

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

**Eighty-Second Session
March 6, 2023**

The Committee on Government Affairs was called to order by Chair Selena Torres at 10:05 a.m. on Monday, March 6, 2023, in Room 3143 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Selena Torres, Chair
Assemblywoman Bea Duran, Vice Chair
Assemblyman Max Carter
Assemblyman Rich DeLong
Assemblyman Reuben D'Silva
Assemblywoman Cecelia González
Assemblyman Bert Gurr
Assemblyman Brian Hibbetts
Assemblyman Gregory Koenig
Assemblyman Richard McArthur
Assemblyman Duy Nguyen
Assemblywoman Angie Taylor
Assemblywoman Clara Thomas

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Judi Bishop, Committee Manager
Lindsey Howell, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Rosalie Bordelove, Chief Deputy Attorney General, Boards and Open Government
Division, Office of the Attorney General
Cadence Matijevich, Government Affairs Liaison, Washoe County
Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties
Jessica Ferrato, representing Nevada Association of School Boards
Mary Pierczynski, representing Nevada Association of Superintendents
Teresa Benitez-Thompson, Chief of Staff, Administrative Division, Office of the
Attorney General

Chair Torres:

[Roll was taken. Committee protocol was reviewed.] Today we have a robust agenda. We are going to begin with the presentation from the Office of the Attorney General. Then we are going to go out of order. We will hear Assembly Bill 52 first, and then we will conclude with Assembly Bill 13.

Aaron D. Ford, Attorney General

I am delighted to be here today. Accompanying me in northern Nevada is my chief of staff, Teresa Benitez-Thompson. I will proceed with our overview of the Office of the Attorney General.

My office consists of nearly 350 dedicated and hardworking individuals committed to enforcing Nevada law and upholding justice for the protection and benefit of our citizens. Every attorney general brings their own perspective as to how to protect and improve the lives of Nevadans. The overarching theme I have used to set the intention of our work in this office is a phrase you have heard me say over and over again: Our job is justice.

To guide my decision-making, I have framed my administration by a set of policy priorities. These priorities do not override our statutory obligations. Rather, they serve as a lens through which we view our work. I refer to these priorities as the five Cs: constitutional rights, criminal justice and reform, consumer protection, client service, and community engagement [page 2, [Exhibit C](#)]. Each of these five Cs is the moral compass we use to guide the ways in which our office can serve all Nevadans.

As the state's chief law enforcement office, our office represents the people of Nevada before state and federal trial and appellate courts in criminal and civil matters [page 3]. We serve as legal counsel to state officers, state departments, and most state boards and commissions. We work with our local state and federal law enforcement partners to protect the public. In addition to my written testimony, I have provided Committee staff with an agency organizational chart. I also invite you to read a copy of the agency's biennial report, which can be found at nv.ag.gov.

While that report goes into significantly greater detail, I would like to highlight a few key accomplishments that the Office of the Attorney General has had over the last two years of my administration. We have saved over \$1.3 billion taxpayer dollars by vigorously defending the state against tort claims. This number does not include litigation on other cause of actions. We have entered into settlements with opioid manufacturers, distributors, and marketers, bringing hundreds of millions of dollars into the state to help combat the opioid crisis. We have investigated and prosecuted those who seek to harm Nevadans, including murderers, some of whom committed their crimes in our prison system; abusers; and scammers. We have provided robust constituent services to Nevadans seeking assistance, receiving over 18,454 complaints and 39,000 or so inquiries in the last reporting period.

Our office is composed of several divisions with specific assignments related to the Attorney General's statutory responsibilities and the administration of the office [page 4, [Exhibit C](#)]. I would like to now turn to each of those divisions in more detail. Several divisions are dedicated to one or more sacred responsibilities of the office, including seeking justice for victims of crime and protecting vulnerable Nevadans. In the criminal prosecution division is Chief Alissa Engler. The criminal prosecution division prosecutes financial fraud, including scams, insurance fraud, workers' compensation fraud, securities fraud, and mortgage fraud. It also works in the area of sex trafficking, cybercrimes, public integrity cases, and crimes that occur in the Department of Corrections facilities.

In the past two years, this division has charged several murder cases, including killings in Nevada's prisons. We also continue the prosecution of Charles Sullivan, a cold case regarding the 1979 murder of a Reno woman we reopened when I took tenure in this office, though the trial was delayed due to the pandemic and other evidentiary hearings.

We have prosecuted hundreds of cases, from child sex trafficking, to scams and fraud, to animal abuse. In the fiscal year 2021 through 2022, the Workers' Compensation Fraud Unit and Insurance Fraud Unit filed 308 prosecutions and had over \$1.2 million dollars in restitution awarded to the state. As the prosecuting agency, it is particularly important to me that when it comes to criminal justice and reform, we do not just talk the talk, but we walk the walk. Within weeks of my beginning my first term, our office adopted a new internal policy to ensure our charging decisions and bail requests were appropriate and ethical. We incorporate the victim's wishes whenever practical, and we seek justice, not vengeance.

Moving on to the Post-Conviction Division, our chief there is Chief Heather Proctor [page 5]. The Post-Conviction Division handles petitions for habeas corpus in state and federal courts. The division is also responsible for representing the state in death penalty appeals. In the past biennium, the division opened 185 federal habeas cases and 381 state habeas cases. This division is also responsible for implementing the law passed by this body to compensate those Nevadans who are wrongly convicted of crimes they did not commit.

The Medicaid Fraud Control Unit is run by Chief Andrew Schulke [page 6, [Exhibit C](#)]. The Medicaid Fraud Control Unit investigates and prosecutes fraud by health care providers in the Nevada Medicaid program. For the past biennium, the Office of the Attorney General's Medicaid Fraud Control Unit opened 186 investigations and successfully prosecuted 34 criminal cases involving fraudulent activities by companies scamming the Medicaid system. We recovered \$10.3 million in the process. The Medicaid Fraud Control Unit also reviews reports of abuse or criminal neglect of patients and facilities that use Medicaid. This unit, focused on community engagement, also partners with medical schools to train students on how to identify signs of elder abuse and neglect.

For the Bureau of Consumer Protection, our chief is actually Mark Krueger [page 7]. Chief Ernest Figueroa works in that division as well. He is our consumer advocate. The Consumer Protection Bureau diligently works to protect Nevada consumers from economic harm.

This division has four primary areas of focus, the first of which is advocacy for ratepayers before the Public Utilities Commission of Nevada. That is what Chief Ernest Figueroa does. The Federal Energy Regulatory Commission ensures ratepayers receive reliable utility services at a reasonable cost. We also protect consumers through enforcement of the Nevada Deceptive Trade Practices Act. Thirdly, we prevent unfair markets through enforcement of the Nevada Unfair Trade Practice Act and federal antitrust laws. Fourth, we work on the administration of the Home Again Nevada Homeowners Relief Program.

In the past two years, this division has been responsible for bringing in tens of millions of dollars to the state as a result of settlements with companies that violated Nevadans' consumer rights, such as consumer data breaches. Of note, we negotiated a settlement in the T-Mobile and Sprint merger that guaranteed every T-Mobile job in Nevada would stay in Nevada and employee bargaining rights would be protected. Additionally, T-Mobile has offered low-cost plans for Nevada consumers and has built our coverage for Nevada's rural Internet services.

This team is also responsible for responding to thousands of COVID-19-related complaints, such as price gouging, failure to issue refunds, illegal evictions, and other scams. The Bureau of Consumer Protection also represented ratepayers before the Public Utilities Commission, saving them from increased utilities cost, especially due to the fiscal impact of the pandemic. This includes litigating a general rate case before the Public Utilities Commission that resulted in \$120 million of a credit to ratepayers in southern Nevada.

Consumer Protection Bureau staff also help Nevadans protect themselves from scams through community education and outreach programs. In fact, this week is National Consumer Protection Week. You will hear us throughout the entirety of this week—either on the radio, on television, or in your inbox—talking about ways Nevadans can protect themselves from scams.

Moving on, the next division is the investigations division, run by Chief William Scott [page 8, [Exhibit C](#)]. The Office of the Attorney General investigators work directly with our prosecutors, as well as local and federal law enforcement partners, to investigate a wide array of criminal activities. Since July 2020, the investigations division has completed almost 950 investigations and has referred 440 cases for prosecution, arrested 188 subjects, and recovered 61 missing children.

Additionally, our office provides vital support to Nevada through multijurisdictional task forces. For example, there is the IRS [Internal Revenue Service] financial fraud task force, the child exploitation task force, the health care fraud task force relative to opioid-related matters, the Southern Nevada Human Trafficking Task Force, and the elder and vulnerable person investigation task force. There are also FBI [Federal Bureau of Investigation] task forces, including the Joint Terrorism Task Force, that my office works on. The investigations division also focuses on engaging with local communities to better foster relationships and trust with the people we serve.

The next office I would like to talk about is the office of our Domestic Violence Ombudsman, run by Nicole Reilly, who does yeoman's work in this area [page 9]. Nevada holds, unfortunately, the unacceptable distinction of being one of the worst states for domestic violence. The Domestic Violence Ombudsman serves as a liaison with all state and local partners on issues related to domestic violence, sexual assault, and human trafficking. The Ombudsman serves as a state-level coordinator with oversight of many of the programs and initiatives, including the statewide Committee on Domestic Violence and Nevada VINE, which is a statewide automated system that allows victims to receive timely, accurate information on the custody status of offenders.

The next division I would like to talk about is actually a carryover [page 10]. I mentioned in earlier parts of my comments that every attorney general comes in with their own priorities. My immediate past predecessor, Mr. Adam Laxalt, created the Office of Military Legal Assistance (OMLA). I continued that because it is a great program. That is run by Special Assistant Attorney General Dawn Jensen. The Office of Military Legal Assistance provides pro bono legal advice for veterans and military families in civil matters. It is the first of its kind in offices of attorneys general across the nation. In fact, it has been—and is being—replicated across the nation as best practice on a moving-forward basis. Since the program's launch in November 2015, with the assistance of our pro bono legal aid partners, the OMLA has helped over 3,650 service members and veterans. Even during the pandemic, the OMLA continued operating virtually, particularly assisting military families who were facing evictions.

Let us talk a little bit about representing our state [page 11]. Our office represents all constitutional offices and state Executive Branch agencies as well as many statutory boards and commissions. The attorneys within these divisions have a broad range of expertise, including in the fields of state and local taxation, business law, regulatory law, election law, employment law, constitutional law, and civil litigation. It is in these divisions that my priority of client service is paramount, though staff also often finds ways to incorporate other priorities, such as the protection of constitutional rights.

Moving to the Gaming Division, our chief is Darlene Caruso [page 12, [Exhibit C](#)]. Staff in that division advise the Nevada Gaming Commission, the Nevada Gaming Control Board, the Nevada Athletic Commission, and the Gaming Policy Committee. In addition to daily legal advice, staff also represents the boards and commissions at monthly public meetings. Litigation in this division includes disciplinary actions brought against gaming licensees, disputes regarding taxes and fees, hearings on the surrender of gaming licenses, and actions to add people to the list of excluded persons.

You will hear from the chief of the Boards and Open Government Division later on today [page 13]. Chief Rosalie Bordelove runs that. The Boards and Open Government Division provides counsel to all *Nevada Revised Statutes* (NRS) Title 54 occupational licensing boards on administrative laws and procedure, administrative rulemaking, the law of licensure, and the Nevada Open Meeting Law. Deputies in this division attend meetings of the boards and commissions. They serve as prosecutors and board counsel in disciplinary proceedings against licensees as well. Staff are also responsible for enforcing the Open Meeting Law for all public bodies.

Moving on to Chief Greg Ott, who runs our Government and Natural Resources Division [page 14]. The Government and Natural Resources Division serves client agencies and officials responsible for providing core government infrastructure, such as the Controller, the Department of Administration, the Nevada Indian Commission, and PERS [Public Employees' Retirement System]. The division also serves agencies responsible for managing and protecting the state's natural resources and environment, such as the State Department of Conservation and Natural Resources, the Division of Environmental Protection, the Division of Water Resources, the Agency for Nuclear Projects, and others. Attorneys in this division helped come to a settlement agreement with the U.S. Department of Energy, as you may recall, to remove plutonium shipped to our state without our consent.

Moving to our Health and Human Services (HHS) Division, our chief there is Chief Sharon Benson [page 15]. Staff in the HHS Division serve as counsel to the Department of Health and Human Services (DHHS) and its many divisions. The Office of the Attorney General advises DHHS on some of the most critical matters to Nevadans, which include services at its Divisions of Health Care Financing and Policy—Medicaid; Welfare and Supportive Services; Health, Mental Health and Developmental Services; Aging and Disability Services; and the Division of Child and Family Services. As you can imagine, this team has been absolutely critical to the state's COVID-19 response.

Our next division is the Personnel Division, which is overseen by Chief Cameron Vandenberg [page 16]. She and her division advise Executive Branch departments, divisions, and agencies on employment law, including administrative hearings regarding discipline of state employees, judicial review of administrative proceedings, resolution of grievances before the Employee-Management Committee, and litigation in state and federal court regarding the employment relationship.

Our Public Safety Division is helmed by Chief D. Randall Gilmer [page 17, [Exhibit C](#)]. That division advises the Nevada Department of Corrections and provides representation in all inmate-related litigation, including property and constitutional claims. Staff in this division also participate in the Inmate Early Mediation Program, a unique program of alternative dispute resolution for inmates.

Our Transportation Division is run by Chief Lori Story [page 18]. The Transportation Division advises the Transportation Board of Directors and many divisions of the Nevada Department of Transportation. Staff in this division provide counsel on many complex transportation matters. They represent the Department of Public Safety in its many divisions, including Parole and Probation as well as the Department of Motor Vehicles.

The Business and Taxation Division is run by Chief David Pope. The Business and Taxation Division provides daily legal advice to the Department of Taxation and the Department of Business and Industry and its 11 divisions, including the divisions of Real Estate, Mortgage Lending, Insurance, Financial Institutions, the Taxicab Authority, Nevada Transportation Authority, the Labor Commissioner, the Consumer Affairs Unit, Housing, Industrial Relations, and the Occupational Safety and Review Board. Attorneys on this division also enforce the Tobacco Master Settlement Agreement and its compliance program to prevent underage smoking. Staff also represents the newly created Cannabis Compliance Board and prosecutes violations of cannabis licensees.

Moving on to our Office of the Solicitor General and Complex Litigation Division, those are run by our Solicitor General, Heidi Parry Stern [page 20]. The Office of the Solicitor General oversees all appeals before the Court of Appeals, the Supreme Court, and the Ninth Circuit Court of Appeals. It also houses the Complex Litigation Division, a team of highly specialized and experienced attorneys who work with staff and all divisions in complex matters on cases that exposed the state to great financial liability.

I would like to also highlight our Administrative Division [page 21]. Our office is one of the largest law firms in the state. It represents a constitutional office elected by the people of Nevada to serve our state. The Office of the Attorney General has a lean, yet efficient staff that supports the daily functioning of this large agency. The Administrative Division includes IT [information technology] personnel, human resources staff, office managers, and legal secretaries dedicated to each legal division. The communications team manages a robust public outreach program to help Nevadans protect themselves from crime and respond to media inquiries. The Constituent Services Unit (CSU), which is very small, is responsible for attending to all complaints, concerns, and questions sent to our Office of the

Attorney General. I mentioned the CSU is very small because it is fantastic that from July 2022 to August 2022, that staff processed more than 18,000 complaints and over 39,000 inquiries. That does not include phone calls and walk-ins to the office.

The Administrative Division also houses the Chief Financial Officer who oversees fiscal analysts, tort claims administration, and the Grants Unit. The Grants Unit is currently administering 17 grants for a total of nearly \$16 million. The Grants Unit manages several federal programs focusing on supporting victims of domestic violence and sexual assault, elder exploitation, and gang suppression. The Grants Unit has developed close relationships with local, state, and federal agencies; victim service providers; and others to administer grants across our state. Now, everything I just mentioned relative to the Administrative Division is overseen by my more-than-capable chief of staff, Teresa Benitez-Thompson. It was a big coup for our office to be able to get her services. We are grateful to her for that.

Let us talk a little bit about the future focus of this office [page 22]. Looking forward, it is clear we as elected officials have a lot of work to do to build trust. Our nation and our state are divided, and trust in our government is broken. Some of our neighbors trust what they read on the Internet more than the people who live in our communities and the people who are elected to represent them.

I often say, as a representative of the government, there are three types of communities I have encountered. One of them is the one you see on TV—*Law and Order: Special Victims Unit*—in the criminal context where Olivia Benson is testifying, and everybody is nodding their heads saying, Yes, what she is saying is true. It is the bible, and anything that anybody else says to the contrary is lying. That is the high level of trust that some have had in the government. They believe everything the government says. There is a type of community that used to have a high level of trust, but that trust has diminished for some reason. Maybe it is something that happened to them or something they have seen vicariously happen to other folks. That high level of trust has diminished at some level. Then there is the type of community that frankly, I came from, which had little to no trust in the community, particularly in law enforcement.

In my estimation, it is my job to augment trust in communities where it already exists, restore trust where it has been diminished, and create it in communities where it has never existed before. In the next two years of my term, my focus is going to be on exactly that: to restore, augment, and create trust in this agency and the state. We will do so by doing our job to the best of our ability every single day, by providing the best client service, being transparent about our agency, following through on our commitments, and always making decisions based on what is in the best interest of Nevadans—all Nevadans. When Nevadans are in need, we will continue to answer the call. I stand available for questions.

Chair Torres:

At this time, I will open it for the members. Any questions?

Assemblyman D'Silva:

I have known the Attorney General for a long time. He was a mentor to me when I was a student at the University of Nevada, Las Vegas (UNLV). We used to call him Mr. Bowtie Fly because of how fashionable he was back in those days.

I have a two-pronged question. One is this: What is the relationship of the Attorney General's Office vis-à-vis the budding cannabis industry? I know you mentioned building trust with the community. I actually had several meetings this weekend with some of the leaders in that industry and in that sector who had some questions. I was wondering if you could extrapolate a bit more on the Attorney General's Office's actual role and relationship with this community.

Number two: I know when our current senator, Senator Catherine Cortez Masto, was the attorney general, she had a very robust extern program for young law students—not just here at UNLV, but also across the country. I was wondering if you could also give us some insight into how that program is going and whether or not it is proving successful in bringing some talented folks to pursue legal careers in public service here in our state.

Attorney General Ford:

I hate to hear I used to be called Mr. Fly with the Bowtie. Hopefully I still have some level of cachet, or as the kids say, rizz. I hope I have a little rizz. It is great to see you, sir.

The first question related to the Cannabis Compliance Board. The answer is relatively simple. We serve as counsel to the Cannabis Compliance Board. My office is not the policy-making entity. We are not the enforcement agency. We are the lawyers for the Cannabis Compliance Board. It is that board that has been charged with developing policy related to this industry to regulate this industry. It is that board's responsibility to maintain public interaction with the industry representatives. My office does, on occasion, have interactions with that industry to ensure we have our ear to the ground on what the percolating issues are so they can also inform the way we advise the Cannabis Compliance Board. But we have no enforcement authority relative to that particular industry. We have the Open Meetings Law, we provide them legal advice, and they make decisions based on what they think is best for that particular industry and for our state. Hopefully that answers your question. If it does not, follow up. I am happy to receive that.

In terms of the externship program, I actually did not realize Senator Catherine Cortez Masto had the program. When I came in, it did not exist. We created, I thought—but clearly, we recreated—an internship program through my first general counsel, Rachel Anderson, a professor at UNLV. We instituted this robust internship program. During COVID-19, it was especially productive because we were able to bring in, as you have indicated, law student interns from all across the nation. We had a student from a university in Maine who was interning with our program.

We do this every semester, including during the summer. In fact, we are receiving résumés right now for applicants to our summer internship program. We have hired some of those interns, and they now serve as lawyers in our office. It has been a great experience for our office and for those who participate in this, both internally and for those students who come in. It has also been a good pipeline to receiving good lawyers coming in as attorneys in our office here.

Assemblywoman Thomas:

On page 3 [Exhibit C], when you discuss the opiate settlement, I was wondering if you could share that number of the millions of dollars. It is something the public should know—how hard the office worked. That is the question.

Attorney General Aaron Ford:

I will have to give you an updated number, but it is probably at \$370 million we will see coming into the state over the next 15 to 20 years through various settlements we have had. We are gearing up for trial now. A trial is scheduled for July 24. I think we have probably three or four defendants left. We have settled with quite a few of them already. We are working on settlement discussions with other entities right now that are interested in doing what is best for our state. We have brought in over \$350 million that will come in over the next decade or so to help abate this crisis.

That includes monies. I want to be clear about this. Attorneys general across the nation work in what we call multistate litigation all the time. That is where several states—sometimes all states—get together. We sue a particular company. I will make up something. We sue the Acme Company for the widgets it has sold across the nation. We may settle with them. For our allocation in Nevada, it makes sense that it would be based on the percentage of widgets that were sold from the Acme Company. That is a multistate settlement.

This one was a little different. We had multistate settlements, but the allocations that were afforded to Nevada under many of those were from my perspective, my professional judgment, woefully insufficient to compensate and recompense this state for the damage opioids had wrought. We rejected some of those. Some of those rejections lead to subsequent settlements with the exact same entities. For example, we got 6 1/2 times as much as we would have received had I accepted the multistate settlement. I say that because it goes back to my five Cs and ensuring we are pursuing justice through those Cs—consumer protection. I am proud of the work my office has been able to do.

It is not easy being the only attorney general to say no to a multistate settlement that has 55 others—because that includes states and territories as well—but I did that. We received 6 1/2 times as much money a month later because I stood up for Nevada. Thank you for that question; it gives me an opportunity to talk a lot about the work our Consumer Protection Division does. We are very proud of that.

Assemblywoman Thomas:

That is just like how our women's basketball team works as hard as you are working for the entire state. I look forward to UNLV topping out the University of Nevada, Reno today.

Chair Torres:

I know we are all still mourning the game that occurred on Saturday. At this time, we will go to Assemblywoman Taylor, who is probably also mourning.

Assemblywoman Taylor:

I am mourning. I am glad I was already online to ask a question because I have to jump in right now and ask another question. This is connected to the question asked by my colleague, Assemblywoman Thomas. How do you determine when we jump into a class action lawsuit with other states and when we stay out, other than money? What are the other things you look at in terms of what is best for Nevada?

Attorney General Aaron Ford:

Listen, it varies. In the opioid context, for example, there are certain multistate settlements with some of the defendants we sign onto based on the circumstances. For example, if it is a bankruptcy where no one is going to get any money, then it makes no sense for us to pursue a different kind of battle, because bankruptcy is a different kind of beast. If it is an entity that has had a higher presence in our state than in other states and has therefore wrought more damage on our state than others have, then we may go it alone against a particular entity. If it is an entity that has little presence in our state, then maybe we will join a multistate settlement under their circumstances. These are just a handful of the considerations in the opioid context we have utilized.

I must say, generally speaking, for most multistate litigation based more on the Acme-Company-selling-widgets type of scenario, it is a lot easier to simply divvy up what the damages look like among the states. It makes more sense for us to join on those. Outside the opioid context, there are not a lot of times we have not joined the multistate efforts, whether it be against Big Tech, other pharmaceutical companies, or whatnot. In the opioid context, it is particular to the type of damage that particular entity or business has wrought here in our state.

Assemblywoman Taylor:

You mentioned the hundreds of millions of dollars we as a state can expect over the next three years as a result of those efforts from your office. Of course, we all really appreciate that. Where do those dollars go?

Attorney General Aaron Ford:

My Consumer Protection Division did yeoman's work in developing what we call the One Nevada Agreement on Allocation of Opioid Recoveries. The state of Nevada was not the only entity suing in the opioid context. Other municipalities, such as Washoe County, Reno, Las Vegas, and Clark County sued. Elko County did not sue, but other entities all throughout our state sued. We entered into what is called the One Nevada Agreement that gave us more

leverage and allowed us to come up with a fair distribution among municipalities in the state. That One Nevada Agreement is in addition to legislation your body passed last session. Then-Senator Julia Ratti passed a bill that created the Advisory Committee for a Resilient Nevada housed within the Department of Health and Human Services.

To be a little colloquial, I bring home the bacon, and I put it in their hands. My office makes no determination whatsoever on how that money is spent. We will bring in \$350 million over the course of the next few years. Some of that money has already arrived. In fact, a couple of weeks back you probably saw a headline where Washoe County agreed to receive their portion of a \$25 million settlement we had with one of the other defendants. Those committees will make those decisions.

Now, the one caveat is that those decisions have to be made towards abating the opioid crisis. This money, for example, will not be given to you all, as a body, for your State General Fund. It cannot do that; it cannot go there. It has to go towards abating the opioid crisis pursuant to the recommendations that come from committees I chair—for example, the SURG [Statewide Substance Abuse Response Working Group]. It also goes to other committees talking to HHS, which has its own advisors, from social workers, to addiction experts, to foster care professionals, to whatever you may contemplate. They will be making that determination at the HHS level.

Assemblywoman Taylor:

I would note, you are wearing that very nice blue blazer. There is a big day today on the basketball floor. I wanted to note what the Attorney General was wearing in such a fly way.

Attorney General Aaron Ford:

It is a day of mourning for some. That is all I can say.

Chair Torres:

Let the record reflect Attorney General Aaron Ford's support for the Wolf Pack.

Assemblywoman Duran:

I wanted to have you explain a little bit about Medicaid fraud. I know there is a big issue about collecting for Medicaid. I am wondering what happens with these investigations.

Attorney General Aaron Ford:

Our Medicaid Fraud Control Unit is run by Andrew Schulke. I would love to have him connect with you directly and maybe provide in writing responses to that particular question for the entire Committee. They are very active. I get information about them. As I indicated, they opened up 186 investigations and prosecuted 34 criminal cases that related to the Medicaid fraud control issues that we have in our state. They recovered \$10.3 million. I will have to again defer to my Medicaid Fraud Control Unit to determine how that money is divided up, because some of our support comes from the federal government. It is 75 percent funded by the feds and 25 percent funded by us. There is a divvying of sorts that has to be

considered. We got a comparable question from the finance committee, the Assembly Committee on Ways and Means, that Andrew Schulke was able to follow up with. If it is okay with you, Madam Chair, I will have him submit that to the Government Affairs Committee as well for your consideration.

Chair Torres:

We would appreciate that. Members, any additional questions? Seeing none, we will now open the hearing on Assembly Bill 52.

Assembly Bill 52: Makes various changes to the Open Meeting Law. (BDR 19-416)

Aaron D. Ford, Attorney General:

I am simply here to introduce the chief of our division, Rosalie Bordelove, who will take the labor of introducing this bill. Madam Chair, may I be excused for the rest of the hearing?

Chair Torres:

Yes. Make sure you share your love and support of the Wolf Pack with all you encounter today.

Rosalie Bordelove, Chief Deputy Attorney General, Boards and Open Government Division, Office of the Attorney General:

The Boards and Open Government Division houses the Open Meeting Law Enforcement Unit within the Office of the Attorney General, in addition to representing many state agencies governed by public bodies. Assembly Bill 52 includes revisions to *Nevada Revised Statutes* (NRS) Chapter 241, the Nevada Open Meeting Law (OML), and a few other chapters relating to the Open Meeting Law's application.

I would like to start with a brief overview of Nevada's Open Meeting Law as it stands today before describing the revisions contained in the bill. Nevada's Open Meeting Law was first passed in 1960 and is considered a "sunshine law." Sunshine laws exist in many states and are laws requiring public disclosure of government agency meetings and records. In enacting the law, the Nevada Legislature declared that "all public bodies exist to aid in the conduct of the people's business," and "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." This intent is stated in NRS 241.010. When I conduct trainings on this law to public bodies across the state, I emphasize the importance of this provision, as it guides the interpretation of the law by both our office and by the courts. Nevada courts have stated the OML was promulgated for the public's benefit, and as such should be construed in favor of openness and transparency.

The Open Meeting Law applies to meetings of public bodies, both of which are terms defined in NRS Chapter 241. A "public body" is defined in NRS 241.015, section 4 and includes any administrative, advisory, executive, or legislative body of the State or a local government consisting of two or more people which expends, disburses, or is supported in whole or in part by tax revenue or which makes collective decisions or recommendations to such a body

and is created by the state constitution, a statute, regulation, city or county charter or ordinance, executive order by the Governor, or formal resolution. Subcommittees of public bodies are also public bodies themselves.

The Legislature is exempt from the OML by NRS 241.016, although it often follows many of the same procedural standards, such as publishing agendas, allowing public comment, and facilitating public access to meetings.

The Open Meeting Law also applies to "meetings" of public bodies, which is defined in NRS 241.015 as a quorum of the body together with deliberation or action. A "quorum" is generally defined as a simple majority of the public body. To "deliberate" is defined as to collectively weigh, examine, reflect, or discuss, while "action" is a majority vote. The Open Meeting Law does not prevent all private discussions by members of a public body, only those that involve a quorum. Additionally, the OML does not prevent a gathering of a quorum of public body members at a social or professional function, so long as there is no deliberation or action.

The Open Meeting Law imposes several requirements on public bodies, including the posting of a full agenda that clearly and completely states all items to be discussed and is posted not later than 9 a.m. on the third working day prior to the meeting. The meeting agenda must be posted on the state's notice website—which is notice.nv.gov—at the public body's principal office, and at the public body's website if it maintains one. Any person requesting a copy of the agenda must also have a notice sent to them. The agenda outline requires public comment periods at the beginning and end of every meeting or before action items. It further requires that all supporting material be made available to the public when it is provided to members of the public body. Public bodies are also required to keep minutes of their meetings that include the substance of discussions and actions.

Exceptions to the OML are few and narrow. Public bodies may hold closed sessions to consider the character, alleged misconduct, or professional competence of a person. They may also receive information from their attorney regarding potential or existing litigation involving a matter over which the public body has jurisdiction and control, and they may deliberate toward a decision outside of the agenda meeting. However, action regarding litigation must be taken during an open meeting unless the public body has delegated that authority to its chair or chief executive. Additionally, emergency meetings are authorized under the law but may only be used to address truly unforeseen circumstances, such as disasters or health and safety emergencies.

The Open Meeting Law requires that the public have an opportunity to comment at each meeting. Reasonable limitations may be time, place, and manner restrictions. A public body can never restrict comment based on the viewpoint of the speaker. Presiding officers may limit public comment when the comments are unduly repetitious or willfully disruptive. The Open Meeting Law also does not prohibit the removal of a person who willfully disrupts a meeting to the extent its orderly conduct is made impractical.

Any action taken in violation of the OML is void, and the Office of the Attorney General has statutory enforcement power to investigate and prosecute violations. Additionally, any person denied a right conferred by NRS Chapter 241 may sue to have an action declared void. The public does not have to rely solely on the Attorney General's Office for enforcement. Criminal and civil penalties may also apply to members if the violation is knowing.

The Office of the Attorney General strives to assist members of the public and public bodies in understanding and complying with this law. We provide training to public bodies across the state and offer training videos on our website available to anyone. There is a deputy attorney general assigned to answer Open Meeting Law questions every day.

Thank you for indulging my summary of Nevada's Open Meeting Law. I am happy to take general questions regarding the law now. If the Chair prefers, I can move directly to the presentation of A.B. 52's proposed changes.

Chair Torres:

Can we go into the presentation of A.B. 52's proposed changes? If members have any questions regarding the Nevada Open Meeting Law, they can ask them at that time.

Rosalie Bordelove:

Assembly Bill 52 is the result of several meetings of the Attorney General's Open Meeting Law Task Force, which consisted of representatives of public bodies in state and local government and public interest groups including the American Civil Liberties Union. The goal of the bill is to allow public bodies to run our government while protecting the public's right to observe and be heard in that process.

Section 2 of the bill provides clarification to the definition of a quorum. It provides that when there is a vacancy on a body, that position does not count when calculating a quorum. The law is currently unclear whether a vacant position is counted, which can lead to confusion when a body has multiple vacancies and is trying to hold a meeting.

Sections 3, 7, 16, 17, 18, and 19 relocate language from NRS 241.034 to separate the notice required for administrative action against a person from the notice required to acquire real property via eminent domain. They change the notice requirements from 5 working days for personal service to 7 calendar days and from 21 working days via certified mail to 14 calendar days. Section 3 also provides for alternative methods of notice for an employee of the public body.

Many public bodies make direct employment decisions regarding certain positions, such as the superintendent of a school district or the executive director of a state agency. As such, the public body holds a closer relationship with these individuals than they do with the general public. The alternative notice provisions for employees take into account that closer relationship and the need for a public body to take certain employment actions in a shorter time frame.

Section 4 clarifies that action requires a majority of the voting members of the public body, as the law is currently unclear with respect to whether non-voting members are counted when making the calculation of votes necessary. It also cleans up language for purposes of continuity with the provisions added by Assembly Bill 253 of the 81st Session. Section 4, subsection 2 further adds a definition of "administrative action against a person" for purposes of the notice requirements I just discussed. The definition comports with existing interpretations by the Attorney General's Office for this term. Lastly, section 4, subsection 4 cleans up the definition of a "meeting" to clarify the existing meaning.

Section 6 changes the notice requirements to mimic those in section 3 for notice to individuals about whose character a public body may consider and provides for the same alternative methods of notice for employees as in section 3.

Section 8 adds language to provide continuity in the chapter as cleanup.

Sections 9 and 10 provide that the quorum reduction provision in the Nevada ethics law, NRS 281A.420, subsection 5, applies to all public bodies in the state of Nevada. Currently, the language of this provision does not apply to bodies composed entirely of elected officials in a county where the population is 45,000 or more unless the official has written advice from an attorney regarding their ethical conflict. The current language is ambiguous with respect to statewide entities and could be construed to apply a different ethical standard to the votes of elected officials in rural counties. The proposed change would apply the same ethical standard and quorum reduction ability to all bodies across the state.

Sections 5, 11, and 12 exempt committees of private citizens created by city councils or the Secretary of State to draft the background for ballot questions from the OML. It is clear from the legislative history of these committees that they were not intended to be public bodies, and in most circumstances, they would not meet the definition of a public body. The same such committees created by county commissions already have an identical exemption.

Sections 13, 14, and 15 provide that library foundations, parent-teacher associations, and certain university foundations are not public bodies unless they otherwise meet the definition of a "public body" contained in NRS 241.015. This clarification codifies existing Nevada Supreme Court case law and is intended to update the statutes, since the definition of a public body was changed in 2011.

That concludes the proposed changes contained in A.B. 52. In closing, A.B. 52 makes clarifications and revisions to the existing Open Meeting Law in an effort to strike the appropriate balance between allowing public bodies to efficiently and effectively carry out the public's business and ensuring the public and the media are able to observe and participate in that business. I welcome any questions that you may have.

Chair Torres:

Members, any questions?

Assemblyman DeLong:

I have a question with regards to defining a quorum when you have less than the maximum number of individuals or are dealing with vacancies. How are you balancing that change or that clarification relative to creating a situation where you have a very small number of individuals on a body making decisions when the intent of the law to establish that body was envisioning a larger number?

Rosalie Bordelove:

Currently the law is unclear, particularly with appointed bodies. They do not have provisions or the ability to temporarily fill a vacancy pending a future election as many city councils or other elected bodies do. They may go longer periods of time with vacancies. The problem occurs when—I will use a general example—a body is intended to have 13 or 15 members, and there simply are not applicants for the positions. But it is required to have this many positions based on federal regulation, because they make recommendations regarding federal money. Currently, if those vacancies are not filled, you could reach a point where the body is unable to convene a meeting and take action at all. This is not saying we do not want those bodies to be full. We would like to see people in every single position and there be no vacancies. But there are many appointed bodies where the body itself does not have the ability, and the appointing authority may not have applicants that meet the statutory requirements to appoint into those positions. The hope here was to get some clarity in the law so these public bodies understand what their limits are and how and when they can act if they are missing individuals in some of their positions.

Chair Torres:

I did have one specific question regarding the administrative action in section 3 of the bill. I wanted to know the genesis of this specifically. I also wanted to know if this would apply to meetings where there was an evaluation of an individual previously scheduled. Would this include those evaluations where they would be having a conversation that could result in administrative action? For example, in the evaluation of an employee of that body, such as a superintendent, would that apply?

Rosalie Bordelove:

This is with the notice requirement, not the definition, am I correct? Yes. These are the noticing requirements. "Administrative action against" is generally considered to include the termination of an employee. It would also include making decisions regarding a license—if a person held a license, whether that be a business license or a license for a professional occupation, and you were to discipline that license, that would be considered "administrative action against." Currently, notice is required. This is simply changing some of what those noticing requirements are, but notice is currently required for both. If it were an evaluation of an employee, notice would be required both under the administrative action provision and the consideration of character provision because you would be most likely considering their professional competence.

Chair Torres:

I have one quick follow-up to that. I do notice and hear that there is language regarding the administrative action; that notice can take place in four different ways. One of them in section 3, subsection 2, paragraph (c), talks about the person "represented by an attorney in connection with the matter. . . ." I am wondering if there is already a process in place somewhere in the NRS that determines how an individual can make that body aware that they are represented by an attorney. Also, why would that be 7 calendar days ahead? I guess that is consistent with the others—well, some of them are 14 days and others are 7 days. I am wondering why there are differences.

Rosalie Bordelove:

I am not aware of a provision specifically in NRS that would apply to this regarding how to notify a body. In general, if a person is to retain a counsel with respect to any particular matter, that counsel will reach out to the body. Most of these public bodies are represented themselves. There are provisions with an attorney—ethics—where if you know an individual is represented, you are required to communicate with that attorney. An attorney cannot then go around and go to the individual directly. Regularly, if an attorney is retained to represent someone, their first action is to go notify the other side that they are being represented in direct communications to them. This is allowing for that notice to the attorney where there is known to be an attorney specifically.

The difference in the two noticing time frames has to do with how the notice is conducted. If you send out a process server and personally serve the notice on the individual, that is the 7 calendar days. The current requirement is 5 working days. It has been changed to 7 calendar days simply for ease of calculation. The change in both of these to calendar days is simply to make it easier to calculate and determine when that is. You do not have to deal with when state holidays arise, which frequently trip people up on the noticing timelines. About the 14 calendar days: The current requirement is 21 working days. That is if you were sending the notice via certified mail. That is the difference in the two timelines. It is the difference in the type of notice.

Chair Torres:

Members, any additional questions? [There were none.] I will invite anyone wishing to testify in support of A.B. 52.

Cadence Matijevich, Government Affairs Liaison, Washoe County:

We are here in support of this bill today. We would like to thank the Attorney General's Office for bringing it forward and for reaching out to local governments in the development of this bill. Washoe County is committed to conducting our business in a transparent and open fashion, and we take the Open Meeting Law very seriously. We appreciate the clarifications this bill brings, particularly that in section 4, subsection 4 around what defines a "meeting." There have been times when we could have been more efficient in conducting trainings of our elected officials but out of an abundance of caution divided them up into multiple meetings so as not to violate the Open Meeting Law.

Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties:

The Nevada Association of Counties supports A.B. 52, which provides flexibility and clarification on when the Open Meeting Law applies to a local governing body. Additionally, the modernization of this law to provide for the use of remote technology enables transparency and public engagement during the proceedings of local government business. The Nevada Association of Counties (NACO) would like to thank the Attorney General for his continuous engagement of local government as we address and review the Open Meeting Law. We also thank him for including NACO on the Open Meeting Law Task Force.

Jessica Ferrato, representing Nevada Association of School Boards:

We would like to communicate our support of the bill and thank Attorney General Ford for his work on this matter as well as the timelines he included. They are very helpful for clarifying what will be considered part of the Open Meeting Law moving forward. We appreciate the bill.

Mary Pierczynski, representing Nevada Association of Superintendents:

The Nevada Association of School Superintendents is composed of all 17 superintendents in the state. We appreciate this bill, and the clarifications and revisions contained within.

Chair Torres:

Is there anyone else wishing to testify in support of A.B. 52? [There was no one.] Is there anyone wishing to testify in opposition to A.B. 52? [There was no one.] Is anyone wishing to testify in neutral to A.B. 52? [There was no one.] That was an overwhelming surprise.

At this time, I will invite the bill's sponsor if there are any closing remarks.

Rosalie Bordelove:

I want to thank you again for hearing about A.B. 52 today. We are open if any questions come up at a later date.

[[Exhibit D](#), [Exhibit E](#), [Exhibit F](#), and [Exhibit G](#) were submitted but not discussed and will become part of the record.]

Chair Torres:

At this time, we will close the hearing on Assembly Bill 52, and we will open the hearing on Assembly Bill 13.

**Assembly Bill 13: Revises provisions related to governmental administration.
(BDR 23-418)**

Teresa Benitez-Thompson, Chief of Staff, Administrative Division, Office of the Attorney General:

I do have our chief for personnel joining us telephonically as well. I will be presenting the testimony on the bill, and then we will be referring to Chief Cameron Vandenberg via the

phone for follow-up questions or more process questions, if the Committee members have them. There also is an amendment [[Exhibit H](#)] to Assembly Bill 13 we will be referring to, so I will be addressing that as well.

The Nevada Whistleblower Protection Act, which is in *Nevada Revised Statutes* (NRS) 281.611 through 281.671, provides for an administrative process to appeal reprisals or retaliatory action that was taken against a state employee because they disclosed information concerning improper governmental action. Assembly Bill 13 proposes to amend the Nevada Whistleblower Protection Act because the Personnel Commission attempted to create a limitation period for filing of a whistleblower appeal through the enactment of a regulation. That regulation was *Nevada Administrative Code* (NAC) 281.305, subsection 1, paragraph (a). However, the Nevada Supreme Court invalidated it on the grounds that the Personnel Commission was not authorized to adopt a jurisdictional rule through its rulemaking authority. That was the *State of Nevada v. Bronder*, 476 P.3d 866 (2020). Therefore, the issue of setting a time frame for filing an appeal comes back to be addressed by the Legislature. Assembly Bill 13 is necessary to clarify what the limitation period is for filing whistleblower actions, and also to reduce litigation, foster the preservation of relevant evidence, ensure that the appeal is conducted at a time when evidence and witness testimony is fresh, promote diligent prosecution, and promote finality in the dispute.

Additionally, Assembly Bill 13 removes provisions of the Whistleblower Act which are in direct conflict with disciplinary procedures set forth in NRS Chapter 281 and NRS Chapter 284, including taking away the authority of the administrative hearing officer to order the termination of an individual employee who is accused of retaliation. Under the current version of the Whistleblower Act, administrative hearing officers have the authority to order that an accused individual be terminated from their employment. We are proposing to remove this language because it does violate the employee's due process rights; it conflicts with other procedures afforded to the employee under NRS Chapter 284 and NAC Chapter 284.

I will now refer to the amendment [[Exhibit H](#)] you have in front of you. The original bill was proposing that a written appeal would be made within 10 working days. In conversations with the Nevada Justice Association, and also with the local governments, we are proposing an amendment to make that 60 working days. That will bring us in line with the practice of local governments. My understanding is that this would bring consensus, along with support, for this time frame as well. We stand open for questions.

Chair Torres:

Members, any questions? It looks like there are no questions.

At this time, I will invite anyone wishing to testify in support of A.B. 13. [There was no one.] Is there anyone wishing to testify in opposition to A.B. 13? [There was no one.] Is there anyone wishing to testify in neutral to A.B. 13? [There was no one.]

I will invite Ms. Teresa Benitez-Thompson back for any closing remarks.

Teresa Benitez-Thompson:

I will let it be said, it is very much an open secret that this is one of my favorite committees in this building. Part of it is because of the wonderful legislators who choose to learn about and provide governance over this subject matter and government affairs. But really, the truth is, it is about the wonderful staff you have here on the Assembly Government Affairs Committee. Have a great session. If you realize you have a question, do not hesitate to reach out.

Chair Torres:

I will close the hearing on A.B. 13. At this time, we will move on to public comment.

[Public comment was heard.]

Are there any additional remarks from members of the Committee before we adjourn? [There were none.] All right, a couple of reminders: Tomorrow we will be meeting in Room 4100. We will be having a hearing for three different bills, so please come prepared as always. We will be hearing Assembly Bill 92, Assembly Bill 174, and Assembly Bill 177. We will be beginning at 9 a.m. tomorrow. I will see members there. This meeting is adjourned [at 11:19 a.m.].

RESPECTFULLY SUBMITTED:

Lindsey Howell
Committee Secretary

APPROVED BY:

Assemblywoman Selena Torres, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Office of the Attorney General," presented by Aaron D. Ford, Attorney General.

[Exhibit D](#) is a letter dated March 6, 2023, submitted by Christina Giunchigliani, Private Citizen, Las Vegas, Nevada, in support of Assembly Bill 52.

[Exhibit E](#) is a letter submitted by Bruce Parks, Chairman, Washoe County Republican Party, in opposition to Assembly Bill 52.

[Exhibit F](#) is a letter submitted by Jenny Brekhus, Private Citizen, Reno, Nevada, in opposition to Assembly Bill 52.

[Exhibit G](#) is a letter submitted by Reva Crump, Private Citizen, Sparks, Nevada, in opposition to Assembly Bill 52.

[Exhibit H](#) is a proposed amendment to Assembly Bill 13, submitted by Aaron D. Ford, Attorney General, and presented by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General.