

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

**Seventy-Seventh Session
April 4, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 8:10 a.m. on Thursday, April 4, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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
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:

Assemblywoman Irene Bustamante Adams (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman Andrew Martin, Clark County Assembly District No. 9
Assemblyman Wesley K. Duncan, Clark County Assembly District No. 37

STAFF MEMBERS PRESENT:

Richard Combs, Director, Legislative Counsel Bureau
Jennifer Ruedy, Committee Policy Analyst
Jim Penrose, Committee Counsel
Bonnie Hoffecker, Committee Manager
Paula Rudolph, Personal Attaché
Lori McCleary, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Susan Rosseter Hart, Chief Deputy Controller, Office of the Controller
Gail Tuzzolo, representing Nevada State AFL-CIO
Randy Soltero, representing International Alliance of Theatrical Stage
Employees and Teamsters Local 631
Jack Mallory, representing Southern Nevada Building & Construction
Trades Council
Ron Cuzze, representing Nevada State Law Enforcement Officers'
Association
Geoffrey Lawrence, representing Nevada Policy Research Institute
Michael P. Murphy, representing Clark County
John Slaughter, representing Washoe County
Jeff Mohlenkamp, Director, Budget and Planning Division, Department of
Administration
Steve Weinberger, Administrator, Division of Internal Audits, Department
of Administration
Bruce Breslow, Director, Department of Business and Industry
Jordan Grow, Policy Analyst, Office of the Governor
James V. deProse, Administrator, Housing Division, Department of
Business and Industry; Acting Administrator, Manufactured
Housing Division, Department of Business and Industry
Tom Clark, representing Nevada Housing Alliance
Gene Temen, representing Quick Space
Marolyn C. Mann, representing Manufactured Home Community Owners'
Association
Amanda Schweisthal, Intern, Assembly Republican Caucus

Jason Mercier, Director, Center for Government Reform, Washington
Policy Center
John McCormick, Rural Courts Coordinator, Administrative Office of the
Courts

Chairwoman Benitez-Thompson:

[Roll was called. Rules and protocol were explained.]

We are going to hear three bills today: Assembly Bill 327, presented by Assemblyman Martin; Assembly Bill 276, presented by Assemblyman Ellison; and Assembly Bill 406, presented by Assemblyman Duncan. I will invite Assemblyman Martin to the witness table and open the hearing for A.B. 327.

**Assembly Bill 327: Revises provisions governing state accountability.
(BDR 31- 554)**

Assemblyman Andrew Martin, Clark County Assembly District No. 9:

I have with me today Susan Hart, Chief Deputy Controller. We are going to jump right into the PowerPoint presentation ([Exhibit C](#)). This will be a quick presentation and hopefully it will answer a lot of the questions you might have. I know you do not like being read to, but this is an extenuating circumstance where Kim Wallin, the State Controller, had a family emergency and could not be here today. With that, we will roll into the purpose of Assembly Bill 327. I will go over the section numbers as a part of the presentation in a moment.

There are basically two parts to this bill. Assembly Bill 327 is trying to promote good accountability for the state. Nevadans are demanding accountability over the spending of their tax dollars ([Exhibit C](#), page 2). Assembly Bill 327 promotes accountability by enacting anticorruption provisions and restoring public confidence.

What does A.B. 327 do ([Exhibit C](#), page 3)? Section 1 of the bill establishes a fraud reporting hotline. We have an example of that coming up. Essentially, any entity that receives public dollars will be required to post, in their place of business, an antifraud hotline toll-free number. The working telephone number we are using is 1-800-NVFRAUD. People can call reports in safely, responsibly, and be assured that their confidence is maintained.

Sections 2 through 12 are tied in with section 1. Essentially, we are proposing to move the Division of Internal Audits from the Department of Administration to the Office of the State Controller.

We need to ask ourselves why people do not report fraud ([Exhibit C](#), page 5). You can read the eight reasons yourself, but essentially, they do not believe anything is going to be done about it. They are also afraid of reprisal. The hotline, which currently exists but is buried on the Controller's website, needs to be promoted. This is a no-cost event. We are now taking it out of the shadows of the website and putting in a public forum. If a contractor or a grant recipient receives money, a sign must be posted on the job sites. We have the sign in English ([Exhibit C](#), page 6) and Spanish ([Exhibit C](#), page 7). This is a safe and secure way to report fraud. It will be followed up by the Controller's Office, then segue into the next part of this presentation.

Currently, the Division of Internal Audits is reporting to the Department of Administration, which is part of the Office of the Governor. To give you a sense of the magnitude of this, the Division of Internal Audits comprises eleven people. The Department of Administration has around 562 employees and they report to the Office of the Governor, which has over 16,000 employees. Speaking as an auditor and fraud examiner, the State Controller is tasked under the *Nevada Constitution* to be the chief auditor ([Exhibit C](#), page 9), but there is no way for the auditor to follow up on any kind of audit issues. What we are trying to do here is give the ability of the auditor to actually follow up on the audit recommendations. The Division of Internal Audits would have a better reporting line. Currently, it is very fractured.

Why is this important ([Exhibit C](#), page 11)? Auditing works best when it is independent. The core problem here is if you have the Division of Internal Audits reporting to the Department of Administration, there is no independence. In a sense, they are being asked to audit the very agencies they report to. If Internal Audits were under the Office of the State Controller, that would no longer be the case.

As you can see, internal auditing independence is accomplished by having independence in appearance and independence of mind ([Exhibit C](#), pages 12 and 13).

This screenshot shows the current reporting relationship ([Exhibit C](#), page 14). As just described, if you look at the very bottom of the screen, you have the 11 employees in the Division of Internal Audits reporting to the Department of Administration, which reports to the Governor's Office. On the right side of the screen is the State Controller, who is the elected constitutional officer responsible for statewide audit reports, but has no ability to do audits. This is a duplication of missions and you get a lot of finger-pointing this way. People would be calling into the hotline, and for the particular agency in question, the

auditor would need the resources to go ahead and follow up for the sake of the people and conduct the audit.

This is the proposed relationship ([Exhibit C](#), page 15), as it repairs the independence and the fractured responsibility. The Division of Internal Audits would report to the Office of the State Controller; the State Controller reports to the Governor.

This is a relatively simple bill, but very powerful. The reality is, I have spent a career auditing. I have identified the problem of the fracture and the independence and I am asking this body to fix that. With that, I would like to turn it over to Susan Rosseter Hart for her statement.

Susan Rosseter Hart, Chief Deputy Controller, Office of the Controller:

The Controller has asked me to read a statement today in support of A.B. 327. She apologizes for not being here, but her mother recently passed away and she is making service arrangements as we speak.

First and foremost, this bill will create the independence that Internal Audits should be operating under. [Ms. Rosseter Hart continued to read from prepared testimony, ([Exhibit D](#)).]

Chairwoman Benitez-Thompson:

Thank you for making those comments on behalf of Ms. Wallin.

Assemblyman Martin, have you finished your presentation, or would you like to walk us through the sections of the bill?

Assemblyman Martin:

I think I have walked everyone through this short bill. We can go right into questions.

Assemblywoman Pierce:

Ms. Rosseter Hart, could you repeat the statistic about how many states have their internal audit division reporting to the governor?

Susan Rosseter Hart:

There are only five other states that currently have internal audit under administration.

Assemblyman Stewart:

I am a little confused about who audits whom. Is this Paul Townsend's division or a separate division?

Susan Rosseter Hart:

No, sir. This is a separate division.

Assemblyman Stewart:

So what does Paul Townsend audit?

Susan Rosseter Hart:

He audits on behalf of the Legislative Counsel Bureau (LCB). The Division of Internal Audits performs their audits on behalf of the Executive Branch.

Assemblyman Stewart:

Does Paul Townsend not audit administrative divisions?

Susan Rosseter Hart:

Yes, he has the ability to audit whatever programs he chooses.

Assemblyman Stewart:

Do we have two auditors auditing the same agencies or different agencies?

Susan Rosseter Hart:

I am not clear on that. I will have to get you the exact division of duties.

Assemblyman Healey:

Who audits the Office of the Controller?

Susan Rosseter Hart:

We are currently being audited by our independent auditors, Kafoury, Armstrong & Co. The Division of Internal Audits certainly has the ability to audit us, if they so desire, but we also audit internally.

Assemblyman Healey:

If this change were to happen and the Division of Internal Audits moved over to the Controller's Office, would they then audit their own department? It seems like the same situation they are in now, correct? They are currently auditing the Department of Administration and report to the Department of Administration, but if moved to the Office of the Controller, they would audit the Controller and report to the Controller.

Susan Rosseter Hart:

I believe that is the case, but I will clarify that for you.

Assemblyman Livermore:

Assemblyman Martin, one of the things you learn is there is no such thing as a simple bill. This bill is complex. Currently, you have political appointees and political appointees can drive audits by policy that makes policy look bad. I agree with Assemblyman Stewart and suggest you have strong consideration about consolidating the two audit branches into one audit branch. In my opinion, the Legislative Auditor is as independent as they get. I am a little concerned by moving the Audit Division to the Office of the Controller. That puts the Controller in a precarious position. Who is going to appoint the audit committee? Who is going to approve the audit plan? Is there an oversight for that?

Assemblyman Martin:

This is not really designed to be a political issue. We are talking about 11 people out of 16,000 under the Governor's Office. Currently the line and staff relationship of these 11 people is that they are being called upon, for the most part, to audit the same agencies they are reporting to. That is really the crux of this.

There is an Executive Branch Audit Committee and that is not going to change under this bill. The Executive Branch Audit Committee oversees what actually is audited and that is not going to change. Independence of the Internal Audits Division from the agencies they report to currently is really the key to this. That is how I see it, anyway. I hope that answered your questions.

Assemblyman Livermore:

You and I spoke yesterday about the transparency and independence of an audit. I would like to make sure that any audit that is produced, approved, and circulated has the highest independence there could possibly be. I am not sure this bill does that. The term of office of the audit committee that makes up the composition of the audit plan, et cetera, is not spelled out in the bill. I am sure the devil is in the details and will probably come out in some legislative commission when the regulations are written. I would just like to place on the record that the process is of concern to me.

Assemblyman Martin:

I truly believe this actually enhances independence and reporting. Basically, the Controller's Office is tasked with the responsibility of being the state's chief auditor. I did not mean to avoid answering your earlier question about consolidation between LCB and the Division of Internal Audits. I think that is a discussion for another time. This is an incremental step, which is really where I am going with it. I am also going to politely point out that the fiscal note that exists on this is really a net zero because the way they write these fiscal notes,

as you know, is they have to present the cost to one department, but it is also a cost savings to the other. It is identical and does zero out. The fiscal note is in the Nevada Electronic Legislative Information System (NELIS). If you start consolidating LCB and doing that, I am not sure that would be the result. There is a relationship between the LCB auditor and the Division of Internal Audits and they do coordinate on some things. It is not completely separate. I believe LCB has 26 employees, mostly certified public accountants and certified fraud examiners. The Division of Internal Audits has 11 employees with a mix of backgrounds.

I was a federal government auditor for many years and I saw this as an opportunity to enhance transparency. What happens if someone in the Division of Internal Audits finds something in the Department of Administration? They are basically risking their job. It is not as clean. Of course, we do have the constitutional authority of the Office of the Controller.

As stated by the chief deputy controller, originally the idea was to put the Division of Internal Audits under the Office of the Controller, but for various reasons, which are beyond my understanding as an auditor, that was not done. The Governor was tasked with this responsibility. All we are trying to do now is realign the original purpose of what the Division of Internal Audits was supposed to do.

Assemblywoman Neal:

In section 1, subsection 2, paragraph (b), there is a requirement that any location where an agency, contractor, grant recipient, or local government that is utilizing public money must post the written notice created by the Controller's Office. The way "contractor" is defined in section 1, subsection 3, paragraph (b), it means any person, business, organization or nonprofit that contracts with the state or local government to receive public money. How many locations are we talking about where we are going to put up a notice?

Assemblyman Martin:

I do not know the answer to that question. Obviously, the number of locations is going to vary with the number of contracts. We are talking about office locations. If it were a highway project, we are not talking about putting up a placard on every light post. It would be at the central office location, in the same way the Equal Employment Opportunity Commission (EEOC) or workers' compensation have their posters displayed.

Assemblywoman Neal:

There may be a need to narrow or indicate the office instead of using the words "any location." My second question refers to the fiscal note that is on NELIS.

For the fiscal note on this bill, you have significant costs. For the first year, it is roughly about \$1 million. On page 5 of the fiscal note, I would like a clarification that the request implements a salary freeze by deferring step increases. Is that because of the \$1 million? Also on page 5, it suspends longevity pay. Is that because of the \$1 million, or is this just a continuation of what is already in existence for the 11 staff who are being funded and who are being shifted over?

On page 6 of the fiscal note it states that the request reallocates the Department of Administration, Administrative Services cost allocation for the elimination of the Commodity Food Program. What is the Commodity Food Program? I can see by the looks on your faces that you have never seen this.

Assemblyman Martin:

That is a great catch.

Susan Rosseter Hart:

I am not seeing anything about the Commodity Food Program on the fiscal note that I submitted. Basically, what we did was take the budget proposed for the coming biennium and move that along with the concomitant revenues to the Controller's Office. It is a zero for us and a zero to the state.

Chairwoman Benitez-Thompson:

It looks like this fiscal note is coming from your office, but perhaps we will leave it there until we can get some clarification.

Assemblyman Daly:

The first question is a follow up to Assemblywoman Neal's question about the way you post the signs. I think the definition is a little too broad. How far down do you plan on going if you have a construction site, for example? If you have a general contractor and he has 10 or 12 subcontractors, are they all supposed to put the poster at their place of business?

Going back to the statements of Assemblyman Livermore, there is already an established process of what the audit plan is in the division that is doing it now. I know the Controller's Office can do audits and I think it makes sense to have independent auditors. Every one of us who has a business may want the independent opinion from someone who is not afraid of being fired, so having an elected official do that makes sense. When we talked about the differences between LCB audits and the other audits, I think they are for two different purposes. The Controller's Office is dealing with the money that comes in and if it is properly deposited, and the money that goes out. The LCB audits deal with that also, but I do not see too much of that. Are you fulfilling, in the LCB

audits, the programs, the schedules, and the reports that you are supposed to follow under the law that the Legislature passes?

Susan Rosseter Hart:

I really cannot speak to that. Those are under the purview of LCB and presently the Department of Administration. I can find out for you, if you would like.

Assemblyman Martin:

The intention of this bill is not to affect LCB. That would be my immediate reaction to your question. The Legislative Counsel Bureau has its defined tasks and the Division of Internal Audits has theirs.

As to the signage question, you made a very good point. The initial anticipation was to post with the general contractor. I guess it could be extended to a subcontractor or whoever is receiving the public dollars and having work done. If you take the classic case of a construction contractor, or maybe it is the subcontractor who has a trailer on the property, I can see where the concern is about what requirements there would be. I guess the requirement would fall wherever the EEOC and worker's compensation posts theirs.

Assemblyman Daly:

The EEOC and workers' compensation posts are to any employer and they have to display it at their place of business. This is only a requirement if there is some public money. I may be hired as a supplier to send out hard hats or something. I do not know if you are using that on a public job or not. You have to figure that out. The subcontractor does not usually have a contract with the public agency on the construction side of it. They have a contract with the general contractor and only the general contractor has a contract with the public body. You have to figure out how far down you want to go. When you use the term subcontractor or a third party, how far do you want to pull that string? I do not think anyone at the third party supply house is going to have any bearing on the fraud issue you are trying to get to.

Regarding my other question, I believe the audit done by LCB is for a different purpose with different criteria, and it is not at all to be mixed up with what we are doing here.

Assemblyman Ellison:

Have you talked with the Governor to get his feedback on this? Also, regarding the fiscal note, it looks like it is a pay in/pay out. Is that already a budgeted item for the next two years?

Chairwoman Benitez-Thompson:

I should note for the record, we have received a little clarity on the fiscal note. It looks as if it is the entire budget for the Division of Internal Audits. They took everything and moved it over. There might be details within this that are not specific to what the bill's sponsor was looking for. We will work on additional clarification, also.

Assemblyman Martin:

I actually have a meeting with the Governor to discuss this very point. I had a previous discussion about auditing and accounting in general with the Governor and he has been very open-minded. I look forward to meeting with him on Monday.

The fiscal note has been addressed, but just to reiterate, it is a net zero effect. What you are looking at is a shifting from one department to another. There should be no fiscal note on this.

Chairwoman Benitez-Thompson:

I would like one point clarified. I know currently, with the positions being in the Executive Branch, they are not classified positions. If they moved over to the Controller's Office, is it your intent that they would be classified employees?

Assemblyman Martin:

I believe they are going to remain unclassified. There will be no change. It is going to be the Division of Internal Audits as it is now under the Controller's Office. Nothing else is contemplated.

Assemblyman Oscarson:

I think it is important that those notices be out there. I think some of the issues that have happened, that you spoke about earlier in your testimony, are actually at some of those levels. I concur that the notices with the hotline number need to be distributed to all those who have input or participation in providing services to a State-funded project. In reality, in other projects for that matter, not just a State-funded project.

Assemblyman Martin:

The intent is not to create a burdensome system. However, at the same time, to publicize the hotline number from the Controller's website, the goal is to protect public dollars. I am open to suggestions about who is required to post it and the mechanics of it. Obviously, we are talking about a statewide event and we want to make sure people are in compliance.

Chairwoman Benitez-Thompson:

Are there any further questions from the Committee? [There were none.] I will open for testimony in support of the bill.

Gail Tuzzolo, representing Nevada State AFL-CIO:

We want to thank Assemblyman Martin for bringing forward this legislation. We think it really does increase transparency and fairness. Audits will have much more strength and transparency to the public.

Randy Soltero, representing International Alliance of Theatrical Stage Employees and Teamsters Local 631:

We are in support of Assembly Bill 327, specifically section 1, which creates a whistleblower protection, if you will, for folks who may want to report abuses. We have seen this happen in our investigations and when I was working with the building trades. It is important for folks to have a way to report abuses whenever there is a public project.

Jack Mallory, representing Southern Nevada Building & Construction Trades Council:

We are also in support of the bill for the reasons stated before. Just to elaborate a little more, organized labor and labor organizations themselves are probably some of the most regulated independent, private groups throughout our country. We are regulated by the U.S. Department of Labor, some of their suborganizations, as well as internal regulations. One of the things we are required to do on an annual basis is complete an independent, third-party audit of all of the functions of our organization to make sure we are adhering to what it is we are charged to do by both federal law and our internal constitution. There is cost involved in doing this, but the interest is in transparency. The results of those audits are compiled into what is called an LM-2 form, which is generally not a single page but frequently 30 to 40 pages of documents that become public record. They are posted and available on the U.S. Department of Labor's website. Even as a private entity, my life turns into an open book every year when that document is filed. This is the reason we support this bill, because it does create that independence and it does create transparency, not only for folks like yourselves who have to rely on those audits when you are considering legislation, but also for the general public.

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

For all the reasons previously stated, we concur. We took a look at this from a law enforcement perspective, and we believe this is commonsense legislation. In addition to the transparency, once you remove even an appearance of political pressure that can be placed on an auditor, it just makes good sense.

I am not saying we are going to prosecute more people for fraud, but this is a good bill from the law enforcement standpoint.

Geoffrey Lawrence, representing Nevada Policy Research Institute:

We believe independence is essential to protect the integrity of an audit function. Actually, this is a change we recommended in our *Solutions 2013* sourcebook ([Exhibit F](#)), so we are very supportive of moving the Division of Internal Audits to the Controller's Office. This seems to be a natural place, since it serves as an audit-type function. I will also be testifying later on Assembly Bill 406, which does something similar, but goes a few steps beyond.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee members? [There were none.] Is there any further testimony in support of the bill? [There was none.] I will open testimony in opposition to the bill.

Michael P. Murphy, representing Clark County:

We are in opposition to Assembly Bill 327. We very clearly support the fighting of fraud and corruption. How the state creates their processes and who they feel should work in those processes is not within our purview and we are certainly not trying to influence that in any way. We believe that lies squarely with you, as the state lawmakers, to make those decisions.

Our concern is the effect this may have on local government, specifically the hotline, the posting of signs, and the requirements for local government. We feel that some of these issues are best kept at the local level in reference to those specific concerns. Our county believes strongly in open and inclusive government and accountability. Those are two of our six guiding principles that we work on daily within our organization.

We believe we demonstrate that we are involved in open and inclusive government and in accountability in the way we conduct our open meetings, our public comments, before and after items, and at the beginning and end of our meetings. We also have a website that posts contact information for department heads, commissioners, the county manager, and others to make sure those elected officials are accountable and accessible to the public. The idea of adding an additional layer of government between Clark County and the citizens we find unnecessary and somewhat costly, not just in the creation of the signs, but in the staffing and requirements to post at 258 buildings and 107 parks. We feel those resources could be addressed in a better way for the needs of our citizens.

We also have an internal audit system that does a top-to-bottom review of departments and reports to county management and to the county commissioners in reference to the audit of different departments and how monies are spent. We understand the concept of the bill and we are not opposed to the reorganization of any state issues, we are just concerned about how this addresses local concerns. As a result of that, we ask that you understand why we are opposed to this bill.

Assemblywoman Neal:

Is your opposition related to the signs themselves? I am trying to understand what you are actually opposing.

Michael P. Murphy:

We are concerned about some of the sections of the bill. Actually, Assemblyman Daly addressed how we would enact some of the requirements of the bill, how we would do that in contracts, and all of the different issues we deal with in addressing the state issues. We feel our citizens have the ability to report at any time directly to us if they see any fraud or any problems within the local government. Some of the administrative requirements of the bill, specifically the posting requirements in contracts and at buildings, become somewhat onerous to us and how we would do that with every dollar spent at every location with retailers and all those we spend money with.

Assemblywoman Neal:

Have you spoken with the bill's sponsor to find out if it would be duplicative of what you are already doing and whether or not he had envisioned this as an action by the county to do more?

Michael Murphy:

I spoke with a representative at his office, but I was not able to speak with him directly. The response I received was that we would be able to create these for about 3 cents apiece from a PDF file and we would be able to post them.

Assemblywoman Pierce:

When was the last time an average citizen got a callback from a county commissioner? No one knows. I think people having a number to call is a good idea.

Michael Murphy:

With all due respect, I am not in any way, shape, or form trying to be argumentative, but I would like to say that I, as a department head in Clark County, respond to constituent calls on a routine and regular basis. I was on the phone last night with a family. Our commissioners have liaisons whose

specific job is to address citizen complaints, and they contact those individuals on a routine and regular basis. Between that and the ability for any citizen to call law enforcement in and for an investigation to be started, should there be a report of fraud, I believe those issues are currently being addressed.

Assemblyman Elliot Anderson:

I am going to give Mr. Murphy a little credit because he does help me a lot with getting my constituents' problems fixed. I did want to say that for the record.

Mr. Murphy, I was looking at the posting requirements and you mentioned 258 buildings. I am assuming you have at least one person in charge of each of those buildings who is the go-to person for the building. We could send them an email with a PDF file attached and have that person post it in the break room. I do not understand why that is onerous.

Michael Murphy:

I am certainly not saying this is not doable. I think part of what we are trying to say is that this is something we feel should be addressed at the state level and let the state address the concerns they have. I feel local government has been pulled into this, when it would be something that would be reported at the state level, and we already have mechanisms in place for our citizens to report things at the local level.

Assemblyman Daly:

That was going to be part of my question. Clark County may have these processes already in place, but I do not know if everyone does. Having it at the state level, I think it would be reported down to the local levels.

I agree somewhat with the sign. It is not a big issue. Maybe we should state that the signs must be posted where all the other notices are required to be posted. There would be some enforcement component to the posting of the sign. However, right now I do not see a penalty in this bill. I do not see the rule as having any meaning to begin with. You are arguing over something that no one can make you do if you do not want to.

Clark County has their own separate audit system, so the state is not auditing Clark County, are they?

Michael Murphy:

We do have our own internal audit system. We also have independent audits that are done. I think it is important to note that we want to go on record to state that we are already doing many of the things that are listed. We are not saying the way the government should be organized at the state level is within

the purview of Clark County. We want to make sure we are on the record to let you know we are addressing many of these issues.

Assemblyman Oscarson:

I concur with Assemblyman Daly's comments. There is probably going to be some way it can be done, and I appreciate your efforts to see if it can be done throughout your organization.

Chairwoman Benitez-Thompson:

Is there any other testimony in opposition to the bill? [There was none.] I will open testimony neutral to the bill.

John Slaughter, representing Washoe County:

We do not have an official position. I have not spoken with the sponsor yet, and I will follow up with him for my questions and comments. Washoe County has been working toward doing our own fraud and abuse hotline number. There has been a lot of internal discussion about that, specifically when there may be something criminal to report. Our District Attorney is in the process of reviewing how that handoff would happen if there is any specific criminal evidence that needs to be followed up on. That has been the sticking point that we are working on internally. I just wanted to make you aware that we are working toward this.

I want to speak specifically to section 1, subsection 2, paragraph (b) where it talks about posting a written notice in any location that utilizes public money to complete a project or carry out any duty pursuant to a contract or a grant with the State. This is more of an observation and I will follow up with the sponsor, but it seems that posting a phone number may capture more interest that is not specific to that topic; even if it is not specific to a project or carrying out a duty pursuant to a contract or grant with the State. My point is, they may receive phone calls that they do not have purview based on this proposed statute. They would then have to hand that call off to the local entity. There may need to be some work on how that would function.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee? [There were none.]

In the process that Washoe County is working to develop, could you explain the process, once the call is received, how that call is then managed? Would you make a distinction as to the severity of the call or the severity of the allegation?

John Slaughter:

That is specifically the hang-up we are working through. We need to determine if it is an actual criminal complaint or if it is something someone has observed that they do not believe is being done correctly. We are working with the District Attorney's Office to determine the collection of evidence, how it is preserved, and the correct questioning that would occur when it is a possible criminal accusation. We are not there yet.

Chairwoman Benitez-Thompson:

Within that conversation, are you talking about the appropriate staffing? Do you imagine for Washoe County it could be more than one person or are you still in the process of determining the scope?

John Slaughter:

We are still in the process of that. There are actually vendors who provide a service like this to local governments, and we have looked at that. The hang-up with the District Attorney's Office is what if it is an actual criminal accusation and how does the handoff occur.

Chairwoman Benitez-Thompson:

Are there any additional questions from the Committee? [There were none.] Is there any additional testimony neutral to the bill?

Jeff Mohlenkamp, Director, Budget and Planning Division, Department of Administration:

What we would like to do is make sure you understand how the situation currently exists and what the State already has in terms of capacity, because we are being asked to change. Currently, Executive Branch agencies are subject to audits from the Legislative Counsel Bureau Audit Division and the Division of Internal Audits. These two groups do coordinate somewhat in order to try to provide the maximum amount of coverage. Mr. Weinberger is the administrator for the Division of Internal Audits.

The process we have is Internal Audits reports to the Executive Branch Audit Committee. Mr. Weinberger will get into more detail on that. Audits can only be approved by the committee. From the standpoint of how audits come into play, the Governor cannot direct an audit that the committee does not approve. Internal Audits reports to the Audit Committee on the findings and the follow-ups.

I also want to point out that we do performance audits, or what we call post review, which is more of a compliance-related audit, and then internal control management to make sure state agencies have proper internal controls in place.

That constitutes not only a review of internal controls, but also training that goes out to the agencies to help them develop and improve on their own internal controls.

Another point I want to make is the Division of Internal Audits is subject to review by LCB on a periodic basis, and also to a peer review. I have spent seven years auditing in my State career. I started with the Gaming Control Board where I was an auditor for them for years, and I was also with the Division of Internal Audits for a couple of years. I believe you do have significant coverage of state agencies, both through LCB and Internal Audits, in the current spectrum. I believe the independence of those audits is adequate. I will turn it over to Mr. Weinberger to get into a little more detail on how that process works.

Chairwoman Benitez-Thompson:

We have a couple of questions before Mr. Weinberger gets started, but either of you can answer. With the LCB audits that Internal Audits is subject to, could you give me an idea of the frequency of those audits?

Steve Weinberger, Administrator, Division of Internal Audits, Department of Administration:

As far as LCB audits, I believe it has been about eight years since we have been audited by them. Mr. Mohlenkamp mentioned that we also do peer reviews. We are subject to the *International Standards for the Professional Practice of Internal Auditing*, which requires us to do peer reviews annually. Once every five years, we have to have someone independent of our agency do a peer review. If you look at the standards, one of the first standards deals with independence and objectivity.

Assemblywoman Neal:

I want to clarify a particular point you made, Mr. Mohlenkamp. You said the Governor does not direct an audit, correct?

Jeff Mohlenkamp:

All audits that are engaged in with the Division of Internal Audits have to be approved by the committee. The Governor and other members of the Executive Branch can bring forward audit concepts to the committee and request that an audit be done. Likewise, we have many cases where department directors will come forward to ask for an audit to be completed because they are concerned about things that might be happening within their operation. However, in order for that audit to move forward, it has to be approved by the committee in a public forum.

Assemblywoman Neal:

Would there be a situation where the Governor would select an actual company who would audit? I know it is not related to this bill, but I am trying to understand what is in the purview.

Jeff Mohlenkamp:

I am not sure I understand the context of the question.

Assemblywoman Neal:

I will ask you off-line.

Chairwoman Benitez-Thompson:

For clarification, within the Division of Internal Audits there are 11 staff members who work at the direction of the Audit Committee, is that correct?

Steve Weinberger:

That is basically correct. Out of our 11 people, I have 6 Executive Branch auditors. All the work they perform is subject to the approval of the Executive Branch Audit Committee. I also have a financial manager who deals mainly with training Executive Branch agencies on internal controls and required regulations. We also have two post review auditors who actually review expenditures made by Executive Branch agencies. That is part of the State Board of Examiners oversight. Their reports are sent to the director of the department they audited and to the Clerk of the Board of Examiners. I also have an administrative employee.

Technically, I have six auditors who are all classified and they report to me. My position is unclassified. Our audit processes report to the Executive Branch Audit Committee.

Assemblyman Stewart:

Who determines the schedule of audits? Do you work with Mr. Townsend to make sure everyone is covered? Do you and Mr. Townsend decide when an agency is going to be audited?

Steve Weinberger:

By statute, I am required to consult with the Legislative Auditor. We get together and I tell him what audits I have planned. If he is in the process of doing an audit at that location, or if he has just done one, I will put the audit off for a while. Their audits are pretty specific. They audit individual programs of a department or an agency. If I am going into that same agency, I will audit other sections. The statute actually states I am supposed to avoid duplicating their efforts, and we do that by communicating.

Assemblyman Stewart:

What is the function of the board? I believe you said there were six of them, is that correct?

Steve Weinberger:

The Executive Branch Audit Committee is chaired by the Governor. In addition, it has all the elected officials. We also have one member of the public. They approve our audits. I put together my plan, I verify with the Legislative Auditor that I am not duplicating any of his efforts, and then I present my plan to the committee for approval.

Chairwoman Benitez-Thompson:

We should clarify for the legislative record that when we talk about the elected officials on the committee, we are talking about the State's constitutional officers, correct?

Steve Weinberger:

Yes.

Assemblyman Stewart:

Would that be six members in addition to the one public member?

Steve Weinberger:

That is correct.

Assemblyman Stewart:

You said you have not been audited for eight years by Mr. Townsend's office, is that correct?

Steve Weinberger:

I have been with the agency for about six years and an audit has not occurred since I have been there. I will have to get you the exact date. I did request their audit recently because I wanted to look at the kinds of things they looked at to make sure we are complying with what they want.

Assemblyman Stewart:

You are due for an audit then?

Steve Weinberger:

Probably.

Chairwoman Benitez-Thompson:

Are there additional questions from Committee members? [There were none.] I need clarification regarding section 1, which talks about establishing the phone number and all the reporting requirements. Is that something that currently happens with the Division of Internal Audits?

Steve Weinberger:

We actually have a section on our website for information on calling in for that type of information. It is not very popular and we have only received one call. We are available for that purpose.

Chairwoman Benitez-Thompson:

Do you have a website posting and also a phone number listed?

Steve Weinberger:

That is correct.

Chairwoman Benitez-Thompson:

Is that a separate phone line or is it a phone number that, if made public statewide and published, would be able to handle a lot of calls if needed?

Steve Weinberger:

That is correct. It is actually our main phone line.

Assemblywoman Neal:

This particular bill by Assemblyman Martin, one of the purposes he says is to try to market that existing phone number on the website or the "stop fraud" phone number. Have you engaged in any efforts to widely publicize or market that telephone number and when was the last effort?

Steve Weinberger:

Our financial manager, when she does her presentations to Executive Branch agencies, mentions that and it is on our website. Those are the only marketing efforts we have done.

Chairwoman Benitez-Thompson:

Is there any other testimony neutral to the bill? [There was none.] I will invite the bill's sponsor back for closing comments.

Assemblyman Martin:

I do appreciate the Committee's attention to the details. I will take back what I said about this being a simple bill. It is a very important bill, however. As legislators, we are tasked to uphold the public trust and confidence. I could go

on about how I disagree with some of the statements made. I am willing to work with any and all parties to clarify the postings.

Mr. Weinberg testified they had received only one phone call. That is the whole problem. No one knows the number exists. We are talking about 3 cents per page. Get the number out there. We can talk about where that is, but people need to be able to call in any waste, fraud, or abuse they see in context to receiving public dollars. I think that is very important and I do not think it imposes a great burden. If that call is going into the Controller's Office, the Controller has to have the staff to follow up on any investigation. Currently, the Controller's staff does not have any auditors. This clearly does not make any sense to me, as an auditor. They have financial accountants who prepare the *Comprehensive Annual Financial Report* (CAFR) and other financial reports they produce, but if someone were to call in to the Controller's Office on this hotline, there needs to be an ability to follow up. Likewise, the CPA firm, which is a relatively large, Midwestern firm that audits the State agencies, comes up with findings, and the Controller's Office needs to be able to utilize the Division of Internal Audits. That was originally intended when this division was created, but something went askew. I am not going to get into the politics of 1995, but the Controller's Office needs the ability to follow up and investigate.

This is probably the only time in this legislative session that you are going to get a passionate plea for auditing. You have to understand, this has been my career. I am a certified public accountant. I am a certified fraud examiner. I am certified in financial forensics. I am a certified internal controls auditor. I am a charter global management accountant. I hold three securities licenses. I have had a mortgage license and health insurance license. I have held a top secret clearance eligibility with the White House. I have audited the White House travel office press funds for ten years. I have served two Presidents of the United States. Auditing is my life. I know, I need to get a life, but this is a passion for me. Part of what we bring as a citizen legislature is our passion in our professions. I invite you all to come to the Certified Fraud Examiners' Conference. It is a rockin' group of about 8,000 people. I fought very hard to get the conference in Las Vegas. We talk about hotlines, transparency, and good governance.

This is what motivated me to bring this bill forward. I saw an office within the Controller's Office that had no ability to follow up on the audit recommendations. Remember, it is very important that you want to have independence in appearance, as well as mind. I am not saying the Governor's Office is mal-intended, because that is not my point here at all. I think the Governor has a very open mind and I look forward to our discussion

on Monday about this. We are talking about 11 people who would greatly enhance the Office of the State Controller, who is the de facto State Auditor.

The discussion about the Executive Branch Audit Committee, none of that changes. Everything is the same. All we are doing is changing the line of staff relationships of 11 people to enable the Controller's Office to do their job as empowered in the *Nevada Constitution*.

Auditing has been my career and auditing is my passion. I hope I have inspired you to make those changes.

Chairwoman Benitez-Thompson:

I will close the hearing on Assembly Bill 327. I will open the hearing on Assembly Bill 276, presented by Assemblyman Ellison.

Assembly Bill 276: Consolidates the Manufactured Housing Division of the Department of Business and Industry within the Housing Division of the Department. (BDR 18-1029)

Assemblyman John C. Ellison, Assembly District No. 33:

Today I would like to present Assembly Bill 276. This bill renames the Manufactured Housing Division as the Manufactured Housing Section and moves it under the Housing Division of the Department of Business and Industry. The bill sets out the changes necessary to accommodate the consolidation and creates a very logical transition.

I would like to add that during the 76th Session, this bill was brought forward, but they decided to pull it back. We have been working with the bills that have sunset and that is what brought this bill back to life. I am going to turn it over to the others to explain their views of the combined division, and then we will be happy to answer any questions the Committee might have.

Bruce Breslow, Director, Department of Business and Industry:

I want to thank Assemblyman Ellison for bringing this bill forward. Had I been at the department long enough to build a budget and do our own bills, this would have been one of the bills we would have been proposing, as well.

Right now, manufactured housing and housing in Carson City are in the same building. Mr. deProse ran the Manufactured Housing Division for the last three years. Efficiencywise, it makes sense for the Manufactured Housing Division to be within the Housing Division as a section. All this bill does is move them lock, stock, and barrel, no changes to who does what, inside the Housing Division. They would have more support, more administrative support,

and get more attention as an industry than they have now, since they are a small, separate, stand-alone agency.

The industry came forward to me in my first week as the Director and asked if we would support doing this. Everyone wanted this to go forward without talking to each other in the beginning, but I believe you will have industry testimony. The Governor's Office proposed this during the last session, so I believe we will have support from the Governor's Office. The gentleman who is the acting administrator of the Division of Manufactured Housing and the administrator for the Housing Division is here as well to testify. It is very simple; it just moves it within the Housing Division.

Jordan Grow, Policy Analyst, Office of the Governor:

We are in support of Assembly Bill 276, which consolidates the Manufactured Housing Division within the Housing Division of the Department of Business and Industry. One of the Governor's priorities has been to look for efficiencies in state government and we believe the consolidation of these divisions aligns with his strategic priorities, and that it can be carried out while ensuring continued service to the manufacturing housing community.

Bruce Breslow:

In anticipating that you might make this decision, I have not filled the administrator position for the Manufactured Housing Division, waiting for the direction of the Legislature and this process to go forward. I did not want to appoint someone and create two people arguing over power and authority. I wanted to do what I thought was the right thing and wait. This bill makes sense, and it should, because there is no additional cost to the state and there should be some eventual savings. I cannot really think of why anyone would oppose it unless the industry thinks they would not get as much attention if we are consolidated into something bigger. I would think the industry, which has brought this forward, would share those concerns but also understand that with Mr. deProse there, the expertise, and the depth of the Housing Division, they would actually get better service than they had before.

Assemblyman Elliot Anderson:

I get the cost-savings argument, which is a very good argument and a good point, but I am curious, did something happen or did something go wrong that precipitated this bill?

Bruce Breslow:

Not that I know of. It just looked like it made sense and everyone brought it to my attention. I could not think of a reason that it would not make sense.

If you want to ask how it has been doing, I would ask the administrator of both of those divisions directly, Mr. deProsse.

James V. deProsse, Administrator, Housing Division, Department of Business and Industry; Acting Administrator, Manufactured Housing Division, Department of Business and Industry:

Historically, over the last few years the Manufactured Housing Division has actually gained quite a bit of ground and developed improved rapport with constituents, whether they are tenants at parks, licensees, or owners of manufactured home parks. We actually turned what, at one time, was an extremely adversarial relationship between the division itself and many of the constituents to one that is now fluid, communicative, and collaborative. I only see that continuing.

As far as the merger itself, we have not done specific cost analyses, but I am confident in saying that as we move forward, there will be synergies and we will experience hard savings and service savings that we are not able to identify at this time.

Chairwoman Benitez-Thompson:

When we are talking about the Housing Division itself, are we talking about public sector housing or is it a mix of public/private? Talk to me about the scope of the Housing Division as it stands currently.

Jim deProsse:

The Housing Division of the State of Nevada is charged with overseeing many federal programs that do specifically address low-income housing programs, as well as low-income housing projects. That is the primary role of the agency. We do that through a lot of public funding, bonding, and working with developers to create projects. What dovetails nicely in a lot of ways is in the manufactured home community, many of the constituent residences are in parks and they are, in many cases, lower income. There are similar programs, such as rent subsidy programs in the Manufactured Housing Division, as well as rent subsidy programs in the Housing Division. There are some parallels between the two constituent groups.

Bruce Breslow:

Over the years, the focus for the Housing Division has been with affordable housing. It does not necessarily mean that is the only thing they can focus on. There are a lot of bonding programs and projects that come forward. There is going to be a proposal in the next year or two to do some veteran housing projects and things like that. By bringing Mr. deProsse in and him rebuilding the division by filling the current vacancies, we are trying to take a more global look

at housing. With that, the housing proposal that we will do a workshop on tomorrow from the director's office, plus some other projects, will take a global look at housing. The general focus has been on affordable housing within the Housing Division.

Chairwoman Benitez-Thompson:

Is the Manufactured Housing Division primarily private industry building and selling? I am just trying to establish the nexus between manufactured housing and public housing. You are talking about a bigger affordable housing umbrella, but I did not know if there was some type of merger on the horizon where more manufactured housing was going to be part of public housing programs.

Bruce Breslow:

The private sector brings forward the projects and uses the tools of the public sector to be able to build affordable housing. The housing projects that do come forward use a public/private partnership. Manufactured housing is a little bit different, but the folks in the same income levels, et cetera, are served. There are some parts of our state that have a dire need for more manufactured housing products, especially in the mining communities where they are really pushed to the limits. Whatever we can do to give them more support, more emphasis, to incorporate them in the housing indexes, and similar things that we do with the Housing Division and the director's office, the more strength manufactured housing will have in trying to improve their economic model when they try to finance new projects and bring products to some of those smaller areas, as well.

Chairwoman Benitez-Thompson:

Once again, this is just because I am not very familiar with all that the Housing Division does. When I think of the Housing Division, I think of all kinds of federal/public housing programs. When I think manufactured housing, I think of the private sector. Help me make more sense to how bringing those two together benefits them both.

Jim deProse:

The role of the Housing Division is currently not limited to just Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) and low-income housing projects. There are other programs. As an example, our Low Income Weatherization Assistance Program allows us to accept federal funds from the U.S. Department of Energy. Those funds are then redistributed through subgrantees to help people who fall within the low-income threshold, allowing them to make energy improvements to their homes. Today, that program, and the recipients of that program, are both low-income, single-family homeowners and low-income

manufactured homeowners. There is some crossover, and that is just one example.

Chairwoman Benitez-Thompson:

So I have a better understanding of what the Housing Division does, is the Manufactured Housing Division responsible for the safety and building of the manufactured homes? Yours is more administration of federal programs, but is there more regulation of that specific industry?

Jim deProsse:

The Manufactured Housing Division and manufactured homes, by definition, are built to a different code. The U.S. Department of Housing and Urban Development (HUD) developed the Manufactured Home Construction and Safety Standards, which we call the HUD Code, created in 1976. It created a code because none existed previous to that point in time for mobile homes. They came up with actual standards of construction, separate from standards of construction for a typical residential home.

Since these homes are built in factories and they fall under different assembly techniques and manufacturing techniques, those codes were created. The manufactured home, by pure definition, is a home that is built in a factory, delivered to a site, and built to a specific set of codes. The residents of those homes are much like many other residents throughout the state, some of whom are low-income, so there is a group of constituents that are very similar, but living in two different types of property.

Chairwoman Benitez-Thompson:

I would like to know the scope of the Housing Division and the scope of the Manufactured Housing Division. When you merge them together, right now all I see is that you are moving a deputy position, but I am begging more the question of the roles and responsibilities within those two divisions and how they come together.

Bruce Breslow:

All we are doing is moving one inside the other. The duties will not change and what they regulate will not change. They do inspections to allow people to move into manufactured homes and that will not change. They have rental assistance programs and that will not change. There is no change proposed except for the title of where it resides. Instead of me appointing the administrator of the Manufactured Housing Division, I would work in conjunction with the administrator of the Housing Division to appoint that position. There is no anticipated change in how it operates in any way.

Chairwoman Benitez-Thompson:

Are there any additional questions from the Committee? [There were none.]
We will now take testimony in support of the bill.

Tom Clark, representing Nevada Housing Alliance:

We very much support this particular piece of legislation. It was baffling to me that the Manufacturing Housing Division was in its own space and not under the Housing Division. I think this is cleanup legislation that really moves the division over. Based on the testimony of Director Breslow and Mr. deProsse, we very much support this legislation. We feel the regulations are not really going to change. The amount of authority over the manufactured housing environment is not going to change. We think this is fiscally responsible and a good thing for state government to do.

Gene Temen, representing Quick Space:

I am the president of Quick Space in Sparks, Nevada. We rent commercial coaches, which are really office trailers, and they fall under the jurisdiction of the Manufactured Housing Division. We have enjoyed a good, open relationship with the division since Jim deProsse has been there. We very much support the merger. There will be consumer divisions on both sides. We think it makes perfect sense and we support it.

Marolyn C. Mann, representing Manufactured Home Community Owners' Association:

We are here today also in support of this bill. The past several years, with Mr. deProsse being the administrator of the Division, we have seen vast improvements, not only in the procedures, but also in new staff appointments. Should this bill pass, we feel very comfortable that we will remain in good hands, so to speak. I believe we all concur from the park side of the industry. Knowing the other people in the industry, I think we all feel the same.

Tom Clark:

If I might add, we talked about Mr. Breslow and Mr. deProsse, but it really is not their personalities that we support to make this happen, it is actually the function of the offices that we support to make this happen. From a long-term perspective, I believe it is a good move for the state to consolidate these two departments.

Assemblyman Elliot Anderson:

This may be a question for Mr. Breslow. Do you think we will be able to recruit the same caliber of person if we make this a lower department with a lower salary down the line? I am imagining the director's salary would go down if it becomes a subdivision of Housing rather than its own division.

Tom Clark:

I do not believe so. I think the caliber of the people who are coming into these types of departments is going to remain the same, regardless of title. From an industry perspective, we are confident that Mr. Breslow or Mr. deProse, or whoever happens to be in those seats, can recruit and attract good people to oversee this particular industry. From a manufactured housing perspective, whether it is a mobile home, a portable building, or a commercial coach, et cetera, I think we are going to be able to get good folks overseeing the industry. I think the State does a very good job, not just with this particular industry, but with others in working with those that are going to be regulated to make sure that the people who are employed in those positions are of high quality and good stature. I have no concerns with that.

Chairwoman Benitez-Thompson:

Are there any additional questions from the Committee? [There were none]. Is there any further testimony in support of the bill? [There was none.] Is there any testimony in opposition of the bill? [There was none.] Is there any testimony neutral to the bill? [There was none.] I will invite the bill's sponsor back to the witness table for closing comments.

Assemblyman Ellison:

We introduced this bill because we followed what happened in the 76th Session. I went to the Legislative Counsel Bureau and put in my request because the two agencies actually marry together very well. In the meantime, after I got my bill request out, I find out there is another bill that is identical to mine. I got with the other sponsor of the bill and he asked me to go ahead and take it.

Chairwoman Benitez-Thompson:

I will close the hearing on Assembly Bill 276. I will open the hearing on Assembly Bill 406 and invite Assemblyman Duncan to the witness table.

Assembly Bill 406: Creates the Office of the State Auditor. (BDR 18-717)

Assemblyman Wesley K. Duncan, Clark County Assembly District No. 37:

Assembly Bill 406 would establish the Office of the State Auditor. It would be an independent and separate office. I know you heard Assemblyman Martin's bill earlier today, so I know there was a lot of discussion about auditing and the auditing process.

The genesis of this bill was during the campaign when I was knocking on doors. I heard from a lot of constituents, not specifically about a particular audit division, the Legislative Auditor, or the Division of Internal Audits, but there is

a general sense that somehow government is not accountable, it is not transparent, and it is not responsive. When I was elected, I wanted to make sure I somehow animated the voice of the constituents and would try to put a conceptual idea forward to try to solve or be part of the discussion about transparency in government. Assembly Bill 406 is my effort in doing that.

I want to turn it over to Amanda Schweisthal, who is our intern in the Nevada Assembly Republican Caucus. The Retail Association of Nevada (RAN) recently did a poll on this topic and she will share that with you, then I will continue with the presentation of the bill.

Amanda Schweisthal, Intern, Assembly Republican Caucus:

I am currently a University of Nevada, Las Vegas, political science student. When I did some research for Assemblyman Duncan to help him with testimony for the bill, we found that Public Opinion Strategies did a poll where 61 percent of Nevadans felt waste, fraud, and abuse are significant problems in Nevada's budget ([Exhibit E](#)). Assemblyman Duncan's bill could actually help fix that and could lead to a reduction in spending cuts and a mitigation of their effects on Nevada's programs. That is especially important where money is scarce and where it is important to fund education more adequately.

Assemblyman Duncan:

That was emblematic of what I was hearing in my district. A lot of people think, whether it is true or not, that government is wasteful and there are areas that can be cut. I did some research and I looked to other states. I know Nevada does auditing, and I want to put on the record that I am by no means casting aspersions upon any of the auditors. I am not saying they are doing a bad job. I reached out to Mr. Townsend this morning and told him I certainly do not think they are doing a poor job.

One of the states I looked to when I was looking at the way states ran their audits was the State of Washington. In 2005, they had an initiative petition that essentially empowered their state auditor with the ability, as an independent office, to do performance audits, not only at the state level, but also at the county and city levels if they were receiving state funds. I looked at what Washington had done and I put in a bill draft request to do something similar.

What this bill does is establish an independent Office of the State Auditor. It would take the Legislative Auditor from the Legislative Counsel Bureau (LCB) and subsume that under the Office of the State Auditor. It would also take the Division of Internal Audits from the Department of Administration and put that under the Office of the State Auditor. The Office of the State Auditor would

have the power to do robust performance auditing, both at the state level and to any entity that receives state money, such as a school district or something of that nature.

I am going to turn it over to Jason Mercier of the Washington Policy Center in Washington. He worked very intimately with this process and he is going to explain the Office of the State Auditor in Washington and will go through what I believe are really amazing cost savings they were able to exact by doing very robust auditing services.

Chairwoman Benitez-Thompson:

Mr. Mercier is currently available by telephone.

Jason Mercier, Director, Center for Government Reform, Washington Policy Center:

It has been a fascinating hearing this morning. I have really enjoyed hearing your presentations on Assembly Bill 327, as well as Assemblyman Duncan's work on Assembly Bill 406. I believe a combination of these two policies that have been put before you today would help Nevada have a really good accountability, efficiency, and independence review for your programs.

As Assemblyman Duncan mentioned, in 2005, the people of Washington passed a citizens' initiative. It passed statewide with 56 percent of the vote. What the initiative did was give our independently elected state auditor the authority to do robust performance audits. This was a power that the state auditor had been requesting for decades, but was denied the ability per statute. That is why it took a citizen's initiative to grant this authority.

The distinction between a performance audit and what you would be used to your auditors doing, such as the accountability, the fiscal loss, and the Comprehensive Annual Financial Reports (CAFR), et cetera, is that it gets away from just the question of accounting for the money agencies have been appropriated, their accountability to state laws, and to the policy implementation of how effective and efficient the agency was in utilizing those funds. What kind of return on investment is the agency providing to the clients of those services, as well as to the state's taxpayers?

If we look at the components, the arsenal if you will, of how a state can be accountable to its citizens, independence is critical. Whether it is with providing this authority to an independently elected controller, comptroller, or creating a new office of state auditor, that is a vital component. I think we heard some of that testimony this morning on A.B. 327. Providing a whistleblower protection for state employees to have the ability to communicate freely with

the state auditor or controller on abuses they may be witnessing; a robust fraud program; a compliance program; open government records; open meeting laws; and, perhaps the one that can provide the most return on your investment, a performance audit. This is a brand new law for the State of Washington. We have only been doing it since 2005. In that time, our state auditors conducted 50 performance audits of over 100 state and local programs and identified, in that five-year period, \$1.3 billion in savings. Of those 1,500 recommendations the state auditor made, 86 percent of them have already been implemented. The State of Washington and local governments have already realized \$833 million in savings or additional revenues since this process started.

If you look at the context of the Great Recession and the damage it has caused state budgets, the ability to identify \$833 million in performance savings was a blessing to the state and allowed us to not have to raise additional taxes or make additional cuts.

The key to effectiveness of a performance audit program is the independence of the auditor. That is why it is very important, whether it is giving the authority to your independently elected controller or creating a new Office of the State Auditor, that independence is key. While the State of Washington does have a Legislative Auditor, the scope of those audits are directed by the Legislature. Sometimes, politically sensitive or favored projects may not receive the review they are in need of. This is where, by having the independent authority for the state auditor or controller, they are able to look at local governments as a full enterprise and identify those areas where savings could be achieved. I believe the Nevada Policy Research Institute (NPRI) has provided some information on some of the audits that have been undertaken ([Exhibit F](#)). Perhaps the one that helped move the needle the most in Washington is, since prohibition, we were one of the liquor control board states. You could not purchase liquor at a grocery store; you had go to a state store. The auditor took a look at this issue, identified that this was a potential revenue generator for the state if they were to privatize the market and, in fact, the result of that audit resulted in the citizens of Washington privatizing the state's liquor monopoly and we are starting to see some of those revenues come in to help provide funding for public safety and other important programs. [Mr. Mercier provided a copy of Washington's Annual Performance Audit Progress Report ([Exhibit G](#)).]

That is a brief overview of what we have done in the State of Washington. Our state auditor and his performance audit team would be happy to work with you as this process moves forward. I think a combination of Assembly Bill 327 and Assembly Bill 406, putting these policies together in one independent elected constitutional officer, would give you great tools.

One final thought, something that our state auditor has been working for but has not yet been able to get accomplished, is to make his office a nonpartisan office. If you look at the activity of an auditor or a chief financial officer, that is really not a partisan function. As you move forward with this, hopefully you will consider making it a nonpartisan office. I would be happy to answer any questions you may have.

Chairwoman Benitez-Thompson:

Are there any questions from Committee members?

Assemblywoman Neal:

Assemblyman Duncan, did Mr. Mercier help you draft this bill?

Assemblyman Duncan:

Actually, no. I took the concept and then I turned it in to LCB. As you can see, I got it back very late in the process and I am the only sponsor on the bill. I have sent it to Mr. Mercier to analyze how similar it is to theirs.

Assemblywoman Neal:

In section 37 of your bill, you have an auditor as part of Child Welfare Services and you want reports concerning the child, the manner in which the case was handled, and any services that were provided to the child if there was a death or near fatality. I am trying to understand the connection to the Washington audit report, which also had a crime victims programs component. They felt there was an overlap to deal with how the monies were being used. I am trying to understand why you have section 37 in the bill and if it came from the crime victims programs component that Washington had in their audit report.

Assemblyman Duncan:

Section 37 is actually a function of what was going on in the Legislative audit. This bill now basically makes it a state office that would move under the purview of that office. To answer your question, it was not in direct response to what was going on in Washington.

Chairwoman Benitez-Thompson:

Section 28 gives the Governor the ability to mandate the state auditor to audit nonstate agencies. The language rolls into child welfare and group foster homes. Is this indicating that the Governor could mandate audits at the county level, whereby the county agencies are performing these functions and the audit would be able to reach down to the county level for these types of services?

Assemblyman Duncan:

Yes. If the county agency is receiving State money, that would empower the state auditor to be able to do performance audits on those entities.

Assemblywoman Neal:

I have read some of the Legislative audits, but what has caused me concern is in section 37, subsection 1 on page 12, line 39. What do the records concerning how the case was handled and the manner in which the case was handled have to do with the improper financial actions that may be in the purview of an auditor?

Assemblyman Duncan:

That is a very good question. It is my understanding that this is a function of the Legislative Auditor now. That is being moved over to the newly created office. Certainly, the intent behind it would be to investigate anything that is related to financial expenditures and not necessarily the specifics of what happened in the case.

Assemblywoman Neal:

I have a suggestion to perhaps help clarify this. Maybe draw a stronger nexus between the contractual obligations of the agency and then put them within the purview of this new state auditor. The way this language reads to me, you are getting into something that may not be the state auditor's duty. I kept looking under the statute for the repealed sections on what was taken out and what their framework and scope were, but I could not find it.

Assemblyman Duncan:

I appreciate that feedback and would absolutely be willing to work to correct any sort of questions you may have.

Amanda Schweisthal:

Assemblywoman Neal, there were two reports from Washington in June 2012 by the previous auditor. I can get you that information after the meeting if you need it. There were significant findings in both school districts and child welfare services that show there were unnecessary costs. I am not a lawyer, but maybe that might be where the wording is at least intended to provide that if there was an accident or fatality involving a child that is through any of the services mentioned in sections 30 through 37, the unnecessary costs could perhaps be prevented by the enacting of the state auditor's office.

Chairwoman Benitez-Thompson:

I want to clarify your legislative intent. Section 5 provides for a state auditor who should be elected and it looks like it will be a statewide office.

However, in a number of different sections, it looks like the elected state auditor will actually take a lot of direction from the Governor in terms of what can be audited. Section 10 says the Governor shall direct the state auditor in their investigations, judgments, and findings and can direct the state auditor to do audits at the local level. Talk to me about the level of autonomy, as the bill's sponsor, that you really want this office to hold. Is your intent for them to be a nonpartisan office selected by the people and who act at their own will or is the intent for them to act at the will of the Governor?

Assemblyman Duncan:

My intent for this bill is to allow the auditor to be as independent as possible. Certainly, if the Governor had areas he wanted to investigate or audit, he could ask the independent state auditor to do so. My legislative intent in this bill, and I want to make it as clear as possible, is to create that independence. That is also why the intent of the bill was to take auditors away from the Legislative Branch and also from the Department of Administration and put them into a single independent auditor's office.

Chairwoman Benitez-Thompson:

Should we expect amendments coming from you, as the bill's sponsor, about reassessing how much direction they take from the Governor, or would we be reading this language as is?

Assemblyman Duncan:

I would certainly entertain any amendments to make that as clear as possible because that is certainly the intent. I want to follow the model that the State of Washington has used in terms of that independence. I would love to be able to work with people to try to make that as clear as possible.

Chairwoman Benitez-Thompson:

In section 5, subsection 1, your bill states the state auditor must be elected. In section 6, subsection 2, paragraph (a), it states the state auditor can appoint an unclassified deputy state auditor. Section 8, subsection 1 provides an annual salary for the state auditor. However, when I read section 9, it looks like the rest of the office would be staffed through contract work. Would the office have only the auditor and the deputy and then everyone else would be hired on contract, as needed, to perform the duties of the office?

Assemblyman Duncan:

Section 9 indicates they "may" contract for services. I would like to clarify the intent. It is essentially taking all the employees from the other agencies and putting them under one office. I certainly am not trying to fire employees or get rid of anyone. I just want to create a more independent office, taking all of

those employees and putting them under one office to do more robust audits. The state auditor does have the power, if he sees fit, to contract for services if the need arises.

Chairwoman Benitez-Thompson:

Thank you for clarifying that. Your intent is to take the existing staff in the Legislative Counsel Bureau and in the Executive Branch office and bring them together as one, correct?

Assemblyman Duncan:

Yes.

Assemblyman Munford:

Does your bill involve whistleblowers if someone had a concern about what is going on in certain entity? Your bill goes into municipalities and local government. If one of the employees had a concern and felt an investigation should take place, do you acknowledge in your bill what a whistleblower has to say?

Assemblyman Duncan:

In terms of the state auditor reaching into the municipalities, it would only reach to the municipalities and the counties if state money was appropriated to those municipalities. I do not want there to be the idea that the state auditor is going to be in everyone's business if there is not state money involved.

I know Assemblyman Martin's bill, Assembly Bill 327, had a large whistleblower component. My understanding is that currently the state controller has a telephone number on their website that people can call. It is also my understanding that it is not used much. This bill does not specifically deal with whistleblowers. If I could work with Assemblyman Martin to put together a bill that makes sense for Nevada, I would absolutely be open to doing that. I think it is important for actual government employees and people in the public, if they see issues with transparency or wastefulness, to have an avenue to be able to reach out and do that. That would be something I would absolutely entertain as part of the bill.

Assemblyman Stewart:

My question is for Mr. Mercier, if he is still on the telephone. Could you refresh my memory on those figures you mentioned? I believe you said \$800 million had been saved since 2005 with your auditing system.

Jason Mercier:

Since 2005, the auditor has identified \$1.3 billion in savings and of that, \$833 million has been realized.

Assemblyman Stewart:

Are you still working on the other \$500 million?

Jason Mercier:

This may get to some of the previous questions about scope of audits and independence, but the state auditor is obviously not a lawmaker. He does not set policy; he makes recommendations. When these performance audits occur and he identifies either best practices or potential policy changes, it is up to the legislative body to determine whether or not they want to enact that or pursue a different policy. On some of those, the Legislature has decided to take other options or they are still exploring how they want to pursue that.

One of the most important features of the law is the requirement, once a performance audit has been issued, that the Legislature hold a public hearing and that ensures these reports do not end up on a bookshelf somewhere, and there is the opportunity for the Legislature, the auditor, and the public to have a dialogue about the findings.

Assemblyman Elliot Anderson:

I was looking at the provisions and I am a little worried about getting rid of the Legislative Auditor. Everything the Legislative Auditor does is not financial. Mr. Combs can correct me if I am wrong, but I have seen Legislative Audit Reports coming back where they are doing more than that. Under this bill, would we lose that other plane, besides the money?

Assemblyman Duncan:

I know that the Legislative Auditor does do performance-type audits. The intent of the bill would be to basically move the Legislative Audit under one branch, so you would not lose the function, but you would lose it under the Legislative Branch.

Also, to go back to Mr. Stewart's question, I think one of the very interesting things we have heard testimony on is when the state auditor has made recommendations to these different state and local government entities, the entities actually went with the recommendations 86 percent of the time. It seems there is a pretty good working relationship between them. The auditor is not going in and telling the agency to do something, but they are showing them the recommendation. I am not saying this happens, but instead of there being

a great audit done and it going no further than that, the state auditor would hold them accountable by having a working dialogue with the agency.

Assemblywoman Pierce:

Section 91 states this act becomes effective on January 1, 2015. However, in section 5, subsection 2, it states the state auditor will be elected in 2016. That seems to be a problem.

Assemblyman Duncan:

The intent would be to start getting the Office of the State Auditor set up. We would basically be moving the auditors from the Department of Administration and from LCB. The election would then take place in 2016 and that person would then take over. There may be an interim person in charge until the actual election takes place. Again, I think to have a nonpartisan auditor would be the best way to do it.

Assemblywoman Pierce:

I have some heartburn about creating another elected office, just because I think citizens have a hard time keeping up with what we do and who we are. I am wishing we could move in the other direction and make some jobs just regular civil service jobs.

I think it is really important that when we are reaching out to other states for things that look like they may create efficiencies, we need to remember that we already have, by a very large margin, the smallest government in the country. If we had the size of government today that the State of Washington has, we would have to hire 23,000 government workers. It seems to me that we should not be looking for the amount of savings that other states get because other states simply have massive governments compared to ours.

Assemblyman Duncan:

To your first point, I am willing to work with all the stakeholders to increase the efficiency or to empower our auditors more. I had just seen a conceptual model that worked in another state and I thought it might be something to shoot for. I wanted to have the dialogue and the discussion about it.

To your second concern, I understand that as well. Again, I was trying to animate the voice of the concerns I heard when I knocked on a lot of doors. I am a reservist and I was active duty in the U.S. Department of Defense, so even in my experiences in the Air Force, I think there are always areas where we can streamline and make things better. I think the reality now is we have finite resources and we have a lot of different areas of government that other people would arguably like to put more money into. If you can save money in

one area and allocate it in different areas, it is something I want to at least look at.

Chairwoman Benitez-Thompson:

I have one additional question to clarify your intent. In section 11, which falls into sections 12 and 13, it looks like the work that the state auditor does is supposed to remain confidential. I know at some point in the audit process there is an actual report that is given to the public or members of the public, but I do not necessarily see that language specifically. It may be later in the chapter where it is outside the purview of this specific bill language, but could you clarify your intent, as the bill's sponsor, that the reports would actually be made public and would not be kept confidential?

Assemblyman Duncan:

The intent here, once you get further into the bill, is once the Office of the State Auditor is able to identify things they see as inadequacies, it then goes directly to the agency so they are made aware of the report. The intent is certainly not to make all the reports confidential. I hope that answers your question.

Chairwoman Benitez-Thompson:

I see in section 14 where the state auditor will prepare a report for the Governor and the Legislators. I just wanted to make sure that it was going outside of just one agency head and was actually going to be a very public document, accessible to all, and reported back to the Legislators and the Governor.

Assemblyman Duncan:

Yes, it does. It goes to the Governor with copies to all the Legislators and, of course, to the agencies involved. It is a very public document.

Amanda Schweisthal:

Section 27, subsection 1 states that any person who conducts a performance or financial audit must provide a copy of the audit report to the state auditor within 90 days. Section 27, subsection 3 states the state auditor must publish a report of the findings within 30 days on the state auditor's website.

[Vice Chairwoman Neal assumed the Chair.]

Vice Chairwoman Neal:

I have three questions. The first one is more for clarification in section 23, subsection 1, where it states, "Each state agency which is awarded a federal grant" Was it envisioned at all to coordinate through the Office of Grant Procurement, Coordination and Management, which was created in 2011,

to establish what their relationship would be to monitor and enforce grants that they take on?

Assemblyman Duncan:

My intent would be that the Office of the State Auditor would be able to have the power you just talked about; to be able to look at the grant money and see where it is going.

Vice Chairwoman Neal:

Is there going to be coordination through the Office of Grant Procurement, Coordination and Management? It is probably within their purview to monitor the money also, so they could have a nexus between this new independent auditor so there is not a duplication.

Assemblyman Duncan:

I think that is a great point and is not one I thought through. The independent auditor would be able to do a performance audit of the entities, so they are not going to be working in concert with the Grant Office, but they can come in and do an audit. I do not see it being duplicative in the way you stated.

Vice Chairwoman Neal:

My next question concerns section 24, subsection 3, where the Governor is taking on additional duties of choosing to contract with a firm to perform an audit. That means we will now have an external group of auditors. In section 24, subsection 1, it states the Governor may require the state auditor to conduct or may choose to contract with a qualified accountant to perform an audit. What was the thought behind having external auditors become a part of the process rather than using the internal mechanism we had in place?

Assemblyman Duncan:

In section 24, subsection 1, we use the word "may" rather than "shall." If the auditor is busy doing other things—for example, if a huge federal grant is coming in and the grant is contingent upon us taking certain actions—we want to ensure that we can hire a team to make sure we are doing things correctly. We would not have to pull resources from the auditor's office; the Governor could actually hire someone independent to do a specific task. That was the thinking behind that section.

Vice Chairwoman Neal:

My third question concerns section 26, subsections 5 and 6, which speak to nonfeasance. The language in subsection 6 states a person who is guilty of nonfeasance loses their employment. Who is the third party adjudicating this

and what is the intent of "any other remedy or penalty?" How broad is the remedy and how broad is the penalty?

Assemblyman Duncan:

I do not have a really good answer for you. The way the bill reads right now, there is no adjudicative body, so that would be something that I think would need to be addressed.

[Chairwoman Benitez-Thompson resumed the Chair.]

Chairwoman Benitez-Thompson:

Are there any additional questions from Committee members? [There were none.] I will open testimony in support of the bill.

Geoffrey Lawrence, representing Nevada Policy Research Institute:

We are very supportive of the concept they put into place in Washington in 2005. In fact, I have provided an exhibit that summarizes some of the more significant audits Washington has done ([Exhibit F](#)). As Mr. Mercier mentioned, they have done about 51 audits since the office has been in place and identified \$1.3 billion in potential savings.

One thing that is worth mentioning is part of the reason only \$833 million has been realized is not only because 15 percent of the recommendations have not been adopted, but also because these savings cascade over time. If you have a recent audit, six months to a year old, even if they had implemented the recommendations, they may not have realized the potential savings. These things can accrue over time and we actually expect that number to go up.

If you look through the exhibit, there are some interesting things. They have been averaging 10 to 12 new audits per year and have come up with some new information that is not on this exhibit.

It is worth noting that there are very good components to both this bill and Assembly Bill 327 that Assemblyman Martin presented. I think some type of merger between the two bills might be productive. I like the idea of a state auditor, but if you want to consolidate these functions into the Office of the State Controller, it would ultimately fulfill the same objective. I also like the idea Mr. Mercier mentioned about making the office nonpartisan because an audit function is truly a nonpartisan function, so it makes a lot of sense.

I think the key element to this particular bill, which we highly value, is the heavy focus on performance audits. Performance audits are different than financial audits because they focus on not just whether you are spending money in the

way you are supposed to, but whether you are spending money efficiently and realizing cost effectiveness for taxpayers. In addition, the independence that is inherent in both of these bills is important. One valuable component of this is it does extend to local governments that accept state funds. Our current audit functions at the state level are somewhat limited in that respect.

I personally read every public audit that is published in Nevada. The Nevada Policy Research Institute publishes a booklet every year, called the *Nevada Piglet Book*, which you are probably familiar with. It basically comes from all the audit reports. I spend a lot of time doing that and it is somewhat boring. The point is, there are only a couple of local governments in the state that have an internal auditor who does anything other than Comprehensive Annual Financial Reports (CAFR). Those local governments are Clark County and the Cities of Las Vegas and Henderson. The City of North Las Vegas had an internal auditor who did these types of things for about a year, but they eliminated the position. There is nothing like this in Washoe County or in the rural counties across the state. To have a state office that can lend this type of service to local government agencies is highly valuable and definitely not something that should be overlooked. To Assemblywoman Pierce's point earlier, I think it is worth mentioning that Nevada's state government is smaller than most, however, our local governments are also larger than most. If you could extend that audit function down to more local governments, there will be a bigger impact.

Assemblywoman Neal:

I know you watch a lot of the bills that come through this body, and you may be aware there is a bill that has been introduced regarding nonpartisan elected positions. I do not know if it was an Assembly Bill or a Senate Bill, but A.B. 406 may fall within the scope of that bill. If so, the new state auditor position may not qualify as a nonpartisan position.

Geoffrey Lawrence:

I am not aware of that, but I will definitely look into it.

Assemblyman Livermore:

It has been interesting sitting here and listening to the two bills and how they could interact with each other. I would like to talk a little bit about local governments. I served 12 years in local government in Carson City. During that period of time, we established an audit committee, appointed individuals to the audit committee, and we established an audit plan. When local revenues started to decline, the decision was made to outsource the auditor. That policy still exists today and they are spending money to outsource their audits. I am not sure your thoughts about local government wishing to receive audits from

the State is quite accurate. Local governments think home rule, and home rule is what they wish to do. I cannot speak for all of the local governments, but I have heard this from some of the local governments.

Geoffrey Lawrence:

I appreciate your comments and I understand your concern. A lot of administrators appreciate getting performance audits because they also receive suggestions about how to run things better to get a better bang for their buck. The issue is that most local governments have either never implemented a performance audit strategy or cannot afford it with their current finances. If the state could lend that expertise, I think in most cases local administrators would probably value the advice.

Chairwoman Benitez-Thompson:

Are there any additional questions from Committee members? [There were none.] Is there any additional testimony in support of the bill? I will open testimony in opposition to the bill.

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts:

We have a concern with the way the Judicial Branch is included in this bill as written. We have pointed it out to the sponsor and we look forward to working with him as he moves forward on this bill to rectify the problem.

Chairwoman Benitez-Thompson:

Are there any questions from Committee members? [There was none.] Is there additional testimony in opposition to the bill? [There was none.] I will accept testimony neutral to the bill.

Richard Combs, Director, Legislative Counsel Bureau:

I hope you realize what a difficult position I feel I am in at the moment. One of the things we strive to do for all of you is to make sure we are not ever testifying in favor or against any legislation. I am under the neutral position and it is generally the way I feel about it. This affects the Audit Division at the Legislative Counsel Bureau (LCB) to such a high degree, I felt I needed to make sure I told you how this bill would affect the Audit Division and a little bit about why, historically, we have been set up the way we are set up so you can use that in your policymaking decision going forward.

As has been indicated, currently the Audit Division is the longest standing audit body in the state. I heard the testimony about making this a nonpartisan office. I just wanted to let you know, you currently have that with the Audit Division at LCB. There are no partisan positions at LCB and the audits that are conducted by the LCB Audit Division are done in a nonpartisan manner.

When the LCB Audit Division was set up, obviously much guidance was looked to from government auditing standards. Those standards provide a framework for performing high quality audit work with competence, integrity, objectivity, and independence. Independence is the one I want to focus on because that seems to be the word that was used a lot today.

Basically, these audits are done to help improve government operations and services. Currently, generally accepted accounting standards contain requirements for guidance for dealing with ethics and independence. A government audit organization, which is what our Audit Division is, can be structurally located within or outside the audited entity. Audit organizations that are external to the audited entity generally report to a third party. The structure we have decided to go with up to this point in Nevada is that you have an audit organization that is auditing Executive Branch agencies, but it is not located in the Executive Branch; it is located in the Legislative Branch. That is the nature we have provided for independence in our auditing in the past and the reason it was structurally set up that way.

For internal audit agencies, there is always a structural threat that placement within the governmental entity, in combination with the structure of the government entity itself, will somehow affect the independence of that audit unit. Maybe the best-case scenario is for the auditor to be completely external, to be separate, possibly even having state auditors reviewing the local governments and the federal auditors reviewing the state governments. That would be the purest definition for independence you could get. I think the next step is what we do. We have one branch of government, unaffiliated with the Executive Branch, reviewing the programs in the Executive Branch.

That is not to say that the idea proposed here is not independent. I think it is. One of the things the audit standards provide is if you have an internal organization, and I would consider Assembly Bill 406 to be setting up an internal audit organization because although it would be a new position, it would be located in the Executive Branch, which is the same branch in which the agencies that are going to be audited are located, one of the safeguards that the auditing standards say you can put into place in that kind of situation, would be to make the person who is performing the audits be accountable to the public. In this particular case, I believe that is why states like Washington have decided to make the position an elected official. I think that is one of the other safeguards if you are going to have an internal audit organization.

For policymakers like yourselves, you may want to decide whether or not that is the route you want to go or whether the system you have is the best. Currently, our state auditor does not have any concern about having to run for

reelection every four years and devotes his full time and attention to the work at hand of auditing state agencies. Obviously, with an elected official, as you are well aware, some time and effort does have to go into running for office when your term is about to expire. Again, I am not saying that is good or bad, it is just a difference between the two routes states have taken in this area.

I did a little research for you to try to give you some help. Currently, there are approximately 37 appointed state audit officers and there are 19 that are elected. Thirty-one state audit agencies basically report or belong to the Legislative Branch and 25 currently belong to or report to the Executive Branch. Again, I am not suggesting one is better than the other, I just wanted to give you some idea of what the numbers are out there in the other states and what other states are doing, especially since a lot of the conversation today was about a model based off what Washington does.

One of the other things I wanted to clarify is there were a lot of questions about the new language that is in A.B. 406. I just wanted to point out that I think in drafting A.B. 406, what was done was that the LCB Audit Division is eliminated. You will see that in the list of repealed sections at the back of the bill. A lot of those sections that were repealed were actually created as new language in a different chapter for this new elected official. A lot of the language that you were going through in those questions you had for Assemblyman Duncan is already language that is in the statute and is followed by the LCB Audit Division. This bill merely moves the language to the new state auditor position and allows the state auditor to have the same duties and responsibilities as the Legislative Auditor currently has.

There are some changes. There are a number of red tabs where I went through the bill and tried to pick out where it looked to me like the authority of the Legislature was being transferred to the Governor. As you can see, there are probably eight or nine sections where the authority you currently have with the audit function located in the Legislative Branch would be transferred to the Executive Branch. That is really the only change in the new language. Rather than it saying "the Legislative Commission" or "the Audit Subcommittee" will make the decision, now the bill says the decision would be made by the Governor.

Assemblywoman Neal:

When you said there are portions of the bill that take some legislative authority and gives it to the Governor, what does that mean in terms of where you have delegated power to yourself and are now transferring it to another body? There is a separation of powers issue, although miniscule. Why would we delegate our authority to the Executive Branch?

Richard Combs:

I really think in this case that is certainly a policy decision for you all to make, as to whether or not that is what you want to do. There is really no constitutional provision that would require the Legislative Branch to be involved in auditing versus the Executive Branch. Historically, this state has maintained the Legislature's independent role in conducting those audits. Clearly, this bill would take that out of the legislative realm and would place it in the Executive Branch realm.

Assemblywoman Neal:

So the effect would be the Executive Branch auditing themselves with no independence. Technically, you would have this elected official, but that elected official is reporting to the Governor and getting direction from the Governor, so there is no independence.

Richard Combs:

I certainly do not want to disparage the system that Washington has because I do not know the particular similarities between what is in A.B. 406 and what is in the State of Washington. However, I would say in A.B. 406, the way it is currently drafted, there are a number of instances where the elected state auditor is taking some direction from the Governor. That might be something, if you were looking at doing something similar to A.B. 406, you might want to look at from a policy standpoint. You could say you are going to create the position, but we are going to try to find ways to increase the independence of that position as we go forward.

Assemblyman Stewart:

The direction of the Governor to any elected official can be ignored or accepted, is that not correct? If the Governor gives direction to the Attorney General or the Secretary of State, he has no authority to enforce his suggestion.

Richard Combs:

I think you are correct. This one is somewhat different in that it is not a constitutional officer, as the others are. This would be a statutory office. The instances I was referring to are more about deciding who is audited and what is done with those results. It appears to be a responsibility that the Governor has in this bill. Again, I am not even sure that is necessarily for what the goal was or if it is at all similar to what goes on in Washington.

Chairwoman Benitez-Thompson:

I will invite the bill's sponsor up for closing comments. I do appreciate, with the bills we have heard today, that we are doing our jobs as legislators in trying to think about ways to make government more productive and more efficient.

To all of the bill's sponsors today, thank you for your due diligence in your legislative role and for the thinking you have put into these bills.

Assemblyman Duncan:

I really appreciate you entertaining my bill and also listening to Assemblyman Martin's bill. I thank Mr. Combs for sharing his neutral concerns with the bill. I do want to make clear, because I know there is a discussion, especially with us being in the Legislative Branch, about giving up certain powers to other branches of government. The intent behind the bill, and I think you see this borne out in Washington, is for that statutory officer to be very independent. Just as Assemblyman Stewart had pointed out, there can be recommendations made, but at the end of the day, that independent auditor would be basically armed with the ability to do robust performance-type audits and to make recommendations to different state entities. That is the intent behind the bill. I have reached out to Assemblyman Martin and he has reached out to me. We have been talking about ways that we can possibly put the two bills together in a working fashion.

I am certainly sensitive to Assemblywoman Neal's question about the separation of powers. It is not really separation of powers in terms of a constitutionality question, but in terms of giving up authority to another branch. I am in the Legislative Branch and maybe giving authority to someone else, we might be sensitive to that. I definitely want to have a discussion about that. If we believe the best policy decision is to leave it in the Legislative Branch and to see if we can give them more robust power, maybe that is a discussion we can have. I would love to be able to work with all the stakeholders and see if we can put something together.

I want to address the constitutionality question that the Eighth Judicial District Court came up with. I will talk with them and work with them to work through their concerns.

Assemblywoman Neal:

I like your bill. Typically, I have a lot of questions, I get into the details, and I get into the language. Mr. Combs brought up a question I had not actually thought about, so I went further with him. Overall, I do not feel this is a bill that creates systemic issues. I wanted to share that with you.

Assemblyman Duncan:

I thought your questions were fair and they are ones I want to be responsive to. My intent is not to give the Governor more power, but to make this an independent seat. I wanted to model it off Washington because I saw they had

fantastic results and I thought it would be a good discussion point for us here in the Legislature.

Chairwoman Benitez-Thompson:

I will open the hearing for any public comment. [There was none.] This hearing of Assembly Committee on Government Affairs is adjourned [at 10:56 am].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 4, 2013

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 327	C	Assemblyman Martin	State Accountability Act presentation
A.B. 327	D	Susan Rosseter Hart, Office of the Controller	Written statement from Kim Wallin, State Controller
A.B. 406	E	Amanda Schweisthal/Assemblyman Duncan	POS Poll
A.B. 406	F	Geoffrey Lawrence, NPRI	Solutions 2013 sourcebook
A.B. 406	G	Jason Mercier, Washington Policy Center	Annual Performance Audit Progress Report