

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Sixth Session
May 31, 2011**

The Committee on Ways and Means was called to order by Chairwoman Debbie Smith at 9:21 a.m. on Tuesday, May 31, 2011, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 Debbie Smith, Chairwoman
Assemblyman Marcus Conklin, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman David P. Bobzien
Assemblywoman Maggie Carlton
Assemblyman Tom Grady
Assemblyman John Hambrick
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblyman Randy Kirner
Assemblywoman April Mastroluca

COMMITTEE MEMBERS EXCUSED:

Assemblyman Pete Goicoechea
Assemblyman John Ocegüera

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Clark County Assembly District No. 12
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Rick Combs, Assembly Fiscal Analyst
Mike Chapman, Principal Deputy Fiscal Analyst
Carol Thomsen, Committee Secretary
Cynthia Wyett, Committee Assistant

Chairwoman Smith opened the hearing on Assembly Bill 195 (R1).

Assembly Bill 195 (1st Reprint): Revises provisions governing the destruction and storage of court records. (BDR 19-550)

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts (AOC), introduced himself to the Committee. Mr. McCormick explained that A.B. 195 (R1) would allow district courts to archive records electronically and would update the statutory provision that currently allowed district courts to archive only on microfilm. Mr. McCormick indicated that archiving records electronically would actually be a cost-saving measure for district courts and local governments.

Mr. McCormick stated that A.B. 195 (R1) did not include justice and municipal courts, and record retention for those courts would remain status quo. All court records were retained according to a schedule that had been set forth in Supreme Court rules.

The second part of the bill, said Mr. McCormick, included some permissive or enabling language that would allow the courts to collaborate in the future with the Division of State Library and Archives (Division) to preserve court records of historical value. Mr. McCormick believed the fiscal note had been attached to the bill because of that language. Such preservation would not be mandatory, and the bill stated that preservation would occur upon a determination by the Administrator of the Division that a record was of historical value, when a court record was provided to the Division by order of the Supreme Court, or when the Division entered into an agreement with the Supreme Court or a district court to receive records. Mr. McCormick reiterated that preservation of documents was not mandatory.

Chairwoman Smith asked that persons from the Department of Cultural Affairs come forward to address the fiscal note and the language that indicated the Division would be "ordered" by the Supreme Court to preserve documents, which appeared to be more forceful than simple enabling language. Chairwoman Smith said she was concerned about the effects of that language.

Mark Costa, Administrative Services Officer 4, Department of Cultural Affairs, introduced himself and Daphne DeLeon, Administrator, Division of State Library and Archives (Division) to the Committee. Mr. Costa stated that he had responded to the fiscal note on two prior occasions regarding different versions of the bill. As the bill had been interpreted by the Department, there was no indication regarding the quantity or the type of records that the Division would be required to archive. Mr. Costa said the Department realized it would need locations in both northern and southern Nevada and had suggested in its fiscal note to A.B. 195 (R1) that the Department meet with the courts and conduct a record survey to determine the type and quantity of records to be stored before the Department provided a cost estimate.

Mr. Costa said the Department realized that there would not be time or opportunity to meet with the courts, and the second fiscal note had been submitted with an estimated amount. The Department used the calculations for previous estimates for record storage and archiving in both northern and southern Nevada to arrive at the figures.

Mr. Costa stated that the Department had revisited the issue on a number of occasions, and recently the Department had submitted a proposal that included costs to use a facility at Lorenzi Park in southern Nevada as a records storage area. The Department had submitted the fiscal note assuming it would need additional archiving capacity in both the north and south. Mr. Costa pointed out that electronic records would require much less space than paper records, and that would increase the available storage capacity and minimize the cost for storage space.

Daphne DeLeon, Administrator, Division of State Library and Archives (Division), stated that she would like to comment regarding the Supreme Court ordering the Division to receive records of historical value. Ms. DeLeon said the Division currently had a working relationship with the Supreme Court and had archived historical case files going back to 1936. She believed that was not the main impetus behind the fiscal note submitted by the Department of Cultural Affairs. Without knowing exactly how many and what type of historical records would come from the district courts, the Division could be put in the very difficult position of providing services to the courts without adequate resources.

Ms. DeLeon said the fiscal note was based on previous estimates for services provided to other Executive agencies. The start-up costs for Carson City included \$1.1 million for compact shelving, which had been in the Capital Improvement Program (CIP) request for the past two biennia. Ms. DeLeon stated that the Division did not know exactly how many records would be submitted, and it did not have the staffing resources to absorb any significant amount of records beyond those submitted by Executive agencies at the present time.

Chairwoman Smith asked about budget cuts for the Division of State Library and Archives. Ms. DeLeon indicated that the Division's budget had been cut by the requisite 10 percent.

Mr. McCormick stated that with the understanding of the potential fiscal impact, the Supreme Court would be comfortable moving forward with elimination of section 2 of A.B. 195 (R1) and engaging in ongoing conversations with the Division toward development of a better strategy for review by the 2013 Legislature.

Chairwoman Smith indicated that elimination of section 2 would make Fiscal Analysis Division staff more comfortable with the fiscal note.

Mr. McCormick said the most important aspect of the bill for the courts was the authorization to archive records electronically in addition to maintaining records on microfilm, and the court would agree with elimination of section 2.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, clarified that rather than eliminating section 2, the language for elimination was included in section 3, subsection 1, paragraph (d), subparagraph (2). Mr. McCormick agreed with the clarification. Mr. Combs asked whether section 3 could be eliminated in its entirety. Mr. McCormick stated that was correct.

Ms. DeLeon noted that section 4, subsection 4 of the bill also included language that indicated the Division of State Library and Archives would establish, maintain, and operate a center for storing and retrieving records for state agencies or court records of the Supreme Court or a district court. In keeping with the suggestion to strike section 3, Ms. DeLeon believed that section 4, subsection 4 should also be struck from the bill.

Chairwoman Smith believed the language in section 4 was enabling because the language stated that the state Library and Archives Administrator "*may*," rather than "*shall*" establish the center. Ms. DeLeon agreed that because it was permissive language, section 4, subsection 4 could remain in the bill.

Chairwoman Smith asked whether there were further questions or testimony to come before the Committee regarding A.B. 195 (R1), and there being none, the Chairwoman closed the hearing. Chairwoman Smith opened 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, indicated that A.B. 354 was an attempt to change the rules for the Employee-Management Committee to an arbitration process; however, because of the fiscal note regarding that process, an amendment had been submitted (Exhibit C) which would simply "tweak" the rules of the Employee-Management Committee.

Assemblyman Segerblom explained that the Employee-Management Committee was composed of an equal number of management and employee representatives. The bill would require a preliminary mediation program at no additional cost to the state and would also stipulate that the Chairman of the Committee would be elected rather than appointed. Also, said Assemblyman Segerblom, the bill stipulated that Committee meetings would require that equal numbers of employee and management representatives were in attendance. Assemblyman Segerblom believed that the amended version of the bill would not create a fiscal note.

Chairwoman Smith indicated that she would like to focus on the fiscal affect of A.B. 354 rather than the policy of the bill. She noted that Ms. Thienhaus was present in Las Vegas and could address the fiscal note for the amended version of the bill.

Teresa Thienhaus, Director, Department of Personnel, indicated that the Department had negotiated with employees' associations regarding the goal to make changes to the Employee-Management Committee. The amended version of the bill would allow for an intermediate step, along with other changes to the Committee that would be cost-neutral for the Department. Ms. Thienhaus said the Department would withdraw its fiscal note for the amended version of the bill.

Chairwoman Smith asked whether there was further testimony regarding A.B. 354.

Kevin Ranft, representing the American Federation of State, County and Municipal Employees (AFSCME), thanked Ms. Thienhaus and her staff for their assistance with A.B. 354, which would address the current problems with the Employee-Management Committee. Mr. Ranft opined that the bill was "long overdue" and other action could be addressed through the regulatory process in the *Nevada Administrative Code* (NAC). He urged the Committee to support the revised version of the bill because the small changes would go a long way in providing the necessary due process and allowing state employees to feel comfortable filing a grievance. Mr. Ranft said the bill would add a new step in the process prior to review by the Employee-Management Committee.

Chairwoman Smith asked whether there was further testimony or comments forthcoming regarding A.B. 354, and there being none, the Chairwoman closed the hearing. Chairwoman Smith opened the hearing on A.B. 427 (R1).

Assembly Bill 427 (1st Reprint): Enacts provisions requiring the payment of deposits and refunds on certain beverage containers sold in this State. (BDR 40-1079)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12, stated that A.B. 427 (R1) dealt with the waste on Nevada's roadways such as plastic bottles, aluminum cans, and glass bottles that were not being recycled. Assemblyman Ohrenschall realized that the Committee on Ways and Means was a fiscal committee rather than a policy committee, but he pointed out that the current recycling rate in Nevada was pitifully low at 15 percent to 20 percent. In the 10 states that had initiated bottle redemption programs, the recycling rate was at least four times as high as that in Nevada at 70 percent to 80 percent, and the programs had been very successful.

Assemblyman Ohrenschall stated that there was a fiscal note on the bill, which did not take into account what would eventually be a surplus from unredeemed deposits. He believed that the program would eventually be self-sustaining, and ideally, he would like to see the bill proceed; however, he realized that it was very late in the 2011 Session. Assemblyman Ohrenschall said if it was not possible to process the bill as written, he would ask the Committee to consider an amendment to the bill to direct an interim committee to work with all interested parties and arrive at a potential solution to the recycling problem for consideration by the 2013 Legislature.

Chairwoman Smith stated that the fiscal note to the bill was sizeable and the Committee would consider the fact that the program would eventually generate revenue, but the initial funding for the program would be substantial.

Chairwoman Smith noted that Mr. Dzyak and his son were present to present testimony regarding the bill.

Mike Dzyak introduced himself and his son, Jake Dzyak, who was a member of Boy Scout Troup No. 145 in Carson City, to the Committee. Mr. Dzyak said he would testify on behalf of his son and the Boy Scout Troup No. 145. He explained that the bill was the result of a merit badge project for Jake Dzyak, who was active in recycling. Mr. Dzyak said that Jake had met all requirements for his "Citizenship in the Community" Boy Scout merit badge, and no matter what happened with A.B. 427 (R1), Mr. Dzyak and Jake wanted to speak in favor of the bill.

Mr. Dzyak believed the bill was good for the environment, good for Nevada, and the program would not only become self-sustaining, but would also have a positive effect on the environment. Mr. Dzyak said Jake often asked why there was not a recycling program in Nevada, and he could not answer that question. Perhaps the recycling program could create jobs in the future, and the Committee could be happy with a decision to keep the idea of a recycling program alive.

Chairwoman Smith said many legislators also often asked why Nevada had not initiated a recycling program; she thanked Mr. Dzyak and congratulated Jake on earning his merit badge. She hoped the Committee could determine a way to keep the issue in the forefront, because it would take some work to bring all parties together and determine a solution regarding a better recycling program for Nevada.

Chairwoman Smith asked Assemblyman Ohrenschall to explain the proposed recycling program and whether there would be a refund on the deposit for containers.

Assemblyman Ohrenschall stated that under the revised version of the bill, a 5-cent deposit would be charged on the container when a person purchased a beverage, which would be refunded when the container was returned to a certified recycling center. The language in the original version of the bill indicated that the containers could be returned to the point of purchase, but retailers believed that would be too burdensome. Assemblyman Ohrenschall said the programs in some states allowed the container to be returned to the point of purchase, but the programs in other states such as California and Hawaii required that containers be returned to certified recycling centers.

Assemblywoman Mastroluca referred to section 14 of the bill, which indicated that a person could not return more than 250 empty containers at one time,

which she understood; however, she wondered whether an exception could be considered for nonprofit organizations. Assemblywoman Mastroluca said that nonprofit groups often used the collection of containers as a fundraising program.

Assemblyman Ohrenschall agreed that nonprofit organizations should be allowed to exceed the 250 container limit as currently written in A.B. 427 (R1), and that was an area of the bill that could be rewritten and improved. He had discussed the issue with persons who believed that it would be advantageous to locate redemption centers at schools as a fundraising program, rather than returning containers only to certified redemption centers. If the Committee were to process the bill, that section could be amended, or that issue could be further discussed over the interim.

Assemblyman Ohrenschall stated that during the hearing for the bill before the Assembly Committee on Natural Resources, Agriculture, and Mining, there had been testimony about job creation by a company called Strategic Materials, who established businesses in states that had initiated recycling programs.

Assemblywoman Carlton said that everyone agreed that recycling was important for Nevada, and she appreciated the cooperation of concerned parties in trying to determine the best plan for a recycling program. She stated that some charities were working with the companies who made recycling machines that allowed persons to receive part of the refund and donate part to a nonprofit organization. The example Assemblywoman Carlton had seen was where part of the refund went to help veterans; the veteran's organization or other nonprofit organizations could purchase the machines and place them at strategic locations. She believed that would be an excellent plan for recycling because it would be easy for persons to use.

Assemblyman Ohrenschall thanked Assemblywoman Carlton for her pivotal work on A.B. 427 (R1), and he believed her point was very well taken. No matter what happened with the bill, whether it was processed or turned into a study, the ease of recycling would be the key to a successful recycling program. Assemblyman Ohrenschall thanked everyone who had supported the bill.

Testifying next was Kyle Davis, Political Director, Nevada Conservation League (NCL), who stated that NCL had testified in support of A.B. 427 (R1) during the hearing before the Assembly Committee on Natural Resources, Agriculture, and Mining, and believed it would be an effective way to reduce litter and increase recycling rates. Obviously, said Mr. Davis, the goal of NCL was to increase

recycling, and he would be happy to work with interim committee members to determine the best plan for Nevada to increase its recycling rate.

Mr. Davis thanked Assemblyman Ohrenschall and Assemblywoman Carlton for their diligent work on A.B. 427 (R1).

Testifying next was John Pappageorge, representing Republic Services in southern Nevada, who stated that Republic Services absolutely supported recycling, and he hoped that the interim study would improve the state's recycling program. Mr. Pappageorge stated that Republic Services had recently invested over \$10 million in recycling equipment that was directed at single-source recycling, and he hoped that an interim study would help improve the methods used by Republic Services and other recycling businesses.

Testifying next was Robert Ostrovsky, who represented Waste Management, Inc., the waste hauler for northern Nevada. Mr. Ostrovsky pledged the support of Waste Management, Inc. for an interim study regarding the recycling issue. He noted that A.B. 427 (R1) as written, presented certain problems for various parties, and those problems could be resolved, given sufficient time and effort.

Mr. Ostrovsky suggested that if the Committee recommended an interim study committee review of the recycling issue, that the language be as broad as possible, so that not just glass bottles, aluminum cans, and plastic bottles were considered, but also such things as plastic bags, curbside recycling, single-source recycling, and all other aspects of recycling. Mr. Ostrovsky believed that the recycling plan should include all the elements to make sure the state could achieve its financial goals and could attain the goal of cleaning up Nevada and increasing the state's recycling rate above 20 percent to 25 percent. Mr. Ostrovsky pledged the support of Waste Management, Inc. in the development of an overall recycling program.

Lea Tauchen, representing the Retail Association of Nevada (RAN), testified next before the Committee. Ms. Tauchen stated that RAN was originally opposed to A.B. 427 (R1), but RAN would change its position and be supportive of an interim study and would like to participate in that study. The retail industry was committed to being socially and environmentally responsible, and Ms. Tauchen reiterated that RAN would like to participate in the study.

Testifying next was Terry Graves, who stated that he represented a scrap metal processing group in Las Vegas. He stated that the group had been neutral on A.B. 427 (R1), but would be happy to lend any support or assistance to an interim study committee regarding the recycling issue.

Alfredo Alonso, representing the California-Nevada Soft Drink Association and the National Beverage Association, stated that both organizations had worked very hard on recycling efforts throughout the country and would lend their support to an interim study committee.

Testifying next was David Emme, Deputy Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources, who stated that the Division had originally submitted a fiscal note, but that fiscal note had not been revised after the bill had been amended. He pointed out that the cost to the Division would increase substantially with the amended version of the bill. Mr. Emme said the cost estimate for A.B. 427 (R1) would be approximately \$1.4 million per year. The revised fiscal note was because of the significant increase in responsibilities that would be placed on the Division under the amended version of the bill. Mr. Emme stated that the original bill had been based on a Massachusetts model, where dealers would actually accept the containers and administer the deposits, and the Division would be charged with writing regulations and standards and conducting some audit functions.

Under the amended version of the bill, said Mr. Emme, the Division would actually be responsible for administering all deposits collected and regulating established recycling centers. That was a significantly greater responsibility and was based somewhat on the model used in Hawaii. Mr. Emme said that the Division had estimated its needs based on the staffing level in Hawaii, which had initiated a similar program.

Mr. Emme said there was no provision for start-up funding within A.B. 427 (R1), and the program in Hawaii had established a container fee for the first two years prior to the deposit system going into effect and allowed for a full two-year implementation period prior to the system going into effect.

Chairwoman Smith asked about the revenue realized by the program in Hawaii and Mr. Emme said he did not have the figures with him today, but a report on the program was filed with Hawaii's legislature on a yearly basis. Mr. Emme said the staffing levels in Hawaii included between 10 to 12 full-time equivalent positions. The program in Hawaii also charged a container fee in addition to the deposit, and those fees provided additional revenue as a subsidy for the recycling centers to pay handling costs and to provide grants to establish new centers. Mr. Emme said if that type of provision was not included, it was unlikely that new centers would be established.

Chairwoman Smith commented that the \$1.4 million fiscal note was quite significant at a time when the state was experiencing a financial downturn and budget cuts.

Assemblywoman Carlton said that the bill had been heard on April 16, 2011, during a work session, and she and Assemblyman Ohrenschall were well aware of the financial situation, which was why the interim study had been proposed. She wondered why an amended fiscal note had not been submitted on the revised version of the bill. Some points brought up by Mr. Emme were valid concerns, and she was glad those concerns were on the record for review by the interim committee.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, explained that when an agency submitted a fiscal note under statute, the agency was required to submit the note on the original version of the bill. There was not a provision in statute for agencies to submit an amended fiscal note, partly because of staffing concerns within the Fiscal Analysis Division. Mr. Combs said the purpose of the fiscal note was to determine whether or not the bill needed to be reviewed by the money committees for discussion and final resolution of the fiscal amount.

Mr. Combs suggested that the Division of Environmental Protection provide a written explanation about the method used to arrive at the revised amounts for the amended bill, and that information could be posted on the Nevada Electronic Legislative Information System (NELIS) for public dissemination as well as a record of the revised fiscal note.

Chairwoman Smith said that would be very helpful. Assemblywoman Carlton commented that she had discussed other issues with the Department of Conservation and Natural Resources on several occasions, and she had been caught somewhat off-guard to hear about the revised fiscal note today; she wanted to be sure that all concerns were addressed.

Chairwoman Smith asked whether there was further testimony or comments regarding A.B. 427 (R1), and there being none, the Chairwoman closed the hearing. Chairwoman Smith opened the hearing on A.B. 406 (R1).

Assembly Bill 406 (1st Reprint): Revises provisions relating to the conducting of executive branch audits and investigations. (BDR 18-584)

Lucas Foletta, General Counsel to Governor Sandoval, explained that the Governor had worked with Assemblyman Hansen in the development of A.B. 406 (R1) and he would like to thank Assemblyman Hansen for his assistance. The Governor would also like to thank Assemblywoman Kirkpatrick, who had helped move the bill forward.

The bill currently before the Committee related to the Division of Internal Audits of the Department of Administration and its operation. Mr. Foletta said the Governor viewed the Division of Internal Audits as an important management tool to combat waste, fraud, and abuse within the Executive Branch. The Governor felt that the changes to the operation of the Division, as reflected in the bill, represented the best way forward in improving the responsiveness and ability of the Division to pursue a work plan that was consistent with the Governor's management priorities.

Mr. Foletta stated that the Division of Internal Audits resided within the Department of Administration and was headed by the Chief, who responded to the Director of the Department of Administration for supervisory purposes. However, the work plan for the Division was established by a State Plan submitted to the Executive Branch Audit Committee, which was composed of the state's Constitutional officers and one public member. Mr. Foletta indicated that the Division was then tasked with executing the plan as approved by the aforementioned committee.

Currently, said Mr. Foletta, the Division had the ability to audit Executive Branch agencies, but it did not have the ability to investigate those agencies. The Governor, as Chair of the Executive Branch Audit Committee, did not have the authority to independently direct an audit to take place. The Governor believed that expanding the scope of the work that the Division could undertake, thereby allowing him to direct such action, would improve the responsiveness and effectiveness of the Division. Mr. Foletta stated that nothing in the bill limited the prerogative of the Executive Branch Audit Committee to guide the action of the Division, but the bill would somewhat enhance the Governor's oversight or authority over the Division.

According to Mr. Foletta, there was no fiscal note attached to the bill. It would change the way the Division operated, but the bill did not propose enhancing personnel or staffing for the Division.

Chairwoman Smith asked why there would be no fiscal effect because the Division would be charged with additional audit duties; there would be audits required by the Governor and those approved by the Executive Branch Audit Committee. She asked how those audits could be accomplished without additional staff.

Mr. Foletta indicated that there would be somewhat of a tradeoff because the number of audits directed by the Governor would be offset by a reduced number of audits conducted by the Division pursuant to the State Plan. It was not the intention of the Governor to request a significant number of audits, said

Mr. Foletta, and the idea was that in emergency situations with extenuating circumstances, the Governor could independently request an audit, and ensure that the audit was completed in an efficient and timely manner. Mr. Foletta believed it would be a question of changing the allocation of work rather than increasing the overall workload of the Division.

Chairwoman Smith opined that the language of the bill should further address the situation regarding the number of staff and the allocation of work. It appeared that the current language of the bill would allow additional audits and additional staff.

Chairwoman Smith referred to the language in section 4, subsection 3, which indicated that the annual report submitted by the Chief to the Committee, "must not include information about any audit or investigation required by the Governor" and she said it appeared the results would not be public information.

Mr. Foletta explained that at the end of the year, the Chief of the Division of Internal Audits must provide a report of his or her actions to the Executive Branch Audit Committee. The language in section 4, subsection 3 indicated that any action taken by the Division pursuant to the directive of the Governor would be excluded from the requirement regarding the annual report. Mr. Foletta believed that whatever information was acquired through an audit directed by the Governor would be subject to the disclosure provisions in section 8 of A.B. 406 (R1).

Chairwoman Smith remained doubtful and pointed out that section 6, subsection 4 also addressed the final report of an audit required by the Governor, and she believed the language should be clarified.

Assemblywoman Carlton also voiced concern about the results of an audit requested by the Governor; if that information was not included in the annual report, persons would not have access to the results. Also, she asked whether the audits would be performance-based, fiscal-based, or review audits or whether the area of the audit would be determined by the Governor.

Mr. Foletta explained that *Nevada Revised Statutes* (NRS) Chapter 353A, which established the Division of Internal Audits, also established the criteria by which the Executive Branch Audit Committee could approve an annual plan and the audits within that annual plan. The criteria that was currently embedded in NRS would guide the Governor's exercise in discretion to request an audit. Mr. Foletta said those audits could include all aspects—performance-based, fiscal-based, or review.

Assemblywoman Carlton asked for a definition of the investigations that would be conducted by the Division. She asked whether the auditors would also be asked to conduct investigations.

Mr. Foletta said the purpose of expanding the bill to include investigations was to discover the source of any inefficiencies that might be revealed through the course of an audit. An audit might reveal that there was an abuse of overtime or a number of contracts awarded to the same vendor, and those issues would reflect a problem, but the audit itself might not uncover the source of the problem. By allowing the Division to "investigate" the problem further, it was the Governor's intention to send a message that the Division of Internal Audits had the authority to uncover the source of whatever inefficiencies might be revealed by the audit. Mr. Foletta said the Governor believed the absence of the ability to investigate was a current weakness of the Division: the audit process stopped before the auditors could uncover untoward or unethical behavior as a source of the inefficiencies. Mr. Foletta stated that if illegalities were uncovered, the matter would then be referred to the Attorney General, which was also stipulated in current statute.

Assemblywoman Carlton asked whether the auditors were sufficiently trained to understand the investigative process or whether additional staff would be required. Investigators would require a different skill-set, and if there were concerns, the investigation should be turned over to an independent, impartial review.

Mr. Foletta stated that as the work of the Division evolved under the new framework decisions would be made by the Chief of the Division whether or not the skill-set of the Division's employees was sufficient to perform the investigative function. That management decision would have to be made going forward by the Chief of the Division in coordination with the Director of the Department of Administration. Mr. Foletta thought that the auditors were suited to the type of investigation depicted by A.B. 406 (R1), which would be conducted to uncover the source of inefficiencies revealed by the audits. He compared the work to that of a forensic auditor who analyzed white-collar financial fraud cases. However, said Mr. Foletta, there might be cause to hire additional staff that had the appropriate skill-set in the future.

Assemblywoman Carlton wondered why an investigation would not be turned over to trained personnel in another agency because improper handling of evidence could prevent further proceedings.

Mr. Foletta agreed, and to the extent that an audit evolved into an investigation and certain tools were employed to retrieve information such as interviewing

state employees and reviewing documents, some protections would be triggered to ensure that employee rights were protected. Those aspects would become part of the training for the auditors employed by the Division of Internal Audits, and that training would occur in consultation with the Attorney General, who was well aware of the required safeguards.

Mr. Foletta said the intent of the legislation was to maintain the function internally within the Division of Internal Audits, and once evidence was uncovered that pointed to illegal activity it would be appropriate to bring in the appropriate parties. Mr. Foletta stated there would be an opportunity to conduct an internal, first-level investigation to determine what had occurred before it became a full-blown criminal investigation. That seemed prudent to ensure that the credibility of state agencies was not undermined by acting too hastily on undeveloped information, but there was also an area that was not quite criminal, but also not quite right for state agencies.

Mr. Foletta reiterated that the Division of Internal Audits was a management tool for the Governor, which was reflected in the current language of the law and also in the amendments to the law as reflected in A.B. 406 (R1).

Assemblywoman Carlton understood the concept of the bill, but she opined that the Division would require a significant increase in resources to accomplish those tasks.

Chairwoman Smith noted that the bill came to the Committee already amended from the Assembly Committee on Government Affairs with no recommendation for further action. The Chairwoman suggested that the Governor's Office work with Fiscal Analysis Division staff to further amend the language so it would be very clear that the Division would not require additional staff because of the tradeoff in audit functions between the audits requested by the Governor and the audits approved by the Executive Branch Audit Committee. Chairwoman Smith believed that would alleviate concerns about the fiscal affect of the bill.

Assemblyman Aizley requested clarification regarding "managing waste" in state agencies. He wondered whether that included unnecessary spending or purchasing unneeded items.

Mr. Foletta said managing waste would include unnecessary spending or purchasing unneeded items, along with not using the proper process to ensure the best price and being duplicative in spending. Waste might also include two agencies making the same expenditures for the same system. Mr. Foletta said those were all areas that could be characterized as "wasteful."

Chairwoman Smith asked whether there were further questions or comments to come before the Committee regarding A.B. 406 (R1), and there being none, the Chairwoman closed the hearing.

Chairwoman Smith opened public comment, and there being no public comment to come before the Committee, the Chairwoman declared the Committee in recess at the call of the Chair. Because of time constraints, the meeting was not reconvened and was adjourned at the June 1, 2011, meeting.

[S.B. 314 was on the agenda for the meeting, but was not heard by the Committee.]

RESPECTFULLY SUBMITTED:

Carol Thomsen
Committee Secretary

APPROVED BY:



Assemblywoman Debbie Smith, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 31, 2011

Time of Meeting: 9:21 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 354	C	Assemblyman Segerblom	Proposed amendment