

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Fourth Session  
February 23, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:01 a.m., on Friday, February 23, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn Kirkpatrick, Chair  
Assemblywoman Peggy Pierce, Vice Chair  
Assemblyman Kelvin Atkinson  
Assemblyman Bob Beers  
Assemblyman David Bobzien  
Assemblyman Chad Christensen  
Assemblyman Jerry Claborn  
Assemblyman Pete Goicoechea  
Assemblyman Ruben Kihuen  
Assemblyman Harvey Munford  
Assemblywoman Bonnie Parnell  
Assemblyman James Settelmeyer  
Assemblyman Lynn Stewart  
Assemblywoman RoseMary Womack

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Sheila Leslie, Assembly District No. 27  
Assemblyman John Carpenter, Assembly District No. 33



**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst  
Scott McKenna, Committee Counsel  
Cheryl Williams, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Leo Drozdoff, Administrator, Nevada Division of Environmental Protection  
Kyle Davis, Policy Director, Nevada Conservation League  
John Marshall, Attorney at Law representing Bill Barrackman  
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance  
of Nevada  
Joe Johnson, Toiyabe Chapter of Sierra Club  
Keith Lee, representing Nevada State Board of Medical Examiners and  
State Contractors Board  
Valerie Rosalin, Director, Office of the Governor, Consumer Health  
Assistance  
Bill Welch, President/CEO, Nevada Hospital Association  
Kimberly Everett, Assistant Supervisor, Life and Health Section, Nevada  
Division of Insurance  
John Wiles, Division Counsel, State of Nevada, Department of Business  
and Industry, Division of Industrial Relations  
Raymond Flynn, Assistant Sheriff, Las Vegas Metropolitan Police  
Department, Nevada  
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County,  
Nevada  
Ted Olivas, representing the City of Las Vegas, Nevada

**Chair Kirkpatrick:**

[Roll Call.] [There was a quorum present.]

Welcome to Government Affairs. We do have a quorum. This morning we will  
start with Assembly Bill 94.

**Assembly Bill 94:** Revises provisions relating to administrative procedure.  
(BDR 18-219)

**Assemblywoman Sheila Leslie, Assembly District No. 27:**

Mr. Carpenter is expected to be here, he may be in another meeting, and  
hopefully he will come in before I finish with my remarks. The reason being,  
Mr. Carpenter was the lone vote against this bill last session, which

A.B. 94 would revise. He had requested the same bill draft, but I had mine in sooner so I have the bill. I am sure that he has some comments to make.

Assembly Bill 94 repeals the changes we made last session in the Administrator Procedure Act often referred to as APA: prohibiting the admission of a person as a party to an administrative proceeding in a contested case involving the grant, denial, or renewal of a license if the person does not have a direct financial interest in the grant, denial, or renewal of the license. Section 1 eliminates that prohibition and re-establishes the statute as it was when the section was originally codified in 1967. What we are doing in this bill is changing it back to the way it was from 1967 until 2005, when I think we made a big mistake. It is a simple repeal. The problem with the change that we made last session is it takes away the rights of citizens to challenge agency decisions unless they, the citizens, can demonstrate a financial interest in the outcome. It abridges the public's right to access their government and have an opportunity to have their views heard. It prevents citizens from challenging the action of any state agency unless those citizens have a financial stake in the outcome.

The other major problem is the conflict the statute is causing with federal laws, such as the Clean Air and Clean Water Acts. Federal government representatives have delegated authority to the states to implement these acts, but they are rightfully unwilling to let states restrict public access to state administrative processes. You will hear the details of that federal concern from the Nevada Division of Environmental Protection (NDEP) staff, and the potential consequences if we do not repeal what we did last session. I will let them speak more specifically about that. Public interest groups are naturally concerned about the change that was made and you will hear from their representatives today with some concrete examples of how this change has affected the important work that they do. Last session this change was promoted by Jim Wadhams on behalf of the Independent Insurance Agents.

The Committee has a letter dated February 20, 2007, from Jim Wadhams and in this letter he outlines why he supported the change last time and his support for A.B. 94 now. He writes, "It eliminates anything that may subvert the continued ability of the State to exercise delegated federal authority over air and water issues."

My closing comment is that I deeply regret that vote. I do not like to be in this position to have to come before you and say I was wrong. I think all of us in the Assembly, with the exception of Mr. Carpenter, were wrong. I reviewed minutes of your Committee meeting when the bill was heard last session; I believe most of us did not fully understand the ramifications of our votes. It is a

big leap from a minor issue with independent insurance agents to taking away the public's right to appeal any administrative action. The bill got under the radar and we have to fix it this time.

The First Amendment of our *United States Constitution* states that every American has the right to petition the Government for a redress of grievances, and I hope that you will agree that we must ensure that right in Nevada by approving A.B. 94.

**Assemblyman John Carpenter, District No. 33:**

I am here to speak in support of A.B. 94. During the last session—right, wrong, or indifferent—I think it was right to be the only Assemblyman to vote against this particular measure, and it is my feeling that you should not have to have a direct financial interest to comment or be a party to one of these actions. If you have to have a financial interest it prevents many concerned citizens from participating in these hearings. Issues such as the environment, the quality of life, and many other factors that concern the general public should be able to be brought forth in such hearings, and the current legislation and the way it is now precludes that, and it never hurts to have a little sunshine on the issues out there. I would be glad to answer any questions.

**Chair Kirkpatrick:**

Does anyone have any questions?

**Assemblyman Goicoechea:**

I understand where we are coming from with the bill. There were some comments in the interim that helped me understand the bill. I have a concern. There is a big difference between having the ability to comment or provide comments and actually being a formal party in an action and having that standing. Everyone should have the opportunity to provide comments, but there is a big difference between providing comments or testimony on a particular thing, and truly having standing or being a party to the action. Maybe we need to talk to our Committee Counsel, Scott McKenna. It is one thing to be able to make a comment, but another to be able to offer testimony. Truly, to have standing and be a party to an action is a different situation. That is how I look at it and that is why I supported the bill last session, because I do believe that you should have "a dog in the fight" if you are going to be a party to any action.

**Chair Kirkpatrick:**

Does anyone have any other questions? Mr. Settlemeyer.

**Assemblyman Settlemeyer:**

My concern is situations where individuals may decide that they do not want a particular thing to happen in a community, so everyone jumps on board and every time something comes up they automatically file against it. I agree that people have the right to voice their concerns, but do they have a right to completely stop something, or have a review process of it? This is just one of my concerns.

**Chair Kirkpatrick:**

I did receive a letter from the Environment Protection Agency (EPA) who will be addressing some of the federal statutes.

**Assemblyman Carpenter:**

If this was carried to an extreme, which it could be, the people in Elko County and many people in northern Nevada would not be able to become a party or to comment on what is happening with the Southern Nevada Water Authority. If you have to have a financial interest in all of these issues that are going on about us, the public is going to be precluded. I understand to a certain degree what Mr. Goicoechea and Mr. Settlemeyer are saying. In this country we need to be very careful that we do not restrict the rights of the people to comment, to intervene, or whatever, in things that they are interested in.

**Assemblywoman Leslie:**

When you review the minutes it is clear that he knew what he was doing. What is also clear from those minutes is that, and this is where I have an objection to what happened, it was sold to this Committee as having to do with insurance agents and a very narrow administrative process. It was not sold to this Committee properly. This affects any administrative proceeding; it is far broader than the discussion that was held in this Committee. At the very least, I know that you will fully air this and hear from people who can perhaps answer Mr. Settlemeyer's question.

My final comment is that I am not aware that there really was a problem with people jumping in, and I know what you are talking about. I do not think that this law as it was since 1967 contributed to that. We have all seen public meetings disrupted with people who jump up, that is not what this is about; it is more about what Mr. Carpenter is saying, making sure that our citizens have a right to have standing, to protest, and to bring up issues in administrative proceedings that otherwise might not ever see the light of day. It is excellent

sunshine legislation. It worked just fine until we did what we did. You will hear from experts that can give you some specific examples.

**Chair Kirkpatrick:**

Thank you, Ms. Leslie. Mr. Beers, did you have a question?

**Assemblyman Beers:**

It is more of a statement than a question. I understand both of the Assemblymen's concerns on this. If we move too far in one direction the hearing will become more like a star chamber. There must be a way within the definition section of the statute to allow for public comment without having a vested decision-making capability.

**Chair Kirkpatrick:**

I know that NDEP is here and I do not have them signed in to speak. Would you mind coming up to speak?

Welcome to Government Affairs. Please introduce yourself and if more than one of you speaks, state your name for the record.

**Leo Drozdoff, Administrator, Nevada Division of Environment Protection:**

With me are my two deputies: Mr. Tom Porta, who oversees our Water, Mining, and Corrective Action Bureaus; and Colleen Cripps, Ph.D., who oversees our Air, Waste, and Federal Facilities Bureaus.

[Read from prepared statement ([Exhibit C](#))].

I appreciate the opportunity to provide testimony on Assembly Bill 94. First, let me state that NDEP supports A.B. 94 and the striking of section 4 in *Nevada Revised Statutes* (NRS) 233B.127. The existing language has been problematic for our agency, the regulated community, and the public. Following the changes made to NRS 233B last session, our agency contacted the U.S. Environmental Protection Agency (USEPA) to seek their opinion. The USEPA has expressed concern that the existing statute could jeopardize our delegate programs. A remanding of our air and water programs to USEPA would be a disaster on many levels.

**Assemblyman Bobzien:**

I had a good conversation with a colleague about the fallibility of the Legislature as a body and this is a clear case where that has happened, but the wonderful thing about the legislative process is that we do have the chance to fix what was broken. This bill fixed something that was not broken, so now we have to go back to fix the fix. I am somewhat concerned about the amendments.

There are two things that are important. Number one, philosophically, as has been presented by the speakers, this is clearly a case where we need to make sure that we are not hampering the public's ability to petition their government. Number two, a more practical concern has been raised. What is our relationship with federal regulators, and how much in jeopardy are we putting ourselves at losing our jurisdiction to regulate ourselves here in Nevada? That is something that I am very concerned about, in addition to the issues that you raised with this amendment and having to provide comment to be a part of any appeal process.

There is another issue that you failed to mention, but is equally important, and that concerns the scope of the appeal itself, which provides by law that comment on the action being appealed and the grounds for the appeal shall be limited to the issues raised in that person's comments. A concern that I would have, having been part of a few different public processes and seeing these things stand over time, is that sometimes it takes quite a long time for things to roll out. Often there is new information, new scientific data that is brought to light in the course of an issue's evolution. I would be concerned that this would hamper the public's ability to meaningfully participate in the process. I wonder if you would comment on that? Also comment on whether or not these amendments could potentially put us in jeopardy with the federal regulators because there is a constriction of the public's right to be involved in the process.

**Leo Drozdoff:**

You have raised a number of excellent points and let me say at the outset that we offer the amendments simply based on two decades worth of experience. We would withdraw our recommendation right now if it would pose any problem. I said that in my testimony and I would like to reiterate that now. Currently, with Nevada's environmental protection statutes and regulations, the process in terms of an appeal is very open. There are state and federal constrictions about taking part in an appeals process. I do not believe that we would run afoul with this type of amendment, and as I also said in my testimony, we offered them based on our experience and we are not married to that language. What we are trying to say is that if somebody is going to comment that a nitrogen limit should be this, then 30 days later they should not say, well, we want you to test once, not four times and appeal. That is the kind of experience that we have had. Again, our underlying purpose in being here is to support the changes that Assemblywoman Leslie has put forth. If there is no interest in the amendment, that is okay with us.

**Assemblyman Bobzien:**

I do respect that you are bringing this forward based on your experience, and I very much appreciate your frankness with the Committee in terms of your interest in the amendment and certainly in correcting this legislation. You should be commended for being diligent in running the situations by others for their opinion as to whether or not we would be placing ourselves in jeopardy with the EPA. My concern would be that I am not sensing that this amendment in particular has gone through the same process. My preference would be to fix what did not need to be fixed the first time and get back to where we were. I certainly have no interest in seeing processes slowed down or having other problems entered into these processes. I would like to deal with those separately, so that if there are truly cases where your work is being hampered, I would like to deal with that.

**Chair Kirkpatrick:**

Mr. Settlemeyer, Mr. Beers, and then I will let you address all of them at once.

**Assemblyman Settlemeyer:**

I am looking for a way to resolve these. I have seen the black coal industry sue the brown coal industry over a license so that they can get their business. I have seen western ranchers sued by eastern ranchers so that they can try to get them kicked off public grazing because it is an undue influence. I see situations where businesses are using this improperly as a way to object to processes and even other situations where people will decide to file a complaint and have absolutely no idea of the particulars or the parameters of a situation. I want to make sure that we involve everyone in a local community who is directly affected. I look at some of the federal laws of civil procedure, rights of intervention stating that you have to have the same interest or will not be in substantial conflict with those parties that are already in a situation. I am looking for some type of a concept to put it so that only individuals who have a direct effect, a present interest not a potential interest, should be the ones who would have the ability to come in and be part of it. Listen to everyone, but as far as the right of a person to intervene, that should be limited to those with a present interest, and a direct effect.

**Assemblyman Beers:**

Along with the question that Mr. Bobzien raised, I am concerned about the amendment myself, because down the line it could reduce the amount of pertinent information available for a valid decision. Essentially, this could produce something that we are running into today where we have to fix what never should have been broken. Echoing Mr. Settlemeyer's concern, we all know there are kooks out there; the problem is, how do we deal with situations

such as the black coal industry suing the brown coal industry for a completely personal reason, rather than a public reason?

**Leo Drozdoff:**

I will try to take your questions in the order received. Certainly I do want to make sure that Assemblyman Bobzien knows that we ran this one up the chain of command. We would not want a repeat of where we stand. With regard to Assemblyman Settelmeyer's concern, I think that it is legitimate, although I am not familiar with the two episodes you referenced. I am familiar with public processes used to satisfy other means, I think that is out there. That is part of why we were thinking that those who want to do that are not looking to resolve anything. They wait until the last minute, then file a very complex appeal and then let us wrestle with it for a long time. That is what we were looking at. It is also fair to say that while those situations exist, the vast majority of the comments that we get, and the vast majority of appeals that we get, are legitimate. Even if it ultimately results in an appeal and there is a somewhat adversarial tone to it, I still think they are legitimate.

Unfortunately, the bad actors are out there but I do not think that the public process should be changed based on those few bad actors. I would echo those sentiments with regard to Assemblyman Beers' comments to us, I hear you. We offered it and I am not married to the language. We offered it based on practical experience. If it is going to pose any difficulty, we will drop it.

**Chair Kirkpatrick:**

Does anyone have any questions? Mr. Goicoechea.

**Assemblyman Goicoechea:**

I, too, am looking for the middle ground. I am trying to figure out where we make this move from actually being a party withstanding to those individuals who truly are only comment makers. Unfortunately, it goes well beyond NDEP and some of these administrative hearings. As we move all across this nation, when you get a 39-cent stamp from Georgia that holds up a process in Nevada it becomes an issue. There has to be a clarification whether you truly are a party and have standing or if you are just an interested member of the public making a comment. I am looking for that middle ground. We might not find it here, but as I look at your amendment I do not think we are quite there yet. I would probably recommend that we do not amend the bill and maybe this is something that we are going to have to deal with in another session. I do think that we need some clarification between standing as a party in a process and/or just as an interested public.

**Chair Kirkpatrick:**

I just have one question. Where else in statute do we have, as in your amendment, such a stringent appeal process?

**Leo Drozdoff:**

We kind of modeled that language after existing federal rules and other state rules.

**Chair Kirkpatrick:**

My concern with the amendment would be that there would be a move to put it in other types of public processes and we would like to keep things transparent. So, I would not be supporting the amendment myself, but we can discuss that in the work session at a later time.

**Leo Drozdoff:**

Having heard the concern I would simply remove the amendment. That is fine with me. If you want to have a discussion over the next two years about things, we would be happy to participate. How about if we simply remove the amendment?

**Chair Kirkpatrick:**

With that, is everybody okay with withdrawing the amendment? Consider it withdrawn. We will move forward with the proponents who are supporting the bill.

I did receive several emails in support. Ms. Betty Burge did write in support of the bill. She is unable to attend in Las Vegas and I did tell her that I would make that part of the record. I will send it to the secretary as part of the record.

Mr. Davis will be the first to speak in favor of this bill.

**Kyle Davis, Policy Director, Nevada Conservation League:**

I am here today to support A.B. 94 on behalf of public interest organizations. A lot of reasons for supporting this bill have been spelled out by previous people. I am hoping to address some of the concerns of the Committee. I have some talking points on the amendments, but it sounds like we have dealt with that already. The biggest reason our organization is supporting this bill is we want to support the public's ability to be involved in the process. That was touched on by Ms. Leslie, that it is a fundamental American right and that in this country we have the ability to be a part of what our government is doing.

We definitely want to support that on behalf of public interest organizations. It is pretty clear that there were some unintended consequences from Senate Bill No. 428 of the 73rd Legislative Session. A specific example has to do with Big Springs Mine, which was a mine that was closing down and was reapplying for a pollution control permit. Public interest groups were denied to be a part of the process because they were deemed not to have a financial standing. We would want to make sure that people who are concerned about such a project, which may be polluting our land and water, have the ability to be a part of that process and have their concerns voiced. That is only one example. Luckily, this bill has only been on the books since last session, but we definitely have the opportunity to fix that right now.

A couple of other advantages that we would see by passing this bill; first of all, dealing with the issue of the courts. Under current law that was passed last session, besides being able to offer testimony but not being able to be a party to the process, the only other option that some public interest groups might have is to actually go through the legal system. The general public does not have any desire to go through the legal system. We certainly do not want to have to go through the legal system and put agencies in court whenever possible, so I think that this is a good way of making sure that state agencies are ending up in court less often. We would definitely rather use the process and this bill allows us to do this.

Secondly, as far as the EPA is concerned, we want to preserve the ability for our State to control the administration of federal programs, and after this bill is written it will allow us to do that. Overall, we feel it is a pretty good bill to clean up the unintended consequences of S.B. No. 428 and it will allow the public back in the process, which is good for the environment and good for Nevada. I did want to address a couple of the questions that I heard. First of all, to Mr. Goicoechea's points on the difference between being able to offer testimony as opposed to being a party in the process, the main difference is why we would support being able to be a party to the process. When you are just able to offer commentary, all you are able to do is offer testimony on the issue. Being a party to the process actually allows you to ask questions and cross-examine some of the people on the other side of the issue. This kind of harkens back to the old debate about whether trees have standing, and essentially our interest in this is to make sure that our land, our water, and our air have standing so that we can be a party to the process to make sure that all of our natural resources are adequately protected.

As far as your questions, Mr. Settelmeyer, about the business versus business aspects, one company suing another company; if you take a look at the letter from Mr. Wadhams on the issue, basically what he said is that for those

agencies that have not adopted specific standards for intervention, the case law in our courts would apply. The purpose of S.B. No. 428 last session was to codify certain case law into state law so that the hearing agent had some guidance in determining who would be admitted as a party in the proceeding. It is not that the case law was not already on the books, it was just to help clarify and codify that for the hearing agent. If we repeal the bill that was passed last session, that case law still remains on the books, so hopefully that will help to mitigate some of that problem. As far as the issue of just being able to make sure that we are not seeing any kooks or crazy people coming in at the last second and that type of thing, the first thing that I would say is I am not aware of this being a big problem. As far as being a part of the appeal process, it is a very long and drawn out process.

For the most part we are seeing mostly public interest organizations being a part of that process, rather than just random people. I would also hope that for dealing with a business to business instance that this would be covered by the case law. We are clearly in favor of the bill and public interest organizations are in favor of it because it allows us to be a part of the process and have the ability to protect our land, water, and air. Any questions?

**Chair Kirkpatrick:**

Does anyone have any questions pertaining to his comments? [None]

I have one other speaker, Mr. Marshall. Miss Gilbert, do I have anyone else who is in favor of this bill who would like to speak?

**John L. Marshall, Attorney at Law, representing Bill Barrackman:**

I am here representing Bill Barrackman who has actually suffered the impact of this legislation. He owns a pistachio farm in Amargosa Valley and NDEP permitted a waste water district permit for a new dairy that was going to be within a mile of his pistachio farm and residence. He was essentially kicked out in front of the State Environmental Commission (SEC) for not having an adequate financial interest in the issuance of the permit. We then had to file litigation challenging that dismissal and we are here to speak in favor of the bill.

I would also like to make a specific request that the legislative history or the bill itself establish that the effects are retroactive so that his appeal can be reinstated. The issue, which is substantive, was whether the issued permit should include a nutrient management plan. Essentially, that would provide details about the animal by-product waste which is equal to a city of about 80,000 people. How is this going to be disposed of? The issue was whether this should be part of the permit that the public should be allowed to comment on. The NDEP did not include it and Mr. Barrackman believed it should have

been part of the permit so that he could comment on it. On that basis he opposed the permit because he could not tell whether or not the permit was protective of his interests or not. We would request that any legislative history, or where it would be appropriately put into the bill, specify that this should be retroactive in its application. I can answer any specifics regarding his situation and what happened at the SEC if any of the Committee members are interested.

**Chair Kirkpatrick:**

Does anyone have any questions for Mr. Marshall? Mr. Christensen.

**Assemblyman Christensen:**

Retroactive enactment of changing the rules can often get pretty hairy. Is this the only instance that you are aware of, or are there others who were affected who would benefit from this time retroactive proposal that you are making?

**John Marshall:**

I am only aware of two instances in which a party was denied standing in an administrative appeals situation. One is the Big Springs Mine case that the speaker before just referred to. I believe the litigation over that dismissal was dismissed and I am not sure that the retroactive legislation would even apply to that case.

**Assemblyman Christensen:**

So the mine and this dairy are the only ones that may be affected. What time frame are you talking about, going back two years, five years?

**John Marshall:**

The appeal was denied last year in October.

**Assemblyman Christensen:**

The other one?

**John Marshall:**

I am not sure of the specifics; I know that it was the appeal that prompted the first application of this law. It prompted the Attorney General opinion that kind of brought this all to a head. That was in 2006.

**Chair Kirkpatrick:**

Does anyone have any questions? [None]

**Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:**

My members have asked me to speak in support of this. I have nothing else to add, but I would like you to support this change back to the original law.

**Chair Kirkpatrick:**

Does anyone have any questions? Mr. Johnson.

**Joe Johnson, Toiyabe Chapter of Sierra Club:**

I would like to go on record as supporting this bill.

**Chair Kirkpatrick:**

Does anyone have any questions? Thank you to all those who testified in support, is there anyone in Las Vegas who would like to testify in support of A.B. 94? Seeing that there are none, we will move on to anyone against A.B. 94 who would like to testify. Anyone in Las Vegas? Mr. Lee.

**Keith Lee, Nevada State Board of Medical Examiners and State Contractors Board:**

I apologize for checking the neutral box; I meant to oppose it on the basis that there may be some unintended consequences or results. The Contractors Board and the Board of Medical Examiners are licensing agencies for physicians on the one hand and contractors on the other. The vast majority of all our licensing matters are not contested cases under NRS 233B. There are contested cases in both matters either with respect to the initial licensure, with respect to suspensions, with respect to revocations, or with respect to the reinstatement of licenses.

We believe that there ought to be some nexus between an intervenor, as that is broadly defined, and the matter at hand. I am not sure there has to be a financial interest to be an intervenor, but in our view there must be some nexus to prevent the gadfly from generally coming forward in every matter that is posted on the respective websites of those two agencies, to intervene both at the disciplinary hearing and at the trial and to participate in a petition for judicial review under Chapter 233B, should that be the case. I would volunteer to be part of any work session that might work on some language that will satisfy the concerns that have been addressed here by those who think that last session's action was overreaching. On the other hand, at least the two licensing boards that I represent create a good balance so that we can prevent the gadfly from becoming part of these proceedings. It is a rare circumstance where such occurs, but nonetheless it is a drain on our resources, both financial and personnel.

**Chair Kirkpatrick:**

Does anyone have any questions? Mr. Lee, I just have one question. From what I understand today, this has worked since 1967, so how have the two boards that you work with handled it, prior to 2005?

**Keith Lee:**

I must admit I do not have an answer for that. I have asked both of my boards to give me an answer and I have yet to receive that. We did not participate in the action last session but we certainly, in our opinion, were a beneficiary of that. We are willing to work with everyone to see if we can develop some type of language so that there is a nexus between an intervenor and the licensing actions that we have at our two boards.

**Chair Kirkpatrick:**

Does anyone have any questions? Is there anyone else who would like to testify in opposition of A.B. 94? Anybody in Las Vegas? Anybody who would like to testify as neutral? I will close the hearing on A.B. 94.

Now I would like to call the meeting on Assembly Bill 98. We have Valerie Rosalin, R.N., in Clark County, who is a proponent of the bill.

**Assembly Bill 98: Revises various provisions relating to the Office for Consumer Health Assistance. (BDR 18-1037)**

**Valerie Rosalin, Director, Office of the Governor, Consumer Health Assistance:**

[Read from prepared statement ([Exhibit D](#)).]

The Governor's Office, Consumer Health Assistance, was created in the 1999 Legislature. Since then we have assisted over 16,000 consumers with health related issues. Our advocacy role has proved to be a valuable resource to the State of Nevada and more responsibilities and programs have been assigned to this Office.

**Chair Kirkpatrick:**

Is that all that you have, Ms. Rosalin?

**Valerie Rosalin:**

Yes, Madam Chair.

**Chair Kirkpatrick:**

Do I have any questions from the Committee on the amendments for Ms. Rosalin? Seeing none, we will move forward with anyone who would like to speak in favor of A.B. 98.

Do I have anyone who would like to speak against A.B. 98? Mr. Welch.

**Bill M. Welch, President/CEO, Nevada Hospital Association:**

I checked in as against, when in reality I am neutral on the bill because I do not understand the bill. But I would like to make some comments on behalf of the hospital industry. I want to emphasize that the hospital industry supports the Office of Consumer Protection. I believe that the office has been very collaborative in working with the hospital industry and for the most part the hospital community has been responsive to the requests and efforts of the Office of Consumer Protection. We were concerned when this was introduced last week, not having any indication in the past that this legislation would be coming forward and that there was any particular concern that needed to be addressed.

The office contacted me on numerous occasions when they had an issue with a hospital that was not complying or cooperating and we have been very helpful in remedying those issues, so this legislation came as a surprise. My industry is in the process of reviewing this to ensure that there are no unintended consequences from this legislation. This legislation does appear to expand extensively the authority of the office. We are not clear if it expands it beyond the original intent for which the office was created and we need the opportunity to have that review. I have also asked the hospital community and our council to review it for any unintended consequences.

I did have an opportunity to speak to Ms. Rosalin yesterday, which was the first opportunity that I had to speak to her regarding this legislation, and some of my questions were clarified, but we still need time for further review. It should also be noted that this legislation may be duplicative of other regulations that are currently on the books. For example, one of the concerns is having access to records, whether it is patient records or medical records. Very clearly in the *Nevada Revised Statutes* (NRS) patients have rights to receive copies of their medical records after going through the appropriate process. They also have the right—and we are required by the hospital community, which was further reinforced by the passage of Assembly Bill No. 342 of the 73rd Session—to receive a copy of their bill in a timely manner.

For those components we are not in opposition to this legislation. This legislation further concerns us in that it would suggest the hospital community

has not been cooperative and again, I want to emphasize that I believe that the hospital industry has been cooperative. Several incidences have been shared with me that generated some of the concern and interest for this legislation to be brought forward. The individuals who made those comments were not the CEO (Chief Executive Officer), nor the CFO (Chief Financial Officer) of the hospitals.

I am absolutely confident that if the hospitals' management were aware of potentially inappropriate statements on behalf of their staff with respect to non-compliance with existing NRS or the *Nevada Administrative Code* (NAC), the hospital would take appropriate action to resolve that with their personnel. We currently produce a report that is submitted to the State and is made available and has recently been submitted to the Legislative Commission. In that report we are surveying the hospitals with regard to charity care policies, discount policies, and collection policies.

All this information is being made available to all patients who receive care at a hospital setting. There is a requirement to post the notices of the Office of Consumer Protection in our hospitals. We have taken the time to ensure that the personnel in our hospitals have been educated. We have had the Office of Consumer Protection come to hospital association meetings on numerous occasions over the last several years, giving them the opportunity to educate us about their authority, responsibilities, and the need for the hospitals' cooperation.

We recently surveyed all hospitals in the State to ensure that they have been complying. Again, I will not deny that occasionally an employee of the hospital may say something that would suggest that the hospital is not going to cooperate or comply. In those cases I want to assure this Committee that the hospitals and the hospital association will intervene and has intervened to ensure that all hospitals do meet the intent of the existing NRS and NAC for the patients and consumer protection. We would be happy as this bill goes forward to work with a work committee or whomever to address our concerns and to try to work through some of the challenges. With that, I would be happy to answer any questions.

**Chair Kirkpatrick:**

Does anyone have any questions of Mr. Welch? Mr. Goicoechea.

**Assemblyman Goicoechea:**

In the past, has the director had the ability to impose a fine?

**Bill Welch:**

There has not been the authority to impose a fine in the past. That seems to be a strong transition from where we are today to what has been proposed.

**Assemblyman Goicoechea:**

Just a follow-up, if I may. It does concern me when you start talking about up to \$5,000 and then when you get to section 4(e) of A.B. 98, "In any other way failing to comply with the decision made by the director..." seems to be getting out there pretty loose for one person to make a call that either the hospital or an entity failed to comply. I am concerned about that and would like to see some of the authority of the director tightened up, or maybe more than one person being able to make that call.

**Assemblywoman Parnell:**

I do not know who the appropriate person is to answer this question, but who currently has the authority to do what is now being given to the director? If we look in Section 2, it is expanding. Currently the director has the authority to carry out provisions of NRS 223.560 and 223.580, and this bill now makes that inclusive. Who currently deals with that, the newer area that is being transferred to the director?

**Mr. Welch:**

I am not really clear, but I know much of the function identified in this legislation is under the direction and supervision of the Division of Insurance as well as DHS (Department of Homeland Security).

**Chair Kirkpatrick:**

Ms. Rosalin, I think that maybe you should address this as you know what your jobs are.

**Valerie Rosalin:**

The purpose of this bill was to give the office the ability to be able to write administrative code in order to apply it to how we are to fulfill our duties under the statute. Although it says the director has the final say, there is no process to do a hearing, there were no consequences if there was a decision made and that decision was not fulfilled. The purpose of this process is to be able to write administrative code, especially under the Bureau for Hospital Patients. We were not trying to repeat any part of any statutes, but we do require information and medical records from providers and hospitals in order to make a decision on what would be fair.

**Chair Kirkpatrick:**

I think the Committee has some more questions for Ms. Rosalin. We will go ahead and see if there is anyone else who would like to testify against this bill.

**Kimberly Everett, Assistant Supervisor, Life and Health Section, Nevada Division of Insurance:**

I would like to share with you the concerns that the Division of Insurance has with the bill, and to provide you with some information as to why we cannot support the bill as it is currently written. Sections 1 through 3 amend Chapter 223 of the NRS by expanding the scope of the director's authority to adopt these regulations. The inclusion of NRS 223.570 in the expansion of the director's authority to adopt regulations is a major concern. The NRS 223.570 includes health care plans, prescription drug programs, and policies in industrial insurance. Due to this proposed expansion, these terms have now become much too broad; for example, certain health care plans may fall under the jurisdiction of the Commissioner of Insurance, the Division of Industrial Relations, or may include Medicaid, Medicare, Employee Retirement Income Security Act (ERISA) Plans, Taft-Hartley Plans, Tri-Care, and Workers Compensation Plans. Section 4, which amends NRS 223.575, allows the director of the Governor's Office of Consumer Health Assistance to assign a designee to perform certain director duties or responsibilities. It also allows the director to impose civil penalties against persons who commit certain acts or admissions relating to resolution of disputes between hospitals and patients.

It is not clear to the division what generated the need for the director to now have the authority to assign a designee or to impose civil penalties, and to whom the penalties may be applied. The term "designee" in Section 4 is very broad, and it does not identify who or from what agencies the director can select a designee. Clarification of the term "designee" is needed to define these parameters of the selection process. Additionally, it appears that the proposed bill gives the director the authority to impose civil penalties upon entities that another agency has regulatory authority over. These civil penalties could be imposed upon entities in another jurisdiction, such as the Commissioner of Insurance, Division of Industrial Relations, Centers for Medicaid and Medicare, the U.S. Department of Labor, and Human and Health Services.

The use of the term "persons" in Section 4 is also very broad and causes concern. It is not clear if "persons" is limited specifically to the hospital and to the patient. There is concern that the term "persons" could include the list of the entities or individuals that appear under NRS 223.570, which includes health care plans, prescription drug programs, and industrial insurance. This would give an agency authority to impede the jurisdictional authority of another agency such as the Commissioner of Insurance, Division of Industrial Relations, Centers

for Medicaid and Medicare, U.S. Department of Labor, Taft-Hartley Plans, Tri-Care, and Workers Compensation Plans. Ambiguous terminology could lead to confusion and regulatory conflict between these agencies, especially at the Office of Consumer Health Assistance whose adopted regulations would either be duplicated, conflicted, or would nullify regulations that are already in place. That concludes my testimony, I would be happy to answer any questions.

**Chair Kirkpatrick:**

You have been beneficial regarding the issues we may have with the bill. Are there any questions? [None]

Is there anybody here who would like to testify neutral on this bill? [None]

**John Wiles, Division Counsel, State of Nevada, Department of Business and Industry, Division of Industrial Relations:**

We put neutral down because based on our conversations with Director Rosalin, it was our understanding that these changes were not applicable to any duties or responsibilities that the Division of Industrial Relations currently carried out in respect to workers compensation matters. I wanted to clarify that.

**Chair Kirkpatrick:**

Are there any other questions? I have one final question for Ms. Rosalin. Can you give me an instance where you found this to be a problem and needed to make all these changes within your department?

**Valerie Rosalin:**

The reason for our request to have the ability to write administrative code is to be able to have a specific method of doing hearings and the ability to ask for a hearing officer from the hearing pool. Because I do review all the cases, I did not feel, and with the Attorney General's advice, that I could make a final decision on a hearing had a case gone that far. I would need to rely on a designee, which would be a hearing officer of the State. This bill amendment was to only be inclusive of the responsibilities of the Office of the Governor, Consumer Health Assistance, and should not have any impact on any agency, state or federal.

**Chair Kirkpatrick:**

At this time I will close the hearing on A.B. 98.

We will now open the hearing on Senate Bill 28.

**Senate Bill 28:** Changes the date by which certain metropolitan police departments must annually submit a budget for the operation of a 911 emergency telephone system. (BDR 20-350)

**Ray Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department (LVMPD), Nevada**

Senate Bill 28 is at the request of the LVMPD. It moves the date of our enhanced 911 budget approval from April 1 to May 1 to match the approval date of our operating budget, which was adjusted last legislative session. The purpose of the original date change last session was to ensure that we have accurate revenue projections as a foundation for our budget. Approval would allow us to use the same data to support our budget requests.

**Chair Kirkpatrick:**

Does anyone else have any comment?

**Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County, Nevada:**

We are in support of this bill. Thank you.

**Ted Olivas, Representing the City of Las Vegas, Nevada:**

We, too, are in support of this bill.

**Chair Kirkpatrick:**

Just for clarification, this bill was changed last session; however, we inadvertently left out the 911 system. Is that correct?

**Ray Flynn:**

Madam Chair, that is correct.

**Chair Kirkpatrick:**

For those of you who were not here last session, we did have heavily debated conversations on this. Unfortunately, we did not think about 911 when we were changing the statute; this is a clean-up.

Do I have any other questions on this? With that being said, I would like to see if there is anyone here who would like to testify in support of this bill? Seeing none, is there anyone who would like to testify against this bill?

With that I will close the public hearing on S.B. 28.

We will not be meeting until 10:00 a.m. on Monday [2/26/07], and Tuesday [2/27/07] there will not be a Government Affairs Committee meeting in the morning.

We do have, from our last Committee meeting, BDRs that we need to make a motion on so that we can submit them for the Committee. We received five BDRs after session had started. This is a list of what was requested amongst different local governments. With that being said, I would entertain a motion to approve all five BDRs at the same time.

ASSEMBLYWOMAN WOMACK MOVED TO DO PASS THE LIST OF  
FIVE BDRS.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Meeting adjourned [at 9:16 a.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** February 23, 2007

**Time of Meeting:** 8:01 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 94	C	Leo Drozdoff	Prepared Statement
A.B. 98	D	Valerie Rosalin, R.N.	Prepared Statement