

**MINUTES OF THE
ADVISORY GROUP TO CONDUCT INTERIM STUDY ON
LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS
BY PUBLIC ENTITIES
(S.B. 426, SECTION 31)
FEBRUARY 23, 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 Thursday, February 23, 2006, in Room 4401 of the Grant Sawyer Building in Las Vegas. The meeting was simultaneously videoconferenced to Room 2135 of the Legislative Building in Carson City.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Warren B. Hardy II, Chairman
Richard "Skip" Daly, Business Manager, Laborer's Local Union 169

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Debbie Smith, Vice Chairman
Andrew Clinger, Director, Department of Administration
James Keenan, Nevada Public Purchasing Study Commission and Purchasing Manager for Douglas County
Patrick Schlosser, Clark and Sullivan Constructors, Inc.
John Sherman, Director of Finance for Washoe County

COMMITTEE MEMBERS ABSENT:

Dan O'Brien, State Public Works Board

STAFF MEMBERS PRESENT:

Jeff Ferguson, Program Analyst, LCB Fiscal Analysis Division
Gary Ghiggeri, Senate Fiscal Analyst, LCB Fiscal Analysis Division
Cheryl Harvey, Secretary, LCB Fiscal Analysis Division
Wil Keane, Principal Deputy Legal Counsel, LCB Legal Division
Tracy Raxter, 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 February 23, 2006, meeting packet prepared and distributed by Legislative Counsel Bureau (LCB) staff
- Exhibit D - Copy of a handout regarding Agenda Item III entitled "Office of the Labor Commissioner Program Review" provided by Michael Tanchek, Office of the Labor Commissioner
- Exhibit E - Copy of the handout entitled "Restated by-Laws of Nevada Real Property Corporation" provided by Robin Reedy, Deputy Treasurer of Debt Management, Office of the State Treasurer
- Exhibit F - Copy of a flow sheet entitled "State of Nevada Lease-Purchase Certificate of Participation Program" provided by Robin Reedy, Deputy Treasurer of Debt Management, Office of the State Treasurer
- Exhibit G - Copy of the handout entitled "Lease-Purchase/Installment-Purchase Financing" provided by John Swendseid, Swendseid & Stern

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 second 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 Thursday, February 23, 2006, at 10:00 a.m. by Chairman Warren B. Hardy. Chairman Hardy welcomed committee members and requested the secretary call roll. It was determined a quorum was present.

II. APPROVAL OF MINUTES OF THE DECEMBER 16, 2005, MEETING.

Chairman Hardy questioned whether committee members had any changes on the minutes of the December 16, 2005, meeting. 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 DECEMBER 16, 2005.

MR. DALY SECONDED THE MOTION.

Chairman Hardy questioned whether committee members had any discussion on the motion. Hearing none, he called for a vote on the motion.

THE MOTION PASSED UNANIMOUSLY.

Chairman Hardy introduced Michael Tanchek to the committee and commended him on his work as the state's Labor Commissioner. Chairman Hardy requested Mr. Tanchek make his presentation on Agenda item III.

III. PRESENTATION ON THE PREVAILING WAGE PROVISIONS AND REQUIREMENTS RELATED TO PUBLIC WORKS PROJECTS.

Michael Tancheck, State of Nevada Labor Commissioner, apprised the committee that he would provide a brief overview of the responsibilities of his office. Referring to the handout entitled "Office of the Labor Commissioner Program Review," (Exhibit D), he noted his office was responsible for the various Nevada Revised Statutes (NRS) listed on the first page of the handout. Mr. Tancheck indicated that approximately 80 percent of the caseload for the Office of the Labor Commissioner entailed review and enforcement of private-sector hours worked, wages, and prevailing-wage laws.

Mr. Tancheck informed the committee that from July 2005 through February 2006, the Office of the Labor Commissioner had processed 409 new projects, representing a value of approximately \$2.4 billion. He advised that the projects were divided fairly evenly between the northern and southern regions in the state; however, in total dollar value, the larger projects were in the south. Mr. Tancheck said the Labor Commissioner's Office had processed over 120 claims relating to prevailing wages since July 2005 and had recovered approximately \$268,000 in wages and \$175,000 in forfeitures for prevailing-wage violations. Mr. Tancheck noted if the pace of the increase in claims continued, the Office of the Labor Commissioner would have an increase of approximately 400 percent in handling complaints and recovering wages, and an increase of 220 percent in collecting forfeitures. He attributed the increase in instances reported to the changes in overtime requirements on prevailing-wage projects and the fact that local governments were more acute to the timeliness of report filings. Mr. Tancheck speculated part of the escalation in reporting instances was due to the increase in undertaking new projects since the financial environment had improved.

Directing the committee back to the handout, (Exhibit D), Mr. Tancheck briefly highlighted for the committee the process of a project as depicted on the flowchart on page 2, entitled "Public Works Milestones." He informed the committee a major area of responsibility for the Office of the Labor Commissioner was the determination and setting of prevailing wages, which was frequently misunderstood by individuals.

Mr. Tancheck pointed out the flowchart on page 3 of the handout, entitled "Prevailing Wage Determinations," illustrated the process utilized by the Office of the Labor Commissioner. In order to determine prevailing wages:

- A survey process was utilized,
- A contractor list was obtained from the State Contractors Board,
- Letters were sent requesting information on specific wages, paid for specific jobs on specific contracts,
- Surveys were collected and reviewed,
- Data from surveys was entered into program to establish preliminary rates, and
- Established proposed final rates were calculated that were based on categories of a clear majority, 40 percent, an average, collective bargaining agreements, the closest county or other.

In response to Chairman Hardy, who inquired what percentage of time the established prevailing wage and the collective bargaining rate were consistent, Mr. Tancheck advised that most of the time, the rates were the same. He said that when survey data for a particular craft was not received (particularly in the rural counties), a collective bargain rate was used through default provisions. Mr. Tancheck explained utilizing the default provision would select information from one of the larger counties, such as Clark County or Washoe County, where the rate had been set through a collective bargaining agreement. He speculated the submittal of data included 20 percent non-collective bargaining to 80 percent collective bargaining to establish the rates.

Chairman Hardy questioned whether the percentages were a result of default or whether, in order to establish a majority (the 40 percent rate), the exact rate must be reported on the survey. He further questioned whether the only way to establish a majority rate was if the surveys reflected a collective bargaining wage. Chairman Hardy said in the private sector, one company would pay \$15.00 per hour and another company would pay \$15.25 per hour for a particular trade; however, if the rate were covered by a collective bargaining agreement, the same rate would be paid.

Mr. Tancheck advised that, conversely, rates were not the same. A hearing was recently conducted for such an issue that arose in Washoe County regarding the proposed rates concerning electricians. Mr. Tancheck explained the system calculated an average rate and concluded there was no clear majority rate for the reasons Chairman Hardy had previously mentioned. Among the spread of rates, there were different rates for the collective bargaining agreements (70 percent of the numbers were from the collective bargaining agreements). Providing another example, Mr. Tancheck said surveys, which were submitted regarding operating engineers (who had group rates under the collective bargaining agreement), had 29 different rates. Mr. Tancheck noted it was the first year he had an opportunity to scrutinize the survey process; he wanted to investigate the process to determine if something could be done to address such issues.

With respect to these issues, Chairman Hardy questioned why the process did not use an average rate. He said with an average rate, wages would be considered for everyone who took the time to submit a survey. Chairman Hardy noted Nevada's process for prevailing wage determinations was similar to that of many other states. He added many in the Legislature and the public assumed an average rate was the process utilized.

Mr. Tancheck agreed most legislators understood the process used for prevailing wage determinations to be an average rate. In a recently conducted survey, no data was listed for one of the classifications in the surveys returned, resulting in a zero rate in that classification. It was determined by the Office of the Labor Commissioner that an average rate based on the Nevada Occupational Employment Statistics (OES) Wage Survey that was performed by the Department of Employment, Training and Rehabilitation (DETR), which provided wage estimates for more than 800 occupations by area and industry, would be used. With the exception of Clark County and Nye County, Mr. Tancheck advised this was the rate in effect for most of Nevada. He

informed the committee the Office of the Labor Commissioner's decision to utilize this average rate was disputed in court.

Continuing his presentation on items considered in determining prevailing wages, Mr. Tancheck said the Office of the Labor Commissioner:

- Published the rates 10 days prior to their effective date,
- Accepted complaints on the published rates,
- Made warranted technical corrections based on review of complaints,
- Allowed for a 30-day window for hearings, and
- Placed rates into effect October 1.

Directing the committee to the last flowchart on page 4 of the handout, (Exhibit D), entitled "Basic Prevailing Wage Violation Analysis," Mr. Tancheck said the process was not as clear-cut as illustrated on the flowchart. He briefly reviewed the process for committee members. Mr. Tancheck advised that if a project was not subject to prevailing wage and some work performed on job sites was not subject to prevailing wage, there would be no violation and the Office of the Labor Commissioner would no longer be involved. If the work performed fell under prevailing wage, an investigation would be opened by the Office of the Labor Commissioner, the governmental body, or the owner of the project. Mr. Tancheck noted the Office of the Labor Commissioner would determine whether workers were correctly classified and whether the pay rate matched the work performed. The next step would be to determine if workers were paid correctly according to the classifications. Lastly, the Office of the Labor Commissioner would ascertain whether the time worked was reported correctly.

Concluding his presentation, Mr. Tancheck apprised the committee that the Office of the Labor Commissioner was currently involved in two major litigations concerning prevailing wages, the Carson Tahoe Hospital project in Northern Nevada and the Littlefield case. Mr. Tancheck advised that the Littlefield litigation and an audit by the Internal Audit Division, Department of Administration, had prompted the Office of the Labor Commissioner to review regulations with regard to improving how upcoming surveys would be conducted. He further advised the Labor Commissioner's Office planned on reviewing and improving job descriptions to provide more clarity for classifications for local governments, contractors, and workers.

Chairman Hardy called for any questions or comments regarding Mr. Tancheck's testimony. Hearing none, he thanked Mr. Tancheck for his presentation and opined that the information provided was very helpful to the committee.

For the record, Chairman Hardy disclosed that he was President of the Associated Builders and Contractors of Southern Nevada. He advised the committee he worked in the construction industry and dealt with issues regarding job classification and prevailing wages on a daily basis. Chairman Hardy apprised the committee that his disclosure letters were on file with the Legislative Counsel Bureau (LCB).

Chairman Hardy informed committee members one of the most difficult issues that contractors encountered was the classification of workers. He related he had

knowledge of contractors who had called the Office of the Labor Commissioner to obtain verbal information on how to classify a worker; later, received complaints with regard to the classification; and subsequently, were found in violation. Chairman Hardy said it was difficult for a contractor to determine a job classification to assign to a worker and equally difficult for the Office of the Labor Commissioner to establish a dictionary of occupational standards. Chairman Hardy opined that with the statutory requirements regarding prequalification, the challenge of initiating these standards would have to be addressed, as the complaints filed against contractors were unfair. Chairman Hardy expressed his encouragement with regard to the issues Mr. Tanchuck indicated he would address in the following years.

With respect to classification, Mr. Tanchuck said the issue required a high level of detailed job descriptions. Illustrating his point, Mr. Tanchuck related that an attorney for one of the contractors posed the question whether a laborer could hold a nail for a carpenter. He apprised the committee the task of welding showed up in ten different job classifications. With respect to job descriptions, Mr. Tanchuck agreed with Chairman Hardy that more clarity provided to contractors, local governments and workers would be beneficial.

Chairman Hardy related there were contractors who intended to violate the law; however, in other cases, contractors were making an honest effort to comply with the law. Chairman Hardy thanked Mr. Tanchuck for his time and commended him and his staff for their efforts in a difficult environment.

IV. PRESENTATION ON LABOR ISSUES RELATED TO LEASE-PURCHASE AGREEMENTS FOR CONSTRUCTION.

Chairman Hardy informed the committee John Rafter would be testifying for Daniel Costella, who was unable to attend the meeting. He indicated both Mr. Rafter and Todd Koch were at the Carson City meeting location. Indicating he had read the letters concerning issues relating to lease-purchase agreements for construction submitted by Mr. Costella and Mr. Koch, Chairman Hardy commended Mr. Costella and Mr. Koch on their efforts to establish a nexus between the problems identified and their relationship to lease purchase. He agreed that the letters identified areas of concern that were worthy of the committee's scrutiny. Although Mr. Costella was scheduled to speak first on the agenda, Chairman Hardy indicated either Mr. Rafter or Mr. Koch could testify first.

Todd Koch, District Council No. 16, Northern Nevada, International Union of Painters and Allied Trades, introduced himself for the record and indicated he would like to read his correspondence to the Advisory Group to Conduct an Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities dated February 9, 2006. He indicated he would then address any questions committee members may have. Mr. Koch read the following into the record:

“As you are aware, I attended the December 16, 2005, hearing and gave some brief remarks indicating that I would be happy to attend this meeting

on February 23, 2006, and testify on some issues that I have direct knowledge of that occurred during the construction phase of the recently completed Richard Bryan Building in Carson City. I can show these issues directly correlate to the procurement of the building using the lease-purchase program.

First, let me state that as a taxpayer in the state of Nevada, I appreciate the intent of the legislation and believe that it has its place in procuring public assets when it is the best option available. I believe, however, that I have some valuable insight to some unintended consequences that were created by this legislation.

The flooring contractor at the new Richard Bryan Building did not pay the benefit package on his workers. These workers are residents of Nevada and your constituents. I notified the project manager at the jobsite in writing that the flooring contractor was severely delinquent in paying his benefits and sent a copy to the Nevada State Public Works Board. In my letter, I made the general contractor aware that NRS Chapter 608.150 made them liable for these payments if their subcontractor did not pay them himself. This same flooring contractor, I might add, was working concurrently on several other Public Works Projects in northern Nevada and was severely delinquent on paying benefits on those projects as well. I notified all general contractors and letting agencies involved with this flooring contractor of their liabilities under NRS Chapter 608.150.

By the end of 2005, we received payments for the benefits from several general contractors, doing Public Works projects, who knew and accepted their lawful responsibilities to pay benefits for these Nevada workers.”

Mr. Koch interjected that on February 22, 2006, additional benefit payments were received for the same contractor from a general contractor working in northern Nevada. Mr. Koch continued with reading his correspondence into the record:

“These same workers did not, however, receive the benefits, which they had earned on the Richard Bryan Building, even though the general contractor was properly notified in the same manner as the other general contractors.

This situation led us to ask the obvious question “Why did the other general contractors on Public Works projects pay for these health insurance, retirement, and training fund benefits as required when the general contractor at the Richard Bryan Building did not?”

I believe the answer has a direct nexus to lease-purchase agreements as used on the Richard Bryan Building.

Normally, when public buildings are built for taxpayers, there is a public process of advertising for bids that are due at a predetermined time. All bids that are responsible and responsive are considered and the low bidder is awarded the project.

This process did not have to be followed for the Richard Bryan Building. Instead, a public entity was given the responsibility of receiving proposals to build a project and then of selecting a project with its construction team. When a public agency is involved in choosing a construction team, they inadvertently take ownership in the construction team. When one owns something, one tends to protect it and one's decision to buy it. This process tends to modify a public agency's responsibilities from one of protecting Nevada's taxpayers and workers to one of protecting the construction team that it chose. Changing a public agency from being a taxpayer advocate to being a construction team advocate is not fair to the public agency and its staff. On the other hand, public advertising and its competitive bidding is a process that creates the atmosphere of public agencies owning public projects and not ownership of a construction company and its project.

So, what we are here for today in working with this committee, is to strengthen this process of lease purchase for the benefit and protection of all. Here is what needs to be addressed to accomplish this:

1. Eliminate bid shopping
2. Eliminate the 50 percent savings clause, which will put the owner of the project back in the role of watchdog
3. Develop a transparent process for any changes to the project
4. Implement standards for oversight and inspection, which are the same as any other public works project
5. Develop criteria to safeguard against the improper use of lease-purchase provisions, such as prevailing wage and bidding requirements, and finally,
6. Develop penalties for any party that violates the lease-purchase agreement.

These are broad recommendations that obviously need further development. In my opinion, they will take the owner out of the conflicted role of owner and advocate and ensure a quality project."

Mr. Koch thanked the committee for their consideration in this matter. Referring to page 37 of the packet, (Exhibit C), Mr. Koch informed the committee an attachment depicting the chronological order of events accompanied his letter to LCB staff for the

committees' review. He offered to furnish documentation regarding any of these events to the committee upon request.

Chairman Hardy thanked Mr. Koch for his testimony and questioned whether committee members had any questions of Mr. Koch.

With respect to the collection of funds owed to the workers involved in the construction of the Richard Bryan Building, Assemblywoman Smith questioned whether the collection was relevant to the work of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities or whether it was coincidental. She wondered if the work of the committee had inspired the payments to be made.

Responding to Assemblywoman Smith's inquiry, Mr. Koch explained that the payments for the workers' benefits for work on the Richard Bryan Building had not yet been made. He further explained a check was received for work performed on another project by the same contractor; however, payment for benefits for the Richard Bryan Building was still outstanding.

Patrick Schlosser, Clark and Sullivan Constructors, Inc., recalled that at the previous meeting of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities, it was determined that prevailing wages were required on the project for the Richard Bryan Building. From a contractor's point of view, Mr. Schlosser disagreed that benefits were not paid due to the lease-purchase system. He opined that the contractor might have been the reason workers' benefits were not paid.

Mr. Koch pointed out the same flooring contractor worked on other Public Work projects and the payments from general contractors and letting agencies were made for workers' benefits on these projects. However, he reiterated that on the project for the Richard Bryan Building, general benefits were not paid and the lease-purchase agreement was the difference.

Chairman Hardy said he wanted to follow up on Mr. Schlosser's statement as it was a germane, threshold question for the purpose of the interim study. Noting the case was made in Mr. Koch's letter that the lack of the requirement for bidding led to the hiring of the contractor for the Richard Bryan Building, Chairman Hardy asked for clarification on what, if anything, in the lease-purchase agreement allowed the contractor to circumvent benefit payments. Chairman Hardy further questioned whether the argument was that lease-purchase agreements provided a "loophole" for the contractor to evade payments of workers' benefits.

Attempting to clarify the issue for the committee, Mr. Koch opined the problems regarding the lack of payments on the project for the Richard Bryan Building were a result of two entities: 1) the general contractor, and 2) the letting agency - the State Public Works Board (SPWB). He further explained that under usual circumstances, letting agencies involved made certain the general contractor ensured payment of

workers' benefits. Since in his experiences with the same contractor regarding other projects, benefit payments had been ensured, Mr. Koch questioned the differences on the Richard Bryan Building project. He called attention to the second recommendation in his letter to the committee that addressed the elimination of the 50 percent savings clause in order to put the owner back in the role of watchdog for a project. Mr. Koch advised that in the particular lease-purchase agreement for the Richard Bryan Building, the clause stated half of money saved (in any manner) on the project would go to the contractor and half to the letting agency (SPWB). Concluding, Mr. Koch said this situation was not proper.

Chairman Hardy said he could understand the reasoning of such a clause; however, he agreed the potential side effects of such clauses in contracts were problematic. In his opinion, Mr. Koch's concern was a legitimate issue for the committee's review and full consideration. Chairman Hardy thanked Mr. Koch for bringing such items to the committee's attention and indicated the committee would give Mr. Koch's recommendations full consideration. Chairman Hardy opined the allegation made against the SPWB was serious, and he wanted to give the SPWB an opportunity to respond to the accusation.

With regard to Chairman Hardy, who requested clarification whether there was something in the lease-purchase contract that permitted the contractor to ignore the obligation of paying workers' benefits, Mr. Koch indicated that he was not aware of anything in the contract that could be identified as a "loophole."

Chairman Hardy indicated he would allow a representative from the SPWB to address the issue brought to light by Mr. Koch at this time.

Gustavo (Gus) Nunez, Deputy Manager, Professional Services, SPWB, appeared before the committee and expressed apologies on behalf of Dan O'Brien's absence. He related Mr. O'Brien was attending arbitration hearings. With regard to correspondence from Mr. Koch and Mr. Costella, Mr. Nunez related he had reviewed the SPWB's pertinent documentation regarding issues addressed in these letters concerning wage and hours. Mr. Nunez apprised the committee that the SPWB prepared four deduction change orders as a result of prevailing wage violations.

Mr. Nunez briefly reviewed for the committee the process implemented regarding complaints received by the SPWB. He explained when the SPWB received a complaint from a union regarding wage and hour violations, the SPWB would open an investigation utilizing SPWB staff. Once a conclusion was reached regarding the investigation, the information was forwarded to the Labor Commissioner, who ratified the data and assessed penalties. Should the decision be appealed, the Labor Commissioner could take further action.

Mr. Nunez read a portion of Change Order #9 concerning the flooring contractor utilized for the Richard Bryan Building project, which indicated four employees were not paid correct wages for 74 calendar days resulting in a forfeiture of \$50 per day, for a total of \$3,700. He apprised the committee that the Labor Commissioner's final determination

reduced the forfeiture against the flooring company to \$250 through the prime contractor. Mr. Nunez explained that since the Labor Commissioner was the final authority with regard to an investigated claim, the SPWB processed the deductive Change Order #9 for the \$250 assessed fine. Mr. Nunez related it was the SPWB's understanding that any further participation by the SPWB regarding the claim was prevented by law.

Continuing, Mr. Nunez informed the committee the SPWB had received a letter from the International Union of Painters and Allied Trades dated June 6, 2005, which indicated that certain workers were not paid the correct wage. He assumed this correspondence prompted the investigation and determination made prior to the change order that was processed on August 5, 2005. Mr. Nunez said that once he spoke to the staff who handled the wage and hour violations, he could provide the committee with further information.

Indicating he did not expect it at today's meeting, Chairman Hardy requested a formal response from the SPWB concerning the allegation that the SPWB overlooked and sided with the contractor in illegal activities based on the 50 percent-saving clause. Stating that this was a serious allegation, Chairman Hardy said he felt the allegation was an important issue for action and response by the committee if it was founded. Ascertaining Mr. Nunez understood the allegation, which had been levied based on the 50 percent-saving clause, Chairman Hardy requested that Mr. Nunez consult with Mr. O'Brien to prepare a report for the committee.

With respect to Chairman Hardy's request, Mr. Nunez indicated that he understood the allegation and representatives from the SPWB would respond. Although he did not have a chance to review the relevant correspondence with Mr. O'Brien, Mr. Nunez opined that conclusions were being reached and blame was being placed prior to the presentation of all the facts.

Chairman Hardy assured Mr. Nunez that until all facts were received, the committee was not assigning blame. He reiterated that such an allegation merited the committee's attention for the sake of all parties involved.

Mr. Koch clarified that two different issues were being addressed. One issue was that of misclassification. He explained that in order to save money, the contractor in question misclassified some workers who were floor coverers as laborers. Mr. Koch commended the SPWB staff on their investigation and determination regarding the complaint made regarding this misclassification.

With regard to the second issue, Mr. Koch requested the committee's permission to read the correspondence of June 6, 2005, previously mentioned by Mr. Nunez. Mr. Koch explained that the letter, written to Jacobsen Construction Company, was personally hand delivered to the project manager on the project. He further explained the letter concerned lease purchase and referred to the Public Works' project number. Mr. Koch read the following into the record:

"Dear Sirs:

As you are aware, Specter Flooring is the flooring contractor covering the above referenced project. Specter Flooring has contracted with Ford and Son Flooring for the labor on the project."

Mr. Koch interjected that Ford and Son Flooring was the contractor in Northern Nevada area.

"Please be advised that Ford and Son Flooring is signatory with this Union and we represent all employees performing work covered by Article 3, work jurisdiction of our collective bargaining agreement. Ford and Son Flooring is not current with payments, which are due for hourly benefits earned by employees working on this project. They, in fact, owe \$7.60 per hour for each employee working on this project.

Nevada Revised Statute 608.150, entitled Original contractor liable for indebtedness for labor incurred by subcontractor or contractor acting under, by or for original contractor; civil action to recover, makes your firm liable for these benefits.

If you have any questions regarding this correspondence, please do not hesitate to contact me."

Mr. Koch informed the committee he went to the job site and obtained the signature of the project manager for Jacobsen Construction Company for receipt of the correspondence and acknowledgement that the project manager had been informed of the law in the state of Nevada that required his company to pay workers' benefits if his subcontractor did not pay. Mr. Koch reported the project manager noted that a copy of the correspondence was to go to the SPWB and, promising to pay the benefits, requested that Mr. Koch not deliver the SPWB's copy of the correspondence. Mr. Koch said he advised the project manager the copy of the letter had already been mailed to the SPWB and a copy of the correspondence signed by the project manager would be sent to SPWB as well. Mr. Koch opined that ignorance of the law in the state of Nevada should not be an excuse; however, he thought it prudent to inform the project manager of the law pertaining to the workers' benefits and his responsibility for the payment.

Continuing, Mr. Koch informed the committee he had made the SPWB aware of the lack of payment by Jacobsen Construction Company and Ford and Son Flooring so they would ensure payment for the benefits as they did in other projects. Responding to Chairman Hardy, who asked if it was his contention that the SPWB did not persuade the construction companies to pay, Mr. Koch said it was a fact they did not.

Chairman Hardy requested a written request from the SPWB representatives regarding the benefit payments.

Directing his question to Mr. Nunez, Skip Daly, Business Manager, Laborer's Local Union 169, asked whether the clause referred to by Mr. Koch regarding the contractor abiding by all laws of the state of Nevada was in the contract for the project. Mr. Nunez confirmed the clause was contained in the contract for the Richard Bryan Building.

Referring to the provision in NRS Chapter 608.150, which states the general contractor was responsible for all labor indebtedness, Mr. Daly said the contractor had apparently not paid the benefits. Mr. Daly questioned whether, since the contractor elected not to follow the agreement in accordance with the collective bargaining agreement and paid workers directly on their check, it was the SPWB's position that the contractor was absolved of their responsibility to pay the benefits.

Responding to Mr. Daly's question, Mr. Nunez said when the SPWB received the correspondence, an investigation was conducted that resulted in an assessment of fines of \$3,700. He added the Office of the Labor Commissioner reduced these fines to \$250 and the contractor was fined \$250. Mr. Nunez testified that, to his knowledge, all requirements within the jurisdiction of the SPWB with respect to prevailing wage had been completed. He said if the SPWB received a claim for an additional violation, they could take action along with the Labor Commissioner.

Mr. Daly clarified the lack of payments for the benefits may not be a prevailing wage issue under the jurisdiction of the Office of the Labor Commissioner. It was Mr. Daly's understanding the payment that the flooring contractor paid the workers, the prevailing-wage rate required (a matter of pennies that resulted in the \$74) with penalties that came up to \$3,700, was one matter. However, Mr. Daly explained, what Mr. Koch was attempting to communicate to the SPWB was the violation of NRS Chapter 608.150. He further explained the contractor paid wages on the workers' checks in excess of what would have been required under the collective bargaining agreement. However, the contractor failed to pay the workers' benefits. Mr. Daly questioned whether the SPWB did not understand Mr. Koch's complaint or the requirements provided in NRS Chapter 608.150. Mr. Daly opined that, according to his understanding of NRS Chapter 608.150, the SPWB was in violation of the law and had taken no action when notified of the violation of contract.

Reviewing the chronological order of events submitted by Mr. Koch depicted on page 37 of the packet, (Exhibit C), Chairman Hardy said he understood that on June 10, 2005, the SPWB was informed by Mr. Koch of the problem of lack of payment on workers' benefits. On July 13, 2005, a determination was written stating the flooring contractor had misclassified its workers. Chairman Hardy said that issue was brought to the Office of the Labor Commissioner, who agreed the flooring company had misclassified the workers. The complaint was apparently appealed to the Office of the Labor Commissioner and fines were reduced. Chairman Hardy noted that on August 5, 2005, the SPWB notified the general contractor of a change order that forfeited \$250 due to the fine levied by the Office of the Labor Commissioner. Chairman Hardy questioned what else the SPWB should have done.

Mr. Daly informed the committee the contractor chose to pay the rate workers received on the workers' checks, which did not comply with prevailing wage. He explained the correction of \$27 was made to each paycheck. Mr. Daly further explained that as far as the Office of the Labor Commissioner was concerned, the proper amount was paid to the workers on their checks. The obligation of workers' benefits, such as the health and welfare under the collective bargaining agreement, was not met according to NRS Chapter 608.150; when the SPWB was informed of the issue, they did not correct it. Although he was unsure if it was related to the lease-purchase element on the project, Mr. Daly observed that the administration on this project was different than other projects.

With regard to the recommendations that Mr. Koch brought before the committee listed on page 37 of the packet, (Exhibit C), Chairman Hardy requested that Mr. Koch provide, for the committee's review, an example of how or what in the lease-purchase contract for the Richard Bryan Building allowed each issue to occur. Providing an example, Chairman Hardy said one instance would be where the process was lacking in transparency for change orders. Chairman Hardy said that if these problems were occurring due to the lease-purchase agreement, they would need to be considered and addressed by the committee. Chairman Hardy indicated the 50 percent savings clause would be reviewed independently. He further indicated that the committee would address Mr. Koch's recommendation regarding projects for the SPWB that did not require bidding, allowing sub-par contractors to receive bids.

Mr. Koch indicated he understood Chairman Hardy's request with respect to the recommendations. He agreed to research and assemble the information for the committee, provided he was allowed ample time.

Chairman Hardy expressed his thanks to Mr. Koch and noted his research on the recommendations would be beneficial to the committee. Chairman Hardy asked if there were further questions for Mr. Koch.

James Keenan, Nevada Public Purchasing Study Commission and Purchasing Manager for Douglas County, requested copies of Mr. Koch's findings when they were available, to circulate to the members of the Nevada Public Purchasing Study Commission for their feedback regarding procurement and contracting issues.

Agreeing with Mr. Keenan's request, Chairman Hardy said the feedback would be beneficial. He advised that once it was determined the lease-purchase agreement was the cause of these problems, the issues would be thoroughly investigated. Chairman Hardy pointed out that ultimately, a review of what the statutes allowed for bid shopping or change order transparency globally might be required. There being no further questions for Mr. Koch, Chairman Hardy welcomed and called for testimony from Mr. Rafter.

John Rafter introduced himself for the record and indicated he represented the Iron Workers Local Union 118. Mr. Rafter announced he was going to read correspondence presented to staff for the committee by Mr. Danny Costella, Business Agent for Iron

Workers Local Union 118, dated February 8, 2006. Mr. Rafter advised the correspondence was in reference to lease-purchase agreements and improper use of public funds. Mr. Rafter requested that any questions or comments regarding the correspondence, or any further information the committee should require on the issue, should be directed to Mr. Costella. Mr. Rafter read the following into the record.

“Dear Mr. Ferguson:

I am in receipt of your correspondence requesting that I submit a written overview of my concerns regarding the lease-purchase agreements as made by public entities within the state and private contractors/construction managers for public works construction. As you know, I have previously testified at length regarding the lease-purchase and the construction of the Natural Resources Building, Project # 03-C50 in Carson City. Please accept this response regarding my observations of the use of lease-purchase agreements for public works construction in Nevada.

Our first concern is in the failure to publicly bid a public works project. The prequalification of contractors is an appropriate method to discern the qualifications of the contractors submitting proposals. It is our opinion that the quality of work previously performed by the contractors and subcontractors submitting bids should have been verified to ensure that only quality contractors were submitting the proposals.

Our second concern is that the responsibility for enforcement of this contract falls upon the agency involved in the contractual agreement, thus changing the role from watchdog to protector. Prior to the construction of this project, ours and other organizations brought up numerous concerns regarding improper licensing of subcontractors and the apparent “splitting” of the subcontract, particularly for the structural steel portion of work. The Public Works Board showed no interest in addressing these concerns by us and other members of the public. The Public Works Board was not amenable in any way to our concerns regarding the numerous troublesome issues with the project.

Our third concern is regarding a portion of the contract, which stated “the amount remaining in the design-builder’s construction contingency at final completion belongs to both Conservation and the design-builder in the ratio of 50 percent Conservation and 50 percent design-builder and may be included in the final request for payment. We believe that this portion of the contract encourages a contractor to cut corners, underpay workers, utilize unfair and unqualified subcontractors, (as evidenced in this contract) in order to cut any costs possible to ensure that a lump sum would be available to them upon completion of the contract over and above the original amount projected.

The contract may have given the awarding body and the contractor an incentive to protect their decisions in order to obtain a portion of the 50 percent savings payment, if as per the contract. This is the language or policy that needs to be changed.

Finally, under the current process, the general contractor has the right to select any subcontractor that has a previous record of performance and is properly licensed to perform the work contracted. The failure of the Public Works Board to enforce their own contract gave the general contractor a great advantage over local Nevada contractors in obtaining the award for this project. The general contractor signed the proposal form, Section 000400, stating that: "the proposer is familiar with all applicable Federal, State and Local laws and regulations... and the proposal is genuine... and the proposer has not sought by collusion to obtain for itself any advantage over any other proposer or the State of Nevada Public Works Board." Were these just shallow words?

In conclusion, it is our opinion that the contract as originally written and signed, (with the exclusion of the 50 percent split for cost savings) was an excellent contract. The failure of the owning agency to enforce its own contract has created a situation where our public monies were not able to be utilized wisely and to the best advantage of the public. We feel that this process, as opposed to traditional bidding, does not protect the public.

If you should have any questions or require any further documentation or information, please contact me at your convenience.

Sincerely,

Danny Costella
Business Agent
Iron Workers Local Union #118"

Chairman Hardy asked if there were any non-substantive questions for Mr. Rafter; there were none. Honoring Mr. Rafter's request, Chairman Hardy instructed committee members to submit any questions they may have of Mr. Costella in writing to staff, who would subsequently draft correspondence outlining the questions. Chairman Hardy requested that Mr. Rafter inform Mr. Costella that he did an excellent, clear and concise job in relating his concerns specifically related to the lease-purchase contract regarding the Richard Bryan Building and that he appreciated those efforts. Chairman Hardy thanked Mr. Rafter for his time.

Thanking the committee, Mr. Rafter indicated he would relate Chairman Hardy's comments. Chairman Hardy welcomed back Mr. Nunez, Deputy Manager, SPWB, to testify on Agenda Item V.

V. DISCUSSION OF FUNCTIONS AND RESPONSIBILITIES OF STATE PUBLIC WORKS BOARD, OVERVIEW OF CONSTRUCTION DELIVERY METHODS, AND EVALUATION OF APPLICABILITY OF EXISTING LAWS RELATING TO PUBLIC WORKS TO LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS.

Mr. Nunez introduced himself for the record and advised the committee he wanted to present a brief history on the SPWB's involvement regarding the project for the Richard Bryan Building. He related the project was the first the SPWB had undertaken under the existing law through the Office of the Treasurer.

Mr. Nunez informed the committee the SPWB had been part of a committee formed, which existed of various state agencies and the budget director, to work on the project. The SPWB's role in the committee was to provide construction budgets and total project cost. In order to determine the size of the building required, the SPWB had to assess the needs of the agencies that would occupy the building with regard to the number of employees who would be housed at the facility and the programs that would be run from the building. To determine financial analysis for the project, the SPWB prepared an outline program to ascertain square footage for the building, common areas and other requirements for the building to develop the construction budget and total project cost.

Continuing, Mr. Nunez explained on a normal Capital Improvement Project (CIP), the SPWB would have engaged the services of an architect or dedicated a project manager (PM) to perform those functions. Reminding the committee that the SPWB was a fee-based agency, Mr. Nunez indicated there was no funding at the time to engage such services. The SPWB had to provide these services and, at the same time, maintain their workload for other projects. He opined the use of such services might have ensured better success at the end of the project in such areas as floor plans. Providing an example of one issue that had emerged, Mr. Nunez said employees who previously had individual offices now only had workstations. It was Mr. Nunez's opinion if funding was appropriated for a potential project, it could be utilized more extensively for the initial planning efforts and employees from the agencies could "buy into" the project. Mr. Nunez advised that since there were no design funds, the plan became a design-build project.

Chairman Hardy pointed out that the committee needed an understanding of the differences between what would be conducted during a traditional CIP project and what would be conducted under a lease-purchase or design-build agreement.

Mr. Nunez advised the SPWB adhered to the NRS for a design-build project with respect to the lease-purchase agreement on the Richard Bryan Building for the selection of the consultant, the proceedings and the contract. He further advised the project was referred to as lease purchase because of the financing used; however, with respect to the design and construction, it was a design-build project that was completed as other design-build projects the SPWB had undertaken.

Mr. Nunez expressed concern that the Office of the Treasurer was exempt from the Public Works Board under NRS Chapter 341, and from the competitive-bidding

requirements under NRS Chapter 338. He explained that according to NRS 341, the SPWB was the building official when a project was on state land. However, since the Office of the Treasurer was exempt from NRS Chapter 341, this became an issue. He informed the committee that the locals, who did not have jurisdiction, would not come on state property. Reiterating the law was silent with regard to the building official on projects on state lands utilizing lease purchase, Mr. Nunez opined clarification was required for future projects to provide third party verification (plan check and inspection, and a certificate of occupancy) for the protection of the owner and the contractor.

In response to Chairman Hardy, who questioned whether the SPWB acted as building official for the Richard Bryan Building and Casa Grande exclusively, as both projects were on state lands, Mr. Nunez affirmed it was the only reason. He explained the jurisdiction would be local if the projects were not on state lands, and the process would be handled through the local building department.

In response to Chairman Hardy, who asked if the lease-purchase agreement and other agreements were similar with regard to the SPWB's responsibility, Mr. Nunez said in the case of the Richard Bryan Building, the financing was conducted separately. However, the design and construction were similar to any other project utilizing design build as a procurement process.

In response to questions from Assemblywoman Smith regarding whether issues could be resolved by clarifying the process, Mr. Nunez advised that either the Interim Finance Committee (IFC) or the Legislature had to approve the process of building a project for the state through the lease-purchase process.

Chairman Hardy advised the committee's goal at this meeting was to identify each issue regarding lease purchase that was a problem for someone (the construction industry, the purchasing entities, or the SPWB). Chairman Hardy indicated once each issue was identified, he would ask staff to draft a letter to everybody in the state who had utilized lease-purchase requesting them to address those issues and provide input for solutions as to how the committee could improve the process, including the transparency of the changes. He encouraged committee members to provide their input on issues to be considered, as well as items regarding lease purchase that were effective.

Recalling there were provisions in the design-build statutes that compensated the contractors or persons who submitted proposals for their participation should they not be successful, Mr. Daly questioned if that were the case on the request for proposal for the Richard Bryan Building.

Answering Mr. Daly's question regarding the compensation, Mr. Nunez replied no compensation was given. He clarified that while the SPWB did follow the NRS for design build, it was not required. Mr. Nunez explained that the lease-purchase law was exempt from any competitive bidding. He speculated that, based on the law, the state could simply handpick a contractor. Mr. Nunez further explained the SPWB chose to go through a type of qualification process, which involved a certain amount of competition.

Mr. Daly stated the provision Mr. Nunez referred to was NRS Chapter 353.590, which stated these projects "... may be conducted as specified in the agreement without complying with the provisions of (a) any law requiring competitive bidding." Mr. Daly said some of the issues the committee had discussed concerned the qualification of the contractors, the licensing of subcontractors and bid shopping. Mr. Daly had understood Mr. Nunez to say the Richard Bryan Building was bid the same as any other design-build project. However, Mr. Nunez's testimony revealed differences. He questioned whether the prerequisite for a contractor to list notification as to who comprised his team (subcontractors) was required with the Richard Bryan Building.

With regard to Mr. Daly's questions, Mr. Nunez related that the NRS (concerning design build) did not require identification of subcontractors at the proposal stage. He added the qualifications of the contractor, the design team and the design-build team as a unit were required on a design-build project. Relating the SPWB tried to follow the design-build NRS to provide fair competition, Mr. Nunez reiterated that since the project was a lease-purchase agreement, these provisions of the law did not have to be followed.

Mr. Daly opined the heart of some of the problems was surfacing with regard to the lease-purchase law. He suggested it would be useful for committee members to see the request for proposals (RFP) for both the Richard Bryan Building project and the Casa Grande project for comparisons to regular bidding statutes and a review of selection criteria, which seemed to be an issue.

Mr. Nunez indicated he would provide the committee with copies of the RFPs and the request for qualifications (RFQ).

Responding to a question from Mr. Keenan concerning which chapter of the NRS regarding design-build provisions the SPWB followed, Mr. Nunez clarified the SPWB followed provisions provided in NRS Chapter 338 for the Richard Bryan Building.

Agreeing with Chairman Hardy that the committee did not have to come up with solutions at this meeting, Assemblywoman Smith pointed out it would be beneficial for staff to request suggestions for improvements for the lease-purchase process. Indicating she felt the process could be better defined, Assemblywoman Smith concurred there had to be solutions for both sides of such projects.

Chairman Hardy asked if there were additional questions of Mr. Nunez. Hearing none, he said Mr. Nunez had also covered issues that were to be discussed in Agenda Item VI C and expressed appreciation for Mr. Nunez's appearance before the committee. Chairman Hardy then welcomed Robin Reedy, Director Glen Whorton and Darrel Rexwinkel for presentations on Agenda Item VI.

VI. OVERVIEW OF NEVADA REAL PROPERTY CORPORATION AND STATE CAPITAL IMPROVEMENT PROJECTS FINANCED THROUGH THE UTILIZATION OF LEASE-PURCHASE AGREEMENTS.

NEVADA REAL PROPERTY CORPORATION (NRPC)

Robin Reedy, Deputy Treasurer of Debt Management, Office of the State Treasurer, extended an apology from Treasurer Krolicki for not being able to attend the meeting. Ms. Reedy indicated she would like to address some of the questions that had been posed during the meeting and present some prepared testimony. She informed the committee the Office of the State Treasurer welcomed a review of the lease-purchase process. Ms. Reedy apprised the committee the Treasurer's Office was proud of the participation and the way lease-purchase progress had worked for the state.

Noting that she had been asked to present information regarding the Nevada Real Property Corporation (NRPC), Ms. Reedy apprised the committee the NRPC was incorporated in 1998 as a non-profit organization with the Secretary of State's Office. She indicated that according to Section 3.01 of the Articles of Incorporation, "The purpose for which the Corporation is organized is to engage in any lawful business activity benefiting the state of Nevada or its investors, including, without limitation, developing; constructing; acquiring; leasing; renting; operating, assigning; selling or conveying real property or facilities in cooperation with the state of Nevada, any trust indenture trustee or any other designated by the state of Nevada." Ms. Reedy informed the committee that the state of Nevada cannot lease property to itself. Thus, the NRPC had been created to facilitate this type of transaction.

Ms. Reedy ascertained committee members received the handout entitled "Restated By-Laws of Nevada Real Property Corporation," (Exhibit E), and the flow sheet entitled "State of Nevada Lease-Purchase Certificate of Participation Program" (Exhibit F). She apprised the committee Section 2.01 of the Articles of Incorporation stated, "Members shall use their best efforts to elect as directors persons who are elected or appointed officials or employees of the state of Nevada." Ms. Reedy said, in this way, there would never be a separate nexus from that corporation and all involved would be responsible people from the state of Nevada.

Continuing, Ms. Reedy apprised the committee Section 2.02 of the Articles of Incorporation stated, "When any vacancy occurs among the directors by death, termination of State of Nevada employment, retirement from State of Nevada employment, loss of State of Nevada elective office, resignation, loss of State of Nevada official capacity, disqualification or other cause, the members, at any regular or special meeting, or at any adjourned meeting thereof, of the remaining directors, by the affirmative vote of a majority thereof, shall elect a successor, if any shall qualify to serve, to hold office for the unexpired portion of the term of the director whose place shall have become vacant and until his successor shall have been elected and shall qualify." Ms. Reedy indicated this section was relatively important, as most of the participants on the original board had left state employment. She listed the following board members/directors for the committee:

- State of Nevada Treasurer,
- State of Nevada Office of the Treasurer Chief Deputy, ex officio secretary to the Board of Finance,

- State of Nevada Director to the Department of Administration, ex officio Secretary to the Board of Examiners,
- State of Nevada, Director of the Department of Corrections, and
- State of Nevada, Manager of the Public Works Board.

Ms. Reedy advised the directors did not receive pay for their services or reimbursement for any of their expenses related to the meeting attendance. Ms. Reedy pointed out if it were required, members could not be paid, as no outside bank account existed for the NRPC.

Ms. Reedy informed the committee the Capital Complex Building, now known as the Richard Bryan Building, was based on the Nevada Capitol Complex Master Plan. With regard to the securities for the Richard Bryan Building, Ms. Reedy apprised the committee securities were issued at a rate of 4.64 percent for 27-year certificates of participation (COP). With regard to the ultimate cost of construction compared to the projected rent that would be paid out through the 27-year period, Ms. Reedy pointed out an estimated \$77 million would have been spent in rent over the same period. However, by utilizing the COPs, the state of Nevada's financing for the principal and interest for the same 27-year period for the project would total approximately \$44 million, resulting in approximately \$33 million in savings for the taxpayers and the benefit of the state of Nevada owning the building.

Ms. Reedy reported that in October 2004, 27-year COPs were issued for the Casa Grande project in the amount of \$22,435,000 at a net interest cost (NIC) of 4.74 percent. She informed the committee that 20-year bonds issued at approximately the same time had a NIC of approximately 4.31 percent and 4.02 percent. Ms. Reedy pointed out the substantial difference in the finance rates. However, comparison of the COPs issued to the revenue bond index revealed little difference and the COPs were sold for the project at greater risk to the security holder without using up the state's debt capacity.

Ms. Reedy informed the committee since 1979, over half of the states in our country, 35 states at last count, had some form of ongoing lease-purchase programs. She explained some states had authorities, building commissions and a mass bureaucracy built to sustain the programs. Ms. Reedy further explained Nevada's lease-purchase program utilized the Office of the Treasurer, with the NRPC, a corporation that had no outside bank accounts and no other employees. Noting the process of lease purchase was not new to the market, Ms. Reedy stated the Office of the Treasurer had tried to learn from the experience of other states and integrate the information in the legislation passed on lease purchase. Ms. Reedy pointed out that while lease purchase had a massively intensive upfront planning and approval process, it could result in a well-built product and a shortened construction period, which would reduce costs.

Ms. Reedy pointed out the main difference between the Casa Grande Building and the Richard Bryan Building was the fact the state of Nevada originally owned the land for the Richard Bryan Building. Should the state decide to "walk away" from the Richard Bryan Building, the state would continue to own the land and receive a

market-based rental allowance based on the unimproved value of the land. The land associated with the Casa Grande project was purchased by the issuance of certificates; therefore, should the state “walk away” from that project, there would be no rental reimbursement (it was paid for by the loan). Ms. Reedy advised that with either project, at the end of the 35 years, the buildings and land would revert to the state of Nevada.

Ms. Reedy advised the committee that while lease-purchase legislation exempted itself from any law requiring competitive bidding or NRS Chapter 341, the Richard Bryan Building and all contracts relating to this project was derived from a competitive process. Revealing she was a layperson with regard to construction and the design-build process, Ms. Reedy requested any questions be deferred for staff with more expertise regarding construction. With regard to the Richard Bryan Building, Ms. Reedy reported the contractor was selected based on several submittals and was chosen from amongst three applicants. Two of the applicants had suggested costs far exceeding those available from the Office of the Treasurer’s estimates of the par amount that the revenues could support in certificates. Ms. Reedy recalled for the committee Mr. Nunez’s earlier testimony that representatives from involved agencies, the SPWB and the Treasurer’s Office convened to determine specifications on the size of the building. Utilizing these projections, revenues were pulled together and estimates were determined regarding how much par amount could be supported to ascertain whether the project was even viable. Ms. Reedy explained these estimates were important in the certificate process. She indicated that members on the committee to discern whether lease purchase was even a viable alternative for the Richard Bryan Building were the State Lands, the Conservation Directors Office, the SPWB, the Office of the Treasurer, the Office of the Attorney General, the outside bond counsel, the Department of Administration and outside construction experts. Ms. Reedy noted prevailing wage was within the lease-purchase statute and that language was clearly included in the contracts of the aforementioned projects.

Continuing, Ms. Reedy explained each project had to be requested by the head of the agency involved. The projects had to be recommended by the Administrator of State Lands, the Director of Administration and the State Treasurer. Ms. Reedy advised the projects were approved by the Legislature. State Lands’ statutes required IFC approval, in addition to the project being approved by the Legislature. She added the Board of Examiners (members are the Governor, Attorney General and Secretary of State) approved all of the contracts. Ms. Reedy further added the Board of Finance (members are the Governor, State Treasurer and State Controller and two banking/accounting officials appointed by the Governor) had to approve the issuance of the certificates. It was Ms. Reedy’s opinion that few bonded or appropriated projects were required to go through as much scrutiny as a lease-purchase project.

Addressing a comment made earlier in the meeting concerning the 50 percent savings clause in the contract, Ms. Reedy reported that the state had a guaranteed maximum-price project. She explained the state elected to have the 50 percent language in the contract as, if the 50 percent savings clause were not included and the project incurred a savings, the savings would all go to the contractor. Ms. Reedy commented that had the project incurred expenses over the guaranteed-maximum price

of the project, the Office of the State Treasurer would have had to appear before the Legislature or the IFC. She further explained that within the contract, any change order that would bring the cost above the guaranteed-maximum price would have had to go through the Office of the Treasurer due to the fact that X amount of principal was issued in the certificate; the Treasurer's Office would not have the money for any change order above that amount.

Ms. Reedy indicated she would like to review the six alternatives in the letter offered by labor with regard to eliminating bid shopping. Ms. Reedy explained that since the building for the Department of Conservation was an office building, the state reasoned they had to do some kind of competitive bidding process for the Richard Bryan Building. She further explained the exemption of competitive bidding in the statute for the state ensured the option of obtaining expertise for a particular requirement in a building for the state. Ms. Reedy said the state reviewed each individual project with regard to the decision of the bidding process.

Chairman Hardy assured Ms. Reedy she would receive a copy of the letter and the committee would ask the Office of the State Treasurer for input concerning any solutions the committee would consider. He called for any questions of Ms. Reedy regarding her testimony.

Responding to Mr. Daly, who questioned the procedures regarding the issuance of bonds and COPs, Ms. Reedy referred to the flowchart she had provided for the committee, entitled "State of Nevada Lease-Purchase Certificate of Participation Program" (Exhibit F). She explained the NRPC issued certificates through the Office of the State Treasurer, who then assigned all responsibilities to a trustee bank. Ms. Reedy further explained that the Office of the State Treasurer made payments, collected revenues, paid principal to the contractor and assured all was balanced. Ms. Reedy further explained the principal paid the contractor and interest was placed in a trust. For payments to be made, a review and approval process was used, which included the Budget Office and the Office of the State Treasurer. Funds were then sent to the trustee who wired to the appropriate recipient for payments.

Responding to Mr. Daly's questions regarding a default or who would own the building should there be a non-appropriation on a project, Ms. Reedy explained the security holders (owners of the COPs) would own the building, would have to pay the state rent on the unimproved land, would have to find a renter for the remaining time left for the 35-year period and arrange for the rent to cover the debt. She added that once the debt was paid off in the 35-year period, the state would own the building and the land. Ms. Reedy noted that in the disclosures for the sale of securities, the risk of non-appropriation was clearly defined and disclosed. This risk factor provided security holders approximately the same rate they would make on revenue issued securities and a better rate than provided by a general obligation (GO) bond.

Chairman Hardy asked whether non-appropriation issues had ever occurred with regard to the COPs. Ms. Reedy responded such issues had happened within the nation; however, it had not been an issue for the state of Nevada. Chairman Hardy concurred

with Mr. Daly that non-appropriation was an important issue for the committee's consideration. He suggested staff make inquiries to see whether non-appropriation had occurred at the local level in Nevada.

Mr. Daly indicated he did not dispute that lease purchase could work; however, he opined the issue should be addressed, especially if a project was on state-owned land. Referring to the Nevada Building Authority v. Hancock ruling, Mr. Daly said the state was actually buying the project, as the state would never allow for non-appropriation to occur.

Chairman Hardy concurred with Mr. Daly on the importance of investigating the repercussions should non-appropriation occur. Chairman Hardy wondered whether the fiscal impact of taking on that liability would outweigh the fiscal impact of the cost if the state did not take on the liability.

Based on the flowchart provided by Ms. Reedy, (Exhibit F), Mr. Daly indicated it was unclear to him why an exemption to competitive bidding would be necessary. Responding to Mr. Daly's concern, Mr. Schlosser explained that in most projects that utilized a lease purchase, the contract was with the development company, not directly with design-build contractor. Mr. Schlosser indicated the Richard Bryan Building contracted directly with Jacobsen Construction Company; whereas, the Casa Grande project contracted with a developer, who received money and hired a contractor from that point. He suggested the proper term for the flowchart might be "developer," rather than "contractor."

Ms. Reedy reminded the committee the flowchart she had furnished for the committee was specifically for the Richard Bryan Building in Carson City.

Indicating that Mr. Schlosser brought up a good point with public-private partnering, Mr. Daly opined that ensuring the developer picks his contractor through competitive bidding may or may not be a detriment as long as prevailing wage was required. However, Mr. Daly felt requiring competitive bidding would eliminate some of the problems.

Mr. Keenan advised the committee another consideration concerning the option of competitive bidding was the ability to negotiate. He said a competitive bid might meet the need of a lower interest rate, but not the quality of construction, or vice versa. Bids could be evaluated for some time without getting the best situation; whereas, the ability to negotiate had many advantages. Commending Ms. Reedy on her "layman's terms," Mr. Keenan said her explanation regarding the 50 percent savings clause was clear and understandable. He said in his profession, the 50 percent savings clause was referred to as incentive contracting. Mr. Keenan explained incentive contracting was a well-established, well-recognized, often used and successful procedure.

Mr. Daly noted the committee needed to be cognizant that the laws concerning lease purchase applied to other public entities in the state, not just the state of Nevada. He

agreed with Mr. Keenan there might be advantages regarding the ability to negotiate; however, he felt there were disadvantages as well.

John Swendseid, Swendseid & Sten, clarified that the flowchart Ms. Reedy provided for the committee was for the procedure for the state of Nevada. He advised the procedures that local governments and other entities outside of state government followed would not necessarily be the same.

Chairman Hardy advised committee members it was clear from Ms. Reedy's presentation that the committee could not separate the fiscal benefits of lease purchase while focusing on the impact on construction. He said the committee needed to review the role, if any, the bid procedures contributed to the fiscal benefits of lease purchase. Chairman Hardy assured Ms. Reedy that those who made the charge that the 50 percent savings clause was detrimental would be asked to demonstrate their view. Any presenter who would bring an allegation before the committee would be held to the standard of providing proof. Chairman Hardy called for any further questions for Ms. Reedy regarding her presentation. Hearing none, he welcomed Director Whorton and requested he present Agenda Item VI B for the committee.

CASA GRANDE TRANSITIONAL HOUSING FACILITY

Glen Whorton, Director, Nevada Department of Corrections (NDOC), introduced himself for the record and informed the committee that the NDOC was the happy recipient of a product of lease purchase, the Casa Grande Transitional Center in Las Vegas. He stated the NDOC was satisfied with the outcome of the project, which was a difficult and confusing project for the department. Director Whorton expressed his appreciation to Ms. Reedy and the staff of the Office of the Treasurer for their participation in the project, as the NDOC would not have accomplished the project without their support.

Director Whorton informed the committee the facility, which arrived on schedule and within the budget, was a functional, durable unit, suitable for the NDOC's needs. He added that thus far, the NDOC had not discovered any construction or design defects and the facility was architecturally appropriate to the surrounding community.

Director Whorton introduced Darrel Rexwinkel, Deputy Director of Support Services, and indicated Mr. Rexwinkel would address issues that were cogent to the committee's study.

Chairman Hardy called for further questions for Director Whorton. Hearing none, he welcomed Mr. Rexwinkel.

Mr. Rexwinkel introduced himself for the record and informed the committee that with the Governor's Study on Corrections, a transitional housing plan for the NDOC was approved in concept by the 2003 Session of the Legislature. He apprised the committee that Assembly Bill 533 appropriated approximately \$2.2 million to the IFC for allocation to the NDOC for FY 2005 for staffing and operation of a transitional housing facility. Mr. Rexwinkel explained that in order to obtain this funding for the facility, the

department was required to complete a comprehensive transitional housing plan and have that plan approved by the Board of Examiners (BOE) and the IFC. He reported the final plan for the transitional housing facility was approved by the IFC on June 16, 2004, as well as a ground lease and a lease-purchase agreement for the development of the transitional housing facility.

Mr. Rexwinkel advised the plan approved by the 2003 Session of the Legislature contemplated a leased facility with a 400-bed capacity and an initial occupancy of 200 beds; however, the plan approved by the IFC changed to a 400-bed facility on a lease-purchase basis. Mr. Rexwinkel explained the change from a lease to a lease purchase was due to the lack of an appropriate facility to lease. He further explained the lease-purchase transaction was accomplished under NRS 353.500 to 363.630, which allowed a state agency to acquire real property through an agreement that extended beyond the biennium in which the agreement was executed if certain conditions were met. Mr. Rexwinkel advised the primary condition was that the state's credit was not offered and future Legislatures were not obligated to continue to fund the agency to pay the lease payments for the facility. Mr. Rexwinkel pointed out, as Ms. Reedy had mentioned, in 35 years the state would own the land and the buildings, even if the state were to default on payments.

Continuing, Mr. Rexwinkel apprised the committee the funding appropriated by the 2003 Legislative Session for FY 2005 was not needed for the staffing and operations of the transitional housing facility since it was not completed in FY 2005. He advised the funding for the 2005-07 biennium for the staffing and operation of a 400-bed facility, which was to begin December 1, 2005, was approved by the 2005 Legislative Session.

Mr. Rexwinkel reported in September 2004, the COPs were sold for the Casa Grande project with proceeds available on October 14, 2004. After much difficulty in locating a suitable location and attempting to obtain zoning permits, NDOC turned to a developer who offered their services and commitment to bring the project to fruition. Noting there was no advance appropriation for the project, Mr. Rexwinkel pointed out that prior to project approval and the sale of the COPs, the developer put their own money and effort into the project with no guarantees. He added the Office of the Treasurer invested professional help, time and money for the project. Mr. Rexwinkel explained that if approvals were declined and the sale of the COPs did not come to fruition, no one would have been paid and the NDOC would still have been in need of a facility.

Because of the issue of acquiring suitable property that would be approved by the local entities in southern Nevada, Mr. Rexwinkel said the NDOC did not feel it was in the best interest of the state or the NDOC to bid shop for the project. He informed the committee that a parcel close to the McCarran International Airport that was privately owned and surrounded on three sides by larger land parcel owned by Clark County (Airport Authority) with deed restrictions had been selected,. Mr. Rexwinkel explained that part of the proceeds from the sale of the COPs was used for the state's acquisition of the property, which dictated project ownership and financing considerations. In turn, the state leased the land to the Nevada Real Property Corporation and improvements were then built on the property.

With regard to issues for the project, it was Mr. Rexwinkel's opinion the most difficult issue was the lack of a funding source to pay for initial professional help for tasks required to be completed prior to the final project approval and sale of the COPs for project financing. This included professional fees for document preparation and review, negotiations, and an owner's representative. He reiterated that several individuals and firms expended substantial amounts with no assurance of payment.

Mr. Rexwinkel reminded the committee that Ms. Reedy touched on fixed funding for the project. Once the COPs were sold, there were no additional sources of funding should monetary project change orders or other project cost increases become necessary. He emphasized this was a fixed-price project, which was closely monitored as the Casa Grande project had to remain within the budget.

Mr. Rexwinkel informed the committee the owner's representative retained by NDOC started work prior to the availability of funding and worked with the developer to get detailed specifications for the design-build project. Once the owner's representative reviewed progress and approved payment plans, NDOC tracked (in detail) what had been accomplished, reviewed the payment plans and forwarded the reviewed materials to the Office of the Treasurer for their approval and payment from the trustee's funds derived from the sale of the COPs.

Mr. Rexwinkel apprised the committee even before the state owned the land, the NDOC determined the SPWB would be the building official for the Casa Grande project as it would eventually be a state project. He referred to a section of the State Administrative Manual (SAM) that indicated the SPWB was to perform building official functions to insure compliance with state standards regardless of the funding source. Since the project was a state project, the SPWB performed functions including plan review, inspections and site inspections. Mr. Rexwinkel advised the developer was selected on a sole source basis; the developer negotiated and retained a contractor from a selection of five different contractors. He further advised a prerequisite of the contractor was prequalification with the SPWB.

Mr. Rexwinkel noted the NDOC and the owner's representative and the developer worked on a detailed list of specifications and considerations for the design-build project. This list of specifications and the developer's work in the field resulted in a quality, useful building for the NDOC. Mr. Rexwinkel informed the committee the NDOC did supplement the design-build project with resources within the NDOC. He explained that one of the NDOC's facility supervisors performed daily, on-site inspections of detailed work during the workweek, which Mr. Rexwinkel opined was beneficial to the NDOC.

Concluding, Mr. Rexwinkel accredited the front-end professional work with the support of Ms. Reedy, various attorneys (the Office of the Treasurer's attorney, the NRPC attorney, the underwriter's attorney) and the developer for the success of the Casa Grande facility. He advised all this professional work was included in the project costs.

Referring to the Development Agreement for Lease Purchase of Casa Grande located on page 43 under tab VI B of the meeting packet, (Exhibit C), Mr. Daly said the developer could pick the consultants, contractor, subcontractor and suppliers in the same manner as if such work was performed by the developer (as if it were a private job). Although Mr. Rexwinkel indicated the contractors were to have prequalification with the SPWB as a prerequisite, Mr. Daly said he found nothing in the development agreement that indicated the prequalification requirement. With regard to safeguards concerning anti-bid shopping, Mr. Daly questioned whether the subcontractors also had to meet the prequalification requirement. He also noted the lack of a requirement regarding daily on-site inspections of the project within the document supplied to the committee.

With regard to Mr. Daly's concerns, Mr. Rexwinkel said the primary responsibility of the on-site inspection was the owner's representative that was selected by the NDOC, who spent time on the site, signed off on the work and approved progress billings. He explained the NDOC had a separate agreement with the owner's representative for those items. Mr. Rexwinkel informed the committee the document of the development agreement beginning on page 43 under tab VI B of the meeting packet, (Exhibit C), was not the final Development Agreement for Lease Purchase for the project. He indicated Item F under Definitions of the final agreement for the committee stated, "Contractor used with respect to the project must be a qualified contractor with the Nevada State Public Works Board prior to commencing construction." Mr. Rexwinkel said the NDOC wanted to ensure the developer retained complete ownership of the quality of work performed so the NDOC looked to the developer, not the contractor to provide a quality project. He noted the Development Agreement for the Lease Purchase of Casa Grande was between the NDOC and a subsidiary company, PH Casa Grande, LLC. Mr. Rexwinkel added the NDOC retained a full indemnity agreement, as well as a development agreement with a company the NDOC worked with for development.

Mr. Daly advised the only agreement committee members had seen was the one provided in the meeting packet. Noting the developer had incentive to perform work without "up-front" compensation, Mr. Daly said he saw no reason some form of competitive bidding under the circumstances of lease purchase would not be used on the project.

Chairman Hardy noted Mr. Daly's point concerning competitive bidding. He said the elimination of profit as a potential motive for companies to get involved in state projects would be problematic. Chairman Hardy indicated he was interested in the fact a lease-purchase agreement was necessary to acquire land. He added there was no control over conditions sellers of land placed on developers, which confirmed lease-purchase was a good tool device for the state. Chairman Hardy questioned the circumstances that caused the NDOC to use lease purchase as a device to acquire the land.

Ms. Reedy informed the committee the projects for a women's correctional facility and a juvenile detention facility (both were projects prior to the lease-purchase legislation) provided education with regard to land acquisition. With regard to supply and demand,

Ms. Reedy explained that with numerous developers and construction companies shopping for the land for the state, land prices suddenly increased in value. Ms. Reedy advised another lesson the two projects provided was to separate the financing from the bidding process. Ms. Reedy indicated these two things were foremost in mind when the state started another corrections' project under lease purchase. Although the company involved had offered to look for property with buildings already constructed for Casa Grande, none of the sites were adequate for the project. The company then pursued land and means to construct the project. Ms. Reedy apprised the committee that the investment of time by the company was substantial. Ms. Reedy advised a portion of the parcel selected adjacent to the McCarran International Airport property was privately owned.

Ms. Reedy pointed out the lease-purchase agreement gave the state the flexibility to move from one piece of land to another (from one complete building to another piece of land), while eliminating the need to go through the levels of details necessary to determine the plan for the cost of the parcel, and whether it would meet legislative intent and the needs of the agency. Ms. Reedy emphasized that the developer involved in the project for Casa Grande was cognizant the state could walk away from the lease-purchase project at anytime, as they had no legislative authority, no approvals or funds. Up to the final approval, the developer took a tremendous risk on the project by putting money down and holding property for the project. Ms. Reedy said this flexibility afforded a certain amount of altruism on the part of the developer for taking the risk and believing in a transitional facility and a certain amount of profit motivation.

Chairman Hardy said that, like it or not, the state had to operate within the marketplace, which with the growth in Southern Nevada and the demand for land equated to loss of control over the potential sellers of land. Chairman Hardy suggested a presentation and discussion from representatives of the market for land development regarding lease purchase. He opined that as land became scarce, developers would consider land more as investments; therefore, leases versus lease-purchase agreements would become more prevalent.

Chairman Hardy congratulated Director Whorton on his appointment and thanked him for his input to the committee. He extended his thanks to Deputy Director Rexwinkel for his presentation.

Responding to Mr. Schlosser, who questioned whether inmate labor was utilized on the Casa Grande facility and if so, whether inmates were paid prevailing wages, Director Whorton affirmed inmates, who were employed by the contractor hired by the development company, were utilized on the project.

Mr. Rexwinkel informed the committee the contractor was certified to the prevailing wage payments. He added that some inmate laborers, who worked for Prison Industries, were used on the project. Prison Industries billed and was paid by the contractor. The inmates employed by Prison Industries were paid minimum wage.

Noting that he had an issue with the use of inmate labor, Mr. Schlosser indicated his company was one of the contractors who competed for the project using full wages in their proposed bid and did not get the contract. Mr. Schlosser opined prevailing wages should be required across the board when utilizing lease/lease-purchase projects for fair competition.

Chairman Hardy called for further questions. He thanked the presenters who addressed the development of the transitional housing facility and indicated they would be called on for their input in future meetings as issues that needed addressing were identified.

Chairman Hardy reminded the committee that at the last meeting, consideration was given to eliminating the financial portion of lease purchase for the committee's consideration. Although committee members and staff had not received any comments from the public relative to issues regarding the financial portion of lease purchase, Chairman Hardy felt it was important for committee members to understand how lease purchase affected public financing. Chairman Hardy welcomed Mr. Swendseid and indicated he would present information on agenda item VII.

VII. PRESENTATION ON COST OF FINANCING PUBLIC WORKS PROJECTS THROUGH LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS.

Ascertaining committee members had received a copy of the handout he had provided entitled "Lease-Purchase/Installment-Purchase Financing," (Exhibit G), Mr. Swendseid indicated he would briefly review the difference in cost to finance something through lease-purchase or an installment-purchase agreement versus a general obligation (GO) bond. Mr. Swendseid agreed with Ms. Reedy's previous statement that it was more expensive to finance with lease-purchase financing than a GO bond.

Mr. Swendseid noted financing with the lease-purchase agreements saved the state of Nevada since the alternative for the state was to rent buildings. Had the alternative to renting been to issue a GO bond for the Richard Bryan Building, the financing costs would have been cheaper.

Mr. Swendseid pointed out the last page of the handout depicted a comparison on a \$20 million project between the cost of a GO bond and the cost of a lease-purchase agreement. Although the percentage of the cost was not much different, on a \$20 million project it amounted to approximately \$.5 million in overall additional costs for the lease purchase as compared to the GO bond.

Continuing, Mr. Swendseid advised that normally when a GO bond was available, it was the financing tool utilized. He further advised that over 95 percent of public financing done in Nevada in the last year, five years or ten years utilized bonds, not lease-purchase. Mr. Swendseid apprised the committee the lease-purchase agreement was used in the 5 percent of cases where bonds did not work. He highlighted for the committee some reasons to utilize lease purchase in Nevada:

- The state of Nevada was close to its debt limit,

- Vendor preference,
- Advantages in the procurement area,
- Diversification of the methods of borrowing money, and
- The inability to issue GO bonds due to election requirements.

Concluding his presentation, Mr. Swendseid said although lease-purchase financing was slightly higher than GO financing, it was an important financial tool for Nevada local governments to continue to use in the 5 percent of the cases when GO financing would not work.

Chairman Hardy asked whether committee members had any questions for Mr. Swendseid. Chairman Hardy questioned whether, as land had become scarcer, sellers of land had increased the demand for lease-purchase financing.

Mr. Swendseid indicated this had not been his observation. It was Mr. Swendseid's opinion that should this demand happen, straight leases would increase, rather than lease purchases. He explained that in Nevada, under a lease-purchase, the government does end up owning the land.

Chairman Hardy said with the scarcity of land, owners of land might see the wisdom in building something to lease on their land. He indicated it would be beneficial for the committee to invite presenters to address the trend of leasing land versus selling or lease purchase to explore this concept. Chairman Hardy thanked Mr. Swendseid for his presentation and indicated the committee would be able to set aside many issues regarding financing; however, it was evident it would not be possible for the committee to separate the impact of financing on lease purchase.

John Sherman, Director of Finance for Washoe County, introduced himself for the record and pointed out the bill that created the committee, Senate Bill 426, required input from a number of different groups, including the Committee on Local Government Finance. He informed the committee at the previous week's meeting of that committee, the topic of lease-purchase/installment-purchase was discussed and the Committee on Local Government Finance found no issues with the lease-purchase/installment-purchase financing method. In response to Chairman Hardy, who asked for clarification whether that was an official position from the Committee on Local Government Finance, Mr. Sherman affirmed it was.

Chairman Hardy indicated the committee had received no other feedback to believe other entities had issues the committee should explore regarding the lease-purchase financing. He suggested, unless committee members had any objections, the issue of the lease purchase as a financing method would be set aside and the committee would focus on issues regarding construction.

With regard to owners of property and the scarcity of land, Ms. Reedy informed the committee one of the lease-purchase projects that the state had been considering was a project for the state of Nevada's Motor Pool Division, who needed to be located close to the airport. The project had changed from a lease-purchase agreement to a straight

lease for the property under consideration. Recognizing the limitation and value of land near the airport, the owner of the selected land had requested a minimum lease. Ms. Reedy pointed out that Chairman Hardy's prediction regarding the trend of leasing land was already occurring.

In response to Assemblywoman Smith, who questioned how close the state was to the state of Nevada's debt limit, Ms. Reedy indicated she did not have the figures at hand. She said typically the limitation of resources of taxes (the 16 or 17 cents) to pay the debt dominated the ability of the state to issue debt for projects.

Chairman Hardy asked if there were additional questions from the committee. He thanked Mr. Swendseid for his presentation.

VIII. DISCUSSION OF ISSUES AND SUGGESTIONS FOR IMPROVEMENT REGARDING STATE STATUTES RELATED TO FINANCING THE ACQUISITION OF REAL PROPERTY, PERSONAL PROPERTY AND IMPROVEMENTS TO REAL PROPERTY THROUGH UTILIZATION OF LEASE-PURCHASE OR INSTALLMENT-PURCHASE AGREEMENTS.

Chairman Hardy advised the committee could begin to focus on recommendations that had been identified at future meetings.

IX. DISCUSSION OF FUTURE AGENDA ITEMS AND NEXT MEETING DATE.

With regard to future agenda items, Chairman Hardy informed committee members he had requested staff to contact representatives of commercial leasing and commercial sales in the state. He advised consideration and a direct discussion of the issues raised by Mr. Koch and Mr. Costella would be necessary to determine whether issues were a result of the lease-purchase agreement. Chairman Hardy indicated these items include the exploration of bid shopping, the 50 percent savings clause, the process for change orders, and the standards for oversight and inspection. He said if any other items that needed addressing occurred to committee members after the meeting, members should contact staff for their consideration on future agendas.

With regard to Mr. Daly, who indicated he would like the committee's consideration and discussion of qualifications regarding prevailing wages with regard to purchasing an existing building, Chairman Hardy agreed it would be an agenda item. Chairman Hardy indicated another predominate subject for future agenda items was the role of the SPWB with regard to lease purchase.

Directing her questions to Mr. Nunez, Assemblywoman Smith asked why the NDOC was intensely involved in the development of the Casa Grande project, while the SPWB was more involved with the Richard Bryan Building versus the Department of Conservation & Natural Resources.

In response to Assemblywoman Smith's inquire regarding involvement, Mr. Nunez explained that on the Richard Bryan Building, the SPWB had been requested to be the

owner representative, manage the project and be the building official; whereas, the SPWB had only been requested to be the building official for the Casa Grande project.

Assemblywoman Smith wondered who made the decision as to who would be the owner representative, manage the project and be the building official. She opined it would be beneficial for the committee to determine the process and oversight on a project.

Ms. Reedy informed the committee the Office of the State Treasurer did not make decisions regarding who would be the owner representative, manage the project and be the building official; it was left up to the agencies involved to decide. She added the decision was also a function of money, location, logistics and the type of building. Ms. Reedy explained that on the Richard Bryan Building, the Department of Conservation & Natural Resources had an interlocal agreement with the SPWB outside of the agreements on lease purchase; whereas, on Casa Grande the NDOC opted to have the SPWB as a building official and hire an architectural firm in the Las Vegas area to complete other work.

Assemblywoman Smith suggested the committee contemplate some commonality or more structure with regard to the decision concerning who would be the owner representative, manage the project and be the building official on lease-purchase projects.

Agreeing this suggestion should be considered as an agenda item, Chairman Hardy asked the SPWB to be prepared to discuss such decisions for the next meeting. Chairman Hardy indicated there would be a few more meetings. He suggested the committee focus on solutions during the next meeting.

It was determined the next meeting would be held on April 20, 2006, at 10:00 a.m. in Las Vegas and videoconference to Carson City. He noted the final meeting would be scheduled in the Carson City where most members are located in order to have all committee members together. Chairman Hardy called for any further items to come before the committee. Hearing none, he called for public comment.

X. PUBLIC COMMENT.

John Madole introduced himself for the record and indicated he represented the Associated General Contractors of Northern Nevada. Mr. Madole related the lease-purchase projects should be subjected to more scrutiny as other projects of the SPWB were. In listening to testimony, it was Mr. Madole's opinion there were weaknesses in the lease-purchase process. He felt the committee was taking the appropriate action to ensure the public would get their value for their construction dollar.

Chairman Hardy expressed his appreciation for Mr. Madole's participation and encouraged Mr. Madole and his group's involvement as the committee investigated and analyzed such matters. There was no response to Chairman Hardy's request for further public comment.

X. ADJOURNMENT.

Chairman Hardy asked for further comments or questions from committee members. Hearing none, he thanked the committee for their time and adjourned the meeting at 1:03 p.m.

Respectfully submitted,

Denise Larsen, Committee Secretary

APPROVED:

Senator Warren B. Hardy II, Chairman

Date:_____