

**MINUTES OF THE MEETING
OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY COMPETITION BETWEEN
LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES
March 12, 2002
Las Vegas, Nevada**

The third 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 Tuesday, March 12, 2001, at 8:15 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 3137 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 MEMBER PRESENT IN CARSON CITY:

Senator Randolph J. Townsend

COMMITTEE MEMBERS ABSENT:

Assemblyman Wendell P. Williams
Assemblywoman Dawn Gibbons

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: Tuesday, March 12, 2002
 8:15 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 videoconference conducted at the following location:

Legislative Building
Room 3137
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 web site 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 January 23, 2002, 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. Discussion of Competition for Services Covered Under the Telecommunications Act in Churchill County, Nevada**

Art Mallory, District Attorney, Churchill County
Mark Feest, Deputy District Attorney, Churchill County

V. Public Comment

Overview of Contracting Provisions and Procedures in the State of Nevada

***VI. Kimberlee Tarter, Purchasing Officer, Purchasing Division, Nevada's Department of Administration Daniel K. O'Brien, Manager, Capital Improvements, State Public Works Board, Nevada's Department of Administration**

***VII. Discussion and Presentation of Proposed Changes to Statutes Regarding Public Works and Planning (Chapter 338 of the *Nevada Revised Statutes*, "Public Works Projects")**

John Madole, Executive Director, Nevada Chapter, Associated General Contractors (AGC)
Steve Holloway, Executive Vice President, AGC Southern Nevada
Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties

VIII. Public Comment

***IX. Continuation of Discussion Regarding Potential Competition in the Delivery of Childcare and Preschool Services**

Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties
Representatives, Nevada Recreation and Park Society
Gary Vause, Owner, Lit'l Scholar Academy

X. Public Comment

***XI. Effects on Competition in the Provision of Health Care Services as a Result of Recent**

Insurance and Medical Malpractice Issues

Larry Mathies, Executive Director, Nevada State Medical Association
Bill Welch, President and Chief Executive Officer, Nevada Hospital Association
Dr. Raj Chanderraj, President, Clark County Medical Society (invited)
Dr. John Ellerton, Chief of Staff, University Medical Center (UMC)
Dr. John Fildes, Medical Director of Trauma Services, UMC Trauma Center
James L. Wadhams, American Insurance Association, Nevada Independent Insurance Agents
Representative(s), Medical Malpractice Insurance Defense Practitioners

XII. Public Comment

XIII. Adjournment

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 8:28 a.m. and reviewed topics on the agenda for discussion. He said the medical malpractice issue is relevant to the subcommittee and hypothesized that the state “may be the provider of last resort.”

APPROVAL OF THE MINUTES OF THE MEETING HELD ON JANUARY 23, 2002, 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 JANUARY 23, 2002, 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, presented a binder of information (**Exhibit A**), and gave an overview of issues raised at the subcommittee's previous meeting, including contracting and childcare. Additionally, he responded to subcommittee questions of how other states address privatization by providing the 1993 audit from the State of Colorado and its accompanying privatization assessment workbook. He said the workbook listed the following items for consideration by state and local governments when developing competition models: (1) market strength; (2) political resistance; (3) cost efficiency; (4) quality of service; (5) impact on employees; (6) legal barriers; (7) risks; (8) resources; and (9) control.

Continuing, Mr. Stewart said that other states have laws regarding competition with language to provide that “a state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, et cetera, [items] that are offered by private enterprises unless specifically authorized by law.” He said there are a number of

exceptions to this excerpt from the State of Colorado's law. Additionally, he noted that the State of Michigan's fair play legislation (regarding competition in the delivery of telecommunications) might provide direction for proposed changes to Nevada's law.

Mr. Stewart said that other states, such as the State of Louisiana, have proposed the establishment of a board or council to address the issue of competition. The board or council develops a plan to assist state agencies in applying a method for determining the following: (1) allocating the cost of performance of a service by a commercial source; (2) conducting feasibility studies; (3) bidding in competition with commercial sources; and (4) deciding if services performed by a state agency can be more efficiently performed pursuant to an interagency agreement. Similarly, he noted that legislation in the State of North Carolina calls for the creation of a commission to provide for better government through a comprehensive state government competition initiative, and the State of Pennsylvania has legislation to establish a private enterprise review board. He summarized that some states form a council or committee to address the issue, while other states reference competition in their statutes.

Further, Mr. Stewart reviewed legislation from the State of New Jersey that established conditions necessary for genuine competition in specific industries such as telecommunications. He noted that legislation from the State of Rhode Island addressed competition between private enterprise and local government in the insurance industry and listed unfair methods and deceptive trade practices.

Concluding, Mr. Stewart reviewed the *Nevada Administrative Code* (NAC) specific to the public works board. He pointed out a section in the State Administrative Manual regarding cooperative agreements and contracts. Finally, he referred members and the public to the Division of State Purchasing, Nevada's Department of Administration, Internet Web site, which guides users through contracting and state government processes. He said the State of Nevada also completed an audit on contracting processes, which was contained in Exhibit A.

DISCUSSION OF COMPETITION FOR SERVICES COVERED UNDER THE TELECOMMUNICATIONS ACT IN CHURCHILL COUNTY, NEVADA

Chairman Schneider tabled this agenda item until the next meeting of the subcommittee, scheduled for May 20, 2002, in Elko, Nevada.

PUBLIC COMMENT

Samuel P. McMullen

Samuel P. McMullen, Las Vegas Chamber of Commerce, Las Vegas, Nevada, reiterated several concepts of competition and noted that it is different than privatization. Privatization is when local governments are providing a service but determines that the private sector could provide the service more efficiently. Competition between local governments and private enterprises focuses on determining the intent of government to compete. He said that these concepts seemed similar but were very different.

Continuing, Mr. McMullen shared the following results of a recent survey conducted by the Las Vegas Chamber of Commerce to its members to determine impacts of competition by local governments in certain enterprises:

- There were few examples of "outright competition" between local governments and private enterprises;
- Health care was identified as a major concern, specifically, UMC's private care centers and patient transportation services;
- A concern for the municipalization of utility services indicated the need for a set of guidelines to determine the role of local governments;
- A Las Vegas shipping business conveyed concern for competing with the United States Postal Service (USPS), which provides USPS shipping material to the public for convenience;

- Clark County provides aerial photographs on its Internet Web site for public use which competes with individual photographers who provide that service for a fee;
- Subsidized social policy concerns include issues of liability caps and the impact on those competing private providers who do not have a liability cap, including the industries of childcare and youth programs; and
- Private process servers noted a negative impact on their ability to serve out-of-state clients because the local government assumes the service through the following entities: (1) the constable's office; or (2) the Las Vegas Metro Police Department's (Metro) Civil Bureau. If Metro cannot serve the notice, the request is returned to the out-of-state petitioners with a photocopy of the yellow pages indicating the private process servers in Clark County.

Continuing, Mr. McMullen advised the subcommittee not to focus on specific incidences, but establish a set of principles, guidelines, and possibly tests for a product to determine if a local government should compete. He listed the following criteria to allow local government to provide a service: (1) if there is no interest from the private sector in providing that service; (2) if it is determined that it is not feasible to expect the private sector to provide that service; and (3) if it is in line with social policy. He suggested that rules or conditions be applied to local governments if they regulate industries that directly compete with those governments.

Concluding, Mr. McMullen said that the membership of the Las Vegas Chamber of Commerce expressed support for a "level playing field," and suggested that local government be subjected to anti-trust and anti-competitive rules. Further, developing rules of conduct could minimize the local government from engaging in "mischief." Similarly, local governments should adhere to the same operating rules structure and taxes as the private sector does.

Senator O'Connell pointed out that the private sector does not participate in the area of insurance, specifically in construction defects and medical malpractice. She suggested that the subcommittee examine marketplace factors to determine why the private sector is not involved.

Mr. McMullen opined that medical malpractice and construction defect insurance issues revolved around market strength and publicity on insurance carriers reveals that litigation costs are driving the premiums higher than normal. He suggested that reforms in social policy focus on containing and controlling litigation costs.

Responding to a comment by Senator Townsend, Mr. Stewart said that the subcommittee could determine standards to measure various issues of competition by utilizing the private assessment workbook from the State of Colorado (Exhibit A). He said the workbook is a good resource because it defines issues such as market strength through a detailed question and answer format.

Senator Townsend suggested that the subcommittee examine the State of Colorado's definition of market strength in terms of hospital and food service ratings. He said that cultural differences between the states of Colorado and Nevada might require an adjustment to the assessment criteria. He speculated which entity in Colorado government completed the workbook; an appointed committee by the Governor or the legislature or a state department of commerce and privatization. He pointed out two situations, the privatization of Quick Care Centers and medical malpractice which, if applied to the workbook, would require a "tie breaking decision." He asked which entity would be required to review conflicting evaluations?

Responding to a question by Assemblyman Parks, Mr. McMullen said he was not aware of a situation where a private sector business was regulated by an entity that competed with them, but speculated on the possibility of that occurring in the areas of telecommunications, transportation, roads, inspections, and emergency medical service. He said there are standards that apply to the private sector that do not apply to the government. Additionally, competition has many subtle layers including licensing, regulations, restrictions, and other government entities providing direct versus indirect regulation.

Senator O'Connell pointed out that the issues of home care lacked definitive lines as to whether the State or the county is the regulatory agent. She said it appears that many county and city agencies do not have a clear idea as to what falls into their jurisdictions or the state's jurisdiction.

Responding to a question from Chairman Schneider, Mr. McMullen said that the Las Vegas Chamber of Commerce would continue to gather specific information on situations where entities went out of business as a result of competing with local government.

John Madole

John Madole, Nevada Chapter, Associated General Contractors (AGC) Northern Nevada, Carson City, said that “regulation” and “assurance of quality” is not the same thing. He said a government agency could regulate the construction of a road and subject it to inspection by that same agency. He said that private inspectors are occasionally used, but not always.

Responding to a comment by Senator Townsend, Mr. Madole said that AGC worked with the Nevada Association of Counties (NACO) and local governments to form a recommendation, but cautioned against a “one size fits all” solution.

**OVERVIEW OF CONTRACTING PROVISIONS
AND PROCEDURES IN THE STATE OF NEVADA**

Daniel K. O’Brien

Daniel K. O’Brien, Manager, Capital Improvements, State Public Works Board, Nevada’s Department of Administration, Carson City, presented an overview of the State Public Works Board contracting process, with an emphasis on change orders and qualification of bidders provisions. Mr. O’Brien said the board complies with *Nevada Revised Statutes* (NRS) 341.145, “Powers and duties of board: Design, construction and repairs,” which allows the board to accept bids for construction projects. Additionally, NRS 341.145 limits the board to a maximum of 10 percent on change orders, and said he was not aware of a maximum change order limit for local governments. The NAC 341.105, “Contract modification,” allows the board to approve a change order that reduces the price set forth in the contract by more than 10 percent. Change orders within the 20 percent range (10 percent maximum and 10 percent minimum) must be approved by the manager of the State Public Works Board.

Continuing, Mr. O’Brien reported that legislation approved in the 2001 Session resulted in improvements to the board’s qualification of bidders process, and effective April 1, 2002, bidders are required to participate in a pre-qualification process prior to the release of the project to bid.

Further, Mr. O’Brien stated that the State Public Works Board does not self-perform any construction projects, but functions as a project manager and regulator of those projects. He said that the board allows bidding on all construction projects approved through the Legislature’s capital improvement program. He noted an exception, the Department of Corrections, which uses prison labor for limited internal projects and construction work.

Additionally, Mr. O’Brien said the State Public Works Board complies with NRS Chapter 338, “Advertising and Acceptance of Bids,” to determine that a contractor is responsive, responsible, and acts in the State’s best interest. He said his office recommends contract awards or refers cases of unresponsive bidders to the board for their final determination.

Responding to a question by Senator O’Connell, Mr. O’Brien listed the following improvements to the contract process approved by the public works board:

- The Attorney General’s Office performs a review of the following: (1) all contracts and contract specifications prior to the open bid process; (2) the quality of the contractor; and (3) the completeness of construction plans including limits on potential change orders, errors, and omissions; and
- The State Public Works Board contributes: (1) more involvement in the day-to-day operations of the agency; (2) monthly meetings to review and evaluate “problem projects”; (3) earlier project evaluations to determine if

schedules are met, if excessive change orders are occurring, or to find any indications that the project is “going bad”; and (4) an earlier and stronger plan check procedure.

Responding to a question by Senator O’Connell, Mr. O’Brien updated the subcommittee on the disposition of several lawsuits, including the Leid Library, the Veterans Home, and the High Desert Prison Station.

Kimberlee Tarter

Kimberlee Tarter, Purchasing Officer, Purchasing Division, Nevada’s Department of Administration, Carson City, reported that the creation of a task force in 1998 to examine Nevada’s contracting procedures resulted in the following: (1) the *State Purchasing Act*; (2) the development of the service and procurement section of the Purchasing Division; (3) the formation of a contract unit within the Civil Division of the Attorney General’s Office; and (4) a recommendation to educate the public on matters relating to contracting. She listed the Purchasing Division’s governing codes including, Chapter 333 of the NRS, “Purchasing: State,” Chapter 333 of the NAC, “Purchasing: State,” and the State Administrative Manual, Section 300, which contains agency policies. Ms. Tarter pointed out that the University System, the State Public Works Board, the Housing Division of Nevada’s Department of Business and Industry, and Nevada’s Department of Transportation are exempt from the *State Purchasing Act*.

Ms. Tarter reviewed the Purchasing Division’s procedure for purchases over \$100,000, and said the procuring agency must first define what they plan to purchase and then work with the Division to begin the request for proposal (RFP) process. She reviewed the RFP process and said it is confidential until the award is processed. Once the announcement is made, the Division solicits comments and other feedback from bidders, especially those who were not awarded the contract. She said the feedback is used to identify and improve customer service issues.

Continuing, Ms. Tarter listed common complaints with the RFP process, including the requirements for high insurance limits and sole source justifications. Requests for proposals are mandatory for any purchase over \$25,000 per fiscal year. Certain types of professional services are exempt from the competitive bidding process including, accounting, legal, and medical because they are not suitable for competitive solicitation. Other industries, including insurance examiners, are required to submit a memorandum of justification because no automatic exemption exists; however, the exemption is almost always granted.

Concluding, Ms. Tarter said that an audit of 18 contracts revealed that amendments to contracts dramatically changed the scope and cost of the overall procurement. As a result, the division has attempted to correct these issues through education. She said that the division holds classes on contracting procedures for state agencies, including procedures for procurements under and over \$25,000. Additionally, a 40-hour training course will be offered to certify employees on procedures. Finally, the division restructured its contract summary form and plans to utilize contract monitors.

Senator O’Connell directed Ms. Tarter to submit the restructured contract summary form to her.

DISCUSSION AND PRESENTATION OF PROPOSED CHANGES TO STATUTES REGARDING PUBLIC WORKS AND PLANNING (CHAPTER 338 OF THE NEVADA REVISED STATUTES, “PUBLIC WORKS PROJECTS”)

Mary Walker

Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties, Minden, Nevada, reported that the public works director and representatives from AGC worked together to address concerns brought forward at previous meetings of the subcommittee. She reviewed the following recommendations to change Chapter 338 of the NRS as it applies to projects between \$25,000 and \$100,000:

- Allow local governments to use an informal bidding process to contact three different contractors;
- Require a quarterly report which states the name of whom the project was awarded to, the amount of the bid,

and the description of the project; and

- Require the local government official responsible for a project to attest, to the best of his knowledge, the estimated cost of the project being performed in-house, a general statement explaining why the project was performed in-house, and a general statement that the project would follow the same specifications as is required by the private sector.

Concluding, Ms. Walker said the recommendations were a result of two meetings of local government and private enterprise. She reported the meetings were conducted in a workshop manner and considerable discussion focused on the operation of local governments. Finally, Ms. Walker said local governments became aware of contractors' concerns and said proposals to change NRS Chapter 338 will be further refined.

Steve Holloway

Steve Holloway, Executive Vice President, AGC Southern Nevada, stated that an agreement to change NRS Chapter 338 had been reached conceptually, but said more work was required to develop the proper language. He said he would like to see more involvement from the procurement agencies in Nevada.

John Madole

John Madole, previously identified in these minutes, concurred with previous testimony and complimented the efforts of the individuals who set aside time to work with contractors. He said he appreciated the cooperation and assistance and said he will participate in the drafting of recommendations to change NRS Chapter 338.

Senator Townsend commented on the concern expressed by parties working on the concept that the language needs additional work. Members engaged in a discussion regarding the best use of time in drafting and refining a BDR.

SENATOR O'CONNELL MOVED FOR THE SUBCOMMITTEE TO STUDY COMPETITION BETWEEN LOCAL GOVERNMENTS AND PRIVATE ENTERPRISES TO DEVELOP A BILL DRAFT REQUEST TO PROPOSE CHANGES TO STATUTES REGARDING PUBLIC WORKS AND PLANNING, SPECIFICALLY TO CHAPTER 338 OF THE NEVADA REVISED STATUTES, "PUBLIC WORKS PROJECTS." THE MOTION WAS SECONDED BY ASSEMBLYMAN PARKS AND CARRIED UNANIMOUSLY.

Senator O'Connell offered the use of a Senate Government Affairs committee BDR if the subcommittee's proposed BDR was not successful or if language could not be agreed upon before the interim ended.

PUBLIC COMMENT

Andrew List

Andrew List, NACO, Carson City, acknowledged the efforts of AGC and offered his assurance that he would work with the counties and public works procurement staff to reach consensus on the recommendations to change Chapter 338 of the NRS.

CONTINUATION OF DISCUSSION REGARDING POTENTIAL COMPETITION IN THE DELIVERY OF CHILDCARE AND PRESCHOOL SERVICES

Mary Walker

Mary Walker, previously identified in these minutes, said she met with representatives from the Nevada Recreation and Park Society and Mr. Stewart to discuss types of services provided by local governments for childcare and latchkey programs. She said the private sector expressed concerns regarding the appearance that local governments were exempt from following rules, regulations, and ordinances.

Continuing, Ms. Walker said research determined that childcare rules, regulations, and ordinances are based on the service that is provided, not who is providing that service. She said licensure is required for all entities in public or

private enterprise that provide childcare services for preschool-aged children. Furthermore, licensure is required for recreational and educational types of programs, such as latchkey or safe key programs; and the same rules, regulations, and ordinances that are enforced at public schools also apply to private enterprise. Additionally, local governments follow the same rules as the private sector for recreational summer camps, dance classes, skating facilities/programs, and so forth.

Concluding, Ms. Walker said there are future meetings scheduled with Gary Vause and Clark County childcare regulation officials to answer questions on points of contention.

Scott Morgan

Scott Morgan, Community Services Parks and Recreation Director, Douglas County, Minden, submitted a document with information on programs for preschool and school-aged youth in Nevada (**Exhibit B**). He said that the rules, regulations, and ordinances that are established in each jurisdiction apply specifically to the service and not necessarily to the service provider. He said that the educational and recreational programs provided by public agencies are critical to the communities that they serve.

Continuing, Mr. Morgan expanded on how youth services are developed in local governmental agencies and in the public sectors. He said programs by public agencies are developed following an expressed need from a group of concerned citizens or residents. He reviewed public agency procedures to implement a new program.

Responding to a question by Senator O'Connell, Mr. Morgan said there is a procedure in Douglas County where private contractors are contacted via a referral process and asked to extend their service to fill a need in a community. The issue revolves around the type of service needed, such as a part-time preschool program versus a latchkey program. He reported that the Douglas County part-time preschool program is contracted out, but the latchkey program is typically a government program operated from public school facilities.

Mr. Morgan reported that school-used facilities are not "free," but require a formal or informal use agreement between the local government and the school district. He said there is a misperception in the private sector that the local governments' use of public schools eliminates any chance for fair competition. Mr. Morgan said that if private sector representatives could answer yes to all of the following questions, then they would be following the protocol that the county follows in accordance with the agreement between local governments and school districts:

- Can you serve every child in the county, even children without funding?
- Can you fully disclose all of your fee policies and procedures in an open public forum, and can you accept input from the public?
- Can you disclose your profit plan in an open public forum?
- Can you incur a loss and still have the finances to exist for a year?
- Can you serve children with disabilities, including exceptional emotional, mental, and physical needs?
- Can you maintain the grounds at the school, which includes maintenance of the grounds, paying for utilities, and janitorial costs?
- Do you have a capital investment program?
- Where is your reciprocal agreement that allows the school to use your private facilities?

Concluding, Mr. Morgan said that maximizing public school facilities is a "great benefit to the taxpayers in the community," although the price is sometimes higher than renting private facilities. He listed the four types of educational and recreational programs for preschool and school-aged youth: (1) drop-in; (2) part-time preschool classes; (3) summer camp, off-school track, and playground programs; and (4) latchkey (after school) programs. He

shared statistics on each program.

Responding to questions by Senator O'Connell, Mr. Morgan said all of the programs are user fee supported and have a high degree of subsidy. He said that each program sets its fees based on fiscal review from the prior year and market driven costs. He also responded that Douglas County is regulated by the State of Nevada for preschool-aged activities and summer camp activities, but other counties with similar programs are typically regulated by its health department.

Karen Mullen

Karen Mullen, Director, Washoe County Parks and Recreation Department, Reno, Nevada, said that approximately 10 percent of the participants in Washoe County programs are the recipients of scholarships. She said that Washoe County has a Social Services Department that establishes the regulations for the programs. She pointed out that many schools are located in rural locations, but the programs are still offered. Additionally, many of the programs provide meals for children and their families.

Concluding, Ms. Mullen said that Washoe County Parks and Recreation Department receives referrals for special needs children when the private sector cannot provide the service. She described scholarship programs and the benefits to the community as evidenced by a reduction in crime. She said a goal of the Washoe County programs is to offer recreational activities to at-risk youth. The programs are also expanded to include comprehensive services, including meals. She provided statistics on youth and the penal system and said communities can unite with counties to offer safe places for children while parents work.

Responding to questions by Senator O'Connell, Ms. Mullen gave hours of operation for various programs and said that lengthening program days must serve the community's greatest need for child supervision before work begins in the morning and after school ends in the afternoon. She said that Washoe County anticipates an increasing need for program scholarships.

Chairman Schneider remarked that two-thirds of voter approval for increased taxes to support after school programs is a strong statistic.

Gary Vause

Gary Vause, Owner, Lit'l Scholar Academy, Las Vegas, said he owns and operates childcare facilities at multiple locations. Mr. Vause listed the types of programs he offers, including childcare, before and after school care, trackbreak, and a state-certified and licensed private kindergarten. Mr. Vause said he operates in direct competition with state and local government for the same services he provides.

Continuing, Mr. Vause said that earlier testimony from local governments offering childcare and youth services indicated that different rules are still enforced differently for private and public sector providers. He said he maintains a stand he took at previous meetings of the subcommittee, which is "to have the same advantage." For example, he said he would like to operate in a building without paying rent, maintaining caregiver ratio requirements, or providing group immunization. He refuted Mr. Morgan's testimony stating that formal/informal use agreements can cost more than renting a private facility and said when he has inquired as to actual costs of local governments he is told, "it is none of your business."

Further, Mr. Vause said he would like an opportunity to compare actual costs for childcare and youth services for public and private sectors. He said he has to pay utilities, rent, labor, ad valorem taxes, property taxes, sales taxes, payroll taxes, insurance, and so forth, and said he doubts that local governments are responsible for paying these expenses. Additionally, he said the public schools are located directly across the street from his centers and offer latchkey programs, which parents use because they are less expensive.

Concluding, Mr. Vause said that he would like research performed to determine statistics on teenage enrollment in public programs and said he does not consider his services to be in competition with the public sector for that age group. He opined that there are a small percentage of teenagers enrolled in latchkey, trackbreak, and before/after school programs.

Chairman Schneider referred to Ms. Walker's testimony and said that both the public and private sector operated

under the same rules. He directed all parties concerned with this issue to meet and compare rules, regulations, and costs. He acknowledged that Mr. Vause has many current vacancies in his programs, but pointed out that private preschools have historically had extensive waiting lists. He theorized that the public sector offered childcare and youth programs as a direct response to a community need that was not met by the private sector.

Carol Hall

Carol Hall, Owner, Creative Kids, Las Vegas, said she operated 11 childcare centers in Las Vegas and said that the main competition for her business is from increasing numbers of private childcare centers opened in response to Clark County's tremendous growth. She listed her primary concern being the definition of "childcare" and associated licensing requirements and regulation. She read a definition she believes is true:

When monetary compensation is given for the care of a child when the parent is absent, that becomes childcare even if that child is watched in a neighbor's home.

Continuing, Ms. Hall noted that even neighbors must be licensed if more than two children are being cared for and payment is received for that care. Once the neighbor is licensed, they must adhere to the regulations imposed by the child welfare agencies. She explained that while licensing guarantees a certain level of quality, the ratios of staff to children ultimately determine safety outcomes. She said that she has more stringent staff ratios to maintain than the public school latchkey program across the street.

Concluding, Ms. Hall said that a new rating system would be incorporated in September of 2002 wherein licensing agencies will rate private childcare facilities. She said that the topic of childcare is complex and there are many issues besides the obvious one of "everyone wants to get something and not pay" for it. She said that most people are "not learned enough" to understand the concept of quality childcare and the importance of safety.

Responding to a question by Senator O'Connell, Ms. Hall said she has never been approached by the county to provide a service, even though she has been caring for children years before safety programs existed in public schools. She said she is aware that other states have privately contracted latchkey programs.

Mr. Vause said he has never been contacted by the school district to participate in the latchkey program but has lost several employees to the city and county. He said that public entities are able to hire the workers away from the private sector because they offer better salaries, benefits, staff ratios, and hours.

Chairman Schneider pointed out that local governments do indeed pay taxes on their employees, yet Mr. Vause makes repeated claims at every meeting of the subcommittee that they do not. He said the facts could be determined when all parties meet and compare paperwork.

PUBLIC COMMENT

There was no public comment on this agenda item.

EFFECTS ON COMPETITION IN THE PROVISION OF HEALTH CARE SERVICES AS A RESULT OF RECENT INSURANCE AND MEDICAL MALPRACTICE ISSUES

Larry Mathies

Larry Mathies, Executive Director, Nevada State Medical Association, furnished members with a document, which chronicled the events leading up to Nevada's medical liability insurance crisis (**Exhibit C**). He said Governor Kenny Quinn would announce a structured approach in the near future to address essential insurance needs. He discussed similarities between the medical liability coverage crisis in the 1970s and today. Mr. Mathies theorized that the State of Nevada, through the Division of Insurance, will determine the unavailability of essential insurance and the associated potential for public harm, and invoke NRS 686B, "Rates and Essential Insurance," to provide coverage to physicians in the primary market. The crisis in the 1970s included every physician in the primary market, while the

crisis in Nevada today involves specialty physicians, including those in the emergency room (ER), obstetrician gynecologists (OBGYN), primary physicians who practice obstetrics, and specialty surgeons.

Concluding, Mr. Mathies reviewed the history of the Doctor's Company, once a physician owned Nevada mutual insurance company, including its sale to the St. Paul Fire and Marine Insurance Company. He said the current crisis is focused in southern Nevada and mainly affects physicians practicing obstetrics. He said the state's role is to fill the essential insurance crisis for some period of time to assure coverage to physicians who are unable to obtain insurance in the primary market. He said there are 15 existing medical insurers. A recent survey by the Insurance Commissioner's Office indicated that three of the 15 insurers are leaving, one is bankrupt, and the rest are limiting insurance coverage for surgical specialties, ER care, and OBGYN.

Responding to a question by Senator O'Connell, Mr. Mathies said that Nevada physicians will propose the formation of another mutual insurance company, but it will be more difficult to form than 30 years ago. He said there are many consultants with funding packages and unsolicited proposals flooding into Nevada for insurance consultant contracts. He said most of these proposals are from out-of-state companies that are unfamiliar with Nevada's issues.

Responding to a comment by Senator O'Connell, Mr. Mathies explained why physicians are listed on malpractice lawsuits by clients they never treated. He said that the arcane nature of the insurance and legal systems allow a single case to include as many defendants as possible, although most physicians are involved tangentially.

Responding to a question by Chairman Schneider, Mr. Mathies said the medical legal screening panel (NRS 41A.003 et seq.) is comprised of medical professionals who determine the merits of a malpractice lawsuit against physician. He said that the last systematic examination of the screening panel resulted in a 1995 interim study of closed claims from the past nine years.

Bill Welch

Bill Welch, President and Chief Executive Officer, Nevada Hospital Association, Reno, provided members with a copy of his testimony (**Exhibit D**), and said he would provide information and data specific to the subcommittee regarding the insurance challenges facing the hospital industry. He said that the medical malpractice insurance crisis issue is a complex and serious issue and pointed out that hospitals, and not just their physicians, are affected by the crisis.

Continuing, Mr. Welch said that most hospitals in Nevada were forced to become self-insured to keep costs under control; however, they are not immune from rate increase problems in order to maintain adequate reserves for potential liability exposure. According to a recent survey of hospitals, the lowest increase was 11 percent; the highest increase was 222 percent. He said that self-insured hospitals are not the solution.

Concluding, Mr. Welch said the Nevada Hospital Association is concerned with the citizens and their ability to access health care at the appropriate setting. He said that hospitals, specifically ERs, are the "safety net providers" in many communities. This fact is demonstrated best in Clark County where hospital ERs are on divert status everyday. He reported that since the insurance crisis, 91 physicians in Clark County have taken a leave of absence, retired, or resigned. He said the difficulty of insuring OBGYNs presents the possibility of ERs becoming birthing centers.

Responding to a question by Senator O'Connell, Mr. Welch acknowledged that the five new hospitals scheduled for construction in Clark County within two to five years are presenting several challenges. He said there was an initial professional staffing issue, specifically a shortage of nurses, but recently, the insurance crisis has cast a shadow on the work force, specifically the physicians with specialties. He said that federal requirements will determine the ease with which foreign trained nurses can come to the United States, and Nevada.

Dr. Raj Chanderraj

Dr. Raj Chanderraj, President, Clark County Medical Society, Las Vegas, encouraged subcommittee members to assist the 240 physicians to form a self-funded mutual insurance agency. He explained that some physicians with specialties are considered high-risk for finding insurance. He said these high-risk physicians are calling for assistance by the State of Nevada now.

Dr. John Ellerton

Dr. John Ellerton, Chief of Staff, University Medical Center (UMC), Las Vegas, said Nevada is not experiencing an insurance crisis in a vacuum. Other states have faced similar challenges and have devised different approaches to the same problems. Dr. Ellerton said the issue is access to medical care. He said UMC has found a temporary solution to the insurance crisis but within weeks and months, the medical school will be uninsured and the radiology unit would be next to go. He said this is a major public health issue.

Concluding, Dr. Ellerton said the advantage of the medical legal screening panel is the number of cases it keeps out of district court. He pointed out that physicians are relatively successful at trial, if the case goes to trial. He said that many cases are settled earlier, even before they are heard before the screening panel.

Dr. Chanderraj added that there were 1064 medical malpractice claims involving 1008 physicians filed in Clark County since 1986. He said the screening panel ruled out 948 cases for lack of merit for medical malpractice, and 460 cases went to trial. He said the screening panel is effective in abolishing 35 percent of the cases filed, and offered to provide nationwide statistics when a new survey concludes within two months.

Dr. John Fildes

Dr. John Fildes, Medical Director of Trauma Services, UMC Trauma Center, Las Vegas, stated that the trauma service at UMC is an essential component of the public safety network. He said the medical malpractice insurance issue is big and complex because it addresses access to health care. He said it is a common misperception that UMC physicians have insurance, are protected with a malpractice cap, and that liability is contained. The truth is that 95 percent of UMC's medical staff are volunteers who are community-based physicians providing their own malpractice insurance.

Continuing, Dr. Fildes said Clark County was instrumental in allowing UMC to hire an additional surgeon as a hospital-based physician and he is covered with a \$50,000 liability cap, but this is a short-term solution that only lasts 90 days. He said that trauma medicine experiences a frequency for litigious activity.

Concluding, Dr. Fildes urged the subcommittee to support short-term, intermediate, and long-term solutions to medical malpractice insurance, because "there will not be a second chance to get it right." He said there will be a migration of Nevada physicians if they cannot practice medicine. Dr. Fildes said it is important that the public understands that tort caps are not meant to deny victims of malpractice acts from fair compensation for financial damages, but rather to limit the intangible pain and suffering portion of the settlements.

Responding to a question by Chairman Schneider, Dr. Fildes said UMC Trauma Center physicians are sued more frequently because of the nature of how the client was injured.

James L. Wadhams

James L. Wadhams, American Insurance Association, Nevada Independent Insurance Agents, Las Vegas, said Nevada has a problem because its physicians need insurance. He said the issues of affordability and availability are easily confused, and while Governor Guinn can activate the state mechanism to provide the availability of insurance, there are no guarantees on affordability.

Concluding, Mr. Wadhams said that insurance companies have placed too much emphasis on blaming runaway juries, skyrocketing verdicts, and that Nevada's insurance marketplace was upset by one company, St. Paul. He said these were nonproductive avenues of explanation and a more pertinent review includes methods to make the marketplace more attractive for business. He said that insurance companies set their prices based on "predictability," and prices are set in advance for a product that will be utilized in the future. If an insurance company cannot accurately predict what they will spend, then they will leave the marketplace.

Responding to a question from Senator O'Connell, Mr. Wadhams defined insurance company reserves as funds set aside to pay claims. He said the allegation is often made that insurance companies inflate the amount they set aside, to deliberately look poor. He said this technique hides income from taxation and is subject to review by the Internal Revenue Service and the Securities Exchange Commission. Since there is not a glut of insurance companies flooding

the market, the allegation is probably false. Mr. Wadhams said that the Commissioner of Insurance has the clear authority and the power to hire contractors to investigate insurance companies and analyze profit balances to ensure that over-reserving does not occur.

Senator O'Connell directed Mr. Stewart to determine if the Office of the Insurance Commissioner has that authority to investigate.

PUBLIC COMMENT

James S. Tate, Jr., M.D.

James S. Tate, Jr., M.D., President, West-Crear Medical Society, Las Vegas, presented members with a copy of his testimony (**Exhibit E**) and said West-Crear is a component chapter of the National Medical Association which represents 25,000 black physicians and their patients. He said that there are approximately 100 black physicians in Clark County who wish to be heard and not be treated as "Pullman Car Porters." He said the black physicians are willing to work with other physician groups and be heard as equals, not as stepchildren. Dr. Tate said that black physicians have patients who "are sicker, poorer, and less likely to seek care at large, seemingly uncaring and racist hospitals and large clinics."

Continuing, Dr. Tate said the medical malpractice insurance crisis can be "blamed on the insurance companies, the trial attorneys, the doctors, and the juries." He said that the exodus of physicians from Nevada represents a "dangerously large" group and Nevada already has the highest patient physician ratio in the nation.

Furthermore, Dr. Tate made the following suggestions:

- Legislate lower policy limits of required insurance;
- Reclassify high-risk specialty physicians, such as obstetrics and surgery, as state employees. Pay these physicians \$1 per month and require them to treat at least one patient a month from Nevada; and
- Allow Nevada physicians to form a mutual insurance company with caps on awards and lower limits of liability. No participating physician in the mutual company will be required to put his personal assets at risk.

Dr. Tate said the black physicians in West-Crear are interested in working with the Legislature to work out the details of a rescue plan. He said that without a plan, "we are heading for a disaster in this state."

Responding to a question by Senator O'Connell, Dr. Tate provided an example of how multiple physicians are named in a single suit. He said that an intoxicated woman was involved in a motor vehicle accident and was admitted to the trauma unit with a non-survivable head injury. The patient expired within one week and a medical malpractice suit was filed against the neurosurgeon, radiologist, the trauma surgeon, all the residents, and the physician monitor. The medical legal screening panel unanimously found no medical malpractice on the part of any physician named in the lawsuit, but the case is still proceeding to court because there is no disincentive for the attorney to stop his quest for \$1 million.

Concluding, Dr. Tate said that every patient has the right to sue, but "it is not a lottery ticket." He said that the president of the Nevada Trial Lawyers Association remarked on a radio show recently that lawyers would never allow tort reform to occur in Nevada. Dr. Tate said he was not singling out trial lawyers, but said, "any species that hunts its prey to extinction is doomed to become extinct itself."

Gerald Gillock

Gerald Gillock, Nevada Trial Lawyers Association, Las Vegas, said he was testifying as a citizen at the meeting. Mr. Gillock said attorney malpractice insurance has risen 30 percent in the past year. He said "attorneys are victimized in the industry that is controlling medicine today, i.e., the managed care insurance and/or insurance industry." He said that five years ago, a patient with Medicare was dreaded, but now the reimbursement policy of

Medicare is considered “the gold standard.”

Mr. Gillock said that medical malpractice cases require the testimony of a physician who, under oath before the Nevada Medical Legal Screening Panel, claims that every physician named in the complaint is negligent. He said there were 219 medical malpractice cases filed in the State of Nevada in 2001. In 2000, there were 215 cases. In 1999, there were 213 cases. He said there has not been an increase in the volume of filed cases, yet suddenly there is a malpractice crisis. He said the reason for the crisis can be blamed on “bad underwriting” by the insurance companies and opportunists within those companies.

Continuing, Mr. Gillock addressed a perception that awards for intangible pain and suffering settlements are like an “astronomical bonus lottery.” He said that there were only 20 plaintiffs verdicts awarded since 1997, the largest of which was \$6 million and has been set aside pending court irregularities. He said that trauma surgeons are not sued on a regular basis, but actually have a low incidence of suit. Mr. Gillock said that Nevada could reduce the amount it pays if the insurance companies were more inclined to settle.

Concluding, Mr. Gillock said his firm does not consider taking a case for medical negligence until a physician has reviewed it. He explained the difficulty in prosecuting medical malpractice cases and said the costs associated with the case prior to going before the screening panel range from \$10,000 to \$20,000. He shared his opinion of why multiple physicians are named on a single suite saying the affidavits of physicians named in a suit will “all point their fingers to the empty chair(s).” Mr. Gillock said he did not know why physicians did this to one another, but it was a common scenario in his experience. Additionally, Nevada did not have runaway verdicts. He said the largest verdict awarded in a case in Nevada was \$25 million but was totally unrelated to medical malpractice.

Responding to a question by Senator O’Connell, Mr. Gillock said that Dr. Tate did not provide complete information in the case of the non-survivable head injury/car crash victim. He said that an attorney would not proceed unless an expert witness, such as a physician, was retained to say: (1) the patient would have lived; (2) the negligence or failure of the physician caused the death of the patient; or (3) the patient suffered damages. He said that without this information, the case would be subject to a summary dismissal by the court.

Responding to questions by Chairman Schneider, Mr. Gillock reviewed a settlement case involving medical malpractice and products liability. He explained the differences between a settlement and a verdict. Additionally, he discussed restraint of trade, price fixing, and the contingency fee structure. He said that there were 20 plaintiff verdicts, but 40 defense verdicts in the last five years, because “juries notoriously hold a doctor in high esteem.”

Dr. Tate responded to Mr. Gillock saying that there is a physician who claimed malpractice in the non-survivable head injury/car crash suit. He said the physician, a radiologist, is the plaintiff and the expert witness in the case.

Larry Preston

Larry Preston, President, Pinnacle Medical Management, LLC, Las Vegas, said that he was confused by conflicting medical malpractice settlement statistics and needed a Legislative entity to tell him which one was correct. He said it seemed ironic that the subcommittee listened to testimony earlier in the meeting that did not support government prying into privatization yet entertained many entities in the afternoon that demand the State take over what the insurance private sector cannot effectively perform.

ADJOURNMENT

Chairman Schneider announced that the next meeting of the subcommittee is scheduled for May 20, 2002, in Elko, Nevada, and the agenda would include cable television and other issues.

There being no further business to come before the committee, Chairman Schneider adjourned the meeting at 12:52 p.m. **Exhibit F** is the “Attendance Record” for this meeting.

Respectfully submitted,

Kennedy
Senior Research Secretary

Michael J. Stewart
Senior Research Analyst

APPROVED BY:

Senator Michael Schneider, Chairman

Date: _____

LIST OF EXHIBITS

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

Tab A “Report of the State Auditor: Privatization in Colorado State Government – Follow-up Performance Audit,” February 1993; and *Privatization Assessment Workbook*, 1997, from the Colorado State Auditor’s Office.

Tab B Select State Laws and Legislation Regarding Competition Between Local Governments and Private Enterprises:

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

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

 From the State of Louisiana, House Bill No. 1110 and Senate Bill No. 275, both of which establish and provide for the creation of the “Louisiana Privatization and Competition Council,” Regular Session, 2001;

 From the State of New Jersey, Assembly Bill No. 3122, which “establishes conditions necessary for genuine competition to develop in the local exchange telephone market, 209th Legislature, introduced January 18, 2001;

 From the State of North Carolina, Senate Bill 56, “An act establishing the North Carolina Government Competition Commission to provide for better government in North Carolina through a comprehensive state government competition initiative,” February 7, 2001;

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

 From the State of Pennsylvania, Senate Bill No. 1162 of the 2001 Session, “An act establishing the Private Enterprise Review Board; and providing for competition with private enterprise by government, community colleges and universities,” October 16, 2001; and

 From the Michigan Chamber of Commerce, a press release titled, “Michigan Chamber of Commerce Board of Directors Supports ‘Fair Play’ Legislation,” April 26, 2001.

Tab C Information regarding contracting and contracting procedures in Nevada:

Title 28, Chapter 338 of the *Nevada Revised Statutes* (NRS), “Public Works Projects” (includes NRS 338.010 through 338.645);

Sections 2 through 15 of Chapter 338 of the *Nevada Administrative Code*;

From the *State Administrative Manual*, “Cooperative Agreements and Contracts,” updated January 22, 2002;

From the Purchasing Division’s website, two sample pages lifted from the “Customer Service Site” containing answers to commonly asked questions; and

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

Tab D From Mary Walker, Lobbyist, Carson City, Douglas, and Lyon Counties; John Madole, Executive Director, Nevada Chapter, Association General Contractors (AGC); and Steve Holloway, Executive Vice President, AGC, Southern Nevada, a document titled, “Local Government and Associated General Contractors Legislative Proposal to the Legislative Committee to Study Competition Between Local Governments and Private Enterprises.”

Inside Cover The inside cover of this binder contains an audit report from Nevada’s Legislative Auditor, Legislative Counsel Bureau, regarding Nevada’s contracting process, dated August 16, 2001. Also included are copies of the minutes of the October 11, 2001, meeting of the Audit Subcommittee of the Legislative Commission and an “audit summary” of the report.

Exhibit B is a 10-page document titled “Nevada Recreation and Park Society,” submitted by Scott Morgan, Community Services Parks and Recreation Director, Douglas County, Minden, Nevada.

Exhibit C is a one-page document titled “Chronology of the Nevada Medical Liability Insurance Crisis,” furnished by Larry Mathies, Executive Director, Nevada State Medical Association, Las Vegas, Nevada.

Exhibit D is a five-page copy of testimony dated March 12, 2002, and titled “Medical Malpractice” provided by Bill M. Welch, President and Chief Executive Officer, Nevada Hospital Association, Reno, Nevada.

Exhibit E is a two-page copy of testimony titled “West-Crear Medical Society, National Medical Association,” presented by James S. Tate, Jr., M.D., President, West-Crear Medical Society, Las Vegas, Nevada.

Exhibit F 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.