MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session
May 13, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:08 a.m. on Friday, May 13, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Mark A. Manendo, Vice Chair
Senator Michael A. Schneider
Senator Joseph (Joe) P. Hardy
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Ellison (Assembly District No. 33)

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Ronald P. Dreher, Peace Officers Research Association of Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Michelle Jotz, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs
Mary Keating, Office of the State Controller
David S. Noble, Assistant General Counsel, Utilities Hearings Officer, Public Utilities Commission of Nevada
Javier Trujillo, City of Henderson
Gary Schmidt

CHAIR LEE:
I will open this meeting with Assembly Bill (A.B.) 265.

ASSEMBLY BILL 265 (1st Reprint): Revises provisions governing the rights of peace officers. (BDR 23-716)

RONALD P. DREHER (Peace Officers Research Association of Nevada):
We are requesting your support in passing the first reprint of A.B. 265 with the proposed amendment (Exhibit C). Written testimony details why the bill is needed (Exhibit D).

I want to clarify several points. One, *Nevada Revised Statute* (NRS) 289.060 is the notice process. Second, I want to clarify the Garrity admonishment. This is the principle that the investigating officer, prior to the beginning the interview, must admonish the witness officer prior to the witness officer being ordered and compelled to provide an involuntary statement. Also, the statement cannot be used in a subsequent criminal investigation. Section 1.7 is a new section and amends NRS 289.080. It provides up to two representatives for the witness officer. The main idea is allowing up to two representatives. The section further states that providing the additional representative shall not create an undue delay in proceeding with the interview. If another representative is not found to assist, the interview will proceed. The intent is not to hold up the investigation. The section also states that information obtained in the interview remain confidential and cannot be disclosed by the representatives. For example, if I am representing several officers during an investigation, what I learn from a witness officer in one section cannot be shared in another section. We corrected this section for Senate passage to ensure confidentiality. Information cannot be disclosed.

CHAIR LEE:
Two police officers are at an event. One officer witnesses the illegal action of the other officer. What is the procedure?

MR. DREHER:
Before reaching the subject officer known as the principal in the investigation, witnesses are interviewed. Some witnesses are officers. The bill as amended notices officers to be witnesses. The witness officers are told they have the right to have up to two representatives, but they can appear without one. They are ordered to talk and speak the truth. The second part addresses

principal officers. They are entitled to two representatives. We did the "up to two" with the witness officers to allow the investigation to proceed and to prevent undue delay. We want witness officers to understand the procedure of notices and their right to representation. Allowing a second representative provides training opportunities for representatives.

The law allows principals the right to attorneys, the right to representatives of their choice. This can include the right to have any police representative they want. We have codified this process to allow witness officers up to two representatives. This also deals with the reasonableness of the investigation. Principals have a minimum 48-hour delay before conducting an investigation. We want witness officers questioned in a reasonable amount of time. In the process, witness officers are noticed, they are entitled up to two representatives, and interviews are conducted.

CHAIR LEE:
How does a witness officer wanting two representatives help train representatives?

MR. DREHER:
As a representative, I like to bring in members of the Peace Officers Research Association. The Association provides Peace Officer Standards and Training (POST)-certified representative training. Part of the training occurs on the job.

CHAIR LEE:
It is not the witness officer.

MR. DREHER:
The witness officer could have up to two, but our reason for wanting that is so we can train representatives.

SENATOR HARDY:
Principals have the right to an attorney and another witness. The amendment would allow witness officers involved in seeing principals' alleged actions to have two people in the room during their interviews.

MR. DREHER:
Principals are entitled to two representatives. One can be an attorney, and one can be a union representative or a civilian representative. Witness representation

is similar. They can have a union or civilian representative and one other representative of their choice.

SENATOR HARDY:
Often, the only witnesses to a crime are the partners of the principal. If I were such a witness, I would be concerned about getting subpoenaed. I would want an attorney and another witness. This is a Fifth Amendment liability. Are we allowing one of the two witness's representatives to be an attorney? People often say unintentional things and can confess without realizing it. A response can result in punitive actions against witnesses because accusatory statements were made without an attorney's presence. Having attorneys present during the witness officer's interview would protect the witness officer. Attorneys would monitor witness officers' statements and remind them that whatever is said can be held against them. Also, attorneys would protect witness officers under the Garrity admonishment. Witness officers need witness protection.

MR. DREHER:
This is why the bill came forward. In the example where an officer is the principal of an investigation and his or her partner is there, that witness officer is also noticed as a principal officer. This is also true in the example where an officer shooting or allegation of misconduct occurs where a second officer was present, was not involved but saw something. In law, officers are noticed as witness officers when they are not principals in the investigation. Under this bill, if it is discovered during the investigation that officers are culpable, investigations are stopped, and officers are noticed in the manner as principal officers. This is done is many areas.

SENATOR HARDY:
Can inadvertent statements by witness officers be used against the witness officers?

MR. DREHER:
Yes. Under A.B. 265, the officer will be noticed, and an admonishment be read. The NRS 289 says that witness officers are advised and ordered to provide compelled statements, and anything said in those statements cannot be used against those witnesses in a subsequent criminal investigation. If witness officers refuse to answer questions, they can be held insubordinate and potentially be terminated. This is the basic Garrity warning. This legislation gives the same warning to witness officers. If witness officers feel they are subject to

the investigation, they are no longer witness officers but can be principals of investigations. They work with their representatives as they have crossed over the bridge. At this time, officers would ask for the interview to end.

SENATOR HARDY:
Statements that come out can be used against them?

MR. DREHER:
Statements can be used against them, but witness officers have representatives present. If the representatives are doing their jobs, the confidential facts of the case will be known to both the representatives and the witness officers. We train representatives and tell them to be prepared before going into hearings. *Nevada Revised Statute* 289 requires representatives to be professional representatives.

SENATOR HARDY:
Representatives are not random people pulled off the street. They are pseudo attorneys who know witness officers have the right of representation. Pseudo attorneys have an obligation to understand the facts of cases before interviews. Representatives serve as witnesses to witness officers and play attorney-like roles.

MR. DREHER:
Yes. Representatives are not witness officers.

SENATOR HARDY:
I understand the training issue and how up to two representatives allow for a representative internship. Only one person needs to represent witness officers, and the other representative can learn the ropes.

MR. DREHER:
Representatives can be interns or they can be additional representatives. First, investigators do their work, and representatives follow. The role of second representatives is to take notes and speak on behalf of witnesses on their part of the investigation.

SENATOR HARDY:
Witnesses do not have to speak and can have their representatives speak for them.

MR. DREHER:
No. Witness officers must answer the questions from investigators. The role of representatives is to provide additional information to rebut questions asked by investigators. Representatives are to mitigate and assist witness officers to answer questions truthfully.

SENATOR HARDY:
I am more comfortable with the partner issue because both partners are almost always considered principals when something goes wrong. I would rather be a principal and identified as the person getting investigated because I would know the circumstances facing me.

MR. DREHER:
We have tried for years to give witness officers the same treatment, and it was our understanding they could have the same rights, but it was not codified. Too many departments in the State treated the roles differently. Assembly Bill 265 defines the roles that need to be codified and takes away ambiguity. There is concern over providing witnesses with representatives. We have tackled that problem.

SENATOR HARDY:
Where is the language talking about witness representatives?

MR. DREHER:
A witness is not a representative.

SENATOR HARDY:
Witness officers do not need two witnesses but two representatives.

MR. DREHER:
Correct.

SENATOR SETTELMEYER:
I understand the intent, and the vast array of police officers is honest and trying to gather correct information. I am concerned about situations where principal officers are guilty people. These principal officers get to choose their two representatives. They may choose to have their coconspirators be present to hear the story.

MR. DREHER:
Provisions in law are in place saying that officers cannot participate as representatives in an investigation if they are a part of the investigation.

SENATOR SETTELMEYER:
I have a few concerns. The first concern is what can take place in the beginning of the process. It might not be known witness officers are principals. For example, a principal is investigated because items were missing from lockup. His fellow officer and friend participated in the crime and served as a representative for the principal because the Sheriff did not know the officer friend was connected.

The second concern I have is the compensation for meeting attendance. Is the compensation part of collective bargaining agreements?

MR. DREHER:
The compensation could be part of collective-bargaining agreements but most likely, no. A witness officer could work graveyard and a hearing takes place in the daytime, and this was our concern.

We want officers to have the ability to flex their schedules so they can attend the hearings, and A.B. 265 provides this needed flexibility. Most often, investigations take place during regular business hours. Before, officers would get paid overtime to attend the hearing, and this bill allows officers to flex their schedules. We do not want officers to lose money.

Internal affairs investigators know the people involved before bringing principals for investigations. The last people called in are the principals, and before this occurs, witness officers and other witnesses are called into investigations. By this time, investigators know the involved people because of police reports, witness statements and the like. The chance of having representatives called in to help witness officers or principals in investigations is slim to none. Representatives cannot do it by law as it presents a conflict of interest. It is an inherent wrong.

SENATOR SETTELMEYER:
The bill is wide open. Police officers can call in anybody to serve as representatives and be in those hearings. To lessen my concern, how about

changing the bill's language to address peace officers choosing two representatives from a list?

Also, Mr. Dreher, you indicated that compensation sometimes is the subject of collective bargaining agreements.

MR. DREHER:
Correct, but not everybody has collective bargaining, such as State officers; not all collective bargaining agreements include that compensation. This is one reason we brought this bill forward. The reason for giving officers the right to two representatives of their choice is governed by several U.S. Supreme Court cases. One court case is *NLRB v. J. Weingarten, Inc*., 420 U.S. 251 (1975). It allows a person's representative of choice to come into a hearing. Another court case is *Garrity v. New Jersey*, 385 U.S. 493 (1967). This states that a police officer is entitled to representatives of his or her choice.

Gardner v. Broderick, 392 U.S. 273 (1968) provides a department the right to compel a statement in an officer-involved shooting and provides that the statement is confidential. Law says principals can have two representatives, and it makes the process clean. If a list is provided, it might not be a good list. We want to meet labor standards and provide officers with appropriate due process. Allowing officers the right to choose their representation gives them control and the option to use representation. When addressing witness officers, it says up to two because agencies did not want a delay with a witness officer getting a second representative to hinder the investigation. A second representative cannot cause an undue delay to the investigation.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
Two federal court cases are put into law with A.B. 265. One allows representatives for witnesses, and the second refers to Garrity and provides cleanup language. Not everyone is 100 percent satisfied with this legislation, but the bill offers good compromise language. It allows officers flexibility for coming in for the investigation and allows the witness officer interview to move forward without having two representatives. This bill does what federal law requires, and by codifying it, we will work through the process.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We had concerns with the original bill, but we support the first reprint of A.B. 265. I agree with Senator Settelmeyer that the majority of officers are

doing a good job and the right thing. It is vital to have public trust in police agencies. It is also vital for agencies to do proper investigation and have the tools necessary to weed out the small group of bad apples.

MICHELLE JOTZ: (Law Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs):
Addressing Senator Settelmeyer's concern over witness officers sitting in principals' interviews, the bill says a representative must not otherwise be connected to or subject to the same investigation. If people in the interview are connected to the case, they are in violation of the law. This bill is a compromise. We support the bill as amended.

CHAIR LEE:
The hearing on A.B. 265 is closed. I am opening the hearing on A.B. 276.

ASSEMBLY BILL 276 (1st Reprint): Requires the State Controller to make certain data available for public inspection on an Internet website established and maintained by the State Controller. (BDR 18-371)

MARY KEATING (Office of the State Controller):
Assembly Bill 276 is a continuation of Nevada's desire to have open government. It will provide information to the public on the Controller's Website about our revenue and expenditures. It will specifically list revenue streams over $100 million. To the best of our ability, we will also include smaller revenue streams.

The bill provides a year to get this information up and running, and it should post no later than July 1, 2012, in its perpetual posting. Information will be current. We look for your support on A.B. 276.

CHAIR LEE:
The Controller's Office wants to require itself to post Website information. Does this need to be placed in law or can the Office implement the process without law?

MS. KEATING:
The Controller met with Assemblyman Marcus L. Conklin, Assemblywoman Marilyn Kirkpatrick and the bill sponsors. The Controller's Office can post any of

the information as public record, but we support their desire to get more information available to the public.

CHAIR LEE:
The hearing is closed on A.B. 276. We will move into work session. We have 14 bills. The first bill is A.B. 1.

ASSEMBLY BILL 1 (1st Reprint): Requires periodic reporting of financial information by certain governmental entities. (BDR S-49)

MICHAEL STEWART (Policy Analyst):
Assembly Bill 1 came to us from Assemblywoman Kirkpatrick. It requires certain governmental entities to file quarterly reports with the Interim Finance Committee (IFC) concerning the collection of taxes and fees. Reports must be filed by the Department of Business and Industry; the Department of Employment, Training and Rehabilitation; the Department of Motor Vehicles; the Department of Taxation; the Office of the Secretary of State; the Office of the State Controller; and the State Gaming Control Board. Reports must be filed starting July 1, 2011, and ending May 30, 2013 (Exhibit E).

The bill also requires each occupational and professional licensing board to file a report with the IFC and the Legislative Commission no later than December 1. This bill is an extension of the reporting requirements approved in A.B. No. 193 of the 75th Session. No amendments were offered.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 1.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR LEE:
The second work session bill is A.B. 17.

ASSEMBLY BILL 17: Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

MR. STEWART:
Assembly Bill 17 came to us from the Public Utilities Commission of Nevada (PUCN). The bill clarifies that judicial review of decisions by PUCN is exempt from NRS 233B, the Nevada Administrative Procedure Act. There is a conceptual amendment proposed by the PUCN (Exhibit F).

The amendment was provided by David Noble of the PUCN and addresses the issue of judicial review of decisions by the PUCN. An explanation of the amendment is in Exhibit F. The PUCN notes that parties suing PUCN did not exhaust their administrative remedies, leading to unnecessary lawsuits that PUCN often could have resolved had the parties requested reconsideration. Also, there is no specific time frame for filing PUCN's record of proceedings for reference in the parties' legal briefs with a district court.

The amendment requires parties to exhaust their administrative remedies with PUCN prior to suing PUCN. It requires PUCN to file its record of proceedings with the district court prior to parties filing legal briefs. It makes language in NRS 703 consistent with NRS 233B and maintains the same four- to six-month time frame for judicial review as is set forth in NRS 233B.

SENATOR HARDY:
Is there a time limit for exhausting remedies?

DAVID S. NOBLE (Assistant General Counsel, Utilities Hearings Officer, Public Utilities Commission of Nevada):
In the Commission's petition for reconsideration regulations, the aggrieved party has to file the petition for reconsideration within ten business days from the effective date of the order. The Commission has 40 days upon which to act or set the petition for reconsideration for a rehearing.

SENATOR HARDY:
Are remedies exhausted in 50 days, or does that mean a hearing can be scheduled to occur in 30 days, 60 days or 6 months?

MR. NOBLE:
If PUCN takes no action on the petition for reconsideration, it is exhausted within 40 days. If PUCN brings it back for reconsideration or a rehearing, the time period is open-ended until PUCN issues the final order.

SENATOR HARDY:
Is there a definition for "exhausted"?

MR. NOBLE:
No definitive backstop time frame exists as to when there will be a rehearing or ongoing reconsideration. The PUCN is cognizant of construction deadlines and money deadlines where the utility needs to collect money paid by the ratepayers. The PUCN wants to get its decisions out quickly.

SENATOR SETTELMEYER:
How would individuals know their administrative remedies are exhausted? Would a notice be sent?

MR. NOBLE:
Very few parties practicing before the PUCN are pro per. Involved attorneys would be familiar with PUCN practices and procedures and would know what NRS states in regard to exhaustion of administrative remedies and PUCN's reconsideration regulations. When a pro per person appears before PUCN, the presiding officer and the parties work with that person to ensure the person knows his or her rights.

CHAIR LEE:
What does pro per mean?

MR. NOBLE:
Pro per is when a person is appearing without legal counsel.

> SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 17.
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> SENATOR HARDY SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The third work session bill is A.B. 37.

ASSEMBLY BILL 37 (1st Reprint): Revises provisions relating to the hours of operation of state offices. (BDR 23-422)

MR. STEWART:
Assembly Bill 37 maintains the requirement for State offices to be open at least 40 hours each week but deletes the requirement that State offices be open during specific hours five days each week. Each State office must physically post its hours of operation at its office. It also deletes the requirement that the State Library and Archives be open eight hours a day and five days each week (Exhibit G). No amendments were offered.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 37.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The fourth bill in our work session is A.B. 45.

ASSEMBLY BILL 45 (1st Reprint): Revises provisions governing district attorneys. (BDR 20-251)

MR. STEWART:
Assembly Bill 45 sets forth the hours during which the office of a district attorney must be open and lists the duties of a district attorney. In counties with populations less than 9,000, the board of county commissioners can reduce the hours the office is required to be open. Testimony indicated that the statute on district attorneys prescribed full-time office hours only for counties casting more than 2,500 votes in the preceding congressional election. This bill deletes the reference to the number of votes cast in a previous congressional election as it was determined to be an obsolete reference to counties whose population was less than 700 (Exhibit H). No amendments were offered.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 45.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The fifth bill we will hear is A.B. 63.

ASSEMBLY BILL 63 (1st Reprint): Revises provisions relating to the duties of, and services provided by, the Office of the Attorney General. (BDR 18-203)

MR. STEWART:
Assembly Bill 63 permits the appointment of a special deputy to represent a regulatory body in cases where the Attorney General (AG) has determined that it is impractical or a conflict of interest for the AG to continue representation. The cost of the special deputy will be paid by the regulatory body. The bill also specifies that local governments are no longer required to submit interlocal agreements to the AG for review. If local governments choose to submit interlocal agreements to the AG for review, the review is to be completed within 30 days. The local governments that submit agreements will be charged for the review (Exhibit I).

The bill also permits a district attorney to accept a designation by the AG to file a claim or to intervene in a case brought under the False Claims Act in NRS 357. If there is a recovery in the case, 33 percent of the recovery must be paid into the general fund of the county that employs the district attorney.

During testimony, questions were raised by Senator Settelmeyer concerning the authority of local boards to hire or contract with their own outside attorneys. The AG's Office has given its commitment to work with Senator Settelmeyer during the 2011-2012 Legislative Interim. No amendments were offered.

CHAIR LEE:
Senator Settelmeyer, you did have conversations with the AG's Office. It has committed to work with you.

SENATOR SETTELMEYER:
I had a problem with charging somebody a fee but not allowing that person the choice not to use the service. Roughly six boards have no choice but to use the AG. The AG is committed to work with me to come forward with a bill next session to work out the issue.

SENATOR MANENDO MOVED TO DO PASS A.B. 63.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The sixth work session bill is A.B. 68.

ASSEMBLY BILL 68 (1st Reprint): Revises provisions governing the sale or lease of real property by counties and cities. (BDR 21-401)

MR. STEWART:
Assembly Bill 68 allows cities and counties to lease buildings or land comprising less than 25,000 square feet without obtaining an appraisal under certain circumstances. The city or county must adopt a resolution stating it is in the city or county's best interest to lease the building or land for less than fair market value without offering it to the public. Any such lease may not be for more than three years, but the lease can be extended for up to two years (Exhibit J). No amendments were offered.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 68.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The seventh work session bill is A.B. 115.

ASSEMBLY BILL 115 (1st Reprint): Revises provisions governing the appropriation of water for beneficial use. (BDR 48-207)

MR. STEWART:
Assembly Bill 115 was brought to us on behalf of the Legislative Committee on Public Lands. It extends the time frame within which the State Engineer can act on a water application from one to two years. The bill deletes the requirement for a protester to approve the postponement of an application and adds additional grounds for postponement of an application. An application that has not been approved or rejected, or on which a hearing has not been held within seven years, must be republished and the protest period reopened. The bill clarifies that applications remain active until either approved or rejected. Additional amendments include reordering certain existing sections of the statutes, eliminating unused definitions and deleting redundant provisions. This bill in part is necessary to bring our statutes into conformance with the Nevada Supreme Court's decision in the *Great Basin Water Network v. State Eng'r, 126 Nev.___*, 234 P.3d 912 (2010) (Exhibit K). No amendments were offered.

SENATOR HARDY MOVED TO DO PASS A.B. 115.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The eighth work session bill we will discuss is A.B. 145.

ASSEMBLY BILL 145 (1st Reprint): Requires the posting of certain notices of a proposed annexation of an area by an unincorporated town under certain circumstances. (BDR 21-11)

MR. STEWART:
Assembly Bill 145 was brought to us by Assemblyman Pete Goicoechea. The bill requires a town board or county commission to mail a notice to affected

property owners of a proposed ordinance to annex their land into an incorporated town. Notice provisions are set forth in the bill, and the county commissions and towns must—at the same time—post the notices of proposed annexation ordinances on their Websites, if a Website is maintained (Exhibit L). No amendments were offered.

SENATOR HARDY MOVED TO DO PASS A.B. 145.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The ninth work session bill is A.B. 146.

ASSEMBLY BILL 146 (1st Reprint): Makes various changes relating to the Office for Consumer Health Assistance. (BDR 18-179)

MR. STEWART:
Assembly Bill 146 includes a person who needs information or assistance relating to health-care or billing disputes within the definition of "consumer." The bill also authorizes the Director of the Office for Consumer Health Assistance or a designee to use alternative means, such as mediation or arbitration, to resolve disputes between hospitals and patients and to adopt regulations relating to dispute resolution (Exhibit M). No amendments were offered.

SENATOR HARDY MOVED TO DO PASS A.B. 146.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The tenth work session bill we are hearing is A.B. 257.

ASSEMBLY BILL 257 (1st Reprint): Revises provisions relating to the Open Meeting Law. (BDR 19-107)

MR. STEWART:
Assembly Bill 257 came to us from Assemblyman John C. Ellison. The bill requires public bodies subject to the Open Meeting Law to provide an opportunity for public comment at least twice during a meeting. One of the public comment periods must be at the beginning of the public meeting. There is a conceptual amendment (Exhibit N).

The amendment, Exhibit N, would amend section 1, subsection 2, paragraph (c), subparagraph (3) to clarify that an agenda for a public meeting must include a period for public comment after each actionable agenda item or at least two periods of public comment—one at the beginning of the meeting prior to any actionable agenda items and one before adjournment. This subsection would also specify that nothing would prohibit the public body from having additional periods for public comments. The conceptual amendment was discussed by Assemblyman Ellison and Javier Trujillo, representing the City of Henderson.

CHAIR LEE:
Mr. Trujillo, can you restate your concern?

JAVIER TRUJILLO (City of Henderson):
Our concern with this legislation was it specified a public body was required to do public comment at the beginning of the meeting and at the adjournment of the meeting. The City of Henderson provides opportunities for public comment after each agenda item. We want to ensure this legislation will not preclude us from continuing our public comment process. The conceptual amendment in Exhibit N meets our needs. It allows us to continue our public comments after each agenda item and to do the final public comment prior to the meeting's adjournment.

SENATOR SCHNEIDER:
The entities in Las Vegas are efficient about having public comment on each agenda item. This bill reminds me of homeowners' associations (HOA).

In HOAs, we had to mandate that homeowners could have public comment. In rural areas, public entities can operate like HOAs.

SENATOR HARDY:
The amendment in Exhibit N gives permission for the public to talk after an agenda item has had action, and it allows for public comment in the time before any agenda item and before the meeting's adjournment. If the municipality only did the public comment after each actionable agenda item, the public would never have a chance to have input before an action.

MR. TRUJILLO:
The public comment portion is offered to the public prior to the vote.

SENATOR HARDY:
Good. The conceptual amendment needs to reflect that a public comment after each actionable agenda item is before the vote. The City of Henderson has public comments before the vote.

MR. TRUJILLO:
Correct. The public comment portion is offered to the public prior to a vote taken by the City Council.

SENATOR HARDY:
This is in spirit with public comments at the beginning of the meeting prior to any actionable item.

CHAIR LEE:
I read this bill to mean that when a meeting is opened, people can speak to the city council or county commissioner and, if they want, can speak after each actionable agenda item, or they can wait and comment about what happened at the meeting before adjournment.

ASSEMBLYMAN JOHN C. ELLISON (Assembly District No. 33)
Correct. When the counties of Elko, Humboldt, Eureka and Douglas hold a meeting, they allow public comments before a vote. Smaller public bodies such as school districts are not allowing the public to speak. It was added that public comments be opened at the beginning of a meeting. If a person is late to a meeting and wants to add something to the next agenda, there is an action item at the end of the meeting allowing the person to speak and add something to

the next meeting's agenda. We also want those counties and cities allowing public comments under each agenda item to continue doing so.

CHAIR LEE:
We are not mandating that Washoe County must allow a public comment period before any agenda item.

ASSEMBLYMAN ELLISON:
Correct.

CHAIR LEE:
We support public comment after each agenda action and would like to see that occur more.

SENATOR HARDY:
It makes sense, but the conceptual amendment uses the word "after" and the definition of actionable agenda item is the crux of this amendment. When I think of action, I think of a vote. When defining each actionable agenda item, the conceptual amendment is referring to a discussion. I want to ensure the public can speak before the vote, either at the beginning of the meeting or before the vote is taken on an actionable item. The conceptual amendment says "after each actionable agenda item."

MR. STEWART:
We can change language to reflect: "a period of public comment after each actionable agenda item but before a final action on that item is taken." Taking action is defined in NRS 241.

CHAIR LEE:
A meeting is opened, and in the beginning, there is a period of public comment. Public comment is closed, and the agenda is addressed. Public comment does not mandate people to speak after each agenda item. People can speak during the public comment period at the end of the meeting.

SENATOR HARDY:
That is one option.

MR. STEWART:
The conceptual amendment would have additional language to clarify the period of public comment after each actionable agenda item before a vote or final action. It would also include the two periods of public comment with one in the beginning of the meeting and the other at the meeting's end. The amendment would also ensure that we would not prohibit a public body from doing something else as it relates to public comments.

HEIDI CHLARSON (Counsel):
The first reprint of A.B. 257 requires that there be at least two periods devoted to public comment. One must be at the beginning of the meeting, and one must be before adjournment of the meeting. The City of Henderson was concerned that even though it has public comment during each agenda item, the City wanted the option to have public comment throughout the meeting instead of a beginning and end public comment. The conceptual amendment allows a public body to choose which two periods of public comment to use. The first is to choose how the first reprint is drafted, allowing a public comment period at the meeting's beginning and end. The public entity could use more if it chose. The alternative under the amendment is a public body would have public comment throughout the meeting, not at the meeting's beginning and end.

SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 257.

SENATOR HARDY SECONDED THE MOTION

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The next work session bill on our agenda is A.B. 389.

ASSEMBLY BILL 389 (1st Reprint): Revises provisions regarding the Open Meeting Law. (BDR 19-226)

MR. STEWART:
Assembly Bill 389 requires a public body to make a reasonable effort to allow competing views to be expressed on any item on the agenda for a meeting of

the public body. It also requires nonprofit corporations having the power of eminent domain to comply with the Open Meeting Law. There is a conceptual amendment (Exhibit O).

The amendment, Exhibit O, proposed by Clark County, amends section 1 and addresses that a public body shall make a reasonable effort to allow the expression of competing opinions concerning any public hearing item on the agenda for a meeting of the public body.

SENATOR SCHNEIDER:
We have public utilities in Nevada. An example is Southwestern Electric Power Company (SWEPCO), formerly known as Valley Electric Membership Corporation, and it has the power of eminent domain. This power company buys most of its land, and when it goes into a closed meeting to discuss buying property, the representatives talk about price and negotiate. A mechanism should be in place to allow entities to do this. If price is discussed openly, entities are negotiating with themselves. If landowners know company prices, they can come back and ask for more money. I am an advocate of Open Meeting Law, but at times discussions need to occur in private to establish offers. We would rather that parties reach negotiated prices than to turn to the use of eminent domain for acquiring a person's land.

SENATOR SETTELMEYER:
Another concept concerning entities such as SWEPCO is that they directly compete with industries not subject to this legislation because they are not nonprofit.

CHAIR LEE:
No person has spoken to me regarding A.B. 389. We will move onto A.B. 410.

ASSEMBLY BILL 410 (1st Reprint): Revises provisions relating to the filing by a governmental entity of a protest against the granting of certain applications relating to water rights. (BDR 48-360)

MR. STEWART:
Assembly 410 requires protests by governmental entities of certain water applications to be verified by affidavit. The bill affects protest of applications to the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources, to change the point of diversion or the

manner or place of use, within the same basin, of an existing water right. The verification of the protest must be made by the person who is in charge in Nevada for that governmental entity. There was one amendment (Exhibit P).

The proposed amendment clarifies water application protests. The first change clarifies that water application protest affidavits filed by the U.S. Forest Service, U.S. Department of Agriculture, must be verified by the Intermountain Regional Office of the Director of Lands and Minerals. The second change clarifies water application protest affidavits filed by the National Park Service (NPS), U.S. Department of the Interior, must be verified by the Regional Director of the Pacific West Region of NPS. The amendment proposed by Assemblyman Ed Goedhart is attached, Exhibit P.

CHAIR LEE:
Concern was expressed about entities not listed in the bill. The amendment from Assemblyman Ed Goedhart, Exhibit P, clarifies what is taking place in the Death Valley area and with the U.S. Forest Service.

> SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 410.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The next work session bill is A.B. 454.

ASSEMBLY BILL 454 (First Reprint): Revises certain provisions relating to land use planning. (BDR 22-1119)

MR. STEWART:
Assembly Bill 454 makes permanent the four-year deadline for filing a final subdivision map and the two-year deadline for filing successive final maps for subdivisions being completed in phases. For parcel maps which contain conservation easements totaling 50 acres or more, the deadline for recording a

parcel map is three years after approval, and the governing body may grant an extension of up to one year.

The extensions for the deadlines for filing final subdivision maps of five parcels or more were passed on a temporary basis by A.B. No. 74 of the 75th Session. This bill removes the sunset provisions in A.B. No. 74 of the 75th Session (Exhibit Q). No amendments were offered.

SENATOR SETTELMEYER:
Local communities came forward to me regarding conservation easements. At times, it is difficult to get a conservation easement done with the federal government within the allotted time frame. I approached the Assembly Committee on Government Affairs to discuss the issue, and the Committee had added an amendment. The bill before us is supported by a strange alliance between builders, conservationist groups and the government.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 454.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The last bill in work session is Assembly Bill 544.

ASSEMBLY BILL 544 (1st Reprint): Provides for uniformity in the naming of group homes and similar facilities. (BDR 20-675)

MR. STEWART:
Assembly Bill 544 comes to us on behalf of the Legislative Commission's Committee to Study Group Homes. The bill requires cities and counties to adopt an ordinance using the terms listed in the bill to describe the facilities, homes, houses and institutions as applicable. The measure clarifies that cities and counties are not required to adopt the State's definition for the listed terms and are not required to include a term if that city or county's ordinances do not refer to such facilities. The listed terms include "child care institution," "facility for transitional living," "group foster home," "halfway house for recovering alcohol

and drug abusers," "home for individual residential care" and "residential facility for groups" (Exhibit R). No amendments were offered.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 544.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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GARY SCHMIDT:
The concept of taking public comment at a work session after it has already been voted upon seems moot. The decision has been made, and public comment is not considered.

Assembly Bill 257 needs clarity. I spoke in the Assembly Committee on Government Affairs, and I support public comment periods at the beginning of a meeting, at the end of a meeting and on each agenda item.

A public comment period at the beginning of a meeting is important because a meeting can last six to nine hours on occasion. I am often the only person in the audience of a Washoe County Board of Commissioners meeting who will sit through a six to nine-hour meeting. I do not speak on every item, and Washoe County does allow public comment on every actionable item. I commend the County. It is difficult for members of the public to communicate with their public bodies. People might have something to say and are time-restricted. People might have to work, and the time period for an actionable item can vary by hours. The public comment period at the beginning of a meeting is relatively time-certain. It is the most important public comment period. People can rearrange their schedules and speak on anything within a 10- to 15-minute time period from when a meeting is scheduled to meet.

The public comment period at the end of a meeting is important because those that follow their government, pay attention to meetings and address issues have an opportunity to speak about what happened at the meeting while the issue is fresh and can serve to correct the record. A vote can be taken on false information, and an opportunity at the end of the meeting allows correct

information to be put on the record. The public body can also reopen what was voted on based upon testimony.

The public comment period on actionable items where land use can be changed or laws created is also important.

I support public periods at the beginning of a meeting, end of the meeting and on every actionable item. If public comment was limited to a one-time period, have the public comment at the beginning of the meeting so people can have a relatively certain time to be present and speak.

The amendment to A.B. 257, Exhibit N, is unclear. Does it mean there is no general comment period at the beginning of the meeting or at the end of the meeting? The amendment can be interpreted that way if a public body elects to have comment on actionable items.

CHAIR LEE:
There are two public comment periods. One period is at the beginning of the meeting, and the other is at the end of the meeting. Some communities such as yours in Washoe County will allow public comments after each agenda item and before the vote. We have enlarged the public comment periods.

MR. SCHMIDT:
The amendment in Exhibit N did not pass?

CHAIR LEE:
The amendment did pass.

MR. SCHMIDT:
I read the amendment to say public bodies have the option. They will have both?

CHAIR LEE:
They will have both.

MR. SCHMIDT:
Will they have both regardless of whether they have public comment on actionable items?

CHAIR LEE:
Yes.

MR. SCHMIDT:
I am relatively satisfied. This bill is an improvement.

CHAIR LEE:
We continue to work on public comments and open meetings, and your input is appreciated.

MR. SCHMIDT:
Under public comment, I want to address A.B. 545 and my proposed amendment regarding committee assignments for the Washoe County Board of Commissioners.

ASSEMBLY BILL 545 (First Reprint): Makes changes to the population basis for the exercise of certain powers by local governments. (BDR 20-548)

Sections 1 and 2 of the amendment remove the proposed change in the law. The report handout (Exhibit S) shows the amount of work and extra committees Washoe Commissioners address. The citizen advisory board meetings are missing because the Commissioners are not obligated to go to them. About a dozen citizen advisory boards have agenda items at every board meeting. The Commissioners rarely attend because they are too occupied elsewhere. A county with a population of 400,000 deserves seven county commissioners. This is an important issue to Washoe County.

I renamed my "Buffet Bill from Hell" editorial the "Stealth Buffet Bill from Hell" because the summary of the 400 changes in law is not descriptive. Assembly Bill 545 is not referenced under the index of bills addressing the number of county commissioners and representation. Sections 1 and 2 say that counties with populations over 400,000 have seven county commissioners. The end of A.B. 545 says this Committee is pledging that the 400 changes have been reviewed, and the changes are appropriate in the population thresholds. I am not asking this Committee to change anything. I am asking this Committee not to make changes.

CHAIR LEE:
We will meet again on this bill as there are seven or eight amendments. I invite you to join the meeting in my office.

MR. SCHMIDT:
I appreciate the invitation, but you give short notice, and I do not know if I can be there.

CHAIR LEE:
The hearing will be Friday.

MR. SCHMIDT:
Douglas County has 50,000 people represented by five county commissioners; Washoe County has 400,000 people represented by five county commissioners; and Lincoln County has about 3,800 people represented by five county commissioners. People in Washoe County are expecting seven county commissioners, and they are becoming aware that this bill would remove that right. I request that personal e-mails are received and they be placed on the record. I am getting word that e-mails should be sent through the Legislative Counsel Bureau's Website where they become placed on the record. I ask that this Committee place received e-mails on the record because this bill is going to return to the Assembly, and I want the paper trail to follow.

Reno's City Council has seven representatives, each serving about 25,000 people. The City of Sparks has six representatives, each representing about 12,000 people. Washoe County has five county commissioners, who each represent about 80,000 people. Even if the law is not changed and seven county commissioners are allowed, each commissioner in Washoe County will represent about 58,000 people. It is appropriate that the law remain the same, and if the law is changed by enacting this bill without an amendment, I want to know the reasoning behind this Committee's decision.

CHAIR LEE:
Having no further business, this meeting of the Senate Committee on Government Affairs is adjourned at 9:32 a.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Sheet
A.B. 265	C	Ronald P. Dreher	Proposed Amendment
A.B. 265	D	Ronald P. Dreher	Position Paper
A.B. 1	E	Michael Stewart	Work Session Document
A.B. 17	F	Michael Stewart	Work Session Document
A.B. 37	G	Michael Stewart	Work Session Document
A.B. 45	H	Michael Stewart	Work Session Document
A.B. 63	I	Michael Stewart	Work Session Document
A.B. 68	J	Michael Stewart	Work Session Document
A.B. 115	K	Michael Stewart	Work Session Document
A.B. 145	L	Michael Stewart	Work Session Document
A.B. 146	M	Michael Stewart	Work Session Document
A.B. 257	N	Michael Stewart	Work Session Document
A.B. 389	O	Michael Stewart	Work Session Document
A.B. 410	P	Michael Stewart	Work Session Document
A.B. 454	Q	Michael Stewart	Work Session Document
A.B. 544	R	Michael Stewart	Work Session Document
A.B. 545	S	Gary Schmidt	Report Handout