

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

**Seventy-Sixth Session
April 8, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 7:33 a.m. on Friday, April 8, 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
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Randy Kirner, Washoe County Assembly District No. 26

Assemblyman Tick Segerblom, Clark County Assembly District No. 9
Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association
Ron Dreher, Director, Government Affairs, Peace Officers Research Association of Nevada
Brett Barratt, Insurance Commissioner, Division of Insurance, Department of Business and Industry
James Wells, Executive Officer, Public Employees' Benefit Program
Kimberlee Tarter, Deputy Administrator, Division of Purchasing, Department of Administration
Bob Johnson, representing Retired Public Employees of Nevada
Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041
Michelle Jotz, Director, Government Affairs, Las Vegas Police Protective Association; and Southern Nevada Conference of Police and Sheriffs
Melanie Bruketta, Human Resources Director, City of Carson City
Teresa Thienhaus, Director, Department of Personnel
P. Michael Murphy, representing Clark County
Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson
Chris Ferrari, representing City of Reno
Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas Metropolitan Police Department
Steve Walker, representing Lyon County
Mary Pierczynski, representing Boulder City
Bart Mangino, representing Clark County School District
Steve Driscoll, Assistant City Manager, City of Sparks
Jeanine Lake, representing American Federation of State, County, and Municipal Employees Local 4041
Bob Ostrovsky, representing City of Las Vegas
Marcia Turner, Vice Chancellor, Operations, Nevada System of Higher Education

William Banter, Lieutenant, Highway Patrol Division, Department of Public Safety
Lisa Foster, representing Boulder City
John B. Hefner, Legislative Chairman, Enlisted Association of Nevada
Stephen Osborne, representing Nevada Justice Association
Amy Davey, Personnel Analyst III, Department of Personnel
Ron Bratsch, Corrections North Chapter President, American Federation of State, County, and Municipal Employees Local 4041
Pam Del Porto, Inspector General, Department of Corrections

Chair Kirkpatrick:

[The roll was called.] Good morning. We will go ahead and get started. We have six bills to get through today, and we need to be on the floor at 10:45 a.m., therefore I will hold you to some time limits. We will start with Mr. Kirner, and we will open the hearing on Assembly Bill 365.

Assembly Bill 365: Makes various changes relating to the Public Employees' Benefits Program. (BDR 23-604)

Assemblyman Randy Kirner, Washoe County Assembly District No. 26:

I will ask you to go into Nevada Electronic Legislative Information System (NELIS) and view the amendment ([Exhibit C](#)), so that it will be easier to follow together. I would like to say that this bill is simple and straightforward, but I do not think that is in the lexicon of our Assembly. I will walk us through the bill, which comes from my background as a board member in the Public Employees' Benefits Program (PEBP) and several years as Chair.

Let us begin with section 1. As it stands now, PEBP is a billion dollar program. If we go out for a request for proposal (RFP), it goes through an evaluation committee, which the Board does not participate in. The evaluation committee makes a decision regarding the usage of a third-party administrator. We are trying to create a second step by working with Greg Smith of the State of Nevada Purchasing Division. The evaluation committee would make a decision, which then goes through the Board. The top two candidates would be reviewed by the Board, while taking into consideration the evaluation committee's assessment. The Board then makes their evaluation and proceeds with the election. Therefore, it becomes a two-step process. On the bottom of page 2 of the amendment, line 38 makes reference to the Executive Officer performance appraisal. The approach that we would like to take would honor the open meeting law. At the same time, we want to provide good and consistent feedback on a board level. The process we are outlining here would provide the performance appraisal at an open meeting. It would then go into a

closed session for the Board to determine a collective view before returning to an open meeting to close the performance appraisal.

Moving to page 3 of the amendment, it is our intent to remove language shown on line 20, "subject to the approval of the Governor." The good news is that I have had the opportunity to visit with the Governor since this has been drafted. Seeing where he is moving in terms of boards, we would no longer include that language.

With regard to page 6, line 24 of the amendment, the original draft required we hire an attorney on a full-time basis, which was never the intent. The intent was that the Board may hire an attorney. Therefore, we removed that language and replaced it with language you see on page 7, line 25, of the amendment, which says, "The Board may, from time to time and as is necessary, engage an attorney who specializes in health plans and health care law, to assist it in carrying out its responsibilities to the Program." The issue we have here is the fact that we are currently represented by the Office of the Attorney General. The Attorney General does not have anyone who is an expert in health care. There are approximately 30 federal laws, including the most recent reform act. From time to time, the Board needs someone who is an expert. We had that experience last year, and the Attorney General agreed to allow us to hire someone, which saved Nevada anywhere between \$20 million and \$30 million.

I will move on to the bottom of page 7 and the top of page 8, which is the Commissioner of Insurance's portion. Quite frankly, we want the Commissioner of Insurance involved in order to assure that the vendors we work with are appropriately licensed and able to do business in Nevada. We are the only self-funded plan in the entire state that looks at reasonableness of administrative charges in relation to contributions. For a self-funded plan, that is really not appropriate language. The Commissioner agrees with us, and we have removed that language.

Regarding the language on page 9, section 7, line 32, it is the law of the land that groups of 300 may exit PEBP. We had an experience where a group indicated that it wanted to leave but only take along the active employees. What we are trying to do here is allow them to leave, but not without also taking their retirees.

The language on page 10, line 35, is a courtesy. We had been doing this for approximately eight years, but have since hired a new attorney who changed the rules on us. Essentially, the language allows the Executive Officer to observe an RFP evaluation committee. They would not participate, but merely watch it. That will complete my overview. I am open for any questions.

Chair Kirkpatrick:

Thank you, Mr. Kirner. I would like to mention that although Mr. Richardson could not be here this morning, he sent me an email saying that he is in full support of the amended version. Are there any questions from the Committee?

Assemblywoman Bustamante Adams:

Can we go back to page 7? I want to make sure that I understand it. You opened your comments by saying that this was the Insurance Commissioner's piece, and you wanted to make sure that he was involved. However, you are eliminating the section. Can you remind me why we are eliminating the section?

Assemblyman Kirner:

Are you speaking about the bottom of page 7 and moving over to page 8?

Assemblywoman Bustamante Adams:

Yes.

Assemblyman Kirner:

Some years ago, the Commissioner of Insurance was added to the *Nevada Revised Statutes* (NRS) to review our rates and our structure, et cetera. Public Employees' Benefits Program is the only self-funded plan in Nevada which was required to go to the Commissioner of Insurance. Having worked with them for a number of years, we found that the relationship is beneficial from the standpoint of verifying whether our vendors are licensed to do business in Nevada. We have a number of third-party administrators and eligibility vendors. There are approximately 15 to 20 vendors. The Commissioner of Insurance is the only one in the state that can guarantee a vendor is licensed, and that is what we want. In terms of reviewing our rates, it is totally impractical because we are a self-insured plan.

Chair Kirkpatrick:

Are there any other questions?

Assemblywoman Neal:

There is a revision in section 7. Can you clarify that for me? You changed their ability to get into their own insurance plan, and now they cannot. Is that what is going on in section 7, lines 32 through 45?

Chair Kirkpatrick:

Ms. Neal, I believe there is an amendment that addresses that. Section 7 of the amendment says if you are going to leave the program, you must take retirees and employees. From my perspective, in the past, we have seen groups

wanting to take the active members because the health rates are cheaper. They would rather let the state provide for the retired members. Is that a fair statement, Mr. Kirner?

Assemblyman Kirner:

It is a very accurate statement.

Assemblyman Ellison:

Did you say that you had an amendment on page 6, line 24?

Assemblyman Kirner:

On page 6, lines 24, 25, and 26 are deleted. The language said the board "shall" hire somebody. That is what caused the fiscal note. We replaced it with the language on page 7, line 25, which says the board "may." That is actually good news because there is no fiscal note this way.

Assemblyman Ellison:

Going back to page 2, language on line 38 says, "The Board may conduct an annual review of the performance of the Executive Officer. After receiving public comment during an open meeting, the Board may meet in closed session to conduct the review."

Assemblyman Kirner:

What is the question?

Assemblyman Ellison:

I do not like closed sessions. I believe I have voiced that to this Committee. That is my biggest concern.

Assemblyman Kirner:

Let me address that, if I may. As many of you know, I have a doctorate. My dissertation is on performance appraisal. My work has been published, and it is going to be presented this summer at the Academy of Management meeting. If there is anyone in this house that understands performance appraisals and what makes them work, it is me. I am trying to create a system that honors the open meeting law, with the first part of the process being an open meeting. The Board will then go into private session to conduct its findings and to come to a collective agreement. Afterward, they would go back into a public session integrating the open meeting findings with the private meeting comments from the Board. The performance review would be completed in the open meeting. I have had a discussion with Mr. Hardy, who was involved in this portion of the bill. He agrees that this is consistent with the intent and direction of the open meeting law with regard to performance appraisal.

Assemblyman Ellison:

I am not indicating that this Committee, or the Board, will experience problems, but this still opens it up for potential problems ten years from now. I just do not believe in closed sessions, and that is my biggest problem with the bill. Other than that, I have no problem with the bill.

Chair Kirkpatrick:

Thank you, Mr. Ellison. I believe you were present when we heard another bill where this same discussion came up. The problem becomes if we start exempting one bill, everyone else will want the same, and it may become a problem. We have been down this road for several sessions.

Assemblyman Kirner:

Remember, this is conducted in an open session. The closed session portion allows the Board to talk amongst themselves, bringing it back to public session to integrate the Board's position with public position, in a public forum.

Assemblywoman Pierce:

The amendment on page 2 reflects new language. Line 13, paragraph (c) states, "Consider the rankings of a committee appointed to evaluate the proposal." What is this committee made of, and who appointed it?

Assemblyman Kirner:

This is your standard language. Whenever there is an RFP, there is an evaluation committee. This refers to that committee.

Chair Kirkpatrick:

I believe that is standard practice throughout state purchasing. The committee sends out the RFP. They bring them all back, going through the proposals to make sure that they meet the criteria. They subsequently provide the recommendations. Are there any other questions? Is there anyone else to testify in support?

Assemblyman Kirner:

Yes, there are several people.

Chair Kirkpatrick:

Okay, I will ask for anyone who would like to testify in support of the bill, as amended, to come forward.

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

We support the bill, however, we did try to opt out at one time. Although the NRS is clear and concise, we would ask PEBP to help with writing the

regulations for us. That is where the problem lies. The state law enforcement officers want to opt out of the state system, but the way the regulations read, it is impossible to do so at this time. Thank you.

Chair Kirkpatrick:

I will have to see how the regulation process works, but this will be a new direction for the bill. I am sure the regulations will have to be updated.

Ron Dreher, Director, Government Affairs, Peace Officers Research Association of Nevada:

We are in support of A.B. 365, with amendments. Thank you.

Brett Barratt, Insurance Commissioner, Division of Insurance, Department of Business and Industry:

I am generally neutral on the bill; however, I do fully support the amendment as proposed for section 6. When I first reviewed section 6, it was a little bit confusing because it was being removed entirely. Working directly with Assemblyman Kirner and Jim Wells from PEBP, I am satisfied the language will protect my fellow state employees. Our office does have the expertise to look at licensees to be certain they meet the financial solvency requirements and that they are appropriate business entities. I also agree that it may be inappropriate for us to determine the reasonableness of the charges, because the Board is better situated to make that decision. The Board knows better the volume of work that they do and what is a fair charge for work required. Thank you.

James Wells, Executive Officer, Public Employees' Benefit Program:

While the PEBP Board has not taken an official position on this bill, I would like to focus on a few things that may improve the operations of our office, the first being section 5, as amended, which allows an attorney to be appointed as necessary. When it was listed as "shall," there was a fiscal note attached to it. As amended, the language would allow us to remove the fiscal note. We do believe there are several positions that help the Health Insurance Portability and Accountability Act. With health care reform, we do need the expertise of a lawyer who is well versed in health care.

We like the portion of section 7 involving the clarity around the groups of 300 that are required to take retirees. As you pointed out, Chair Kirkpatrick, that issue was the problem with the original groups of 300. There were no retirees included in the group of 300 that first time. We do believe the purchasing section, as amended, will provide us with enough structure to allow the Board to participate in the RFP process. Thank you.

Kimberlee Tarter, Deputy Administrator, Division of Purchasing, Department of Administration:

We worked with PEBP and Assemblyman Kirner on the language which directly affects the evaluation process. We signed in as neutral, but we support moving forward with the amended language.

Bob Johnson, representing Retired Public Employees of Nevada:

We have over 9,000 members. As you know, we are facing many problems now with health care. I have been involved with health and the PEBP program for many years now. We are in support of this bill. There is just one issue that we have discussed. In certain instances, there is a small matter of changing "may" to "shall" in some of the language. We feel that in the past, it has been too permissive, and we have not been able to obtain the information that is required. We do support the bill wholeheartedly. Thank you.

Chair Kirkpatrick:

Mr. Kirner, if there are any minor changes to be made, we do need to have them turned in no later than Monday morning. We are a three-day-a-week Committee, and the majority of our work session will be done on Wednesdays.

Assemblyman Kirner:

You will have whatever you need.

Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041:

Local 4041 absolutely supports this bill as amended. Thank you.

Chair Kirkpatrick:

Is there anyone else wishing to testify in favor of, opposed to, or neutral to A.B. 365? I will go ahead and close the hearing on A.B. 365. I will now open the hearing on Assembly Bill 266.

Assembly Bill 266: Revises provisions governing disciplinary proceedings for certain employees of state and local government. (BDR 23-35)

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

Assembly Bill 266 deals with an issue that comes up in various state agencies and some local governments, although not very frequently. There are employees who are not covered by collective bargain agreements, but they are still permanent employees. Oftentimes, there are questions about what due process those employees are entitled to. This may occur when the employees are accused of something and must appear at an investigative interview, or when they are being disciplined, such as being suspended or terminated.

We have tried to set forth the fundamental concepts of due process, which the Nevada Supreme Court has said the employees are entitled to. We want to put them into statute so that there is no question that the employees have this coverage. Legal staff has provided a legal amendment, which I am not sure has made it onto NELIS ([Exhibit D](#)). If it has not, I apologize. [Assemblyman Segerblom also provided a copy of a PowerPoint presentation ([Exhibit E](#)).]

Chair Kirkpatrick:

We do have a hard copy of the amendment.

Assemblyman Segerblom:

I will summarize it for you. The amendment refers to sections 5 and 6, which deal with the rights of a hearing. It basically says that if the local government entity has a collective bargaining agreement, the agreement would supersede these due process procedures. It takes those employees out from under this.

Just this morning, several cities contacted me saying they have civil service commissions that will offer the same procedures. I will be happy to add that to the amendment, which would state that if there is a legitimate civil service commission, the procedures would not cover those employees.

Assemblywoman Neal:

Language in section 4, subsection 4 says, "Technical rules of evidence do not apply at the hearing." Why did you take that out when you have cross examination and judicial review?

Assemblyman Segerblom:

It is because these are known as administrative hearings, which is like arbitration, where it is more the weight of the evidence than the technical rules. The hearings may get into hearsay, but if there was direct evidence as opposed to hearsay, the direct evidence would prevail. It becomes too cumbersome and could be dragged out for too long.

Chair Kirkpatrick:

I did receive quite a few concerns last night and will forward the emails your way to address. Most of them came from the public safety departments. I will be sure to get them to you.

Assemblyman Stewart:

Can you tell us about the fiscal note?

Assemblyman Segerblom:

To my knowledge, there is no fiscal note on this bill.

Chair Kirkpatrick:

On the bill itself, it does show a fiscal note.

Assemblyman Segerblom:

I am sorry but I have never seen one. On the next bill, I was provided a fiscal note, but not on this one. Basically, most of these procedures occur already so I do not know that there would be a fiscal note. This is formalized, and sometimes an attorney is required, whereas sometimes one is not. All the procedures are occurring; the question comes back to who will be doing the process.

Chair Kirkpatrick:

We can check on it later. Actually, Ms. Pierce just checked on it and the fiscal note stays at zero. I do not see any more questions. I will forward the emails to you. Do you have anyone to testify in support?

Assemblyman Segerblom:

I have invited some, but I am not sure who is here.

Chair Kirkpatrick:

If there is anyone to testify, please come forward now.

Michelle Jotz, Director, Government Affairs, Las Vegas Police Protective Association; and Southern Nevada Conference of Police and Sheriffs:

We are in support of this bill with the amendment.

Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041:

I would like to say on the record that we are for *Nevada Revised Statutes* (NRS) Chapter 284 provisions, as well as the amended provisions presented under A.B. 266.

Chair Kirkpatrick:

Is there anyone who is in opposition to the bill?

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

We are in support of this bill; however, I would like to point out there is a conflict with another section of NRS Chapter 284. This bill allows the employee 48 hours to obtain counsel. In another section, it says the employee has 48 working hours. We ask that this bill should also reflect the employee has 48 working hours to obtain representation.

Chair Kirkpatrick:

You say the conflict is within this bill?

Ron Cuzze:

Currently, NRS Chapter 284 says that the employee has 48 "working" hours. Also, in NRS Chapter 289, it just says 48 hours. Now, this bill says 48 hours. We are asking for a clean-up measure that indicates that all employees are allowed 48 working hours to obtain representation. If there is a three-day weekend, and an employee working a 24/7 shift is charged, what can happen is that he can be brought before a tribunal of any nature within 48 hours, over a three-day weekend. That is stretching it, but that is what this does. We ask that it be 48 working hours.

Chair Kirkpatrick:

This bill, along with the last few bills we have seen, says "at least 48 hours." Would you rather specify 48 working hours?

Ron Cuzze:

No. It should say "at least 48 working hours."

Assemblyman Stewart:

I appreciate the intent of the bill, but one thing that concerns me is if there is a serious infraction of a teacher, an officer, et cetera, which requires immediate attention. Would this language postpone that from occurring? Let us say there is an altercation of some kind. Would the principal be able to talk with the teacher right away?

Ron Cuzze:

I do not believe so. There are other provisions in NRS Chapter 284 and other sections of the law. If there seems to be a problem, especially involving public safety, that individual may be spoken to and removed. This bill is concerning hearings and rights. It will not affect a situation where there can be harm to the public or employees.

Melanie Bruketta, Human Resources Director, City of Carson City:

I am here today because all of our classified employees have similar protections in this bill. However, regarding our unclassified professional employees, there is a provision in state law that allows them to appear before the Board of Supervisors, should they be dismissed. This bill extends that to essentially take away their at-will status and give them binding rights to come back to employment, which the state law currently does not provide them.

Chair Kirkpatrick:

We will have Mr. Segerblom address that when he comes back up.

Teresa Thienhaus, Director, Department of Personnel:

We are opposed to the first section of the bill, which amends NRS Chapter 284. Section 1 of the bill significantly changes the state's obligation to provide reasonable notice to an employee who is subjected to an internal investigation. [Ms. Thienhaus continued reading from written testimony ([Exhibit F](#)).]

Chair Kirkpatrick:

Does anyone have any questions?

P. Michael Murphy, representing Clark County:

We are opposed to this bill. We understand the amendment, which was brought forth by the Police Department, and we realize that it will take care of the collective bargaining issue, but we would like to say that the county's merit personnel system provides a hearing process for the nonunion eligible employees that would be superseded by this bill. In reality, we believe the current process works well for both employees and employers. We think that the enactment would force us into a "one size fits all" situation. We do not believe that is appropriate for what we are doing. There is no way that I will be able to argue the legal merits of that process with Mr. Segerblom, since this is his area of expertise. I will say that I have dealt with him on more than one occasion in reference to employee issues. I think we have always been able to come to a successful conclusion. Our at-will employees have a due process. Even though they are "at-will," they always have that guaranty of due process. We believe this is unnecessary. Thank you for your time.

Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson:

We definitely appreciate the Assemblyman's efforts regarding the amendment, which would exclude our collective bargaining agreements. We are also in agreement with the County and their position that we already have due process for our employees who are not represented. The City of Henderson has civil service rules that provide for an appeal to an impartial civil service board. A hearing would be held where the employee may be represented by an attorney. That civil service board is appointed by our city council, which is composed of community members. In addition, the city charter, which was approved by the Legislature, provides that the City may establish its own civil service system. Our disciplinary procedures provide all appropriate due process. We believe this bill is not necessary and has taken away our right to utilize the system that we created.

Assemblywoman Neal:

Would this bill afford greater protections to an employee, and why is that a problem to you? I have heard your arguments and perhaps this addresses all that I have heard. What is the problem with having greater protections?

Javier Trujillo:

The concern is that we already have these processes in place. We do not feel that it must be mandating or put into statute. We do afford these protections to all employees who are represented and not represented. We also feel this may increase some costs, especially if we are mandated to hire an arbitrator. We already have that process offered through our civil service board. We do not feel that this bill is necessary.

Chris Ferrari, representing City of Reno:

While we appreciate the Assemblyman's efforts in this legislation, it does not change the impact on civil service employees for the City of Reno who are not represented under a collective bargaining agreement. Unrepresented civil service employees are already entitled to a hearing before the Civil Service Commission. We do appreciate his efforts and are happy to work with him, but we are in opposition to the bill. Thank you.

Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:

All of our concerns have already been raised. I would also just like to say that we oppose the bill.

Steve Walker, representing Lyon County:

Lyon County is opposed to this bill for reasons which were already provided by the other local governments. Thank you.

Mary Pierczynski, representing Boulder City:

For reasons already stated, we are opposed to the bill.

Bart Mangino, representing Clark County School District:

We are also opposed to the bill.

Steve Driscoll, Assistant City Manager, City of Sparks:

We are in opposition because currently under NRS Chapter 288, all of our collective bargaining agreements are being handled. Our charter has a civil service committee, which handles this for them and some of the nonrepresented parties. We also have administrative rules and regulations which are part of the resolutions that we have with our unrepresented groups. Thank you.

Chair Kirkpatrick:

After this hearing, Ms. Neal has some questions for you. Please try to get together with her then. Thank you.

Assemblyman Segerblom:

First, I would like to say that the bill is not intended for at-will, exempt employees. I am not sure what the concern from Carson City is, because this does not give any rights to people who do not have rights. Secondly, as you heard initially, I offered to change the amendment to remove collective bargaining employees and employees covered by civil service rules. It will only apply to cities that do not have civil service rules, for their nonbargaining employees.

Assemblyman Ellison:

On page 3, section 1, line 8, paragraph (c) says, "The answer to the question cannot be used against the employee in a criminal proceeding." Can you explain that?

Assemblyman Segerblom:

That is what is known as the Garrity warning. If a public employee has been accused of something criminal, and the employer wants to question the employee about the incident, the employer cannot force the employee to answer the questions without applying the Garrity warning. The Garrity warning would dictate that the employee's answers cannot be used in criminal court. That is the current law, but this is just laying it out in statute. It is designed to prevent violating people's Fifth Amendment rights. It allows the city to question the employee to determine what occurred, but it does not take away rights that may incriminate.

Chair Kirkpatrick:

Mr. Segerblom, can you address the Department of Personnel's concerns with the first part of the bill?

Assemblyman Segerblom:

I believe there is just a basic issue. One of the biggest problems is being accused of inappropriate conduct, but the employee is given a blanket notice

without providing them with any details of the accusation. The whole point of this is to make the employee aware of the conduct he is being accused of before the interview, in order to be better prepared to answer the questions. If the employee is being brought in on one pretense and then drifts off to another, the employee should be able to walk away and return when the questions are more specific. There is a real problem with providing a generic notice, bringing the employee in for questions, and then using the answers to those questions as basis for termination.

Chair Kirkpatrick:

I do not see any more questions. Thank you, Mr. Segerblom. Are you also presenting Assembly Bill 354? Okay, we will close the hearing on A.B. 266 and will open the hearing on A.B. 354.

Assembly Bill 354: Revises provisions relating to the State Personnel System.
(BDR 23-1014)

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

Assembly Bill 354 deals with state employees and the current grievance process. The current grievance process, which deals with matters other than suspensions and terminations, involves what is called an employee management committee. Under statute, it is a committee that is formed by the appointment of three people from labor along with three from management. They sit as a board to meet once or twice per month to hear these grievances. I think that most everyone agrees that this process is not working well, and this bill was designed to replace the system with another process of arbitration. Unfortunately, we were hit with a fiscal note, which is pretty substantial. I am not sure now if this bill, which utilizes an arbitrator, will work. I have talked to the Director of Personnel about trying to work on something else. I just wanted to raise the issue that the current system is not working. The Employee Management Committee decides whether it wants to hear a grievance or not. Sometimes it will arbitrarily decide that there is no issue, which leaves the employee dissatisfied. We have a problem, but we do not have a good solution yet. [Assemblyman Segerblom provided a PowerPoint presentation ([Exhibit G](#)).]

Chair Kirkpatrick:

For the members of the Committee, this is something that we have been working on since at least 2005. We have been trying to expedite the process because we have heard from employees that at times they wait a very long time to air their grievances. In some cases, they are not being provided with hearings at all. We have heard both sides, and I know this is something we have been trying to work on for a long time.

Assemblyman Segerblom:

That is correct. Currently, one of the problems is six employees will take a day off, which costs the state a great deal of money. It is not included in their fiscal note, but if you want to hire an outside hearing officer for \$100 per hour, that gets added up as \$1,000 per day for 140 days. If we address that issue, it may be helpful.

Chair Kirkpatrick:

There are no questions. Are you going to leave the hearing now? Should we go forward with other testimony?

Assemblyman Segerblom:

Yes, I do have somewhere else I need to be now. Thank you.

Chair Kirkpatrick:

Is there anyone who would like to testify in support of A.B. 354?

Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041:

Our members have some serious concerns with the current process under the Employee Management Committee (EMC). I would first like to thank Mr. Segerblom for bringing this forward. As the Chair said, we have had this issue come up many times. This time we thought we could abolish it and come up with a new system. I would also like to bring to your attention the panel of three employees and three employee supervisors. When there is a tie, it goes to the employee supervisors.

The other concern is that the EMC is appointed completely by the Governor. Ultimately, there are no other parties involved to show a little bit of diversity. Time and time again, it takes the employees months to be allowed a hearing. Furthermore, a state employee may actually be denied an EMC hearing, because the Committee may actually make a determination that EMC has no jurisdiction to resolve the employee grievance.

We feel that the system, which was developed in 1981, requires some attention. If not arbitration, there should be some other method utilized to resolve the employee grievance. The system is broken and is not being resolved in a timely manner. We feel that state employees need to have their voices heard and to be provided with fair and impartial hearings. The arbitration process could be a fair avenue, but there is a fiscal note. We feel that the arbitration process would not cost as much as what is recorded on the fiscal note. Employers would not be utilizing it because they would be compelled to solve the grievances prior to the arbitration level. We feel that the grievances

making it to the final step would decrease immensely, once they are forced to take notice of the issue. This is not for all administrators in the state government. There are a few supervisors and administrators who decide to pass it on to the EMC to deal with. That is not a fair process. The employees should be dealt with at the lowest possible level at all times.

Our goal is to save the state money, and we feel we can do that by utilizing a better method. We would be happy to work with state personnel, along with Assemblyman Segerblom, to ensure that we have a plan by Monday. I apologize for not having that done, but we felt that the arbitration process was appropriate until we saw the monetary portion. Although it is only \$37,000 annually, if you take all things into consideration, you really should not see a big change in monetary amounts. This may be cost-neutral, to a certain degree. This arbitration process would be rarely used. I am sorry Ron Dreher is not here today; he is currently in another meeting. He would tell you that arbitration is not very often used, because it is a final step in the process. We support A.B. 354.

Jeanine Lake, representing American Federation of State, County, and Municipal Employees Local 4041:

I have seen both sides of the EMC issue. I am a former state employee who served on the EMC at one time. I am now a union representative for the American Federation of State, County, and Municipal Employees (AFSCME) Local 4041. For a number of years, we have been utilizing the EMC as the final level of the grievance process. Over time, as a representative, I have seen the attitude towards grievances in Nevada change considerably. There was a time when supervisors and managers were willing to try to sit down and resolve issues informally or at the lowest level of the grievance process. That has changed. We now have supervisors and managers who are telling employees, "I do not care. File a grievance." They know it will get to the EMC because very seldom do we see at any level of the grievance process where managers or supervisors are willing to sit down with the employee. It is always a response to the grievance or no response to the grievance. Therefore, the employee must go forward to the level of the EMC to have his grievance heard. We do believe the cost of grievances will go down considerably if management and the employees share in the financial burden for an arbitrator. We believe that management would be more inclined to sit down with employees at the lowest level to try to resolve issues. In addition, when it gets to the EMC, there have been times where the grievance was not even heard. At no time throughout the grievance process, including the EMC, has the employee had the opportunity to present his or her case or have the issues heard. As I said before, it is the general attitude out there in state government, from supervisors and managers, to encourage employees to file grievances and allow them to get to the EMC.

Why is that? We do not believe that is necessary, and our members fully support this bill and have asked for a revision in the regulations for many years now.

We feel that there is room for improvement with the current process, and we would like to see this bill passed. Thank you, very much.

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

We fully support this bill and agree with everything that AFSCME has said. I would ask the Committee for some statistics from Department of Personnel on the EMC. I believe that if you were provided with some more facts, it would be easier to understand what goes on. Our association represents law enforcement. In the Department of Public Safety, we do not get grievances. The reason we do not get the grievances is because I am able to talk to the director and I am able to talk to all five division chiefs. We sit down and discuss the matter, and in that department, the grievance stays at the lowest level, as Ms. Lake was indicating. The State of Nevada is spending too much money on the grievance system and the EMC. The system is broken, and one of two things must happen. We will either go with an arbitrator, or we will have to have our managers in the system start talking again to their employees. That is hard for a Legislature to do. You are here to pass laws and not to supervise our managers. We support the bill, but definitely think there is a better way of doing it.

Chair Kirkpatrick:

Is there anyone in opposition to A.B. 354?

Teresa Thienhaus, Director, Department of Personnel:

You have heard about the makeup of the EMC and how it operates. One of the reasons we are opposed to this bill is at its meetings, the Committee reviews documentation submitted by the parties and takes testimony. This is an informal hearing process. [Ms. Thienhaus continued reading from written testimony ([Exhibit H](#)).]

To address some of the concerns raised by AFSCME, we have done training. We have decreased the amount of time it takes for a grievance to get to a hearing. The amount of time has decreased by 45 to 60 days. We are much quicker at getting the hearings set. We have changed regulation that mandates step 3. The highest administrator in the department must discuss the grievance with the employee to try to resolve it at that step. We are trying through training and other methods to improve the process. We have heard the concerns that AFSCME and other employee associations have raised over the years. We will continue to try to work towards that.

Assemblyman Livermore:

I am looking at the fiscal note for the Department of Personnel. Have you seen the fiscal note in this bill?

Teresa Thienhaus:

I wrote the fiscal note.

Assemblyman Livermore:

Do you believe this note of \$75,582 is sufficient? I am hearing a much larger fiscal impact, and I am not sure I can justify the numbers here.

Teresa Thienhaus:

The difference in the cost between the EMC and having an arbitrator is \$37,791, based upon the fee which would be charged by the arbitrator. A current hearing officer is making \$100 per hour under their contract. It also depends on how many hearings are held every month. Currently, we are having an average number of 141 hearings per year, allowing for approximately three to six hours for each hearing. Taking all of this into consideration, that is how we arrived at our cost basis. As I mentioned in my testimony, if we are talking about going outside of our independent contract hearing officers, and utilizing arbitrators, they charge a base utilization fee of \$1500, while paying the arbitrator a per-hour fee on top of that. It will be much more expensive.

Assemblyman Livermore:

I am not here to question the note you produced. I just felt that your testimony would have shown substantially higher costs. I want to make sure the fiscal note reflects that.

Chair Kirkpatrick:

I have a question. It seems the number about how many hearings we are having keeps increasing. Is the number that you provided of 141 hearings an increase from last year? As a freshman, I remember hearing it was well under 70 hearings.

Teresa Thienhaus:

I can get that information for you. We can go back and provide you with a historical record.

Chair Kirkpatrick:

That information may provide us with a guideline of how we can decrease it because of the costs, the time, and everyone who is impacted. If we are seeing an increase, we definitely must do business differently.

Teresa Thienhaus:

I agree wholeheartedly. That is why we are trying to do something within regulation to provide training and try to get the supervisors to understand that they need to try to resolve these issues before they move to the step four process. We may also work with higher-level administrators in the department and ask them to sit down and hear the grievance. When a grievance comes through our department, I call every single grievant. I provide them with up to an hour of my time. I talk to them and try to resolve the issue at that level. We are trying to work on that aspect of it.

Chair Kirkpatrick:

I just think it will save us all in the long run. I blame it on technology, because everyone wants to email instead of talking with someone. I tell my kids that all the time. Is there anyone else in opposition or neutral to the bill? [There was no response.] We will close the hearing on A.B. 354. Mr. Aizley, we will bring you up to present Assembly Bill 338, which I know is similar to A.B. 179. There have been a lot of changes and work done on A.B. 179. We will open the hearing on A.B. 338.

Assembly Bill 338: Provides for reconsideration of personnel decisions for public employees. (BDR 23-1010)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

Thank you for the opportunity to present Assembly Bill 338 today. First I will summarize the bill, and then I will provide some background on why I believe this legislation is necessary. [Assemblyman Aizley continued reading from prepared testimony ([Exhibit I](#)).]

Assembly Bill 338 is written to apply originally to all state employees. It has gone beyond that. I had the structure of higher education in mind, and it may be that the amendments are needed for other state agencies.

Madam Chair, with your permission, Kevin Ranft could speak next about that issue, and then I will be happy to try to answer any questions.

Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041:

I would like to thank Assemblyman Aizley, who over years has his heart set on helping the people with due process such as the state employees, local government, higher education, and the basic working folks. The bill is a great bill for ensuring there is due process from the hearing level all the way down to dealing with the supervisor. The only concern I have is to be sure it is equal, such as the personnel division within higher education versus the classified

state employees. As for A.B. 179, had those two bills stayed the same, there would have been no problem. I will work with Mr. Aizley to ensure that the personnel individuals know exactly what to expect within higher education, and that the employees have a fair due process avenue to go to with their personnel individuals. Ultimately, the president within the higher education system has the final say. The system is broken in that respect. Mr. Aizley's intent clearly is to ensure that there is a provision to protect the interest of those individuals. I am sure this is a great start to ensure that occurs. Thank you.

Assemblywoman Neal:

You said you had been in situations where during the appeal the same person was involved with the first hearing. Can you clarify that for me and provide a more specific example of why you felt that was an abuse?

Assemblyman Aizley:

I will try to avoid specifics. The structure of a university is a basic order of faculty member, department chair, dean, vice president, and president. For example, let us say there was a hearing established because of a negative decision made by a department chair. The discrepancy would be between the chair and the dean. So the chair recommends something negative to a faculty member, and the dean supports that. For the hearing, the dean will appoint a committee. To me that does not make any sense. The dean has already spoken and should not be speaking again. That can be done at each level.

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

We strongly support this bill. Although I retired from the University of Nevada, Las Vegas Police Department (UNLVDPD), we closely watch what is going on with our unclassified brethren. That system is broken, and Assemblyman Aizley is correct. We hope you will pass this. Thank you.

Chair Kirkpatrick:

Is there anyone in opposition of A.B. 338?

Bob Ostrovsky, representing City of Las Vegas:

Although our position is in opposition, we are unclear. Perhaps we can obtain some clarification from the bill's sponsor. We have understood that charter cities and municipalities that have civil service arrangements and collective bargaining agreements would not be covered by this bill. Some clarification would be useful, because in the City of Las Vegas, we have many collective bargaining agreements. We also have a civil service commission, created by charter, that provides many of these protections, although maybe not in this form. If we are trying to solve a problem because we are having issues within the way the civil service commission works or the way our collective bargaining

agreements are administered, we would be happy to address those issues. I have not heard those complaints coming up from a municipal level. Our employees have a great deal of protection, and I believe they deserve those protections. They deserve fair hearings. We are not arguing otherwise, we are just unclear about our role in this. As written, it changes all that we have in the City. We would have to rework all of our processes, which we believe are currently working. If there was evidence that they were not working, we would certainly take a different position. Rather than go through individual items, some clarification would be helpful.

Chair Kirkpatrick:

Thank you. I believe your concern is with section 1, subsection 6. Is that correct?

Bob Ostrovsky:

That is correct.

Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson:

We share the same concerns as was mentioned by Bob Ostrovsky, which are many of the same concerns expressed about Assemblyman Segerblom's bill. We do have many of these processes in place. Our city's charters provide us that right. In conversation with the bill's sponsor, it was our understanding that the bill was there to address some issues at the state level. We do not believe these issues are coming from the municipal level. We are happy to work with the bill's sponsor to address any concerns, if they are at the municipal level. If they are not, we hope to be exempted from this bill.

Teresa Thienhaus, Director, Department of Personnel:

We are opposed to this bill because of the way it amends *Nevada Revised Statutes* (NRS) Chapter 281, which impacts state employment as well as other public employers in Nevada. While A.B. 338 is not exactly the same as A.B. 179, much of the language is similar. [Ms. Thienhaus continued reading from prepared testimony ([Exhibit J](#)).]

For all of these reasons, we are opposed to the bill. Thank you for your consideration. I will be happy to answer any questions.

Assemblyman Neal:

I believe you mentioned dealing with probationary employees. What do you have in place currently that deals with assuring the appropriate training before the employees are dismissed? I recall several situations where I have been contacted by people indicating that they did not receive sufficient training in order to provide adequate service. There is a learning curve for everything,

right? They were being penalized for not completing the job in the particular framework or time frame expected, but yet the expectation should have been longer. In the months required for learning, the information may not have been appropriately conveyed to the employee. There is always a subjective issue. What do you have in place right now to eliminate the issue?

Teresa Thienhaus:

Ms. Neal, I do not know that we have anything that eliminates the issue. We do have many safeguards in place to help supervisors deal with an issue like that. We have extensive supervisory training, in which supervisors are taught that this is how you handle a probationary employee. They are instructed to provide training and handle the probationary period in a certain way. We have evaluations which must be done at 3 months, 7 months, and 11 months during the probationary period, which forces the supervisor to be sure the employee is receiving the proper training. Their work performance standards must be met at those intervals. Once they reach permanent status, they are evaluated on an annual basis. During the probationary period, they are watched much more closely. They receive their work performance standards, and it is up to the supervisor to be sure to work with the employee to meet the work performance standards. That is why the evaluation periods come about more frequently. Those are the kinds of things we use to address the issue. There is a certain amount of training that takes place at the agency level which my department is not responsible for. That would include the particular types of training that help the employees perform the specific tasks of his or her job. Our department trains supervisors on how to handle the probationary employee.

Assemblywoman Neal:

Have you never had a situation where a supervisor has been subjective, and he has used a personal issue rather than an objective issue to deal with an employee?

Teresa Thienhaus:

That was not my testimony.

Assemblywoman Neal:

I am bringing that up because some protections should be in place to deal with these subjective issues. They are usually not flushed out because a person will never admit to it. There is an issue, and so I am just wondering because you have been at the table several times. I am just trying to figure out what is the issue with having more protection than not.

Teresa Thienhaus:

Ms. Neal, having more protection puts that person in a non-at-will status. Probationary employment is at-will. There are certain laws that pertain to what the at-will employment relationship is. There is only so far you can go in providing protections before stepping over the line and the employee is no longer at-will. We try to work in the system we have to bring probationary employees on board, make sure they are trained, and evaluate them more frequently. If there is a subjective personality issue between the supervisor and the probationary employee, that is the purpose behind the at-will employment rule. Perhaps it may not be a good fit for the employee, and they need to obtain a job for which they are a better fit, before reaching permanent status. That is what at-will employment is. It has nothing to do with the Title VII types of protections that at-will employees have. They are provided all the protections of Title VII. They also have all the protections of our state statutes that pertain to discrimination. During the probationary period, they are in an at-will status.

Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:

We oppose A.B. 338. We are concerned about how this may impact our agency and our current collective bargaining agreement. As you know, police work is completely different from your typical public employee. As part of our collective bargaining agreement, we have a discipline matrix which we use when disciplining employees. There are occasions where, in police work, a warning is not appropriate for a first offense of a violation of policy or procedure. An example would be truthfulness or use of force. Those issues may not rise to the level of being considered violation of the law, but if an officer is using excessive force or being untruthful, a warning would not necessarily be appropriate for a first offense in those areas. That is why we have a discipline matrix in place, so that we may adequately discipline our employees properly, equally, and appropriately for the situation.

In police work, our agencies are held highly liable for the actions of our employees. When employees are acting improperly, our agencies are liable for that, so we are concerned that this bill would impact how we discipline our employees. For that reason, we oppose the bill.

P. Michael Murphy, representing Clark County:

In the interest of time, we will say that we agree with many things voiced by the municipal governments, with the addition of county government. We will simply say "me too."

Marcia Turner, Vice Chancellor, Operations, Nevada System of Higher Education:

We are opposed to this bill. We have had multiple conversations with Assemblyman Aizley and appreciate his willingness to talk with us. We applaud his efforts to bring issues forward to promote fairness in the employment process. We believe that if there are any issues within the Nevada System of Higher Education, we have numerous policies and procedures in place within the Nevada Board of Regents' codes and the institution's bylaws to address these issues. We believe that we can handle any issues of concern within the existing structure. Because of the subjectivity of some of the specific language, we are concerned that the bill, as it is written, could cause a significant increase in the number of challenges over time. That is the purpose of our fiscal note. We believe we can address the issues with the current structure and authority of the Nevada Board of Regents. We will continue to participate in the process as it moves forward.

William Banter, Lieutenant, Highway Patrol Division, Department of Public Safety:

Along with our counterparts in the law enforcement community, we also have concerns and oppose this bill as written. First and foremost, we have concerns with how this is actually applied to agencies that currently have procedures in place. There are independent sections, such as the internal affairs unit, that investigate misconduct of our employees. We currently do this formatted with the criminal investigative type process. It has deemed to be effective for our department, throughout the entire process, including the predisciplinary hearing and state hearings associated with these types of actions taken by the appointed authority. In addition, we would like to point out a concern we have regarding the time frame with the investigations to be conducted and completed within 90 days. Under normal circumstances, our investigations are completed within a 30-day time frame. However, in 3 to 5 percent of investigations involving serious misconduct or other critical incidences such as officer shootings or allegations of excessive force, there are many issues and a flurry of litigations in which a time frame of 90 days would be very difficult for us to thoroughly investigate. We are in opposition based on those issues. We are willing to work with the sponsor to address our issues. Thank you.

Chris Ferrari, representing City of Reno:

Following the comments from the Cities of Henderson and Las Vegas, City of Reno is also in opposition of the bill. It was also our understanding that the municipalities that were chartered were intended to be removed from the provisions. We are happy to work with the bill sponsor.

Steve Driscoll, Assistant City Manager, City of Sparks:

We originally signed in as neutral to this bill, pending discussion on section 1, subsection 6. Without local governments being exempted from this, it is in direct conflict with NRS 288.150, subsection 2, paragraph (i), which mandates discipline. Between that and the charter that mandates the civil service system, we believe that we already have the protections needed. We have the policies and procedures in place to eliminate the subjectivity. We welcome the opportunity to work with the bill's sponsor to resolve this issue.

Melanie Bruketta, Human Resources Director, City of Carson City:

We are in opposition of this bill, along with all the other local governments and law enforcement. Thank you.

Steve Walker, representing Lyon County:

We are also in opposition. One of the things that we look at in smaller organizations is to have two supervisors that are not associated with the employee yet still associated with the discipline. It would be really problematic.

Lisa Foster, representing Boulder City:

I would like to go on the record as being opposed to the bill as written.

Chair Kirkpatrick:

Is there anyone else in opposition or neutral to the bill? Mr. Aizley, do you have any final words?

Assemblyman Aizley:

I will be happy to work with all of the people who have suggested it. I am just disappointed that people are testifying against fairness.

Chair Kirkpatrick:

We will close the hearing on A.B. 338. Mr. Anderson, I am going to take your bill last because I know there was a lot of work that went into it. I want to make sure that we thoroughly go through the amendment. Mr. Stewart, we will open the hearing on Assembly Bill 420.

Assembly Bill 420: Revises the rights of members of the Nevada National Guard. (BDR 36-1033)

Assemblyman Lynn Stewart, Clark County Assembly District No. 22:

I am here to present A. B. 420 on behalf of the Nevada National Guard. As you might recall, in the last decade or so, the Nevada National Guard has been deployed on many occasions to many places throughout the world, including Iraq and Afghanistan. They have served remarkably well when called to active

duty. The purpose of this bill is to offer protections to these guardsmen and guardswomen who have so diligently and effectively served their state and their country. The bill has four parts to it. It provides confidentiality for their military records. It provides protection from termination from employment while involved in training. It further provides protection from civil actions while in training. Finally, it provides preference for points on exams while on active duty. With me is Command Sergeant Major John Hefner, who has long served the National Guard. He is now an advocate for the National Guard. I will turn it over to him to provide more specific details on why the bill is needed.

John B. Hefner, Legislative Chairman, Enlisted Association of Nevada:

I am a retired command sergeant major in the Nevada Army National Guard. I serve the Nevada National Guard Enlisted Association as their Legislative Chairman. [Mr. Hefner continued reading from prepared testimony ([Exhibit K](#)).]

I had a discussion with Steve Osborne, from the Nevada Justice Association. We prepared some amendments, which will be discussed when he comes up to testify. [Mr. Hefner continued reading from prepared testimony.]

Assemblyman Ellison:

Is this bill drafted in comparison with other states?

John Hefner:

I do not have any cites from any other specific states. I did not necessarily do that research. I drafted it against the Serviceman's Relief Act and the Uniformed Services Employment Rights. Other states have provided similar extensions of those protections, although I cannot provide you with a list.

Assemblyman Ellison:

Is it correct that they cannot be served while in active duty?

John Hefner:

That is one of the amendments that Steve Osborne has brought up.

Chair Kirkpatrick:

I would like to clarify that language in section 5, subsection 1, says [Chair Kirkpatrick read from section 5, subsection 1 of the bill.] It seems like it is written strangely, but I apologize, because I understand it now.

Assemblyman Anderson:

I am curious regarding the intent of assembling for training. I would like some clarification. Would that occur as soon as you get an order?

John Hefner:

We had a discussion with Mr. Osborne about what defines "ordered." It has been my experience, through the Guard, that while someone may get an order to go to training, which can be 30 days in advance, the protection would not extend on the day a person received the order. It would begin on the day the tour began. The order may say on June 1 the person is to report to military school. The coverage would start on June 1, and not on the date the person received the order.

Chair Kirkpatrick:

Mr. Osborne, it may be helpful if you come up now with the amendment.

Stephen Osborne, representing Nevada Justice Association:

With regard to section 4, instead of using the word "commence," it would read, "A person may not serve a civil action or administrative proceeding." This would change the word "commence" to "serve," and add the word "administrative." This amendment will be uploaded to NELIS ([Exhibit L](#)). The other change appears in section 4, subsection 4, paragraph (a). We are striking the words "or active duty," and changing it to read, "Assembles for training, participates in field training or otherwise meets as required pursuant to NRS 412.118." We are striking "or active duty," so that it is clear and it comports with the other statutes. To respond to Assemblyman Anderson's comments, in the same section, paragraph (b), we are striking "Is ordered to active service." It will be changed to read, "Begins active service upon order." It will begin just as Mr. Hefner explained in his testimony. Finally, we are adding a paragraph (d) which says, "During the events specified in (a), (b), and (c), the service of a civil action or administrative proceeding is stayed, postponed, or suspended." The purpose of that is so that the serviceman can devote his entire attention to the service of our nation and not have to worry about the civil actions.

Chair Kirkpatrick:

Can you go over the last amendment with me again?

Stephen Osborne:

During the events specified in (a), (b), and (c), the service of a civil action or administrative proceeding is stayed, postponed, or suspended.

Chair Kirkpatrick:

In the amendment, you want to add letter (d) that says just as you described?

Stephen Osborne:

That is correct. That accomplishes the purpose of protecting them while not prejudicing other people's rights.

Assemblyman Livermore:

Would you define civil action to include the process of foreclosures?

Stephen Osborne:

It should include all civil actions and administrative proceedings. The purpose of it is to provide the temporary suspension of these actions against our servicemen, so that their rights are not prejudiced by them serving.

Chair Kirkpatrick:

At this time, if there is anyone in support of A.B. 420, please come up to testify. Is there anyone in opposition or neutral? Do you have any final words, Mr. Stewart? We will close the hearing on A.B. 420. I would like to see that amendment today. Lastly, we will open the hearing on Assembly Bill 179. I know there are several amendments, therefore, Mr. Anderson, we will work off of the amended piece of legislation.

Assembly Bill 179: Revises provisions relating to disciplinary action against a state employee. (BDR 23-841)

Assemblyman Elliott Anderson, Clark County Assembly District No. 15:

I am coming before you today to present A.B. 179, which deals with state employment. I can promise you that this has nothing to do with construction managers at risk. I want to first give you my reasons for bringing this bill forward.

Everyone here understands state workers have been called in the past biennium to sacrifice in fiscal matters. Because of this understanding, I thought we should do something to make the workplace better. I sought out opinions from state workers, and the end result became A.B. 179. This bill changes *Nevada Revised Statutes* (NRS) Chapter 284, which details the state personnel system. The bodies in charge were well aware of the State Department of Personnel, which is supervised by the Personnel Commission. After consulting with the State Department of Personnel and state workers, an amendment was developed to deal with concerns of the Department of Personnel. The Department's employees and I agree the mock-up amendment ([Exhibit M](#)) is a positive addition to the workplace. I will walk you through the amendment mock-up.

Section 1 adds a new proposed subsection, which requires a state department, upon hiring, to provide a classified employee a guidebook showing responsibilities of his job. It makes sure the employees will have some clarity in the context of their job and know what is expected of them. It also ensures that they understand the system for disciplinary action, which is laid out in NRS Chapter 284, and any other provisions which affect their employment, including the *Nevada Administrative Code* (NAC). Section 1 of the mock-up also removes detailed procedures for an investigation. As per discussions with the Department of Personnel, it was concluded that this would be better provided through the regulatory process with the Personnel Commission, governing NRS Chapter 284, with some responsibilities of the NAC.

Section 2 adds a new provision which requires the appointing authority to consult with the Attorney General or the general counsel of their division within the Nevada System of Higher Education. This provision will work for the benefit of employees and the State. It will cause an appointed authority to ensure, before major employment action is taken, that there is some certainty in that action. The State will not be on the hook for making a bad decision, and an employee who may possibly be impacted will be spared a major disruption in his life. An amendment from the Nevada System of Higher Education has been uploaded to NELIS ([Exhibit N](#)), in addition to the mock-up. I have no issue with this amendment. I believe it is making clear the bill is not addressing the whole system of higher education. It is addressing the individual part of the system. For instance, if the situation arose at University of Nevada, Las Vegas (UNLV), it would be handled by the UNLV administration and not the main office.

Section 3 sets the timeline for an investigation. At the start of the investigation, the intent is to conclude a resolution of any investigation within 90 days. Failing a quick resolution with a complicated issue, this amendment provides for an extension of an investigation, per approval by the Human Resource Management Division of the Department of Administrations. Should any additional time be needed, per this amendment, they will need to have an approval from the Office of the Governor. The intent of this section is to ensure a shoe is not hanging over the head of our state employees indefinitely, once an investigation is started. I am sure that we have all been there in our lives, wondering if something is going to happen. We all know it is not fun, and it makes your life miserable. This is a small thing we can do to provide some certainty if something did happen.

I have been informed by the parties who will testify after me that the Office of the Governor was informed about this language. As far as I know, there is no objection to this language from the Office of the Governor. In addition, I provided the language to the Attorney General last week. I will assume she

does not have a problem with it, because I have not heard any feedback from the Attorney General's office. Finally, at the end of section 3, language was removed regarding the right to consult with an attorney. This provision is already provided for by the Nevada Department of Personnel.

In short, this bill is an attempt to provide some stability and improve the morale for state workers that work hard for us every day. It is supported by both major groups for state workers and the Department of Personnel. It is a good bill, and I urge passage. I am open for questions, but if your question is of a more technical nature, it may be better addressed to the other parties who will testify.

Marcia Turner, Vice Chancellor, Operations, Nevada System of Higher Education:

We appreciate Assemblyman Anderson's willingness to work with us on this friendly amendment ([Exhibit N](#)) to clarify the language. He described it perfectly, and we appreciate your consideration.

Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041:

Assembly Bill 179 improves the due process rights regarding numerous issues, especially within the investigation process. It will clearly improve the efficiency of all of the agencies across Nevada. When someone is under investigation, it is not the best working environment to be a part of, especially if you feel you are innocent. Quite often, the investigation can last up to a year. Sometimes the results do not come back at all. This corrects the issue and ensures that the communication is present. It also provides a timetable to ensure things get completed in a timely manner. It will improve not only the employee's work environment, but his family's environment. The worst thing that can happen is for someone to inform his spouse that he is under investigation. The spouse will fear the job will be lost, and the kids will be unhappy. I have been through this, and it is not pleasant. I appreciate the opportunity to address this bill. I am very grateful to Assemblyman Anderson for sponsoring the bill. I would also like to thank Director Thienhaus, from the State of Nevada's Department of Personnel, and her staff Shelley Blotter and Amy Davey. They worked every single day on this. We went back and forth with phone calls to be sure we were all on the same page. I want to thank Mark Evans as well. Ron Dreher and Ron Bratsch have also helped out with this. This is something that state employees have been seeking for a long time. Thank you.

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

We are in support of this bill. I will echo what Kevin Ranft said about the Personnel Department's staff. They have done an excellent job.

Teresa Thienhaus, Director, Department of Personnel:

I am happy to be up here in support of this bill. [Ms. Thienhaus presented committee members with a letter of explanation ([Exhibit O](#)).] The Department of Personnel has worked with representatives from the American Federation of State, County, and Municipal Employees (AFSCME) and other employee associations to develop the language in the amendment to A.B. 179. We thoroughly discussed the elements contained in the original bill and have agreed that some requirements should be in statute, while other procedural elements are more appropriately addressed through regulations. We have agreed to continue to work with the interested parties to adopt regulations to address improvements to our disciplinary procedures. I would like to turn the testimony over to Amy Davey, the personnel analyst from my staff. She is the one who worked closely with the employee associations on the amended language. She will go over the specific points that we would like to address.

Amy Davey, Personnel Analyst III, Department of Personnel:

We have a few points that we would like to bring to your attention. The parties have discussed and agreed that procedures affecting disciplinary process can be more effectively developed in regulation. This allows for input from employee associations, the Nevada Department of Personnel, the Nevada Personnel Commission, and state agencies. It also allows for the flexibility to refine processes. We are committed to working with all parties to define effective and equitable procedures. As you have heard, we worked with representatives from AFSCME Local 4041. We received input from representatives from the Peace Officers' Research Association of Nevada, the Nevada State Law Enforcement Officers' Association, and the Nevada Corrections Association. We also requested input from state agencies regarding their concerns with A.B. 179 in its original format, as well as input on the language in the amendment. The amendment covers several items. Assemblyman Anderson did an excellent job of reviewing those. I will briefly review them as well.

Section 1, which would amend NRS 284.383, refers to agency prohibitions and penalties and a description of the progressive disciplinary process used by the state, as well as any processes specific to the agency where the employee works. Section 2 amends NRS 284.385. This language currently exists in the *Nevada State Administrative Manual*, which is published by the Department of Administration. We feel it is appropriately included in statute. Section 3 amends NRS 284.387. We have inserted language requiring the notice of investigation to be delivered on a form approved by the Department of Personnel, which ensures consistency and conformity to the requirements of NRS 284.387. The language says, "Reasonable timeframes for the conducting of an internal investigation and the notification to the employee of the intent to pursue disciplinary action protect an employee's interest in prompt

resolution of a disciplinary action." Allowance has been made in the language for unusual delay due to either the employee's needs or the employers needing a complex investigation. This concludes my testimony on behalf of the Department of Personnel. I appreciate your consideration.

Ron Bratsch, Corrections North Chapter President, American Federation of State, County, and Municipal Employees Local 4041:

We are definitely in support of this bill. I appreciate everyone that we have had a chance to meet with. This is overdue legislation. We appreciate your support. Some of our employees have had these types of cases held over their heads for over a year. If they must appeal the decision, it could go up to another year for personnel hearings. Sometimes these cases are dragged on for a very long time. I appreciate your support.

Chair Kirkpatrick:

Is there anybody in opposition or neutral to A.B. 179, as amended?

William Banter, Lieutenant, Highway Patrol Division, Department of Public Safety:

We have reviewed the amendments to this bill, and our position is neutral. We have one suggestion, which we would like to work with the sponsor on. It is pertaining to section 3, regarding notice of investigation. We would like clarification on that language. As per NRS 289.060, we are only required to notify on investigation. With that notification, we must show the allegations of misconduct, daytime location, who is doing the interview, et cetera. It is somewhat ambiguous, as written. We are working with the sponsor to amend that language.

Pam Del Porto, Inspector General, Department of Corrections:

We are also standing neutral on the issue, but would like clarification on the last page regarding notice of investigation. The verbiage should read something like, "investigation and/or interview." That is all we have.

Chair Kirkpatrick:

Is there anyone else wishing to testify? Mr. Anderson, would you like to come back up?

Assemblyman Anderson:

We have been working on this for a while and will take care of the smaller technical issues. There are also some other cleanup matters to deal with, such as an incorrect cite on one of the NRS sections. We will make the corrections and get it back to the Committee as fast as we can.

Chair Kirkpatrick:

Monday is when you will have to have it in. We are at a deadline. We will now close the hearing on A.B. 179. We will now turn our attention to our work session. I would like to provide a preview on what we have coming up. We have six bills coming up on Monday, with a rolling work session. On Tuesday, we are going to meet 15 minutes after the Taxation Committee hearing. We will process four additional bills. On Wednesday, we will process two more bills. We also have about 50 work session bills to get through. The goal is to have two bills on Friday and then be finished. We will start Monday morning at 8 a.m. We are now going to turn to our work session and Assembly Bill 63.

Assembly Bill 63: Revises provisions relating to the duties of, and services provided by, the Office of the Attorney General. (BDR 18-203)

Susan Scholley, Committee Policy Analyst:

The first bill is Assembly Bill 63, which was sponsored by this Committee on behalf of the Attorney General ([Exhibit P](#)). The bill was heard on March 16, 2011. This bill provides for payment for various services of the Attorney General's Office, as shown in the summary. It also allows the Attorney General to designate a district attorney to investigate and bring a civil action, if the district attorney so chooses, under *Nevada Revised Statutes* (NRS) Chapter 357, which is the false claims chapter. Assistant Attorney General Keith Monroe presented the bill. We heard testimony from the Nevada Association of Counties and the Nevada League of Cities and Municipalities, who testified as neutral. There were amendments presented at the hearing. Afterwards, there were additional amendments proposed to address concerns raised at the hearing. I will highlight the changes.

On the mock-up page 2, the Attorney General is deleting language relating to charging for the cost of providing such assistance. Also, the language on page 2, lines 29 through 34 is being reverted to existing language. Page 3 of the mock-up addresses the concerns that were raised by the local governments. The changes would require the concurrence of the board of county commissioners and the district attorney when appointing a special prosecutor. Additionally, subsection 6 was added, which provides clarification. The Attorney General, accepting the prosecution of a category A or B felony, the compensation, and other terms and conditions, will be agreed upon by the Attorney General and the district attorney. Lines 32 through 36 of page 3 are being deleted. Page 4 includes another amendment that came up subsequent to the hearing. This would only allow the Attorney General to charge for reviewing interlocal agreements if turned around within 30 days. I do not believe there were any further amendments subsequent to the hearing. The rest of the sections relate to the false claims chapter.

Assemblyman Ellison:

When we worked on this, it was said that opinions would be excluded, which the amendment reflects. However, on page 4, line 10, can you address the language reflecting the Attorney General charging a cost?

Susan Scholley:

Yes. This section refers to the Attorney General reviewing interlocal agreements. In the current law, the Attorney General is required to review those. This changes the language to "may" review, so that it is optional. If the local government does want the Attorney General to review it, there will only be a charge if the Attorney General must turn it around within 30 days. It is basically an expediting fee.

Assemblyman Ellison:

Is that standard practice?

Susan Scholley:

I am not sure there is a standard on which to judge. There is only one Attorney General.

Chair Kirkpatrick:

We did work with the counties, and they were comfortable with this because it gave them the option to use the Attorney General. It gave the Attorney General the option to work with them on the price, as well.

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 63.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 276: Requires the State Controller to make data concerning certain accounts available for public inspection on an Internet website established and maintained by the State Controller. (BDR 18-371)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 276 was sponsored by Assemblymembers Conklin and Kirkpatrick. It was heard on March 30, 2011. [Read from work session document ([Exhibit Q](#)).] Assemblyman Conklin presented the bill. The State Controller testified in support with the proposed amendments. There was no other testimony. The document titled Conceptual Amendments to A.B. 276,

which was presented at the hearing, would remain the amendment that is being proposed.

Assemblyman Livermore:

I think this bill provides the maximum amount of information to the public. I am in support anytime we can provide additional information to the public of their right to see financial and other implications of all governments.

ASSEMBLYMAN LIVERMORE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 276.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

Chair Kirkpatrick:

I would like to say that I believe that once the public sees this information, they will realize the task that we are set up here to do.

THE MOTION PASSED UNANIMOUSLY.

[Assembly Bill 413](#): Revises provisions governing public works. (BDR 28-718)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 413 was sponsored by Assemblymembers Daly, Conklin, Hickey, and others. The bill was heard on March 25, 2011. [Read from work session document ([Exhibit R](#)).] Assemblyman Daly presented the bill. I have noted the testimony in support and neutral. Various amendments were discussed at the hearing. After the hearing, the sponsor submitted the mock-up with further amendments. The first change is on page 1 of the mock-up. The second amendment is on page 2. There is a parallel change on page 3, with respect to subcontractors. There is another parallel change for subcontractors on the top of page 4. There are further parallel changes on page 5 relating to the third tier. The sponsor added a sunset provision so that the bill would expire by limitation on July 1, 2015.

Chair Kirkpatrick:

Mr. Daly worked with the local governments. On page 5, lines 15 through 18 indicate that they can actually keep the retainage for protection for the local governments.

Assemblyman Livermore:

I am still a little bit concerned about the public's protection rights to ensure that the project is developed, completed, and the warranties attached are sufficient. I am not quite sure what 5 or 10 percent would amount to. It would all depend

on the size of the project. I am very sympathetic to the contractors and subcontractors. Even though I have those concerns, I will probably support this because I am concerned about the economy's effects on the subcontractors and their rights to receive fair payments.

Chair Kirkpatrick:

This section expires in a few years so that it may be revisited at that time.

Assemblyman Ellison:

I do agree with my colleague. When we went through the bill, we really studied this down to make sure of all the checks and balances. I agree that we can bring it back, if we need to. I do believe this will provide a good tool for these individuals.

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 413.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE
MOTION.

THE MOTION PASSED UNANIMOUSLY.

[Assembly Bill 419:](#) Revises provisions relating to groundwater basins.
(BDR 48-299)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 419 was sponsored by Assemblyman Goicoechea. The bill was heard in this Committee on March 30, 2011. [Read from work session document ([Exhibit S](#)).] The bill was presented by Assemblyman Goicoechea. The State Engineer testified in support of the bill with the proposed amendments. Other testimony was provided as shown. Amendments were proposed by the bill's sponsor at the hearing. Further amendments were worked out after the hearing and are included in the mock-up. Also, Assemblywoman Pierce proposed an amendment to require the posting of notices relating to these proceedings on the State Engineer's website. Looking at the mock-up, the majority of vote issue is proposed to be changed. Instead of "appropriators of record," it will read "holders of permits or certificates to appropriate water in that basin on file in the Office of the State Engineer." On page 2, there is an inclusion of domestic wells in consideration. These are the factors that a state engineer would consider when deciding whether to approve a groundwater management plan. The other changes are on page 5 of the mock-up. This allows the State Engineer the option to either designate a basin after the withdrawals of groundwater have consistently exceeded perennial yield

of the basin or requires him to do so upon receipt of a petition signed by a majority of the holders of permits and certificates. Also there is an addition of the website notice. This amendment deletes the definition of perennial yield from the bill.

Chair Kirkpatrick:

I would like to point out that Mr. Goicoechea said that this may see an amendment on the other side. However, until we see the actual amendments that come out of legal, people are comfortable with this moving forward.

Assemblyman Goedhart:

On page 5, there were a few different amendments. On line 16, subsection 7 will say "may" designate, correct? On the front summary sheet it says, "Requires the State Engineer to designate a groundwater basin as a critical management area" Are those in conflict with each other?

Susan Scholley:

I will confess that when I prepare mock-ups, I do not change the digest. I am not even sure if I am allowed to do that on my mock-up tool. Legal will certainly take care of that.

Assemblyman Goedhart:

The other item in the digest says, "The bill also allows the State Engineer to consider the existence of a groundwater basin management plan as a factor when reviewing requests for an extension of time to avoid forfeiture." I did not see the language in the bill itself. Where in the bill is that specific language?

Susan Scholley:

That can be found on page 3 of the mock-up, in the blue bolded print. That was part of the original bill; therefore, I did not go over it in the changes.

Assemblyman Goedhart:

I will call the water engineer directly, but the bill mentions that if the engineer has to bring the groundwater withdrawals into compliance with the perennial yield, it would not exclude domestic wells. I think we had a conversation in that hearing about the priority date given to the domestic well. Was there a point where there was a new piece of land subdivided that created that new parcel? In Nevada water law, every parcel of land comes appurtenant with it, 2.80 acre-feet for personal use. I will be talking to the water engineer on that as well. I just want to make sure that we do not inadvertently have a person who has been living out there a long time, without access to domestic water, especially if there is no access to a public water service.

Chair Kirkpatrick:

Is there any other discussion?

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 419.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

I want to remind the Committee that until we actually see the amendment from legal, we will keep this addressed.

THE MOTION PASSED UNANIMOUSLY.

That concludes our work session for today. The meeting is adjourned [at 10:03 a.m.].

[Additional exhibits not discussed during the hearing include: written testimony in support of Assembly Bill 420, from Lt. Col. Richard Blower ([Exhibit T](#)), and written testimony regarding Assembly Bill 338 from Bart Patterson, Vice Chancellor, Administrative and Legal Affairs, Nevada System of Higher Education ([Exhibit U](#)).]

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Transcribing Secretary

Sheryl Burrows
Recording Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 8, 2011

Time of Meeting: 7:33 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 365	C	Assemblyman Kirner	Amendments to the Bill
A.B. 266	D	Assemblyman Segerblom	Proposed Amendment
A.B. 266	E	Assemblyman Segerblom	PowerPoint Presentation
A.B. 266	F	Teresa Thienhaus, Director, Department of Personnel	Prepared Testimony
A.B. 354	G	Assemblyman Segerblom	PowerPoint Presentation
A.B. 354	H	Teresa Thienhaus, Director, Department of Personnel	Prepared Testimony
A.B. 338	I	Assemblyman Paul Aizley, Clark County Assembly District No. 41	Presentation
A.B. 338	J	Teresa Thienhaus, Director, Department of Personnel	Prepared Testimony
A.B. 420	K	John B. Hefner, Legislative Chairman, Enlisted Association of Nevada	Prepared Testimony
A.B. 420	L	Stephen Osborne, representing Nevada Justice Association	Proposed Amendment
A.B. 179	M	Assemblyman Elliot Anderson, Clark County Assembly District No.15	Mock-up Amendment
A.B. 179	N	Marcia Turner, Vice Chancellor, Operations, Nevada System of Higher Education	Proposed Clarifying Language
A.B. 179	O	Teresa Thienhaus, Director, Department of Personnel	Prepared Testimony
A.B. 63	P	Susan Scholley, Committee Policy Analyst	Work Session Document

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A.B. 276	Q	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 413	R	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 419	S	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 420	T	Lt. Col. Rick Blower, Staff Judge Advocate, Nevada Military Department	Written Testimony
A.B. 338	U	Bart Patterson, Vice Chancellor, Administrative & Legal Affairs, Nevada System of Higher Education	Written Testimony