MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Eighty-First Session
March 29, 2021

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9:03 a.m. on Monday, March 29, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblywoman Selena Torres, Vice Chair
Assemblywoman Natha C. Anderson
Assemblywoman Annie Black
Assemblywoman Tracy Brown-May
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Susie Martinez
Assemblyman Andy Matthews
Assemblyman Richard McArthur
Assemblywoman Clara Thomas

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Assembly District No. 8
Assemblywoman Michelle Gorelow, Assembly District No. 35

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Judith Bishop, Committee Manager
Lindsey Howell, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and representing Washoe County Public Defender's Office
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Elizabeth Davenport, representing American Civil Liberties Union of Nevada
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
K. Neena Laxalt, Private Citizen, Reno, Nevada
Edward Ableser, representing Paladina Health
Laura Rich, Executive Officer, Public Employees Benefits Program
Laura Freed, Director, Department of Administration
Marlene Lockard, representing Retired Public Employees of Nevada
Thomas Burns, President, Craigin & Pike, Las Vegas, Nevada

Chair Flores:
[The meeting was called to order. Committee protocol was explained.] We have three bill hearings. We will take them in the order they appear, starting with Assembly Bill 220, followed by Assembly Bill 236, and lastly, Assembly Bill 337. With that, we will start off with Assembly Bill 220.

Assembly Bill 220: Establishes provisions relating to the use of mobile devices by peace officers. (BDR 23-924)

Assemblyman Jason Frierson, Assembly District No. 8:
I am pleased to present to you today Assembly Bill 220, which simply prohibits peace officers from using mobile applications that encrypt communications on official and publicly issued cell phones. I will walk through the short provisions of the bill, but I want to express why I brought this bill forward.

First off, I want to make it very clear that the bill is only applicable to work phones; it has nothing to do with personal phones. It is certainly not intended to prohibit law enforcement from doing their jobs effectively, and it has nothing to do with using their personal cell phones. This is simply, I believe, an effort to modernize our statutes with the advancement of technology and communications to make sure that we are still allowing transparency in law enforcement. We are trying to be proactive. This is not pointing a finger at law enforcement accusing them of doing anything wrong. This is simply adapting our statutes to the advancement of technology.

If our peace officers are using encrypted communications on their work phones, those communications that would normally be discoverable inherently become hidden from the public and the legal process. I am sure that we will get into this at some point: There are limitations to what is discoverable, and this is not intended to go after that. There are things

that law enforcement has to do with the federal government and some systems that are encrypted to help avoid hacking. This bill is not intended to impact that. This Signal app, for example, allows for a person to disappear messages. This bill would be designed to prevent law enforcement, in the course of their actual duties on their work phone, from implementing that part of the app if it is for the purpose of avoiding the messages being discovered.

Just a little bit of overview: Discovery is the formal process of exchanging information between parties concerning witnesses and evidence that they would present in a court proceeding. This includes various types of discovery, whether it is records, interrogatories, physical exams—various documents and communications. It is both civil and criminal. In civil cases as well as criminal cases, there is the exchange of discovery. Of course, in criminal proceedings, this revolves around a prosecutor's obligation to provide the defense with any exculpatory or potential exculpatory information. It is reciprocal between a prosecution and a defense in a criminal context. Typically, messages, text messages, and other forms of electronic communication are discoverable so long as they are not covered by attorney-client privilege or work-product exemption, such as internal reports documents of the prosecution or the defense. A peace officer could be involved in discovery in several ways: as a witness, as a defendant, and as a party, especially in a civil case. In all these situations, statements, paper, documents, and tangible objects in their possession including emails and text would likely be subject to discovery. As technology advances, I think it is imperative for us to update our standards and ensure that we do not lose sight of transparency and fairness in the process.

I am going to go through the bill itself. Again, it is pretty straightforward, but I want to note for the Committee's benefit that I did reach out to law enforcement in advance to talk about this and to talk about their practices. I was not aware that some had started using encrypted technology because of its convenience. Again, so long as it is being used appropriately, this bill is not intended to impact that. I do believe that, in speaking with the Las Vegas Metropolitan Police Department (LVMPD) in particular, there may be some language, which I consider to be friendly, that they want to propose that makes clear that they can do their jobs using this type of technology. They do not have to divulge what would not ordinarily be discoverable. I think that we understand what we are trying to do and have certainly been working toward some minor tweaks to make it clear.

With that, section 1, subsection 1 requires law enforcement agencies to develop a written policy that sets forth standards of conduct for using publicly issued and official mobile devices. Section 1, subsection 2, paragraph (a) requires that written policies include mobile applications that are approved for use on official mobile devices. Section 1, subsection 2, paragraph (b) prohibits the use of mobile applications not expressly approved.

Lastly, there is the section that I believe might be subject to a little bit of adjustment. Section 1, subsection 3 prohibits the use of mobile applications that use end-to-end encryption that avoids discovery. The intention is not to prevent end-to-end encryption from being used, if that is an ordinary course of conduct for officers that is approved. But if it is

for the purpose of avoiding lawful discovery, that is what we are trying to get at. Again, that is the section that I have been speaking with members of the law enforcement community about, making sure that we do not have any unintended consequences but simply advance our laws to deal with new technology.

I believe that this bill serves as a reasonable measure to protect public trust in our law enforcement agencies and ensure that technology does not prohibit transparency and accountability. Again, I am agreeable to clarifying language that makes that intent clear, but that is the bill, and I would be happy to answer any questions at this time.

Chair Flores:
With that, we will open it up for any questions. [There were none.] At this time, I would like to invite those wishing to testify in support of Assembly Bill 220 to call in.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and representing Washoe County Public Defender's Office:
We are testifying on behalf of the Clark County Public Defender's Office and the Washoe County Public Defender's office in support of A.B. 220 as currently written. Obviously, we will have to see what the Las Vegas Metropolitan Police Department decides to propose to see where we stand after that language is submitted. As currently written, this bill ensures the integrity of the recordkeeping process. We are not an outlier in this phase. Michigan has worked toward enacting steps to prevent police officers from using encrypted communications apps, such as Signal. Text messages, as part of an investigation, provide truth and transparency in the investigative process. This bill allows [prevents] avoidance of Freedom of Information Act requests or any attempts to subvert the truth-seeking process in trial. This bill provides much-needed transparency by those of us who employ law enforcement officers—the taxpayers of Nevada—to ensure that accountability and transparency are maintained because both of those are vital to rebuilding the public trust. If the police have nothing to hide, then they should not worry about this bill at all.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We are here in support of A.B. 220. At the Progressive Leadership Alliance of Nevada, we seek to structurally transform Nevada's criminal justice system by organizing with people who have direct experience with mass incarceration, as well as their families. In the past year, thousands of Nevadans have taken to the streets to demand an end to racist policing and police violence. The key to that goal is greater transparency and accountability from our law enforcement system. Assembly Bill 220 is a step to ensure this, and we urge your support.

Elizabeth Davenport, representing American Civil Liberties Union of Nevada:
We are in support of A.B. 220 as currently written. Thank you, Speaker Frierson, for bringing this bill forward. Good governance requires transparency. It promotes accountability and provides information for everyone about what our government is doing. This is vital, especially to inform areas where we should revise policy. Lack of accountability can create environments where there is potential for abuses of power or

secrecy. Transparency and accountability are critical while we are in the process of revising policing practices, and public trust is more important than ever.

Law enforcement cell phone communication is government-related messaging, just as emails are. Making that communication transparent, just as emails are, is vital to preserving and creating public trust and important in accountability measures. End-to-end encrypted messaging obviates accountability and transparency by fostering a culture of secret messages or lack of accountability. We support this bill as written because preserving government transparency and accountability and reducing secrecy in law enforcement messaging promotes greater governance.

Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:
Nevada Attorneys for Criminal Justice (NACJ) supports A.B. 220. In many instances in litigation, there are times when we request discovery and request certain communications between officers—for example, in some kind of task force-related action—and we do not get anything. This is because a lot of times, the messages were done on Signal or some other encrypted app outside of what the department, particularly LVMPD, authorizes. This bill is a good bill; I would ask for you to support it. It merely requests that the apps that are used are authorized by the department, and that they are within the confines of the control of the department. These are activities and messaging that go on in the context of the job. These are not after-work texts; these are things that are happening while they are on the job. It is a good bill. It goes exactly to what the heart of the issue is, which is transparency, and NACJ is completely in support.

Chair Flores:
We will continue hearing support for Assembly Bill 220. [There was none.] At this time, I would like to invite those wishing to testify in opposition to Assembly Bill 220 to call in.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
Per the rules of Committee, we are here in opposition to the bill as written. I believe that with some recommended language that we have given Speaker Frierson, we will be in a position of support. We certainly support what he is trying to do. The Las Vegas Metropolitan Police Department currently has a policy on the use of mobile devices. We are 100 percent behind transparency. Currently, our supervisors in the field and detectives are issued cell phones. However, every officer is not issued a cell phone by the department.

There is a legitimate use for end-to-end encryption. Obviously, I am not a tech guy, but my understanding is that encryption protects the message from sender to receiver, but it does not deal with retention of the message. That is a separate issue. End-to-end encryption is often used to protect data that might be of a homeland security nature. Some federal systems that we use require an encrypted VPN in order to access them, such as the Committee on Foreign Investment in the United States or the National Crime Information Center.

Our only concern is that, with the way the bill is currently written, it might impact some of those legitimate uses for encryption. As many of you probably know, last year in June there were over 200 police departments that were hacked. Personal data of officers and victims and other information that was confidential in nature were released via those hackings. We have submitted some language to Speaker Frierson to address our concerns and, as always, we really appreciate his willingness to work on this. I look forward to being able to support this legislation.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
Ditto to what Chuck Callaway said.

Chair Flores:
We will continue hearing opposition to Assembly Bill 220. [There was none.] At this time, I would like to invite those wishing to speak in the neutral position for Assembly Bill 220 to call in. [There was no one.] Speaker Frierson, please come forward with your closing remarks.

Assemblyman Frierson:
I want to thank Mr. Callaway in particular. He did provide some language. I did not submit it because I wanted to make sure that I had the Legal Division of the Legislative Counsel Bureau take a look to make sure that we were all on the same page. For the edification of the Committee and folks listening, at the risk of oversimplifying it, I believe that the suggested changes would only add some level of intent. Basically, a law enforcement agency may not approve for official use on a mobile device any mobile application that uses end-to-end encryption, or any other means, with the intent to avoid the creation, retention, lawfulness, or adding lawful discovery of records or data relating to the communications. Those two components were the subject of what Mr. Callaway, Mr. Spratley, and I had discussed. I wanted to run that by the Legal Division before I submitted a formal proposed amendment. I still intend to do that. I will continue working with Mr. Callaway, Mr. Spratley, and members of the law enforcement community to provide something to the Committee that meets what I think is a simple goal of preventing the intention to avoid the creation and retention or lawful discovery of pertinent records. With that, I would say that I plan on continuing to work and providing something to the Committee in the near future.

[Testimony in support of A.B. 220 was submitted by Maria-Teresa Liebermann-Parraga, Deputy Director of Battle Born Progress, Exhibit C.]

Chair Flores:
We look forward to seeing the outcome of that conversation with law enforcement. At this time, we will go ahead and close out the hearing on Assembly Bill 220. Next on the agenda, we will continue with Speaker Frierson on Assembly Bill 236, which discusses the qualifications for Office of the Attorney General.

Assembly Bill 236: Revises provisions governing the qualifications for the Office of Attorney General. (BDR 18-921)

Assemblyman Jason Frierson, Assembly District No. 8:
Today, I am happy to introduce Assembly Bill 236 for your consideration. Assembly Bill 236 increases certain qualifications for the Office of the Attorney General in Nevada. A little bit of background: Our Attorney General is, of course, our top legal officer in our state, representing our state agencies and the public interest of Nevada. The office oversees even our district attorneys, as well as their own Deputy Attorneys General in prosecuting and defending cases in the Supreme Court of Nevada. The Attorney General defends our state in the United States Supreme Court and other federal courts on matters concerning things such as water and public lands. The Attorney General also provides legal opinions to the Executive Branch, boards and commissions, district attorneys, and city attorneys. The Attorney General investigates and prosecutes offenses by state and local officers and employees; crimes against older and vulnerable persons; and Medicare, insurance, and workers' compensation fraud.

I believe it is time that the job qualifications for our top law enforcement officer reflect the needs and expectations that our state deserves. Over the years, the duties of the Attorney General have only become more wide-ranging and complex. However, the qualifications for Attorney General have not, and they have not been updated since 1955—that was over 66 years ago. A review of the qualifications in other states found that Nevada ranks below many states regarding the standards placed for candidates for Attorney General. Now is the right time to raise standards for our chief law enforcement officer in the state and to ensure that future candidates have a certain level of experience, background in practicing law, and a meaningful understanding of Nevada's history, cultural norms, and attitude.

Currently, the only qualifications to run for the Office of the Attorney General in Nevada are that the person must be at least 25 years old, be a qualified elector, and have been a citizen or resident of the state for two years at the time of the election. There is currently no requirement that the Attorney General, who is in charge of attorneys and direction for the state in legal matters, actually have a law degree or experience practicing law. According to the information published by the National Association of Attorneys General, currently 9 states have a minimum of age of 26 years or older, 11 states have a minimum age of 25, 18 states have no minimum age restriction for holding office as Attorney General, and 12 states have a minimum age of, actually, less than 25. The oldest minimum age that we could find is 31 years of age in Oklahoma. While many states have a minimum age of less than 25 or no minimum age, bar membership requirements of up to 10 years for some states imply a practical minimal age of 30 to 35 years old, depending on the length of the state bar membership. While they do not expressly have an age limitation, they do incorporate a requirement that would have a *de facto* age limitation.

Most, but not all, states explicitly require their Attorney General to be a resident of the state. State residency requirements range from one year in Alaska, Arkansas, and several other states to ten years in Maryland and Oklahoma. The 18 states that do not require state residency do require that their Attorney General be an elector; thereby residency is implied. Many jurisdictions have specific statutory constitutional requirements for bar membership, while many others do not have that requirement. Fourteen states provide a minimum period

of time for which one must be admitted to the bar before being eligible to serve as Attorney General. That period ranges from four years in Wyoming to ten years in Connecticut and Maryland.

Now I will just go through the bill and review it. In the text of the bill, you will see that it makes just a couple of changes. It increases the minimum age required for the Office of the Attorney General from 25 to 30 years at the time of the election. It increases the state residency requirement from two to three years and adds a requirement that a person be a member of the State Bar of Nevada in good standing. After reviewing the range of qualifications in other states, I believe that the changes proposed in this bill are fairly modest but still set a reasonable standard for future candidates for the Office of the Attorney General.

That concludes my remarks and presentation of Assembly Bill 236. I am glad to take any questions you may have.

Assemblywoman Thomas:
My question is about section 1, subsection 3. Here you say, "Is a member of the State Bar of Nevada in good standing." What qualifies "good standing"?

Assemblyman Frierson:
When we say "a member of the State Bar of Nevada in good standing," it is essentially reflecting that you do not have any pending disciplinary matters that the State Bar has taken action on to suspend your ability to practice. It means that you have paid your dues. That is essentially it. There are attorneys that are barred in Nevada but are suspended or going through issues with respect to disciplinary matters with the State Bar. This simply says that you need to be a member of the bar, meaning that you need to be licensed to practice law in the state of Nevada, and in good standing, meaning that your dues are up to date and you do not have any issues with respect to limitations on your ability to practice law as determined by the State Bar.

Assemblywoman Thomas:
As you were going through the bill, I was just wondering why you did not go further in stating that a person who wants to be Nevada's Attorney General would only qualify if they had either five or ten years of practice in Nevada, as in other states.

Assemblyman Frierson:
It is always a balance of trying not to dissuade or disqualify folks that would be able to do a good job, but at the same time incorporate reasonable standards to ensure that the state is well-represented. I think this was an attempt to strike some balance. We have, for example, attorneys in our state that may have practiced for 20 years in another state and have a significant amount of experience, moved here, and may do well in leading that office. We wanted to keep it flexible and allow for the greatest opportunity for qualified candidates to be eligible. It has just been a balance of how far you go and what steps you take to ensure that folks that are seeking this office are able to lead a team of attorneys and investigators on behalf of the state. This is just where we landed based on comparisons to other states.

Assemblywoman Considine:
My question was actually asked by Assemblywoman Thomas, but since I have a moment, I do want to thank you for building in a few more qualifications for a position as important as the Nevada Attorney General.

Assemblywoman Anderson:
I am in the same boat as Assemblywoman Considine, as Assemblywoman Thomas brought up every single question I had. Although now that I am reading it again, do you think there is a possibility of this triggering a waterfall effect that impacts all of our different counties when it comes to their attorneys elected for the position of district attorney? I realize that I am asking you to make a kind of forecast and that it is not in the bill itself.

Assemblyman Frierson:
That is an interesting question. It was not something that I contemplated. I want to put out there that I recognize that Nevada is unique—it is not a one-size-fits-all state in many respects. For example, you can be a judge in some parts of our state without being a lawyer. I think that is a reflection of the population, and I do not want to take action that really limits, for example, small counties, which do not operate like the larger counties do when it comes to those matters. I am simply unaware of the technical qualifications for, say, district attorney or city attorney in every jurisdiction to know for sure.

However, having worked as a deputy attorney general myself and having seen the important, complicated work that attorneys general do, I could not imagine someone who is not licensed to practice law leading attorneys and investigators on securities fraud. I could not see a nonlicensed person representing the State of Nevada with respect to opioid settlements or the Volkswagen Clean Air Act civil settlement case—things of that nature that are complicated as Nevada grows. That was why the focus was on the state Attorney General. I am now curious about local attorneys, but that is certainly not the focus of this bill.

Assemblywoman Black:
I am curious about Senate Joint Resolution 8 of the 80th Session. If the electorate passes it in the next election, do you think the age requirement would stand up?

Assemblyman Frierson:
I have learned, as Speaker, that I have lots of numbers scrolling in my head. I do not know if I understand how Senate Joint Resolution 8 of the 80th Session would impact the bill.

Assemblywoman Black:
Because of nondiscrimination based on age. I think that it could be argued that this is discriminatory.

Assemblyman Frierson:
I would welcome someone arguing that. I guess my answer is that there is an age restriction that is in existing law. Whether we change the age or not, someone could argue that

currently. I do not know that Senate Joint Resolution 8 of the 80th Session would impact the bill any differently than it would impact existing law.

Assemblywoman Black:
I have a follow-up statement on section 1, subsection 3. From my experience, there are a lot of juris doctors (JDs) that never passed the bar that could be great constitutional scholars. I guess I kind of understand why you are putting that requirement in there, but I am not sure that I agree with it because you could be a brilliant professor or something such as that and maybe have never passed the bar exam. How do you address or justify that? I think that there are actually more people that are JDs that do not take the bar exam than do.

Assemblyman Frierson:
I would disagree that there are more JDs that do not take the bar than do. Again, having been practicing law since 2001, I think it is a rarity. I think that being a professor is significantly different than being in charge of attorneys. When you are in a position of receiving evidence, as a justice of the peace, for example, it is up to the litigants to present their case. Then it is up to you to assess facts, frequently sitting as a fact-finder. Juries sit as fact-finders as well, and they are not attorneys—but they are also not in charge. I believe that being the fact-gatherer and assessing what is presented to you is a significantly different function than being in charge of the process of presenting evidence and taking a position on behalf of the State of Nevada. There are so many incredibly important issues that are handled by the Attorney General. This is not a case of a speeding ticket in a small county, with a hearing master or a justice of the peace hearing it. This is a position in charge of handling very complicated matters on behalf of the state, and I do not know how one does that without understanding the intricacies and limitations of the practice of law.

I do not believe that, in modern times, this has even been an issue; I do not know that we have had an Attorney General under the age of 30 who was not an attorney in modern times. For me, it is a safeguard for making sure that the person who handles the legal affairs for the state and supervises other people who champion legal matters for the state is qualified to do so.

Assemblyman Matthews:
I have a question that I guess is somewhat related to the last question asked by Assemblywoman Black regarding section 1, subsection 3 and the requirement that the Attorney General (AG) be a member of the bar. I just wondered if you were aware of, or could point to, any practical instances in our state's history where not having that requirement did pose a problem; if we ever did have an AG who was not a member and that caused a practical issue; or maybe instances you are aware of where, hypothetically, maybe we did have an AG who was a member of the bar, but had he or she not been, it would have been a particular issue. I just wondered if there was a practical case out of which this need arose.

Assemblyman Frierson:
There are lots of ifs in that layered question that I do not think are answerable because this bill is attempting to increase qualifications for an important position. It is not attempting to

remedy a historical issue. It is attempting to prevent a catastrophe that could occur if the Office of the Attorney General was led by someone who does not understand the rules of ethics for attorneys, the intricacies of the various forms of litigation that the Attorney General engages in, interacting with other states, and both the state and federal government. I find it difficult to imagine how someone who is not licensed to practice law would be able to supervise attorneys dealing with federal habeas corpus issues in federal court—which is part of what I did when I was at the Attorney General's Office—or again, securities fraud.

This is something that I have wondered for several years, since I worked in the Attorney General's Office—why we did not already have a requirement that the Attorney General actually be an attorney. I do not think that, given what our Attorney General's Office has handled over the years, it is worth the risk of having someone not qualified to oversee and supervise that conduct and be in charge of the office. I think that it would be a disaster, in modern times, for a nonattorney to be in charge of the Attorney General's Office. Maybe to some extent, this is prophylactic; again, as the state grows up and encounters complicated matters, I think that we need to make sure that our elected officials that are in charge are up to the task.

Chair Flores:
Members, do we have any additional questions? [There were none.] At this time, I would like to invite those wishing to speak in support of Assembly Bill 236 to call in.

K. Neena Laxalt, Private Citizen, Reno, Nevada:
As a native Nevadan with pretty much a front row seat to Nevada politics my entire life, I have looked at this bill and wondered what the history has been through my lifetime on these three issues of Assembly Bill 236 and what it would have changed. I looked back at ten AGs and realized that the law had been put into place right about the time I was born, so I am looking at an entire lifetime of what we have had and how this bill might have changed our past. About section 1, subsection 1, which would change the age limit—look at what someone has to go through to be an attorney. Let us say they graduate at 18 from high school. Then they go through seven years of graduate and postgraduate school. They are 25 years old; that would make them eligible, as a brand-new graduate of law school, to become Attorney General. All of our Attorneys General in the past have been well over 30, so I believe and agree with Speaker Frierson that moving this age from 25 to 30 is a very modest change.

I went back again and looked at everyone who has been an Attorney General, and nearly every single one of them, sans one, have been in the state for at least ten years. Many of them have been lifelong Nevadans. To change the residency requirement merely from two years to three years gives those people an opportunity to see what Nevada is about, who we are, and to get a feel for Nevada as a state.

The third change, of course, is requiring that the Attorney General be an attorney. I was surprised about 15 years ago to realize that position was not required to be an attorney, so it was kind of a coincidence that the Nevada Attorney General is called an attorney. Again,

going back in history, every single one of our Attorneys General has been an attorney. With that, I agree that these are very modest—and I believe modest is an understatement—changes to the requirements for the Attorney General. It is a very litigious society, more than it was in the '50s. I believe that this is a very moderate, very conservative, very modest change. I support this bill.

Chair Flores:
We will continue with testimony in support of Assembly Bill 236. [There was none.] At this time, we will invite those wishing to testify in opposition to Assembly Bill 236 to call in. [There was no one.] At this time, we will invite those wishing to testify in the neutral position to Assembly Bill 236. [There was no one.] Speaker Frierson, do you have any closing remarks?

Assemblyman Frierson:
I do not have anything to add. I thank the Committee for their attention and questions; it always makes for a more complete record. Again, I would welcome any further questions offline and think that A.B. 236 is a positive step forward for the state of Nevada.

Chair Flores:
At this time, we will go ahead and close out the hearing on Assembly Bill 236. I see that we have Assemblywoman Gorelow, who has joined our meeting, and at this time, we will open up the hearing on Assembly Bill 337.

Assembly Bill 337: Requires the Board of the Public Employees' Benefits Program to create a certain pilot program in certain circumstances. (BDR 23-710)

Assemblywoman Michelle Gorelow, Assembly District No. 35:
I appreciate this opportunity to present Assembly Bill 337, which creates a pilot program for one or more state employee health clinics. With health care costs continuing to increase while quality, access, and satisfaction with the health care system decline, many employers have decided to optimize their benefit dollars by offering on-site or near-site clinics to their covered populations. Primary care services for employees can modify their lifestyles and move employees toward a more optimal state of wellness. They can also produce organization and employee benefits, such as lowered health care costs, increased productivity, improved recruitment and retention, reduced absenteeism, and enhanced employee engagement.

In recent years, many states have begun offering these services, including Colorado, Kentucky, and New Jersey. Kentucky's employee health clinics conduct preventative health education, medical screenings, and lifestyle modifications to ensure the best health for their employees. Their services include urgent care, immunization, treatment of minor injuries that are non-work-related, treatment of illnesses such as colds and flu, and wellness screenings. They also provide management services for conditions such as diabetes and hypertension, in cooperation with a primary care provider. An employer-sponsored health clinic can serve as the hub of a worksite wellness program, making it possible to integrate

and analyze all the data from health-related programs and activities. At the same time, the on-site clinic staff can increase engagement of workers in preventative condition management programs. This type of population health approach may identify unnecessary services, gaps in care, opportunities for savings, and quality improvement.

In 2017, the Public Employees Benefit Program (PEBP) board put out a request for proposal (RFP) to explore the possibilities of an on-site or near-site primary care clinic. Unfortunately, the one company that responded could not commit to the return on investment (ROI) that was expected in the RFP. Since that time, the PEBP board has not explored the feasibility of on-site or near-site clinics. However, in the last few years, many other companies have entered the market and have proven they can effectively accomplish a high level of return on investment while providing more benefits at reduced costs.

As written, Assembly Bill 337 allows the PEBP board, to the extent that money is available, to create a pilot program to establish one or more clinics to provide primary care services to state employees who participate in the program. There is a conceptual amendment that will be discussed shortly. If the pilot program is created, this bill requires the board to solicit feedback from employees that use the clinic and to also report annually to the Legislature concerning the pilot program. This concludes my prepared remarks. I would like to turn it over to Edward Ableser to discuss the amendment. I also have Laura Freed, the PEBP board chair, and Laura Rich, PEBP's Executive Officer, here to answer questions.

Chair Flores:
Members, I do not see any questions that have arrived via chat. Eddie Ableser, were you hoping to jump in now?

Edward Ableser, representing Paladina Health:
Mr. Chair, I was going to give prepared remarks and discuss the conceptual amendment.

Chair Flores:
I did just get a question. Let me hold off on that, and we will let Mr. Ableser do his thing first.

Edward Ableser:
I would like to thank Assemblywoman Gorelow for her work, as well as the work of Executive Director Laura Rich from PEBP, to craft language that can create this opportunity for tremendous benefit and value for on-site and near-site primary care clinics for State of Nevada employees. This bill, along with the conceptual amendment, is pretty basic. What the bill does is ask PEBP to release an RFP, such as they did in 2017, and solicit responses which might not have been financially viable in 2017 but are today and might meet their ROI that was originally idealized in their RFP. This bill in no way commits the state or PEBP to administer an on-site or near-site program, but instead, requests solicitation and responses to determine if it can be done.

To that point, the conceptual amendment does three things. First, in section 1, subsection 1, it adds "at the discretion of . . . the Board" in making a determination of money available. We understand that there might be more dollars coming from the federal government or new economic forecasts that might bring money to PEBP. With the recent PEBP cuts and other changes in their offering to state employees, we understand that those probably take priority, and we did not want to have language that bound their directive or their dollars. I think providing discretion of the board satiates that point concerning being bound to spend those moneys, new moneys, just on this program.

The second part of the amendment in section 1, subsection 1 adds language of "on-site" and "near-site." This should have been in the original draft. It was left out mistakenly. Obviously, this is all about on-site and near-site primary care clinics for state employees, so we needed to add that into the bill.

Finally, there is a new section 1, subsection 4 in the conceptual amendment that instructs the Purchasing Division of the Department of Administration to assist PEBP in the solicitation of the RFP. We understand that PEBP is very busy and overwhelmed as a department, as most departments are, and there is value in adding the Purchasing Division to assist departments in soliciting and reviewing RFPs.

In regards to the fiscal note submitted by PEBP, I think it is important to note that those numbers were based on the 2017 RFP and the only one response that they got back from a potential operator. Passing this bill does not bind PEBP into engaging in this program or compel them to accept any vendor. Any cost to PEBP would occur only if the board chooses to move forward with this innovative health care effort. Moreover, PEBP can possibly receive, should strong RFPs be responded to, innovative cost-saving measures that might end up saving PEBP significant dollars.

In the age of COVID-19, when more and more workers are coming back to the workplace and there are more and more concerns about public health, employers across the country are turning to nuanced on-site primary care clinics to help mitigate the risks and anxiety that come with reentry into the workplace. These privileged clinics are perfectly situated for same-day access; comprehensive health integration such as pharmacy, labs, and procedures; and giving state employees concierge-style health services. All the while, it saves the state significant dollars that are associated with the loss of an employee who leaves the workplace to go to a doctor's office that might be across town, generally days or weeks after exhibiting symptoms.

In 2019, a Milliman Study found that in Union County, North Carolina, their claim costs were lowered by 20 percent, hospital admissions were lowered by 25.5 percent, and their emergency room visitations decreased by 40 percent, all with the implementation of these near-site or on-site primary care clinics for their government employees and those employees' families. States such as North Carolina, New Jersey, Colorado, and Kentucky have made these effective on-site and near-site primary care clinics pervasive for all their state employees. They are realizing roughly 40 percent reductions to overall costs in their health

care system. Other states and municipalities are using these clinics to drive down these costs, but more importantly, to provide access for employees that generally do not have access to care by having it on-site.

I want to thank the Committee for your time, Assemblywoman Gorelow for her innovation in bringing this bill forward, and Executive Director Laura Rich for her collaboration and feedback along this process. I am available for any questions, as well.

Chair Flores:
With that, we will go to questions, starting with Assemblyman Ellison.

Assemblyman Ellison:
I am still trying to get the amendment to download; we have not received that yet. One of the questions I have is that it looks like this would be cost-saving to PEBP. However, if A.B. 337 passes, and they did get some people to take a look, bid, and put a program together, at that point in time, would it have to come back to this board? Or is it something that the director of PEBP can implement at that point in time?

Assemblywoman Gorelow:
If I can, I would like to turn that question over to either Mr. Ableser or Laura Rich.

Edward Ableser:
I would say that the bill instructs PEBP and the board to administer and move forward with this procedure. The way I read the bill, that does not need to come back to the Legislature. Only reports about the success—or perhaps, failure—of the program come back to the Legislature. Should a vendor with a very competitive, strong proposal present itself to the board, and should they choose to move forward, they have the right to do that independent of what I believe the Legislature needs to accomplish based on this bill. Executive Director Rich, I do not know if you want to add to that.

Laura Rich, Executive Officer, Public Employees Benefits Program:
Mr. Ableser is right. This appears to give the PEBP board the ability to move forward without going back to the Legislature. However, I do want to go back and just make a couple of corrections to statements that have been made.

When PEBP did this in 2017, it was a request for quotation (RFQ) that went out. We did actually receive three proposals. Only one of them met the ROI requirements; only one vendor was willing to meet the return on investment requirements that had been inserted into the solicitation at the time. After we got into the negotiation phase, that vendor was unable to really drill down to the ROI requirements that PEBP needed at the time.

Assemblyman Ellison:
If they put the RFP out, I think that either one way or another, it should come back as information. Maybe not as a bill draft request, but at least as a work session to give the body an idea of where they went and what they came up with at the end.

Assemblywoman Anderson:
Thank you, Assemblywoman Gorelow, for bringing forward a possible way for us to save some money and help our public employees. My question has to do with section 1, subsection 1, where it states "primary care." Would that include mental health services, or is that only the physical health services, including the pharmaceutical help?

Assemblywoman Gorelow:
I believe that would have to be based on the RFP that would be returned from the provider on what services they would actually be providing. Then the PEBP board can look those requirements over and decide which vendor would be best suited for the on-site or near-site clinic. However, I might need some clarification from Laura Rich or Mr. Ableser on that.

Laura Rich:
Yes, Assemblywoman Gorelow is correct. It would depend on how intense you wanted to set up that clinic to be and what kinds of services you want to provide. Remember that the more services you include in this clinic, the more levels of expertise you have to have. You have to understand that there is specialty care that occurs, so you would need those specialists to be staffed at that clinic. The more specialty services that are included, the higher the cost is and the more engagement that PEBP would require in order for this clinic to be considered a cost savings. Primary care is not necessarily a cost driver in PEBP. That is more on the specialty side.

Access is an issue, too. It is not an issue in primary care, but it is an issue in specialty care. When we originally looked at this back in 2017, that was one of the problems. First of all, there was the location: Where do you put this clinic so that state employees can access it? At the time, we were looking in the Las Vegas market; we were looking to pilot it there because Las Vegas has more access issues than, say, northern Nevada. We were asking, Where do we put this on-site location so that state employees are able to access it and it has a benefit to our state employees and to the cost of PEBP? The problem with that is that our state employees are widespread, especially in Las Vegas. There is no central location where you have a population density of state employees. You do at, say, the universities, but the university already has its own clinic, so it did not make sense to do it there. You have to centrally locate the clinic in a population density where it is going to be used by state employees.

The problem that has made it even more challenging today is that people are now working from home. I suspect that will continue. Again, there is no longer a centralized workplace where these people are going to access the clinic, so it now becomes just another primary care option. That is where we struggle with the return on investment—you have to have high utilization. In that situation, if you have high utilization, you have to then motivate people to use that clinic. Either you are going to motivate them with convenience, which we do not have, or with a different plan design. For example, maybe you incentivize with a lower copayment to use this facility. What ends up happening is that we then have disparity issues. Say you put this clinic in the south and offer a statewide plan, and we say, Okay, if you use this clinic in the south, it will cost you $10 to use it, a $10 copayment. The people in the

north do not have that access. You have disparity issues between plan designs. That was another challenge that we have as well.

Assemblywoman Anderson:
I realize that it is a very difficult area to consider. This will be my last follow-up, I promise, Mr. Chair: Has there been any discussion about telehealth and possibly utilizing that? Since this is coming back, I know that telehealth was not very popular or well-known in the 2016 time frame, but it is now something more well-known. Is that currently something that is part of the plan, or is that just a possible discussion for the future?

Laura Rich:
It would have to be a part of the RFP. I would assume that the answer is yes. Now, with the option of telehealth, and it being a more utilized option, I think people are more receptive to using it. I think providers are more capable of offering telehealth; that would also be a service that would be provided, should this be something that PEBP moves forward with.

Edward Ableser:
To both of your questions, Assemblywoman Anderson: Many new, nuanced, on-site or near-site clinics have integrated mental health, lab work, and pharmacies. Even some certain specialty clinics nearby are integrated into their sites. We have seen this in Colorado and New Jersey, to a large effort and tremendous success embedded into that process. We have also seen robust telehealth offerings. The cool idea about these near-site and on-site clinics is that they are privileged to the employees and their families—no one else accesses them. That goes back to Director Rich's point about finding a location that is perfectly centered for enough employees and their families to access it, so that the usage rate creates that ROI that PEBP might visualize should they get a strong proposal from the RFPs that are submitted.

Assemblywoman Black:
My question is for Director Rich. I was looking at the RFQ, the bids that came back in 2017—or the numbers, I guess I should say. They were $1.3 million to set up the clinic, $3.75 million per year to run it—it obviously did not make sense then. I assume that now things are just more expensive. Then you have added another layer onto this that I did not even think of, which is that a lot of people are now transitioning to working from home. I am curious: Do you feel that there is something that changed in the last four years that has made this more feasible?

Laura Rich:
There are definitely a lot of challenges with this. About whether it is more feasible today than in 2017: My opinion is that there are different services that have been offered, such as telehealth, which people are more receptive to. The Legislature, as well as self-funded plans, are addressing things such as the way telehealth is billed. There are some changes in the market. I cannot say whether this would be more beneficial or if things have changed enough to change the direction of the board.

Regardless, there are always going to be start-up costs. There are those implementation costs. You are still going to have to find a physical space. You are still going to have to furnish the building. You are still going to have to staff it. PEBP will have to have additional staff to take on a project like this, as well. There are still going to be those up-front costs that will never go away.

About whether there is cost-savings involved: When we did this a few years ago we determined—because primary care is again, not a cost driver—that the ROI would potentially be in steerage. For example, today, say a person goes to a primary care facility and they go see their provider, and their provider says, You need to get imaging done. They just send them to whatever imaging facility they want to refer them to. There are a lot of discrepancies in the price of imaging between one facility and the other. What PEBP would do in this type of scenario is steer to those high-quality, low-cost facilities, versus the high-cost facilities. But we were just not able, at that point, to really get the vendor to come up with ROI methodology that both PEBP and the vendor were willing to agree on and stand behind. The most we could get was a one to one, so we would come out even. We were not seeing a cost savings, and that is why we chose not to move forward.

Assemblywoman Black:
I love the idea of telehealth, especially for the rural community. I think it is going to make great differences in peoples' lives. However, at some point, we all have to go to an actual brick-and-mortar building. This is just an idea, but maybe PEBP could implement a telehealth system at first to try it out. Otherwise, I am with Assemblyman Ellison. I think that this should have gone out for an RFQ, and the body should have seen if this was even a feasible idea before we talk about a bill.

Chair Flores:
I will take that just as a general statement, rather than a question. I know some folk had some questions. I believe that during the back-and-forth, some of the questions were addressed.

Assemblywoman Torres:
I just wanted some clarification. As I read the bill—and I understand that there is an amendment, but I have not had the opportunity to take a look at it—I am just confirming that this is permissive language for the board to do this, to the extent that it is possible. It is not compulsive language requiring them to enact it, correct?

Assemblywoman Gorelow:
Yes, this is permissive. It gives them the ability to send out the RFP or RFQ, based on any funding that they may have—if the board determines that they do not have the funding to move forward, then they do not have to do this.

Assemblywoman Torres:
I think, with that language, that helps me understand where the legislation is, and it hopefully answers some of the concerns of my colleagues. As I look at the legislation, it seems to

empower the board to make the decision of whether or not this is something that would be feasible. I am definitely interested in hearing if there is other language that would help clarify that—perhaps some type of amendment allowing for the board to determine the feasibility of this would be helpful.

Assemblywoman Brown-May:
I am really just following up on my colleagues' questions. I was also of the position that this is enabling language. Furthermore, it supports the intent that it is the desire to actually care for our folks that are in this program and that medical care should be a focus, right? Then, of course, there is the utilization of telehealth. As we continue to expand that, working with other partnerships, potentially a brick-and-mortar position would not be as readily necessary. Now, I have seen something like this done in the past, in a for-profit organization working really hard to support their employee base. I think that the utilization would be the most necessary to ensure that folks could go to this on-site or near-site clinic. I just want to follow up on that language again. This is enabling and identifies the desire to support people in medical care, is that correct?

Assemblywoman Gorelow:
Yes, this language is enabling. It just allows the board to look at RFPs and RFQs to determine if there is another organization that might be able to meet their needs. What those needs are, again, would be determined by the board and what they decide based on employee feedback.

Laura Freed, Director, Department of Administration:
I also serve as the chair of the Public Employees Benefits Program board. I wanted to chime in to point out, after a couple of questions and folks seeking confirmation, that this enables the board. The PEBP board, under current law, has domain over plan design. If there is a groundswell of need for primary care, then the board is already empowered to react to that by changing plan design or suggesting enhancements in the budget process that would address the needs of the membership. To the members who have suggested that maybe the process be that an RFQ be put into the budget, yes, that is absolutely a way the board might do that. I just wanted to get on record that the board could do this without this bill if it wished to do that. Really, the question just comes down to available subsidy dollars to fund plan design changes.

Chair Flores:
Members, any additional questions? [There were none.] Thank you for the conversation this morning. I appreciate everybody joining us and participating in that dialogue. At this time, we will go to the phone lines and invite those wishing to testify in support of Assembly Bill 337. [There was no one.] At this time, we will go to those wishing to testify in opposition to Assembly Bill 337. [There was no one.] Next, we will go to those wishing to testify in the neutral position.

Marlene Lockard, representing Retired Public Employees of Nevada:
I am testifying in neutral on this bill today but have significant concerns and questions that this bill raises for our members. First, it is difficult to testify appropriately when the amendment is not posted and we have not had the benefit of seeing what language changes may be in the amendment. For example, the bill definitely states that "the Board shall"—shall—"create a pilot program." However, testimony referred to it being optional. I wonder if that is one area that is contained in an amendment.

Probably the primary issue is the cost of this program. At a time when PEBP is cutting benefits for seniors, retirees, and state employees, we do not feel that this is the time to embark on a program that would cost so much money to the state. Secondly, this directs the board to take a specific course of action, which would take away their flexibility of considering telehealth and other options that may emerge in the changing marketplace of health care. I was there in 2017 when the pilot program was presented before. While we do not oppose such a program and would welcome additional access, we think it is a matter of priorities at this time to take a closer look at how this bill would impact the PEBP board, as well as the participants of PEBP.

Chair Flores:
I think I will let the record reflect that that could fall in opposition. I understand that we often walk cautiously, respectfully, with bill sponsors and folk, and we do not want to send a message of opposition, that you do not want to work with them, and/or that you somehow personally oppose a particular member, or anything such as that. But given how the concerns were presented, I believe that is opposition. We will go ahead and do that. We will go to those wishing to testify in the neutral position to Assembly Bill 337.

Thomas Burns, President, Craigin & Pike, Las Vegas, Nevada:
I am also the immediate past chair of the Vegas Chamber and a member of the Board of Trustees in government affairs. I apologize, Mr. Chair—I had a technical difficulty when I was trying to chime in in opposition, but I will be very brief. My remarks reflect the previous caller's concerns. They are really reflective of our knowledge without the possibility of digesting the amendment. While the Chamber supports affordable and accessible health care for Nevadans, the Chamber is opposed to Assembly Bill 337 from the perspective of Nevada taxpayers.

While we recognize that Assembly Bill 337 would be a pilot program, and it would done only if funds were available, we have concerns about the potential costs that would occur in establishing the primary care facilities. The impact it would have on PEBP's existing operating budget and staffing levels would be another concern. Start-up costs for such health care endeavors are costly. Ongoing operations for these types of clinics are another issue of concern. As someone who has worked in the insurance industry for more than 30 years, it is my experience that the cost and performance are the two biggest challenges associated with operating these clinics.

Chair Flores:
I understand that we have issues with technology, as we have all become all too familiar with. For the clarity of the record, that was in opposition to Assembly Bill 337. We will move on to those wishing to testify in the neutral position to Assembly Bill 337. [There was no one.] Mr. Ableser, thank you for joining us. Assemblywoman Gorelow, I do not know if you have any closing remarks, or if you wanted to hand that over to anyone else.

Assemblywoman Gorelow:
I will be brief with my closing remarks. I want to thank everybody for considering this measure and taking the time to listen to it, as well as those who called in. I apologize for that amendment not being up; however, in that amendment, it should say "may," not "shall," which is in section 1, subsection 1. We will continue to work with everyone to make this a better bill and keep everyone informed.

Chair Flores:
I appreciate the thoughtful dialogue. With that, we will go ahead and close out the hearing on Assembly Bill 337. Next, we will move on to public comment. Please know that this is not a time to reopen a hearing. It is a time for you to join us and speak on general matters that fall within the purview of our Committee. I want to encourage you to speak and join us this morning, but if you try to reopen a debate on a hearing, we will have to cut you off. With that, we will go to the phone lines for public comment. [There was none.] Members, tomorrow, Tuesday, March 30, we have three bill hearings. We will have Assembly Bill 249, Assembly Bill 340, and Assembly Bill 378. Please make sure you give yourself an opportunity to review those ahead of time. We will be starting at 9 a.m. This meeting is adjourned [at 10:34 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lindsey Howell
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony submitted by Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress, in support of Assembly Bill 220.