# Competition Between Local Governments and Private Enterprises


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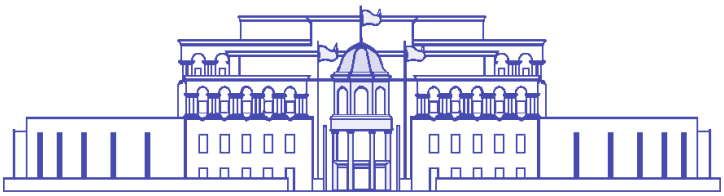

# LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES

BULLETIN NO. 03-07

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# LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES

(*Nevada Revised Statutes* 218.682)

This summary presents the recommendations approved by the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises during the 2001-2002 legislative interim and at its final meeting held on June 26, 2002, in Carson City.

## RECOMMENDATIONS FOR LEGISLATION

### Bidding and Contracting Procedures for Certain Public Works Projects

1. Enact legislation making various changes to Chapter 338 of the *Nevada Revised Statutes* (NRS) ("Public Works Projects"). Specifically, the legislation would propose the following amendments **(BDR 28-409)**:

    a. Amend Chapter 338 of the NRS to allow local governments to use three informal bids for those public works projects between $25,000 and $100,000. Contract awards would be to appropriately licensed contractors who are the lowest responsible bidders.

    b. Amend Chapter 338 of the NRS to require quarterly reporting to the governing boards for those projects between $25,000 and $100,000 that have been awarded to contractors. The quarterly report would state to whom the projects were awarded, the amount of the bid, and the description of the project.

    c. Amend Chapter 338 of the NRS to require the local government official responsible for a project between $25,000 and $100,000 to document in his or her files the following:

        1. An attestation to the best of his or her knowledge the estimated cost of the project being performed in-house;

        2. A general statement why the project was performed in-house; and

        3. A general statement that the project follows the same specifications as is required of the private sector.

d. Amend Chapter 338 of the NRS to allow local governments to use informal bids by soliciting at least three contractors. Currently, the law requires a local government to solicit bids from not more than three contractors.

e. Delete provisions in Chapter 338 of the NRS requiring public bodies to maintain and administer a list of properly licensed contractors who are interested in receiving offers to bid on certain public works projects.

**Public/Private Competition—Legislative Declaration and Creation of Guidebook**

2. Enact legislation, which includes the following **(BDR 17-412)**:

a. A legislative declaration specifying that the Nevada Legislature supports a state policy creating an atmosphere in which the needs of its residents are met primarily through the private sector. The declaration would also specify that if the private sector is unable to meet these needs, the government has a full and complete responsibility to provide service and products at the highest level of quality and at the lowest possible cost.

b. Language authorizing the Legislative Commission to create (either on its own or through the appointment of a subcommittee or interim study) a guidebook or manual for use by state and local government establishing specific criteria and assessments for use by these entities to evaluate services or activities that may compete with the private sector before procuring those services or entering into those activities.

**Authorizing Public/Private Partnerships with Nevada's Department of Motor Vehicles (DMV) for Fleet Motor Vehicle Registration**

3. Enact legislation authorizing in the NRS public/private partnership efforts between Nevada's DMV, the rental car industry, and other companies with large vehicle fleets to provide for, among other similar programs, an optional program of internal, computerized motor vehicle registration. **(BDR 43-411)**

**Proposed Amendment to the Sales and Use Tax Act of 1955**

4. Enact legislation similar or identical to Assembly Bill 611 of the 1997 Legislative Session (Chapter 404, *Statutes of Nevada*), which proposes that an amendment to the Sales and Use Tax Act of 1955 be submitted to Nevada's voters at the 2004 General Election to require state and local governments to collect sales taxes on sales of items purchased for resale to the public. (**BDR 32-410**)

## RECOMMENDATIONS FOR SUBCOMMITTEE ACTION: SUBCOMMITTEE STATEMENTS AND LETTERS

The members of the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send the following letters to:

5. Representatives of Churchill County Communications and Charter Communications asking for their cooperation in reaching an agreement in the establishment of rules and regulations attractive to both parties and advising them that the Senate and Assembly Committees on Commerce and Labor will likely address this and other topics relating to the provision of telecommunication and cable television services during the 2003 Legislative Session.

6. Representatives of the Eighth Judicial District Court (the drug court), Clark County's Traffic/DUI (driving under the influence) School, and the Clark County Court Education Program requesting a presentation to the Senate Committee on Transportation or the Senate or Assembly Committees on Government Affairs during the 2003 Legislative Session highlighting the role and operations of the county's traffic/DUI school and how the school assists in the funding and operation of drug courts in Clark County.

7. The chairmen of all Boards of County Commissioners and representatives of television districts in Nevada clarifying and giving impetus to provisions in Nevada law prohibiting the rebroadcast of FM radio signals by television districts in cities or towns already served by local radio. The letter serves to address concerns raised by certain members of the Nevada Broadcasters Association and radio station owners in rural Nevada.

8. The chair of the Senate Committee on Governments Affairs requesting that a mandate to consider the use of independent project managers for all government projects within a specific cost range be incorporated into state law through an existing or new bill draft request.

9. Governor Kenny Guinn, the chair of the Legislative Subcommittee to Study Medical Malpractice, the Nevada Trial Lawyers Association, the Doctor's Group, Nevada's Commissioner of Insurance, and to James Wadhams, who represents various insurance groups, expressing support for their examination of the medical malpractice issue and setting forth an explanation from the Subcommittee to Study Competition Between Local Governments and Private Enterprises regarding the possible impacts on competition stemming from recent insurance and medical malpractice issues.

10. Representatives of the Nevada Recreation and Park Society, Gary Vause, Owner, Lit'l Scholar Academy (Clark County), and Carol Hall, Owner, Creative Kids (Clark County), encouraging continued dialogue between these parties in addressing real and perceived competition in the provision of childcare services.

11. Member's of Nevada's Congressional delegation, the Secretary of the United States Department of the Interior (DOI), and the Director of the Bureau of Land Management (BLM), encouraging the full funding of the Payments in Lieu of Taxes (PILT) program administered by the BLM. Specify in the letter that many local governments in Nevada do not have adequate operating budgets due to the lack of private, taxable land base for the collection of revenue, and that at a minimum, full funding of PILT by the United States Congress as requested by the DOI would greatly improve the fragile economic status of several rural Nevada counties.

12. The chairmen of the Senate and Assembly Committees on Government Affairs requesting that they examine, during the 2003 Legislative Session, the issue of ongoing and continued costs associated with certain local ballot questions that are not necessarily set forth in the required fiscal notes for those ballot questions.

13. Various executive state agencies notifying them of the requirements set forth in NRS 233B.066. This provision requires all adopted regulations submitted to the Legislative Counsel Bureau or filed with Nevada's Office of the Secretary of State to include a statement of the estimated economic impact the regulation may have on the public and on the business, which it is to regulate.

The members of the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises also requested staff to provide a summary and historical analysis of the operations of the Nevada State Motor Pool Division, Nevada's Department of Administration. The summary should include a history of motor pool traffic during the previous ten years and an overview of internal studies performed by the State Motor Division regarding efforts to privatize or outsource certain motor pool operations.

# REPORT TO THE 72nd SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES

## I. INTRODUCTION

During the 2001 Legislative Session, the Senate Committee on Government Affairs and the Senate Committee on Legislative Affairs and Operations considered and approved Senate Bill 355. The full Senate approved the measure on June 4, 2001, the final day of the regular legislative session. Although the bill did not pass the Assembly due to the constitutional time limit on the session, Senate and Assembly leadership had already slated the topic for an interim study. Therefore, in September 2001, the Legislative Commission created the Subcommittee to Study Competition Between Local Governments and Private Enterprises modeled loosely after S.B. 355.

The original version of S.B. 355 specified that if a local government provides goods or services, or both, to the general public in competition with a private entity, the local government shall comply with all laws, rules, and regulations of this state and any other local government with which the private entity would be required to comply. Some members of the Senate felt, given the complexity of the topic and the ramifications of the bill that a more suitable approach would be to conduct an interim study on the matter. It was therefore amended to require the Legislative Commission to appoint a subcommittee to study the issue.

### A. SUBCOMMITTEE MEMBERS AND STAFF

The Legislative Commission appointed the following six legislators (three members of the Senate and three members of the Assembly) to conduct the interim study as directed by the Legislative Commission and report their findings to the 2003 Legislature:

Senator Michael Schneider, Chairman
Senator Ann O'Connell
Senator Randolph J. Townsend
Assemblyman Wendell P. Williams
Assemblyman David R. Parks
Assemblywoman Dawn Gibbons

Staff support for the subcommittee was provided by the following Legislative Counsel Bureau (LCB) staff members:

Michael J. Stewart, Senior Research Analyst, Research Division
M. Scott McKenna, Principal Deputy Legislative Counsel, Legal Division
Kennedy, Senior Research Secretary, Research Division

## B. BRIEF OVERVIEW OF SUBCOMMITTEE PROCEEDINGS

The subcommittee held five meetings in Nevada, including a work session, during the course of the study. The first three meetings were held in Las Vegas, the fourth meeting was held in Elko, and the final meeting and work session was held in Carson City. Videoconferencing of the meetings held in Las Vegas and Carson City was provided.

The subcommittee discussed numerous topics during the course of its study. In particular, the subcommittee examined potential competition in services generally provided to the public by state and local government agencies and their affiliates that might also be supplied, in some manner, by the private sector. Representatives of the private sector typically related concerns about possible advantages government might have in providing such services, particularly with regard to taxation and regulation. Meanwhile, representatives from state and local government service providers noted that they are responsible for meeting carefully defined public needs that are not generally met by the private sector. Topics addressed by the subcommittee included:

- Competition, privatization, and outsourcing activities and provisions in other states;
- Potential competition in the delivery of health care services, especially those services provided in Clark County;
- Contracting and bidding procedures for public works contractors and construction companies;
- Potential competition in the delivery and provision of childcare services;
- Activities of Nevada's Department of Motor Vehicles (DMV) and the Department's involvement in public/private partnerships for certain services;
- Potential competition in the provision of telecommunications and cable television services;
- Management and ownership of convention facilities by local governments and the private sector;
- Impacts of privatization and outsourcing on services such as public safety, prisons, and public transportation;
- Effects on competition in the provision of health care as a result of insurance and medical malpractice issues;
- Role of government risk pools and their relationship with the competition issue;

- Activities of the Las Vegas Chamber of Commerce and its positions regarding the competition issue;

- Activities of local government and their efforts to outsource or privatize certain services; and

- Effects of competition in the provision of electric utility services in the State of Nevada.

Attendance at the subcommittee meetings was high, and presentations during the course of the study included numerous recommendations. At its March meeting and at the final meeting and work session, the members voted to request the drafting of four bills for consideration by the 2003 Nevada Legislature. These bill draft requests (BDRs) address: (1) bidding and contracting procedures for certain public works projects; (2) the creation of a guidebook regarding public/private competition; (3) public/private partnerships with DMV for fleet motor vehicle registration; and (4) an amendment to the Sales and Use Tax Act of 1955. Finally, the subcommittee voted to send several letters and subcommittee statements to various elected officials, legislative committee chairmen, state and local government agency personnel, and private individuals regarding a wide range of competition issues.

## C. SUMMARY OF INDIVIDUAL SUBCOMMITTEE MEETINGS

This section briefly summarizes the decisions at the subcommittee's five meetings. More detailed analyses of the subcommittee's deliberations can be found in the subcommittee's official meeting minutes filed in the Research Library of the LCB (telephone: 775/684-6827). The first three meetings of the subcommittee were held in Las Vegas; the fourth meeting was held in Elko; and the final meeting and work session was held in Carson City.

### 1. Las Vegas Meeting (December 5, 2001)

The subcommittee's first meeting was held in Las Vegas on December 5, 2001. At this organizational meeting, the subcommittee reviewed a binder as prepared by staff containing informational materials regarding competition between local governments and private enterprises. Some of the contents of this binder and accompanying research are listed in Section V of this report. This was followed by a discussion of competition in the delivery of health care services. Particular focus was on the role of the University Medical Center's (UMC's) Quick Care Center (QCC) model and the impacts QCCs may have on privately provided medical services. Patient statistics, economic data relative to the health care industry, and information regarding services provided by public and private hospitals was presented as part of this discussion.

The subcommittee also heard from representatives of the contracting and construction industry regarding the state and local contracting process and the impacts of competition in these procedures. Testimony indicated that minor adjustments to Nevada's contracting provisions (Chapter 338 of the NRS, "Public Works Projects") would assist both local governments and

contractors/bidders in providing an improved and less costly work product. In addition, the subcommittee received a review of municipal competition in the provision of telecommunications and cable television services in Nevada.

The subcommittee also heard from representatives of local government organizations who provided their perspectives on the issue of competition between government and private enterprises. These representatives agreed to work closely with the subcommittee throughout the legislative interim. Finally, the subcommittee heard from the President of the Nevada Taxpayers Association, who presented a number of fiscal policy principles for the subcommittee's consideration when addressing the competition issue.

### 2. Las Vegas Meeting (January 23, 2002)

The second meeting of the subcommittee was held in Las Vegas and videoconferenced to Carson City. During this meeting, subcommittee staff reviewed various informational items highlighting state agency audits, programs, and provisions in other states that address contracting procedures and competition between government (primarily at the state level) and private enterprises. This review was followed by an overview from the Associated General Contractors regarding efforts to amend Chapter 338 of the NRS to help streamline and improve the contracting and bidding process for public works projects.

A representative from the Las Vegas Chamber of Commerce provided a presentation regarding competition between local governments and private enterprises. She reported several instances where competition between government and the private sector may not be advantageous and identified several potential public/private partnerships. The subcommittee also continued its review of possible competition in the provision of health care services in Clark County, Nevada. Representatives from private hospitals noted that there should be "a level playing field" to foster fair competition. Meanwhile, representatives from UMC explained that their operations meet a public need that is not being covered by private providers.

The subcommittee then heard from a representative of the Nevada Public Agency Insurance Pool. A history of Nevada's insurance pool was provided and the subcommittee learned how the functions of the risk pool relate to competition between government and the private sector. Finally, the subcommittee heard a discussion of issues regarding competition in the delivery of childcare and preschool services. In particular, the subcommittee heard from two private childcare providers in Clark County who argued that unfair competition exists in the childcare industry. They stipulated that public childcare programs operate under a different and less restrictive regulatory structure.

### 3. Las Vegas Meeting (March 12, 2002)

The third meeting of the subcommittee was held in Las Vegas and videoconferenced to Carson City. Following introductory remarks by the chair and the approval of previous meeting minutes, the subcommittee reviewed a binder as prepared by staff containing

informational materials regarding competition between local governments and private enterprises. The subcommittee then heard from Samuel P. McMullen, representing the Las Vegas Chamber of Commerce, who shared with the subcommittee results of a survey conducted by the Chamber to its members to determine the impacts of competition by local governments in the provision of certain services.

The subcommittee also heard an overview of contracting provisions and procedures in the State of Nevada from representatives of the State Public Works Board and the Purchasing Division. Particular focus was placed on the request for proposal process, bidding procedures, contract change orders, project management, and education. This overview was followed by a presentation from Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties, and representatives from the Associated General Contractors highlighting proposed changes to Chapter 338 of the NRS pertaining to contracting provisions and public works projects. The subcommittee voted to request a bill draft proposing changes to Chapter 338 and directed the speakers to develop specific language prior to the subcommittee's work session scheduled for June 2002.

Additional testimony was heard regarding the delivery of childcare and preschool services in Nevada. Representatives from the Nevada Recreation and Park Society clarified the requirements for these services and discussed the regulatory framework under which publicly provided childcare programs operate. Representatives from private childcare centers stipulated that public childcare providers have an unfair advantage in the industry due to their tax exempt and taxpayer funded status.

Finally, the subcommittee heard from numerous individuals and health care service representatives regarding the effects on competition in the provision of health care services as a result of insurance and medical malpractice issues. The subcommittee heard a chronology of events leading up to the medical malpractice situation and discussed related impacts on both the patient and physician communities in Clark County. Additional testimony was received from insurance industry representatives and a representative from the Nevada Trial Lawyers Association. No further action was taken at this meeting.

**4. Elko Meeting (May 20, 2002)**

The fourth meeting of the subcommittee was held in Elko, Nevada, at the Elko Convention Center. Following opening remarks from Chairman Schneider, subcommittee staff reviewed various informational items highlighting programs and provisions in other states that address competition between government (primarily at the state level) and private enterprises. Primary focus was on the Texas Council on Competitive Government (CCG) and other government competition provisions and reports from the State of Texas.

The subcommittee also heard from representatives from the City and County of Elko regarding outsourcing, privatization, and contracting activities. This discussion was followed by a presentation from Carol Falk, Vehicle Program Manager, DMV, regarding services

outsourced or contracted by the department. Specific programs that have been outsourced or provided through public/private partnerships include mail handling, registration renewal by vehicle emission stations, certification for commercial driver's licenses, and certain computer services.

The subcommittee also heard from a representative of the rental car industry who proposed a public/private partnership with the DMV to permit in-house vehicle registration at rental car offices for rental car fleets. David Nestor of Enterprise Rent-A-Car indicated that the cost savings realized from such a program would be extensive. In addition, the subcommittee received a presentation from the Utility Shareholders Association of Nevada regarding the impacts of competition in the provision of electric utility services in Nevada.

Finally, the subcommittee reviewed, for discussion purposes only, a preliminary list of possible recommendations in advance of the subcommittee's final meeting and work session scheduled for June 26, 2002, in Carson City.

## 5. Carson City Meeting and Work Session (June 26, 2002)

The fifth and final meeting of the subcommittee was held in Carson City and videoconferenced to Las Vegas on June 26, 2002. The meeting began with opening remarks and introductions from the Chairman and approval of subcommittee minutes of meetings held in March and May 2002. This was followed by an overview of potential competition in the provision of traffic school instruction as well as a discussion regarding traffic school programs offered in Clark County. Kenneth Kruger, Owner, All American Driving School, opined that county-run traffic schools in southern Nevada are unfairly competing against private traffic schools. District Court Judge Jack Lehman, however, testified that Clark County's Traffic/DUI School, in addition to serving traffic law and DUI offenders, contributes significant revenue to the Clark County drug courts. He added the county school was created in 1991 because the private sector schools were not providing quality service. The subcommittee voted to send a letter to Clark County requesting a presentation to the appropriate legislative committees highlighting the role and operations of Clark County's Traffic/DUI school and how the school assists in the funding and operation of the drug courts in Clark County.

The subcommittee then heard from representatives of Charter Communications and Churchill County Communications regarding potential competition in the provision of telecommunications services. After lengthy discussions regarding the competitive nature of the industry, the subcommittee agreed to send letters to both parties requesting that they work together to foster an agreement for the development of rules and regulations attractive to both organizations. Representatives of local government and the contracting industry then presented final language regarding local public works contracting and bidding for inclusion into a previously approved BDR. Specifically, the language seeks to create an expedited and less formal process for local governments to hire and utilize contractors for certain lower cost (between $25,000 and $100,000) public works projects.

Finally, the subcommittee approved numerous recommendations as set forth in the final work session document. In addition to the contracting BDR noted above, additional recommended BDRs included: (1) requesting the Legislative Commission (or its designee) to create a guidebook setting forth criteria and guidelines for evaluating public/private competitive activities; (2) authorizing in the NRS the establishment of public/private partnerships between Nevada's DMV, the rental car industry, and other companies with large vehicle fleets to provide for, among other similar programs, an optional program of internal, computerized motor vehicle registration; and (3) amending the Sales and Use Tax Act of 1955 to require state and local governments to charge sales tax on items purchased for resale to the public. The subcommittee also approved the drafting of numerous letters. Topics of these letters included: (1) medical malpractice, (2) the rebroadcast of FM radio signals; (3) the use of independent project managers for certain high-cost public works projects; (4) the provision of childcare services; (5) the Federal Payments in Lieu of Taxes program; (6) the fiscal impacts of local ballot questions; (7) business impact statements required for adopted and filed state regulations; and (8) the provision of telecommunications and cable television services in Churchill County.

## II. ISSUES CONSIDERED DURING THE 2001-2002 LEGISLATIVE INTERIM

During the 2001-2002 legislative interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises discussed the competition topic at length. The subcommittee reviewed research and practices from other states and also discussed potential competition in the provision of numerous services in the State of Nevada. Upon examining this topic in detail, it became clear that there lies a direct correlation between public and private competition and the issue of privatization. This stems from the fact that privatization of certain public services is the method of choice by many state and local governments across the United States to limit or control public-private competition. Key public services that were identified by subcommittee members and meeting participants as being potentially competitive in nature are described and summarized below.

### A. HEALTH CARE SERVICES

One of the natural topic choices for the subcommittee was potential competition in the provision and delivery of health care services, particularly in Clark County. During the initial debate on S.B. 355 of the 2001 Legislative Session (the original measure after which this interim study is loosely modeled), the majority of the discussion focused on concerns that the UMC's Quick Care System in Las Vegas, according to some, unfairly competes with private health care providers. Given the original focus during the legislative session on the health care competition issue, the subcommittee actively sought input from both public and private health care providers in Clark County.

During the course of several meetings, the subcommittee learned that in 2001, QCCs in Las Vegas experienced over 500,000 patient visits, with 400,000 requiring urgent care.

According to Clark County, these 400,000 urgent care patients would have sought this care in Clark County's overburdened emergency rooms if the QCCs were not available. Some private health care providers, however, argued that the "spirit of competition [in the health care industry] has been overrun by UMC." Private providers also pointed out that UMC's taxpayer supported operations do not provide a "level playing field" for the health care industry in Clark County.

Representatives from UMC noted that their presence in the market is to meet serious public needs, including: (1) minimizing tax impacts on the public; (2) avoiding over-crowding at local emergency rooms; (3) offering services during times of economic stress; and (4) meeting the health care needs of the uninsured, underinsured, or indigent populations in Clark County. Meanwhile, private providers argued that UMC's Quick Care System unfairly operates in a deficit mode and that private facilities could meet these public needs as well or better than the public health care system. On the other hand, UMC representatives reported that their Board of Trustees set forth criteria for new QCCs which specifies, among other things, that new facilities should meet community health needs while at the same time, be financially viable to benefit the taxpayers.

During the first few meetings of the subcommittee, it became very clear that resolving the differences between certain private health care providers and the UMC would be difficult. Essentially, UMC's position indicated they are meeting a clear public need that is not being met or is unable to be met by the private sector. Meanwhile, private providers argued that in meeting these public needs, UMC unfairly competes against them.

The subcommittee did not offer any recommendations in its work session to address this delicate issue. Indeed, the financial situation of UMC's QCC operations is ever-changing and the competition issues that appeared critical in late 2001 and early 2002 appear to have taken a backseat to other pressing economic concerns and the increasing discontent in the medical community over the cost of medical malpractice insurance.

## B. CONTRACTING AND CONSTRUCTION

The subcommittee also heard discussions regarding contracting and bidding. Initial concerns raised by representatives of the Associated General Contractors included: (1) weak statutory language regarding the efficient and cost-effective work performance of government agencies; (2) an imbalanced permitting process; and (3) unrealistic contract bidding procedures. The subcommittee obtained information from other states (Texas and Washington) that helped identify best practices in contracting procedures. This information assisted the subcommittee in recognizing important issues to discuss throughout the 2001-2002 legislative interim.

The subcommittee also heard valuable testimony from the State Public Works Board and the State Purchasing Division, which oversee contracting procedures. Of particular concern were the impacts of change orders on the ultimate cost of certain projects. Representatives from the

contracting and construction industry as well as local governments combined efforts to jointly recommend changes that would require:

- Three informal bids for public works projects between $25,000 and $100,000;

- Quarterly progress reports regarding projects to the local government entities that oversee the contract; and

- Local governments to provide written justification as to why a particular project was selected to be performed "in-house" as opposed to contracted out.

Other suggestions for reform regarding contracting included adjusting prevailing wage caps for contracted projects in rural counties, and establishing time frames for the "re-bid" of certain projects. While much of the subcommittee's discussion centered around procedural adjustments that might be made to Chapter 338 of the NRS, the subcommittee did vote to send a letter to the chair of the Senate Committee on Government Affairs requesting that a mandate to consider the use of independent project mangers for all government projects within a specific cost range be incorporated into State law through an existing or new BDR. For further information regarding this letter and the proposed BDR recommended by the subcommittee, please refer to Section IV of this report.

## C. CHILDCARE SERVICES

Discussion regarding potential competition in the delivery of childcare services was also heard during the subcommittee meetings. In particular, representatives of private childcare centers argued that public providers are subject to less regulatory requirements. Meanwhile, public childcare providers stipulated that the current regulatory structure applies to all children, based on the number of children, the type of care provided, and the age of the children—whether or not they receive public or private services.

Like the health care issue, testimony was heard regarding a county's obligation to respond to a public need (especially in Latch Key/Safe Key programs) and the private sector's ability and willingness to provide services to those who may be unable to pay for them. During its work session, the subcommittee voted to write a letter to the public and private childcare providers involved in the subcommittee's discussions encouraging them to continue dialogue on this important issue and develop common ground on how both sides are regulated and what their obligations should be in meeting childcare needs in Nevada (see Section IV of this report).

## D. DEPARTMENT OF MOTOR VEHICLES SERVICES

The subcommittee was particularly intrigued by the many services that DMV actively outsources or privatizes. The subcommittee received a presentation from the Department that identified a number of private sector partnerships, including:

- Motor vehicle registration renewals by emissions stations;

- New vehicle registration pilot project by auto dealerships;
- Mail services;
- Third-party certifiers for commercial driver's licenses;
- Third-party certifiers for motorcycle safety skills and license endorsements; and
- Various computer services.

The subcommittee was also very interested in a proposal from the rental car industry that would allow internal vehicle registration for rental car fleets. Enterprise Car Rental of Nevada alone registers 7,500 cars per year at a cost of $2.5 million. The proposal would drastically reduce the amount of time spent traveling to and from the DMV and standing in line to register the fleet vehicles. Furthermore, the proposal would eliminate 20-day new car tags on new rental cars and improve customer service for the rental car companies.

The subcommittee seemed very intrigued by this proposal and believed that expanding this concept to include all fleet vehicle registration would be prudent. Subcommittee members voted at the work session to request a bill draft authorizing in Nevada law public/private partnership efforts between Nevada's DMV, the rental car industry, and other companies with large vehicle fleets to allow for an optional program of internal, computerized motor vehicle registration. A description and summary of this proposal appears in Section IV of this report.

## E. TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES

Presentations regarding possible competition in the provision of telecommunication and cable television services were also heard by the subcommittee. Specifically, representatives from Charter Communications expressed concerns that Churchill County Communications (CC Communications) unfairly competes with their operations. Charter Communications opined that CC Communications is unfairly exempt from certain licensing and franchise fees, has the ability to cross-subsidize costs for future investments, can extend credit to itself, use public funds, and guarantee a loan.

Meanwhile, CC Communications argued that the provision of technology services in rural areas poses a unique challenge and the company is responding to a public need that is not currently being met by the private sector. Representatives noted that CC Communications infused $1.5 million in Churchill County's General Fund in 2001 and provides 100 jobs to local residents. While the subcommittee took no official position on the issue, several members noted that competition in the communications industry appears evident. The subcommittee did vote to write a letter to Charter Communications and CC Communications encouraging them to work together to find a reasonable solution to their business and competitive concerns (see Section IV).

## F. MANAGEMENT AND OWNERSHIP OF CONVENTION FACILITIES

The subcommittee heard from several individuals regarding potential competition in the provision of convention facilities, particularly in Clark County. Some participants noted that many of the large gaming and hotel establishments in southern Nevada provide convention space; however, they explained that public convention facilities set artificially low convention space rates, thereby drawing business away from private establishments. These individuals explained to the subcommittee that the existence of publicly provided convention space was simply not an equitable practice.

Meanwhile, representatives of the Las Vegas Convention and Visitors Authority (LVCVA) argued that the LVCVA does not compete with the private sector for convention and trade-show space, but exists to continually expand the tourist base. Representatives noted that the LVCVA attracted over $1 billion to the Clark County economy during 2001 and its primary mission is to infuse Clark County's economy with tourist dollars.

While the subcommittee took no action on this issue, it was quite intrigued by the various positions presented regarding this topic and recognized the impact the use of convention facilities has on Nevada's economy.

## G. IMPACTS OF COMPETITION RELATIONSHIPS ON LOCAL GOVERNMENT

Throughout the course of the interim study, the subcommittee heard testimony from representatives of local government. Nearly all of these representatives noted the growing concern of the economic conditions of local governments. In addition, representatives consistently reiterated their position that decisions regarding the provision of services at the local government level are best made by policymakers at that same level.

The role of government, according to many, is to ensure stability and provide consistent public services during economic fluctuations and times of unmet needs. Several observations were raised regarding the complexity of the private sector providing services traditionally supplied by government and determining precisely when a public need becomes a market need that can be supplied by private enterprise. Despite some of these concerns, the subcommittee was pleased to hear that many government programs and practices have indeed been outsourced either in part or in their entirety and the success of these endeavors has generally been favorable. It should be noted, however, that prior to engaging in outsourcing or privatization, the local governments typically embark on a careful review of the economic, political, and social impacts of the practice.

## H. COMPETITION AND THE ROLE OF TAXES IN NEVADA

During subcommittee hearings, the subject of taxation seemed relevant to many discussion topics. Indeed, throughout the course of the interim study, the Nevada Taxpayers Association (NTA) provided regular analysis of the tax implications of public/private competition. The NTA's "Measures of Fiscal Policy" (see Appendix A) was presented during the subcommittee's first meeting. The "general expenditure principles" portion of these fiscal

policy measures recommends, "competitive outsourcing of government functions which can be efficiently and cost effectively performed by the private sector should be encouraged and expanded." Among other things, these principles also stipulate that "expenditures should be based on necessity," "all programs should be systematically reviewed," and "meaningful performance standards must be adopted." Throughout the interim, the subcommittee regularly discussed the "cost to the taxpayer" of certain government programs and the input from the NTA was greatly appreciated.

## I. PRIVATIZATION OF GOVERNMENT SERVICES

As noted earlier, a thorough examination of the competition issue is difficult without considering the topic of privatization. Privatization of certain public services is often the method of choice by many state and local governments across the United States to limit or control public-private competition. In times of economic difficulty, state and local governments sometimes consider increasing opportunities for state and local government agencies to outsource certain services or set priorities to privatize newly established or existing government programs.

Privatization can take various forms. According to the Federal General Accounting Office (GAO), the most common form is contracting with private bidders to perform a government service.[1] This approach allows the government to remain the financier and manager of the service while the service itself is provided privately. Another form of privatization involves the complete governmental transfer of ownership, assets, enterprises, or responsibilities to the private sector. The GAO reports that a new form of privatization involves "managed competition," whereby the contracting process allows a government agency to prepare a work proposal and submit a competitive bid along with private bids. The government may then award to the agency or the private bidder. Privatization and its many forms remained a consistent "thread" throughout the course of the interim study and is an underlying theme in much of the available research regarding public/private competition.[2]

## III. REVIEW OF COMPETITION AND PRIVATIZATION ISSUES IN OTHER STATES

In discussing the issue of competition between local governments and private enterprises, the subcommittee took great interest in how this topic has been addressed in other states. One of the primary goals of the subcommittee's staff was to provide information to the members that highlighted such activities in other states. In general, research in other states seemed to

[1] For additional information, please refer to GAO report no. GGD-97-48 titled *Privatization: Lessons Learned by State and Local Governments*, March 1997.

[2] A primary and consistent source of information for this interim study was *Legislative Counsel Bureau Bulletin No. 93-18*, titled "Feasibility of Privatizing Provision of Government Services," September 1992. This interim study was authorized by Senate Concurrent Resolution No. 2 of the 1991 Legislative Session (File No. 198, *Statutes of Nevada*). Pages two through eight of the report proved especially useful during the course of this competition study.

indicate that public/private competition is typically addressed, if at all, utilizing three broad approaches or combinations thereof:

**1.** Several states offer guidebooks and evaluation tools for state and/or local governments to use when deciding whether or not to outsource or privatize a public service. In general, these guidelines establish criteria similar those listed below from the State of Colorado:

- Market strength;
- Political resistance;
- Quality of service;
- Employee impacts;
- Legal issues;
- Level of risk;
- Impact on resources; and
- Quality control issues.

**2.** Many states also have review boards, councils, or commissions that specifically address competition and privatization issues. These bodies typically evaluate services and determine whether those services should or should not be outsourced by government. States that currently have such boards or commissions include Georgia, Maine, Michigan, New York, Texas, and Virginia.

**3.** The final approach to addressing competition is to directly prohibit or limit it in state law. The State of Colorado, in addition to utilizing the guidebooks and evaluation tools described above, enacted in 1988 Article 113 of Title 24 in the *Colorado Revised Statutes* (CRS), titled "Government Competition with Private Enterprises." Further details regarding Colorado's provisions appear below.

Of course, some states have chosen other ways to deal with the competition question. However, research seems to indicate that most states—if they choose to address this matter in state law—have done so using one of the above three approaches. The following pages highlight competition issues and the approaches used to address them in the States of Colorado, Texas, and Virginia. In addition, a summary of the GAO's report no. GGD-97-48 titled *Privatization: Lessons Learned by State and Local Governments* is also provided.

## A. THE STATE OF COLORADO'S APPROACH TO ADDRESSING COMPETITION

As noted above, the State of Colorado has enacted provisions specifically prohibiting public/private competition in certain services. Numerous exceptions to this prohibition are also included in this competition provision. Specifically, CRS 24-113-103 states:

> (1) A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless specifically authorized by law.
>
> (2) A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section.
>
> (3) The restrictions on competition with private enterprise contained in this section do not apply to:
>
> (a) The development, operation, and management of state parks, historical monuments, and hiking or equestrian trails or to the management, protection, or restoration of Colorado's forest and soil resources;
>
> (b) Correctional industries established and operated by the department of corrections pursuant to article 24 of title 17, C.R.S.;
>
> (c) State veterans' homes, except the state veterans' home at Rifle, Colorado;
>
> (d) The Colorado tourism board;
>
> (e) Printing and distributing information to the public if the state agency is otherwise authorized to do so and printing or copying public records or other material relating to the state agency's public business if the costs of such printing, copying, and distribution are recovered through fees and charges;
>
> (f) The department of public safety;
>
> (g) The construction, maintenance, and operation of state transportation facilities;
>
> (h) The provision of free medical services or equipment to indigents in association with a community service health program; and
>
> (i) The regional transportation district.
>
> (4) The provisions of section 24-113-104 and not the restrictions contained in subsection (1) of this section shall apply to institutions of higher education.

The State of Colorado also addresses competition with private enterprise by institutions of higher education in CRS 24-113-104. In particular, this provision stipulates that institutions of higher education shall not, unless specifically authorized by law:

> . . . provide to persons other than students, faculty, staff and invited guests, through competitive bidding, goods, services, or facilities that are available from private enterprise, unless the provision of the good, service, or facility offers a valuable educational or research experience for students as a part of their education or fulfills the public service mission of the institution of higher education.

The statute further provides criteria to determine whether and how a particular good, service, or facility offers "a valuable teaching, educational, or research experience."

Finally, as noted above, the Colorado State Auditor's Office has created guidebooks for use by governments to evaluate the competitive effects of services and help state and local governments make choices, based on a detailed set of criteria, how certain services should be provided. These criteria include market strength, service quality, employee impacts, level of risk, and the impact on resources.

## B. THE STATE OF TEXAS' COUNCIL ON COMPETITIVE GOVERNMENT

To assist in developing concepts and ideas for contracting, consolidating, and outsourcing government services in the State of Nevada, it was helpful for the subcommittee to review services and processes utilized in the State of Texas. In 1993, the Texas Legislature created the Texas Council on Competitive Government (CCG) in response to a growing interest in making government more resourceful, cost-effective, and competitive.[3] According to the CCG Internet Web site, the Council "has saved the state more than $65 million" through fiscal year 2001. The role of the CCG is to review state services (both existing and newly created services) to identify the most cost-effective and efficient provider of those services. The possible outcomes of a CCG review are:

**1.** The reengineering and reorganization of services within the same agency or agencies;

**2.** The reengineering and reorganization of services to another agency or agencies;

**3.** The reassignment of services to the private sector; or

**4.** The reassignment of services through a partnership between the pubic and private sectors.

According the CCG Internet Web site (www.ccg.state.tx.us), past and present public services in the State of Texas that have been identified as suitable for contracting/outsourcing include:

- Police video systems;
- Document imaging;
- State vehicle fleet management (motor pool);
- Child support payment collection;
- Debt collection and printing services within the Office of the State Comptroller;
- Presort of mail;
- Operation of the Texas Department of Transportation's (TxDOT's) Centralized Auto Parts System;

[3] For more information on the Texas Council on Competitive Government, please refer to the Council's Internet Web site at www.ccg.state.tx.us.

- Management of TxDOT's San Antonio Fueling Facilities;
- Retail credit card fuel purchases;
- Document destruction services;
- Travis County print shops;
- Texas Department of Health vendor drug claims processing;
- TxDOT's manufacture of herbicide rigs;
- Prevailing wage rate determination program;
- State operated computer data center;
- Renegotiation of the State of Texas long distance calling rates; and
- Travis County's mail presort and barcode services.

The CCG also has identified many services and activities that are not suitable for contracting or outsourcing. In most of these instances, the CCG noted that it was unable to identify opportunities for significant cost savings and therefore did not recommend transfer to another state agency, reorganization, or outsourcing. These services and activities include:

- Library records storage and microfilm;
- Statewide computer data centers;
- The operation of the alternative fuel conversion facility operated by the Texas Railroad Commission;
- Capitol Complex telephone system;
- Routine vehicle maintenance of state vehicles;
- The TxDOT's El Paso auto parts warehouse;
- Geographic information systems services;
- Texas' Health and Human Services enrollment and eligibility processes;
- Attorney General's Office Child Support Program;
- Financial reviews of the Texas Animal Health Commission;
- Windstorm inspection function of the Texas Department of Insurance;
- Re-engineering of the state's mail practices;
- Laundry services for the state's Mental Health and Mental Retardation programs;

- Office of the Comptroller's lock box/revenue processing program; and
- Public information, media, and advertising functions of the Texas State Lottery Commission.

The director of the CCG, opined that the CCG's success is based on the Council's "complete authority to decide" if and when a particular government service or activity should be consolidated, outsourced, or privatized. He further explained that the CCG has designed a process that assesses the cost and quality of programs and services and compares them to external service providers.

## C. THE STATE OF VIRGINIA'S COMMONWEALTH COMPETITION COUNCIL[4]

Virginia's Commonwealth Competition Council was created by the Virginia Government Competition Act of 1995 (Title 9, Chapter 45, *Code of Virginia*). The Council is an independent agency within the executive branch of government and is composed of employees of executive branch agencies appointed by the Governor, members of the General Assembly appointed by the Speaker of the House and the Senate Committee on Privileges and Elections, and private sector members appointed by the Governor, the Speaker of the House, and the Senate Committee on Privileges and Elections.

According to the Council's Internet Web site (www.egovcompetition.com), it has numerous functions and responsibilities, including:

- Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program;
- Advise the Governor, the General Assembly, the Small Business Commission, and executive branch agencies of the Council's findings and recommendations;
- Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government;
- Establish a system to encourage the use of feasibility studies and innovation to determine where competition can reduce government costs without harming the public;
- Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector;

[4]The information presented under this section is lifted largely from the Internet Web site of the Virginia Commonwealth Competition Council. For further details please refer to www.egovcompetition.com.

- Advocate and develop the implementation of a competitive program for state entities to ensure competition for the provision or production of government services from both public and private sector entities;

- Seek, evaluate, and recommend effective public-private partnerships;

- Establish approval, planning, and reporting processes required to carry out the functions of the Council, including directing a state agency to perform a public-private performance analysis when the Council receives a qualifying unsolicited proposal from a private entity;

- Determine the privatization/competition potential of a program or activity; conduct cost-benefit and public-private performance analyses;

- Devise evaluation criteria to be used in conducting performance reviews of any program or activity which is subject to a privatization recommendation;

- Make its services available to any political subdivision of the Commonwealth; and

- Review the practices of government agencies and nonprofit organizations, which may constitute inappropriate competition with private enterprise; develop proposals for preserving the traditional role of private enterprise; encourage the expansion of new private enterprise; and monitor inappropriate competition by nonprofit organizations.

The Council employs various tools to carry out its mission including a computerized public-private performance analysis program, a computerized cost comparison program, statewide surveys with state entities, and annual reports to the Governor, the General Assembly, the Small Business Commission, and executive branch agencies.

Like the State of Colorado, the Virginia Commonwealth Competition Council publishes a public/private performance analysis manual for use by state and local agencies to evaluate the competitive effects of government services. Finally, the Council also maintains and promotes a repository of "best practices." This repository lists and tracks these best practices to encourage other government agencies to employ similar operational tactics. The Council defines "best practices" as:

> . . . a superior method or innovative practice that contributes to improved performance of the process. This designation of "best" may be based on one or more factors, to include (but not limited to):
>
> 1. Expert review of the practice by either a functional or process expert;
>
> 2. Clearly superior results when compared to like organizations;
>
> 3. Results are "breakthrough" in efficiency/effectiveness--could be a "first";

4. Multiple sources, usually experts in the process, agree the practice is superior;

5. The practice employs the latest applicable technology; and/or

6. A large numbers of customers report their satisfaction with the best practice.

## D. HIGHLIGHTS OF THE GENERAL ACCOUNTING OFFICE'S REPORT REGARDING PRIVATIZATION

As noted earlier, it is difficult to discuss public/private competition without also addressing privatization. Many studies over the years have identified the successes and failures of privatization efforts by state and local governments. In 1997, the GAO released a study titled *Privatization: Lessons Learned by State and Local Governments*, which specifically addressed the issue of competition and privatization. In developing this study, GAO personnel examined five state governments (Georgia, Massachusetts, Michigan, New York, and Virginia) and one municipality (Indianapolis, Indiana) to evaluate the experiences these political subdivisions had in addressing competition through privatization. The study identified several "lessons learned" by these governments based on their experiences with privatization. Don Bumgardner of the GAO provided the following summary of these key lessons and findings:

> **1. Political Champion.** Privatization can be best introduced and sustained when there is a committed political leader to champion it. In the six governments studied, a political leader (the governor or mayor) or, in one case, several leaders working in concert (state legislators and the governor) played a crucial role in introducing privatization. These leaders built internal and external support for privatization, sustained momentum for their privatization initiatives, and adjusted implementation strategies when barriers to privatization arose.
>
> **2. Implementation Structure.** Governments need to establish an organizational and analytical structure to implement the privatization effort. This structure can include commissions, staff offices, and analytical frameworks for privatization decision-making. Five of the six governments established government-wide commissions to identify privatization opportunities among government activities and to set policies to guide privatization initiatives.
>
> **3. Legislative and Resource Changes.** Governments may need to enact legislative changes and/or reduce resources available to government agencies in order to encourage greater use of privatization. Georgia enacted legislation to reform the state's civil service and to reduce the operating funds of state agencies. Virginia reduced the size of the state's workforce and enacted legislation to establish an independent state council to foster privatization efforts. These actions, officials told the GAO, enhanced privatization and sent a signal to managers and employees that political leaders were serious about implementing privatization.
>
> **4. Reliable and Complete Cost Data.** To assess the overall performance of activities targeted for privatization, to support informed privatization decisions, and to make

these decisions easier to implement and justify to potential critics, policy makers need reliable and complete cost data on government activities. Most of the governments the GAO surveyed used estimated cost data because obtaining complete cost and performance data by activity was difficult with their accounting systems. While the use of estimated cost data can save a government the time and cost associated with preparing more accurate data, the resulting imprecision can have negative consequences. For example, in Massachusetts, the state auditor questioned savings reported from privatized activities because an "inadequate cost analysis" was done before the privatization.

**5. Workforce Transition Strategy.** Governments need to develop strategies to help their workforces make the transition to private sector employment. Such strategies might seek to involve employees in the privatization process, provide training to help prepare them for privatization, and create a safety net for displaced employees. All six of the governments developed programs or policies to address employee concerns with privatization, such as job loss and the need for retraining. Four of the governments permitted at least some employee groups to submit bids for service contracts along with private-sector bidders.

**6. Monitoring and Oversight.** When a government reduces its direct role in the delivery of services, it creates a need to enhance monitoring and oversight that evaluates compliance with the terms of the contract and evaluates performance in delivering services to ensure that the government's interests are fully protected. Officials from most governments said that monitoring contractors' performance was the weakest link in their privatization processes.

For further information regarding this study, please refer to Appendix B, which includes a complete copy of the report.

## IV. DISCUSSION OF THE SUBCOMMITTEE'S FINAL RECOMMENDATIONS

At its work session, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises considered several recommendations for action by the 2003 session of the Nevada Legislature. The subcommittee also considered, at its work session and at other meetings during the 2001-2002 legislative interim, sending policy statements through subcommittee letters. The members voted to proceed with many of these recommendations, which resulted in BDRs and numerous official subcommittee letters. The subcommittee also requested staff to provide a summary and historical analysis of the operations of the Nevada State Motor Pool Division, Nevada's Department of Administration. A copy of this summary can be obtained by contacting Michael J. Stewart, Senior Research Analyst, at 775/684-6825.

### A. BILL DRAFT REQUESTS

This section provides background information for each of the approved recommendations for legislative action. The assigned BDR number is provided at the end of each recommendation

summary. A copy of BDR No. 28-409 (S.B. 19 of the 2003 Legislative Session) is included in Appendix D of this report. The remaining BDRs were not yet available for distribution at the time of printing of this report.

### 1. Bidding and Contracting Procedures for Certain Public Works Projects

As noted earlier, the subcommittee received a considerable amount of testimony regarding contracting and construction matters. During the subcommittee's first meeting, representatives from the Associated General Contractors (AGC) referenced a number of weaknesses in Nevada's contracting provisions. Some local government representatives also explained that local governments were sometimes burdened by unnecessary regulation, especially with regard to smaller-scale public works projects valued under $100,000. Representatives from both AGC and local government worked together throughout the interim to address these concerns.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises recommends that the 2003 Session of the Nevada Legislature:

**Enact legislation making various changes to Chapter 338 of the *Nevada Revised Statutes* (NRS) ("Public Works Projects"). Specifically, the legislation would propose the following amendments (BDR 28—409):**

**a. Amend Chapter 338 of the NRS to allow local governments to use three informal bids for those public works projects between $25,000 and $100,000. Contract awards would be to appropriately licensed contractors who are the lowest responsible bidders.**

**b. Amend Chapter 338 of the NRS to require quarterly reporting to the governing boards for those projects between $25,000 and $100,000 that have been awarded to contractors. The quarterly report would state to whom the projects were awarded, the amount of the bid, and the description of the project.**

**c. Amend Chapter 338 of the NRS to require the local government official responsible for a project between $25,000 and $100,000 to document in his or her files the following:**

**1. An attestation to the best of his or her knowledge the estimated cost of the project being performed in-house;**

**2. A general statement why the project was performed in-house; and**

**3. A general statement that the project follows the same specifications as is required of the private sector.**

**d. Amend Chapter 338 of the NRS to allow local governments to use informal bids by soliciting at least three contractors. Currently, the law requires a local government to solicit bids from not more than three contractors.**

**e. Delete provisions in Chapter 338 of the NRS requiring public bodies to maintain and administer a list of properly licensed contractors who are interested in receiving offers to bid on certain public works projects.**

## 2. Public/Private Competition—Legislative Declaration and Creation of Guidebook

The subcommittee was quite intrigued by the approaches some states use in addressing the question of competition between local governments and private enterprises. Indeed, during the subcommittee's work session, members carefully considered the three broad approaches noted earlier that some states have used in addressing this matter. The work session document highlighted these three approaches in a hierarchical manner of sorts—from least restrictive to most restrictive.

In recommendation no. 1 of the work session, the subcommittee considered a proposal to require (if a bill) a state agency or encourage (if a resolution) a state agency or other entity, as determined by the subcommittee, to compile and make available a guidebook for use by state and local government that establishes specific criteria and assessments that these entities may use to evaluate services or activities that may compete with the private sector before procuring those services or entering into those activities. This recommendation suggested that the guidebook might be modeled after similar publications produced in other states.

The second recommendation proposed that the subcommittee establish (through legislation) a review board, commission, or council to address the privatization of services and determine how the competitive relationship should be handled and whether certain services should or should not be outsourced. This recommendation suggested that such an entity could be modeled after similar boards or commissions created in other states, including Georgia, Maine, Michigan, New York, Texas, and Virginia.

Finally, the subcommittee considered an option dealing with competition similar to the statutory approach used in the State of Colorado. As noted earlier, Colorado prohibits in statute competition with private enterprise in certain state services or activities. The recommendation proposed that the measure stipulate numerous exceptions (as in the State of Colorado), including: state parks, historical monuments, state forest and soil resources, correctional institutions, veteran's homes, the tourism board, the Department of Public Safety, the construction of state transportation facilities, the provision of free medical services and

equipment to indigent persons (in association with community health programs), regional transportation districts, higher education, and other exceptions as determined by the subcommittee.

After a lengthy discussion, the subcommittee decided to mesh the concepts in recommendations nos. 1 and 2 by giving the Legislative Commission the authority to establish criteria and guidelines for evaluating competition. In some instances, the Legislative Commission chooses to respond to such authority or directives by appointing an interim study to address the question. In addition, the subcommittee voted to include in the BDR a declaration setting forth the Legislature's position on the competition issue.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises recommends that the 2003 Session of the Nevada Legislature:

**Enact legislation, which includes the following (BDR 17—412):**

**a. A legislative declaration specifying that the Nevada Legislature supports a state policy creating an atmosphere in which the needs of its residents are met primarily through the private sector. The declaration would also specify that if the private sector is unable to meet these needs, the government has a full and complete responsibility to provide service and products at the highest level of quality and at the lowest possible cost.**

**b. Language authorizing the Legislative Commission to create (either on its own or through the appointment of a subcommittee or interim study) a guidebook or manual for use by state and local government establishing specific criteria and assessments for use by these entities to evaluate services or activities that may compete with the private sector before procuring those services or entering into those activities.**

### 3. Authorizing Public/Private Partnerships with Nevada's Department of Motor Vehicles for Fleet Motor Vehicle Registration

During the subcommittee's fourth meeting in held in Elko, Nevada, the members considered a proposal by the rental car industry that would allow internal vehicle registration for rental car fleets. The Enterprise Car Rental of Nevada alone registers 7,500 cars per year at a cost of $2.5 million. According to testimony, this proposal would drastically reduce the amount of time spent by the industry traveling to and from the DMV and standing in line to register the fleet vehicles. Furthermore, the proposal would eliminate 20-day new car tags on new rental cars and improve customer service for the rental car companies.

The subcommittee seemed very intrigued by this proposal and believed that expanding this concept to include all fleet vehicle registration would be prudent. Representatives from the DMV expressed support for this proposal and testified that the department was already exploring similar alternatives for fleet vehicle registration.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises recommends that the 2003 Session of the Nevada Legislature:

> **Enact legislation authorizing in the NRS public/private partnership efforts between Nevada's DMV, the rental car industry, and other companies with large vehicle fleets to provide for, among other similar programs, an optional program of internal, computerized motor vehicle registration. (BDR 43-411)**

### 4. Proposed Amendment to the Sales and Use Tax Act of 1955

Throughout the legislative interim, the subcommittee heard testimony regarding the general differences between government and the private sector. Carole Vilardo, President, Nevada Taxpayers Association, noted that Assembly Bill 611 of the 1997 Legislative Session (Chapter 404, *Statutes of Nevada*) proposed to set forth the same sales tax requirements on government-operated retail establishments as private sector establishments. Ms. Vilardo opined during the subcommittee's meetings in Elko and Carson City that this amendment to the Sales and Use Tax Act of 1955 would set the same regulatory environment and oversight on government when it competes with the private sector and pointed out that valid revenue sources are lost when private businesses are displaced. She cited an example where a particular private enterprise sells the same items as a government-operated facility located in an adjacent building. The private operation has to charge sales tax on items sold and the government store does not.

In 1997, A.B. 611 was approved unanimously in the Assembly and by a vote of 16 to 5 in the Senate. Since the measure proposed an amendment to the Sales and Use Tax Act, it was then submitted to the voters as Ballot Question No. 7 on the 1998 General Election Ballot. The measure failed with 164,818 "Yes" votes and 227,078 "No" votes. Ms. Vilardo urged the subcommittee to request measure again, and opined that a more concerted campaign addressing the merits of the measure, especially during this tenuous economic time, might result in a successful ballot question.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises recommends that the 2003 Session of the Nevada Legislature:

**Enact legislation similar or identical to A.B. 611 of the 1997 Legislative Session (Chapter 404, *Statutes of Nevada*), which proposes that an amendment to the Sales and Use Tax Act of 1955 be submitted to Nevada's voters at the 2004 General Election to require state and local governments to collect sales taxes on sales of items purchased for resale to the public. (BDR 32—410)**

A copy of Ballot Question No. 7 of the 1998 General Election along with brief explanation of the ballot question and arguments for and against can be found in Appendix C of this report.

## B. SUBCOMMITTEE LETTERS

This section provides background information for each of the letters sent from the subcommittee to various elected representatives, federal, state, and local government officials, and other individuals. Copies of the corresponding letters and attachments can be found in Appendix E of this report.

### 1. The Provision of Telecommunications and Cable Television Services

At the December 5, 2001, and the June 26, 2002, meetings of subcommittee, members learned about the intricacies of the telecommunications and cable television industry and the management and operational challenges both Charter Communications and Churchill County Communications (CC Communications) face on a daily basis.

During these presentations, concerns were expressed by representatives of Charter Communications that CC Communications unfairly competes with the operations of Charter Communications and that CC Communications is unfairly exempt from certain licensing and franchise fees, has the ability to cross-subsidize costs for future investments, can extend credit to itself, use public funds, and guarantee a loan. Meanwhile, arguments were presented that the provision of technology services by CC Communications in rural Nevada poses a unique challenge and the public company is responding to a public need that is not currently being met by the private sector. According to testimony, CC Communications infused $1.5 million in Churchill County's General Fund in 2001 and provides 100 jobs to local residents.

While the subcommittee took no official position on the issue, it did vote to write letters to representatives of Charter Communications and CC Communications, encouraging both organizations to work together to find a reasonable solution to their business and competitive concerns.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

**Representatives of Churchill County Communications and Charter Communications asking for their cooperation in reaching an agreement in the establishment of rules and regulations attractive to both parties and advising them that the Senate and Assembly Committees on Commerce and Labor will likely address this and other topics relating to the provision of telecommunication and cable television services during the 2003 Legislative Session.**

During the subcommittee's final meeting, members agreed that this agreement between the parties should include stipulations to identify a point in time where CC Communications acknowledges that it is no longer entitled to certain protections enjoyed by governmental entities. Additionally, the agreement should, according to the subcommittee, include the basis that determines a "level playing field" in the provision of the services both organizations provide and identify fees and tax levels, which are applicable under this determination (i.e., property tax, franchise fees, licensing fees, and so forth).

## 2. Role of Clark County's Traffic/Driving Under the Influence (DUI) School and the Drug Courts

During the subcommittee's final meeting, the members heard testimony regarding potential competition in the provision of traffic school and DUI program instruction. In particular, a representative from All American Driving School opined that private driving schools have a difficult time operating in Clark County. This is due, according to All American Driving School, the alleged referral of DUI defendants by the Drug Courts of the Eight Judicial District to the county-operated traffic/DUI school (as opposed to private traffic schools).

Meanwhile, the Honorable Jack Lehman, Drug Court Judge, Eighth Judicial District Court, noted at the meeting that the purposes of the county's traffic/DUI school are to serve a critical public need, while at the same time, contribute revenue to the Clark County drug courts. In fact, the drug courts received approximately $800,000 in revenue from the traffic/DUI school during the past fiscal year. Judge Lehman noted that an owner of a private-based Las Vegas driving education program brought forward concerns that the Las Vegas Justice Court was not publicizing a long-standing policy that it accepted school completions from any DMV certified traffic education program. Judge Lehman said that policy would be publicized by installing a sign in the Justice Court of Las Vegas Township to notify traffic defendants of their right to choose any DMV certified traffic education program to satisfy their traffic school requirements.

The representative from All American Driving School also expressed a concern that the Clark County School District (CCSD) unfairly holds the contract for the drivers' education program for high school aged students. He alleged the CCSD refused graduation credits to students that completed private driving school courses; that the CCSD is not licensed to teach drivers' education; and the CCSD did not put the contract out to bid to professional driving

schools. He said this same situation exists with the Las Vegas Municipal Court and the Las Vegas Municipality.

Statistics from Clark County indicate the issuance of 220,000 traffic citations in 2001, while 30,000 students enrolled in Clark County's Traffic/DUI School during that same year. The cost of attending Clark County's Traffic/DUI School is $35. These statistics prove, according to representatives of Clark County, that the Drug Courts and the traffic/DUI school play an integral role in the court system and Clark County's offender programs.

The subcommittee was intrigued by the presentations of everyone who spoke on this topic and believed the presentations had particular value in showing how the operating expenses of the drug courts are offset by Clark County's Traffic/DUI School revenues. Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

> **Representatives of the Eighth Judicial District Court (the drug court), Clark County's Traffic/DUI (driving under the influence) School, and the Clark County Court Education Program requesting a presentation to the Senate Committee on Transportation or the Senate or Assembly Committees on Government Affairs during the 2003 Legislative Session highlighting the role and operations of the county's traffic/DUI school and how the school assists in the funding and operation of drug courts in Clark County.**

The subcommittee hopes that providing this information to the wider audience of a legislative standing committee will bring about a greater understanding of the operations of both the Clark County Traffic/DUI School and the drug courts and will help clarify the concerns brought forward by representatives of certain private driving schools.

### 3. Rebroadcast of FM Radio Signals

The subcommittee members engaged in a discussion regarding the rebroadcast of FM radio signals by television districts in the State of Nevada during the final meeting. In particular, it was noted that opinions from both Nevada's Office of the Attorney General and the LCB have stipulated that the rebroadcast of FM radio signals by a television district is not permitted in a community that is served by a licensed commercial radio station. Testimony during this meeting indicated that some unauthorized rebroadcasting of FM radio signals is occurring in portions of Nevada (especially in rural areas). The opinions further note that a television district formed pursuant to NRS 318.1192 is not expressly authorized to acquire or rebroadcast FM radio signals. The opinion from the LCB, however, notes that:

> . . . a town board or board of county commissioners that conducts its own FM radio rebroadcasting operation under NRS 269.127, whether directly or by contract rather than by the creation of a general improvement district, is nowhere precluded from doing so, whether or not they do so in a community served by a licensed commercial radio station.

While the subcommittee was unable to verify which television districts were involved in the unauthorized rebroadcast of FM radio signals, it was interested in ensuring that any related unsanctioned activity be ceased.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

> **The chairmen of all Boards of County Commissioners and representatives of television districts in Nevada clarifying and giving impetus to provisions in Nevada law prohibiting the rebroadcast of FM radio signals by television districts in cities or towns already served by local radio. The letter serves to address concerns raised by certain members of the Nevada Broadcasters Association and radio station owners in rural Nevada.**

The subcommittee anticipates that, if needed, any adjustments to be made in FM radio rebroadcast practices in rural areas can be accomplished at the local level using local expertise.

### 4. Use of Independent Project Mangers for Certain Public Works Projects

The subcommittee's third meeting (held in Las Vegas on March 12, 2002) focused heavily on contracting, procurement, and construction issues. During the course of the discussion, one subcommittee member noted the importance of contract monitoring and oversight by independent project managers and the challenges associated with seeing public works and related construction projects to fruition. It became evident that some local public works projects may be ideally suited for supervision by independent project managers – especially those higher cost projects. In fact, several examples were offered during the subcommittee's discussions indicating that independent project management is a very popular administrative tool used by some local governments to monitor construction projects and ensure those projects consistently meet or exceed quality standards and economic specifications. Subcommittee members opined that independent project managers provide valuable oversight that eventually saves the government (as the purchaser of project) money by carefully evaluating the time requirements associated with a project, minimizing change orders, and ensuring that internal controls are in place. They agreed that project management is important to the fiscal health of all local governments that engage in larger public works projects.

The subcommittee did not vote to address this matter in a BDR, but rather chose to articulate its intentions regarding independent project management in a letter to the Chair of the Senate Committee on Government Affairs.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send a letter to:

**The chair of the Senate Committee on Governments Affairs requesting that a mandate to consider the use of independent project managers for all government projects within a specific cost range be incorporated into state law through an existing or new bill draft request.**

Regarding the project dollar amounts referenced in the recommendation, several project dollar thresholds were discussed during the subcommittee's work session, ranging from $2.5 million to over $10 million. It appears from initial research that such a proposal could be made in Chapter 338 of the NRS. This request is far from a mandate for governments to use independent project managers. Rather, the proposal asks state and local government to at least contemplate their use and possible benefits.

## 5. Medical Malpractice and Its Relation to the Competition Issue

In 2002, Nevada experienced a crisis involving both the cost and availability of medical malpractice coverage for its physicians. This issue progressed to the forefront of policy discussions beginning in the spring of 2002, just prior to the subcommittee's third meeting. Because of the skyrocketing malpractice insurance premiums, physicians (especially those physicians in southern Nevada) considered closing their practices or severely limiting the services they could provide, and the State's only Level I Trauma Center in southern Nevada closed for a short period in July 2002. The ability of Nevadans to access health care was at risk, particularly in Southern Nevada.

As a result, the subcommittee focused some attention on this critical issue at its early stages. Indeed, subcommittee members felt that some of the remedies proposed at the time related directly to public/private competition. Governor Guinn's plan to provide insurance coverage by the State of Nevada to certain physicians (as recently authorized under NRS 686B.180 through 686B.250) provided a direct linkage to the competition issue. Consequently, the subcommittee reviewed the possible competitive impacts of having the state provide insurance coverage to relieve Nevada's physicians from the burdens of skyrocketing medical malpractice insurance rates.

During the course of the subcommittee's discussions, it became very clear that the complex medical malpractice situation in southern Nevada would not be easily resolved. Following the subcommittee's third meeting, the Legislative Subcommittee to Study Medical Malpractice was appointed by the Legislative Commission to intensely study the issue.[5] At the time, there seemed to be as many possible solutions to this crisis as there were unanswered questions and the Governor subsequently called the 18th Special Session of the Nevada Legislature to specifically address the issue.

[5]For further information regarding the medical malpractice crisis and the activities of the Legislative Subcommittee to Study Medical Malpractice, please refer to *Legislative Counsel Bureau Bulletin No. 03-09* "Subcommittee to Study Medical Malpractice." Copies of this bulletin are available from the Research Library (775/684-6827).

Therefore, prior to the 18th Special Session, the subcommittee voted to send letters addressing this important matter to the following individuals:

> **Governor Kenny Guinn, the chair of the Legislative Subcommittee to Study Medical Malpractice, the Nevada Trial Lawyers Association, the Doctor's Group, Nevada's Commissioner of Insurance, and to James Wadhams, who represents various insurance groups, expressing support for their examination of the medical malpractice issue and setting forth an explanation from the subcommittee to Study Competition Between Local Governments and Private Enterprises regarding the possible impacts on competition stemming from recent insurance and medical malpractice issues.**

### 6. Potential Competition in the Provision of Childcare Services

During the interim, representatives of public and private childcare programs appeared before the subcommittee to discuss their concerns and share insights regarding potential competition in the provision of childcare services in Nevada. The subcommittee heard extensive testimony regarding this issue and unfortunately, there appeared to be some general disagreement over issues of competition in the childcare industry. Specifically, there were conflicting reports about whether or not government sponsored childcare programs (such as the Boys and Girls Club, Safe Key/Latch Key, and other before or after school programs) are required to operate under the same or similar guidelines as private childcare programs. In particular, there were varying reports on required staff ratios, licensure requirements, and facility inspection criteria between private and government sponsored programs.

In short, private childcare providers noted that before and after school programs and other childcare and recreation programs administered by local governments were exempt, due to their taxpayer-supported status, from many of the requirements that must be adhered to by private providers. Meanwhile, representatives of local park and recreation departments explained that requirements such as adult/child ratios, fees and rent for facilities, inspections, and nutritional standards are no different for public and private childcare providers.

The subcommittee was unable propose a legislative solution in response to the concerns raised. Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send a letter to:

> **Representatives of the Nevada Recreation and Park Society, Gary Vause, Owner, Lit'l Scholar Academy (Clark County), and Carol Hall, Owner, Creative Kids (Clark County), encouraging continued dialogue between these parties in addressing real and perceived competition in the provision of childcare services.**

It is the subcommittee's hope, through collective discussions, that both public and private childcare providers will foster strong working relationships so future community and public needs can be spread across government and private sector programs.

### 7. Federal Payments in Lieu of Taxes Program

The Federal Government's Payments in Lieu of Taxes (PILT) program was established in 1976 to help local governments offset the loss of tax revenue caused by the presence of tax-exempted federal land within their jurisdictions. Nevada's rural local governments rely heavily on this money to offset costs associated with school construction, transportation projects, and other critical infrastructure development. This program, which is funded through Congressional appropriation, is especially beneficial for Nevada, as nearly 87 percent of its land base is under federal management. Nevada counties that have an extensive amount of federally controlled land often experience significant fiscal burdens due, in part, to this federal land ownership pattern. Five of Nevada's 17 counties have at least 90 percent of their land area under federal ownership and another 9 counties have federal land ownership of between 60 percent and 90 percent. In fact, on a percentage basis, Nevada has more federal land than any other state.

Despite recent increases in funding to the national PILT program, money appropriated by Congress is consistently insufficient to provide full payments under the PILT formula (the program has been under funded since 1976 by roughly 50 percent). Recent legislative efforts, including by the 107th Congress, to take PILT out of the annual Congressional appropriations process and make full PILT payments automatic have been unsuccessful.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

> **Member's of Nevada's Congressional delegation, the Secretary of the United States Department of the Interior (DOI), and the Director of the Bureau of Land Management (BLM), encouraging the full funding of the Payments in Lieu of Taxes (PILT) program administered by the BLM. Specify in the letter that many local governments in Nevada do not have adequate operating budgets due to the lack of private, taxable land base for the collection of revenue, and that at a minimum, full funding of PILT by the United States Congress as requested by the DOI would greatly improve the fragile economic status of several rural Nevada counties.**

### 8. Fiscal Impact of Local Ballot Questions

During the subcommittee's final meeting, the members engaged in a discussion regarding the fiscal impact of local ballot questions and initiatives. Several members noted that while fiscal notes appear often on local ballot questions, there sometimes is not sufficient detail within those fiscal notes or available knowledge to determine ongoing fiscal impacts. For example, voters in a particular county could choose to approve bonds for the construction of a police

substation. While the fiscal note for the ballot question might set forth the actual construction cost for the substation, it may not provide for costs associated with ongoing maintenance, operational expenses, and personnel to staff the facility. Once a particular building or facility is constructed, there sometimes is little option but to operate that facility. The subcommittee concluded that the public should be aware of all costs related to local ballot proposals and that ongoing revenue sources should be identified in ballot question fiscal notes whenever possible.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

> **The chairmen of the Senate and Assembly Committees on Government Affairs requesting that they examine, during the 2003 Legislative Session, the issue of ongoing and continued costs associated with certain local ballot questions that are not necessarily set forth in the required fiscal notes for those ballot questions.**

The subcommittee noted that these discussions might include an examination of what is typically included in ballot question fiscal notes and an evaluation of the feasibility of informing voters of future ongoing costs of local ballot proposals.

### 9. Economic Impact Statement for Administrative Regulations

During the subcommittee's meeting in Elko, the members heard a report that some state agencies or departments might not be aware of or might not understand the significance of NRS 233B.066. Subsection 1(e) of this statute was identified as being especially important to private industry. This subsection requires each adopted regulation that is submitted to the LCB or filed with the Office of the Secretary of State to include a statement containing, among other things, the estimated economic effect of the regulation on the public and the business to which it regulates. The adverse and beneficial economic effects as well as the regulation's immediate and long-term impacts must also be identified in the statement.

The subcommittee recognized that this requirement is extremely valuable and without such a statement, the public and the business community might not be fully aware of the influence a particular administrative regulation has on industry and the taxpayer.

Therefore, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send letters to:

> **Various executive state agencies notifying them of the requirements set forth in NRS 233B.066. This provision requires all adopted regulations submitted to the LCB or filed with Nevada's Office of the Secretary of State to include a statement of the estimated economic impact the regulation may have on the public and on the business, which it is to regulate.**

## V. KEY SOURCES OF INFORMATION

The subcommittee examined numerous informational items and documents throughout the interim. At each meeting, subcommittee staff provided members with handouts, reports, relevant news articles, audits, legislation from other states, and pertinent staff research. A listing of each of these items by meeting date (except for the subcommittee's final meeting) is provided below. Copies of these items are included as official exhibits of the subcommittee minutes for the dates identified and are on file with the minutes in the Research Library (775/684-6827).

### A. INFORMATIONAL ITEMS AND HANDOUTS — LAS VEGAS MEETING (DECEMBER 5, 2001)

- *Legislative Counsel Bureau Bulletin No. 93-18*, "Feasibility of Privatizing Provision of Governmental Services," September 1992.

- From the Reason Public Policy Institute (RPPI), *Privatization 2001 – 15th Annual Report on Privatization*. This booklet highlights privatization trends in child welfare, education, "e-government," environmental services, infrastructure, public safety, public sector services, public works, and transportation and addresses other emerging issues in privatization and competition.

- From the Council of State Governments, "Private Practices: A Review of Privatization in State Government," 1998.

- Policy Study No. 272 of the RPPI by Adrian T. Moore, Geoffrey F. Segal, and John McCormally, "Infrastructure Outsourcing: Leveraging Concrete, Steel, and Asphalt with Public-Private Partnerships," September 2000.

- From RPPI, e-brief #103, titled "Muni Power Grabs: Municipal Utilities, Tax exempt Debt, and the Competitive Market" by Adrian T. Moore and Jeff Woemer, November 1999.

- Policy Brief No. 18 of the RPPI by Robin Johnson, "The Future of Local Emergency Medical Service Ambulance Wars 1 or Public-Private Truce?" August 2001.

- Policy Study No. 180 of the RPPI, "Public Authorities and Private Firms as Providers of Public Goods" by Clayton P. Gillette, September 1994.

- E-brief #112 of the RPPI, "Privatization and Layoffs: The Real Story" by Robin Johnson, March 13, 2001.

- From the Nevada Association of Independent Business, "A Draft Report on Government Competition in the Private Sector in Nevada," November 2001, provided by Phil Stout.

- From the American Federation of State, County, and Municipal Employees (AFSCME), "Fact Sheet: Privatization," March 2001.

- "Legislative Approaches to Responsible Contracting" from AFSCME (http://www.afscme.org/private/tools05.htm).

- From Cornell Working Papers in Planning #194, Department of City and Regional Planning, Cornell University, "Taking the High Road: Local Government Restructuring and the Quest for Quality" by Michael J. Ballard and Mildred E. Warner, April 2000.

**B. INFORMATIONAL ITEMS AND HANDOUTS — LAS VEGAS MEETING (JANUARY 23, 2002)**

- From Michael R. Alastuey, Assistant County Manager, Clark County, two letters that follow-up discussions at the December 5, 2001, meeting of the subcommittee regarding "JET-VAC sewer cleaning vehicles" and the capital costs at University Medical Center's Quick Care sites.

- From the Texas State Auditor's Office, a report titled "Best Practices and Guidelines for Effectively Using a Contract Workforce," March 1999.

- From the Washington State Auditor's Office, a report titled "Special Audit of State of Washington Contracting Practices: Architecture and Engineering, Construction, Purchased Services, Personal Services," July 1, 1999 through June 30, 2000.

- From the Reason Public Policy Institute (RPPI), "Legal Brief: Supreme Court Rules on Private Pension Liability" by Geoffrey F. Segal, January 7, 2002.

- "Keys to Success in the Philadelphia School Privatization Effort," by Lisa Snell of RPPI, December 12, 2001.

- From RPPI, "Opening the Floodgates: Why Water Privatization Will Continue," August 2001.

- From the American Federation of State, County and Municipal Employees, a report titled "Safety Net for Sale," January 2002.

**C. INFORMATIONAL ITEMS AND HANDOUTS — LAS VEGAS MEETING (MARCH 12, 2002)**

- From the Colorado State Auditor's Office, "Report of the State Auditor: Privatization in Colorado State Government – Follow-up Performance Audit," February 1993.

- From the Colorado State Auditor's Office, *Privatization Assessment Workbook*, 1997.

- The following select state laws and legislation regarding competition between local governments and private enterprises:

  1. From the *Colorado Revised Statutes* (CRS), Article 13, "State Government Competition with Private Enterprise," added in 1988 and amended several times thereafter (includes CRS 24-113-101 through 23-113-104);

  2. From the State of Michigan, S.B. 880, the "Metropolitan Extension Telecommunications Rights-of-Way Oversight Act," (formerly known as "Fair Play" legislation) as passed by the Michigan State Senate on Wednesday, February 20, 2001 (includes a summary and full text of the measure);

  3. From the State of Louisiana, House Bill 1110 and S.B. 275, both of which establish and provide for the creation of the "Louisiana Privatization and Competition Council," Regular Session, 2001;

  4. From the State of New Jersey, A.B. 3122, which "establishes conditions necessary for genuine competition to develop in the local exchange telephone market," 209th Legislature, introduced January 18, 2001;

  5. From the State of North Carolina, S.B. 56, "An act establishing the North Carolina Government Competition Commission to provide for better government in North Carolina through a comprehensive state government competition initiative," February 7, 2001;

  6. From the State of Rhode of Island, S 0713 of 2001, "An act relating to unfair competition and deceptive acts and practices in the business of insurance," February 14, 2001;

  7. From the State of Pennsylvania, S.B. 1162 of the 2001 Session, "An act establishing the Private Enterprise Review Board; and providing for competition with private enterprise by government, community colleges and universities," October 16, 2001; and

  8. From the Michigan Chamber of Commerce, a press release titled "Michigan Chamber of Commerce Board of Directors Supports 'Fair Play' Legislation," April 26, 2001.

- The following information regarding contracting and contracting procedures in Nevada:

    1. From the *State Administrative Manual*, "Cooperative Agreements and Contracts," updated January 22, 2002;

    2. From the Purchasing Division's Internet Web site, two sample pages lifted from the "Customer Service Site" containing answers to commonly asked questions; and

    3. From the State Public Works Board, "Application for Qualification on General Projects for a Period of 2 Years."

- An audit report from Nevada's Legislative Auditor, LCB, regarding Nevada's contracting process, dated August 16, 2001.

**D. INFORMATIONAL ITEMS AND HANDOUTS — ELKO MEETING (MAY 20, 2002)**

- From the United States General Accounting Office, report no. GAO/GGD-97-48 titled "Privatization: Lessons Learned by State and Local Governments," issued March 14, 1997 (see appendix B of this report);

- Information from the Texas State CCG, including:

    1. An overview of the duties and history of the CCG;

    2. Background information regarding the creation of the CCG, outcomes of CCG reviews, and the organizational structure of the CCG;

    3. A listing of "tools for competition";

    4. A sample of services under current review;

    5. A listing of current contracts;

    6. An "expired projects" list;

    7. A current listing of identified State of Texas services that were not recommended for transfer to another state agency, reorganization, or outsourcing; and

    8. A listing of suggestions received by the CCG that were not designated as "identified state services."

- Chapter 2162 of the *Texas Statutes* titled "State Council on Competitive Government" (note: this is the governing Chapter for the CCG);

- Information regarding the Texas Incentive and Productivity Commission, including an overview, organizational chart, and the Commission's governing statutes in Chapter 2108 of the *Texas Statutes*;

- From the Texas State Auditor's Office, the Introduction and Chapter Five of the "Guide to Cost-Based Decision-Making," August 1995;

- From the Texas State Auditor's Office, a report titled "Best Practices and Guidelines for Effectively Using A Contract Workforce," March 1999;

- Excerpts from the "Privatization Assessment Workbook," prepared by the Colorado State Auditor's Office, 1997;

- A memorandum from Ginny Lewis, Director, Nevada's Department of Motor Vehicles, titled "DMV Services/Duties Outsourced," dated April 24, 2002; and

- From the *Las Vegas Sun*:

    1. "Sprint CEO supports ruling to promote competition," May 16, 2002;

    2. "Las Vegas convention centers ready to compete," April 8, 2002;

    3. "Audit calls for better control over construction changes," March 14, 2002; and

    4. "Five southern Nevada contractors lose licenses," February 26, 2002.

During the interim, staff of the subcommittee regularly referred to the Internet Web sites of the Reason Public Policy Institute at www.rppi.org and the American Federation of State, County and Municipal Employees at www.afscme.org. Finally, subcommittee members and staff relied heavily on materials and documents supplied by the many presenters who spoke during the various meetings.

## VI. ACKNOWLEDGEMENTS AND CONCLUDING REMARKS

The Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises spent much of the legislative interim addressing key public services and government functions. The subcommittee hopes that its deliberations serve as a starting point to carry forward meaningful discussions regarding the efficient and sensible delivery of government services by state and local government.

The participation of many people and organizations was crucial to the success of the subcommittee's activities during the 2001-2002 legislative interim. The subcommittee wishes to thank all of those who testified throughout the legislative interim and submitted comments and recommendations.

## VII. APPENDICES

Page

# APPENDIX A

"The Measures of Fiscal Policy: Presented to the SB 355 Committee," December 5, 2001

# THE MEASURES OF FISCAL POLICY

## PRESENTED TO THE SB 355 COMMITTEE

**December 5, 2001**

**by Carole Vilardo, Nevada Taxpayers Association**

Fiscal policy issues involve the elements of revenue generation and the expenditure of funds. The second page of this document is a statement of the "Principles of Taxation." These Principles have evolved from the writings of Adam Smith in *The Wealth of Nations.* They are extremely important in analyzing and evaluating not only the proposed changes in the existing Nevada tax structure, but also in analyzing and evaluating any proposals for the imposition of new taxes and fees. Unfortunately, no tax or fee can meet all the Principles, but every effort should be made to embrace as many of the Principles as possible.

The third page deals with General Expenditure Principles. As with the Principles of Taxation these Principles should be the basis for evaluating the expenditures made by government, the litmus test if you will, by which to provide assurance to the taxpaying public that their tax dollars are being efficiently and effectively used.

Neither taxation nor expenditure issues can be viewed independently of one another. In Nevada a slowing economy, which has been further impacted by the events of September 11, has resulted in reduced revenues which coupled with increased demands for services will require the combined efforts of the spenders and payers to find equitable solutions. The road to these solutions both on the revenue and expenditure sides requires that decision makers take into account the fiscal policies identified on the following two pages.

# THE MEASURES OF FISCAL POLICY
## 1. PRINCIPLES OF TAXATION (and FEES)

**1. TAXES SHOULD REFLECT THE ECONOMIC STRUCTURE OF A STATE.**

A tax structure which recognizes all economic spheres will generally allow the lowest rate possible thereby insuring economic viability.

**2. THE RATE OF THE TAX SHOULD BE AT THE LOWEST LEVEL POSSIBLE.**

The rate of the tax imposed should not be the cause of an individual or business having to make economic decisions on what they can spend or save.

**3. TAXES SHOULD NOT BE PUNITIVE TO ANY ONE ECONOMIC GROUP.**

The impact on individuals, the business community and the continued and future economic growth of a State and local governments must be taken into consideration.

**4. TAXES SHOULD BE SIMPLE TO UNDERSTAND AND EASILY COMPLIED WITH.**

This Principle results in improved voluntary compliance and reduced administrative costs. A systematic, periodic review should be conducted to consider current business practices, loopholes and other impacts to ensure continuing ease and cost-effective compliance and administration.

**5. THE COLLECTION OF TAXES SHOULD BE FAIRLY AND UNIFORMLY ENFORCED.**

No one who is required to do so under law should escape paying or collecting taxes. Revenue collecting agencies should have the necessary resources to ensure that revenue that should be remitted is in fact being remitted.

**6. TAXES SHOULD BE STABLE AND PREDICTABLE.**

A moderate, balanced and stable tax structure is essential to: (1) allow individuals and businesses to know their liability because the system does not constantly change; (2) maintain their economic well-being; and (3) promote a positive business climate necessary to allow the State to compete in a global economy. Also, to the extent possible the tax structure should provide government with a predictable revenue structure.

**7. TAXES SHOULD BE BROAD BASED WITH AS FEW EXEMPTIONS AS POSSIBLE.**

Exemptions, when allowed, erode the tax base. They should be based on economic criteria, not special-interest group pressure. Exemptions should be periodically reviewed to determine if the intended goal is being achieved; if it is not, the exemption should be eliminated.

**8. EARMARKING SHOULD BE PROHIBITED EXCEPT WHERE A DIRECT BENEFIT-RELATIONSHIP EXISTS BETWEEN THE PAYER AND THE END USER [1].**

There is generally a lack of accountability that accompanies programs which have a guaranteed revenue source, in addition to the loss of flexibility in prioritizing expenditure needs.

[1] For example, gas tax is earmarked for the highway fund and paid by the drivers of vehicles which use the roads.

**9. STATE AND LOCAL GOVERNMENTS SHOULD NOT COMPETE FOR THE SAME REVENUE SOURCES.**

Competition for the same revenue source can cause rates to become too high thereby resulting in diminishing revenue returns.

**10. TAXES SHOULD BE CRAFTED TO BE COMPATIBLE WITH OTHER JURISDICTIONS THAT IMPOSE THE SAME TAX.**

If a state imposes a tax, and another governmental entity in the state has the authority to impose a like tax, the provisions of the local tax should mirror as closely as possible the provisions of the state tax to insure ease of compliance and administration.

## THE MEASURES OF FISCAL POLICY
## 2. GENERAL EXPENDITURE PRINCIPLES

**1. EXPENDITURES SHOULD BE BASED ON NECESSITY.**

Expenditures should reflect needs and not want, in addition to being compatible with sustaining economic growth and budget stability.

**2. BUDGETS SHOULD BE PRIORITY BASED.**

Existing resources should be allocated to meet priorities. Priority budgets should be required to be submitted periodically.

**3. SPECIAL PROJECT FUNDING SHOULD BE CONDITIONAL.**

Any funds provided as seed money for specific projects should have a firm time limitation within which the project must be either completed or self-supporting.

**4. ALL PROGRAMS SHOULD BE SYSTEMATICALLY REVIEWED.**

Government services should be examined to maintain what's best, discard what's worst and find ways to improve the rest. The review should include the following elements:

a. Expenditures should meet statutory requirements.
b. They should not duplicate or contradict efforts of other agencies or local governments.
c. Efficiencies should be enhanced by providing for the consolidation of services where warranted and the contracting out of services when the necessary service level will be maintained and savings will occur.
d. Each program should be evaluated for cost effectiveness by determining the benefit versus cost.

**5. MEANINGFUL PERFORMANCE STANDARDS MUST BE ADOPTED.**

Performance standards should include expectations as well as outcome indicators. These standards must be developed for each agency and department and incorporated into budget evaluation processes that would include justifying programs for continuation or expansion.

**6. STATUTORY ESCALATORS, A.K.A., "TRIGGERS" SHOULD NOT BE USED.**

The use of "triggers" to fund ongoing operations contingent upon a government receiving greater revenue than anticipated generally results in tax increases to support future budgets and does not support the concept of economic stability.

**7. ONGOING VACANT POSITIONS SHOULD BE JUSTIFIED FOR CONTINUATION.**

Staff vacancies which exist for a period of 12 months in any department or agency should be eliminated unless the continuation of the position(s) can be justified.

**8. A COMPETITIVE OUTSOURCING OF GOVERNMENT FUNCTIONS WHICH CAN BE EFFICIENTLY AND COST EFFECTIVELY PERFORMED BY THE PRIVATE SECTOR SHOULD BE ENCOURAGED AND EXPANDED.**

Comparison studies should be conducted to discover and take advantage of outsourcing opportunities. Government should not go into competition with, or displace, services currently provided by the private sector unless they:

a. Are required to abide by all rules, regulations and permitting processes required of the private sector.
b. Pay all the taxes that would be required by the private sector.

**9. A RESERVE FUND SHOULD BE ESTABLISHED.**

Generally known as a Rainy Day or Contingency Fund this set-aside of revenue allows for a continuation of basic service levels when revenues do not meet projections.

NOTES ON ITEMS:

# 6 In Nevada"Triggers" occur in the second year of the biennium and must be annualized. The 2001 session is the first time since 1993 that they have been used.

# 9 Nevada has a rainy day account although it is not funded to the level allowed by law.

# APPENDIX B

From the United States General Accounting Office, report no. GAO/GGD-97-48 titled "Privatization: Lessons Learned by State and Local Governments," issued March 14, 1997

United States General Accounting Office

GAO

Report to the Chairman, House Republican Task Force on Privatization

March 1997

# PRIVATIZATION

# Lessons Learned by State and Local Governments

GAO/GGD-97-48

GAO

**United States**
**General Accounting Office**
**Washington, D.C. 20548**

**General Government Division**

B-271979

March 14, 1997

The Honorable Scott Klug
Chairman, House Republican Task
Force on Privatization

Dear Chairman Klug:

State and local governments have increased their use of privatization over the last several years, and Congress and the administration have indicated an interest in having the federal government also increase its use of privatization. In light of this interest, you asked us to identify major lessons learned by, and the related experiences of, state and city governments in implementing privatization efforts. This report, which responds to your request, discusses privatization lessons learned by, and the related experiences of, the states of Georgia, Massachusetts, Michigan, New York, and Virginia as well as the city of Indianapolis, Indiana. Each of these governments made extensive use of privatization over the last several years.

## Background

Privatization is commonly defined as any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector. Privatization can take various forms. The most common form is contracting, which typically entails a competition among private bidders to perform government activities. With contracting, the government remains the financier and has management and policy control over the type and quality of services to be provided. Another form of privatization occurs when a government transfers ownership of assets, commercial type enterprises, or responsibilities to the private sector. This is called an "asset sale," and generally the government would have no role in the financial support, management, or oversight of a sold asset.

Another, more recent variation of privatization is "managed competition." Under it, the contracting process permits an agency (e.g., the highway department) of the government to prepare a work proposal and submit a bid to compete with private bidders (e.g., highway construction contractors). The government may award the contract to the bidding agency or to a private bidder. (App. I shows various forms of privatization and the frequency of their use by state governments as reported by the Council of State Governments in 1993.)

Over the past several years, state and local governments have increased their use of various types of privatization. The 1993 Council of State Governments' survey found that state agencies responsible for social services, transportation, mental health care, corrections, health, and education had all increased privatization activities since 1988. The Council reported that the survey results indicated a trend toward expanded privatization across major state agencies.[1] According to the International City/County Management Association, city governments have also increased the number and types of services contracted, such as child welfare programs, health services, street maintenance, and data processing.[2]

Recent federal laws, rules, and initiatives—especially the Government Performance and Results Act of 1993 (GPRA);[3] the Clinger-Cohen Act of 1996;[4] the revised handbook to Office of Management and Budget (OMB) Circular A-76;[5] and the Clinton Administration's major management reform initiative, the National Performance Review (NPR)—have given new impetus to federal agencies to operate more effectively and efficiently. One helpful approach in reaching this goal, according to NPR, is privatization. Certain of the cited laws and initiatives direct federal managers to review their programs by first considering whether government should be performing an activity, a step that can lead to privatization.

[1]State Trends and Forecasts: Privatization, Vol. II: No. 2 (Lexington, KY: November 1993).

[2]International City/County Management Association Municipal Year Book 1994: Alternative Service Delivery in Local Government, 1982-1992 (Washington, D.C.: 1994), p. 28.

[3]GPRA requires agencies to develop strategic plans, obtain input on desired goals from key stakeholders, and measure and report progress toward achieving those goals.

[4]The Clinger-Cohen Act was originally the Federal Acquisition Reform Act of 1996 and the Information Technology Management Reform Act (ITMRA) of 1996. It was renamed by section 808 of Public Law 104-208, enacted on September 30, 1996. ITMRA introduced new requirements for how information technology-related projects are to be selected and managed. These requirements closely parallel investment practices of leading organizations.

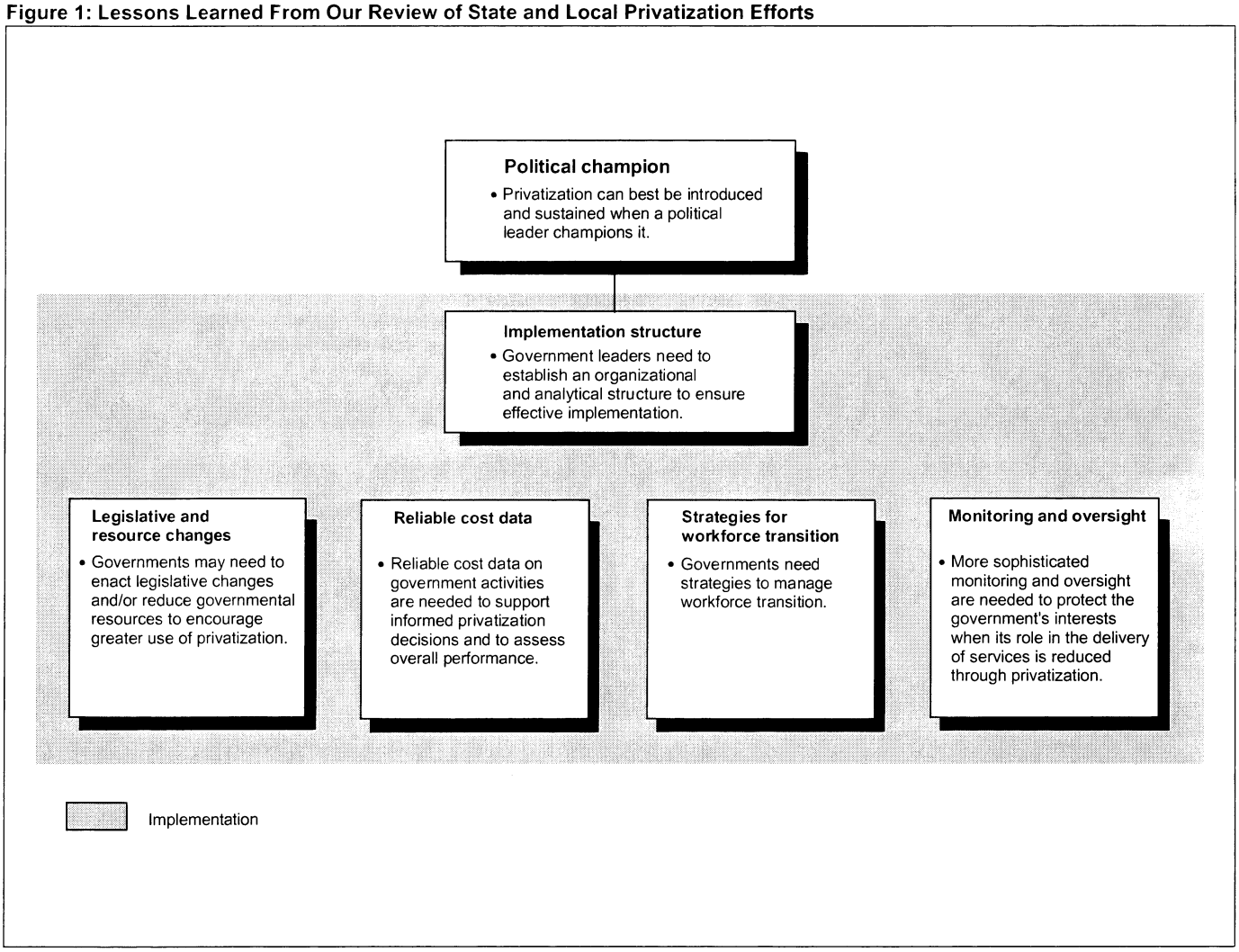
[5]OMB Circular A-76 sets forth federal policy for using commercial services. In March 1996, OMB revised the A-76 supplemental handbook to enhance federal performance through competition and choice, seek the most cost-effective means of obtaining commercial products and support services, and provide new administrative flexibility in agencies' decisions to retain services in-house or contract them out.

## Results in Brief

The six governments we visited tailored their approaches to privatization to their particular political, economic, and labor environments.[6] On the basis of our literature review, the views of a panel of privatization experts, and our work in the six governments, we identified six lessons learned, as shown in figure 1, that were generally common to all six governments in implementing privatization initiatives.

[6]The predominant form of privatization that occurred in these six governments was contracting for goods and services, followed by asset sales and managed competitions.

**Figure 1: Lessons Learned From Our Review of State and Local Privatization Efforts**




Source: GAO analysis.

First of all, privatization can best be introduced and sustained when there is a committed political leader to champion it. In the six governments, a political leader (the governor or mayor), or in one case several leaders working in concert (state legislators and the governor), played a crucial role in introducing privatization. These leaders built internal and external

support for privatization, sustained momentum for their privatization initiatives, and adjusted implementation strategies when barriers to privatization arose.

Second, governments need to establish an organizational and analytical structure to implement the privatization effort. This structure can include commissions, staff offices, and analytical frameworks for privatization decisionmaking. For example, five of the six governments established governmentwide commissions to identify privatization opportunities among government activities and to set policies to guide privatization initiatives.

Third, governments may need to enact legislative changes and/or reduce resources available to government agencies in order to encourage greater use of privatization. Georgia, for example, enacted legislation to reform the state's civil service and to reduce the operating funds of state agencies. Virginia reduced the size of the state's workforce and enacted legislation to establish an independent state council to foster privatization efforts. These actions, officials told us, enhanced privatization and sent a signal to managers and employees that political leaders were serious about implementing privatization.

Fourth, reliable and complete cost data on government activities are needed to assess the overall performance of activities targeted for privatization, to support informed privatization decisions, and to make these decisions easier to implement and justify to potential critics. Most of the governments we surveyed used estimated cost data because obtaining complete cost[7] and performance data by activity from their accounting systems was difficult. However, Indianapolis and more recently Virginia used new techniques to obtain more precise and complete cost data. While the use of estimated cost data can save a government the time and cost associated with preparing more accurate data, the resulting imprecision can have negative consequences. For example, in Massachusetts, the State Auditor questioned savings reported from privatized activities because an "inadequate cost analysis" was done before the privatization.

Fifth, governments need to develop strategies to help their workforces make the transition to a private-sector environment. Such strategies, for example, might seek to involve employees in the privatization process,

[7]Complete costs are generally defined as the fully allocated costs of an activity. These include all direct and indirect personnel costs, as well as the costs of materials and supplies, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, operations overhead, and general and administrative overhead.

provide training to help prepare them for privatization, and create a safety net for displaced employees. Among the six governments we visited, four permitted at least some employee groups to submit bids along with private-sector bidders to provide public services. All six governments developed programs or policies to address employee concerns with privatization, such as job loss and the need for retraining.

Finally, when a government's direct role in the delivery of services is reduced through privatization, a need is created for enhanced monitoring and oversight that evaluates compliance with the terms of the privatization agreement and evaluates performance in delivering services to ensure that the government's interests are fully protected. For example, Indianapolis officials said their efforts to develop performance measures for activities enhanced their monitoring efforts. However, officials from most governments said that monitoring contractors' performance was the weakest link in their privatization processes.

## Objective, Scope, and Methodology

Our objective was to ascertain the lessons learned by, and the related experiences of, state and local governments in privatizing government activities. To meet this objective, we went through a multistep process to identify the governments to survey, developed an information collection framework refined with the assistance of a panel of experts, and then contacted various officials from the selected governments to obtain information and insights on their privatization experiences.

To develop a list of potential states and cities to survey, we first surveyed 50 individuals whom we identified as knowledgeable on privatization topics from congressional testimony, studies, and other published literature on the privatization of government activities. We asked the 50 individuals to name states and cities that had undertaken notable privatization efforts, and 33 of the individuals responded. From their responses, we compiled a list of 10 state governments and 10 city governments that the respondents had named most often as undertaking notable privatization efforts.

As agreed with your office, we focused the rest of our selection process on state governments rather than city governments. We focused on states because data indicated that states were generally involved in privatizing a wider variety of activities than were cities, and because lessons learned by state governments would be more likely than local government experiences to be instructive in the federal context. However, as agreed

with your office, we included the city of Indianapolis in our survey because it was cited more frequently than any other city or state named by our experts.

A panel of 8 privatization experts reviewed our list of state governments and agreed that the 10 state governments and Indianapolis were the most appropriate candidates to survey. The panel members, most of whom were drawn from among the 33 respondents to our survey, are listed in appendix II. They were selected on the basis of their practical knowledge of privatization or their scholarly knowledge on the issue of privatization.

We contacted the 10 state governments to update privatization data that were reported on them and other states in a 1993 Council of State Governments report. On the basis of information in the 1993 report and the updated data from the 10 states, we selected Georgia, Massachusetts, Michigan, New York, and Virginia for visits and further research. We chose these states because they had the most extensive privatization efforts involving activities that correlate with those performed at the federal level. Their privatization efforts, and those of Indianapolis, covered a variety of mission-related activities, such as prison health care, delinquent tax collection, and vehicle maintenance.

Before meeting with various officials from the six governments, we developed from the relevant literature a list of key privatization factors that our panel of eight experts agreed were critical or important when considering whether to privatize public functions. These factors gave us a framework for collecting information on privatization experiences. We pretested this framework and data collection approach and made minor adjustments.

Using our framework of privatization factors as a guide, we interviewed, and obtained documents from, 117 officials in the 6 sites that we visited. These included policymakers (such as cabinet officers and directors of privatization offices), agency managers, and labor representatives who were involved with or knowledgeable about the privatization efforts of the six governments. To obtain an independent perspective, we interviewed audit and legislative oversight officials who had knowledge of their governments' privatization efforts. We obtained from these various officials information on such topics as (1) the reasons for using privatization; (2) approaches taken to introduce, implement, and manage privatization efforts; and (3) barriers to privatization and strategies employed to overcome the barriers. In our interviews and document

reviews, we focused attention on privatization efforts that occurred since 1991, were reported to have had high cost savings, were reported to have resulted in continued or improved service, and involved activities similar to those performed by the federal government.

In addition to our interview data, we reviewed such state, city, and agency documents as commission reports, planning documents, policy and procedural guidance, budget documents, legislative analyses, agency performance reports, audit reports, and pertinent legislation. From our analysis of the information obtained, we distilled a list of major lessons learned in privatizing state and local government activities. The list was not intended to be an exhaustive compilation of all possible or actual lessons learned or experiences in privatizing government activities.

Because our objective was to identify lessons learned by the six governments we visited, we relied on their own evaluations and assessment of their experiences. Using information they gave us, we summarized a number of the six governments' privatization projects that they selected (see app. III). We did not evaluate privatization results or independently verify the accuracy of the information provided by the governments. Because this report uses a wide variety of privatization terms, we also prepared a privatization glossary so that the types of privatization we refer to in this report can be understood in the context of the range of privatization efforts that can occur. The glossary appears at the end of the report.

We did our work at the selected states' capitals, Indianapolis, and Washington, D.C., from April 1996 through December 1996 in accordance with generally accepted government auditing standards. In February 1997, we provided the chief executives of the six governments with a draft of this report for review and comment. These governments concurred with the message of our report and provided clarifying comments, which we have included where appropriate.

## Privatization Requires a Political Champion

According to our panel of experts and officials of the six governments we surveyed, privatization can best be introduced and sustained when a political leader champions it. The panel and officials said that, in introducing and sustaining privatization initiatives, political leaders should anticipate a need to develop and communicate a privatization philosophy and to garner public, business, and political support.

According to the government officials that we interviewed, the chief executive (the governor or mayor) was the political champion for the most recent privatization efforts in Georgia, Massachusetts, Michigan, New York, and Indianapolis. In Virginia, key state legislators and the Governor worked together to introduce new privatization initiatives. The political champions faced a variety of political and economic environments. In some cases, the political leaders introduced and built support for privatization within government workforces that were unionized and, in other cases, within workforces that were not unionized. Similarly, some political leaders introduced and built support for privatization during times when their respective governments were experiencing fiscal problems, and other leaders did so during times when their governments were stable financially. For example, the Governor of Massachusetts introduced privatization during a period when the state, which had a heavily unionized workforce, was experiencing a severe budget crisis. On the other hand, Virginia's leaders introduced privatization into a largely nonunionized workforce and saw it as an approach that could help the state government more effectively deliver services and maintain its sound fiscal condition.

While forceful leadership was reported to be an important ingredient in the success of privatization initiatives by the six governments, they also came to recognize a need for flexibility. When implementing privatization, political leaders found that they could encounter barriers that might require them to adjust their privatization strategy to maintain support. For example, when Indianapolis's initiative encountered early opposition from employee unions, the Mayor began formally involving the unions in the privatization process. In doing so, he moved from an approach that solely emphasized competing public activities among private-sector firms to one that included using managed competition, which gave city employees the chance to compete with the private sector. This change in approach, according to city and union officials, won employee support and allowed the privatization initiative to proceed.

According to Indianapolis officials, competition in the marketplace rather than privatization per se produces the most value for the taxpayer. This view was shared by most state officials we spoke with. A top Indianapolis official said that the primary advantages of managed competition were reduced costs, improved services, improved employee morale, and increased innovation. Massachusetts, New York, and Virginia now permit government agencies to bid on certain contracts that are open to the private sector.

## Implementation Structure Needed to Guide Privatization Efforts

According to officials in the six governments, once political leaders introduce privatization, they need to establish a formal structure to ensure effective implementation. Such a structure can include a governmentwide commission to identify privatization opportunities and set privatization policy, a staff office that can support agencies in their privatization efforts and oversee implementation, and a framework for making privatization decisions.

Five of the six governments used governmentwide commissions to promote privatization, identify privatization opportunities, and establish policies and procedures to guide privatization initiatives. Massachusetts did not use a commission; instead, cabinet secretaries selected the government activities to privatize. The commissions were created either by the chief executive (Georgia, Michigan, New York, and Indianapolis) or jointly by the state legislature and chief executive (Virginia).

The memberships of the four state commissions included representatives of both government and the private sector. Indianapolis's commission was composed of private sector representatives, assisted by both private and public-sector employees. Although officials in the five governments saw commissions as useful, a former senior official from Michigan who studied his and other states' commissions[8] cautioned that a commission's effectiveness can be limited if it does not have a clear mission and a membership that reflects a balance between the public and private sectors.

Five of the six governments established offices or support staffs, which were attached to the privatization commissions, to provide guidance and technical assistance to agencies in the day-to-day implementation of privatization.[9] New York's office, the Empire State Development Corporation, was unique among the supporting organizations in that it was a government corporation. Massachusetts did not establish a separate support office. Instead, individual departments initially used internal teams to design and implement specific initiatives. Later the Executive Office for Administration and Finance provided guidance to departments.

[8]John M. Kost, New Approaches to Public Management: The Case of Michigan (Washington, D.C.: The Brookings Institution, July 1996).

[9]Michigan established a Privatization Division as part of its Department of Management and Budget in 1991, before the governor established a public-private partnership commission in 1992. The Privatization Division provided staff support to the commission before the commission was abolished in late 1992.

These support units, according to officials and documents we reviewed, typically used an analytical framework to evaluate the costs and performance of government activities and the risks and benefits of privatizing a particular activity. These analytical frameworks typically included a step-by-step decisionmaking process. Having a framework that provides a consistent approach for analyzing government activities was considered highly desirable by key officials in all six governments. Many of the frameworks established by the six governments shared common elements such as providing criteria for selecting activities to privatize, an inventory of privatization candidates, cost comparison and evaluation methods, and procedures for monitoring the performance of privatized activities. The frameworks used by Michigan, Virginia, and Indianapolis are described in more detail in appendix IV.

## Legislative and/or Resource Changes May Be Needed to Promote the Use of Privatization

According to some officials, governments may need to enact legislative and/or resource changes to encourage or facilitate the use of privatization. These changes, the officials said, are necessary to signal to managers and employees that the move to privatization is serious and not a passing fad.

All five states and the city of Indianapolis used some combination of legislative changes and resource cuts as part of their privatization initiatives. For example, Virginia enacted the Virginia Government Competition Act of 1995, which created a permanent independent state council to promote privatization. The state also initiated an effort to reduce its workforce by 15 percent over 3 years. According to state officials, some departments, such as transportation, began facing work backlogs following this reduction. To ease this backlog, Virginia looked to the private sector to perform the work. Virginia officials said enabling legislation and staffing cuts together signaled the seriousness of Virginia's effort to increase the use of privatization and managed competition.

Georgia's legislature, with the Governor's support, passed civil service reform legislation that made it easier for the state to hire and fire employees. Georgia officials told us that this measure facilitated the use of privatization by state managers. In addition, the Governor instituted a budget redirection program in 1996 that required all agencies to prioritize their current programs and activities and identify those programs that could be eliminated or streamlined to the extent that the agencies would be able to make at least 5 percent of their total state-funded budgets available to be redirected to higher priorities. Each agency was asked to recommend how the 5 percent would be redirected to existing programs

or to new programs within the agency. According to the Executive Director of Georgia's Commission on Privatization, the Governor, as part of his budget development process, reviewed these recommended redirections, as well as other statewide priorities, and shifted those identified funds within and among the agencies as determined to be most cost beneficial. This budget redirection initiative, according to the Executive Director, will continue for the remainder of the Governor's term, which ends in early 1998. According to a Georgia Privatization Commission official, agencies were given a 6-month notice that their budgets would be cut. State officials said these cuts required managers to rethink how they could perform the same activities for a lower cost. This led to contracting out more activities, such as vehicle maintenance and management services for a war veterans facility.

In Indianapolis, the Mayor eliminated selected middle-level management positions. According to the remaining supervisors with whom we spoke, this action sent a clear message that the city's privatization program was serious and that the city workforce would have to work differently and use new methods if it were to successfully compete to retain city work. Union officials said that these selective management cuts helped to build union support for the competition initiatives.

## Reliable and Complete Cost Information Needed to Support Privatization

According to officials in the six governments and our panel of experts, reliable and complete cost data on government activities are needed to ensure a sound competitive process and to assess overall performance. Reliable and complete data, they said, simplify privatization decisions and make these decisions easier to implement and justify to potential critics.

All six governments developed information on the cost of government activities. Four governments made "best estimates" of a service's or function's cost because obtaining complete cost and performance data by activity from their accounting systems was difficult. Indianapolis and Virginia attempted to go beyond best estimates by making extensive efforts to identify all costs associated with performing a government function or service.

Indianapolis was nationally recognized for using an activity-based costing (ABC) approach. Indianapolis used this approach to help analysts derive the complete costs of providing a service or performing a function. Following ABC procedures, analysts were to identify all activities associated with producing a service or function and to evaluate the

resources these activities consumed to achieve various levels of performance.

Virginia introduced a comprehensive cost analysis method based on the federal government's A-76 program and the state's contracting experiences to try to capture the complete costs associated with performing a service or function. Virginia reported that in fiscal year 1996 it was able to identify complete costs for 45 percent of the government activities identified as privatization candidates. Since 1995, Virginia has piloted an ABC approach in a number of agencies as a possible replacement for its existing analysis method. According to officials in Indianapolis and Virginia, obtaining more complete data was more time consuming but enhanced their governments' ability to identify cost savings and evaluate bid proposals.

Indianapolis officials told us they were able to obtain the information they needed to do ABC analyses from their current accounting system even though it did not provide cost data by activity. Officials used a system that took cost data (e.g., salaries, overhead) associated with a function (e.g., street maintenance) and assigned it for cost analysis purposes to activities (e.g., filling potholes, cleaning streets, repairing curbs). The city was assisted in this exercise by a private-sector firm with cost-analysis expertise.

Indianapolis and Virginia officials also said that working before privatization occurs with private firms with expertise in an activity slated for privatization was very beneficial in getting a better understanding of the cost and performance issues likely to be encountered during a privatization. For example, when Virginia's Department of Corrections planned its prison privatization project, the department publicly discussed its plans with private firms to better understand the issues that needed to be addressed and resolved in order to successfully privatize prisons. According to the Director of Virginia's Commonwealth Competition Council, after the department consulted with private firms, it better understood what the needs of the private sector were in terms of writing specific statements of work and better realized the potential cost-benefit to the state of the proposed prison privatization.

Attaining precision in cost data has tradeoffs, according to a number of government officials that we interviewed. In general, while cost estimates can be made more quickly and at less cost than more precise approaches such as ABC, their use also may have negative consequences. For example, Massachusetts, according to senior state administration and audit officials,

used estimates because complete cost data on state activities were difficult to obtain from the state's accounting system. However, reports by the Massachusetts State Auditor called into question the reported savings of some privatization activities, citing inadequate cost analysis before privatization as well as a lack of substantiating data on the benefits claimed following privatization.

## Strategies Needed to Manage Workforce Transition

According to most officials in the six governments and our expert panel, moving governments into privatization requires (1) employee involvement in the privatization process, (2) training to provide skills for either competing against the private sector or monitoring contractor performance, and (3) creating a safety net for displaced employees. Most officials said these strategies were necessary to mitigate employees' concerns with, and to bolster their support for, the privatization changes as well as to aid in the transition to a competitive environment.

All six governments developed workforce transition strategies to complement their privatization efforts. These strategies varied depending on local political factors and the relationship between the governments' top leaders and employee groups.

### Employee Involvement

In the six governments, management of employee involvement in the privatizations was not only important to initial efforts but also set the tone for future privatizations. For example, Massachusetts officials said that their initial failure to involve state employee unions in their privatization plans led the unions to contest and block these plans. State officials said that following this initial confrontation, Massachusetts sought to improve labor-management cooperation by allowing unions to compete for several highway maintenance contracts. Nevertheless, according to state officials, union and state legislature concerns that employee protections were not being observed under privatization contributed to the passage of legislation in 1993, over the Governor's veto, that made privatization more difficult.[10] For example, the law required private firms that win state contracts to offer jobs to qualified state employees who were terminated because of the contracts and to compensate them at a rate comparable to their government pay and benefits. The Massachusetts State Auditor said that in the 2 years before the law, 6 Massachusetts departments privatized approximately 20 services, but only 2 privatizations occurred between the law's enactment and December 1996.

[10]Commonwealth of Massachusetts Privatization Law, Chapter 296 of the Acts of 1993.

According to privatization experts, Indianapolis presents a comprehensive example of how a government benefited by engaging employees and their unions in the privatization process. Indianapolis's management employees were involved in the privatization process when it began but union employees were not formally involved. Soon after introducing privatization, the Mayor moved to address employee concerns raised by unions about not being formally involved in the city's privatization efforts. According to city and union officials, the city used a multifaceted approach to effectively address the unions' concerns. This approach included the use of new management tools (such as ABC), training in use of the tools, a cooperative union-management effort, and permitting and enabling the workforce to compete against private vendors. This cooperative effort, we were told, was built on (1) empowering frontline workers to make decisions and act on their own initiative, (2) providing training and pay incentives for performance, (3) fostering a partnership with unions, and (4) establishing an employee safety net for displaced workers.

## Training

The majority of the top government officials and experts whom we surveyed said that having qualified employees with specific skills related to privatization was important to successfully implementing privatization. However, some officials said the need for new skills should not impede privatization since the skills could also be contracted for if not available within the government workforce.

Officials from the states and Indianapolis pointed out that to move into a more competitive environment, their governments had to improve the skills of their employees so they could (1) participate in managed competition and/or (2) prepare for and monitor contracting efforts. Public and union officials identified the following as helpful to employees involved in privatization: (1) knowledge of the existing government program, (2) ability to analyze work flows and processes, (3) ability to develop methods to eliminate inefficiencies, (4) knowledge of cost-estimation techniques, (5) ability to apply methods of financial analysis, (6) ability to determine and write concise and specific contract requirements to delineate exactly what the contractor is responsible for, and (7) knowledge of methods for monitoring the performance of contractors.

## Safety Net

Providing a safety net for displaced workers was a component of the six governments' workforce transition strategies. These strategies included offering workers early retirement, severance pay, or a buyout, or, if the activity was taken over by a private firm, ensuring that employees' concerns about compensation issues involved in this transition were addressed.[11] Other strategies included placing workers in other government units if their jobs were eliminated and offering job transition assistance, such as career planning and training, to workers moving to the private sector. According to Virginia officials, for example, employees' concerns were one of the biggest barriers in that state's privatization efforts. The Governor directed state officials to examine and recommend measures to provide the opportunity for departing state workers to compete in the private sector. According to state officials and employee representatives, this led to the passage of the Workforce Transition Act, which mitigated some of the employees' concerns with privatization, such as job loss, training, and benefits.

In New York, according to state officials, new collective bargaining agreements were negotiated that allowed the state to lay off affected employees, provided they were accorded certain considerations such as 60 days written notice of intended separation, placement on a redeployment list, and an offer of redeployment if a fillable vacancy became available elsewhere in state government. If redeployment was not possible and the employee had no displacement rights under the state's Civil Service Law, the employee had the option of receiving a financial stipend for an identified retraining or educational opportunity, severance pay, or preferential consideration for employment with the contractor. Redeployment would ensure that the affected employees maintained their salary and titles comparable to former positions.

## Enhanced Monitoring and Oversight of Performance Is Needed When Privatization Is Used

According to officials with the six governments, monitoring and oversight that not only evaluates compliance with the terms of the privatization agreement but also evaluates a private firm's performance in delivering services is needed when a government's direct role in the delivery of services is reduced through privatization. This is necessary to help ensure that the government's interests are protected and that accountability of both the government and the private party is maintained.

[11]To the extent that resources are provided by a government for services such as severance pay or training, the net financial savings resulting from the privatization may be diminished.

## Monitoring Privatization

Officials in all six governments told us that monitoring of privatized activities is critical. According to experts, such monitoring consists of contract auditing and technical or performance monitoring. Contract auditing aims to ensure that contractors are paid as mandated by the contract and that all contractual obligations are fulfilled. Contract auditing also serves as an independent check on contractors and on the government's contract managers. Technical and/or performance monitoring aims to ensure that contractor-provided services are meeting contract specifications for quantity and quality.

The majority of the state and city officials we interviewed said that performance monitoring is more difficult than contract auditing and that their governments faced a much greater need to develop employee skills for performance monitoring than for contract auditing. Officials at all of the governments we visited said that one of the most important—and often most difficult—tasks in privatizing government activities was writing specific work statements for the privatization contracts. Officials noted that when contract requirements were vague, contractor performance was not easily evaluated, even if the government used sufficient and effective monitoring techniques. Given the importance of being able to specify work requirements and outputs, most of the six governments reported that they took steps to mitigate their risk. For example, Georgia and Virginia's guidance for evaluating whether a service should be considered for privatization focused on the ease with which the service's objectives could be defined and measured for monitoring purposes. Indianapolis officials said that its use of performance measures enhanced the writing of contract terms because they focused at the activity level (e.g., air and water quality assurance) and measured each activity's outputs (e.g., water samples collected and evaluated).

Officials from all but Indianapolis said that performance monitoring was their weakest link in the privatization process. Officials from all the governments said that they were working to enhance their employees' skills so that they could undertake more sophisticated monitoring. For example, officials said that monitoring the performance of complex activities, such as wastewater treatment or the medical care of prisoners, can require analytical skills that go beyond compliance checklist-type reviews. Monitoring performance, they said, sometimes required new or innovative approaches. For example, Virginia used a newly designed approach to measure the performance of its two contractor-operated child support enforcement offices. Because the offices were newly created, Virginia could not compare pre- and post-privatization costs. Instead,

Virginia established quarterly and semiannual reporting requirements in the contract and used sophisticated statistical measures to compare the performance of its child support offices with a hypothetical average office with similar characteristics, such as size and demographics. In addition to having performance measures, the new system required new data collection skills for state employees, such as doing customer satisfaction surveys.

## Oversight of Privatization

Officials in all six jurisdictions and our expert panel told us that independent oversight of privatization efforts was critical. Independent oversight by an office that is outside the control of the unit responsible for operating the activity provides a more objective and unbiased evaluation of privatized activities than is possible by senior government managers or program-level monitors. Virginia's Auditor of Public Accounts, for example, said that independent oversight can focus on such areas as automatic contract extensions to ensure that costs do not escalate without limit and that the program manager attempts to maximize competition in the award of contracts.

Each of the six governments had independent oversight functions, and these functions played different roles in the privatization process and provided varying degrees of oversight coverage. For example, beginning in December 1993, the Massachusetts State Auditor had formal review and approval powers related to proposed privatizations for activities costing over $100,000. Virginia's legislative and executive branches, according to officials of both branches, provided extensive oversight. In the executive branch, Virginia had an agency network of internal auditors, coordinated by the Department of the State Internal Auditor, to review privatized activities within their respective agencies. Virginia's legislature had the Joint Legislative Audit Review Commission (JLARC) and the Auditor of Public Accounts. JLARC's actions on a proposed privatization demonstrate the value of independent oversight. In 1996, JLARC raised concerns about a proposed computer systems privatization that was begun before the state government established its current privatization process. As a result of these concerns, the General Assembly subsequently delayed the proposed privatization and directed JLARC to conduct a more complete study of the project.

We are sending copies of this report to the Chairman and Ranking Minority Member of the Senate Committee on Governmental Affairs and

the House Committee on Government Reform and Oversight; the Director, Office of Management and Budget; the Director, Office of Personnel Management; and other interested parties. Copies will be made to others upon request.

The major contributors to this report are listed in appendix V. Please contact me on (202) 512-9039 if you have any questions.

Sincerely yours,

Michael Brostek
Associate Director, Federal Management
and Workforce Issues

# Contents

## Figures



### Abbreviations

| | |
|---|---|
| ABC | activity-based costing |
| CCC | (Virginia) Commonwealth Competition Council |
| CEO | chief executive officer |
| DMB | (Michigan) Department of Management and Budget |
| ESOP | employee stock ownership plan |
| GPRA | Government Performance and Results Act of 1993 |
| GSE | government-sponsored enterprise |
| ITMRA | Information Technology Reform of 1996 |
| JLARC | (Virginia) Joint Legislative Audit Review Commission |
| NPR | National Performance Review |
| OMB | Office of Management and Budget |
| PBO | performance based organization |
| PERM | (Michigan) privatize, eliminate, retain, or modify |

# Forms of Privatization and Frequency of Use in State Programs and Services

| Forms of privatization | Administration/ General Services | Corrections |
|---|---|---|
| Contracting out | 91.67% | 92.09% |
| Grants | 0.56 | 1.19 |
| Vouchers | 3.06 | 0.40 |
| Volunteerism | 1.39 | 3.56 |
| Public-private partnerships | 1.67 | 2.37 |
| Private donation | 0.56 | 0.40 |
| Franchise | 0.28 | .00 |
| Service shedding | 0.28 | .00 |
| Deregulation | .00 | .00 |
| Asset sales | 0.56 | .00 |

| Agencies' frequency of use | | | | | |
|---|---|---|---|---|---|
| Education | Health | Mental Health/ Retardation | Social Services | Transportation | Average by form of privatization |
| 81.29% | 69.57% | 64.67% | 71.32% | 83.51% | 78.06% |
| 8.63 | 14.13 | 15.63 | 12.48 | 4.50 | 8.48 |
| 0.72 | 4.89 | 5.35 | 9.31 | 0.43 | 4.11 |
| 1.44 | 3.26 | 3.64 | 2.98 | 5.35 | 3.32 |
| 5.04 | 5.43 | 3.85 | 2.23 | 2.57 | 2.95 |
| 0.72 | .00 | 2.57 | 0.19 | 1.28 | 0.96 |
| 1.44 | 1.09 | 1.71 | 0.37 | 1.50 | 0.91 |
| 0.72 | 1.09 | 0.86 | 0.74 | 0.43 | 0.58 |
| .00 | 0.54 | 1.50 | 0.37 | 0.21 | 0.46 |
| .00 | .00 | 0.21 | .00 | 0.21 | 0.17 |

Source: State Trends and Forecasts: Privatization, Council of State Governments, 1993.

# Expert Panelists on GAO's Review of State and Local Privatization Efforts[1]

Keon S. Chi, Director, Center for State Trends and Innovations, Council of State Governments. Author, State Trends and Forecasts: Privatization, 1993, and Privatization and Contracting Out for State Services: A Guide, 1988, The Council of State Governments.

John D. Donahue, Professor, John F. Kennedy School of Government, Harvard University. Author, The Privatization Decision: Public Ends, Private Means, 1989.

William D. Eggers, Director of Privatization and Government Reform, Reason Foundation. Coauthor, Revolution at the Roots: Making Our Government Smaller, Better, and Closer to Home, 1995.

David Seader, Senior Manager, Privatization and Infrastructure Group, Price Waterhouse. Former Executive Director, Privatization Council, Inc., a nonprofit educational organization devoted to developing and expanding the concept of privatization and public-private partnerships.

Dennis Houlihan, Labor Economist, Department of Research and Collective Bargaining Services, American Federation of State, County, and Municipal Employees.

Ronald W. Jensen, Private Consultant. Former Public Works Director, Phoenix, Arizona. Developed city program on privatization; specifically initiated the innovative process of various city operations competitively bidding against private contractors.

Linda Morrison, Private Consultant. Former Director of the Mayor's Competitive Contracting Office, Philadelphia, Pennsylvania, and former competitive contracting advisor to the State of New Jersey.

Larry Gupton, Deputy Auditor, State of Colorado. Coauthor of Privatization in Colorado State Government: Performance Audit, 1989, and the follow-up performance audit report, 1993.

[1] The panel helped us identify governments to visit and validated our framework of privatization factors, which we used as a guide in data collection.

# Overview of Recent Privatization Efforts in the Six Governments

This appendix provides an overview of selected recent privatization efforts in the six governments we surveyed. Officials from the six governments provided the following key initial actions, primary reasons for governmentwide privatization efforts, and an overview of select projects.

| Government | Key initial action | Primary reasons for governmentwide privatization efforts |
|---|---|---|
| **Georgia** | Governor created commission on privatization of government services in 1995. | Limit growth of government.<br>Reduce scope of government.<br>Improve government efficiency. |
| **Massachusetts** | Governor called on department managers to privatize functions and services in 1991. | Reduce state budget deficit.<br>Reduce costs of government services.<br>Improve quality of government services. |

**Overview of governments' select projects**

| Project | Primary reason | Type of privatization[a] | Reported results[b] |
|---|---|---|---|
| Milledgeville War Veterans Home | Privatization Commission analysis showed that costs were much higher than in six benchmark states. | Outsourcing | • Estimated cost savings of 57 percent for 5 years.<br>• Staff are more responsive to family concerns and inquiries.<br>• Quality of life enhancements include: cleaner home, better food, and cable television. |
| State maintenance of autos | Not a core function of state. | Outsourcing | • Estimated cost savings of $300,000 per year. Estimated savings represent a projected 40 percent savings over government provision of service. |
| Lake Lanier Islands recreational area | Not a core function of state. | Outsourcing | • Projected revenue of $300 million to $350 million over the 50-year contract. |
| Prison health care | Reduce prison health care costs and improve medical care and access to care. | Outsourcing | • Estimated annual cost savings of $8 million over 5-year contract.<br>• Expenses for state employee benefits have been reduced.<br>• State shielded from liability because single vendor has become responsible for all inmate patient care and held responsible for all malpractice awards and legal costs.<br>• Ten of 20 state prisons now meet National Commission on Correctional Health Care accreditation standards (previously none of the prisons met these standards).<br>• Trips by prisoners to outside hospitals have been reduced from over 100 every day to 100 per week. This has reduced personnel and transportation costs. |
| Essex County highway maintenance | Improve quality of highway maintenance. | Outsourcing/ managed competition | • Dollar savings from the first year of the contract were $2 million in direct operating costs, $1 million in reallocated equipment, and $1.5 million in reallocated personnel.<br>• Maintenance overtime costs reduced by $252,000 in the first year of the contract.<br>• Highway maintenance services have improved and include new bridge washing service, increased mowing of grass, roadway sweepings, and guardrail maintenance. |
| Social services revenue management operations | Apply private-sector technology to increase revenue collections. | Outsourcing | • Overall increase in collections of $87 million during first 2 years of contract (federal fiscal years 1994 and 1995).<br>• Before privatization an estimated $49 million to $70 million was not collected annually.<br>• Agency has increased its annual level of revenue generation by 40 percent and reduced its per-dollar cost of revenue collection by 30 percent.<br>• Additional revenue has been used to boost the agency's preventive services, adoption, foster care and other child welfare initiatives. |

(continued)

| Government | Key initial action | Primary reasons for governmentwide privatization efforts |
|---|---|---|
| **Michigan** | Governor created public-private partnership commission in 1992. | Reduce the state's budget deficit.<br><br>Shrink size and scope of government. |
| **New York** | Governor established an advisory commission on privatization and a research council on privatization in 1995. | Reduce size and scope of government.<br><br>Reduce cost and improve the quality of government services. |

**Overview of governments' select projects**

| Project | Primary reason | Type of privatization[a] | Reported results[b] |
|---|---|---|---|
| Workers Compensation Accident Fund | State determined that the fund should no longer be a government function. | Asset sale | • The state gained $261 million from the sale of the Accident Fund.<br>• The private Accident Fund Company has reduced rates by an average of 9.2 percent in the first year of operations.<br>• Quality service at competitive rates.<br>• Removes potential for political interference in the ratemaking process.<br>• The private Accident Fund Company has introduced new products for participants, such as group dividend programs which offer the potential for rebates on insurance premiums if the overall loss ratio for the group remains low. |
| Physical security at military facilities | Cost savings. | Outsourcing | • Estimated savings of approximately $1.2 million over fiscal year 1996 costs from contracting security programs at Camp Grayling, Alpena Combat Center, and Battle Creek Air National Guard Base.<br>• Estimated cost savings represent a savings of 70 percent over fiscal year 1996 costs.<br>• Allows the state's Department of Military Affairs to meet federal security requirements at all three sites within the limitations of available federal funding.<br>• Camp Grayling increased level of security with enhanced monitoring coverage. |
| Sales of armories | Excess, unused armories that resulted from national defense downsizing were no longer needed. | Asset sale | • State gained $407,900 from the sale of the St. Joseph and Benton Harbor armories.<br>• Sale proceeds from armory asset sales deposited in Michigan National Guard Armory Construction Fund to be used for acquisition and construction of facilities and other purposes, thereby offsetting future1 general fund expenditures.<br>• State no longer responsible for oversight of vacant facilities. |
| Vista Hotel | Owning/operating hotel was not considered to be a governmental function. | Asset sale | • Hotel was sold in 1995 by the New York-New Jersey Port Authority for $141.5 million. |
| Tax form processing | To enhance cost savings and the efficiency and effectiveness of processing tax returns. | Outsourcing | • Estimated annual savings of $7.5 million. |
| Economic development and housing loan portfolio servicing | Reduce costs and improve services. | Outsourcing | • Approximately $3 million estimated annual cost savings. |

(continued)

| Government | Key initial action | Primary reasons for governmentwide privatization efforts |
|---|---|---|
| **Virginia** | Key legislators and governor created a competition council in 1995. | Improve service and productivity of government services.<br><br>Reduce cost of operations. |
| **Indianapolis** | Mayor created a private-sector advisory group in 1992. | Reduce size and scope of government.<br><br>Increase the quality and decrease the cost of services. |

**Overview of governments' select projects**

| Project | Primary reason | Type of privatization[a] | Reported results[b] |
|---|---|---|---|
| Delinquent tax collection | Increase collections. | Outsourcing | • Estimated $6.8 million in collections in first year.<br>• Improved collection of previously uncollectable accounts. |
| Education loan authority | Not considered to be a government function. | Asset sale | • State gained $62 million from sale of loan portfolio and building facilities that housed loan authority staff operations. |
| Child support enforcement | Need to respond to increased caseload and take advantage of private sector technology. | Outsourcing | • Administrative cost of private office to collect $1 dollar support was 60 percent lower than public office during an 18-month period.<br>• Improved customer service satisfaction.<br>• Increased number of clients served. |
| Wastewater treatment | Cost savings. | Outsourcing | • Estimated $65 million cost savings between 1994 and 1998.<br>• Estimated cost savings represent a 42 percent savings over government provision of service.<br>• Increased capacity to treat effluent with fewer staff.<br>• Improved effluent quality.<br>• Better maintenance program resulted in improved equipment reliability.<br>• Combined sewer overflows reduced by 50 percent. |
| Airport management | Promote economic development. | Outsourcing | • Estimated $105 million in cost savings or new revenues between 1995 and 2004.<br>• Estimated cost savings represent a 28-percent savings over government provision of service.<br>• 16.5 percent reduction in the cost per enplaned passenger from 1994 to 1995.<br>• 22 percent reduction in airline landing fees from 1994 to 1995.<br>• Increased retail selection and quality for passengers. |
| Street maintenance | Cost savings. | Outsourcing/ managed competition | • Estimated $700,000 in cost savings between 1992 and 1996.<br>• Estimated cost savings represented a 30-percent savings over previous costs.<br>• Increased chuckhole crew daily productivity by 68 percent.<br>• A 200-percent annual average increase in lane miles repaired (cracks sealed) between 1993 and 1996 compared to 1993 baseline. |
| Audio-visual/ microfilm services | Cost savings. | Outsourcing | • Estimated $1.5 million in cost savings between 1992 and 1995.<br>• Estimated cost savings represented a 54-percent savings over government provision of service.<br>• Eliminated prior 3-year backlog of service requests.<br>• Consistent achievement of turnaround requirements.<br>• Improved service to citizens using microfilm archives. |

(continued)

| Government | Key initial action | Primary reasons for governmentwide privatization efforts |
|---|---|---|
| Indianapolis (continued) | | |

**Overview of governments' select projects**

| Project | Primary reason | Type of privatization[a] | Reported results[b] |
|---|---|---|---|
| Maintenance of city vehicles | Cost savings. | Managed competition | • Estimated $4.2 million in cost savings between 1995 and 1997.<br>• Estimated cost savings represent a 21-percent savings over government provision of service.<br>• Fewer labor grievances in first year of contract compared to prior 1-year period.<br>• Cost of workers compensation claims decreased by two-thirds since 1994. |

Note: The six governments selected the projects to illustrate the range of activities that they have undertaken in their recent privatization efforts.

[a]See the end of this report for our glossary of privatization terms.

[b]All results are as reported by the governments. We did not verify these results.

Sources: Georgia, Massachusetts, Michigan, New York, Virginia, and city of Indianapolis government officials.

# Analytical Frameworks Used by Indianapolis, Michigan, and Virginia

Most of the state and local government officials and experts we surveyed said that having a framework or process was key to implementing privatization because it provided a consistent approach for analyzing government activities. All six governments used some form of analytical framework to guide their decisionmaking. Some said that the repeated use of such a framework shortened the learning time in analyzing government functions.

These analytical frameworks typically included a step-by-step decisionmaking process. Many of the frameworks established by the six governments shared common elements, such as providing criteria for selecting activities to privatize, an inventory of privatization candidates, cost comparison and evaluation methods, and procedures for monitoring the performance of privatized activities. Indianapolis, Michigan, and Virginia had the most formalized frameworks and they are described below.

## The Indianapolis Costing and Competitiveness Model

After introducing competition into government in 1992, Indianapolis included city employees through their union in the process for competitive bidding for contracts to deliver city services. Once a number of activities had been identified as candidates for competition, city officials developed a three-phase approach to implementing a managed competition process. The three phases were (1) determining the costs of government services using activity-based costing, (2) openly and competitively bidding for functions or services and contracting with either a city agency or private-sector firm to provide those functions or services, and (3) evaluating the level of performance of functions and services delivered using a system of citizen and customer satisfaction surveys and measures of cost and performance. The costing and competitiveness model is shown in figure IV.1 and worked as follows.

First, city officials, after a discussion with the affected unions, decided whether or not to open competitive bidding for an activity. If the decision was to compete, the city then issued a request for proposals. City officials provided a bid package to the union at the same time as other potential bidders.

Second, to ensure that city employees were equipped to participate in the process, the city provided managers and union members with the analytical training they needed to spot inefficiencies, and with the

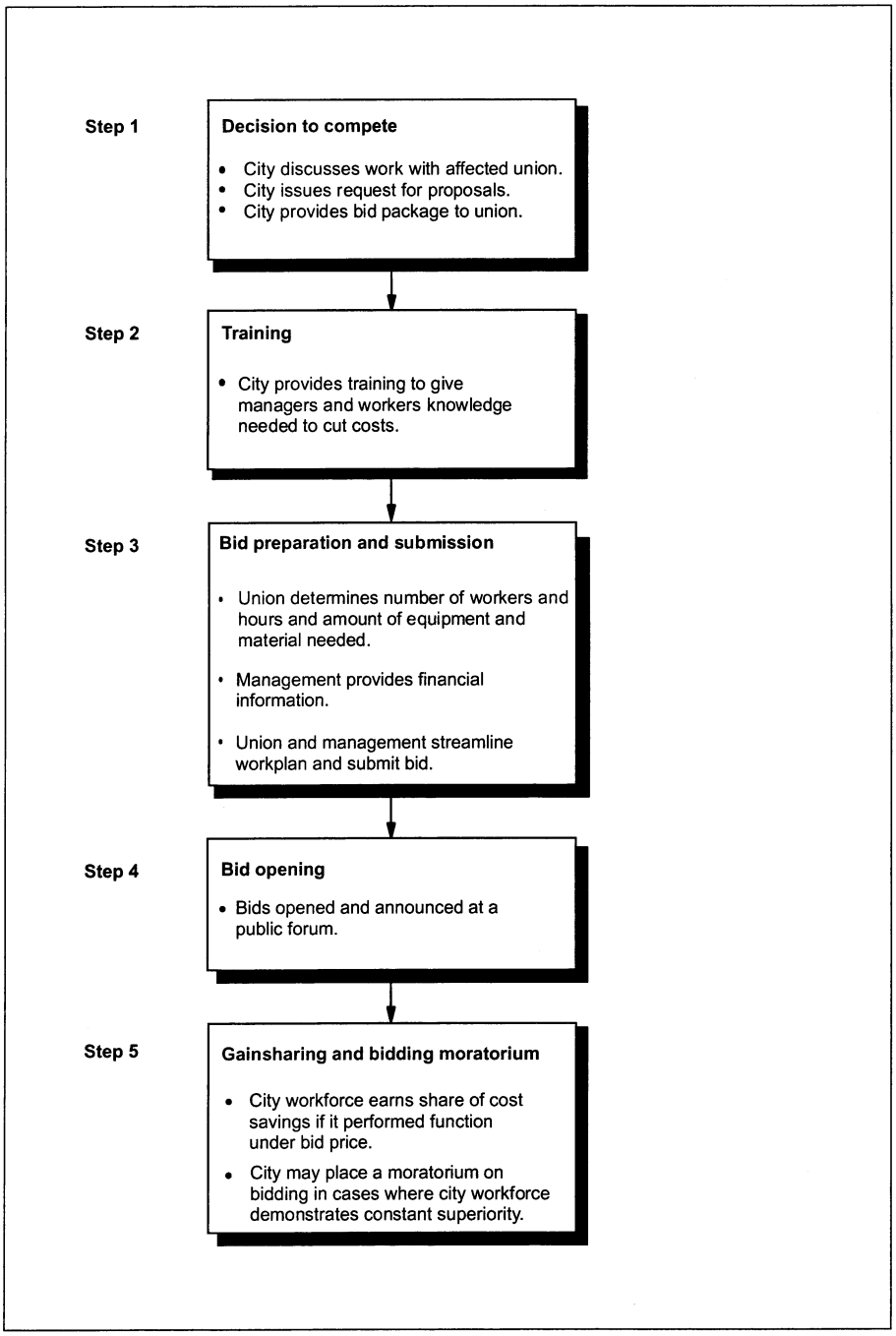
knowledge needed to analyze and reduce costs. The city also provided consultants to help city employees prepare their proposals.

Third, a union-management bid team reviewed the bid document and determined (1) the number of employees and hours needed to perform the function as well as the amount of equipment and materials needed and (2) the necessary financial and performance information, which was provided by management. The team then worked to streamline the work processes and rewrite the workplan. Often with the help of consultants provided by the city, the team then prepared the bid package which was submitted along with private bids.

Fourth, at a public forum, all public and private-sector bids were opened together and the winning bid was announced.

Finally, if the public sector won a competition and the union-management team performed the activity at the desired level of performance for less than it bid, the team received a share of the savings at the end of the year. The city, after it tracked performance over a period of years, could place a moratorium on bidding for areas for which city employees had demonstrated performance excellence and in which they consistently outbid private competitors.

**Figure IV.1: The Indianapolis Approach: Costing and Competitiveness in the Delivery of Public Services**




Source: City of Indianapolis.

## Michigan's PERM Process

Michigan established its framework in 1992. The framework provided a set of procedures for analyzing government activities to determine if they should be privatized, eliminated, retained in current form, or modified (PERM). To accomplish these objectives, the PERM process included the steps described below. Michigan's operating agencies, Privatization Division, and private contractors have performed PERM studies of state activities and functions. Figure IV.2 illustrates this process.

Initially, agency directors used the Public-Private Partnership Commission's list of suggested activities[1] to choose functions and services to be analyzed. The analyses were to be done using a three-part analytical model developed by the Privatization Division in Michigan's Department of Management and Budget (DMB). First, an historical analysis of the activity was done to identify factors that caused the state government to become involved in the activity and whether those factors have changed. This analysis also tracked the state's level of responsibility throughout its involvement.

Second, the agency prepared a report which recommended whether the function should be privatized, eliminated, retained in current form, or modified. This included evaluating the potential effects on customers and other state activities of changing a function or service. It also included a quantitative assessment of activity operations, as well as results to be achieved and in what time frames. Issues involved in resolving potential or pending issues (legal, liability, confidentiality, etc.) were also assessed.

Third, the agency prepared an analysis of the function or service's current costs, as well as a basis for determining the cost of operations if they would be changed. For example, if the initial decision were to privatize an existing state activity, the third part of the analysis would include both the cost of the current program as well as an estimate of what the privatized activity would cost. The latter would include estimates of the costs associated with the transition from government operation to privatized status. Agency management then reviewed the PERM analysis and decided what action was to be taken. This decision was forwarded to the DMB's Privatization Division for review. Each recommendation was either agreed to or, if not, it was renegotiated or studied further.

Since 1995, the focus has shifted from agency-initiated PERM studies to Privatization Division-initiated PERM studies, particularly on functions and

[1]Final Report-PERM: Privatize, Eliminate, Retain or Modify, Michigan's Public-Private Partnership Commission, December 1992.

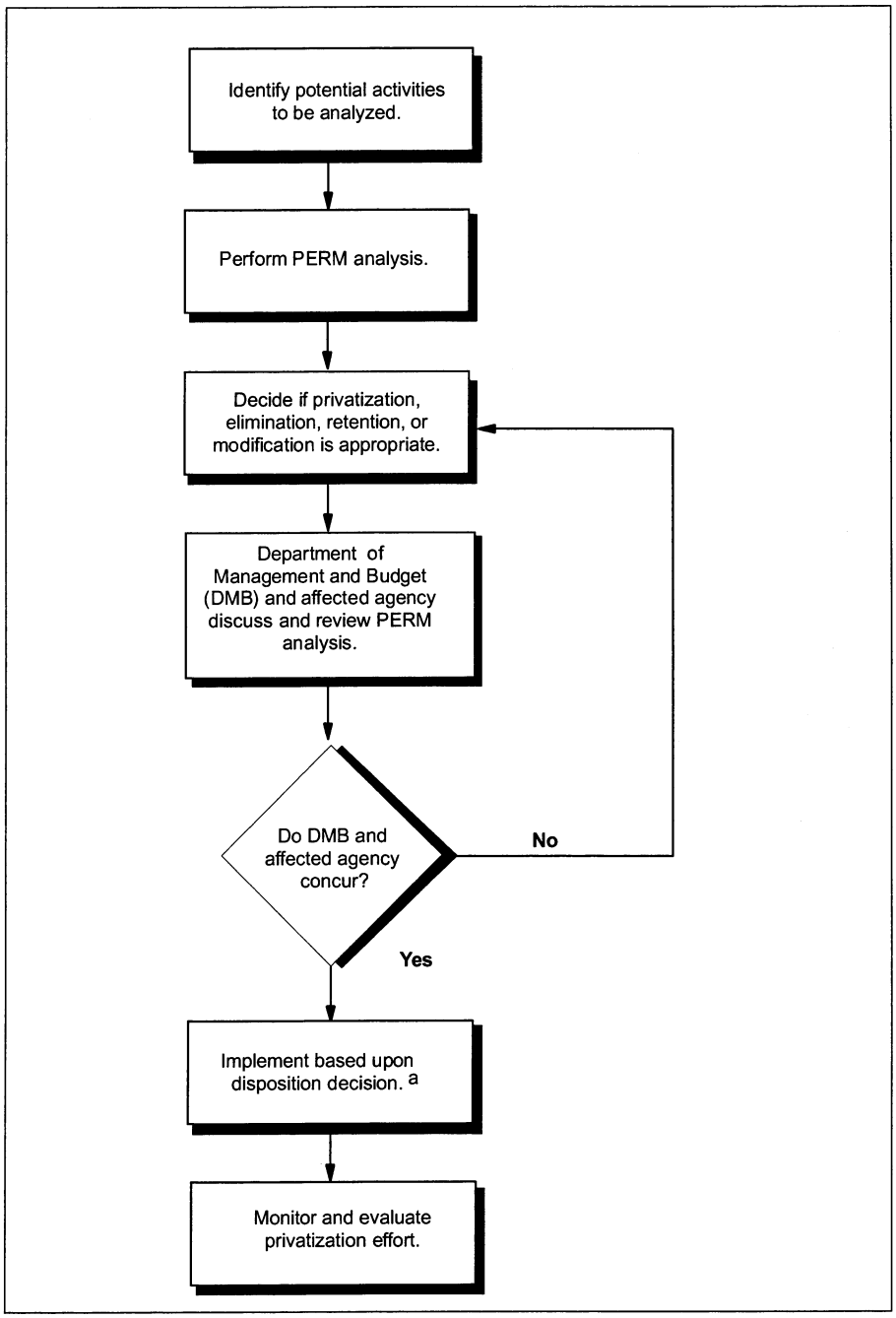
services that cross agency lines. Thus, the process changed in that DMB's Privatization Division would conduct studies, using the three-part analytical model described above, after obtaining approval from DMB and the Governor's office. Privatization Division staff would then submit their PERM analysis to the affected agency for review and comment. After DMB and the affected agency negotiated the recommendation made in DMB's PERM study, both parties agreed on a decision to implement.

Michigan has also contracted out to have PERM studies conducted. The state's Office of Information Technology maintains a list of preapproved PERM contractors, which agencies can contract with to perform PERM studies. These are usually done in consultation with the Privatization Division staff and the affected department and address issues outlined in the three-part analysis model outlined above.

According to Michigan officials, most decisions calling for privatization, elimination, retention, or modification could be implemented by executive branch administrative actions. When privatization was recommended, Michigan's Civil Service Department reviewed agency proposals to contract for personal services.[2] A proposed privatization also could be subject to legislative approval if authorizing legislation needs to be created, changed, or repealed.

[2]As defined by Michigan's Civil Service Commission Rules, personal services are services that the state contracts for with persons who are not classified as employees of the state.

**Figure IV.2: Michigan's PERM Process for Analyzing Functions and Services**



[a]Submit decision information to appropriate entities as required (e.g., Attorney General, Civil Service, Contract Management, Facilities, Purchasing).

Source: Michigan's Department of Management and Budget, Privatization Division.

## Virginia Commonwealth Competition Council Process

Virginia's framework, known as the Commonwealth Competition Council (CCC) Process, was used to implement governmentwide privatization efforts for the first time in 1996 (see figure IV.3). State officials told us that most of the previous privatization efforts used a similar approach. This process is dynamic as state government organizations may be at different steps depending on their respective agency performance requirements.

In step 1, the Council held hearings to solicit input from citizens, business interests, and government employees. Using this input and information from functional departmental reviews, the CCC developed an inventory of functions or services that could be opened to competition with the private sector. The inventory for future years is published in the Council's annual report.

In step 2, agencies conducted a public-private performance analysis of selected activities to determine whether they should be opened to competition with the private sector. The performance analysis consisted of five parts. The first part evaluated an activity's potential for competition, assessing such aspects as the private sector's capacity and the state's ability to measure performance for evaluation purposes. The second part assessed the full cost of operating the current activity as well as the estimated cost of the contract for the function or activity considered for privatization. The third part focused on public policy issues related to public safety and welfare. The fourth considered issues involved in planning the competition, such as personnel and transition considerations, as well as contract administration. The fifth component considered implementation issues such as procurement requirements and quality assurance evaluation procedures.

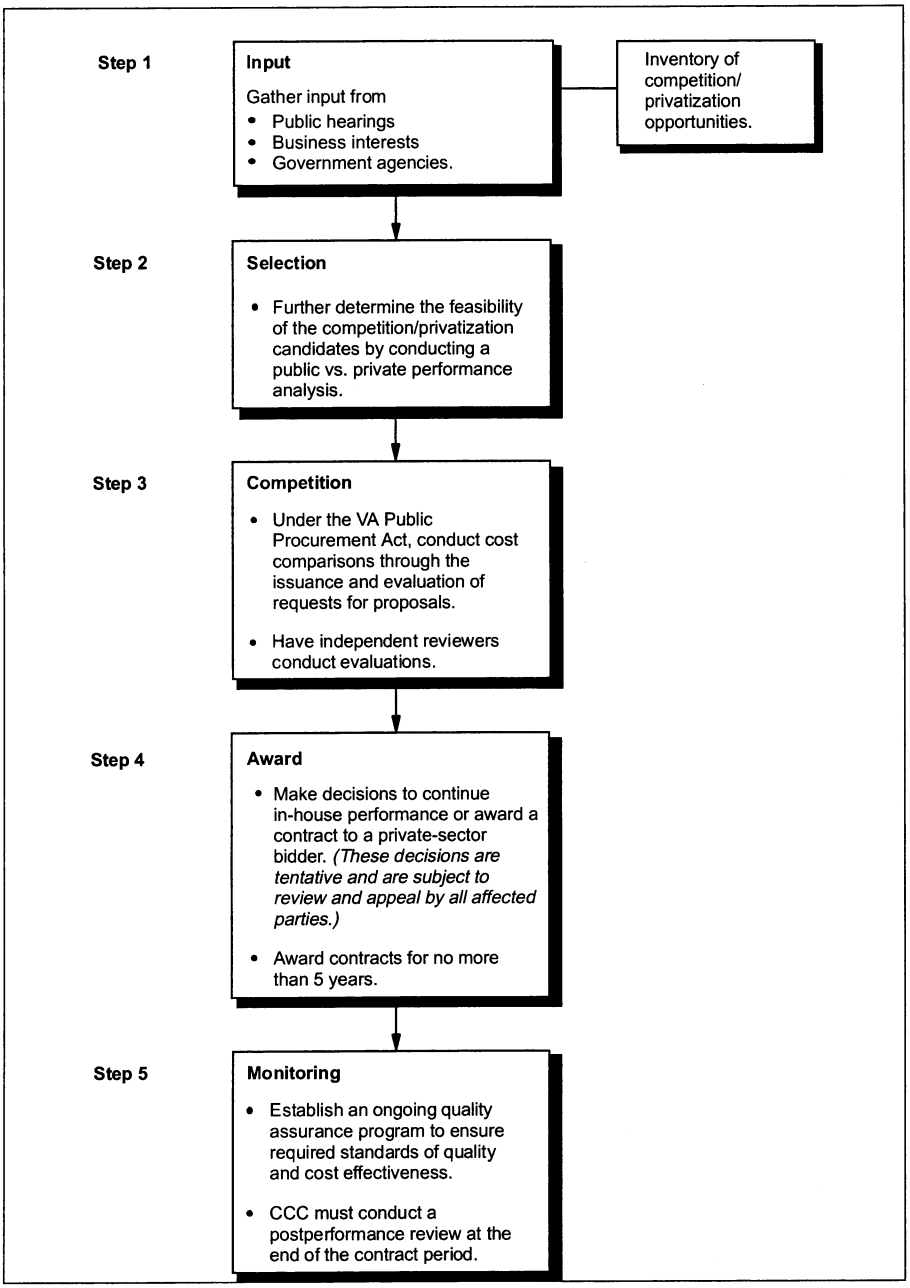
In step 3, the agency requested proposals from private-sector firms and, in certain instances, state agencies. The Council staff oversaw the cost comparison evaluation process. An interagency team did an independent review of in-house costs to ensure the government costs were complete, accurate, and reasonable. The team was selected by and reported to the Council and included officials from the offices of the Attorney General, Planning and Budget, Purchases and Supplies, State Internal Auditor, Joint Legislative Audit and Review Commission, the Virginia Institute of

Government, Auditor of Public Accounts, and Council of Higher Education.

In step 4, the agency received sealed proposals from the private firms, and if a managed competition was used, from public employees, and announced a tentative decision to continue in-house performance or to award the contract to a particular bidder. Contracts were awarded for a period not to exceed 5 years.

Step 5 required that the agency establish an ongoing quality assurance program to ensure that quality and cost standards established in the contract were met. The agency was required to conduct a postperformance review at the end of the contract period.

**Figure IV.3: Virginia's Commonwealth Competition Council Process**




Source: Virginia's Commonwealth Competition Council.

Appendix V

# Major Contributors and Acknowledgments

## Major Contributors

| | |
|---|---|
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## Acknowledgments


| | |
|---|---|
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# Glossary of Privatization-Related Terms

| | |
|---|---|
| Asset Sale | An asset sale is the transfer of ownership of government assets, commercial type enterprises, or functions to the private sector. In general, the government will have no role in the financial support, management, or oversight of a sold asset. However, if the asset is sold to a company in an industry with monopolistic characteristics, the government may regulate certain aspects of the business, such as the regulation of utility rates. |
| Competition | Competition occurs when two or more parties independently attempt to secure the business of a customer by offering the most favorable terms. Competition in relation to government activities is usually categorized in three ways: (1) public versus private, in which public-sector organizations compete with the private sector to conduct public-sector business; (2) public versus public, in which public-sector organizations compete among themselves to conduct public-sector business; and (3) private versus private, in which private-sector organizations compete among themselves to conduct public-sector business. |
| Contracting Out | Contracting out is the hiring of private-sector firms or nonprofit organizations to provide a good or service for the government. Under this approach, the government remains the financier and has management and policy control over the type and quality of services to be provided. Thus, the government can replace contractors that do not perform well. |
| Divestiture | Divestiture involves the sale of government-owned assets or commercial-type functions or enterprises. After the divestiture, the government generally has no role concerning financial support, management, regulation, or oversight. |
| Employee Stock Ownership Plans | Under an employee stock ownership plan (ESOP), employees take over or participate in the management of the organization that employs them by becoming shareholders of stock in that organization. In the public sector, an ESOP can be used in privatizing a service or function. Recently, for example, the Office of Personnel Management established an ESOP for its employees who perform personnel background investigations. |
| Franchising of Internal Services | Under the franchising of internal services, government agencies may provide administrative services to other government agencies on a |

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| | reimbursable basis. Franchising gives agencies the opportunity to obtain administrative services from another governmental entity instead of providing them for themselves. |
| Franchising-External Service | In the franchise-external service technique, the government grants a concession or privilege to a private-sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain national parks. The government may regulate the service level or price, but users of the service pay the provider directly. |
| Government Corporations | Government corporations are separate legal entities that are created by Congress, generally with the intent of conducting revenue-producing commercial-type activities and that are generally free from certain government restrictions related to employees and acquisitions. |
| Government-Sponsored Enterprises | Government-sponsored enterprises (GSE) are privately owned, federally chartered financial institutions with a nationwide scope and limited lending powers that benefit from an implicit federal guarantee that enhances a GSE's ability to borrow money in the private sector. They are not agencies of the United States but serve as a means of accomplishing a public purpose defined by law. |
| Joint Ventures | See public-private partnership. |
| Leasing Arrangements | Leasing arrangements are a form of public-private partnership. Under a long-term lease, the government may lease a facility or enterprise to a private-sector entity for a specified period. Maintenance, operation, and payment terms are spelled out in the lease agreement. Under a sale-leaseback arrangement, the government sells an asset to a private-sector entity and then leases it back. Under a sale-service contract or lease-service contract, an asset sale or long-term lease is coupled with an arrangement with the purchaser to furnish services for a specified period. Leases in which the government leases a facility (e.g., a building lease) are considered a form of contracting out, rather than a public-private partnership. |

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| Managed Competition | Under managed competition, a public-sector agency competes with private-sector firms to provide public-sector functions or services under a controlled or managed process. This process clearly defines the steps to be taken by government employees in preparing their own approach to performing an activity. The agency's proposal, which includes a bid proposal for cost-estimate, is useful to compete directly with private-sector bids. |
| Outsourcing | Under outsourcing, a government entity remains fully responsible for the provision of affected services and maintains control over management decisions while another entity operates the function or performs the service. This approach includes contracting out, the granting of franchises to private firms, and the use of volunteers to deliver public services. |
| Performance Based Organizations | Under a performance based organization (PBO), policymaking is to be separated from service operation functions by moving all policymaking responsibilities to a Presidential appointee. The service operations are moved to an organization to be headed by a chief executive officer (CEO), hired on a competitive contract for a fixed term. The CEO's contract defines expected performance and in exchange for being held accountable for achieving performance, the CEO is granted certain flexibilities for human resource management, procurement, and other administrative functions. As of March 1997, several PBOs had been proposed but no PBO had been authorized in the federal government. |
| Privatization | The term privatization has generally been defined as any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector. |
| Public-Private Partnership | Under a public-private partnership, sometimes referred to as a joint venture, a contractual arrangement is formed between public- and private-sector partners, and can include a variety of activities involving the private sector in the development, financing, ownership, and operation of a public facility or service. It typically includes infrastructure projects and/or facilities. In such a partnership, public and private resources are pooled and their responsibilities divided so that each partner's efforts complement one another. Typically, each partner shares in income resulting from the partnership in direct proportion to the partner's |

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| | investment. Such a venture, while a contractual arrangement, differs from typical service contracting in that the private-sector partner usually makes a substantial cash, at-risk, equity investment in the project, and the public sector gains access to new revenue or service delivery capacity without having to pay the private-sector partner. |
| Service Shedding | Divestiture through service shedding occurs when the government reduces the level of service provided or stops providing a service altogether. Private-sector businesses or nonprofit organizations may step in to provide the service if there is a market demand. |
| Subsidies | The government can encourage private-sector involvement in accomplishing public purposes through tax subsidies or direct subsidies, such as the funding of low-income housing and research and development tax credits. |
| User Fees | User fees require those who use a government service to pay some or all of the cost of the service rather than having the government pay for it through revenues generated by taxes. Charging entry fees into public parks is an example of a user fee. |
| Volunteer Activities | An activity in which volunteers provide all or part of a service and are organized and directed by a government entity can also be considered a form of outsourcing. Volunteer activities are conducted either through a formal agency volunteer program or through a private nonprofit service organization. |
| Vouchers | Vouchers are government financial subsidies given to individuals for purchasing specific goods or services from the private or public sector. The government gives individuals redeemable certificates or vouchers to purchase the service in the open market. Under this approach, the government relies on the market competition for cost control and individual citizens to seek out quality goods or services. The government's financial obligation to the recipient is limited by the amount of the voucher. A form of vouchers are grants, which can be given to state and local governments that may use the funds to buy services from the private sector. |

# GAO Privatization Products Related to State and Local Governments

Child Support Enforcement: Early Results on Comparability of Privatized and Public Offices (GAO/HEHS-97-4, Dec. 16, 1996).

Airport Privatization: Issues Related to the Sale or Lease of U.S. Commercial Airports (GAO/RCED-97-3, Nov. 7, 1996).

Child Support Enforcement: States' Experience With Private Agencies' Collection of Support Payments (GAO/HEHS-97-11, Oct. 23, 1996).

Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service (GAO/GGD-96-158, Aug. 16, 1996).

Child Support Enforcement: States and Localities Move to Privatized Services (GAO/HEHS-96-43FS, Nov. 20, 1995).

District of Columbia: City and State Privatization Initiatives and Impediments (GAO/T-GGD-95-194, June 28, 1995).

District of Columbia: Actions Taken in Five Cities to Improve Their Financial Health (GAO/T-GGD-95-110, Mar. 2, 1995).

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# APPENDIX C

Ballot Question No. 7 from the 1998 General Election

## QUESTION NO. 7

### Amendment to the Sales and Use Tax Act of 1955

Assembly Bill No. 611 of the 69th Session

### CONDENSATION (ballot question)

Shall the Sales and Use Tax Act of 1955 be amended to impose the sales and use tax upon items purchased by this state or by a local government or local governmental agency for resale to the public by the governmental entity?

**Yes** --------- ☐

**No** --------- ☐

### EXPLANATION

The proposed amendment to the Sales and Use Tax Act of 1955 would impose the tax upon the gross receipts from the sale of tangible personal property purchased by the state or a local government or local governmental agency for resale to the public.

State law requires that private businesses collect sales taxes on items that they sell to the public. Some state agencies and local governments have shops or restaurants in which they also sell items to the public. These government-owned establishments, often operated in connection with public museums, ski slopes, or beaches, are not required to collect sales taxes from their customers. The proposed amendment to the Sales and Use Tax Act of 1955 would require that the state and local governments collect sales taxes on items that they purchase for resale to the public.

### ARGUMENTS FOR PASSAGE

Stores and shops operated by agencies of state or local government often sell items such as posters, magazines, meals, and golf and ski accessories that are also offered for sale in private stores and restaurants. Because these government-run shops do not collect sales taxes from their customers, they enjoy an unfair advantage over their private competitors. This amendment would allow private businesses to compete on equal terms with governmental agencies. In addition, by ending the governmental exemption and thereby requiring governmental shops to collect sales taxes from their customers, the proposed amendment would modestly increase public revenues.

**A "Yes" vote would amend the Sales and Use Tax Act of 1955 to impose sales and use tax upon items purchased by this state or by a local government or local governmental agency for resale to the public by the governmental entity.**

## ARGUMENTS AGAINST PASSAGE

Shops and restaurants operated by state and local governmental agencies provide money to help support public museums, parks, and other places for public recreation. Therefore, it is appropriate that customers in governmental shops not be required to pay taxes on their purchases. In addition, certain private nonprofit agencies that sell items to the public are currently exempt from these taxes. Shops operated by governmental agencies are similar, in some ways, to those nonprofit shops and should therefore be treated the same by continuing to receive the same exemption.

**A "No" vote would continue the current practice under the Sales and Use Tax Act of 1955 which prohibits the imposition of a sales and use tax upon items purchased by this state or by a local government or local governmental agency for resale to the public by the governmental entity.**

## FISCAL NOTE

**Financial Impact - No.** The proposal to amend the Sales and Use Tax Act of 1955 would provide that state or local governments or governmental agencies must impose sales and use tax upon items sold to the public. The state or local governments or governmental agencies would be collecting the sales tax, not paying it. Approval of this proposal would have no adverse fiscal effect.

## FULL TEXT OF THE MEASURE

AN ACT relating to taxes on retail sales; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to impose the tax on sales of items purchased by this state and local governments for resale to the public; contingently imposing analogous taxes on such sales; and providing other matters properly relating thereto.

**Section 1.** At the general election on November 3, 1998, a proposal must be submitted to the registered voters of this state to amend the Sales and Use Tax Act, which was enacted by the 47th session of the legislature of the State of Nevada and approved by the governor in 1955, and subsequently approved by the people of this state at the general election held on November 6, 1956.

**Sec. 2.** At the time and in the manner provided by law, the secretary of state shall transmit the proposed act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

**Sec. 3.** The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the general election on November 3, 1998, a question will appear on the ballot for the adoption or rejection by the registered voters of the state of the following proposed act:

AN ACT to amend an act entitled "An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto." approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA,
DO ENACT AS FOLLOWS:

Section 1. Section 14 of the above-entitled act, being chapter 397, Statutes of Nevada 1955, at page 765, is hereby amended to read as follows:

Sec. 14. "Seller" includes every person, *the State of Nevada, its unincorporated agencies and instrumentalities, any county, city, district or other political subdivision of this state* engaged in the business of selling tangible personal property of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

Sec. 2. Section 50 of the above-entitled act, being chapter 397, Statutes of Nevada 1955, at page 771, is hereby amended to read as follows:

Sec. 50. *1.* There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

[1.] *(a)* The United States, its unincorporated agencies and instrumentalities.

[2.] *(b)* Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

[3.] *(c)* The State of Nevada, its unincorporated agencies and instrumentalities.

[4.] *(d)* Any county, city, district or other political subdivision of this state.

*2. Except as otherwise provided in subsection 2, there are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property by:*

*(a) The State of Nevada, its unincorporated agencies and instrumentalities.*

*(b) Any county, city, district or other political subdivision of this state.*

*3. The provisions of subsection 2 do not apply to the sale of items of tangible personal property which are purchased by the governmental entity for resale to the public.*

Sec. 3. Section 3 of the above-entitled act, being chapter 397, Statutes of Nevada 1955, at page 763, is hereby repealed.

Sec. 4. This act becomes effective on January 1, 1999.

**Sec. 4.** The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to impose the sales and use tax upon items purchased by this state or by a local government or local governmental agency for resale to the public by the governmental entity?

**Yes ☐ No ☐**

**Sec. 5.** The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would impose the tax upon the gross receipts from the sale of tangible personal property purchased by the state or a local government or local governmental agency for resale to the public.

**Sec. 6.** If a majority of the votes cast on the question is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 1999. If less than a majority of votes cast on the question is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

**Sec. 7.** All general election laws not inconsistent with this act are applicable.

**Sec. 8.** Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the office of the secretary of state whether the proposed amendment was adopted by a majority of those registered voters.

**Sec. 9.** NRS 374.075 is hereby amended to read as follows:

374.075 "Seller" includes every person, *the State of Nevada, its unincorporated agencies and instrumentalities, any county, city, district or other political subdivision of this state* engaged in the business of selling tangible personal property of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

**Sec. 10.** NRS 374.330 is hereby amended to read as follows:

374.330 *1.* There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

[1.] *(a)* The United States, its unincorporated agencies and instrumentalities.

[2.] *(b)* Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

[3.] *(c)* The State of Nevada, its unincorporated agencies and instrumentalities.

[4.] *(d)* Any county, city, district or other political subdivision of this state.

*2. Except as otherwise provided in subsection 3, there are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property by:*

*(a) The State of Nevada, its unincorporated agencies and instrumentalities.*

*(b) Any county, city, district or other political subdivision of this state.*

*3. The provisions of subsection 2 do not apply to the sale of items of tangible personal property which are purchased by the governmental entity for resale to the public.*

**Sec. 11.** Sections 9 and 10 of this act become effective on January 1, 1999, only if the proposal submitted pursuant to sections 1 to 5, inclusive, of this act is approved by the voters at the general election on November 3, 1998.

# APPENDIX D

Bill Draft Request No. 28—409, "Makes various changes to advertising and awarding contracts for certain smaller public works projects."

SUMMARY—Makes various changes relating to advertising and awarding contracts for certain smaller public works projects. (BDR 28-409)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to public works; providing for an expedited process by which the State or local government solicits bids and awards contracts for certain smaller public works projects to properly licensed contractors or completes such projects itself; providing that such an expedited process does not relieve the State or a local government from duties relating to the qualification of bidders and the awarding of a contract to the contractor who submits the best bid; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

**Sec. 2.** ***If the estimated cost of a public work is $100,000 or less, this state or a local government shall:***

*1. Award a contract for the completion of the project to a properly licensed contractor in accordance with section 3 of this act; or*

*2. Perform the project itself in accordance with section 4 of this act.*

**Sec. 3.** *1. Before this state or a local government awards a contract for the completion of a public works project in accordance with subsection 1 of section 2 of this act, the State or the local government must:*

*(a) If the estimated cost of the public work is more than $25,000 but not more than $100,000, solicit bids from at least three properly licensed contractors; and*

*(b) If the estimated cost of the public work is $25,000 or less, solicit a bid from at least one properly licensed contractor.*

*2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the State or the local government determines:*

*(a) That the quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or*

*(b) As evidenced in a detailed written explanation setting forth the reasons for the determination, that:*

*(1) The bidder is not responsive or responsible; or*

*(2) The public interest would be served by such a rejection.*

*3. At least once each quarter, the State and each local government shall prepare a report detailing, for each public works project for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:*

*(a) The name of the contractor to whom the contract was awarded;*

*(b) The amount of the contract awarded;*

*(c) A brief description of the project; and*

*(d) The names of all contractors from whom bids were solicited.*

*4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.*

*5. The provisions of this section do not relieve this state or a local government from the duty to award the contract for the public work to a bidder who:*

*(a) Is qualified pursuant to the applicable provisions of NRS 338.1375 to 338.1383, inclusive; and*

*(b) Submits the best bid, as determined pursuant to NRS 338.1389, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1.*

**Sec. 4.** *1. Before this state or a local government commences work on a public works project that the State or the local government has elected to perform itself in accordance with subsection 2 of section 2 of this act, the State or the local government must, if the estimated cost of the public work is more than $25,000 but not more than $100,000, prepare a signed attestation regarding the decision of the State or the local government to perform the project itself.*

*2. An attestation prepared pursuant to subsection 1:*

*(a) Must set forth:*

*(1) The estimated cost of the project;*

*(2) A general statement as to why the State or the local government has decided to perform the project itself; and*

*(3) A general statement that the project will adhere to the same quality and standards as would be required of a properly licensed contractor if the project had been awarded to a properly licensed contractor;*

*(b) Is a public record and must be maintained on file at the administrative offices of the applicable public body.*

**Sec. 5.** *If the estimated cost of a public work is $100,000 or less, a local government shall:*

*1. Award a contract for the completion of the project to a properly licensed contractor in accordance with section 6 of this act; or*

*2. Perform the project itself in accordance with section 7 of this act.*

**Sec. 6.** *1. Before a local government awards a contract for the completion of a public works project in accordance with subsection 1 of section 5 of this act, the local government must:*

*(a) If the estimated cost of the public work is more than $25,000 but not more than $100,000, solicit bids from at least three properly licensed contractors; and*

*(b) If the estimated cost of the public work is $25,000 or less, solicit a bid from at least one properly licensed contractor.*

*2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the local government determines:*

*(a) That the quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or*

*(b) As evidenced in a detailed written explanation setting forth the reasons for the determination, that:*

*(1) The bidder is not responsive or responsible; or*

*(2) The public interest would be served by such a rejection.*

*3. At least once each quarter, a local government shall prepare a report detailing, for each public works project for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:*

*(a) The name of the contractor to whom the contract was awarded;*

*(b) The amount of the contract awarded;*

*(c) A brief description of the project; and*

*(d) The names of all contractors from whom bids were solicited.*

*4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.*

*5. The provisions of this section do not relieve a local government from the duty to award the contract for the public work to a bidder who submits the best bid, as determined pursuant to NRS 338.147, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1 of this section.*

**Sec. 7.** *1. Before a local government commences work on a public works project that the local government has elected to perform itself in accordance with subsection 2 of section 5*

*of this act, the local government must, if the estimated cost of the public work is more than $25,000 but not more than $100,000, prepare a signed attestation regarding the decision of the local government to perform the project itself.*

*2. An attestation prepared pursuant to subsection 1:*

*(a) Must set forth:*

*(1) The estimated cost of the project;*

*(2) A general statement as to why the local government has decided to perform the project itself; and*

*(3) A general statement that the project will adhere to the same quality and standards as would be required of a properly licensed contractor if the project had been awarded to a properly licensed contractor;*

*(b) Is a public record and must be maintained on file at the administrative offices of the applicable public body.*

**Sec. 8.** NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

3. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or is licensed as a professional engineer pursuant to chapter 625 of NRS.

4. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

5. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

6. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

7. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

8. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;

(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

(d) Comply with subsection 4 or 5 of NRS 338.070.

9. "Prime contractor" means a person who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his own workforce to perform all or a part of the construction, repair or reconstruction of the project; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

FLUSH The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

10. "Public body" means the State, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

11. "Public work" means any project for the new construction, repair or reconstruction of:

(a) A project financed in whole or in part from public money for:

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;

(5) Public streets and alleys;

(6) Public utilities which are financed in whole or in part by public money;

(7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;

(9) Public convention facilities which are financed at least in part with public ~~[funds;]~~ ***money;*** and

(10) All other publicly owned works and property . ~~[whose cost as a whole exceeds $20,000. Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.]~~

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

12. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

13. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

FLUSH that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

14. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the workman.

15. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

**Sec. 9.** NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government shall award a contract for the construction, alteration or repair of a public work pursuant to the provisions of:

(a) NRS 338.1377 to 338.139, inclusive ~~[,]~~ ***, and sections 2, 3 and 4 of this act;*** or

(b) NRS 338.143 to 338.148, inclusive ~~[.]~~ ***, and sections 5, 6 and 7 of this act.***

2. The provisions of NRS 338.1375 to 338.1383, inclusive, and 338.139 do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

**Sec. 10.** NRS 338.1385 is hereby amended to read as follows:

FIRST PARALLEL SECTION

338.1385 1. Except as otherwise provided in subsection ~~[7]~~ ***6*** and NRS 338.1906 and 338.1907, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

(a) Commence such a project for which the estimated cost exceeds $100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[or]~~

(b) ***Commence such a project for which the estimated cost is $100,000 or less unless it complies with the provisions of sections 2, 3 and 4 of this act; or***

***(c)*** Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~[.~~

~~2. Except as otherwise provided in subsection 7, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than $25,000 but less than $100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.~~

~~3.]~~ ***or (b).***

***2.*** Each advertisement for bids must include a provision that sets forth:

(a) The requirement that a contractor must be qualified pursuant to NRS 338.1379 to bid on the contract or must be exempt from meeting such qualifications pursuant to NRS 338.1383; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

~~[4.]~~ ***3.*** Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the project must be awarded on the basis of bids received.

~~[5.]~~ ***4.*** Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;

(b) The bidder is not responsive ~~[;]~~ ***or responsible;***

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or

(d) The public interest would be served by such a rejection.

~~[6.]~~ ***5.*** Before the State or a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the State or the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

~~[7.]~~ ***6.*** This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727.

**Sec. 11.** NRS 338.1385 is hereby amended to read as follows:

SECOND PARALLEL SECTION

338.1385 1. Except as otherwise provided in subsection ~~[8,]~~ ***7,*** this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

(a) Commence such a project for which the estimated cost exceeds $100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[or]~~

(b) ***Commence such a project for which the estimated cost is $100,000 or less unless it complies with the provisions of sections 2, 3 and 4 of this act; or***

***(c)*** Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~[.~~

~~2. Except as otherwise provided in subsection 8, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than $25,000 but less than $100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.~~

~~3.]~~ ***or (b).***

***2.*** Each advertisement for bids must include a provision that sets forth:

(a) The requirement that a contractor must be qualified pursuant to NRS 338.1379 to bid on the contract or must be exempt from meeting such qualifications pursuant to NRS 338.1383; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

~~[4.]~~ ***3.*** Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the project must be awarded on the basis of bids received.

~~[5.]~~ ***4.*** Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;

(b) The bidder is not responsive ~~[;]~~ ***or responsible;***

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or

(d) The public interest would be served by such a rejection.

~~[6.]~~ ***5.*** Before the State or a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the State or the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

~~[7.]~~ ***6.*** In preparing the estimated cost of a project pursuant to subsection ~~[6,]~~ ***5,*** the State or a local government must include the fair market value of, or, if known, the actual cost of, all materials, supplies, labor and equipment to be used for the project.

~~[8.]~~ ***7.*** This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district; or

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

**Sec. 12.** NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in ***sections 2 and 4 of this act,*** NRS 338.1385 and 338.1711 to 338.1727, inclusive, a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, for the purposes of this section, a contractor who:

(a) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or is exempt from meeting such requirements pursuant to NRS 338.1373 or 338.1383; and

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

FLUSH shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this state:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for

each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this state of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this state:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each

consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this state of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this state by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes that were paid in this state by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board

an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work. The provisions of subsection 2 do not apply to any contract for a public work which is expected to cost less than $250,000.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public

body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

**Sec. 13.** NRS 338.143 is hereby amended to read as follows:

FIRST PARALLEL SECTION

338.143 1. Except as otherwise provided in subsection ~~[6]~~ ***5*** and NRS 338.1907, a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

(a) Commence such a project for which the estimated cost exceeds $100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[or]~~

(b) ***Commence such a project for which the estimated cost is $100,000 or less unless it complies with the provisions of sections 5, 6 and 7 of this act; or***

***(c)*** Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~[.~~

~~2. Except as otherwise provided in subsection 6, a local government that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than $25,000 but less than $100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The local government shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the local~~

~~government to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.~~

~~3.~~] *or (b).*

*2.* Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the project must be awarded on the basis of bids received.

~~[4.]~~ *3.* Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or

(c) The public interest would be served by such a rejection.

~~[5.]~~ *4.* Before a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the project itself.

~~[6.]~~ ***5.*** This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

**Sec. 14.** NRS 338.143 is hereby amended to read as follows:

SECOND PARALLEL SECTION

338.143 1. Except as otherwise provided in subsection ~~[7,]~~ ***6,*** a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373, or a public officer, public employee or other

person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

(a) Commence such a project for which the estimated cost exceeds $100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[or]~~

(b) ***Commence such a project for which the estimated cost is $100,000 or less unless it complies with the provisions of sections 5, 6 and 7 of this act; or***

***(c)*** Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~[.~~

~~2. Except as otherwise provided in subsection 7, a local government that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than $25,000 but less than $100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The local government shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the local government to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.~~

~~3.]~~ ***or (b).***

***2.*** Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the project must be awarded on the basis of bids received.

~~[4.]~~ ***3.*** Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or

(c) The public interest would be served by such a rejection.

~~[5.]~~ ***4.*** Before a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the project itself.

~~[6.]~~ ***5.*** In preparing the estimated cost of a project pursuant to subsection ~~[5,]~~ ***4,*** a local government must include the fair market value of, or, if known, the actual cost of, all materials, supplies, labor and equipment to be used for the project.

~~[7.]~~ ***6.*** This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

**Sec. 15.** NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in ***sections 5 and 7 of this act,*** NRS 338.143 and 338.1711 to 338.1727, inclusive, a local government shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, for the purposes of this section, a contractor who:

(a) Has been found to be a responsible and responsive contractor by the local government; and

(b) At the time he submits his bid, provides to the local government a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

FLUSH shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this state:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this state of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this state:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this state of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this state by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this state by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work. The provisions of subsection 2 do not apply to any contract for a public work which is expected to cost less than $250,000.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the

certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a contract for the completion of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

**Sec. 16.** NRS 341.148 is hereby amended to read as follows:

341.148 ~~[1. Except as otherwise provided in subsection 2, the Board shall advertise in a newspaper of general circulation in the State of Nevada for separate sealed bids for each construction project. Approved plans and specifications for the construction must be on file at a~~

~~place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons.]~~ The Board may accept bids on either the whole or a part of the construction, equipment and furnishings ~~[,]~~ ***of a construction project*** and may let separate contracts for different and separate portions of any project, or a combination contract for structural, mechanical and electrical construction if savings will result to the lowest responsible and responsive bidder.

~~[2. The Board is not required to advertise for sealed bids for construction projects if the estimated cost is less than $25,000, but the Board may solicit firm written bids from not less than two licensed contractors doing business in the area and may award the contract to the lowest responsible and responsive bidder or reject all bids.]~~

**Sec. 17.** NRS 341.166 is hereby amended to read as follows:

341.166 1. The Board may, with the approval of the Interim Finance Committee when the Legislature is not in regular or special session, or with the approval of the Legislature by concurrent resolution when the Legislature is in regular or special session, enter into a contract for services with a contractor licensed pursuant to chapter 624 of NRS to assist the Board:

(a) In the development of designs, plans, specifications and estimates of costs for a proposed construction project.

(b) In the review of designs, plans, specifications and estimates of costs for a proposed construction project to ensure that the designs, plans, specifications and estimates of costs are complete and that the project is feasible to construct.

2. The Board is not required to advertise for bids for a contract for services pursuant to subsection 1, but may solicit bids from not fewer than three licensed contractors and may award the contract to the lowest responsible and responsive bidder.

3. The Board shall adopt regulations establishing procedures for:

(a) The determination of the qualifications of contractors to bid for the contracts for services described in subsection 1.

(b) The bidding and awarding of such contracts.

4. If a proposed construction project for which a contractor is awarded a contract for services by the Board pursuant to subsection 1 is advertised pursuant to NRS ~~[341.148,]~~ ***338.1385,*** that contractor may submit a bid for the contract for the proposed construction project if he is qualified pursuant to NRS ~~[338.1377.]~~ ***338.1375.***

**Sec. 18** 1. This section and sections 1 to 10, inclusive, 12, 13, 15, 16 and 17 of this act become effective on October 1, 2003.

2. Sections 10 and 13 of this act expire by limitation on April 30, 2013.

3. Sections 11 and 14 of this act become effective at 12:01 a.m. on May 1, 2013.

APPENDIX E

Subcommittee letters

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

COMMITTEES:
*Member*
Commerce and Labor
Human Resources and Facilities
Taxation

# State of Nevada
# Senate

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Fax No.: (775) 684-6522

November 22, 2002

Marcia Berkbigler
Government Affairs Director
Charter Communications
9335 Prototype Drive
Reno, Nevada 89511

Mark Feest
Deputy District Attorney
Churchill County
365 South Maine
Fallon, Nevada 89406

Dear Ms. Berkbigler and Mr. Feest:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. Both of your presentations at the June 26, 2002, meeting of the Subcommittee were much appreciated and helped inform the members about the intricacies of the telecommunications and cable television industry and the management and operational challenges both Charter Communications and Churchill County Communications (CC Communications) face on a daily basis.

During your presentations, concerns were expressed that CC Communications unfairly competes with the operations of Charter Communications and that CC Communications is unfairly exempt from certain licensing and franchise fees, has the ability to cross-subsidize costs for future investments, can extend credit to itself, use public funds, and guarantee a loan. Meanwhile, arguments were presented that the provision of technology services by CC Communications in rural Nevada poses a unique challenge and the public company is

responding to a public need that is not currently being met by the private sector. According to testimony, CC Communications infused $1.5 million in Churchill County's General Fund in 2001 and provides 100 jobs to local residents.

While the Subcommittee took no official position on the issue, it did vote to write a letter to you, as representatives of Charter Communications and CC Communications, encouraging both organizations to work together to find a reasonable solution to their business and competitive concerns. During the hearing, the Subcommittee agreed that this solution should include stipulations to identify a point in time where CC Communications acknowledges that it is no longer entitled to certain protections enjoyed by governmental entities. Additionally, the agreement should include the basis that determines a "level playing field" in the provision of the services your organizations provide and identify fees and tax levels which are applicable under this determination (i.e., property tax, franchise fees, licensing fees, and so forth). It is my belief that if an agreement in this area is not reached, the 2003 Legislature may need to step in and directly deal with this issue.

The Subcommittee is confident that through your collective cooperation, experience, and diligence that such an agreement can be reached by February 2003, so that it may be presented early in the 2003 Legislative Session to one or both of the Legislature's Commerce and Labor Committees. We believe that your combined efforts may set the stage for other private technical service providers and local governments to follow when the fine line between private competition and government services begins to fade.

Thank you in advance for so diligently working to resolve this important matter. As always, please feel free to contact the members of the Subcommittee or me if we may be of any assistance to you.

Sincerely,

Michael A. Schneider

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:L017/W24004

cc: Senator Townsend, Chairman, Senate Committee on Commerce and Labor
Assemblyman Perkins, Speaker of the Assembly

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

COMMITTEES:
*Member*
Commerce and Labor
Human Resources and Facilities
Taxation

# State of Nevada
# Senate

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January 23, 2003

The Honorable Jack Lehman
Drug Court Judge
Eighth Judicial District Court
200 South Third Street
Las Vegas, Nevada 89155

Dear Judge Lehman:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim legislative study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. In addition, the Subcommittee regularly discussed the economic condition of Nevada's local governments.

During the Subcommittee's final meeting, the members heard testimony regarding potential competition in the provision of traffic school and driving under the influence (DUI) program instruction. As a representative of Clark County's drug courts, you noted at the meeting that the purposes of the county's Traffic/DUI School are to serve a critical public need, while at the same time, contribute revenue to the Clark County drug courts. In fact, the drug courts received approximately $800,000 in revenue from the Traffic/DUI School during the past fiscal year.

The Subcommittee was very appreciative of your presentation regarding the history of the Clark County Traffic/DUI School and the establishment of the drug courts. It was also intrigued by the presentations of everyone who spoke during this agenda item and believed your presentation had particular value in showing how the operating expenses of the drug courts are offset by Clark County's Traffic/DUI School revenues. As a result, the Subcommittee voted to send you this letter requesting that you or a representative of the drug court provide a similar presentation to one or more of the following standing committees during the 2003 Legislative Session:

- Senate Committee on Government Affairs (Senator Ann O'Connell, Chair [telephone: 775/684-2126]);
- Senate Committee on Transportation (Senator Raymond Shaffer, Chair [telephone: 775/684-2127]);
- Assembly Committee on Government Affairs (Assemblyman Mark Manendo, Chair [telephone: 775/684-8801]); or
- Assembly Committee on Judiciary (Assemblyman Bernie Anderson, Chair [telephone: 775/684-8563);

I trust that providing this information to the wider audience of a legislative standing committee will bring about a greater understanding of the operations of both the Clark County Traffic/DUI School and the drug courts. A copy of this letter has been supplied to each of these committee chairs and their committee staff.

Thank you for your kind consideration of this letter. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:W24005.L023

cc: Assemblyman Anderson, Chair, Assembly Committee on Judiciary
Allison Combs, Research Division, LCB
Steven Grierson, Court Education Coordinator, Clark County
Marsheilah Lyons, Research Division, LCB
Assemblyman Manendo, Chair, Assembly Committee on Government Affairs
Dan Musgrove, Intergovernmental Relations Manager, Clark County
Senator O'Connell, Chair, Senate Committee on Government Affairs
John J. Phillips, Drive Friendly Driving and Traffic School
Senator Shaffer, Chair, Senate Committee on Transportation
Susan E. Scholley, Research Division, LCB
Michael J. Stewart, Research Division, LCB
Assemblyman Williams

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

COMMITTEES:
*Member*
Commerce and Labor
Human Resources and Facilities
Taxation

# State of Nevada
# Senate

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Fax No.: (775) 684-6522

January 23, 2003

Dave Ayoob
Chairman
Pershing County Board of Commissioners
Post Office Drawer E
Lovelock, Nevada 89419

Mr. Ayoob:

The 2001-2002 legislative interim is drawing to a close and many statutory and interim legislative study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. In addition, the Subcommittee regularly discussed the economic condition of Nevada's local governments.

During the Subcommittee's final meeting, the members engaged in a discussion regarding the rebroadcast of FM radio signals by television districts in the State of Nevada. In particular, it was noted that opinions from both Nevada's Office of the Attorney General and the Nevada Legislative Counsel Bureau (LCB) have stipulated that the rebroadcast of FM radio signals by a television district is not permitted in a community that is served by a licensed commercial radio station. Testimony during the Subcommittee's final meeting indicated that some unauthorized rebroadcasting of FM radio signals is occurring in portions of Nevada. The opinions further note that a television district formed pursuant to *Nevada Revised Statutes* (NRS) 318.1192 is not expressly authorized to acquire or rebroadcast FM radio signals. The opinion from the LCB, however, notes that:

> . . . a town board or board of county commissioners that conducts its own FM radio rebroadcasting operation under NRS 269.127, whether directly or by contract rather than by the creation of a general improvement district, is

nowhere precluded from doing so, whether or not they do so in a community served by a licensed commercial radio station.

The Subcommittee was unable to verify which television districts were involved in the unauthorized rebroadcasting of FM radio signals. Therefore, during its work session, the Subcommittee voted to send the various television districts in Nevada and the chairs of Nevada's 17 County Commissions this letter and provide copies of the aforementioned opinions as well as copies of Assembly Bill 8 of the 1995 Legislative Session (Chapter 551, *Statutes of Nevada*), a brief summary of A.B. 8, and pertinent sections of Chapter 318 of the NRS. It is the Subcommittee's hope that you will review these documents and state provisions, which are enclosed for your reference, and evaluate their applicability to your county or television district. The Subcommittee anticipates that, if needed, any adjustments to be made in FM radio rebroadcast practices in your area can be accomplished at the local level using local expertise.

Thank you for your kind consideration of this letter. I trust you will find the enclosed materials useful. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:W24006.L022
Enc.
cc: Paul G. Gardner, Nevada Broadcasters Association

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
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FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

April 8, 1994

Dear

You have requested our opinion concerning the authority of a general improvement district formed pursuant to chapter 318 of the Nevada Revised Statutes. This letter sets forth our response to your request.

## QUESTION

May the charter of a television district formed pursuant to NRS 318.1192 acquire and rebroadcast FM radio signals, or may a television district rebroadcast such radio signals under an implied powers theory?

## ANALYSIS

The basic powers that may be conferred upon a general improvement district formed under NRS chapter 318 are set forth in NRS 318.116, which provides:

> Any one, all or any combination of the following basic powers may be granted to a district in proceedings for its organization, or its reorganization pursuant to NRS 318.077 and all provisions in this chapter supplemental thereto, or as may be otherwise provided by statute:
> 1. Furnishing electrical light and power, as provided in NRS 318.117;
> 2. Extermination and abatement of mosquitoes, flies other

insects, rats, and liver fluke or fasciola hepatica, as provided in NRS 318.118;

3. Furnishing facilities or services for public cemeteries, as provided in NRS 318.119;

4. Furnishing facilities for swimming pools, as provided in NRS 318.1191;

5. Furnishing facilities for television, as provided in NRS 318.1192;

6. Furnishing streets and alleys, as provided in NRS 318.120;

7. Furnishing curb, gutter and sidewalks, as provided in NRS 318.125;

8. Furnishing sidewalks, as provided in NRS 318.130;

9. Furnishing facilities for storm drainage or flood control, as provided in NRS 318.135;

10. Furnishing sanitary facilities for sewerage, as provided in NRS 318.140;

11. Furnishing facilities for lighting streets, as provided in NRS 318.141;

12. Furnishing facilities for the collection and disposal of garbage and refuse, as provided in NRS 318.142;

13. Furnishing recreational facilities, as provided in NRS 318.143;

14. Furnishing facilities for water, as provided in NRS 318.144;

15. Furnishing fencing, as provided in NRS 318.1195;

16. Furnishing facilities for protection from fire,as provided in NRS 318.1181;

17. Furnishing energy for heating, as provided in NRS 318.1175;

18. Furnishing emergency medical services, as provided in NRS 318.1185; and

19. Furnishing facilities for public schools, as provided in NRS 318.136 to 318.139, inclusive.

Further, under NRS 318.1192, the board of trustees of a district created wholly or in part for acquiring television facilities has the following powers:

In the case of a district created wholly or in part for acquiring television maintenance facilities, the board shall have power to:

1. Acquire television broadcast, transmission and relay improvements.

2. Levy special assessments against specially benefited real property on which are located television receivers operated within the district and able to

receive television broadcasts supplied by the district.

3. Fix tolls, rates and other service or use charges for services furnished by the district or facilities of the district, including without limitation any one, all or any combination of the following:

(a) Flat rate charges;

(b) Charges classified by the number of receivers;

(c) Charges classified by the value of property served by television receivers;

(d) Charges classified by the character of the property served by television receivers;

(e) Minimum charges;

(f) Stand-by charges; or

(g) Other charges bases on the availability of service.

4. The district shall not have the power in connection with the basic power stated in this section to borrow money which loan is evidenced by the issuance of any general obligation bonds or other general obligations of the district.

The power to acquire and rebroadcast radio signals is not expressly mentioned in the provisions cited above or elsewhere in NRS chapter 318. As you point out, however, NRS 318.210 confers upon a district board of trustees all rights and powers necessary or incidental to or implied from the specific powers granted in NRS chapter 318.

In *Checker, Inc. v. Public Serv. Comm'n*, 84 Nev. 623, 629-30, 446 P.2d 981 (1968), the supreme court discussed the principle of implied powers which NRS chapter 318 codifies:

> It is the universal rule of statutory construction that wherever a power is conferred by statute, everything necessary to carry out the power and make it effectual and complete will be implied... The grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective

Id. (citations omitted).

It is clear to us that the power to acquire or rebroadcast radio signals is not necessary or appropriate to effectuate the basic power of a general improvement district to acquire television facilities or broadcast television signals. As you note, Nevada statutes clearly differentiate between "radio" and "television." *See* NRS 41.336. Accordingly, we are in complete agreement with your conclusion that the basic power to acquire television facilities

and broadcast television signals does not carry with it the implied power to acquire or rebroadcast radio signals.

## CONCLUSION

A television district formed pursuant to NRS 318.1192 is not authorized to acquire or rebroadcast FM radio signals.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

RAK:mkm

**Exhibit F**

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
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CARSON CITY, NEVADA 89701-4747
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LEGISLATIVE COMMISSION (775) 687-6800
ANN O'CONNELL, Senator, *Chairman*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 687-6821
MORSE ARBERRY, JR., *Assemblyman, Chairman*
Mark W. Stevens, *Fiscal Analyst*
Daniel G. Miles, *Fiscal Analyst*

Wm. GARY CREWS, *Legislative Auditor* (775) 687-6815
ROBERT E. ERICKSON, *Research Director* (775) 687-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 687-6830

July 2, 1999

Dear

You have asked whether a rural television district may rebroadcast FM radio signals in a community that is served by a licensed commercial radio station.

## I. Background

Television districts are a type of general improvement district authorized under chapter 318 of NRS. NRS 318.1192 expressly authorizes the creation of such districts "wholly or in part" for the purpose of providing television service and establishes the powers available to the governing boards of such districts. The power to rebroadcast FM radio signals is not explicitly enumerated among those powers. Nevertheless, at some point before 1994, a number of television districts, including the Elko television district, began to rebroadcast FM radio signals in addition to their television signals. When licensed commercial radio stations in Elko complained to the board of county commissioners, the board sought and obtained an informal opinion from the Attorney General concerning the legality of this practice. This opinion declared that no television district organized under NRS 318.1192 had either express or implied power to acquire and rebroadcast FM radio signals. (Letter opinion, Robert A. Kirkman to J. Michael Memeo, April 8, 1994.) Accordingly, the Elko television district ceased its FM rebroadcasts.

Subsequently, at the 1995 session of the Legislature, the Elko television district sought express statutory authority to rebroadcast FM radio signals. The requested measure was introduced as Assembly Bill No. 8 of the 1995 Legislature (A.B. 8). The Committees on Government Affairs of Assembly and Senate held hearings at which they heard substantial testimony for and against the bill. (Minutes, Assembly Committee on

Government Affairs, February 24, 1995; Minutes, Senate Committee on Government Affairs, May 8, 1995). The testimony given at that time suggested that at least 10 television districts engaged in the rebroadcast of FM radio signals under the impression that they had an "inherent" right to do so, presumably pursuant to grants of power under NRS 318.1192. The testimony also suggested that a town board or board of county commissioners in at least one county had elected to operate its own television translator service under the authority of NRS 269.127. Opposition to A.B. 8 was based primarily on the objection that it authorized the creation of publicly-funded entities to compete with private enterprise. The bill was amended in response to this objection and, as amended, passed both houses and was signed by the governor. (*See* chapter 551, Statutes of Nevada 1995, at page 1904.) A portion of the amended bill was codified as NRS 318.1187. This section authorizes the creation of general improvement districts to provide FM radio rebroadcast service (FM radio districts). Like the statute authorizing television districts, it lists the numerous powers expressly granted to the governing boards of general improvement districts organized pursuant to its provisions. Unlike the statute governing television districts, however, NRS 318.1187 includes an absolute and unambiguous clause that was added by amendment to A.B. 8 and which declares that an FM radio district organized pursuant to NRS 318.1187:

> ...does not have the power in connection with the basic power stated in this section to...[r]ebroadcast an FM radio signal in a community served by a commercial radio station licensed by the Federal Communications Commission.[1]

Nonetheless, it seems that some rural television districts continue to broadcast FM radio signals in communities served by licensed commercial radio stations. (*See* "A Letter to the Attorney General," *The Daily Broadcaster*, March 5, 1999.) You, therefore, have asked us to evaluate the legality of this conduct. Because power to rebroadcast FM signals could be claimed under three different statutes, we will analyze each one separately.

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[1] This absolute ban contrasts with the more circumscribed limitation imposed on television districts under NRS 318.1193, which forbids only the creation of a television district that includes "any area already served by a community antenna television company unless the governing body of the local government which granted a franchise to the community antenna television company determines that both the company and the district may furnish service to that area."

## II. Analysis

### A. NRS 318.1187

A.B. 8 was enacted as "enabling legislation." It was not intended to, nor did it, create any FM radio districts. It merely authorized boards of county commissioners to establish such districts if they chose or to modify the powers of existing districts to include the power to rebroadcast FM radio signals.[2] Any FM radio district created pursuant to this authority, or any television district that obtained a modification of its powers to include expressly rebroadcasting an FM radio signal, is clearly subject to all the terms of the statute, including the provision that prohibits competition with a commercial radio station licensed by the Federal Communications Commission. Therefore, it is the opinion of this office that a general improvement district that rebroadcasts an FM radio signal pursuant to a grant of power under NRS 318.1187 may not do so in a community that is served by a licensed commercial radio station.

### B. NRS 318.1192

As previously indicated, A.B. 8 did not create any FM radio districts nor did it modify the powers of any existing television district. It merely authorized boards of county commissioners to do so. Consequently, any television district that has not received an express grant of power to rebroadcast FM radio signals from its board of county commissioners is not acting pursuant to NRS 318.1187 and is not subject to that section's clause prohibiting competition with a commercial radio station licensed by the Federal Communications Commission. On the other hand, that district's FM radio rebroadcasts are not authorized by NRS 318.1187. Consequently, in any county where the commissioners have not expressly conveyed to the television or other general improvement district the power to rebroadcast FM radio signals pursuant to NRS 318.1187, any district that does so must either be acting without authorization or such authorization must be found in their existing powers under NRS 318.1192. Thus, the question as to these districts is not whether they can legally rebroadcast FM radio signals in communities served by licensed commercial broadcasters, but whether they may rebroadcast such signals at all.

As we have seen, the Attorney General has expressed the opinion that NRS 318.1192 gives television districts no express power to rebroadcast FM radio signals and

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[2] NRS 318.077 permits boards of county commissioners to confer additional powers upon existing general improvement districts from the list of powers enumerated at NRS 318.116. A.B. 8 amended that section to add furnishing facilities for FM radio to the list of such powers.

that the power to do so is not implied in that section. The opinions of the Attorney General, however, "do not constitute binding legal authority or precedent." Goldman v. Bryan, 106 Nev. 30, 42, 787 P.2d 372 (1990). Therefore, it is necessary to reexamine both of these claims again.

### 1. Express power

The text of NRS 318.1192 authorizes the rebroadcast of "television." It does not explicitly mention FM radio. Nevertheless, it has been argued that the word "television" in that statute, should be read as "television and FM radio" because television sound and FM radio signals are the same thing. The basis for this contention is technical and rests on the fact that FM radio and television occupy adjacent frequencies along the electromagnetic spectrum. Thus, according to one witness during the 1995 legislative hearings, "television signals are FM signals." (Testimony of Leo Puccinelli, Minutes of the Assembly Committee on Government Affairs, February 24, 1995.) Or, in other words, "FM radio is merely television without the picture." (Leo Puccinelli, quoted in "A Letter to the Attorney General," *The Daily Broadcaster*, March 5, 1999.) However, relying on a specialized or technical definition of a word to interpret a statute violates the traditional rule of statutory construction that where a statutory term has not been given a particular statutory definition, the term should be given its plain and ordinary meaning. Cunningham v. State, 109 Nev. 569, 571, 855 P.2d 125 ( 1993); Amoco Production Co. v. Southern Ute Tribe, 67 U.S.L.W. 4397, 4399 (1999) ("ordinary, contemporary, common meaning.") (citation and internal quotation marks omitted). The term "television," although used repeatedly throughout NRS, is never defined. Consequently, it must be presumed that the Legislature intended that it be given its plain and ordinary meaning. That meaning does not encompass FM radio.[3]

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[3] To arrive at the plain and ordinary meaning of a term, a reviewing court usually relies upon dictionary definitions because those definitions reflect the plain and ordinary meanings that are commonly ascribed to words and terms. *See* Cunningham, 109 Nev. at 571. *Webster's Third New International Dictionary of the English Language Unabridged* (1993) defines television as:

> the transmission and reproduction of transient images of fixed or moving objects; *specif*[ically]: an electronic system of transmitting such images together with sound over a wire or through space by apparatus that converts light and sound into electrical waves and reconverts them into visible light and audible sound.

There is nothing in this definition that suggests an identity between the audio portions of a television signal and an FM radio signal.

Just as the plain and ordinary meaning of television does not suggest that it includes FM radio, the statutory definition of FM radio does not suggest that it includes television. Subsection 3 of NRS 318.020 defines FM radio as "a system of radio broadcasting by means of frequency modulation."[4] It does not say 'a system of radio and television audio broadcasting by means of frequency modulation.' In short, even accepting that as a technical matter the audio portion of a television transmission is an FM radio signal, neither the plain and ordinary meaning of the word 'television,' nor the technical meaning of the term 'FM radio' supports the notion that the Legislature intended to use the two terms interchangeably.

Moreover, interpreting the word "television" as including "FM radio" would violate several other rules of statutory construction as well. For example, if the word "television" in NRS 318.1192 is construed as "television and FM radio," then much of NRS 318.1187 is rendered superfluous in violation of the rule that "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." Paramount Ins. v. Rayson & Smitley, 86 Nev. 644, 649, 472 P.2d 530 (1970) (quoting Torreyson v. Board of Examiners, 7 Nev. 19, 22 (1871). Similarly, if the power to rebroadcast FM radio signals is inherent in the power to rebroadcast television granted in NRS 318.1192, then not only was the enactment of NRS 318.1187 superfluous, but its enactment leads to the absurd result that a television district is subject to the clause restricting competition if it rebroadcasts FM radio signals under NRS 318.1187, but is exempt from that restriction if it engages in identical conduct under NRS 318.1192 instead. One of the established rules of statutory construction is that a statute must be interpreted so as to avoid an absurd result. Oakley v. State, 105 Nev. 700, 702, 782 P.2d 1321 (1989); Washoe Medical Ctr., Inc. v. Reliance Ins. Co., 112 Nev. 494, 497, 915 P.2d 288 (1996). It is the opinion of this office that television districts do not have the express power under NRS 318.1192 to rebroadcast FM radio signals. However, the powers of governing boards of television districts are not restricted to those expressly given by NRS 318.1192. Consequently, it is necessary to examine whether they have the implied power to do so.

**2. Implied power**

The governing boards of television districts, in common with the boards of all general improvement districts, have and may exercise "all rights and powers necessary or incidental to or implied from the specific powers granted in ... chapter [318 of NRS]." (*See* NRS 318.210.) Moreover, any special power given in any particular section of that

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[4] This same definition is used at NRS 269.127.

chapter "shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent" of the chapter as a whole. *Id.* In addition, "[i]t is the universal rule of statutory construction that wherever a power is conferred by statute, everything necessary to carry out the power and make it effectual and complete will be implied." *Checker v. Public Service Comm'n*, 84 Nev. 623, 629-30, 446 P.2d 981 (1968).

Given that the power expressly granted in NRS 318.1192 is for the rebroadcast of television signals, it cannot be said that the rebroadcast of FM radio signals is "necessary or incidental to or implied from" that power. Nor can it be said that the rebroadcast of FM radio signals is "necessary to carry out and make effectual and complete" the power to broadcast television. Accordingly, it is the opinion of this office that television districts do not have the implied power to rebroadcast FM radio signals.

In reaching the conclusions that the rebroadcast of FM radio signals by television districts is neither express nor implied, we are mindful of the admonitions of NRS 318.015 that "the provisions of this chapter shall be broadly construed" and of NRS 318.040 that "[t]his chapter being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes." Even the broadest and most liberal construction, however, will not permit the term "television" in NRS 318.1192 to be read as "television and FM radio" where there are numerous indications that the Legislature regarded television and FM radio as separate categories and nothing to suggest that it did not.

### C. NRS 269.127[5]

Town boards or boards of county commissioners that choose to operate or to contract for the operation of their own television or FM radio translator service under the authority of NRS 269.127, instead of creating an improvement district to do so, are not subject to the clause of NRS 318.1187 that prohibits competition with a commercial radio

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[5] NRS 269.127 reads in pertinent part:

1. A town board or board of county commissioners may:

(a) Make application for and hold any license required to provide television or FM radio broadcast translator signals, or both.

(b) Contract with any person, corporation or association to provide the equipment, facilities and services necessary to furnish such broadcast translator signals for a period not to exceed 10 years.

(c) Enter into contracts for the purposes of this section that extend beyond the term of office of any member of the board or commission.

(d) Levy and collect a tax upon the assessed value of property within an unincorporated town to cover the costs of providing such broadcast translator signals to that town.

station licensed by the Federal Communications Commission. Although A.B. 8, the bill that created the clause restricting competition for FM radio districts, also amended NRS 269.127 to authorize boards of county commissioners to rebroadcast FM radio signals in addition to television (*see* section 5 of chapter 551, Statutes of Nevada 1995, pp. 1907-08), no comparable restriction on competition was imposed on such boards. The terms of the clause of NRS 318.1187 are clear and unambiguous. They do not mention, nor can they be interpreted to include, town boards or boards of county commissioners acting pursuant to their statutory powers under NRS 269.127.

## III. Conclusion

It is the opinion of this office that it is unlawful for any television district that derives its authority to rebroadcast FM radio signals from NRS 318.1187 to do so in a community that is served by a licensed commercial radio station. In addition, no television district is expressly or impliedly authorized to rebroadcast FM radio signals pursuant to NRS 318.1192, whether or not they do so in a community served by a licensed commercial radio station. Finally, we conclude that a town board or board of county commissioners that conducts its own FM radio rebroadcasting operation under NRS 269.127, whether directly or by contract rather than by the creation of a general improvement district, is nowhere precluded from doing so, whether or not they do so in a community served by a licensed commercial radio station.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

WBRD:dtm
Ref No. 9906020810

Assembly Bill No. 8—Assemblyman Marvel

## CHAPTER 551

AN ACT relating to local governments; authorizing the creation of a general improvement district to furnish facilities for certain radio transmission; authorizing unincorporated towns to provide for certain radio transmissions; and providing other matters properly relating thereto.

[Approved July 5, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1. Chapter 318 of NRS** is hereby amended by adding thereto a new section to read as follows:

*1. In the case of a district created wholly or in part for acquiring facilities for FM radio, the board has the power to:*

*(a) Acquire broadcast, transmission and relay improvements for FM radio.*

*(b) Levy special assessments against specially benefited real property on which are located receivers operated within the district and able to receive broadcasts of FM radio supplied by the district.*

*(c) Fix tolls, rates and other service or use charges for services furnished by the district or facilities of the district, including, without limitation, any one, all or any combination of the following:*

*(1) Flat rate charges;*

*(2) Charges classified by the number of receivers;*

*(3) Charges classified by the value of property served by receivers of FM radio;*

*(4) Charges classified by the character of the property served by receivers of FM radio;*

*(5) Minimum charges;*

*(6) Stand-by charges; or*

*(7) Other charges based on the availability of service.*

*2. The district does not have the power in connection with the basic power stated in this section to:*

*(a) Borrow money which loan is evidenced by the issuance of any general obligation bonds or other general obligations of the district.*

*(b) Rebroadcast an FM radio signal in a community served by a commercial radio station licensed by the Federal Communications Commission.*

**Sec. 2. NRS 318.020** is hereby amended to read as follows:

318.020 As used in this chapter [the following words or phrases are defined as follows:] *, unless the context otherwise requires:*

1. "Acquisition," "acquire" and "acquiring" each means acquisition, extension, alteration, reconstruction, repair or other improvement by purchase, construction, installation, reconstruction, condemnation, lease, rent, gift, grant, bequest, devise, contract or other acquisition, or any combination thereof.

2. "Board of trustees" and "board" alone each means the board of trustees of a district.

3. *"FM radio" means a system of radio broadcasting by means of frequency modulation.*



*4.* "General improvement district" and "district" alone each means any general improvement district organized or, in the case of organizational provisions, proposed to be organized, pursuant to this chapter.

[4.] *5.* "Mail" means a single mailing first class [(] or its equivalent , [),] postage prepaid, by deposit in the United States mails, at least 15 days [prior to] *before* the designated time or event.

[5.] *6.* "Project" and "improvement" each means any structure, facility, undertaking or system which a district is authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property, including , but not limited to , land, elements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof.

[6.] *7.* "Publication" means publication at least once a week for 3 consecutive weeks in at least one newspaper of general circulation in the district. It [shall not be] *is not* necessary that publication be made on the same day of the week in each of the 3 calendar weeks, but the first publication [shall] *must* be at least 15 days [prior to] *before* the designated time or event.

[7.] *8.* "Qualified elector" means a person who has registered to vote in district elections.

[8.] *9.* "Special assessment district" means any local public improvement district organized within a general improvement district by the board of trustees of such general improvement district pursuant to this chapter.

[9.] *10.* "Trustees" means the members of a board.

**Sec. 3. NRS 318.116** is hereby amended to read as follows:

318.116 Any one, all or any combination of the following basic powers may be granted to a district in proceedings for its organization, or its reorganization pursuant to NRS 318.077 and all provisions in this chapter supplemental thereto, or as may be otherwise provided by statute:

1. Furnishing electric light and power, as provided in NRS 318.117;

2. Extermination and abatement of mosquitoes, flies, other insects, rats, and liver fluke or fasciola hepatica, as provided in NRS 318.118;

3. Furnishing facilities or services for public cemeteries, as provided in NRS 318.119;

4. Furnishing facilities for swimming pools, as provided in NRS 318.1191;

5. Furnishing facilities for television, as provided in NRS 318.1192;

6. *Furnishing facilities for FM radio, as provided in section 1 of this act;*

7. Furnishing streets and alleys, as provided in NRS 318.120;

[7.] *8.* Furnishing curb, gutter and sidewalks, as provided in NRS 318.125;

[8.] *9.* Furnishing sidewalks, as provided in NRS 318.130;

[9.] *10.* Furnishing facilities for storm drainage or flood control, as provided in NRS 318.135;

[10.] *11.* Furnishing sanitary facilities for sewerage, as provided in NRS 318.140;

[11.] *12.* Furnishing facilities for lighting streets, as provided in NRS 318.141;

[12.] *13.* Furnishing facilities for the collection and disposal of garbage and refuse, as provided in NRS 318.142;

[13.] *14.* Furnishing recreational facilities, as provided in NRS 318.143;

[14.] *15.* Furnishing facilities for water, as provided in NRS 318.144;

[15.] *16.* Furnishing fencing, as provided in NRS 318.1195;

[16.] *17.* Furnishing facilities for protection from fire, as provided in NRS 318.1181;

[17.] *18.* Furnishing energy for heating, as provided in NRS 318.1175; and

[18.] *19.* Furnishing emergency medical services, as provided in NRS 318.1185.

**Sec. 4. NRS 318.197** is hereby amended to read as follows:

318.197 1. The board may fix, and from time to time increase or decrease, electric energy, cemetery, swimming pool, other recreational facilities, television, *FM radio,* sewer, water, storm drainage, flood control, lighting, garbage or refuse rates, tolls or charges other than special assessments, including, but not limited to, service charges and stand-by service charges, for services or facilities furnished by the district, charges for the availability of service, annexation charges, and minimum charges, and pledge [such] *the* revenue for the payment of any indebtedness or special obligations of the district.

2. Upon compliance with subsection 9 and until paid, all rates, tolls or charges constitute a perpetual lien on and against the property served. A perpetual lien is prior and superior to all liens, claims and titles other than liens of general taxes and special assessments and is not subject to extinguishment by the sale of any property on account of nonpayment of any [such] liens, claims and titles including the liens of general taxes and special assessments. A perpetual lien must be foreclosed in the same manner as provided by the laws of the State of Nevada for the foreclosure of mechanics' liens. Before any [such] lien is foreclosed the board shall hold a hearing thereon after providing notice thereof by publication and by registered or certified first-class mail, postage prepaid, addressed to the last known owner at his last known address according to the records of the district and the real property assessment roll in the county in which the property is located.

3. The board shall prescribe and enforce regulations for the connection with and the disconnection from properties of the facilities of the district and the taking of its services.

4. The board may provide for the collection of charges. Provisions may be made for, but are not limited to:

(a) The granting of discounts for prompt payment of bills.

(b) The requiring of deposits or the prepayment of charges in an amount not exceeding 1 year's charges from persons receiving service and using the facilities of the enterprise or from the owners of property on which or in connection with which [such] services and facilities are to be used. In case of nonpayment of all or part of a bill, the deposits or prepaid charges must be applied only insofar as necessary to liquidate the cumulative amount of the charges plus penalties and cost of collection.

(c) The requiring of a guaranty by the owner of property that the bills for service to the property or the occupants thereof will be paid.



5. The board may provide for a basic penalty for nonpayment of the charges within the time and in the manner prescribed by it. The basic penalty must not be more than 10 percent of each month's charges for the first month delinquent. In addition to the basic penalty, the board may provide for a penalty of not exceeding 1.5 percent per month for nonpayment of the charges and basic penalty. On the first day of the calendar month following the date of payment specified in the bill the charge becomes delinquent if the bill or that portion thereof which is not in bona fide dispute remains unpaid. The board may provide for collection of the penalties provided for in this section.

6. The board may provide that charges for any service must be collected together with and not separately from the charges for any other service rendered by it, and that all charges must be billed upon the same bill and collected as one item.

7. The board may enter into a written contract with any person, firm or public or private corporation providing for the billing and collection by the person, firm or corporation of the charges for the service furnished by any enterprise. If all or any part of any bill rendered by the person, firm or corporation pursuant to a contract is not paid and if the person, firm or corporation renders any public utility service to the person billed, the person, firm or corporation may discontinue its utility service until the bill is paid, and the contract between the board and the person, firm or corporation may so provide.

8. As a remedy established for the collection of due and unpaid deposits and charges and the penalties thereon an action may be brought in the name of the district in any court of competent jurisdiction against the person or persons who occupied the property when the service was rendered or the deposit became due or against any person guaranteeing payment of bills, or against any or all [of] such persons, for the collection of the amount of the deposit or the collection of delinquent charges and all penalties thereon.

9. A lien against the property served is not effective until a notice of the lien, separately prepared for each lot affected, is:

(a) Mailed to the last known owner at his last known address according to the records of the district and the real property assessment roll of the county in which the property is located;

(b) Delivered by the board to the office of the county recorder of the county within which the property subject to such lien is located;

(c) Recorded by the county recorder in a book kept by him for the purpose of recording instruments encumbering land; and

(d) Indexed in the real estate index as deeds and other conveyances are required by law to be indexed.

**Sec. 5. NRS 269.127** is hereby amended to read as follows:

269.127 *1.* A town board or board of county commissioners may:

[1.] *(a)* Make application for and hold any license required to provide television *or FM radio* broadcast translator signals [.] *, or both.*

[2.] *(b)* Contract with any person, corporation or association to provide the equipment, facilities and services necessary to furnish [television] *such* broadcast translator signals for a period not to exceed 10 years.

[3.] *(c)* Enter into contracts for the purposes of this section that extend beyond the term of office of any member of the board or commission.

[4.] *(d)* Levy and collect a tax upon the assessed value of property within an unincorporated town to cover the costs of providing [television] *such* broadcast translator signals to that town.

*2. As used in this section, "FM radio" means a system of radio broadcasting by means of frequency modulation.*

**Sec. 6. NRS 354.626** is hereby amended to read as follows:

354.626 1. No governing body or member thereof, officer, office, department or agency may, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function, other than bond repayments, short-term financing repayments, and any other long-term contract expressly authorized by law. Any officer or employee of a local government who willfully violates NRS 354.470 to 354.626, inclusive, is guilty of a misdemeanor, and upon conviction thereof ceases to hold his office or employment. Prosecution for any violation of this section may be conducted by the attorney general, or, in the case of incorporated cities, school districts or special districts, by the district attorney.

2. Without limiting the generality of the exceptions contained in subsection 1, the provisions of this section specifically do not apply to:

(a) Purchase of comprehensive general liability policies of insurance which require an audit at the end of the term thereof.

(b) Long-term cooperative agreements as authorized by chapter 277 of NRS.

(c) Long-term contracts in connection with planning and zoning as authorized by NRS 278.010 to 278.630, inclusive.

(d) Long-term contracts for the purchase of utility service such as, but not limited to, heat, light, sewerage, power, water and telephone service.

(e) Contracts between a local government and an employee covering professional services to be performed within 24 months following the date of such contract or contracts entered into between local government employers and employee organizations.

(f) Contracts between a local government and any person for the construction or completion of public works, money for which has been provided by the proceeds of a sale of bonds or short-term financing. Neither the fund balance of a governmental fund nor the equity balance in any proprietary fund may be used unless appropriated in a manner provided by law.

(g) Contracts which are entered into by a local government and delivered to any person solely for the purpose of acquiring supplies and equipment necessarily ordered in the current fiscal year for use in an ensuing fiscal year, and which, under the method of accounting adopted by the local government, will be charged against an appropriation of a subsequent fiscal year. Purchase orders evidencing such contracts are public records available for inspection by any person on demand.

(h) Long-term contracts for the furnishing of television *or FM radio* broadcast translator signals as authorized by NRS 269.127.





(i) The receipt and proper expenditure of money received pursuant to a grant awarded by an agency of the Federal Government.

(j) The incurrence of obligations beyond the current fiscal year under a lease or contract for installment purchase which contains a provision that the obligation incurred thereby is extinguished by the failure of the governing body to appropriate money for the ensuing fiscal year for the payment of the amounts then due.

**Sec. 7.** Section 3 of this act becomes effective at 12:01 a.m. on October 1, 1995.

## A.B. 8 (Chapter 551)

Assembly Bill 8 authorizes a county to create, in an area without a local radio station, a general improvement district to acquire facilities for FM radio transmission. The bill sets forth the powers of the district board of trustees, which include the levy of special assessments and the collection of charges for the services or facilities provided by the district. The measure also authorizes unincorporated towns to obtain a license to provide FM translator signals.

## Provisions in the *Nevada Revised Statutes* that relate to FM radio signals (Chapter 318)

**NRS 318.020 Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Acquisition," "acquire" and "acquiring" each means acquisition, extension, alteration, reconstruction, repair or other improvement by purchase, construction, installation, reconstruction, condemnation, lease, rent, gift, grant, bequest, devise, contract or other acquisition, or any combination thereof.
2. "Board of trustees" and "board" alone each means the board of trustees of a district.
3. "FM radio" means a system of radio broadcasting by means of frequency modulation.
4. "General improvement district" and "district" alone each means any general improvement district organized or, in the case of organizational provisions, proposed to be organized, pursuant to this chapter.
5. "Mail" means a single mailing first class or its equivalent, postage prepaid, by deposit in the United States mails, at least 15 days before the designated time or event.
6. "Project" and "improvement" each means any structure, facility, undertaking or system which a district is authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property, including, but not limited to, land, elements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof.
7. "Publication" means publication at least once a week for 3 consecutive weeks in at least one newspaper of general circulation in the district. It is not necessary that publication be made on the same day of the week in each of the 3 calendar weeks, but the first publication must be at least 15 days before the designated time or event.
8. "Qualified elector" means a person who has registered to vote in district elections.
9. "Special assessment district" means any local public improvement district organized within a general improvement district by the board of trustees of such general improvement district pursuant to this chapter.
10. "Trustees" means the members of a board.

(Added to NRS by 1959, 458; A 1967, 1679; 1973, 86; 1977, 525; 1995, 1904)

**NRS 318.1187 Facilities for FM radio.**

1. In the case of a district created wholly or in part for acquiring facilities for FM radio, the board has the power to:

(a) Acquire broadcast, transmission and relay improvements for FM radio.

(b) Levy special assessments against specially benefited real property on which are located receivers operated within the district and able to receive broadcasts of FM radio supplied by the district.

(c) Fix tolls, rates and other service or use charges for services furnished by the district or facilities of the district, including, without limitation, any one, all or any combination of the following:

(1) Flat rate charges;
(2) Charges classified by the number of receivers;
(3) Charges classified by the value of property served by receivers of FM radio;
(4) Charges classified by the character of the property served by receivers of FM radio;
(5) Minimum charges;
(6) Stand-by charges; or
(7) Other charges based on the availability of service.

2. The district does not have the power in connection with the basic power stated in this section to:

(a) Borrow money which loan is evidenced by the issuance of any general obligation bonds or other general obligations of the district.

(b) Rebroadcast an FM radio signal in a community served by a commercial radio station licensed by the Federal Communications Commission.

(Added to NRS by 1995, 1904)

Identical letters sent to:

Ray Masayko
Mayor
Carson City Board of Supervisors
201 North Carson Street, #2
Carson City, Nevada 89701

Gwen Washburn
Commission Chairman
Churchill County Board of Commissioners
155 North Taylor Street, #110
Fallon, Nevada 89406-2748

Rory Reid
Chairman
Clark County Board of Commissioners
Post Office Box 551601
Las Vegas, Nevada 89155-1601

Steve Weissinger
Chairman
Douglas County Board of Commissioners
Post Office Box 218
Minden, Nevada 89423

John Ellison
Chairman
Elko County Board of Commissioners
569 Court Street
Elko, Nevada 89801

Benjamin Viljoen
Chairman
Esmeralda County Board of Commissioners
Post Office Box 146
Silver Peak, Nevada 89047

Wayne Robinson
Chairman
Eureka County Board of Commissioners
Post Office Box 677
Eureka, Nevada 89316

Dan Cassinelli
Chairman
Humboldt County Board of Commissioners
Courthouse, Room 205
Winnemucca, Nevada 89445

Gene Sullivan
Chairman
Lander County Board of Commissioners
315 South Humboldt Street
Battle Mountain, Nevada 89820

Spencer Hafen
Chairman
Lincoln County Board of Commissioners
Post Office Box 90
Pioche, Nevada 89043

David Fulstone
Chairman
Lyon County Board of Commissioners
27 South Main Street
Yerington, Nevada 89447

Kevin Wadlow
Chairman
Mineral County Board of Commissioners
Post Office Box 1450
Hawthorne, Nevada 89415

Henry "Butch" Neth
Chairman
Nye County Board of Commissioners
421 So. Frontage Road #1
Pahrump, Nevada 89048

Dave Ayoob
Chairman
Pershing County Board of Commissioners
Post Office Drawer E
Lovelock, Nevada 89419

Greg J. Hess
Chairman
Storey County Board of Commissioners
Post Office Box 801
Virginia City, Nevada 89440

Pete Sferrazza
Chairman
Washoe County Board of Commissioners
Post Office Box 11130
Reno, Nevada 89520

David Provost
Chairman
White Pine County Board of Commissioners
801 Clark Street #4
Ely, Nevada 89301

Monica Mealey
Secretary
Carlin Television District
Post Office Box 787
Carlin, Nevada 89822

Stanley Zunino
Treasurer
Elko Television District
Post Office Box 456
Elko, Nevada 89801

Michael Rebaleati
Eureka County Recorder/Auditor
Post Office Box 556
Eureka, Nevada 89316

Sheila Tobler
Secretary
Lincoln County Television District
Post Office Box 216
Pioche, Nevada 89043

Sharon Campbell
Office Supervisor
Mineral Television District No. 1
Post Office Box 1991
Hawthorne, Nevada 89415

Robert Cronshey
Chairman
Moapa Television District
Post Office Box 492
Logandale, Nevada 89021

Wendy Rudder
Bookkeeper
Pahranagat Valley Television District
Post Office Box 389
Alamo, Nevada 89001

Charles Coleman
Chairman
Smoky Valley Television District
Post Office Box 1517
Round Mountain, Nevada 89045

Barbara Ting
Bookkeeper
Verdi Television District
Post Office Box 221
Verdi, Nevada 89439

Robert Swain
Chairman
White Pine Television District
Post Office Box 704
Ely, Nevada 89301

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

COMMITTEES:
*Member*
Commerce and Labor
Human Resources and Facilities
Taxation

# State of Nevada
# Senate

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January 23, 2003

Senator Ann O'Connell, Chair
Senate Committee on Government Affairs
7225 Montecito Circle
Las Vegas, Nevada 89120

Dear Senator O'Connell:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services.

You may recall during several Subcommittee meetings, the members engaged in discussions regarding contract and project management procedures set forth in state law and the challenges associated with seeing public works and related construction projects to fruition. It became evident during these discussions that some local public works projects may be ideally suited for supervision by independent project managers. In fact, several examples were offered during the Subcommittee's discussions indicating that independent project management is a very popular administrative tool used by some local governments to monitor construction projects and ensure those projects consistently meet or exceed quality standards and economic specifications.

During its work session, the Subcommittee voted to send you this letter, as chair of the Senate Committee on Government Affairs, requesting that you examine the possibility of including, in an existing bill in your committee or in a bill draft, a mandate for local governments to *consider* the use of independent project managers for public works projects above a certain dollar amount. Several project dollar amount thresholds were discussed during the work session, ranging from $2.5 million to over $10 million. It appears from initial

research that such a proposal could be made in Chapter 338 of the *Nevada Revised Statutes*. While this request is far from a mandate for local governments to use independent project managers, it does require these entities to at least contemplate their use and possible benefits.

Thank you for your kind consideration of this letter. I trust you will agree that this topic is important to the fiscal health of all local governments that engage in larger public works projects. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:W24007.L020

cc: Senator Townsend
Michael J. Stewart, Research Division, LCB

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

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July 19, 2002

The Honorable Barbara E. Buckley
Majority Floor Leader
Nevada State Assembly
5442 Holbrook Drive
Las Vegas, Nevada 89103-2439

Dear Assemblywoman Buckley:

The Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises recently completed its business for the 2001-2002 legislative interim period. As you know, the subcommittee addressed a host of different topics during the interim, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications services.

During its meeting on March 12, 2002, and the final work session on June 26, 2002, the Subcommittee also discussed the current medical malpractice crisis in Nevada (particularly in Clark County). The subcommittee believed that the provision of insurance coverage by the State of Nevada to certain physicians (as recently authorized under *Nevada Revised Statutes* 686B.180 through 686B.250) provided a direct linkage to the competition issue. Consequently, the subcommittee discussed this important matter and reviewed the possible competitive impacts of having the state provide insurance coverage to relieve Nevada's physicians from the burdens of skyrocketing medical malpractice insurance rates.

During the course of the subcommittee's discussions, it became very clear that the complex medical malpractice situation in southern Nevada is not easily resolved. There are as many possible solutions to this crisis as there are unanswered questions and now, it appears that a special session of the Nevada Legislature will be convened to address this important issue.

At its final meeting and work session the subcommittee voted to send you, as Chairwoman of the Legislative Subcommittee to Study Medical Malpractice, this letter thanking you for your ongoing efforts in addressing this critical crisis and encouraging you and your subcommittee to continue working to identify solutions to the current medical malpractice situation. It is our hope that all affected parties can generate a workable resolution that can be readily addressed and considered by the Nevada Legislature. The Subcommittee to Study Competition Between Local Governments and Private Enterprises realizes this is a monumental task. Nonetheless, we are confident in your leadership and ability to craft meaningful recommendations that will instill a level of comfort back to insurers, legal practitioners, patients, physicians, and others who are impacted by this issue.

Thank you again for so diligently working to resolve this important matter. As always, please feel free to contact the members of the Subcommittee or me if we may be of any assistance to you.

Sincerely,

Michael A. Schneider

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local
Governments and Private Enterprises

MAS/k:L010/W23286

Identical letters were sent to:

Alice A. Molasky-Arman
Nevada Commissioner of Insurance
788 Fairview Drive, Suite 300
Carson City, Nevada 89701

James L. Wadhams
c/o Nevada Independent Insurance Agents
1120 Shadow Lane, Suite D
Las Vegas, Nevada 89102

Larry Mathies
Executive Director
Nevada State Medical Association
2590 Russell Road
Las Vegas, Nevada 89120

Timothy C. Williams, President
Nevada Trial Lawyers Association
1785 East Sahara, #337
Las Vegas, Nevada 89104

The Honorable Kenny C. Guinn
Governor of Nevada
Governor's Office
101 North Carson Street, Suite 1
Carson City, Nevada 89710-4786

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

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Human Resources and Facilities
Taxation

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January 23, 2003

Carole Hall, Owner
Creative Kids
Post Office Box 80237
Las Vegas, Nevada 89180

Karen Mullen, Director
Washoe County Parks and Recreation Department
2601 Plumas Street
Reno, Nevada 89509

Scott Morgan, Director
Community Services, Parks, and Recreation
Douglas County
Post Office Box 216
Minden, Nevada 89423

Gary Vause, Owner
Lil' Scholar Academy
2301 West Charleston Boulevard
Las Vegas, Nevada 89121

Dear Ms. Hall, Ms. Mullen, Mr. Morgan, and Mr. Vause:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and potential competition issues in the provision of health care, public services, and telecommunications and cable television services.

During the interim, you appeared before the subcommittee to discuss concerns and share your insights regarding potential competition in the provision of childcare services in Nevada. You may recall that extensive testimony was received regarding this issue and unfortunately, there appeared to be some disagreement over issues of competition in the childcare industry. Specifically, there were conflicting reports about whether or not government sponsored childcare programs (such as the Boys and Girls Club, Safe Key/Latch Key, and other before or after school programs) are required to operate under the same or similar guidelines as private childcare programs. In particular, there were varying reports on required staff ratios, licensure requirements, and facility inspection criteria between private and government sponsored programs.

While the Subcommittee was unable propose a legislative solution in response to the concerns raised, it did vote during its work session to send you this letter encouraging you, as representatives of both public and private childcare programs, to continue a constructive dialogue regarding these important issues. It is the Subcommittee's hope that your collective discussions will foster strong working relationships between public and private childcare providers so that future community and public needs can be spread across government and private sector programs.

Thank you for your participation in the Subcommittee's discussions and your kind consideration of this letter. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:W24008.L021
cc: Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties

MICHAEL A. SCHNEIDER
SENATOR
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January 22, 2003

The Honorable Harry Reid
United States Senator
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reid:

The 2001-2002 legislative interim in Nevada is drawing to a close and many statutory and interim study committees of the Nevada Legislature are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. The Subcommittee also discussed the present economic conditions of Nevada's 17 counties and learned that most of the state's local governments are struggling to pay for and maintain basic public services at respectable levels.

Much of these financial troubles, especially in Nevada's rural counties, result from the fact that nearly 87 percent of the state's land base is under federal management. Five of Nevada's 17 counties have at least 90 percent of their land area under federal ownership and another 9 have federal land ownership of between 60 and 90 percent. In fact, on a percentage basis, Nevada has more federal land than any other state. As you know, land managed by the Federal Government is not taxable; therefore, Nevada counties that have an extensive amount of federally controlled land experience significant fiscal burdens. In 1976, federal lawmakers recognized the need to assist local governments and established the Federal Payments in Lieu of Taxes (PILT) program. This program makes payments to local governments to offset the loss of tax revenue caused by the presence of tax-exempted federal land within their jurisdictions.

The PILT program is funded through Congressional appropriation and has been especially beneficial for Nevada. Despite recent increases in funding to the national PILT program, money appropriated by Congress is consistently insufficient to provide full payments under the PILT formula (the program has been underfunded since 1976 by roughly 50 percent). Recent legislative efforts, including S. 454 (which you co-sponsored) and H.R. 1811 of the 107th Congress, to take PILT out of the annual Congressional appropriations process and make full PILT payments automatic have been unsuccessful. Nevada's rural local governments rely heavily on this money to offset costs associated with school construction, transportation projects, and other critical infrastructure development. Therefore, at its final meeting and work session, the Subcommittee to Study Competition Between Local Governments and Private Enterprises voted to send you this letter encouraging you to continue supporting all efforts by Congress to increase, and perhaps one day, fully fund the PILT program.

Thank you for your kind consideration of this request. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local
Governments and Private Enterprises

MAS/k:W24009.L018

Identical letters were sent to:

United States Senator Jon Porter
218 Cannon House Office Building
Washington, D.C. 20515

United States Senator John Ensign
600 East William Street
Suite 304
Carson City, Nevada 89701

United States Representative Shelley Berkley
439 Cannon House Office Building
Washington, D.C. 20515

United States Representative Jim Gibbons
100 Cannon House Office Building
Washington, D.C. 20515

Gale Norton
Secretary of the Interior
United States Department of the Interior
1849 C Street, NW, Room 7229
Washington, D.C. 20240

Kathleen Clarke, Director
United States Bureau of Land Management
5660MIB
1849 C Street, NW
Washington, D.C. 20240

MICHAEL A. SCHNEIDER
SENATOR
Clark No. 8

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January 22, 2003

Senator Ann O'Connell, Chair
Senate Committee on Government Affairs
7225 Montecito Circle
Las Vegas, Nevada 89120

Assemblyman Mark Manendo, Chairman
Assembly Committee on Government Affairs
4629 Butterfly Circle
Las Vegas, Nevada 89122-6149

Dear Senator O'Connell and Assemblyman Manendo:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. In addition, the Subcommittee regularly discussed the economic condition of Nevada's local governments.

During the Subcommittee's final meeting, the members engaged in a discussion regarding the fiscal impact of local ballot questions and initiatives. Several Subcommittee members noted that while fiscal notes appear on local ballot questions, there often is not sufficient detail within those fiscal notes or available knowledge to determine ongoing fiscal impacts. For example, voters in a particular county could choose to approve bonds for the construction of a police substation. While the fiscal note for the ballot question might set forth the actual construction cost for the substation, it may not provide for costs associated with ongoing maintenance, operation expenses, and personnel to staff the facility. Once a particular building or

facility is constructed, there is little option but to operate that facility. This is why the Subcommittee believes the public should be aware of all costs related to local ballot proposals and that ongoing revenue sources should be identified in ballot question fiscal notes whenever possible.

During its work session, the Subcommittee voted to send you this letter, as chairmen of the Senate and Assembly Committees on Government Affairs, requesting that one or both of your committees examine and discuss this important issue. Included in these discussions might be an examination of what is typically included in ballot question fiscal notes and an evaluation of the feasibility of informing voters of future ongoing costs of local ballot proposals.

Thank you for your kind consideration of this letter. I trust you will agree that this topic is important to the fiscal health of local economies and to the public who deserve an accurate projection of the full cost of a particular proposal. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local
Governments and Private Enterprises

MAS/k:W24010;L019

cc: Senator Townsend
Michael J. Stewart, Research Division, LCB
Susan Scholley, Research Division, LCB

MICHAEL A. SCHNEIDER
SENATOR
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January 23, 2003

John P. Comeaux
Director
Department of Administration
Blasdel Building
209 East Musser Street
Carson City, Nevada 89701

Dear Mr. Comeaux:

As you know, the 2001-2002 legislative interim is drawing to a close and many statutory and interim legislative study committees are distributing their correspondence and preparing final reports. During the interim, the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises addressed a host of different topics, including public works contracting procedures, state and local government outsourcing opportunities and practices, and competition issues in the provision of childcare, health care, and telecommunications and cable television services. In addition, the Subcommittee regularly discussed the economic condition of Nevada's local governments.

During the Subcommittee's meeting in Elko, Nevada, the members heard a report that some state agencies or departments might not be aware of or might not understand the significance of *Nevada Revised Statutes* (NRS) 233B.066. Subsection 1(e) of this statute was identified as being especially important to private industry. This subsection requires each adopted regulation that is submitted to the Legislative Counsel Bureau or filed with the Office of the Secretary of State to include a statement containing, among other things, the estimated economic effect of the regulation on the public and the business to which it regulates. The adverse and beneficial economic effects as well as the regulation's immediate and long-term impacts must also be identified in the statement.

The Subcommittee understands that this requirement is extremely valuable and without such a statement, the public and the business community might not be fully aware of the influence a particular administrative regulation has on industry and the taxpayer. Therefore, at its final meeting and work session, the Subcommittee voted to send this letter to you and other key

agency administrators and directors emphasizing the significance of NRS 233B.066 (especially subsection 1[e]) and reminding you of these important requirements. For your review, a copy of this statute is enclosed.

Thank you for your kind consideration of this letter. As always, please do not hesitate to contact me if the Subcommittee or I may be of any assistance to you.

Sincerely,

Michael A. Schneider

Michael A. Schneider
Nevada State Senator
Chairman, Legislative Subcommittee
to Study Competition Between Local Governments
and Private Enterprises

MAS/k:W24011.L024
Enc.
cc: Assemblyman Carpenter

**NRS 233B.066 Informational statement required concerning adopted regulation; contents of statement.**

1. Except as otherwise provided in subsection 2, each adopted regulation which is submitted to the legislative counsel bureau pursuant to NRS 233B.067 or filed with the secretary of state pursuant to subsection 2 of NRS 233B.070 must be accompanied by a statement concerning the regulation which contains the following information:

(a) A description of how public comment was solicited, a summary of the public response, and an explanation how other interested persons may obtain a copy of the summary.

(b) The number of persons who:

(1) Attended each hearing;

(2) Testified at each hearing; and

(3) Submitted to the agency written statements.

(c) A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

(d) If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

(e) The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(1) Both adverse and beneficial effects; and

(2) Both immediate and long-term effects.

(f) The estimated cost to the agency for enforcement of the proposed regulation.

(g) A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

(h) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

(i) If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

2. The requirements of paragraphs (a) to (d), inclusive, of subsection 1 do not apply to emergency regulations.

(Added to NRS by 1981, 186; A 1987, 1581; 1989, 572; 1995, 131, 2580)

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