

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

**Eightieth Session  
March 27, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:32 a.m. on Wednesday, March 27, 2019, 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/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chair  
Assemblyman William McCurdy II, Vice Chair  
Assemblyman Alex Assefa  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblyman Richard Carrillo  
Assemblywoman Bea Duran  
Assemblyman John Ellison  
Assemblywoman Michelle Gorelow  
Assemblyman Gregory T. Hafen II  
Assemblywoman Melissa Hardy  
Assemblyman Glen Leavitt  
Assemblywoman Susie Martinez  
Assemblywoman Connie Munk

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Dina Neal, Assembly District No. 7  
Assemblywoman Robin L. Titus, Assembly District No. 38



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Asher Killian, Committee Counsel  
Kirsten Oleson, Committee Secretary  
Trinity Thom, Committee Assistant

**OTHERS PRESENT:**

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas  
Metropolitan Police Department  
J.P. Kemp, representing Nevada Justice Association  
DeAndre Caruthers, President, Las Vegas City Employees' Association  
Drake Ridge, representing Las Vegas City Employees' Association  
Dagny Stapleton, Executive Director, Nevada Association of Counties  
David Cherry, Government Affairs Manager, City of Henderson  
Michael Baltz, Chief Compliance Investigator, Nevada Equal Rights Commission,  
Department of Employment, Training and Rehabilitation  
Peggy Ewald, Chair, Nevada POLST  
Joanna Jacob, representing Dignity Health-St. Rose Dominican  
Mari Nakashima, representing Nevada State Medical Association  
Maggie O'Flaherty, representing Death with Dignity  
Melissa Clement, Executive Director, Nevada Right to Life  
Janine Hansen, State President, Nevada Families for Freedom

**Chair Flores:**

[Roll was called. Committee rules and protocol were explained.] We have two bill hearings. We will begin with Assembly Bill 274.

**Assembly Bill 274: Revises provisions relating to governmental administration.  
(BDR 18-86)**

**Assemblywoman Dina Neal, Assembly District No. 7:**

I am going to present Assembly Bill 274. I want to start with how I arrived at creating a whistle-blower bill—or, really, amending the whistle-blower statute. Over the summer, I was brought into a conversation with a state agency—I do not know if I should say the name—but it was the Department of Transportation, regarding an individual who was being discriminated against. They asked me to come and sit in with the director, his deputy director, and some other folks. This individual had been discriminated against for 22 years. The end result of this was that the supervisor who was over him ended up calling me later and telling me some stories that she felt I should know about that were concerning to her. She wanted to keep her confidentiality. One of things that she told me was that there had been a sexual assault in the field. A female employee had reported it to her, and she was a female supervisor. There was a group of middle managers who, in this scenario, rather than allowing the woman's issue to be investigated, started the process of retaliation. They

retaliated against the white female supervisor and then harassed the female who was bringing the complaint. I was completely baffled. The supervisor described it as mobbing. Mobbing means they threw complaints in her file alleging that she did some dirty deeds, and then they caused the other woman to be so distressed that she quit. Nothing happened, because she left.

The second thing that this female supervisor told me was that there had been drug trafficking. She said that it happened but was no longer happening. She said she wanted to create walls so that this no longer happens. There were drugs being trafficked in the vehicles. I told her, "I never saw this in the paper—I do not understand—why are you telling me all of this?" She said, "I am telling you this because, No. 1, I believe that you care; No. 2, you came in to address the individual who felt like he had been discriminated against for 22 years; I myself have been discriminated against, and my supervisor is one of the individuals who has been doing the same thing to me." I asked her, "Would you be willing to tell your story, confidentially, to the police?" Because this sounded to me like criminal activity, I called Mr. Callaway and I told him I needed this woman to tell him her story. She repeated her version of the story to him. I said, "All right, I am going to bring a whistle-blower bill, and I am going to figure out how to build more protections into the current law." After I let Mr. Callaway speak, I will cover the other issues that I have discovered were happening locally, which further drove this bill.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

I received a call from Assemblywoman Neal during the interim about this incident. I reached out to the lady in question and had a lengthy conversation with her on the telephone. She told me that she had worked for this state entity for a very long time and she was getting ready to retire. She mentioned that the criminal activity that occurred had occurred quite a while ago, but she was at a point in her career where, when she retired, she did not want to leave herself or the agency with a bad reputation. She wanted to leave with a clean slate; that is why she was coming forward and talking about the retaliation she had received while working there. I got quite a bit of information from her. She also wanted to make sure that when she left, there were protections in place for people who had suffered the same kind of retaliation that she had. I gave her my number and said, "If there is anyone that you would like to pass my number on to within the agency, they can always call me." I also passed on the information about the alleged drug trafficking to the narcotics section, even though she claimed it had happened years ago, so that they could evaluate whether it warranted undercover operations or to see if anything like that was still occurring. I could tell by my conversation with her that what she was telling me was true—that she had suffered some type of retaliation for coming forward in these instances.

**Assemblywoman Neal:**

That story is the reason why the provision in the bill around the Nevada Equal Rights Commission (NERC) was placed there. I wanted to put a safeguard in place so that someone at a sister agency could make a complaint without a political decision being made because NERC is under the Department of Employment, Training and Rehabilitation (DETR). The

way the structure worked, when I submitted this information to NERC—this is not me saying that NERC did anything wrong—the immediate response was, I need to let the director know about the sister agency. I felt that the things I heard were egregious enough that there should be both privacy and a safeguard between those two agencies.

The reason why the rest of the bill is there is because there have been instances of retaliation at the local level that have been so amazing to me. For example, I have seen grown men depressed and not willing to go to work because false records have been placed in their employee file. In this case, everyone knows that it is a false record. The employee has asked for it to be removed but it has not been. This individual whom I am speaking about is currently seeking legal advice and legal action because he found out that one of his supervisors or assistant supervisors had placed the false record in his file. He was in a collective bargaining agreement and one of the union representatives mentioned he or she knew that the record had been placed in his file three months prior, yet no one was doing anything about it. The person went into a severe depression. I told this person, "All I can do is help you find a lawyer, and I need you to go ahead and start a file with NERC." I could not believe that No. 1, someone would do that to him, and No. 2, that he had no recourse. Despite people having knowledge that the record was false, and they were acknowledging to others that it was false, this person was left with no remedy. Later, Las Vegas City Employees' Association (LVCEA) will talk about a very specific case.

I know you have two amendments, but we are going to work through the nine-page one ([Exhibit C](#)) and then I will explain the second amendment, which is the shorter version ([Exhibit D](#)).

When you read this, you were probably thinking, Who is the Commission? It is a personnel commission where these hearings occur. On the books there is a retaliatory and reprisal statute, but for local governments it says "may"—it is permissive. If you pull up the statutory provision [*Nevada Revised Statutes* 281.635], you can see that the provision for local government was put in place in 2001. It did not say "shall." The main thing that this bill will accomplish is making them both equal. I am making it a "shall," not a "may." In section 1, subsection 5 [page 4, ([Exhibit C](#))], we will get into when it is necessary.

Currently, the Commission may disclose information gathered pursuant to *Nevada Revised Statutes* (NRS) 233.190, subsection 2. The new language in section 1, subsection 5 of the bill [page 4, lines 24-32] says that after the filing of the complaint with the Commission, access to the information related to the complaint must be limited to certain staff. That is the NERC safeguard to make sure that no political decisions are going to be made and that NERC can deal with a complaint confidentially if it concerns a sister agency or any agency. You will hear from NERC that typically, when a claim comes in and they know it concerns a sister agency, they will send it to the federal Equal Employment Opportunity Commission (EEOC). But in this situation, if anything should happen at any of the other state agencies in the future, I do not want there to be any reason why someone would not feel protected or that a political decision be made because the agency in question is a sister agency under the Office of the Governor. I am not saying that the current or previous director engaged in

anything improper. What I am doing in this section is trying to make sure that there is a safeguard in the future. I do not want political decisions being made when there should be a remedy—a proper remedy for an individual who wants to bring his or her claim forward.

If you move to section 2 [page 5, ([Exhibit C](#))], we get into the local government and the local government officer. Section 2, subsection 5 has a laundry list of what is considered reprisal or retaliatory action [pages 5-6]. All of those things are existing law; I added to subsection 5, paragraphs (n), (o), and (p). I put in paragraph (n) because I wanted to add that it can be reprisal or retaliatory if you knowingly place false information in a personnel file of an employee. It should never happen. I put in paragraph (o) to add "deliberately interfering with a complaint or investigation being filed with a supervisor or a person in control of work environment." I put that provision in because of the example I gave you about the state female supervisor and female who reported to her; there was interference in that investigation occurring and that complaint being filed. The employee filed her complaint and, as the supervisor described it, the mobbing occurred and the employee felt harassed to the point where she did not want to continue with the complaint, and she quit. Those offending individuals continue to work there and continue with that behavior to other individuals, but not based on alleged sexual assault. I want to make sure that if you are one of those individuals who is so determined to prevent a complaint from happening, but you are potentially the wrongdoer, I want your conduct to be considered a retaliatory action that the state and local governments will look at. I put in paragraph (p), which says "deliberately, or knowingly creating a false informal or formal complaints against an employee to cause distress, harass or harm to reputation in the workplace," because there have been situations where an individual may say, It is not a formal complaint but an informal one, yet it will go into their file. But the only purpose of doing that is to harass and to harm the person psychologically. The individual whom I described as being depressed was serially harassed. That person felt that every time he turned around, they tagged him for volunteer activities; they tagged him for being late five months prior. There was a series of harassment that the individual experienced. When you hear the LVCEA story, you will see how, no matter what the individual did, he got in trouble whether or not he was in the right or in the wrong; he was tagged for every single event that occurred.

Section 3 [page 6, ([Exhibit C](#))] is where I changed the "may enact" an ordinance to a "shall" enact an ordinance. I felt there was so much of this activity happening at the local level, and I wanted to make sure that this was not a permissive thing, that we actually do it.

In section 4 [page 7], I wanted to figure out how to impose a civil penalty against the proper person. I added a fine of \$5,000 for the first offense and then \$7,500 for the second offense. Here is my reasoning: I know that the county and the city can be on the hook for certain things, but I want the individuals who are doing the activity to personally be on the hook. My deterrence is that if I get into your pocket financially, you will not do this behavior. Once you get notice that this bill has passed and it moves, if you are going to engage in any of those activities listed in section 2, subsection 5, paragraphs (a) through (p) of the bill, then you are going to understand that there will be joint liability if the city or your supervisor knew and they were aware and they basically colluded with you. But if you individually

acted, I am going to personally go into your pocket—you are going to have to come up with \$5,000. The things that had been going on were so pervasive that I thought, What could I do to stop an individual from doing this? People have argued, Why not termination? Sometimes people do not get terminated; they just get disciplined. Sometimes that is not enough because if you are a person who is doing it, you are probably doing it habitually. I want to make you feel some sort of financial pain so you will really think about your decisions, you will treat employees appropriately and properly, and you will refrain from this conduct.

In section 5, subsection 2, paragraph (c) [page 8, [Exhibit C](#)], there is a correction that I need to make. It still has the same fine provision, but I got a little crazy—I added that the third offense would be a gross misdemeanor. I am deleting that. I can do that—I can go from civil to criminal, but that is probably a little too hard. That is a deletion that will be in the new amendment as a strikeout. I just really want the fine—I am not necessarily trying to put a criminal misdemeanor on somebody. I am trying to have a proper deterrent to make sure that they never do it again.

I will go into the second amendment ([Exhibit D](#)). The Legal Division, Legislative Counsel Bureau, helped me clean up what were going to be paragraphs (o) and (p)—it will be a new section in the bill instead. I will explain the two scenarios that I wanted to deal with. One, where the supervisor orders a subordinate to retaliate by including them in interfering with the disclosure. Two, where the supervisor fails to take action to remedy any retaliation that the supervisor becomes aware of. You can have a supervisor who enlists an agent. It could be an underling whom they ask to put a false record in the file or do other activities. For example, if you are in a police structure where there are true chains of command, you could be ordered to do something that you disagree with, but you do it anyway. The new subsection 1, paragraph (a) says that if you "directly or indirectly use or attempt to use the official authority or influence of the officer or employee to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence," then you are still going to fall under the retaliatory action. These are going to be activities that you should refrain from doing, as they are actionable under a retaliatory or reprisal claim. Paragraph (b) says that if you "fail to use the official authority or influence of the officer or employee to remedy any reprisal or retaliation action of which the officer or employee became aware." I wanted to make sure that we do not have a situation to that alleged assault; it poses a problem when the employee leaves and you no longer have an actual, willing participant in the complaint. There should have been an ability to move the complaint forward, and it should have been noted so that everyone should have been aware that it happened.

I know that people can get into situations where they are under stress, under duress. Maybe you can have moments where you are afraid, but sometimes even when you are afraid, you just have to do the right thing. In a workplace environment, it can be very stressful. I have seen it myself where individuals literally want to quit. I had one individual tell me, I feel like my job is trying to make me commit suicide. This was a 49-year-old man. I said to myself, I have no power to help you; all I can do is try to change the law. The fact that it is

happening to you gives me cause for concern, because you always see men as strong. I said, This law needs to change. I am going to bring this out and deal with this, because nobody should have to go to work depressed and afraid of the next thing they are going to do to attack or put dirt in an employee record. All you want to do is go to work and take care of your family. Ideally, you would love to go to work with a smile on your face. As legislators we can come to our job and, because we are all equal, none of us can make another person feel bad; we all have power. When you are an employee, you find that your power is limited and restricted when another individual has decided that they want to threaten, intimidate, harass you, and try to take away everything about you and try to make you as unhappy and miserable as possible. The idea that somebody can lie about you every day and put things in your file and write you up for every single little thing—no one should ever have the capacity and right to do that to another individual—but it is happening.

When I told people over the interim that I was bringing this bill forward, they started telling me things that were happening in the north, or what is happening on health boards. They said, If you bring this bill forward, it will help so many people because it is happening and they do not feel like they have a place to go. I am getting emotional because it is hard for me to see a grown man say, I think I want to take my life, over what somebody is doing to him. I did not even know what to do, but I said, I will bring the bill, and we will see what happens, and we will go from there.

In section 4 in the second amendment ([Exhibit D](#)), we wanted to weave into NRS 281.641 additional language that would help in a situation where a state officer or employee disclosed information, and that state officer or employee filed a written appeal with the hearing officer, but the facts and circumstances under which that disclosure of improper governmental action was made had been interfered with or prevented. We also amended that statute to incorporate what I am doing in NRS 281.631.

What is happening out there is wrong. It is time that the local governments participated and did what the state has been responsible for doing to make everyone feel as though they are protected. There is no question whether they will enact; they shall enact an ordinance for the employees at the local level.

**Chair Flores:**

Thank you. We have questions.

**Assemblywoman Bilbray-Axelrod:**

On the first amendment [page 7, ([Exhibit C](#))] you put a \$5,000 fine per incident. What if there are multiple people involved in the retaliation? You wrote "for each incident"; would we be considering a fine for each individual involved, or would the entire event be one incident with one fine?



**Assemblywoman Neal:**

It reads "a 5000 dollar fine will be assessed to them." I should clean that up. I did mean that if there is collusion among multiple people, the fine should apply to all the individuals who acted in concert with each other. Instead of saying "them," it should say "to each individual involved."

**Assemblyman Leavitt:**

If the parties are involved in an employee union in the course of their employment, is the union ever involved in your scenario? Is there a pathway there that gives them an added level of protection?

**Assemblywoman Neal:**

Do you mean if the union is doing the activity?

**Assemblyman Leavitt:**

No. Does this legislation enable them to report to a union officer, union steward, or whomever to help them resolve this situation outside of their normal employment group?

**Assemblywoman Neal:**

It is my understanding that they are still allowed to seek union representation. If it is a city employee who is filing, he or she could go to his or her union representative and say, This is what is happening to me at the city and I am going to file a grievance whether or not you will represent me. That is still a pathway for them, but the question is whether that is a pathway the employee can take without fear that the union might also be in collusion. I asked NERC about this—if an employee felt he or she could not get representation from the union, could the person still file a claim with NERC, or is the person bound to the proper process of going through human resources and the union representative first, find that it is futile, then file with NERC? If there is collusion—for example, in a situation where all the individuals know that a false record is being filed on the employee, as in my example—causing the employee to feel as if he or she is not going to be represented, then the employee can skip and go directly to NERC. However, they do have the right to seek the union assistance. This bill does not prevent that. All this bill does is spell out additional conduct that is considered retaliatory. This bill makes sure that the local governments are now mandated to enact an ordinance so it is no longer permissive. Also, it builds a safeguard for the state employee who needs to file something with NERC to make sure there is confidentiality and separation.

**Assemblyman Leavitt:**

I would love to see the bill extend to other reporting entities so that there is no collusion among those individuals as well. For example—I am not saying it is happening, I am trying to protect from it—I want some sort of protection from my union steward or whoever is representing me, outside of my employer, from passing on information that is within their purview that could potentially cause a retaliatory action against me.



**Assemblywoman Neal:**

I can see where you are going because when I was drafting this and considering what the language ought to be, it was one of the first things that I considered. I thought I would be going into a collective bargaining statute and making the language a component of a contract. That requires a second fight with union individuals about whether or not they want to accept that inclusion. I like where you are going because I thought about that; I will think about it.

**Assemblyman Carrillo:**

I want to go to section 4, subsection 2, paragraph (b) [page 7, ([Exhibit C](#))] where you talk about the penalties. I understand that this goes before the Personnel Commission, Division of Human Resource Management, Department of Administration. Would the commission be the ones imposing the fine to the employer, and would that employer be, for example, the "City of Lala"—I do not want to name any specific city—would it be the city that is fined the \$5,000 or \$7,500?

**Assemblywoman Neal:**

If you look under section 4 [line 29, page 6], it is taken to the hearing officer and then it says that the hearing must be conducted in accordance with the procedures [line 38, page 7] and if the hearing officer determines that the action is reprisal or retaliatory, the hearing officer may issue an order (a) directing the proper person to desist and refrain from the activity and (b) imposing a civil penalty against the proper person. In this situation, it will be the city that is fined if the employer had knowledge of the reprisal or retaliatory conduct and it failed to remedy or intercede. I am trying to get at the individual who is in control of the work environment and who knowingly participated in the retaliation. It has been said that cities and counties have some liability already. I want joint liability if it is needed—I am never trying to escape that. I am personally trying to go after the individual.

**Assemblyman Carrillo:**

When you say you are going after the individual, are you referring to the individual who would be in charge of the department? That person may not have \$5,000 even in their savings account. Who would be the ones actually forking out that fine?

**Assemblywoman Neal:**

If the hearing officer found that the proper person was the supervisor, it would be the supervisor paying. If the hearing officer found out that it was the supervisor and the supervisor's agent, then it would be those two. It would be the same scenario if you found out that it was simply a manager, and then maybe the manager directed an employee to do the retaliatory action, place false information in the file, or interfere; they also would be on the hook. If several individuals participated, the "proper person" then applies to all individuals who are liable for that activity, meaning there was sufficient proof presented to the hearing officer that they could identify one individual, two individuals, or three individuals. That is my intent. If that is not clear, I will definitely work on making it clear.

**Assemblywoman Duran:**

Assemblywoman Neal, we appreciate this bill. I work in labor; we do see the intimidation, and we see grown adults—grown adults—in fear of coming to work every day because of the retaliation, because of everything you mentioned today. This bill is needed to teach those because they are in a position to intimidate you, or anybody, because they do not like you, or whatever the case may be. It is a course of action. It would be an honor to put my name on this bill, if possible, if you amend it.

**Assemblywoman Neal:**

Thank you.

**Assemblyman Hafen:**

I think this is a pretty good bill. In reading the existing law, in addition to employees and employers, it would also pertain to local government officers or state officers, which would actually mean all of us. Is that the intent? Because I agree with that; I think we all should be liable just like anybody else who would do something like this. But then getting into your proposed language on page 6, section 4, I need some clarification on subsection 2, where it says "the hearing officer may issue an order" [line 42, page 7, ([Exhibit C](#))] and then it goes into paragraphs (a) and (b). Does the hearing officer then have the discretion to just do (a) or to just do (b)? There is no "and/or" in there, so I am curious.

**Assemblywoman Neal:**

I think that is a typo, but they do have discretion. Yes, it should be an "and/or." That is my error in typing while trying to do eight things at the same time. I intend for there to be discretion. I am not interested in changing "may" to "shall." I do want there to be discretion to determine from the evidence whether or not the actions are going on.

**Assemblyman Hafen:**

I thought that was your intent, so I wanted to bring that up.

To the conversation of discretion and following up on our colleagues' questions on the \$5,000 and \$7,500 fines, the hearing officer would have the discretion, then, whether or not to impose a statutorily mandated fine of \$5,000 or \$7,500 for the second offense. Do we want to consider giving the hearing officer the discretion to impose a fine on the first offense of, say, \$1,000 up to \$5,000, and then mandatory on the second one? Maybe this is just food for thought, but I thought I would bring that up.

**Assemblywoman Neal:**

I considered that. Normally, I am not a person who tries to seek dollar amounts for wrongful activity. I struggled with \$1,000 or \$2,500 because I was trying to figure out, based on the information that I received, what will make you stop? What will make you refrain? What will make you think twice once you get educated on the new changes around the whistle-blower law? I want an amount to get that individual who may currently be doing that activity right now to say, You know what? I think I am going to pull back, and I think I am going to stop.

I agree with you on the "up to" language, but I am looking for the hammer. I am looking for how to really put a second thought in an individual's mind to say, I know I do not like this individual. I know I want to harm this individual's reputation in the workplace. I know I want to harass him. But I just had education from the local government and state government that there is a potential that I can be hit with a \$5,000 fine if I engage in this behavior. And I wanted something in there to make that person pause. If "up to" will help to get this bill out of Committee, I am willing to put that in there, but that was my thought process on how I was trying to figure out if I would do \$1,000; \$2,500; \$5,000; or \$7,500. Because if you have done a second offense, we have a problem, and you really might need to find some other work or get therapy.

I will definitely look into that because I do want discretion, but I also want a deterrent. I want individuals to stop doing this behavior to other people. It is not right. It is wrong that you think you have the right to go after another employee in any way and to stand there and not be accountable for it. That is currently what is happening—they are not held accountable. They are hiding and they are destroying people's lives and that is not okay. The thing is, we have been giving them a pass because the statute has never said what you are accountable for. These individuals have been wreaking havoc just because they have decided to ruin someone else's life for a week, a year. I am at a point where I can no longer have that exist in this state. There has to be a public policy shift to make those individuals recognize that you will not keep that power over another individual. And you will never get the right or the opportunity to ruin somebody's life and harass and intimidate and make someone feel less than they are at their job. I promise you that this is one of those things that, even if this bill does not pass, if I get another chance to run for office—oh, yeah—I am bringing it back.

**Assemblyman Hafen:**

I agree with you. If it were my business, I would terminate the person on the spot. Thank you for bringing this forward.

**Assemblyman Assefa:**

In a scenario where an entire department is colluding against a particular employee, they are all being fined, and there is a secretary in the office who may have been ordered to place the defamatory document in the file of that employee. If she was not part of it, I want to make sure that she is not also wrapped up in the situation because she was just doing her job. If we could have language to clarify that, that would be great.

Where does the money go once the fine is paid? I assume to the State General Fund? But how would that make the injured employee whole again? The fine may stop the behavior moving forward—I am thinking about the 49-year-old gentleman who is contemplating taking his own life—that is not helping him retroactively. It may stop the behavior in that department, moving forward, from happening against other employees, but what other remedies does that gentleman have in addressing his issue?

**Assemblywoman Neal:**

I have always thought that the remedy that they had through NERC or through the EEOC was still a remedy that they could go through. I had not considered that they did not continue to have a remedy for a hostile work environment or workplace harassment. I figure for that to be dealt with separately, that once we found the evidence that this behavior was there, they could then move to another legal pathway. In fact, that is what these individuals are currently doing. They either file a private right of action, they file suit, or they end up going through the process through NERC, or, if it rises to a federal claim where a federal law is somehow triggered, they open an EEOC complaint. Then, under that legal structure, whatever is considered the damages that a person is allowed is the amount that person is allowed to go after in a settlement. That is how I have always seen this or understood their pathway to be.

Going back to your question about the secretary, if she is aware—there is a point in this that I think an individual has a responsibility to tell on her boss. I know people can be scared, and I know people feel like—and I have seen it a million times—I do not want to say anything because I do not want to get in trouble myself, I do not want to lose my job. I am making it so that if you fail to use your official authority or influence or employee to remedy any reprisal, you should try to make people aware. There should be a pathway for you to do that, and you should say something. God forbid there is a whole department that is doing this. If there is a whole department that is that dirty, they all should go down. If I have to figure out how to carve a pathway for someone who might be skittish, I have to really think about that because I do not want it to be such a safe harbor that everybody finds their way underneath it and says, Well, I could not find the courage to speak out and say what was going on. Because at some point, you have got to find the courage to speak out about what was going on. At some point, you have to find the courage. Otherwise, you are complicit if you know it is happening. Why would you watch that happen to somebody? Why would you be the person who typed that document? You hear all the circular conversation; you know that the intent is to harm someone. You are typing it up and you are saying, I am just going to do what he says. Why would you allow that to happen?

I guess, maybe, in my own philosophy, I am hoping that individuals will find the courage to stand up for another employee and not allow that to happen. Maybe I come from a different background where I can be fearless sometimes. Sometimes other people need to be too. You cannot be complicit and say, Well, I knew—I knew for five years—and I never said a word. Why? You saw that person suffer and you just said, I will just be a bystander. I am saying that you are no longer allowed to be a bystander.

**Assemblywoman Hardy:**

I think we all agree this is something that is very concerning. We can imagine ourselves in this position. It would be very disturbing. As far as the penalties against the supervisor or someone who is doing this to their employees, in addition to the penalties, had you considered that they would be terminated from their job at some point?

**Assemblywoman Neal:**

Yes. And I have been asked, instead of imposing the appropriate civil penalty, why would I not just seek termination? My fear is, what if they are never terminated? What if they are just disciplined? I could add that in, and I have been considering adding that because that input came to me from the counties. But I want to make sure that they really are terminated—because I have seen situations where you can have a director and a deputy director and they have each other's back. They are gone for maybe a few months, disciplined, and then they are right back on the job. That is unfair because you are covering them by saying, Oh, you are being unfairly targeted. They are coming after you. It is the employee who has the problem, not you. I do not know why people turn a blind eye and say, You were actually right to do what you did. But that is currently happening. There is a situation that is happening where individuals, because they are friends, will not tell the other person, Maybe you have gone too far. These individuals came up in the ranks together, they have each other's back, and now they are just refusing to tell the other person, Stop what you are doing because I know what you are doing is wrong. They are turning a blind eye to the other person, just throwing dirt on an employee. That is what I am worried about—that they will find their way back into the job. I have seen it in cities. I have seen a person who should not even have been hired, get rehired.

**Assemblywoman Hardy:**

Yes, I am sure that goes on—no question. I agree, if there was a fine and, in addition, by the way, the Commission can find that, we are going to fine you and you no longer have your job. Maybe it would not be the department head who had that authority to terminate them; it would be someone who is not involved with it—termination just being another punishment for them, as you said.

**Assemblywoman Neal:**

I have heard it, and I am hearing from you, and I have heard it from the counties. I will add it in.

**Assemblyman Ellison:**

Most of these are within government agencies, cities, counties, and state departments. That seems like where most of this stuff is going on. Do these agencies not have a policy where if you have a complaint with a supervisor or somebody in your department, you can ask for it to be moved up to the next level, and it can go all the way to the director? Or are they stopping the complaints in between?

**Assemblywoman Neal:**

Typically, there is a grievance process where you could go to the human resources (HR) department if you feel that your director will not handle it for you, and file there. That grievance process is not eliminated by this bill. But if you are in a situation where the HR department has a close connection or is in a relationship with the director of your department, it could be that it is futile for you to file there. You may need to bypass that. You will need to establish that it is futile for you to go there, but you can bring these issues to HR. You should be able to bring these issues to HR. I have asked, Why have you not brought this to

HR? I am afraid that when I open this up in the HR department, it is going to get back to my department and I am going to continue to be harassed and threatened, and it is just going to get worse for me. There is a fear of telling what is happening to you because you are afraid that it is going to get worse and that the person is then going to get even more angry that you had the audacity to speak out for yourself. That is what is happening. It should be confidential.

You should have faith that your HR department will defend you, but what happens if enough dirt has been spread on you that the friendships among departments are now getting in the way of a proper investigation. What then do you do? I have had to consider all of these scenarios because I have encountered individuals who have faced each one of those scenarios—I am not making it up. I have thought, Wow, I have no idea what I would do if I were in that situation, because I empathize and I understand, but I have never been in these situations. I have always had the idea that if something happens to me, I am going to figure out a way to defend myself. If I have to blow this up, I am going to, and I am going to file and I am going to figure out how to use that juris doctorate that I have, and I am going to turn this around. But other people do not have that same level of belief in themselves that they will go against a giant. I do, but other people do not. And I am trying to figure out how to help them feel as though what is happening to them has some legal place in this state.

**Chair Flores:**

Thank you, Assemblywoman. I will ask you to step back and I will invite those wishing to speak in support of Assembly Bill 274 to please come forward.

**J.P. Kemp, representing Nevada Justice Association:**

We are in support of A.B. 274 and its greater whistle-blower protections that it is aiming to implement. Retaliation and reprisals against employees who do the right thing or report wrongdoing are intolerable and need to be punished. In my practice as an employment attorney, I see people all the time who have been subject to retaliation and reprisals for complaining about wrongdoing. In the past several months I had a person come to see me who worked at an agency and had complained about misuse of state funds and was having his or her duties taken away. This would fall under the refusal to assign meaningful work that is provided for in the statute. It is terrible. So much of how we view ourselves as individuals and our self-image is tied up in what we do for a living that when somebody messes with that, it gets right down in your core. It really does have a tremendous impact on people. The penalties that are provided in this are a good step. I do believe that there should be civil remedies for people who are harmed, but at least having these monetary fines will create some deterrents. There are some legal avenues that people can go down if they have the right set of facts, such as cases for defamation, for intentional affliction of emotional distress, or for civil conspiracy for the violation of Title 42, Section 1983 of the *United States Code*, if you have somebody who is having their liberty or property interests interfered with under color of law. There could be remedies under that. Having some specific civil remedies in the future would be good, but this is a great first step and improvement. We are in support of A.B. 274.

**DeAndre Caruthers, President, Las Vegas City Employees' Association:**

We are highly in support of this bill. Being the union president, I also deal with a lot of employee labor issues. Even though our HR department would say that the city has a strict no-retaliation policy, some management and some supervisors will figure out a way to manipulate the rules in their favor as far as nitpicking ([Exhibit E](#)). We are in support of this bill, and we ask that you go ahead and pass it.

**Drake Ridge, representing Las Vegas City Employees' Association:**

We would like to echo the sentiments of our clients down south. We would like to support this bill as amended, and we would like to thank Assemblywoman Neal for bringing this forward.

**Chair Flores:**

Seeing no one else in support, I will move to opposition. Those wishing to speak in opposition of [A.B. 274](#), please come forward.

**Dagny Stapleton, Executive Director, Nevada Association of Counties:**

I want to make very clear that we are opposing this bill specifically on one portion of one section. We are not in opposition to the concept or intent of what Assemblywoman Neal is trying to accomplish, and we absolutely agree that there is no question that those retaliating on whistle-blowers have got to be held accountable. Because of that, we do support the changes to section 2 and 3; it tightens up things and the requirements on local government. It is section 5 of the bill that we want to address [pages 7-8, ([Exhibit C](#))]. This is the section that makes sure the process for holding those individuals accountable is better. The proposed addition of a civil penalty for these individuals is the sole part in the bill that we are opposed to. Currently, under NRS Chapter 41, local government employees are granted immunity from individual liability. That is why we are opposed to creating that individual civil liability in this bill. The current process for dealing with those who retaliate against whistle-blowers is an internal disciplinary one, including a cease and desist as well as, of course, the option for termination. We agree and will be open to the additional repercussion being added to the statute that it is up to termination but, again, we oppose the portion on the civil penalty. We want to thank Assemblywoman Neal very much for hearing us and having discussions with us on this and meeting with us prior to the hearing. I would be happy to answer any questions.

**Assemblyman Assefa:**

First, you mentioned that county employees may have immunity. If county employees are doing something gross like this—absolutely nonsensical like this—why should they be immune from penalties?

Second, if you are willing to terminate them for their actions, why are you defending them against a monetary penalty?



**Dagny Stapleton:**

They should not be immune, absolutely. But the process that we have now is based on a tenet that local government employees are protected from individual liability. It is the organization that is liable. Individuals cannot be slapped with an individual penalty. They are not immune from being terminated, of course, which is one of the ultimate penalties, I would think, in this situation. They also have, of course, the opportunity to go to court.

**Assemblyman Assefa:**

I was asking, if you are willing to terminate them for an action that you recognize to be a wrong action, an improper action, why are you defending them from the monetary penalty?

**Dagny Stapleton:**

It is based on that tenet according to Chapter 41 of the NRS. This bill would make a new exception to the tenet that local governments are immune from individual penalties. Internally, they can be disciplined. There is a process for that. However, there is not a lot of precedent for making employees individually liable in the regular scope and course of their work. It is a tenet in local government that government employees have that immunity, and it is the government agency that is responsible. We do take that very seriously for discipline, up to termination.

**Assemblyman Carrillo:**

Regarding NRS Chapter 41, do you have the specific section of the statute?

**Dagny Stapleton:**

I do not right now, but I can get that for you and will email it to the Committee.

**Assemblyman Ellison:**

I would like to get a copy of the statute that you are referring to. Does it apply to counties only, or also to cities?

**Dagny Stapleton:**

I believe it applies to all local government as well as state, but I will get that for you. I will send it to the entire Committee.

**David Cherry, Government Affairs Manager, City of Henderson:**

We are in opposition to this bill, but we have had the opportunity to speak with the bill sponsor to discuss with her what our concerns were about the legislation, and we want to thank her for her time.

Our opposition is based on the same sections of the bill that Ms. Stapleton articulated, which is essentially that the civil penalties are present in the bill and will be levied against an individual or individuals. As she mentioned, the NRS generally provides that when government employees are carrying out actions within the scope of their duties, they are not subject to civil penalties assessed against them personally. One of the things that we see could happen, if this were to be the case, is this could lead to the units of local government

choosing not to represent an employee facing personal liability because of what it deems to be a personal action. Also, this could lead to a situation where supervisors may need to hire their own attorneys and perhaps have to secure their own insurance policies to protect them against liability costs. The law of unintended consequences may be at work there. We do support the other sections of this bill and are in absolute agreement with the bill sponsor that we must protect whistle-blowers against retaliation, and we have a process in place, as an employer, that allows us to discipline an employee found to have engaged in retaliatory practices, including terminating them from their job with their city. We do feel that termination is a more severe penalty than a one-time fine of a set amount. It is not to say that a fine can also be a deterrent, but we feel as though termination, or the possibility of termination is, we hope, a very strong deterrent. I am available to answer any questions.

**Assemblyman McCurdy:**

I am very happy to hear this bill. I believe that it is going to protect many good people from going through situations that none of us should experience. I have a question about the information that either local governments or the counties are retaining as it pertains to bullying complaints against a director or whomever. Do you keep track of those? If so, could you provide the Committee with how you are responding to those? Because what we see is—and this is unfortunate that we have to bring this bill to protect people—but what we see is that we have an issue, and any time that we have various people from all walks of life crying about the same type of issue, that means that we have a duty to act. If you could provide the Committee with how you are handling that, I would definitely say that the next step should be to send out an all-email to let folks know that this will not be tolerated, and that the state is engaging in looking at how to give remedy to folks who are going through this.

**David Cherry:**

Mr. Vice Chair, we would absolutely be able to provide you with that information. We do track any and all complaints that would come in. We do also have an anonymous way that folks can report incidents in case they are worried about their identity bringing issues of retaliation, so we can definitely share that information with you.

**Chair Flores:**

Members, are there any additional questions? Seeing none, we will go ahead and move away from opposition to A.B. 274. I do not believe we have anybody else wishing to speak in opposition. I invite those who wish to speak in the neutral position to please come forward.

**Michael Baltz, Chief Compliance Investigator, Nevada Equal Rights Commission,  
Department of Employment, Training and Rehabilitation:**

Nevada Equal Rights Commission is neutral on this bill. *Nevada Revised Statutes* 233.190 already provides for confidentiality of investigations. For any internal DETR employment charges or any other potential conflicts, once the charge is signed, the charge is transferred to the EEOC for processing to avoid even the appearance of any potential conflict. For state-only cases, NERC must investigate; it serves no other agency with jurisdiction pursuant

to NRS. Nevada Equal Rights Commission does have an established firewall. I am happy to take any questions.

**Chair Flores:**

Thank you. Members, are there any questions? I see none. I do not believe we have anybody else in the neutral position, so I will ask Assemblywoman Neal to please come back up with any closing remarks.

**Assemblywoman Neal:**

I want to thank the Assembly Committee on Government Affairs for hearing A.B. 274.

I know this is a public policy that deviates from immunity. I know it does. But it is up to this Committee to determine the value proposition of this legislation, whether or not this is public policy that should move forward for the good of the state and to protect individuals. There have been enough instances where immunity has not solved the problem. Termination has not solved the problem. If termination were enough of a deterrent, then there should have never been a subsequent offense. That means that there should be no director, supervisor, or person in control of a work environment who should have ever retaliated or subjected an employee to reprisal. The fear of termination should stop those people in their tracks, and if that were enough of a deterrent, then there would be no more stories. The state portion of the statute has been in place for a while, but the local portion has been in place only since 2001. If I am still telling a story of what has happened in 2018 and what is currently happening in 2019, then termination is not enough of a deterrent.

Committee, it is up to you and your judgment to make a decision about this public policy. I feel strongly about it, and I feel that there is a need to make a shift. Individuals are harming other employees and there are no consequences for what they are doing. I need the behavior to end. I was trying to figure out a way to get it to end because termination did not seem adequate to making an individual want to stop. Individuals were willing to risk being fired because they could hide, somehow, or the disciplinary action they were given was not enough to rise to their leaving their job or their job being terminated. You have to make the decision for yourself.

Did I provide enough information for you today to support that we should shift public policy, that we should take a second look at immunity and ask ourselves the question whether it is proper for the state to move toward personal liability if a person is not preventing an individual from doing this activity? I am going to leave it up to you. Of course, I am going to lobby you, but I definitely believe that we need a public policy shift because if termination were the answer, I would not have even brought the bill. I thank you for your time.

**Chair Flores:**

Thank you, Assemblywoman. I knew that we were going to have a lively discussion today. We appreciate you. I am going to go ahead and close out the hearing on Assembly Bill 274. Next, Assemblywoman Robin Titus is going to present Assembly Bill 381. We will open the hearing on Assembly Bill 381, which designates April 16 as "Healthcare Decisions Day" in

Nevada. I want to publicly thank you, Assemblywoman, because we made a last-minute request that you present. Members, I advise you that if you are given a day to present, you just accept it because that may be the only day that is offered to you.

**Assembly Bill 381: Designates April 16 as “Healthcare Decisions Day” in Nevada.  
(BDR 19-660)**

**Assemblywoman Robin L. Titus, Assembly District No. 38:**

Assembly District No. 38 is Churchill County and most of Lyon County. I am here to present Assembly Bill 381, which designates April 16 as Healthcare Decisions Day in Nevada. Here at the table with me is Peggy Ewald, who is chair of Nevada POLST [Provider Order for Life-Sustaining Treatment], a nonprofit group here. I very much appreciate the opportunity to present this bill designating April 16 as Healthcare Decisions Day. I appreciate getting an early, quick turnaround time on my testimony and the bill because we are shooting for April 16.

Before I discuss the provisions of the bill, I want to give you a little background on the concept of a Healthcare Decisions Day. The National Conference of State Legislatures—we are known as NCSL—which we are all members of, has the Task Force on Innovations in State Health Systems, which explores issues and opportunities to reform state health systems. The task force, which consists of legislators and legislative staff from across the country selected by NCSL leadership, meets two or three times a year to discuss health care issues. The Nevada members include Senator Julia Ratti and Marsheilah Lyons with the Legislative Counsel Bureau. Marsheilah Lyons is chief principal policy analyst in the Research Division. The task force produced a report titled "10 Strategies for Improving Health Care: Report from NCSL's Task Force on Innovations in State Health Systems." One of the top ten strategies mentioned in the report is improving end-of-life care. It is noted that some state legislatures have designated April 16 as annual Healthcare Decisions Day. Healthcare Decisions Day is an initiative that is a part of The Conversation Project, which is a public engagement initiative with the goal of having every person's wishes for end of life expressed and respected.

Healthcare Decisions Day aims to provide clear, concise, and consistent information on health care decision-making to the public, health care providers, and facilities through the widespread availability and dissemination of free, simple, and uniform tools to guide the process. It is another way to encourage and publicize the importance of completing advance directives. According to The Conversation Project's national survey in 2018, 96 percent of Americans say it is important to discuss their wishes for end-of-life care; however, only 32 percent have done so. When asked, 95 percent of Americans say they would be willing to talk about their wishes, and 53 percent even say they would be relieved to discuss it. Healthcare Decisions Day helps initiate those conversations.

The aim of this bill does make April 16 "Healthcare Decisions Day" in the state of Nevada. By making this designation, we will bring about awareness throughout the state to have that important discussion, not just for health care providers but in the community in general, so

that they have that discussion so end-of-life care can be provided with dignity and respect for the patient's wishes.

I was asked, why the 16th? It actually was designated the 16th for a reason: it is the day after taxes are due, April 15, and you have heard the old expression, Nothing is sure except for death and taxes. So April 16 was chosen as the day after you have paid your taxes and the day to now discuss your health care wishes. I encourage your support of this Healthcare Decisions Day. I am happy to take questions, and I will turn it over to Ms. Ewald. However, before I do so, I will take a moment to show you a quick little video to give you a little bit more information about what I am trying to do with this bill.

[A video for the National Healthcare Decisions Day Speak Up campaign was played ([Exhibit F](#)).]

**Peggy Ewald, Chair, Nevada POLST:**

As chair of Nevada POLST and as a director of clinical operations for a large geriatric practice, I am highly supportive of a Nevada health care decision-making day for April 16. I currently do some work at a national level for the National POLST Paradigm and for The Conversation Project. Nevada already has a committee that has been working on National Healthcare Decisions Day and that is called the Conversation Matters. We meet on a monthly basis talking about these types of issues. Included are all sorts of entities statewide, from palliative health care system programs, hospice programs, geriatric programs, and we have all set out in our respective organizations the opportunities to make this a successful day. It is a day for escalating the awareness and the importance of making these difficult and very sensitive decisions and being able to elicit, document, and honor people's wishes toward the end of their life or as they have a life-limiting experience or chronic condition. I could go on forever and talk about the passion that I have for these conversations and increasing public awareness and offering more programs around having these types of conversations as part of advanced care planning.

**Assemblywoman Titus:**

Mr. Chair, I am happy to take any questions.

**Chair Flores:**

It may be a good idea for you to reference this document, "Nevada POLST (Provider Order for Life-Sustaining Treatment)" ([Exhibit G](#)). It was provided to us in the Nevada Electronic Legislative Information System.

**Assemblywoman Titus:**

We brought forward these fuchsia-colored POLST forms for you so that you can know the questions that we, as providers, are asking. This body, this state, has been very forward-thinking in the area of advanced planning, and I have been honored to be part of having that process go forward. These fuchsia forms originally were titled Physician Order for Life-Sustaining Treatment. Last session, we were able to change it to Provider Order for Life-Sustaining Treatment, because many of you may not have a physician whom you see as

a person you trust the most; it might be an advanced practice nurse, it might be a physician assistant, it might be someone else. So we brought in who could go over these decisions with you [page 1, ([Exhibit G](#))]. As you go through and look at them, there are several options. Most people say, Oh do not bring me back. If I die or if I have a heart attack, do not do cardiopulmonary resuscitation. But what if you do not die? What if you are in that coma? What if you have a stroke? What if you have some other injury that does not kill you at the moment, but then you have to make decisions? Do you want a feeding tube? Do you want antibiotics? What do you want us to do? One of the levels is just comfort care, Keep me comfortable, do not let me have pain. I have these conversations, not every day, since I am here in Carson City, but I certainly have them every Saturday when I go back to my district, when I make my long-term care rounds, which I do during session. I go home two nights a week and have that discussion in my office. It is important that we know. The wonderful other thing that Nevada does that you see on this form is our Secretary of State has a lockbox [page 2, ([Exhibit G](#))], because you are not going to have this fuchsia form with you, more than likely, when something happens to you. Where is your form? We made it pink so that you can find it easily among all your other forms. You can have it in a lockbox that the Secretary of State has control of so wherever you are, you have access to it. That is one of the wonderful things. I am going to have Ms. Ewald address anything else that I have not.

**Peggy Ewald:**

This POLST is a mobile medical order ([Exhibit G](#)). This is a program that encourages conversation with your patient. It is designed for a select group of patients. Completing a POLST is not necessarily for all patient populations. There are three identifying factors in the statute. It is usually for people who we think are not going to survive another year or so. The intention of having these conversations is to address somebody's individual goals of care; it can be very different from what I think professionally and what I have experienced personally or professionally. So it is important that we try to have these very comprehensive and sensitive conversations. Statistics show many people are not having them. We might have side conversations, but we have a difficult time expressing these wishes to our own family members and our providers. Having a designated day out of the year, as Assemblywoman Titus says, when we can have these conversations is good. In my experience, I do it daily with our practitioners and with my patient population.

Keep in mind, too, that this is not just about being resuscitated and not being resuscitated. It is not intended to make mandatory having these discussions about POLST. It is just to recognize that person's values and wishes. When I present my advanced care planning workshops, we talk about how we plan for marriages, how we plan for going to school, how we plan for having children, but we do not plan for what we want for our health care decisions when we lack decisional capacity and are unable to do so. We can make this a more positive experience and not about the downside of end-of-life or life-limiting experiences. The other thing, too, is having the conversation not necessarily in a clinical community but in our lay community is a gift that we give our children and our other family members so it does not leave them guessing and wondering, What would mom want or what would my husband want or whoever, in any specific scenario.

**Chair Flores:**

Thank you for the presentation.

**Assemblywoman Martinez:**

Do you have this ([Exhibit G](#)) in different languages, or will it be in English only?

**Peggy Ewald:**

It is in Spanish for the state of Nevada. The Spanish form is intended for interpretation only. We would still need it filled out in the English version.

**Assemblyman Leavitt:**

Thank you for bringing this forward. I think it is an important message. Having gone through this process and not having had an advance directive writing in place, the children of my mother were often perplexed and anxious about what we should do for her care when she no longer was at a level of capacity where she could make those decisions. Thinking of my situation for my children, I do not want to put them in that situation where they have to make a decision based on what they think I would want or what they think their parents would want, as far as our care in the future. I appreciate very much your bringing this forward and promoting this message.

**Assemblyman Carrillo:**

Thank you, Assemblywoman Titus, for bringing this bill. I like this. I see that our state has 23 other days that are of observance in *Nevada Revised Statutes* (NRS) Chapter 236; the only one I do not see is Square Dancing Day, which is much appreciated. I am only joking. This definitely will bring some clarity to many people's concerns.

How do you plan to get this information out? Is there a public service announcement? We do not think about Tartan Day [NRS 236.055] when it is coming around, but something that is, as you stated, April 16, is that day that we have to concern ourselves with. What do you foresee? News media? Obviously, getting the message out there is the most important.

**Assemblywoman Titus:**

It is really fortunate for the state of Nevada that we already have a template and we already have a plan in process. I will have Ms. Ewald detail what the plans are for getting this out. We already have something going.

**Peggy Ewald:**

We have been working statewide with different entities, with hospices down in the south, in Las Vegas, and some of our rural communities. Up here in the north, Renown Health, one of our big health systems, is conducting advanced care planning workshops and presentations. We are attempting for the whole year to reach out to about 20,000 lives that we will have touched through these advanced care planning days. We are at about 12,000 so far, a little shy of our goal. Ours is a very unsophisticated way of capturing the data, since it is not a very formalized process. Maybe with the passage of this bill we can solicit more sophistication to the process. We are holding individual workshops—it is all individual



entities that are getting the word out. I do not have anything for myself, being a part of the Conversation Matters project for the state of Nevada, and what we are going to do in a state presentation.

**Assemblywoman Titus:**

I hope this bill brings that kind of statewide attention and allows us to have that statewide conversation on that day. With your support and the Senate support and the Governor's, we can announce through the news media that now, in the state, we need to have April 16 to have this conversation. So we bring it forward that way.

**Assemblywoman Bilbray-Axelrod:**

I like this form ([Exhibit G](#)). I have a personal story relating to this. My husband was in a coma for three weeks in 2017. He was intubated of his own volition, but about ten days later, I was asked if he wanted a feeding tube. It was not a conversation that I had ever had with my husband. It was a very difficult decision; I am going to be honest. Now that he is healthy, I think, Thank God I made that decision. But when someone is lying there and you have not had that conversation and you do not know what they want and they are looking to you—I cannot stress the importance of this piece of paper.

To Assemblywoman Martinez's point, I would, especially in southern Nevada, love to see this in a variety of languages. I think that is important. You mentioned that it would still need to be filled out in English. Maybe we could figure that aspect out.

Finally, you mentioned that you have these conversations in your practice. I have never seen this form before and I would love to see this in every private practice, in obstetrics and gynecology, et cetera, as part of one's welcome package. I applaud you for bringing this. It is very important. As someone who went through this firsthand, you do not realize how difficult these decisions are until you are in that situation.

**Assemblywoman Titus:**

I do already have an electronic medical record system in a welcome pack. Whenever I have a patient come to my office, I ask, Do they have an advance directive? That is part of the conversation that I have with all my patients of any age. The POLSTs come about for a select group of folks who are my long-term care patients and their families. I have one of these in each and every one of their charts. It is more of a directive.

I want to acknowledge the tragic event with your husband and how scary that can be. Unless you have lived it, it is hard to know what those emotions are. Just thinking about it makes me emotional about my husband and what we would do. He and I have this conversation, and I have these conversations with folks. Not having it with somebody would put you in a terrible position, not only emotionally but in having to make those decisions. This POLST was originally meant for that older population—your parents, what do they want? It can be used; it is not restricted to somebody who is elderly, but that is the select group. That is why you have not seen it when you walk into your doctor's office. They do not have it. We do always have the advance directive. If your providers have not discussed an advance directive

with you, they should be discussing that with you. It is helpful to have that discussion. It makes our jobs as physicians easier, it makes your family's job less stressful, and it gives you a sense of comfort knowing that your job has been done.

**Assemblywoman Bilbray-Axelrod:**

I believe I have been asked that for many years: Do you have one? I usually say, I do not, and then we just move on. If not this POLST then having something similar that a patient could walk out of the office with or download or whatever the case may be, would be a good thing to highlight on that April 16 date, which also happens to be Assemblyman McCurdy's birthday, so he is excited about that.

**Peggy Ewald:**

As a nurse in the geriatric practice, our average patient population age is 85 years old. We have patients who can have five or more comorbidities and chronic conditions. Those are the populations or the patients we have in mind for Nevada POLST. This is a medical order. It is not intended to be for everybody upon admission to any particular practice. Assemblywoman Bilbray-Axelrod, in response to your comment about the form being available in an obstetrician's office, those are not usually the patient population that are at high risk of life-altering or life-ending or end-of-life decisions. However, upon admission and according to Medicare participation rules, acute care facilities, long-term care facilities, and home health and hospice agencies do have to ask patients, What is the status of their advance directive? We make it as part of our practice, and I hear Assemblywoman Titus does so also in her practice as part of the admission process. An advance directive is different from a Nevada POLST. An advance directive is your durable power of attorney for health care and your declaration or your living will. Part of Nevada Healthcare Decisions Day is looking at that whole picture of advanced care planning, making it reimbursable for providers to have that conversation with you and spend that time with you in their office while they are also seeing you for your other conditions. I would recommend this and try to teach even my young children about this. Minimally we need to have those conversations with patients 18 years and older to identify who they would want to have make decisions for them in the event that they cannot, and try better to understand what those person's values are. I hope that helps to differentiate between an advance directive and the Nevada POLST. I can do a whole course on advanced care planning and offer it to the Legislature.

**Assemblywoman Titus:**

There is a humorous caveat to some of this. I am so passionate about making sure patients have let me and let their families know what their health care decisions are that sometimes when they come back for something like a little skin procedure and maybe it is the first time I have seen them in a while, I will say, Do you have an advance directive? And they say, Why, am I going to die from this? What is happening here?

If we designate a day like April 16, it becomes a conversation that everybody can have and it opens up that door. I would submit to you that most people—your parents, for example—want to have that conversation, but perhaps no one has ever asked them about that or they are afraid to ask you about that.

**Assemblyman Ellison:**

I really appreciate this. I have had to make this decision twice. Once with my mother, when I knew how she felt and how sick she was. The worst one I had to do with my son. I hope to God nobody goes through that. I appreciate this. I do not believe in assisted suicide, but this is something that I will go home tonight or this weekend and have my wife fill out. This is so important. Do not put it on your family. Do not put it on your kid. Just do it.

**Chair Flores:**

Members, are there any additional questions? Thank you; I ask that you please step back and I invite anybody wishing to speak in support of A.B. 381 to please come forward.

**Joanna Jacob, representing Dignity Health-St. Rose Dominican:**

We are very pleased to come here and support this bill and the efforts of Assemblywoman Titus and Ms. Ewald in bringing this important decision to the forefront. To answer some of the questions—in the Dignity system we consider palliative care part of our system of care. We offer palliative care to people regardless of age, and when you are diagnosed with a chronic disease, we start the conversation then. We do that regardless of age or disease status. It is a very important part of our mission. We are also founding members of the Advisory Council on Palliative Care and Quality of Life that is housed in the Aging and Disability Services Division of the Department of Health and Human Services. Your colleague, Senator Joyce Woodhouse, has been a real champion for this issue in the past. We are here to volunteer, to be part of the conversation, and to support any effort by Assemblywoman Titus or any of the stakeholders to promote awareness on this issue.

**Mari Nakashima, representing Nevada State Medical Association:**

On behalf of the Nevada State Medical Association, which represents Nevada's physicians and physician assistants, we want to express gratitude to Chair Flores and to Assemblywoman Titus for bringing this measure forward. We know that health care decisions are so important to be made in advance when at all possible. The more that you can involve your family members and loved ones, the more you can have an open and ongoing dialogue. This helps ensure one's wishes are understood clearly prior to emergency situations or end-of-life moments when emotions are running high and decisions may be difficult to make. This bill raises awareness and creates a public campaign so that families and loved ones are more comfortable talking about some of these issues that may be difficult to discuss. We believe it brings an important issue to the forefront and helps families understand the importance of having these conversations. The association is happy to work with our members and our partners to ensure that they have access to the forms for those times when it is appropriate to bring it up to a patient and that they are made available through the association.

**Maggie O'Flaherty, representing Death with Dignity:**

I want to thank Assemblywoman Titus and Ms. Ewald and the other sponsors of the bill. I echo everything that has been said before me but also reiterate that Death with Dignity supports the idea that Nevadans have autonomy over all health care decisions, and that

includes those that are made at the very end of life, with those end-of-life decision and peaceful passing options.

**Chair Flores:**

Is there anyone else wishing to speak in support of A.B. 381? Seeing no one, is there anyone wishing to speak in opposition to A.B. 381? I do not see anybody in Las Vegas.

**Melissa Clement, Executive Director, Nevada Right to Life:**

I come more in support than not, but we do have some concerns. I would like to start with a quick story. In 2005, we were in the midst of the Terri Schiavo controversy. I received a phone call from my mother-in-law who said, "Whatever you do, Melissa, make sure that I never get a feeding tube. I do not want one. That is the worst thing that could possibly happen," she said. I told her how uncomfortable I was talking about this, first of all, but also that I really encouraged her to go find a different medical decision-maker because I could not, in my good conscience, starve or dehydrate her. So she did. Time went on. She was 64 at the time this happened. A year later, she called me again. She said, "Melissa, I have stomach cancer. It is stage 4, and they want to give me a feeding tube. What do I do?" I said, "BJ, get the feeding tube." She said, "They have only given me a couple of months to live." I said, "Get the feeding tube; worst case scenario, you can take it out." So she did. Sadly, we lost her about five months later. But in those five months, she was able to spend an incredible amount of time with her three grandchildren. She was able to take us to Oregon, and we were able to have some of the best times. The feeding tube became a joke because that is the way we are, and we joke about those horrible things. This story gives the reason why I raise and I fully support awareness, but also our hope is that such a day would focus on the life-affirming choices more so than the death-causing choices. Our concern is with the current consideration of physician-assisted suicide—that this is somehow going to be put on the same level as the POLST, which is a great document because it does give lots of life-affirming choices. That is our only concern. I very much appreciate your listening to my testimony.

**Janine Hansen, State President, Nevada Families for Freedom:**

We also are quite in support of this bill today but wanted to bring up some of our concerns. One of the things that I really like about the POLST document is that it discusses the issue of feeding and fluids; one of the big concerns has been that people will be dehydrated to death or starved to death, and they might die from that instead of the disease or underlying medical issue. That can be a very negative consequence of making a decision.

Years ago when my father made a decision, he specifically said he did not want to be starved to death or dehydrated to death. I was thankful for those decisions he made. When it came time, he had a ruptured bowel, he was misdiagnosed, and that led to peritonitis and other complications. Soon after, as he was slipping into a coma, I was in intensive care and I said to him—he had a tube down his throat—I said to him, "Dad, I love you." He was able, before he slipped into that coma, to say to me, "I love you." That was a very important event for me. While I was there for those two weeks while my father was dying, I brought my children every day to see him. My brothers were able to come from out of town to be able to

say their goodbyes. We were able to have a prayer as a family with him. We were able to invite friends to come and say goodbye. He had been very active in the community, had been a Scouter for over 65 years, and had received many awards. Many of the Boy Scouts that he had worked with came to say goodbye.

My concern is that oftentimes when people sign advance directives, they do not think about the simple treatment of fluids and food. I do not think most people want to die from having no fluids and no food. They do not mind, perhaps, dying from a heart attack or dying from the underlying disease or, as my father finally did, from saying no more surgery—he had had surgery and we determined that it was not going to be beneficial for him to have more surgery. Those are important decisions, but I do not think most people think about what can happen when they do not have food or fluids. That is my concern about promoting this. People are aware that the precious time between the time they are diagnosed and the time they pass away is actually a very precious time for a family. It is time they can come together, be united, and say goodbye to the person whom they love, and if my father had not decided that he would not be dehydrated or starved to death, that might not have occurred for all of us. I am thankful for his decision and for the help of the physicians who were there with us. I want to put that on the record because in people's minds those are kind of separate issues, rather than dying of some extreme medical event.

**Chair Flores:**

Is there anybody else wishing to speak in opposition? Seeing none, is there anyone wishing to speak in the neutral position for A.B. 381? Seeing none, do you have any closing remarks, Assemblywoman?

**Assemblywoman Titus:**

Thank you for hearing the bill, and thank you to the two women who were in opposition. That is why we need this day. We need clarification that this day encourages the conversation to have the feeding tube if you want to. The very first line of section B on this POLST indicates you want everything done [page 1, ([Exhibit G](#))]. I have a 102-year-old patient in long-term care who wants these things done, and I am going to honor her wishes. The fact that they are anxious about it shows that we need to do our job better.

The other thing that is really important to point out is this is revocable. Your lives change. Your needs change. Your faiths change, sometimes. Sometimes you do not want anything done but when it gets closer you think, Well, maybe I want to see my granddaughter get married. Maybe I want to see my grandson graduate from high school. You have these goals that make you say, Well, wait a minute. I would like everything done. The very first choice on this Medical Interventions section is "Full Treatment" with all the options; I appreciate your hearing the bill. I hope you understand how important it is to have this conversation—whether you want everything done, or you want nothing done, or somewhere in between, or all those choices change as we go forward.

**Chair Flores:**

Members, I want to thank you all. The topic of the conversation and the testimony in support and opposition is very personal to you. This is obviously something that many of us have either faced already and/or at some point will. The reality is, sometimes it is difficult to have that conversation in this building. I appreciate everybody's authentic remarks and your allowing yourselves to be so vulnerable in a setting where we often do not do that.

**Assemblywoman Bilbray-Axelrod:**

Thank you for indulging me, Mr. Chair. I am curious after Ms. Hansen's testimony; does this document become the final say? If a patient has marked that he does not want a feeding tube but then his spouse says, Well, I am sure this is what he meant for when he is 85, and he is only 40 now. Which one is legal?

**Assemblywoman Titus:**

This is actually a medical order. It is revocable and changing. If a provider shows up at the person's house and is handed this ([Exhibit G](#)), this is a medical order; it stands legally as your choices. But, again, it can be changed. Ms. Ewald will come up and clarify that.

**Peggy Ewald:**

This is a medical order for a specific population. It is intended to honor what those wishes are at that time. There is no assumption made that this medical order is intended to be a do-not-resuscitate order. That is a misperception. We want to enable the health care system and people who are caregivers to take care of patients who still want life support and aggressive treatment regardless of what their underlying conditions are.

To answer your question, can this be revoked or revised? Absolutely. There is statute [NRS 449A.545] that describes who can do this. If a patient has decisional capacity, he or she fills this out with the provider and they both sign it. If the patient lacks decisional capacity to sign the form, then we look to the durable power of attorney for health care (DPOA-HC). If the patient does not have a DPOA-HC, there is a section [section E, page 1, ([Exhibit G](#))] where a surrogate decision-maker can sign the form. If the patient fills this out with his or her provider, he or she can revoke it. If the DPOA-HC designee fills this out with his or her provider, the DPOA-HC designee can revoke it. If the patient lacks decisional capacity and it is a surrogate decision-maker who signs the form—meaning a surrogate who does not have legal representative capacity or a legal DPOA-HC—the surrogate may revoke this POLST.

As health care providers, we need to be careful—and my hospice colleagues over here will agree—that when patients put the effort to have this conversation and make their wishes known, we need them to make sure they designate someone in their directive who will honor their wishes. There are instructions on the back [page 2, ([Exhibit G](#))] on how to revise and revoke the POLST and who can do it. It also talks about when to review this order. If your goals of care change, you have a change of condition, a change of preference, or the three reasons listed on the form occur, the physician or provider should reevaluate and reassess this POLST with you. Also, even if a patient has completed a POLST but remains awake and

alert and can make decisions, the patient needs to participate in decision-making at that time. This is only used, and the same with the durable power of attorney for health care, when somebody lacks decisional capacity and cannot participate in the decision-making.

**Chair Flores:**

The whole dialogue shifted to the POLST form and we completely got away from the bill. In fact, there was not a single question on the bill. We have had a full hearing on something that was not even up for discussion. However, we were having such a compassionate conversation that I felt bad cutting people off. Members, please realize what the bill does—it creates a day. I am not trying to minimize that goal, but that is what the bill does. We went somewhere else. Thank you, Assemblywoman Titus, for your presentation.

I am going to close the hearing on Assembly Bill 381, and I am going to invite those who are here for public comment to please come forward. There is nobody here for public comment. This meeting is adjourned [at 10:37 a.m.].

RESPECTFULLY SUBMITTED:

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Kirsten Oleson  
Recording Secretary

RESPECTFULLY SUBMITTED:

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Geigy Stringer  
Transcribing Secretary

APPROVED BY:

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Assemblyman Edgar Flores, Chair

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



## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 274, dated March 15, 2019, submitted by Assemblywoman Dina Neal, Assembly District No. 7; Assemblywoman Selena Torres, Assembly District No. 3; and Assemblyman Howard Watts, Assembly District No. 15.

[Exhibit D](#) is a proposed second amendment to Assembly Bill 274, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit E](#) is a document titled "Step 2 Appeal, 12/29/2015 @ 1 p.m., City Hall, HR room #2," submitted by DeAndre Caruthers, President, Las Vegas City Employees' Association, in support of Assembly Bill 274.

[Exhibit F](#) is a copy of a video for the NHDD [National Healthcare Decisions Day] titled, "NHDD Speak Up Video," presented by Assemblywoman Robin L. Titus, Assembly District No. 38, in support of Assembly Bill 381.

[Exhibit G](#) is a form titled "Nevada POLST (Provider Order for Life-Sustaining Treatment)," submitted by Assemblywoman Robin L. Titus, Assembly District No. 38, in support of Assembly Bill 381.