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

## Seventy-Eighth Session
## February 13, 2015

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:32 a.m. on Friday, February 13, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Glenn E. Trowbridge
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Lori McCleary, Committee Secretary
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Adam Paul Laxalt, Attorney General, Office of the Attorney General
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Colleen L. Platt, Deputy Attorney General, Office of the Attorney General
Sue S. Matuska, representing Nevada State Education Association
James P. Kemp, representing Nevada Justice Association
Keith L. Lee, representing Board of Medical Examiners
Jay Parmer, representing Nevada Home Builders Association
Michael Kimmel, Private Citizen, Reno, Nevada
Janet Murphy, Deputy Director, Budget Division, Department of Administration
Carla Watson, Budget Analyst, Budget Division, Department of Administration
Scott K. Sisco, Deputy Director, Support Services, Department of Corrections
James W. Smack, Chief Deputy Controller, Office of the State Controller

**Chairman Ellison:**
[Roll was called. Committee rules and protocol were explained.] To begin, we will be hearing a presentation from the Office of the Attorney General.

**Adam Paul Laxalt, Attorney General, Office of the Attorney General:**
I would like to commend you all for what you are doing. I know this will be a tough few months. I am brand new and working to get up to speed in this office. I wanted to at least cue you in to a few things we have done in the last 30 days.

We held a law enforcement summit on day 30 of my being in office. We had 100 participants, including district attorneys, sheriffs, and chiefs from around the state. It was very well attended, and I think they are very excited to have an open dialogue as a law enforcement community so we can present issues to the Legislature and work to make the communities safer.

Yesterday, we announced a military commission, led by the Office of the Attorney General, that will work on setting up an office of legal assistance. I will tell you more about that later in this presentation. I want to make sure you all know you are welcome to reach out to our office regarding anything affecting your community along the lines of law enforcement. As we get the ball rolling on this military legal assistance office, it will obviously affect all of you and all of your districts.

I am here today to provide an overview of the Office of the Attorney General. We have approximately 370 dedicated and hardworking individuals working in our office. Everyone is committed to the mission of making Nevada a safer place, working toward the law enforcement needs of our state, and protecting our citizens.

As the state's chief law enforcement officer, the Attorney General represents the people of Nevada before trial and appellate courts of Nevada and before the United States in criminal and civil matters. We serve as the legal counsel to state officers, state departments, and most state boards and commissions. We also assist the 17 district attorneys of the state with local prosecution and other law enforcement needs. Based on the 2014 litigation figures, this office currently defends approximately $1.2 billion in potential liabilities. That number jumps out to me and, I assume, jumps out to all of you. That is what this huge team of lawyers is doing, defending the state from these liabilities.

My office is organized into four major bureaus, which include the Bureau of Governmental Affairs, the Bureau of Litigation, the Bureau of Criminal Justice, and the Bureau of Consumer Protection. These four bureaus all have divisions beneath them that all have specific assignments related to our statutory responsibilities. We also have an Administrative Division that is responsible for all administrative matters pertaining to the office, including personnel, fiscal matters, information technology, grant administration, communications, and investigations.

The Bureau of Litigation represents the State of Nevada, its executive and judicial officers, and most state agencies in the litigation of complex cases. We advise the Executive Branch, branch departments, divisions, and agencies in all aspects of employment law. We oversee all appeals before the Nevada Supreme Court, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court. The Bureau of Litigation includes the Personnel Division, the Public Safety Division, and the Appellate Division.

The Bureau of Governmental Affairs is a huge bureau, which includes the Gaming Division, Transportation Division, Business and Taxation Division,

Government and Natural Resources, Boards and Licensing, and Health and Human Services Division. The Bureau of Governmental Affairs also represents all constitutional officers, the Department of Administration, and all Executive Branch agencies. In addition, we provide legal advice and representation to boards and commissions that enforce statutory provisions regulating various occupations and professions. As the Legislature forms boards and commissions, we are usually the legal counsel. We also enforce the Open Meeting Law to ensure transparency in state and local government. When requested, we provide legal opinions on questions of law to district attorneys and city attorneys.

The Bureau of Criminal Justice includes our Special Prosecutions Unit and our Fraud Unit. This Bureau investigates and prosecutes Medicaid fraud, insurance fraud, workers' compensation fraud, and securities fraud. We are also tasked with the overall mission of helping with sex trafficking, cybercrime, and public integrity cases. We also handle habeas cases and prison inmate litigation.

The Medical Fraud Control Unit investigates and prosecutes fraud by health care providers in the Medicaid Services program. For the past biennium, this unit has opened 51 investigations, closed 59 investigations, and successfully prosecuted 30 criminal cases involving fraudulent activity by companies scamming our system. In the process, the unit has recovered nearly $20 million in the past two fiscal years.

In the Workers' Compensation Fraud Unit for fiscal year 2013, we filed charges in 139 cases, recovering nearly $500,000 for the state in restitution costs and fees. In fiscal year 2014, we filed 128 cases, recovering almost $400,000 for the state. In fiscal year 2013, the Insurance Fraud Unit filed 34 cases, recovering almost $700,000 in ordered restitution. In fiscal year 2014, we opened 57 cases and recovered over $600,000.

The Bureau of Consumer Protection has three primary areas of focus: advocacy for ratepayers before the Public Utilities Commission of Nevada and the Federal Energy Regulatory Commission. We handle antitrust, as well as civil enforcement of *Nevada Revised Statutes* (NRS) Chapter 598, Deceptive Trade Practices. Multistate settlements concerning deceptive trade and antitrust issues have seen an increase during the past biennium. My office usually returns an average of $2.2 million per year to the State General Fund from these settlements. The prepared testimony (Exhibit C) states $19.2 million will be returned to the General Fund to assist with the shortfall, but I believe it is now $23 million.

The Mortgage Fraud Task Force investigates and prosecutes the activities of fraudulent loan modification companies. We joined a multistate national foreclosure fraud settlement, which went after five of the largest mortgage servicers for foreclosure abuses. Nevada's share of these funds was $1.5 billion. In addition, we received a separate settlement from Bank of America for its fraudulent practices in the state.

In addition to the activities of these four bureaus, we also have a number of additional functions. For the past fiscal year, the Extraditions Unit handled 671 transfers of criminal defendants to or from Nevada, and the Grants Unit administered over $2 million in federal grant programs under the Violence Against Women Act, providing resources to over 50 law enforcement and victim services recipients at the state and local level.

Domestic violence continues to tear at the fabric of our society, and unfortunately, Nevada has led the nation in the number of women killed by men for many years. My office has oversight of two committees focusing on solutions to this problem. The Nevada Council for the Prevention of Domestic Violence includes representatives from law enforcement, the judiciary, prosecutors, victim services, health care, and education. The other committee is the Committee on Domestic Violence, which regulates the batterers' treatment programs that provide counseling to domestic violence offenders. During this past biennium, our office also convened a statewide domestic violence fatality review team that reviewed domestic violence homicide cases in four different rural communities and made recommendations for system improvement to save lives in the future.

My office has instituted a statewide automated Victim Information Notification System (VINE) where crime victims have around-the-clock access to information about the custody status of offenders in Nevada's jails and prisons and are notified if the offender is transferred, released, or escapes.

As part of our outreach to the rural communities, my office has utilized federal grants to embed our prosecutors with district attorneys in six counties to prosecute domestic and sexual assault cases under the supervision of the appropriate district attorney. We have computer forensic examiners working with multijurisdictional task forces, such as the Internet Crimes Against Children task force. Most recently, we obtained a federal grant to assist rural law enforcement agencies with sex offender registration compliance checks to make sure our communities are safer from sexual predators.

As provided by *The Constitution of the State of Nevada* and NRS, the Attorney General is a member of several state boards, including the

State Board of Examiners, the Board of State Prison Commissioners, the State Board of Pardons Commissioners, the Executive Branch Audit Committee, the Advisory Commission on the Administration of Justice, the Nevada Council for the Prevention of Domestic Violence, the Substance Abuse Working Group, the Advisory Council for Prosecuting Attorneys, and the Technological Crime Advisory Board.

As is clear from this recitation of duties, the breadth and depth of legal issues that this office addresses on a daily, weekly, and yearly basis is substantial.

Under my administration, we will be committed to making Nevada as safe as possible. We are witnessing a clear trend toward crime that is facilitated through technology and that transcends borders. My office is focused on improving our capacity to provide assistance and support to local authorities in investigating and prosecuting transnational criminal activities, such as sex trafficking, money laundering, and cybercrime.

As mentioned earlier, on February 5, 2014, we hosted a law enforcement summit. We felt that was a very important first step to make sure all our local communities are aware that we need to partner on these issues. We need to make sure we have a regular and open dialogue so we are not replicating services.

I am also committed to providing support for our military. The concept of what we want to create in the next few months will be called the Office of Military Legal Assistance. As you all know, last year, the Governor made it the "Year of the Veteran in Nevada." They worked overtime to create a number of jobs programs to make Nevada the most veteran-friendly state in the country. One piece of data we noticed in the statewide survey was that 61 percent of respondents indicated their number one unmet need is affordable legal services. This is something you can see around the country. We felt it was a good opportunity to use the Office of the Attorney General to be the chokepoint, go out into the private sector, seek small or large law firms, sole practitioners, state and county bars, to recruit as many pro bono hours as we could for this mission of trying to address this legal shortfall.

Starting yesterday, we created a commission that includes Nellis Air Force Base, Naval Air Station Fallon, one example of an Air Force Reserve Unit, and the Nevada National Guard. We have included at least one service example from all of the military components in this state. On the other side, we invited one large Nevada law firm, a large Nevada corporation's general counsel's office, the State Bar of Nevada, the Washoe County Bar Association, and the Clark County Bar Association. We also invited the two existing legal service

providers, one from southern Nevada and Nevada Legal Services, Inc. We had a great kickoff yesterday, and we are beginning to understand the range of legal services that are most needed. That is our goal in the next few months, and we will keep you updated. We have to determine what the capacity is going to be, and it really depends on how many lawyers will agree to provide pro bono service to this program. I think it will be a great opportunity for all of the constituents in the state.

As I said in the beginning, this is one office that keeps our community safe. Working toward successful law enforcement solutions is a truly nonpartisan issue, and something we can all agree upon about 90 percent of the time. I look forward to working with all of you. I know you currently have a lot of other responsibilities, but as issues arise, please reach out to us. We would like to assist you in finding ways to make our community safer. I thank you for having me here today, and good luck with the rest of the session.

**Chairman Ellison:**
Are there any questions from the Committee?

**Assemblyman Flores:**
I realize you are overwhelmed with individuals coming forward with issues, specifically in the areas of fraud. I would like to get some perspective on how many incidents of fraud need to be reported against a specific individual or business before you can utilize some of your resources.

**Adam Laxalt:**
We have a process where anyone can file a complaint, and there are numerous avenues to do so. It basically goes through an office review process to determine the merits of the evidence and whether or not our office will move forward with an investigation. My understanding is it is not three complaints or four complaints. That is not how it works. The first complaint may be a complaint the office wants to move forward with. If a fourth company complains about the same issue, it becomes a pattern, and it creates more of a case. I believe that is how it works, but we would be happy to provide more information.

**Assemblyman Flores:**
I believe you gave three different instances where you get involved with Medicaid fraud. I know the immigrant communities, our Asian communities, Pacific Island, or Central and South American communities, have a huge issue with individuals who take advantage of them when it comes to their immigration status, either being repaired, represented in court, et cetera. Is that something where you have a group of attorneys or a task force that addresses that specific

question, or is that not something you are pursuing? Is that just a general fraud question?

**Adam Laxalt:**
I am personally aware of those issues and people trying to take advantage of those communities. I do not know if there is a concerted effort in our office regarding these issues, but I am happy to look into that for you. If you have any specific examples from your communities, we would love to hear them. That is what we are supposed to be doing, certainly in situations where there is widespread fraud. That is a mission of the office, to try to protect consumers from this kind of repeated bad behavior.

**Assemblyman Carrillo:**
My question pertains to the sex trafficking bill that passed last session, Assembly Bill No. 67 of the 77th Session. Some people feel, in some cases, it may have reached too far regarding the sex offender registration. Some constituents were saying they have issues with the registration. They may have been in a tier that was not necessarily a high tier, but they are now put in a situation where they have to register to a point where it affects their work. I heard this was now in the Nevada Supreme Court. Could you elaborate on that? I would like to know if A.B. No. 67 of the 77th Session is doing what it was supposed to do regarding sex trafficking.

**Adam Laxalt:**
I would like to say first, if you are aware of particular instances or are troubled with issues you are hearing about from your constituents, please contact us. I would like to pass your question to Mr. Kandt, who has been part of that process from the beginning and is also working on some amendments.

**Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:**
I think there are two parts to your question. One is the issue of sex trafficking in our state, the enactment of A.B. No. 67 of the 77th Session, and the follow-up to address the problem of sex trafficking, and then the second issue of registration as a sex offender.

With regard to A.B. No. 67 of the 77th Session, we have recognized that sex trafficking is a significant problem in our state. It is probably a problem to a greater extent than we realized because it is underreported. In the last two decades, the Las Vegas Metropolitan Police Department has recovered over 2,400 children that have been trafficked for sex in the Las Vegas metropolitan area. That number probably understates the extent of the problem. We realized we needed to address it in a comprehensive way. Assembly Bill No. 67 of the 77th Session was intended to do that.

First of all, A.B. No. 67 of the 77th Session addressed the fact that we did not criminalize sex trafficking under state law. It was a crime under federal law. When we had sex trafficking taking place, we had to work with our federal colleagues to have them take it forward with prosecution in the federal courts. An important part of A.B. No. 67 of the 77th Session was criminalizing the act of sex trafficking under state law. That is now a crime. Sex trafficking so defined is any trafficking of a person for sex if they are a minor, or if they are an adult engaging in prostitution by physical force or violence. That is the crime of sex trafficking. We still have the separate crime of pandering, which involves adult prostitution with no force or violence involved. We enacted what we thought were appropriate penalties for engaging in sex trafficking.

As a follow-up to your question, we also provided that if you are convicted of the crime of sex trafficking, you have to register as a sex offender. As a follow-up to A.B. No. 67 of the 77th Session, both at the state and local level, we are prosecuting individuals for sex trafficking, and we have gotten convictions. Addressing the long-term problem of sex trafficking in our state and in our communities really requires a four-pronged response.

The first is public awareness and prevention. One thing we realized, in terms of identifying when trafficking activity is taking place, law enforcement is not on the front line. It is usually people in the regular business world in our communities who are in the best position to identify when trafficking is taking place. For instance, we are working with the Nevada Resort Association. The people who work in our casinos and hotel properties, working the floors, cleaning the rooms, or parking the cars, may be in the best position to identify when there is sex trafficking taking place on that property. We are working with them on how to identify if it is happening and who to report it to so we can follow up and investigate, and if necessary, prosecute that trafficking activity. Public awareness is an important part.

The second is law enforcement response. Assembly Bill No. 67 of the 77th Session recognized sex trafficking as a crime and gave us some tools we can use. We are working with our law enforcement and prosecution agencies to ensure they know how to properly investigate and prosecute those cases, obtain evidence, get a conviction, and send the traffickers to prison.

The third is treatment and services for the victims. This is probably the piece we have the furthest to go on. I hate to say this, but the average age of an individual who has been trafficked is 13 or 14. You have a victim who has been trafficked since they were that young, perhaps into adulthood. They cannot just walk away from that and start a new life. They need counseling treatment services to help them rebuild their lives and move on. We simply do

not have those resources at this time. We are trying to work with the private sector. Last session you also created a fund for victims of trafficking that can accept grants, gifts, and donations. There have been efforts to raise money to build those resources.

The fourth prong of our approach to this problem is getting reliable data and statistics. Once again, it is underreported. We do not know to what extent it really is a problem. It is probably a greater problem than we realize.

With regard to sex offender registration, you referred to litigation. In 2007, Nevada was the first state to enact the federal Adam Walsh Child Protection and Safety Act in its entirety in state law, which changed our sex offender registration system from an offender base to an offense base. The level tier that requires registration is based upon the offense committed. Shortly after the Nevada Legislature enacted the Adam Walsh Act, it was enjoined from our ability to enforce it in litigation in federal court.

Our office defended the Adam Walsh Act successfully all the way to the Ninth Circuit Court of Appeals. We prevailed and the permanent injunction against our ability to enforce the Adam Walsh Act was supposed to be lifted. However, we also had some corresponding litigation in state court. We have a case pending before the Nevada Supreme Court. As of yet, we have not enforced the Adam Walsh Act with regard to our sex offender registration system because of this litigation. As I indicated, our office has successfully defended the Adam Walsh Act at every stage of litigation to date.

**Assemblyman Carrillo:**
I apologize, Chairman. I know this is not the Assembly Committee on Judiciary and I gave everyone on this Committee a taste of the Judiciary Committee. I have been on the Judiciary Committee the last two sessions. Thank you for providing me that information. I will contact the Office of the Attorney General for more information.

**Chairman Ellison:**
There were some questions brought up recently on sex trafficking and pandering, so I was glad to get that out on the table. Are there any other questions?

**Assemblyman Munford:**
This is a personal question. About 40 percent of my constituency is Hispanic. Your office has filed a suit against the President's immigration plan. I would like to know your justification and reason for doing so. Some of my constituents reacted to that. I received phone calls and emails regarding this issue.

They feel the move on the part of the President was a compassionate and sensitive move regarding families being broken up, in addition to education opportunities. I am speaking on behalf of my constituents. What I feel personally is one thing, but this question is motivated by my constituents.

**Adam Laxalt:**
As many of you may know, my family came from the Basque country 100 years ago. This act was profoundly not anti-immigrant. This act had nothing to do with immigrants as an identifiable group. We have a constitutional system, a system I believe has made this the greatest country in the world. People have come to America for hundreds of years in order to have the American Dream and prosperity. People can have different opinions on what has made this a great country, but from my perspective, one defining feature of America is we have a rule of law, and in the majority of cases, people follow the law. The laws are enforced. What we have seen in the past number of years, from my perspective, is an abandonment of the rule of law.

This particular case happened to involve illegal immigration. There are many other examples that will likely come forward in the next year. The President of the United States must work within our constitutional framework and reach out to our elected representatives. Nevada has a healthy mix of Democrats and Republicans. The President needs to work with these representatives. Without being too partisan, the President has said for many years that he could not do what was eventually done. He has said over and over that we have a constitutional system, and he could not act unilaterally. If compassion is what moved him to go it alone, my job is to defend the law and to defend the best interests of the state. We felt it was important to protect this state and defend the rule of law.

I will address an unsolicited question that always comes up, that of resources. As you saw from our testimony today, we are doing hundreds of things at once. Nothing stopped in our office because we joined this lawsuit. Texas has a very competent Office of Solicitor General, and they are undertaking this case. The 27 states that have joined this lawsuit are able to piggyback on many lawyers who are working on this issue every day. All of those things factored into our decision as to whether it was right for Nevada and whether it was right for us to push forward.

**Assemblyman Munford:**
Is there much cost to this in terms of dollars spent by your office?

**Adam Laxalt:**
Our office filed a short amendment to join the lawsuit. With the exception of the time it took for me to evaluate the case and a few of us deciding the legal underpinnings of this case, there is no additional time or cost to our office.

**Assemblyman Munford:**
Did you consider this amnesty?

**Adam Laxalt:**
I think it is important for the Attorney General to do his best to stay out of the politics of these things. We evaluated whether this was lawful under our constitutional system, and we felt it was not, as did 27 other states.

**Assemblyman Munford:**
I understand what your office has proposed to do. I am defending my constituency and their concerns. That is the reason I was elected. I have to speak for them, because no one else will. I am glad you are here today in order for me to present that question to you. I will take that message back to my district.

**Adam Laxalt:**
I would like to add, one essential piece to this lawsuit is to force it back into Congress. If the federal judge in this case grants the lawsuit and determines it is unconstitutional, that simply pushes the issue back into the legislative body where the problem needs to be fixed. The solution that was presented by the President is not a long-term or permanent solution. I will not go any further into the policy, but from a legal perspective, the lawsuit is something we felt we needed to join. We hope it will push for more certainty in the long run.

**Assemblyman Munford:**
Constitutionally, the President does have Executive power. In an emergency situation, the President can use his Executive power in the best interests of this country. He did that at the time. Congress should be given the opportunity to weigh in on it later. The President was not wrong. He did what he had to do at the time.

**Assemblyman Stewart:**
I have a question concerning the sex registration time period. Is there a way of getting off that list? I have heard of several incidences from my constituents. For example, a 19-year-old who was dating his high school sweetheart, who was slightly underage. The girl's father brought charges against him, and he was placed on the sex offender list. They later got married, had children, and live a happy life. Is there a way for people like that, where there were

extenuating circumstances, to get off the list? My second question is whether we have enough data on Assembly Bill No. 67 of the 77th Session to know how effective it has been?

**Brett Kandt:**
I cannot speak to the specific facts of the example you gave. I can tell you, under our sex offender registration system, both the current system we are working under and the Adam Walsh Act amendments that we are not yet enforcing, but which this body enacted into law in 2007, some individuals are subject to lifetime registration. They are assessed to be high risk to reoffend in a sexual manner, and they are subject to lifetime supervision. There is a good reason for that because they have been determined to be a high risk to reoffend and are a danger to our community.

With regard to A.B. No. 67 of the 77th Session, it is too early to know how effective it is, because it was enacted into law less than two years ago. I can tell you, we have gotten convictions, and we have sent traffickers to prison.

**Chairman Ellison:**
I have received calls about the same issue as Assemblyman Stewart. Young men were dating underage girls and are now on the sex offender list. There has to be a way to adjust for some of these who are not predators. Can you find out what we need to do and get that information back to us? I think that is important. Why leave someone on the list for a lifetime for something that happened 20 years ago involving extenuating circumstances.

**Brett Kandt:**
I will meet individually with each of you and bring the experts who handle the sex offender registry. The subject matter experts can talk to you about the way the system works.

**Assemblywoman Spiegel:**
I have a procedural question. When someone files a complaint with your office, what is a reasonable time frame for the matter to be investigated and for him or her to hear back from your office?

**Adam Laxalt:**
I think that will depend on what type of complaint it is. We are happy to get back to you with information on what our lead times are. We have so many different units, and some of them are staffed well. However, others are not.

**Brett Kandt:**
We have a constituent services individual in our office. Our office receives a great number of inquiries, and sometimes the inquiries involve matters that are within the purview of our office, and sometimes they are not. We realize that we owe it to the public to send them in the right direction, even if it is not within our office. Our constituent services individual will work with people when they contact our office to determine exactly what their issue is and send them in the right direction, whether it is another state agency or something on the local level. If it is something within the purview of our office, we will send them to the correct unit in our office to get started in the process so we can investigate their concerns.

**Assemblywoman Spiegel:**
If someone does not hear back from your office within 30, 45, 60, or 90 days, is there an escalation process or somewhere else they can go?

**Brett Kandt:**
If you have constituents who say they have not heard from our office in that time frame, I would like to discuss that and have you put me in touch with those constituents. The reason we created a position that focuses on constituent services is so they will get timely and accurate responses. We want to send them in the right direction and help them to the greatest extent possible.

**Assemblyman Moore:**
Mr. Attorney General, I would like to thank you for your dedication and willingness to step forward and defend the *U.S. Constitution* when no one else would. A great number of my constituents applaud you for that, and I have been in contact with them. They are in support of you. As a veteran myself, thank you for the work you are doing to help our veterans in our great state.

**Chairman Ellison:**
Are there any further questions from the Committee? [There were none.] I will open the hearing for Assembly Bill 53.

**Assembly Bill 53: Revises provisions relating to administrative procedure. (BDR 18-160)**

**Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:**
I am here to present for your consideration Assembly Bill 53. To my left is Deputy Attorney General Colleen Platt, who will get into the weeds of this bill. Ms. Platt will take you through the process of an administrative proceeding under the Nevada Administrative Procedure Act (APA), which is

*Nevada Revised Statutes* (NRS) Chapter 233B. What A.B. 53 does, in a nutshell, is revise certain provisions of that chapter to comply with a recent Nevada Supreme Court decision, and to ensure there is consistency and efficiency in our contested cases. We will then go through the bill section by section to explain how we believe A.B. 53 would improve that process. [Mr. Kandt also provided written testimony (Exhibit D).]

**Colleen L. Platt, Deputy Attorney General, Office of the Attorney General:**
Before a contested case can come before a district court, we will have, at a commission or board level, a complaint notice of hearing. These generally involve a professional licensee, a doctor, or a private investigator, for example. There is a hearing held by the board where evidence is submitted and a decision is made by the board. At that time, if the decision is against the licensee, the licensee has 30 days to appeal the decision to a district court. That is called a petition for judicial review. At that point, the court will then review the decision of the board using a lesser standard than the board applied. They will make a decision as to whether the board acted within its powers or whether the decision was arbitrary and capricious, making sure the individual's due process rights were not violated. That is the general gist of how you get to the district court.

The main focus of the bill is to bring the standard of proof that a board or commission must use at the complaint notice of hearing level. Prior to the decision by the Nevada Supreme Court in *Nassiri v. Chiropractic Physicians' Board,* 130 Nev., Adv. Op. 27, (Apr. 3, 2014), some courts utilized a substantial evidence standard and some boards used a preponderance of evidence standard. The Nevada Supreme Court said there is no lower standard than a preponderance of evidence standard. That is what this bill does, in addition to some other provisions. It brings it into compliance with the court's decision in *Nassiri*: a board or a commission at the complaint notice of hearing level must use a preponderance of the evidence.

In section 2 of the bill, we define "preponderance of the evidence" as evidence that enables a trier of fact to determine the existence of a fact is more probable than the nonexistence. In other words, a 51 percent probability that the fact did occur.

In section 3 of the bill, we are trying to provide that costs are not allowed in a petition for judicial review. I will let Mr. Kandt speak to that.

**Brett Kandt:**
*Nevada Revised Statutes* 18.010 allows attorney fees to be awarded to a prevailing party in certain actions. *Nevada Revised Statutes* 18.020 allows

costs to be awarded to a prevailing party in certain actions. There has always been some question as to whether a petition for judicial review is a special proceeding for purposes of those statutes. A petition for judicial review is not actually listed as a special proceeding for the purpose of those statutes, but some courts have questioned whether it should be, or whether it still applies, because there is an old Nevada Supreme Court case that implies that a petition for judicial review is a special proceeding for that purpose.

To frame the issue for you, generally, a petition for judicial review is filed by a licensee because they are aggrieved by the decision of the board or commission. Under NRS 233B.135, a "court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact." When you file a petition for judicial review and you are aggrieved by the decision of one of our boards or commissions, there is a very high bar for you to overcome on judicial review. Basically, you will have to demonstrate, and the court in conducting judicial review of the agency decision will have to determine, that the agency acted in an arbitrary or capricious manner.

Some of our boards and commissions currently, when they prevail, do seek costs and fees in certain instances. As many of you know, boards and commissions are not all created equal. In the event some of our small boards and commissions are taken up on a petition for judicial review and lose, because it was determined they did act in an arbitrary or capricious manner, they could be bankrupt if the other party seeks attorney costs and fees. It is a policy decision for this legislative body to make, as to whether you want to clarify in the law that a prevailing party on a petition for judicial review is a special proceeding and whether costs and fees should be awarded to the prevailing party.

**Colleen Platt:**
Turning to section 5 of the bill, we are seeking to amend subsection 5 of NRS 233B.121 to provide that a voluntary surrender may be one of the types of informal dispositions that a board could make prior to the hearing done at the board level. Any informal disposition taken by a board is considered disciplinary action by that board. Certain boards are required, under federal statutes, to report disciplinary action to a specific databank. For example, physicians have to report any type of disciplinary action to the National Practitioner Data Bank. What happens in certain situations is these licensees think if they settle the case beforehand, it is not discipline. We are clarifying that even a settlement is a disciplinary action by the board and is reportable.

In section 5, subsection 7, we are seeking to have the party making the petition for judicial review the party that bears the costs associated with the transcript.

Because these are permissive events a licensee can take at their prerogative, the cost associated with transcribing the hearing at the board level is quite expensive. *Nevada Revised Statutes* Chapter 622A is a complement to the Nevada Administrative Procedure Act (APA). *Nevada Revised Statutes* Chapter 622A only says the person making the petition is the person who has to provide an original or certified copy of the transcript of the hearing. This change to NRS Chapter 233B will require the party filing the petition to be responsible for all of those transcription costs.

Section 8 of the bill revises NRS 233B.127 to clarify the grant, denial, or renewal of a license is not a contested case within the meaning of the APA. There is a Nevada Supreme Court decision which states that, so we are bringing these statutes into compliance. There are some instances where people think once they have been denied a license, they can bring it up to the district court for review. That is simply not the case, unless there is a statute that provides for a hearing in such a matter. If there were statutory framework for that, then that would fall within the definition of a contested case.

Section 9, subsection 2(c) of the bill revises NRS 233B.130 to provide that a petition for judicial review must be served upon the Attorney General's Office and the board. There was nothing in the statutes about whether or not the petition had to be served on anyone. There were a few situations where we found out after the fact that the petition had been filed. We are making this consistent with NRS 41.031, subsection 2, which requires an individual who sues the state to serve the lawsuit upon the Attorney General's Office, as well as the board.

**Assemblyman Trowbridge:**
Going back to section 5 regarding surrendering a license, I would hope it is addressed somewhere in the statutes that this is different from someone who voluntarily surrenders the license as a result of retirement, leaving the area, or leaving the profession and would not be considered a disciplinary action.

**Colleen Platt:**
A voluntary surrender is generally only done when someone has filed a complaint against the licensee. If someone retires, it is different. That person would generally not renew the license. Voluntary surrenders are generally only given when there is a pending case against the licensee. They would generally say in lieu of other disciplinary action, meaning a fine or some sort of cost, the licensee would give the license to the board.

**Assemblyman Trowbridge:**
There are different terms in different states. Sometimes a person may want to surrender the license to be free for multiple reasons. It is a different section of the law than a plea in a disciplinary matter. I just do not want it confused here.

**Colleen Platt:**
Yes. This strictly involves an action where the board is seeking to take disciplinary action against the licensee.

**Chairman Ellison:**
The reason I am allowing questions as we go along is because it makes it easier than going back after your presentation of the bill.

**Assemblywoman Neal:**
I have a question on section 5 and section 8 of the bill. You stated in your testimony that you chose to apply the meaning to settlements in section 5. Where did that reasoning come from? Is there an existing case?

**Colleen Platt:**
There is currently no court case. What we have run into during the actual practice of disciplining licensees is that some licensees feel an informal disposition, meaning a settlement agreement, is not the same as being disciplined by the board. For example, if I settle a case with an appraiser where we agree he is going to pay a $5,000 fine and is required to complete 30 hours of education, the licensee has asked if the settlement is reportable. The answer is yes, it is reportable. The action by the board will then go into that appraiser's file as a part of the permanent record. The Real Estate Division of the Department of Business and Industry then reports that action to the national databank.

**Assemblywoman Neal:**
I am not clear about section 8. I would like real examples of what situations or circumstances would apply to this provision. I have read it a couple of times, and it is awkward wording. When I was reading the provisions of NRS 233B.121 through NRS 233B.150, it is not clear to me what the situations or circumstances are. The inclusion of the statute says it does not apply.

**Colleen Platt:**
*Nevada Revised Statutes* 233B.010 through NRS 233B.150 is the Nevada Administrative Procedure Act. What that means is all of those provisions regarding the procedures at a district court level for the petitions for judicial review are not applicable to a situation where a board has granted, denied, or renewed a license. If I applied for a license from a board and it was

denied due to a lack of experience to satisfy what the statute required, I have lost my application fee, and I do not have a license. I now cannot file a petition for judicial review and have a district court review that decision because it is not a contested case. I am not required to have a hearing before the board for the grant denial or renewal of the license. If the statute said I must come before the board and have a hearing before I was awarded a license, that would be different. If it is only staff denying my license, I am not allowed to file a petition.

**Assemblywoman Neal:**
I needed clarity on that. There could be a denial the licensee felt was discriminatory, but as long as another statute speaks to that action, you can go forward because the licensee is challenging the denial for other reasons.

**Colleen Platt:**
Possibly. If there were a statute that provides for a hearing on the grant denial or renewal of a license, then yes, the licensee could file a petition. If no such statute exists, the licensee could not file a petition for judicial review. There are other options the licensee could file, including a writ, but it would not be a petition for judicial review. There are certain requirements for a petition for judicial review in the statutes, for example, filing the transcript and filing the record. When you do not have a hearing because staff denied the license, there are no transcripts or records. There would be nothing for the court to review. There is a case that talks to this particular provision.

**Brett Kandt:**
I would like to follow up to Assemblywoman Neal's question. The scenario you described was perhaps a board discriminating under color of law, which is essentially a civil rights violation. In that instance, the aggrieved person might have a potential cause of action in federal court for a civil rights violation. They would still have recourse under that scenario.

**Assemblyman Carrillo:**
Why the change from substantial evidence to preponderance of evidence?

**Colleen Platt:**
The Nevada Supreme Court, in *Nassiri v. Chiropractic Physicians' Board*, made the determination that preponderance of the evidence is the appropriate standard to apply at a hearing at the board level.

**Assemblyman Carrillo:**
What happened to generate A.B. 53? Can you give me an example or case?

**Colleen Platt:**
Yes. The *Nassiri* case spurred the impetus of this bill. In our practice working with the boards and commissions, we have run into issues, so we are using this opportunity to correct some of those issues and to make consistencies between the APA and NRS Chapter 622A. I have a copy of the *Nassiri* decision if the Committee members would like it.

**Chairman Ellison:**
Would you get the Committee members a copy, please?

**Assemblywoman Spiegel:**
I have had a number of emails from folks about the Board of Dental Examiners of Nevada taking arbitrary action. It seems to me that if this bill were to pass, dentists, especially those in small practices, would not have the ability to hire an attorney to take on a matter on a contingency fee because costs would never be awarded. I think that would be greatly inhibiting. I am wondering what this would do to due process. When there is a board that has so many people saying they are taking inappropriate action, how is that fair to licensees?

**Colleen Platt:**
The Office of the Attorney General does not have a lot of work with the Board of Dental Examiners of Nevada. They have a private attorney on staff. The impetus behind the cost portion is because generally courts are not going to overturn a board's decision because there is such a high standard. At the board level, the licensee has been assessed a fine, perhaps required education, and perhaps some attorney fees. Now the licensee is going to exercise his rights and file a petition because he is aggrieved. If the board wins, the court will assess more attorney fees. It did not seem fair to our office to pile on more fees to a licensee.

**Brett Kandt:**
Once again, this is ultimately a policy decision for this body to make. Currently, it is unclear in statute whether a petition for judicial review is a special proceeding for which costs and fees can be awarded, although there is case law that seems to imply that it would. There are some boards and commissions that have sought costs and fees against aggrieved licensees when they filed for a petition for judicial review. There is also a scenario that has not yet happened, where a small board or commission with a small budget could lose on a petition for judicial review, get hit with costs and fees, and be bankrupted. This is a policy decision we wanted to bring to your attention for your consideration.

**Assemblywoman Spiegel:**
Mr. Kandt, do you have data from your office about the number of matters that have gone through judicial review, how they have been resolved, how the costs were affected one way or the other, and how it would play out if this had already been in law? If so, can you share it with me?

**Brett Kandt:**
We may not have that data simply because not all boards are created equal and some boards have their own legal counsel, so our office does not provide them general counsel. We may not have all of that data. We could try to get you some data.

**Colleen Platt:**
Judicial reviews are rare. I have done one in the couple of years I have been at the Office of the Attorney General. I know another colleague of mine has done two.

**Assemblywoman Spiegel:**
Will it be hard to get the data?

**Colleen Platt:**
No. However, as Mr. Kandt said, some of the larger boards have their own staff. They could have other data relating to this issue.

**Assemblyman Flores:**
I am looking at page 5, section 9, lines 33 through 43, and page 6, lines 1 and 2. When I look at section 9, subsection 2, line 33, it says, "Petitions for judicial review must: (a) Name as respondents the agency...." Why are we adding this language? Is it not common practice if you are a respondent you are going to be served? Obviously, some scenario must have occurred where it is not happening, and I would like to know the real world scenarios that occurred as to why this language is necessary.

**Colleen Platt:**
Prior to this language being added, it is not clear in the statutes. When you look at the rules and service of process, it talks about a "complaint." A petition for judicial review is not necessarily a complaint. It is unclear as to whether those rules apply. We have run into situations where a petition is filed, but it has not been served on the proper parties. It may have been mailed to the agency, but it was never turned over to the Office of the Attorney General. Once they file a petition, that starts a clock ticking for our office and for the client to respond to that petition. If we do not know that petition has been filed, the timing is off. There have been actions where the courts have asked why the

Office of the Attorney General had not been notified. This is making it consistent with how a lawsuit is filed. It must be served on the agency and the Office of the Attorney General. The statute says you name the agency, and it is implied that you serve it, but it is not necessarily the case.

**Chairman Ellison:**
For clarification, are boards who have their own legal staff exempt?

**Colleen Platt:**
They are not exempt from NRS Chapter 233B.

**Assemblyman Carrillo:**
If there was an appeal, what are the costs for transcripts, and how would we address that?

**Colleen Platt:**
In NRS Chapter 622A, there is a statutory provision which provides that the appellant is the one who pays for the transcription. For example, the State Board of Nursing is exempt from NRS Chapter 622A. In a situation they had, there was a three-day hearing with a nurse where the nurse's license was revoked. The nurse then filed a petition for judicial review. The transcript alone cost over $5,000. Because the State Nursing Board is exempt from NRS Chapter 622A, they had to pay the cost associated with the transcription of that record. This statute makes it consistent for all boards and agencies. This does not apply to just the boards in NRS Title 54, this will apply to other agencies, such as the Department of Education, if they took administrative action against a licensee and filed a petition.

**Assemblyman Carrillo:**
What if it were an injured worker who went before the court?

**Colleen Platt:**
I am not sure.

**Brett Kandt:**
That scenario was brought up just before this hearing, and it was discussed that perhaps there needs to be a different application when it involves an injured worker. We will work on a resolution with the folks who brought up that issue.

**Chairman Ellison:**
Are there any other questions from the Committee? [There were none.] Please continue with your presentation.

**Colleen Platt:**
In section 10, we are revising NRS 233B.131. Subsection 1 increases the time from 30 days to 45 days. We have run into situations where the transcript has not been returned to our office within 30 days to transmit it to the court. We are asking for an additional 15 days to allow for that issue, in addition to making sure we have the full record on appeal. When the petition for judicial review is filed, it comes to my office. I then contact the clients and ask for the entire record, which includes exhibits, transcripts, all of the complaints that were filed, any motions that were filed, or any orders by the board. All of that information has to be compiled, scanned, and filed with the court. That takes an extensive amount of time. We are asking for an additional 15 days to give us that breathing room. Again, we are making this consistent with regards to the transmission of the transcripts. The party asking for and paying for the transcription is then going to transmit that transcription to the court. My job will then be to transmit the remaining part of the record.

Section 11 amends NRS 233B.135. Now the petition is within the court's jurisdiction and the court will review that petition. In section 11, subsection 3 of the bill, we are removing the term "substantial." The judge will be reviewing the evidence based on reliable and probative evidence. It is a lesser standard. Because the court is not authorized to substitute their opinion for the board's opinion, they need to review it at a lesser standard. They need to make sure, based on reliable and probative evidence, the board's decision was not erroneous.

**Assemblywoman Neal:**
My question is regarding page 7, lines 41 and 42. I had the benefit of reading the *Nassiri* case. When they cite *City of North Las Vegas v. Warburton*, 127 Nev. Adv. Op. 62, they said, "We review the factual determinations of administrative agencies for clear error 'in view of the reliable, probative and substantial evidence on the whole record' or for an 'abuse of discretion.'" Was your deletion of "substantial" a mistake, because the quote captures all three descriptive words in the citation of the court case?

**Colleen Platt:**
That decision was citing the statute. The statute at the time had "substantial" evidence. You were looking at "reliable," "probative," and "substantial." We are removing "substantial" so it is clear the court is using a lesser standard to review that decision.

**Assemblywoman Neal:**
I did not see an adjustment. They tried to make the distinction between "standard of review" and "standard of proof." I am trying to follow the

reasoning. You said this is when the petition is in the courts, and they have jurisdiction. Are we now at "standard of review?"

**Colleen Platt:**
Correct.

**Assemblywoman Neal:**
This, then, does not apply because "preponderance of evidence" applies to "standard of review."

**Colleen Platt:**
No. The "preponderance of evidence" applies to "standard of proof." That is at the board level. That is what the board has to apply.

**Assemblywoman Neal:**
That is why I was confused. I am thinking the standard is different in terms of what we are applying.

**Colleen Platt:**
It is. When the court is reviewing it, it is a lesser standard than what the board had to apply. The board has to make sure that 51 percent of that fact occurred and that incident happened. They have a higher standard to make sure the proof is there and the fact occurred. When a court reviews that, they will apply a lesser standard because they are not substituting their judgment, and they are not relitigating the case. The court is reviewing whether the board was erroneous in what it did, which is a lesser standard. A review standard is not quite as high as what you need as a proof standard.

**Assemblywoman Neal:**
That is why I thought "substantial" would still apply to the "standard of review."

**Colleen Platt:**
We decided to remove it so it is clear that they will look at "reliable" and "probative."

**Chairman Ellison:**
Are there any further questions from the Committee? [There were none.] Please continue with you presentation.

**Colleen Platt:**
The last main change is in section 13, which revises NRS 622.360 to authorize a board to request a licensee be fingerprinted upon the filing of a complaint.

The remaining sections of the bill make that change from "substantial" to "preponderance" of the evidence when they look at the burden of proof at the board level. There were some boards within NRS Title 54 that had a substantial evidence standard, and we need to make those consistent with the court's decision in *Nassiri*.

**Chairman Ellison:**
Are there any questions from the Committee? [There were none.] Is there anyone here wishing to testify in favor of the bill?

**Sue S. Matuska, representing Nevada State Education Association:**
I am here today to ask for some legal clarification regarding the point Assemblywoman Neal made about the standard of review. We feel the bill appropriately changes the standard of proof at the administrative level, comporting with the Nevada Supreme Court's opinion in *Nassiri v. Chiropractic Physicians' Board*. However, we did see that opinion as affirming that standard of review, the "reliable, probative, and substantial" evidence. We want more clarification on the reason for changing both. I did hear Ms. Platt's explanation. We would ask to be part of more dialogue on that point. [Ms. Matuska also provided a written statement (Exhibit E).]

**Chairman Ellison:**
Could I have the bill sponsor answer Ms. Matuska's requests.

**Colleen Platt:**
We would be willing to work with her.

**Sue Matuska:**
I would be happy to have a discussion with the Office of the Attorney General and Ms. Platt. Again, this is for further clarification. The current standard of review is cited in 30 to 40 Nevada Supreme Court cases, and it is understood. We would like more discussion on whether the change is a good idea and what it would mean.

**Colleen Platt:**
Prior to the *Nassiri* decision, there was a lot of confusion as to what standard applied and what the standard even was. There was a lot of confusion that the standard of review in NRS 233B.135 was actually the standard of proof. We want to make it extremely clear that it is the standard of review, and it is a lesser standard. Having "substantial" evidence in the NRS still ties back to "preponderance." We felt it could possibly be a little confusing, especially without a definition of what "substantial" evidence is. We could define it as something less than "preponderance." However, the lines could be blended, so

we want to make it extremely clear that the court should just be looking for reliable and probative evidence, which is a lesser standard. We thought because there was such confusion in the courts prior to the *Nassiri* decision, even keeping the descriptor "substantial" evidence may further that confusion.

**Chairman Ellison:**
Is there anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone in opposition to the bill?

**James P. Kemp, representing Nevada Justice Association:**
I am also an attorney who represents injured employees in workers' compensation issues. Our concern is with the amendments to the judicial review process that will shift the cost of the proceedings to workers' compensation claimants. Specifically, section 10 of Assembly Bill 53 seeks amendment of NRS 233B.131. Under this proposed provision of the bill, it would cause workers' compensation claimants who are seeking judicial review to bear the cost of the transcript of the administrative proceeding before the Appeals Officer at the Department of Administration. They would be required to transmit the transcript. Oftentimes, there are pro se litigants who would be required to get the transcript and have to pay for the transcript. Section 5, subsection 7 of the bill, will require whoever requests the transcript to pay for it. That transcript is often hundreds of dollars, and these are generally people who have been on workers' compensation benefits and have not been working. These claimants do not have the means to bear those kinds of costs. They generally have trouble meeting their own living expenses.

This will also cause a problem for the courts and the state because these pro se litigants will invariably get this wrong. The court will have to hold hearings, will have to issue orders, and the claimants will have to go back and work with the state.

The current system, which requires the administrative agency to transmit the entire record on appeal, which includes getting the transcript prepared, works much better in the workers' compensation context. The bill seems to be aimed more at boards and commissions that deal with licensing. Workers' compensation administrative appeals are a much different process.

I did have a chance to speak with Mr. Kandt. He has expressed an interest in working on an amendment. We will follow up with him very quickly to attempt to do that. I believe a simple amendment would fix this.

*Nevada Revised Statutes* 233B.039, subsection 3(b), provides the judicial review procedures in NRS Chapter 616A through NRS Chapter 617. If you

have special provisions that deal with judicial review in those chapters, that will take precedence over NRS Chapter 233B. I believe we could come up with an amendment to provide that workers' compensation cases will continue to have the entire record on appeal prepared by the administrative agency, including the transcript, and transferred to the court on judicial review matters. We will work with Mr. Kandt and the Office of the Attorney General to work out an amendment.

Similar to unemployment compensation statutes, there is a specific statute that requires the transcript be prepared by the agency and transferred to the court. We would like to make it more like the unemployment statutes. We will work on the amendment with Mr. Kandt. That is the extent of our concern with A.B. 53.

**Assemblyman Carrillo:**
I want to make sure the individuals are taken care of regarding injuries. I am glad to hear the bill's sponsor is willing to look at an amendment for that issue.

**Keith L. Lee, representing Board of Medical Examiners:**
The Board of Medical Examiners is a larger board, and we have our own counsel who represents the board in petitions for judicial review. We have no problem with the majority of this bill. However, we do oppose sections 3 and 12, which are the cost provisions. I have met with both Mr. Kandt and Ms. Platt to discuss this issue. We have respectfully agreed to disagree on our positions on sections 3 and 12.

There are not a lot of petitions for judicial review at any level with most of these boards and commissions. As a matter of course, if the board prevails, which is probably 99 percent of the time, we make a request for costs and fees. It is a discretionary matter with the court whether to award costs and fees. In 2011, we were awarded costs and fees of just less than $20,000. The subsequent year, we made a request for costs and fees, and the court denied it. The courts, as they do in so many cases, weigh and balance the equities among the parties to make those decisions.

We believe this is a policy that has been in place for a number of years and it works. If I understand what the Office of the Attorney General has said, one of the primary reasons to do away with awarding costs and fees at the petition for judicial review level is because in the hypothetical, yet unrealized, situation where one of these smaller boards may be on the losing end, a request for costs and fees would bankrupt the board. It is our experience at the Board of Medical Examiners that the courts have exercised discretion in whether

to award costs and fees. I suspect a court could exercise discretion in the event that hypothetical event should arise.

An example of an unintended consequence is just the reverse of this. Any good lawyer will sit with his or her client and determine whether to file litigation and look at the pros and cons. One of the cons is what happens if the client loses? If he loses, there is a good likelihood that he is not only going to pay his attorney fees, but also the other side's costs and fees. Sometimes, that is a factor against filing that litigation. Likewise, I think the same would apply here in determining the merits of a petition for judicial review. If it really does not have a lot of merit, but there is no penalty for paying the prevailing sides' costs and fees, there is no consequence in filing the petition for judicial review. That will result in more time and expense, at least for my board. I would suspect when the Office of the Attorney General represents the smaller boards and commissions, there is likewise more time and expense to their office.

I would suggest this is a policy that has been in place for some time. Our experience has been that the court exercises discretion, as it should. I do not see any reason to change this policy, particularly because of a hypothetical, unrealized situation that may bankrupt a board or commission. On the other hand, an unintended consequence is it may add additional burden and expense to these boards and commissions if there is no adverse consequence to filing a petition.

**Chairman Ellison:**
What boards do you represent?

**Keith Lee:**
The Board of Medical Examiners is the only board I represent under NRS Title 54.

**Assemblyman Flores:**
Adding this specific language, do you not think that also helps a pro se litigant? For example, someone who may be on the fence, who knows the issue, but is not 100 percent sure if the decision was correct, and cannot afford to pay the fees of the other side if he loses. You are discouraging many of the pro se individuals who possibly have a legitimate basis for filing a petition for judicial review. I realize the other side of bankrupting the boards, which obviously is a concern, but I also think this would put the pro se litigant who has a legitimate concern on the fence. If there is no legitimate basis for the petition for judicial review, is that genuinely something that is going to be that costly to the board?

**Keith Lee:**
I understand your question, but it is hard for me to put it into the context of the board I represent because we do not see pro se litigants. Based on the experience we have had with the board, the two examples I cited, one where the court awarded us costs and fees, and the other where the court listened to our petition for costs and fees and said no, I think the court could exercise discretion in that situation, understanding the situation of the pro se litigant, and perhaps then award those costs and fees.

**Chairman Ellison:**
Are there any other questions from the Committee? [There were none.]

**Jay Parmer, representing Nevada Home Builders Association:**
With me today is Mr. Michael Kimmel, who is a Reno attorney and also a member of the Builders Association of Northern Nevada. We do not have any concerns with the bill as a whole. We do have one specific concern regarding section 5 of the bill. We have spoken to the Office of the Attorney General and have a commitment from them to work on the issue and see if we can address it to the necessary extent. With your permission, I would like to have Mr. Kimmel speak to you specifically about one section of this bill and how it affects licensees' relationships with the State Contractors' Board.

**Michael Kimmel, Private Citizen, Reno, Nevada:**
I am an attorney with the law firm of Hoy, Chrissinger, Kimmel and Vallas. As part of my law practice, I represent contractors, subcontractors, and also homeowners in front of the State Contractors' Board. I would like to focus on section 5, subsection 5, lines 9 through 11, where it states, "An agency shall consider an informal disposition of a contested case involving a license to constitute disciplinary action against the licensee." In my opinion, this is bad for homeowners and contractors.

When a homeowner makes a complaint to the State Contractors' Board, the first thing that happens is the Contractors' Board initiates an investigation. At that point, there is no formal hearing and no formal complaint issued by the board. The Contractors' Board, through its investigative staff, will have the homeowner and the contractor come in to gather information. Many times, the board puts the parties together and tries to get them to work it out. Working it out is in everyone's best interest. It prevents litigation, it prevents costs to the board, it gets homeowners' repairs done quickly, and there is a big incentive for the contractors to make those repairs. It also keeps the homeowner happy and it keeps the contractor from receiving a mark on their license.

This proposed language takes away that incentive, which hurts homeowners. It also hurts contractors. It puts the contractors in a position to take claims against them all the way to hearing. That is the only way they can defend their name and keep a mark off their license. If there is a resolution, even on something that may be speculative, it will then become a mark against their license. That is a disincentive to the contractors.

Respectfully, I ask that you look at this and try to modify the language. I am happy to answer any questions. In my opinion, this type of language creates litigation; it does not remove it, and that is the last thing we should be doing.

**Chairman Ellison:**
Are you going to propose an amendment?

**Michael Kimmel:**
I have not proposed an amendment. As Mr. Parmer stated, we have been in contact with the Office of the Attorney General, and we will try to come up with amended language.

**Chairman Ellison:**
I believe we should get a few people together, Mr. Parmer, Mr. Lee, and the sponsor of the bill, to work these issues out. There are some concerns that we need to address. We can set up a meeting in my office to get this done.

**Assemblyman Flores:**
I did not catch why this would create litigation in your hypothetical situation. If I have an issue with a home, I contact the contractor, we negotiate the issues, we come to an agreement, and the contractor fixes the problem. I am not sure how litigation would result from that situation.

**Michael Kimmel:**
The reason I believe it will incentivize litigation is that contractors may lose their incentive to reach that settlement. Through reaching that settlement, they will necessarily get a disciplinary mark on their license, so they may as well move forward to the hearing, take their chances, and see if they can prove there is nothing wrong at the hearing. If they prove it, then there will not be a mark on their license. If there is a problem, there will be a mark on their license. At least at that point, they have had an opportunity to be heard and defend themselves.

**Assemblyman Flores:**
I understand. People would not come to the table at that point.

**Jay Parmer:**
Thank you for the invitation to participate in the working group. We are happy to work with the Office of the Attorney General and other interested parties to help with an amendment that addresses these issues.

**Chairman Ellison:**
Are there any other questions from the Committee? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone who is neutral on the bill? [There was no one.] Do you have any closing comments?

**Brett Kandt:**
We will definitely sit down with all the parties who have expressed concerns with different sections of the bill, specifically sections 3 and 12, regarding costs and fees for prevailing parties, and section 5, regarding the transcriptions involving injured workers and the informal disposition. I believe we can work out language and bring a universally proposed amendment for your consideration and take this bill forward in a work session.

**Chairman Ellison:**
I will close the hearing on Assembly Bill 53. I will open the hearing on Assembly Bill 20. Those who are here to present A.B. 20, please come forward.

**Assembly Bill 20: Revises provisions relating to the budget of the Executive Department of State Government. (BDR 31-287)**

**Janet Murphy, Deputy Director, Budget Division, Department of Administration:**
With me today is Carla Watson. We are pleased to present Assembly Bill 20, which proposes to address a conflict between two statutes within the State Budget Act, as well as streamline the approval of work programs. I will provide you a brief overview.

Section 1, subsection 8(b) pertains to balancing forward authority or remaining cash. Interim Finance Committee (IFC) approval is required for all work programs that exceed certain thresholds, including the balance forward of currently authorized funds to a subsequent accounting period when there is no change in purpose for the use of those authorized funds.

Section 1, subsection 8(b) seeks to exempt work programs which balance forward authority or remaining cash with no change in purpose from requiring IFC approval when they meet or exceed thresholds that would otherwise require IFC approval. [Ms. Murphy read from prepared text (Exhibit F).]

**Assemblywoman Neal:**
In your explanation for the need of the amended section 1, subsection 8(b), why do you need it? Were there delays and what is an example of the type of delays you were experiencing in the interim?

**Janet Murphy:**
Currently, we do not enforce *Nevada Revised Statutes* (NRS) 353.335 because we are unable to due to NRS 353.220. Secondly, with no change in purpose, there is a burden on the agencies. A typical example is when agencies receive federal grants. The federal fiscal year is October 1 through September 30. Our state fiscal year is July 1 through June 30. Many times, the agencies need the last quarter of the federal fiscal year to finish out the grant, but they need to close the state fiscal year. The agencies try to estimate, to the best of their ability, what they need to leave in the state fiscal year through June 30, and what they will need to expend to complete the grant between July 1 and September 30. That tends to be the delay and the burden on the agencies.

**Assemblywoman Neal:**
How have you been managing these issues so far?

**Janet Murphy:**
Many agencies are doing a partial balance forward, or they balance forward into a reserve category. Then they process a second work program to pull the authority out of the reserve category to the expenditure category. They are actually processing two work programs to accomplish the task.

**Assemblywoman Neal:**
In section 1, you added certain provisions. As I read section 1, subsections 4 and 5 together, does it mean it must be approved or designated as an emergency before any money can be encumbered when you are relating it to the gift issue? It seems like the threshold is changing when you read all of subsections 4 and 5. The language in section 4 states an increase or decrease must be approved by the Legislature for any of the allotments within the work program. It links to subsection 5 with the language on page 1, lines 25 and 26, "...as provided in subsection 5 before any appropriated or authorized money may be encumbered for the revision." Section 5 is the emergency language.

**Janet Murphy:**
There are occasions when we have emergency work programs. We may have to have authority in an emergency, such as a flood, in order to move money quickly. The Governor has the ability to process those immediately. On occasion, we also have agencies that ask for an expeditious approval of a work program. Typically, those are grants that are received between

two IFC meetings. They need to receive the grant in order to start the program. By the time they receive their grant award, they may only have nine months to implement the grant. In those cases, this section will provide us the ability to submit a work program requiring 15 days for a hearing. If they are not heard, then they are approved as an information item for the IFC. This is to give the Governor the ability to have emergency or expeditious powers.

**Assemblyman Trowbridge:**
I have not thoroughly reviewed NRS 353.335, but I do have a request. Could staff take a look at what could happen in a couple of situations? These situations involve acceptance of a gift of property. The gift of property is sometimes a very clever maneuver to offload anticipated renovations, for example, a parcel of property that is without value because it is in the middle of a flood channel. By accepting that property, someone is accepting the responsibility for the improvements of that flood channel. Two other situations which have happened to me where a donation is offered, involved a steam engine and a historically significant home on the federal registry. Transportation, renovation, and ongoing costs were not anticipated in the acceptance of those donations when they did not come through as committed at the time. They said if you take this property, we will come fix it. They never showed up to fix it. After many years of it sitting there, the taxpayers had to pick up the tab. I would hope that part of the evaluation process for the acceptance of gifts, grants, and donations would involve an evaluation of initial and ongoing costs associated with the acceptance.

**Janet Murphy:**
We do have a review process, both with fiscal staff in our office as well as your legislative fiscal staff. We ask questions such as that. We vet these before we approve them. We would take that into consideration.

**Carla Watson, Budget Analyst, Budget Division, Department of Administration:**
As a follow-up to what Ms. Murphy has just explained, when real property is involved, that falls under the purview of the Division of State Lands of the State Department of Conservation and Natural Resources. They are our expert real estate reviewer. Typically, when agencies are receiving gifts and donations, it is either in the form of a nongovernmental grant or cash to help with an existing activity that the individual or entity that is donating wants to assist with. In other instances, it could be a vehicle or a boat. The condition of that type of property is always well vetted.

**Assemblyman Trowbridge:**
The more relevant and immediate situation involves the Stewart Indian School. The state is now in the position of selling 100 acres with the proceeds from

that sale going to operating, maintaining, and improving that donation from the federal government.

**Chairman Ellison:**
Are there any further questions from the Committee? [There were none.] Is there anyone wishing to testify in support of the bill?

**Scott K. Sisco, Deputy Director, Support Services, Department of Corrections:**
Next month I will have 29 years with state government. Probably 27 of those years have been as a chief financial officer for state government. For the major portion of those years, we did not have the current interpretation we have now. It was a regular issue. We would get a federal grant, but it would take the federal government about six months to do anything. We would get our grants in April, we would go before the IFC to get approval to accept that federal grant, go out and do something for the citizens of Nevada, and then head back to our office and try to put the necessary contracts and agreements together. By the time that was complete, it would be July 1 and a new fiscal year. We would have to go before the IFC and do the same thing again.

There is always a lot of conversation about inefficiencies in government, and that is a perfect example of what happened when a new interpretation said we had to stop doing that. The first IFC meeting is usually in August. The money is sitting there, and as a result, there has been money left on the table that should have gone to providing services to the citizens of Nevada.

I would also like to mention the emergency work programs that the Governor has the authority to issue. The Department of Corrections had an emergency last year. We had a situation where we had some money that needed to be moved quickly. If we had not moved the money, we would have lost almost $500,000 in discounts to our medical service providers if we had not paid them pursuant to the timeline of the contract. We had another situation where one of our medical prescription providers was refusing to provide the necessary medication for an inmate. It got to the point of sending one of our employees to the pharmacy to purchase the medication with his own credit card and be reimbursed after the work program process.

This is a good bill, and this issue has needed to be fixed since the new interpretation came along. Anything you can do to expedite this would be greatly appreciated.

**Assemblywoman Neal:**
Where did this interpretation come from? Was it a court decision?

**Scott Sisco:**
I am not 100 percent sure of that. I do know we had smooth sailing for many years and then during the Gibbons Administration, things were tightened down.

**Assemblywoman Neal:**
All the way back to 2003?

**Carla Watson:**
Some biennia ago, the Budget Division of the Department of Administration actually engaged in what would be best termed as a gentleman's agreement with the Legislative Counsel Bureau's Fiscal Analysis Division. The Legislature had already approved the use of the fund's balance forward with no change in purpose. We have since determined this is one of those agreements that had carried on for a number of years and really needed to be solidified in statute. That is what we are doing.

The Department of Administration has brought these proposals forward in the last two biennia, but they were intermixed with other proposals, some of which were not accepted as these two were readily accepted, we believe, by all parties. With the inclusion of the other proposals intertwined with this, it fell through the cracks and eventually was not approved.

Our current proposal is very clean and straightforward with just those two components.

**Assemblywoman Neal:**
I appreciate that because it seemed as if it were an abstract interpretation from some mystical planet.

**Carla Watson:**
This is our attempt to finally remedy these inefficient processes. The original intent was to give agencies more flexibility with the higher threshold. The second part was to solidify the balance forward with no change in purpose because those had already been approved. We were going through a second approval process, which was an inefficient way to go about things.

**Chairman Ellison:**
Are there any other questions from the Committee? [There were none.] Is there anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone wishing to testify in opposition of the bill? [There was no one.] Is there anyone wishing to testify who is neutral to the bill? [There was no one.] Are there any closing comments? [There were none.] I will close the hearing on Assembly Bill 20.

We will move forward with the work session. I will ask Mr. McDonald to walk us through the work session documents.

**Jered McDonald, Committee Policy Analyst:**
Members, you should have in front of you a set of work session documents in a binder. This is also available on the Nevada Electronic Legislative Information System. I believe there are some available for the public on the back table.

We have three bills on work session today. The first one is Assembly Bill 14.

**Assembly Bill 14: Makes requirements for management of bad debts consistent among all agencies of the Executive Branch of the State Government. (BDR 18-457)**

This bill was heard in this Committee on February 5, 2015. This bill was brought forward by the Office of the State Controller and sponsored by this Committee. [Continued to read from prepared text (Exhibit G).]

There was an amendment brought forward during the meeting. There is a copy of the amendment attached to the bill page (Exhibit G). The amendment clarifies the role of the State Gaming Control Board and the State Board of Examiners.

**Chairman Ellison:**
Is there any discussion on the bill?

**Assemblywoman Spiegel:**
During the hearing, I had requested the Controller's Office send me an aging report. Mr. Smack said he would do that, but I have not received it. I do not have the information I need to make an assessment of the underlying policy. I am going to be voting no. I would like to reserve the right to change my vote on the floor pending the receipt of the requested information from the Controller's Office.

**Chairman Ellison:**
I will make sure you get that information prior to this bill going to the floor. Seeing no other discussion, I will entertain a motion.

ASSEMBLYMAN STEWART MOVED TO AMEND AND DO PASS ASSEMBLY BILL 14.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN SPIEGEL VOTED NO.)

**Chairman Ellison:**
Mr. Stewart will take the floor statement. We will move to Assembly Bill 24.

**Assembly Bill 24: Authorizes payroll offsets to recover delinquent balances on state-issued travel charge cards. (BDR 23-458)**

**Jered McDonald, Committee Policy Analyst:**
The next bill on the work session is Assembly Bill 24. This bill was heard in this Committee on February 5, 2015. [Continued to read from prepared text (Exhibit H).]

We did receive an amendment on this bill, and it was discussed during the meeting. The amendment is attached to the bill page (Exhibit H). The amendment introduces the term "charged off," and it also clarifies that the deducted card balances are remitted to the State.

**Chairman Ellison:**
Is there any discussion on the bill?

**Assemblyman Trowbridge:**
Does the balance also include any interest or late fees that would be the responsibility of the employee?

**Jered McDonald:**
If I recall from the testimony, I believe it did. If you need further clarification, I believe the bill sponsor is in the audience.

**James W. Smack, Chief Deputy Controller, Office of the State Controller:**
First of all, Assemblywoman Spiegel, you will have the report you requested on Assembly Bill 14 as soon as I get back to my office. It is a fairly large Excel file and when I tried to send it, it was too big. Could you repeat the question for me, Assemblyman Trowbridge?

**Assemblyman Trowbridge:**
Does the balance also include any interest or late fees that would be the responsibility of the employee?

**James Smack:**
It will include all interest and fees.

**Chairman Ellison:**
Is there any other discussion? [There was none.] I will entertain a motion.

> ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO PASS ASSEMBLY BILL 24.
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

**Chairman Ellison:**
Mr. Silberkraus will take the floor statement. We will move to Assembly Bill 61.

**Assembly Bill 61: Revises provisions requiring the submission of certain reports by the Personnel Commission and the Administrator of the Division of Human Resource Management of the Department of Administration. (BDR 23-286)**

**Jered McDonald, Committee Policy Analyst:**
The last bill on work session is Assembly Bill 61. This bill was heard in Committee on February 6, 2015. [Continued to read from prepared text (Exhibit I).

We did receive an amendment that was discussed during the hearing. The amendment is attached to the bill page (Exhibit I). The amendment restores a portion of the language removed, keeping the substantive language, which limits when a competitive examination can be suspended. I do want to point out, the amendment does not remove the elimination of the reporting requirement.

**Chairman Ellison:**
Is there any discussion? [There was none.] I will entertain a motion.

ASSEMBLYMAN STEWART MOVED TO AMEND AND DO PASS ASSEMBLY BILL 61.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Ellison:**
Mr. Carrillo will take the floor statement. Is there any public comment? [There was none.] I would like to mention that Assemblyman Hansen's son-in-law passed away, which is a tragedy. Please keep the family in your heart today. We are adjourned [at 10:49 a.m.].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE:

**EXHIBITS**

**Committee Name: Committee on Government Affairs**

**Date: February 13, 2015** **Time of Meeting: 8:32 a.m.**

| Bill | Exhibit | Witness/Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| | C | Adam Laxalt, Office of the Attorney General | Written testimony |
| A.B. 53 | D | Brett Kandt, Office of the Attorney General | Presentation of bill |
| A.B. 53 | E | Sue S. Matuska, Nevada State Education Association | Written statement |
| A.B. 20 | F | Janet Murphy, Budget Division, Department of Administration | Written testimony |
| A.B. 14 | G | Jered McDonald | Work session document |
| A.B. 24 | H | Jered McDonald | Work session document |
| A.B. 61 | I | Jered McDonald | Work session document |