

**MINUTES OF THE
ADVISORY GROUP TO CONDUCT INTERIM STUDY ON
LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS
BY PUBLIC ENTITIES
(S.B. 426, SECTION 31)
JULY 12, 2006**

A meeting of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities was held at 10:00 a.m. on Wednesday, July 12, 2006, in Room 2135 of the Legislative Building in Carson City. The meeting was simultaneously videoconferenced to Room 4412 of the Grant Sawyer Building in Las Vegas.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

None

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Warren B. Hardy II, Chairman
Assemblywoman Debbie Smith, Vice Chairman
Andrew Clinger, Director, Department of Administration
James Keenan, Nevada Public Purchasing Study Commission and Purchasing Manager for Douglas County
Richard "Skip" Daly, Business Manager, Laborer's Local Union 169

COMMITTEE MEMBERS ABSENT, EXCUSED:

John Sherman, Director of Finance for Washoe County
Patrick Schlosser, Clark and Sullivan Constructors, Inc.

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel, LCB Legal Division
Jeff Ferguson, Program Analyst, LCB Fiscal Analysis Division
Gary Ghiggeri, Senate Fiscal Analyst, LCB Fiscal Analysis Division
Wil Keane, Principal Deputy Legal Counsel, LCB Legal Division
Tracy Raxter, Senior Program Analyst, LCB Fiscal Analysis Division
Mark Stevens, Assembly Fiscal Analyst, LCB Fiscal Analysis Division
Denise Larsen, Secretary, LCB Fiscal Analysis Division

EXHIBITS:

Exhibit A - Agenda

Exhibit B - Attendance Roster

Exhibit C - Copy of the July 12, 2006, meeting packet prepared and distributed by
Counsel Bureau (LCB) staff

Legislative

Because of their size, the exhibits are not attached to these minutes; however, upon request, exhibits may be reviewed in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. The library may be contacted at (775) 684-6827.

I. CALL TO ORDER AND OPENING REMARKS BY SENATOR WARREN B. HARDY II.

The fourth meeting of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities for the 2005-2006 Interim was called to order on Wednesday, July 12, 2006, at 10:00 a.m. by Chairman Hardy. Chairman Hardy welcomed committee members and requested the secretary call roll. It was determined a quorum was present. Chairman Hardy requested a moment of silence to honor the memory of Kathy Augustine, Nevada's State Controller. He expressed Ms. Augustine was a dedicated servant who cared about Nevada.

Indicating the meeting was a Work Session meeting, Chairman Hardy related it was his hope most of the issues regarding lease purchase would be finalized during the meeting. He expressed his appreciation to committee members, the public, who had taken a serious interest in lease purchase and participated in discussions, and staff. Chairman Hardy opined that the lease-purchase concept was an important tool for public entities. He related that measures should be taken to ensure the process was fair and everyone had an opportunity to benefit from lease-purchase projects.

II. APPROVAL OF MINUTES OF THE APRIL 20, 2006, MEETING.

Chairman Hardy questioned whether committee members had an opportunity to review the minutes of the April 20, 2006, meeting and whether there were any items that needed to be changed. Hearing none, Chairman Hardy indicated he would accept a motion for approval of the minutes.

ASSEMBLYWOMAN SMITH MOVED TO APPROVE THE MINUTES OF THE ADVISORY GROUP TO CONDUCT INTERIM STUDY ON LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS BY PUBLIC ENTITIES MEETING HELD APRIL 20, 2006.

MR. DALY SECONDED THE MOTION.

Chairman Hardy called for further discussion on the motion. Hearing none, he called for a vote on the motion.

THE MOTION PASSED UNANIMOUSLY.

III. WORK SESSION – DISCUSSION AND POSSIBLE ACTION REGARDING RECOMMENDATIONS RELATED TO LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS BY PUBLIC ENTITIES.

Referring to the Work Session document beginning on page 25 under tab III of the meeting packet (Exhibit C), Chairman Hardy requested that Tracy Raxter, Senior Program Analyst, and Jeff Ferguson, Program Analyst, Legislative Counsel Bureau (LCB), Fiscal Analysis Division, provide background on each topic listed for the committee's consideration. Chairman Hardy hoped ample opportunity had been provided for individuals to present ideas regarding the lease-purchase concept. Chairman Hardy noted opportunity would be provided at this meeting to discuss any ideas or concepts that may work with regard to the topics

being considered.

Mr. Ferguson indicated the first consideration was for a bidding process intended for lease-purchase agreements that would not eliminate the advantages afforded by lease-purchase agreements. Mr. Ferguson said in the hearings conducted, the advisory group concluded that public entities 1) need to find the most cost effective way to accomplish public works; and 2) need to assure that every taxpayer wanting to pursue public works had the opportunity to do so. He said that accordingly, the committee determined it would be beneficial to apply some sort of bidding process to lease-purchase agreements, as long as the process did not do violence to the lease-purchase concept. Through the committee's discussion, three distinct scenarios were identified and each needed to be addressed separately.

Describing the first scenario, Mr. Ferguson advised the state/local government entity might find an existing building that it would want to acquire by lease purchase. Although no examples of this scenario were presented at the hearings for the committee's discussion, Mr. Ferguson indicated bidding in this instance would not be something the committee would want to consider. He suggested the committee explore other options that would allow competition in acquiring an existing building via lease purchase, such as a public announcement of the agency's intent to lease purchase a building in a certain area.

Mr. Ferguson recalled for the committee that concern from labor representatives was voiced that "behind-the-scenes arrangements" could occur where an agency and a builder got together, a building was constructed, and that building was eventually lease purchased to the state. Mr. Ferguson pointed out that such an arrangement could effectively bypass the requirement that public buildings must be constructed with prevailing wages.

Continuing, Mr. Ferguson advised the committee that in the second scenario, the state/local government entity owned the land and solicited a lease-purchase project. Mr. Ferguson pointed out that this was the basic scenario associated with the Richard Bryan Building in Carson City discussed at previous committee meetings. Mr. Ferguson said that the State Public Works Board (SPWB) utilized the design-build bidding procedures set forth in *Nevada Revised Statutes* (NRS) 338.1721 through 338.1727 for the Richard Bryan Building. Directing the committee to page 31 under tab IV of the meeting packet (Exhibit C), Mr. Ferguson noted that Attachment A provided a brief summary of the design-build requirements. He said the committee may wish to draft legislation to require that the existing design-build bidding procedures be utilized for cases where the state/local government owns the land on which the building would be constructed via a lease-purchase agreement.

Mr. Ferguson advised the committee the third scenario identified was where the state/local government entity wished to lease purchase a building but did not own the land. This was the scenario associated with the Casa Grande project completed for the Nevada Department of Corrections (NDOC). In the case of Casa Grande, the developer owned the land and proposed to build the needed facility; no bidding was involved.

Mr. Ferguson said that in terms of bidding, the committee may wish to discuss recommendations to encourage some sort of bidding process or a public notification pertaining to instances where the state/local government entity would like to lease purchase a facility when it did not own the land.

Chairman Hardy indicated he had given consideration to all of the scenarios mentioned; however, he had not been able to visualize anything beyond a public notice with regard to consideration 1a and 1c on pages 26 and 27 under tab III of the meeting packet (Exhibit C). He opined the committee should consider a requirement for a public notice stating the entity was looking for a lease-purchase arrangement that would provide an opportunity for individuals to come forward with a proposal.

Chairman Hardy thought that item 1b on page 27 of the meeting packet (Exhibit C), in which the state/local government entity owned the land and solicited a lease-purchase project, would be the scenario utilized the most. Noting that he would have Brenda Erdoes, Legislative Counsel, LCB Legal Division, address the issue later in the meeting, Chairman Hardy advised the state of Nevada had recently encountered problems with the lease-purchase project for the Nevada State Printing Office. Conflicts had occurred with legislation proposed by Assemblyman Scott Sibley, which passed during the 2005 Legislative Session, and the design-

build process. Chairman Hardy's opined the committee should attempt to present the 2007 Legislative Session with recommendations in an attempt to deal with such conflicts. It was Chairman Hardy suggestion that the committee table item 1b until the committee received more input on the issues with the building for the State Printing Office.

Chairman Hardy suggested that the committee ask staff to draft a bill draft request (BDR) for items 1a and 1c to provide some type of public notice to accommodate transparency for the lease-purchase process. The public notice should include information for the state/local government entity's proposed project and detail the arrangement that may be pending. Thus, anyone with a similarly situated piece of land would have the opportunity to come forward with his offer. Chairman Hardy called for comments on item 1.

Richard "Skip" Daly, Business Manager, Laborer's Local Union 169, indicated he had no problem with tabling item 1b. In reference to item 1c, Mr. Daly agreed that when a project was to be constructed on land owned by an individual, public notification was a good recommendation for the committee to make. However, Mr. Daly opined that once the owner of the land picked his general contractor, the owner's team should be disclosed (similar to design build), and a procedure should be in place for selection of the subcontractors for the project. Mr. Daly explained that bid shopping appeared during the selection of subcontractors, not on the selection of the general contractors. Mr. Daly advised the committee the team should be listed in the proposal for the project and allowances to later change the team should not be permitted. He noted a process should be included that allowed individuals to bid on the project. Mr. Daly reiterated the legislation could allow the owner to select the general contractor and should have a process in place to ensure anti-bid shopping in the state of Nevada.

With regard to in item 1c, Chairman Hardy said it was difficult to provide any kind of a bid process in the scenario where the contractor owned the land. In order to make the process transparent, Chairman Hardy suggested a legislative declaration could be required to ensure the use of prevailing wage, eliminate bid shopping and avoid the potential of the "behind-the-scenes arrangements" to circumvent laws by constructing a building that would be eventually lease purchased to the state/local government entity.

Mr. Keenan saw no harm with Mr. Daly's suggestion for the requirement by the general contractor to provide a list of subcontractors he planned to utilize for the purpose of transparency; however, he expressed concern with what would follow. He questioned whether approval or disapproval of the list would be required. Mr. Keenan further questioned what procedures would be in place if a sub-contractor on the list was not appropriate.

Chairman Hardy indicated the second step of approval or disapproval was a measure the committee did not need to address, as long as there was no evidence of bid shopping, "behind-the-scenes arrangements" or circumvention of prevailing wage laws.

Mr. Daly clarified he did not mean to state the general contractor could not select his subcontractors without objections; however, the subcontractors should be listed up front as a commitment. If the general contractor were to change subcontractors, reasons for the changes should be provided. Mr. Daly said the present statutes required 5 percent for bid opening and 1 percent after 2 hours, or the alternative 3 percent method. Mr. Daly explained the list of subcontractors would eliminate problems with general contractors putting out proposals, getting numbers and changing the proposal to tailor the proposal to whoever he wanted to pick. He said a general legislative declaration could be established, which could be modified later if it did not work.

Chairman Hardy related in the scenario, in which the state/local government entity approached the private-sector owner, the owner should have complete control, which would even include bid shopping. Chairman Hardy indicated he wanted to ensure this method was not used to circumvent prevailing wage and other established requirements.

Assemblywoman Smith reminded the committee they had received testimony on the fact that inmates, who were not paid a prevailing wage, had been utilized for part of the construction on the Casa Grande project. Assemblywoman Smith further reminded the committee of testimony that another contractor had submitted a proposal on the project, and knowing it would not be acceptable, this contractor did not have the intent of using inmate labor. She questioned whether the circumvention of regular labor occurred because of lease purchase. Assemblywoman Smith wondered whether addressing this issue would be within the scope of the committee.

Chairman Hardy recalled that the committee received testimony in all of the scenarios that prevailing wage was paid. He noted that lack of payment of prevailing wage would have been a violation of NRS Chapter 338. Chairman Hardy advised such situations would fall under the category of enforcement issues, which the committee wanted to keep separate. Chairman Hardy opined the concern with scenario 1c was the potential of creating an opportunity for such circumvention. The legislative declaration could contain a general policy statement declaring it was the intent that public construction would adhere to prevailing wages on lease-purchase projects. Chairman Hardy asked whether committee members had further issues with the concept of a legislative declaration on 1a and 1c.

With regard to scenario 1a, where the state/local government entity found an existing building that they wanted to acquire via a lease-purchase agreement, Mr. Daly thought the committee's legislative declaration should include a statement that any work performed as an alteration to meet the needs of the new occupant should be covered by prevailing wage. He expressed concern in addressing the issue of evading prevailing wage when an existing building was being lease purchased. Mr. Daly said that was where the committee had the time-frame moratorium thrown out.

Chairman Hardy said if the committee drafted such a legislative declaration, it would be declaring that the law must be obeyed.

Ms. Erdoes suggested the committee could provide the background information, which currently may not be provided in the statutes, in the legislative declaration, such as adding the reason the Legislature wanted this to happen.

Chairman Hardy agreed that providing the background information may resolve Mr. Daly's concern, since there would be a legislative finding. He said such abusive activity would be watched carefully.

Noting that he too would be watching carefully, Mr. Daly advised he had encountered such abuses in the federal sector. He indicated he wanted to ensure the strongest safeguards possible were put into place with regard to lease purchase.

Given the fact that the committee received testimony that the scenario did not occur often at the state level, Chairman Hardy said he would be opposed to placing a time limit on such projects. He said if problems occurred, he would be open to revisiting the issue in two years. Chairman Hardy explained that this meeting was a Work Session meeting and invited public comment as items were discussed.

Pat Sanderson, lobbyist for Laborers Local 872, introduced himself for the record and indicated he felt the legislative declaration should address the issue of use of inmate labor on lease-purchase projects. Mr. Sanderson opined that the inmates should not be allowed to work on lease-purchase agreement projects at any time. He stated that allowing inmates to be employed on such projects took jobs away from the working men and women of the state of Nevada. Mr. Sanderson urged the committee to consider prohibiting any inmate employment on any lease-purchase projects construction projects.

Chairman Hardy thanked Mr. Sanderson for his testimony. He indicated that since he was unsure of the policies of the correctional institutions, he would not be in favor of making a recommendation prohibiting inmate employment on lease-purchase projects without further information. Chairman Hardy advised the committee that the state also needed to consider their goal to rehabilitate inmates. Indicating that Mr. Sanderson raised a valid point for the committee's consideration, Chairman Hardy said he would like to hear testimony regarding eligibility requirements for inmate employment and the programs available to inmates. Chairman Hardy indicated since this would not be the final meeting due to the issue with item 1b, staff could research the information on inmate employment and report to the committee at the next meeting in order to identify any abuses that may be occurring in the lease-purchase process. Chairman Hardy said once the committee was provided with the information, they may want to address inmate employment with regard to lease-purchase projects.

Robin Reedy, Deputy Treasurer of Debt Management, Office of the State Treasurer, introduced herself for the record. She advised the committee that staff of the Office of the State Treasurer recognized through their involvement with lease-purchase projects that although prevailing wage requirements that were in the law were stressed, there was a need for further clarification regarding the prevailing wage for developers and contractors. Ms. Reedy indicated that the Office of the State Treasurer's staff planned to design a form that

contained clarification regarding the prevailing-wage prerequisite that developers/contractors would be required to sign.

Ms. Reedy said the lease-purchase project for Casa Grande was a unique project. She informed the committee that when the use of inmate labor was brought to the attention of staff involved with the project, inmate labor was removed and another labor force was hired, resulting in an increased price for the Casa Grande project. Ms. Reedy added that elimination of the inmate labor on the project was the right thing to do.

Ms. Reedy assured the committee that the Office of the State Treasurer would be implementing a procedure that spelled out prevailing wage and other lease-purchase laws to clarify requirements.

Chairman Hardy expressed his appreciation to Ms. Reedy and other staff of the Office of the State Treasurer with regard to their clarification endeavors. He explained the concern for payment of prevailing wages on lease-purchase projects was one issue that created the need for the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities. Chairman Hardy reiterated his appreciation for Mr. Sanderson's testimony, which brought the issue of inmate labor forward. He advised this was a policy issue for the Legislature's consideration. Chairman Hardy said although many people thought he was opposed to prevailing wage, he was not. He opined prevailing wage was an important concept and always had been. However, Chairman Hardy thought there should be a more accurate method of determining prevailing wage.

Noting that each recommendation depicted both state and local governments, Mr. Keenan questioned whether the items for consideration at the Work Session were only applicable at the state level.

With regard to Mr. Keenan's question, Chairman Hardy indicated the committee was addressing issues for both state and local governments. He added he had received requests from local governments that did not think they statutorily had the ability to do lease-purchase agreements.

Mr. Daly affirmed that the committee was addressing state and all local governments. Noting that it was his understanding that the statutes already covered local governments, he said counties had the ability to utilize lease-purchase under NRS 244.

Chairman Hardy advised the City of Las Vegas had contacted him concerning extending the law. Chairman Hardy said he was favorable to extending the law to include cities, as the tool of lease purchase should be extended to all local entities. With regard to item 1, Chairman Hardy requested staff to draft a legislative declaration for the committee's perusal for the next Work Session meeting.

Asking for clarification, Mr. Daly questioned whether the legislative declaration would include recommendations that would ensure:

- Prevailing wage would not be circumvented
- Avoidance of bid shopping
- Strong language with regard to leasing an existing building in an attempt to circumvent prevailing wages

Agreeing those items would be addressed in the draft for the legislative declaration, Chairman Hardy clarified the legislative declaration would not go beyond the NRS 338 process; however, bid shopping related to items 1a and 1b would be addressed with design-build procedures.

Mr. Danny Costella, Business Agent for Iron Workers Local Union 118, introduced himself for the record and questioned whether it would be appropriate for the committee to include preferential hiring of Nevada residents in the legislative declaration. Mr. Costella indicated preferential hiring of Nevada residents was a law; however, it had not been enforced on many projects.

Chairman Hardy questioned whether preferential hiring of Nevada residents was included in NRS 338. Consensus was that the issue pertaining to preferential hiring of Nevada residents was included in NRS 338.130. Chairman Hardy requested staff to review NRS 130 to see whether it would be appropriate to add a statement concerning preferential hiring to the legislative declaration. He advised he did not want to add

restrictions to the point that the committee would do harm to the lease-purchase system; however, he would have no problem including it in the legislative declaration if preferential hiring currently applied in the statutes.

Mr. Daly apprised the committee that the statutes that tied prevailing wage to lease-purchase projects were not contained within NRS 338.013 - 338.090. However, the provisions Mr. Costella referred to were in NRS. 338.125 - 338.130. Mr. Daly added that preferential hiring of Nevada residents referred to by Mr. Costella was not currently required for lease purchase; thus, the committee might want to include the requirement in the legislative declaration.

Reiterating he would like staff to review the statutes concerning preferential hiring of Nevada residents, Chairman Hardy indicated that he would support adding the requirement of preferential hiring of Nevada residents only if it were currently required by law. Chairman Hardy called for any objections to including the preferential hiring of Nevada residents referred to by Mr. Costella. Hearing none, he called for further comments or issues on items covered in item 1. Hearing none, Chairman Hardy directed Mr. Ferguson to address item 2 on page 27 under tab III of the meeting packet (Exhibit C).

Mr. Ferguson advised the committee that the second item for the committee's consideration was the requirement of a more transparent process for changes to lease-purchase projects. Mr. Ferguson noted testimony had been presented to the committee suggesting lease-purchase agreements should follow procedures to ensure that a transparent process existed with regard to changes to a project. Mr. Ferguson pointed out a current example of such a process was contained in subsection 7 of NRS 341.145, which required the State Public Works Board (SPWB) to obtain approval from the Interim Finance Committee (IFC) for any changes in the scope of the design or construction of a project. Recalling that there was discussion that the lease-purchase process was already a transparent process during hearings, Mr. Ferguson reminded the committee there was agreement to discuss this issue further at the Work Session meeting.

Mr. Ferguson apprised the committee that one option for consideration could be to request drafting of legislation to clarify that any change in scope to the design and/or construction of a building project financed through a lease-purchase agreement required the approval of the IFC.

Noting that NRS 341 required approval from the IFC for any changes in scope on a building project, Chairman Hardy requested clarification on the need for such a consideration.

Mr. Ferguson explained that lease-purchase agreements were not specified in the requirements of NRS 341. He added that such legislation might not appropriately fit within the area of NRS 341 and the committee may want to seek advice on the matter with legal staff.

Responding to Chairman Hardy, who questioned whether adding legislation to require IFC approval for changes in scope to the design and/or construction of a building project financed through a lease-purchase agreement would significantly delay projects, Ms. Reedy said that if the IFC were to meet on a monthly basis, it might not be a problem. However, as the state required contracts to contain clauses that demanded penalization if the projects were not completed on time, penalties could also be assessed on the state due to delays awaiting IFC approval.

Ms. Reedy agreed with Chairman Hardy that the definition of scope would be important to provide more detail on the effect the requirement of IFC approval for a change in scope to the design and/or construction of a building project.

Noting that he did not serve on the finance committees, Chairman Hardy opined that a significant change in scope should come before the IFC.

Ms. Reedy said she had been informed that scope could be as simple as changing a staircase or moving a sign in the parking lot. She said if more money were required for a lease-purchase project, requests had to go through the approval processes before the Board of Examiners' (BOE) meetings or the Board of Finance's (BOF) meetings.

Tracy Raxter, Senior Program Analyst, LCB Fiscal Analysis Division, informed the committee that subsection 7 of NRS 341.145 stated that the SPWB shall adopt by regulation criteria for determining whether a change

in the scope of the design or construction of a project required IFC approval. Thus, the SPWB had developed a regulation that had been approved and was contained in Nevada Administrative Code (NAC) 341.017 that defined "change in the scope of the design or construction of a project" to mean the:

- Addition or deletion of 10 percent or more of the square footage of the project that was originally authorized by the Legislature
- Change in the intended use of more than 10 percent of the square footage of the project that was originally authorized by the Legislature
- Change of more than 10 percent of the users of the project that were originally intended by the Legislature

Noting the regulations were significant, Chairman Hardy requested that, as part of the committee's recommendations, staff prepare requirements to obtain approval from the IFC for any changes in the scope of the design or construction of a project. He said persons with any information or concerns regarding the requirement should contact staff prior to the next Work Session meeting, which would be held in late August 2006.

Noting she was a member of the IFC, Assemblywoman Smith opined that the IFC approval would be a good accountability measure. She said timeliness might create problems for lease-purchase projects; however, timeliness had to be dealt with on all state projects. She indicated this would be a positive step toward accountability. Assemblywoman Smith expressed her surprise that such accountability regarding lease-purchase projects had not been presented to the IFC in the past.

Mr. Daly said he realized the focus of the committee was on state issues and the IFC; however, the committee needed to be cognizant their recommendations extended to public agencies. The committee needed to reference any legislation to the local government entities. Mr. Daly said such references, similar to change orders, were frequently seen on city agendas. Mr. Daly recalled for the committee that the lease-purchase agreements were to be a guaranteed maximum price. Mr. Daly opined that any project that was in excess of the guaranteed maximum price (plus contingencies) should be approved by the body that would be spending the money on the project.

Indicating he wanted to honor the local governments, their stewardship and their responsibility, Chairman Hardy said he would bring the proposal forward with that in mind. Chairman Hardy requested representatives from the local government group check to see how the committee might provide comparable accountability without placing unnecessary restrictions on them. Chairman Hardy called for additional comments regarding the second consideration.

Ms. Reedy wanted to remind the committee that if a lease-purchase project cost more money, the approval for the project would be required by the BOE, as the contract must be increased. If securities needed to be issued, the project had to go through the stream of approvals. Because of the issuance of certificates of participation securities, a change of use would not be possible, as securities were issued only for a specific use for that project. Ms. Reedy requested the opportunity to look at the language and the definition of scope and apply it to projects undertaken by the Office of the State Treasurer.

Chairman Hardy indicated that in terms of changing scope, anything that would be required on a non-lease-purchase job, would be required on a lease-purchase job. He clarified that the committee did not want to exclude that type of accountability on lease purchase. Chairman Hardy questioned whether there were any objections to moving forward on the second recommendation; there were none.

Directing the committee to page 28 under tab III of the meeting packet (Exhibit C), Mr. Ferguson advised that the third item for consideration was to provide for a period of public review of proposed lease-purchase contracts. Mr. Ferguson recalled that during the April 20, 2006, meeting, the committee entertained suggestions that a public review be implemented either just prior to, or just after, a lease-purchase contract was awarded to a developer or contractor. Testimony presented by labor representatives indicated a number

of questions were raised after the fact on the Richard H. Bryan Building, and if a period of public review was in place, some of those concerns could have been brought to light and addressed earlier to avoid problems. In addition, labor representatives suggested that bids could contain a provision to cover the costs for a contract administrator who could deal with problems that might arise from the public review process. During previous meetings, concerns were voiced that due to timing, it would be difficult to make any changes to contracts. Mr. Ferguson explained that if a contract had already been entered into, and a following review produced concerns, some legal issues would be involved with changing a contract once it had been approved. Mr. Ferguson said the committee had agreed to discuss this issue further for any recommendations at this Work Session.

With regard to the third consideration, Chairman Hardy opined the recommendation was in the category of regulating to the degree it would burden the lease-purchase process. Indicating it was his opinion that some of the steps the committee was considering would address some of Mr. Costella's concerns, Chairman Hardy said he was not favorably disposed to pursuing this recommendation. Chairman Hardy called for comments regarding the recommendation.

Agreeing with Chairman Hardy's observation regarding the third recommendation, Mr. Keenan apprised the committee that he could foresee difficulty with contract administration procedures as to who had authority to represent and who had authority to change items depending on what the contract said.

Mr. Costella said the purpose of the recommendation was to address the enforcement issue. He questioned what steps should be taken if a labor representative went to the developer or contractor with an issue or contract violation and they were ignored.

Responding to Mr. Costella's question, Chairman Hardy said although the issue was a legitimate concern, the recommendation went beyond the scope of the committee and back to enforcement issues previously discussed.

Mr. Costella agreed that lack of enforcement caused many of the issues. He questioned how to get to the root of the problem.

Chairman Hardy agreed there were enforcement issues regarding the Richard H. Bryan Building. He said that significant time was provided in earlier meetings to show that lease purchase was the cause of the lack of enforcement; however, the case was not demonstrated.

Mr. Costella expressed his hope that the legislative declaration that the committee planned to draft would be beneficial in this area. He opined there was no sense in having the laws if they were not going to be enforced.

Chairman Hardy offered to make himself available to help resolve further issues on the Richard H. Bryan Building, and Mr. Costella thanked him for the offer.

Although he understood Mr. Costella's concern, Mr. Daly advised he was in agreement with Chairman Hardy's opinion that the recommendation was in the category of regulating and could harm the lease-purchase process. It was Mr. Daly's observation that with the implementation of new processes at public meetings and process reviews, there would be no complaints; once projects were awarded, complaints would come in. Mr. Daly said if the issues were truly enforcement issues, such as contractors on the projects that were not licensed and had not gone through the review process, the issues could still be enforced. He agreed the enforcement issues warranted addressing; however, they should be addressed in a setting outside the scope of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities.

Chairman Hardy advised the decision by the committee to require a public notification for proposed projects should help with the process. He called for further comments or objections to the third consideration. Hearing none, he directed the committee's attention to the fourth consideration located on page 28 under tab III of the meeting packet (Exhibit C).

Mr. Raxter apprised the committee that the fourth recommendation was proposed by SPWB to amend NRS 353.590 to clarify that the SPWB would be responsible for serving as the building official for lease-purchase projects constructed on state property. Mr. Raxter recalled for the committee that NRS 353.590 exempted lease-purchase agreements from the provisions of NRS 341. He explained that NRS 341 was the statute that specified that the SPWB was the building official when a construction project was on state land. Therefore, the law was silent on who should be the building official when a construction project on state lands utilized a lease-purchase agreement.

Mr. Raxter advised that testimony was provided to the committee by SPWB representatives who indicated the importance of clarifying the building official responsibility on lease-purchase building projects on state lands to ensure inspections on projects for code compliance for the protection of the owner and the contractor.

Mr. Raxter recalled for the committee that alternatively, Mr. Daly recommend reciprocal agreements be pursued and enacted between the state and local governments for building official responsibilities on their respective lease-purchase building projects for state and local governments.

Responding to Assemblywoman Smith, who requested clarification or a definition of building official, Gus Nunez, Deputy Manager, SPWB, explained the function of the building official was to plan check the project for code compliance and inspect the project in accordance with the plans and the code.

With regard to the intent of alternative reciprocal agreements, Chairman Hardy questioned whether the suggestion was to alleviate duplicate efforts. He said that as a legislator or committee, he would not want to preclude such agreements; however, he did not want them to be required. Chairman Hardy said that unless there were objections from other state agencies or other local entities interested in using design build, he thought that the fourth consideration was a "housecleaning bill" and he had no problem with the recommendation.

Mr. Daly recalled for the committee that discussions on the 50-percent savings clause addressed the perception of individuals having the incentive to partake in illegal activities or cut corners to realize an additional bottom line. He said the intent of the alternative recommendation was to remove any such perception by having performance monitored and code inspections completed by a non-biased individual. Although Mr. Daly did not think the committee would want to mandate that an agency or local entity enter into reciprocal agreements, the statute could leave it up to the public agency that was a party to the lease to decide how they would want to handle the reciprocal agreement. He suggested the statute could state, "Whoever the public body was that was party to the lease could not be the building official."

Chairman Hardy said he would be more comfortable if the committee were to include such a statement in the legislative declaration. The declaration could include language that indicated state agencies or local entities were encouraged to avoid the appearance of such conflicts.

Mr. Daly indicated that as long as the legislative declaration had the force of law and state agencies or local entities could not be their own building official, it could be included in the legislative declaration. Mr. Daly explained if the state was the party on the lease, they could not also be the building official. He reiterated the committee would not dictate who the building official would be. Providing an example, Mr. Daly said if the SPWB was the party on the lease, they could hire a private building official or go with another entity, such as

the City of Sparks. Noting that Mr. Nunez's definition of building official was plan check and inspection, Mr. Daly said in this example, the City of Sparks would have all the oversight on the project.

Chairman Hardy recalled that the committee spent time on this issue and ascertained there had been no problems in this area. Chairman Hardy indicated he did not want the committee to provide solutions in search of problems or deal in hypothetical situations that were going to cause additional regulatory burdens.

Mr. Nunez informed the committee that the present legislation allowed the SPWB to contract with local governments should the SPWB want to contract for a building official on state projects. Mr. Nunez said that to his knowledge, such contracting with local entities had not been utilized. Mr. Nunez advised that as the law presently read, local government did not have jurisdiction on state property unless both entered into an agreement. He related that compliance of all the different requirements and codes of the various local government entities that were not uniform to those of the state could be problematic. He suggested the committee keep in mind that local government did not plan check or enforce Americans with Disability Act (ADA) requirements required by NRS; the state did.

Mr. Daly opined that if the state had regulations for a state project, another entity should be doing the plan check using the state's regulations. He said allegations were made because there was perceived incentive on the Richard Bryan Building. Mr. Daly opined if oversight on a project was conducted by a cross agency the perception would not exist. He clarified the project would not be checked to the local entities' standards, but to the state's standards that were in existence. Mr. Daly said he was adamant that having performance monitored and code inspections done by a non-biased individual should be required.

Chairman Hardy said these were serious allegations that were never substantiated. He advised that a venue was not provided to substantiate these allegations, as it was not the focus of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities. Chairman Hardy expressed his reluctance to have a recommendation to address the issue that had not been substantiated. Chairman Hardy said he would like to spend more time on enforcement issues, and if it were established that legislation for cross monitoring and inspections could remedy these issues, he would submit a personal bill request for the requirement. He reiterated it was outside the scope of the committee. Chairman Hardy recognized and welcomed State Treasurer Krolicki to the committee.

Ms. Reedy advised she wanted to reiterate testimony she had previously provided to the committee that may help to alleviate some of Mr. Daly's concerns. Ms. Reedy said the market was a wonderful thing; it was a regulatory system of its own. If there were savings on a project, and the savings were to come back to the state, it was required (through the securities issuance) to go to the project or to pay the debt of the project. Ms. Reedy advised the savings did not go to the agency or the general fund.

Mary Walker, lobbyist for Carson City, Douglas, and Lyon Counties, appeared before the committee and advised that if local government were to have another local government building official for their building project, it would be extremely difficult. She explained public works was one area for county projects, building officials was another area, and thus far, no problems had occurred in these areas. Since some local governments disagreed amongst themselves, Ms. Walker expressed concern regarding the recommendation for cross monitoring and inspections. She added there could be difficulty with time-frame availability for plan checks and inspections. Ms. Walker opined that from an administrative point of view, the recommendation would be a nightmare.

Chairman Hardy advised there was a request from Vice Chairman Smith to move the fourth consideration and its alternative to the agenda for the next meeting, allowing additional time to gather more information on the subject. Noting he was going to honor this request, Chairman Hardy asked that any further information concerning the fourth item be forwarded to him and Vice Chairman Smith for further consideration and

discussion.

Mr. Daly clarified that he was not suggesting changes concerning the 50-percent savings clause. Mr. Daly said although the various allegations, which had the possibility and perception of incentive to partake in illegal activities or cut corners, were not substantiated due to the fact it was not allowed in venue of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities, they did exist. He opined the committee should address the perception and potential.

Chairman Hardy stated at this time he did not want to preclude these types of arrangements and would like to see a legislative declaration encouraging those involved to avoid such perceptions; however, unless there was further information that needed to be addressed in this area at this time, the committee would move forward. Chairman Hardy requested Mr. Raxter address the next consideration for the committee.

Mr. Raxter indicated the fifth item for consideration was located on page 29 under tab III of the meeting packet (Exhibit C). The item considered whether it was desirable to have some commonality regarding the entity responsible for serving as the owner representative and project manager for lease-purchase building projects, including whether it was desirable to have more structure to the decision on who performed these functions.

Mr. Raxter recalled for the committee that testimony indicated that the Department of Conservation & Natural Resources entered into an interlocal agreement with the SPWB to provide owner's-representative and project-management services for the Richard Bryan Building lease-purchase project. However, for the Casa Grande lease-purchase project, the NDOC opted to hire an outside architectural firm to serve as its owner's representative and provide project-management duties. Mr. Raxter advised that these duties included developing performance criteria, checking submittal of design plans/construction documents, monitoring contractor's request for information and project change orders, monitoring adherence to the project construction schedule and contract documents, and tracking contractor's applications for payment.

Mr. Raxter said the committee indicated it would like to explore the possibility of either having a common entity to perform the owner representative and project management functions on a lease-purchase project or having some structure to the decision on who performed these functions.

Chairman Hardy advised that although it was another issue dealing with oversight and enforcement on the Richard Bryan Building, he wanted this consideration on the Work Session document, as it was proposed by Vice Chairwoman Smith. He said that Vice Chairwoman Smith did not recall it being a major issue. Since the fifth consideration fit into enforcement issues concerning the Richard Bryan Building that would be addressed in another venue, Chairman Hardy indicated he was not inclined to move forward with the recommendation. He called for comments from committee members regarding the fifth recommendation. Hearing none, Chairman Hardy directed the committee to the sixth consideration.

Mr. Raxter informed the committee the sixth recommendation was the consideration of whether it was desirable to have funding to pay for initial professional services for tasks required to be completed prior to final project approval and sale of the debt instruments for financing of a lease-purchase project. Mr. Raxter said testimony provided to the committee by representatives of the SPWB indicated they provided building programming services for the Richard H. Bryan Building project, including providing construction budgets, square-footage requirements for the facility, and agencies that were to be located in the building. With regard to the Casa Grande project, Mr. Raxter advised that representatives of the NDOC testified there were initial professional services and fees for document preparation and review, negotiations, and owner representative services.

Mr. Raxter said the committee may wish to discuss recommendations to encourage legislative approval that

a lease-purchase building project include funding for these necessary initial professional services, which would include building programming, preparation of request for proposals, contract negotiations, and owner representative services prior to the sale of any debt instruments for financing of the project.

Directing his question to Ms. Reedy and Ms. Erdoes, Chairman Hardy asked whether the sixth consideration would better fit under the discussion of item 1b. He questioned whether the recommendation could be included with item 1b for the final recommendation. Ms. Reedy agreed combining the recommendations would be accurate.

Chairman Hardy questioned if committee members had further discussion on the sixth item. Hearing none, Chairman Hardy announced since many opportunities had been afforded for persons to bring forward their recommendations, he was not going to open the floor for further recommendations. He informed committee members of challenges that had recently surfaced with regard to the LCB, Nevada State Printing Office lease-purchase project. Due to timing, the committee may have an opportunity to address some of the issues and help resolve them. Chairman Hardy requested that Ms. Reedy address some of the concerns that the Office of the State Treasurer had encountered regarding the LCB, Nevada State Printing Office project.

Ms. Reedy advised the committee that lease-purchase agreements presented challenges of getting agencies together, obtaining cooperation, finding individuals who would be willing to take risks in a project, and attaining disclosure through the BOE, BOF, IFC and any other boards that an agency may have to go through. She added there were complications when laws that applied to lease purchase changed. Ms. Reedy said that when dealing in real property and large amounts, the Office of the State Treasurer needed to pay close attention. Ms. Reedy explained that during the due diligence for the securities on the LCB, Nevada State Printing Office project, discovery was made that a law for state lands may require many appraisals and public bid for the state project. Ms. Reedy said lawyers met for approximately ten days with regard to the project.

Providing the committee with some history, Chairman Hardy explained the bill that Ms. Reedy referred to was a bill that passed in the 2005 Legislative Session, Assembly Bill (A.B.) 312, which was introduced by Assemblyman Scott Sibley. Chairman Hardy explained there might be a need for adjustment of the bill to provide for lease purchase.

Continuing, Ms. Reedy explained the Office of the State Treasurer and attorneys were considering two tiers of a problem regarding the LCB, Nevada State Printing Office project:

- Did the law apply to the printing building?
- How would it affect the lease purchase?

Reiterating that lease-purchase agreements were a challenge with many legal snags, Ms. Reedy advised a considerable number of lease-purchase projects failed before ground was even broken. Noting some of the obstacles for the committee, Ms. Reedy said that money for lease-purchase projects was not created and funds had to be paid back. A revenue or expense stream had to exist for use, and a massive amount of legal documents had to be prepared for presentation to the BOE, BOF, IFC, and other boards for their approvals. She said that increasing the system with other burdens would either kill lease purchase as it was known, or it would increase the number of employees required to review and monitor the documents that were necessary. Ms. Reedy opined she was not pleased with either of these options.

Chairman Hardy said it was not his intent to kill lease purchase; it was just the opposite. He said that lease purchase should be a tool available to as many agencies/entities as possible. Chairman Hardy said he would like to obtain recommendations for the committee members' consideration to determine possible remedies for the difficulties encountered in the LCB, Nevada State Printing project.

Ms. Erdoes advised that LCB staff would be willing to work with staff from the Office of the Treasurer and the Bond Counsel to submit descriptions of the issues for the committee. She provided the committee with a brief description of some of the obstacles encountered in the LCB, Nevada State Printing project utilizing the lease-purchase process. Ms. Erdoes explained that lease-purchase provisions required that in order to build a project on state lands, a land lease or a leaseback was required for the land underneath the building. She said that this was almost pro forma, because if the Legislature were to default on the deal and the owner of the building were to get the building back, assurance must be provided that the owner could use the building. Ms. Erdoes said having a competitive bid for such a lease was absurd. Ms. Erdoes advised that A.B. 312 seemed to conflict with the provisions of lease-purchase. She explained staff was attempting to work out issues through statutory interpretation.

Chairman Hardy informed the committee that he was involved with Assemblywoman Kirkpatrick on Assemblyman Sibley's bill (A.B. 312) and at no time did the impact on lease purchase surface during the discussions of the legislation. He said the "law of unintended consequence" was in place regarding the statute.

Chairman Hardy requested Ms. Reedy work with Ms. Erdoes and staff to summarize recommendations and provide them for the committee's consideration. He asked if committee members had any objections to his request. No objections were voiced. Chairman Hardy said one recommendation that was not in the current Work Session document that should be on the next agenda was the removal of the restriction of the three-project limit for the Nevada System of Higher Education (NSHE) if there were not objections from committee members. No objections were voiced.

Continuing, Chairman Hardy said if there were no objections from committee members, he would also like to add the City of Las Vegas' request to allow them and other local municipalities to utilize lease purchase as a recommendation.

Responding to Mr. Daly, who questioned whether the NSHE's limitation constituted three lease-purchase projects per year or three lease-purchase projects between legislative sessions, Chairman Hardy explained he had introduced the legislation upon request of the NSHE. He further explained that when the original lease-purchase act was passed, the NSHE was excluded. Testimony from the Office of the State Treasurer revealed the NSHE was excluded because their representatives were not present in the room when the act was discussed, and others did not want to speak for them. Chairman Hardy said the assumption was, once the issues of lease purchase were resolved, the NSHE would have the lease-purchase tool available to them as other agencies had. Chairman Hardy said the compromise during the legislative session was that the NSHE could proceed with three lease-purchase projects while the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities completed their study to work out the issues.

Mr. Daly said he recalled labor representatives had no issue with the ruling that the NSHE could undertake three lease-purchase projects. He advised it was clarified that the NSHE would pay prevailing wages on the three projects that were allowed. Mr. Daly informed the committee the reason labor representatives were concerned with lease-purchase projects was the experiences labor representatives had with the limited use of lease purchase were not good. Mr. Daly added that not all of these issues had been addressed by the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities. Mr. Daly said he was not opposed to having further discussion of the removal of the three-project limit for NSHE; however, he did not want to have the recommendation go forward without objection due to his further concerns.

Chairman Hardy noted he understood Mr. Daly's need to have assurances that the recommendations adopted by the committee would resolve Mr. Daly's concerns. He opined this was a reasonable position for

Mr. Daly to take. Chairman Hardy requested the recommendation of the removal of the restriction of the three-project limit for the NSHE be included on the final Work Session document.

With regard to Ms. Erdoes' question regarding what the committee would consider local governmental structure for bill drafting purposes, Chairman Hardy said the only local government entity that had specifically requested the right to lease purchase was the City of Las Vegas. He said if other groups were interested, they would have time during the legislative process to come forward and ask to be included. Chairman Hardy indicated other entities were welcome to contact the committee with similar requests.

Chairman Hardy expressed his appreciation for the work committee members and staff had accomplished. He commended staff on distilling the issues down in order to deal with them in an expedited manner. Chairman Hardy called for public comment; he welcomed Dave Rosenberg to the committee.

X. PUBLIC COMMENT.

Dave Rosenberg, Nevada State Office of Energy, introduced himself for the record and informed the committee the Leadership in Energy and Environmental Design (LEED) standards for green buildings that provided property tax abatements to individuals, who build to the LEED standards, had recently passed. He questioned whether individuals who built utilizing lease-purchase contracts could get the property tax abatements when the land was owned by a private individual, as in consideration 1c.

Chairman Hardy thought the answer to Mr. Rosenberg's question was no, but called on Ms. Reedy for her expertise.

Ms. Reedy agreed with Chairman Hardy that the property tax abatement could not be provided when the land was owned by a private individual, such as the case of Casa Grande. Ms. Reedy explained that the land was purchased with the securities; thus the Nevada Real Property Corporation (NRPC) owned the land. With regard Casa Grande, Ms. Reedy advised related documents depicted that since Casa Grande was a state-used building, no property tax was to be paid.

Mr. Rosenberg said it was suggested that should the state default on the lease-purchase contract, the building would go back to the owner. He questioned whether the state would still own the land and lease it back to the owner of the building.

Ms. Reedy confirmed that for the length of the securities issuance, there would be lease payments made for the use of the land by whatever private entity used the building until the time the securities were paid off. She explained that in the end, the state would own the land and the building.

Mr. Rosenberg thanked Ms. Reedy and the committee for the clarification.

Chairman Hardy called for further public comment to come before the committee. Hearing none, Chairman Hardy commented he was please the committee was in a position to help resolve additional issues concerning lease purchase.

It was determined that the next meeting would be held in Carson City on Wednesday, August 30, 2006, and information gathered would be e-mailed to interested parties for their review and input prior to the meeting.

XI. ADJOURNMENT.

Chairman Hardy asked for further comments or questions from committee members. Hearing none, he reiterated his thanks to the committee for their time and adjourned the meeting at 11:38 a.m.

Respectfully submitted,

Denise Larsen, Committee Secretary

APPROVED:

Senator Warren B. Hardy II, Chairman

Date: _____