

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

**Seventy-Fifth Session  
February 19, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m. on Thursday, February 19, 2009, 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/75th2009/committees/](http://www.leg.state.nv.us/75th2009/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 K. Kirkpatrick, Chair  
Assemblyman David P. Bobzien, Vice Chair  
Assemblyman Paul Aizley  
Assemblyman Kelvin Atkinson  
Assemblyman Chad Christensen  
Assemblyman Jerry D. Claborn  
Assemblyman Ed A. Goedhart  
Assemblywoman April Mastroluca  
Assemblyman Harvey J. Munford  
Assemblywoman Peggy Pierce  
Assemblyman James A. Settelmeyer  
Assemblywoman Ellen B. Spiegel  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT**

None

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Scott McKenna, Committee Counsel  
Cyndie Carter, Committee Manager  
Cheryl Williams, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada  
Sabra Smith-Newby, Director, Department of Administrative Services, Clark County, Las Vegas, Nevada  
Janine Hansen, representing the American Independent Party and Nevada Eagle Forum, Elko, Nevada  
Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada, Las Vegas, Nevada  
Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County, Las Vegas, Nevada  
John Slaughter, Director, Management Services, Washoe County, Reno, Nevada  
Karen L. Storms, City Clerk, City of North Las Vegas, Nevada

Chair Kirkpatrick:

[Roll taken] We will start with Assembly Bill 31.

**Assembly Bill 31:** Revises certain powers of county governments.  
(BDR 20-455)

**Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada:**

Counties in Nevada may only exercise specific powers and authorities granted to them by the Nevada Legislature. Assembly Bill 31 seeks legislative approval for three specific authorities. If approved, section 2 of this bill would authorize county governments to sell naming rights to certain facilities, including parks, and recreational and cultural areas, or to events held at these facilities.

Funds raised by the sale of naming rights could only be used to pay for the expenses of the facility. We understand that Clark County would like to offer an amendment to this part of A.B. 31 to include public hospitals in the facilities for which the sale of naming rights would be allowed. We support this amendment.

The second authority sought is in section 3 of A.B. 31, which would allow counties to impose civil penalties for violations of ordinances concerning the licensing or regulation of businesses, unless state law provides for a criminal penalty for the violation. The language in this section is identical to language in A.B. 49 submitted on behalf of Clark County. With the Chair's permission, I would like to defer to Ms. Smith-Newby on this issue.

**Sabra Smith-Newby, Director, Department of Administrative Services, Clark County, Las Vegas, Nevada:**

With respect to A.B. 31 and the section for civil penalties, that same language is in A.B. 49 that you will be hearing after this. I would be happy to give you an explanation of that right now.

**Chair Kirkpatrick:**

Please, if you would do so now. This is my heartburn, so I would like a good explanation.

**Sabra Smith-Newby:**

The selective language in both A.B. 49 and A.B. 31 concerns business licenses and civil penalties. Currently Clark County, because of Dillon's Rule, which limits the powers of local governments, does not have the ability to level a civil penalty for a violation of an ordinance. Conversely, the cities of Las Vegas, Henderson, and North Las Vegas all have this ability. Currently in Clark County, if a business violates an ordinance, like selling liquor repeatedly to underage buyers, our options are two-fold.

**Chair Kirkpatrick:**

May I stop you for a second, please? How does that language pertain to this bill except for the part in section 3 that violates the ordinance? Are you referring to the section that determines the naming rights or if they did something wrong? I am confused.

**Sabra Smith-Newby:**

The section we are referring to is actually section 3, which is not about the naming rights but about the civil penalty for business licenses and infractions.

**Chair Kirkpatrick:**

So it is the same language? I see; you do not have to explain. You can do it on the next one. I just thought that was going back to the naming rights and that you wanted to be able put those penalties in place.

**Sabra Smith-Newby:**

No, with respect to the naming rights, it is not the civil penalties that we are concerned with; actually, we wanted to offer an amendment to the naming rights. If you want me to go over that now, I can. I was going to wait for the neutral section.

**Chair Kirkpatrick:**

Mr. Henderson, did you have anything else?

**Wes Henderson:**

Section 4 of A.B. 31 seeks authority for counties to abate graffiti placed on residential properties and not just on their exterior walls as provided for under current law. This section contains provisions allowing for notice to be provided to the property owner requiring they remove or cover the graffiti. Property owners would have the right to request a hearing and appeal to the board of county commissioners. If the property owner was not successful in the hearing and appeal process, the graffiti would have to be removed or covered in a set time period. If the property owner failed to remove or cover the graffiti, then the county itself could remove or cover the graffiti or direct a third party to do it. The county would be able to recover the costs of removing or covering the graffiti should this be necessary. Just to clarify any confusion, there are actually three different, specific authorities included in A.B. 31: one, is naming rights, two, is the civil penalties, and three, is the graffiti abatement.

**Chair Kirkpatrick:**

Does anyone have any questions?

**Assemblyman Aizley:**

Would you define graffiti for me?

**Wes Henderson:**

That would have to be defined in the ordinances adopted by the board of county commissioners.

**Assemblyman Aizley:**

Is there a definition there?

**Wes Henderson:**

I do not have one. I believe that would have to be defined in the ordinances that the board of county commissioners created.

**Chair Kirkpatrick:**

Mr. Aizley, I believe there is a definition, and staff is looking for that right now.

**Assemblyman Claborn:**

Will this bill encompass weed abatement?

**Wes Henderson:**

No, sir, I do not believe this bill addresses weed abatement.

**Assemblyman Claborn:**

A couple of years ago they made me weed-abate my property when all around the neighborhood there were properties ten times worse than mine, but they only act on a complaint. That does not make any sense. I would like to see that added into the bill so everyone is treated fairly.

**Chair Kirkpatrick:**

Mr. McKenna, would you like to address that graffiti question?

**Scott McKenna, Committee Counsel:**

Yes. For the purposes of section 5 of A.B. 31, the definition of the term "graffiti" is set forth in *Nevada Revised Statutes* (NRS) 244.36915. The reason the definition is not in the bill is because its placement in NRS makes the definition apply automatically. The definition in that section defines graffiti as "any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn or painted on the public or private property, real or personal, of another, which defaces such property." An incorrect definition of graffiti has been in effect for eight years and has applied to all of the other different graffiti abatement sections that are in Chapter 244 of NRS.

**Chair Kirkpatrick:**

Mr. Aizley, does that answer your question?

**Assemblyman Aizley:**

Yes, I would need to look at all of the wording.

**Chair Kirkpatrick:**

We have statute books right behind us, and we can pull it for you.

**Assemblyman Settlemeyer:**

You are indicating that if a property owner has graffiti, or what the county deems as graffiti, they will have to remove it? The thing I worry about is that sometimes what one person may consider to be defacement may not be what the property owner considers to be defacement. So is the county going to be the one making that decision?

**Wes Henderson:**

I believe the definition of graffiti that staff has referred to describes graffiti as "unauthorized," that it is placed on the property without permission.

**Assemblyman Settlemeyer:**

I guess what I mean is sometimes people will do things to your property without permission, and you may not necessarily consider it to be problematic. What I am saying is that the county will be the one interpreting that definition.

**Wes Henderson:**

Mr. Settlemeyer, I am not sure that is correct. I think it would have to be placed there against the property owner's permission. I think what you are talking to may be for more of the homeowners' associations that control what you can do to your own property.

**Assemblyman Settlemeyer:**

What I am alluding to is that I have seen situations where the graffiti is done in an artistic way and the property owner may not consider it to be offensive or problematic, yet now the county will have the right to come in and say, "I do not like that. You will have to remove that." The property owner, even though it was done against his will, may not necessarily agree with the county's decision that it needs to come off. I am worried about property rights issues.

**Chair Kirkpatrick:**

There was a problem with that in the City of Las Vegas where a man got tired of repainting and said, "Just paint something nice," and they ended up fining him anyway. I am sure that Mr. McKenna can answer that question.

**Scott McKenna:**

I just wanted to point out that in section 5, on page 4 of the bill, specifically in lines 39, 40, and 41, the mechanism here for the abatement of graffiti specifically contains provisions allowing the property owner to come forward and, if need be, explain that this is not on the property against my will, that I prefer you do not remove it. Certainly there is a hearing mechanism where the property owner would be able to voice such concerns.

**Assemblywoman Mastroluca:**

I would like to have an explanation as to why the county commissioners would be open to selling the naming rights of facilities.

**Wes Henderson:**

The sale of naming rights would raise revenue to maintain the facilities. If they can sell naming rights and use that revenue for the facilities, that would free up other revenue for other responsibilities the county governments have.

**Assemblywoman Mastroluca:**

How do they determine what is an acceptable naming right? Is it based on the amount of money someone is willing spend, or is there some kind of ideal that says this is acceptable; and how do you make that decision among a group of people?

**Wes Henderson:**

That would be outlined in the statutes the counties would create to sell the naming rights. The counties could craft language to control to whom or at what donation levels it would be appropriate to sell a naming right to a facility.

**Assemblywoman Mastroluca:**

So we sell a naming right to an individual who is an upstanding citizen because we want to honor him, and then he does something really, really bad, and we are stuck with the name until someone else buys the right again?

**Chair Kirkpatrick:**

That does happen.

**Assemblywoman Mastroluca:**

I was going to give examples but chose not to.

**Wes Henderson:**

I was thinking of the University of Southern California, myself. I am sure there can be some provisions in the bill for a morals clause to be included in the statute.

**Assemblywoman Mastroluca:**

I would like to see that because this really concerns me.

**Assemblyman Goedhart:**

We have three different changes going on in one bill, and we are bouncing around from graffiti to naming rights. We all have concerns, but for me it is regarding section 3. It seems to be quite an expansion of what a county is able

to do, rather than to simply go after a violation of a business license regulation or state law. Instead of providing for a criminal penalty, section 3 gives the county the ability to seek a civil penalty. I was wondering exactly what the impetus was behind this bill. Please give me a couple of examples of what the Nevada Association of Counties (NACO) thought was not strong enough on the criminal side and why they wanted to extend this to the civil side.

**Wes Henderson:**

Part of the genesis of this bill was the health crisis in Clark County earlier this year, where there was one clinic within the city limits of Las Vegas and one clinic across the street in Clark County. The city could come in and impose a civil fine, but the county would have to file criminal charges or revoke the clinic's license. There is no intermediate step for counties. The counties are looking for an intermediate step so, when a violation occurs, they can reprimand a business without having to revoke its license or incur the expense of filing a criminal charge and taking the business to court.

**Assemblyman Goedhart:**

You have a maximum of \$1,000 for each violation. Can you be a little more specific with regard to what was happening at the clinic?

**Wes Henderson:**

I am referring to when the clinics were reusing equipment without regard to standard medical procedures.

**Assemblyman Goedhart:**

In section 3, the bill provides penalties for each violation. What if the county went back through the records and said that between February 1 and February 20 the business had violated procedures 150 times. Does this mean you will fine them up to \$1,000 for that violation, or will you fine them \$1,000 for each time they had deviated from standard medical protocol?

**Wes Henderson:**

I believe the statutes could be created by the county commissions to provide penalties per occurrence, or it could be written for a single violation.

**Chair Kirkpatrick:**

Just to give you some background, last session we had a bill, Assembly Bill No. 221 of the 74th Session. It died a very slow death in Government Affairs because there was concern it was too broad. I agreed to give it a hearing this time if we narrowed the gap, because if we are giving a business license to someone who has all these issues and then we go out and fine him, we are not doing our job to begin with.



I personally believe I misread this bill. I thought that this was pertaining to the naming rights. I think that this piece of the bill, in section 3, probably needs to be pulled out and just kept in A.B. 49. I think there is too much in this bill—it has the same thing as in A.B. 49. Regarding the endoscopy clinics, believe me, the press beat me up, because it was the Chairman of Government Affairs who did not give us the ability to do this and now we cannot close the clinic. I got the phone calls and mail, but at the same time it was not good policy. That is why we are hearing it again. I honestly believe the language should not be in A.B. 31 and we should discuss it in depth in A.B. 49.

**Assemblywoman Pierce:**

I live in a world in which a number of venerable names in the business community have fallen under a cloud of corruption, hubris, stupidity, and greed. Imagine if we had a lovely Countrywide Park or an AIG Park, or a Lehman Brothers Stadium. At the very least there has to be something in the bill that says if you took Troubled Asset Recovery Program (TARP) money, we will not name anything after you, or that the day your CEO takes a perp walk, your name is coming down.

I live in Las Vegas, and when you call neighborhood services and say there is some graffiti, it is gone in about 48 hours; it is a lovely thing. I would like to hear from Ted Olivas how this bill would affect that service, because all of a sudden it seems we might not be able to get rid of graffiti nearly as fast as we do now. I can drive through my neighborhood, see graffiti on a couple of walls, and call neighborhood services. They come out, throw some beige paint up there, and it is gone. I would like to hear from the City of Las Vegas on how this will affect graffiti abatement.

**Chair Kirkpatrick:**

This is related to just the county.

**Assemblywoman Pierce:**

This would not affect Las Vegas then.

**Assemblywoman Spiegel:**

I have a question pertaining to the graffiti section. How will the county determine ownership of block walls, especially when the back of the wall is a private residence? I am reading that this bill is limited in scope, but how and who will be liable for graffiti removed in common-interest communities?

**Wes Henderson:**

Counties currently have the authority to remove and abate graffiti upon exterior walls. The purpose of this bill is to expand that authority to remove the graffiti that is actually painted on the residence itself.

**Assemblywoman Spiegel:**

Is this issue affected by the preponderance of abandoned homes and the fact that the removal is being slowed because nobody is living in the home to report or take care of the graffiti?

**Wes Henderson:**

That is certainly one of the driving factors behind this. The county currently does not have the authority to go in and clean that graffiti up. The graffiti then drives down property values throughout the neighborhood.

**Assemblyman Goedhart:**

Just a comment on the graffiti portion of the bill. We also have a lot of rolling graffiti billboards called rail cars. A lot of times those rail cars will be on a siding, and I think that is something we need to think about.

**Assemblyman Claborn:**

Will this have any effect on the county's quick response program? I might add, this program of the Public Response Office does a very good job. When I call Public Response regarding graffiti, I get a quick response.

**Wes Henderson:**

I do not believe so, but I will have to check. I think this just expands county authority to remove graffiti placed on a residential property.

**Assemblyman Claborn:**

I might add that they do a very fine job in my neighborhood on walls and everything else. We take care of our own property when it comes to taggers.

**Chair Kirkpatrick:**

I am trying to get a little clarification because I know we spent a lot of time in the Assembly Judiciary Committee last session discussing how to deal with graffiti. I wanted to get our legal opinion on the parameters. Mr. Munford has an example of graffiti art in his district. Someone painted a picture of the President at age 12 on the side of their house. Would this bill allow the county to fine the current homeowner when a past homeowner did the painting?

**Wes Henderson:**

If it is something the property owner approves of and they go through the hearing procedure and prevail, then the art could stay.

**Chair Kirkpatrick:**

Has everyone had their say on this portion of the bill?

Last session we had Senator Lee's bill, Senate Bill No. 497 of the 74th Session, on naming rights for the Clark County shooting park, which, in my opinion, was great because we were bringing in tourism.

My heartburn with this bill is that it is very broad. The counties could draw up different ordinances, and the rules would vary from county to county. What works in Washoe County will not necessarily work in any other county. Back in 1998, the Parent Teacher Association (PTA) was trying to generate some funds. They sold their name to be put on Dannon Yogurt. You would be amazed at the number of people who would not buy the yogurt because of PTA being on it or bought it only because of the PTA. It became a nationwide drama.

I think if you are really considering allowing naming rights, it cannot be done by ordinance because the regulations are "loosey goosey" across the state; it has to be in statute. I have asked my county commissioner for the ordinance that is supposed to be in place on the naming rights of the Clark County shooting park. We have yet to receive it. I agree, in these tough times some people are coming through with private donations, and they want to get something in return. There has to be a little bit more stability and some real rules. For instance, Nye County could adopt one ordinance that says it is okay to do this, and Clark County could say no. This would set a bad precedent for business across the state. We then start pitting counties against each other; this is my real concern.

I really thought section 3 was pertaining to naming rights, because what is the process of fining a company in violation? Let us say that company A comes in and gets naming rights, and they push the envelope a little bit and add something different to the name. I really thought this penalty was directed toward those kinds of loopholes in the process.

I think the business licensing requirements in section 3 are inappropriate in this bill. I made my case earlier. It is a whole separate issue as it relates to the cities and counties.

On the graffiti part, I think there is some merit to what we are saying about the structures. In the City of Las Vegas—I believe it was on Bonanza Road—we saw an instance where the owner did not want the graffiti in the beginning and kept painting over it because he was getting fined. Finally he said to the taggers, "Go ahead and paint it so it looks fair." The city fined him anyway, but he said, "Hey, I like it," and the city said, "We do not, so you have to take it off." I get where Mr. Settelmeyer and Mr. Goedhart are coming from on penalties and property rights. I agree, in the case that graffiti is not wanted, but I find it hard to believe that there is not a nuisance violation you could cite instead.

I think there is merit to this bill, but it definitely needs to be completely massaged. The language has to be very clear-cut. I do not think it is fair that a person has to go through the appeals process when he should have never been there to begin with.

With those issues, so far, we are going to let other people speak. I think we need to work on this bill.

Does anyone else have any questions for Mr. Henderson? [There were none.]

Will those in favor of A.B. 31 as written please come up to the table. Is there anyone who would like to testify in favor of this bill as written? [There were none.] Is there anyone who is opposed to this bill as written?

**Janine Hansen, representing the Independent American Party and the Nevada Eagle Forum, Elko, Nevada:**

My concern is with section 3 in this bill. I do not have all the history from last session because I do not think I discussed this issue. I really appreciated your questions this morning. My concerns with section 3 involve basic principles and lead to Article 1, Section 8 of the *Nevada Constitution*, which provides for a right to trial by jury that "shall be secured to all and remain inviolate forever."

However, when you change from a criminal offense to an administrative fine, you lose the right to trial by jury and many other of your constitutional rights. When you go to a hearing officer, you are essentially in a kangaroo court where you have no constitutional rights to defend yourself in the same way you would in a criminal situation. Anytime a criminal violation is changed to a civil penalty, your right to trial by jury, your appeal rights, and your other rights are in severe jeopardy, and I have a concern about that. My concern would also apply to A.B. 49.

I have had considerable experience with administrative fines and civil penalties through the Secretary of State's Office. There is no good appeal process, and they can impose huge fines, and then you do not have an opportunity to defend yourself in court. My concern is with the basic principle of moving from criminal to civil where you lose your constitutional rights.

**Chair Kirkpatrick:**

We will reflect your comments in the next version. You should stop by this Committee. We have a reputation for being spirited, very smart, and we start on time.

**Janine Hansen:**

You proved that this morning. You know me, I like to put people on the spot, especially the bureaucrats. We need to keep limited government in our state. That is one of our important reputations we have here—limited government.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in opposition to A.B. 31? [There were none.] Is there anyone who is neutral and would like to testify on A.B. 31?

**Sabra Smith-Newby:**

We would like to offer an amendment to the naming rights section of A.B. 31. It is sort of a special situation. As you mentioned earlier, S.B. No. 497 of the 74th Session allowed Clark County to sell the naming rights to the shooting park. The county has a number of specialized parks. Others planned include an off-highway vehicle (OHV) park, a horseman's park, and a dog fanciers' park. There are some specialized donors or companies that might be interested in buying naming rights to those parks.

The amendment ([Exhibit C](#)) I have before you concerns the county's University Medical Center (UMC). It is not so much selling naming rights, but we have an increasing number of situations where people want to donate money to the University Medical Center for a service, a program, or facilities.

Recently we had a donor who provided \$1 million and would like that money to go to a catheterization laboratory at UMC. We would like to be able to name a facility like a cath lab, or a program in the donor's honor. For example, we are working on a kidney transplant program. You can see where, for example, a donor whose mother had diabetes would like to donate for a facility that provides treatment to those who have diabetes, and we would like to recognize that donor by naming a program, room, or facility in their honor. That is what we are aiming for in this amendment.

**Chair Kirkpatrick:**

Does anyone have any questions on her amendment?

**Assemblyman Aizley:**

This is more of a point of information. I thought that most of the university buildings were state-owned buildings and possibly are part of interlocal agreements, so now you have two jurisdictions involved in the naming of facilities.

**Sabra Smith-Newby:**

I do not know the history of the University Medical Center. Although we have partnerships with the state and the university, the University Medical Center is owned by Clark County, so there is just one jurisdiction.

**Assemblywoman Mastroluca:**

As someone who worked in fundraising, I understand and appreciate wanting to name a program, a certain lab, or a section of a building after a generous donor. Again, the concept of naming rights going to the highest bidder, this is what concerns me. I am fine with the program with the lab, but I think the bill needs to stay the way it is.

**Chair Kirkpatrick:**

Mr. McKenna, what is the proper procedure on how donations are processed in naming parks? Is it similar to the way the school districts do it? Do you know, and could you find out for us?

**Assemblyman Settelmeyer:**

Can you give me some of the names of individuals who something has already been named after?

**Sabra Smith-Newby:**

I do not believe we have anything named after anyone at this point.

**Assemblywoman Pierce:**

This has muddled the water for me. If it is a donation, then it is not selling. Is there anything to stop you now from naming a wing of a hospital after someone who has donated a lot of money to the hospital?

**Sabra Smith-Newby:**

In the past, our district attorneys have told us, because of Dillon's Rule, unless an authority is expressly stated in the NRS, it is not something that we are allowed to do. So I imagine their opinion would be the same even with donations, even though it does not necessarily mean we are selling the name.

This is why we would like the language in the NRS to expressly allow us that ability.

**Assemblywoman Pierce:**

But if you named a wing after somebody in sight of this, then their donation suddenly stops being tax deductible.

**Chair Kirkpatrick:**

How are you going to answer that?

**Sabra Smith-Newby:**

Ms. Pierce, you bring up a very good point, and of course we would not want to in any way harm that opportunity for a tax exemption. I do not specialize in taxes; I suppose we will need to check with our attorneys on that. We would support any language that would make it clear that it is a donation and we would simply like to name a room or facility after them. There is no quid pro quo necessarily. Whatever makes it right. We want to make sure we have the ability to follow the naming process.

**Assemblyman Bobzien:**

I will be fascinated with what information Scott McKenna pulls out. At the university setting we do this a lot. To Ms. Mastroluca's point earlier, there definitely have been situations where a donation is promised and the name goes up on the building, and magically the donors lose their wallets and the name stays there for four or five years. Then it eventually comes down. I do not know if you are open to putting some stopgap language in to tighten the rules, so there would be provisions laid out in case there is nonperformance of a donation or the sale. Depending on what we hear from Scott, if we can make the authority similar to what the county currently has, and I would like to see it somewhat uniform no matter where you are in the state.

**Sabra Smith-Newby:**

Yes, in the case that you state about nonperformance, such language would protect both you and us, and I am sure that we would be amenable to that. I do recall, at the Governor's Mansion, the Nevada Room is also named after a certain purveyor of liquor. Clearly there is an ability to award these naming rights, but we would be very willing to work with you in any way to make sure we satisfy your concerns.

**Chair Kirkpatrick:**

For your information, I had great discussions with Senator Raggio last session, and at that time he did not believe in putting up a name and taking it down no matter what the person did. I think you need to have this discussion with him. We went round and round for many months over Floyd Lamb State Park, which eventually was transferred to the City of Las Vegas and renamed Floyd Lamb Park at Tule Springs. It took us a long time to agree to that, so I would suggest that any of you who are thinking about similar issues should check with Senator Raggio.

Is there anyone else who would like to testify on A.B. 31?

**Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada, Las Vegas, Nevada:**

I want to quickly mention something about the naming section of this bill. I will save my comments about the duplication for A.B. 49. There have been comments made regarding what happens if someone or some company is indicted or goes out of business. There is an even greater problem, and it has occurred in some states with their "Adopt a Highway" programs. If you are opening up a designation to the highest bidder, you could have situations such as a highway that has been adopted by the Ku Klux Klan, and the courts have pretty much said that, in the absence of any illegality or criminal conduct, those kinds of organizations—or any other kind of organization—are going to have the same rights.

I heard earlier that maybe we could have some kind of morals clause. Again, it might work very well in terms prohibiting people involved in criminal activity, but allowing this kind of open bidding for names could create unintended consequences that result in court cases.

**Chair Kirkpatrick:**

Does anybody have any questions? Is there anyone else who would like to testify on A.B. 31? I am closing the hearing on A.B. 31.

We are going to move on with Assembly Bill 49 and go out of turn because we are already having the discussion. I just want to say, for the record, that I said we would give the bill a hearing because last session we did not. It is very interesting to me that the cities with their charters have a lot more power than the counties, which are responsible for a lot more things. I believe it is a matter of fairness that we have this discussion.



**Assembly Bill 49:** Authorizes a board of county commissioners, under certain circumstances, to provide a civil penalty in lieu of a criminal penalty for the violation of certain ordinances. (BDR 20-449)

**Sabra Smith-Newby, Director, Department of Administrative Services,  
Clark County, Las Vegas, Nevada:**

I have with me Constance Brooks, who will be presenting this bill.

**Constance Brooks, Senior Management Analyst, Office of the County Manager,  
Clark County, Las Vegas, Nevada:**

The intent of this bill authorizes the board of county commissioners under certain circumstances to provide a civil penalty in lieu of a criminal penalty for the violation of ordinances related to the licensing and regulation of businesses. This bill is a proactive measure that greatly enhances our ability to encourage compliance in code, thereby improving the health, welfare, and safety of our community.

As Mr. Henderson stated, this is an intermediate step in providing oversight in regulating businesses. Examples of ordinance violations include businesses operating without a valid license, businesses violating county codes in a way that affects public safety and public health, and businesses that falsify their license applications.

When violations occur, our current system allows for citations to be issued but with no fines attached. Currently, violations to ordinances are addressed in the following manner: Business license agents would issue a warning or a notice of noncompliance. If the condition or violation continues, the agent would then issue a citation that would go through the court system. This citation imposes no fine on the violator. The business or person cited would go through the judicial system, appearing before a judge and possibly having to get an attorney. The judge would determine the extent of the violation and the amount of the fine.

The problems with this process are twofold. Number one: It places demands on our already-taxed court system. Most cases are not pursued by the District Attorney's Office because they do not rise to the level of critical prosecution, such as crimes that cause harm and injury to others. Also, businesses continue to operate during the court process, which can take more than a year to prosecute. Number two: For more flagrant violations we shut businesses down, which could be a last resort, especially given the dire economic conditions we are currently facing. This is an extreme measure, is seldom used, and limits the effectiveness of our ability to provide oversight.

To ensure fairness and equity in imposing the civil penalty or fine, business representatives will have the opportunity to participate in an appeals process led by a hearing officer. The hearing officer would represent the Clark County Department of Business License. In no case will a person or business be fined without appearing before the hearing officer. Statute currently provides this authority for cities, and cities also have the ability to impose civil penalties.

We would like to amend the statute to extend the same liberties to the county. In the example that Mr. Henderson gave, as it relates to the grave issues that arose with the endoscopy clinics, the clinic that fell under the jurisdiction of the city was both fined and closed. However, those clinics that fell under the jurisdiction of the county were closed with no fines imposed.

This bill is also an attempt to address parity of businesses, as you stated. You can have two businesses in two different jurisdictions, and one business can more readily break the law while the other is held to a stricter standard because it can be fined. This is not fair to the business that plays by the rules and is under the possible penalty of fines.

Again, the intent of this measure is not to generate revenue but to enforce code compliance and allow the county to be more aligned with its surrounding jurisdictions in protecting the health and safety of our community.

**Chair Kirkpatrick:**

Does anyone have any questions?

This issue was terrible heartburn for me last session. I think this bill is very broad. My concern is the county has all these little agencies, and I do not want this to be a free-for-all where every agency—whether it be the water authority, the health district, the redevelopment agency, or all of them—runs out and fines businesses based on things they do.

I believe this bill is probably too broad. At least the cities do not have so many agencies that go out and fine businesses. That is my concern with this bill. Also, the ordinance process is not consistent across the state. Can we just insert some basic provisions regarding public safety and welfare, and then you can assess the effectiveness? There has to be a better way to make it consistent. I had a business in North Las Vegas, another store in the city of Las Vegas, and a store in the county. If the city was cracking down, I would simply move most of my stuff to the county and live by their rules because nobody came out. Finally, when the county caught on, everything went back to North Las Vegas. At the end it was a shuffle.

An example that really frosts me is the group homes. We have the same owners of the group homes, and they shuffle back and forth across jurisdictions. I believe there has to be some parity, but it has to be limited to public safety. This has been my stance since 2007.

I have seen business licenses approved on a Saturday night at midnight; I think, "Are you kidding me?" That is a violation coming. We have to be better at this for me to be comfortable.

**Assemblywoman Mastroluca:**

I would like to see a snapshot of how many violations each department is writing and for what kinds of things. I agree with the Chair; I can see this being abused, and if it comes down to it, fining businesses is another way for the counties to come up with more money. There needs to be a better answer.

**Constance Brooks:**

To address the number of citations, I can give you some exact numbers, but I do not have the information on the types of citations. I can get that for you ([Exhibit D](#)). In 2008 we conducted over 2,000 official investigations on businesses in our jurisdiction and issued over 500 notices of violations. Those notices led to approximately 10 citations, which then went through our judicial process.

**Chair Kirkpatrick:**

Does anyone else have any questions?

**Assemblywoman Spiegel:**

Is there a way to structure this so the parity issue could be addressed? Say the same violation could be fined in adjoining jurisdictions, so that you cannot have two businesses across the street from each other, one in unincorporated Clark County and one in the City of Las Vegas, subject to different rules.

**Chair Kirkpatrick:**

The only question I would ask you is: who is going to determine who has the better structure? Is the City of Las Vegas better, or is the City of North Las Vegas better? We have five building departments in Clark County, and they all have their own sets of rules. I do not know how you would determine who has the best set of rules. The language in this bill is exactly what is in city charters. I think it has merit, but it is too broad. I want to see how it works first. We may have to sunset it, which I hate to do, because I am trying to get to the public safety issues.

**Sabra Smith-Newby:**

I understand your concerns and was aware of them. I did check with our district attorney about the applicability of this bill to some of the other entities that are affiliated with Clark County and not part of Clark County, like the health district and others. The district attorney has advised me that this bill does not apply to the other entities because of its placement in NRS Chapter 244 and their placement in other chapters in the NRS. The bill is not applicable to them. We did try to get the language down as narrowly as possible by saying it concerns the licensing or regulation of businesses.

The other language in NRS 268.019, with respect to cities, says "the governing body of an incorporated city may by ordinance provide that a violation of an ordinance adopted by the governing body pursuant to NRS 268.4122 by the owner of commercial property imposes a civil liability to the city in an amount not to exceed \$1,000 instead of a criminal sanction."

As you can see, the language that applies to cities is actually broader than the language we have tried to provide you here.

**Chair Kirkpatrick:**

Does anyone have any other questions?

Show me the sections within NRS Chapter 244 that would give the county the ability to levy fines, because I cannot believe that it would just relate to business licensing; but if you can prove it to me, then I am there with you.

**Sabra Smith-Newby:**

We would be happy to do that. With your permission, I would like to get an opinion from our district attorney, give it to your Legislative Counsel Bureau to review it, and make sure they are on the same page. Once we have that opinion, we will present it to you so you have some confidence that both entities agree about the applicability of this bill.

**Chair Kirkpatrick:**

I think that will help me. Does anyone else have any questions? I would like to call up anyone who would like to speak in favor of A.B. 49.

**John Slaughter, Director, Management Services, Washoe County, Reno, Nevada:**

We want to go on record that we do support the bill as written, but it sounds as if there may be some tightening or some changes, and we would be more than willing to be involved in that process.

**Chair Kirkpatrick:**

Does anyone have any questions for Mr. Slaughter? Is there anyone else who would like to testify in support of this bill? Is there anyone who would like to testify in opposition of this bill?

**Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada, Las Vegas, Nevada:**

I would like to testify in favor of this bill. The problems that were brought up and the questions of the scope were ones that we had not thought of in terms of whether it applies to anything other than business licenses.

The current situation is that people who are running a business, and who may have some regulatory violation, face the prospect of going to court and defending themselves against criminal charges. We believe that is the criminalization of what are essentially minor business violations. The examples of the endoscopy centers are not typical. The typical one may be a business that requires all of its employees to have work cards, and someone does not have their work card, or something like that. It is a violation, but the question is, does it really go to a criminal matter? The purpose here is to deal with these kinds of violations within the civil process. That seems to make more sense and keeps people from facing the prospect of having a criminal record and also having to go through a court process.

Ms. Hansen spoke earlier in terms of A.B. 31. Her comments were well taken because, very clearly, any process like this requires the possibility of judicial review, even in the misdemeanor situation. No one is going to have a jury trial unless they are facing jail time, which is not typical for business license violations. The question is, is there an administrative process that would work, and I think the answer is, only if there is prompt judicial review of any fines such as this. Clearly, there are some details to be worked out, but the basic principal of not criminalizing behavior that is really not criminal would seem to make a lot of sense.

**Chair Kirkpatrick:**

Does anybody else have any questions? [There were none.] Is there anybody who would like to testify in opposition to this bill? [There were none.] Is there anybody who is neutral on this bill? [There were none.]

We will close the public hearing on A.B. 49, and we will be opening the hearing on A.B. 39.

**Assembly Bill 39:** Revises the provisions of the North Las Vegas City Charter governing primary municipal elections. (BDR S-373)

**Karen L. Storms, City Clerk, City of North Las Vegas, Nevada:**

I am here to give you a brief presentation regarding A.B. 39, to change a portion of the city's charter related to elections. As the charter currently reads, for any seat up for election where there are only two candidates, those two candidates would bypass the primary election, and their names would appear only on the general election ballot.

The proposed charter change would allow the names of those two candidates to appear on the primary election ballot, and the race would be decided then, eliminating the need for the candidates' names to appear on the general election ballot.

For your information, all elected officials in the City of North Las Vegas take office July 1, so this change would have no effect on the officials' terms. This change would also make our election laws consistent with the laws in both the Cities of Las Vegas and Henderson. Every election season we receive numerous calls because constituents are expecting to see a certain race on the primary ballot, only to find out our laws are different and the race will be on the general election ballot.

This bill would have no fiscal impact. I have spoken to Larry Lomax, the Registrar of Voters for Clark County, and he has no objection to the bill.

**Chair Kirkpatrick:**

Does anybody have any questions?

**Assemblywoman Pierce:**

Section 1 refers to candidates declaring their candidacy, and section 2 refers to nominated candidates. I am wondering if there is some other kind of process besides filing—that there is some kind of nomination process?

**Karen Storms:**

Not that I am aware of.

**Chair Kirkpatrick:**

Mr. McKenna, is there some specific language? The reference to nominated candidates does make it appear that someone is putting the candidates on the ballot, as opposed to their filing. Is there something different there? I would guess that it is the same language as the City of Henderson or the City of Las Vegas.

**Karen Storms:**

We did pattern our language after theirs. The only provision that may apply, and I would have to check, is if there is a recall and a nomination at the same time.

**Chair Kirkpatrick:**

What happens if Assembly Bill 79 goes through with the Nevada League of Cities? What is the cost savings to the city now? In North Las Vegas it is very sad; their voter turnout is about 7 percent. It has to cost thousands of dollars for every vote cast. Now that we have changed to the ward system, it is probably a little bit easier to break it down.

**Karen Storms:**

I am not sure what your question is.

**Chair Kirkpatrick:**

Currently, what is the approximate cost to run a primary election?

**Karen Storms:**

Approximately \$105,000.

**Chair Kirkpatrick:**

If there are only two people in the primary and only one ward up for election, then that would be very expensive for the voter turnout, correct?

**Karen Storms:**

That is the general cost. A lot of it is printing, so if the sample ballot is small, the cost is going to be smaller. Again, we are talking about the difference between a primary election and a general election. So there really is not a cost savings. The race is going to be on one or the other.

**Chair Kirkpatrick:**

What happens if A.B. 79, which is in the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments, passes? How does that intertwine with this bill?

**Karen Storms:**

It does not intertwine because our language is in our charter. Assembly Bill 79 would cover only cities that do not have the language in their charter, so it does not affect North Las Vegas.

**Chair Kirkpatrick:**

It does say that?

**Karen Storms:**

Yes.

**Chair Kirkpatrick:**

I did not see that part. Does anybody else have any questions? [There were none.] Is there anyone who would like to testify in support of this bill? [There were none.] Is there anybody who is in opposition to this bill? [There were none.] Is there anybody who is neutral on this bill? [There were none.]

With that we will close the hearing on A.B. 39. Is there any public comment? [There was none.] Is there any discussion from the Committee? [There was none.]

Meeting adjourned [at 9:09 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 19, 2009

**Time of Meeting:** 8:02 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Guest List
A.B. 31	C	Sabra Smith-Newby	Amendment
A.B. 49	D	Constance Brooks	Civil Penalties/Violations list