

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

**Seventy-Sixth Session  
April 29, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:01 a.m. on Friday, April 29, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), and the Attendance Roster ([Exhibit B](#)), 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/76th2011/committees/](http://www.leg.state.nv.us/76th2011/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  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Peggy Pierce (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Ben Kieckhefer, Washoe County Senatorial District No. 4  
Senator Valerie Wiener, Clark County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Tray Abney, representing Reno/Sparks Chamber of Commerce  
Terry Graves, representing Henderson Chamber of Commerce  
Carole Vilardo, President, Nevada Taxpayers Association  
Jeannette K. Belz, representing Nevada Academy of Ophthalmology

**Chair Kirkpatrick:**

[Roll taken.] We will open the hearing on Senate Bill 251(1st Reprint) and invite Senator Kieckhefer to come up.

**Senate Bill 251 (1st Reprint):** Creates the Nevada Sunset Commission to evaluate certain governmental programs and services. (BDR 18-745)

**Senator Ben Kieckhefer, Washoe County Senatorial District No. 4:**

I am here to today to go over a sunset commission bill. You have heard these before, and I appreciate your willingness to hear this bill as well.

I recognize that you did process Assembly Bill 474, which was a bill created by Assemblywoman Debbie Smith and had the concurrence of Assemblyman Ira Hansen, and that bill created the subcommittee of the Legislative Commission to review ongoing boards and commissions. I support that bill. I think it is an excellent piece of legislation. You also have the Governor creating a sunset review of boards and commissions that have been created by Executive order, of which there are dozens. I also believe that is a valuable process. This is happening exclusively in the Executive Branch.

Senate Bill 251 (R1) takes a little bit different tact. What this bill tries to do is get at operations of government more generally than just boards and commissions. It is a recommendation out of the Spending and Government Efficiency (SAGE) Commission report.

I worked in former Governor Gibbons' office when we had the SAGE Commission, and one of their primary recommendations was the creation of the Sunset Commission. In that recommendation it does talk more broadly

about operations of state government and government overall. That is what I am trying to get at.

If you look at the recommendations that came out of the SAGE Commission, the vast majority are related to broader governmental operations, whether it is Medicaid funding, motor pooling, or things of that nature that are not necessarily related specifically to boards and commissions.

The bill I came up with was S.B. 251 (R1). It creates something else called the Nevada Sunset Commission. If you would like to amend it, I will turn it over to the will of the Committee to rename it whatever you like, considering I do not think that we need three sunset commissions. The bill also creates the membership and the charge of the Commission.

The membership is pretty straightforward. It is comprised of a member appointed by the Governor, members appointed by each of the four party leaders of the Legislature, a person appointed by the Nevada League of Cities and Municipalities, and another member appointed by the Nevada Association of Counties. All of them must be members of the general public. They cannot be elected officials. They must also have general knowledge of both business and government.

The charge of the Commission is in section 5, page 3 of the bill. It is a call to really review the functions of government, looking for both efficiency and efficacy within programs of state government, as well as looking for duplication of services among federal, state, and local levels, and the review of existing programs as laws change.

One of the things I go back to is when the federal government passed Medicare Part D, which is a prescription drug benefit. We have a program in law called the Senior Rx which provides a prescription benefit for senior citizens in Nevada. There was never really a full comprehensive review of the Senior Rx program to decide whether to continue the program, and whether it was the best use of those tobacco settlement dollars as it existed. Would it have been more appropriate to shift the dollars into another purpose, or things of that nature?

That may have been an internal discussion that happened in the Department of Health and Human Services, but the broader policy issue was never discussed or considered. I think this is the type of change in law of one level of government that affects our level of government that we never really consider.

That is the basic charge. The Department of Administration would ultimately provide limited staffing support to the Commission. The Governor's appointee would serve as Chair of the Commission. The idea is that the Executive Branch would ultimately control and consider who would be reviewing the Executive Branch agencies on a regular basis.

It also states that they can solicit and accept contributions, but that any contributions solicited or accepted cannot be from an agency that the Commission is reviewing.

That is the bill in a nutshell, and I would be happy to answer any questions, and I will try to keep it short.

**Chair Kirkpatrick:**

Thank you. Are there any questions?

**Assemblyman Ellison:**

It looks like the bill that was on the Assembly side is almost identical to one on the Senate side. There are a few differences, but not many.

**Senator Kieckhefer:**

Which bill are you referring to?

**Assemblyman Ellison:**

We sent one over that was . . . Did we not?

**Chair Kirkpatrick:**

Assemblyman Ira Hansen had Assembly Bill 406, and we sent it without any recommendation to the Ways and Means Committee so that some of his bill could be incorporated to Assembly Bill 474. However, A.B. 474 has been passed out and sent to the Senate side, so it is in Senate Government Affairs. We passed it out last week. I think there are some differences.

**Assemblyman Ellison:**

Yes, there are a few changes in this bill that are different, but as far as the Sunset Commission goes, the language from the Majority Leaders from both Houses and the League of Cities and Nevada Association of Counties (NACO) and at-large members are pretty close.

**Chair Kirkpatrick:**

I think that the difference is the subcommittee because, if you remember, Assembly Bill 1 ended up being part of that whole. There were 11 legislators that all had a piece of the pie that they tried to put in. I know this particular

section, section 5, because in the last session I did that on abatements. I sunsetted them after ten years so that we could come back and review them. Ms. Vilardo and I have been working for some time to try to get some of what this bill is about.

I think section 5 of S.B. 251 (R1) was not incorporated in A.B. 474 that was sent over to the Senate side.

**Senator Kieckhefer:**

That is correct.

**Chair Kirkpatrick:**

We actually used Assemblyman Hansen's bill . . . I know this is complicated, but we used his bill as another avenue for something completely different.

I worked with the Office of the Governor, and we actually used his bill for an internal audit. We gutted it, replaced it, and gutted it again; so the short story is section 5 is completely different, and it is probably something that we need to look at.

What I was going to ask you, Senator, is whether the Legislative Commission is going to form a subcommittee? Are you looking to have that same subcommittee do the sunsets or not? My concern with that is that everyone has regular jobs when we go back home. This is going to take a lot of work, and there is probably some outside help that we can utilize, so I am comfortable with leaving it more this way than the other way.

**Senator Kieckhefer:**

The reason that I do not like the review of these Executive Branch programs as a subcommittee of the Legislative Commission is the idea that legislators will continue to fight for programs. If you create a program, you will more than likely keep fighting for it and sometimes you get blinded by the light.

I specifically state in the makeup of my recommended commission that these cannot be elected officials. This needs to be an outside view of these programs for their necessity and efficiency. I think there is value in that. That is the way we originally created the SAGE Commission, and I think it was effective and valuable to the process. I would prefer to see it remain an external body. Again, I am willing to entertain ideas.

**Chair Kirkpatrick:**

I prefer to see it this way because we need people that are not invested in it to give a broad perspective of some changes that we can or cannot do.

**Assemblyman Ellison:**

I agree, and the reason is, it is best to look in and not be fogged over and look out. To me it is a better, cleaner idea.

**Chair Kirkpatrick:**

I will say that the other perspective that comes out is that private industry will see what it entails and the different aspects that the Legislature has. This way both parties, the private side and the legislative side, are educated on what would work better.

Ms. Vilardo will tell you that sometimes just because it looks bad for government, once we explain it, it is not as bad as the people thought. I think it benefits both sides.

Are these going to be open meetings? Because I like to follow them. The SAGE Commission was really hard to follow, just so you could keep up on what they are talking about.

**Senator Kieckhefer:**

I had intended in the amendment that we incorporated in the Senate to ensure that it did follow the open meeting law. I thought that we had gotten it in there, and if I did not, I apologize and I would appreciate it that you amend it in. I thought that we had put it in there, and I guess we did not. I am reading the original version; I think it is in there. I will have to check; I apologize. I was not reading the reprint.

**Chair Kirkpatrick:**

Are there any questions?

**Assemblyman Livermore:**

I really like your bill. My question is on the schematics. In each legislative cycle or year there are numerous legislators, local government bodies, and others who really think it is appropriate to create a body to look at something. Would those people have access to this Commission to . . . Is this committee worthwhile? Is there a review process before or during the legislative process?

**Senator Kieckhefer:**

The Commission itself will make recommendations to the Legislature for programs that it deems to be either unnecessary or in need of change. Is your

question regarding an external person being able to access the Commission and request that it do an evaluation?

**Assemblyman Livermore:**

That is exactly what I mean.

**Senator Kieckhefer:**

There is nothing in the bill to prohibit that. Ultimately it would be up to the Commission itself to decide which programs it would want to review.

**Assemblyman Livermore:**

We have had a lot of testimony here. I can foresee the testimony coming here and someone saying, "I have presented this plan to the Sunset Commission, and they have embraced it or endorsed it." That is what I am trying to get at; is that going to be within the realm of possibility?

**Senator Kieckhefer:**

I would think so. It is not something that I think would be appropriate to put into statute.

**Chair Kirkpatrick:**

You know I am famous for getting reports because then we can go back and look, especially all of you that are on this Committee. Assemblyman Munford, Assemblyman Stewart, Assemblyman Goedhart, Assemblywoman Woodbury, and I are not going to be here as long as you are going to be here. There is some institutional knowledge that you can gain from some of this.

I will give you an example. When we went through the abatements, there is an abatement that was put on the books in 1977 that has never been used. Well, get it off the books, or fix it so that somebody can use it so that it does not tie up that perception that it is out there. I think it would be more appropriate to call it a review instead of a commission so that it is consistent.

The other thing I will ask is, it looks like they both expire . . . the board appointments, one is in 2013 and one is in 2014, is it meant to keep going? I think there are a lot of programs and you are probably going to have to focus on a few, or is it something that you want to readdress?

**Senator Kieckhefer:**

It was meant to be staggered in terms of the expiration of the members.

**Chair Kirkpatrick:**

But it does not sunset the whole thing by the end of 2014. Correct?

**Senator Kieckhefer:**

No, it does not.

**Chair Kirkpatrick:**

Are there any other questions?

**Assemblywoman Benitez-Thompson:**

I was wondering more about the logistics of this bill. Section 5 is telling us that the Commission is going to do a continuous review of all government programs and services. That is a lot of work to do. So, at the call of the Chair they can meet as frequently as they need to perform these duties, but no less frequently than every other month.

I guess I would wonder what the expectation would be about how much this Commission could accomplish. I know that they are not going to be provided a per diem unless the money is available. I do not want to assume that the money is going to be available for them. So, for these Commission members, what is going to be the expectation of the workload, the work commitment, and what kind of product are you looking for in terms of the review that will come out in the report every two years?

**Senator Kieckhefer:**

Originally when we created the SAGE Commission, it was designed as a high-level review, and the people that were appointed to that Commission served without compensation. These were CEOs of airlines, and other high-level people to provide this kind of review. They volunteered a lot of their time and put out a significant amount of effort in doing that, and there were paid staff that went along with that, as well.

What I envision, and what I think people should expect, is that this is a body that will be looked to very respectfully as a voice of some reform in government. I would expect that you would have people who want to serve on this Commission because they believe that it is an opportunity to participate in the government process, and they will expect to make some commitment in terms of time, energy, and effort to ensure that the job is done correctly. I do not expect a SAGE Commission book to come out every biennium, but I would like to see several firm recommendations for ways to make the state a better place.

**Assemblywoman Benitez-Thompson:**

I guess what I am getting at is as with Texas and their sunset commission, they have a schedule and they review the agencies every 12 years. So, every 12 years the agency has notice that they are going to be reviewed, and they



look at more than 150 different agencies. I was trying to get a better feel for whether you are looking at that same kind of model where everyone is reviewed once and it is cyclical, or are you looking at the Commission to have the ability to go back and every year look at the Department of Health and Human Services. Other departments might get pushed back and never looked at. I guess I was trying to get a better feel of why not a book every two years, and why not a volume every two years? Is it more? Is it less? What are they going to put into our hands with this report, and what are you hoping for it to look like?

**Senator Kieckhefer:**

Texas has a significantly more formal process; it is significantly more robust. They have spent \$27 million on it. They have dozens of staff. This is a massive process and with the size of Texas they have a lot more to look at and significantly larger dollars to look at. I intended to leave this bill fairly broad and to the discretion of the Commission. I believe that people who will volunteer and want to serve on this Commission are going to come in with some ideas with what needs to be reviewed, and I would leave it to them to do it. I do not want to put too many handcuffs on them and say you need to review on a certain cycle, you need to review this or that. As you know, things change. In the past year Medicaid fraud, waste, and abuse have become big buzz words. So, maybe that is something they want to adopt as an issue to address or review. I would prefer to give them the flexibility to make those decisions.

**Chair Kirkpatrick:**

Especially because they will be meeting in the interim while we are not in the Legislative session, if there are specific issues that you hear, they may be able to review some of that to see what we could be doing better. The topics change often. Affordable housing was the topic in 2005. In 2007, it was something different. In 2009, it was unemployment. This year, it is accountability and transparency.

There is a lot, and it is constantly changing. I know at least with the SAGE Commission they had a lot of subcommittees that branched out to do different portions of different things. This would allow them to keep moving in those directions. On top of that, you also have the Advisory Committee for Intergovernmental Relations (ACIR) which is doing local government and state things. Hopefully they can all coordinate and report back together.

Are there any other questions?

**Assemblyman Stewart:**

I would say initially the Committee would have a lot of work to do in the first couple of years or so. And then as they reviewed everything, their workload would perhaps disappear or be very minimal and require them to meet every two months after they have done a lot of their work. Perhaps we should make it more flexible to the call of the Chair. Do you have any comments on that?

**Senator Kieckhefer:**

As I testified before to this Committee, in my previous life I worked for the Department of Health and Human Services (DHHS) and helped coordinate the board and commission appointments for more than 55 boards and commissions in the DHHS alone. Sometimes flexibility is not necessarily a good thing in terms of how often you are allowed to meet. There were lots of boards and commissions that I worked within DHHS that never met. Some requirement, I think is warranted. Quarterly is not asking too much.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] If there are no other questions, those that are in support of S.B. 251 (R1) please come up.

**Tray Abney, representing Reno/Sparks Chamber of Commerce:**

We testified in favor of Assemblyman Hansen's bill a month ago when he was before this Committee. We support this concept. As you know, the SAGE Commission thinks that their recommendations could save the state \$2 billion over five years if you take all of their recommendations in total.

You all know David Goldwater. He was a member of the SAGE Commission and he testified on the Senate side for this bill and said when they looked at this, they found somewhere between 165 and 175 boards and commissions at the state level. The point was that they were not sure what the exact number of boards and commissions that we actually had was. I think this process will help figure the actual number.

I do like the conversation about having a private group versus having a legislative subcommittee, Madam Chair. I agree with you there. I agree with you on the open meeting requirements. I was able to make a couple of SAGE Commission meetings when they met up at the University of Nevada, Reno (UNR), but they would go back and forth in the state, and you could not watch it online a lot of the time. I think that would be a great thing to look at.

We talked about abatements, and this bill does not deal with the whole tax abatement issue, but the original SAGE Commission report had a

sunset commission looking at all of that. That may be a different discussion, and I would have preferred that all the members be appointed by the Reno/Sparks Chamber of Commerce, but I think this bill is a pretty good alternative; therefore, we support it.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Terry Graves, representing Henderson Chamber of Commerce:**

We would like to note the extensive time and energy that went into the SAGE Commission by Chairman Bruce James and its members. We appreciate Senator Kieckhefer bringing this bill forward. We also lend our support to the bill.

**Chair Kirkpatrick:**

Thank you, Mr. Graves, we appreciate that. Are there any questions? [There were none.]

**Carole Vilardo, President, Nevada Taxpayers Association:**

I am speaking in support of the bill. I did serve on the SAGE Commission. This was one of the important recommendations because even if you go back to the 1991 study on the reorganization of government, they had a problem figuring out the number of boards and commissions. They also found boards and commissions where the scope of what they were originally charged with doing had changed dramatically. They did not need to function the way they were functioning. There were a number of changes made at that point. I can tell you that I subsequently served on a SAGE Implementation Commission. There are only five of us.

The question that Assemblywoman Benitez-Thompson had asked was about procedure and format. One of the things that happens when you have people appointed and that agree to the appointment, they usually do want to serve and that includes without compensation. I do not think that I have served on one committee, including state committees, that I have been paid for.

What we did on the implementation panel was at the first meeting we determined, based on the Executive order, what the scope was and then what our procedures would be. You need that flexibility depending on what you are going to be charged with.

In both the SAGE and the Implementation Panel Committee we worked with subcommittees because they are huge charges and everyone else had a job. So, you are juggling your own job, and you know that because you are involved

with your community, plus you are trying to do what you have been charged with doing. Being able to work in smaller groups allows you to drill down, which is what we were able to do. We were very specific.

Relative to Assemblyman Stewart, it would be my impression that I would not even be alive by the time this Committee got to the point where they did not need to meet as frequently as is in this bill. I was amazed with just our very narrow charge to look at two SAGE recommendations for purposes of implementation. We met every other week, plus the groups that we split off into as just five people were meeting among themselves for very specific charges. We made 14 recommendations in less than six months, really drilling down on issues and that was just two very narrowly defined SAGE recommendations for purposes of implementation.

We absolutely support the bill, and I think it has long been needed. Two quick examples. When the draft existed, we had a selection board that was to look at the draft relative to Nevada, and while there was a draft they functioned fine. It took five to six years after there was no longer a draft to get rid of that board and commission. You just got rid of a board, and I believe this has passed both Houses, the board on metrics because we never went to the metric system, but yet that board was sitting out there. This is the kind of thing that you hope to accomplish, in addition to which you have some boards which are smaller boards that probably, because of the infinity between those boards, could be merged.

That is another type of recommendation. It is not that you would necessarily eliminate everything that you are reviewing or say that they are wonderful and they are going to exist exactly as they are, but that you would turn around and look at efficiencies within the operation and make sure they are following the changes in law at that point.

**Chair Kirkpatrick:**

Are there any other questions?

**Assemblywoman Benitez-Thompson:**

I would like to clarify. I do not think I was questioning so much the expectation of the time that the people have put into this because I certainly think that there are people with a passion and zeal for this. I think there will be a lot of people submitting their names to be on the Commission. I was trying to gauge from the bill's sponsor a better idea of what his expectation of what their work product would be. With section 5 saying, "and continuous review of all governments," does that mean a continuous review within the two years that they have to produce a report, a continuous review of everything over the

course of a decade? I was trying to gauge and get a better idea of what his expectation was for the Committee in that continuous review of all parts of the state government.

**Chair Kirkpatrick:**

Okay, Mr. Stewart.

**Assemblyman Stewart:**

Ms. Vilardo, if you are not going to be around I am sure that I will not be around either when this comes to fruition. Having served on the SAGE Commission, I assume that you guys had to hire at your own expense a staff to carry out the details of organizing things, doing research, and printing things. Is that correct, and would this Commission have to do the same thing to provide for people to staff?

**Carole Vilardo:**

The SAGE Commission was fortunate insofar as the chairman did some fundraising and spent a great deal of his own money in hiring a staff that would be available for the scope of what was requested under that Executive order. In the exact reverse, the SAGE Blue Ribbon Implementation Panel, which was only 5 people instead of 14 people, had no staff assigned other than a person from the Division of Buildings and Grounds. We did our own work. We issued our own reports. That would be part of what you would be dealing with relative to the first committee meeting at the very least.

The second committee meeting is determining the procedure and process. I would expect at some point that there would be somebody from the Governor's Office who would be assigned to at least make sure that compliance with the open meeting law was done, as we did.

We had presentations made. This was determined at the first meeting, so on the second meeting we had presentations made on ethics. We had presentations made on the open meeting law so that we could comply with that. We chose to make two state employees, because of what we were looking at, ex officio members so that we would have the ability of their expertise. What you will find is that in those first couple of meetings you are going to create a structure.

As I say, at a minimum even without paid staff I would assume, which is dangerous sometimes, that there would be at least one person assigned from the administration.

**Chair Kirkpatrick:**

Are there any other questions? You would be surprised at how willing the staff is to participate because it is important that they get their side out also.

Is there anyone else that would like to testify in support of S.B. 251 (R1)? [There was no one.] Is there anyone that would like to testify in opposition of S.B. 251 (R1)? [There was no one.] Is there anyone that is neutral on S.B. 251 (R1)? [There was no one.] We will close the hearing on S.B. 251 (R1).

Senator Kieckhefer, I am sure that Senator Wiener knows that we like a little bit of a cooling-off period. Our next work session is scheduled for next Friday. I will get with you if the bill is on our work session.

Senator Wiener, welcome to the Committee. We will open the hearing on Senate Bill 7.

**Senate Bill 7: Revises provisions governing the adoption of emergency regulations. (BDR 18-13)**

**Senator Valerie Wiener, Clark County Senatorial District No. 3:**

Before you is an early bill, and that is for a reason. This is the fourth session that I have worked to improve the administrative regulation process in Nevada. The first session was a lot of work, the next session was a little less, the next session a little less, but it all has been important, and this is one that hopefully will complete the work that many people have come to support regarding the administrative regulation process.

This particular measure deals with emergency regulations that agencies might adopt. This, as all of the other measures the past three sessions, is intended to engage the public as much as possible. It has been consistent and the continuity is there to engage the people of Nevada in the process. In bringing up the tail of this four-session experience, this addresses emergency regulations allowing the public to participate and to be aware of what is happening.

You will see language in the measure, if practicable, to provide a copy of the regulation the first working day before the hearing, so that people can see what is being considered.

There is another provision: a copy of the measure is made available on a website a day before it is filed. What is important is that the version that is being considered be the version that is being provided to the public. These regulations have significant impacts.

Just a little history if you will indulge me. When I first became engaged with this four-session process of working on administrative regulations and streamlining and engaging the public more, we were looking at what happens with the regulatory process after we work in session to pass laws that affect agencies. I was stunned and disappointed to learn at that time with that first bill that somewhere in the mid-70 percent of agencies adopted regulations after we left town that did not meet the legislative intent of the measures that we worked so hard to pass. That inspired me to continue working on this process.

Those of you who have attended a Legislative Commission meeting in the past few years will find that the lion's share of the work is about administrative regulations. I used to serve on that commission. When I first served, we would have page after page of regulations that were provided to the commission, but more often than not we would pass them. What I found has changed substantially through the years with each session becoming historical was that often there are more regulations pulled for more consideration and we need to talk about this in depth or the legislative intent. We really dig into them. I find that a lot more work is being done in the Legislative Commission to ensure that the intent of the work done by the Legislature is honored and that what it is that we work so hard to do for the people that we serve is respected in the regulatory process.

This is the piece that deals with emergency regulations, because a lot can happen, and the public should still be part of the process. To do that they need to be made aware of what is going to be considered. Truly this is the tale of four sessions of work.

**Chair Kirkpatrick:**

Does anyone have any questions? I will give a little bit of history. I do sit on the Legislative Commission and on the committee to review regulations. I will give you a couple of great examples. Leadership in Energy and Environmental Design (LEED) was created through the legislative process which was much different than the bill that was passed at the end of session.

Assemblyman Stewart also sits on the Legislative Commission with me, as well as the committee to review regulations. Also, I will give you a prime example, there was a bill last session, I think it was Senate Bill No. 52 of the 75th Session. It was a Department of Motor Vehicles (DMV) bill that made all these changes that did not make it out of committee. Well, the regulation came, and they said, "They told us to do it through regulation." It was like, "No, the legislators did not approve of this." On the last night we got so many emails on that particular DMV bill. There was never any discussion,

so we denied the regulation twice because the Legislature said, "We are not ready for this particular regulation." They went on to adopt it as a temporary regulation. So, they circumvented the system. It was very frustrating because you bring it to the Legislature, the Legislature says no, not now; and then they submit it as a regulation anyway. Then if they do not like the Legislature they do a temporary regulation which requires approval from the Office of the Governor, but it does not ever let the Legislature go back and be part of the process. It has happened, and the DMV has had a lot of changes since then, but it does happen. It is the truth of what is going on out there.

**Senator Wiener:**

Again, because this deals with that piece of emergency regulation, it is no less important and sometimes it is more important because of the nature of the timeliness of it. I strongly believe that the public should still be part of the process, and this makes that information available in a way that the public can review it before they learn about it and say, "Oh my gosh, we should have been able to come to the table."

**Chair Kirkpatrick:**

Correct. Are there any other questions?

**Assemblyman Anderson:**

I just have a comment. Thank you, Senator Wiener, for bringing this bill forward. Being a political science major, I really worry about how institutionally the Legislature is compared to the Executive Branch, and I feel it is not a proper balance. I think this is a bill that will shed a little light on what is going on for everyone including all of us who will be busy at home doing a lot of our other work. So, thank you.

**Assemblywoman Neal:**

I am curious about examples of how this works. I listened to you discuss the history. Say you have the legislative intent, and then the Legal Counsel makes or reviews the regulation and then you find out there is a missing piece or element, then this bill triggers . . . How does that work?

**Senator Wiener:**

This is separate from the part that the Chair was talking about. I am not on the Commission but I did serve on it for several years. After we leave town, our staff wraps up our work, and we go on and do our thing and go into our interim committees. They put all the pieces together about the work that we did. Then our staff starts working with agencies to develop the regulations that will put into place or action what it is we did in statute. They need to establish regulations to implement what we did statutorily.



It is critical that they follow the intent of what we wanted to accomplish, and that is established in the record, often on floor. They look at what the intent is in the drafting. Again, when I started doing this four sessions ago, I was stunned, dumbfounded, and disappointed to learn that somewhere in the mid-70 percent of agencies were not following legislative intent.

But, the process with that bill started shifting in a very big way. The Legislative Commission, because of the law and the changes, refocused its energy on reviewing. Our Legal Counsel determines that the Legislative intent is met. But what has happened in this culture, which is wonderful, is the members of the Commission are now much more in tune with going more deeply into what is in the regulations. These regulations are sometimes bigger than the bills. They are substantial.

I have not been on the Commission in a while, but sometimes we got 20, 30, 40, 60 regulations to review prior to one meeting. Fortunately the subcommittee to review regulations gets to look at them first and makes recommendations. What often happens now is people will contact the legislators in the interim and say, "This happened and this was not supposed to happen." As the Chair so aptly said, it was not in statute and one of the agencies went around it, and then went around it again, and then really went around the process that was in place to ensure the checks and balances between the branches of government and the intent of getting this legislation to work. Sometimes regulations can take a year or two years.

I always thought, before I got involved with this, when I was a sponsor of a bill and it was a great bill, "I am so excited, wonderful things will happen because the effective date is July 1 or October 1." Then it does not happen that quickly if it involves a state agency because they have to figure out how to make it happen. That is where the regulatory process comes in.

I do not want to point fingers at agencies, but there were some things that needed fixing and again, this is the fourth session to work on it. Emergency regulations happen the same way as temporary regulations, and just because it is an emergency does not mean it is not huge. This particular issue can happen so quickly. The public still needs to be part of the process because the outcomes are still significant, even though they may be happening quickly. There are people who are directly and dramatically affected by emergency regulations in the same way they are in the regular process, and they should not be excluded.

**Chair Kirkpatrick:**

I will follow up, Ms. Neal. You still need the ability to make emergency regulations, regardless, because there are instances where we have to make decisions when the Legislature is not in place to address certain things. But the whole point of this bill is that a lot of times we read about those emergency regulations in the press. It is very frustrating if your constituents are calling you on an emergency regulation that was just passed and you know nothing about it.

The other thing is, there should be an open process so that we know what the unintended consequences are of some of these emergency regulations. I will tell you that from the DMV's perspective these were huge, and they had to do with the secure driver's license. That was a huge challenge for many Nevadans that were going to have to change. It was a huge fiscal impact to the DMV itself. They were trying to circumvent the system, but the system was supposed to be working for the good of the people, not against the people. There needs to be some kind of public process.

**Senator Wiener:**

If I may add, Madam Chair, the regular regulatory process in the big picture will address legislation, but these situations address scenarios that occur when something in the interim occurs that was not anticipated or was not directly connected to a piece of legislation, but something arises and they have to address it.

Just as the Chair says, it is just as significant whether or not we had a bill. There was something about medical assistance and that was a big piece that the Board of Medical Examiners needed to address in an emergency mode. It was not about active legislation that had been addressed the session before, but it was because of some things that had happened. Life goes on when we are not here, and the needs of the state go forward and often it involves a regulation. In this particular case, no less significant are those that occur in emergency mode and some times even more significant because it happens so quickly. We should not be excluded from the process.

**Chair Kirkpatrick:**

Are there any questions?

**Assemblyman Stewart:**

I applaud your longtime effort to keep agencies under control and to keep the public informed.

**Assemblyman Anderson:**

The Chair got me thinking about how she would get calls from constituents about an emergency regulation. Do you think that maybe under subsection 3 we could put in a requirement to say that they should also send emergency regulations to the legislators by electronic mail? I am not sure just how many emergency regulations are normally done, but it made me think, maybe that would be a good thing to put in the bill to notify all legislators by email that there is an emergency regulation coming up.

**Senator Wiener:**

I would be concerned about that, and I appreciate and entertain that thought. I had not done that. This happens so quickly. It would be on a website and, of course, we do not monitor all of the websites. Those who are following agencies because they have vested interests, or however you want to define that, would follow their activities anyway. Because we would not be in session, as legislators what would we be able to do or how would we intervene, other than for information we would know based on our constituents? But, by way of taking action as a legislative body, the timing would not work there because this happens so quickly.

**Chair Kirkpatrick:**

One other thing to note, Senator, is that once it is public, our legislative staff is very sure at least to get them within the leaderships of both agencies.

**Senator Wiener:**

I appreciate that, and that is probably the better remark to come forward with because if we need to be on board, our leaders are informed. Again, our staff does monitor because they are engaged with the process. Thank you, you were much more articulate than my answer.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] I do appreciate it, and I will tell the Committee that we have always typically had one committee to review regulations during session. There may be something at the end of session, if you want to sit in and watch and see the thousands of pages and the responsibility of the task of being on that committee.

**Senator Wiener:**

Madam Chair, as a longtime member of the Legislative Commission, at one point for one time I was asked to substitute for one of the members and that was an extraordinary experience, and I am glad that I substituted one time. Thank you.

**Chair Kirkpatrick:**

Is there anyone that would like to testify in support of S.B. 7?

**Jeannette K. Belz, representing Nevada Academy of Ophthalmology:**

We have been working throughout the four sessions with Senator Wiener. The specific example that I wanted to bring to the Committee was on behalf of the Nevada Academy of Ophthalmology.

Senator Wiener mentioned the emergency regulations that were proposed by the Board of Medical Examiners with reference to medical assistants. The emergency was defined for them by the Governor because, as you see in section 1, the emergency has to actually be something that is derived from the Governor. There was an instance where a medical assistant in Las Vegas was injecting Botox. The Board of Medical Examiners came together very quickly and put together an emergency regulation relative to that situation.

The impact of that emergency regulation is that sometimes you fix one thing, but you affect another. What happens in this particular regulation was it stated that a medical assistant could not do anything relative to a patient until the patient had been seen by the physician and there was some kind of decision by the physician on what to do.

If you think about when you go to the ophthalmologist's office, the ophthalmologist cannot do anything to you until someone puts drops in your eyes to dilate them and take a measurement. That is how their process works.

In effect, an emergency regulation which was being heard in the morning would have been effective in the afternoon, and if you look in subsection 4, for a period of 120 days, just like that. It would have significantly impacted how ophthalmologists do their work.

I happened to be there, and I was one of the first ones to testify on that and modifications were made. Interestingly enough, there were a couple of people at that hearing who did not get a chance to testify, and that in itself is a whole other issue.

Because of the nature of an emergency, I am concerned how quickly these things can happen and our ability to be able to at least know what is being put forth. One of my off-session tasks is to look at all of the websites where all of the regulations are posted for all of the agencies every single day for all my clients that I cover because I need to know what they are doing, what they are proposing, and when they are scheduling their regulations.

Emergency regulations fall under a different category, and that is why I feel so strongly about this bill.

**Chair Kirkpatrick:**

Thank you. Does anyone have any questions? [There was no one.]

**Carole Vilardo, President, Nevada Taxpayers Association:**

The Nevada Taxpayers Association is in support of this bill. I look at this as coming full circle because, originally, emergency regulations did not even have to have an explanation by the Governor as to why the regulation was being done.

If an agency said they needed a regulation, the Governor would go with it, and that was it. It was a terrible process, and I applaud Senator Wiener because she has been a champion of seeing that *Nevada Revised Statutes* (NRS) 233B.0613 creates a level of transparency in the regulations and so, for that reason, we support this as we have supported most of her prior bills. Thank you.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anyone else who would like to testify in support of S.B. 7? [There was no one.] Is there anyone that would like to testify in opposition of S.B. 7? [There was no one.] Is there anyone who is neutral on S.B. 7? [There was no one.] With that, we will go ahead and close the hearing on S.B. 7.

Is there any public comment? [There was none.] Is there anything else for the Committee? Monday is home rule day for local governments, so please be on time because I am sure it is going to be an interesting meeting for some. If there is nothing else, meeting adjourned [at 9:58 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:** April 29, 2011

**Time of Meeting:** 9:01 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster