

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

**Seventy-Sixth Session  
March 10, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Thursday, March 10, 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/](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  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman David P. Bobzien, Washoe County Assembly District  
No. 24  
Assemblywoman Debbie Smith, Washoe County Assembly District  
No. 30

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Barry Smith, Executive Director, Nevada Press Association, Inc.  
Carole Vilardo, President, Nevada Taxpayers Association  
Alan H. Glover, Clerk-Recorder, Carson City  
Lisa Foster, representing the Nevada League of Cities and Municipalities  
Ted Olivas, Director, Administrative Services, City of Las Vegas  
Wes Henderson, Deputy Director, Nevada Association of Counties  
Dino DiCianno, Executive Director, Department of Taxation  
Jeff L. Mohlenkamp, Deputy Director Support Services, Department  
of Corrections  
Lisa O. Cooper, Executive Director, Nevada State Board of Massage  
Therapists  
Nicole Rourke, Executive Director, Government Affairs, Clark County  
School District  
Paula Berkley, representing Nevada Physical Therapist Board; Nevada  
Board of Occupational Therapy; and Food Bank of Northern Nevada  
Keith Lee, representing Nevada Board of Medical Examiners; Nevada  
Board of Contractors; and Nevada State LP-Gas Board  
Fred L. Hillerby, representing Nevada State Board of Pharmacy; Nevada  
State Board of Dental Examiners; Nevada State Board of Nursing;  
and Nevada State Board of Accountancy  
Janine Hansen, President, Nevada Eagle Forum  
Lon DeWeese, Chief Financial Officer, Housing Division, Department of  
Business and Industry  
Susan Meuschke, Executive Director, Nevada Network Against  
Domestic Violence

LaVonne Brooks, Chief Executive Officer of High Sierra Industries-Washoe Association of Retarded Citizens; representing Northern Nevada Association of Service Providers; and Southern Nevada Association of Service Providers

Jeanette K. Belz, representing Nevada Chapter, Associated General Contractors of America

Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15; and Southern Nevada Building and Construction Trades Council

Rusty McAllister, President, Professional Fire Fighters of Nevada

Andrew Clinger, Director, Budget and Planning Division, Department of Administration

Nicole J. Lamboley, Chief Deputy, Secretary of State

Robert D. Chisel, Assistant Director-Administration, Department of Transportation

**Chair Kirkpatrick:**

[Roll was called.] We will begin with Assembly Bill 239.

**Assembly Bill 239:** Requires public bodies to post on their websites, if any, certain material and records related to meetings of the public body. (BDR 19-527)

**Assemblyman David P. Bobzien, Washoe County Assembly District No. 24:**

Assembly Bill 239 is intended to modernize the open meeting law in terms of addressing those government entities with websites. They should be posting public documents on their website. The intention of this bill is not meant to be a "gotcha" for any government agency. You will hear from a number of agencies this morning that have concerns about technical feasibility. It is my intent to work with them to address any shortcomings this legislation may have, in terms of technical challenges in being able fulfill the requirements that are put into this bill. The intent is that if you have a website, and you have the capacity to post documents according to the requirements of this bill, you should be doing that. Within that framework, there may be some issues that need to be addressed.

Section 1 of this bill essentially speaks to the current requirement that when a request is made for copies of exhibits from a particular meeting, the government body is required to fulfill that request and provide copies. This bill suggests that, in addition to providing copies to the person who requested the exhibits, the public entity should also post the exhibits on its website.

Section 2 deals with the issue of minutes and when minutes are made available following a public meeting. Currently, the government entity is required to furnish those minutes for public review 30 days after a public meeting. This bill suggests that it also post the minutes on its website, to the extent that it is practical from a technical standpoint. I recognize that the fulfillment of the open meeting law varies immensely across different government entities. There are city council meetings, neighborhood advisory boards, and different commissions. Some of them are using a digital recorder, some are typed minutes. Some of them have the minutes made with an audiotape. Depending on the format, posting them on their website may or may not be practical. What you will see in the bill is discussion of technical feasibility. If it is not technically feasible to get exhibits and minutes posted on a webpage, those entities would receive an exemption. The intention is, if you have a website and you are already keeping exhibits and minutes in a format that is feasible to put them online, you should be putting them online.

**Assemblywoman Pierce:**

What triggers material being put on the website? Is it someone asking for it?

**Assemblyman Bobzien:**

In section 1, for exhibits, that is correct. In section 2, for minutes, the law triggers it.

**Assemblywoman Pierce:**

So if a member of the public never asks for this material, it does not go on the website?

**Assemblyman Bobzien:**

For section 1, the current law states that if someone asks for copies of exhibits, they must be furnished. In addition to furnishing this information to someone who asked, this bill would require that information be posted online as well. Practically speaking, those exhibits would be put online as a common practice.

**Assemblywoman Pierce:**

On section 2, why did you decide on the one-year time frame for keeping the minutes available?

**Assemblyman Bobzien:**

I also find this hard to understand, given how cheap memory is. Frankly, I believe that archiving these electronically should be for a much longer period than that. Recognizing that there may be a finite amount of storage space on someone's website or server, if you want to take them down to reserve space, you could.

**Assemblyman Anderson:**

Page 4, line 20, says "the Internet or its successor." What is your intent of that? Is there anything you can envision at this time succeeding the Internet?

**Assemblyman Bobzien:**

That is a necessary clause to deal with the possibility that the Legislature may change a commission, or dissolve it, or move its function into some other body, so it is meant to ensure some continuity of the record itself.

**Chair Kirkpatrick:**

I think that it would also provide flexibility as technology changes and there are different ways to maintain these records.

**Assemblywoman Bustamante Adams:**

You stated that minutes should be posted on the website, to the extent that it is possible. What do you mean by that?

**Assemblyman Bobzien:**

The issue is one of technical feasibility. Currently, for the open meeting law, if you are recording a meeting the old-fashioned way with audiotapes, and you keep a backlog of those tapes, that is sufficient. Someone can go back and review those tapes and listen to what happened during the meeting. It is very hard to take those audiotapes and put them on the website because it is not in a digital format. The issue is that if it is not currently in digital format, we are not going to create a new requirement that you must convert it into a digital format for purposes of satisfying this bill.

**Chair Kirkpatrick:**

I received letters from Lincoln County ([Exhibit C](#)), Humboldt County ([Exhibit D](#)), White Pine County ([Exhibit E](#)), and Washoe County ([Exhibit F](#)) expressing their concerns. I believe that you have addressed their concerns, because they probably do not have a website and they are probably not ready to do this.

**Assemblyman Bobzien:**

It is a two-part test. If you currently have a website, you should be using it. If you are keeping your minutes in a digital format that is readily accessible for placement on the website, you should do it.

**Chair Kirkpatrick:**

These counties can justify that by proving that they do not typically have digital formats.

**Assemblyman Ellison:**

Is this going to be an undue burden on some of these smaller agencies? They do post some information on their website, but will this create more of a workload and hardship when all of this information is available anyway?

**Assemblyman Bobzien:**

What are you referring to when you say all the information is out there anyway?

**Assemblyman Ellison:**

They post their agendas, but this is pretty detailed.

**Assemblyman Bobzien:**

Again, the idea is that if you have a website, you should use it. If you are already keeping your minutes in a digital format and they can be moved to a website, you should be doing that.

**Assemblyman Goedhart:**

Do you know anyone that is very good at websites, who can help them? I believe we can get all of this information on the Internet. More and more people are relying on the Internet for their information. I applaud your efforts to give a little push to these governing bodies to get all of their information online.

**Assemblyman Bobzien:**

There is readily available software that makes it very easy to do this without the intervention of a professional web designer.

**Chair Kirkpatrick:**

Any other questions on A.B. 239? Anyone in support of A.B. 239?

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

This is clearly a benefit to the public to make these documents as accessible as possible. It adds to the spirit of open government, and that is what we are in support of.

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

I find Nevada Electronic Legislative Information System (NELIS), with the exhibits, absolutely wonderful. I support this bill because I think it provides more information to the public and allows them to keep current. My only concern is the fact that in certain instances, exhibits in contested cases should not be made public. Using the Nevada Tax Commission as an example, there is a provision in the law, under certain circumstances, where the Tax Commission can have a hearing for confidentiality. It receives exhibits supporting this information. I would be concerned about the language unless there is a specific

exemption. There may also be cases with personnel actions by a local government which are considered confidential. I think there needs to be some clarification in that particular area.

**Assemblywoman Benitez-Thompson:**

Are you speaking about a meeting that would be an open meeting but with closed exhibits, or a closed meeting?

**Carole Vilardo:**

For my Tax Commission example, that is an open meeting. However, because of the way the law works, when going before the Tax Commission, you can apply for a closed hearing. Prior to granting that closed hearing, part of the discussion may involve exhibits which might invoke problems with the confidentiality after the closed hearing is granted. You may have an open meeting with a provision for deliberating whether or not you are going to close part of the meeting. That may happen at certain times with local governments also. It might happen, in fact, with personnel issues. It might happen with collective bargaining issues where you are in an open meeting and looking at closing it. The law may change for any of these.

**Chair Kirkpatrick:**

Mr. Smith, would you like to talk about the exception that is already in the law?

**Barry Smith:**

As a general comment, this bill would not open anything that is not already open.

**Chair Kirkpatrick:**

Anyone else have questions?

**Assemblyman Bobzien:**

A number of local government representatives reached out to me yesterday. I do appreciate their concerns. Within the framework of this bill, if it is technologically feasible, you should be doing this. If there are specific concerns that need to be addressed, I am happy to work with them.

**Chair Kirkpatrick:**

Anyone else in favor of A.B. 239? Anyone in opposition?

**Alan H. Glover, Clerk-Recorder, Carson City:**

Basically, the clerks in this state like the concept. I would like to impart to you some of their frustrations. One is that some of the clerks are both the clerk and the treasurer. They run elections and several other things, and they have had

their staff cut. They are concerned about how they are going to implement this. It is not the minutes, but the backup material, that frightens them. For example, the Carson City Board of Equalization has a lot of material for their meetings.

The Nevada Association of Counties would like to work with Assemblyman Bobzien in an effort to find something that works for everyone. It is in everyone's best interest to have this information on the Internet. It eliminates calls for copies of the minutes. You can simply refer them to the website. Something to keep in mind is that most of the backup material that is given to any board or commission comes from staff, not the general public. It is difficult for them to get this information scanned in. We have our minutes and our backup material on the website for the Carson City Board of Supervisors. We do not have backup material online for the other boards and commissions. It is not a bad idea, we just need to work out how we are going to do it. I am assuming Clark County's volume of material is much larger than ours is. We really would like to work on this and come up with something that works for everybody. I am not sure how to go about that, but the concept is excellent. It makes life easier for everybody.

**Assemblyman Stewart:**

I would like to know who makes the determination as to what is possible and what is not possible? Is it the entity that is doing it, or the state entity?

**Alan Glover:**

Some of the counties may not have scanning software, and a lot of them do not have information technology (IT) departments. It is up to the clerk, or the recorder or the treasurer. They have to do this themselves. They have no central support on how to get the information out on the Internet. That is one problem. Internally, within a county, assigning someone to do the work is something each county needs to work out. In our case, the city manager's office scans in all the backup material. As the records manager for Carson City, at the end of every year, we take all the information that came to the Board, scan it, and convert it to film for a permanent record. This bill helps us because the scanning will be done every week during the year. We can pull that and put it right to film, and add the documents that were brought to the Board. Sometimes people bring pictures of their issue to the Board. Currently, that does not get scanned in until the end of the year. Is it going to be the clerk's job in every county to do all this? Are they going to divide it among the agencies? If, for example, it is the parks and recreation's meeting, is it their job to do all this work? I think it is a matter of spreading the work out among the agencies.



**Assemblyman Stewart:**

My concern is if the clerk says I cannot do that, will somebody in the state say you just do not know how to do it? Who determines what can be done and what cannot be done?

**Alan Glover:**

I do not know that answer. A clerk would probably end up going to his district attorney asking for help to do it.

**Chair Kirkpatrick:**

The letters that I received from Humboldt and Lincoln Counties were not old-fashioned, typed letters. Someone typed these in an email format. I hate PowerPoint presentations with a passion, and we do not have them in these hearings, ever. We do, however, get tons of them in an electronic form. They are emailed to us. So, how is it that they do not have the capability to do the same, electronically, with their minutes? The whole point is to allow the public to be more informed. I cannot be at every single meeting, but I can follow activities of meetings I am interested in. I find it frustrating that once again, local government does not want to go the extra mile. They are not that behind the times. I can show you every single PowerPoint they have sent. You cannot do PowerPoint without a computer, and you cannot send it to me electronically, without the Internet. I do not want to hear any crying anymore. The public wants to know what is going on.

**Alan Glover:**

Speaking for myself, the main issue is knowing how to take a file and transfer it to a website. We just bought new scanners so we can scan everything that comes in. Again, a lot of counties do not have an IT department to show them how to do that.

**Chair Kirkpatrick:**

Let me reiterate. We are not typing minutes the old-fashioned way. People are typing minutes as city council meetings are going on. They are typing minutes on a computer, and they can post them electronically. They put them in PDF files; it is a matter of pushing a button and moving the information. They are already typing and putting them in electronic format, so it is a matter of putting one file into another file. Maybe we need a different kind of argument, because this one does not work for me.

**Alan Glover:**

Minutes are not the issue; it is more the backup materials that come in. They need to scan the information in, attach it to a file, and then put it on the

website. Who is going to do that? Will they have time to do that? You are right; minutes are done on a PC and are stored electronically.

**Chair Kirkpatrick:**

I would bet that other agencies are doing that same electronic thing. I would be curious to see how many of them are doing it the old-fashioned way.

**Assemblyman Livermore:**

My compliments to Assemblyman Bobzien. I think transparency of government is very important to our public. The public is entitled to have access to the volumes of information that we receive. As a county elected official throughout the years, in departments like the library board, the planning commission, the parks commission and the like, when they generated their meeting agenda, they generated the information that was necessary for that meeting. Those things were put on the web page under city government and certain departments. There were many people doing this. The emphasis is on how these organizations want to apply the open meeting law and the material that goes with it. I was never one to think that we should restrict the public's right to this information. I also need to do homework, read the agendas, and do research on the web page. In Carson City, the information is readily available, the technical component is there, we have reasonable personnel, and it takes a high school intern to scan documents.

**Chair Kirkpatrick:**

Any other questions? Mr. Glover, people have got to start stepping up to the plate and participate for the public's best interest. I would like you to take that message back.

**Alan Glover:**

I agree with you. I think the clerks realize this is a best practices idea and everyone wants to go in that direction.

**Chair Kirkpatrick:**

Anyone else in opposition?

**Lisa Foster, representing the League of Cities and Municipalities:**

I would like to state that, as of yesterday, we had not heard from the smaller cities about any concerns they had. The bigger cities have said that they have websites, and it is not a problem. If Mr. Glover and the clerks are meeting, the League of Cities and Municipalities would like to be included, particularly as we talk about the storage of the videotape piece of this bill.

**Chair Kirkpatrick:**

Anyone else neutral who would like to testify?

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

I was one of the persons that the bill sponsor alluded to in his testimony in trying to track him down. We applaud his efforts in this bill. Clearly, the City of Las Vegas is a proponent of open and transparent government, and we do want to go the extra mile.

There were two minor concerns that we discussed with Assemblyman Bobzien. There is a timing issue in section 1, subsection 7. It says that "the public body shall post the supporting material . . . not later than the earlier of:" and there are two criteria identified. There are some situations where we cannot meet those criteria. If you look at the letter of the law, which is what we are trying to do, we cannot do that. If someone shows up at a meeting, wants an exhibit to be part of the record, and provides copies for the public, clearly we cannot get that on the website soon enough. The second minor concern is the effective date of the bill, which we have also discussed with the bill sponsor. It is July 1, 2011. While the City of Las Vegas can make this happen very quickly, we are not sure that some of the smaller jurisdictions can do that. You may want to allow some flexibility on the effective date.

**Wes Henderson, Deputy Director, Nevada Association of Counties:**

We support the concept, and we support transparency in government. Our concern is with some of the timing issues. Also, some of the smaller counties do not have the staff to do this. With the reduced revenues, we are concerned about the burden this will place on them. I am happy to report that 16 of the 17 counties have a website. The last one, Mineral County, does have a bare-bones website but hopes to have it fully functional by the end of the year. Many of the counties already post the agendas and the backup material on their website.

**Dino DiCianno, Executive Director, Department of Taxation:**

We believe in transparency in government, and we support this bill. However, the devil is in the details. I want to explain to you some of the situations that the Department deals with. We staff the Nevada Tax Commission, the State Board of Equalization, and the Committee on Local Government Finance. Because of everything that we do, since we deal with taxes and money, it is almost always litigious. The difficulty with that is that we utilize a court reporter. Under *Nevada Revised Statutes* (NRS) Chapter 239, we cannot post the verbatim minutes that the court reporter provides to us on the website. They are providing a professional service and are entitled to payment for that service if copies are made of those transcripts. During the interim, we will have

to convert those into regular minutes or record those meetings. More problematic than that, and we will deal with it, this Monday, the Nevada Tax Commission had a contested case with over 7,000 pages of material.

Also there is difficulty in dealing with the State Board of Equalization. It deals with hundreds of taxpayer appeals. The concern I have with posting the materials that these taxpayers provide to us is that much of it is confidential information. I realize the bill has provisions for that, but removing the confidential information will take time. The last thing we want to do is to put individual social security numbers, financial records, et cetera on the website. We are more than willing to work with the sponsor of the bill. We will make this work the best way we can. I agree with Assemblyman Stewart's question. Who is going to police this? Who is going to make the final determination as to whether or not they have complied? That is a concern.

**Chair Kirkpatrick:**

Do you think it is because the definition says "a public body," it is very broad on who is encompassed in this?

**Dino DiCianno:**

I do not believe so. I think that, as a public body, we should provide the transparency and the information. It is just that there are some complexities in doing that.

**Jeff L. Mohlenkamp, Deputy Director Support Services, Department of Corrections:**

I would like to advise this body that there will be a fiscal consequence to this bill for the Department of Corrections. We are currently evaluating that. I only became aware of this bill a few days ago. If it passes, we will look at the fiscal impact. The primary reason is that we have site panel reviews, approximately 18 hours a month, that are videotaped. That is quite a bit of storage, and ultimately bandwidth, if people are viewing these in a streaming video component. Our IT division is looking at this to determine the consequences of trying to put all that video on our website. We are required to keep that video for one year. That is 18 hours times 12 months. That is our primary concern.

**Chief Kirkpatrick:**

We put a lot of documents on NELIS. This Committee probably has 10,000 pages on it already. What is the difference, if we are able to do it on NELIS, for the Department of Corrections? Eighteen hours times twelve months, is not a lot compared to what we have done in the first five weeks of session.

**Jeff Mohlenkamp:**

I am not familiar with the legislative budget, so I could not speak to your resources or how you are able to do that. We are looking at this, but we do believe there will be a financial consequence. Maybe we need additional servers, possibly additional T1 lines, in order to provide for this. I will have our IT people come in next time to speak to that directly.

**Chair Kirkpatrick:**

I would like to hear that fiscal note, because I understand it costs more and takes more time, but everyone is being asked to do more with less. At the same time, the more that we can tell the public about what our state is doing on a daily basis, the better we can all recover. When the public does not know what is going on and they cannot get answers and, if you are a person like me, you kick and stomp your feet until you stir the pot enough that people will finally call you back and get you what you want. I am frustrated with the argument that it costs more, or it is a little extra work, or I need a new server to do it. To me, we have to start doing things a little bit better. I would definitely like to see your fiscal note by Monday; that would be fabulous.

**Lisa O. Cooper, Executive Director, Nevada State Board of Massage Therapists:**

I contacted our IT provider, the Department of Information Technology (DoIT), on March 3, 2011, to talk about our website. I did not receive a call back. On March 8, 2011, I emailed them asking for help. They sent back an email that said they are working on redoing everything. They did not know when they would get to me, and they did not have me scheduled. Yesterday, I sent another email asking if it would take days, weeks, months? If months, how many months to get back to me? I have not received a response back. I just want you to know that it is not that we are not trying, it is that we do not have the resource to do it ourselves so we rely on another agency. That agency is not giving us the help we need.

**Assemblywoman Bustamante Adams:**

I think I missed it. Which other agency are you referring to?

**Lisa Cooper:**

I am referring to DoIT. There are our IT people.

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

We are neutral on this bill. We already comply with posting our agendas, tapings, and all of our backup material on our website. We just have one suggestion: to allow entities to possibly provide materials rather than mail them electronically when practical.

**Assemblyman Ellison:**

When the school district does its posting, how does it repost after the minutes are approved?

**Nicole Rourke:**

If there are any corrections to the minutes, we correct them at that time.

**Assemblyman Stewart:**

I applaud you for making this open and available to the public; but again, who would make the decision as to whether it is feasible or not, in your view, and how would it be enforced?

**Assemblyman Bobzien:**

We have heard about the technical challenges related to this bill. I was very grateful for Ms. Cooper in exposing an issue that is very much a topic of conversation right now in the Assembly Committee on Ways and Means. What is the appropriate service model for DoIT, and what is it doing to support all the different boards and commissions across the state? There clearly has to be a better way. The technical feasibility issue is similar to how current open meeting law problems are resolved. If someone is not in compliance, it is going to become a legal situation pretty quickly.

**Chair Kirkpatrick:**

I am not a technology guru, but I think we owe the public as much information as we can give them.

**Assemblyman Bobzien:**

I appreciate everyone's concerns and I am certainly willing to work with everybody in dealing with and resolving the technical issues.

**Chair Kirkpatrick:**

We will now close the hearing on A.B. 239. We will open the hearing on Assembly Bill 1.

[Vice Chair Bustamante Adams assumed the chair.]

**Assembly Bill 1:** Requires periodic reporting of financial information by certain governmental entities. (BDR S-49)

**Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1:**

I am here today to present A.B. 1. Let me begin by saying that I know there is a lot of concern. Anytime you talk about boards, you can fill a room. The ultimate goal of this bill is to allow for a little more transparency. Last summer,

during the Legislative Commission, we heard from some boards that were coming back for fee increases. There was a lot of discussion about whether these boards had assets or not, and why they were getting fee increases three or four years out. Most of my colleagues on that Commission wanted to get rid of the boards or consolidate the boards. I wanted to first get a report so we could figure out what types of things these boards had.

I was a little bit shocked to learn that some of our boards have certificates of deposit, some own property, some have leases. I was shocked because they are really more of a private entity rather than something that works with the state.

The first part of the bill is existing language from Assembly Bill No. 193 of the 75th Session. This particular report has been very helpful to the legislators. If you are on the Legislative Commission or the Interim Finance Committee, you are actually seeing a steady income that comes in. We know what is collectible. We did find some issues that we are going to look at fixing, such as a lot of uncollected debt that sits on our books. Mr. DiCianno brought that to our attention through this report. My thought is if you are not hiding anything, a little extra work is good for the public to see as well as the legislators.

Let me give you an idea of what the occupational boards are, for those of you on this Committee. We have the Landscape Architecture Board, the Professional Engineers & Land Surveyors, Healing Arts, Physicians, Dentistry, Dental Hygiene, Nursing, Chiropractic, Oriental Medicine, Optometry, Audiologists, Veterinarians, Pharmacists, Pharmacies, Message Therapists, et cetera. As you can see, there are a lot of boards. I realize that some of these boards already report. The Legislature would like to see it in a package so that we can evaluate it for the future. I would say this is a relatively simple bill, because it is a reporting mechanism as opposed to getting rid of the boards. I would entertain any comments and am willing to work with anyone in the audience to see if there is a better way to do this report so that we have a better piece of transparency.

[Amendment submitted, but not mentioned by Assemblywoman Kirkpatrick ([Exhibit G](#)).]

**Vice Chair Bustamante Adams:**

Anyone here to testify in support of A.B. 1?

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

I am in my "support transparency" mode today. I appreciate the bill and the concept. We totally agree with it. I understand that as people have a chance

to look it over, it may need a few tweaks. I agree with the sponsor. What you are looking at is a reporting mechanism, and I have no problem with that.

**Paula Berkley, representing Nevada Physical Therapist Board; and Nevada Board of Occupational Therapy:**

When I presented this bill to the boards, they all said, "Not another report." Nobody likes to do reports. However there have been a number of legislators who have expressed concern about how boards are handling money. There are a lot of questions that need to be answered. I have heard a lot of concerns that boards have too much money, which surprises me. I have been around here long enough to go back to Governor Miller's efforts to reevaluate the boards when he had Kenny Guinn do a study. That study revealed that the boards did not have enough money. Obviously, that means we do not give you enough information. Both of these boards said they would be more than happy to give you the information in whatever form. The only thing they would like to see is the reports be standardized so that you could compare apples to apples. If these reports are being developed by each board, there could be conflicting information, making it difficult to tell which has enough money and which does not and what each is doing with it.

**Wes Henderson, Deputy Director, Nevada Association of Counties:**

This is our "support transparency in government day" as well. We do support this bill, particularly section 2 regarding the reporting by the Commission on Economic Development of tax abatements that have been granted. This information is very useful to the counties, as oftentimes the abatements are of local government taxes.

**Assemblyman Ellison:**

You stated you have a concern with section 2. Which part?

**Wes Henderson:**

Actually, section 2 is of particular interest to us because it requires reporting of the abatements that have been granted by the Nevada Commission on Economic Development.

**Keith Lee, representing Nevada Board of Medical Examiners; Nevada Board of Contractors; and Nevada State LP-Gas Board:**

I am here with my colleague, Mr. Hillerby. We have both met with the sponsor of the bill, and we support the concept of the bill. We have agreed to work with the sponsor with regard to some amendments that we believe will bring this all together. I can tell you with respect to the three boards that I represent, we do submit a report to the Legislative Counsel Bureau (LCB). The report from the Nevada Board of Medical Examiners is required by NRS 622.100. We also



file annually with LCB and with the Director of the Department of Administration. The annual audits are performed by outside accountants for each of those boards.

**Fred L. Hillerby, representing Nevada State Board of Pharmacy; Nevada State Board of Dental Examiners; Nevada State Board of Nursing; and Nevada State Board of Accountancy:**

Mr. Lee and I met with Assemblywoman Kirkpatrick yesterday expressing some of our concerns, which include being sure to take into account the reports that are currently being filed, including that CPA audit, et cetera. Perhaps the data available through these reports can be compiled in a way to satisfy the maker of this bill's interest in what our boards do. We committed to the sponsor that we will work with her on amending this bill. We have all read in the newspaper quotes by certain legislators and in the State of the State that perhaps we should go through a sunset process for all the boards, to see which ones really should continue to exist or if some could be combined for efficiency. Perhaps this might be the vehicle to start down that road, and we are going to be working with the Chair regarding that.

**Vice Chair Bustamante Adams:**

Anyone else to testify in support of A.B. 1? Anyone opposed to A.B. 1? Anyone neutral to A.B. 1?

**Assemblywoman Kirkpatrick:**

I did agree to work with several people from the boards because I believe there is room to discuss sunsetting some boards. We would still need to know what assets, properties, and leases these boards have, so that we could make an educated decision.

**Vice Chair Bustamante Adams:**

I will now close the hearing on A.B. 1. We will take a very short recess. I will now open the hearing for Assembly Bill 242.

**Assembly Bill 242:** Requires quasi-public organization to submit annual report to Legislative Commission detailing disposition and use of money conveyed to organization by state agency. (BDR 31-67)

**Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1:** Assembly Bill 242 is a reporting mechanism on dollars that are given to nonprofit organizations as well as agencies within our state. For a long time I have tried to get information from our agencies on what services nonprofits provide. I started with group homes four years ago, which are some of the

biggest nonprofits we have. This bill is much larger than that. [Written presentation provided by Assemblywoman Kirkpatrick ([Exhibit H](#)).]

I have discovered that when we give out Medicaid dollars and we give out different dollars for grants and gifts, we are never able to track what services are provided to our state and our constituents. This bill requires all agencies to have an accountability measure of what dollars are out there. I have an amendment, because I wanted to narrow the scope a little bit more ([Exhibit I](#)). The bill says that the Legislative Counsel Bureau (LCB) Director, Lorne Malkiewich, will create the form. The agencies will be able to give the nonprofits and the quasi-public entities the form when they are getting their grant. We would like to make this form available in an electronic format as well. Also, the amendment is to have the board members listed on their website.

**Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:**

I support this bill for a few reasons. When we had the Interim Finance Committee's Subcommittee for Federal Stimulus Oversight last interim, we looked at a lot of money, tens of millions of dollars that came through the state and went to various nonprofits. That process gave me the opportunity to see what kind of reporting and transparency was out there and what I thought needed to be strengthened. Our legislation requires a lot of transparency, so you can certainly track that money and figure out where it went. It made me realize, generally speaking, that we do not have enough control or transparency over taxpayer dollars that go to nonprofits or the quasi-public agencies.

I believe that when we give any money out, there is some kind of one-shot funding to groups, which we do almost every session, and there is a lot of grant funding. The grant funding tends to be, as you know, pretty tightly controlled with a lot of reporting. It was still my opinion, when I went looking for who these groups were or how that money was spent, that I should not have to dig around to find it. We were in one hearing regarding some housing money and there was a nonprofit involved that was helping facilitate some of that money. When I went on its website, the members were not listed, and there was no information that could help me figure out who this group was. As a taxpayer, I should be able to find out who the board members are. I should see, at minimum, an annual report that tells me what their budget looks like. If the detail of the budget is not on there, at least the annual report would tell you how much money they receive and how they spend it.

I was looking at the Food Bank of Northern Nevada's website. It is very comprehensive. You can find its annual report, which tells how much money it takes in and, generally speaking, how money is spent. That is where we are

trying to get to. Any taxpayer should be able to go to any organization's website and find out how those taxpayer dollars are being spent. We are finding many ways that we can fix what we do and make things better going forward, putting us in a better place and being better able to report to our constituents about how these taxpayer dollars are being spent.

**Assemblywoman Kirkpatrick:**

This will also help us to know, indirectly, what services are being provided through the state to different groups across the state. We have tons of group homes that provide fabulous services to many of our elderly and social service programs. This will help to see exactly what we are doing. Also, in local government we have found a lot of duplications, and we want to make sure the groups that are doing a great job and spending our state dollars well are being helped in being a partner with the state. However, the ones that are not doing so well need to either change the way they do business, get with the state's program, or we need to find better groups that can provide those services to our constituents.

**Assemblywoman Smith:**

I would like to add that when I was at a program in Kentucky last summer, one of our speakers at a lunch program was the Controller of Kentucky. She was an amazing speaker. She told us about how she took this issue on in her state, because they had a lot of problems. The things she found and the changes that were made were very impressive. I do not contend that there are a lot of bad things going on, but I do contend that we can do a better job with this information. Kentucky gave me a very strong sense that this is something we can do here. A few months ago, we had a quasi-public agency in Washoe County that was refusing to give salary information. Some of you may have followed that; it was a very big deal in the press. It finally happened, but I kept thinking that information should not be hard to get. They follow the open meeting law and do all the things they are required to do in that regard. That information should be made public.

**Assemblywoman Neal:**

I understand the intent of the bill, but it seems to me that the scope is extremely large. Section 5, subsection 2, paragraph (b), subparagraph (3), sub-subparagraph (II) asks for "The nature and duration of any programs that the quasi-public organization conducted using the money so received," and sub-subparagraph (IV) says, "Whether the goods, products and services that the quasi-public organization provided using the money so received, or the programs that the quasi-public organization conducted using the money so received, were required to be provided or conducted, as applicable, pursuant to federal or state law." Under *Nevada Revised Statutes* (NRS) 82.131, when you deal with

charitable organizations or nonprofits, they can use their powers to donate to public welfare, community funds, hospital, scientific, all kinds of endeavors. I am trying to figure out how we are going to report all of those activities, because this bill says we should track everything that was done.

The second issue is that for quasi-public organizations we included nonprofit, religious, and fraternal. It seems to be within the *Nevada Constitution*; we only list charitable organizations we can actually donate to. Is this falling out of the scope of that?

**Vice Chair Bustamante Adams:**

This bill refers to the nonprofits or the quasi-public entities who receive money from the state.

**Assemblywoman Neal:**

Correct. This is all state actions, state money. In the *Constitution of the State of Nevada*, Article 8, Section 9 it says, "The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes." Is it still fitting in for fraternal and nonprofit? Have we enlarged it?

**Assemblywoman Kirkpatrick:**

I can get the answer for you from legal. The intent is that we have a lot of groups, like the Nevada Development Authority and the Economic Development Authority of Western Nevada which are included and are happy to be included in this because they are doing a great job and have no problems. Honestly, it is going to be a help to some of those in regards to marketing. We only ever read the bad in the paper. We only ever read the negative on what they are not doing, based on who is talking. If they are showing us a report and they are working with Economic Development, they are going to have to justify what they did with their money.

This is no different than if I gave my daughter \$20 a week for lunch, but she never ate lunch, she just pocketed the money. If I give you the money, I want to make sure that you are eating lunch and not putting the money in your coffers to be used for something different. I think we want that information. I do not want to specifically call out one agency or one type of nonprofit. If we give someone \$500,000 to promote services for kids for after-school programs, we want to know where that \$500,000 was spent, how many kids were helped, what kind of stuff was done with it. We can use a lot of this data for educational purposes in the future. In my opinion, if you are getting money from the taxpayers, then the taxpayers should know what you are doing with

that money. I understand the administrative fees; we allow for that across the board throughout the state. But we want to know, are you spending 45 percent for administrative fees? Are you spending 17 percent for administrative fees? We would hope that there is some consistency across these reports.

**Assemblywoman Benitez-Thompson:**

In my experience sitting on a number of nonprofit boards in the community, as I look through this bill, it seems like a lot of information. Then I realize that this is all information that, as a board member, we are typically reporting and collecting information on: services that we are providing, our programs, number of people served, and administrative costs. I do not see anything unreasonable here that, as a former board member, would seem overwhelming or intimidating.

**Assemblyman Munford:**

I would like to speak about my district, No. 6. We go way back when it comes to nonprofit assistance and programs. I do not want to confuse federal with state, but you can go back to 1966 at the federal level, with President Johnson and his War on Poverty. That was the first nonprofit that was introduced in my district. It was the Economic Opportunity Act of 1964. In 1966, we thought that was the silver bullet, the panacea which would bring our district up out of our plight and our problems. That program has collapsed since then, and most programs and services have been passed to the state. We have had a lot of nonprofits, and I do commend this bill. I like it because I think there has to be some transparency. I believe many nonprofits have not fulfilled their purpose. The people who benefitted and gained the most from them are the people at the top, the administration, and it never trickles down to the ones that really need it. My district is still in the same condition, almost, as it was in 1966. Nonprofit has not been the answer. I hope this bill will have some effect and bring some transparency. I also hope those programs will do the work that is intended for them to do. Maybe something good can come out of this.

**Assemblyman Anderson:**

I also think this is a great bill. Going back to the Chair's point, when you give somebody some money, you want to see the receipt. That is what this is, particularly with all the news with nonprofits spending too much money in overhead and salaries. I have seen those reports and was not too thrilled about them.

**Assemblyman Stewart:**

I think this bill is much needed. I would like some clarification on a few things. Does this include national organizations that are in Nevada, like the Boy Scouts, the Red Cross, or national religious organizations? Would the national

organization be subjected to this, even if the only benefit they received was the tax exemption?

**Assemblywoman Kirkpatrick:**

No, we are not talking about tax exemptions, we are talking about tax dollars.

**Assemblyman Stewart:**

So it is just organizations that receive funds from the state, not those that are tax exempt?

**Assemblywoman Kirkpatrick:**

Correct.

**Assemblyman Livermore:**

My compliments to you for bringing this bill forward. I think it is very timely and very appropriate. I would suggest that you not limit this to just state agencies. Coming from the county government, I can tell you many local organizations receive county money, which is still public money, just out of a different bank. I would suggest that this could be a process of enabling legislation for counties and cities as well.

**Assemblywoman Kirkpatrick:**

Thank you. I am looking into adding local organizations in an amendment also.

**Assemblywoman Pierce:**

I think this is really good. We need to be tracking what happens with the money that we give agencies. I know that the executive director of the nonprofit that I worked for does this kind of tracking for other reasons, has all this information, and I do not think this is too much to ask. I have a question on section 7. Is the reason for that because these agencies that get direct appropriation already track in some other way?

**Assemblywoman Smith:**

I will double-check with legal, but I think the point here is that if you have someone that is appropriated money through the budget, for example, he is going to already have a means of compliance. I suspect that is why it is constructed that way. I do want to check on one-shot money. In my mind, it is one of the things I want to get to with this bill. We will make sure of the intent and that we do not accidentally exclude people who get one-shot contributions, versus an appropriation through the regular budgeting process.

**Vice Chair Bustamante Adams:**

Anyone here in support of A.B. 242?

**Paula Berkley, representing Food Bank of Northern Nevada:**

We support this bill because, as Assemblywoman Smith alluded to, transparency is what generates money for the Food Bank of Northern Nevada. The more transparent you are, the more confidence people have in what you do. It does not matter whether it is the state, or a private donation, or a foundation, or the federal government. The more you put out there, the more confidence people have in you, and therefore, the more money they will give you. We feel it is a way of generating money. The Food Bank of Northern Nevada receives about \$139,000 through the tobacco funds to do food stamp outreach. From that, we keep 10,584 people out of the welfare offices. We generate \$13,576,000 of food stamp benefits to the state. It has an economic impact of an additional \$24,301,000. That is a return on your investment of 9,667 percent. You can tell that we track what we do pretty well, and we report to the state pretty well also.

**Assemblywoman Benitez-Thompson:**

I just want to confirm that the reporting requirements that are set forth here for your nonprofit is for information that you tend to have readily available and that you are typically compiling in other kinds of reports, so the work burden would not be increased?

**Paula Berkley:**

I do not think we would have any problem with the reports. However, I am wondering whether maybe there would be an exemption or condition where if you are already reporting to the state and the state is very happy with what you are doing, then maybe we do not have to do another report. For example, this food stamp outreach, we report quarterly to the Grants Management Unit as well as the federal government. By the time we have reported satisfactorily to them, I do not think there would be any information that you would not already have.

**Assemblywoman Benitez-Thompson:**

So, with LCB and the legislators working on this form, there might be the opportunity to consolidate some of this information that you are putting out there.

**Paula Berkley:**

That is what I am hoping. This is a process that we are all learning right now. My support today is totally in concept because the more transparent nonprofits are, the better we all look.

**Vice Chair Bustamante Adams:**

Anyone else in support of A.B. 242?

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

I am definitely in support of the bill. I think it has two very important elements for the taxpayers. Besides accountability, as we evolve, and unfortunately in situations like this economy, you may want to provide the same service, but your delivery has to change. The delivery may go to a nonprofit, such as Ms. Berkley was referring to. To that extent, having these reports allows you to determine how effective and efficient these nonprofits are in delivering the service that they received the money for. At the same time, it allows you to evaluate if they did not perform and take them off of the list. I think that is a tremendous service to the taxpayer.

**Janine Hansen, President, Nevada Eagle Forum:**

I am very much in favor of this bill. I would like to relate some information I received from a dear friend of mine who was working for a nonprofit that received in that capacity some taxpayer money through the tobacco settlement. Keep in mind that this is a young person who is pretty idealistic. When she began working for this nonprofit, she probably had more idealism, and so her criticism was probably more harsh than otherwise might be the case.

When I spoke to my friend last night, we went through a stream of consciousness about her concerns with this particular place where she worked. She said that there was a constant disregard for how much anything cost. They spent so much money feeding people, they could have given them work study credit instead. She said the head leadership abused the money all the time and would leave for hours on end and was not accountable. We really need to have accountability and audits.

I told her about this particular bill. She said it was so easy to "b.s." a report. There was gross overspending and blatant disregard for the taxpayer's money. She said there was waste and abuse of all kinds. She said they had all kinds of soda pop and expensive snacks and everyone was overweight. She said there were trainings with lavish lunches. She said the gas money was abused. She remarked that the people that were higher up had huge paychecks, and they said they were working from home three or four days a week. She said they complained about the tobacco money going to the Millennium Scholarship. She was particularly upset by that because she was one of the recipients of that program, which helped her considerably.

My friend said they wasted a lot of money. She said they ordered their office supplies at the most expensive place and had them delivered. She said, and this is part of her perspective as a young person, they bought date books for the interns for \$25 or \$30 each, and they could have gotten them at the dollar store much cheaper. They were buying groceries for their homes. She lost all



faith in nonprofits when she worked there, seeing the gross waste of money. She said people in charge got paid a lot and what you need in nonprofits is people who really love the job and want to help other people and not get big salaries.

Some of the highest earning jobs in the U.S., she told me, are nonprofit CEOs. There should be incentives for saving money in the programs. If they do not use their budget, they lose it, so they just waste it. "Who cares; the government paid for it," she felt was the attitude. They make decisions so they can make more money and get funding and keep their jobs. She was so disappointed. They need to show how they maximize each dollar that they get. Again, she said they wasted money at every turn. For instance, she said that when she went to work there, they bought her a new office desk when they had three or four empty desks already available. She said every time they had a fund-raiser it was a big party to secure more spending. They could have spent more of that money on individual people that really needed the money. It is terrible, and it is sick, she said, on the backs of the needy. It is just their way to keep the rich richer and the poor poorer. She said it is really easy to falsify reports to keep up the funding and to keep the bank account growing.

I particularly support section 5, subsection 2, paragraph (b), subparagraph (3), sub-subparagraphs (III) and (VII). Sub-subparagraph (III) requires, "The number of persons and entities to whom the quasi-public organization provided goods, products and services using the money so received." Sub-subparagraph (VII) states, "The amount and nature of any administrative costs, including, without limitation, the salary and benefits of employees, that the quasi-public organization paid using the money so received."

I think this is a wonderful bill that goes far towards accountability and transparency. There are many very fine nonprofit organizations, and I believe, also, many that are not quasi-public, but are totally self-funded from charitable donations. One of my concerns over the years with some nonprofit organizations is that they have become involved with political agendas in sponsoring candidates and other things. I believe that when they are receiving government money, that type of practice becomes questionable.

**Vice Chair Bustamante Adams:**  
Thank you Ms. Hansen.

**Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry:**

I am here to support A.B. 242, because we believe not only in increased transparency in government, but we also think it is important with regard to

those things that are in this bill termed quasi-public. I would like to speak on behalf of those nonprofit organizations that are organized under 501(c)(3), specifically alluding to lessening the burdens of government, as opposed to the 501(c)(3) organizations for charitable purposes. We have, at the Housing Division and throughout the Department of Business and Industry, organized four of these types of organizations in the last ten years. We believe that there should be adequate reporting and transparency.

The Housing Division combines all of that information in our publicly published financial statements. For our purposes, that information is available, and we do not see this as a specific enlargement or added burden. The one question I have is regarding section 5, subsection 2, paragraph (b), subparagraph (3), sub-subparagraph (VI). It states " . . . dissemination of such information is not prohibited by federal or state law, the identity of any person who benefited from the money so received." I worked the last two sessions with regard to lending programs associated with employer/employee sponsors, and I am not certain that each person who received a loan would like to have his name listed in a public report. I would ask the Committee to consider that.

**Vice Chair Bustamante Adams:**

I know we have some other people that would like to testify. Are there any other individuals who would like to speak in support of A.B. 242? Is there anyone in opposition?

**Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:**

I would like to make it very clear that I am not opposed to the intent of this bill. My opposition comes from the details of the bill. I do not know if I work in the wrong nonprofit sector, but I am required to report monthly, quarterly, semi-annually and annually. I pay for the privilege of having a private CPA firm come in and audit my records. I submit my audit to the clearinghouse of the federal government. I submit the IRS Form 990 for nonprofit income. I report every day. I represent organizations that run the gamut, from million dollar budgets to folks that work in an all-volunteer program with a budget of less than \$30,000. I applaud the intent of this bill, but I am concerned about the impact this will have, particularly on small rural nonprofits where they collect this information but are already reporting it to state agencies and the federal government. They are spending more time filling out reports than they are delivering services. Is there any way we can develop a process where the information that is currently coming to the state is going to you also? I did not realize that you had no idea what we were doing, because we give the state numbers on a regular basis. There are many small nonprofits that do not have computers. Again, I am not opposed to the intent; I believe in transparency, I believe in reporting. I know

that nonprofits do incredible work with very few resources. [Witness also provided written testimony ([Exhibit J](#)).]

**Assemblywoman Benitez-Thompson:**

I am sensitive to the fact that there are so many nonprofits that do so much with so little that they can feel like they are doing nothing but generating reports. Within this bill, section 5, subsection 2, paragraph (a), it mentions the document being provided by the LCB. If there was some type of consolidation so that the information you are reporting to state agencies was captured, would you still feel this is burdensome?

**Susan Meuschke:**

If there is a way for that information to be aggregated, then absolutely, I do not have a problem. It was my first reaction to yet another report. I am really concerned that we report to the state all the information, yet you have no access to that information. I would like to work to ensure that you all know the kind of work that folks are doing and the way they are spending money. Some of our reports include copies of checks and invoices. We are giving a level of detail that we would like you all to know about.

**Assemblywoman Benitez-Thompson:**

As I read the bill, it seems to be the status quo that there is an unfair reporting requirement. Some nonprofits are really doing hard work reporting and are held to a different standard. There are other agencies out there who are getting money from the state that are not reporting as much. I think there is room to consolidate that information, and language in this bill sets a fair standard so that anyone who is receiving these public dollars has equal reporting requirements.

**Assemblyman Anderson:**

Regarding the reports that you are filing with the state now, would you say those reports are more or less comprehensive than what is required in this bill?

**Susan Meuschke:**

They are different. Every single report we file is different. Everyone wants a little bit different information. I think the concern is the fact that it is not as easy as just putting together an annual report. Everybody wants a little different piece of information. My real concern is for small nonprofits that do not have accounting programs or databases of material. They are going to then have to pull all of their information together for yet another report. This is a little bit different information, but I think all of the information is available in different places. It would be helpful to us to see the state consolidate all its reporting into the same kind of report. I think we would have less concern.

**Assemblyman Livermore:**

Does your organization file an IRS Form 990 annually?

**Susan Meuschke:**

Yes, we do.

**Assemblyman Livermore:**

All of that report information, salaries of people, where money was distributed, is public. I understand your point that it should be in a central location, a data bank for instance. I am hearing about people being afraid or shy reporting salaries and information, but it is required of a 501(c)(3), correct?

**Susan Meuschke:**

Absolutely. I do not think people are shy about reporting their salaries. What I am saying is that there seems to be a lot of redundancy, in a time when we really need to be streamlining and not creating more work for folks. If what you are requiring is that every 501(c)(3) nonprofit submit their IRS Form 990 to the state, that would be fine.

**Vice Chair Bustamante Adams:**

Thank you. Is there anyone else in opposition? Anyone neutral? We have one more bill to present, so out of professional courtesy, if you could not repeat any testimony, but just agree or disagree.

**LaVonne Brooks, Chief Executive Officer of High Sierra Industries-Washoe Association of Retarded Citizens; representing Northern Nevada Association of Service Providers; and Southern Nevada Association of Service Providers:**

We provide service to individuals with primarily intellectual disabilities. Our service dollars are a combination of state dollars and Medicaid Federal Medical Assistance Percentages funds. We report down to the penny everything that goes for service. We also report to various state agencies, all of whom want the data differently. We have a process improvement map that we have been working on to reduce the amount of bureaucracy that we have between providers and the Sierra Regional Center. It will give you a great picture of the amount of paperwork that we are doing to satisfy reports. We are in support of accountability and transparency. We report everything every which way from Sunday. I will say that there probably needs to be more accountability in the system for one-shot and appropriation dollars. Having said that, we would love to work with the authors of the bill to further suss this out.

**Jeanette K. Belz, representing Nevada Chapter, Associated General Contractors of America:**

The Nevada Chapter of the Associated General Contractors (AGC) receives money from the Nevada State Board of Contractors' for the purposes of helping disadvantaged and minority contractors. We are neutral on this bill, but would like to suggest that the sponsors consider a threshold amount. The amount that the AGC receives is \$10,000 annually. At this point, it would be cumbersome to require a report on very small funds. I did speak with both sponsors and, clearly, it is up to them if they want to consider our request or not.

**Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15:**

I did not intend to speak on this bill. I am supportive of this bill. I sit on various boards of trustees for nonprofit organizations, training trust funds, labor management committees, health and welfare committees, and a pension committee, all of which are governed by different laws. If some of these nonprofits are concerned about the burden, I would ask them to speak with their accountant about the process of filing LM-2, which is a labor management form required to be filed by a labor organization on an annual basis. The cost of generating this form varies from \$7,000 to \$17,000 because of the comprehensive audit that is involved. The information that is disclosed includes itemizing all expenditures in excess of \$5,000 and disclosing the salaries of every employee and every officer of the organization. It is in the form of a public document that is accessible on the Department of Labor's website. I do not believe what the state is putting forth in this bill is onerous, and I am in full support.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

Essentially we are neutral on this bill, but I am asking for some clarification. We currently have a 501(c)(3) charitable organization, but the revenue generated to fund that organization comes from the sale of license plates. The money is not taxpayer money, because the only ones who can purchase the plates are firefighters. The money goes to and is collected by the Department of Motor Vehicles and is conveyed on a quarterly basis to our charitable organization. My question is, are we subject to this since we are not getting any money from the state; they are simply serving as the collection point and then giving it back out to the charitable organization. We already submit an annual report to the Legislative Commission on Special License Plates, and I am not sure if this would apply to us.

**Vice Chair Bustamante Adams:**

Thank you. The bill's sponsors can answer your question at a later time. We will now give the sponsors an opportunity to provide closing remarks.

**Assemblywoman Kirkpatrick:**

We are not here to make people complete a lot of redundant reports. We are here to make sure that the dollars are spent the way we intend them to be spent. I am all about working with Mr. Malkiewicz to ensure the forms are amenable to the different agencies. I do not know what the form looks like that they give the IRS. However, I am going to get a copy of one. We need to know in greater detail what they are doing with those dollars. Like it or not, we need to know. I think Ms. Hansen brought a great case for you, and we want to make sure we are not doing that. We are not setting ourselves up for that, and we are not endorsing bad practices. I think there are many great services provided directly and indirectly, and I think that we should talk about what we do.

For example, in 2005, we gave the Nevada Cancer Institute \$10 million. It has been able to generate hundreds of millions of dollars back into the community, plus it is servicing folks every single day with just that start-up money. Unless the Nevada Cancer Institute is in your district, you probably do not know much about what it does. I do understand combining the reports. That is in my amendment. So if a particular nonprofit gets money from three different agencies, this would allow all the information to be on one form so that the reports are not redundant. I do not know the answer to Mr. McAllister's question, but I will get that information for him.

**Vice Chair Bustamante Adams:**

We will now close the hearing on A.B. 242. We will open the hearing on Assembly Bill 240.

[Chair Kirkpatrick reassumed the Chair.]

**Assembly Bill 240:** Revises provisions governing contracts for services entered into by certain public employers. (BDR 23-149)

**Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:**

I am here to present A.B. 240. This bill deals with the way the state uses what we think of as consultants. Because there are so many new Committee members, I would like to give you a little background about how we got here, and what this bill would do to what has already been implemented in the last legislative session. [Written presentation provided by Assemblywoman Smith ([Exhibit K](#)).]

I tell the story about the interim before the last session. I was out and about one day, and I heard about a public hearing that was being conducted. I decided that this particular public hearing was in between a couple of things,

so I would swing in there and see what they were doing. There was a consultant working for the state who was conducting this hearing. I was concerned about the way the hearing was being conducted to begin with. We were just headed into the beginning of the recession, and we were sensitive about what we were paying this person, and what the expectation was. It sort of got the wheels turning. At the end of that session, we, the public, were asked to make some paper collages. We were given old magazines, scissors, and glue sticks and were asked to each make a collage. I was pretty steamed, and so I left at that point. I could not imagine that was the way we were spending precious dollars.

I started thinking about trying to do something to rein in how we hire what I thought of as consultants in the state. As I continued down that path, I also became aware of other things that were happening. We had former state employees who were retiring, forming an LLC, and coming back to work for the state again. Many were leaving and coming back right away. I found that very offensive, and I wanted to make sure that we were not usurping our regular state employees who are working hard every day and working alongside someone who is making more money because he is drawing a retirement and also making more money than his colleagues.

We crafted the bill last session to make some requirements on the use of consultants. We deliberately left the definition of "consultant" out because we thought if we put in a definition, someone would say he does not fit that definition exactly, so he does not have to comply. The opposite happened and we basically had a decision made by the former administration to say no one is going to fit this term "consultant," and so there basically was no compliance with the bill. This legislation required a one-year cooling-off period for a former employee to come back to work for the state and that we would not sign contracts for more than two years. That was another thing we were concerned about. Were we just rolling along contracts year after year and keeping people as consultants on the state payroll?

One of the other provisions was to require temporary agencies to report their hiring of employees as contractors for the state. We found out that we did not necessarily know who these people were and that it can certainly be a back door to the hiring process. I know they fill a very important need in this state, but we wanted to know who they were, and we wanted to make sure that the people coming in through that door were complying with these rules of the cooling-off period, et cetera. We put in a waiver process so that the agency could come to the Interim Finance Committee (IFC) and ask for a waiver for extenuating circumstances. One example of an obvious case where using a former state employee made absolute sense. The Agency for Nuclear Projects

deals with Yucca Mountain. We had a state employee who was the preeminent authority on this issue. He retired, and we had an issue, and he was contracted to come back to help out. We could not have paid enough money or found a person in this country who knew as much as this particular person. That type of situation makes absolute sense. What does not make sense is that we let people retire and come right back to work in a position that another employee should have. What happens when we do that is we are not encouraging our state employees to mentor and cultivate their replacements when they retire. I do not believe we are incentivizing that mentoring and training that needs to go on to fill those positions. That is the genesis of how this bill came about.

The other provision we added in the last legislation was that the Nevada System of Higher Education and the school districts would not have to comply with these provisions, but they would be required to report their use of consultants. I will tell you that they have done well. Although we did not have compliance on the state side, we did have compliance from the education system. I do believe that the transparency that is inherent in reporting changed some behavior. When that information is out there, people think a little bit about what they are about and what they are about to do, and if it will look appropriate to the taxpayers.

Our legislative auditors did some auditing on our agencies regarding this legislation. I am sure you have all seen the audit or seen the coverage about some of the egregious abuses that took place in some of these jobs. People were paid much, much more than a commensurate state employee would be paid. People were working as a state employee and as a contractor, and sometimes there was overlap of their time. Some of that is management and recordkeeping. We want to ensure that we have processes in place so those things cannot happen. I know there are times when we have a state employee who contracts with some other agency to do work on the weekend out in rural Nevada. I think psychologists are a good example of that. Those are positions that are very hard to fill, and that is an occurrence that I could see happening. We need to have good record keeping and know that we are following all the practices to ensure there is no abuse.

In drafting this legislation, I looked at what the auditor had recommended, and I spoke with him to see how we could change this to tighten it up. What we decided to do was change "consultant" to "contract," where people are employed through that contract. We are not talking about goods and services; we are talking about people. Therefore, you eliminate the need for someone to decide what a consultant is or is not. That is the first thing we did, and the biggest change in the legislation. We separated out the school districts and Higher Education. In section 3 of this bill, I left "consultant" in the language



because the school districts and Higher Education understand what the term "consultant" means. They complied, and they did their reporting.

I have been talking to a few people within state agencies, and I think I will recommend a couple of amendments. I really would like to have the cooling-off period go from one year to two years. I think that, particularly in this environment, we should not need to be hiring people back that readily. This is a very competitive environment, and I would really like to see us extend the cooling-off period. That is one recommendation that we will work on.

The other thing that was changed since we changed the contracts language is in section 1, subsection 8, paragraphs (a), (b), (c), and (d). It refers to the Public Employees' Benefit Program (PEBP), Department of Transportation, State Plan for Medicaid, and financial services. We are not trying to get to these giant contracts. We are trying to get to the contracts that hire people in lieu of a state employee, not to make it any more onerous for these agencies and not to make them have to go through some other process where you know they are going to get the waiver, because those big contracts are for more than two years. I added that into the bill so it excludes the PEBP contract, the Medicaid contract and the big financial services. That may need some fine-tuning, but that is where it currently stands. I have no desire to hold those big contracts up to accomplish the goals of this bill.

I am sure you will hear from a few people today who either want exclusions or have concerns about the way they are affected. However, from the outcome of the audit, I believe this is the right thing to do. You will hear from Mr. Clinger of the Department of Administration about what they have done to change their processes since the audit came out. You will probably remember that the Governor has mentioned publicly that they had formed a task force to look at how to deal with this issue after the audit came out, and they have some recommendations that Mr. Clinger will discuss.

The other thing I would like to work with the administration on is, rather than have the waiver be granted by the Interim Finance Committee (IFC), it could be granted by the Board of Examiners. It does not matter who grants the waiver, as long as they know who is being hired, what they are making, who the people are, and that there is a good reason to grant an exception if they are within the cooling-off period or it is a contract for longer than two years. As long as there is a group within our state that is taking responsibility for that, I am good with that. If the administration wants to change that to the State Board of Examiners, I am fine with that. I just want the letter of this statute to be followed, and I think we are in agreement on that issue.

**Chair Kirkpatrick:**

I am wondering if the Board of Examiners' contracts are on a consent agenda or if it actually reviews them.

**Andrew Clinger, Director, Budget and Planning Division, Department of Administration:**

I will tell you that under Governor Brian Sandoval, Board of Examiners meetings, which in the past may have lasted 10 to 20 minutes, are now lasting up to 1 1/2 hours. The Board is looking at the contracts in great detail. I provide a packet of contracts to all of the board members. The first time I walked into Governor Sandoval's office, that packet probably had 50 little tabs in it with questions that the Governor had. He clearly read through that entire packet and asked questions during the Board of Examiners proceedings. I do think there is a very good review process that we go through with the Board of Examiners.

**Assemblywoman Bustamante Adams:**

In the audit highlights, it says that the agencies 60-day plan for corrective action is due March 8, 2011.

**Assemblywoman Smith:**

The timing is impeccable for this bill. Before Mr. Clinger begins his remarks, I would like to say that I appreciate the fact that they took this seriously and jumped right on it. You will hear Mr. Clinger define a process that is very tight and thorough regarding the contract issue. I appreciate the fact that we have come to some reconciliation.

**Assemblyman Stewart:**

I applaud the sponsor in working so closely with the administration, and I think you have already done a great deal to enhance the need for more transparency with these consultants. I appreciate your efforts.

**Andrew Clinger:**

I would like to say that with the changes that Assemblywoman Smith spoke about in regards to the approval process changing from the IFC to the Board of Examiners, the administration supports this bill. I would like to highlight some of the provisions that we are putting in place in response to the audit. We put together a task force to look at this. It included Mr. Willden, Mr. Chisel, as well as representatives of our Purchasing Division. What we are recommending is to amend the contract template to note that a state employee will not perform work on state time. We are also developing a contract application requiring agencies to document controls that they have established to ensure contract work will not occur during state work time. One of the things identified in the audit was employees overlapping their time as an employee and as a contractor.

We are also recommending amendments to the State Administrative Manual (SAM), which is the manual of the policies and procedures of the state. It is approved by the Board of Examiners so that it requires contractors to provide specific days and hours worked. That was one of the problems we had that the audit identified. Each contract that the state approved has a contract monitor. The contract monitor and the supervisor of those employees will be required to reconcile billings to the state employees' time sheet to ensure that they do not perform contract work on state time. We will put a process in place where the contracting agency has to approve that invoice as well as the employing agency.

We are also developing a secondary employment form that state employees with outside employment must complete. The form will require employees to identify when they perform outside employment and state work. One of the other things that the audit identified was excessive rates in some of these contracts. We are putting into place provisions that require a comparison of where a state employee can perform that state work, a comparison of the state rates versus the contract rates. If those contract rates exceed the state rates by more than 10 percent, it automatically must be approved by the Board of Examiners regardless of the dollar threshold on it. We are also recommending the development of a contract application to describe the normal job duties for current employees and the prior job duties of former state employees contracting with the state. These are just some of the provisions that we are putting place in response to the audit.

**Assemblywoman Benitez-Thompson:**

Within this process, when you are talking about the reconciliation of the invoices and the one example where an employee was paid for 25 hours in one day, is there some type of mechanism when there are overpayments or discrepancies that are not in the state's favor, to get those funds back to the state from the person?

**Andrew Clinger:**

If it was something that could not be worked out with the contracting agency, if it was not agreed to by all parties that it was an error, it would have to be turned over to the Office of the Attorney General. I should point out that we did get a list from the Legislative Counsel Bureau (LCB) Auditor of all of the contracts that were involved, and we are sending letters to those agencies to have them fix all of the problems that were identified. There were varying problems that were identified, whether it was the contract summary forms, or not identifying that this was, in fact, a state employee. Two issues cited did not even have contracts in place. We have letters to all of those agencies to correct items that were identified in the audit.

**Assemblywoman Benitez-Thompson:**

So it would go to the Office of the Attorney General. It is not necessarily an accounting function or provision within accounting to reconcile those differences?

**Andrew Clinger:**

It depends on the level of severity of the issue. I would say that, of the contracts that were identified, probably 99 percent of those contracts would not go to the Office of the Attorney General. In fact, some of those contracts were approved by the Board of Examiners. They went through the proper process that was in place at the time. The changes we are making will help prevent the types of abuses that were identified in the audit.

**Assemblywoman Debbie Smith:**

Currently, the contracts have a box to check if you are a state employee. In the new process that the administration has developed, it is not just a matter checking a box or forgetting to check a box, but having an actual application process that will clarify that if that is the case, and then it will initiate the automatic monitoring.

**Chair Kirkpatrick:**

Mr. Clinger, I am most impressed with the one comparison piece. I think that will be huge to a lot of folks, and I would bet some folks drop their rates and the state might benefit.

Anyone else here that would like to testify in support of A.B. 240?

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

As I said earlier, it is my day to support transparency, and I truly do support this bill.

**Nicole J. Lambole, Chief Deputy, Secretary of State:**

On behalf of Secretary of State Ross Miller, who is a member of the Board of Examiners, we support this legislation. I mentioned to the sponsor that we had some clarifying language that we would like to see added in section 7 that relates to the state business license. About a year ago, at Secretary Miller's request, the Board of Examiners found about 25 percent of contracts before the Board were not active or in good standing with the Secretary of State's Office. That means they either did not file their annual list of officers or had not filed for a state business license. The Board adopted a policy whereby state contracts had to be in good standing. We want to clarify the language so we do not capture those nonprofits who are exempt from having a state business license. I would also like to add, for the record, that through the Board's efforts

we have adopted policies that increase transparency. We require, through SAM, that the clerk of the board provide members of the Board packets at least five days before the Board meeting so the Board members have an opportunity to review the contract and other issues on the Board of Examiners' agenda. We also meet at times with the clerk to review various contracts to get more information. The clerk and his staff have done a tremendous job in providing more information to the contracts. We do support this legislation and any thing that will improve transparency.

**Chair Kirkpatrick:**

I understand that nonprofits do not have to have a business license, but we can require them to get one if they are getting a state contract, correct?

**Nicole Lamboley:**

They have to be active and in good standing. They may not have to have a state business license, but their articles of organization and their annual list of officers has to be active. It cannot be in default or revocation. That is where we would like to clarify the language that says certain entities have to be active or in good standing. There are also provisions with the interstate commerce clause, which is a complicated clause, and we have been working with the Office of the Attorney General and contracting agencies to clarify that. I think active and in good standing would ensure people are permitted to do business in this state, as the Legislature intended them to be.

**Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15; and Southern Nevada Building and Construction Trades Council:**

We are full in support of the bill. There are a couple of things that we believe are important, which are the provisions regarding licensing requirements. Even though it is not clearly stated in the bill, it appears that this would potentially apply to more than just consultants. It would also apply to contracts for procurement, service and maintenance, and construction with the named public bodies within the bill. We are definitely supportive of the principle. Hopefully these issues can be clarified by the bill's sponsor. If an individual is providing service maintenance or construction services, he would also potentially need to have a state contractor's license.

**Chair Kirkpatrick:**

Any questions? Anyone who would like to testify in opposition to A.B. 240?  
Anyone neutral on A.B. 240?

**Robert D. Chisel, Assistant Director-Administration, Department of Transportation:**

We want to make sure you are aware of a couple of issues. One is how a service provider is defined. We have a lot of services we outsource with contractors and vendors, particularly such as weed spraying, design work, et cetera. Most of these are longer than two years. Our projects are four years, and if the vendor has to provide equipment to an up source, such as weed spraying, it may be very costly and he will raise his rates because he only has two years to recoup those costs, instead of over a longer period of time. Particularly, as we are looking at outsourcing some of our maintenance activities which is another bill before Legislature, we would like to work with the sponsor to identify whether it is two years or four years or some longer period of time. In addition, if our agreements and contracts are highway related, they do not go to the Board of Examiners. They go to the Department of Transportation Board of Directors, which consists of fairly similar members, so we would like to discuss that as an option as opposed to the Board of Examiners.

**Chair Kirkpatrick:**

I am perplexed that Nevada Department of Transportation always tries to get out of this bill. Why is that? "Service provider" is pretty clear as far as I am concerned. We have to look at this as a whole, because if we exempt one then we exempt another. I really like the Board of Examiners because not everybody follows the Transportation Board. I do not know what the bill sponsor wants to do, but I would not support that as the Committee Chair.

**Assemblywoman Smith:**

I will work with the various people who have contacted me about concerns, but I will say to you that I am not a big fan of exemptions. I had another group come to me yesterday asking me to exempt them. Everyone has a compelling reason, but I really do not see the provisions of this as being too onerous. We are only talking about if you are trying to hire back people within the cooling-off period, or for contracts for more than two years. I do not have an appetite for either watering this bill down or giving exemptions. I will work with all those concerned, but I would really like to try to get this, once and for all, to the point that everyone understands the rules and they can comply with them. Again, in this environment, where we do not have a lot of activity, it is the time to fix it, so we have a clean path to the way we do this work.

**Chair Kirkpatrick:**

Any questions? We will close the hearing on A.B. 240. Is there any public comment?

**Assemblyman Ellison:**

I would like to make a note on Assembly Bill 242. I support the bill strongly, but would like to meet with the maker of the bill and make one recommendation if you do not mind?

**Chair Kirkpatrick:**

Any other business? Meeting adjourned at [10:35 a.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Recording Secretary

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 10, 2011

**Time of Meeting:** 8:03 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance roster
A.B. 239	C	Lisa C. Lloyd	Lincoln County's letter of opposition/request for amendment
A.B. 239	D	Tami Rae Spero	Humboldt County's letter of opposition/request for amendment
A.B. 239	E	Linda F. Burleigh	White Pine County's letter of opposition/request for amendment
A.B. 239	F	Amy Harvey	Washoe County's letter of opposition/request for amendment
A.B. 1	G	Assemblywoman Kirkpatrick	Amendment
A.B. 242	H	Assemblywoman Kirkpatrick	Written presentation
A.B. 242	I	Assemblywoman Kirkpatrick	Amendment
A.B. 242	J	Susan Meuschke	Written testimony
A.B. 240	K	Assemblywoman Smith	Written presentation