MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
May 9, 2005

The Committee on Government Affairs was called to order at 9:09 a.m., on Monday, May 9, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst

Sylvia Brown, Committee Attaché

OTHERS PRESENT:

Ted J. Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada
Tim McAndrew, Emergency Manager, Office of Emergency Management, City of Las Vegas, Nevada
Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority
J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada
Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada
Kent Lauer, Executive Director, Nevada Press Association
Daniel J. Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada
James T. Richardson, Legislative Advocate, representing the Nevada Faculty Alliance
Paul McKenzie, Organizer, Operating Engineers Local Union No. 3, Reno, Nevada
Richard Daly, Business Manager, Laborers' International Union of North America Local 169, Reno, Nevada
Daniel J. Costella, Business Agent, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local No. 118, Sparks, Nevada
James L. Wadhams, Attorney at Law, Jones Vargas Law Firm, Las Vegas, Nevada
Fred L. Hillerby, Legislative Advocate, representing the Nevada State Board of Nursing
Isaac Henderson, Private Citizen, Las Vegas, Nevada
Carole Vilardo, President, Nevada Taxpayers Association
Paul J. Enos, Government Affairs Manager, Retail Association of Nevada
Cheryl Blomstrom, Legislative Advocate, representing the National Federation of Independent Businesses
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada
Cheri Edelman, Legislative Advocate, representing the City of Las Vegas, Nevada
Neena Laxalt, Legislative Advocate, representing the City of Sparks, Nevada

Vice Chairwoman Pierce:
[Meeting called to order and roll called.] I will open the hearing on S.B. 115.

Senate Bill 115 (1st Reprint): Authorizes governing bodies of local governments and certain advisory bodies to such governing bodies to hold closed meetings concerning matters relating to security and terrorism under certain circumstances. (BDR 19-601)

Ted J. Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada:
[Distributed Exhibit B.] Today, I'm joined by Tim McAndrew, the Emergency Manager for the City of Las Vegas. I'd like to walk the Committee through the bill and then turn it over to Mr. McAndrew. He'll provide some additional details for the Committee.

In general, the intent of this bill is to allow local governments the authority to hold a closed meeting to discuss security related issues. This authority closely mirrors the authority that the Nevada Commission on Homeland Security is allowed under NRS [*Nevada Revised Statutes*] 239C. Under the State's Homeland Security Act, the local jurisdictions are required to develop and submit a response plan to the Homeland Security Commission. This plan is considered confidential in accordance with NRS 239C, yet the law does not allow us to review this confidential plan in a closed meeting. Here is a brief overview of the bill.

In subsection 1, it defines very specifically what security topics we can discuss. It also requires a determination by a two-thirds vote of the governing or advisory body that public disclosure would likely threaten the safety of the public.

Subsection 2 requires a motion that specifies the nature of the business to be considered in the closed meeting. In a practical application, you'd still have the notice to the public, you would have an agenda—just like we have at all the Commission meetings and the council meetings—and on that agenda—just like you have sometime on a personnel session—you have an item that says, we're going to discuss security-related items, and here is what we are going to talk about in general. You would close the meeting; the council or commission would then go back, have a discussion, then come back out, and then continue the meeting so the public is duly notified of the discussions that are going to be taking place. I wanted to make that clear.

[Ted Olivas, continued.] Subsection 3 specifies that all the information, materials, minutes, and other reproductions related to the meeting are confidential. Subsection 4 specifies that those documents related to the meeting may be made available to the public by a court order. Subsection 5 defines the acts of terrorism, which is consistent with the Nevada Commission on Homeland Security or acts of terrorism.

Assemblyman Hardy:
I'm curious about the vote in the closed meeting. You said discussion in the closed meeting, but you didn't say a vote in the closed meeting. If we are going to have a closed meeting discussion, are we also going to do it differently than we do personnel, where we have to then go back to the open meeting and have a vote, or are we going to have the vote in the closed meeting after the discussion in the closed meeting?

Ted Olivas:
The vote would take place before closing the session to go into a closed meeting. The committee, council, or commission would vote that it's appropriate to have a discussion about the security-related issues. Once the vote was taken, then they would go back, close the meeting, go have the discussion, and then come back out. It takes place before they have the closed meeting.

Assemblyman Hardy:
That's not my question. In the closed meeting, they've had the vote, two-thirds have agreed to do it, and they had the discussion in closed meeting. There has to be a decision after that discussion. That decision has to be a vote. Does the vote happen in the closed meeting? This is where I think it's a security issue.

Ted Olivas:
The answer to your question is yes. If there needs to be a vote in that closed session, it would take place in the closed session, and then it would come out into the regular open meeting.

Assemblyman Hardy:
Which is a distinction between the closed meeting and on the personnel issues, where you come back into open session and have the actual vote?

Ted Olivas:
That is correct.

Assemblyman Hardy:
So, this is different, and appropriately so, I think. The court order: is a judge able to see the stuff that is asked for before the judge says, "Yes, I will allow that to happen"? In other words, is the judge blinded to what he or she is going to see, or is the judge able to see the security information before the judge says, "Yes, I'm going to open that"?

Ted Olivas:
I'm not a lawyer, and so I can't answer that question. I would assume that we would have to provide that information to a judge, so he could make a determination as to whether it should be provided to the public.

Assemblyman Hardy:
Thank you. That is what I would like.

Assemblyman McCleary:
My colleague to my far left has brought up a concern. They're going to be able to vote in secret, or vote in that secret meeting? Does the vote become public record after that? In other words, was it 3 to 2? Who voted for what?

Ted Olivas:
Yes. That would be a part of the record in the closed session, and that would be part of the minutes of the meeting.

Assemblyman McCleary:
I still don't understand. That's going to be in the minutes of the closed meeting?

Ted Olivas:
That is correct.

Assemblyman McCleary:
Only you know the secret handshake you can read, right? I'm saying that you're going to vote on a topic. Of course, you want to keep the details of this topic confidential because of security reasons. Shouldn't the vote still be public record, how they voted—whether it was unanimous, 3 to 2, or whatever it may be?

Ted Olivas:
I'm not sure if that information needs to be included in the public record. We are talking about security-related issues, and basically the only vote that there would be is on what type of things you feel the jurisdiction needs to perform to fix the issues that have been identified. So, the vote would be, here are the top

five things that need to be taken care of, and do we all agree to that? If so, you would take a vote.

Assemblyman McCleary:
Maybe I'm just confused, and I apologize if I'm not getting it. Let's say you are constructing a building and you decide in the best interest of safety that we don't want the blueprints in this to be public, or something to that effect. So, you decide to meet together to discuss the details—maybe you're discussing the blueprints—you want to discuss this in private, and then you decide we are okay. We like the way it's going to be constructed, we do want to keep this confidential, we don't want this to be public information, and so then let's take a vote.

In that situation, I would think the people still should have a right to know how you voted, regardless of whether or not they know the details of the information you are trying to keep private.

Vice Chairwoman Pierce:
I would like to point out that staff has just pointed out to me that there is nothing in the bill that allows you to take a vote. There is nothing, specifically, in the bill. Can you tell me what would give you that authority?

Ted Olivas:
There is nothing in the bill that says that we have to take a vote. The question was, "If there was a vote back there, would that be considered part of the public record or not?"

The intent and the wording is very clear. Basically, you're giving a security briefing, so they are identifying the issue that you have with your jurisdiction and the vulnerabilities. You don't necessarily take a vote on that, but certainly a council could take a vote on it. There is nothing that precludes them from taking a vote on the information that was provided during the meeting.

Vice Chairwoman Pierce:
Is the vote part in the open part of the session or the closed part of the session?

Ted Olivas:
The only requirement that we have in here is to let the public know by a two-thirds vote that we are going to talk about security-related issues in a closed session. Beyond that—once they are in that session—there is no requirement for a vote. It would depend upon the jurisdiction and what they are talking about, but they are just getting briefed on terrorism issues, and they may or may not vote on what information they have received.

Vice Chairwoman Pierce:
Is there any part of the statute that says you are allowed to take a vote or that you are not allowed to take a vote in a closed meeting?

Ted Olivas:
Not that I'm aware of. I don't know of any specific statute.

Assemblyman Sibley:
My concern is with these votes behind closed doors. If you take my colleague's example of reviewing a building plan—and see how a building is built—then you decide, at that time, that you need to do something to increase security, would you be voting on a purchasing issue behind closed doors?

Ted Olivas:
Absolutely not. Anything that happens as a result of the findings in the meeting—and particularly on building vulnerabilities—does not preclude the need to follow the laws for purchasing and for public works.

Let's say that we decided on a certain building to do some sort of a retrofit—for example, put up some barriers or something. They would make that decision in a closed meeting. Once that decision was made, then the public works department would go through the normal process of saying, "We want to put barriers at this building." It just wouldn't be tied to a security-related issue; it would just be another public works project.

Assemblyman Claborn:
I have a problem with Section 1, paragraph 7. The word "emergencies," that's a broad statement. I would hate to see public information suppressed. It could come in so many different ways; it could come in contamination of our water, or it could be contamination of our air pollution. I would hate to see a bomb threat suppressed. Does this cover that? That is very broad, and I don't like it at all.

Tim McAndrew, Emergency Manager, Office of Emergency Management, City of Las Vegas, Nevada:
Everything within the provisions of S.B. 115 are specifically related to acts of terrorism. If there was, for example, a bomb threat, by definition a bomb threat is an act of terrorism and/or an intended act of terrorism. If we had a threat against the community that someone was going to blow up a building or what have you, that would be a threat of terrorism, and that would be a discussion for the closed session. The procedures and response protocols of that community would take place to try and prevent the threat.

Assemblyman Claborn:
Are you saying that we would have to have a meeting first and then vote on it before we let out the information to the public? That is what it looks like to me in this bill.

Tim McAndrew:
No, these are intended for planning procedures in advance of emergencies that have occurred. Of course, if an explosion has occurred, we are not going to have a meeting to determine how we are going to respond to it. These are all pre-planning discussions prior to an event occurring.

Assemblyman Claborn:
That still doesn't answer my question.

Assemblyman Hardy:
I appreciate the questions that are coming up. I'm not familiar with Chapter 241 of NRS, where it says this is all for pre-planning. I think as we look at an event that happens, obviously when something happens we discuss the security, the procedures for responding, the related information for emergencies, and the deficiencies in our security. That is what we do, and as soon as something happens, we review that whole protocol on what we are going to do to prevent it from happening again. It sounds good.

The pre-planning—I don't know if Chapter 241 says specifically what you are alluding to. My personal feeling is that I think you do need the power to have a secure place to talk about secure information. I concur that we need something in the statute—in a way of amending—that would say when we can take a vote and take action in that closed meeting. That is where I'm coming from. Now, that is a departure from what we do now in the open meeting. I want to make sure that is clear, that either we are going to do that, or we are not going to do that. Without showing it in the bill itself, or the proposal, we don't have the right to vote. In what I'm reading, we don't have that right to vote in a closed meeting in the bill as it is presented. I do not see that.

Assemblywoman Kirkpatrick:
I think that in some of these meetings, we already have a response task force. Am I correct to assume that we are only trying to include the local government so that everybody could know what is going on? I know, for instance, prior to New Year's Eve on the Strip, for security purposes, planning was going on about how the procedure would work. There were helicopters flying over the Strip, and it is closed down. I understand and believe we already have these types of task force groups meeting on homeland security. I think we are just

trying to make sure the public officials know what's going on too, because of the different communities. North Las Vegas may know something, but Las Vegas may not be aware. Am I reading the bill correctly?

Tim McAndrew:
You are correct that those bodies have already been in place for years. There are essentially two groups: the local jurisdictional governments and the emergency advisory bodies to those local jurisdictions. We find ourselves in a new world after September 11, 2001. We are dealing with homeland security issues versus just typical criminal security on New Year's Eve, for example. We are now looking at homeland security issues and what the current provisions of the state's homeland security statute require of local governing bodies—and their advisory bodies—to create emergency response plans for their intended response to acts of terrorism. That same existing statute says that those plans are confidential. Currently, there is no way that our advisory bodies—or the governing bodies that have to ratify those plans to make them official—have any way to review, develop, or adopt those plans with the exception of an open meeting. Yet, it's a confidential plan. That's what we are trying to accomplish.

Assemblywoman Parnell:
Along those same lines, the language in this bill gives the impression that we want to allow the local jurisdictions to be briefed. I don't see any action there, and I think there is a very clear difference between being briefed on an issue and taking action on that issue. I'm very unclear and uncomfortable not having that line drawn a little more clearly.

Assemblyman Goicoechea:
The way I see it coming down, in an open meeting, the body would determine and establish by a two-thirds vote that there would be issues discussed that pertain to security of that local jurisdiction. As I go on down, in Section 3, once any materials that were discussed in that closed meeting portion become confidential, that is the real issue when you are a public body. At the point you bring it into an open meeting and you vote on it—and I don't see any real problem with even coming out into an open meeting and then voting to adopt whatever plan, because typically, when you vote on a plan in a public meeting, it then becomes public record. This takes that away. It wouldn't be an issue whether you voted in the closed session. Typically, I wouldn't think that you would. All this material would be submitted to you, the discussion would take place, you could come back into open forum, and then you would vote to adopt the plans.

[Assemblyman Goicoechea, continued.] The real crux of the bill is the fact that you do not have to provide that information that was discussed in the meeting. I think that's what they are looking for, and I agree with them.

Assemblyman Claborn:
The conversation seems to be centering on whether, after the fact, something has happened. The bill on line 6, Section 1, says "relating to threats." Maybe I'm wrong; I see that as prior to anything happening. Am I incorrect? Threat means before the action is actually taken?

Ted Olivas:
Yes, this is a planning procedure. This isn't after the fact. This is a planning procedure, and this is consistent with the State Homeland Security group. In NRS 239C, they have the ability to have a closed meeting to receive security briefings and some other things, which is what subsections 1(a), 1(b), and 1(c) are modeled after. We took those definitions and we tightened them up some. We wanted it to be specific to threats of terrorism. This is a planning procedure that we are going through to prepare ourselves for security threats relating to terrorism, very specifically. So, it's not an after-the-fact process; it's a preplanning process.

Assemblyman Claborn:
You have the before, middle, and after?

Ted Olivas:
It's ongoing.

Tim McAndrew:
Senate Bill 115 essentially replicates existing statute at both the federal and state levels. NRS 239C, as Mr. Olivas mentioned to you earlier, is the existing state statute for homeland security, and it provides precisely these same provisions. Actually, they are looser provisions than what we have already established into this through some amendments. These are actually tighter provisions here.

Senate Bill 115 closes the gap between where the real homeland security threat is going to occur—and God forbid that if an act of terrorism does happen—and where the event happens. Irrespective of what a target of a terrorist group might be—whether it be a federal installation, a state installation, or even a privately owned facility, such as a casino or a hotel down on the Strip in Las Vegas—it doesn't really matter where that event occurs and what the threat is against. It is against a local jurisdiction. The local first responders are the ones who are going to respond to that event. The local governments are the

ones that have to provide the resources to those first responders, hopefully try to prevent an attack, and respond to the best of their abilities if an attack occurs. This bill closes that gap, where our federal government and our state government bodies—for these very same reasons—have the ability to go into a closed session and discuss the procedures that are going be relative to that threat. This closes that gap, and it provides the local jurisdictions at the ground level, where the rubber hits the road, that same ability.

Assemblywoman Parnell:
Say we are talking, as Mrs. Kirkpatrick said, about the New Year's Eve threat on the Strip. Are our local leaders currently briefed on that in private, or do they have to be briefed in an open setting?

Tim McAndrew:
They have to be briefed independently. They cannot currently be brought together as a unified group and be briefed in a unified manner with a single voice and a single message. That's one of the things that's concerning to us. Right now, we have to fragment the way we brief our local officials—as well as some of our advisory bodies—if we assemble a quorum. Then, we're into a public meeting issue. We currently have to fragment our briefings. Have you ever been involved in one of those conversations where you tell one person on this side of the room something, and by the time it comes out the other side of the room, the story has changed dramatically as it goes from person to person? We are trying to avoid that. This bill provides us the ability to gather the government agency and give them one unified briefing so that they have that cohesiveness.

Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority:
Truckee Meadows Water Authority is in support of this bill. We spoke on the Senate side. Our issue is, basically, that our board sets policy for Truckee Meadows Water Authority's operations. We have had to conduct vulnerability assessments, both at the federal and state levels, to protect water supplies. We are particularly vulnerable. We have two surface water treatment plants on the Truckee River, one right within downtown Reno. How and why this bill would be supported by our entity is the fact that we have to do the vulnerability assessments—we've determined we have vulnerabilities—and then we have to develop a vulnerability plan. At that point, we can't really discuss any of these issues because all of our meetings are public, as well as being broadcast on television. During those times, the fact that we could—through a two-thirds majority—go into a private discussion on those issues would be helpful for Truckee Meadows Water Authority.

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:

I think Mr. Goicoechea hit the nail on the head. There has been some discussion about whether a vote could take place inside of this closed session or not. I perceive there is some discomfort among some of the members of the Committee on that issue. My interpretation—I would certainly defer to Legal on this—is that unless it's specified in this bill, you would still be subject to all the aspects of the Open Meeting Law that weren't specifically addressed in here. The Attorney General's Office has opined that votes cannot be taken in closed session. My interpretation—unless it were specified otherwise in here, which it isn't; I don't see in here where it indicates the vote can be taken in there—was that votes couldn't be taken in there.

I don't think it's the City of Las Vegas' intent that that would be the case. I think their intention, as they said, was to be able to brief their elected officials. To that point, local elected officials have oversight responsibility for their agencies. They have a specific duty to protect the public safety of their communities. To that end, they all need to be able to hear the same thing in frank terms. As a former city manager, it was always important to me that all my elected officials were privy to all the same information. This would allow all of them to hear all of the information in very frank terms, without compromising the safety of the community.

On one of the handouts (Exhibit B), you have the S.B. 115 fact sheet, which wasn't prepared by us, but which indicates several states that have passed similar legislation. I'll add one state I don't see listed. On September 11, 2001, I was a city manager in the state of Kansas, and in the 2002 session, their legislature convened and passed similar legislation immediately following that. In fact, in the 2003 session, they returned to the subject. They strengthened and broadened that legislation in order to give public bodies that right. As a city manager, functioning in that state at that time, it was invaluable to us, as the nation's attention was focused on enhancing security and putting those plans into place. It was very important to us that we be able to brief our elected officials in that way.

I will amplify the fact by indicating that in Kansas, we thought it was very important that we get that information to our elected officials. We weren't even a high target area like Southern Nevada, in particular, might be. For that reason, the local elected officials need to have that information in frank terms, and know they are accountable to their constituents to make sure that their agencies are addressing those issues. The agencies need an opportunity to brief them on those matters. Therefore, the League of Cities strongly supports S.B. 115.

Vice Chairwoman Pierce:
Is there anyone else that would like to speak in favor S.B. 115? Is there anyone who would like to speak in opposition to S.B. 115?

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada (ACLU):
We are very concerned with S.B. 115. The ACLU testified on the Senate side. We are glad to see some of the proposals were adopted and are part of the text of the current bill, including the closing of a portion of a meeting as opposed to the entire meeting, just to make it more specific. Also, the access of the documentation upon court order is very important, and we are very glad to see that. There is one glaring omission, though, and we are very concerned. This is not something that was just proposed by the ACLU, but it was heartily accepted by Senate Chairman Nolan. It deals with the fact that there should be some oversight by some agencies, such as the Attorney General's Office, to determine whether the closing of a meeting is really appropriate. I will explain why this is so important.

We are talking about quite an expansion of what happened in the prior session. The current law—NRS 239—was adopted in the 2003 Legislative Session. It created an exception to the Open Meeting Law for the Nevada Commission on Homeland Security. By doing that, it closed meetings for specified items. According to the existing law, this allows the Commission to close and classify materials to which the public should have a right to access. Furthermore, the language did not require any notice, agenda, or indication of the nature of the items to be considered. There were no requirements of keeping minutes or any records of its action during the closed session. All these exceptions to the Open Meeting Law raise serious concern about maintaining an open government.

Senate Bill 115 goes quite a bit further. It extends this exception to all local governments, which is no small task. We believe that in this regard, there should be more precautions before you close a portion of a meeting, and that the oversight of the Attorney General's Office or maybe a body of the Legislature would be appropriate. We believe that it is a very essential portion to go forward with this bill.

Assemblyman Hardy:
I'm intrigued by the concept of the oversight. I think the concept is good. Logistically, I'm not quite sure how it would work if the board, the city council, the county commission, or the advisory committee meets and then votes in a two-thirds majority to get to the point of going into the closed session. The Attorney General's Office then would give a retrospective opinion on whether

they did right or wrong. Therefore, if they did wrong, what is the penalty? Is that one of those "three strikes and you're out" things that we talked about? I have some logistical questions about how that would happen. I see some regulations coming with this—for instance, with the Attorney General being able to say, "These are the circumstances in which you can do something"—but I'm a little curious on how that logistically would happen, except retroactively.

Laura Mijanovich:
I don't have it very clear myself on how the logistics of this would work. The idea is that in this case, you are giving public bodies and local bodies—whose information the public generally should have access to—a tremendous power to close a particular portion of their meeting. They should have the view or the opinion of the Attorney General before making that decision. I heard during the course of this hearing that this pertains mostly to planning issues and not something that is after the fact. It accommodates or gives the opportunity for the Attorney General to give its opinion as to the propriety of closing the meeting or a portion of the meeting.

Assemblyman Hardy:
I guess that goes back to one of my other questions. I confess ignorance on Chapter 241. Does that include just planning? Where I come from, you start planning as soon as something happens to shore up your defenses. I don't know that you could get an advance opinion by the Attorney General fast enough for what you want to be able to do to react to something that is ongoing. So, if you have one attack in one place and you anticipate another plane in another place, it's all the same attack. I don't see the Attorney General being able to necessarily do that in advance. Planning is a nebulous word that doesn't make sense to me, because you are always planning, even right after something happens.

Laura Mijanovich:
I see your concern. However, the instances in which a portion of a meeting would be closed are very specific, and they are stated under (a), (b), and (c). I don't see a problem in those regards, as to being able to notify the Attorney General's Office—upon an emergency—that this is an issue that needs to be closed. It would be a notification and would make the Attorney General's Office part of this decision.

Assemblywoman Kirkpatrick:
My question may be for Mr. Olivas, because I'm thinking that no matter what you did behind closed doors, you probably wouldn't be able to spend any money and do anything without it coming back before a public vote. I'm trying to address your concerns, but I know, even if it's one extra police officer or traffic

control, it all costs money. Does that not have to come back to council to vote on?

Ted Olivas:
You are correct.

Assemblyman Grady:
I think we're going way further in trying to read stuff into this that isn't there. I don't see anywhere in this bill where it says that the Attorney General does not have the oversight that he has always had. If you feel that there is a violation, you can file a complaint with the Attorney General, which is still there. Public bodies can go into a closed session. This tightens it up, and it says they can only go into a closed session for three items in here when there is two-thirds vote. I think, if anything, this is tightening it up.

It's not saying that the Attorney General cannot review what they are doing, or that you, as a private citizen, cannot file a compliant. All of that is still there, so I don't see where your argument is coming from. This makes it tighter, not looser, when you say the city manager cannot put in here, "We're going into a closed session to discuss an item." It takes the council, the commissioners, or whoever it might be to say, on a two-thirds vote, "We are going into a closed session." I think this tightens it up; I think it's a great bill.

Laura Mijanovich:
I understand what you are saying; however, I believe that these are exceptional circumstances. So far, the Legislature has given power to the Nevada Commission on Homeland Security to close hearings or portions of hearings for this particular kind of situation. Now, this power is being given to local governments, where normally the public had a right to access the information. The instances normally—and the prior law—for closing a session or a portion of a session were very strict. Personal issues and issues involved in liability are extremely limited, and there are all kinds of requirements for those types of closing meetings. They have to keep minutes, and in this case, there are no minutes kept.

There are a number of requirements that were in place, and with this bill, they would be eliminated. Local governments would have a right to decide the closing of a hearing in these instances. They are so serious that they would require, in our opinion, not just the decision of the pertinent local government body, but also of an overseeing body. That is the way I see it. I respect your opinion, but we really feel very strongly about the fact that you need an additional body to make sure that there is propriety in the closing of a portion of a meeting.

Assemblyman Grady:
If you look at Section 4, the information material and minutes reproduction described in subsection 3 must be made available by a court order. You are reading more into this. There are minutes.

Assemblyman Sibley:
I have a question for Ted. It's back to my purchasing concerns. Earlier this session, we passed out of this Committee A.B. 179, which allows for first responders to not use the competitive bidding process to purchase items that are used in the prevention of terrorism-related issues. My concern is that now the meetings are going to be held privately, the purchasing is going to be done privately, and we're basically left in the dark when it comes to government spending our money.

Ted Olivas:
The purchase is not done without public notice. It just doesn't require competitive bidding, so for instance, if the purchase of the item is over $25,000, it still goes before the governing body. When you buy that item, it's not specifically tied to a terrorist activity. You are just buying it for an emergency-type purchase, but it is done in an open meeting and it's all done with public notice, so it is done appropriately. Both sides are covered from the purchasing perspective. The purchasing process still takes place as it normally would, but it is just not tied to our security plan. That's the difference.

Assemblyman Sibley:
In the hearing—it's done behind closed doors—you'll decide that maybe you'll need a certain item to protect your community. Then you will have the normal hearing, where you're going to discuss what you need, but still use the competitive bidding?

Ted Olivas:
Absolutely. The results of that meeting may create a need to purchase something or to have some sort of construction-type work done. That would then follow the normal process. Let's say you are going to put in a new security system in one of your community centers. You would then go out and create the public works document to purchase and install that, but it's not tied to your security plan. That's the difference. This does not preclude the requirements of the Local Government Purchasing Act. You still have to follow the protocol.

Kent Lauer, Executive Director, Nevada Press Association:
We are strongly opposed to this bill, and I'd like to focus my thoughts on two areas: first, the need for this bill, and secondly, the danger of creating a significant exemption to our Open Meeting Law.

First, let me focus on the need. When the proponents were up here, I heard only one specific incident in which they needed this closed meeting, and that was to prepare a response plan to be submitted to the State Homeland Security Commission. That's the only incident that they cited in their testimony of why the need this secrecy. Then you look at the bill, which doesn't say, "…to have a closed meeting to prepare a response plan," that, by law, must be submitted to the State. It gives them broad reasons to close the meeting, and I think Assemblyman Claborn was hitting on this. Just look in Section 1, subsection 1(c); they could close a meeting to discuss deficiencies in security with respect to public services, public facilities, and public infrastructure.

There is a security problem at the county courthouse, or there might be a protest at the county courthouse, and they want to discuss security regarding that protest. So, they decide to just close the meeting and discuss that security. There is a deficiency in the county courthouse, the new regional courthouse that is being built in Las Vegas. You all know the problems with that facility. There might be a deficiency in the security of that new building that is costing taxpayers millions of dollars. We will just close the meeting to discuss that deficiency in security. The language does not mirror what they want. I want to emphasize that the only thing that they mention in their testimony is, "We have to prepare this response plan," which is given to the State, and the State Commission keeps it secret. How can we discuss that document? If they want to discuss that document in closed session, then the bill should state that specific reason only.

Addressing the need further, you have to wonder why law enforcement officials aren't here rallying behind this bill. Think about that. There is not one single law enforcement official testifying in favor of this legislation. I'd also like to point out that the State Homeland Security Commission has the authority to meet behind closed doors under certain circumstances. Guess how many times the State Homeland Security Commission has met in secret since its inception two years ago. Zero times. They have never seen the need to meet in secret, but yet local governments are coming up to the table and saying, "The State has this authority; give it to us, too." In fact, a leading member of the State Commission, Clark County Sheriff Bill Young, has told the Legislature during this session that he doesn't think the State Commission needs to have closed meetings. So, where is the need for the bill?

[Kent Lauer, continued.] Now, I'd like to discuss the danger if you pass this bill in its current form. There is a real possibility that this significant exemption to openness will be abused. Boards will go into closed sessions and stray into other discussions—perhaps purchasing discussions or other matters—that they just don't want the public to know about. We shouldn't give them that opportunity. It's too much of a temptation; we've seen it happen in other areas of the law. The City has already testified before you today that they think under this legislation, they could take a vote in a closed session. They put that on the record at the very beginning of their discussion: "This would allow us to vote in a closed session."

No. This does not allow them to vote in a closed session. The Open Meeting Law is very specific on this point. All actions of a public body must be taken in the open. Now, I would suggest to you, if the city is under the impression that they can vote behind closed doors under this piece of legislation, then perhaps they might think that they can do other activities, if they are given this authority to meet in closed session. That is why I say that there is a real potential for abuse here. There is a real temptation that the discussion is going to stray into other areas. The real losers when that happens are the taxpayers, the public. I suggest you have to keep the public's interest in mind here. Sure, there is a real fine balance between protecting the public, if there is a legitimate, compelling need for that public safety.

The other part of that equation is the public's right to know what its government is doing. I would suggest that if you have any doubts whatsoever, that you give the edge to openness and to the public's right to know. The way this bill is written, there is no balance. Again, look at Section 1, subsection 1: "…receives security briefing related to threats of terrorism…" That is pretty broad language. Somebody calls in a threat; close the doors. I know it sounds good and compelling—terrorism. Sometimes when I testify against these bills, I feel like I'm pro-terrorism. I'm not. I'm pro-public's right to know.

Section 1(b) discusses procedures for responding to threats of terrorism, acts of terrorism, and "related emergencies." Is there a natural gas line in my neighborhood that is threatened, which could endanger my neighborhood and my community? Is there something in the water that could endanger my neighborhood and my community? "Sorry, we're going to discuss that behind closed doors, Mr. Lauer. Your neighbors and you have no right to know that."

Section 1(c) deals again with deficiencies in security with respect to public services, public facilities, and public infrastructure. I have two children in school. What if there is a deficiency in security at my daughter's high school or my son's elementary school, and the local government wants to meet behind

closed doors to discuss that deficiency in security? And what if there is a real problem at my daughter's school and my son's school? They say, "Just trust us. We need to discuss this in secret, and we'll take care of it." I'm sorry, but as a parent of those children in those two schools, I want to know what that deficiency is. I don't want to give that authority to a local board to discuss the secret.

Assemblyman Goicoechea:
To me, the real issue is that it is covered under Section 1, subsection 3, which is the pertinent information and materials. There is just no way—if you are in a public body, you are in an open meeting, and it hits the desk—that you can keep that confidential. This bill does allow for you to have a security plan, or the one you are going to send to the State, to be adopted. It allows for that information to, in fact, be held confidential and not be subject to public review. I don't have a problem with that. There is no way to exempt that other than exempt it from the Open Meeting Law. If you are not in a closed session and it hits that desk, it becomes public record.

Assemblyman Hardy:
From what you are saying, it wouldn't help you to feel any better if we put in on line 10, "Discuss deficiencies relating to threats of terrorism"? If we process the bill, I think it ought to be in there as well. It wouldn't make you feel any better, obviously, because you had problems with (a) and (b). I can understand where local governments are going to say, "This is our line of contacts. These are the literal people that we are going to call in an emergency," which becomes an open record. Then, you take out those people individually before you do your terrorism kind of thing, and you disrupt the plan by taking out the people. I think it harkens back to the argument and the example of freedom of speech, where you have freedom of speech, but not necessarily including yelling "fire" in a crowded theater when there is no fire. I think there are some real issues.

I appreciate what you are saying, and for lack of a better word, I appreciate all the viewpoints. I do have concerns with how this is written, what it allows, and what is doesn't. The Senate bill fact sheet (Exhibit B) uses the phrase, "...and adopt these plans in a confidential setting." The point of view that I'm coming from is that it is a vote, and I don't know that you can vote in public on a confidential thing without having that vote elaborate what you just voted on. I hear the concerns before me and behind me about that very issue, and I think that's the real problem that I am faced with.

Kent Lauer:
I think we are talking about a response plan. That is what the City says we really need this bill for, in order to discuss that response plan. The response plan

is then filed with the State and is kept confidential at that level. The whole point of my testimony was that this bill gives them a lot more than just the response plan activity. So, if you do decide to process this bill, and you do feel it's absolutely necessary, then perhaps you may want to consider just the response plan aspect that is filed with the State. This goes far afield of that. That is where the danger is.

Assemblyman Parks:
I just wanted to make an observation; there is nothing in the Open Meeting Law that prohibits a county manager or city manager from briefing, individually, each of the elected officials, if there is any thought that we had relative to not being able to do that. That is certainly a possibility.

Kent Lauer:
I think Mr. Parks raises a very good point, and that goes back to the need for this bill. Since September 11, 2001, what have these local governments been doing? Where has the problem been? They have been accomplishing that. If there is very sensitive information, they are sharing it in one-on-one discussions. I think that's a very good point.

Assemblyman Parks:
Before you close the hearing on S.B. 115, on line 13, there is a reference to an affirmative vote of at least two-thirds of the members. I know that Senator Care and I had co-sponsored—several sessions ago—a bill prohibiting public bodies from acting without an affirmative vote of a majority of its members. Somehow, that seems to get twisted. I recently watched a local rebroadcast of a meeting, whereby three votes carried a motion, and it was a seven-member body. When we work on this bill, I think we need to go back in and make sure that it is at least two-thirds of the full membership of the board, as opposed to those sitting in a hearing on any one day.

Vice Chairwoman Pierce:
I will close the hearing on S.B. 115 and open the hearing on S.B. 409.

Senate Bill 409: Revises definition of "state agency" for purposes of installment-purchase and lease-purchase agreements. (BDR 31-1346)

Daniel J. Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada (UCCSN):
This bill is simply an effort on the part of University and Community College System to put another arrow in our quiver on how to finance infrastructure. If

you look, for example, at the infrastructure on the campus at UNLV [University of Nevada, Las Vegas] and relative student-to-square-footage ratios that you see throughout the system, they are about 3.4 million square feet behind where they could or should be right now.

[Daniel Klaich, continued.] We are trying to take advantage of programs that are available to other State agencies, to do lease/purchases. We want to be very clear to repeat the testimony that we had on the other side. We are not trying to change the law on competitive bidding. We are not trying to avoid prevailing wage. We have passed out an amendment (Exhibit C) that we have discussed with interested parties with respect to the prevailing wage issue. This is simply a way for us to be proactive in helping build infrastructure. We know the full needs of infrastructure throughout the system are, quite frankly, beyond the ability of the State to provide, and we are trying to help ourselves.

James T. Richardson, Legislative Advocate, representing the Nevada Faculty Alliance:
I served on the A.B. 203 Interim Study Committee on higher education and wanted to put on the record that one of the major concerns that the committee demonstrated in the report are the problems we have getting adequate space for our classrooms, faculty, and research needs. It was a high-priority issue in that committee. This bill would help us deal with that problem, and we urge your support for the bill.

Paul McKenzie, Organizer, Operating Engineers Local Union No. 3, Reno, Nevada:
I'm here to speak in opposition to this bill. There are numerous issues with the lease/purchase options that are being used by the State now that are causing problems with buildings that are already being built. We addressed these issues with the sponsors of the bill, hoping that they would step forward and help fix those problems. They weren't willing to work with us. We hate to get more entities on board with lease/purchase when it's a broken system. The building across the street has many problems, and we would hope that, before we would give more people this tool to use, we fix the tool so that it isn't a problem anymore.

Assemblyman Claborn:
We all know that maintenance does not come under public works. NRS 353.500 to 353.630 says that this is exclusive for construction, alteration, repair, and remodeling. I'm sure alterations and remodeling would come under public works. How do they get around that?

Paul McKenzie:
If you read the NRS, it excludes the public works section of the law from being affected on a lease/purchase. That's why when we approached the public works department on this building, they said that there wasn't a requirement under the law to pay prevailing wage, but they would pay it out of the goodness of their heart. The way that the law is currently written, it's broken. If we can't fix it first, we shouldn't put more people under that broken system.

Assemblyman Claborn:
I agree. It seems out of whack here to me, because maintenance is maintenance and new construction is new construction. Anytime you remodel something or whenever you change the appearance of it, I would say it was new construction.

Daniel Klaich:
I'd just like to clarify a couple of points, and maybe even Mr. Claborn's point as well. We understood that the prevailing wage issue was an issue. We spoke with the folks who were interested in the issue. We've agreed that it shouldn't be an issue. We've agreed that we don't want to avoid the issue, and we have offered you an amendment (Exhibit C).

It's not right to sit in front of this Committee and say that we are not cooperating. That's not correct. With the issue of new construction and remodeling, that was a big issue in a legislative audit concerning construction over the last biennium. There is another bill that is making its way through the Legislature right now to clarify that exact point on when it is and when it isn't, and to ensure it comes within these statutes that you're concerned about. That was drafted at the request of Mr. Hettrick and Mr. Marvel, and I think that is finding its way through the session appropriately.

This is not a broken system. This is a system where we are way behind on what we need to provide for the State of Nevada and, in particular, the University and Community College System. This is something that you have already granted to other State agencies. We are trying to get in here and help ourselves, rather than coming to the Legislature for every nickel and dime we need for bricks and mortar. I think it's discouraging to find that we are going out there and trying to help ourselves and get rapped on the head for it.

Assemblyman Claborn:
I have to agree with you in a sense, but my concerns are making sure that the workers get paid, and paid rightfully, at proper wages.

Daniel Klaich:
We agree, and I just want to be absolutely clear for the record. We agree 100 percent with you and have offered a friendly amendment to our own bill to clarify that, so that there will be no question whatsoever. Your statement is one with which we agree, Mr. Claborn.

Richard Daly, Business Manager, Laborers' International Union of North America Local 169, Reno, Nevada:
We are here in opposition to the bill as it currently is written, along with the prevailing wage concern we addressed on the Senate side. We also tried to present an amendment, but we were soundly rejected by the Chairman over there. He said it wasn't germane to the bill.

There were several other concerns that we have with the lease/purchase process that were identified and that we discussed with the parties. They were unwilling to find a way to address the concerns that we have. One of the concerns we had centered on was how they procured the contractors and subcontractors on the job. There is a competitive bidding issue, so we suggested that they come up with some type of procurement process. They don't want to do that.

The other concern came from experiences that I have had in various other State buildings and issues. Everyone denies that it happens, but I've personally seen it happen and have experienced it. They will say, "Wouldn't it be nice if there was a building built over here with this many square feet, with these amenities, and so on? If there were one like that, we would lease it." A developer would build it. They would lease/purchase it and pay prevailing wage that way. We had another amendment that we proposed that would alleviate that. They also refused to work with us on that or accept those suggestions.

We've identified several problems and they won't address them all, so we can't see expanding a process that we have known issues with and needs to be fixed. If this was such a good thing, how did the University get excluded in the first place? Weren't there some concerns over the University System using the process? I don't have the answer to that question, but it would be a question I would ask.

Assemblyman McCleary:
Let me see if I understand. This is a process that already takes place in other government agencies? Your objection is to the process itself, not necessarily the college system using that system? Is that what I understand?

Richard Daly:
Yes. We believe that the process needs some revision to it, and not necessarily to how the process is supposed to work. They are able to leverage money to build more square footage. It's a sound process for the State; I don't have a problem with that. If we can't have these concerns addressed, then we view it as a negative process and not in balance unless it works for everybody.

Assemblyman McCleary:
I understand your concerns with the entire process, which affects all these different agencies. At the same time, I can see them saying, "Everyone else is doing that. Why can't we?"

Richard Daly:
Yes. If everyone else is doing it and doing it poorly, does that mean that it's a good process that does not merit repair or having the bill fixed? Just because everyone else is doing or has access to it doesn't mean we still don't have the same concerns and issues over the competitive bidding, bid shopping, and various issues. Mr. [Daniel] Costella of Iron Workers has more information about that. We have seen some of these issues. They are known issues, they are identified, and we need to try to fix them. This is just an opportunity to do so, rather than keep the same problems expanded to more agencies.

Vice Chairwoman Pierce:
Does the amendment that has been proposed (Exhibit C) help some?

Richard Daly:
Yes, it does. It is language that we suggested on the Senate side, but it doesn't concern the other known issues. We were hoping to fix more than just that one potential problem.

Daniel J. Costella, Business Agent, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local No. 118, Sparks, Nevada:
I'd like to echo those sentiments by Mr. Daly. We feel that this is a system in need of repair, and if there are efforts made to correct them, we would certainly not want to deny the State the ability to acquire more space for its university.

First hand, I can just tell you that on this project in Carson City, we did lose over six thousand man-hours to local hires. Be it union or non-union, that's not the issue. There was improper licensing and other issues we had to deal with. We have something in front of the Labor Commissioner now, and we feel we will win in that case.

Assemblyman Hardy:
I haven't seen any amendment except the one that we were handed today (Exhibit C). Is there an amendment floating around somewhere that we should probably have?

Daniel Costella:
Not that I'm aware of.

Richard Daly:
Yes, there is some other language that was suggested that we have gone back and forth on. I'd be happy to drop it by your office if you would like me to.

Daniel Costella:
A big problem we have is with the misclassification of workers and the failure of the out-of-state contractors to perform their due diligence when coming to the state of Nevada.

Daniel Klaich:
If I understand the other two issues, they were competitive bidding and speculative uses. If we build it, the students will come. Number one, we are not going to have any speculative buildings built in the middle of our campus that are State property. We are not going to undertake anything that is going to create the possibility of a default and having a private island in the middle of your and our campuses. We will have identified sources of income set aside to pay for these leases before we start construction.

As far as competitive bidding, I would like to see amendment language, too. I will tell you that is a deal killer, because this is a likely situation. One of the persons doing the lease option may be someone who has a construction company or is a private donor and wants to select their own construction company and contractor. So that's not going to work.

I'm very sympathetic about some of the other issues that are being discussed, but we are not trying to preempt the authority of the Labor Commissioner to solve a lot of these issues here. I don't think this legislation impacts that one way or another.

Vice Chairwoman Pierce:
I will close the hearing on S.B. 409 and open the hearing on S.B. 428.

Senate Bill 428: Prohibits admission of certain persons as parties to certain administrative proceedings. (BDR 18-987)

James L. Wadhams, Attorney at Law, Jones Vargas Law Firm, Las Vegas, Nevada:
This bill is being brought by me. I have been in practice in administrative law for 30 years in this state. This is an amendment to NRS 233B, which deals with the administrative process and, in particular, 233B.127, on the issue of licenses. The critical language is found inside on pages 2 and 3. I will discuss the amendment on page 2 first.

It simply deals with standing to intercede to an administrative proceeding on the issuance or denial of a license. Oftentimes, in these administrative proceedings, the hearing officers are not attorneys, and the issue of standing can become somewhat convoluted. I have seen in the past where competitors—simply to interfere with the grant or denial of a license—have been allowed to participate in that. I think the courts have been relatively clear on the direct impact necessary to achieve standing as a party. This amendment states the public policy clearly for the benefit of all administrative proceedings at the State level.

The amendment on page 3 reflects that. In other words, in order to be able to appeal a decision on the granting or denial of a license, you must have been a participant in the underlying preceding. You can't suddenly appear later and become a party. Despite all the words that appear on these pages, that, I think, is the essence of this bill.

Assemblyman Goicoechea:
As I look at Section 1, subsection 4, almost anyone would—especially if you were a competitor—either gain or lose financially if a person was not licensed or was licensed.

James Wadhams:
I think that really raises the essence, and I think it's a fair question. Demonstrating to a hearing officer that you are going to gain or lose by the existence of a competitor is a relatively difficult thing to prove. I might say that I'd rather not have the sixteenth lawyer in town. If I'm the first lawyer, I want the second lawyer. The old saying is, "One will starve; two will make money." In terms of competitive businesses, the direct impact of the competitor is very difficult to prove. That's the problem that I'm trying to solve here. One must demonstrate that will have an impact, not that I would just assume not have a competitor.

Without naming instances by name, I could suggest to you that I have seen circumstances. Years ago, where there was one health maintenance

organization (HMO) in the state, and when they were having some success, they managed to appear in opposition to the licensing of subsequent HMOs for a period of time. That was designed not necessarily to prevent financial harm, but to basically maintain a monopoly. I think the standing issue is one that is important.

[James Wadhams, continued.] A question was asked of me in the committee in the other House: "Who might have an interest?" In a circumstance where there is a license that is up either for grant or denial for a supplier of certain goods or services that require a license, a business that is going to rely and be able to benefit from the grant or denial of that license could certainly intercede as a party to indicate the need for that license and the benefit that would be derived from it. I think that is a fair question, and again—simply stated, purely being a competitor is very difficult. That is a very steep hill to climb to show that is going to have a demonstrative impact on that competitor.

Assemblyman Parks:
I believe in the discussion in the other House, there was some discussion about a McDonald's and a Burger King. I'm having a hard time grappling with where that came from. Where did they go? Is there applicability in this bill?

James Wadhams:
The answer is yes. That question came up simply in the context of competitors. Those businesses are not the sorts that are subject to State-issued licenses, but it seemed to illustrate for the benefit of that particular legislator how a competitor might simply be trying to stop more business in that area. Those types of business are not issued State licenses that would be affected by this.

Vice Chairwoman Pierce:
Besides businesses competing against each other, what other kind of licenses would this apply to?

James Wadhams:
NRS 233B.127 applies to all licenses that can be contested—in other words, if they are going to be granted or denied. Typically, very few licenses require a hearing prior to being granted, but a denial of a license is one that always affords opportunity for a hearing. In my experience—I started 30 years ago with the Insurance Division under Governor O'Callaghan and then served in Business and Industry—the array of licenses granted through that, which is probably 13 or 14 agencies, covers a wide range of activities.

Vice Chairwoman Pierce:
In the granting of a license, does the only concern for the State have to do with finances?

James Wadhams:
No. In fact, if you look at lines 18, 19, and 20, it specifically makes it clear that the agency being admitted as a party is not subject to that, because they are the ones that have the broader interest of the public to look out after. For a stranger to the issuance of that license to intercede as a party, it requires a direct financial interest.

Vice Chairwoman Pierce:
If you are talking about a license for a doctor, does this mean that a former patient, who has no financial connection at all, has no way of weighing in, and the State is saying that we are not interested?

James Wadhams:
I think in that context, the State agency—and in that particular case, it would be the State Board of Medical Examiners—would typically be bringing former patients in as witnesses in regard to a denial of a license, or maybe it was a favorable former patient who wanted to come in and testify as a witness against the denial of that license. The point of this amendment is that this person would not be a direct party. They could be a witness, provide evidence, testimony, and the like, but they wouldn't be a party to the granting or denial of a license.

Vice Chairwoman Pierce:
So, as long as someone brings them to the hearing as a witness, they can testify?

James Wadhams:
Let me illustrate my lack of familiarity with the particular board you are referencing. Most of my experience has been in the business and industry area. Those are public hearings and testimony is obtained. Witnesses can come forward from the general public, which is not the issue here. It's not where the information comes from; it is the legal status of a party of the granting or denial. This is not in any way a preclusion of broad public testimony from anybody. In hearings that I've attended—just in the last three or four months, before the session—it's sometimes surprising, the people who want to testify. They have that right under the public meeting law and under the hearing process. This narrows down who could be a party to that transaction. It does not, in any way, preclude evidence or testimony from the general public, or from witnesses for either the prosecution or defense, of a particular aspect.

Fred L. Hillerby, Legislative Advocate, representing the Nevada State Board of Nursing:
Had I known this was Jim Wadhams' bill, I would have asked him, and he could have answered it for me. Frankly, I'm confused and we are confused by the language in Section 2, subsection 5, lines 15 and 16. As I read both of these sections of the Administrative Procedures Act, it clearly is a contested case—one that has been to a hearing, and then it has gone to judicial review. That may be oversimplified or overstated; I'm not sure which.

I'm going to start on line 13, because it ties it together. "If the proceeding involves a petition for judicial review or crossed-petitioned for judicial review of the final decision of the State Contractors' Board or of a final decision of an agency or hearing officer involving the grant, denial, or renewal of the license, the district court shall..." Then, it determines who gets to stay or who gets to go.

Our concern is that we get a lot of applications from people who aren't qualified. They get denied. This seems to say that the final decision was that they got denied, and now they go straight to a judicial review. I am hopeful that isn't what it says, but as you read this, it just says "a final decision of an agency or hearing officer involving the grant, denial, or renewal of a license," and that puts that decision in the middle of a judicial review. I've read it several times and probably am confused. I stand anxious to be corrected. I would have asked Mr. Wadhams ahead of time, but until he walked in here, I didn't know it was him. It just seems to be that any of our professional licensing boards—if you talk about every time you are denied a claim, they can go directly for judicial review—it could be they are just not qualified or they didn't have a scoring grade high enough on the national exam that may be required. I can't believe that this is what it was intended to say, but somehow it says these people are all of a sudden in the middle of a judicial review, and then the judge decides who is a party to the review and who isn't.

That is my question. Perhaps Mr. Wadhams can clarify it for us, or maybe your legal staff can do that. I think it's one that needs an answer. Otherwise, we have the Administrative Procedures Act, but you don't look at that when you are a nurse seeking licensure—or the Pharmacy Board, or the Dental Board—and you get denied. Normally, you have an administrative process you have to exhaust before you get access to the court, but this seems to confuse that, at least in my mind.

James Wadhams:
I think that it is important to note that this does not in any way change the administrative proceedings. In other words, if a nurse is denied a license as not being a graduate of an accredited school within the Nurse Practice Act, she or he has the right to appeal that through the State Board of Nursing and, presumably, put on evidence that that school was indeed accredited or it was accredited when he or she obtained their degree. This language deals with avoiding some intermediate opportunity to go to a petition for judicial review. Under the existing state law, you can't go to court until you have gone through the steps necessary for any particular agency or board, so it would be the final decision in the case of the Nursing Board, should the State Board of Nursing itself have denied a license. That has always been subject to judicial review.

This amendment is designed to say that you can't seek judicial review if you are not a party in the underlying transaction. Presumably, the nurse, who failed to prove that the school that he or she graduated from was accredited at the time they received their degree, has a right today for a petition for judicial review. So, in regard to that process, it doesn't change anything.

Fred Hillerby:
I don't know if a denial gives you access to the courts. I think you still have to go through an administrative proceeding. Senate Bill 276, which will be heard this afternoon in Commerce and Labor in this House, says, "The final decision of the regulatory body approving or denying an application for issuance or renewing of a license is not a contested case for the purpose of this Chapter." Granted, that is new language, but as I understood it—coming from the Attorney General to clarify that—it has always been my feeling, and I thought Mr. Wadhams said it earlier, that you would have an appeal process you would have to go through before you would have a judicial review, but then his final statement again brought me back to what has made us a little paranoid about this bill. It sounds as though, for the mere denial of a license, the next step for that applicant is the judicial review, rather than an administrative review by the board or agency.

James Wadhams:
I don't think I can go any further, as this Committee is aware, unless we have the entirety of 233B and then the Nurse Practice Act. In the case of the State Board of Nursing, if a denial by staff is appealable to the Board and is not itself a final decision, you can't go to judicial review until you get whatever intermediate appeals are necessary. This doesn't change the existing obligation to preclude the administrative process, but it is absolutely the case, absent this. If you look at the language, it is not being changed. If my license is denied and that is a final decision, I have the right to appeal, whether I'm applying for a

license as an insurance agent, nurse, doctor, or an engineer. There is no change in that. This language simply says that for a party to appeal the final decision, they have to have been a party in the contested case in the first place. I'd be happy to talk to Mr. Hillerby, if the Committee has no questions, and go through the entire section.

Vice Chairwoman Pierce:
I think that Ms. [Eileen] O'Grady is going to get us an answer on this question.

Isaac Henderson, Private Citizen, Las Vegas, Nevada:
The only thing that I see that wasn't mentioned was that once the credentials were approved right then for that person—whether they are an engineer, attorney, judge, or whatever the case may be—to be licensed, they should be put on a temporary trial basis as far as their employment is concerned, so that he or she can continue to make an income to support their families.

If they had that type of leeway before they were denied or granted license, then they could have an option to go another course in order to acquire employment. From what I see right now, things seem like they are on an even basis, but it's not quite, given the person who is filing for the appeal to be heard, as far as their financial status for that family, as well as for the future. If you could come up with some sort of solution to give them temporary financial assistance to help them, that would be great.

Vice Chairwoman Pierce:
Is there anyone else who would like to testify on S.B. 428? The hearing is closed on S.B. 428. We are being called to the Floor; I would like to recess this hearing until 7:30 a.m. tomorrow. This meeting is recessed [at 10:57 a.m.].

Chairman Parks:
[Meeting called back to order at 7:40 a.m. on May 10, 2005.] This is the recessed hearing from May 9, 2005. We will proceed with the last bill from yesterday's agenda, which is S.B. 488.

Senate Bill 488 (1st Reprint): Makes various changes concerning adoption of certain rules and regulations affecting business. (BDR 19-1294)

Carole Vilardo, President, Nevada Taxpayers' Association:
I am speaking in support of S.B. 488. Paul Enos, from Retail Association of Nevada (RAN), has some specific examples as to how the bill came about. A little background first: when the legislation was originally put into law—it is

known as the business impact statement—it was done so that businesses that would be fiscally impacted by a decision made by a local government would have the opportunity to have some sort of notification of what that impact was. As written in the existing law, it is a staff person who makes that decision as to whether or not there is a business impact. We found that since the law was first put in, in many cases, the staff person has always been a government employee, does not know or understand the particular type of business, and doesn't actually know if there is an impact or not. They can look at an issue and, from their perspective say, that there is no impact. This bill changes the procedure around to get the business community involved in the front end, instead of the back end.

[Carole Vilardo, continued.] Again, going to existing law, if in fact there is a determination made that there is no business impact and no statement to that effect, business might miss it. The ordinance gets put into place, and then it is after the fact that the business has to appeal it. This bill says that before you issue or make a determination that there is a business impact, you will contact the affected parties. We know it is impossible for the local governments to know every affected party, and the same thing goes with the State. We have done it so that they have to make this good faith attempt, and they can work through trade associations and chambers of commerce. The notification goes out, you look at this before the ordinance, and if there is an impact, that impact is identified at that time and before the ordinance is done.

The law further says that at the State level, if there is a severe impact and you've had a lot of information about there being a negative impact, you will try to mitigate those problems by working with the local government. I think Paul can give you an example of where that has very successfully worked. Be that as it may, that is the reason for the bill coming forward. It is to move this process to the front end.

In the course of discussions and as the bill moved from the Senate to this side, there were two amendments suggested, which will be presented to you by the City of Reno (Exhibit D) and the City of Las Vegas (Exhibit E). I think they are good amendments and would only make the bill better. We would urge your consideration, not only of the bill and in support of the bill, but support of the bill with those amendments. Paul will give you some specific examples about what the bad side of the existing law is and the way we can envision that it would work—and actually did work—with business licenses in Washoe County.

Assemblyman Grady:
Originally when this was put in, wasn't the whole idea that the business community would work with the local governments at the front end?

Carole Vilardo:
That was the original idea. That was how we thought it would work. Unfortunately, that did not happen, because the issue was that while there was a notification, the notification was after the fact. It was a staff person who was making the initial determination. With this, we are trying to front-end it.

I should also note that while this is in NRS [*Nevada Revised Statues*] 237—and the bulk of the changes involve the business impact statement by the local government—there is a provision that deals with NRS 233B, and that is the State agency, the State Administrative Procedures Act. The change in that part of the bill is for State agencies to put a statement as to how they notified the local governments. State agencies operate on a different set of rules—generally speaking, if you are going to do a regulation, you have to notice everybody that has asked to be noticed fifteen days ahead of time. You do discuss financial impact at that time. Sometimes there is no response whatsoever. That is the reason for including a notification within the Administrative Procedures Act, or a statement as to how notification was affected.

Assemblywoman Pierce:
I'm confused as to how this works. When a local government discovers that something might impact a business, how much lead time are they supposed to give before this proposed rule is discussed by the public body?

Carole Vilardo:
Generally speaking, the rule covers the regulation, ordinance, or anything that would be put within the governing ordinances of the local government. Right now, when you are changing one of these rules, you put through a notice of your intent to change. That is normally done at one commission or council meeting, and then two weeks later, you actually have the hearing on that ordinance. One of the amendments that will be offered establishes from the point of notification, which would be when you know you are going to do something with the ordinance, to then have a fifteen-day response time. I think that it will work pretty much within the existing framework that we have right now, which is generally used by local governments. They will be up here to speak to the bill, so I don't see any major impacts to a local government.

Assemblywoman Pierce:
How does this differ from notifying Joe Q. Public? How is this different?

Carole Vilardo:
Let's say City XYZ decides that it is going to change all of its business license fees, and the business license fees are changing by 100 percent plus one. Any

business that has asked to be notified or any of the trades or chambers within the jurisdiction of that entity would be notified that this change will be coming forth. This will be done before the ordinance is put through, rather than the situation that has occurred at this point, the way it is currently notified. Now, if a person decides that 100 percent isn't that bad—they are still reasonable from a staff perspective, but it may not be reasonable from the business perspective—then we go through this ordinance hearing, and there is a notification about the date that we are going to adopt the ordinance that we have. What I end up reading into the record, under existing law, is the fact that there is no business impact. At that point, I'm trying to challenge this. I may be only one person or two people, and there has not been enough time to explain that we will work with the local government to talk about what the impact is and what could be done to mitigate it.

Assemblywoman Pierce:
I understand what the thinking is behind this; I'm concerned that this is giving businesses some kind of lead time that we don't provide for a resident or a regular citizen.

Carole Vilardo:
If you want to do it for a citizen, I have no problem with that. This is paralleling what we do in the Administrative Procedures Act right now for State agencies. If an individual wants to be notified of specific items—not that they would have the benefit of this—they can ask any local government to be put on a notification list.

Assemblywoman Pierce:
Ordinary people don't get an impact statement on how something is going to impact them. I'm a little confused about why I would belong to a trade association that doesn't have someone paying attention to notices. What am I paying for? Isn't that what trade associations do? They track what government does, they pay attention, and they notify members. I understand most of this is in there, but I'm confused as to why government is doing what the trade associations are supposed to do.

Chairman Parks:
In looking at the established language, the general reference seems to be to "proposed regulation." However, in the revised language, it refers to a "proposed rule." What is the difference between a proposed rule and a proposed regulation? I think I know what a regulation is, but I'm not so certain I know what a rule is.

I can certainly understand how you reach out to a trade association, but the example I used was if there was to be an ordinance restricting outcall services, and we know there are 100 pages of ads in the Las Vegas phone book for outcall services. How do you notify or get the input from those 100 pages of persons who advertised their outcall services?

Carole Vilardo:
On the first one, rule becomes a term of art that was discussed. It involves both an ordinance and a regulation. When there were regulations established with the local governments and how to deal with this, it was at the suggestion of Mr. [John] Swendseid that the terminology "rule" be used. I don't know how it changed over, because I don't remember that being testified to in the Senate. It may have been a case, because of the amendment, that in taking the time to review, Legal realized that rule is more encompassing.

Chairman Parks:
I gathered that, but I wanted to know how encompassing it might be. Our staff just handed me NRS [*Nevada Revised Statues*] 237.060. As long as we have a definition, I am satisfied with it.

Carole Vilardo:
The accepted practice so far has been the same as with the State relative to an individual business. You can request a local government to put you on a mailing and notification list. I have that with a number of the local governments, and I had it when I had my own business in Clark County. I called and was on a list for any time that there would be a major change in business licenses. That was my particular interest at that point from something that occurred. Relative to the outcalls, my understanding is that they do have a trade association.

Assemblywoman Kirkpatrick:
We were working on an ordinance affecting the cell tower situations and how we could work together to make it better, so that the neighbors didn't have to come out so often. This was so that we could streamline things a little bit better. We got with the local industry, brought them all in, had a task force meeting, and we were able to address many concerns that the public had. I think this makes it more proactive. A lot of times, if I ask you the question, you don't necessarily have the answer. However, you have time to go back and get the answer, so when it does come before a public hearing, then the residents are much more at ease. This is because we have all of the answers. I think this helps a lot of people, including the residents.

Nine times out of ten, you will see a lot of residents who are coming out because they want to hear the entire discussion, whether it be something

simple or complex—ordinances, regulations, or guidelines. I think this is a step in the right direction, because it gets a lot of questions out on the table. It gives people plenty of time to come back, and it is putting a lot of people in the industry together to get their knowledge. For example, in North Las Vegas, we were trying to change the tavern ordinance and how far it was away. The public hearing was four hours long because people had so many questions. We then had a task force meeting to address a lot of the questions. After that, we came back. The residents didn't have to sit there for four hours, but they were able to get all of their answers. We all worked together. A lot of residents will usually ask to be part of this type of task force.

[Assemblywoman Kirkpatrick, continued.] For me, I think it is a step in the right direction. It mitigates a lot of problems from the get-go. I think it's easier to understand when you do things in layman's terms.

Paul J. Enos, Government Affairs Manager, Retail Association of Nevada:
I am speaking in support of S.B. 488. Assemblywoman Kirkpatrick brings up an interesting point. Most often, as a lobbyist or as a business, we end up reacting to rules or ordinances. This allows us to be proactive. When a business and a local government are able to work together on an ordinance, rule, or issue, we end up coming up with a solution that might not be there otherwise. I know we have worked with Clark County on a graffiti ordinance. They said that we have a problem with graffiti on abandoned buildings and asked us to help us come with a solution to abate this problem. The Las Vegas Chamber, retail, the paint industry, and we were all there to come up with an idea to make things better.

The same thing happened in Washoe County with business license increases. They wanted, in some cases, to raise business license fees 600 percent. We all came to the table and had numerous meetings—some four hours long—where we came up with an idea where the impact was much less on businesses, and they ended up generating more revenue. There are times when we will see an ordinance that will pop up on first reading, and we'll say that no business impact statement is needed because it won't impact business. There was a municipality that I was dealing with that wanted to pass a shopping cart ordinance. We see it on the agenda for first reading. It says, "No business impact statement required, because it is not going to impact business." In fact, it would impact business, because it would end up charging a store $18 for each abandoned shopping cart that they have to go pick up. It would put the cart retrieval people at a disadvantage, because the city would be collecting the cart instead of the cart retrieval services.

When we saw that and we saw how they said this will not impact business, we said that if we could come to the table beforehand and work with the entity

beforehand to come up with a solution, we'd make it easier on the back end. Instead of going to the public hearing opposing it, you would be able to take care of all of those issues up front, as opposed to having to come before public hearings and trying to work it out then.

Assemblywoman Pierce:
I must have another definition of proactive, because proactive to me, in terms of a trade organization, would be that you have a secretary who keeps track of regulations that are coming up and that you write your own impact statement. To say that a trade organization is being proactive by waiting for the local government to send them a notice that something is going to happen that might affect them, and then requiring that local government to write the impact statement, is not my definition of proactive.

Paul Enos:
Oftentimes—as a local government might not know how a rule or ordinance is going to impact business—we don't always know how what we do is impacting a local government. We understand abandoned shopping carts might be an issue, and we don't know how big of an issue it is until somebody in the local government contacts us and tells us, "We have a problem here. There are 100 abandoned shopping carts downtown, and we need to fix this problem." By them contacting us, we are then able to work on a solution together.

Assemblywoman Pierce:
I don't see that as the same as being notified that a regulation is going to be changed, that there is going to be a public meeting, and that government needs to come up with an impact statement, so that your trade organization doesn't have to spend the money to come up with an impact statement. I don't think that is the same thing.

Cheryl Blomstrom, Legislative Advocate, representing the National Federation of Independent Businesses:
We very much support the concept within S.B. 488, as well as the two proposed amendments as we understand them. As Assemblywoman Pierce points out, trade associations are attempting to be proactive. The business impact statement language is in current statute. We are trying to provide some clarity for local governments, regulatory agencies at the State level, and for our business members. I think you will hear some information within the proposed amendment from the City of Reno (Exhibit D) that puts some more of the burden back on small businesses and trade associations.

Assemblywoman Pierce:
I'm confused about your idea that this puts more of the burden back on business. Could you explain that to me?

Cheryl Blomstrom:
As it stands right now, it does not burden business. We are saying that the amendment puts more of the burden back on us, as I understand it. I think Ms. Lamboley is going to present that for you.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada:
We did have concerns with this bill as initially proposed in the Senate, and we agreed to sit down with the bill's proponents and work with them to try and find some solution. The City of Reno was very concerned that they added additional layers of work for City staff that maybe did not produce the results. The City of Reno has been very proactive in reaching out the business community on various ordinances and rules that we've adopted. Most recently, we were looking at the mini-motorcycles and mini-scooters, and we did talk with the Retailers Association about how this might impact some of their members by requiring them to post signs about what the state law was regarding the proper use and the licensure of people who were going to operate those vehicles.

In looking at this bill, we thought that we would offer an amendment (Exhibit D) that would require the trade associations or the businesses to get back to the local governments in a certain time period where we could identify whether or not. Sometimes we don't hear back from the business community, and we presume or assume—because of their lack of response—that there may not be an impact. Sometimes that does happen. By putting a time period into the law, we feel that this does put some proactivity requirement onto the businesses, so that they know that we are reaching out to them. We also, in the interim, would like to work with the various business associations to see how we might make these business impacts very real, as far as the process.

The City of Reno is committed to continuing to look at ways to improve business impact statements. We have had some success—the graffiti ordinance. We are working with shopping cart ordinances right now, and we think that we can improve the process and would be willing to do that. We have proposed an amendment (Exhibit D). It is before you, and we think it would improve the bill and allow us to be more supportive of the bill than we were in the Senate.

Chairman Parks:
Has this proposed amendment been shared with other individuals? Have you discussed it with the Retailers Association of Nevada or the Taxpayers' Association?

Nicole Lamboley:
We did, yesterday, talk with everybody and shared the amendment with them. They have indicated that they believe that the amendment does improve the bill. We think this is an ongoing commitment to improving the bill and the process.

Chairman Parks:
I noticed that it has a 15-day limit in there. When I was reading the initial bill, that was a major concern that I had; someone might get whipsawed back and forth if there were multiple trade associations that all said they wanted a bite of the apple.

Assemblyman Grady:
I have some questions on your amendment, where it says, "Trade associations or owners and officers of businesses shall have fifteen days after receiving notification…" Are you just opening up a can of worms here that trade association X comes in and says, "We didn't receive that notification until the fourth and you are having the meeting on the tenth, so we didn't have fifteen days"? The other thing is, when you are talking fifteen days, are you talking fifteen business days or calendar days? How are you defining your fifteen days?

Nicole Lamboley:
It should be fifteen business days or working days. Generally, as I understand it, they usually give about three days after mailing as an expectation of when you would receive notification. Generally, in the ordinance process that we end up dealing with, it isn't just two weeks. We don't introduce the ordinance and then hear it in the next two weeks. Sometimes that occurs, but generally it has been practiced that business impact statements take three to four weeks to process. In some instances, they take four or five months to begin drafting. I think the experience of the City of Reno most recently has been that, as we start to look at what ordinances are being proposed, we know our Council is going to ask what the impact on business or the affected parties is.

We contact interested groups earlier in the game as we begin to draft the ordinance, so that they don't see it the first time it gets put on the agenda. Fifteen days could be a little problematic in that you could get a question about when they received notification, but I think that is why—in the interim—we need to work out some of these things, what we are really trying to do, what is

proper notice, what is reasonable time, and how we will deal with the business impact. We would be happy to accept fifteen business days or working days, so it isn't fifteen calendar days.

Cheri Edelman, Legislative Advocate, representing the City of Las Vegas, Nevada:
We passed out an amendment (Exhibit E) to S.B. 488. Essentially, it is a clarifying amendment right now. The law asks that we have the governing body do the business impact statement; we'd like to clarify that it could be the governing body or its designee, to allow staff to do that. With that, we would echo and agree with Ms. Lamboley's amendment.

Chairman Parks:
Have you shared this with the Retail Association, independent business, and other local governments?

Cheri Edelman:
I've shared it with the Taxpayers Association, but I've not shared it with anyone else. I would be more than happy to share it with any others.

Chairman Parks:
As long as you see that they have copies.

Carole Vilardo:
I shared that with the people who have been working on this bill from the business community. There is support for the amendment.

Assemblywoman Pierce:
I do appreciate the amendment. When I first read this, I wondered how local governments keep from getting sued if there is no notification, or the impact statement is not big or through enough. At least this gives local governments some protection.

Neena Laxalt, Legislative Advocate, representing the City of Sparks, Nevada:
The City of Sparks supports this bill with the amendment (Exhibit D) that the City of Reno has proposed.

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:
I felt it was important that I indicate that with the amendments proposed, the League of Cities' concerns have largely been addressed. The reason that I felt it was important to say that is because in the other House, I testified that we still had remaining questions and concerns, but we were willing to work those out

with the proponents of the bill. With the amendments—and it is my understanding that the proponents of the bill are amenable to that—the League of Cities' concerns are largely resolved.

I would indicate—relative to Mr. Grady's concern on the Reno amendment (Exhibit D)—that, in addition to adding the word "business," so that it would be fifteen business days, I wonder if it might be wise to remove the word "receiving" in letter (c) of the amendment. This would be so that they have fifteen business days after notification. That way, the local government doesn't have to try to certify that someone else received the notice. They can only indicate that they had properly sent notices and so forth. That might be a suggestion that would take care of that.

Chairman Parks:
Is there anyone else wishing to speak on S.B. 488? Seeing none, we will close the hearing on S.B. 488.

Senate Bill 276 (1st Reprint): Establishes uniform disciplinary process for certain regulatory bodies which administer occupational licensing. (BDR 54-98)

Not heard.

Chairman Parks:
We are also going to close and adjourn this hearing from May 9, 2005. We are adjourned [at 8:15 a.m.].

RESPECTFULLY SUBMITTED:

Sylvia Brown	Paul Partida
Recording Attaché	Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 9, 2005 **Time of Meeting: 9:09 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 115	B	Ted Olivas / City of Las Vegas	Bill fact sheet
SB 409	C	Daniel Klaich / UCCSN	Proposed amendment
SB 488	D	Nicole Lamboley / City of Reno	Proposed amendment
SB 488	E	Cheri Edelman / City of Las Vegas	Proposed amendment