MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session
May 20, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:37 a.m. on Friday, May 20, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, 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:

Assemblywoman Debbie Smith (Assembly District No. 30):

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services
George Flint, Select Legal Brothels of Nevada
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Lucas Foletta, General Counsel, Office of the Governor
Marilyn G. Wills, Interim Director, Office for Consumer Health Assistance

CHAIR LEE:
I will open the meeting of the Senate Committee on Government Affairs with Assembly Bill (A.B.) 519.

ASSEMBLY BILL 519 (1st Reprint): Makes various changes relating to the Office for Consumer Health Assistance. (BDR 18-1157)

MARY LIVERATTI (Deputy Director, Programs, Department of Health and Human Services):
I have provided copies of my written testimony (Exhibit C). Assembly Bill 519 is a bill that will transfer the Governor's Office for Consumer Health Assistance into the Department of Health and Human Services (DHHS). It also revises the qualifications of the Director of the Office for Consumer Health Assistance. The Director will be renamed the Governor's Consumer Health Advocate. The bill allows the Director of DHHS to appoint the Advocate. Currently, the position is appointed by the Governor.

Assembly Bill 519 also relocates the Office of Minority Health under the Office for Consumer Health Assistance. The Office of Minority Health would retain its own identity as the Office of Minority Health. The bill allows the Director of DHHS to appoint or designate a Manager for the Office of Minority Health as long as funding is available for that purpose. We included language in the bill to pay the salary and per diem expenses for members of the Office of Minority Health Advisory Committee as long as funding is available for that purpose.

The transfer of the Office for Consumer Health Assistance program over to DHHS is a good fit because the mission and activities of both promote health and well-being of Nevadans. The two offices also provide a high level of consumer advocacy regarding health care and promote better coordination of consumer information, counseling and education.

The Office for Consumer Health Assistance has a strong working partnership with the DHHS programs including: Medicaid Services; Nevada Check Up; State Health Insurance Assistance Program located at the Aging and Disability Services Division, DHHS; Senior Rx; and the Disability Rx programs. With the implementation of health-care reform, consumer assistance will be an integral part of the health-care exchange. Partnerships will be strengthened by this move. This will offer new opportunities to enhance and expand consumer

advocacy efforts. The move will increase operational efficiencies and support. The DHHS will provide closer oversight, guidance and administrative support, additional technical and program expertise, and information technology, as well as fiscal support.

The transfer of this office is supported by recommendations of the Legislative Committee for the Fundamental Review of the Base Budgets of State Agencies and is included in the budget closings that have already occurred before the Senate Committee on Finance and the Assembly Ways and Means Committee.

The qualifications for the Consumer Health Advocate currently require that a health-care practitioner be appointed, either a physician, a nurse, an advanced practitioner of nursing or a physician's assistant, to fill the position. We would like to change the criteria to require the person be selected based on: his or her training, experience, capacity and interest in health-related services; be a graduate of an accredited college or university; and to the extent practicable, give preference to a person who has a degree in a field of health, social science, public administration, business administration or a related field. We would also like the candidate to have not less than three years of experience in the administration of health care or insurance programs and have expertise and experience in the field of advocacy.

Other desirable skills and abilities are: (1) experience in resource development and grant management; (2) demonstrated skills in presentation and public speaking; (3) supervisory experience; (4) fiscal management; and (5) skill in partnership and collaboration building.

We conducted a survey with 34 states that have consumer health assistance programs and received responses from 21 of those contacted. None of the states use licensed health-care practitioners for consumer health assistance offices. Some of the backgrounds used in other states were business or public administration, advocacy, health care, insurance, benefits counseling and legal expertise.

The relocation of the Office of Minority Health into the Office for Consumer Health Assistance is beneficial. We can leverage additional resources, since now the Office of Minority Health has one staff member funded out of a federal grant. Combining the two offices will provide more support to that office. We also expect to raise the visibility and exposure of the Office of

Minority Health and improve our outreach efforts. If we are going to make a difference in the health disparity of members of minority groups, we need to ensure we do a better job of helping these people access health care.

CHAIR LEE:
I agree with what you are trying to achieve with this bill. Do you turn away people who are poor if they are in a certain minority class?

MS. LIVERATTI:
No. The Office of Minority Health was in our Health Division, but we want to move it into the same offices with the Office for Consumer Health Assistance now that we are moving that office into DHHS. It is just a matter of placing those two offices together.

SENATOR HARDY:
When you say you are putting two offices together, you are combining the agencies so you would not need two directors in the same building. Will one director oversee both missions?

MS. LIVERATTI:
Actually, the Consumer Health Advocate will oversee both offices. We do have a manager of the Office of Minority Health funded through a federal grant. This is the reason we requested language in the bill. If the money is not available, the Director of DHHS could designate another person to complete these functions.

SENATOR HARDY:
You are not combining, you are downsizing with the same mission in regard to a salary. Is that how your budget was closed?

MS. LIVERATTI:
Yes. We still have the Director of the Department of Health and Human Services. The Office of Minority Health would report to the Office for Consumer Health Assistance.

SENATOR HARDY:
Would you still have an Office of Minority Health?

MS. LIVERATTI:
Yes. We want that office to retain its identity because we have heard from minority groups that they do not want the office to be lost in the merge.

SENATOR HARDY:
Is the Office of Minority Health dependent on the federal grant?

MR. LIVERATTI:
The federal grant is not a lot of money; it is only about $130,000.

SENATOR HARDY:
It pays for one position.

MS. LIVERATTI:
Right. We are hoping by leveraging our resources that we are receiving through other grants we can give the Office more exposure and make it more effective.

SENATOR HARDY:
If we look at the Office of Minority Health and at the concept of leverage, will that apply for us to leverage Medicaid funds?

MS. LIVERATTI:
We do not use Medicaid dollars to support the Office of Minority Health, but we do use Medicaid dollars to support the Office for Consumer Health Assistance.

SENATOR HARDY:
If you are combining the two offices, it seems you would leverage the dollars from Medicaid because, if we are looking at Minority Health in the Office of Consumer Health Assistance, you are also looking at a dual role of Medicaid because that is the percentage of people who will be affected.

MS. LIVERATTI:
We can look into it, but right now I am not sure if Medicaid would pay for the services, the outreach and the assistance at the Office of Minority Health. For example, the Office of Minority Health has a large project this year relative to diabetes. We are trying to reach out to minority groups because the incidence of diabetes is so high in those minority groups. I would have to look at Medicaid to determine if there is reimbursement there.

SENATOR HARDY:
That would make sense to me because you are basically taking people who are diabetic, some of whom are on Medicaid, under the combined office that is leveraging Medicaid dollars. If you are combining these offices, how can the money be leveraged? I would appreciate receiving that information.

MS. LIVERATTI:
I will look into that for you, Senator.

MARILYN G. WILLS (Interim Director, Office for Consumer Health Assistance):
I am available to answer any questions.

CHAIR LEE:
We will open the work session hearing with A.B. 545.

ASSEMBLY BILL 545 (1st Reprint): Makes changes to the population basis for the exercise of certain powers by local governments. (BDR 20-548)

This bill has always been known as a routine technical bill needed every ten years following the national census to adjust our population thresholds throughout the *Nevada Revised Statutes* (NRS). The idea is to ensure that what impacts a category of counties prior to the census impacts that same group of counties following the census, as noted in my opening remarks (Exhibit D).

Obviously, we can look at every population threshold and make a determination about how each one should be applied. However, as many of you may have noticed, this bill has become a vehicle for one amendment after another seeking to change one set of population thresholds for another. My preference, as Chair of the Senate Committee on Government Affairs, is to see these proposals in separate measures, where we can discuss the rationale for such changes separately because the population cap bill is overwhelming, with 315 sections within 281 pages of the bill.

I am proposing two amendments to the measure to specifically address these concerns. The first would set forth a mechanism to clarify the manner in which a bill of this nature may be considered in the future, presumably in 2021. The second amendment brings the bill back to its original introduced form. I would encourage those interested parties who sought amendments to the bill

or were successful in getting amendments to the introduced version to try to secure a separate bill either this Legislative Session or during the next.

Out of professional courtesy to a member of this Committee, I am allowing the consideration in today's work session of an amendment to section 10, subsection 8 of the bill as requested by a Committee member, Senator Hardy. I will leave it to the Committee to decide on that proposal and the other two proposals I have suggested today.

MICHAEL STEWART (Policy Analyst):
As Chair Lee mentioned, there are three amendments proposed for A.B. 545 in the work session document (Exhibit E). The first two amendments are offered by Chair Lee. The first would add section 75.5 and add new language in NRS 218D to specify that before changing a classification in statute based upon population, the Legislature shall review the classification, consider the suggestions of all interested persons in the State relating to whether the classification should be retained, unchanged or amended and find that the classification should be amended to a different level. This determination must not solely be based upon changes in the population of local governmental districts in this State.

The second proposed amendment would revert the bill back to the introduced version. This would involve removing the Assembly amendments to sections 42, 43, 46 and 47, changing in all four sections the references to population classifications of 100,000 back to the original amended classification of 700,000. The Assembly Amendment No. 399 is part of the work session document, Exhibit E.

Third, there is an amendment proposed by Senator Hardy, Exhibit E, to change the population threshold in section 10, subsection 8, back to 400,000.

CHAIR LEE:
Basically, what we have is a bill that for 20 years we have been adding things to and at the last second, it became a vehicle for a lot of other issues that affected many different counties. The feeling of the Chair was that we could not hang all of these different issues on this bill, so we are returning it to the original bill and you can come back with solutions to solve the problems you discovered. I wish this had not been a last-minute bill so some of these issues could have been addressed earlier. You could have found another vehicle to

carry your issues forward. At this time, we need to move this bill out of the Committee.

SENATOR HARDY:
As I read the proposed amended language, I would like to speak to our legal staff. I did not personally want to be on the record of voting for or addressing the institution of prostitution. As I read the amendment in section 10, subsection 8, for a county whose population is 400,000 or more, the licensing board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution. Let me ask Ms. Chlarson, if this amendment passes, will it change anything as it stands right now?

HEIDI CHLARSON (Counsel):
If amendment No. 3 is adopted by the Committee, the provisions of section 10 of the bill, other than subsection 8, will revert back to the "as introduced" version of the bill. Subsection 8 of section 10 will retain the existing population cap of 400,000. With the population change in A.B. 545, Washoe County would be included.

SENATOR HARDY:
Would this amendment change anything in the legal world of prostitution or would it remain as it is in Washoe County?

MS. CHLARSON:
Prostitution is not legal in Washoe County, so I do not believe the adoption of this amendment would change the legal status of prostitution in Washoe County.

SENATOR HARDY:
It is not legal now, nor will it be under this amendment?

MS. CHLARSON:
That is correct.

SENATOR HARDY:
Would that only be limited to Washoe County, or would it capture anyone else?

MS. CHLARSON:
If the population cap that is listed in subsection 8 were set at 400,000, which is what is in existing law, Washoe County and Clark County would be included. I do not believe it would be a substantive change.

CHAIR LEE:
Did you get the answer you were seeking?

SENATOR HARDY:
I received an answer but want to ensure everyone understands what adding the amendment means. My intent is not to change anything that is already in place now as far as the practice of prostitution.

GEORGE FLINT (Select Legal Brothels of Nevada):
Senator Hardy's amendment would make a change. It would make prostitution in Washoe County illegal by statute, not by ordinance. The only county in the State where it is illegal by statute is Clark County. This statute is 60 years old and was the result of a demand on the part of the federal government in order to bring in the air field that became Nellis Air Force Base. Prostitution in Washoe County has never been illegal by statute; however, repeatedly people think it is because Washoe County is over 400,000 in population. In order not to make it illegal by statute, the population cap was raised to 700,000. Today, Washoe County is over 400,000.

In the 2000 Census, Washoe County's population was at 390,000, so it was not included at that time. During the last ten years, it has increased and now is over 400,000. Senator Hardy's amendment would change prostitution illegality in Washoe County from a county option—there is an ordinance against it—to a prohibition by statute. I have been in more than one conference with leaders from the Reno area who have talked about the possibility of making prostitution legal in Washoe County because of the economy. Reno is nearly bankrupt and has not been able to make bond payments. There are certain leaders who have asked for input on this issue.

If Senator Hardy's amendment is adopted, this would prohibit Washoe County from taking any steps in that direction for at least two more years. The press looks at the population of Washoe County and takes for granted that prostitution is illegal by statute, but it is by ordinance.

SENATOR HARDY:
That answers my question. If we adopt this amendment, the status of prostitution will continue as it is now, and that is my recommendation.

SENATOR SETTELMEYER:
I look at A.B. 545 as being a difficult bill. There are a multitude of subjects affected by these law changes. I find it difficult to vote on the population cap portion of the bill. I agree the population cap bill should never be used as a vehicle for anything other than addressing the population totals of the counties. I would make the motion to return to the original version of the bill. The concept of amending the bill even to address Senator Hardy's concerns violates the premise that we should strip the amendments and leave this solely as a population cap bill and not a vehicle for anything else.

CHAIR LEE:
I will allow Senator Hardy to amend and do pass the bill, and if there is no second, we will go to Senator Settelmeyer to make a motion.

> SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 545.
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> THE MOTION FAILED FOR LACK OF A SECOND.

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SENATOR SETTELMEYER:
I agree with your recommendation to revert the bill to its introduced version because it should be left as a population cap bill.

CHAIR LEE:
Senator Settelmeyer has proposed adopting amendment (1) in the work session document, removing sections 42, 43, 46 and 47 from the bill as introduced by Amendment No. 399 by the Assembly Committee on Government Affairs, adopting amendment (2) and returning the bill to the original version as introduced.

SENATOR SETTELMEYER:
Yes, I agree this should always be a population cap bill and the language would clarify our intent.

CHAIR LEE:
The first amendment, which is Assembly Amendment No. 399, will clarify that ten years from now, the Legislature will be unable to add amendments to the population cap bill. The second amendment in the work session document reverts A.B. 545 back to the version of the bill "as introduced." This motion does not include the third amendment listed in the work session document.

SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 545.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will now open the work session hearing on A.B. 240.

ASSEMBLY BILL 240 (1st Reprint): Revises provisions governing contracts for services entered into by certain public employers. (BDR 23-149)

MR. STEWART:
Assembly Bill 240, as explained in the work session document (Exhibit F), expands the current restrictions on State contracts with consultants to include all State contracts with consultants for services. The cooling-off period for such contracts with former State employees is expanded from one to two years. Instead of the Interim Finance Committee (IFC) being required to approve certain contracts with former or current State employees, the responsibility is transferred to the State Board of Examiners. Finally, the bill provides that school districts must report to the IFC every six months on the number of consultants employed by the districts, the purposes of the contracts, and the amount and length of the contracts.

During testimony on the measure, the sponsor indicated some minor amendments may need to be considered in order to improve and streamline the implementation of A.B. 240. The amendments are set forth in the work session document, Exhibit F.

The attached documentation is slightly different from what was presented to you for review. I can quickly go through the amended language. The first proposed amendment clarifies that emergency contracts submitted to the Board of Examiners (BOE) by a State agency or division must be reviewed by the BOE. The BOE must notify the State agency or division whether the BOE would have approved the contract if it had not been considered an emergency contract.

The second amendment provides that the report to the IFC by a State agency or division concerning contracts include information regarding any contracts with current employees.

The third amendment specifies provisions in the bill regarding contracts do not apply to the employment of a person by a business or entity which is a provider of services under the State Plan for Medicaid and which provides those services on a fee for service basis or through managed care.

SENATOR SETTELMEYER:
Last night we heard Assembly Bill 452 in the Senate Committee on Legislative Operations and Elections dealing with a two-year cooling-off period. There was a motion by the Majority Leader to strip the two-year aspect from the bill and return the cooling-off period to one year. I do not agree that increasing the cooling-off period to two years is the right thing to do and cannot support the bill. I would support leaving the cooling-off period at one year and accepting all of the other changes. I would like the sponsor to provide us with her thoughts.

ASSEMBLY BILL 452 (1st Reprint): Revises provisions relating to elections. (BDR 24-1136)

The one-year cooling-off period was supported by Majority Leader Steven A. Horsford and Senator Moises (Mo) Denis. Senator Denis supported one year instead of two years because of how it affects the Public Utilities Commission of Nevada (PUCN) and the State Gaming Control Board and their ability to hire individuals for their departments. An individual who is hired now with a one-year cooling-off period cannot quit but has to cool off for another year. We may be in a situation where we are laying off individuals who may not be able to gain employment in the private sector.

CHAIR LEE:
Assemblywoman Smith, would you like to discuss moving this item to one year instead of two?

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
We may be talking about two different issues. The bill you are referencing may be the two-year cooling-off period that affects lobbying versus State employees who leave and then return to work for the State. That is the cooling-off period referenced in A.B. 240. If you retire and form a limited liability company (LLC), you cannot come back to the State without abiding by the two-year cooling-off period unless you fully meet the exceptions approved by the Board of Examiners. We are only talking about this particular situation in this bill, not A.B. 452 you are referring to from the other Committee. Assembly Bill 240 concerns those State employees who leave State employment and come back to work for the State as a contractor. We are trying to mitigate this issue unless the conditions are such that you must have that individual.

SENATOR SETTELMEYER:
Unfortunately, this was part of the discussion in the Committee. Individuals who work for the PUCN, leave but have the skill set necessary to work for NV Energy issues in front of the PUCN—they are lobbying a form of government, are they not?

ASSEMBLYWOMAN SMITH:
This bill does not affect any form of lobbying. It is only about State employees who are hired back under contract. This is a separate situation. You are referencing the elections bill that had a two-year cooling-off period for lobbying. This bill does not relate to that issue because it only pertains to employees who retire from the State and then come back. The bill does have a provision for exceptions which could be used by the BOE if individuals have particular expertise or if there is an emergency.

CHAIR LEE:
I recognize that Clark County School District had some area superintendents quit and then immediately return on special contracts, making one-third more than they did previously as employees.

ASSEMBLYWOMAN SMITH:
We have seen this happen at the State level, and that is really what this bill addresses. We want to manage the way we use contractors. We do have circumstances where people retire from the State, form LLCs and come back, working alongside regular State employees and making more money. The Department of Administration is also enacting some provisions that will cap how much money these contractors can be paid. This bill literally requires a two-year cooling-off period so the State does not have people leaving State service and then turning around and coming back under contract.

SENATOR SETTELMEYER:
I believe I remember the bill correctly, and I may change my vote by the time the bill gets to the Senate Floor. I do not support the bill in its current form. I think you are applying this to workers who are currently working under the one-year cooling-off period. We could potentially be laying off employees, and in the meantime we say they now have to wait two years before coming back to work. I am concerned about that aspect of the bill. I understand when you say it applies only to consultants.

ASSEMBLYWOMAN SMITH:
I believe we are on a different page, but I would be happy to sit down and discuss the issue with you before it goes to the Senate Floor for a vote.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED A.B. 240.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SETTELMEYER VOTED NO.)

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CHAIR LEE:
I would ask Assemblywoman Smith to work with Senator Settelmeyer before the bill goes to the Senate Floor for a vote. We will now discuss A.B. 242.

ASSEMBLY BILL 242 (1st Reprint): Requires a quasi-public organization that receives money from a state agency to make available certain information. (BDR 31-67)

MR. STEWART:
Assembly Bill 242, as explained in the work session document (Exhibit G), requires a quasi-public organization that receives State funding to provide certain information on either its Website or, if it does not maintain a Website, on a Website of the State agency from which it receives money. The required information to be posted online includes the organization's board of directors, its most recent annual report, any recent meeting minutes and the organization's mission statement. The bill mandates quasi-public organizations to submit to the Legislative Counsel Bureau (LCB) copies of their reports provided to the State agency from which they receive money.

Following the hearing, the bill's sponsor worked with interested parties and submitted an amendment to narrow the scope of Website postings and reporting requirements to those designated organizations that receive money from the Nevada Department of Health and Human Services (DHHS) in the form of a donation, gift, grant or other conveyance. The amendment specifically provides a definition of designated organizations.

It provides that a designated organization that receives money from the Department must include on its Internet Website or, if the organization does not have a Website, on the Website of DHHS: (1) the names and terms of the persons on the board of directors or governing body of the organization; (2) the most recent annual report of the organization; and (3) the mission statement or other statement of purpose of the organization.

It provides that for a period of two years DHHS must require any designated organization involved in grants or contracts related to the provision of services within the scope of DHHS to submit a report every six months to the Department.

Finally, it requires the Department to submit a copy of the reports electronically to the Legislative Counsel Bureau. The amendment is included in the work session document, Exhibit G.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED A.B. 242.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will now discuss A.B. 265.

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

MR. STEWART:
Assembly Bill 265, as explained in the work session document (Exhibit H), clarifies that a collective bargaining agreement may modify the statutory provisions relating to suspension of a peace officer, without pay.

The proposed amendment, Exhibit H, clarifies in section 1.5 of A.B. 265 that a peace officer serving as a witness during an investigative interview must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative.

It deletes language that would have required an investigative hearing notice be sent to "any other peace officer whom the law enforcement agency is investigating in connection with the complaint or allegation."

It deletes "or for any hearing" language in section 1.5, subsection 3 of A.B. 265 as it relates to the revision of a peace officer's work schedule for purposes of the investigative interview or interrogation.

It clarifies in a new section 1.7 to A.B. 265, which amends NRS 289.080, that a peace officer witness may, upon request, have up to two representatives of the peace officer's choosing at the interview. These representatives may include, but are not limited to, a lawyer, a labor union representative or another peace officer. Section 1.7 also provides that any information a representative obtains from the peace officer who is a witness in an investigation is confidential and must not be disclosed.

Finally, the proposed amendment adds the term "interview" throughout the bill to complement the terms "interrogation or hearing" and to codify what typically takes place in an administrative investigation process.

CHAIR LEE:
We held this bill because Senator Settelmeyer had some concerns.

SENATOR SETTELMEYER:
I had some conversations with my local sheriffs' departments. The amendment attempts to deal with the many concerns brought forward. I still have an issue with the ability of having information from these investigations leak out because there are more people in the room during the investigation. Following discussions with individuals, I determined there is no way to address the issue of investigation information remaining confidential.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED A.B. 265.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SETTELMEYER VOTED NO.)

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CHAIR LEE:
Before I lose Senator Hardy to testify in another committee, we will discuss A.B. 471 from the work session document.

ASSEMBLY BILL 471 (1st Reprint): Revises provisions relating to enterprise funds. (BDR 31-915)

MR. STEWART:
Assembly Bill 471, as explained in the work session document (Exhibit I), relates to enterprise funds. We had some discussions both on May 16 and then received additional information on May 18. The discussion on May 18 was actually centered around the proposed amendment so instead of reading the first reprint summary, I will go through Proposed Amendment 6931. Following the initial hearing on the measure, several amendments were discussed and a working group prepared the next eight changes to the bill. The amended language does the following:

(1) Amends section 1 to provide that the loan from the enterprise fund relating to a medium-term obligation or for a cost allocation for employees, equipment,

or other resources must be made with the approval of the governing body under a nonconsent item that is separately listed on the agenda for a regular meeting;

(2) Provides that the governing body, and not the Committee on Local Government Finance, may approve a fee increase associated with an enterprise fund provided it is done under a nonconsent item that is separately listed on the agenda for a regular meeting and the governing body determines that all fees deposited into the enterprise fund are being used solely for the purposes for which the fees are collected;

(3) Requires that upon adoption of any fee increase the governing body will provide to the Department of Taxation an executed copy of the action increasing the fee. This requirement would not apply to the governing body of a federally regulated airport;

(4) Provides that the bill, as it relates to fee increases, should not be construed to prohibit a local government from increasing a fee or using money in an enterprise fund to repay a loan made to the enterprise fund from another fund of the local government or to prohibit or impose any substantive or procedural limitations on a fee increase that is necessary to meet the requirements of a bond or other debt obligation;

(5) Sets forth a remedy for a violation of the fee increase requirements by allowing a person to file a complaint with the district attorney or Attorney General alleging such a violation;

(6) Gives authority to the Committee on Local Government Finance to adopt regulations setting forth the extent to which general, overhead and administrative expenses may be allocated to an enterprise fund;

(7) Sets forth a procedure to assist local governments that have been using an enterprise fund to subsidize their general funds for the past five years by requiring the local governments to develop a plan, no later than July 1, 2012, to cease such subsidization by July 1, 2021. After July 1, 2021, no general fund subsidization shall occur;

(8) Strikes existing NRS language in section 10 of A.B. 471 that authorizes a local government to subsidize its general fund. This language goes into effect on

July 1, 2021, thereby allowing the local government to implement the plan just discussed.

CHAIR LEE:
Local governments were actually creating enterprise funds and then moving the money to the general fund for other projects. This bill will stop that kind of transfer and allows officials in North Las Vegas, which has gotten used to using that money, a chance to wean themselves away from utilizing those funds.

> SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 471.
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> SENATOR HARDY SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will now discuss A.B. 304.

ASSEMBLY BILL 304 (1st Reprint): Makes various changes relating to fire performers and apprentice fire performers. (BDR 42-885)

MR. STEWART:
Assembly Bill 304, as explained in the work session document (Exhibit J), prohibits a person from acting as a fire performer or apprentice fire performer without a certificate of registration from the State Fire Marshal. The bill also sets 18 years as a minimum age for a fire performer and requires an apprentice fire performer to be supervised by a fire performer who is at least 21 years of age.

We have two proposed amendments to the bill. One amendment was offered by the State Fire Marshal that clarifies that an apprentice fire performer must be at least 18 years of age and a fire performer must be at least 21 years of age. A second amendment was offered by Tom Clark on behalf of Controlled Burn, Inc., clarifying the definition of fire performer by specifying a fire performer is one who performs for an audience using an open flame in a

venue permitted by a government entity. Both of the amendments are included in the work session document, Exhibit J.

SENATOR HARDY:
The purpose is to clarify that the bill pertains to fire performers who only entertain in public venues where a permit for the performance has been granted by a governmental entity. The bill does not intend to make it necessary for amateur individuals or youths who may have fire as part of their acts to be licensed by the State Fire Marshal, but it allows parents to have parental responsibility and it allows the educational system to have a performance on a football field under the responsibility of the parents.

> SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 304.
>
> SENATOR MANENDO SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
The next bill to discuss is A.B. 389.

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

MR. STEWART:
Assembly Bill 389, as explained in the work session document (Exhibit K), requires a public body to make reasonable effort to allow competing views to be expressed on any item on the agenda for a meeting of the public body. The bill also requires a nonprofit corporation that has the power of eminent domain to comply with the Open Meeting Law.

There are two amendments offered, one from Clark County to allow a reasonable effort to allow the expression of competing opinions relating to an action item on the agenda.

You may recall during the second hearing there was some discussion concerning section 2, subsection 3, paragraph (c) which states that a nonprofit corporation organized or existing under the provisions of NRS 82 that has the authority to exercise the power of eminent domain pursuant to subsection 2 of NRS 37.0095 would actually fall under the Open Meeting Law.

The Committee may want to consider a couple of options: retain the language in A.B. 389; or delete section 2, subsection 3, paragraph (c) in its entirety; or provide that a nonprofit corporation organized or existing under NRS 82 that has the authority to exercise the power of eminent domain is considered a public body for the purposes of NRS 241 only when the nonprofit corporation is exercising that power of eminent domain. Those are the three options offered for the second amendment.

SENATOR MANENDO:
I have not had a chance to speak to Assemblyman James Ohrenschall regarding this bill, but I want to know if there was any dialogue to move this bill forward.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED A.B. 389.

CHAIR LEE:
We have a motion to amend and do pass A.B. 389 with conceptual amendments (1) and (2c) as described in the work session document.

THE MOTION FAILED FOR LACK OF A SECOND.

* * * * *

CHAIR LEE:
We will now discuss A.B. 360.

ASSEMBLY BILL 360 (1st Reprint): Revises provisions governing the imposition of civil penalties for violations of city or county ordinances regarding the abatement of certain conditions and nuisances on property within the city or county. (BDR 21-266)

MR. STEWART:
Assembly Bill 360, as explained in the work session document (Exhibit L), revises provisions governing an imposition of civil penalties for violations of city or county ordinances regarding the abatement of certain conditions and nuisances on property within the city or county. This bill was discussed in a previous work session and a few amendments have been offered. During testimony, an amendment was discussed to clarify the definition of residential and commercial property as set forth in the measure.

Proposed Amendment 6936 is in the work session document, Exhibit L, and will clarify for the purposes of sections 2, 3 and 5 of A.B. 360 that residential property does not include commercial real estate.

Secondly, the amendment clarifies for the purposes of sections 2, 3 and 5 that commercial real estate has the same meaning as set forth in NRS 645.8711. A copy is included in the work session document as a reference for the Committee.

Senator Manendo proposed second amendment, Proposed Amendment 7016. This will add language throughout the bill providing that a local ordinance must provide that if the nuisance or condition is not an immediate danger to the public health, safety or welfare and was caused by criminal activity of a person other than the property owner, the owner must be afforded at least 30 days to abate the nuisance. In addition, the amendment will reduce the proposed civil penalty for nonresidential property in sections 2, 3, and 5 from $1,000 per day to $750 per day.

SENATOR MANENDO:
There was an issue that I remember when a person's property was continuously being hit with graffiti and he would clean it up. Sometimes he would go to work and not get to it immediately, and the City of Las Vegas kept issuing citation after citation against this person. It got to the point where all he was doing was cleaning up graffiti. He was a victim of a crime. I do not think this person should be continuously punished for something beyond his control. It is instances like this that cause me great concern. I worked with interested parties and we are in agreement with this amendment. I also thought the $1,000 fine was a bit steep, so we reduced it to $750 as a compromise.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED A.B. 360.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will move on to A.B. 549.

ASSEMBLY BILL 549 (1st Reprint): Revises various provisions governing homeland security. (BDR 19-41)

MR. STEWART:
Assembly Bill 549, as explained in the work session document (Exhibit M), raises the number of voting members the Governor must appoint to the Nevada Commission on Homeland Security from 14 to 16 members. One of the new members must be recommended by the Inter-Tribal Council of Nevada, Inc., and must represent Native American tribal nations in Nevada. The other new member must be a representative of the broadcaster community.

The measure also expands the Governor's authority to determine, by executive order, that certain documents relating to homeland security are confidential. The types of documents that could be made confidential include the vulnerability assessments and emergency response plans of utilities, public entities and private businesses. Finally, the bill provides that documents subject to the Governor's order of confidentiality may be inspected by and released to the Legislative Auditor when conducting a postaudit and that any such information inspected by or released to the Legislative Auditor remains confidential and not subject to subpoena or discovery.

During the hearing on A.B. 549, an amendment was presented in mock-up format and a copy is included in the work session documents, Exhibit M. In addition, the American Civil Liberties Union of Nevada (ACLU) submitted an amendment which is also part of the work session documents.

The first amendment submitted by Assemblywoman Marilyn Kirkpatrick does the following:

(1) Adds a new section 1.5 to A.B. 549 to set forth a definition of "tribal government" and requires, in section 24.5, the Commission on Homeland Security to make recommendations to tribal governments with respect to actions and measures that may be taken to protect State residents and visitors;

(2) Adds the Chief of the Division of Emergency Management to the list of nonvoting members appointed by the Governor to the Commission;

(3) Requires the Commission to make recommendations to the Governor, through the Division of Emergency Management, on the use of State Homeland Security Grant Programs and Urban Area Security Initiative funding received by the State of Nevada;

(4) Requires the Commission to submit an annual briefing to the Governor assessing the preparedness of the State to counteract, prevent, and respond to potential acts of terrorism and related emergencies;

(5) Provides that the Legislative Auditor, during the course of a postaudit, may only confirm the possession of a vulnerability assessment by a State agency. Such assessments must not be inspected by or released by the Legislative Auditor. Any employee of the Audit Division who is conducting an audit that includes access to such vulnerability assessments must be properly cleared through federal criteria or through a State or local background check. That is the first proposed amendment submitted by Assemblywoman Marilyn Kirkpatrick and presented by Lucas Foletta, General Counsel, Office of the Governor.

The second amendment, submitted by Rebecca Gasca, representing the ACLU, does the following:

(1) Amends section 26 by allowing a court to order the release of the documents and records the Governor has made confidential by executive order, but allows those documents to be kept under seal;

I would note that in an electronic mail to Committee staff, the ACLU indicated this amendment would allow for appropriate review of an executive power. Current law allows no checks or balances on this wide power granted to the Governor.

(2) Amends section 26 to provide that a person who knowingly and unlawfully discloses a confidential document or information is not subject to the criminal penalty set forth in section 26 if the information had been publicly available prior to an executive order making it confidential;

(3) Adds a new section 5 to A.B. 549 providing that "documents, records, or other items of information subject to executive order pursuant to subsection 1 shall be reviewed by the Governor every 5 years to assess their continued need to remain confidential. Challenges to such executive orders and their review may be filed in a local court of competent jurisdiction."

The ACLU explained without the language in section 5, "all documents a Governor deems confidential under an executive order are forever considered confidential. Recurring review of these orders by the Governor allows ongoing governmental accountability."

Those are the amendments offered for A.B. 549.

CHAIR LEE:
This is a bill that we should take amendment by amendment. No one has issues with the first amendment, 1 through 5. Are there any questions for Ms. Gasca on this amendment?

SENATOR SETTELMEYER:
Ms. Gasca talked to me about the amendment, and I would like to know the other side of accepting the amendments. I am hesitant to allow any court to review the documents. I have no problem saying the Nevada Supreme Court has the right to review them *in camera* to make sure it is pertinent to continue to keep them private. I am worried about "any court" because there are so many courts in the State.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
We would be fine with Senator Settelmeyer's recommendations. If the Committee deems it most appropriate for the Nevada Supreme Court to review the documents, we would be fine with it. As drafted, it would go to a local court of competent jurisdiction which would be the district court. Basically, the gist of the amendment is to ensure there is some sort of judicial review and we would be happy with that suggestion.

LUCAS FOLETTA (General Counsel, Office of the Governor):
As I read the public records law, I believe there is a provision that provides that confidential documents could be released after a period of 30 years, based on a court subpoena. I do not see making these documents confidential forever. With that said, the original bill determined the Governor as the decision maker related to the confidentiality of these documents. It is important that a statewide official in certain narrow cases who is specifically charged with maintaining the health, safety and welfare of the people make a decision about the release of certain sensitive documents.

The Governor is sensitive and understands the value of judicial review of executive branch decision making. Nonetheless, it seems appropriate that in a very narrow area, when it comes to highly sensitive documents, a policy decision be made as to whom is the most appropriate decision maker to apply a narrow standard to maintain confidentiality of these documents. The Governor views it as appropriately residing under his authority as the law is currently written.

CHAIR LEE:
Did you discuss the district court or Supreme Court issue with the Governor?

MR. FOLETTA:
We did not discuss the issue of the Supreme Court as it was just raised today by Senator Settelmeyer.

SENATOR SETTELMEYER:
What I indicated is if the Committee were to proceed with that amendment, the only way I could vote for it would be to limit it to the highest court in the State of Nevada. With the Governor's staff explanation, I am no longer comfortable with the first portion of the amendment.

CHAIR LEE:
How about Amendment (2) of Ms. Gasca's amendments? Does the Committee have any challenges with this?

SENATOR SETTELMEYER:
I think this came up during the discussion of the independent source of an inevitable discovery rule that exists within criminal law. I question if someone can be disciplined for releasing data that may already be public information, or would it be considered inevitable discovery?

MS. GASCA:
The inevitable discovery is an interesting parallel, although it is not exactly the same. It speaks to the idea that it is unfair for the government to close the barn door after the horse has run out and blame the person who obtained the information legally, whether from microfiche in a library or some other data published in a newspaper. The intent is for people not to get into trouble for publishing information that has otherwise been in the purview for 60 years.

CHAIR LEE:
Does anyone have issues with Amendment (3) of Ms. Gasca's amendments?

MS. GASCA:
I would also like to address Mr. Foletta's remarks with respect to the current NRS that allows for the release of confidential documents. We do not believe that section of law sufficiently covers the questions we have with this statute. We think judicial review is warranted, and this amendment seeks to ensure that confidentiality does not continue in perpetuity. The Governor's Office needs to review the declaration or order that made a swath of documents confidential. Five years was just a round number but certainly the Committee might see it as more appropriate at ten years so the same sitting Governor is not reviewing himself or herself one day. If the Committee sees the number as problematic, we will concede on that issue. There is good reason to maintain the confidentiality of those documents, and we think this amendment would suffice to ensure it.

CHAIR LEE:
Is there any portion of the amendment on which you might require additional information?

MR. FOLETTA:
I have a point regarding the second proposed amendment. I can understand how Ms. Gasca may have an issue with information that is already in the hands of a member of the public. There is a strong policy reason for saying that the information resides with a member of the public. It is one thing to say a person has the information, but it is something else to have the information published in a newspaper. There are other areas of the law where people have obtained information lawfully, but they are not entitled to publish the information, such as proprietary information that someone gains as a result of employment with a company or private industry. For instance, if you were employed as an engineer with an energy committee who had obtained trade secrets, you cannot start writing letters to the newspaper and then publish the sensitive information.

Maintaining confidentiality of certain information is a good idea. The Governor is in support of the current state of the law which does reflect that fact. If the Committee is inclined to move forward with an amendment that looks like this, I would suggest clarifying the language so it is clear that if a piece of information found its way into the hands of a person before this law went into effect, the government is not required to hand out that same piece of information to new requestors. That would be a compromise position to the original disclosure with the original person who had the information. If we cannot keep people from disclosing information, then at the very least we should be able to declare certain pieces of the information confidential for purposes of new inquiries.

This amendment says this information can be confidential unless it was information already made public. We need to be very sure that clause, if it stays in the bill, is not read to say information of a particular type that has been traditionally public information would continue to be available. For example, certain types of police reports that are associated to cases that have been closed and did not proceed toward prosecution could be obtained under a public records request. It should be made clear that even though that is a type of report that has traditionally been made available, it would not be available simply because it is of the type of report that has been available in the past. This should be limited to substantive pieces of information that have been disclosed.

SENATOR HARDY:
You are saying the current state of law works.

MR. FOLETTA:
Yes.

SENATOR HARDY:
I am reading Ms. Gasca's amendment (3) where it indicates a review every five years on documents and records, recognizing that in five years you could still have the same Governor in office and he or she would be reviewing his or her own decisions. Does the current state of law allow the next Governor to look at the confidential information that is in a drawer somewhere so he or she is aware of threats or confidential information?

MR. FOLETTA:
Yes. Because it would be implemented through executive order, any subsequent Governor could reevaluate the decision. To be clear, the Governor does not object to a requirement that these orders be reevaluated on a periodic basis, because that seems fair.

SENATOR HARDY:
Would there be a problem reviewing every ten years, and therefore you get a new Governor's viewpoint?

MR. FOLETTA:
The Governor would not object to a ten-year period of reevaluation.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 549.

CHAIR LEE:
We would accept all five points of Assemblywoman Marilyn Kirkpatrick's proposed amendment and with Ms. Gasca's amendments, we would accept Amendment (3), recognizing if we change from five years to ten years it would be more feasible. We would strike "challenges to the executive orders and their review may be filed in a local court of current jurisdiction."

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
I will adjourn the meeting of the Senate Committee on Government Affairs at 6:12 p.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 519	C	Mary Liveratti	Written testimony
A.B. 545	D	Senator John J. Lee	Notes for Senator Lee regarding Assembly Bill 545
A.B. 545	E	Michael Stewart	Work session document
A.B. 240	F	Michael Stewart	Work session document
A.B. 242	G	Michael Stewart	Work session document
A.B. 265	H	Michael Stewart	Work session document
A.B. 471	I	Michael Stewart	Work session document
A.B. 304	J	Michael Stewart	Work session document
A.B. 389	K	Michael Stewart	Work session document
A.B. 360	L	Michael Stewart	Work session document
A.B. 549	M	Michael Stewart	Work session document