

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

**Seventy-Eighth Session  
April 1, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:02 a.m. on Wednesday, April 1, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://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](mailto: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 Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Melissa Woodbury (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Tyrone Thompson, Assembly District No. 17

Minutes ID: 639



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst

Eileen O'Grady, Committee Counsel

Erin Barlow, Committee Secretary

Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Scott Gilles, representing the City of Reno

Jonnie Pullman, Chairwoman, Charter Committee, City of Reno

Andrew Diss, Member, Charter Committee, City of Reno

Ron Dreher, representing Peace Officers Research Association of Nevada

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada

Stacey Shinn, representing Progressive Leadership Alliance of Nevada

Sean Sullivan, representing the Office of the Public Defender, Washoe County

Steve Yeager, representing the Office of the Public Defender, Clark County

Otis Lang, Private Citizen, Las Vegas, Nevada

Anthony Gilyard, Reentry Case Manager, Foundation for an Independent Tomorrow

Jose Vazquez, Private Citizen, Las Vegas, Nevada

Ryann Juden, Chief of Staff, Office of the Mayor/City Council, City of North Las Vegas

David Cherry, Intergovernmental Relations Specialist, City of Henderson

John Fudenberg, representing Clark County

Melanie Bruketta, Human Resources Director, City of Carson City

**Chairman Ellison:**

[Roll was called. Committee rules and protocol were explained.] This morning, we have a new member of the Committee, Assemblyman Jim Wheeler. You all have the right to make him uncomfortable. Assembly Bill 293 has been withdrawn by the sponsor of the bill because he has some amendments he is still drawing up. At this time, I will open the hearing on Assembly Bill 88.

**Assembly Bill 88: Makes various changes to the Charter of the City of Reno.  
(BDR S-478)**

**Scott Gilles, representing the City of Reno:**

I have with me Karl Hall, the City Attorney for the City of Reno. We are here to present Assembly Bill 88, which changes just the City of Reno's charter. It makes no changes to other charters or charter rules statewide. Also here today are some of the Charter Committee members, including Chairwoman Jonnie Pullman, committee member Andrew Diss, committee member Seth Williams, and the Chair of the Civil Service Commission, Jean Atkinson, who was involved in the work done by the Charter Committee.

I will start with some background on the Charter Committee and its efforts, and then get into the amendments presented in this bill. The Charter Committee was established by the 2013 Legislature as part of amendments to the City of Reno charter. It was Assembly Bill No. 9 of the 77th Session. Since that time, the Charter Committee has met nearly 20 times, including multiple joint meetings with the City Council. There are 13 committee members, with 7 appointed by the Reno City Council and the mayor, and 6 legislative appointments. The committee started their work by creating a work plan that they could follow throughout its process. They reviewed provisions in the charter identified by the City Council, provisions identified by committee members and the City of Reno Civil Service Commission. They were assisted by the city manager's office as well as the city attorney's office and staff. The city clerk served as the clerk of the Charter Committee meetings. Many department heads attended the meetings and provided feedback. Over the course of the meetings, the committee considered a wide range of possible amendments to the charter, but ultimately operated on a majority vote basis, where only the amendments that received a majority vote of the Charter Committee were presented as recommendations to the City Council. Ultimately, the City Council accepted the bulk of the recommendations from the Charter Committee and agreed to use one of its two bill draft requests (BDR) for the recommended charter amendment.

**Chairman Ellison:**

You are asking for one other BDR to be added for Reno in this bill, is that correct?

**Scott Gilles:**

That is correct. Sections 2 and 11 address that. It creates a BDR specific to the Charter Committee, that the committee could submit to the Legislature prior to the September 1 deadline in the even year preceding a legislative session. The BDR is required to be presented to the City Council prior to that deadline.

It does not require the City Council's approval. But when this was vetted by the Council, it was determined that it would be highly unlikely the Charter Committee would move forward with charter amendments in their own BDR if the City Council was not on board and did not approve of the amendments. But the way the bill is written, it is a Charter Committee BDR that does not require Council approval.

I will jump into the sections I believe are relevant. I will not touch on every section of the bill. Some of the sections are just corresponding changes based on the substantive amendments that I will talk about today. Sections 1 and 4 revise some existing definitions and create new definitions to clarify the distinction between "appointive officers" and "appointive employees" in the charter. I will describe the distinction between those two categories of appointed staff more fully for the Committee when I get to section 7 of the bill, which is one of the meatier provisions.

Section 6 of the bill addresses prospective vacancies on the City Council and the Office of the City Attorney or municipal judges. It permits the Council to fill these prospective vacancies by special election. Currently, prospective vacancies can be filled by appointment, but it was not clear if they could be filled by special election. An example would be when our current mayor was elected mayor, she was a sitting, at-large Council member. The Council knew the position was going to be vacant when she took office as the mayor. What this allows the Council to do is determine that they will call for special election when that prospective vacancy exists. You will see that there is an amendment ([Exhibit C](#)) to this provision to clarify that what the Charter Committee intended was that if the vacancy will be filled by special election, the City Council is required to declare by resolution that they are going to hold a special election in lieu of appointment, and that the resolution needs to be done within 30 days of the actual vacancy. It closes an open-ended loop.

Section 7 is pretty lengthy, but it is ultimately intended to create a comprehensive reference and clarification of which city employees are appointed officers and which are appointed employees. Section 7, subsection 3 proscribes a specific list of appointive officers in the charter. This is a finite list of specific positions, which includes the assistant city managers, the city clerk, the city manager, for example. This is a finite list of specific offices which are appointed. Within this subsection, the City of Reno has submitted an amendment to remove the assistant fire chief from that list of appointed officers. There is also an amendment to remove references to the heads of the divisions or the assistant heads of the divisions. The reason for the second change on divisions is that divisions are not a clearly defined organizational department within the City of Reno. There was some confusion as to who

those people would be, so we removed those provisions. The reasoning for taking the assistant fire chief out was the concern that making the assistant fire chief an appointed position would conflict with the existing collective bargaining agreement. Both the Charter Committee and the City Council agreed to remove that reference and keep the status quo that the assistant fire chief is not an appointed position.

Subsection 5 of section 7 gets into the definition that creates our category of "appointive employees." This is not a finite list. This is a definition description of who an appointive employee is within the city. That language states that they "(a) Are not appointive officers but regularly assist an appointive officer; (b) Have duties that consist of administrative work directly related to management policies; and (c) Have positions that require them customarily to exercise discretion and independent judgment."

Now that section 7 has created these two distinct categories of appointive officers and appointive employees, subsection 4 of section 7 goes on to place a limit on the number of appointive employees that the city may appoint. The cap for the city is the greater of forty full-time appointive positions or four percent of the total number of appointive officers plus all full-time equivalent positions in the civil service. When this number that the four percent would apply to was last counted in the City of Reno, it came to roughly 11,000. Four percent of 11,000 is 44. Right now, as this language exists, the cap on appointive employees would be 44. Currently, based on the definitions in this bill, the City of Reno counts between 35 and 37 existing appointive employees.

The final piece of section 7 requires the city manager to prepare and file an annual report setting forth the organization of every department of the city and include the job duties of each appointive officer and each appointive employee. The purpose of this was to provide some transparency as to the appointive offices within the City of Reno.

Section 10 fixes a potential problem in the legislative appointment rules in the charter. Currently, residents elect legislators representing the City of Reno, who then make appointments to the committee. Two of those committee members are appointed from those members in the Senate and Assembly majority, and one member is from the Senate and Assembly minority. Though it does not exist right now, it is feasible that there could be no Reno representative in either the majority or minority of one or both of the houses. In that event, the changes in section 10 would vest the Charter Committee with appointment power in the leader of that house's minority or majority leader. An example of this would be if all Senate members from Reno were from the same party and

that party was in the minority, the new rules would have the majority leader of the Senate make the City of Reno charter committee appointments.

Section 12 addresses the residency requirements for the city manager's office. It requires the city manager to actually, as opposed to constructively, reside in the state. It requires that a city manager has six months to obtain that residency when appointed. Section 12 also requires that the city manager's office be filled within six months of vacancy in that office. Section 14 revises the employment structure of the city attorney's office so that clerical staff must be civil service employees. To be clear, this does not apply to attorneys, paralegals, investigators, office administrators, and executive assistants. This would make the clerical staff in Mr. Hall's office civil service employees. Mr. Hall believes that would impact approximately ten employees at this time.

The changes made in section 17 are intended to make clear in the charter who is and who is not covered by the merit system and the rules established by the Civil Service Commission. Section 17 adds to the existing list of who is not a civil service employee. Some obvious examples are appointments to vacant elected positions, the appointive officers and employees that were added in previous sections, temporary employees who work less than 234 hours in a fiscal quarter, the city manager, the city attorney, and the city clerk. It removes a person employed as a trainee for a period of time which is not more than the period proscribed for a probationary employee from that list of who is not a civil service employee. The rationale is that "trainee" is an outdated reference and no longer used in the city.

Section 19 prohibits the Civil Service Commission from obtaining employee medical examination records or results. This was done to address concerns that the city manager's office staff had regarding compliance with state and federal health information privacy regulations. Section 20 revises applicable rules from when a position is declared to be within the civil service, and assists in the transition of that position into civil service.

Section 21 is another relatively lengthy section. Section 21 requires the city manager to prepare and maintain a classification plan for all civil service positions. This does not include the appointive positions or the appointive officers. The classification plan will allocate each position within the civil service to a particular class. The section goes on to detail what is required in that classification plan as to listing the duties and responsibilities, and where those classifications lie. Section 21 goes on to extend to the civil service employees their right to have their classification reviewed by the Civil Service Commission within 30 days of receiving allocation or reallocation of their position. The Civil Service Commission is then required to make findings as to

the duties, responsibilities, and qualifications of that position. If the commission finds that the allocation by the city manager is not correct, it shall notify the city manager and the city manager shall reallocate pursuant to the findings. Section 18 requires the commission to adopt procedures for this review process.

**Chairman Ellison:**

Whom does the committee report to? Is it to the city manager who then goes to the City Council, or does it bypass the city manager?

**Scott Gilles:**

I am not entirely familiar with the process. My understanding is that the committee does not necessarily report to anyone. The committee works under the structure set forth in the charter. The committee met with the city manager's office staff, and the city attorney's staff, throughout their process. Ultimately, they present their recommendations to the previous City Council. At that point, the previous City Council agreed to accept the recommendations, and use one of the city's BDRs to submit these amendments before this body. As far as who they report to, I do not think there is someone they necessarily report to. But ultimately, they had to bring these recommendations to the City Council for approval in order for the city to accept the recommendations and put them into one of their own BDRs. That was done prior to the deadline for submitting the BDR that became this bill.

**Chairman Ellison:**

So you are asking for a BDR for the charter service directly, correct? Are you asking to take one from the City Council and give it to the Charter Committee, or are you asking for a new BDR?

**Scott Gilles:**

This bill asks for a new BDR specifically for the Charter Committee. The preference of the city is that this would not impact one of its two existing BDRs which it uses for other topics. I think the rationale behind the request in this charter is that if the Charter Committee is going to be working over a two-year span pursuant to the bill from last session, the Charter Committee did not want to present these recommendations to the city and have the city use one of its two BDRs for the charter changes. That was the motivation for the request for a third BDR for the city, but is specific to the Charter Committee.

**Chairman Ellison:**

I do have a problem with that. I think that would be like opening Pandora's box, and that there is a reason the legislators came up with the law they did. I also do not believe that anyone should bypass the chain of command and therefore

their checks and balances. I think this bill would. I think Charter Committee BDRs should be clarified by the city manager, who is the focal point of authority, and then it could be put on the agenda. Those are some of the concerns I have.

**Assemblyman Wheeler:**

In section 12, subsection 3, it says that a vacancy of the city manager's position must be filled within six months after the vacancy occurs. I can understand that, but I am wondering what the penalty is if you do not. There is nothing in here that says you really have to.

**Scott Gilles:**

I think you are correct. There is not a remedy or penalty set for not making that appointment within six months. I think this is seen as direction to the City Council, that if this vacancy exists, it should not sit open for more than that six months. I do not have a lot of experience with how other city manager positions are filled throughout the state, but it seems to me that the City Council would have a tough time leaving that open for more than six months and still be able to function properly within its city charter. To answer your question, the bill as written does not set forth an explicit penalty for not making that appointment within six months.

**Assemblyman Wheeler:**

I cannot see that vacancy going longer than six months either. But we are setting a regulation and a law, is that correct?

**Scott Gilles:**

I do not know that we are setting a regulation into law. I am not sure what the legal implication would be if it were not filled within six months, and how that would be dealt with if this was litigated or brought in a grievance. I am not sure what would happen.

**Assemblyman Wheeler:**

In section 19, you are removing a requirement for obtaining the results of a medical examination. Does that include drug testing? I am wondering why we are removing that. Is there something in the collective bargaining agreement?

**Scott Gilles:**

I will start with the onus for the change. As I am informed, it was because there was a concern that keeping that in there would conflict with other state and federal health privacy policies. I do not know what those are specifically, but I can get back to you with what the potential conflicts are. I do understand that the request for that change came from the city manager's staff as



a potential issue they saw. As to whether it would apply to drug tests, I will defer to the city attorney. It appears to me that the way the language was removed, it could include drug tests. I will defer to the city attorney on that.

**Assemblywoman Neal:**

In section 15, you changed where it says subject matter of such employment. What services are we talking about when you say the "City Attorney shall have no responsibility over..." but it looks like they have the ability to hire an outside person to come in to help them. What services are they not going to have "responsibility or authority concerning?" That is a wide term.

**Scott Gilles:**

I am not entirely clear on that. I would have to go back and look for the rationale for the change here. I understood that it might apply to a scenario where special counsel needed to be retained to deal with an employment issue within the city attorney's office, but I will have to get back to you on the rationale for those changes. I do not have a good answer for you.

**Assemblywoman Neal:**

In section 20, you are waiving any requirement that an employee complete a probationary period. Have we run into situations in the past where someone was needed right away, or their probationary period needed to be waived so they can skip ahead?

**Scott Gilles:**

I do not have specific examples of what has happened in the past. My understanding of the Charter Committee's change here was to transition civil service employees more efficiently. I can get back to you with more real-world examples of why that was put into this bill.

**Assemblywoman Joiner:**

On the topic of the BDR request you have, I looked through the size of your city and how many BDRs cities of that size typically get. It appears that you currently get two BDRs, but it is based on population. I did not see a model for where other cities have BDRs specific to their charters. If I understand correctly, there would only be two or three other cities in the same situation, if this were to be drafted another way, and that would bring us to that Pandora's box issue. There would only be two or three other cities that could really justify this case based on population. I did not know if you had looked at the population of your city, or at other examples when you decided to request this for the charter as opposed to the population per the *Nevada Revised Statutes* (NRS).

**Scott Gilles:**

I do not know if the Charter Committee looked at where Reno falls on that population threshold, or if that was a motivation for requesting this BDR. My understanding is that the motivation was that if they are going to work over this two-year span as they prepare for the legislative session, that they are always going to have recommendations to make and do not want to always put the city in a bind by using one of the city's two BDRs. As far as the other cities are concerned, the BDRs that are allocated are based on the population. My understanding is that the City of Las Vegas has three BDRs, and Henderson has two just like Reno. I believe Sparks has one and North Las Vegas has two. This would be the only city charter in the state that would have this charter-specific BDR in it.

**Chairman Ellison:**

Assemblywoman Joiner, I know you have been involved with the politics in Reno. Do you feel comfortable with this bill as presented?

**Assemblywoman Joiner:**

They did come and speak with me, and I do not have any concerns about this bill. I plan to support it the way it is.

**Chairman Ellison:**

Is there any other discussion? [There was none.] We will move to those in favor.

**Jonnie Pullman, Chairwoman, Charter Committee, City of Reno:**

I wanted to let you know that we took our jobs as a legislatively appointed committee to review the charter very seriously. We met cooperatively with the city staff and with City Council. We believe this is a joint recommendation to clarify the city charter to put in some new points to make it work more smoothly and efficiently and make it very transparent to the public. On the topic of the BDR, I wanted to mention that the intent of our body was that since we felt we were created as a charter committee, we are empowered by the Legislature and the city to make these recommendations back to you. We did not want to take away from the city. We know there are other charter committees in the limited number of chartered cities in the state. After working with the City Council, we did not feel like we should take away from their flexibility. We feel our position is to support the city and to make good government.

**Andrew Diss, Member, Charter Committee, City of Reno:**

Chairman Ellison, I wanted to expand on the point Ms. Pullman brought up, because it seemed like you had concerns about the third BDR. We are

a legislatively created body. With that comes some independence from the City of Reno. One of the circumstances that affects Reno that might not affect some other municipalities is that in November, when elections take place, the new council members who are elected that year take their seats almost immediately. We typically meet with the previous City Council before the September deadline to get our BDRs to the Legislative Counsel Bureau (LCB) ahead of the deadline so they can start drafting. But with an intervening election taking place, there could be differences between how the previous City Council views what we agreed on with them, and then what the new Council's view is. If the Charter Committee has their own BDR, it will not be subject to a new Council wanting to change things that we already agreed on with the previous City Council.

There was another issue brought up by Assemblywoman Neal about the services of special counsel in Section 15. The reason that was put in is that over the last few years, the City of Reno has retained a counsel outside of the city attorney's office for conducting a lot of their collective bargaining with employee groups. There was a law firm that they retained in particular from Las Vegas that ran up bills in excess of a million dollars. There were a lot of people on the Charter Committee who had concerns about the bills they were seeing, and many of them thought that the work would be better done by the city attorney's office, so that taxpayer dollars are not spent on outside counsel. That is why that was put in there.

**Jonnie Pullman:**

I want to clarify. In relation to this particular bill, there was no disagreement with the current Council and past Council. The Charter Committee met with both, and it is a joint bill from the past and current Council, with the amendments we are proposing.

**Chairman Ellison:**

That is important to know. Usually, when you have a newly elected body, they come in with new ideas.

**Assemblywoman Neal:**

In section 15 on lines 16 through 18, how does this sentence meet the needs of the issues? You were saying that outside attorneys were charging for exorbitant services and there was no control over them. This says "The City Attorney shall have no responsibility or authority concerning the services of such attorneys." Does that say that they will not monitor the attorneys anymore?

**Jonnie Pullman:**

Section 15 is primarily cleanup language to make it clear that the current charter allows the Council to hire outside legal assistance. This provides additional clarifying language to make who is responsible and who is to monitor very clear. We felt that the prior language was not clear. This is mostly clarifying language. This is already allowed currently in the charter.

**Assemblyman Wheeler:**

My colleague is exactly right. Why is the city manager not involved in the hiring of an attorney who is basically hired for the city?

**Jonnie Pullman:**

The city attorney and the Council are elected. I think the issue here is that if there is a feeling there could be a conflict or a need for additional legal assistance, it is the Council's prerogative to hire the additional help. It is not circumventing the city manager. The city manager and the city attorney are separately elected. The city manager works at the pleasure of the Council, but the authority comes from the elected officials themselves.

**Chairman Ellison:**

Is there anybody else in favor of A.B. 88? [There was no one.] Is anybody here to testify in opposition?

**Ron Dreher, representing Peace Officers Research Association of Nevada:**

In my capacity with the Peace Officers Research Association of Nevada, I also represent the Reno Police Protective Association and the Reno Police Supervisors Association. I signed in as opposition, but I talked to Mr. Gilles yesterday regarding the changes to A.B. 88. At this point, with the amendments, we could support the changes. I also know Jean Atkinson, the Chair of the Reno Civil Service Commission. In 2013, as Mr. Gilles mentioned, there was A.B. No. 9 of the 77th Session, sponsored by the City of Reno. We had a lot of concerns over the many changes to the City of Reno charter at that point. We also asked during that session to have members of the association put on the committees that the Legislature added to the charter. Unfortunately, that did not get put in there. But in talking to Ms. Atkinson and the other members of the Charter Committee, they did involve the associations in their discussions about this. It is my understanding that the Reno Police Supervisors and Administrative Employees Association president supported the amendment to have an assistant police chief appointed. That was a concern of ours last session. As you were told, the amendment removes the assistant fire chief, for whatever reason, and we are not involved in that aspect.

The concerns we had over the word "division" were addressed in the amendment. We had a lot of discussion about that last session. For example, a police lieutenant could be in charge of the detective division, because the word "division" is not defined. That has been clarified in this amendment as well. Those are really the substantial changes. The issue of what an appointee is and is not needed to be clarified. In looking at A.B. 88, it is my understanding that the language currently mirrors *Nevada Revised Statutes* (NRS) Chapter 288, which refers to what a supervisor is and spells out appointed positions. We do not have a problem with that. Though I am up here because I was opposed to the original bill, we do support A.B. 88 now with the amendments, and with the explanation given by Mr. Gilles.

**Assemblyman Carrillo:**

Regarding the language in section 7, subsection 6, paragraph (a) where it says "No person who is an employee of the City's Police Department is an appointive officer": is that an elected position right now?

**Ron Dreher:**

Right now, there is not an assistant police chief. There are two deputy chiefs that tag team. That language would create a new position. I also asked Mr. Gilles whether or not they were recreating a new position, or if one of the deputy chiefs would be filling that role. It is my understanding that it was not clarified, so I do not have an answer for that. It would be a new appointive position. It is not an elected position, it is appointive under the definitions in the amended bill. It is my understanding, as I have testified, that the Reno Police Supervisors and Administrative Employees Association have agreed to that.

**Chairman Ellison:**

Is there any other discussion? [There was none.] Is there anyone else in opposition? [There was no one.] Is there anyone in neutral?

**Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:**

We are neutral on this bill, but we would like to thank you for hearing the bill. We think this is the proper process for making changes to city charters when the changes are brought from the city to the Legislature for your consideration.

**Chairman Ellison:**

How many chartered cities are there in the state?

**Wes Henderson:**

There are 12 chartered cities, including Carson City, which is a combined municipality.

**Chairman Ellison:**

How many use this process?

**Wes Henderson:**

I do not know the answer to that. I will get that information back to you.

**Chairman Ellison:**

I am just trying to get my arms around this. If you could give me that information, I would appreciate it.

**Wes Henderson:**

We can do that for you.

**Assemblywoman Spiegel:**

Does the Nevada League of Cities have any thoughts on the extra BDR piece of this bill?

**Wes Henderson:**

No, we do not. We are neutral on the bill, and on the BDR provision as well.

**Chairman Ellison:**

Eileen O'Grady just told me that there are four cities with charter committees in the state of Nevada, and this is the only committee that has asked for an extra BDR, is that correct?

**Eileen O'Grady, Committee Counsel:**

Yes.

**Chairman Ellison:**

Is anybody else neutral? [There was no one.] Would the bill sponsor like to make a closing statement?

**Scott Gilles:**

Unless there are any further questions, I would like to thank the Chairman for this hearing and the Committee members who met with me. I will be following up with the ones who have not yet met with me to discuss the bill with you, and I apologize for not meeting with you in advance of the hearing today. I have already begun the process of working on a mock-up of the City of Reno's conceptual amendments with LCB staff. I do not want to promise a time for that, but it should be relatively soon. Once that is done, I am happy to continue the conversation with the Committee members and get this bill to a point where everybody is comfortable with it.

**Chairman Ellison:**

So you do not foresee any other proposed amendments?

**Scott Gilles:**

At this time, the City of Reno has no further amendments. No other groups or entities have reached out to ask me for other specific amendments.

**Chairman Ellison:**

I will close the hearing on A.B. 88. I will open the hearing on Assembly Bill 348.

**Assembly Bill 348:** Revises provisions governing the consideration of the criminal history of an applicant for employment by the State or a county or city. (BDR 23-1053)

**Assemblyman Tyrone Thompson, Assembly District No. 17:**

The core of my district is in the City of North Las Vegas, and some county islands. This bill will revise provisions governing the consideration of the criminal history of an applicant for employment by the state, county, or a city. I have worked with the population of people with criminal records for many years. I have tried my best to work for system change and initiatives that would help this population in their quest for gainful employment. I want to say that, in the United States, there are over 70 million people that fall into this category. They are from all different backgrounds. It is quite an issue. There are also statistics that show one out of three people have some type of criminal record that is following them. [Continued to read from ([Exhibit D](#)).]

Uploaded in the Nevada Electronic Legislative Information System (NELIS) is a map ([Exhibit E](#)) that shows the states that have adopted some form of "Ban the Box." There are currently 14 states, and those states are in dark blue on the map. The light blue shows if there are city or county forms of "Ban the Box." As you see, our beautiful state does not have a color; we are a shade of gray. We do not currently have any type of "Ban the Box" initiatives within our state. This is a great opportunity. I do want to say that there has been some promise to setting this standard by a few of our jurisdictions in the state. [Continued to read from ([Exhibit D](#)).]

Section 2, subsection 4 states that if the criminal history of an applicant is used as a basis for rescinding a conditional offer of employment, rescission of the conditional offer of employment must be made in writing and specifically state the evidence presented and the reasons for the rescission of the offer. I want to state that I have talked to many of our jurisdictions in southern Nevada and here in northern Nevada. There are some concerns, and I am willing to continue

to work with them on an amendment that can be acceptable to them. Section 3 mirrors section 2, except that it talks specifically about classified positions, all those other positions that are non-management. Section 4, subsection 3 strikes "has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct." The reason it is crossed out is to really meet the needs of the "Ban the Box" initiative. This is necessary to strike. Section 5 mirrors sections 2 and 3, but it specifically talks about county employment. Section 6 mirrors section 2, 3, and 5, but it is specifically for city government.

As I mentioned before, I have had constructive dialogue with the jurisdictions, and plan to work closely with them in the next few days because I know we are coming close to the deadline to get bills out of committees, to work on a solid amendment that will require certain exemptions. That is a concern I have heard, because there are certain job classifications that they have concerns about. I am definitely willing to be at the table with them to spell those out.

I do want to let you know that I will have statements of support from Stacey Shinn, who is with the Progressive Leadership Alliance of Nevada (PLAN) and Vanessa Spinazola, who is with the American Civil Liberties Union (ACLU). In Las Vegas, I have Mr. Otis Lang, who is one of my constituents, and Mr. Anthony Gilyard, with Foundation for an Independent Tomorrow. He has a story, and I believe there are a few other testimonials. On NELIS, there are a few letters of support that have been uploaded from PLAN ([Exhibit F](#)), from M & R Strategic Services ([Exhibit G](#)), from Mr. John Ponder as the executive director and founder of HOPE for Prisoners ([Exhibit H](#)), from Workforce Connections, Mrs. Kenadie Cobbin Richardson ([Exhibit I](#)), and lastly from the National Employment Law Project from their senior staff attorney, Ms. Michelle Rodriguez, who has been working with a lot of the states, cities, and counties on this initiative ([Exhibit J](#)). She wanted to be here, but could not.

**Chairman Ellison:**

Can you give me an idea of which employers would be eligible? Say I owned an auto body shop and I wanted to hire somebody to work in the office. Can you give me an idea of where I can go to do the background check? Can you give me some idea of what you are trying to do?

**Assemblyman Thompson:**

I appreciate your bringing that up. We are not looking at private employers at this time. We are looking just at public entities for hiring purposes. There are some third-party organizations that would do background checks, specifically with government. They work specifically with the Committee on National Statistics, and they use what is called Project Scope. Depending on



the extent of the job, they also work through the Federal Bureau of Investigation (FBI).

**Assemblywoman Neal:**

I was reading section 2, subsection 3, paragraph (a), which says "Whether any criminal offense committed by the person directly relates to the responsibilities of the position for which the person has applied or been considered." I think that is an interesting provision because it allows for some concept and analysis regarding whether or not the applicant has the skill set to work in this position. Then in paragraph (b), it allows you to ask for "The nature and severity of each criminal offense" after you have had an interview. I personally like the policy because when I was reading the statistics for the Department of Corrections (NDOC), the latest statistics that they cited said we have 12,778 people who have been incarcerated in the state of Nevada. When I looked at North Carolina's Justice Reinvestment Act, they talked about the prison population total compared to releases. This ban on unfair barriers to employment is a national action. The range of releases from prison averaged from 9,000 to 12,000 people yearly within states.

In reentry work, they say that statistical research has shown that in order to keep people from reoffending, they have to have meaningful work. Meaningful work keeps them from reoffending, not getting jobs where they have to go mop floors, but jobs that allow them to think and to buy into the positions they are in. I think these kinds of legislation help a population that is not able to regain sustainable employment. There was one statistic saying that the loss in income of the reentry population represented a \$55 million loss per year, in a net average of what that population could earn. That population never gets a chance to maintain sustainable employment and keep a job where they can build retirements, rebuild their families, and actually function. This gives them the chance to successfully say "Okay, I did my time, now I want to work and take care of my family." I wanted to put that on the record because I thought that was interesting. The Council of State Governments has a huge study across the nation on reentry population and statistics.

**Assemblyman Munford:**

I wanted to commend Assemblyman Thompson for taking these steps. This is long overdue. Many sessions back, I made an attempt to do something similar to this, and I was totally discouraged. It was so natural that an inmate who is serving time, especially in one of our state facilities, would want to be released and that some of our local entities might give them some special consideration and understanding about their opportunities. That is what they want when they are released; they want an opportunity and a chance to make a decent living and gain the respect of society and self-respect for themselves.

It is a twofold issue. There is a lack of funding in the corrections system. There need to be funds there to train industrial programs in the facilities to prepare inmates who will be on parole or released so they can have the skills and ability to take on a job. It is not an easy thing, and that is why I commend you for this bill. There are a lot of impediments.

This is also a humanitarian bill. The business world has to have compassion. They have to understand and give these ex-offenders an opportunity and a chance to regain their lives and become a productive citizen in society again. I hear this all the time in my district. I have so many families who have family members that are incarcerated. I could go on with it, but I wanted to say that you are taking a nice step. It is a big step in some ways, but also a baby step in some ways too. You have a long way to go to convince people. It will not be easy.

**Assemblyman Thompson:**

Thank you. I do want to say that, yes, we have talked about those who are in prison right now, but we need to also look at the full scope of people who have criminal records who are living within our state that are from other states. Even though we talked about a population of about 12,000, we have to multiply that number. There are thousands of people in our communities who are facing this. I also wanted to say that this is not a "hand-up." We do not want to discount the type of employees that we get in our jurisdictions. We are saying that there are some highly qualified people that have the education background either from when they were incarcerated or from a degree. They have the skills and background. They paid their debt to society. But unfortunately, when they have to answer that question on the front end of their job application, many times, that weeds them out immediately. That is the whole concept of the bill—to not have that question on the front end. Of course, we want people to be able to perform background checks, because that is an important formality. But we want to do that later on in the hiring and employment process.

**Assemblywoman Dooling:**

I do understand what you are trying to do. I am wondering about normal employment procedures. Under section 2, subsections 1 and 2, it talks about actually offering the employment before doing a background check. Do we not usually look at the application, think about the person, decide they might be a good candidate, decide to do a background check, and then offer them the position? I was also wondering if you could address section 2, subsection 3, subparagraphs (b) and (d). These people commit a lot of criminal offenses, and then get their opportunity? Could you explain that?

**Assemblyman Thompson:**

In regard to the first part of your question, in subsections 1 and 2, I am again at the table, along with jurisdictions. If we do need to look at this language and tighten it up, I am willing to do that. Around the time that the employer is thinking about hiring the person, they have the right to do the background check. That is okay. But I think that, looking at this, we need to tighten up the language. I really want it to be language that the jurisdictions feel comfortable with.

As far as section 2, subsection 3, subparagraphs (b) and (d), I want to make it clear that we are not talking about habitual offenders. There are some people out there who are not. I use the unfortunate example of a woman who may have been in a domestic violence situation, and may have shot and killed or significantly injured her husband, but served her 15 to 20 years, got her degree, worked consistently since then but hit bumps in the road because she can only have very menial jobs. This gives her a better opportunity to get a job with a livable wage. We have to admit that in the public sector there are some really good salaries and benefits that families need.

**Assemblywoman Spiegel:**

I want to thank you for bringing this forward. I know this will help my constituents a lot. Last summer, I met a family where the father had a drug offense when he was very young in California, something like 29 years ago. He never had another offense after that. He was employed by the University of Nevada, Las Vegas when they first moved to Nevada. But during the economic downturn, he was laid off. He had not been able to get another job because of his prior record. His wife was a school bus driver, and during the time school was not in session over the summer, there was a three or four week gap where no income was coming in to the family. It was very difficult for them, and they needed to get public assistance. This bill will help him and families like his, so that they can be self-sufficient. I really want to commend you for bringing this forward.

**Assemblyman Moore:**

Why do you think this bill is necessary? Do you think it is better to waste time going through the interview process? I have interviewed thousands of people over my lifetime. It seems to me that I would want to know who I am talking to before I even extend an offer of employment. I would never offer someone employment who fit in certain categories if I knew that up front.

**Assemblyman Thompson:**

I think we are on the same wavelength. You, as an employer, want to get someone that fits in with your work culture. I did my research, and I am saying

that traditionally, all the jurisdictions here have some form of that question on the front end. You will hear some testimony saying they do not look at it, and I commend them on that. But I think to not have it there on the front end ensures that it is not looked at. There are going to be some exempted positions, and there are two areas that have already been discussed with me. Being a firefighter is one, but I do not want to say fire service because there are some support positions in fire service that maybe people should not be excluded from just because they have a criminal record. It may exclude you from being a firefighter, and that I can understand. Being a police officer has also been brought up. But to exclude from general law enforcement, no, because there are a lot of support staff such as human resources staff that work in law enforcement. Yes, there is some confidential information, but you are taking that risk with anyone. That is the reasoning. Instead of making a blanket statement that because someone has a criminal record they cannot be considered, this gives the opportunity for us to look at quality candidates. If it is necessary, based on the job classification as is written in the bill, they can be disqualified.

**Assemblyman Moore:**

Given that scenario with support staff, do we really want a non-habitual criminal, say someone who robbed a bank or molested a child, working in some type of government support staff anywhere along the line?

**Assemblyman Thompson:**

It truly depends on the job. It depends on a lot of factors with the job. I was out in the hallway, and one of the jurisdictions told me that they hired a sex offender, and that person is working out quite well. It truly depends on the situation. I do not think that we can generalize anymore. Like Assemblyman Munford said, this is a long time in coming. We should not have those assumptions on the table anymore.

**Assemblywoman Neal:**

I am going to go back to the normal me and ask a real question. Section 2, subsection 3, paragraph (a) says to consider "Whether any criminal offense committed by the person directly relates to the responsibilities of the position." What kinds of conversations have you had with the NDOC? The Nevada Department of Corrections has invested a lot of money in training people who exit. When you visit the prison, you can watch the inmates in classes. They even learn how to create lenses for glasses. What would be helpful is if they left NDOC and participated in an actual training program which has the goal of the inmates finding fruitful employment. There could be some relationship or tie-in with that particular provision. That means that the state has already invested money in that person.

We have a vested outcome when we invest dollars in people, and we want them to go to work when they leave the prison. We have invested money in a sizeable amount of people who have left the NDOC and not been able to get employment or maintain it, even though we invested money in the last year before their exit. I think that addition would be helpful. It would add efficiency. The language talks about the government money that is being spent on these people having a return that can be documented and reported.

**Assemblyman Thompson:**

I agree. I have not reached out to the Deputy Director of NDOC about this bill. You are talking about prison industries. Brian Connett is responsible for prison industries. That is easy for me to talk with him about. That is just a sliver of the communities. I do not want us to get caught up in people who are immediately discharged from prison. There are people who have had criminal records in our communities for a long time. Those offenses were not in Nevada, and they have made Nevada their home. But I do understand the idea for a return on investment.

**Chairman Ellison:**

I served on the Interim Finance Committee's Committee on Industrial Programs twice, and some of the ex-offenders did a lot of welding, such as on the High Roller on the Las Vegas Strip. A lot of the jobs they did were vocational jobs, and they come out of prison highly skilled. I understand that part, and it has worked out really well. Assemblyman Wheeler, now you might have a chance to get a job.

**Assemblyman Munford:**

You mentioned state jurisdictions and similar jurisdictions. When I think of the state, I think of the school district. I have inquired about ex-offenders working for the school district. There are plenty of jobs where you do not have to be certified, especially in buildings and grounds, keeping up the athletic field, and things like that. They almost told me a flat-out "No, we will not ever hire any ex-felons" because they do not want them to be that close to kids. I would think there are plenty of jobs there. They are building new schools all the time. But they seemed to give me that feeling, and the direct answer that they did not want to have any ex-offenders near kids. How can we overcome that?

**Assemblyman Thompson:**

In working on this project, many school districts have always been exempted. That is something I am looking to consider. However, one thing that I do know is that I am not sure we can make a blanket statement that there is not one person that works in our school districts that does not have some type of criminal record. But for the sake of this bill, I am very open to exempting school

districts, because that is something other states have automatically listed as an exemption. Thank you for pointing that out.

**Assemblyman Munford:**

I know the gaming industry has totally barred this population when it comes to working in casinos where money is going to be exchanged. They have shut the door and refused to hire them. I have looked into this. They will not hire.

I do not like to use the word "ex-felon." That is negative. I believe that "ex-offender" is the more proper term. Those are areas where there are many opportunities for gainful employment, but they have been denied and refused consideration.

**Assemblyman Thompson:**

I do want to state that this would not deal with casinos, because this is specifically for public employers at this time. In doing a lot of my research, I have also wondered about the right terminology to use. One of the terms they say to use is "people with criminal records." Usually, that flows a little better than saying "ex-con," "ex-felon," or "ex-offender."

**Assemblyman Wheeler:**

Has there been any type of study done as to the cost of hiring someone and then finding out they cannot fit into that position? Say someone got out of jail and applied for the police department. Obviously, the police department is exempt, but you understand what I am saying. What you are saying is that we should ban the box, and I am assuming that is the box that applicants check answering whether or not they have a criminal history when they are applying. So the employer goes through all the process, and finds out that the person is not fit for this job because he or she has to deal with children. What is the cost to the city or the county to get through that process and then find out that person is not a fit?

**Assemblyman Thompson:**

It would vary. But you have to realize that with or without a criminal record, sometimes jurisdictions invest money on the front end anyway as part of the employment process, and then they may end up not hiring the person. In this situation, I would say that it would be just the cost of the background check. Of course, when the other jurisdictions come up, they can give a better overview of what that would look like. I would say it would be case-by-case, and also that the person with a criminal record might just not be a fit for the organization, so there would be money invested anyway. That is just part of the human resources budget.

**Assemblyman Wheeler:**

You were saying that other states already do this, is that correct?

**Assemblyman Thompson:**

Yes.

**Assemblyman Wheeler:**

Has there been any type of repercussion, or has anyone found any cost involved in those states? What you are saying right now is that you have not heard of any type of costs or study. I am wondering if there is something in other states.

**Assemblyman Thompson:**

I do not have that information right now, but I have been working with Michelle Rodriguez from the National Employment Law Project, who has been coordinating all this and sent in her letter of support ([Exhibit J](#)). I am almost sure that she can give us some type of information about that. Is that something that you would like to have?

**Assemblyman Wheeler:**

Yes.

**Assemblyman Thompson:**

I will do that.

**Assemblyman Flores:**

I want to thank you for bringing this bill forth. I have gotten numerous emails from constituents expressing their gratitude for this bill. I personally know two individuals, one with a Ph.D. and one with a master's degree, who are smarter than most people I have met and who unfortunately cannot find a job now in their 20s because of something they did when they were 18 or 19. They have not had the same opportunities as their school colleagues.

We invest so much money on rehabilitating individuals during the time they are in prison, and after. There are all kinds of programs and training, and all kinds of money goes into that. But if we are not hiring them, all that money is not well spent. We are just wasting it. We are investing so many resources into getting these individuals to reintegrate into society, and when we do not hire them, we are just wasting that money. I would be grateful if you could look into providing us data about how those states which have these types of laws now are actually saving money because they are not just throwing money down the drain. They are actually rehabilitating these individuals, training them, and the end result is that these individuals are working, and the state is saving

money by keeping those individuals from falling back into the prison system. If you have data on that right now, I would appreciate it. If you do not, I would appreciate it if you could provide that to us. I know it is out there.

When someone is convicted, it is my understanding that the purpose of having to disclose that is not for keeping that person from being employed. If someone had a felony conviction and applied for a job, it is not the policy rationale that when they disclose it, they are automatically not employed. I want you to tell me if that is correct. I know that is a factor that an employer should take into account, but what is happening now is that once someone discloses a conviction, their application is immediately being thrown out. Is that correct?

**Assemblyman Thompson:**

I got the tail end of what you were saying. Are you trying to get at the point of whether or not there is an upfront bias?

**Assemblyman Flores:**

Yes, and what is the policy rationale behind having to disclose conviction? When a conviction is disclosed to an employer, it seems like what is happening is that the moment it is disclosed, the application is thrown out. It is my understanding that the policy rationale never intended for that to happen. That was never the policy rationale for why conviction must be disclosed. I wanted you to clarify that and perhaps elaborate.

**Assemblyman Thompson:**

I think there are two things. Yes, it could be, depending on the practice of that organization, that disclosure is a weeding-out factor. It could also be whether people fit a job classification they are applying for. A good example is the case of the sex offender. The sex offender cannot work in a situation like child welfare. Based on what has happened, in this specific job, that organization would not hire that person. I think there are two things happening. Disclosure could be for weeding out. Some people would call that discrimination. It could also signify that the person is not a match with the job he or she is applying for.

**Assemblyman Flores:**

In the data you have seen, do you see that a lot of individuals whose conviction has nothing to do with whether or not they are right for that job are still being weeded out? Say someone was convicted of theft. Even if it had nothing to do with their job description and it is not an indicator of whether or not they are fit for that job, and it is not something that automatically weeds them out, does your data indicate that those individuals are still being weeded out?



**Assemblyman Thompson:**

There is a 66-page document from the National Employment Law Project (NELP) ([Exhibit K](#)) that is uploaded on NELIS. You can all look through it. I do not want to say anything on record, because I am not the authority on this. I do not want to say anything ill of the jurisdictions that are doing great work in our state. But I can say that when you look in general terms at the data that has been received from all the states, that is a part of the picture.

**Assemblywoman Shelton:**

I wanted to pick your brain a little. I like what you are doing here, and I am all for giving somebody a second chance. But I wanted to check something with you. You mentioned a study that you have done for the government jobs. Are those jurisdictions doing the background checks right now? You were talking about the schools, and I was thinking about how many times we have found out later that someone who worked at a school was a sex offender. Are we already doing background checks in all areas?

**Assemblyman Thompson:**

I can say that everyone is doing a background check. The time and stage of that check may differ, but I am pretty sure that everyone is doing a background check. I think the question might be to what extent they are doing the background check. Sometimes, a background check can be just looking at the application and calling a few employers to see how the applicant's work performance was. Some organizations may actually do a fingerprint type of background check, check the Scope information, and check at the federal level. I think the jurisdictions differ. But I can say that as a whole, we are doing some form of background checks.

**Assemblywoman Shelton:**

That makes me wonder if we need to specify what kind of background check. I was automatically assuming a criminal background check, but you have brought up the fact that there are different types of background checks. That is probably on a different topic.

So if a background check has been done, and the employer decides they do not want to hire that person because of the information they got from the background check, and they put that in writing, will that open up the potential for a lawsuit?

**Assemblyman Thompson:**

That was a difficult item for a lot of the jurisdictions that I have been talking to. Some automatically give a general denial letter, but as it specifies in here, we modeled the language of NELP, and wanted to use the strong language that

they have. I am willing to have even further dialogue with the jurisdictions so we can talk about something that we all feel comfortable with.

**Assemblyman Stewart:**

I have a statement. Over the past 30 years, I have had the opportunity to visit prisons a number of times. I have seen the work programs they have there, particularly at the Indian Springs prison where they contract to private companies and they do their work in the prison. They had one program where they cut Lincolns and Cadillacs in half and made them into stretch limousines. The work there was beautifully done. Another program they had was refurbishing trucks. They did a beautiful job on that also. There is a high skill level in some of these programs that can be utilized very well outside of prison.

I think there are people who break the law, and then there are dangerous criminals. There are hardened individuals who should probably stay in prison forever, and then there are people who I visited in a religious capacity with my church. I visited the county jail for a number of years every Saturday and conducted a religious service with people there. I find that there are young people who made mistakes when they were young, and they are not really criminals. They made a mistake, and were at the wrong place at the wrong time and made a stupid decision. I can think of an individual who is very prominent, who got drunk one night and drove up on the sidewalk and killed a couple of senior citizens. People might do dumb things or make stupid mistakes. I think we have to be careful how we judge. I learned that by talking to a lot of these people. I think your heart is in the right place with this bill. I think we need to work with you on it.

**Chairman Ellison:**

Those in favor, please come forward.

**Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:**

I agree with the comments made by Assemblyman Thompson. I wanted to focus my comments on the factors that are listed in the bill. They do not come out of the blue. There is lots of litigation on this. It would be cost-saving for cities. The main case is *Green v. Missouri Pacific Railroad Company*, 549 F.2d 1158 (8th Cir. 1977). The holding in that case was that a blanket policy of never hiring people with criminal convictions actually violates the Civil Rights Act of 1964. The reason for that is because we have a disproportionate number of black and Hispanic people who have been incarcerated in this country. Since the 1977 case, our incarceration levels have only gone up. Just this session, we have over 30 bills pending that will increase sentences and create new crimes. The Department of Justice (DOJ)

actually estimated that by 2010, almost 7 percent of the population would be incarcerated. That does disproportionately affect the population.

The factors that you see listed in this bill, particularly in section 2, subsection 3, paragraphs (a), (b), and (d), all come from the *Green v. Missouri Pacific Railroad Company* case. If citizens applied to a city job and then alleged discrimination, and could show that the city was just not hiring anyone with criminal convictions, they would win that lawsuit. That would be a civil rights lawsuit. They could win damages from that and back pay on their jobs. The other factors, (e) and (c), come from guidance from the Equal Employment Opportunities Commission (EEOC). These are guidelines that were issued in the late 1980s. This is a result of all the litigation over criminal convictions. None of this is new, they are things that were potentially litigated over and over again in the past. Target and Walmart voluntarily do this, because they know that as large corporations, they are at risk for discrimination lawsuits if they do not give people an initial chance because of the disproportionate impact on communities of color. I will also note that this is a bipartisan effort. Chris Christie, the New Jersey Governor, recently signed this bill into law there.

We also wanted to note that this is better for public safety. It has been noted multiple times that there are three factors that help people better reintegrate into the community, and one of those is solid employment. With all the formerly incarcerated folks we have in our communities, we want to ensure that they are gainfully employed so that we are all safer.

**Stacey Shinn, representing Progressive Leadership Alliance of Nevada:**

An estimated 70 million adults in the United States have arrests or convictions that make it difficult, if not impossible, to secure employment. This means that a very significant percentage of our population faces barriers to community reentry. The likelihood of even receiving a callback for an entry level position is reduced by 50 percent for applicants with a conviction or arrest history. Furthermore, black job applicants are even less likely to get a callback than their white applicant counterparts with similar records.

In using the racial equity impact assessment tool that we are using this session, we can demonstrate that there will be a positive potential outcome for communities of color with this policy. Do current disparities exist by race around this issue? Yes. We know that despite comprising only 9 percent of our state's population, African-Americans make up 28 percent of our prison population. If disparities exist, how will they be affected by this policy? The formerly incarcerated will be positively impacted by further opportunities to be productive members of our communities. In conclusion, we believe that

those who have paid their debts to our society should be given a second chance to be productive members.

**Sean Sullivan, representing the Office of the Public Defender, Washoe County:**

The Washoe County Public Defender's Office does support this bill. We think it is an important piece of legislation. When I am dealing with my clients, whether they are coming to the court for the first time or they will be placed on probation or parole, one of the chief things the court system will look at is whether or not they are gainfully employed. It is a very valuable tool that the judges and the parole board will look at when determining whether a person can make it in the community. I feel a sense of obligation to always try to help these clients be gainfully employed. They do stay in contact with me, and reach out to me via email or letter asking about employment opportunities and how they can be employed with a criminal record. I think this is a very important piece of legislation, and I thank the proponents of the bill for testifying in support today.

**Steve Yeager, representing the Office of the Public Defender, Clark County:**

As this Committee probably knows, one of the things that we are tasked to do is to defend folks who do not have the financial resources to hire attorneys. It is probably not surprising that many of our clients end up in prison, which means they will be on parole or on probation. When they are put on probation, one of the conditions is that they try to find gainful employment. I think it has been my experience that clients who have jobs typically do much better on probation. Our hope with this bill is that it increases the chances of getting gainful employment, which would obviously be a positive for indigent defense. During the hearing, I was doing a bit of research. From the latest numbers in 2010, it appears that nearly 25 percent of Nevadans have some type of criminal record. That gives you a scope of what we are looking at here in the state of Nevada.

**Assemblyman Carrillo:**

Ms. Spinazola, at the beginning of your testimony, you said something about race.

**Vanessa Spinazola:**

Yes. I was talking about the fact that a byproduct of our criminal justice system is that black and Hispanic people, men in particular, more often have criminal convictions. The EEOC and numerous litigations have determined that when an employer has a policy that is neutral on its face and states that they will not hire anyone with a criminal conviction, that policy is actually against the Civil Rights Act because of the disparate impact that a policy like that can have. It seems like it is neutral, but in fact, you are disproportionately not hiring black

and Hispanic people at higher rates. Any employer with that type of policy would be subject to civil rights litigation.

**Assemblywoman Shelton:**

My question is kind of along the same line. I wanted to clarify. In the bill it talks about sending a letter with the reason for not hiring an applicant if part of that reason is because of what they found in their criminal background check. Are you saying that would open the door to a civil lawsuit?

**Vanessa Spinazola:**

No, it is actually safer to have the disqualification later. If you look at the EEOC guidelines, what they require is that an employer does an individualized assessment of somebody who applies for a job by virtue of going through the interview process and finding out things like what is listed in the bill, such as the nature and severity of the offense or the age of the person at the time the crime was committed. If you also have what is called a business necessity, where you do not want a sex offender teaching in a school, or someone who has a securities fraud issue working with databases or cash, and after you individually assessed that person and you have a legitimate business necessity, then you can deny him employment and it is okay. But that assessment and legitimate business necessity has to happen before you determine that you are not hiring him because he has a criminal conviction. This bill provides guidance from the lawsuits we have seen, and from the EEOC at our state level.

**Assemblywoman Shelton:**

So if you do the background check first before you hire, then you would be open to a lawsuit, but if you do the background check after you hire the person, then you are within the civil rights guidelines?

**Vanessa Spinazola:**

The background check can be done after you hire or have at least done an interview and a personal assessment. You cannot take in the application and see the box checked saying the person has a criminal conviction, and say that you are not hiring that person because of a criminal conviction. That is what you cannot do. You have to go through some sort of individual assessment of that person, which you typically cannot do before you have an interview, and then you can determine the business necessity and potentially deny him employment. In that case, you would be legally safe. But you cannot just deny everyone based on their response to the "Box."

[Assemblyman Moore assumed the Chair.]

**Assemblywoman Shelton:**

This is to the public defender's offices. Many times with the cases you deal with, people might be innocent, but because of circumstances, they take a plea bargain. Then they still have some type of criminal record. I was wondering if you had a percentage of who those people might be. If I am understanding this bill, it could help those people who get put into that situation. Are there many times when people find themselves in a position where they have to take a plea bargain? Are there many people, or just a few? I am wondering how many people this bill could help.

**Steve Yeager:**

It is hard to determine a number. It is not atypical in our world to have someone come in to an initial court appearance facing what looks like a fairly serious charge, only to then be offered a misdemeanor sentence to get out of jail today and there are no further requirements. In those situations, it is not unusual for clients to agree so they can get out of custody and get on with their lives. We try to have the discussion and explain that they will now have misdemeanors. It is hard to say how many of them are innocent, but I think that does happen. I do not think it is a huge number of people, but sometimes based on a life situation, a client may decide he would rather have a misdemeanor than stay in jail and have to deal with those consequences. For those individuals, I think it would help. Typically, they are misdemeanors, so they are a little easier to explain to an employer versus just checking a box saying they have a conviction. If there is a blanket exclusion, there is no chance for them to explain. I cannot give you a specific answer. I think there are folks in that situation, but I would not say there are is a huge amount of people.

**Assemblywoman Neal:**

I was reading a study called "Ex-Offenders In The Labor Market" by the Center for Economic and Policy Research, done in 2010. They did a longitudinal study of 13,000 youth and tracked them from 1979 to 1994. They tracked their incarceration rates every year and compared their jobs. The study looked at them in terms of the same type of job and age, and made sure the comparisons were exactly correct. I am wondering if there is another study that came after that which deals with the cost. They also did an audit report where they took 3,000 employers in large metropolitan cities, and the employer data that came back said they were more likely to hire a welfare recipient than someone with a criminal history. I was wondering if there has been something since 2010 that discussed the cost on the employer's side of hiring those folks, and whether or not there has been a change in the aggregate data reflecting employer effects on the market.

**Vanessa Spinazola:**

That is the most long-term study. The letter from NELP ([Exhibit J](#)) cites that study in footnote 3. There are a few other footnotes with studies. Footnote 6 has one that is specific to Philadelphia. I will note that the NELP letter noted from that study that it costs the United States economy between \$57 billion and \$65 billion in output in 2008.

**Assemblywoman Neal:**

Do you have any information on another study that could be out there that reflects what the Center for Economic and Policy Research study also talked about: the impact on the unemployment insurance system in the United States? It said that those persons who may have carried a job for a period of time, like six months, then became active members in the unemployment system, which caused an additional burden and loss in net wage. When we talk about a labor market in terms of individuals actively performing work within the state, some of these persons became part of the unemployment system, which is not necessarily something we want. The cost is the burden on the employer, and also on the state. If you find anything, send it my way.

**Vanessa Spinazola:**

I will. You bring up a good point. On the other end, when people are gainfully employed, they are paying taxes, social security, and paying into Medicaid. There is an incredible amount of money that flows into our government and economy. It is undeniable that gainfully employed people contribute to the economy.

**Vice Chairman Moore:**

Now we will go down south.

**Otis Lang, Private Citizen, Las Vegas, Nevada:**

This bill is very important. I am actually surprised that it is coming up so late. This is long overdue. While I was in prison, I had a visit with Assemblyman Munford. We talked for quite a while when I was in prison about this situation: employment and what I was going to do when I got out. I was frustrated and he was frustrated too. He asked me to call him if there was ever anything I needed. I never called him. I had to deal with parole and probation, and those people were frustrated also because when I got out, I was not able to get a job during the recession. I got frustrated with myself.

I am an active member of the community now. I give back to my community and am part of a couple of organizations. But I did not do it by going through the normal route: being out and then getting employed. I could not get a job. My will to live and to not go back to prison were the only things that kept me

from going back. I was not able to be gainfully employed because of my criminal history and background. I was not able to go out and provide for my family like the average man can, and it was really frustrating.

My question is, why not pass this bill? Why not give me and anyone else who has gotten out of prison the same opportunities that you in the Committee or anyone else has? I am married and have not had any contact with the police. I do not see any contact in the future. The only thing that can hold me back is what we are talking about right now. I want to change that. I really do not feel this bill is for me personally, because my problems have been taken care of. I am here in support for those who are getting out, and those that are out already and having a hard time.

Parole and probation was frustrated because I was not able to get gainful employment. When I came back at the end of the month, their advice was for me to not get in any trouble. They knew I could not get a job. It was the recession, and I am a felon. No one was going to hire me. We could talk about politics and demographics all day. Prison industry jobs are for people who are serving life sentences and for people with long sentences. People like me who get out and people who are in and out of prison do not get those jobs. I was at Southern Desert and High Desert, and up north also. They do not get those jobs, so something must be done.

**Assemblyman Munford:**

I want to say hello to you, and that I am proud of you. How have you been able to readjust? I am sorry you did not call me, but give me a call someday when I am back in town.

**Otis Lang:**

I have done a lot to reintegrate back into society. I have directed a movie.

**Anthony Gilyard, Reentry Case Manager, Foundation for an Independent Tomorrow:**

I am here to express my support for this bill that allows individuals with criminal records a second chance. It is a very much needed bill. My personal story is that back in 1996, I had just joined the United States Marine Corps. I was stationed in Camp Pendleton, California, and while I was on liberty over the weekend, I was out and about in town. Someone else decided to interrupt my life by attempting to rob me. When I defended myself, the State of California allowed me to have an extended stay in what I like to call "Hotel California" until April 2013. For 12 years and six months, I sat and became a number and lost my name.



Now, I have to live this life and have to mark that "Box." When I came home in 2010, I was denied all jobs that I applied for, even with my education, experience, and the community support I had. I was turned away once I had to disclose the fact that I had felony convictions in my background. This was the first time I had ever been incarcerated. I was still not allowed to even apply to the school district, though I went to college in 1993 on a full-ride football scholarship and was invited to coach high school football after I got out. I was not allowed. My immediate family and extended family are all in law enforcement, which was why I went into the Marine Corps and had that career in front of me. I was denied all jobs, because I am no longer able to bridge a gap because I was a felon.

Today, I sit as a case manager and listen to story after story from my clients, and encourage them to move forward and we find ways to retrain them, get them current certifications, invest more money into allowing them a new future. When a few find success, it changes families. It changes not only my clients' lives but the lives of their family members. I have since completed my associate's degree as well as a bachelor's degree. I am recently married and supporting my family by working for this organization where I was once a client. I cannot express my support enough. I strongly urge you all to support A.B. 348.

[Assemblyman Ellison reassumed the Chair.]

**Jose Vazquez, Private Citizen, Las Vegas, Nevada:**

I am here to support A.B. 348 because I personally know people who have been affected by this practice where they are not even allowed interviews because of even minor histories they may have. I can understand Mr. Lang's situation. I have a really close friend who has a master's degree. He worked at the Southern Youth Detention Center at Spring Mountain for eight years. Once he got his master's degree, he applied for a position as a probation officer. He could not get that job because he committed a crime when he was 17. He was precluded from a job that could have paid \$60,000 a year that he could have supported his family with. He has two children, and now has a job at the courthouse that I would consider fit for someone in high school or a freshman in college.

I think that this practice perpetuates an underclass of citizens. People who have criminal records are made into a perpetual underclass who will never be able to have a job where they can afford to send their children to private school, for example, and give them a better chance at life. I think this needs to change, and this is a good first step. More needs to be done, and people should not just be weeded out because they have an arrest. There are all sorts of different

variables to look at once they get past the interview process, but to be disqualified right off the bat is wrong. When these people are in a situation where they cannot get a job, many of them will go back to crime because they have no other option. They really do not. I also see that minorities are disproportionately affected by this. I know several people who are affected by these types of practices. I think this is a good first step for the state to take to remedy this issue. I encourage everybody to support A.B. 348.

**Chairman Ellison:**

Are there any questions from the Committee? [There were none.] We will move back down to Las Vegas.

**Ryann Juden, Chief of Staff, Office of the Mayor/City Council, City of the North Las Vegas:**

We wanted to add our voice as prospective employers, whom the language of the bill specifically applies to. We think this is good policy, considering the significant amount of money that we spend as a state on rehabilitation and reintegration. We think this is a good policy that furthers the efforts that the state has embarked on. Many of our other municipalities are neutral on this.

We do support this. It is important that we lead by example in the public sector. The Ban the Box initiative only applies to public entities; it does not apply to those in the private sector. We believe this is an important opportunity for us to lead and to show by example, and show that people should have another opportunity and can bring value. They can find entry into the workforce through us or once they have an entry, they can possibly move on to other gainful employment that will help them in their lives. We applaud Assemblyman Thompson for bringing this forward and look forward to working with him on any suggestions this Committee has made so we can make this a better bill. We stand in support.

**David Cherry, Intergovernmental Relations Specialist, City of Henderson:**

When I arrived this morning, we were signed in as in opposition, but given Assemblyman Thompson's statement that he is willing to make some amendments, we are able to say we support the bill with amendments as proposed. One thing I would like to do is enter on record some of the issues that we have discussed with Assemblyman Thompson. There are three. The first has to do with the term "finalist." There is a concern from the City of Henderson that "finalist" may mean different things to different employers. We would like to see a definition along the lines of "until the time of or after the initial interview process," at which point the employer could do the background check. The second issue is the one that is most important, and one that I think Assemblyman Thompson spoke about. That is the exception for law

enforcement or firefighters, specific to the term "police officers or fire fighters or as otherwise authorized by specific statute." That can be found on pages 5 and 6 of the bill. Our final suggestion is one that we have shared with the Assemblyman. Right now, the bill calls for an explicit explanation to be given to the candidate as to why he was not hired. There are already established guidelines under the Fair Credit Reporting Act, and we would like to see those maintained as the only requirement on an employer, that they abide by those as opposed to having this additional requirement that the bill sets forth. Those are in sections 2 and 3.

**John Fudenberg, representing Clark County:**

Clark County supports the concept of this bill. We have been working closely with Assemblyman Thompson on a few friendly amendments. I think it is important for the Committee to know that in Clark County, we do not preclude any individual from applying or being considered for employment. We do not consider their criminal history until post-offer. When we do consider employing them, we take all of the factors listed in section 5, subsection 3, specifically paragraphs (a) through (e). We take those into consideration when we are evaluating the applicant. Most of this bill describes our current practice today. The section we do have concerns about is section 5, subsection 4. They are similar concerns to Mr. Cherry's from Henderson. That section states that we must rescind an offer in writing, and specifically state the evidence presented and the reasons. We believe this provision violates our agreement with the Department of Public Safety through the FBI for their criteria for our background checks. We are not allowed to give the specific reason and evidence to the applicant. If we rescind an offer, they are able to come to human resources, show identification, and get the specifics. But we are not allowed to give that to them when it is unsolicited.

**Chairman Ellison:**

Have you talked to the bill sponsor about corrections on that portion?

**John Fudenberg:**

Yes, I have. We have been working very closely with Assemblyman Thompson on those amendments.

**Assemblyman Moore:**

We have heard a lot of testimony this morning in support of this bill. This question is for you gentlemen representing your respective cities. If Charles Manson were to be granted parole, would your cities be willing to consider that individual for employment with the city in some capacity?

**John Fudenberg:**

I hope that he is not granted parole and that he will not apply for a job in Clark County. I do not work in the human resources department, so I would not be able to answer that question. I would hope that we would not hire him in Clark County.

**Chairman Ellison:**

Are there any questions from the Committee? [There were none.] Is there anyone in opposition?

**Melanie Bruketta, Human Resources Director, City of Carson City:**

I initially signed in to testify in opposition to this bill; however, I was able to speak to the sponsor of this bill briefly before coming in to the Committee hearing. Due to the fact that he is willing to work with Carson City and the other agencies, I am asking that you change my testimony to neutral.

**Chairman Ellison:**

Is there anybody else testifying neutral? [There was no one.] Assemblyman Thompson, it looks like you had a lot of discussions and earned your money today, my friend. If you would like to come up and make your closing arguments, please come forward.

**Assemblyman Thompson:**

I wanted to thank the Committee for their undivided attention to A.B. 348. I think this is a great opportunity for the state of Nevada to join forces with evidence-based practices across the United States in the Ban the Box initiative. This will also help people that have served their time.

I want to reiterate and paraphrase what my colleague Assemblyman Stewart said. He gave a clear distinction between a person that is a criminal versus a person that has a criminal record. He nailed it, so thank you, Assemblyman Stewart. I do look forward to working with the jurisdictions. I am going to fast-track this because I do want to submit an amendment on this bill and hopefully, we can see it in work session and pass it out of this Committee.

**Chairman Ellison:**

If you could work with Assemblywoman Neal on some of these ideas, that would be great. I think she hit some of the concerns right on the head, in sections 2 and 5.

**Assemblyman Thompson:**

I will do that, thank you.

**Chairman Ellison:**

I will close the hearing on A.B. 348. [A NELP factsheet, ([Exhibit L](#)), was submitted to NELIS and will become part of the record.] Is anyone here for public comment? [There was no one.] The meeting is adjourned [at 10:19 a.m.].

RESPECTFULLY SUBMITTED:

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Erin Barlow  
Committee Secretary

APPROVED BY:

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Assemblyman John Ellison, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** April 1, 2015

**Time of Meeting:** 8:02 a.m.

| Bill     | Exhibit | Witness / Agency   | Description         |
|----------|---------|--|---------------------|
|          | A       |  | Agenda              |
|          | B       |  | Attendance Roster   |
| A.B. 88  | C       | Scott Gilles / City of Reno                              | Proposed Amendments |
| A.B. 348 | D       | Assemblyman Thompson                                     | Testimony           |
| A.B. 348 | E       | Michelle Rodriguez / National Employment Law Project     | Map                 |
| A.B. 348 | F       | Laura Martin / Progressive Leadership Alliance of Nevada | Letter              |
| A.B. 348 | G       | Regan Comis / M & R Strategic Services                   | Letter              |
| A.B. 348 | H       | John Ponder / HOPE for Prisoners                         | Letter              |
| A.B. 348 | I       | Kenadie Cobbin Richardson / Workforce Connections        | Letter              |
| A.B. 348 | J       | Michelle Rodriguez / National Employment Law Project     | Letter              |
| A.B. 348 | K       | Michelle Rodriguez / National Employment Law Project     | Guide               |
| A.B. 348 | L       | Michelle Rodriguez / National Employment Law Project     | Factsheet           |