

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

**Seventy-Sixth Session
April 4, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:01 a.m. on Monday, April 4, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
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:

Assemblyman John Ellison (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Richard (Skip) Daly, Washoe County Assembly
District No. 31

Assemblyman Ira D. Hansen, Assembly District No. 32

Assemblyman Crescent Hardy, Clark County Assembly District No. 20

Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst

Cyndie Carter, Committee Manager

Cheryl Williams, Committee Secretary

Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Patrick T. Sanderson, representing Laborers' International Union
Local 872

Dan Musgrove, representing City of North Las Vegas

Susan Fisher, representing City of Reno

Danny L. Thompson, President, Nevada State AFL-CIO

Keith G. Munro, First Assistant Attorney General, Office of the
Attorney General

Suzanne Kilgore, Research Analyst, Nevada Taxpayers Association

Frank Partlow, Private Citizen, Reno, Nevada

Dale A. R. Erquiaga, Senior Advisor, Office of the Governor

Matthew A. Taylor, President, Nevada Registered Agent Association

Tray Abney, Director, Government Relations, Reno Sparks Chamber
of Commerce

Ted J. Olivas, Director, Administrative Services, City of Las Vegas

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

Kathy Clewett, Government Affairs Coordinator, City of Sparks

April Medlin, Private Citizen, Las Vegas, Nevada

Martin G. Crowley, Attorney, Fallon, Nevada

Colleen McCarty, Investigative Reporter, Channel 8 I-Team,
Las Vegas, Nevada

Trevor Hayes, representing Nevada Press Association

Barry Lovgren, Private Citizen, Carson City, Nevada

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

James W. Pierce, Assistant County Clerk, Clark County

Nathan Hill, Records Analyst, City of Henderson

Joyce Haldeman, Associate Superintendent, Clark County School District

Laurel Jimenez, Information Technology, Clark County Recorder's Office

Alan H. Glover, Clerk-Recorder, Carson City

Lisa Foster, representing League of Cities and Municipalities

Susan Fisher, representing City of Reno

John J. Slaughter, Government Affairs Director, Office of the County Manager, Washoe County

Jennifer P. Togliatti, Chief Judge, Eighth Judicial District

Karen Gray, Researcher, The Nevada Policy Research Institute, Las Vegas, Nevada

Kyle Davis, Policy Director, Nevada Conservation League and Education Fund

Susan Lynn, Coordinator, Great Basin Water Network

Bjorn Selinder, representing Churchill, Eureka, and Elko Counties

Jake Tibbitts, Natural Resource Manager, Eureka County

Doug Busselman, representing Nevada Farm Bureau Federation

Dean Baker, Manager, Baker Ranches, Inc., Baker, Nevada

Jason King, State Engineer, Division of Water Resources

Leo M. Drozdoff, Director, Department of Conservation and Natural Resources

Andy Belanger, representing Southern Nevada Water Authority; and the Las Vegas Valley Water District

Chair Kirkpatrick:

[Roll was taken.] Our agenda is going to drastically change this morning as we try to accommodate everyone. I will tell you that we are not going to be able to do this much. We are meeting on Thursday nights and we will be here until the deadline. So please, if you have bills up, do not change them.

Assemblyman Segerblom cannot be here until 8:30 a.m., so we will not hear Assembly Bill 159 until he gets here. Assemblyman Hansen is waiting for people from the Office of the Governor. We will wait for the Governor's Office to arrive.

Assemblyman Ellison is ill so we will not hear Assembly Bill 257.

Assembly Bill 257: Revises provisions relating to the Open Meeting Law. (BDR 19-107)

[This bill was not heard.]

We will hear Assembly Bill 423, which is Assemblyman Daly's bill.

Assembly Bill 423: Allows certain organizations to request an opinion of the Attorney General under certain circumstances. (BDR 18-719)

Assemblyman Richard (Skip) Daly, Washoe County Assembly District No. 31:

Assembly Bill 423 provides a limited opportunity for labor organizations and trade associations to get an Attorney General's opinion if there is a dispute with that agency regarding a state law or regulation. It is a two-page bill. As I said before, nothing is ever simple, but I believe the bill is pretty straightforward on what it does and what we are trying to do. I had some other people that were going to give some examples of how this would be helpful, but I can do so if necessary.

I will bring up one issue, and this was with Cabela's and the Sales Tax Anticipated Revenue (STAR) bonds in Reno. Maybe if we had this process in place we could have avoided what turned out to be a three-year lawsuit that went all the way to the Nevada Supreme Court, which recently just ruled in favor of the position that was taken by the Building & Construction Trades Council of Northern Nevada against the Labor Commissioner. We think that could have been done at a lower and less-expensive level. We look at going to the Attorney General as mediation before arbitration, trying to get a neutral or an unbiased person's opinion on what the situation is.

With that, I would be happy to answer any questions. I know there are a couple of people that have some concerns.

Chair Kirkpatrick:

Are there any questions?

Assemblywoman Bustamante Adams:

Can you talk about the fee for the opinion that you are seeking to use through the Office of the Attorney General?

Assemblyman Daly:

Yes. When I ran this by the Attorney General a couple of years ago before I even decided to run for office, one of the things she said was, "This cannot cost my office any money." I would not want that either. The fee is set up to try to limit people from going after frivolous stuff. It will cost \$2,500, even if the Attorney General spends less than that on the opinion. If the hourly rate charged goes over \$2,500, you pay the difference. There is zero cost, and that was the intent, to the Office of the Attorney General.

Chair Kirkpatrick:

Are there any other questions? I do have a question. On page 2, starting on line 26, if you could explain paragraphs (a) and (b) together, that would be helpful.

Assemblyman Daly:

That was the part that I just answered for Assemblywoman Bustamante Adams. It says, "The Attorney General shall charge an organization that requests an opinion pursuant to subsection 3 a reasonable fee as provided in this subsection for providing the opinion. The fee: (a) Must be charged for services on an hourly basis in an amount sufficient to pay the salary and other expenses of the deputy attorney general who provides the services; and (b) Is \$2,500 if the amount described in paragraph (a) is less than \$2,500."

That is the way I read that: if the amount that it costs them to write the opinion is less than \$2,500, they still charge you the \$2,500. If it is above that, it is whatever the hourly amount is that is above \$2,500. That is the bill you are going to get.

Chair Kirkpatrick:

Okay. Does anyone else have any questions? Assemblyman Daly, do you have anyone that you would like to call up to support your bill?

Assemblyman Daly:

I just got a note that Danny Thompson is going to be here, but he is still about 20 minutes away. We are not waiting for him.

Assemblyman Goedhart:

How often do you think something like this would be utilized? You had pointed out one specific case as related to the STAR bonds and the development and construction of one of the stores there in Reno, but how often do you think this would actually be utilized by the labor unions or trade workers?

Assemblyman Daly:

That is hard to say. I am sure that there would be some instances and cases. It would be more than zero, and ten or fewer in a two-year period. I do not anticipate that many of them. Not many people are going to bring up a frivolous case if they have to spend the money. I could not say for sure. It is kind of like asking the Secretary of Defense, Robert Gates, how long the action in Libya is going last. No one knows.

Assemblywoman Bustamante Adams:

Can you tell me what the traditional route is for something like this? Does it go through the Labor Commissioner? Is that how I understand it?

Assemblyman Daly:

Various cases are different. It may go through the Labor Commissioner. The Cabela's case that I mentioned earlier went through the Office of the

Labor Commissioner. It was STAR bonds; there were issues over the payment of prevailing wage. A complaint was sent to the Labor Commissioner's Office. The Labor Commissioner went through his process and made a determination. There was an objection to that determination, and that ended up in District Court. The District Court ruled in favor of the Building & Construction Trades Council of Northern Nevada. The City of Reno appealed to the Nevada Supreme Court. Three years later, we have a decision. Now the contractor is gone, workers are not able to be found, et cetera. Part of the dispute was over the interpretation of the *Nevada Revised Statutes* (NRS) on whether the Labor Commissioner actually had jurisdiction or not. Now they are going to try to correct part of that in some other bills that I have seen this session. We cannot anticipate everything.

The other case that is separate from that involves some municipalities and would have nothing to do with the Labor Commissioner. Some municipalities believe they can use a "construction manager," not a "construction manager at risk" but "construction manager" delivery method for public works. My opinion and the opinion of other people that I know is that this does not exist in the statute and they insist it does.

Assemblyman Livermore may recall that I went to the Carson City Board of Supervisors and told them that they cannot do it like this. We would have ended up having a lawsuit aside from the project that they were looking at, which did not go through because they lost their funding. In that situation, we asked Carson City to request an opinion from the Attorney General because right now the city attorneys and district attorneys can request one if it has to do with state law. They said, "We have our legal counsel, and he says we are right." So basically they said, "Go ahead and sue us." This bill would give us an opportunity in that circumstance to avoid a lawsuit, get an opinion and move "the discussion" in a different direction rather than conflict.

Assemblyman Goedhart:

Going back to the Cabela's case, say hypothetically a trade organization had requested an opinion from the Attorney General's Office at that point in time. That is basically an opinion; it is not a ruling. In this case, the City of Reno decided to go ahead and appeal the decision of the District Court. The opinion of the Attorney General's Office would not necessarily preclude the City of Reno from appealing the decision to District Court and so on. Is that correct?

Assemblyman Daly:

Yes, that is correct. My understanding is the same as I mentioned. It is mediation. It is nonbinding. The opinion is an opinion. Everyone still has all

their options open to them. Again, if you go to a mediator to try to end a dispute, generally the person is unbiased. The Attorney General is not going to come to any meeting. They will look at the law, look at the facts, and then they will give an opinion. Both sides still have their options open to disagree, but we think this will be helpful if that step is in there.

Assemblyman Goedhart:

I have been involved in a couple of legal actions where the Attorney General's opinion, at some point in time, was overruled at the district court or at the Nevada Supreme Court. It is my opinion that if either one of the two parties feels that convinced of the rightfulness of its position that an opinion is just going to be looked at by one side as validation, and the other side is not just going to come back to the mediation table because we have an opinion from Mount Sinai. Thank you.

Assemblyman Daly:

I appreciate that and you are correct. The other side of that is if a person gets an opinion, it will either help or hurt. Obviously, you have a dispute. Both sides believe that they are right, but one side is going to be wrong in the adjudication; that is what the court system does.

But, as in a court opinion or a court ruling, at least you have an idea where you stand. If you want to proceed or if you want to make a correction at the Legislative level rather than going further, you have an idea of where you need to go and what needs to be changed in order to clear up the dispute. I do believe that it will be a useful step in the process.

Assemblyman Livermore:

I am little bit concerned about the Attorney General trying to wear two hats. I do not see anything that provides for her to recuse herself or to declare a conflict of interest. In the case that you referenced, I think the Board of Supervisors directed the district attorney to seek an opinion. Who would get this service and who would not? Did I make myself clear with that?

Chair Kirkpatrick:

Assemblyman Livermore, are you asking if the Attorney General would be conflicted because she may be representing local government as well as the Labor Commissioner? Is that what you are asking?

I do know that when the Attorney General's Office was before us, she stated she represents the boards predominately and she does weigh in with local government when asked. So, maybe we can get Ms. Masto to get that answer to us later, but I think that she already does wear separate hats.

Here is the way I see it. Everyone wants an opinion from the Attorney General's Office when they cannot get the answer they want somewhere else. I mean either side. Local government does the same thing. They are quick to say, "Bail me out." My personal opinion is that everyone uses the Attorney General's Office for convenience. I do not see a conflict, but I am happy to call Ms. Masto later today and ask her. I do support the fact that at least you are paying for that opinion. I wonder why there is no time frame in here, because sometimes the Attorney General's opinion can take just as long as going to court. Was this ever a discussion?

Assemblyman Daly:

Let me go to the time frame, and I will then talk about the conflict. There is a representative from the Attorney General's Office here that will be able to speak to that. The time frame is not in there because it was not one of the concerns that was brought up to me by the Attorney General. I do not know if we want to put some precedent on this over other pressing issues and various things to say, "Hey, you have to do this first." I think everyone understands the inherent roll of the dice, to use a term from Nevada, on seeking any of these things. You never know how long a court case is going to take. I think the Attorney General's Office would be faster than any of the court cases that I have witnessed.

On the conflict issue, that was a concern that was brought up. The Attorney General has had several hats all the way across the board. We want to try to avoid that as much possible, but it is like this: in my regular day job, we recently had an issue between two members of our union at the Nevada Cement Company and we separated it out. I was the representative for one of them and the other person got a different business agent to work for him. We walled that off. I did my case and he did his case. They were in conflict, and one of them was terminated and the other person was not. There are ways to do that in the Attorney General's Office; wall it off and make a decision and go from there.

Chair Kirkpatrick:

Does anyone else have any questions? If Mr. Thompson would like to submit some testimony we will take it throughout the day.

Assemblyman Daly:

If he shows up, I will direct him to your office.

Chair Kirkpatrick:

Mr. Sanderson, did you want to come up in support?

Patrick T. Sanderson, representing Laborers' International Union Local 872:

I think this is a common sense bill, one that brings two warring parties to the table, and lets them sit back and listen after they get into a disagreement and work things out. That is the main thing. You will have a district attorney in that area that is going to say, "This is the way it is going to be, or else."

You have the labor union that says, "We think that we are right." We are just looking for someone to step in there before it goes any further, and maybe it can get worked out. When people sit down and talk, things get worked out. If that never happens, then it goes to court. You then waste thousands of dollars, and it does not get taken care of until after the problem is completely over.

I like common sense bills, things that stop people from getting into a big fight. Work things out, and if it goes on, then it goes on. But a lot of times you can work things out just by sitting down and talking. I would appreciate it if you would take a look at this bill, pass it forward, and we will work it out. Thank you very much.

Chair Kirkpatrick:

Is there anyone else who would like to testify in support of A.B. 423? [There was no one.] Is there anyone that is in opposition of A.B. 423? If you do not testify either for or against, it goes on the record.

Dan Musgrove, representing City of North Las Vegas:

I have talked to some of the other local governments, and they were willing to allow me to come and talk about how this would affect cities. I appreciate Assemblyman Daly a great deal, especially as someone who sat on this side of the dais and worked hard to lobby the legislature and then took the big step to run for elected office. I understand his position. We just have to disagree, because we see the Attorney General as the chief law enforcement officer of the State of Nevada. She is government's legal counsel. Local governments, being creatures of state government, want the opportunity to use her as a second opinion, especially cities that have appointed city attorneys unlike counties that have elected district attorneys.

There is a lot of natural conflict that can occur between elected officials and the city attorney. There are times when the city attorney comes up with a decision that might be in opposition to how his/her own elected officials might feel. That gives local government a feeling of comfort that it can use the Attorney General as an opportunity to gain a second opinion, a backstop in other words, not necessarily as a mediator as the previous people testified.

That is not her role. Her role is to issue legal counsel, and I do not pretend to talk on behalf of the Attorney General. We have Mr. Munro in the audience, and will come up as neutral with some grave concerns.

We are lucky to have an excellent Attorney General for the State of Nevada right now, and I am very prejudiced in that matter. She has gone out of her way to act nonpartisan and it is that nonpartisan nature that is important. Her job is to read the law and come up with an opinion.

My fear is that if this becomes a position of arbitration, if it becomes a position where she is actually deciding between two parties, I think in the future you might see people looking to gain advantage with future Attorneys General. Whether it is business, whether it is labor to try to get her or him on its side in the future, it now becomes a race as to who gets to the Attorney General first to ask that opinion. We want local government and state agencies to be able to use her in the position that the framers of the *U.S. Constitution* see attorneys general, as the chief law enforcement and the legal counsel for state agencies and creatures of the state, which local governments are.

It is an important backstop for us, and we have utilized the Attorney General in the past. I think that is the role that she should have in state government, not as a mediator or arbitrator.

With all due respect to Assemblyman Daly, labor organizations have the ability to get private attorneys. They can get their own opinions. We have arbitration and mediation to sit down and make those decisions to try to work things out. Then if we do not agree, that is when it goes to court. It is not the role of the Attorney General to begin acting as a judicial branch to decide between two parties. Her job is to issue opinions, and whether or not the two sides agree with that opinion, you then proceed with the courts.

We do not believe this legislation is necessary. I think it is important that the Attorney General maintain her place as the chief law enforcement officer for the state and its agencies. With that, I stand open for any questions.

Susan Fisher, representing the City of Reno:

I did not check in as in opposition, but we are also opposed to this measure for the same reasons that Mr. Musgrove stated. I will not try to restate everything that he said. The Attorney General provides a very good backstop when there is a bit of a conflict between the council and the city attorney. This gives us a good sounding board to have the option to go to Attorney General, for the same reason that the labor unions do have a lot of resources to be able to hire their own legal staff. We do have concerns.

Chair Kirkpatrick:

Assemblyman Anderson has a question.

Assemblyman Anderson:

Mr. Musgrove, I am trying to figure where in the bill it says that the Attorney General is going to be a mediator. All I see is that she can provide an opinion.

Dan Musgrove:

Assemblyman Daly referenced that in his testimony. One of the examples he talked to me about was before and during the Cabela's hearing, if Cabela's could have first gone to the Attorney General and got an opinion, the company believes that that would have given it the opportunity to mediate it before it went to court. I think their intent is to be able to use an opinion in their favor to go to the local government and say, "Hey, look. See this is how the Attorney General feels. Are you sure you want to push this any further? We need to sit down and mediate this." I think that is what I heard him say. If not, I agree that the bill does not necessarily say that. What I testified to is it gets to be a position where parties are going to race to the Attorney General to try to get the opinion that they want. I do not feel that is her role.

I would hate to see, in future years, campaign contribution issues, and that is what we talk about when we have judges. That is reason this Legislature looked at a different way of electing judges and took the campaign contribution matter of it. I think that we do not want agencies, people, or organizations providing the Attorney General with contributions to try to get the Attorney General to look to err on their side. That would never happen with this Attorney General; I can guarantee that, but you never know what will happen in the future.

Assemblywoman Benitez-Thompson:

I am having trouble reconciling your argument, and would like you to help me understand. What I hear you saying is that you are worried that by allowing this bill to pass, the Attorney General may somehow be less objective in her opinions or that the motives behind issuing an opinion may change based on the fact that you are going to have cities and labor unions lobbying her to try and get the opinion that they want. The Attorney General is elected to begin with, so I have trouble thinking there are not politics inherent within an elected system and the people who are elected. I am trying to understand how your argument follows through. I think if the labor organizations are willing to pay the amount to get an opinion then the Attorney General is going to be objective in issuing that opinion. I have trouble with the premise that somehow that office may lose objectivity in this.

Dan Musgrove:

I would agree that would never happen with this Attorney General. To me, the trouble with this bill—it is the nose under the tent. Why would labor organizations have standing with the state's chief law enforcement officer? Usually, they are in opposition with the local government. What is to say that at the next legislative session we do not ask that someone else be given the opportunity to use the Attorney General? It just goes and goes. It is government and the boards that operate within the state structure that should have access to the Attorney General.

I think it starts a trend that was never anticipated in the role of the Attorney General. It concerns me, in the future, who has standing to ask the Attorney General for an opinion. I do not feel anyone should be lobbying the Attorney General, but I think with a bill like this it will allow that and almost create an atmosphere where that is going to happen in the future. If this bill does not go through, then there is not a reason to lobby the Attorney General. She is just going to rule on the facts of the law, and we want to maintain that true standing. That is just my opinion.

Chair Kirkpatrick:

Did you want to follow up, Ms. Thompson?

Assemblywoman Benitez-Thompson:

I have more of a statement. I would think in those cases where there is a conflict, and for some reason local government is not going to the Attorney General, labor organizations would be willing to pay. And I think that the fee looks pretty fair, and gives them due cause to stop and think, "Do we want to spend this money to get an opinion that might not line up with us." What I am hearing that I have trouble with is the assumption that the Attorney General is always going to side with labor and lose objectivity. That is the premise of the argument that I have concern with. It is very possible, and what no one has discussed, is that they go for an opinion and that opinion supports the city and what the city or local government is trying to advocate for. If this opinion could prevent thousands of dollars in a legal case that a local government might not otherwise spend, then I think that it would probably be worth it.

Dan Musgrove:

Just one follow-up if I could. I think in that case there would not be any reason why the local government would not be the one asking for the opinion.

Chair Kirkpatrick:

We could debate this all day long, but we will not.

Assemblyman Goedhart:

I am trying to get a feel for how many other states allow the labor and trade organizations to have the opportunity to get an opinion from the Attorney General's Office. Has anyone done any research on that at all? Was the genesis of this bill because other states are now doing it? Or have other states always done it?

Dan Musgrove:

I happened to ask Assemblyman Daly about this before the hearing. I do not want to testify on his behalf, but he told me that this would be the first state ever to do this. That is something you might want to consider.

Chair Kirkpatrick:

We will let Assemblyman Daly clarify that when he comes up. Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who is neutral? We can go back to support after we do neutral.

Danny L. Thompson, President, Nevada State AFL-CIO:

I am in support and I apologize; I had another meeting. I do not want to belabor the point, but I would like to say that the money that is spent on these cases is astronomical on both sides.

The Cabela's case, which the Nevada Supreme Court ruled on last week, did not need to happen, and with a mechanism like this you could have prevented both the costs to the City of Reno and to the organizations that spent the money taking it to the Nevada Supreme Court. I have been to the Nevada Supreme Court so many times I cannot tell you, and I have never gone to the Nevada Supreme Court for less than \$100,000. The amount of money being wasted on these cases that could be decided with an opinion certainly would have been worth it. Thank you.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] That, for the record, Cheryl [addressing the Committee secretary], was in support. Is there anyone neutral that would like to testify?

Keith G. Munro, First Assistant Attorney General, Office of the Attorney General:

We have talked at length with Assemblyman Daly about this bill, and we certainly appreciate his efforts. Mr. Sanderson said, and I do not think anyone could have said it any better, it is awfully good when parties can talk and get together and that is certainly something to strive for.

The Attorney General's Office is created in the *Nevada Constitution*, but for the most part, we are a creature of statute. This is a fancy-pants way of saying we do what the Legislature tells us to do, and if the Legislature wants us to undertake this, we will do it.

We did some research, and Assemblyman Goedhart had a question about other states. This would be unusual for an attorney general's office. We checked all the western states and could not find any other attorney general's office that does this.

In some cases this might cause a little conflict for us because we represent the Labor Commissioner. If it was a dispute with the Labor Commissioner, and an opinion came to us, it might be the same opinion we gave to the Labor Commissioner.

I would also like to note, for the record, some of the definitions in section 6 seem to be a little vague. If this bill gets processed any further, we would like to have a little bit more clarification on who we would be giving an opinion to.

Chair Kirkpatrick:

Are you talking about section 1, subsection 6? Does anyone have any questions for Mr. Munro? Assemblyman Daly, do you have any final comments?

Assemblyman Daly:

I did speak with the Assistant Attorney General, Mr. Munro, about subsection 6, paragraphs (a) and (b), and we will work with him to try to make sure that is narrow enough. We do not want to have it wide open or contain too many things. That was one of the things that the Attorney General talked about.

A couple of the other things that were said include the Attorney General is not judicial. We are not trying to decide the case. We are trying to get information that may balance things out. I know when Mr. Musgrove was talking, he said one side is going to race to the Attorney General and try to lobby, and right now there is no need to race. It is a one-sided deal, and you already said we do not need to argue how often they actually go to get those opinions.

I have been told by more than one city attorney and district attorney, "I do not need to go to the Attorney General. I have made the decision, and this is what I am going to advise my client—end of story," practically challenging us to sue them. I am just trying to avoid that step. The Attorney General is the chief law enforcement of the state, and I have complete confidence that the

Attorney General's Office is not going to be susceptible to bias and various things. They will look at the law, and then they are going to make an interpretation.

As far as the opinion where one side may get it so that we can use it as mediation, it is the same thing on the other side. If the opinion goes in the other direction and in favor of, say the City of Reno, it would cause us to change our position potentially, or to look for a legislative fix which I think happens on both sides. I will agree with Mr. Sanderson; this is pretty much common sense and I am hoping for your support.

Chair Kirkpatrick:

Thank you, Assemblyman Daly. Does anyone have any questions? [There was no one.] Is there anyone in southern Nevada who would like to testify on A.B. 423? [There was no one.] Seeing none, I am closing the hearing on A.B. 423. We are going to go back to Assembly Bill 243.

Assembly Bill 243: Creates the position of State Grants Coordinator within the Budget Division of the Department of Administration. (BDR 31-585)

Assemblyman Ira D. Hansen, Assembly District No. 32:

While running for this office, I became very acquainted with the Spending and Government Efficiency Commission, the SAGE Commission. One of the things I did upon election was meet with the principals involved in the Commission and ask for recommendations as to what their priorities would be.

Their No. 1 priority was the grants position coordinator, and I will read why. On a per capita basis by federal agencies, Nevada is ranked 50th in the U.S. Census Bureau report *Federal Aid to States for Fiscal Year 2008*. Another census report shows Nevada's per capita return on each federal dollar as a percent of U.S. per capita levels at 75 cents compared with 95 cents for states in the Western region.

For grants alone, Nevada's return is 65 cents compared to the \$1.06 for the Western region. The real key though, for my interests, was the amount of money that we are leaving on the table. And we are not talking about just savings. We are talking cold, hard cash that we could be getting.

If we pass this position, the amount of money that the SAGE Commission estimated would be brought into Nevada in the first year is \$93 million. Over a five-year window, it would be \$310 million.

If you are not familiar with the SAGE Commission, it is made up of seven Democrats, seven Republicans, and these are highly influential people. Two of them are sitting with me now. Immediately to my left is Suzanne Kilgore of the Nevada Taxpayers Association who is the General Manager of the SAGE Commission. On her left is General Frank Partlow, retired from the U.S. Army, and a graduate of the United States Military Academy at West Point. That is the caliber of people that did this, and this was a unanimous decision among the seven Democrats and the seven Republicans that made up the SAGE Commission.

Here is what my bill would do specifically: section 2 of this bill creates the position of State Grants Coordinator within the Division of Budget and Planning of the Department of Administration to disseminate grant information and encourage collaboration on grant opportunities for governmental entities in this state. Section 3 of this bill creates a State Grants Master Service Agreement Fund to pay for services provided to state departments, agencies, and divisions by private contractors who prepare applications for grants under master service contracts with the State Grants Coordinator. Section 4 of this bill increases, under certain circumstances, the maximum amount of government grants that a state agency may accept from \$100,000 to \$225,000, with the maximum amount of gifts including grants from nongovernmental sources that a state agency may accept increased from \$10,000 to \$25,000.

I am not an expert on grants. That is why I have the experts here with me today. I am someone who ran for office telling everyone that I would do everything possible to raise as much revenue and keep taxes to a minimum.

The SAGE Commission recommendations are a godsend when you have people of this caliber coming up with these sorts of ideas and generating this kind of income. We need to give very careful consideration to that, and that is what this bill essentially does.

Also, from the Office of the Governor we have Mr. Dale Erquiaga, who will address the question on the fiscal note. If you recall the Governor's State of the State address he addressed this specifically, and there is money already in the Governor's budget to cover that. With your permission, Madam Chair, I would like to allow Suzanne Kilgore to go over a few more of the details of the bill.

Chair Kirkpatrick:

Just so you know, we are the policy committee. So, regardless, it would have to go to the Assembly Committee on Ways and Means. We just like the policy to be correct before it leaves our Committee.

Assemblyman Hansen:

Understood. Thank you.

Suzanne Kilgore, Research Analyst, Nevada Taxpayers Association:

I am here representing the Nevada Taxpayers Association and as the former General Manager of the Nevada SAGE Commission, in both roles, I am here in support of A.B. 243. This was modeled after Recommendation No. 41 of the SAGE Commission. The Commission's interest in the proposal was spurred by comments made to Commissioners when they were in Washington, D.C. meeting with the Office of Management and Budget and the Government Accountability Office.

In both cases, the statement was made to them, "Nevada is leaving a lot of money on the table." What does that mean? Their suggestion was that we contact what were, in their opinion, the two best states in the country in terms of an organized approach to grants procurement and management. Those two states were Maryland and Texas.

We identified the basic principles that were being used by Maryland and Texas. They had different approaches, but their concept was exactly the same. Perry Comeaux and I hosted a roundtable, and we were able to get 12 different state employees who represented eight different departments. Each of these people were very involved in trying to get grants for the state.

We sent out a memo to them in advance explaining the principles we identified, and we gave them a short survey to come back to us with. We then compiled their answers, blah, blah, blah.

We worked with them that afternoon on how they were approaching this and what we had presented to them as a concept of a grants management program. We came up with a recommendation that afternoon. The crux of the idea is to have a coordinated approach, and it is one that not just allows, but directs, a collaborative effort among different state agencies, among state/local government, nonprofits, and even business entities.

There are currently three bills that have been introduced this session to create a distinct effort on grants procurement. Assembly Bill 243 warrants our strong support because it is structured to make a long-term commitment for all state

and local entities. It is about building a collaborative system for grants application management, and it is a proven approach and has huge long-term benefits for Nevada.

Chair Kirkpatrick:

Does anyone have any questions? I have a couple of questions. In section 2, subsection 2(b), I am a little nervous about the part identifying active employees as consultants. I think that they have to wear two separate hats, so is there a task force or something that you are going to put in place? If they are active state employees they should be active state employees and not be collecting a separate paycheck as a consultant. How do you envision that?

Suzanne Kilgore:

What that actually means is when people are putting together a grant application, which I am told can take 4,200 collective hours to do, there are many specific requests in the grant application. The idea is that there are state employees who are experts in that one little field. They are not writing the application, but they could do one of the little pieces of the grant.

Chair Kirkpatrick:

I know the Governor's Office has made some big strides on when and how you can and cannot be a consultant, but is there a better way to write that language? For me, it could be misconstrued as you could wear those two hats and probably do quite well for yourself.

Suzanne Kilgore:

Right. In honesty, I think we envisioned it as being former state employees who left with expertise and might be interested in helping.

Chair Kirkpatrick:

Okay. Recommendation No. 41 from the SAGE Commission ([Exhibit C](#)) currently says a significant number of opportunities for federal funding are not pursued because of an inadequate availability of grant writers and the lack of a communication structure among state agencies with county governments, local governments, and nonprofits. But in the bill, I do not see any reference to local governments.

This is something we have been trying to do for a long time, at least since I have been here. In 2005, we realized in the Assembly Committee on Natural Resources, Agriculture and Mining the huge losses, the money we were not getting because we did not have the database to collect some of this information. The other thing was that we could not react fast enough in order to actually get some of these grants.

Local government seems to have the ability to react a lot faster, but I do not see where the coordination is in these two bills. Local government will love it when I say this, but if we are not required to work together, it will not necessarily be a priority.

Suzanne Kilgore:

Certainly the language could be amended, but the concept is that by having a central office where all this information goes, job one for that office is to build the network. The network has to be much larger than the state. That is where you bring in the local government contacts, the nonprofit contacts, and whatever, and that is the place. So, if someone in the Department of Corrections saw an opportunity for a grant, he could find someone in Washoe County immediately to work with him.

Assemblyman Hansen:

If I could address that, in section 2, subsection 2, "The State Grants Coordinator shall (a) Research and identify potential sources of money which may be available to match state, county and local programs and solicit money from those sources." We can certainly amend that to expand the language as you suggested, as well as to deal with the issue of active and former state employees. We are more than happy to do that.

Chair Kirkpatrick:

When we talk about matching, we lose a lot of grants because we cannot match them. We do not want to cause local government to lose them for that same reason. I just think there has to be more communication. Does anyone else have any questions?

Assemblyman Goedhart:

On page 4, you have some differences on the amounts on lines 14 and 15. I was wondering on line 15, government grants, why do they have limits on those grants anyway? I am trying to get to the reasoning behind that. On page 4, it says a state agency may accept gifts, including grants, and then it says governmental grants, previously limited to \$100,000, now may not exceed \$225,000 each in value. Why do they have a limit on what type of grants we can get, and why was that value increased from \$100,000 to \$225,000?

Frank Partlow, Private Citizen, Reno, Nevada:

Madam Chair, I may be able to answer that. I am testifying later on another bill. I am the former Executive Director of the Nevada SAGE Commission, and the Nevada SAGE Commission also made a recommendation which we are going to take up with Assembly Bill 424 later on in the session or whenever the Chair determines.

We are going to testify why those limits were changed for that bill. I assume that those who drafted this bill wanted the two bills to track so that we would be talking about the same thing. I am not certain of that, but that is my guess.

Chair Kirkpatrick:

Let me ask this question. Assemblyman Hardy's A.B. 424 on the work programs is scheduled to be heard today. Currently the Interim Finance Committee (IFC) has to look at a lot of those, but we also have Assembly Bill 450 today, which allows for at least the Assembly Committee on Health and Human Services to expedite some of those grant processes so that we can actually get the money out as fast as we get it, correct?

Suzanne Kilgore:

The IFC thresholds on gifts and grants have not been raised in years. That was something the SAGE Commission separately identified as not realistic, to have those low amounts to be able to take the money and go. That is why we are suggesting those thresholds be raised. The delay that is caused when we have to go to IFC has caused us the loss of some money because we have missed deadlines.

Chair Kirkpatrick:

Are there any other questions?

Assemblywoman Pierce:

In section 2, subsection 3, it says the State Grants Coordinator may enter into master service contracts with private contractors, and then in section 3, subsection 2, it says the money in the fund must be used only to pay the costs of master service contracts with private contractors. So, this is not aimed at developing any kind of in-house grant writing expertise. This is entirely created to hire private contractors to do this.

Suzanne Kilgore:

The master service agreement is a smaller part of this proposal, and the idea of it is that within different agencies they do not have designated grant writers. So, if there was an opportunity but they did not have someone available to do a grant, there would be this pool of money over there so they could actually hire an independent grant writer. The overall concept here is to build the expertise within our own agencies to do it. This is just a way they can get help if they have to do something in a hurry and they do not have the staff available to do it.

Chair Kirkpatrick:

Let me follow up with Assemblywoman Pierce. Would those then go out to requests for proposal (RFPs) because that seems like that would add time to those as well.

Suzanne Kilgore:

The master service agreement I am assuming would be done through purchasing, and the Grants Coordinator would have a list of available, authorized, outside consultant grant writers to call on in that case.

Chair Kirkpatrick:

Okay, and that is consistent with the State of Maryland?

Frank Partlow:

For the record and to clear up the record, I was Executive Director, not a Commissioner on the Nevada SAGE Commission. I held that position from June 2008 to December 2009. Suzanne Kilgore was our General Manager, Perry Comeaux, the former Budget Director of the State of Nevada was my Deputy Director. Those were the three staff people, and Assemblyman Hansen has described the nature of the full Commission. I want to make sure that you understand, it was our job—Suzanne, Perry, and my job—to present ideas to the Commission much as you are acting today. The Commission then voted on these ideas. Assemblyman Hansen's statement that the Commission unanimously approved this particular recommendation is factually correct.

I would also to state for the record that I am the author of a book called *SAGE Nevada: Bipartisan Directions for Nevada's Future*. I provided that book at my expense to each member of this Legislature. I am very proud that I did that. I am not asking for any special recognition for that, but I want to make sure that it is understood that there are parts of that book which are my personal opinion and not actions of the SAGE Commission. I actually have no official capacity in this state at this time, except that I am a member of the Nevada Veterans Services Commission.

I want it clear that I am really speaking to you as a private citizen in favor of this bill, and here is why: I was a member of the SAGE Commission who went to Washington, D.C., and I have a significant amount of experience in Washington, D.C. with both the Office of Management and Budget, as well as with the General Accounting Office.

The other members who were there and I were absolutely floored when we were told that Nevada has the worst record for getting federal funding of any state. You can fudge that around, use other statistics, but that is what they

told us. The statement was, "Nevada is leaving a lot of money on the table." I am not going to rehash the specific figures for that.

I would like to move on and simply say that the other states that Ms. Kilgore researched coordinate their grant writing efforts through effective communication between grant writers throughout the state, whether governmental or private sector. I think that is a huge consideration that you need to keep in mind.

Maryland is a classic example of how this system works. Maryland is No. 1 and Nevada is last in terms of getting federal funds. In Nevada by contrast, the City of Sparks competes with Washoe County, the City of Reno, and the private-sector nonprofits throughout the state for the same grant. I discovered personally that there are separate state agencies that are competing with each other for the same grant. Nevada can do better, and this is something that I wanted to add because I think it is very important. This has happened since the SAGE Commission, but is another project on which I am working.

Nevada can do better as shown by its recent *Nevada's Promise: Excellence, Rigor and Equity* application for the federal Race to the Top education grant, which involved collaboration across all entities, public and private, as well as all regions throughout the state. Although it was unsuccessful, it finished 24th of the 36 states which applied, and left a legacy of cooperation which will serve education reform efforts in Nevada well. The success of this effort is no secret: the motivation of millions of dollars in federal grant money, for which there is no matching grant required, and the cooperation of 28 disparate Nevada entities and individuals, including one of your own, Assemblywoman Debbie Smith. We can do this. Thank you, Madam Chair.

Assemblywoman Pierce:

I just have to say that I appreciate the SAGE Commission discovering this, but a lot of us in this building have known this for years and years and years, before you people discovered it. The biggest problem is that we will not put up matching funds, and it is not that we will not. The truth is that nobody says it better than former Senator and current Assemblywoman Maggie Carlton: "Nevada would step over a dollar to pick up a nickel." We do that all the time, and we do it in the name of fiscal conservatism. What you are saying is not a surprise to anyone who knows anything about this state, and who has known anything about the state for more than ten minutes.

Chair Kirkpatrick:

Are there any other questions? Is there anyone else that would like to testify in support?

Assemblyman Hansen:

Yes, there are several.

Dale A. R. Erquiaga, Senior Advisor, Office of the Governor:

It is our pleasure to be here in support of A.B. 243. As Assemblyman Hansen mentioned, the Governor included this idea in his State of the State address. We appreciate the work of the SAGE Commission and the many of the members of this Committee who have talked about this need for a very long time.

We think the bill is structured appropriately, placing this position within the Department of Administration. It has been alluded to that when this bill is rereferred to the Assembly Committee on Ways and Means, the discussion will be on those funds that are included, but I did want the Committee to know that the Governor has budgeted for a position like this and two grants analysts within the current recommended *Executive Budget*.

We appreciate very much the provision in this bill for the establishment of a separate account for master service agreements and the use of contractors. We would not wish to build an entirely staff-driven function. This bill provides us the option to use contractors wherever possible. Again, for the record, we very much support this bill and we urge you to process it.

[Vice Chair Bustamante Adams took over meeting.]

Vice Chair Bustamante Adams:

Are there any questions from the Committee?

Assemblywoman Benitez-Thompson:

I am wondering how many grants in the research of this project you have discovered that Nevada would be able to procure through these positions, and how many of those would not require matching funds versus how many of those do require matching funds?

Dale Erquiaga:

I apologize to Assemblywoman Benitez-Thompson; I do not know the answer to that question. We have not done the research. I do not believe that the Department of Administration has that information. I will tell you, currently, part of the reason this is important to us is because we are working on a grant with the Nevada System of Higher Education.

Often the Governor's Office has to be involved and that is run through my office. I am not a grants analyst, but because the Governor is required to sign the application, it comes through us. We do not know the universe that is available to us. The SAGE Commission did do some research on how many dollars we were leaving behind, but I cannot tell you specifically.

Vice Chair Bustamante Adams:

Are there any other questions? [There were none.] Then we will go ahead and move to the next presenter.

Mathew A. Taylor, President, Nevada Registered Agent Association:

We are here in support of this bill. We are happy to do so. We believe it will have an overall impact on the private sector as well as create additional opportunities for contracting and recruiting businesses to the State of Nevada.

Vice Chair Bustamante Adams:

Seeing no questions, we will move to the next presenter.

Tray Abney, Government Relations, Reno Sparks Chamber of Commerce:

I do not need to add much more than what has been said. We think this is a great bill. As Mr. Partlow mentioned, there is no reason to leave any money that we can get on the table. Mr. Partlow and Ms. Kilgore and the rest of the SAGE Commission and Commissioners should be commended for their efforts here. If you add up all of their recommendations together, they say we could get, through savings of deficiencies potentially, \$2 billion over five years. I think we need to look at this bill and other bills in order to be more efficient in the state and to get all the money that should be coming to us. Thank you very much.

Vice Chair Bustamante Adams:

Are there others in support of A.B. 243? Seeing none, we will now go to those in the neutral position.

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

I did not sign in on this bill; I apologize, but the Chair mentioned the local governments' involvement in this bill. There is a bill on the Senate side that does not mirror this bill, but it talks about grant coordination. I just want to make sure that we are crystal clear that the local governments do need to be a part of this. Even if the bill passed in this form, we are one Nevada, and the right hand needs to know what the left hand is doing. We would want to be a party to that, whether we were included in this bill or not. We would work with this office because we struggle with our grant opportunities. This is a great way to do that. I just wanted to make sure that we got that on the record.

Assemblyman Stewart:

What is the situation now in applying for grants with respect to the locals and the state? What are the problems that we are having now?

Ted Olivas:

That is a good question. The problem is that we are kind of in silos, and so what the City of Las Vegas is requesting for its grants requirements, either at the federal or state level, may be duplicative of what other jurisdictions are doing. I have got to be honest; I am responsible for that at the City of Las Vegas. I can tell you I am not sure exactly what the City of Henderson, Clark County, or the City of North Las Vegas are doing. We need to collaborate better. This bill gets us one step closer to that, and we do want to be a party to it. There are opportunities where perhaps we are duplicating services and not working together. That is not to say that we are not 100 percent working together because there are grants and things like that where valley wide there are groups that work on those things and we are committed to working with the state in this regard.

Assemblyman Stewart:

Can you comment on your relationship with the state? Right now the state is not cooperating or helping you in any degree at the present time, is that correct?

Ted Olivas:

The state is not doing anything wrong. We should probably just be coordinating more, and if there was a central office we could do that. We would have one place to go.

Assemblywoman Neal:

I have a question on duplicating services that you mentioned. I have seen more than one bill similar to this. Although this bill creates a Grants Coordinator within the Budget Division, there was another one that created a grants coordinator within Department of Health and Human Services. Have you seen any conversations about trying to merge or have discussions about those two bills? I am wondering where are we going to get the money to pay for these different grant coordinators in these different departments.

Ted Olivas:

I have not seen the other bill. Money is an issue, and what I can say is if there is an opportunity for the state to somehow centralize that, then that would be an appropriate place for local governments to work with the state.

Right now, we do not really know who to go to. So, this would be helpful to us. To answer your question directly, I have not thought about how those should all be consolidated.

[Assemblywoman Kirkpatrick reassumed the Chair.]

Chair Kirkpatrick:

I did speak to Mr. Andrew Clinger in the hallway, and within the Governor's budget there are three positions. So, however all these grants bills come together, they still all have to go to the Ways and Means Committee. As I have said, we are the policy committee and we will determine that. Like Assemblywoman Pierce, and at least since 2005 when I started, we could not even get a hearing on a grants bill for the longest time. It is amazing this time that we have three in this House and two in the other House.

Mr. Clinger would you come up, and address the fiscal piece of this bill, because someone was asking?

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

I assume that we are still on A.B. 243. We did put a fiscal note on this bill, but the fiscal note is essentially the budget that we included in the Governor's *Executive Budget*. It is reflective of what is already included in the budget.

Chair Kirkpatrick:

Does that help you Assemblywoman Neal, or would you like to follow up? Here is the concern. We do have three separate grants bills. What I was saying is that I believe that they will go to the Ways and Means Committee and together it will figure out how it can put the bills together or give some separate roles. Our decision in this Committee is to get the policy out. I did know that the Governor's budget had room for three, correct?

Andrew Clinger:

That is correct, and we have included three positions in the *Executive Budget*. There are two grants analysts positions, and then a position with a classification of Management Analyst IV. That could really be the Grants Coordinator out of the three.

Assemblywoman Neal:

What is going to be the average pay for the Grants Coordinator and the other position you mentioned?

Andrew Clinger:

I am not sure what the pay is. The Management Analyst IV is in the classified service and that is a grade 39.

Chair Kirkpatrick:

I think you said in the budget there was about \$350,000, correct?

Andrew Clinger:

In the first year it is \$192,000 and in the second year I think it is \$198,000. It is slightly different from the fiscal note, but very close.

Assemblywoman Benitez-Thompson:

I am still trying to get a feel for this, and I do not know if you might have a response for how many of these grants opportunities Nevada would be able to take advantage of without having to match any contribution.

In testimony on another bill that was similar with grants, Health and Human Services had presented a paper of missed grant opportunities. There were 11 missed opportunities by the Department of Health and Human Services, and the intent was to make the case that if we had a grants position maybe we could pursue these. In looking at those, seven to eight of those opportunities we would not have been able to pursue because they required some type of investment in infrastructure or to data systems. Now that is 63 to 72 percent of the grants that we still would not be able to pursue without any type of investment in Nevada's infrastructure. I just want to make sure that we acknowledge that on the record, because I think it is slightly disingenuous to think that if we just hire people to fill out the paperwork and submit the grants then all this money is going to be rolling in. The truth is the vast majority of those funds are not going to come to us because we are not willing to consider a greater investment in those infrastructures systems.

Andrew Clinger:

Certainly, there are grant opportunities out there that do not require matching funds, and a lot of times those that do, you can provide in-kind matches; that is always an option. Depending on the leverage, if there is a grant opportunity out there that does require a state investment—and through this Grants Coordinator office we look at that and think that is a smart investment—I think we should look at investing more state dollars in those cases where we do have these opportunities.

Chair Kirkpatrick:

Does the Governor's Office envision some kind of report coming back so we can see what kind of progress we are making, or should I have Assemblyman Hansen answer those questions?

Andrew Clinger:

We included performance indicators in the budget, and that is one of the things that we will be tracking. Once this office is up and running, we will be tracking the amount of federal dollars that this office brings into the state, and it is not just federal dollars; it is other grant opportunities as well. So we will be tracking the number of dollars that we bring into the state through this grants office.

Chair Kirkpatrick:

Are there any other questions? [There were none.] Is there anyone else who would like to testify in the neutral position?

Kathy Clewett, Government Affairs Coordinator, City of Sparks:

We are also neutral on this bill. We just want to let the Committee know that in the north, Truckee Meadows, it is very much a concerted effort. We have a lot of different groups that we do coordinate our grants through when we go through our federal appropriation process. Until the federal government figures out how it is going to start relaying money back to the state, we are not quite sure how the process is working. For the federal appropriations process, we have all signed on to the others' requests. We let one group take the lead on it, the rest of us sign support letters. That is what our federal delegation gets back east, so it knows that if the City of Sparks is working on one thing and Sparks gets letters of significance from the City of Reno, Washoe County, and whichever other entities it might happen to touch, that is the way the money comes through. The City of Sparks is the one entity in charge of it, but everybody has signed on for it. We actually do that up here in the north regularly.

One of my other hats is the grants coordinator for the City of Sparks. It completely depends on how the federal government decides to relay the money out. Certain departments relay it to the local governments. In other departments it always comes through the state. It is going to depend on which way the federal government puts its money out.

Chair Kirkpatrick:

Are there any other questions?

Assemblyman Stewart:

Right now, you are getting very little help from the state in applying for grants, is that correct?

Kathy Clewett:

We do. The Emergency Management grants and some of the Department of Justice (DOJ) grants go through the state. We coordinate it through the state so that it gets disseminated that way through all the correct local governments, whichever they might be. Sometimes when the American Recovery and Reinvestment Act (ARRA) funds came out, you had to go directly to the federal government; you could not go through the state. They came directly out to the cities that way. It depends on how the money is getting funneled out and through which department, and whether or not you would be working with the state or not.

All the transportation funds come through the Nevada Department of Transportation (NDOT).

Assemblyman Stewart:

But you think that this bill would improve the coordination and be a big step forward?

Kathy Clewett:

Yes, I do. I believe that all the nonprofits would be able to have one centralized place that they could go, and that would really help them since they have very few dollars to support their grant process.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who would like to testify as neutral? [There was no one.] Is there anyone that is in opposition of this bill?

April Medlin, Private Citizen, Las Vegas, Nevada:

I am here today to speak against A.B. 243, basically because of the private contractor part of it. I recently posted a message on Black Box Voting. The next morning there was a reply. It says:

Dear April, you have come to the right place. I feel your pain! What you have described is a typical rebellious attitude copped by like-minded people who are just a little bit late in trying to preserve what is left of democracy in the Good Old USA.

The growth of private power has reached a point where it is stronger than democracy as we imagine it should be. You have mentioned NASCIO.

NASCIO is at the Nevada Department of Motor Vehicles (DMV) or connected to it.

It is one example of many associations using IT format. I will add another for you, NASED.

Our new Deputy of Elections is already signed up. It is the National Association for State Elections Directors.

These two are just the tip of the iceberg when it comes to domineering democracy. If you think their power does not affect every facet of your life, you are wrong. Your experience in Nevada regarding Voter ID, the DMV, MMT fuel taxing, and how it affects your voting rights should convince you.

Notice how subcommittees move regulations from one resolution to another and suddenly it becomes law. No questions asked. (Emergency regulation has now expired.). I do not know where you are headed with this, but Lots of Luck.

The LOL are capitalized and I take that as Laughing out Loud.

I was part of the group that testified against the Real ID Act for Nevada. We were successful in doing so. I found out at that time that a multinational private contractor had been brought in to Nevada's DMV to make Real ID. After we fought that back, it was supposed to go back to normal, as we were told, and it never has. Now what we have from the DMV central facility is notices, and my husband and I both received one, stating that our insurance has lapsed and we now have to pay a \$250 fine to reinstate our registrations, which the DMV said was a computer error. Basically the private contractors need to be taken out. L-1 Identity Solutions' parent corporation is L-3 Communications Corporation. According to the . . .

Chair Kirkpatrick:

Excuse me, Ms. Medlin. I get the whole Real ID thing because I dealt with that on the regulations, but on this particular bill you are concerned about the piece that allows them to go out to a private contractor, which Assemblywoman Pierce talked about earlier. Is that correct?

April Medlin:
Correct.

Chair Kirkpatrick:

If you would like to submit your testimony, am I correct that the letter was a response from your Assemblyperson when you asked a question?

April Medlin:

No, it was on <www.blackboxvoting.org>. I began researching on the Internet in 2008 when my husband's pension was cut in half. The value fell in half because of everything that had been occurring.

One other thing that I would like to say is that the accountant accomplices of Bernard Madoff were never arrested. PricewaterhouseCoopers, which is a big accounting firm, had a lot to do with that.

Chair Kirkpatrick:

Okay, so in section 3, subsection 2, you would like to see that language changed just a little bit so it stays in-house as opposed to a private contractor. Correct?

April Medlin:

Yes. I am sure, and I know several people that would love to have a job as a grant writer. Keep the private contractors out. Thank you.

Chair Kirkpatrick:

Okay. If they were to be a private contractors, unless, of course, they work for the state I just want to be clear on that. A private contractor, I believe, is anyone who does not work for the state or could be considered a consultant. I can verify that with Assemblyman Hansen when he comes back up.

Is there anything else you would like to bring before us, Ms. Medlin?

April Medlin:
That is it.

Chair Kirkpatrick:

Thank you and we appreciate your coming down and testifying. Is there anyone else who would like to testify in opposition to A.B. 243? [There was no one.] Assemblyman Hansen, do you have any final words?

Assemblyman Hansen:

Thank you for the hearing today. There are a couple of things that I would like to clear up in the future. One, we will get the language changed to make sure that we include local government. We will clean up the active and former employee question that was addressed.

On the matching funds question that Assemblywoman Benitez-Thompson addressed, we will see if we can get some firmer answers on that. We do know that there are already many grants that do not require matching funds. Even if that is a significant issue it still means right now that we are leaving substantial monies on the table that may not require that.

On the three separate bills issue, Senator Parks has a bill, I have a bill, and Assemblyman Brooks has a bill. They all have certain similarities. Suzanne Kilgore of the Nevada Taxpayers Association has written testimony on this. If you would like, I will have her submit that rather than read it into the record today.

As to the question about performance indicators, I would be more than happy to have that brought into the bill as well so that we have some way to review whether or not this program is doing what we intended it to do.

Regarding Ms. Medlin's question about the private contractors, it is my understanding that that is how Maryland and Texas also do it. We are trying to copy a very successful program elsewhere, but certainly that is a question that we can try to address as well.

Chair Kirkpatrick:

Thank you, Assemblyman Hansen. I will tell you from being here last session, my colleague from Sparks and I found a lot of abuse when it came to some of that with active state employees and some of the former employees. I will give you one example that you probably did not hear last session. I bet there are a few cities that have some similarities too. For example, someone retired from the state on a Monday after he got a new job in South Carolina the Friday before. However, we kept him on the books for six months in the state to oversee operations while he was working a full time job in another state. That is why there is some concern. Assemblywoman Pierce is correct; we have had bills in the past and we could not even get legroom on them because it really was a lot of private sector people that had those jobs, or it was employees within the state that were wearing two hats. This is where the concern comes from. You have probably seen the audits that came out showing a state employee calling in sick and making more in her private sector job on the same day. There just has to be very good record keeping. That is why you

will hear that from this Committee because we heard that bill last session in great force.

Assemblyman Hansen:

I share those concerns 100 percent. Believe me, the last thing I want is to have any sort of fraud. We will see if we can address that and weed that out as much as possible. Certainly, that should be a huge concern for everyone. That is flat out stealing from the taxpayers, which is certainly not our intent with this bill.

Chair Kirkpatrick:

Okay, perfect. As far as Senator Parks' bill, I have not seen it. I typically wait until they get here. We have 119 bills of our own. We did hear Assemblyman Brooks' bill. I will tell you that some of the information that he gave us was helpful and maybe there is some information that your friends could help get on potential upcoming opportunities. We did see that with the state Office of Energy and the Department of Health and Human Services, but it might be helpful to see from what opportunities we have some of the other agencies.

Assemblyman Hansen:

They have prepared testimony they could actually deliver now, or would you prefer that in writing?

Chair Kirkpatrick:

They could give it to us in writing and that way we could put it on the Nevada Electronic Legislative Information System (NELIS) for everyone that is listening at home.

Are there other questions for Assemblyman Hansen? [There were none.] At this time, let me state that the bill sponsor for Assembly Bill 450 has asked that it be stricken from today's agenda. I told them the same thing I told everyone else. It will be hard to get the bill back on the agenda; we will do our best. We will close the hearing on A.B. 243.

Assembly Bill 450: Revises provisions governing state financial administration.
(BDR 31-151)

[This bill was not heard.]

I will now open the hearing on Assembly Bill 424.

Assembly Bill 424: Revises provisions governing the revision of work programs and the acceptance of gifts and grants. (BDR 31-814)

Assemblyman Crescent Hardy, Clark County Assembly District No. 20:

I will read from the prepared testimony that I submitted.

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

Chair Kirkpatrick:

Thank you. Does anyone any one have any questions? I just have one. I do not sit on the Interim Finance Committee (IFC) normally, but I am an alternate and I notice that a lot of people came and they had to have a public hearing. I understood that they were going to try to do a public process on their expenditure levels. Do you know if any of that has been discussed?

Assemblyman Hardy:

At this point, I have not heard any more discussion on that. If there are any questions, Mr. Frank Partlow is here to also to assist. He is part of this bill also.

Chair Kirkpatrick:

Okay, I thought that was something that they discussed during the IFC—streamlining the process for the nonprofits and everyone—but I never heard if they figured out a system to do that.

A lot of times work programs, specifically, come because they are hiring a person or they are getting rid of someone. Work programs are more than just nonprofit or the grants releasing them. Where is the accountability? This says a work program as in *Nevada Revised Statutes* (NRS) 353.215 but when I pulled up NRS 353.215 this morning, it is pretty much the kitchen sink. I am wondering where the accountability piece is.

Frank Partlow, Private Citizen, Reno, Nevada:

We did not discuss any of the items that you are talking about in terms of the work programs. They were way beyond what the Spending and Government Efficiency (SAGE) Commission was really able to address. I come before you today to talk a little bit about where this IFC process change or threshold change really came from. I will do it in five minutes, but I think it is something that you should really hear. It really gets to Assemblywoman Pierce's comments earlier.

When the Nevada SAGE Commission first began, it was characterized in the media as the waste commission. In my experience of 13 years in the federal government, when you approach an employee in the federal government

and say you are from the waste commission, the employee decides that you are looking at him or her either as incompetent, a crook, or both.

We decided that because we did not want the employees of this state to feel that way about our Commission, we would undertake the first comprehensive survey of all state employees that had ever been taken at least according to what I could find out in the research that I did.

[Started to read from prepared text ([Exhibit E](#)).]

This is what those replies look like in paper form. I am probably the only person in the world who has read this. What I want to say is that this tells you that the employees of this state, first of all, are relatively happy with what they do. But sometimes they are very unhappy with things that they see, frankly, from the Legislature and the Administration of this state.

The response rates were incredible. With regard to the IFC testimony that I am here to talk about today, this is really the genesis. This survey is the genesis of the reason the members of this Commission thought that the IFC matter rose to the level of their concern. I have two of these responses. The first one is a more emotional type of response.

The IFC process is also inefficient. If my agency gets a federal grant with a finite funding period we end up wasting three to four months of the grant just to say, "Mother, may I?" from the IFC to accept the funds. Also, . . .

Chair Kirkpatrick:

I feel that you are way more aggressive than I am this morning, but I can be just as aggressive. What I do want to say is that I hope that you will share those with us so that we can look at them. I want to go back to my concern. "Work program" is a much bigger word than you are specifically talking to. I just want to figure how to clarify that.

Frank Partlow:

I was not responding to your question, Madam Chair. I was asked to come here today as a private citizen on behalf of Assemblyman Hardy to testify on this bill of which I am in support because the current IFC thresholds were established 14 years ago and have not been adjusted for inflation, or current fiscal reality. The SAGE Commission agreed with the gist of the survey of state employees that these need to be fixed.

Chair Kirkpatrick:

I do not disagree, but what I want to know from your prospective, do most of those that you are going to point out to us have to do with the grant process or do they vary?

Frank Partlow:

They do not have to do with the grant process. They have to do with the IFC process itself. I am happy to submit them for the record, whatever you would like to do. I believe that your employees in this state have a right to be heard just like the lady from Las Vegas. I am trying to represent them.

Chair Kirkpatrick:

I do not disagree. I am the most . . . I get that but, however, I feel that you are somewhat demeaning to the Committee and that is not going to happen in this Committee, ever. So, I am asking you a specific question. If you would like to read a few more of them, I am trying to understand the brunt, because my ultimate concern is the work program. I am trying to understand what you are saying, so please proceed.

Frank Partlow:

Madam Chair, I really do not wish to proceed. I was not trying to affront this Committee. I was simply trying to represent your employees to you in a way that the SAGE Commission did. I apologize for any affront that you may have taken. I am a private citizen, and I will leave you today. Thank you.

Chair Kirkpatrick:

Can you please leave those for the record so that the rest of the Committee can read them?

Assemblyman Hardy:

For clarification, I will try to work through the work program situation with the Legal Division and see what we can change. As a private sector business individual, I have found that when I hire individuals, if I turn them loose to do their work, they do a better job than if I micromanage them.

Watching this legislative process and the IFC, we have many people sitting for hours waiting because no one knows what time the IFC will be there. I think we waste more money than we actually save by going through the review process. The larger items are the only ones that we ever address. I believe this bill has a tendency to save a lot of money with that efficiency and gives staff the responsibility they need and they will spend more wisely when the responsibility is on their backs.

Chair Kirkpatrick:

Does anyone have any questions? We do want to hear from the state employees. We work hard to hear from the state employees, but a work program means so much more than some of the smaller things. I just want to be clear, before we do that, what we are specifically getting at. I do not disagree that we have to go back and change things and come up with some times. Work programs are just very broad in NRS 353.215, but it really says in that statute that it has to do with technologies or anything else the state wants to discuss. It is one paragraph. That is my concern. I always want to hear from state employees because they know best how we can be more efficient. I want to work on that specific wording because maybe something different that we word, or for consent agenda on the IFC would be helpful, or something like that.

Assemblyman Hardy:

Thank you. I will return and report. I will have that worked out.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Goedhart:

On page 4, lines 31-33, I had asked this during the last bill. We had raised those levels because they had not been raised for 14 years. With the new fiscal realities and inflation that has occurred since then, I guess that is commensurate to what that value was 14 years ago. Why would we put a limit on accepting grants?

Assemblyman Hardy:

I heard today that the Office of the Governor has a similar bill coming out, and it does not have a limit on it. I do not know if that is necessarily the case. I just heard that that was the case. We felt with this particular item that if we could raise that threshold that it would give a bigger degree of responsibility to staff and increase productivity.

Assemblyman Goedhart:

Thank you. I do think when we are looking for grant money, we want to make it as easy as possible for us to receive and be the beneficiary of grants.

Assemblywoman Pierce:

Can you talk a little bit about section 1, subsection 5? There is a movement toward transparency and this seems to go in the opposite direction.

Assemblyman Hardy:

Lines 27 through 30 on page 2 state that the provisions in subsection 4 do not apply to a request to carry forward allotments remaining from the previous year and does not change the purpose for which that allotment was previously approved. I do not know if that is the part you are talking about, but we do not want to mess with monies that are left over from the prior year. I think that is the responsibility of the Legislature to be able to move those monies where they need to be moved. However, for monies that are in-house, we feel a department could move them most efficiently inside that department. A department might feel that \$20,000 in one part of the organization might be better utilized in another part.

Chair Kirkpatrick:

Are there any other questions? [There were none.] Is there anyone who would like to testify in support of A.B. 424? [There was no one.] Is there anyone who is neutral on A.B. 424?

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

The only reason I signed in as neutral and not in support of this bill is that we do have a bill, Senate Bill 73, that is out there that is slightly different, but I am happy to work with the sponsors to reconcile our differences on those bills.

The difference between S.B. 73 and A.B. 424 has to do with the thresholds. What we are doing in S.B. 73 is actually striking out the thresholds and in place of that the Chief of the Budget Division, which is myself, the Assembly Fiscal Analyst, and the Senate Fiscal Analyst jointly make a recommendation to the Board of Examiners and the IFC, so it actually takes these out of statute and puts them in policy which will give us more flexibility moving forward.

Madam Chair, if I may I would like to take a second to try to address the question that you had earlier on about what happens if the thresholds are raised and they do not come to the IFC. Currently, under law, what happens is those are actually approved by me. The way the law is written it is each work program that is less than \$20,000, but once you cumulatively reach \$50,000 or 10 percent, then they go to IFC. While I have the authority to approve work programs under a certain threshold, if cumulatively we get to the thresholds that are currently in statute then it does trigger it to go to IFC. I do not know if that addresses your concern, but there is a process that the state agencies have to go through to get work programs approved even if these thresholds are raised or we replace it with some other policy. They still have to be approved by my office.

Chair Kirkpatrick:

That is most helpful, and that is what I was trying to get at to understand. The work programs that I have seen had to do with revolving funds, where we were adding employees and deleting employees, and I just want to make sure. When I checked the statute it was not very clear on specifics.

I have a lot more comfort knowing that there is a process that it goes through. For those of us who do not sit on the IFC but write the policy for it, it is helpful to know that information. I appreciate that.

Andrew Clinger:

On page 2, lines 27 through 35 to try to address the question that came up regarding that earlier. This is the case right now. You can have a work program go to the IFC in April and say the agency does not spend that money by the end of the fiscal year. If they want to balance that money forward, they have to come back in September. It is the same policy decision that already has been approved, so really, lines 27 through 35 are trying to clarify that if it has already been approved by the IFC so there is no reason to bring it back and have the IFC approve it again.

Chair Kirkpatrick:

Thank you for staying. I think you have cleared a lot of things up, and we appreciate that. Does anyone else have any questions? [There was no one.] Is there anyone else that would like to testify as neutral on A.B. 424? [There was no one.] Is there anyone that is in opposition to A.B. 424? [There was no one.] Assemblyman Hardy, do you have any final words?

Assemblyman Hardy:

Thank you Madam Chair. The only final word I have to say is to thank Mr. Clinger for coming forward and clarifying.

Chair Kirkpatrick:

Is there anything else? With that we will close the hearing on A.B. 424, and we are going to open the hearing on Assembly Bill 159.

Assembly Bill 159: Revises provisions relating to public records. (BDR 19-574)

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

This bill deals with public records and making them available in a more effective way. Former Senator Care actually brought this bill to me, and the bill was brought to him by Mr. Martin Crowley. Mr. Crowley will be giving the presentation, and I have in Las Vegas, Colleen McCarty.

I do want to point out that I submitted a PowerPoint in NELIS ([Exhibit F](#)). In this PowerPoint it has a story that Ms. McCarty did on Channel 8; you can click on the link in presentation and see that story.

Also, you will not go to jail because we got one of those permission slips, signed by Channel 8 authorizing you to look at it without being in violation of the copyright laws.

Chair Kirkpatrick:

Thank you and good morning.

Martin G. Crowley, Attorney, Fallon, Nevada:

I appreciate the opportunity to speak to this Committee. I frequently make arguments next door at the Nevada Supreme Court. This is my first testimony here. I am used to making short arguments and then fielding questions from the justices and I am happy to do the same here.

Reading the news stories recently regarding all the protestors in Africa and the Middle East, and the fact that many of these protestors are killed by their governments is further evidence that this is the greatest country on the face of the earth.

It was good to see many young protestors outside this building and standing up for what they believe in. None of them were assaulted or killed, to my knowledge. They contribute to the process of an open and honest government. The opportunity for differing views to be aired and heard, in most cases peacefully, is what separates our county from the rest of the world.

The fuel for peaceful dissent or opposition is access to public records. If anyone wants to challenge a public action, he first starts going to the public records location. In order to keep our government open, transparent, and honest, we have to have open access to public records.

I realize that there are those opposed to free or cheaper access copies who are worried about cost. It is funny to see what gets some bureaucrats talking about costs. We cannot seem to get any significant budget concessions from most of our government agencies, but they do not seem to mind making too many copies of documents for what is in their presentations.

But if a taxpayer wants a copy of a public document, you would think that you are asking them to turn over their firstborn child. They act like there is something wrong with you. Why would you want that? They act like they forget the words "public" and "servant" and what those words mean. I have

witnessed this on many occasions. I have also had many clients and individuals complain to me about this type of treatment that they receive at these public agencies.

One way to keep from having to provide public records is to keep the cost high. Who can afford to pay a dollar a page for many pages? That will keep the riffraff away, and if the agency uses the law to raise revenues, then shame on them. Public records are not for sale. But we should probably look at getting away from paper copies. We cut down enough trees. In this digital age where we can carry thousands of pages of documents on a single disk or a flash drive, why are we even providing paper copies of public records? I can carry around millions of pages right here in this netbook. It beats the heck out of those big trial briefcases that we usually pack into the courtroom.

Most agencies, county clerks, and recorders have gone to digital copies. Several places mandate that we submit our documents digitally. What a blessing this has been. Sure, it was a little hard to get used to it at first, especially for those of us who did not grow up around computers. Now I can send a brief through a web portal to an appellate court in Pasadena, California like I did Friday evening, and I will send several more briefs several times again this week to other courts. If you want a hard copy, you can hold one in your hand in the form of a CD. You can get a 100-pack spindle of CDs for \$10, and that equates to about 10 cents apiece.

Most of the federal courts have public access computers where you can look up documents for free. If I want to download them from the comfort of my office, I can sign up for a Public Access to Court Electronic Records (PACER) account and pay 8 cents a page for the first 30 pages of a document and anything larger is free. We should do that in all government offices.

Most records are being scanned in or entered electronically now. Add a public terminal for viewing or downloading, you do not have pay a staff member to look it up, and then if you want to take copies with you, burn them to a CD and then take them home.

I have gotten so now that I ask other attorneys or parties to email me their documents or send a CD rather than paper. Paper is really an outdated product for document handling, and it is so cumbersome to file away and retrieve later. Digital copies can be stored and retrieved in seconds and sent around the world if you wanted.

A couple of years ago I wanted some records from the Lyon County Recorder's Office. I had to drive to Yerington to go to the Recorder's Office to search its

database. They set me up on a computer in the back of the office. Then I had to select the documents that I wanted and copies of those were printed to a printer, and then the clerk charged me \$1 a page. It was \$19 for the 19 copies and an hour each way driving. Being able to access those documents from my office via the Internet: priceless.

You can steer the policies and practices of the various offices and agencies throughout this great state of ours by directing them to provide these things that this bill mandates rather than have people come in and "bug" them. By doing this, many bureaucrats will get themselves into the 21st century and put their public records online. They then can be accessed and viewed by anyone with a computer. It is easier for everyone and the cost goes way down as well.

So, I would change the part about providing the copies and whatever media the public wants, and I had that down as NRS 239.010, subsection 4(a), and make copies of documents or recordings to be put on CDs; you can put documents and audio recordings on the same CD and you can put hundreds or thousands of them on one CD.

If you do have to make paper copies, they should be no more than 10 cents. I get copies at a local copy store in Fallon called Jeff's Copy Express and I pay 6 cents a page. I assume that Jeff is not losing money, so 10 cents a page would be like gold to some entrepreneur. If the agency does not want to use its resources to make copies, it can use a contractor to come in and make the copies for a profit at 10 cents per page, and I do know some places that are actually doing this.

Even though we need to make things available, people do need to understand that costs are important and do have to be met. We all have to be responsible citizens. Please pass this bill with maybe that one alteration. Thank you.

Chair Kirkpatrick:

Are there any questions? I have one question. Throughout the bill, it says copies of the minutes and recordings must be available within 30 working days. At least from the legislative interim committees, we have trouble with that time frame. I know the 30-day number is currently in the system, but we are trying to get local and state governments to put everything online so that people can get the information themselves. Is there any thought behind that, giving them a little bit more time initially to get setup to do that?

Assemblyman Segerblom:

I think the intent was once the minutes are prepared, not that the minutes have to be prepared within 30 days.

Chair Kirkpatrick:

Okay.

Assemblywoman Neal:

The portion of the bill that I actually really like is the law library language because I remember going down to Clark County Law Library and having a pocketful of quarters, and if you run out there is no cash machine and you cannot get any change. With that language in there, that would be beneficial to people who actually want to make copies at the Clark County Law Library.

Assemblyman Goedhart:

I am just trying to get my hands around the whole bill, but when you talk about copies, are those primarily digital copies, when you say 10 cents per page? Are you saying that you can get copies downloaded to you digitally for, I believe, 8 cents for the first 30 pages? So, are these copies physical paper copies, digital copies, or either/or?

Martin Crowley:

The 10-cent charge would be for paper copies. Digital copies should pretty much be free except for the cost of the disk. If you provide the disk, the disk itself is 10 cents at Office Depot, and you can put thousands of pages on a simple disk, literally thousands.

Chair Kirkpatrick:

Are there any other questions? I always support the open meeting law, but what happens if you are not specifically looking for minutes? You know, like they did to our legislative staff last session. They requested everyone's salary information for the last two years. That does take a little more time, so is this only for this specific thing or is it . . . No one has a problem giving information, but it does take a little bit more time. How does that work?

Assemblyman Segerblom:

I do not believe that there is a time limit for requests like that, but it would have to be something reasonable, and it cannot be unreasonable as far as taking two years or longer.

Chair Kirkpatrick:

Right, I am sure with 63 legislators it probably took our staff a little bit of time to get it together, and I use us as an example because I do not know any

others. Do you still think that that should be a 10-cent price, or should there be a fee on top of it? I have gotten 30 emails from local governments, different agencies, but I am wondering, for us, should we allow some flat fee plus 10 cents or just 10 cents?

Assemblyman Segerblom:

I do not know how you would. It is a slippery slope. As soon as you go past the price per page, then the staff time starts mounting up and then it turns into overtime costs. The reality is if there are any checks and balances with the press then these things have to be accessible. As soon as you start charging people who are involved in the requests, it kills you. We are basically shooting ourselves in my opinion.

Chair Kirkpatrick:

I do not disagree. Does anyone have any questions? [There was no one.] We will go to Ms. McCarty in southern Nevada.

Colleen McCarty, Investigative Reporter, Channel 8 I-Team, Las Vegas, Nevada:

Assemblyman Segerblom asked me to come and share a little bit about what we experience every day. Between the three of us, myself and my colleagues George Knapp and Jonathan Humbert, we have anywhere from three to four public requests out at any given time. In the last couple of years we have really experienced some unprecedented costs. We are not talking costs just for copies. We are talking costs for plain access. If you want to see these records, you are going to have to pay an exorbitant amount of money for our staff to gather them.

Assemblyman Segerblom mentioned a little story on NELIS. I am going to break that down for you briefly, just to give you sort of an idea of what we are talking about. Last year we requested a half dozen public records from several different agencies looking at the travel expenses and expense reports for nine or so top-level staffers. The requests were virtually identical, the same number of people, the same types of records, and six different agencies. Four of those six agencies gave us the copies either for free or at a very minimal cost, \$50 or less. But this did not happen with two of those agencies. We ended up spending more than \$400 each for the copies. Those costs were not only for actual paper; they were for access. We ended up paying staffers at various different levels—from the line staffer who pulled the records to the attorney who reviewed the records to see what, if anything, needed to be redacted. Then there was someone else to sort the records. So before we even got to the copy cost which averaged about 10 cents or so for each page, we were paying several hundred dollars just for the cost of access.

My favorite public records nightmare story of all time was the Governor Gibbons' administration on this very records request. When the records finally arrived, we paid more than \$400 for them, and they were so disorganized we could not figure out which paper went with which expense report. We sent an email to the Governor's general counsel at the time and asked, "Can you please help us figure out how these records are organized?" She sent an email back that said, "They are not; it is more fun that way." We did not think it was more fun that way, but apparently she did.

So we do get into some contentious relationships with various agencies that for whatever reasons, do not want us to have these records. During the same set of records requests, we decided we wanted to look at some of the purchasing cards for the school district. We asked the school district for a year's worth of records related to their 1,600 or so purchasing cards. These would basically be the billing statements, the bank statements. I was told it was going to cost more than \$34,000 to have that request fulfilled. Half of that cost would have been for copies, and the other half was for access.

When we talk about the cost of access, these are not small figures. More and more, this is the way public agencies work to delay us or to discourage us entirely from getting the records that we believe our open society demands the public has access to. I would be happy to answer any questions that you may have.

Chair Kirkpatrick:

Are there any questions? [There were none.] With that, I think you have enlightened us with how expensive it can get. We appreciate that. Assemblyman Segerblom, did you have anyone else who would like to testify?

Assemblyman Segerblom:

No, that is everyone. Thank you.

Chair Kirkpatrick:

We will now move to those that are in support of A.B. 159.

Trevor Hayes, representing the Nevada Press Association:

We are here in support of A.B. 159, particularly the 10-cent-per-page cost. I am an attorney, and I represent a number of different clients including one who, two years ago, had some issues with his Department of Motor Vehicles (DMV) record and had his license pulled. We were trying to figure out why his license had been revoked. I was told by the DMV it would cost \$3 a page to get his own DMV record. It was 8 pages, so a total cost of \$24. I pointed out to them Senate Bill 123 of the 74th Session which states only

actual costs could be charged. They basically dared me to challenge them on it. Because the gentleman, who was a senior citizen, was a Realtor by trade and needed to get his license back as soon as possible, the \$24 was a little more timely and cost effective for him than fighting that.

Agencies continue to charge what they want. Part of the responsibility and obligation of a government to its people is to be transparent in its dealings and actions that it takes on their behalf. It is one of the costs of being a government. It is not something that we should pass on to someone trying to figure out what the government is doing on their behalf. It is one of the actual and necessary costs of government. With that, I would be happy to answer any questions, and we do offer our support on behalf of this bill.

Chair Kirkpatrick:

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

Barry Lovgren, Private Citizen, Carson City, Nevada:

My name is Barry Lovgren, and I am a private citizen. [Continued to read from prepared text ([Exhibit G](#)).]

Most people would have given up by now. The final piece of correspondence is the response I got when seeking that funding ledger for that funding information. Part of the way that they have to deal with this agency is to dig around and find out the specific name of the document you are asking for.

[Continued reading the last paragraph in prepared text ([Exhibit G](#)).]

So in general, I very much support this bill, but it needs to be tightened up and absolutely needs an enforcement clause. Thank you.

Chair Kirkpatrick:

Does anyone have any questions? You did provide us with some copies ([Exhibit G](#)) of paperwork as well that show where you tried to get information and could not. Correct?

Barry Lovgren:

There is so much correspondence that it would have cost me over \$200 to provide you with all of it.

Chair Kirkpatrick:

We appreciate your providing it for free.

Barry Lovgren:

I did provide you with copies ([Exhibit H](#)) of five of the most interesting letters.

Chair Kirkpatrick:

And we appreciate that, thank you.

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

We are in full support of this bill. From our perspective, transparency gets meaningful when individuals can actually access those issues or information for which they seek additional information. This type of transparency is what gives government its true meaning when the public and the citizenry can actually understand what the government is doing on its behalf.

We are here in full support of this bill, in particular page 8, section 7, line 40 which iterates that no fee may be charged or collected for the searching of records or files in the offices of county clerks.

The American Civil Liberties Union (ACLU) recently litigated a case. The case was *Karen Gray v. Clark County School District* (Eighth Judicial District Court, Case No. 07A543861) and in it we address the question of whether public agencies can charge for the inspection of documents or just copies. This was in state court, and our view is that public agencies cannot charge for the inspection of documents and indeed the judge ruled in our favor finding that as a factual matter the request for inspection did not require any exceptional use of resources. The appeal was dropped and so there was no opinion found in Nevada Supreme Court, but we do continue to get complaints regarding this issue.

These individuals who shared their stories today are certainly not few and far between. This is of significant concern and it does provide hindrance of public access when agencies are charging for the mere inspection of documents or records. We certainly support this bill and hope that you move forward in making sure that we provide access to the public when it desires it and at no exorbitant cost. Thank you.

Chair Kirkpatrick:

Does anyone have any questions? [There was no one.] Is there anyone else who would like testify in support of A.B. 159? [There was no one.] Is there anyone who is in opposition to A.B. 159? If you are in Clark County, there are two seats at the table; please make your way there now. Is there anyone in northern Nevada that is in opposition? We will start in southern Nevada.

James W. Pierce, Assistant County Clerk, Clark County:

We are in opposition to this bill for three major points. I believe you received a letter ([Exhibit I](#)) from Diana Alba, the Clark County Clerk. Most of what I am going to say is in support or specific to that.

The first point is that from our perspective what this is doing is pushing costs from the requester to the taxpayer. The bottom line is making copies or the process is going to cost money. So either the person that is making the request pays for it, or we pull that back internally and it becomes a cost that, in our case, Clark County has to pick up. I think that is important for you to keep in mind.

Second, although we know that there are a lot of people that have good reasons for information, when the requester has to pay for the cost of making copies it will help him narrow down his search before he actually walks in and makes his request. My point being, it is very easy to walk into the clerk's office and say, "I want every record that you have." The way this particular bill is written if we had that happen day in and day out it, it would not be long before we would be overwhelmed and would no longer be meeting any of our other duties. It is written loosely enough that it really leaves a lot of challenges in there in regards to responsibility of the requester and making sure that he is requesting just what he needs and not everything. Obviously, from our perspective, they are welcome to have everything; it is the effort required to get them.

To clarify a few points along that line, we have some information on paper, and we have some information that is on microfilm, which today we do not have the ability to transfer directly from microfilm to electronic image as necessary when putting information on a CD. There is one example that was given. We also have records in electronic form in the form of images that allow us an opportunity to put these records onto CDs very quickly. Mind you, when we do that, we do not follow the dollar-per-page price.

The current statute is written in a way that allows us to charge the cost of delivering that service. For example, if you came in and requested copies of last year's meetings of the County Commission, what we would do is estimate the actual cost of grabbing those records off the system, because they are stored electronically, and putting them on a CD. That is going to take labor, which it seems most of the people who have spoken so far have not considered. It is going to take material, which is a relatively inexpensive CD, and it is going to take computer time to process it, which is also in today's world relatively inexpensive. Something like that which might cost thousands of dollars in paper form, is going to cost up to \$200 for whatever it costs to do the actual

work of collecting the information and putting it on a CD. I guess it is a very complex environment today because we have records in so many places.

Another type of record that is important to talk about are the records that are not necessarily scanned copies of a piece of paper. They are actually stored records in databases. I do not want to get technical with you, but an example would be payroll records or human resource records or, in our case, marriage license records. Those things exist in systems and we can extract that information from those systems but, depending on the type of request, if it is a request that has not been made in the past, we actually have to write programs to get that information out. There are costs associated with that. It is not that we do not want to provide the service; it is the fact that those things cost, and today, the way the statute is written, the requester is the one that is going pay for the cost.

The next and third point I would like to make is that the original law has been in place for a long time. It has been modified over time to include things like electronic records, and for the most part, most of us feel it is well thought out. Once again, it puts the responsibility of determining what the person wants on to the requester. I will tell you that records today are much more complex and more voluminous then they were just 20 or 30 years ago.

It can be a real challenge to go in and find the information that some person is asking for, and often it does take conversation back and forth trying to narrow that down. I have been in situations where people have asked for things and when we talk about it, we get more specific and find out what they were really looking for was something very different. It is important to make sure that you keep that in mind. All of those things are going to take time and cost money.

So when you start talking about instant record requests, people wanting things while they are standing there, in some instances it may be very viable. If someone asks for the minutes to the December board meeting then sure, we can pull that up and print that off at \$1 per page.

In the case of electronic copies, right now they can go out on the web for Clark County and grab that document themselves. There are lots of options available.

Chair Kirkpatrick:
Thank you.

Assemblyman Stewart:

I believe the letter ([Exhibit I](#)) from the County Clerk, Diana Alba, said that she figured it would be a \$120,000 cost per year to the County Clerk's Office if this were implemented. In your view then, most of this \$120,000 would be labor and that type of thing. Is that correct?

Jim Pierce:

Yes, that is correct, and obviously if this bill were passed, that cost would then be something that the county would have to pick up through its general fund. That would mean in today's world where we are all trying to cut costs that would be one more burden that the taxpayer has to pick up, and we would probably lose a service someplace else. I do not know how the county would go through the decision process to determine how it was going to cover those costs, but in the big picture it is working under very tight budgets and those costs would have to be covered because it would be mandated by the statute.

Assemblyman Stewart:

If we kept the \$1 fee then you could live with the rest of the bill, correct?

Jim Pierce:

Whether it is right or wrong as far as the amount of the \$1 fee, the point is that the requester needs to be prepared to pay for the cost of recovering that record. I do think it makes sense as a state that we look at how we can make records available.

I am not convinced that everything should be available on the Internet mostly because it is available worldwide. If you were a soldier in Afghanistan, you would not necessarily want the locals over there looking up your home address here in Las Vegas, which they could do today. The point being there are many ways that we can get these documents into electronic form and make them available for less money, but the reality is that these records are going to be in many forms today and they are going to cost money for us to extract them, and it will vary depending on the type of record. I am speaking for the Clark County Clerk's Office; I am not speaking for the rest of the county.

Chair Kirkpatrick:

Thank you. I have a couple more questions, and then we still have one more bill that we need to hear.

Assemblywoman Benitez-Thompson:

I will make it quick. Mine is more of a statement that I appreciate the sensitivity to counties and local agencies and how tight your budgets are, and the fact that we do not want to impose any more of a financial burden on you

than may already come out of this session. However, I do think we want to balance that with the fact that, to the public, so many of these policies on public records look capricious; we have different costs at different levels being charged and there is no consistency. I think it is worth having the conversation about how we can get a more consistent policy in place so that you are not seeing a \$1 fee here versus 10 cents there versus \$3 somewhere else and everyone arguing for justification about why their fee is right.

Chair Kirkpatrick:

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

Nathan Hill, Records Analyst, City of Henderson:

We have two concerns with this bill. Section 2 of this bill requires a public book of record to be made available immediately upon request if the public book of record is readily available. This would have a potentially negative impact on the City of Henderson during times of high-volume records requests.

While the city makes every attempt to provide records as quickly as possible to all requesters, simultaneous immediate requests for records may not be possible due to current limited staffing. Additionally, what may be perceived as readily available to the person requesting a record may actually take time and effort to locate and/or assemble and would not be able to be produced immediately.

The lack of definition of "readily available" in this legislation has the potential to create an unrealistic expectation of the fulfillment of records requests.

Section 5 of this bill requires copies and minutes and audio recordings of public meetings to be made available to the public upon request at no charge. This bill would prohibit the charging of fees for extensive use of staff time as currently permitted by law. It is important to note that the vast majority of the city's requests for minutes are completed via electronic file transfer and at no charge to the customer. However, the city does receive requests for minutes that are considered extensive. Examples include research on voting records for council members covering multiple years. Other examples include minutes of final actions on projects or subjects that require research into multiple years of meeting minutes.

Under this law, the substantial use of staff time would be unrecoverable. Additionally, providing requesters with an estimate of the extensive research time that may be charged often serves to focus their request from one that is overly broad to one with only the items the requester is specifically looking for or specifically referencing.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? Let me clarify what you said on section 2. Section 2 allows for someone to inspect a book. What did you say on section 2?

Nathan Hill:

This bill requires a public book or record to be made available immediately upon request if the public book or record is considered readily available. The issue there is "readily available" is not defined; and we may have multiple requests simultaneously for a record that might be considered readily available but, due to limited staffing, we may not be able to provide those records immediately.

Chair Kirkpatrick:

Thank you. Are there any other questions? [There were none.] Is there anyone else in southern Nevada that would like to testify in opposition? If so, we are coming up to northern Nevada and then we will go back to southern Nevada.

Joyce Haldeman, Associate Superintendent, Clark County School District:

In the interest of time I am not going to repeat the information that the two gentlemen just gave, but the Clark County School District mirrors those very same concerns.

I wanted to put on the record that one of the things that is often confusing to people when they are asking for records is that their requests are so broad, and they do not understand that the law does not require us to create a report for them. It simply requires us to give them the information that is available to them.

For instance, when the example of 16,000 purchasing cards was mentioned, we do not keep a report that is easily available and so we do not want to say to somebody he cannot have access to that information, because he can have access to it. But because it is not in a format that is easily given to him, then there is a true cost of what we must do to prepare it for him. Instead of saying you cannot have it, we say, "Here is what is available," and most of the time it is not what he wants. Then we have to tell him what the cost would be to provide him with what he is looking for.

Oftentimes we find that people are looking for a needle in a haystack. While the needle is not expensive, they want us to pay for the haystack while we sort through it. So, it becomes a real problem for us to do it. The problem is that there are more of them who come in and ask for requests than there are of us. My office, Community and Government Relations office in the Clark County School District, does not receive the most records requests, but

I can tell you the number of requests received from 2009 to 2010 quadrupled. In 2009, we had 43 public records requests, and in 2010, we had 119 public records request. The purchasing department and the finance department have received far more public records requests than we have.

First of all, I wanted to indicate that we have moved to system similar to the Nevada Electronic Legislative Information System (NELIS) which I believe everyone loves. What a great move for the Nevada Legislature because things are so readily available. We have something called BoardDocs. If a person simply wants minutes to a meeting, that is easy for us to provide because he can go to BoardDocs and he can print what he needs himself or, if he does not have access to a printer, we will be happy to print those for him.

Those requests are easy, but there are lots of other kinds of requests that come from people when they are truly looking for something that might be a story and they give the request to us in many different ways. Having the request in writing is very important to us because it clarifies what the request is and it makes sure that we are actually providing what is actually being requested.

The fact is we need to define "if readily available" and the immediacy of the request; we could have someone who could come in and stand at the counter like it is a fast food place and say, "I will take one of those, and one of those."

The idea of this bill would be that you have to sit there and provide what they requested because they are immediately available. The requesters would be the one who decide how our employees would spend their time.

Our other concern is that there really does have to be recognition of the true cost. You could have someone come in who says that he wants a copy of every school board meeting minutes that we have in our archive. That would be boxes and boxes of requests that he would be required to pay for.

I want to make sure that the public knows that we are really willing to provide access to information. We recognize that we have a responsibility to do so, but how the request comes in, the definition of the request, and the true cost of the request are things that we cannot simply ignore, particularly as we go through additional budget cuts.

I already have lots of unfilled positions in my communications office where we fill a lot of these requests, and the number of people who are there is diminishing every year. I am happy to answer any questions.

Chair Kirkpatrick:

Does anyone have any questions? [There was no one.] Is there anyone else in northern Nevada who would to testify in opposition?

Laurel Jimenez, Information Technology, Clark County Recorder's Office:

I am Laurel Jimenez from the Clark County Recorder's Office. [Continued to read from prepared text ([Exhibit J](#)).]

When we analyze the cost to us for making a paper copy, we do 200,000 plain paper page copies a year. At \$1 per page, we are collecting \$200,000 in revenue and that only covers about 30 percent of the cost to our office, again, mostly in labor, but also some equipment and incidentals.

It costs us about \$700,000 a year to provide those copies that we only recoup \$200,000 for. If we were to drop the price to 10 cents per page, we would only be collecting \$20,000 in revenue, and that would increase the gap that we are not recovering by \$180,000. So, we would have to look to the Clark County General Fund to help contribute an additional \$180,000 for the Recorder's Office to provide this service.

Therefore, the Clark County Recorder's Office opposes A.B. 159 as written. We request that the bill be amended to specifically state that the legislation does not pertain to county recorders.

Chair Kirkpatrick:

Thank you. I could not follow your math fast enough. So could you send me the last part of that testimony on paper? It sounded like your office is in a deficit by doing its job.

Laurel Jimenez:

I will email that to you.

Chair Kirkpatrick:

For those of you that are here, we are running out of time and we have one more bill to hear.

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

I apologize for this amendment ([Exhibit K](#)). It was drawn up quickly. I would like to suggest one other amendment to the bill, and that is in section 2, page 3, line 17; delete the word "oral." These requests really need to come in writing because if you do not, you get into a "He said, she said," or "I really did not want all these," but, "Yes, you did." The writing can be right at the counter, if

they just write on a piece of paper, they email us, or they can do a formal letter for the request.

My other suggested amendment is in section 5, page 5, line 34; this would be so we could try to recover some of our money, not to exceed some amount or something like that. In section 7, page 8, line 26, with the courts we would like to retain the \$1 fee for that and I believe you have a letter from the First Judicial District judges to that point.

In section 7, page 8, line 40, I suggest that you insert the words "if electronically indexed." There is a big difference if someone calls in and says, "Hey, can you check for my divorce? I am not sure what year it was." You pull it up in the computer and tell him, "It was three years ago, and here is the case number." I personally do not think you should charge \$1 for that. However, people come in and say, "I want a copy of the case involving my grandfather that was accused of murder, but I do not know what year. Can you check from 1860 to 1930?" That means digging up the books and going through page after page, and charging for this would be appropriate.

I do agree with the Clark County Recorder's Office, as county recorders, I would hope that you would exclude us. With that, if you have any questions I would be more than happy to answer them.

Chair Kirkpatrick:

Thank you. We appreciate that. Has the bill sponsor seen your amendment?

Alan Glover:

Yes, he has.

Chair Kirkpatrick:

Perfect.

Lisa Foster, representing League of Cities and Municipalities:

Basically this is a "Me too." I think some of the smaller cities are most concerned with the impact this may have. A lot of the clerks' staff have been diminished because of budget cuts in recent years.

Chair Kirkpatrick:

If anyone has any questions, please let me know because we are losing our quorum as we go.

Susan Fisher, representing the City of Reno:

Most of our concerns have already been addressed, and I will not repeat those. But there is a fine line and a balancing act between maintaining confidentiality and disclosing information to people who request it. It takes a lot of time to go in and redact information that is private when we get requests for information.

John J. Slaughter, Government Affairs Director, Office of the County Manager Washoe County:

I initially signed in as opposed, but with Mr. Glover's suggested amendments and the suggested amendment regarding the county recorders, we would be neutral with concerns.

Chair Kirkpatrick:

Does anyone have any questions?

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

Ditto on the comments. Mr. Hill identified the same concerns that we had in sections 2, 5, and 7. Let me just say, it was implied that most governing agencies create a bureaucracy when the public is requesting records. I can tell you that many of those that are sitting in this room take this very seriously. Those jurisdictions take this very seriously.

We are not trying to stack fees on the requestor of these records. In fact, what we try to do is identify the cheapest way that we can deliver that request to the customer. Sometimes it is \$1 a page or whatever the fee is. Sometimes, if it is a request for a large volume of data, we tell him the disk is better and it will cost him \$50 because it took us two hours to work on his request. We try to identify the most cost-effective way to get that to the consumer. We are not trying to stack fees on our community. I just wanted to make sure that was clear.

Chair Kirkpatrick:

Are there any questions? Is there anyone else in northern Nevada who would like to testify as neutral? Assemblyman Segerblom, I am going to invite you up, and then we will go to southern Nevada where we have Ms. Gray.

Karen Gray, Researcher, The Nevada Policy Research Institute, Las Vegas, Nevada:

I wrote a speech hoping to be first this morning on the schedule. Since we are now pressed for time, what I want to do is share with the Committee some experiences that I have had in trying to access public records from various agencies.

First, I would like to disclose for the record that I am the *Karen Gray* case that Rebecca Gasca, from the ACLU referenced, and I was wearing my hat as a private citizen, so if there are any questions regarding that I would be happy to answer those as well.

In section 1, subsection 3, I would like to say that I have never been charged or never been required to make my own copies of public records. However, I have been charged or denied records because they either contained confidential information or were housed with records that contained confidential information, or simply because the records were not available in a hard copy format and were on a computer.

In one instance, I was charged a \$106 fee for inspection and the agency explained the cost to me as, "When documents are stored in electronic format all the documents are lumped together albeit in different locations. Therefore, we actually print files to sift the confidential records to develop a public viewing file." In that instance, I was charged \$106 by the agency to create a file that was accessible to the public to view.

Chair Kirkpatrick:

Ms. Gray, you can submit that down there, and we can put your entire speech and testimony on the website and let the Committee members have the ability to read it as well. Do you just want to give us a couple of examples and then we will read your testimony?

Karen Gray:

Yes, I can do that. I will move to section 2 with an example of how allowing or placing the word "oral" into the language of the statute would be beneficial and bring clarity.

It was just about six weeks ago that I attended a public meeting. In that meeting a woman had requested some public records. The public body's president informed the lady that she would have to submit her request in writing. Later on in the same meeting I made a public records request on the record and was informed of the same thing. It was a few days later that the public body conceded that I could make an oral request and eventually it provided the records.

So, I think that for clarity purposes adding the actual term "oral" to the language in section 1 may be beneficial because section 2 specifically states that oral requests should not be prohibited. I think that there needs to be more clarity in the way that practical application happens in this area.

Under section 4, I would like to say that I often request or search through meetings and recordings of public agencies. Most of those you can find online, and I am lucky I have a computer and I live on that computer. But there are others who cannot afford a computer, who do not have the Internet, or who do not have a computer.

I will say that I have been charged \$1 a page for minutes and anywhere from \$5 to \$10 a CD in order to receive recordings of public meetings. I think that this can be cost prohibitive for those who do not have access to a computer in order to access these records.

In section 7, I have a little anecdote about a situation that occurred. I received records from a particular division in our County Clerk's Office. While I was searching through stacks and stacks of committee meetings, agendas, and minutes I was not charged for them to locate those records for me. However, when I located the records that I wanted to copy, I wanted to scan them with my own scanner into my own laptop. I was told I would have to pay \$1 per page for every page that I physically scanned into my own laptop with my own equipment. This has happened on three occasions.

Each time, when I insisted on a written cost estimate I was allowed to scan the records for free, but if I had not been advised as I am of the law, I would have either paid those fees or walked out of the office without those records.

Chair Kirkpatrick:

Okay, is there anything else, Ms. Gray? If you want to hand your testimony to the secretary we will get it up on NELIS this afternoon and the Committee members can go through it.

Karen Gray:

No, that is fine.

Jennifer P. Togliatti, Chief Judge, Eighth Judicial District Court:

The Eighth Judicial District Court has provided a letter to the members of the Committee, March 8, 2011. I simply wanted to highlight the fiscal impact of the bill on the Clerk of the Court for Eighth Judicial District Court, which would be \$131,000 annually. We currently collect \$146,000 a year in copy and search costs.

Unfortunately, the way our case management is set up we are unable to break up copy and search costs at this time, but that is the fiscal impact. Also, touching upon something Assemblywoman Benitez-Thompson mentioned, the Eighth Judicial District Court would like to see consistency between justice

court copying and search fees, and district court copying and search fees. This would not affect justice court and, notably, Assembly Bill 9 actually proposes to increase the justice court copy fee by 20 cents to a total of 50 cents per page. So, we would have inconsistency within our consolidated court. Other than that, we remain neutral.

Chair Kirkpatrick:

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

Assemblyman Segerblom:

We will be happy to work with these people to see if we can come up with something that is positive.

Chair Kirkpatrick:

Perfect. Thank you. Are there any other questions from the Committee? [There were none.] We will close the hearing on Assembly Bill 159, and Assemblyman Segerblom will work with them.

Obviously, Assemblyman Ellison did not make it this morning so we will put Assembly Bill 257 on another agenda.

Assembly Bill 257: Revises provisions relating to the Open Meeting Law.
(BDR 19-107)

[This bill was not heard.]

I will now open the hearing on Assembly Bill 466.

Assembly Bill 466: Requires the State Engineer to define, by regulation, the term “environmentally sound” for the purpose of making certain determinations relating to interbasin transfers of groundwater.
(BDR 48-1120)

Kyle Davis, Policy Director, Nevada Conservation League and Education Fund:

I am going to turn the testimony over to Ms. Lynn to do the bulk of the explanation, the reason for this bill, and why we feel it is important. I did want to highlight for the Committee, this bill is one of four “Conservation Priorities” for Nevada. We are a group of 17 conservation organizations from throughout the state that have four priority bills in the Legislature for this session. This is one of them, and we would urge the bill’s support from the Committee. I will now turn it over to Ms. Lynn to walk you through the bill.

Susan Lynn, Coordinator, Great Basin Water Network:

We work with counties, tribes, ranchers, businesspeople, and conservation organizations to share information and science about interbasin transfers of groundwater. I want to thank you for bringing A.B. 466 forward for hearing. We know that water is a contentious and sensitive issue that is full of technicalities and legal terms.

As the current bill is written, the summary is longer than the actual bill. What we are proposing to do is define the term, "environmentally sound," which is on page 3, subsection 6(c) of the existing language. Our amendment to NRS 533.370 says the State Engineer shall by regulation define the terms of environmentally sound for the purpose of paragraph (c) of subsection 6 ([Exhibit L](#)).

It is as simple as that. We had thought about putting a requirement for a time schedule, but you can do it through intent and I think that is what we would prefer to do. We hope that "environmentally sound" would be defined by regulation to bring forward to the next legislative session beginning in 2013. That gives the State Engineer essentially two years to perform the task.

We also assume and presume the intent will include a public process that will include the Legislature, the State Engineer, and the people that are interested in this topic.

There are massive interbasin transfer projects to come forward to the State Engineer. This is a little history. The State Engineer does not have tools to help him define "environmental soundness." There are no topics to find to inform him, the applicants, or the protestants as to what these two words mean. There are no common definitions for many terms; the law refers to "environmental soundness," but what does it mean? There are no criteria for directing thought or measurement.

One of the issues that came up in your previous bill was perennial yield. There are definitions from different agencies that talk about perennial yield, and I think it is firm in scientific basis for helping the State Engineer define that.

What does maximizing beneficial use mean? What is a beneficial use? We have several of those defined in law, but there are some obvious omissions such as plants that conserve soil and can conserve air quality.

There is also forage on public lands that is not irrigated which is important to wildlife and livestock.

How far do groundwater levels decline before they impact existing users? Are our senior rights really protected? These are some of the issues that I wanted to discuss during this process, and I will say that we are pretty clear that we do not need any amendments at this stage of the game. We are willing to live with the existing language as long as the intent is that we complete this process in two years, prior to the next legislative session, and that it be a public open process. Thank you.

Chair Kirkpatrick:

Because I gave this bill, I do not understand what you are willing to live with. I thought that the Legislative Committee on Public Lands sent a letter to the Office of the State Engineer and I thought that because the Governor had put a hold on all the regulations which require a public process, this bill was going to help get that process going. Correct?

Susan Lynn:

We hope.

Chair Kirkpatrick:

I do not understand what . . . We need to fix whatever the problem is. I thought this addressed everyone's concern. It gave the State Engineer the ability to have some flexibility, to have public hearings, it gives the Legislative Committee the ability to revisit the regulations as they come through the process. Is it the date or what?

Kyle Davis:

I will try to clarify. We have submitted the amendment ([Exhibit L](#)) to clarify a public process to be completed by the next legislative session. If there is a better way to word that, we are still talking about doing it within existing processes for regulation. If there is a better way, just so that we are clear, it is not something that needs be done by the end this year, but needs to be done before the next legislative session.

Chair Kirkpatrick:

Okay, that is fine. We put a bunch of bills in the last four years. The regulation process is very open; in fact, state agencies will tell you that it takes too long to get information to the Legislative Commission. I would disagree. I think that there is a huge process. I will look at that, and then we will fix whatever so that the bill is clean going to Senator Lee. Anything that has water in it, I want it to be perfect when it leaves this House.

Are there any other questions? [There were none.] Is there any one else that would like to testify in support of A.B. 466?

Bjorn Selinder, representing Churchill, Eureka, and Elko Counties:

We are here to express support for the bill and the concept of it. It is an important issue that needs to be addressed. How it is to be done sounds like it is going to be left for another day.

I did note on the bill itself that it has a fiscal note, which was not on NELIS. It says, "the effect on the state." I would simply suggest that it is probably cheaper to go through a regulatory adoption process than it is to pay for a lot of attorneys. With that, I would like to turn comments over to Mr. Jake Tibbitts who is the Eureka County Natural Resource Manager.

Jake Tibbitts, Natural Resource Manager, Eureka County:

We do support A.B. 466 and feel it is necessary that the State Engineer move forward in defining "environmentally sound" with stakeholder involvement and a public process.

I would like to echo what Mr. Selinder just mentioned. Currently it is left up to personal interpretation and the courts to decide, and I think that we need to take that power into our own hands to define what that is. Again, we ask that you empower all the stakeholders to work together to define "environmentally sound" through A.B. 466.

Doug Busselman, representing Nevada Farm Bureau Federation:

The Nevada Farm Bureau has a fairly extensive policy position outlining details and specifics of what it would like to see included. We support the bill and we will work with the State Engineer to have those concerns articulated in the definition that is developed.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] The one thing that I will tell both sides is, it would be nice if you could all agree on something that comes to the Legislative Commission, because I sit on that board and I would like to make sure that we are working together and not on opposite sides.

Is there anyone else that would like to testify in support of A.B. 466? And if you are neutral, please come up. We are late to floor, but so is every other committee so we have a couple of minutes.

Dean Baker, Manager, Baker Ranches, Inc., Baker, Nevada:

I think this is one of the most critical bills for the future in the history of Nevada because there are so many places with a drawdown which has pulled the water down and taken more than there realistically was.

It is not easy to find out or see what it is, but it should be studied carefully. There is another reason for the importance of this bill, and that is because there have been interbasin transfers before, but not on this kind of seven-foot or bigger pipeline that takes the total amount of water created in the valleys and other areas away and can create major problems.

There is a history of drawdowns that have been put on top of an aquifer and done gradually, but not like this. So it needs to be defined and looked at and studied very carefully. As you all know, if water comes out, it goes down. So, if you are taking the water from a valley several thousand feet higher to another valley, it may in the end not get to the valley years later, and this is very undefined.

I think it is a very important bill. I think it should be studied and put forward.

Chair Kirkpatrick:

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

Jason King, State Engineer, Division of Water Resources:

Our office is in support of adopting a regulation to define what consideration should be analyzed in determining whether the export of water is environmentally sound as it relates to the basin of origin. With that said, our office strongly opposes section 2 of the bill that requires us to adopt these regulations by the end of this calendar year. Adopting regulations is a very time-consuming process for noncontentious issues, let alone when trying to define what "environmentally sound" means in the context of water transfers.

We do not feel we can get this done by the end of this calendar year. Even if we could hold the necessary workshops and hearings and draft a set of regulations, they would have to be reviewed by the Legislative Counsel Bureau (LCB), sometimes more than once. Then they have to be submitted to the Legislative Commission, as you discussed, Madam Chair, for final approval. These processes can be very time consuming and are out of our control.

Chair Kirkpatrick:

I could say it for you, but you may go ahead.

Leo M. Drozdoff, Director, Department of Conservation and Natural Resources:

Yes, Madam Chair. You have talked about the Executive Order which requires that we have to take look at and make sure that for regulations to move forward at all, they have to comply with certain provisions of that Executive Order.

We also have to evaluate our existing regulations and report back. I think, from a department standpoint, our strategy is to review all of our existing regulations as part of that Executive Order.

That seems to make more sense to me, and then we move forward as needed or as directed with new regulations. I would just echo Mr. King's statement that we are committed. We think it would make a lot of sense to do this, but we are very worried about the time frames outlined as well as the other things that we have to do pursuant to the Executive Order.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? [There was no one.] What I did not want to do was to define it myself because I do not think that is fair to anyone, and I am sure somebody would definitely lose. Do you think that somewhere in the middle of the next legislative session we could at least see where we are at? I only say this because people come and go, and Mr. King, you may decide that you want to retire tomorrow and then this gets left. What I do not want to happen is for it to come back and be part of statute and be a discussion that no one ever had. I can foresee that happening. Maybe we could have this discussion to figure out the best way to do this. I also know I am willing to go to the Office of the Governor, but Mr. Ocegüera has a bill on different regulations and he would have to go back and change his Executive Order and amend it every time there was an unintended consequence with the regulations. I am willing to have that discussion with the both of you at another time. That is where I am at. I could have defined it, and I am sure that everyone would have hated me when it was done. I did not want to do that.

Jason King:

Again, we really appreciate that, as Mr. Tibbitts said earlier. We like being able to go out and adopt these regulations ourselves and get some consensus. In terms of timing, I like the idea of the end of the calendar year 2012, but again this is going to be a contentious issue. We might be able to draft some regulations. We will have to rely on getting them back from the LCB and have to get them to the Legislative Commission. I like the sound of calendar year 2012, but again, I would like to get on the record that there still could be problems with that date.

Chair Kirkpatrick:

I do not disagree, because sometimes it takes six months with our process to even get to the Legislative Commission. I would like to work with you on the date.

Andy Belanger, representing Southern Nevada Water Authority; and the Las Vegas Valley Water District:

In concept we support the bill, and we support defining terms that are in NRS 533.370 that have not yet been defined and should be defined in addition to "environmental soundness." It makes sense to me that we define other terms specifically in subsection 6 that have not yet been defined, including "appropriate long-term use," "unduly limit growth," and "water available for appropriation." All of these terms have very specific traditions surrounding them, but not necessarily regulations that define those terms, and those terms ought to be defined.

In addition, I think we echo at least in principle, but probably not in definition the idea of defining the terms "perennial yield," "recharge," and "discharge," in regulation; all of those terms should be defined so that the State Engineer and every applicant and protestant are on the same page when they go to a hearing on a water application. They are terribly complex, and we can propose an amendment to add those terms. I do not think that anyone would have an objection to that.

Chair Kirkpatrick:

I understand what you are saying and I am going to let Assemblyman Goedhart talk, but I think we need to chop at them one at a time. We have made great strides on water, at least since 2007.

Assemblyman Goedhart:

Have you been able to talk to the bill sponsors and let them know that you see the deadline is a little bit too onerous for your office to draw all the input and have all the dialog and discussions back and forth? Have they been open to working with you on a date by which they would like to see that done?

Jason King:

Actually, I was not able to talk to everyone that I wanted to, but I was happy to see that Ms. Lynn's amendment talked about the end of 2012. I thought she understood too how lengthy this process was. I do believe that the stakeholders understand that it is going to be a rather lengthy process, and this calendar year is just not possible.

Chair Kirkpatrick:

Sorry, Mr. Belanger. We have to take a little bit of the apple at a time. I do not accept your amendment, personally.

Andy Belanger:

That is fine. I understand there is a process. I will state one other thing that I think is important as a policy discussion that we need to have at some point, if not in this session, then at some point in the future.

There are specific requirements that address interbasin transfers that do not apply to any other application of water. Those are namely: they have to justify the need, there has to be a conservation plan if the State Engineer deems one appropriate, it has to be environmentally sound, and it has to not unduly limit growth and development in the basin of origin. Those provisions of law should apply to all applications of water. All applications should have to justify the need. All applications should have a conservation plan. All applications should be environmentally sound.

We have had situations within the last year where a city decided to give up its entire water supply so that a private business could come and jeopardized that entire city's water supply. No one opposed it, and that project would have been potentially stopped if there was an environmental soundness requirement that had to do with intrabasin transfers. We would be very interested in seeing all applications must be environmentally sound. All applications must have a conservation plan, and if we do not define the rest of those terms in statute, perhaps we will be willing to go there this session.

Chair Kirkpatrick:

Are there any other questions? Mr. Belanger, I am going to make sure that you lobby that the State Engineer's Office gets to keep all its money because it cannot do all these things without money.

Leo Drozdoff:

I just wanted to make sure that the sentiment is out there, which is, when Mr. King and I first started working together on this before any bill back in April of 2010. One of the first things we talked about was that developing regulations was probably in the best interest of all stakeholders, so we are committed to that.

We look forward to working with you offline or elsewhere. A concept to consider, in taking a look at Mr. King's workload, is I think we could commit to initiating a process at the beginning of 2012. We are willing to take that where it takes us; as he said there are a lot of steps. So by the end of 2012 we can either have a finished product, that would be the ideal, or a report back to the Legislature on where we are. I think those are things within our control, or at least are some concepts for you to consider as we move forward.

Chair Kirkpatrick:

Okay, I think that is what we all want here is not to "ram-n-jam" it and end up with something that is worse. Is there anyone else that would like to testify on A.B. 466? [There was no one.] With that, we are closing the hearing on A.B. 466. Is there anything for public comment? [There was nothing.] Is there anything from the Committee? [There was nothing.]

Just a reminder for the Committee members: 7:30 a.m. on Wednesday. We do have a full day, and Thursday, do not forget we have six bills for Thursday night at 6 p.m. Lastly, the working group for the group homes will be in my office at 5 p.m. so anyone that wants to participate can. The meeting is adjourned [at 11:13 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 4, 2011

Time of Meeting: 8:01 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 243	C	Frank Partlow	Recommendation #41
A.B. 424	D	Assemblyman Cresent Hardy	Prepared Text
A.B. 424	E	Frank Partlow	SAGE Survey and Recommendations
A.B. 159	F	Assemblyman Tick Segerblom	Presentation
A.B. 159	G	Barry Lovgren	Prepared Text
A.B. 159	H	Barry Lovgren	Letters of Support
A.B. 159	I	Diana Alba	Letter
A.B. 159	J	Laurel Jimenez	Letter
A.B. 159	K	Alan Glover	Amendment
A.B. 466	L	Kyle Davis	Amendment