

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

**Seventy-Seventh Session
March 29, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 10:23 a.m. on Friday, March 29, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Chairwoman
Assemblywoman Dina Neal, Vice Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Irene Bustamante Adams
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblyman James W. Healey
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Heidi Swank
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblyman Pat Hickey, Washoe County District No. 25
Assemblywoman Marilyn Kirkpatrick, Clark County District No. 1

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Jim Penrose, Committee Counsel
Bonnie Hoffeecker, Committee Manager
Maysha Watson, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Clayton Kelly Hurst, Private Citizen, Las Vegas, Nevada

Chairwoman Benitez-Thompson:

[Roll was taken and protocol reiterated.] We are going to be starting with the work session, and then we will hear Assembly Bill 407.

We will go ahead and start with Assembly Bill 31 for consideration.

Assembly Bill 31: Revises various provisions relating to public records.
(BDR 19-211)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 31 was heard by the Committee on February 7 and March 13. It requires the head of each agency, bureau, board, commission, department, division, or any other unit of the Executive Department of State Government, except the Nevada System of Higher Education, to designate one or more employees of the agency to act as records manager for the agency. [Continued to read from ([Exhibit C](#)).]

There were four fiscal notes on the bill. All but one—the one from the Health Division—were zero impact. There were several amendments provided. If you will turn to the mock-up, the first amendment from the Office of the Attorney General is found on the first page, changing "manager" to "official" in section 1 and specifying the State Library and Archives Administrator, adding them to subsection 3 of section 1.

The list in section 3 had numerous additions. It says on page 4, lines 9 and 10 of the mock-up [([Exhibit C](#)), page 9]: "...unless otherwise declared by law to be confidential." The Legal Division and the Attorney General have done their best to try to find all of these statutes for this list, and some other various agencies have provided additional statutes that should be cited in here. Those are added into this, but please note the language I mentioned because we may have missed one or two things.

The second amendment from the Office of the Attorney General is on page 4 of the mock-up, deleting all of subsection 2. The third amendment deletes all of section 4.

Chairwoman Benitez-Thompson:

I believe everyone has had time to read over the mock-up.

I will go ahead and accept a motion to amend and do pass.

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 31.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Benitez-Thompson:

I see two different comments.

Assemblyman Ellison:

Madam Chairwoman, I am still working on some issues on the bill. I am going to vote yes, but I would like to reserve my right to change my vote on the floor.

Assemblyman Daly:

I just want to make sure that the motion was to amend and do pass as it is amended in the mock-up.

Chairwoman Benitez-Thompson:

Yes.

Assemblyman Daly:

I will not be changing my vote. I am for that.

Chairwoman Benitez-Thompson:

Our staff has been diligent in going through *Nevada Revised Statutes* (NRS). As our policy analyst indicated in section 3 of the mock-up, and as we do want to make very clear for the legislative record, there might be other statutes over time that get captured and put in there. This bill does not change whether or not an NRS is subject to a public records act.

Assemblyman Oscarson:

Like my colleague from the north, I am going to vote to support this. I am still concerned about some of the fiscal impact, but I will vote to support it, reserving my right to change my vote.

Chairwoman Benitez-Thompson:

Thank you. Remember, once sent out of this Committee, the bill will get captured on the Floor of the Assembly by Assemblywoman Carlton.

Assemblyman Livermore:

I have the same comment as my colleague from Pahrump. I will support the motion but reserve the right to change my vote. I have some issues with the fiscal note.

Chairwoman Benitez-Thompson:

I will assign the floor statement to Assemblyman Daly. We will move on to Assembly Bill 45.

Assembly Bill 45: Revises various provisions relating to the Department of Administration. (BDR 33-306)

This bill was previously passed out of this Committee. The different parties involved continued conversations afterward and came up with an amendment that they liked much better than the one we voted on. What I would like us to consider as a Committee is rescinding our vote and then revoting on it with the language that is preferred by the bill sponsor.

With that, I will accept a motion to rescind the vote on A.B. 45.

ASSEMBLYMAN ELLIOT ANDERSON MOVED TO RESCIND
ASSEMBLY BILL 45.

ASSEMBLYWOMAN NEAL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will hand it off to our policy analyst to walk through what the new language on the bill is.

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 45 was passed out on March 4, 2013 by the Committee. It eliminates the requirement that the State Library and Archives Administrator must maintain custody of and carefully preserve the description of the State Seal and other such seals and expired official bonds approved by the Governor. [Continued to read from ([Exhibit D](#)).]

In lieu of having two amendments going to the Floor and being adopted on second reading, they just rescinded action so that there could be simply one amendment including all three of these amendments.

Chairwoman Benitez-Thompson:

I will take a motion to amend and do pass with the agreement between Las Vegas Metropolitan Police Department and Jeffrey Kintop on the additional language to insert "to the extent necessary to facilitate subsections 3, 5, 6 and 7 of this section" after "governmental agency" in subsection 8 of section 2 on line 33 of the bill along with the original amendments on which the Committee voted.

ASSEMBLYWOMAN NEAL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 45.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Stewart. We will move on to Assembly Bill 58.

Assembly Bill 58: Revises various provisions relating to veterans. (BDR 37-303)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 58 is the veterans' bill that the Committee heard on February 5, 2013. It changes the Office of Veterans Services (OVS) to a State department. [Continued to read from ([Exhibit E](#)).] These exemptions are actually in sections 35 and 36, which I believe are recommended for deletion in the mock-up.

The measure authorizes the Department of Veterans Services to purchase, construct, lease, renovate, or acquire by lease-purchase a veterans home in northern Nevada. [Continued to read from ([Exhibit E](#)).]

There were four fiscal notes on this bill. Two of them were zero impact. One of them was \$2,500 for letterhead and business cards for the new office. The second one was from the Division of State Parks, which was actually revenue. There is a statement in the work session document from Dave Morrow of the Division of State Parks regarding their fiscal note [([Exhibit E](#)), page 40].

If we go to the mock-up on the bill, I believe we have the amendments laid out. Assemblyman Elliot Anderson proposed additional language for the bill. He proposed that the qualifications for this new position created be similar to that currently set forth in NRS 417.030 for the Executive Director of the Office of Veterans Services; specifically that the person be a veteran and a resident of the state of Nevada. He also proposed suggesting the Office of Veterans Policy and Coordination shall consist of no more than ten employees, putting a limitation on the number of employees. There is additional language in section 9, subsections 6 through 10 [([Exhibit E](#)), pages 6 and 7]. Assemblyman Anderson adds five additional duties for the Executive Director, stating the director:

Shall develop increased collaboration and coordination between the state government of Nevada, veterans, and veterans service organizations. Shall develop policies, legislation, initiatives, and strategies to serve veterans; and shall annually present the report to: The Governor; The Legislature; and, The Nevada Veterans Services Commission, created by NRS 417.150. As appropriate, shall convene local veterans councils, to coordinate with and gather information from: Local governments; Veterans organizations; and, Veterans. Shall develop best practices for veterans services by collaborating and coordinating with the federal government and other state governments. Shall be responsible for communicating the efforts of the State of Nevada to serve veterans throughout the state and abroad, and shall communicate these efforts to, but without limitation, different generations of veterans.

At this point, I should point out that when this comes out of Legal it may not have this exact same language. As you know, whatever language goes in here is going to come out looking a little different from the official bill draft. Also, Assemblywoman Pierce pointed out that the Interagency Council on

Veterans Affairs (ICVA) did not include the Director of the Department of Veterans Services, which appeared to be an oversight. That person has now been included in section 10.

Sections 35 and 36 are completely deleted at the request of representatives from labor organizations and accepted by the bill sponsor. In section 38 on page 22 of the mock-up [([Exhibit E](#)), page 26], this amendment changes "county assessor" to "tax receiver." This was from Dave Dawley, the assessor from Carson City representing Nevada Assessors' Association, who pointed out that the assessor is not actually the tax receiver.

Following the mock-up is the statement from Dave Morrow of the Division of State Parks [([Exhibit E](#)), page 40], which states: "We do not believe revenue loss will be substantial, can be absorbed by the park system, and is not significant enough to stand in the way of providing this benefit to these deserving citizens."

Chairwoman Benitez-Thompson:

I will accept a motion to amend and do pass the bill as in the mock-up.

ASSEMBLYMAN ELLIOT ANDERSON MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 58.

ASSEMBLYMAN OSCARSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Elliot Anderson:

I wanted to speak a little bit about the changes here and also what the State is doing in terms of veterans' services. One of the biggest issues that the State has to get hold of right now is in regard to folks who are transitioning back from service on the front lines. We have had issues in previous demobilizations from as far back as World War I up until now with this new conflict. What is important is that we have our state infrastructure ready to absorb these folks back into the workforce and back into the civilian world. That can be a challenge.

I want to talk about some of the new structures that are being created, such as the ICVA. That is to ensure that state agencies are talking together so they can really make sure that they are doing the best that they can. In terms of elevating that new office, it is important so that they can get things done and make sure veterans are getting served. The existing structure, I think, can

make it so the Nevada Department of Veterans Services is on the same level as the other cabinet agencies. This bill elevates it a little bit.

On the same hand, my concern during the hearing was that the position would not have any articulated duties. I was afraid that future governors would maybe use it as a patronage position. I wanted to ensure that we did not lose the connection that the state department has with veterans currently. They are always doing the programmatic services. This bill seeks to ensure that they have contact with the veterans' community, have duties to serve the veterans' community, and actually know what veterans need. My belief is that you cannot make good policy if you do not know the area for which you are making policy. This bill articulates some clear duties to ensure that happens. I think it is very important that nexus is there. I also share the goal that we need to elevate someone to make sure that the other state agencies are doing the best that they can in terms of veterans' services.

These amendments fix my concerns with the bill. They also ensure that the Nevada Veterans Services Commission, the existing infrastructure we have, and the Legislature have an opportunity to question the Office of Veterans Policy and Coordination on what they are doing and ensure that they are not using the position solely for patronage in the future.

To be clear, I have complete confidence in the current governor and what he is doing. I have worked with him on veterans' services. There are no egos in this. I have said that time and time again. We are creating statute that will go beyond our terms here and beyond the Governor's term.

Assemblyman Oscarson:

I concur with the comments of my colleague. In addition, I think that this streamlines a lot of processes. I am very impressed so far with the efforts of Caleb Cage and the Office of Veterans Services. They have responded to some issues that I have had in Assembly District No. 36 quickly and expedited the needed services. I appreciate that, and I support this bill fully.

Chairwoman Benitez-Thompson:

I will assign the floor statement to Assemblyman Elliot Anderson. We will move on to Assembly Bill 65.

Assembly Bill 65: Revises various provisions relating to open meetings.
(BDR 19-402)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 65 was heard by the Committee on February 7 and March 13. This is the open meeting bill from the Office of the Attorney General. Assembly Bill 65 compiles a list of all existing statutory exceptions to the Open Meeting Law (OML) within one section of the *Nevada Revised Statutes* (NRS), and adds a new exemption for meetings of a committee or subcommittee of a public body when engaged solely in fact-finding activities and not when deliberating or taking action, including without limitation, making recommendations on the matter. [Continued reading from ([Exhibit F](#)).]

There were several amendments presented on A.B. 65, as well. You can look at the amendments individually; however, I would like you to go ahead and pass over to the mock-up following those individual amendments. It is a mock-up for A.B. 65 with certain amendments included. On the first page of that mock-up is the first amendment from the Office of the Attorney General to avoid confusion with the proposed definition of "deliberate," which has deleted paragraph (d) of subsection 2 of section 2. It has also deleted subsection 3 of section 2 and replaced it with: "Any statute which: Provides that any meeting, hearing or other proceedings are not subject to the provisions of this chapter; or otherwise authorizes or requires a closed meeting, hearing or other proceedings, prevails over the general provisions of this chapter." Barry Smith suggested adding "deliberate or" in subsection 4 of section 2.

The amendment "or made on the record at a public meeting" is added to section 3. That was the third amendment provided by the Office of the Attorney General, to clarify that designations may also be made on the record at a meeting of the public body and entered into the meeting minutes.

The fourth amendment from the Office of the Attorney General is found throughout section 4. The purpose of the amendment is to clarify that a public body may correct an inadvertent violation in the course of a meeting if the violation is capable of correction during that meeting under the provisions of Chapter 241 of the NRS. When that was discussed, one of the examples given was that if a bill was not agendaized for action but action was taken on it, that action can be rescinded if the public body realized their mistake before the end of the meeting.

Added to subsection 4 of section 4 is: "Nothing in this section shall prevent a public body from taking action in conformity with this chapter to correct an alleged violation of this chapter prior to adjournment of the meeting at which the alleged violation occurs."

The fifth amendment from the Office of the Attorney General clarified the electronic communication. There was quite a bit of discussion about the message boards and wanting to avoid the use of them. The language that was settled on was "teleconference or videoconference" in lieu of "electronic communication."

Amendment numbers 2 and 6 from the Attorney General were subsequently revised per discussions with the Chairwoman, Committee Legal Counsel, and the Attorney General. This was regarding the definition of "deliberate." There was quite a bit of discussion on this. The agreement that was reached is in section 6, subsection 2: "'Deliberate' means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision."

I believe the next change is on page 6 of the mock-up [([Exhibit F](#)), page 15]. This was the seventh amendment from the Office of the Attorney General, expanding the language to say:

A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item, or, if an item is placed on the agenda pursuant to section 4 of this act, by placing the term "for possible corrective action" next to the appropriate item.

On page 8 of the mock-up [([Exhibit F](#)), page 17], the population caps were changed in 2011, so "40,000" would need to be changed to "45,000" to exclude Nye County.

The eighth amendment from the Office of the Attorney General, which is also found on page 8 in subsection 7 of section 7, is to permit supporting material provided to the members of a governing body at a meeting to be posted within 24 hours. It changes "elected public body" to "governing body."

Chairwoman Benitez-Thompson:

Assembly Bill 65 was heard twice by this Committee. It is a bill that has had lots of input and discussion around it. I want to make sure it is clear for the record; section 6, subsection 2, specifically. At the second hearing, there was lots of conversation about line 42 and whether it was going to be "and" or "or." We probably spent about 30 minutes discussing that. It will remain "and." The bill sponsor is good with that. I believe that helped address some of Assemblyman Stewart's concerns.

I will go ahead and accept a motion to amend and do pass as proposed in the mock-up.

ASSEMBLYWOMAN NEAL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 65.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Ellison:

We had a problem with one section of the bill that was existing law. We did not ask for a change, but under section 2, subsection 2, paragraph (c), Assemblyman Munford and I will be asking for an amendment to that. That was one of the discussions that was brought up several times. Under paragraph (c) it states: "Meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke the parole of a prisoner or to establish or modify the terms of the parole of a prisoner."

We are going to vote in favor of the bill, but we are going to bring a change back to that.

Chairwoman Benitez-Thompson:

In my conversation with Assemblyman Ellison, more specifically in the second hearing of this bill, I was not going to allow A.B. 65 to be a vehicle to change any Open Meeting Law provisions that existed in status quo. We were not repealing any provisions. We were not granting any provisions. Certainly, if any folks have concerns about specific Open Meeting Law requirements and specific statutes, they are welcome to bring the bill next session. I think all of those should have proper hearings and really be vetted in a full hearing. We were not going to do it by amendment.

That being said, I will assign the floor statement to Assemblywoman Neal. We will move on to Assembly Bill 87.

Assembly Bill 87: Revises provisions governing local regulation of the zoning and construction of public schools in certain counties. (BDR 22-274)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 87 was heard on February 18. It provides that, in a county whose population is 100,000 or more but less than 700,000, the comprehensive regional plan must include an expedited process for the approval of the zoning of public schools. [Continued to read from ([Exhibit G](#)).]

There were several fiscal notes, but none of them showed any fiscal impact. The attached amendment was proposed by the working group on A.B. 87 and supported by the bill sponsor. It would delete all the text from the bill as introduced and replace it with the new language as provided. The amendment states: "Prior to March 1, 2014, the county and the local governments in the county shall adopt consistent standards and specifications for public schools addressing the height of buildings, building setbacks, landscape and parking that are applicable in the county or in any local government in the county." [Continued to read from ([Exhibit G](#)), page 2.]

Chairwoman Benitez-Thompson:

I will go ahead and accept a motion to amend and do pass with just the language proposed in the mock-up by the working group.

ASSEMBLYMAN LIVERMORE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 87.

ASSEMBLYWOMAN NEAL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Daly:

We did have several meetings. This is an issue specific to Washoe County. What I was told regarding the two-meeting issue on zoning, which Assemblywoman Swank was worried about, was that it was already taken care of; so the zoning part of it was less of an issue. They are going to have the planning commission of the local body and the city council or county commission make up the two meetings. I was hoping that they would come to me with what they are planning, but they are working on that. They want to adopt that to the regional plan, and then they want each city to be able to adopt it by ordinance. They said they need more time. They think this is a good idea. They want to do it. This is the catalyst for them to start working together better, and I am told that they are actually working on other things, which they did not ask to do. I said I will step back, but they have to keep doing good work. We gave them the March 1, 2014 deadline to get that work done. I think they are looking at a uniform process to do these things. We will have extra benefits, as well.

It was agreed by all four entities that if they are going to change this once it is established, it has to be agreed. They can always come back to Carson City and fix it. I was pleased with the progress made by the four entities working together. That was the intent, and I think we are reaching a goal that is going to be beneficial.

Chairwoman Benitez-Thompson:

Thank you. I will assign that floor statement to Assemblyman Daly. We will move on to Assembly Bill 139.

Assembly Bill 139: Revises provisions relating to the state business portal.
(BDR 7-127)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 139 is the bill relating to the state business portal. This bill was heard on February 21, 2013. This was another bill on which several working groups convened. Assembly Bill 139 requires the Secretary of State to: (1) establish common business registration information that is required to be collected from businesses by State and local agencies and health districts to conduct necessary transactions with businesses in this state; and (2) cause the State business portal to provide common business registration information to those same entities. [Continued to read from ([Exhibit H](#)).] This has been in the works for a while.

Chairwoman Benitez-Thompson:

That is A.B. 139. I will go ahead and accept a motion to amend and do pass as presented here.

ASSEMBLYMAN HEALEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 139.

ASSEMBLYWOMAN NEAL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLISON, LIVERMORE,
OSCARSON, STEWART, AND WOODBURY VOTED NO.)

Assemblyman Stewart:

I and my colleagues appreciate the effort that has gone into making this bill more acceptable. We appreciate the business number being uniform now throughout the state; that is a great thing. However, my colleagues and I still have concerns about the waiver process affecting the rural counties and the fees that might be applied. We are also concerned that Boulder City and Mesquite would not be able to access this as easily as the other entities within Clark County. Finally, we are concerned with the Memorandum of Understanding. We appreciate that being issued by the Secretary of State, but we wish it was in the statute and not just in a letter of understanding. For those concerns, several of us will be voting no on this bill.

Chairwoman Benitez-Thompson:

Thank you for your comments for the record, Assemblyman Stewart.

Assemblyman Healey:

I wanted to thank the Office of the Secretary of State and the local jurisdictions that worked very hard with Assemblyman Daly to make this happen. I think that this is a great step for businesses, particularly small businesses here in the state of Nevada. Like any piece of legislation, it is never perfect the first time around, but it is certainly a wonderful step in making business easier and improving the availability for businesses to start and to renew here in the state of Nevada. Thank you to all of those agencies involved.

Chairwoman Benitez-Thompson:

We will move on to Assembly Bill 169.

Assembly Bill 169: Revises provisions relating to contracts with a governmental entity. (BDR 23-793)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 169 was almost heard on February 28, but that was when we had the fire drill. We did not really get too far into it on that day. It was heard fully on March 4, and then it went into subcommittee and was heard March 8 and March 18. This bill provides statutory definitions within Chapter 281 (General Provisions for Public Officers and Employees) of the *Nevada Revised Statutes* (NRS) for the terms: independent contractor, public body, purchasing division, and sole source contract. [Continued to read from ([Exhibit I](#)).] Attached is the mock-up, but I believe there may be additional comments.

Assemblywoman Neal:

I needed to add two things. First, NRS Chapter 332 is going to apply to sections 13 and 14, requiring that the local bodies report to the Purchasing Division on their sole source contracts. It is my understanding that Clark County and the City of North Las Vegas agree. The second addition is in section 21. If you look at line 43 on page 6 of the mock-up [([Exhibit I](#)), page 8], the language says "should." That is being crossed out and will now say "shall." I spoke with the Nevada System of Higher Education (NSHE) lobbyists, and they are okay with that change because NSHE is already abiding by that amendment. They did not feel "shall" would make a difference. Those are the two changes that need to be noted in the bill.

Chairwoman Benitez-Thompson:

I will accept a motion to amend and do pass as presented in the mock-up, including the additional comments from Assemblywoman Neal.

ASSEMBLYWOMAN BUSTAMANTE ADAMS MOVED TO AMEND
AND DO PASS ASSEMBLY BILL 169.

ASSEMBLYWOMAN SWANK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLISON, LIVERMORE,
OSCARSON, STEWART, AND WOODBURY VOTED NO.)

Assemblyman Stewart:

We appreciate the work that has been done on this bill. I know some great concessions have been made, but several of my colleagues and I still have concerns that this bill puts additional burdens on contractors in this very difficult economic time. Several of us will be voting no.

Chairwoman Benitez-Thompson:

We will move on to Assembly Bill 249.

[Assembly Bill 249](#): Revises provisions governing vacancies in the office of district attorney. (BDR 20-39)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 249 is Assemblyman Munford's bill, which was heard on March 19, and it has the distinction of being the only bill today that does not have an amendment. This bill removes statutory language that provides for an appointed District Attorney to serve the unexpired remainder of the four-year term. [Continued reading from ([Exhibit J](#)).]

Chairwoman Benitez-Thompson:

I will accept a motion to do pass.

ASSEMBLYMAN LIVERMORE MOVED TO DO PASS
ASSEMBLY BILL 249.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign that floor statement to Assemblyman Munford.

For the last item, Assembly Bill 252, we are actually going to hold this.

Assembly Bill 252: Makes various changes to the Nevada Administrative Procedure Act. (BDR 18-539)

I discussed it with the bill sponsor yesterday. We have one Committee member who had a technical question on the bill, and they were looking to just get that answer. I let Assemblyman Hansen know that if we did not have that answer, we would hold A.B. 252. He was absolutely okay with that and understood it. I will reference that in the mock-up, just so that when we consider this again, you will see an amendment that I added, which the bill sponsor liked very much. Section 4 that says if a regulation has not been made after two years, then the chief executive officer of that agency shall appear before the legislative commission and explain why the proposed regulation had not been adopted. Assemblyman Hansen and Assemblywoman Kirkpatrick liked that very much. We will be revisiting this bill once we get the technical question addressed.

With that, we are done with our work session.

Assemblyman Stewart:

I would just like to thank you for the open and very fair method with which you have conducted the work session. We appreciate it.

Chairwoman Benitez-Thompson:

Thank you. With that being said, we will go ahead and open the hearing on Assembly Bill 407.

Assembly Bill 407: Revises provisions governing residency requirements for candidates for public office. (BDR 23-606)

We have with us our sponsor and cosponsor, Assemblyman Hickey and Assemblywoman Kirkpatrick.

Assemblyman Pat Hickey, Washoe County District No. 25:

Assembly Bill 407 is an attempt to clear up some confusion regarding the determination of candidates' residencies. This has been an issue observed by persons for a long period of time. We think this bill is going to help clear up that question about a person's residency when filing as a candidate and going on to be elected. Assembly Bill 407 amends current state law determining how a person's residency is determined for eligibility purposes for public office by deleting the reference to a person's actual residence—which is something that has been vague and a little bit confusing—and the provision relevant to a person with multiple residences. The proposed language in section 1,

subsection 1 defines residence with reference to eligibility in office as "that place where the person has been actually, physically and corporeally" residing. The definition of "corporeally" residing means having a physical, material, and tangible existence. This gives further clarification to the actual residence of a person.

In addition, with the statutory deadline for making a change to the ballot for a general election, which is the fourth Friday in June of the year of the general election, a district court does not have jurisdiction in an action to determine the residency. We will talk a little more about that in questions regarding how the district court has and has not been able to really play a role in this matter.

I do have an amendment ([Exhibit K](#)). I am not sure if Chairwoman Benitez-Thompson has seen it. If a candidate decides to contest an election before this body, he files it with the Secretary of State. It has to be done following the election, and then it is brought up to this body after the contest is made. This body then, according to the rules of the Legislature, creates a committee to determine the validity of the contest or the challenge. One of the current rules for that, and one of the things this amendment does, is to strike some language. If you look at the amendment in section 14 under subsection 5, I am going to tell you what it strikes from current statute and why. Subsection 5 states: "In a contest of a general election for the office of Assemblyman, Assemblywoman or Senator, the house in which a contest was tried or was to be tried shall determine the remedy, if any, to be awarded to the prevailing party to such a contest." What the amendment is striking out is: "The remedy may include, without limitation, any costs incurred by a party in connection with the contest." One of the reasons we are proposing to strike this is if someone decided to contest it with the way the law is now and were unsuccessful, there is no limitation of charges that could be placed upon that person. In other words—and this may be an exaggeration—you could technically say if this law was applied in this regard, the cost of all of attorneys' fees and all of that might be applied to the person who was unsuccessful in contest or, in the case of what we just witnessed, with a person who might be expelled. This amendment is to try to tighten things up.

In conclusion, this is a really important bill that helps clarify a problem that has been there for individuals for decades in Nevada. There have been questions about people actually living in their residences as opposed to having a residence that was used for the sake of candidacy; or at least alleged to have been used in certain instances. I think this bill goes a long way in helping to clear that up. If the amendment is considered, I think it will also give a person, if they decide to contest it, the opportunity to do so without it having a chilling effect upon them or without them being afraid to challenge it because of the potential cost.

I want to thank Assemblywoman Kirkpatrick for cosponsoring this bill and trying to tighten up the main issue of this—the residency with respect to not only the legislative candidates, but to candidates and offices throughout the state.

Assemblywoman Marilyn Kirkpatrick, Clark County District No. 1:

I want to give you a little bit of history. Assemblyman Hickey and I had a conversation regarding an unfortunate situation that arose in Clark County the day before the election. We spoke in January and decided to try to clean this issue up. The bottom line is we want a little bit of clarity. We want to make sure that the rules are clear on how this procedure should be handled. At that time, I called Commissioner Giunchigliani, and she worked on the original portion of this language. I asked her where the language came from, why she worded things the way she did, and how we could clarify it. She said that the language was a definition that was used to legislatively end terms, and she understood we needed to have a little bit of clarity.

This issue did not happen just this last election cycle. This is an issue that has been going on for quite some time to both Republicans and Democrats across the state. It has always been unclear where some folks live. In order to prevent a partisan issue, we decided to work together so that we could define residency for everybody for the long-term. What does it mean to live in your residence?

Let me walk you through the bill. Section 1 of A.B. 407 attempts to clarify the person's residence, defining it as "that place where the person has been actually, physically and corporeally within the State or county or district." This applies to all of our offices and to everyone who is running for office.

In section 1, subsection 4, we want to make things very clear because there was some concern and some confusion regarding a court's jurisdiction when there was a case brought forth after a ballot had been printed. Subsection 4 specifies that the court has no jurisdiction over a legislative candidate's residency. I believe that is important because the Secretary of State has a duty to put together the ballot and get it out to folks. That is why we have those rules on when you can challenge it and when you cannot. There was confusion on all sides as to whether or not the judge should step in. This language clarifies it to say that they absolutely should not.

Section 4 says that a person who receives a certificate of election or appointment to an office can only be removed through expulsion by the legislator's own House if they are not a resident of the district they serve. We never want to see that happen. I can tell you personally that it is a pretty painful experience. However, we do need some clarity on who is responsible

for making such a decision. Section 4 also says the election can be contested if the person does not live in the district.

I know any time we deal with election law, it always seems that we cannot get a bill that is shorter than 15 pages. I think it is because the bills are trying to bring all the statutes together. I have not seen the amendment yet, but I believe that Assemblyman Hickey has a good point. I apologize I did not look it up on the Nevada Electronic Legislative Information System (NELIS). That is my fault. However, I think it is important that we clarify residency for the long-term going forward, and I think it is important that we have some real rules.

Assemblyman Daly:

My question is probably more for Legal Counsel. I see "actually, physically and corporeally" here. I looked up the definition for "corporeally," and I believe it means the same thing as the first two words. Can you further explain what "corporeally" means and why it is different than the others?

Jim Penrose, Committee Counsel:

I believe that "corporeally" is just a synonym for "physically." It means to be actually, physically present in a particular location.

Assemblywoman Kirkpatrick:

I do not know that we will ever really get the right language. I think the legislative intent is most important; that you must actually live in your house. We have heard different definitions of residency over the years. It is where your cat lives and where you take your trash out. You live in your district. You shop in your district. You live next door to the people you represent and are elected to serve. You are a part of the community. I believe that it is really important to actually live in the district that you represent, to serve the people, and to be part of the community.

Chairwoman Benitez-Thompson:

Thank you for clarifying the legislative record.

Assemblyman Daly:

I agree. I was not trying to muck anything up. I was just trying to understand the word. It means basically the same as the word that is used two spaces over. Can you just give me a flavor of what we are trying to do when you have two residences? I know we are trying to clarify that language, but can you just explain what we are trying to do so that I know I am on the same page as you?

Assemblyman Hickey:

The term "legal domicile" has sometimes been used. In other words, you might have a situation where someone has a residence that they have set up and have done all of the things to make it appear that they may own it, but they do not actually live there. As Assemblywoman Kirkpatrick said, this has been alleged from persons for decades in the state from both parties. What this bill attempts to do is to further clarify where a candidate is actually living day in and day out, not just establishing a residency for the purpose of being able to run or represent a particular district in which you do not actually live.

Assemblyman Livermore:

I want to compliment the two leaders of this legislative body for coming together to find a solution for things that affect people no matter what party they are from. I would like to personally thank both Assemblyman Hickey and Assemblywoman Kirkpatrick.

Assemblyman Munford:

The thing that I find most troubling is how someone moves into a district prior to an election just to obtain residency to be eligible to run in that particular district. What about the house that they previously lived in? Is there any way of tracking whether or not they are living in both residences? It has happened that at night a legislator will sleep at his old residence, but in the day he is at his new residence. It has happened several times in my district. Assemblywoman Kirkpatrick knows what I am talking about. She knows very well. It has occurred in her district, to some degree. I know some people maintain two residences. I think that is grounds for investigation. Where do they really live? I mean, they can own two houses. There is nothing wrong with that. However, that brings up a little flag of suspicion.

Assemblyman Hickey:

You are right, of course. I think by this bill making the definition of residency much more specific, we are going to send a message to candidates at all levels. They are not going to be able to skirt the law and create shadow residences. The last thing we want to do—and I would say this for members of both parties and leaders—is become private investigators; to have to be checking on people. It is a very unpleasant experience. We are trying to make it absolutely clear to people that even if you still own an old house in an old district but decide for whatever reason to move, you really have to live there. That is the intent of this bill.

Assemblywoman Kirkpatrick:

I want to make sure the record is very clear. Assemblyman Munford, we all know that you are entitled to move into a new district within a time frame.

You have to be there, for the most part, for 30 days. That has always been the law, but that is not the bill that is before us today. I think the main thing with A.B. 407 is defining residence. I know you specifically are very engrossed in your community. To me, you are doing the right thing because you are representing the people that surround you. I do think in the past we have had folks who fly into the neighborhood, take up residency, and never engage in the community. The legislative intent is to try to ensure that you are living in and surrounding yourself with the community that you represent; that you have to be part of the people whom you set out to represent. In my mind, it is a whole lot different than taking up residency in a place where you do not really know what goes on around you.

Chairwoman Benitez-Thompson:

Thank you for clarifying the record that we are not contemplating the 30-day limit that is allowed by law.

Assemblywoman Neal:

What is the effective date of this bill? Also, on line 31 in section 1 where you are adding that the district court does not have jurisdiction to determine residency, what is the effect of that? I was reading about a case in Honolulu where the court said that the city clerk had the jurisdiction to determine residency, not the court. I do not know where we are with that in terms of what jurisdiction means and whether or not we are removing something that may not be in our jurisdiction. I heard the argument that we are using the same article we used for the recent expulsion to deal with qualifications of our members, but does residency not fall into a different category?

Assemblyman Hickey:

I would like to ask if Mr. Penrose from Legal could address this. We had a rather lengthy conversation about its implication this morning. Is that all right with you, Madam Chairwoman?

Chairwoman Benitez-Thompson:

Absolutely.

Jim Penrose, Committee Counsel:

To answer Assemblywoman Neal's first question, the effective date of the bill is October 1 of this year, which is the default date. As for the second question relating to the jurisdiction of the district court under existing law, to my understanding, a challenge to someone's residence can be filed within a four-week period; between the time the person files a declaration of candidacy and five days after the deadline for them to withdraw as a candidate. Nothing in this bill, as I read it, affects the ability to file an action in district court within

that time frame. When you reach the point in June when changes can no longer be made to the general election ballot, the bill then cuts off. It cuts off the jurisdiction of the district court to become involved in a case like this or, apparently, to take any action at all if the court has not ruled by that point.

Assemblywoman Neal:

I get it. If it came to our body, what facts and what law are we going to apply to determine whether or not someone is a resident? Will that not fall into a grey area about our capacity to determine residency?

Jim Penrose, Committee Counsel:

I believe the intent of the bill, which I think would be a pretty strong legal argument, is that the Assembly would be required to apply the standard that is set forth in statute, whatever that standard may be.

Assemblyman Elliot Anderson:

I like this bill. I like that particular provision of the district court not having jurisdiction. There is a well-worn doctrine; the political question doctrine. We have a duty in the *Nevada Constitution* to be the judge of elections. We ensure that once those ballots are out, that is when the election has begun. In a way, we are clarifying constitutional provisions and ensuring that the power of the Legislature is not encroached on by the courts. I do think that is good best practices for us. We would be the judge of law in fact. We would take fact and find out what is going on, and we would apply the law and then make our decision. I think this all fits in.

There is only one technical thing I wanted to ask. I was looking at the declaration of candidacy, and Assemblyman Hickey was talking about providing notice. Would it be good to maybe put something more about what residence means in the notice, maybe citing to the definition that we would be creating?

Assemblyman Hickey:

You probably make a good point. They did strike the previous language. I might defer to Legal here. Anything that clarifies more in the declaration of candidacy would be important, obviously, because that is where we are signing under the threat of perjury. We want candidates to be clear about what they are being held to. I certainly would be open to that if we could further clarify this.

Assemblyman Elliot Anderson:

I think it is a good idea, Assemblyman Hickey, because there is a rule in criminal law that if it is not clear, the tie goes to the defendant, so to say. The more notice we get, the more it can withstand challenge.

Assemblyman Hickey:

Regarding the district court, I agree with you, Assemblyman Anderson. In the end, the *Nevada Constitution* says that we have a right to judge the qualifications of membership into this body. There is a process whereby if someone contests that their opponent was improperly elected, it can come before this body.

To Assemblywoman Neal's question of what would be the standard of evidence, as I understand it, a committee would be created. Evidence would be presented to that committee, voted upon by that committee, and then voted upon by the whole body. I think anything that is frivolous or a harassment of a certain candidate by another could easily be dismissed by that committee. Things that had some weight to them ought to be seriously considered.

Assemblywoman Kirkpatrick:

This has been done before in the Assembly. Former Assemblyman Conklin, in his very first election in 2003, was challenged regarding whether or not he should be seated based on his residency. This is not something that has never happened. I do think that if it ever got to that point, there is some type of process that is in place, that works, and has a little bit of history. I do not claim to know all of the history in the building, but I do know that we looked into that issue.

The focus really should be more about the legislative intent regarding residency. I do not believe that there is a perfect word to define residency, but I think that we have a responsibility to stop folks who want to run and think they can game the system. I do not know that if you put specifics in the definition—that your residence is where your cat lives or where you take out your trash—you as a legislative body for the future might not limit yourself. What if these people do those things, but they just do not sleep there? Then you have left something out, and I am a firm believer on spelling out the rules and making them clear. In this sense, I think that you might want to be very careful of using the right language.

The last time that this definition was worked on was in 2003. Before that, the definition had not been worked on since 1995. There is a reason that people have not brought it back. It is because we are always trying to get the perfect language. Speaking with Commissioner Giunchigliani, who tried to create a definition based on other legislators around the country, I think we have to do one better this time in clarifying the language. A lot of folks have been gaming the system for a while. It is a different time. There are term limits. There is a different kind of a legislator that is expected. People can believe that this is a part-time job, but it is not. It is full-time. If you do not live

in your district or know what is going on in your district, how can you represent those folks?

Chairwoman Benitez-Thompson:

I think the intent of the bill sponsors is to make sure that we are giving clarity to something that is pretty muddy, knowing that there is probably no perfect answer or solution. However, we are at least creating a stronger tool by which to ask these types of questions. I want to thank both of you for your comments for the record.

Is there any testimony in support?

Clayton Kelly Hurst, Private Citizen, Las Vegas, Nevada:

I was a candidate for Clark County District No. 9. I want to thank Assemblywoman Kirkpatrick for bringing this bill. I was part of a situation similar to this, so I know a little bit about it. I also want to thank her for giving me the opportunity to come testify in front of you today. The residency issue is something that has come up quite a bit in the past. I know the bill sponsors talked about all the different times that the language has tried to be clarified and the things that have happened as recently as the 68th Legislative Session. I think it is important that we are actually taking this issue up and trying to clarify it even more. It is important that people represent their neighbors and actually reside in the area.

The American principle of a representative government is a truly historic cornerstone of our country's ideals. One of the main basis points for our founding is a representative government. This bill addresses some major concerns dealing with residency, and so I am supporting it. First, it more clearly defines residency as the place where the person is actually, physically residing. That is great. Second, which I can personally attest to, it removes the unlimited financial liability in the case that somebody would not be residing in the district and a challenge is brought, which can be disenfranchising to the process for people. In bringing a challenge, you could risk your business, your life, and your personal savings. You have to make a conscious decision to not do what you feel is right in protection of your family. I think that language is a major win for this bill, as well.

One of the areas that I think you may want to consider some improvement is regarding addressing the time frame in which a challenge of the qualifications can be brought legally. I know Mr. Penrose had said there was about a four-week window. That is if you filed from the first filing date. However, if you file the last day, you are looking at maybe a two-week window. In order to make sure that somebody lives somewhere, you need more time than two

weeks. If that date could be pushed back, then you give more ample time to build a case and present proper evidence if somebody does not live where they say they live.

I think this would do two things. First, it would stop frivolous lawsuits because you would have more information. You would not have to shoot from the hip and throw an allegation at them. Second, it gives candidates the peace of mind that everybody is playing by the same set of rules and there is a fair due process. This is just something to consider. Overall, I think this bill is great. I want to thank all of you for taking the time to review this and letting me come to address you.

Chairwoman Benitez-Thompson:

Thank you for your comments. I appreciate the fact that they were respectful in nature and tone.

Are there additional comments in support? [There were none.] Are there any comments in opposition? [There were none.] Are there any comments in neutral? [There were none.] We will close this hearing on A.B. 407. I will open up for public comment. [There was none.]

Meeting adjourned [at 12:05 p.m.].

RESPECTFULLY SUBMITTED:

Maysha Watson
Committee Secretary

APPROVED BY:

Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 29, 2013

Time of Meeting: 10:23 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 31	C	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 45	D	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 58	E	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 65	F	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 87	G	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 139	H	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 169	I	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 249	J	Jennifer Ruedy, Committee Policy Analyst	Work session document
A.B. 407	K	Assemblyman Pat Hickey	Amendment handout