

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Seventh Session
May 27, 2013**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 2:10 p.m. on Monday, May 27, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Pat Spearman, Vice Chair
Senator Mark A. Manendo
Senator Pete Goicoechea
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Assemblyman Richard (Skip) Daly, Assembly District No. 31
Assemblywoman Dina Neal, Assembly District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Barry Smith, Executive Director, Nevada Press Association
Brian Connett, Deputy Director, Industrial Programs, Department of Corrections
Nicole J. Lamboley, Chief Deputy, Office of the Secretary of State
Mike Cathcart, Business Operations Manager, City of Henderson
Mary C. Walker, Carson City; Douglas County; Lyon County; Storey County;
Eureka County

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Mendy Elliott, Northern Nevada Development Authority
Karen Duddleston, Business Licensing Manager, City of Las Vegas
Carole Vilardo, Nevada Taxpayers Association
Erin McMullen, Las Vegas Metro Chamber of Commerce
Bryan Wachter, Retail Association of Nevada
Andy Belanger, Southern Nevada Water Authority; Las Vegas Valley Water District

Chair Parks:

We will open the hearing on Assembly Bill (A.B.) 31.

ASSEMBLY BILL 31 (1st Reprint): Revises various provisions relating to public records. (BDR 19-211)

Keith G. Munro (Assistant Attorney General, Office of the Attorney General):

This is a joint bill with the Division of State Library and Archives. It is an effort to improve the public records process. It passed the Assembly unanimously.

We presented this bill because the best way to improve the public records process is to have public discussion about it. The intent of this legislation is to provide procedures for members of the public who are seeking access to records and for agencies to respond to public requests in a timely and consistent manner. It is not a cure-all bill for the problems with the public records process; however, we are making small steps to create improvements and prompt further discussion.

Section 1 requires the head of each agency, bureau, board, commission, department, division or other unit of the Executive Department of State government to designate one or more employees to act as records managers for the agencies. These people will be responsible for handling requests for the public records of that agency.

Section 1 also requires the Division of State Library and Archives, along with the Attorney General's (AG) Office, to prescribe the form to be used for requesting a public record from an agency; the form to be used by an agency to respond to a request; and the procedures to be followed by the records managers to respond to requests.

These forms and procedures will go through the traditional regulation approval process in order to give the Legislature final approval of the process. This will be a default procedure. An agency may choose to develop its own form and procedures; however, an agency choosing to use the forms and procedures approved by the Legislature will know it is handling a public records request in an appropriate manner.

Section 1 further requires that each agency must make the forms and procedures available on the agency's Website to promote public access.

Section 3 sets forth, within the public records chapter, *Nevada Revised Statutes* (NRS) 239, a list of existing statutory exceptions to the public records law in order to let everyone know what they are and where to find them. Exceptions to the public records law appear throughout the *Nevada Revised Statutes*.

We propose that legislative staff compile the exceptions in one place within the NRS to describe clearly which public records have been declared confidential by the Legislature. These exceptions should be listed in one place rather than have them spread throughout 700-some NRS chapters. For lack of a better term, everyone should be reading from the same sheet of music. Section 3 represents a first effort to do so.

Senator Goicoechea:

I am concerned because it says actual cost can only be the direct cost of the reproduction and not include the research involved in finding a document. I realize this only pertains to State government and not local government; however, I am concerned about where this will go. There is inherent cost with searching records.

Mr. Munro:

That is not part of the bill. We have left the actual cost to your staff to determine; however, many agencies add personnel costs.

Barry Smith (Executive Director, Nevada Press Association):

I am speaking in support of A.B. 31. The intent of this bill is to make records requests easier and less bureaucratic. I do not want anyone to think that the designation of a records official or the provision of a form should in any way complicate simple requests. This bill will provide a protocol, a means to standardize the process to make it easier, not more difficult. I do not want

anyone to get the idea that you cannot enter an office, ask to see a record and get a copy of it, the normal kind of thing. However, there is no process. This is an attempt to get started on how to deal with requests.

The other thing is that long list of exceptions. There is no intent to add or subtract anything, make anything confidential that is not designated as such now or to release anything that is confidential. It is just as Mr. Munro said, it makes sense that the exceptions are compiled somewhere. Frankly, when we started compiling the exceptions, the Legislative Counsel Bureau and the AG's Office should be thanked for doing all that work because there were more than we expected. There would be a comprehensive list of those exceptions in one place in the records statute.

Senator Goicoechea:

This only pertains to the Executive Branch.

Mr. Smith:

That is correct.

Chair Parks:

I agree with you that this is common sense and should simplify issues.

Brian Connett (Deputy Director, Industrial Programs, Department of Corrections):

We appreciate the attempt to satisfy many of the requirements we come across.

Regarding section 1, subsection 1 of the bill, the Department of Corrections (DOC) does not have the full-time or part-time staff resources for a records manager. We also do not see the vehicle through which we can recover staff costs for times when staff has to sit with people viewing records in order to ensure the records do not disappear.

The DOC does not get simple requests. For example, we received requests for one particular inmate; the press thought he had gained weight. We had a number of public records requests regarding what the DOC fed this inmate for the 18 months. We usually receive requests for multiple items over multiple years or multiple periods of time. For us, it has been no small task for part-time staff who have other duties assigned as their original jobs.

Senator Spearman:

Do you have anything in the DOC that uses technology administratively?

Mr. Connett:

We have an old technology system; however, many of the records in that system are confidential.

Senator Spearman:

Are any of the records in electronic form, or are all of them in paper form?

Mr. Munro:

Some may be electronic and some may be in paper form. However, Mr. Connett's testimony provides support for our bill. He is a member of an important Executive Branch agency. Everyone is clear that we want public records. We need to start on the task of how the agencies handle these things. That is what we are doing with this bill.

Senator Spearman:

Earlier in the Session, we heard from county recorders who were talking about entering and transcribing records electronically, and they had a process in place for redaction. Does this bill provide for that also?

Mr. Munro:

This bill does not speak to that directly. It requires an agency to develop a procedure. One of the procedures for reviewing public records is to determine if anything needs to be redacted. That would be done on a by-request basis.

Senator Spearman:

If records are electronic, does someone go through them and redact as needed?

Mr. Munro:

That could potentially be true. It depends on the situation.

Chair Parks:

Mr. Connett, I realize you probably have different types of requests for various information. The initial step in this bill is to create a process or a procedure. I realize that you could be inundated with requests quite easily. We will take your concerns under advisement.

Mr. Connett:

I appreciate Mr. Munro getting this project under way and starting dialogue for this process. It is something that has been needed. We appreciate that both the AG's Office and the Legislature is taking this on.

Senator Goicoechea:

I do not see where this bill is enabling. It says the agencies "shall" name the person and create the forms. That could affect the DOC and other agencies.

Chair Parks:

It does say designate one or more employees.

Senator Goicoechea:

Depending on what is requested, that could be a significant number of people in some agencies.

Mr. Munro:

Agencies are getting public records requests; almost a letter a day. We want them to pay attention that there are public record requests. We want them to have a core group of people and train them to handle the requests appropriately because they are doing that now. Let us take this seriously. This is an act from the Legislature to have public records.

I have submitted a letter from the Attorney General requesting your support of A.B. 31 ([Exhibit C](#)).

Chair Parks:

We will close the hearing on A.B. 31 and open the hearing on A.B. 139.

ASSEMBLY BILL 139 (1st Reprint): Revises provisions relating to the state business portal. (BDR 7-127)

Assemblyman Richard (Skip) Daly (Assembly District No. 31):

Assembly Bill 139 is the next step in the implementation of the State's business portal. The main thrust of the bill is to streamline the process for businesses to get all the proper licenses and other things they need to get from their first idea to their first sale as quickly and with as little fanfare as possible.

The business portal has been in existence for a while. This bill allows people to integrate their computer systems into the business portal. There will be a common business identification number. We want to have a free exchange or a greater ability to exchange common business information, such as names, addresses and other things that are entered repeatedly onto various forms for four or five different agencies. With the business portal, this would be done once and then passed on to the different agencies.

I understand that there are three friendly amendments. One is to streamline further and get rid of an affidavit process that will no longer be needed. Doing things electronically will eliminate that piece of paper. The other two amendments will make it easier for State agencies to participate and ensure that if confidential information is exchanged, it remains confidential in order to allow those types of internal processes to work properly.

This is the first step in the next stage of integration. Since this bill was heard earlier in the Assembly, we met with the agencies and worked out many of the issues. By the time you get finished with these three amendments, the bill will be soup with all the peas and carrots added, then it will go to the Governor. Things will be easier on the businesses in this State.

Nicole J. Lamboley (Chief Deputy, Office of the Secretary of State):

I submitted two documents called SilverFlume ([Exhibit D](#) and [Exhibit E](#)). These are screenshots of what SilverFlume, the name of the Nevada business portal, looks like. The first two pages, [Exhibit D](#), show the difference between where we were in February and what the home page looks like today. It may not appear to be different; however, we added a section of a Website on page 2 called "Why Nevada?" which explains the benefits of conducting business in Nevada, as well as "Want to set up a Nevada business but don't know how?" The latter is a checklist with five easy steps for a business to follow that will tell what type of process it needs to go through, depending on some simple answers to questions such as: Will you have employees? What type of business are you opening? We have implemented regulatory codes. If someone is opening a child care facility, the site will direct him or her to the licensing standards at the State and then help guide the person to, perhaps, the local business license requirements. The person would be able to understand the process for starting a business in Nevada.

Secretary of State (SOS) Ross Miller supports [A.B. 139](#) because this legislation is necessary. In 2009, the Legislature gave the SOS the authority to create the Nevada business portal. The idea was to make business-to-government transactions simpler and streamlined for the business customer.

[Assembly Bill 139](#) is designed to add more services to the portal. The policy reduces redundant and complex bureaucratic processes and simplifies the business customer's interaction with government.

Traditionally, government organizations have worked in silos, each designing and developing systems that work only for a particular agency. With the advent of technology, we are able to allow the customer to have a one-stop shop.

The one-stop shop is a common vision and until now has been voluntary. [Assembly Bill 139](#) requires some levels of integration or participation, and the impact of this legislation on the various entities depends on the definition of integration.

There are three levels of integration in this bill. The first is the common business registration, [Exhibit E](#). The common business registration is what we call CBR. The CBR is the common information that every entity collects about a business such as the name and location. We have reviewed a document created by the Legislature in 1993 called the Nevada business registration form, [Exhibit E](#), page 4. This was designed to be a one-page form that each business owner completed and carried with him or her to the various licensing agencies, including the Department of Taxation, Department of Employment, Training and Rehabilitation (DETR) and local business license agencies.

Over time, this single form became multiple forms because every agency had additional information it needed to collect. In some cases, information collected by the Department of Taxation or DETR was confidential. It contained things like social security numbers that local business licensing agencies and other agencies did not need to collect. Therefore, everyone moved away from the Nevada business registration form. With the business portal, we can secure that data and only transmit the data that each licensing agency tells us it needs to receive. If the agency does not need to receive certain information, such as the number of employees or the social security numbers, we do not need to pass along that information.

The first deadline in this bill is that by December 31, all agencies will begin accepting the CBR. This is what we call Level 1, which is the low-tech integration whereby we give the agency access and it can download a report to receive the CBR. It can choose to use the CBR data as it sees fit.

The next proposed bill deadline is July 1, 2014. That date is when agencies are required to report status to the Legislature and the State Board of Examiners on the process of Level 2 and Level 3 integration.

Level 2 integration takes the CBRs and transfers the information into the licensing agencies' electronic systems or databases. It would be an electronic transfer of the CBR data.

Level 3 is full integration whereby someone could process an application online through SilverFlume. That data would be transmitted to the licensing agency to which he or she is applying for a license.

One of the reasons we have worked with Assemblyman Daly and Assembly Speaker Marilyn Kirkpatrick on the reporting requirements is to ensure that people are at the table talking about the process for integration. We understand that many agencies may not have electronic processes. They may have antiquated systems that cannot be upgraded or they are in the process of planning for upgrades. Through this legislation, we are planning for the future.

Many people have talked about this being an unfunded mandate. There is a mandate for integration and there is no funding to this; however, there also is no penalty for failure to comply. The only requirement in this bill is if an agency cannot meet the first deadline of December 31, which is the acceptance of the low-tech report of CBR, the agency must seek a waiver from the State Board of Examiners indicating why it cannot receive the CBR through a paper report.

The other deadline, July 1, 2014, is for reports from the agencies about where they are in the process; that they have participated in the discussion with the SOS; that they are evaluating their system needs and capabilities. In the future, when there are upgrades planned for technology or enhancements to existing systems or the purchase of a new system, the agencies will be engaged with us and understand the technological specifications for integration.

As part of this process, we also have an interlocal agreement, which is designed similarly to a licensing agreement—such as when you sign for a cell phone, you download an application, and you see the terms of use. This is to ensure we maintain the security of the system and everyone is protecting the State-funded technology development.

We have great feedback from users on SilverFlume and interest from the business community about streamlining the business license process. The SilverFlume is designed to allow for a human work flow. For many local agencies, particularly the larger cities and counties, certain requirements have to be met, such as a fire inspection or a health inspection, depending on the type of business. This process allows a customer to go to a certain point when he or she has to schedule inspections, and then there is a human work flow piece that will allow the local agency to sign off on the process.

The technology is available. This is not what is called vaporware. It is real and is being used by the business community. We no longer have a separate online system in the SOS's Office. If you want to apply for a business license, file your articles of incorporation or your annual list of officers, you do that through <http://www.nvsilverflume.gov>. You can also apply for your sales and use permit through the Department of Taxation. We are working with a number of State agencies, as well as the regulatory bodies, to integrate this information to give people who are looking to start or expand a business in Nevada a one-stop shop for business-government transactions.

Senator Goicoechea:

Section 1, subsection 3, paragraph (a) says, "To the extent practicable"; therefore, technically, if an agency does not have the hardware or software to make this work, it is exempt.

Ms. Lamboley:

That is correct. We have had much discussion about what "to the extent practicable" means. Secretary of State Ross Miller assured local and state agencies that it means to the extent practicable. This does not automate a paper-based filing system. You have to have the technology in place. We are helping people plan for the future.

Senator Spearman:

How will this enhance the agencies that are already integrated, such as the Department of Taxation?

Ms. Lamboley:

You are talking about the Department of Taxation's independent legacy system. Therefore, the long-term plan is to allow the Department of Taxation and SilverFlume to be further integrated so it is seamless.

We need to do a couple things because of the Department of Taxation's rules governing privacy, confidentiality and access to those in an organization who can file and sign for tax documents. That is probably one of the things we are working with the Department of Taxation. This is not the silver bullet. It does not integrate everything at one time. We have to do it in a process that procedurally makes sense to the business customer.

The first amendment is the proposed amendment to A.B. 139 dated May 15 ([Exhibit F](#)) that we worked on with DETR to address concerns regarding the confidentiality of some records in the unemployment insurance module in the Employment Security Division. Federal requirements govern the exchange of certain information with agencies not authorized to use this.

This amendment states that nothing in section 1, subsection 3, paragraph (a), subparagraph (3) requires the dissemination or release of information by a State or local agency or health district that would be in violation of State or federal confidentiality laws. Depending on the type of collection of information, State or federal laws may govern the exchange of that information with various parties.

In order to allow for participation, we have discussed with many of the State and local agencies where we can reduce redundancies or move the statutes to allow technological exchange of data.

The second proposed amendment to A.B. 139 ([Exhibit G](#)) deletes language that allows county clerks to permit fictitious firm name filings even though the entity is not in good standing or issued a business license by the SOS. The county clerks actually brought this conflict to our attention regarding the qualification to do business in Nevada. This language in NRS 602.020 conflicts with existing law in Title 7 of the NRS, which deals with what is required of a business to be qualified to do business in Nevada.

We did the research on this legislation, and it was added by S.B. No. 350 of the 75th Session by the State Bar of Nevada, Business Law Section. We consulted with members of the Business Law Section on the necessity of adding this language in the 75th Session. They were not really sure why it was there and did not object to the removal of this language since they recognize that it creates a conflict with the law regarding qualification to do business in Nevada. This will allow county clerks to eventually automate fictitious firm names. It also eliminates what would be an exception to the rule that we would have to determine how to handle electronically.

Mike Cathcart (Business Operations Manager, City of Henderson):

I am neutral on A.B. 139; however, I want to address a couple of issues we have been working on as local governments. The first is the Memorandum of Understanding (MOU) ([Exhibit H](#)).

In the conversation we had with the SOS—when this was first heard in the Assembly—there was much misunderstanding of what the bill would be doing to local government regarding the speed of integration, especially electronic integration. From the City of Henderson’s standpoint, we were initially opposed to this bill and had filed a \$3.5 million fiscal note. That is what it would cost to integrate our system, which we are looking into replacing, but it is a long process because we are replacing our entire development services software. It is not just a business license software; it is an organization-wide software replacement that will take 2 years.

We were concerned that we would have to integrate our legacy system before the December 31 deadline. With the MOU, the SOS committed to us that we just needed to do the Level 1 integration prior to December 31. If we did the Level 1, which is the nonelectronic integration, and started using the CBR and allowed our local-level technicians to log in to SilverFlume and access data entered by business owners when they apply for their State business licenses, we would not have to acquire a waiver from the State Board of Examiners. We are required to do the Level 1 integration, which is addressed in the MOU.

Therefore, we are neutral, understanding what we have to do through the MOU. This has been reviewed by the City of Henderson City Council.

The second issue is the third amendment to A.B. 139 ([Exhibit I](#)) which proposes to delete NRS 364.110 and NRS 364.120. These are hard copy affidavit

requirements regarding fictitious name filings. With the Level 1 integration with SilverFlume, the hard copy or even the online application that many entities are using will no longer be necessary.

Mary C. Walker (Carson City; Douglas County; Lyon County; Storey County; Eureka County):

We support A.B. 139. Originally, we also had many concerns, particularly for the smaller, rural entities. Many of the smaller counties have old computer systems. It would cost between \$200,000 to \$500,000 per entity to connect with the SOS's system if it does a full integration.

However, in working with the SOS and Ms. Lamboley, we have an MOU ([Exhibit J](#)), which is very similar to the one that Clark County has. However, we added a paragraph, which states about section 9:

Nothing in this Act requires a local agency to upgrade its information technology system to comply with these requirements prior to the agency's normal system upgrades. If the agency cannot comply with the requirements, the local government will only be subject to the reporting requirements

We are pleased with this clarification and appreciate the willingness of the SOS's Office to alleviate the concerns of the smaller jurisdictions.

Mendy Elliott (Northern Nevada Development Authority):

I have submitted written testimony in support of A.B. 139 ([Exhibit K](#)).

Karen Duddlesten (Business Licensing Manager, City of Las Vegas):

Mr. Cathcart expressed our concerns well. The local entities in southern Nevada have worked with the SOS's Office to clarify where we are on A.B. 139.

Our goal is to understand what success is so we do not come before the Legislature not meeting your expectations. Assembly Bill 139 has three separate documents. The bill contains the definition of "integration," which appears to be full integration of local systems. Then there is the MOU. We have all worked on a proposed interlocal agreement that has three levels of participation. We want to be sure that we understand exactly what is expected of us and which level the Legislature is asking us to do.

The City of Las Vegas, through the interlocal agreement, is prepared and ready on Level 1 and Level 2 as stated by Ms. Lambole. To us, Level 3 is an entirely new computer system which is expensive and toward which we are working as quickly as we can. However, it will be a long time before we can integrate a business license system, which at the local level takes into account zoning and building permits, fire inspections and all those things that have to be integrated as well. We are a ways off from that. Our fiscal note lies with that level of integration.

The other issue on understanding what is success includes participation and looking at how we bring things into the business portal. The local governments in southern Nevada spent a great deal of time these past 2 years working to create a regional contractor's license based on a bill passed in the 76th Session. We synchronized all our systems to the State Contractors' Board so when a contractor goes into our building department, the local system checks the State Contractors' Board and local licensing and ensures that everything matches up and there is a valid license at both locations.

If we synchronize to the SOS's Office, we want to make sure the State Contractors' Board goes in before we do so there are no problems for those people who are pulling permits.

For us, participation is bringing our customers inside of what we do. We suggested a user's committee where businesses and agencies get together to make sure that from a practical level, not the technology level, we are pulling things together for the benefit of our customers.

I have also submitted written comments on A.B. 139 ([Exhibit L](#)).

Chair Parks:

I am presuming that the reference to a user's committee and the practicality of it has been an item of discussion regarding the work of local government entities as well as through the SOS.

Ms. Duddlesten:

Yes, it has. We proposed an amendment in the Assembly that would create a user's committee. In the interlocal agreement, there is a technical committee of agency representatives who will receive technical information about the progress of the portal so we can be ready to amend our systems.

We are talking about a larger picture of inviting the customer, making sure the pieces are going in logical order so we will not have criticism down the line that we did A when what someone needed us to do was B.

Ms. Lamboley:

Secretary of State Miller considered what they were talking about. That has been the process since we began and the Legislature authorized the creation of the State business portal.

Rather than putting it into statute, this is actually part of the discussion as we talk to the local agencies, not only to the subject matter experts such as Ms. Duddleston but also to the information technology teams that support their licensing processes.

The portal cannot integrate and simplify the process for the customer without the active involvement of the subject matter experts. The business portal by no means takes away the local jurisdiction's right to define what is licensed, how it is licensed and what are the licensing requirements. The local entities have the ability to do that via their ordinances. It does not require a local agency, such as Douglas County which does not have a business license, to create a local business license. Each of these things will be worked out with the participating agencies to determine their needs and requirements. In addition, where possible, we will collaborate. For example, if there is a regional group, it would be necessary to talk to that group as well as the individual local group. The SOS has committed to that. Concern has been expressed about future Secretaries of State; it would be in the best interest of any person who wants to see the success of the business portal to actively engage all levels of people in the process.

Chair Parks:

Am I to understand that this Memorandum of Understanding will be entered into by all jurisdictions at all levels?

Ms. Lamboley:

The MOU was brought forth by southern Nevada jurisdictions after a conversation with the Secretary of State on their concerns and expectations. There is no requirement that any local entity signs the MOU. As Ms. Walker testified, some of the rural cities and counties also desired to have MOUs. It is up to whatever each local jurisdiction feels is necessary.

The purpose of the MOU is to make the local agencies and their leadership comfortable with the expectations. The bill states "to the extent practicable," and everyone understands that in these times we have to address whatever technology is available and use it to the best of its ability if it can be modified. We have systems in the SOS's Office that are over a decade old with which we have problems. Therefore, to the extent practicable, we are integrating those systems. We understand what the local agencies are going through.

Chair Parks:

This does not have a specific timeline or deadline. This is an issue moving toward some greater good overall.

Ms. Lamboley:

The timelines in the bill specify certain things. The first is December 31 whereby agencies can start accepting the low-tech version of the CBR, which is a report. While everyone would love to see integration by the end of 2014, the second deadline recognizes that is probably not likely. Although in some instances it may occur, and we may have some Level 2 or Level 3 integration, depending on the agency. This is not just about local agencies; it is also about State agencies that may be prepared to integrate at different levels.

The only other requirement is that by July 1, 2014, agencies report back to the State Board of Examiners and the Legislature where they are in the process. If an agency advises us that the Board reviewed the report and it has funds or it does not have a business license and this is not applicable, that is the report. The idea is just to communicate and stay in a collaborative mode about where we are in the process. As noted, there is no penalty for failure to participate or to integrate because we recognize everybody is at a different level.

There has been some discussion in Washoe County, Reno and Sparks. They contacted us and asked what our specifications were so their request for proposal process for a new system could include those requirements. Whether they purchase a system now or in 1 year, the jurisdiction will have to decide and report back.

Chair Parks:

We have received a written statement on A.B. 139 from the Chair of the Southern Nevada Regional Planning Coalition and City of Las Vegas Councilman Bob Coffin ([Exhibit M](#)). We close the hearing on A.B. 139 and open A.B. 408.

I will now turn the meeting over to Vice Chair Spearman so I am able to testify at an Assembly Committee meeting.

ASSEMBLY BILL 408 (1st Reprint): Revises provisions governing business impact statements prepared by state agencies and governing bodies of local governments. (BDR 18-416)

Assemblywoman Dina Neal (Assembly District No. 7):

Assembly Bill 408 relates to business impact statements. This bill came about because during the interim, we found the business impact statements required by State and local agencies were not being completed properly. They had many empty spaces and not applicables. In one instance, the Department of Taxation received a statement that was not completed and did not discuss the business impact. When we held our hearing for the Southern Nevada Water Authority business impact, one entity copied another's statement—so it did not apply to that entity and the business impact did not relate.

This bill will strengthen the business impact statement. Section 1 is the most important part of the bill. *Nevada Revised Statutes* 233B applies to State agencies and NRS 237 applies to local agencies.

We have added language in section 1, which also applies to local agencies, saying a State agency must make a concerted effort to determine whether a proposed regulation is likely to impose a direct and significant economic burden upon a small business.

It was important to add the language "make a concerted effort." There is language in statute, but if we tell you to make an effort, then you will fill out the business impact statement in a way that helps us to understand there is an impact to a business. In section 1, subsection 2, paragraph (b), language was added that states that the State agency will "conduct or cause to be conducted an analysis of the likely impact of the proposed regulation on small businesses. Insofar as practicable"

The person who should do the analysis is the person in the agency who is most likely to have knowledge on the subject area that the regulation impacts. This was changed from the original language that called for an "independent" analysis. We found that there is not a specific person in any agency who does the analysis. Therefore, you cannot say "independent" because there were

questions: Who is independent? What is independent? Do I need a lawyer? You need a person in your agency who is supposed to fill out the statement and who knows enough about the issue to complete it. The added language is when a notice is posted for a hearing on a proposed regulation related to a business impact statement, the statement accompanies the public hearing agenda. This lets individuals know so they get a chance to read the statement before it is reviewed. If there is any kind of change to the business impact statement, there must also be an explanation of the revisions. In addition, the agency must provide reasons for why it came up with the impact statement. The director or other person responsible shall sign the statement certifying to the best of his or her knowledge that a concerted effort was made to determine if the proposed regulation has an impact on small business.

The same language applies to the local agencies, which is covered by NRS 237, found in sections 6 through 8 of A.B. 408.

Senator Spearman:

On page 3, where lines 16 and 17 say "not less than 15 days before," is there any wiggle room?

Assemblywoman Neal:

Not much. What are you looking for?

Senator Spearman:

Sometimes 2 weeks before is not much time for people who are preparing documents that are going to be made public because there may be changes at the last minute. If you make it available to the public and there are changes, are you penalized for posting those changes?

Assemblywoman Neal:

No, there is no penalty associated with this. In section 1, subsection 4, if the adopted regulation is submitted and the agency revises the regulation after preparing the small business statement pursuant to subsection 3, the agency must include an explanation of the effect of the change.

It says not less than 15 days before the workshop, so if a revision occurs 12 days before the workshop, it just needs to be cited in the hearing. The reason this may work out is because the AG had a bill addressing if there is a correction or change for a public meeting, you can cite that correction or

change on the agenda in the meeting. You will not run afoul of the Open Meeting Law or have a discussion on the agenda that was not agendized properly. If there were an issue of time delay, the AG bill would actually remedy that.

Carole Vilardo (Nevada Taxpayers Association):

The question of the 15 days is answered because in NRS 233B.061, which refers to what happens when the State agency has a workshop on a proposed regulation, the notice of the workshop must be posted 15 days prior and you are supposed to have the regulation. Therefore, this keys having that business impact statement with the regulation so you can address the business impact statement at the regulatory workshop. This has been problematic for us when we have not seen a business impact statement or the impact statement shows up after the workshop, or we get a copy of an impact statement that is posted with the agenda and the regulation, but when we get to the workshop there is no longer the posting for the impact statement. If you have not printed a copy of it or saved a copy, you do not have it.

This bill provides consistency and conformity to the original purpose of the business impact statement, and we support A.B. 408.

Erin McMullen (Las Vegas Metro Chamber of Commerce):

We support A.B. 408. We worked with Assemblywoman Neal over the interim to develop language to strengthen and clarify statutes in the Nevada Administrative Procedure Act, NRS 233B, and NRS 237 that regulates local government agencies and political subdivisions.

We saw many examples of impact statements that were not completed or inaccurate. This bill will strengthen and enhance the procedure that is supposed to be followed for these local governments and make sure that businesses know what is coming at them and the potential impact.

Section 7, which points to NRS 237, applies to the local government agencies. This is a particularly important provision because it allows the business impact statement to be considered on an agenda separate and apart from when the proposed rule is being adopted. As it stands now, there is one agenda item asking if the regulation would impact business, and the next agenda item is to either adopt or not adopt the rule—this defeats the purpose of a business

impact statement since there should be time to cure any negative impact if one is delineated in the statement.

Bryan Wachter (Retail Association of Nevada):

We support this bill. Businesses are looking for stability and the expectation that things will be done. The 15-day requirement is something plenty of boards and regulatory bodies are doing now, but the idea is to make it consistent.

For example, the Department of Taxation had a meeting on a proposed regulation. The impact statement said there were no impacts on small business, but about 40 or 50 businesses came to the table to tell of high impacts. Everyone had concerns with the proposed regulation, and at the next meeting, the business impact statement still reported no impact.

Things like this bill are good, and we are happy that we are moving forward in this direction.

Andy Belanger (Southern Nevada Water Authority; Las Vegas Valley Water District):

We also support A.B. 408.

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Senator Spearman:

We will close the hearing on A.B. 408. Having no further business to come before the Senate Committee of Government Affairs, this meeting is adjourned at 3:25 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

| <u>EXHIBITS</u> | | | | |
|------------------------|----------------|----|-------------------------|--|
| Bill | Exhibit | | Witness / Agency | Description |
| | A | 1 | | Agenda |
| | B | 8 | | Attendance Roster |
| A.B. 31 | C | 2 | Brett Kandt | Letter From Attorney General |
| A.B. 139 | D | 20 | Nicole J. Lamboley | SilverFlume Screen Shots |
| A.B. 139 | E | 4 | Nicole J. Lamboley | Common Business Registration Detail Report |
| A.B. 139 | F | 1 | Nicole J. Lamboley | Proposed Amendment |
| A.B. 139 | G | 1 | Nicole J. Lamboley | Proposed Amendment |
| A.B. 139 | H | 1 | Mike Cathcart | Memorandum of Understanding |
| A.B. 139 | I | 1 | Mike Cathcart | Proposed Amendment |
| A.B. 139 | J | 1 | Mary C. Walker | Memorandum of Understanding |
| A.B. 139 | K | 2 | Mendy Elliott | Written Testimony |
| A.B. 139 | L | 2 | Karen Duddleston | Written Statement |
| A.B. 139 | M | 1 | Senator David R. Parks | Letter from Bob Coffin |