

**MINUTES OF THE MEETING
OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY COMPETITION BETWEEN
LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES
January 23, 2002
Las Vegas, Nevada**

The second meeting of Nevada's Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises for the 2001-2002 interim was held on Wednesday, January 23, 2002, at 9:30 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. This meeting was videoconferenced to Room 3138 of the Legislative Building in Carson City, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Michael Schneider, Chair
Senator Ann O'Connell
Assemblyman David R. Parks

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Randolph J. Townsend
Assemblywoman Dawn Gibbons

COMMITTEE MEMBERS ABSENT

Assemblyman Wendell P. Williams

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

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

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Commission's Subcommittee to Study
Competition Between Local Governments and Private
Enterprises

Date and Time of Meeting: Wednesday, January 23, 2002
9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous video conference

conducted at the following location:

Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

If you are unable attend the meeting, you may listen to it live over the Internet. The address for the legislative website is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks and Introductions

Senator Mike Schneider, Chairman

*II. Approval of the Minutes of the Meeting Held on December 5, 2001, in Las Vegas, Nevada

*III. Brief Overview of Information and Research Relating to Competition Between Local Governments and Private Enterprises

Michael J. Stewart, Senior Research Analyst, Research Division, Legislative Counsel Bureau

IV. Public Testimony

*V. Presentation from the City of Las Vegas Chamber of Commerce Regarding Competition Between Local Governments and Private Enterprises

Kami L. Dempsey, Director of Government Affairs, City of Las Vegas
Chamber of Commerce

*VI. Continuation of Discussion Regarding Potential Competition Between Certain Health Care Providers in Clark County, Nevada, and Review of Follow-Up Information Requested at the December 5, 2001, Meeting of the Subcommittee

Allan Stipe, President and Chief Executive Officer, Sunrise Hospital and Medical Center

Greg Griffin, Chief Executive Officer, Freemont Medical Center

Mike Alastuey, Assistant County Manager, Clark County

*VII. Overview of Government Risk Pools as They Relate to Competition Between Local Governments and Private Enterprises

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool

*VIII. Discussion of Issues Regarding Competition in the Delivery of Child Care and Pre School Services

Gary Vause, Owner, Lit'l Scholar Academy

IX. Public Testimony

X. Adjournment

*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the

meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Kennedy at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's website at www.leg.state.nv.us.

OPENING REMARKS

Chairman Michael Schneider called the meeting to order at 9:45 a.m. He said the private industry displayed a reluctance to participate in the interim study of competition between local governments and private enterprises and enlisted Senator O'Connell's assistance.

APPROVAL OF THE MINUTES OF THE MEETING HELD ON DECEMBER 5, 2001, IN LAS VEGAS, NEVADA

SENATOR O'CONNELL MOVED FOR APPROVAL OF THE MINUTES OF THE MEETING OF THE SUBCOMMITTEE TO STUDY COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES HELD ON DECEMBER 5, 2001, IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY ASSEMBLYMAN PARKS AND CARRIED UNANIMOUSLY.

BRIEF OVERVIEW OF INFORMATION AND RESEARCH RELATING TO COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES

Michael J. Stewart

Michael J. Stewart, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City, Nevada, referred members to a packet of information (**Exhibit A**) and reviewed the documents contained within. He said the subcommittee would hear testimony on contracting and listed the following two reports as reference: (1) the State of Texas Auditor's Office report, titled "Best Practices and Guidelines for Effectively Using a Contract Workforce"; and (2) the Washington State Auditor's Office report, titled "Special Audit of State of Washington Contracting Practices: Architecture and Engineering, Construction, Purchased Services, Personal Services." Mr. Stewart said the first report detailed staffing strategies, cost effectiveness, legal issues, productivity, and the consequences of such for state agencies utilizing contracts. The second report, the results of an audit, determined that Washington State's agencies have established adequate contract procurement, monitoring, and payment controls. He noted that if the subcommittee chooses to create a model for privatization in Nevada, it may wish to incorporate the positive features of the two reports.

Responding to requests by Senator O'Connell, Mr. Stewart agreed to provide legislation from the States of Colorado and Michigan, which sets forth a model of privatization for governments in competition with small businesses. He said he would also provide information on "fail to perform penalties" incurred by private businesses under contract with the state.

Concluding, Mr. Stewart said the best practices report and an analysis of change orders, prepared by the State of Texas, might have particular relevance to the subcommittee, as well as other documents in Exhibit A detailing privatization in the prison industry, schools, and certain water utilities.

Responding to a request by Senator O'Connell, Mr. Stewart agreed to research the incidence of unscrupulous "lowball" bidding and subsequent change orders submitted by contractors in Nevada. He identified the risks listed by the State of Washington in noncompliance or fraud occurring in three areas: (1) improper procurement procedures; (2) inflation due to improper change orders and contract payments; and (3) agency contract personnel with improper beneficial interests in contracts under their supervision.

Mr. Stewart agreed to supply the subcommittee with a comparison of change orders submitted to the State of Nevada versus the State of Washington, at Assemblywoman Gibbons' request.

Senator O'Connell suggested that the subcommittee focus the direction of the study based on the information supplied by Mr. Stewart.

PUBLIC TESTIMONY

Phil Stout

Phil Stout, Executive Director, Nevada Association of Independent Businesses, Henderson, Nevada, distributed copies of an article from the *Las Vegas Review-Journal* regarding the Henderson convention center (**Exhibit B**). He said that the article demonstrated how government (the City of Henderson) unfairly competes with private enterprise through plans to increase the capacity of the convention center, offer less expensive rates, and pay fewer taxes. Mr. Stout noted that the Las Vegas Convention Center operated in a similarly unfair manner through plans to expand the center's ballroom space to rival private ballrooms on the "strip." He asked the subcommittee to be aware of the common practice of local governments using an unfair advantage when competing with private businesses for convention services.

John Madole

John Madole, Nevada Chapter, Associated General Contractors (AGC) Northern Nevada, Carson City, briefed members on a recent meeting with local governments to openly discuss AGC concerns and find solutions outside of legislation. He said the AGC would most likely request changes to *Nevada Revised Statutes* (NRS) 338.143, which addresses when local governments may or may not perform construction work with their own forces. Mr. Madole recommended that NRS 338.143 be amended to include more fiscal accountability by local governments to ensure that budgets are adhered to. He also recommended that local government be compliant with specifications that would be enforced only when a private contractor performed the work.

Concluding, Mr. Madole said he is aware that a street or road department can occasionally respond better than a private contractor, but he would like to see local government demonstrate why it is the best way to deliver service in those cases. He said that another meeting is scheduled for the AGC and local government representatives to develop language modifying the NRS to include more flexibility in the bidding process for private contractors.

Senator O'Connell pointed out that increased insurance costs could be detrimental to private carriers in a manner similar to the high cost of malpractice insurance in the medical profession. She asked Mr. Madole to explain the distinctions in insurance standards between local government, private contractors, the insurance carriers, and the attorneys representing clients injured on the job. Mr. Madole said that risks are shifted to place unfair insurance burdens on private contractors such as a requirement to insure subcontractors. He added that the county would not impose that requirement on itself. He said he would provide additional information on this topic.

Senator Townsend requested that Mr. Madole share his opinion of the statute requiring local government to accept the lowest responsible bidder. Senator Townsend noted that the status of the "lowest bid" is altered with the submission of change orders; a practice used to make up for necessary shortfalls once a job is started. As far as the life of the project is concerned, he said that the burden on future taxpayers should be protected as well. He asked if AGC had any flexibility on these issues.

Mr. Madole said that certain types of construction projects are easier to quantify, such as energy. However, highway construction projects are not as simple, and contracts include performance measures that can extend 10 years to 15 years into the future. He cautioned that long-term maintenance commitments would price smaller, independent companies out of the market. Mr. Madole said that the quest of the lowest cost should begin with a good design for any project, but owners (private or governmental) want the best deal. He said that a number of pressures are brought to bear on designers who then make unrealistic promises.

Responding to a comment by Assemblywoman Gibbons, Mr. Madole explained that it was not possible to compare

government or “force account” job contracts with private carriers. When local governments perform jobs, there is no accountability on change orders. He said that there are occasions where change orders are necessary to compensate for a flawed project design. He explained the history of change orders to Ms. Gibbons.

Responding to a remark by Senator Townsend, Mr. Madole referred to proposed legislation that requires certain projects to hire a contractor as a consultant. The contractor reviews the design and determines if the project is appropriate for the cost. He said that this practice increases the overall cost of the project but said the investment prevents more costly change orders.

Senator Townsend remarked that the price for an independent project manager is negligible compared to the cost of projects that spiral out of control. He suggested that the subcommittee consider this approach in order to give taxpayers an opportunity to gain back a small return on their “investment.” He said a system of checks and balances is needed for the bidder, the project designer, the staff working on the projects, the project itself, and ultimately, the taxpayer.

Steve Holloway

Steve Holloway, Executive Vice President, AGC Southern Nevada, Las Vegas, Nevada, said that Mr. Madole’s reference to project design review is called constructability and review, and was proposed in a bill that was defeated during the 2001 Session. He said the review was historically practiced frequently throughout Nevada but now public agencies seem less interested in consulting with contractors on the constructability of a project. He said that most change orders are the result of poor design or specifications, and it is not the contractors who initiate most changes on a job.

Assemblywoman Gibbons suggested that change orders be tracked to discourage incidences of favoritism for public companies over private enterprises. She said she worked on a project with the Reno Airport Authority and witnessed a potential for abuse through the change order system.

Mr. Holloway repeated that most change orders are a direct result of inadequate design. He said that constructability and review could eliminate the need for change orders on a project before the bidding process began. He said that provisions in Chapter 338 of the NRS define contracting between government and private enterprises and sets appropriate standards on governmental use of force accounts.

Concluding, Mr. Holloway said AGC would continue to seek latitude for smaller contract jobs (those projects under \$100,000). He said both northern and southern AGC have agreed to work with counties and public work agencies to develop language in enabling legislation to permit such latitude.

Mary Walker

Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties, Nevada, referred to the meeting with public works, local government, and AGC representatives, and identified additional flexibilities as eliminating “red tape” in the bidding process of smaller projects and increasing the \$100,000 threshold. She said that lowest responsible bidder requirement creates problems for rural communities because they lack the resources of the district attorney’s office. Many builders purposely submit a low bid, get the contract, and then return with many change orders. She said that local government will request flexibility in the requirement that the low bid always wins the contract.

Responding to a question by Assemblywoman Gibbons, Mr. Holloway explained that the definition of “best bid” is addressed in statute by the language “lowest responsible and responsive bidder.” A responsive bidder means the bid conforms to the specifications required by the authorizing agency. An example of a nonresponsive bid is one that fails to list every subcontractor performing more than 5 percent of the work. He explained that a responsible bid is defined by the regulations in many public works agencies and addresses the criteria and prequalification of bidders. An example of an irresponsible bidder is one that cannot be bonded for a project, or the bidder has been convicted of a crime. He said that refined prequalification criteria will be addressed in legislation during the 2003 Session.

Responding to a question by Senator O’Connell, Ms. Walker explained that Douglas, and Lyon Counties have sovereign immunity and are not subject to malpractice insurance due to their local government status.

Responding to a question by Senator O’Connell, Mr. Holloway said that AGC’s insurance costs for a contractor are “astronomical.” Last year, liability insurance increased from 140 percent to 400 percent.

Wayne Carlson

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool, Carson City, said that sovereign immunity is only applicable to governments and has a tort cap of \$50,000 per claimant cause of action. He said this does not extend to the private sector, or to a contractor hired by a local government.

Mr. Carlson explained that risk management tends to transfer risk to the organization most directly associated with it; for example, to the contractor who has control of the job site. He said that because the government can be named in a lawsuit alongside a contractor, the government wants to be protected and defended by the same insurance company as the contractor. He said the cost of adding local government to the contractor’s insurance is generally under 20 percent of the total cost of insurance for the project. This requirement exists because potential plaintiffs seek to name the government as an additional defendant on an injury case against a contractor. He explained that the issue is further complicated by joint liability cases. In every instance, Mr. Carlson said it is prudent to have all parties insured on the second contract.

Concluding, Mr. Carlson agreed that the present insurance market “is a mess, and costs are going up for everyone, including the government sector.”

The subcommittee engaged in a discussion of the issues revealed in public comment.

Responding to a question by Senator O’Connell, Mr. Holloway said that AGC could not document the number of contractors that left Nevada due to its lack of tort reform. He said many contractors with AGC no longer perform residential work because of Nevada’s construction defect law and the inability of contractors to purchase meaningful construction defect insurance on the current market. He said there are only one or two insurers that will provide this costly insurance, but the excessive waivers and stipulations within it dilute any real coverage for the contractor.

Responding to several comments by Assemblywoman Gibbons, Mr. Holloway explained changing the certificate of eligibility to allow latitude for smaller companies could unwittingly encourage out-of-state “fly-by-night operators” to bid on Nevada projects. He said the purpose of the certificate of eligibility is to ensure that a bidder has stability and a knowledge base for bidders preference. He further recommended against changing the certificate of eligibility to discourage a large quantity of bids and said the current certification appropriately screens for quality. Mr. Holloway acknowledged that rural areas experience problems in locating contractors to bid on projects, and suggested that expediency may be achieved by granting flexibility to the bidding process on smaller jobs.

Chairman Schneider acknowledged the cooperative effort between local governments and representatives from AGC in addressing issues to find solutions outside of legislation and to develop appropriate language for those issues that required legislation.

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PRESENTATION FROM THE CITY OF LAS VEGAS CHAMBER OF COMMERCE REGARDING COMPETITION BETWEEN LOCAL GOVERNMENT AND PRIVATE ENTERPRISES

Kami L. Dempsey

Kami L. Dempsey, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, said the business community supports the interim study and appreciates the opportunity to implement strong policies regarding government or public entities getting involved with private enterprise. She said the negative impacts of government on private companies are too numerous to list, however, the following are general principals of why public entities should not compete with private markets:

- Governments have a 200 year-old tradition of noninvolvement in private practice;
- The American enterprise system should be preserved because citizens support the government through income

taxes;

- There is no limit to the number of services or products that the government can provide that the private industry is currently supplying;
- Tax dollars are depleted in areas that government operates as a business, such as museums or libraries, because government does not collect or charge taxes;
- The free market recognizes that all participants compete on the same playing field. A business that is governmentalized does not pay taxes;
- The unfair advantages that public entities have over private corporations are best exemplified in the health care industry;
- Competition provides an overall better quality of service or product and comparative prices for the consumer;
- The more revenue generated by government agencies, the greater potential for the government to offset taxes; and
- Business owners want to partner with local government and not directly compete with them.

Ms. Dempsey identified the following areas as potential partnerships between private businesses and local governments: (1) state and local printing services; (2) minor vehicle repairs on public vehicles; (3) human resources functions; (4) public school buses; (5) janitorial services; (6) security services; and (7) the State Motor Pool.

Concluding, Ms. Dempsey recommended that government pass a set of standards before entering into competition with an established company that is currently providing that service. She said it is crucial that private industry fund government through taxes, but leaders must realize that private industry cannot fairly compete against government.

Senator Townsend requested that Ms. Dempsey provide a current list of private enterprises that are in competition with local government. He said the issue is centered on the consumer and what level of service or product is received.

Chairman Schneider requested that Ms. Dempsey also provide a list of private companies driven out of business by the government going into that same line of business.

**CONTINUATION OF DISCUSSION REGARDING POTENTIAL COMPETITION BETWEEN CERTAIN
HEALTH CARE PROVIDERS IN CLARK COUNTY, NEVADA, AND REVIEW OF FOLLOW-UP
INFORMATION REQUESTED AT THE
DECEMBER 5, 2001, MEETING OF THE SUBCOMMITTEE**

Allan Stipe

Allan Stipe, President and Chief Executive Officer, Sunrise Hospital and Medical Center, Las Vegas, stated that Sunrise Hospital and Medical Center does not seek to close operations or limit the growth of the University Medical Center's (UMC's) Quick Care Centers (QCCs). He said the private sector needs a level playing field to compete with the government in the field of health care, especially in the area of governmental protections in medical malpractice and liability insurance issues.

Continuing, Mr. Stipe referred to a report by UMC (**Exhibit A**) and noted a \$12 million revenue loss last year from the QCCs, but said UMC benefited from \$20 million in referrals to the hospital. He referred to Nevada's Corporate Practice of Medicine Law and an unnamed federal statute and said private sector hospitals cannot hire physicians. The UMC however, can hire physicians. Additionally, he explained that the private sector must demonstrate medical malpractice insurance for \$1 million and coverage to \$3 million.

Responding to questions by Senator O'Connell, Mr. Stipe said physicians hired by UMC are covered under sovereign immunity as county employees and are not subject to escalating malpractice and liability insurance fees. He said that as tempting as working for the government may be, strong elements and motivations still exist which compel many physicians to pursue private practice. He said Nevada's tort laws may negatively impact private practice in the immediate future.

Concluding, Mr. Stipe said UMC can bid for managed care agreements as an organization while the private sector cannot utilize that operating model. He suggested that guidelines be established to separate the quick care operations from hospital operations in an effort to level the playing field.

Senator O'Connell identified Mr. Stipe's major concern being that UMC's loss of \$12 million was offset by a gain of \$20 million made through QCC referrals. Also, UMC can employ physicians in QCCs and direct them to refer patients or services to UMC while federal law does not allow a private corporation to own a medical office building, employ physicians, or allow any atmosphere of influence be placed on a physician to affect the referral pattern.

Greg Griffin

Greg Griffin, Chief Executive Officer, Freemont Medical Center, Las Vegas, requested legislative assistance to level the playing field for private business that are forced to compete with governmental entities, specifically in reference to UMC's QCCs. He said UMC is "giving away \$12 million of taxpayer money to buy hospital market share by predatory pricing and giving away primary care services at below their operating costs."

Mr. Griffin said that QCCs currently collect \$71 per visit while spending \$96 per visit, amounting to a \$25 loss per visit on 500,000 visits, over 90 percent of which are patients with insurance. He pointed out that a business in the real world could not exist by spending 111 percent of its revenue on salary and benefits. He stated that either QCCs expenses are too high or their revenue is too low.

Concluding, Mr. Griffin stated his objection to the county "going into business in order to generate revenue." He said there is no philosophical justification for entering the free market because the county does not like the bottom line of providing a service, such as indigent care.

Chairman Schneider pointed out that UMC historically made a "cash call" to the taxpayers on a regular basis. But since UMC is "acting more like a business," the public is receiving medical services at a reasonable rate and the taxpayers are not losing money.

Mr. Griffin opined that UMC intentionally loses money because the objective is to fill hospital beds. He said this practice is illegal for the private sector and continued his discussion of QCCs charge-per-visit, physician salaries, overhead, and benefit package.

Responding to a comment by Senator O'Connell, Mr. Griffin said some physicians left Fremont Medical Center to seek employment at the QCCs and a number of physicians who once had smaller private practices have joined Fremont Medical Center due to increasing malpractice insurance costs. He said Fremont Medical Center pays malpractice insurance for its physicians.

Senator Townsend said a role for government is created by public demands for necessities that are not being met or served adequately by the private sector. He noted that there is a need for health care in southern Nevada and the private sector was either unwilling, unable, or made a conscious decision that there was not a profit to be made in entering a certain segment of the health care industry. He said there is a role for a QCC in an outlying area to protect the health of the individuals in that area. However, if the motivation is to establish a QCC as a revenue generator to offset costs in the public sector (as stated where QCC charged well below actual costs), then that is disingenuous as a public policy and needs to be examined. Continuing, Senator Townsend said that if there is a segment in southern Nevada that needs a QCC or some medical component that the private sector does not provide, then the service should be performed at cost and not below cost for obvious reasons.

Senator Townsend recognized the opinion of Kimberly A. Morgan, Chief Deputy Legislative Counsel, LCB, Carson City, being that physicians employed by the State of Nevada are protected under sovereign immunity.

Mike Alastuey

Mike Alastuey, Assistant County Manager, Clark County, addressed comments directed at UMC and QCCs earlier in the meeting and offered the following explanations:

- Clark County opened QCCs in 14 locations in the Las Vegas valley during the late 1980s. Six of the 14 QCCs are located in high need areas, which refutes the rumor that UMC asked the county to locate QCCs in only profitable areas.
- On the issues of sovereign immunity and the determination of liability as it applies to the exodus of physicians from private practice to public service, it is suggested that issues in the law, which increase liability, be governed and made subject to procedural requirements to monitor settlement figures and resulting insurance premiums.
- The UMC has 20 percent of the inpatient beds in Clark County and 17 percent of the primary care physicians including family practice, internists, and pediatricians. These percentages are similarly spread among all the larger Clark County hospital systems, demonstrating that there is not a massive number of physicians seeking employment with UMC and the QCCs for the purpose of practicing under sovereign immunity.
- Accusations of permissible financial relationships between hospitals/physicians and the public/private sector are unreliable because that information is typically proprietary to the extent that it is legally allowed. There are opportunities for business relationships between physicians and hospitals in real estate and other areas. Likewise, some hospitals have participated in revenue guarantee arrangements to induce physicians to establish practices.
- Implications that QCCs engaged in practices where managed care operators approached UMC with rates that might be unacceptable to other operators are anecdotal at best. Rate discussions are confidential and individuals involved in such negotiations are not allowed to share sensitive information including from whom such offers were made. The subcommittee should exercise caution when listening to underbidding accusations because that information is not verifiable.
- The UMC's direct and indirectly assigned costs resulted in book losses of approximately \$12 million at the quick care primary care locations; half of those losses were related to direct costs at the sites. The remaining losses were due to assigned overhead. The subcommittee repeatedly hears criticism of individuals who interpret these figures to include payroll services, human resources, supplies, storage, and other costs occurring outside of the hospital system that supports the QCCs. Even though QCCs did not actually pay for these expenses, UMC assigned a book cost for overhead, which resulted in the \$12 million netted against the \$20 million gain at the hospital. That leaves an overall net gain of \$7.7 million.
- The county is charged with treating all patients within its boundaries and county hospitals are typically referred to as "the hospital of last resort." Private hospitals have the ability to treat an emergent need, stabilize the patient, and make a referral. The UMC does not have this opportunity. It does, however, have the responsibility to retain the patient throughout the course of treatment. Therefore, the playing field is not level in regards to treatment responsibility. Given this stipulation, attempts to level the playing field are not reasonable given the financial obligations attached to UMC's treatment responsibility.

Responding to a comment by Senator O'Connell, Mr. Alastuey said research was conducted to determine the proportion of beds within the UMC system and some specific outpatient information. Senator O'Connell said she recalled that the projected growth and expansion of QCCs over the next decade included gaining approximately 70 percent of the market share.

Mr. Alastuey then began his presentation by announcing that a meeting and subsequent survey of clinic operators was completed. The operators were a representative sample from 30 clinics throughout Las Vegas. The survey asked for the number of physicians on site, hours of operation, coverage for nursing/physicians' assistants/and other staff, and

type of equipment, and polled to determine if the clinic subjected itself to joint accreditation standards. The results of the study will determine the programmatic and service differences between clinics. He offered to share these results, along with patient opinion polls, to the subcommittee when available.

Continuing, Mr. Alastuey reported that all of the clinic operators at the meeting said they envisioned a public hospital to exclusively care for indigents. He said UMC does not wish to return to this status. Indigents now receive care throughout the QCC system and disbanding them could cause a substantial disruption to medical care access and a deviation from any market direction that is acceptable to the public.

Mr. Alastuey said the subcommittee requested UMC's operating requirements at its last meeting and he distributed two documents (**Exhibit D and Exhibit E**). He said UMC has a mandate to "treat all and treat all fully." He said UMC is publicly governed and the audit statements are a matter of public record.

Further, Mr. Alastuey said the events of September 2001 have negatively impacted health care in Clark County as evidenced by a 4 percent payer-mix shift in the QCCs within the past two months. The shift represents 4 percent of self-pay, including non-paying patients, replacing approximately 20,000 insured patients. He said that UMC is closely monitoring this recent shift to determine if the trend of uninsured and non-paying customers increases at the current rate. He said Clark County's definition of indigent does not encompass the recent influx of displaced workers at this time. These workers represent the next population at greatest risk for losing medical benefits and eventually meeting the county's definition of indigent. At Senator O'Connell's request, Mr. Alastuey said he would provide the subcommittee with UMC's payer-source tracking.

Concluding, Mr. Alastuey said that UMC is required to provide emergency services and its QCCs serve more patients than all of the emergency rooms throughout the valley. He referred members to divert statistics contained in Exhibit D and explained that Clark County is experiencing problems with overcrowding in emergency rooms which causes a facility to activate divert status protocols.

Chairman Schneider referred to Exhibit E and asked for clarification. Mr. Alastuey said it represented UMC's regulations and mandates, encompassing approximately three inches worth of paper. He added that the private sector is not subject to these regulations and mandates.

Responding to a comment by Chairman Schneider regarding the ability of Sunrise Hospital and Medical Center to staff, own, or buy-into QCCs, Mr. Alastuey deferred to legal counsel. He said there has been discussion of real estate arrangements and ownership interest, but he could not address the legal aspects of such discussions.

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PUBLIC TESTIMONY
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Robert Barengo

Robert Barengo, Sunrise Hospital and Medical Center, Las Vegas, said Mr. Alastuey's testimony did not include the requirement that all hospitals in Nevada provide emergency care to a patient regardless of that patient's financial status. He said all hospitals share the same burden of providing emergency care under "anti-dumping" statutes (Chapter 439B of the NRS), which were approved in 1987. Anti-dumping legislation makes it unlawful for any hospital in Nevada to stabilize a patient and "dump him" or transfer him to another facility without appropriate authority by the patient, or his legal representative, and the proposed hospital. He reiterated, "The burdens are the same on both kinds of hospitals."

Larry Preston

Larry Preston, President, Pinnacle Medical Management, LLC, Las Vegas, said he was asked at the last meeting of the subcommittee to prepare information on what private physicians or groups could not do, but UMC could, and what state or federal legislation issues could be reviewed for the committee. He presented those responses in a document (**Exhibit F**) and listed several examples:

- Private physicians do not have malpractice limits placed on them, while UMC physicians do have a cap. While private physicians do not benefit from tort reform and are unfairly being forced out of business because

insurance carriers have increased premiums, UMC enjoys all the benefits of tort reform. Nevada does not have the physician base to cover large tort awards.

- Private physicians are barred from employing and dictating physician practices and referral patterns (federal “Stark” regulations), yet UMC can do both. The Stark rules bar physicians from entering into referral relationships with other entities or physicians that would create remuneration back to the physician. The following services cannot be owned by a physician outside of the group safe harbor provisions, but can be directed and controlled by UMC: (1) clinical laboratories; (2) physical therapy; (3) occupational therapy; (4) radiology; (5) radiation therapy; (6) durable medical equipment and supplies; (7) prosthetics and orthotic devices; (8) home health services; (9) outpatient prescription drugs; and (10) inpatient and outpatient hospital services.
- Private physicians cannot receive payment or inducements from specialists or companies selling these services. The UMC admits that they control all of the referrals of patients seen by QCCs to only physicians who admit to UMC.
- Compensation for private physicians is dictated by Stark rules, including productivity bonuses, profit sharing, and employee agreements. The UMC has no barrier to creative employment opportunities and may bonus and pay their physicians any amounts, regardless of the financial viability of these decisions.
- The corporate practice of medicine in southern Nevada does not allow hospitals to employ physicians due to state opinions and federal law. The UMC employs physicians and can direct care and referrals because they are a governmental agency.

Concluding, Mr. Preston said that the unfair double standards imposed on private physicians make competition unrealistic. He refuted parts of Mr. Alastuey’s testimony and said UMC pays physicians more, offers a generous benefit package, and leverages employers and insurance companies into signing contracts, yet still loses \$12 million per year to QCCs. Mr. Preston remarked, “Only the tax donations of our generous citizens have allowed this to continue. . . I don’t think our taxpayers are winning when \$12 million is being given away.”

Glen Arnodo

Glen Arnodo, Culinary Worker’s Union, Las Vegas, said he was not an expert on health care but appreciated QCCs’ hours of operation and level of service. He pointed out that children rarely become ill Monday through Friday during business hours. Additionally, Las Vegas is a city that is open 24 hours a day, seven days a week and is not just for tourists, but also for workers. He said that QCCs served 18,000 members of the Culinary Workers’ Union last year despite its members’ variety of shift work. This enforces the fact that health care can be simple and accessible. He said the private sector should consider more flexibility in work hours if serving a diverse client base is a priority.

Concluding, Mr. Arnodo said the Culinary Workers’ Union applauds the efforts of UMC in providing health care that is affordable, accessible, and offers a good quality of care. He said QCCs are an essential part of delivering health care for working families in southern Nevada.

Responding to a question from Senator O’Connell, Mr. Arnodo explained that his health insurance co-pay was \$10 and he could not speculate on how the delivery of service might change if an entity other than UMC operated the QCCs. Senator O’Connell said she just utilized the services at a QCC and was charged \$90 because her health care plan did not cover the cost.

Elizabeth Gilbertson

Elizabeth Gilbertson, Director of Strategic Planning, Culinary Health Fund, Las Vegas, said the Culinary Workers’ Union is presently in negotiation with all of the hospitals, but pointed out that the Culinary Health Fund currently has a set of rates that are acceptable for what they are willing to pay for primary care services. She said those rates are the same across primary care providers, meaning that the rate schedule for primary care services is the same for everyone. She said that a provider is usually paid in a variety of ways by the managed care entities and/or other people who use their services.

Marianne Dawicki

Marianne Dawicki, Political Director, Service Employees International Union, Local 1107, Las Vegas, said the union represents approximately 7,000 health care workers in southern Nevada with collective bargaining agreements at UMC, Sunrise Hospital and Medical Center, and Valley and Desert Springs Hospitals. Ms. Dawicki said the union's members are employed by UMC and others are patients that utilize QCC for health care. She opined that UMC has a long history of being the "medical haven of last resort for the working poor."

Concluding, Ms. Dawicki said that taxpayers benefit because UMC can support the community's hospital with profits, not tax dollars. Additionally, emergency rooms divert status statistics demonstrate that the for-profit health services cannot bear the current burden on emergency rooms. After listing several more benefits of QCCs, she said that UMC should not be punished for finding a formula that works. She said Nevada should not placate the large out-of-state hospitals because they turn a large profit, which does not remain in the state.

Brad Walker, M.D.

Brad Walker, M.D., Staff Physician, UMC, and member, Culinary Health Fund, Las Vegas, said he is the elected head of the doctor's union at UMC and represented approximately 100 physicians. A resident of Las Vegas for eight years, Dr. Walker said he is a former employee of the Fremont Medical Center and Greg Griffin was his former supervisor. Additionally, he has worked at several health care facilities in the Las Vegas Valley intermittently and has experience in both the public and the private sector. Fifty percent of UMC's physicians work outside in the private sector as well. He said that UMC unsuccessfully attempted to eliminate that option from physician contracts but failed. It is Dr. Walker's opinion that UMC should not use its size to influence physicians from working in underserved areas within the private sector. He said the issue is currently a source of debate at UMC.

Continuing, Dr. Walker said that the doctors at UMC recognize that quick care and primary care services have been discounted and "they try to make it up on the inpatient admissions." He said his knowledge of the industry could only lead to the conclusion that UMC is operating like a lost leader. Although UMC is backing away from that model, Dr. Walker said a recent meeting with the County Commission marks a trend where UMC will charge their expenses more up front. He said \$5 million of UMC's \$12 million loss is due to the number of uninsured people who use QCCs. Secondly, approximately \$1 million was lost due to UMC operating as a lost leader. Finally, the remaining \$6 million loss was due to "inflated overhead" costs outside of the 14 quick care clinic sites.

Dr. Walker said indigents are charged more when they are seen in a hospital facility, regardless of being admitted or receiving outpatient treatment. As an example, he said that an indigent visit at Fremont Medical Center will cost \$45 to \$50, but that same visit costs \$110 to \$200 at the county facility. He said that the doctors union has taken the position that the county should decrease the fee for the uninsured that are poor.

Further, Dr. Walker said Fremont Medical Center used a simple system for hospital admissions during his six-year employ; patients with insurance were referred to Sunrise Hospital and Medical Center, and patients without insurance were referred to UMC. He said he earned more money when he worked for Fremont but had fewer benefits, and the county pays less but provides more benefits. Dr. Walker said it is untrue that private practice physicians make a lot more money; they do so by simply decreasing their own benefits.

Also during Dr. Walker's employ at Fremont Medical Center, he said that referrals were based on the selection of a physician who would admit the patient to Sunrise Hospital. He said that if he suddenly decided to choose physicians who would admit the patient to UMC, Fremont would have justifiably fired him. He said the point is that Fremont Medical Center, as well as other medical management groups and UMC's QCCs, all use a direct referral system. He said, "there is no difference between us, everyone is the same" in that every clinic is going to send their patients to specialists in the hospital that supports them.

Dr. Walker addressed an earlier comment that "the burden is the same" at all hospitals and said that certain patients upset that balance. For example, uninsured cancer patients require expensive care and are always referred to UMC. He cautioned the subcommittee that some testimony heard earlier was not accurate.

Concluding, Dr. Walker said that in his opinion, UMC operates with the most disadvantages including adherence to volumes of government regulations and has to care for all of the uninsured patients. He said that hospital corporations in Las Vegas earn profits of \$25 million per year and have the luxury of choosing their patients. He suggested that a 15 percent tax be levied on those corporations to help pay for the poor and “make things fair.” He summarized UMC’s plight by saying “people want to destroy the indigent care system in order to increase their profits.” He said the community benefits from UMC in many ways, especially through the medical school and the research funding that accompanies it. He encouraged the committee to maintain UMC’s system and not disband it.

Responding to a question from Senator O’Connell, Dr. Walker said he is required to have medical malpractice insurance when he works outside of UMC. Physicians either carry their own insurance or are covered by the clinic they are working for. He said the doctors union supports tort reform.

Cathy Silver

Cathy Silver, Administrative Team, UMC, Las Vegas, said she has experience in health care having worked in both the private and public sectors. She said that earlier testimony required some clarification and explained that a host of relationships, financial and otherwise, are available to the private sector. She said it is common practice that emergency rooms at every hospital in the valley direct referrals to physicians who are loyal to those facilities, and earlier discussion that UMC somehow “corners all the admissions and sends them to the hospital” is naïve. The real world operates differently, as evidenced by the divert statistics. Ms. Silver said that Sunrise Hospital and Medical Center and Valley Hospital both benefit from over 300 admissions per year due to divert status at QCCs.

Concluding, Ms. Silver said that earlier remarks aimed at UMC’s “predatory pricing” practices were inaccurate as well. Oftentimes, she said, a payer presents hospitals with a “take it or leave it,” offer. She said QCCs handle many workers’ compensation cases, and those rates are set by statute, not through negotiation. Oftentimes, payers offer a very low rate for service to the sole practitioners first and this is what lowers the standard, not QCCs. Finally, she said hospitals do not bill patients differently based on the type of insurance the patient holds. She said the billed charges are consistent, however, some contracts are negotiated to discount certain billed charges.

OVERVIEW OF GOVERNMENT RISK POOLS AS THEY RELATE TO COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES

Wayne Carlson

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool, and Executive Director of the Public Agency Compensation Trust, said the pool provides property liability insurance for local governments throughout Nevada, and the trust provides workers’ compensation coverage for most of the local governments in Nevada as well. He referred to Exhibit A, which contains a copy of his written testimony, and highlighted the following points:

- Risk pools came in to existence when the private market failed in the 1980s to provide a market for insurance for governmental entities. When the insurance industry abandoned the governmental market or raised prices to unacceptably high levels, governmental entities around the nation began examining alternatives such as self-funding and risk pools. In 2002, insurance increases are expected to be at least 50 percent in the government sector. It is a long-term goal of risk pools to stabilize price and availability of coverage for their members in spite of external market forces.
- A bill for the creation of risk pools was introduced during the 1983 Session but failed. In the 1985 Session the bill passed, but the only carrier available to governmental entities was Lloyd’s of London. In 1987 a risk pool was created with four members. In 2002, the pool contains 82 local governments.
- In the early 1990s, the insurance market not only abandoned the risk pool, but also began to compete against it. Naturally, when the pool did not fail, the insurance industry accused the risk pool of having an unfair advantage and of competing unfairly. Emerging liability problems in employment practices led to the creation of Cooperative Resource Management, which offers outsource human resource support to prevent losses. Risk pools are essential to the stability of financial protection for local government risks.

- The Nevada Public Agency Insurance Pool and the Public Agency Compensation Trust are both virtual pools because they have no employees of their own. The risk pool has combined the efforts of private firms with the interest of the risk pool members to broad available coverage and services. The members could not reach consensus on expanding into health insurance.
- There is no action that should be taken at this point. There is a role for government to find alternative solutions when the insurance market fails and risk pools need the flexibility to make local determinations.

Concluding, Mr. Carlson said that the suggestion that risk pools have an unfair advantage over the private market or that the private insurance market is more cost effective, more stable, or a better solution for local governments, does not match the reality demonstrated over the last fifteen years by Nevada's risk pools.

Assemblyman Parks pointed out that the St. Paul Medical Liability Insurance Company will discontinue all medical malpractice insurance nationally and not just in Nevada.

DISCUSSION OF ISSUES REGARDING COMPETITION IN THE DELIVERY OF CHILDCARE AND PRESCHOOL SERVICES

Gary Vause

Gary Vause, Owner, Lit'l Scholar Academy, Las Vegas, said his childcare centers offer the following programs: (1) preschool; (2) before/after-school care; (3) summer camp; (4) track breaks; (5) 24-hour care; and (6) weekend care. He said the City of Las Vegas and Clark County both offer preschool, track breaks, before- and after-school programs, summer camp, and the school district has a latch key program which expanded into summer programs including field trips, and track break programs. Mr. Vause said it was his perception that Clark County entered the childcare market because it is a "good business." He expressed concerns that the county will monopolize the market by "putting private operators out of business." He said the county exempts itself from licensing and associated costs and he "wants the same deal" to be able to compete with local government.

Continuing, Mr. Vause listed the requirements for licensing childcare providers in the private sector, to include: (1) maintaining certain staff ratios (caregivers to students); (2) providing proof of immunization before admitting children into a program; and (3) obtaining a statement from a health care provider that states a child can attend a program. He said Clark County childcare services operate without any of the aforementioned paperwork.

Concluding, Mr. Vause listed additional costs to private childcare providers, including:

- The employer/employee tax (head tax);
- A \$35 card from the Las Vegas Metro Police Department (Metro), renewable every five years;
- A \$39 background check fee through the Nevada Highway Patrol and Federal Bureau of Investigations; and
- A \$30 card from the Department of Health, renewable every two years.

Carol Hall

Carol Hall, Owner, Creative Kids, Las Vegas, said she operated 11 childcare centers in Las Vegas. Ms. Hall compared requirements between governmental entities and private operators and highlighted the following:

- Governmental entities are not licensed in Safe Key programs and are not required to adhere to staff ratios in after-school programs. Private operators must maintain a ratio of 1 staff to 15 children;
- Governmental entities offer a considerably less rate for their services because other costs are written off.

Private operators cannot compete with such a discount.

- Private operators are inspected each quarter of the year and are subject to additional inspections in the event of a complaint.

Responding to a question by Chairman Schneider, Ms. Hall responded that the Safe Key program is staffed by Clark County employees and is sponsored by the recreation department. She said that the boys and girls “club” escapes licensures and is not subject to requirements for outside playground or ratio or building requirements.

Ms. Hall questioned the logic of Nevada’s child welfare department in overlooking staffing ratios and safety requirements in facilities run by local governments but holding private childcare facilities to strict standards.

Chairman Schneider pointed out that Nevada teachers are licensed. He directed staff to research city and county requirements for childcare licensure. He said a meeting of interested parties could compare the requirements between local governments and private sector childcare providers.

Assemblyman Parks pointed out that certain childcare costs are not waived for local governments; for example, the Recreation and Parks Departments are responsible for paying a fee for some programs.

PUBLIC TESTIMONY

Mary Walker

Mary Walker, previously identified in these minutes, said she also represents the Nevada Recreation and Parks Society and invited Mr. Vause and Ms. Hall to the society’s next meeting. She said that Carson City has a large latch key program to serve a population of children age 8 to age 14, and the Boys and Girls Club has a daily client base of 300. She offered to provide information on the club’s staff ratio and other regulatory requirements.

ADJOURNMENT

There being no further business to come before the committee, Chairman Schneider adjourned the meeting at 1:45 p.m. The next meeting is March 12, 2002, in Carson City. Exhibit G is the “Attendance Record” for this meeting.

Respectfully submitted,

Kennedy
Senior Research Secretary

Michael J. Steward
Senior Research Analyst

APPROVED BY:

Senator Michael Schneider, Chairman

Date: _____

LIST OF EXHIBITS

Exhibit A is packet of information compiled by Michael J. Stewart, Senior Research Analyst, Research Division, LCB, Carson City, Nevada, containing the following:

1. A two-page memo dated January 23, 2002, to the Chairman and Members of the Legislative Commission's Subcommittee to Study Competition Between Local Governments and Private Enterprises, regarding enclosed materials, from Michael J. Stewart, Senior Research Analyst, Research Division, LCB, Carson City, Nevada;
2. A four-page letter dated December 17, 2001, to Senator Michael A. Schneider regarding the status of an Associated General Contractor Issue from Michael R. Alastuey, Assistant County Manager, Clark County, Nevada;
3. A one-page letter dated December 6, 2001, to Senator Michael A. Schneider regarding the capital costs for UMC Quick Cares from Michael R. Alastuey, Assistant County Manager, Clark County, Nevada;
4. A four-page copy of testimony dated January 23, 2002, provided by Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust;
5. A 27-page document titled "Best Practices and Guidelines For Effectively Using A Contract Workforce," prepared by the State of Texas, Lawrence F. Alwin, CPA, State Auditor, State Auditor's Office;
6. A 20-page document titled "Washington State Auditor's Office, Special Audit of State of Washington Contracting Practices;"
7. An eight-page document dated January 7, 2001, titled "Legal Brief: Supreme Court Rules on Private Prison Liability," written by Geoffrey F. Segal;
8. An eight-page document dated December 12, 2001, titled "Keys to Success in the Philadelphia School Privatization Effort," authored by Lisa Snell;
9. A six-page document dated August 2001, titled "Policy Brief 17, Opening the Floodgates: Why Water Privatization Will Continue," written by Robin Johnson and Adrian Moore; and
10. A 20-page article titled "Safety Net for Sale," from an Internet Web site copyright American Federation of State, County and Municipal Employees 2002.

Exhibit B is two-page copy of an article from the January 2, 2002, *Las Vegas Review-Journal* titled "Convention Center: Henderson to consider raising fees," submitted by Phil Stout, Executive Director, Nevada Association of Independent Businesses, Henderson, Nevada.

Exhibit C is a 33-page bound document presented by Allan Stipe, President and Chief Executive Officer, Sunrise Hospital and Medical Center, Las Vegas, Nevada.

Exhibit D is a 19-page bound document dated January 23, 2002, titled "Overview: Legal Mandates, Policies Governing University Medical Center," provided by Mike Alastuey, Assistant County Manager, Clark County, Las Vegas, Nevada.

Exhibit E is a 500 page spiral bound document dated January 23, 2002, titled "Overview: Legal Mandates, Policies Governing University Medical Center," presented by Mike Alastuey, Assistant County Manager, Clark County, Las Vegas, Nevada.

Exhibit F is a four-page copy of testimony dated January 23, 2002, submitted by Larry Preston, President, Pinnacle Medical Management L.L.C., Las Vegas, Nevada.

Exhibit G is the "Attendance Record" for the meeting.

Copies of the materials distributed in the meeting are on file in the Research Library (775-684-6827) of the Legislative Counsel Bureau, Carson City, Nevada.