

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

**Seventy-Sixth Session
March 1, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:07 a.m. on Tuesday, March 1, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, 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/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; 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
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Sheryl Burrows, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Terry J. Care, Private Citizen, Las Vegas
Donald Jayne, Administrator, Division of Industrial Relations, Department
of Business and Industry
Lawrence Matheis, Executive Director, Nevada State Medical Association
James Wright, Interim Chief, Division of Emergency Management,
Department of Public Safety
Randall Todd, Director, Epidemiology and Public Health Preparedness,
Washoe County Health District
Jack Mallory, Director, Government Affairs, District Council 15,
International Union of Painters and Allied Trades
Patrick Sanderson, representing Laborers' International Union, Local 872
Carole Vilardo, President, Nevada Taxpayers Association
John Slaughter, Government Affairs Director, County Manager's Office,
Washoe County
Brian McAnallen, Director, Legislative Affairs, CenturyLink
Jesse Wadhams, representing Overton Power District
Judy Stokey, Executive, Government and External Affairs, NV Energy
Randy Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada
Michael Murphy, representing Clark County
Keith Munro, Assistant Attorney General, Office of the Attorney General
George Taylor, Deputy Attorney General, Office of the Attorney General
George Flint, representing Wedding Chapel Alliance; Select Legal Brothels
of Nevada
Barry Smith, Executive Director, Nevada Press Association, Inc.
Connie Bisbee, Chairman, State Board of Parole Commissioners
Susan Fisher, representing the City of Reno
Jeff Fontaine, Executive Director, Nevada Association of Counties
Mark Jackson, District Attorney, Douglas County District Attorney's
Office
Ronald Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada, Inc.
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada
Lisa Foster, representing the League of Cities

Paul Lipparelli, Assistant District Attorney, Washoe County
Jim Galloway, Private Citizen, Reno
Nicole Rourke, Executive Director, Government Affairs, Clark County
School District
Ted Olivas, Director, Administrative Services, City of Las Vegas
Todd Rich, Deputy Director, Department of Business and Industry

Chair Kirkpatrick:

[Roll was taken.] We are going to go a little bit out of order this morning. We will start with Assembly Bill 98. Then we will do Assembly Bill 101, followed by Assembly Bill 59.

Assembly Bill 98: Enacts the Uniform Emergency Volunteer Health Practitioners Act. (BDR 36-56)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

Assembly Bill 98 is a uniform law, enacted by the Uniform Law Commission. Former Senator, Terry J. Care, who is an active member of that Commission, will make the presentation.

Terry J. Care, Private Citizen, Las Vegas:

I am representing myself and appearing in my capacity as a member of the Uniform Law Commission. The Uniform Law Commission is an organization that is about 120 years old, composed of state and federal trial and appellate court judges, law professors, legislators, practitioners, and representatives from the various attorney general offices. Once a year they meet to adopt uniform acts. Nevada has adopted dozens of these. The best known product of the Uniform Law Commission is the Uniform Commercial Code. In recent years, the Uniform Arbitration Act, the revised Uniform Partnership Act, and several others have been adopted. The idea here is, absent any federal legislation, to leave it up to the states to adopt a uniform act, so that soon all the states are playing by the same rules. Then when you cross state lines, you know what the law is. It gives some certainty to situations where, currently, the law may be scattered all over the place. I received my appointment from the Legislative Commission in 1999 and, under Nevada law, if you get a legislative appointment, you are allowed to keep that, if you wish. There is no compensation for it. Assemblyman Segerblom, Assemblyman Ohrenschall, and Assemblyman Horne are Uniform Law Commissioners also.

In the last few weeks, you may have seen the video of the earthquake in Christchurch, New Zealand. The death toll now exceeds 100, and I am not sure on the number missing. A flood of volunteer health practitioners have gone to assist with the rescue operations following the earthquake. This event serves

as a reminder that disasters or emergencies can strike anywhere, usually without any advance warning.

In the 2005 hurricane season on the Gulf Coast, you will remember Hurricane Katrina, that hit New Orleans dead on. There was a subsequent hurricane, Hurricane Rita, which wiped out parts of the Gulf Coast that had not been directly hit by Katrina. There was a situation in New Orleans in particular and the Gulf Coast states with those two hurricanes and the number of volunteer health practitioners who came to assist. They were delayed and turned away because they could not get quick authorization for them to practice. There is something called the Emergency Management Assistance Compact (EMAC) that has been signed by all 50 states, including Nevada. It is in *Nevada Revised Statutes* (NRS) Chapter 415. This compact is an interstate compact recognizing the licenses of practitioners responding to emergencies, but it is not effective when you have the surge that occurs during a disaster.

This act is intended to address the disaster situation and ease those difficulties to allow appropriately licensed practitioners to come into an impacted state. It would allow for the quick deployment of such personnel in Nevada in the event of some type of disaster. It would also add another state to the 11 states that have already adopted the act, as have the Virgin Islands and the District of Columbia. The number of states that have adopted it is growing. Louisiana, as you would expect, has adopted it. The act has been introduced in three legislatures this year—Nevada, Texas, and Mississippi.

I will give a quick overview of how the act works and then address certain sections of it. In general, the act would allow out-of-state health professionals to register in advance or during an emergency to provide volunteer services. Health care facilities and disaster relief organizations in the affected states would allow these professionals to register with authorized systems. That way, everyone would know prior to an emergency who the authorized, out-of-state, appropriately-licensed practitioners are. The licenses recognized in the affected states would be recognized for the duration of the emergency only and subject to the restrictions imposed by the host state.

The host state would be mandated to report any disciplinary actions to the home state of the practitioner. The scope of practice in this state would be limited to that in the home state.

Section 28 of A.B. 98 is a policy on civil liabilities that the uniform commission struggled with. Basically, as it is now, if a health provider commits what is called "ordinary negligence," there would be no liability. There would be liability for gross negligence or misconduct. The policy question is that this provision

may be needed for the practitioners to come immediately when they are needed in rapidly changing situations.

There is a provision in Section 29 of the act that addresses workers' compensation. For example, if you have a physician from another state who is not covered, could he be covered in this state in the event of death or injury?

There are a couple of amendments from the Nevada State Medical Association ([Exhibit C](#)) and the Division of Industrial Relations ([Exhibit D](#)). We are fine with those. We have reviewed them in the Uniform Law Commission. As to the bill itself, sections 4 through 19 contain the definitions. I would point the Committee to sections 6 and 7. Section 6 defines an emergency as an event or condition that is proclaimed an emergency or disaster pursuant to Chapter 414 of the *Nevada Revised Statutes* (NRS). That is existing law which means that the Governor can declare an emergency, or the Legislature can, by resolution, declare an emergency. That is an emergency that has occurred or is anticipated. However, under Nevada law, it must be a natural, technological, or human-caused emergency or disaster of major proportions that is a threat to the safety and welfare of the citizens. In section 12, it lists the activities that would be covered.

Chair Kirkpatrick:

We have three different amendments. One is from Larry Matheis of the Nevada State Medical Association ([Exhibit C](#)). Another is from Donald Jayne regarding workman's compensation ([Exhibit D](#)). They are all very detailed and different. Are you good with both amendments?

Terry J. Care:

The Uniform Law Commission develops a uniform law with the understanding that states may need to make changes to the law that tailor those uniform acts to conform to state law. The Commission is more concerned with the intent or mechanism of the law.

To further clarify, in section 21 where it says while an emergency declaration is in effect, the "Division" refers to the Division of Emergency Management, that will be here today. That section concerns the regulation of services during the emergency. Section 22 concerns the voluntary health practitioner registration system. The American Red Cross is the most common place to register. Section 23 is the recognition of volunteer health practitioners licensed in other states, which I already discussed. In subsection 2 of section 23, you will note that these practitioners must be in good standing. This does not apply to someone who has a suspended license, a revoked license, or is subject to some type of agency order in his home state. Section 24 means that there is no

effect on credentialing or privileging activities. Section 25 refers to the provision of volunteer health for veterinary services, administrative sanctions, and scope of practice. You will note that it simply means that this state is empowered to impose administrative sanctions if these practitioners exceed the scope of practice. Hopefully that would not happen, but if it does, the state has the authority to regulate those activities. Section 27 gives the regulatory authority to the Emergency Management Division. Section 28 discusses the limitations on civil liability. There is no definition of gross negligence. In the 18th Special Session of 2002, we had to struggle with what that meant. Ordinary negligence, when someone makes an honest mistake, is on one end, and intentional misconduct is on the other end. In the middle is gross negligence. There would be liability for acts of gross negligence.

Section 29 concerns workers' compensation. We are comfortable with the proposed amendments we have been given by the Division of Industrial Relations.

Chair Kirkpatrick:

Does anyone have any questions? This is a new chapter in Government Affairs.

Assemblywoman Flores:

I understand who would regulate them once they are here. This is obviously an important issue and necessary should there be an emergency situation. How would we ensure that these practitioners are licensed and in good standing?

Terry J. Care:

You cannot register if you are not in good standing. The purpose of the act is to create a registration system. Registration should be completed prior to any emergency but can be done during the emergency. The American Red Cross will verify that the practitioner is licensed and in good standing. If someone just walks in from the streets and claims to be a doctor, there are other laws to handle that.

Assemblyman Stewart:

Have there been any instances where Nevada has needed health care providers from outside to assist us in disasters?

Terry J. Care:

I do not remember this occurring.

Assemblyman Livermore:

I have a question regarding Good Samaritans. A Good Samaritan may not be a practitioner, but may have some level of first aid training. How would they fit in this bill?

Terry J. Care:

There is a definition of a health practitioner in Section 11 which means "an individual licensed under the laws of this or another state to provide health or veterinary services." That is who this bill really concerns. A Good Samaritan, the volunteer who just wants to help out, would be covered under existing law. I am no expert in the area. This bill concerns bringing health practitioners from the outside.

Assemblywoman Neal:

I have a question on the Department of Business and Industry's amendment to the language in section 29 ([Exhibit D](#)) on workers' compensation. Could you walk me through the process? It appears that the practitioner will preregister in the category of one who is dealing with some emergency. How does this claim work? Workers' compensation is not an easy process. Can you walk me through an example of what that would look like?

Donald Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:

When we reviewed this particular bill, we thought the premise of the bill was excellent. I hope we never, ever need it. In the event we do, we wanted to remove any ambiguities that may be there on workers' compensation. The host entity, such as the Red Cross, would be viewed as the employer. In Nevada, you must have an employer to have workers' compensation. The amendment also clarifies that volunteer health practitioners are at a deemed wage, which is used for many volunteer aspects of it ([Exhibit D](#)). The key to deemed wage is that all of the medical expenses in the event of an injury would be paid, and their compensation for disability would be based on the deemed wage of a volunteer. We also wanted to tie it to terminology that is familiar to Nevada in the way we interpret our workers' compensation laws. Hence, the reason we talk about filing a claim for compensation in lieu of the elective coverage that was in the original bill draft. There is a small nuance here in Nevada with the way we handle stress. It is very focused in NRS 616C.180 that we handle stress and the definition of injury. It includes mental injury, so we direct it back to the appropriate NRS section in our law to clarify what stress means.

Chair Kirkpatrick:

Does anyone have questions? Now is a good time to ask questions on the amendment. [There was no response.] Is there anyone who would like to testify in support?

Lawrence Matheis, Executive Director, Nevada State Medical Association:

This is a really important bill. So far we have often sent disaster responders to other states to aid in the aftermath of such man-made and natural disasters as September 11 and Hurricane Katrina. The only change that we are suggesting is to ensure we capture the entire health professional team that you want to recruit as volunteers ([Exhibit C](#)). We have found over the last few years the importance of having behavioral and mental health specialists available. The post disaster issues are great. The doctors and nurses are obvious. What this does is set up, through host agencies—which could be the State Health Division, the health district, the Red Cross, the Medical Reserve Corps, et cetera—verification that people who volunteered are available to be sent wherever the disaster occurs. That is why we suggested in section 11 to broaden the term “health practitioners.” Health practitioner is only used in Nevada in the pharmacy statutes to describe who can prescribe or administer drugs. Rather than having the confusion of using the term in two different ways in our statute, we suggest using NRS 629.031, which is the general health records law that defines a whole list of providers. However, afterwards I realized that every two years we add new license categories in health care. There could be a delay before the list catches up. I did not think it was wise to burden the statute with every possible licensee.

In section 20 we are dealing with an issue that probably every state that passes this act will have to address. Even health professionals do not just volunteer for a disaster, there is special training that they must attend. Responding to a disaster is different than responding to a medical emergency or routine medical care. Volunteer health practitioners should be properly trained. We suggest that training should be considered a necessary part of what it means to volunteer. It is quite possible that before the emergency declaration, you have engaged the disaster responders. The declaration can take time, but you do not want to delay the responders. The host agency—the health division, the Red Cross, the Medical Reserve Corps—if they are dispatched to respond with the assumption that there will be a declaration, then the statute goes into effect.

Those are the two amendments that we have for sections 11 and 20. I assume that something similar will be necessary in most of these statutes. The idea is that there will be a limited but necessary pool of professionals that must be drawn in on these occasions. We would hope that we would always be a

provider of providers rather than needing them, but it is best to have the system in place now.

Chair Kirkpatrick:

Does anyone have any questions? Mr. Care, it will take us a little while to digest this, and you know my policy that we never send anything up the same day. I want to be able to dissect all the amendments and figure out where they go.

Is there anyone who would like to testify in support?

James Wright, Interim Chief, Division of Emergency Management, Department of Public Safety:

I am also the State Fire Marshal. I am here in support of A.B. 98. We appreciate the basic content of the bill and its intent and that it does follow that uniform act. We feel that working with the appropriate agencies—Division of Industrial Relations, Nevada State Health Division—we could enact this with regulations, as the Emergency Management Division would have the regulation authority. This certainly helps the State of Nevada in preparing itself in the event of a major disaster.

Chair Kirkpatrick:

Why do we need regulations? It seems pretty clear.

James Wright:

To fully implement this, having regulations in place would give us a playing field to follow and ensure that the intent of this law could be followed correctly. Also, we need to give some enforcement authority, if needed. It has been asked how we would control those people who show up at the disaster scene saying they are doctors. A limited amount of regulations would be necessary.

Chair Kirkpatrick:

I am not a big proponent of regulations. I would rather have it done during session so people do not rewrite the law during the interim.

Randall Todd, Director, Epidemiology and Public Health Preparedness, Washoe County Health District:

I am here in support of A.B. 98. In particular, we would be one of those host agencies that might need to use some of the volunteer health care providers that this legislation envisions. Washoe County has a medical reserve corps. We have a little over 160 health care and support-related people in our medical reserve corps. We do register them, not only in the medical reserve corps, but into one of the systems that is mentioned in this bill. It is a system with a

horrible acronym. It is called the Emergency System for Advance Registration of Volunteer Healthcare Professionals (ESAR-VHP). The State Health Division operates this. It is a federal grant requirement that they do so. It allows us to verify health care licenses and any certifications they may have and make them available to other states, should the need arise. What has been missing, until this act, has been a mechanism to easily allow them the license to practice within their scope from another state in Nevada. We support the amendments, and in particular, the amendment offered by the State Medical Association to extend the scope of this to include exercises and trainings. That has been a very difficult issue for us locally, because most of the existing laws only envision an emergency. Certainly we cannot expect people to perform well during an emergency if they had not practiced that performance in preparation for those emergencies.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who would like to testify in support of A.B. 98? Is there anyone who is in opposition of A.B. 98? Is there anyone neutral on A.B. 98? [There was no response.] Mr. Care, do you have any last words? [He motioned he did not.] We are going to close the hearing on A.B. 98. We will open the hearing on Assembly Bill 101.

Assembly Bill 101: Provides for the creation of underground utilities districts.
(BDR 20-544)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

In Nevada Electronic Legislative Information System (NELIS) there is a PowerPoint presentation (Exhibit E). Assembly Bill 101 allows Clark County or counties over 400,000 in population to establish a countywide utility underground district. It is a simple concept. It is like what we use for flood control districts where there is a countywide district. The county commissioners are authorized to create the district and ask the county voters to support a tax. If the voters vote in favor, that tax is used to sell bonds. The bonds, in turn, are used, in this case, to put utilities underground.

The purpose is twofold. First, because the county is not growing right now, why not improve the appearance of existing neighborhoods in Las Vegas, Clark County, and other cities? Secondly, there are thousands and thousands of unemployed construction workers in Clark County. I do not see any new hotels being built anytime soon. I do not see any major public works projects being built. This would be a good way to put those people to work.

It is not in the bill, but I also have an amendment in NELIS (Exhibit F), that requires a prevailing wage be paid on any projects. It also corrects an error in

the bill by changing the use of the funds from just counties to counties and cities. The intent was that the funds were to be used anywhere, in either incorporated or unincorporated areas. I am not sure, but in previous conversations it sounds like the cities or counties will be upset. I am not sure why, because this is not going to cost them anything. This is money that the taxpayers would vote to approve. It will not increase governmental payrolls because it will be private enterprise. The utility companies do not have to pay this. This is paid for with the proceeds from the bonds. It does not hurt the utility companies, cities, or counties. It employs people. If you look through the PowerPoint you will see the visual of what an existing neighborhood looks like now and what it would look like without the power lines. One thing you will see in Las Vegas and even here in Carson City, are power lines, which is one way you know how old the neighborhood is. It would not be for the larger power lines. It would be for the ones that go on the thoroughfare and the alleys. I know downtown Henderson has a few that could be put underground. It is a very simple concept. It seems to me this is something we should consider. Of course, I am a little bit prejudiced because my district is all old Las Vegas and has many power poles. Looking around the room, most of you have areas of your districts that could benefit from this, especially in Amargosa Valley.

Assemblywoman Bustamante Adams:

In order to complete this work, there would be several entities that need to work together, such as the utilities, the cable company, the telephone company, et cetera. So who would orchestrate the coordination of those entities?

Assemblyman Segerblom:

There would be a new governmental structure called the Underground Utilities District, similar to the flood control district and composed of, essentially, the county commission. It would have a small staff that would develop this process. It would be composed of elected officials from around the county. They would prioritize throughout the county where they could do this. There would probably be something in Las Vegas, in Henderson, and something in the county. They would work with representatives from the different utility companies because we would like to have them all included. It is not a simple task. But if it is done on a regular basis, it would be a coordinated effort. By prioritizing it, you could plan over a 10-year period and develop a cost structure that would bring down the overall cost and make the process more efficient.

Assemblywoman Bustamante Adams:

I have seen the model in California. I think I heard you say, correct me if I am wrong, that it would not be a burden to any of the participating entities such as

the utility companies, et cetera. Did you say the money to do this was from a private entity?

Assemblyman Segerblom:

No, the voters have to approve a tax, which is then used to sell bonds. The bonds would pay for it. We would subsidize the utilities for any costs incurred in the process. Ideally we could even work with the road department to coordinate the utility work with the road work.

Chair Kirkpatrick:

The census data is not out yet but, typically, we have a bill out to change the population cap. Is this intended for just Clark County or just Washoe County or both?

Assemblyman Segerblom:

The intent was Clark County, but if Washoe County were interested, we could support that too. I know they have a lot of above-ground power. Any county could be involved if it chose. It is mandatory for Clark County.

Assemblyman Ellison:

Any lot that currently has overhead power lines is covered by that ordinance. Anything new has underground utilities. In section 5, subsection 2, line 16, "In a county whose population is less than 400,000, the board of county commissioners may, by ordinance, create an underground utilities district." You are trying to throw everything into this, is that correct? The reason I have a problem with that is we have utility boards or groups that meet on a constant basis with the cities and counties. I think it would be devastating to create a district right now and put another tax back on the people. I am in the construction industry. I would not be in favor of adding rural Nevada into this. You may want to make an amendment and change that to a population above or something similar.

Assemblyman Segerblom:

This is strictly discretionary. Elko County would not have to do this. Clark County would have to. Secondly, it is a vote of the people. If the Elko County people did not vote in favor of this tax, it would not happen.

Chair Kirkpatrick:

I think, Mr. Segerblom, that it is easy enough for you to take the conflict out of the two pieces within this bill?

Assemblyman Segerblom:

Yes. My understanding is that it would be mandatory in Clark County and discretionary in the other counties. The 400,000 threshold would include Washoe County; we could raise the threshold to 500,000. The next decade we would have to go to 500,000 as the cutoff.

Assemblyman Livermore:

Would this apply if the county had a utility corridor plan?

Assemblyman Segerblom:

The county has to vote for it. I am not sure what a utility corridor would be, so I am not sure if it applies. It is not designed for the large transmission lines. It is designed for the smaller ones.

Assemblyman Livermore:

I understand that. A utility corridor is where a utility creates a new service from one distribution center to give more continuity for the demand load.

Assemblyman Segerblom:

This would not create any new corridors. This is strictly putting existing lines underground.

Assemblyman Livermore:

So it would currently replace the overhead lines to underground. It would not affect anything new?

Assemblyman Segerblom:

It does not give any new powers to create new utility corridors or eminent domain, et cetera.

Chair Kirkpatrick:

Typically, most of those areas are in the older neighborhoods. In my neighborhood, we have power lines stop at Craig Road, and then everything else forward is underground.

Where you are talking about allowing the counties to establish the districts, would it not be just one district? The flood district is set up for the whole county.

Assemblyman Segerblom:

That is correct. The point was to make it countywide instead of separate districts. Currently, they can do separate districts. This would be countywide,

like the flood control. There would be a countywide vote on the tax. Then the projects themselves would be distributed throughout the county.

Chair Kirkpatrick:

Section 6 of the amendment allows them to establish the boundaries. With the flood district, the entire county is the boundary.

Assemblyman Segerblom:

If that is there, it is unintentional. This is a conceptual bill that obviously could use a little work.

Chair Kirkpatrick:

We saw it last session. You are making progress. Does anyone have any questions?

Assemblywoman Pierce:

When I originally read this bill, it seemed like it would only deal with new underground utilities. But now it seems that it would put utilities underground, which does interest me because my district is an older district and we have lots of wires. However, in section 3, it does say in the end that the term does not include an underground conversion project as defined in the *Nevada Revised Statutes* (NRS) 271.242. That seems to eliminate the possibility of putting utilities underground. That needs to be looked at.

Assemblyman Segerblom:

That was done by the drafters to differentiate between the areas that already do this. We wanted this to cover all the areas.

Assemblywoman Pierce:

I want to make sure that the older neighborhoods are included in moving the utilities underground.

Assemblyman Segerblom:

That is the intent. The districts are contiguous. The power lines down Charleston Boulevard are all underground from Valley View Boulevard to Rancho Drive. It is amazing the difference.

Assemblywoman Pierce:

Then they get to my district, and they are all above ground.

Assemblyman Segerblom:

This would be an improvement for you.

Chair Kirkpatrick:

Are there any other questions from the Committee? Is there anyone who would like to testify in favor of A.B. 101?

Jack Mallory, Director, Government Affairs, District Council 15, International Union of Painters and Allied Trades:

We are in full support of A.B. 101. We think this is a good idea, particularly because with an approving vote of the people, the bond funding for the district can be used to create jobs.

Chair Kirkpatrick:

Does anyone have any questions?

Patrick Sanderson, representing Laborers' International Union, Local 872:

I support this bill for the same reason.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone who is neutral on A.B. 101?

Carol Vilardo, President, Nevada Taxpayers Association:

I have a concern on page 3, line 42 which is that the district may submit the proposal at either a primary or general election. In keeping with tax issues, we would like "primary" struck and to have the question done at a general election. That is where you have maximum voter participation. Mr. Segerblom indicated that he did not have a problem with that.

John Slaughter, Government Affairs Director, County Manager's Office, Washoe County:

We are neutral on this bill. We are happy with the optional portion of it that affects us.

Brian McAnallen, Director, Legislative Affairs, CenturyLink:

We are neutral on this bill. We want to applaud Assemblyman Segerblom for his efforts to address some of our concerns. He has worked on this issue for a number of years. We are happy to see a cost recovery mechanism in this legislation, even though it would be subject to taxpayer approval on a general election ballot. The cost for relocating these facilities underground is extremely expensive. We do have some significant concerns about the coordination issue. I appreciate Assemblywoman Bustamante Adams asking those important questions about that coordination. We would have to get this passed by the voters, but that is a significant concern for us. We do understand that in Assemblywoman Pierce's district a lot of those lines are above ground and

should be addressed. We appreciate the lengths that Assemblyman Segerblom has gone to address the cost issues.

Jesse Wadhams, representing Overton Power District:

We are neutral on this bill because many of the powers that would be granted already apply to us under NRS Chapter 318 as general improvement districts. We would just ask that any redundancies be clarified. We can certainly work with the maker on that.

Judy Stokey, Executive, Government and External Affairs, NV Energy:

We are also neutral on this bill. We were very concerned about the cost of this bill the last two sessions. That has been addressed. We have spoken to the sponsor. The company will not support or oppose tax increases. We want to make sure that it is the people who live in the area that will be paying for it. The Public Utilities Commission (PUC) has had a couple of decisions recently where undergrounding has been ordered. The specific residents in the area who benefitted were the ones who paid for it. Currently, ordinances in some local jurisdictions require that all distribution lines are put underground in new developments. Currently, when we have to upgrade an older line and it is over a certain length, we do put it underground.

Randy Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada:

I am also neutral on this bill. I would also like to point out two additional items. Under NRS today, there are two mechanisms in place that allow for the establishment of utility districts. One happens with approval of the providers impacted by the undergrounding of the utilities. The other would happen by the vote of the affected property owners. There is a mechanism in place today to create these districts.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who is neutral? Is there anyone who is in opposition?

Michael Murphy, representing Clark County:

We are in opposition. We strongly oppose this bill in its current form. The financial burden it would place on Clark County and its taxpayers we consider to be immense. Assembly Bill 101 would require counties of 400,001 persons or more to create a district mandatorily, while it allows other counties to have the option. At the very least, we believe that this should be an optional issue, not a mandatory issue. The financing of the undergrounding of utilities by authorizing the issuance of general obligation bonds and the levy of an ad valorem tax after approval by the registered voters can create a problem. The county already has statutory authority to provide for undergrounding of the

utilities. Unlike the existing law, A.B. 101 mandates that the county establish the underground utility district. The bill could be very costly to the county, as written, and shifts the cost of the undergrounding of the utilities from utilities ratepayers to Clark County and the taxpayers of Clark County. To finance the undergrounding of utilities, the bill provides for a ballot question to approve an ad valorem tax, pursuant to NRS 354.5982, which may be rejected by the voters. At that point, any bonds that were issued per this bill would require an ad valorem tax increase for those properties within the district. Several areas within the county are close to the ad valorem tax limit of \$3.64 per \$100 of assessed value. If the ad valorem tax is not approved by the voters, then the county would be stuck with the cost of the mandated underground utilities in the district. However, a fundamental problem with the mandating of this bill is that the county is not the owner of the utilities nor is it the operator of the utilities. Unlike the flood district, which can own the flood facilities or provide monies to various governmental entities who are the owners of the flood facilities, the county has no authority to require the affected utilities companies to participate in the undergrounding of their utilities. Past experience with utility companies has shown that when we are relocating lines at the county's request and at the cost of the county, the terms and the conditions of the agreements can be onerous and extremely favorable to the utility companies. These projects can cost the county substantial money.

There are other difficulties associated with A.B. 101 which are that the property rights must be obtained from various property owners. Overhead lines which are to be relocated underground in neighborhoods will require the property owner's permission and the granting of an easement for the placement of the underground lines. If a property owner objects to that project, then the county will be forced to condemn the easement and somehow force the property owner to allow for a new utility to be placed. That means block walls, fences, structures, and landscaping may all be altered for the placement of the underground utility, which is why you typically see underground utilities being placed in new developments, not in existing developments.

I have spoken at length with the utility companies. I was under the misunderstanding that the undergrounding utilities were for safety purposes, but the truth is they are purely for aesthetics. It is actually easier for them to service them when they are above ground. This is an issue of aesthetics. There is no appetite within our county government to be involved in this process.

While I am not an attorney, I will tell you that there is a legal issue that is being considered or has been considered by the PUC of Nevada on an issue in the north. The phase II Tracy to Silver Lake Transmission line project is 17.6 miles,

with a cost of \$24 million. On that project, 7.6 miles were buried underground at a cost of \$14 million. The net cost increase was \$11 million. If they had put it above ground for those 7.6 miles, it would have only been \$3 million. The question was, should the utility district or all the customers in that district pay for the undergrounding of that 7.6 miles? As it stands now, the PUC is saying that it is not appropriate for all of the customers to pay for the cost of the undergrounding for the benefit of a select few customers. If you create a utility district and bury those lines in certain areas, are you asking everyone to pay for the benefit of a few? This was an example of when a group of people were assessed an amount for utilities to be put underground for the benefit of a few. There is a fairness question that will certainly be decided by others in the legal community, and it would not be something I can address.

Lastly, with our families and community watching every penny, the creation and funding of an underground utility for the purposes of aesthetics, we feel, is inappropriate. We therefore strongly oppose A.B. 101 and, at the very least, ask that the language be changed so that it enables, not requires.

Assemblyman Ellison:

I totally agree with you. I think you hit the nail on the head. I do not know if the maker of the bill would amend that or restrict it to Clark County only. I feel that this bill could be devastating with housing development. You can see what is going on in the state. To put another charge on these people is unreal. I like how you presented it, and maybe the maker of the bill will amend that and put your comments on it.

Assemblywoman Pierce:

I appreciate some of the issues you brought up, and we should certainly look at them more, but I could not disagree with you more about aesthetics being of no value. My district starts at Charleston Boulevard and Hinson Street and when I arrive at Rainbow Boulevard or a little past, all of sudden there are no more wires, and all the McDonald's signs are short, and there are trees. I would ask that you drive out Charleston Boulevard some time and ask yourself seriously, which neighborhood looks better to you; which one are you more likely to buy a home in? Aesthetics matter. They matter in terms of quality of life. They matter in terms of property values. The City of Las Vegas put up some sculptures made of rebar on Upland Boulevard which are really terrific and adorable, and it matters—it changed the whole look of the street. It is not a question of aesthetics versus dollars. The fact is aesthetics does translate into dollars. There is a reason why people want to move to Summerlin and Green Valley—there are no wires.

Chair Kirkpatrick:

You did not get the memo from last session that we are very passionate about the aesthetics—none of us live in the new areas.

Assemblywoman Flores:

I want to echo Assemblywoman Pierce. It absolutely does matter. In addition to that, I think there are some safety concerns there too. There are the power poles, the downed wires during storms, and the cutting of the trees. I live in an older area as well, and very often you have trees that are not maintained by the city or the county growing onto the power lines and the other utilities.

That was not my main point. I wanted to address the cost argument that you were making. I am not entirely sure why that is such a huge issue if ultimately this is on voter approval. That is more of a comment than a question. I feel that if this requires a question that is put to voters and the voters approve it, then I do not see why anyone should have a problem with that. We are not imposing that burden on anyone, unless they submit. You mentioned something about utility cost being done unfairly or some cost on the county as well. That kind of addresses Assemblywoman Bustamante Adams' questions about orchestrating. Perhaps I do not understand the logistics of how this would happen if the voters should approve it. Would not what they approve cover the entire cost of putting them underground? I am a little confused about that.

Chair Kirkpatrick:

Maybe the bill is not specific enough on how it would work if it did pass.

Assemblywoman Neal:

I am echoing the issue of safety versus aesthetics. I want the utilities to come back to the table to deal with that statement of whether or not there truly is a safety reason for putting them underground.

Assemblyman Anderson:

Do you think aesthetics could help improve property values and bring in a little more property tax revenue?

Chair Kirkpatrick:

I do not think he is qualified to answer that, but you can ask the assessor's office or a realtor's office for sure. Is that correct?

Michael Murphy:

I cannot give an answer to the property tax question. Just as a point of interest, I live at Spring Mountain Road and Rainbow Boulevard where we have both above- and below-ground utilities.

Assemblyman Goedhart:

If there is a creation of a district to levy an additional fee for the underground utilities where you are at the ad valorem maximum, does that preclude the ability to levy that tax on a community or area?

Michael Murphy:

I will try to take the questions in reverse order. Carol Vilardo may be able to answer the maximum ad valorem tax question better. As I understand it, that is one of the concerns we have. We may, at that point, be placed on the hook for money that we cannot recoup. I am not an expert in that area. I am in some instances repeating information that I have been given because of my position here as a lobbyist for the county. That is my understanding, as it has been explained to me. If we reach that cap and we are not able to recoup those funds, the county could be responsible.

Chair Kirkpatrick:

We can clarify that with our tax department. I will get that answer for everyone.

Michael Murphy:

I apologize if I have offended anyone on the aesthetics issue. I think the utility companies should come up and answer that question. My original understanding of this, when I researched this bill, was that it was more for safety and other issues. Certainly aesthetics is an issue. I am not trying to make light of that issue. I would just go one step further to say that when we are in some financial straits, we have to weigh out those issues and decide which ones we want to do first.

The reason I brought up the issue in the north, where some people benefitted by finances across the county, is that this was brought up at the PUC. That is part of the concern that we have with the bill: that everyone in Clark County would be charged. Improvements will be done in specific areas and not everyone would benefit from that. You are charging everyone for the benefit of a few. There seems to be some question of whether that is legal. While I am not an attorney, the question is, should not those areas move forward with special improvement districts rather than on a countywide financial responsibility?

Assemblyman Livermore:

Do you have any idea what the administrative cost was on the northern Nevada project you mentioned? Would you suspect that it would be an additional cost beyond the construction cost?

Michael Murphy:

I have no idea on those costs.

Chair Kirkpatrick:

Let us get that information, because I believe you have to have the money in place before you begin the project. I know with the flood district, after the voter approval, they did not just start the project for a while because of start-up costs. You could get us some information from the flood district on how they started and the administrative costs to get it set up. If nothing else, this bill does not address any of that. We would need that information going forward.

The utilities will need to get us the information on Assemblywoman Neal's questions later. Is there anyone else who would like to testify in opposition?

Assemblyman Segerblom:

We can tweak this law, but I think the concept is valid. I do agree with Assemblywoman Pierce and others that aesthetics is valuable. I also think that there are safety issues with the poles, just with the car crashes. In the summer those power lines lose a lot of their conductivity when it is very hot, so it would also make the electricity more efficient.

Chair Kirkpatrick:

With that we will close the hearing on A.B. 101 and open Assembly Bill 59.

Assembly Bill 59: Makes various changes to the Open Meeting Law.
(BDR 19-288)

Keith Munro, Assistant Attorney General, Office of the Attorney General:

The open meeting law exists in this state because the Legislature has decided they should. The Legislature sets the parameters and guidelines for requiring public bodies to hold meetings. [He continued to read from prepared text ([Exhibit G](#)). The prepared text refers to [Exhibit H](#).]

Assemblyman Munford:

Where do homeowners associations (HOA) fall in this? Are they considered a public body? Do they have to comply with the open meeting law?

Keith Munro:

I would have to look at the HOA statutes and compare them to the definition of a public body.

Assemblyman Munford:

I have received so many complaints from homeowners because there does not seem to be transparency with HOAs. There must be some oversight in place such that the Board of HOAs can be investigated in a proper and just way. I wondered if they were subject to investigation and penalty by the Attorney General's Office if they do not conduct their affairs properly.

Keith Munro:

I would be happy to look into that and discuss it with you off-line.

Assemblyman Livermore:

I saw no reference to email that a secretary or county manager may use to solicit input or direction. Is that a violation of the open meeting law?

George Taylor, Deputy Attorney General, Office of the Attorney General:

I am the open meeting law deputy for the State of Nevada. Nevada is a quorum state. It is true that serial communications by email, text, twitter, et cetera, coupled perhaps with a physical meeting can result in a violation. There has to be a quorum of a public body involved.

Assemblyman Livermore:

If an email, in the nature of being distributed, has a subnote that says "please do not discuss this among yourselves, but you may respond back to me," is that a serial meeting?

George Taylor:

It is difficult to determine with your hypothetical situation. All of our investigations are fact-intensive. Every investigation we do is based on a review of many, many different things. It is hard to say whether such a communication from a county manager or city manager to members of the public lobby would be a violation.

Assemblyman Livermore:

In this same hypothetical case, this manager is sensing the flavor of the body which could result in a policy or action. I presume to think that the transparency here is lacking.

Assemblywoman Flores:

This follows the lines of Assemblyman Munford's questions. Who then would define what a quasi-judicial entity actually means? I understand that it is the intent rather than the actual function whether or not there is due process involved. Who determines what a quasi-judicial purpose is?

Keith Munro:

You could get a definition of quasi-judicial. Our Supreme Court has tried to define it and said when due process is afforded to the participants before the hearing—normally, the right to be heard, the right to due process, deliberation by the body—those are the types of things that the Supreme Court has said qualify as quasi-judicial.

Assemblywoman Benitez-Thompson:

Would it not be easier to have some type of predesignation for whom the open meeting law should apply? When I look at this language, I am still not sure what bodies it applies to. I do think there should be stronger ramifications for people who willingly defy the open meeting law. But in your testimony, you mention that so many of the complaints are from people just not knowing and understanding the law, not maliciously violating the law. Are we just muddying the waters more by putting in more language for people to argue about, as opposed to just getting an up front certification that everyone is on notice. You are meeting, and you do have to follow the open meeting law in your situation.

Keith Munro:

That is an excellent question. We came forward with a professional licensing board because our office represents so many of them. We think they should comply. If there are other boards that you want to delineate further, you are welcome to.

Assemblyman Stewart:

In these tough economic times, when we have boards and commissions composed of people serving without compensation, we now are adding to their burden because they will be looking over their shoulder for possible criminal charges, fines, et cetera. I have some serious concerns about this.

Keith Munro:

I fully understand your concerns, when so many of our boards in our state are composed of people who volunteer their services. The criminal charges have been on the books for at least 20 or 30 years. It has just never been utilized. We are looking to plug in something different, from 60 days to cease and desist to criminal charges, to get these people to start paying attention. The public body must acknowledge that the Attorney General's Office found a violation. They also must come forth in a public setting to say they agree and they will remedy it, or that they disagree. The civil penalty is for cases with knowing violations. We are trying to get the attention of those folks.

Assemblyman Stewart:

You said that there is no enforcement, but I think the media and the American Civil Liberties Union (ACLU) is an effective enforcing agent, on the open meeting law.

Keith Munro:

I did not say there is no enforcement. We have enforcement. The question is, do you, as a Legislature, want better tools for enforcement? Do you want governmental entities stepping forward and doing their jobs? You have designated our office to do that, and we are telling you that the tools may not be there to enforce openness as you want. If you want to rely on the ACLU, that would be your decision, and we would accept that.

Assemblyman Goedhart:

I see a lot of good language in this bill. It is hard to be against something that strives to enhance transparency. But we do not want to make the net too big; such that we unwittingly put someone in harm's way who may not have intended or controlled what was done. I am referring to section 6, subsection 4, which refers to ". . . each member . . . who attends a meeting . . . where action is taken in violation" For example, I sat on a committee where the chair would allow those with whose viewpoint she agreed speak without limit. But for those whose viewpoint she disagreed with, she would cut them off shortly. If you are a member of that committee and are not a chair or vice chair, what remedies are available to you with that committee at that point in time? Do you have to recuse yourself from that committee and "call out" the chair, who may not recognize you, to say the committee is violating the open meeting law? It puts you in a weird situation.

Keith Munro:

I understand your position. If you want to come up with some language to clear that up, please do. That is not our intent. It would be for the people involved who know they are violating the process and continue on. If someone stepped back and did not continue, he would not have violated the open meeting law.

Assemblyman Goedhart:

It appears in this case you may not have control of how that meeting is being conducted, but you would be open to that civil penalty, because you were sitting on that board at the point in time where the person who had the power made the violation.

Chair Kirkpatrick:

On page 4, lines 19 to 25, we often have boards that are charged with making recommendations: the Sage Commission, the Nevada Vision Stakeholder Group. I am not clear if this bill would include these groups.

Keith Munro:

You mentioned transition teams. Transition teams not appointed by a sworn in governor are not included.

Chair Kirkpatrick:

There is a current governor who is in place. There are people they must work with to go forward with the transition. We are always working with the public's best interest at heart, but there are times when we are going to overlap due to term limits, election cycles, et cetera. This just says "the Governor." So if the current governor does say, I am appointing this group for this task that seems that group would be subject to the open meeting law.

Keith Munro:

If the current governor issued an executive order which says this committee will be formed to return with a recommendation. A formal designation with policy-making implications would probably mean the open meeting law would apply.

Chair Kirkpatrick:

Are you saying that the Board of Examiners, for example, is not subject to that in the same section? It says if the board, commission, or committee has at least two members that are not on the staff of the Governor, that they are part of this. I think we should have open meetings for everything because I have nothing to hide. But, I am having difficulty understanding what boards, committees, and commissions are included in this law. Are groups that use public buildings included in this?

Keith Munro:

The Board of Examiners is an existing statutory committee that makes policy determination, so the open meeting law applies. A statutory committee is not what that section concerns.

Chair Kirkpatrick:

What about those who use the public buildings? Those do not seem to fall under this.

Keith Munro:

If you mean a group of people without a formal designation from an executive office get together and talk, the open meeting law would not apply.

This is difficult stuff. There are so many violations because people do not understand the laws. Our goal in bringing this bill is to help bring some clarity to it.

Chair Kirkpatrick:

What if another officer within the Executive Branch has a big meeting and creates a task force; none of that qualifies?

Keith Munro:

That would depend on the formal designation. If they appointed at least two people from outside their staff, outside government employment, which gave the public appearance that the task force had policymaking input in meetings, the open meeting law would apply.

Assemblywoman Benitez-Thompson:

I would be more comfortable with this if there were some type of language to put people on warning as opposed to everything after the fact, just because there is so much confusion about who the open meeting law applies to. Also, the fact that most violations are due to ignorance of the law makes a warning more appropriate.

Assemblyman Munford:

In regard to the Parole and Probation Board, which I know is subject to the open meeting law, does it have quasi-judicial authority?

Keith Munro:

According to our Supreme Court's interpretation of laws that this body has passed, if it is quasi-judicial in nature—due process, notice to be heard—there is an exemption. We are here today to say for a professional licensing board there should not be an exemption. Assemblywoman Flores discussed a "doctor's good standing" with respect to Assemblyman Segerblom's bill. You would not know if a doctor is in good standing or if discipline was brought against that person, if those hearings were exempted. Potentially, those proceedings could be held in secret pursuant to that exemption.

Chair Kirkpatrick:

We have all the fun stuff in Government Affairs, yes? We will start with the people that are in support of this.

George Flint, representing Wedding Chapel Alliance; Select Legal Brothels of Nevada:

I have been practicing this imperfect science for 49 years. I have been before this Committee for 49 years. Madam Chairwoman, you project a fairness, common sense, practicality, and open mindedness that I do not always see, and I want you to know I appreciate it. My credibility has been damaged and my business has been abused by the open meeting law being ignored. I would like you to allow me to give you two examples of that situation that I referred to. I will be careful not to name names or be accusing.

Besides the wedding chapels, I also represent the world's oldest profession. We still have a handful of counties in Nevada that only have three county commissioners. Very often, I am invited to lunch with one of them. I have been downright frightened a few times when, interestingly enough and rather mysteriously, a second one shows up for that same lunch. That has never happened in Carson City, Assemblyman Livermore. Nor, Assemblyman Ellison, has it happened in Elko County. And, Assemblyman Goedhart, it has not happened in Nye County. I have sat in situations in coffee shops with two out of three county commissioners and seen deals offered and made. I have thought to myself, wow, I am glad the Attorney General is not here. Assemblywoman Benitez-Thompson is correct. It is done without any cunning or nefariousness or any intention to do anything underhanded. Oftentimes, members of boards or commissions just become a bit imperial. They forget that they have to follow rules.

The other example is one that you are more knowledgeable of, Chair Kirkpatrick. In last year's special session, you introduced a bill to the Committee of the Whole that changed the 40-year-old law related to wedding license issuance hours in Clark and Washoe Counties. This was an opportunity for a variation of those hours from what had been a law that I helped pass 41 or 42 years ago. Clark County has made no attempt to change their hours, but Washoe County has put us through a series of jumps, switches, changes, and exercises. We do not know from one day to the next when a wedding license will be available anymore. For example, we found out that the Friday after Thanksgiving is a holiday. It is called Family Day, so there would be holiday hours. We found out that Christmas Eve is a holiday. I thought that would offend the Jewish community, but it did not seem to. They had special hours on Christmas Eve too. On Thanksgiving, they decided to close completely. I have to tell you that I had three weddings walk in that day, and I had to tell them I was sorry, but I could not marry them that day. All three drove to Clark County to get married on Thanksgiving. What does that have to do with the open meeting law? You, as the Legislature, gave the authority and the power to the county commission to make these variations in the existing 40-year-old statute. The county clerk,

in all measure, is part of the commission, as she takes the minutes, advisor, secretary, et cetera. In this particular case there is a lot of camaraderie, friendship, and give-and-take. One of the commissioners told me that he spends many evenings at the county clerk's home because they are friends. When these new hours were being discussed, the wedding chapels were told to show up at a meeting on April 13 and you will have an opportunity to discuss this potential variation of hours. The five chapels remaining in Reno attended the meeting. It was so obvious that the deal had already been sealed. Miss Amy Harvey spent 27 minutes delivering her explanation of why the hours should be reduced, including some days of closure. I was the spokesman for the response. When I asked Mr. David Humke, the current chairman, how much time I would have to respond, he said two minutes. I told him that was not enough time. He told me I was using up my two minutes. It was so obvious to me that this decision had been set in stone, and there was no way we would be able to respond fairly. Routinely, we are asked to meet with the county clerk, her two deputies, and one or two commissioners at unannounced meetings that are never posted, but there may be a quorum. I am here to support this bill that will help to remind public officials that there is an open meeting law and that there are procedures that must be followed. And to remind them that the private sector must be part of the considerations and negotiations that have a huge effect on private enterprise.

Barry Smith, Executive Director, Nevada Press Association, Inc.

I was a member of the task force that worked on this bill with the Attorney General, but I am not speaking for the task force. These are difficult issues to deal with. We spent hours discussing them and how best to make the recommendations to the Attorney General. I would like to discuss the basic concepts from my perspective.

First, the best way to strengthen the open meeting law was to strengthen the Attorney General's ability to enforce. Secondly, many of the concepts in the *Nevada Open Meeting Law Manual* are not in the law, so it made sense to apply those to the statute, rather than relying on the opinions and manual to be there. Third is the difficult concept that you brought up, Madam Chairwoman—the definition of a public body. Clearly, there are bodies that are forming public opinion that, by any other definition under the law, are public bodies. But as they were appointed by the chief officer there was some doubt. Are they actually a public body? The section that you referred to is the best attempt to define this, to make it clear who is covered and who is not. This is not to interfere with a government staff meeting. Just last month, there was quite a controversy in Incline Village with a school improvement committee which was appointed to receive all kinds of information and give input on what should happen with Incline Village schools. That committee said that they were not

included in the open meeting law and, thus, there would be no open meetings. There was a public outcry. Citizens took out ads on television and radio to blast the committee. The committee then changed its policy and decided it was a good idea to open the meetings. It is always a good idea to have open meetings but the confusion was there as to whether the open meeting law applied to them. This is the task force's best recommendation on how to resolve this problem. I am in support of this bill.

Assemblywoman Benitez-Thompson:

I wanted to clarify that my comments were not necessarily about county commissioners making backroom deals, but more like discovery museums, charter high schools, and citizens' advisory groups who are completely naïve about the open meeting law.

Assemblyman Ellison:

My question dovetails on the Chair's question on a transition team. If the Governor were to send out a press release saying he was asking two conflicting parties to resolve their differences, would that qualify on that definition of a public body?

Barry Smith:

I am no attorney. Your description does not include a formal designation, appointment, or an executive order to form a group to decide public policy. The task force discussions focused on how the body is formed or what is the function of the body. Does that answer your question?

Assemblyman Anderson:

A press release can look pretty official. I just wanted to clarify.

Chair Kirkpatrick:

Are there any other questions?

Here is how we will handle the opposition. If you have an amendment, you will testify as neutral, because you are changing the bill so it is acceptable to you.

Connie Bisbee, Chairman, State Board of Parole Commissioners:

I am here to speak in opposition to A.B. 59. I think you have asked some excellent questions this morning. It goes to show that the open meeting law is a very complicated and onerous process. I personally have been involved in sunshine law or open meeting law for the last 20 years. I have served on multiple boards and commissions, the majority of which I served on as a volunteer. I appreciate the Assemblyman's comments that this bill may prevent people from serving on boards and commissions when there is a financially

punitive action taken on an open meeting law violation that they may not realize had occurred. Given my lengthy background, I am still often confused by the open meeting law. More language may add more confusion. We have a deputy attorney general available and present at all of our meetings that are subject to the open meeting law to help us. It is that complicated. Frequently, I will be looking in the audience for our deputy attorney general to get direction. One of Mr. Munro's comments was that you can just deny the bill altogether and say that you are supportive of the way the Attorney General's Office has been handling this. We are just confirming that we are happy with the law as it stands. I would encourage you to do that and deny A.B. 59 all together.

I made a copy of this bill yesterday. My copy has different language in the section discussing the \$500 fine. My copy says "regardless of knowledge of the violation," on page 8, line 7. That is very difficult when you are sitting next to someone who may unintentionally violate the open meeting law. I cannot pull those words back from his mouth. I think that is grossly unfair, especially with all these volunteer commissions and boards, that they could be penalized in that way for merely being a part of the body.

The Parole Board is a bit schizophrenic in the fact that our parole hearings are quasi-judicial, but the meetings of the full board are open meetings. We are trying to deal with both of those issues at the same time. The way the open meeting law reads even now, we do not even publish an agenda without having an attorney to approve it. In conclusion, I hope you will consider Mr. Munro's option to deny A.B. 59 in its entirety.

Susan Fisher, representing the City of Reno:

The City of Reno is in opposition, as written. The amendments may change it to a form we can accept. We are particularly opposed to section 4, subsection 3, where it defines a public body and any administrative, advisory, executive, or legislative body. That could be interpreted to mean that if any two or more members of our executive staff—the city manager, assistant manager, department directors—meet, that could violate the open meeting law. Subsection 3, paragraph (b), subparagraph (1), appears to attempt to clarify this issue, but our city attorney's office believes that the way our charter is written that the first definition would prevail, with the executive staff being considered members of the executive body rather than employees of the executive officer. On the last page of the bill, section 6, subsection 4 exposes each member of our city council to a civil penalty of \$500 if he attends a meeting that has been conducted in violation of the open meeting law, regardless of his knowledge of the violation. We think this is excessive punishment for someone who simply attends a meeting that may have been held in violation by manner of a technical issue that he had no direct involvement in. All of that said, in the unfortunate

event of this bill passing as written, we would request that the effective date be bumped out to the end of October, to give our staff sufficient time to train for the new regulations, particularly in light of the significant penalties involved.

Jeff Fontaine, Executive Director, Nevada Association of Counties:

We, too, are opposed to the bill as written. However, I do want to acknowledge and thank the Attorney General for creating the task force to look at this issue. We understand how difficult it is. I was asked to participate on that task force with the caveat that my participation was pretty limited. My recollection of the discussion about this issue is that there was not a consensus on a number of these points. We are concerned about section 4, the definition of a public body, as we believe it is overly broad. Like others before us, we have concerns with section 6 that an individual would be subject to a fine regardless of his awareness of the violation. That issue is particularly troublesome for us, as we have a lot of boards and commissions in small communities where it is difficult enough to get people to participate on those. Now, with the specter of a \$500 fine for a violation they are unaware of, it would make it even more difficult to get participation. We would be happy to work with the amendments.

Chair Kirkpatrick:

I appreciate that you are willing to work with the amendments. I am frustrated by people being just opposed and finished with it.

Mark Jackson, District Attorney, Douglas County District Attorney's Office:

There are a couple of sections that I oppose; however, there are others that I am either neutral on or that I support.

Chair Kirkpatrick:

At least you are willing to work at the table and are not just opposed to it.

Mark Jackson:

I oppose section 4 as it is written, but I would be supportive of the proposed amendment that has been submitted by Clark County ([Exhibit I](#)). For the same reasons that have been stated by other speakers, I am also opposed to section 6. I do want to thank the Attorney General. I had an opportunity to meet with the Assistant Attorney General, Keith Munro, on many occasions. Three times we spoke on the phone and had many email exchanges, and I know he did the same with many other district attorneys throughout the state. We definitely understand the Attorney General's concerns about enforcing the open meeting law and ensuring transparency in government. We appreciate them bringing this forward.

I am also the president of the Nevada District Attorneys Association. That Association does support the amendment ([Exhibit J](#)) that does bring in the knowledge component associated with the civil penalty and would oppose any language that takes out the knowledge and makes it a strict liability.

Assemblywoman Pierce:

Were the people on these small boards that have been meeting for years and years aware that they could be charged with a misdemeanor? Was that acceptable to them? It seems like suddenly we are concerned about the \$500 fine but everyone was amenable with the misdemeanor part. We have all kinds of people volunteering on boards in this state who cannot be bothered to read the open meeting law once. If you are going to be on a board, it should be a little more onerous than watching your television. There should be more involvement. They should read the open meeting law and have an idea of what it means or even know they do not understand it.

Chair Kirkpatrick:

Mr. Fontaine, it would be helpful if you could get us the process for how these boards train new members. When I was on the planning commission in North Las Vegas, I had to attend an ethics class before my first meeting. I had to sign documentation.

Jeff Fontaine:

There are training opportunities for the county commissioners we represent, and we do provide them with information on open meeting laws, et cetera. There is training/education. Some distinctions must be made. First, as the law currently exists, the misdemeanor is based on knowingly violating the open meeting law. What this bill does is allow for a \$500 civil penalty even if you do not know you violated the law.

In addition to the county commissions, there are a number of advisory boards in small communities that do not necessarily have the benefit of legal counsel. They are volunteers from the community. They are participating in other types of activities. I should have identified that we were not only concerned about the county commissioners, but also the advisory boards and other county committees.

Assemblywoman Pierce:

I would hope that people take it seriously if they are on an advisory board. It should be taken seriously.

Assemblywoman Flores:

This is more of a suggestion or comment. I see the issues with the element of knowledge and creating a strict liability violation here. We know that intent is always the hardest to prove in a crime. Perhaps lowering the burden of proof is an alternative. I see the point, and I feel it is necessary. We have willful and nonwillful violations at the same time, but in essence there are no teeth to this as it currently stands. Based on testimony, it seems like people are violating this all the time, although I am sure that is not the case. There is an enforcement mechanism, but it does not work well. There are some issues, and I hope there is some way they can be worked out because I do think it is necessary. I acknowledge there are a lot of problems with it, especially in the definition of a public body and the strict liability violation.

Chair Kirkpatrick:

One option for Mr. Munro to consider is that when you do serve on these boards to require open meeting law training. The ethics training was very controversial last session. If you are going to serve, you should know what you are getting into.

Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Inc.:

I signed in as in opposition, but since then I have spoken to others who clarified some points about the bill. After listening to the testimony of Mr. Munro, it furthered my quasi-support, quasi-opposition, and quasi-neutral position. I have some examples I would like this body to hear.

A couple of years ago, Governor Gibbons started the Sage Commission. He appointed various individuals, and the Legislature appointed individuals as well. When we went to the meetings and told them that it was an open meeting, they said that even though it was an executive meeting appointed by the Governor, it was not subject to the open meeting law, even though they did follow it to a degree. Mr. Munro's example clarifies that it would be, in fact, subject to the open meeting law. At the end of that meeting, they gave us a couple of minutes to respond to all the items on the agenda. This would clarify that. In those regards, it is a good thing.

I was appointed to a committee in the City of Reno. I relied on the staff of the City of Reno to tell us about the open meeting requirements and do everything appropriately. No one ever told us that if you did something in violation that you would be fined. The notice that Chair Kirkpatrick discussed is crucial to tell people that when they are on these advisory committees, there is a huge responsibility even if it is an advisory committee that they sit on. I appreciate

what the Attorney General's Office has done here. On behalf of our organization, we support, we oppose, and we are neutral.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

We too support, oppose, and are neutral on this bill. It is quite complex. We appreciate the work the Attorney General's Office has put into this bill, in particular, all the work that went into the task force. Maggie McLetchie, our legal director, sat on that committee and they worked tirelessly on these issues. I do want to reiterate the note that was put on the record by a prior testifier, that from our perspective, there were several issues that were left unresolved by the end of the committee's meetings. That is clear in the drafting of this bill and the different positions that you are hearing.

We do agree that it is very important to move forward with this bill because it addresses several concerns that have already been brought to your attention today. Several examples such as the one in Incline Village, the one given right before my testimony, and Governor Gibbon's Blue Ribbon Task Force on Education reiterate the point that this law has loopholes that need to be addressed. In general, we have been pretty happy with how it has been addressed in section 4. But, unfortunately, the weight put into that section is on the form of how those committees are being created, rather than the function of the committee itself. From our perspective, the most important aspect of the open meeting law is in regards to how a body is functioning, rather than how it was created. I appreciate Assemblyman Anderson's point regarding the press release. That can be sticky, but even more so is the stickiness of how decision making is happening and what is taken into account. We would love to see some changes in that in order to put more emphasis on the functionality of a committee, rather than just the formation of it.

Assemblywoman Neal:

Can you explain more about the functionality in how it connects? The current statute already has the misdemeanor language in it. Please give me an example.

Rebecca Gasca:

The Blue Ribbon Task Force was the one that we were the most intimately involved with. We actually exchanged letters with Governor Gibbons' staff regarding this issue. When the actual proclamation was issued, the Governor had said that it was just an advisory committee which was created to advise the Governor on education. As we saw it play out, that was not actually what happened. The results of that Blue Ribbon Task Force have been taken into consideration for changing many aspects of the *Nevada Revised Statutes* (NRS). That would be a prime example.

From a more limited perspective, take the example brought forth by Mr. Flint earlier. If there are one or two people who are informally gathering for lunch, but they are substantively discussing issues that are of interest to the public, one could see how that could be construed as a public body. In form, it may not be a public body but, in function, it is actually discussing the people's business.

Assemblywoman Neal:

So, you want the intent to be clear that you are actually going to deal with substantive issues that may have an effect on statute. You want that scope clearly defined for any group that is put to deal with an issue. Is that what you are saying?

Rebecca Gasca:

There could be a way that it could be specified without getting people in trouble, such as members of executive staff carrying out the course of their duty. By making it too broad, those people may be caught up in a potential loophole. It is important to take into consideration what that group of people is doing rather than just how that group was created, whether it was formally or informally.

Chair Kirkpatrick:

Is there any other section of the bill you have concerns with?

Rebecca Gasca:

I share the same concerns with section 6 that have already been discussed with respect to the strict liability. There does need to be some sort of "hook" for people to say that they did not know what was going on. It would be fairer to address it in another manner.

Lisa Foster, representing the League of Cities:

Our members have concerns with the two sections that have already been mentioned, section 4 and section 6. The issues are nothing different from what has been previously stated. We will be happy to work with the Attorney General in ways to refine this language.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who would like to testify in opposition? [There was no response.] We will go to the neutrals.

Paul Lipparelli, Assistant District Attorney, Washoe County:

I was a member of the Attorney General's task force. I want to thank her for the opportunity to be part of that discussion. We signed up neutral and we are

prepared to work with the Attorney General and this Committee to refine the sections that we have a problem with. Specifically it is section 4, the definition of a public body. We want to make sure that we do not provide a disincentive for the executive of a county, city, or state agency to seek input. Take a hypothetical case of a famous old tree that is maybe dangerous and needs to be cut down. If the city or county manager sits in her office and makes a decision to take the tree down by herself, no one would question whether that was appropriate. If she wanted to call one of her colleagues around town and get their input, no one would think that a committee was formed. But if she sent out a letter and asked a group of people to get together to take the tree down, now we are asking, does that mean she has formed a committee? And does that committee have to do its work under the open meeting law? Whichever way the Legislature wants it is fine, we just want to make sure we understand what the rule is. I completely agree with Assistant Attorney General Munro that our aim is for clarity. I must advise 40 or more different county agencies, boards, commissions, and departments, and I want to be able to tell them with clarity whether what they are doing is within or without the open meeting law.

Jim Galloway, Private Citizen, Reno:

I was a Washoe County Commissioner for 12 years and every day open meeting law issues arose. I share the concerns regarding the wording in section 6, subsection 1. My concern is not just with the new wording to be added but also with making it more consistent. You will notice that in section 6, subsection 1, there is a notice that for simply attending a meeting where action is taken that you are in violation, but subsection 1 does say you have to have knowledge of the violation. There are two issues here. First, it should be clear that the individual participates in a portion of the meeting and participates in the violation. For example, suppose a board member suspects there has been a violation during a break. A quorum of the members was talking, and they crossed the line because they oppose the agenda item. If that member absents himself from the meeting during the vote, he is effectively voting no and therefore supporting those who oppose the agenda item. Why should that person who is not a participant in the violation have to absent himself even from a portion of the meeting? In subsection 4 of section 6, I would again suggest a portion of the meeting and say who has knowingly participated in the violation. That would go a long way to easing some of the concerns. Finally, say that a member of a public body may rely on the advice of a legal counsel, if present, as to whether a violation might be committed.

Nicole Rourke, Executive Director, Government Affairs, Clark County School District:

We are neutral and opposed to certain sections. We support transparency and have the same concerns with sections 4 and section 6.

Ted Olivas, Director, Administrative Services, City of Las Vegas:

We have seen the amendment from Clark County. We have the same concerns with section 6. We look forward to fixing this bill because we do believe it is a good bill.

Todd Rich, Deputy Director, Department of Business and Industry:

We have a proposed amendment ([Exhibit K](#)). We are specifically looking to amend the language of NRS 241.0033, by adding some language that would clarify that the provisions of this section do not apply to persons seeking employment with a public body. Particularly, we are looking at some of the divisions within our department where we have to hire an administrator based upon names referred to us by various boards—Taxi Cab Authority, Dairy Commission, Employee Management Relations Board. It is our feeling that the interpretation of this section is somewhat onerous and requires 21 working days to hand-deliver or provide by certified mail information to the applicants who are applying for administrator positions. We are looking for some language that would apply, not to the employees, but to the applicants.

Chair Kirkpatrick:

Am I correct in that your amendment does not apply to the open meeting law; it is just because the section is germane? This is a lot of what you see at the end of session, but we are starting at the beginning. The section he is referring to is at the top of page 5. Because the statute is open, he is trying to make an amendment. We thought we would take this opportunity to try to get this clarified for future issues. If I have any questions I can ask you or Mr. Johnson?

Michael Murphy, representing Clark County:

We have proposed four amendments ([Exhibit I](#)). We are neutral. We support the concept of the open meeting law and make every effort to operate appropriately. The first amendment modifies section 2, which requires that we put on the agenda that the Attorney General has made a finding of a violation of the open meeting law. We believe that they should be able to appeal and not post it on their agenda until the violation has been confirmed. We would like to see an appeal process.

Section 4 refers to committees formed by the executive officer. Our concern is who the executive officer has the ability to meet with. For example, if we meet with the Attorney General's Office for the purpose of amending this bill, does that, in fact, constitute an open meeting as it is currently written? I think the goal is for committees, et cetera, which can be worked out with language we discussed.

Section 5 is the issue of combining two items on an agenda. We have found that there are instances where there are more than two. We would like to see that language be two or more items on an agenda.

Section 6 has been discussed a lot already. We suggest that the language be modified to change "regardless of knowledge" to the same language used for the criminal provision which is "with knowledge of the fact." We have a lot of volunteers. We recognize that they have a responsibility to ensure that what they are doing is appropriate. We try to train them in that concept. They go to the ethics training. When they are not knowledgeable of the event, they should not be held accountable. They should be put on notice that they have done something inappropriate.

We are more than happy to work with the Attorney General's Office or any other persons that may assist us in these amendments.

Assemblyman Ellison:

Listening to all the testimony, I really believe this is a good bill, but I think the amendments need to be put forward. I do not know how you want to do that.

Chair Kirkpatrick:

Mr. Munro is going to do that. He has the task force. I will be honest. I do not do subcommittees.

Assemblyman Ellison:

I think there are some clarifications to be done. It could come back and be positive.

Chair Kirkpatrick:

Mr. Munro, the amendment sponsors did see you, correct?

Keith Munro:

They tried. This is a difficult issue. I would point out a few things with respect to section 6. The legislative website may not have posted our amendment because there was a drafting error. We did say it had to be with knowledge. Mr. Murphy's recommendation would be a good one.

I would like to note that of all the things presented, no professional licensing board stepped forward with any concerns about having open meetings for disciplinary hearings. No one objected to putting the procedures in the law. Mr. Murphy had a good suggestion that would be fine with us as well. No one objected, except for Mr. Murphy, to placing the finding by the Attorney General's Office on the record and giving the public body the opportunity to

acknowledge it and correct it or disagree with it. No one objected to us getting subpoena power so we could work quicker through these issues. Those are the good things for this bill. We know that section 4 is tough. We will look at the amendment. We will work with anyone to try and clean that up. And as I spoke to section 6, that should be consistent with knowledge required. I particularly liked Assemblywoman Pierce's comments about how for all these years you have never had any objection to being charged with a crime, but now you are coming forward and objecting to a modest fine. That seems a little oxymoronic, but nevertheless. I will meet with anyone who wants to work on this bill. We would like the four good sections to go forward and will do our best on the two in question.

Chair Kirkpatrick:

I believe that the amendment to section 6 is on NELIS. Is there anyone else who would like to testify on A.B. 59? I am closing the hearing on A.B. 59. Is there any public comment? Is there anything for the Committee? We are meeting tomorrow morning at 8 a.m. [Meeting adjourned at 10:53 a.m.]

RESPECTFULLY SUBMITTED:

Rebecca Richman
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 1, 2011

Time of Meeting: 8:07 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 98	C	Lawrence Matheis	Nevada State Medical Association Position
A.B.98	D	Donald E. Jayne	Proposed Amendments
A.B.101	E	Assemblyman Segerblom	PowerPoint Presentation
A.B.101	F	Assemblyman Segerblom	Proposed Amendment
A.B. 59	G	Keith Munro	Prepared text
A.B. 59	H	Keith Munro	Proposed Amendments to NRS Chapter 241
A.B. 59	I	Michael Murphy	Proposed Amendments
A.B. 59	J	Keith Munro	Proposed
A.B. 59	K	Terry Johnson	Proposed Amendment