

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
April 25, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:09 a.m. on Thursday, April 25, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to University of Nevada, 4505 S. Maryland Parkway, System Computing Service Building, Room 102. [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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Carrillo, Assembly District No. 18

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Kevin Benson, Senior Deputy Attorney General, Office of the Attorney General
Nicole Lamboley, Chief Deputy, Office of the Secretary of State
Ed Guthrie, Executive Director, Opportunity Village
Elliot Karp, President and CEO, Jewish Federation of Las Vegas
Clara Andriola, CEO, American Red Cross, Northern Nevada Chapter
Lesley Pittman, United Way of Southern Nevada; YMCA of Southern Nevada

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Phil Johncock, Executive Director, Alliance for Nevada Nonprofits
Allan Smith, Religious Alliance in Nevada
Janine Hansen, Nevada Families
James Wadhams, Las Vegas Convention and Visitors Authority
Bruce Arkell, Personal Care Association of Nevada
Peter Morris, President/Owner, BrightStar Care
Laura Coger, Program Manager, Consumer Direct Personal Care
Lisa Ruiz-Lee, Director, Department of Family Services, Clark County

Chair Segerblom:

We will open the hearing on Assembly Bill (A.B.) 60.

ASSEMBLY BILL 60 (1st Reprint): Establishes requirements for solicitation of charitable contributions by nonprofit corporations and other charitable organizations. (BDR 7-217)

Kevin Benson (Senior Deputy Attorney General, Office of the Attorney General):

We support Assembly Bill 60 and have submitted a letter breaking down the bill by section ([Exhibit C](#)). This bill is intended to improve the information available to the public on nonprofit organizations that solicit charitable contributions in Nevada. It establishes a requirement that nonprofit corporations must disclose their solicitations and whether the contributions are tax deductible. It also requires nonprofit organizations that intend to solicit charitable contributions in Nevada to make additional statements on their annual filings of officers with the Secretary of State's Office.

Americans are known for their generosity. We give a lot to charitable organizations and groups, especially after natural disasters and situations like the Boston Marathon bombing. The Attorney General recently issued a press release warning people about potential frauds related to charitable contributions following the Boston bombing ([Exhibit D](#)). Unfortunately, people try to take advantage of our open hearts and wallets and set up illegitimate groups to solicit money from people who want to give to these causes. We do not want to discourage people from giving, but when people give to an organization and then find out it is a fraud, they often feel taken advantage of and stop giving altogether. When charitable contributions decline or dry up, it hurts the legitimate charities and ultimately, their benefactors.

In addition to charities, Nevadans also support a wide range of nonprofit organizations that are not charities. Many people do not realize that you can have a nonprofit not designated as a charity under federal tax rules. The Nevada organization called a nonprofit corporation is separate and distinct from Internal Revenue Service designations of charities. You may contribute to a legitimate nonprofit, but that is not a tax-deductible contribution. Many people are confused by that and do not understand the difference.

This bill intends to require a statement on the solicitation of donations that states whether the contribution is tax-deductible. The other part of this bill requires those nonprofits that solicit charitable contributions to make statements when they file with the Secretary of State's Office. It will be simple for a potential donor to look them up on the Secretary of State's Website and determine the kind of organization. Most states have some sort of charitable registration requirements, usually done through the attorney general's offices. We are collaborating with the Secretary of State's Office because its system registers and collects the annual filings for corporations. Rather than inventing a new system or creating a new registration database, we are using what we already have.

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

Forty states and the District of Columbia have registration requirements for charitable organizations. We have been discussing this concept for a number of years. In 2009, S.B. No. 153 of the 75th Session was to create a similar registry, but the legislation failed because it created a separate registry with a significant fiscal impact on the State. We worked with interested parties in the nonprofit community to determine how to create more transparency and accountability using our existing system.

Nevada Revised Statutes (NRS) 82 requires that an entity file its formation documents as a nonprofit corporation and file an annual list of officers. We are proposing to add some additional information in the articles of incorporation or the annual list of officers required for an entity to maintain its active status. In addition to the information the corporations currently provide, we would collect their IRS federal Employer Identification Numbers (EIN). The EIN is not considered confidential information. We could collect that number and provide it so people could search on the IRS Website.

The name of the entity is registered with the Secretary of State, or if it is a nonprofit, the jurisdiction of origin. The organization is also required to state the purpose—any lawful purpose or include more extensive information if it so chooses—and the name or names under which the entity intends to solicit charitable contributions. This is important because people may have a national organization but do business under another name within the State of Nevada.

If the office is in the Nevada, we also require the location of the office and the name of the main contact person. We could collect the IRS Form 990, but there are different levels of this Form, including Form 990-N—an e-postcard for entities under \$50,000. It would be our intent not to collect the Form 990 but to work with the nonprofit communities to select meaningful, simple financial information that conveys the current financial status of an organization. We could look at annual receipts, expenses, net assets and net liabilities. We have the ability to create regulations in this statute and would work through the regulatory process.

As far as enforcement provisions to ensure compliance, the bill gives the Secretary of State's Office the ability to notify a nonprofit if it has lapsed in maintaining its active status and is soliciting charitable contributions. The nonprofit would have to return to good standing to solicit those charitable contributions. If it fails to maintain compliance, we can issue a cease and desist order on the solicitation and impose a civil penalty of up to \$1,000. When it fails to comply with those requirements, we can forward the complaint to the Attorney General's Office for a determination as to whether further action should be taken. The Attorney General's Office has the ability to seek injunctive relief if a charity actively solicits after not maintaining its compliance.

When a Nevada entity is formed under NRS 82 as a nonprofit, a misperception exists that this action automatically makes it a charitable organization. We receive complaints, particularly following major natural disasters like Hurricane Katrina. People paid \$50 filing fees and established nonprofit organizations to assist pets and family members who were displaced by the hurricane. We got calls from donors for the organizations' tax receipts so they could claim deductions, and they found out that these were not charitable organizations. We are trying to give some transparency to the donors using our existing filing system. We will reach out to the nonprofit sector to educate donors and nonprofit organizations on the changes in these laws.

Senator Hutchison:

Are charitable organizations grandfathered in, or do they have to start filing? For example, the Catholic Church could fall under this provision. Will the Catholic Church now have to file reports every time a priest asks for donations to help fix the roof at the local parish? How is that handled with all the nonprofits?

Ms. Lamboley:

The religious organizations are exempt under statute and will continue to be exempt. Many of them are organized under NRS 84, which is corporation sole. As far as the other organizations, we have representatives from those organizations who have been strong proponents of this legislation. Some of them came to talk to us before they knew we had a bill draft in the works. They feel this is important. Many of them have this type of restriction in the states in which they operate. The state charities officers have a unified registration statement that is supposed to be a single form, but it is seven pages long. We do not intend to propose anything like that. We are starting small to see how it works. We want to create transparency, but not create an impact or a burden on those existing entities.

Senator Hutchison:

You said 40 other states have this. Is this a uniform act or is it patterned after a uniform act or a particular state?

Ms. Lamboley:

The National Association of Attorneys General has enacted a model act. Most of these registries are in a separate registry managed by an attorney general. In some states, it is part of the executive branch through the department of agriculture or the department of commerce. It is a separate registry from the corporation filings. These states have their secretary of state corporation filings, and they have additional filings with additional fees. We are proposing to make it a single filing.

Senator Brower:

I have also heard from the nonprofit sector with some criticisms of the bill and some issues. I get what you want to do. It is clear to all of us, particularly with the frauds that pop up following tragedies, that people want to help and instead become victimized by the frauds. I will get more information from those who have continuing issues with the bill, and we can talk about those issues. Would

this bill require that the board members of the nonprofit have their names and addresses on the Website?

Mr. Benson:

That information required by the Secretary of State's Office is not published within the list.

Senator Brower:

We should clarify whether the bill would require the names and addresses of all board members on the Secretary of State's Website.

Chair Segerblom:

I do not see that it is required on the Website.

Ms. Lamboley:

By statute, under filing your articles of incorporation and list of officers, you do have to provide your list of officers' names. That is not a change.

Senator Brower:

I am not talking about officers. I am talking about people who volunteer their time to serve on these boards. I serve on the board of KNPB, the PBS affiliate in Reno, along with other people who volunteer their time. I do not think anybody has a problem with his or her name being on the Website. I would not have a problem with my address on the Website because of my position here; my address is out there publicly. Many other people would not want that. We can look at this later and satisfy the concerns of board members by not displaying their personal information.

Ms. Lamboley:

I will have to look into that. I believe it complies with the current corporation laws in the State. We will verify it and get back to you.

Senator Brower:

I am also concerned with other parts of the bill. There may be some overreaching and unnecessary complexity in the reporting requirements. I will follow up with you.

Chair Segerblom:

You indicated you have made substantial changes from the original bill. Can you go through those?

Ms. Lamboley:

The American Red Cross is a federally chartered instrument of the United States government. Chapters have exemptions in other states, so we addressed their concern in section 2.5 of the bill. There was also some concern regarding the generally broad powers. We worked with the nonprofit sector that had some concerns regarding our enforcement powers. Our office specified that these enforcement actions are intended to deal with the filing requirements, an entity soliciting charitable contributions without properly being registered with our Office or failing to disclose pursuant to section 12 of the bill. Changes to the form would have to go through the regulatory process, so they were not spelled out in statute.

We also dealt with an issue related to private foundations, like a family foundation. People were concerned the language in the bill meant that if a husband and wife decided to create a foundation and solicit their family members, friends or business associates, they might be captured every time they had a conversation about this on the disclosure requirements. So we put a limitation on that in section 12.

We have been meeting extensively with the nonprofit sector since we started talking about this bill draft in July. Some have been engaged and have brought forth their concerns specifically related to the bill. Other nonprofits see this is an additional burden that is unnecessary. We believe it is good public policy to provide more transparency. We understand that some feel it is not necessary legislation, and we respect their right to have that opinion. We look forward to working with them to address future concerns.

Senator Ford:

We were getting emails about this in February when it was in the Assembly. Did you have communications with Richard Ziser from Nevada Concerned Citizens and address their concerns? Have they reached out to you with complaints about the bill, and have you addressed any of those?

Ms. Lamboley:

I have not heard from Mr. Ziser. Some of his organization's concern related to sections that have been deleted. Significant concerns came from people representing all sides of the spectrum who saw the provision as too broad, and that section was removed. I do not specifically know Mr. Ziser's concerns.

Mr. Benson:

I have not heard of any concerns. If we knew the specific concerns, we would be happy to work with them.

Senator Ford:

Nevada Concerned Citizens emailed every Legislator with concerns. I am surprised they did not reach out to the bill sponsors to address these. I will forward you the email. We can have a discussion with them and see if the concerns have been addressed. That is the best approach. If you complain about a bill, you should have correspondence with those responsible.

Ed Guthrie (Executive Director, Opportunity Village):

We are a nonprofit corporation. We provide vocational training, rehabilitation and employment services to people with intellectual and other disabilities. We rely on public support. At least 25 percent of our annual operating budget is generated from donations from the general public, either through the Magical Forest, donations to our thrift store or other special events. It is important to us that the integrity of the nonprofit communities is maintained. We rely on the general public for millions of dollars in donations each year.

There are over 8,000 organizations registered as nonprofit with the Secretary of State in Nevada. Most of those organizations are not qualified charities under 501(c)(3) of the Internal Revenue Code. Contributions to those non-501(c)(3) organizations are not tax-deductible. There is no easy way for potential donors to figure out whether the organization soliciting contributions is a 501(c)(3) organization, making the donor contribution tax-deductible. In addition, it is difficult for donors to know if the money they give the nonprofit organization is used for the charitable purpose to which the organization says it solicits.

Many good organizations like Opportunity Village spend 85 percent of the money they raise providing services to individuals with disabilities or for other charitable purposes. Other organizations direct 85 percent of the money raised to areas other than the charitable purposes of the organizations.

Assembly Bill 60 will allow a level of transparency in Nevada so donors know that a charitable donation is a tax-deductible donation. It will also allow donors to know whether the money they contribute goes to an organization that makes efficient use of those donations to provide charitable services to individuals with disabilities. I have submitted my written testimony and support ([Exhibit E](#)).

Chair Segerblom:

Do you support the bill?

Mr. Guthrie:

Yes, sir.

Senator Hutchison:

I have heard concerns about the time it may take to comply with these obligations. Is your point that if you are a 501(c)(3) corporation, you already submit this report in your filings with the IRS?

Mr. Guthrie:

Yes. We file the detailed information with the IRS annually on Form 990. The problem is that this so-detailed Form needs a certified public accountant to produce some of the information. We suggest that you take ten items or less out of the IRS Form 990 to give a good snapshot of what an organization does and how efficient it is in using the donated money.

Elliot Karp (President and CEO, Jewish Federation of Las Vegas):

I support this bill. Our Jewish Federation raises millions of dollars. I am proud that our most recent statement indicated our administrative and fund-raising expenses were less than 15 percent. This means that more than 85 percent of every dollar contributed to our organization goes for programs and services. We serve the people in southern Nevada, both Jewish and non-Jewish. This is good public policy because greater accountability and transparency will enhance donor confidence and improve the state of philanthropy in our community.

We think of this as the Good Housekeeping Seal of Approval. It may require organizations to spend more time, but it will be to their greater benefit. We encourage you to look at A.B. 60 carefully. We are pleased the Attorney General and Secretary of State have worked together on this. This is good public policy.

Clara Andriola (CEO, American Red Cross, Northern Nevada Chapter):

The American Red Cross is a unique nonprofit organization, and we are thankful to the sponsors for the language in this bill. We were created by Congressional Charter. We are viewed as federal instrumentality, and our auditing requirements put the public at ease knowing that 91 cents of every dollar goes directly to the services we provide. The disasters we attend to include the recent Boston bombings, the fertilizer plant explosion in West, Texas, and the recent Texas flood. We are there. Last night in northern Nevada, we helped a family who was displaced from their home.

We appreciate the sponsor including the language for the American Red Cross. We appreciate the transparency. The IRS Form 990 is a public document. Any citizen can request a Form 990. The organization needs a reasonable time to prepare it because it is lengthy. It is an important transparency requirement already in place. We are in support of this bill. We have experienced many different tragedies that have created some of the situations that were explained.

Lesley Pittman (United Way of Southern Nevada; YMCA of Southern Nevada):

We fully support A.B. 60. We appreciate the Attorney General's Office and the Secretary of State's Office bringing the legislation forward. We agree with the positive comments made previously. This is an enforcement mechanism for the Secretary of State to go after the bad actors in our community who raise charitable contributions under the impression of doing something good for the community—solely for personal enrichment.

Phil Johncock (Executive Director, Alliance for Nevada Nonprofits):

We have been working with the Secretary of State and the Attorney General's Office on this bill. I have submitted written testimony ([Exhibit F](#)). We have had many conversations with the nonprofit sector recently to identify and address the biggest issues.

Today is Nevada's Big Give, an online donation campaign at the television station KNPB. I was there this morning, and over \$60,000 has been raised. Our goal is to raise \$1 million online. A few years ago, we raised over \$413,000. I hope you can support our effort.

After discussions with people in our nonprofit community, I can report that they do have some concern. They feel they are unfairly regulated and that a few bad apples have caused the good organizations to be penalized as a result. They are

concerned with these new regulations and how they will turn out. They would like to see the State Website have a link to the IRS site that gives further information about tax-exempt organizations and Publication 78.

Senator Ford:

I was looking at page 2 of your memo, [Exhibit F](#), which is the fiscal impact discussion. You show that 4,681 Nevada nonprofits can accept donations. That is a lot. How many members are there in Alliance for Nevada Nonprofits?

Mr. Johncock:

We have most of those in our database that we communicate with on a regular basis. A third of our revenue can come in from membership. We do not push to get all of those people. If they were all members of the Alliance, we would be above our one-third limit, and we would lose our IRS 501(c)(3) status. We have served most of those over the course of the last 3 years. The amount of actual members is about 175.

Senator Hutchison:

You provide some perspective that is important for the record. You have to be dialed in with the nonprofit sector. That is your job; you are an association of nonprofits. Is it fair to say you feel like you have good handle on their needs and requirements?

Mr. Johncock:

I hope so.

Senator Hutchison:

In the information you provided on page 2 of [Exhibit F](#), you estimated it will take about 1.75 hours to comply with the new requirements.

Mr. Johncock:

Yes. That is an estimate. We do not know many variables at the moment.

Senator Hutchison:

Are you in a good position to estimate that?

Mr. Johncock:

Yes.

Senator Hutchison:

We have 1.75 hours and your fair market value estimate is \$40 an hour. On average, based on your experience and expertise, it will cost less than \$80 an hour to comply with this law. Is that fair?

Mr. Johncock:

Yes.

Senator Hutchison:

Do your members think that is an undue burden?

Mr. Johncock:

Below the estimate on page 2 are quotes from two members who thought it would be much more than that. The average number of volunteers our members have is about 400. You are talking about training 400 people per charity. That cost will be more with the smaller nonprofits. We are low-balling it.

Senator Hutchison:

Do you feel comfortable with the information you submitted to us? Is it accurate?

Mr. Johncock:

Yes.

Allan Smith (Religious Alliance in Nevada):

Religious Alliance in Nevada is an organization made up of five member groups, which are the Nevada-based judicatories of five different denominations. Our board met last Tuesday and discussed this bill. We came to the decision that this is the right thing to do. Our Alliance is not a 501(c)(3) organization; therefore, we would be required to comply with the reporting and notification requirements.

Chair Segerblom:

Can you give us the five denominations?

Mr. Smith:

They are the Roman Catholic Dioceses of Reno and Las Vegas plus the Lutheran, Methodist, Presbyterian and Episcopal denominations; each is exempt by their nature.

Janine Hansen (President, Nevada Families):

When we heard this bill in the Assembly, it was very different. Much of the draconian regulation and law put in by the Secretary of State has been removed. We were concerned about the lack of due process. We still have significant concerns. One of our immediate concerns is that every time we meet, there is a proposal of more regulations and laws. These limit our freedom. Every time we have more rules and laws, more of our freedoms are lost.

The U.S. Supreme Court case of *American Communications Assn. v. Douds*, 339 U.S. 382 (1950), made this statement: "It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error." This applies to this case.

Nonprofit organizations provide a vast variety of worthwhile services to our society. Spiritual, charitable and educational services to veterans, families, children and disabled provide citizens the opportunity to band together for a greater cause. This will affect that opportunity for people to band together.

Will this bill only apply to nonprofits that are 501(c)(3)? Will others not have to file according to this? If it applies beyond 501(c)(3), my concerns are increased. I saw the press release by the Attorney General. This is excellent. We need to educate people about potential fraud and problems. The best way to protect people is through the media and through communication. We do not always have to have rules and laws in order to protect people. Pretty soon, we will not be able to do anything without checking in with the Secretary of State's Office. This bill will affect the small organizations the most.

Chair Segerblom:

Is there a financial cap on this?

Ms. Hansen:

I do not see a financial cap in the bill. A small neighborhood organization or people raising money for their local schools could be impacted by this. I would say it is not worth it to deal with this and the Secretary of State's Office. The proponents mentioned in their testimony that this was a first step. We see a vision of what the future might bring in their bill. Does section 2 apply to 501(c)(3)?

Ms. Lamboley:

All entities that want to create a nonprofit organization are required to file with the Secretary of State's Office. The additional information only applies to those entities that intend to solicit charitable contributions. You have to be a 501(c)(3) recognized by the IRS or in the process of completing the IRS 501(c)(3) filing request.

Ms. Hansen:

For clarification, does this mean non-501(c)(3) nonprofit organizations that solicit donations in this State do not have to comply with this law?

Ms. Lamboley:

Not with sections 2 through 9. Anyone soliciting contributions must disclose to the prospective donor or contributor whether the donation qualifies as tax-exempt or just a donation.

Chair Segerblom:

Just for the record, a 501(c)(4) cannot request charitable contributions?

Ms. Lamboley:

Correct. We are codifying that IRS rule because people do not understand the distinction. Of 31 IRS 501(c) regulations, the 501(c)(3) is charitable.

Ms. Hansen:

I am familiar with 501(c)(4) because we are one and cannot receive tax-deductible donations, but we do solicit donations which are not reportable.

Chair Segerblom:

Such organizations cannot use the word "charitable."

Ms. Hansen:

I understand that. I have a few other issues with the bill. I appreciate that clarification.

Smaller organizations that fall under 501(c)(3) would be required to comply with these, possibly driving some organizations to say it is just not worth it. Page 5 shows the Secretary of State's Office is imposing its regulations on those organizations. I do not see any kind of appeals process with the Secretary of State. We read section 5, subsection 3 as a final decision for the

purposes of judicial review. My understanding of that is the court can only review the original information in the trial if the Secretary of State has gone through the process correctly; none of the original information can be brought up if some kind of problem occurs with this, so you cannot have a new trial. This is a problem because we have lost our right to trial by jury in Nevada through the administrative court procedure.

In addition, the Attorney General has the authority to impose a civil penalty, and section 6.5, subsection 3 applies \$1,000 for each violation. Does that mean that a small charitable organization that asks for donations and does not have a lawyer to keep it in compliance may get a possible fine for each violation or because it has not filed? I do not think that is clear. If it is for each violation, I am concerned that small organizations would be drastically impacted if they make mistakes and fail to comply with this law. In section 9, the Secretary of State may adopt regulations to administer the provisions of sections 2 through 9. That worries me.

Chair Segerblom:

I hate to say it, but that is the law.

Ms. Hansen:

I understand. That is a significant worry because we do not know what regulations the Secretary of State's Office may impose on us.

Chair Segerblom:

I appreciate your distaste for government and your distaste for the way government functions, but we do not have time to hear your philosophy. Can you be more specific? We are running behind.

Ms. Hansen:

As the only one testifying against this bill, I thought it was important to bring up some of the concerns. We have many others in the Assembly who did testify. We need to be vigilant in how we spend our money. We do not always need government looking over our shoulder to tell us what is best. When we do ask government to look over our shoulder, constantly telling us what is best, we lose the opportunity for liberty. That is my concern. This will suppress the proliferation of good charitable organizations, especially small ones, in our State.

James Wadhams (Las Vegas Convention and Visitors Authority):

I would like to ask the Committee for time to visit with the Secretary of State and the Attorney General. The Convention and Visitors Authority bring in trade shows and conventions that oftentimes are closed to the public. Frequently, they will have solicitations for charities within that environment. I want to make sure we understand how that process will work with the trade shows and conventions.

Senator Brower:

I have just confirmed that the IRS Form 990 does list the names of the officers and board members, but not the addresses. We need to sort this out and explore the details of this bill.

Senator Hutchison:

I want to talk to Ms. Hansen on some of the views she raised. I appreciate those who express views we have not heard before, and we need to take them into consideration.

Ms. Lamboley, on the final judicial review in section 5, subsection 3, can you explain your understanding of what the judicial review process means? I understand it means you are not losing any legal rights, but now you proceed to district court and do not have to exhaust the administrative remedies. You leave no legal rights behind in the administrative remedy realm. I want to give you a chance to address a concern that Ms. Hansen raised.

Ms. Lamboley:

I will defer to the Attorney General's Office. There is an administrative review process. Noncompliant corporations are sent a written notice explaining they have failed to maintain active status by filing their annual list of officers. They are given 90 days to cure that. If they fail to do so, we will notify them that they go into default. We will issue a cease and desist order saying you can no longer solicit because you are not active and in good standing with Nevada. If they fail to do that, we can defer to the Attorney General's Office to determine what legal remedies should be pursued.

Mr. Benson:

Ms. Lamboley is correct. The process of giving a 90-day notice to come into compliance is in section 5, subsection 2. That penalty and cease and desist would only occur after giving the notices and if the organization still fails to

accomplish that. The judicial review is to review the Secretary of State's decision to enter a penalty or to issue the cease and desist. The organization would have a chance to go to district court and air any concerns.

Senator Hutchison:

One of the concerns expressed is that this final decision makes you abandon or compromise your legal rights. This allows you to go to district court and express any and all concerns, legal claims or arguments you may have.

Mr. Benson:

That is correct. My understanding of the Nevada Administrative Procedure Act is in order to have a judicial review, you have to have a final agency decision. This declares a final decision for that purpose so you can go to district court without a procedural hiccup.

Ms. Lamboley:

We are attempting to give Nevada donors the opportunity to find out more information related to nonprofit organizations: if they are charitable or neighborhood groups, have a different 501(c) than the charitable status and the opportunity to get some information. You can go to the IRS Website, although it is a tedious Website even for a skilled searcher. This gives people a handy place to verify what is happening for a Nevada organization that they want to support. If you google why is transparency important in the nonprofit sector, you will find pages and pages of nonprofit organizations, entities and associations that talk about the need for transparency in the nonprofit sector. There are requirements that all nonprofit boards of directors should follow, including the code of ethics. The organizations believe that helps to support their causes and generates the donor community to support their efforts.

We do not want to stymie the nonprofit sector. We believe these nonprofits are important and take care of a lot of the business of the people of Nevada not funded by government or the private sector. It is the social sector that supports everything from arts and culture, environmental concerns, education and religious organizations. We want to grow a healthy nonprofit sector, and that is our intent.

An April 5 article in *The Chronicle of Philanthropy*, which connects the nonprofit world with news, jobs and ideas, is titled "IRS Takes Step to Make Charity Data More Accessible." That is because those in the nonprofit sector have said we

need to make this information more available. We also want to provide a simple way in Nevada to get some base information. We can then link people to more information if they choose to go out and research.

Chair Segerblom:

We will close the hearing on A.B. 60 and open the hearing on A.B. 132.

ASSEMBLY BILL 132 (1st Reprint): Provides immunity from civil liability to persons employed by an agency to provide personal care services in the home in certain circumstances. (BDR 40-151)

Assemblyman Richard Carrillo (Assembly District No. 18):

I recently attended a legislative forum by the Nevada Senior Corps Association that brought many of the providers for the seniors and disabled together with Legislators to discuss issues that providers face. One that caught my interest was the dilemma that personal care agencies and their caregivers face. The Department of Health and Human Services requires caregivers to obtain basic first aid training and cardiopulmonary resuscitation (CPR). While this is a good requirement, it exposes the personal care agency and the caregiver to potential lawsuits because the good-samaritan law does not cover people while they are employed. Several years ago, the Legislature recognized the issue with schoolteachers having to perform CPR while employed and provided them with coverage under the good-samaritan statutes, NRS 41.500 through 41.507. This bill extends that coverage to personal care attendants.

Bruce Arkell (Personal Care Association of Nevada):

For the past few years, we have discussed the issues concerning the health care industry. One of the problems is a requirement that the caregivers have CPR and first aid training. A provision in the regulations that they cannot touch the patients has created some conflicts. We started out with a bill that would have amended the good-samaritan statutes through discussions with the trial lawyers. That probably was not an appropriate place for that; we should move it to the health statute that provides protection for the caregivers in the event something happens. If you want more detail about how it affects the personal care agency, we have a provider here who can explain it.

Senator Ford:

Thank you for this bill and thank you for your testimony. Are we being preventive or responding to losses asserted against caregivers?

Mr. Arkell:

I am unaware of any lawsuits. This is preventive. It has caused problems. There was a nurse in California who refused to perform CPR. That happened the same day this bill was being heard in the Assembly. That has been the dilemma caregivers face. In the personal care agencies, it is even worse because the caregivers are alone with their clients in their homes.

Senator Ford:

I recall that situation with the nurse in California. Do you know if this has any impact on employment? If someone were employed by an agency and is a caregiver at a client's house, would this statute authorize, outside of an employment agreement or an employment directive, the caregiver to give CPR? Does that make sense?

Mr. Arkell:

I do not understand your question.

Senator Ford:

The circumstance I recall being described in California was that the woman's employer would not allow her to touch the person.

Mr. Arkell:

Yes, that is what happened, but I am not sure Nevada regulations would allow that to occur. That unknown led to this. I talked to some personal care agencies and providers. It has been an issue. They are not sure if they are covered, and they are not sure what they have to do.

Senator Hutchison:

Thank you for bringing a solid bill to us. My observation has this bill as extending the good-samaritan law to people in the course or scope of their employment when they take care of elderly people in their homes. If the bill's intent is also to ensure quality training, I am not sure it does that. It provides a standard in section 1, subsections 1 and 2, but in subsection 3, it takes it away. If the focus of the bill is to provide quality training, you could delete section 1, subsection 3 and improve the training element quality of the bill.

Mr. Arkell:

The training aspects of that are covered. Caregivers are required to pass courses that give them the training. The issue is what happens when we use it, which is why the bill was constructed the way it was.

Senator Hutchison:

I see that is the primary intent. Are you satisfied with the training aspect?

Mr. Arkell:

Yes.

Peter Morris (President/Owner, BrightStar Care):

We are a personal care agency, and we employ caregivers who work in the home. The regulations require that our caregivers receive CPR and first aid training equivalent to the American Red Cross guidelines. The great thing about this bill is it removes the ambiguity caregivers are under. They are alone with clients in their homes; if something happens, should they or should they not do something? Seconds count in those moments. Through this bill we can say to our caregivers: it is okay, you have the training, you are permitted to give CPR and you will be covered. If we can do that, we have done a good deed for our caregivers and their clients.

Senator Ford:

That is relative to the question I had earlier. Is there more to it than the ambiguity, or is there also a concern about agencies allowing or disallowing your employees to administer CPR?

Mr. Morris:

The key is removing the ambiguity. Is there a liability or not? It is important to get it clear. If a client has gone down, the caregiver calls 911 and could administer CPR and, hopefully, get a good outcome for the client.

Laura Coger (Program Manager, Consumer Direct Personal Care):

Peter said this well. This bill removes the ambiguity. We have caregivers call us to ask if they are allowed to do what they are trained to do. As it is now, we have to train them to know they have liability.

Assemblyman Carrillo:

Thank you for hearing this bill.

Chair Segerblom:

We will close the hearing on A.B. 132 and open the hearing on A.B. 217.

ASSEMBLY BILL 217 (1st Reprint): Revises provisions governing criminal background checks of employees and applicants for employment with a department of juvenile justice services or an agency which provides child welfare services. (BDR 5-993)

Lisa Ruiz-Lee (Director, Department of Family Services, Clark County):

This bill comes to you from the Clark County Department of Family Services and Department of Juvenile Justice Services. This bill sets standards for the criminal history related to the employees who work for Clark County Juvenile Justice or the child welfare agencies in Nevada. It outlines the acceptable limits around an applicant's background history and if that person can be employed by us. As a child welfare agency, we license more than 1,400 foster homes. We use those foster homes to place child welfare and juvenile justice children.

The language around criminal history, in order to be licensed as a foster parent, is much of the same language we put into A.B. 217. *Nevada Revised Statute* 424.031 has a lot of the same language for the licensing of foster parents. The other important component is our shelter program through Family Services called Child Haven, a licensed facility under NRS 432A. The employees who work in that facility are subject to those background check requirements. The requirements in NRS 432A are much the same you see combined in this bill.

Chair Segerblom:

Who will be covered under A.B. 217 who is not covered now?

Ms. Ruiz-Lee:

All of our child protective service investigators, our permanency workers and administrative child welfare staff would now be covered with the same background check requirements as those licensed under NRS 432A through the Child Haven licensure process. The Clark County Department of Juvenile Justice Services has similar issues. Its requirements for POST-certified officers are contained under NRS 289 and NRS 62A. The Department of Juvenile Justice Services has a whole other set of employees who still have regular, ongoing interaction with kids but are neither POST-certified nor subject to those background check requirements. We are attempting to level that playing field.

Chair Segerblom:

You are bringing in people who have not had a criminal background check to work with the children in both of these Departments?

Ms. Ruiz-Lee:

That is correct. The language contained in A.B. 217 defines the criteria for employment with our agencies and outlines how often we rerun the background checks as we do with our foster parents. It is not like we would hire people and never go back and take a look at them. It obligates us to rerun checks on them in order to stay current with issues that may arise.

Chair Segerblom:

If that is what the bill does, it sounds good.

Senator Jones:

Is there any difference between what you are asking for in this bill and the background check requirements that apply to Child Haven or other agencies?

Ms. Ruiz-Lee:

A few nuances are different in the bill. The language in statute has some interpretation issues. We have another bill, A.B. 348, that adds clarification. In A.B. 217, section 2, subsection 1, paragraph (a), subparagraphs (4), (5) and (6) are specific to battery charges. Those charges differ from what you see in the foster care regulations. If we have our way, those battery clauses will also go into the foster parent licensing regulations. Subparagraph (8) is the pandering and prostitution language. We are attempting to add it to the foster care licensing statute.

ASSEMBLY BILL 348 (1st Reprint): Revises provisions relating to foster care.
(BDR 38-457)

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Chair Segerblom:

We will close the hearing on A.B. 217. This meeting is adjourned at 10:31 a.m.

RESPECTFULLY SUBMITTED:

Gayle Rankin,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 60	C	2	Kevin Benson	Letter of Support from Brett Kandt
A.B. 60	D	2	Kevin Benson	Attorney General Catherine Cortez Masto’s Press Release
A.B. 60	E	1	Ed Guthrie	Written Testimony and Letter of Support
A.B. 60	F	2	Alliance for Nevada Nonprofits	Memo from Phil Johncock