MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-third Session
April 7, 2025

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Monday, April 7, 2025, in Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 6 of the Nevada Legislature Hearing Rooms, 7120 Amigo Street, Las Vegas, Nevada. Exhibit A is the agenda. Exhibit B is the attendance roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Edgar Flores, Vice Chair
Senator James Ohrenschall
Senator Roberta Lange
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator John Ellison

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Michael Scully, Committee Counsel
Timothy Gibbs, Committee Secretary

OTHERS PRESENT:

Randy Hawkes, Clark County Deputy Marshals Association
Troyce Krumme, Las Vegas Metro Police Managers & Supervisors Association
John Abel, Las Vegas Police Protective Association
Dan Gordon, Nevada Police Union
Jason Lesher, Washoe County Sheriff Deputies Association
Michael Sanft
Andres Moses, Eighth Judicial District Court
Jeff Rogan, Clark County District Attorney's Office

Justin Watkins, Nevada Justice Association
Dora Martinez, Nevada Disability Action Coalition
Brandon Kemble, City of Henderson
Brandon Sendall, City of Sparks
Nathan Ullyot, City of Reno
Chris Craft, City of North Las Vegas
Vinson Guthreau, Nevada Association of Counties
Kelly McNeil, Nevada League of Cities
Isaac Hardy, City of Boulder City; City of Mesquite
Soraia Bohner, Intern, Senator Scheible
Kenny Lee, Lee Keifer & Park
Michaelle Rafferty, Legislative Committee, Probate and Trust Section, State Bar of Nevada
Jeff Luszeck, Legislative Committee, Probate and Trust Section, State Bar of Nevada

CHAIR SCHEIBLE:
We have three bills today for hearing. It is my intention to take them out of order. We will start with Senate Bill (S.B.) 450. Since I am presenting that bill, I will hand the gavel over to my vice chair, Senator Flores.

SENATE BILL 450: Revises provisions relating to bailiffs and deputy marshals in certain courts. (BDR 1-1019)

VICE CHAIR FLORES:
We will now open up the hearing on S.B. 450.

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
Senate Bill 450 relates to the employment of marshals, deputy marshals and bailiffs in counties with populations of 700,000 or more—which right now would only be Clark County.

Over the last 10 to 15 years, there has been a growing need to clarify the roles of bailiffs and deputy marshals in Clark County because historically these positions were appointed by judges or justices of the peace and served at their pleasure. In the modern era, they have been selected more—like we see other law enforcement officers selected—into a general pool of POST-certified individuals who are able to provide the safety and security that is needed in a

courthouse, like the Eighth Judicial District has at the [Clark County] Regional Justice Center.

In addition, recent legal precedents have highlighted the distinction between state and local government employees, emphasizing that local executive department employees are not part of the State Executive Department. The distinction is crucial as it impacts how we manage personnel within the judiciary.

The Nevada Supreme Court has also underscored that the separation of powers doctrine primarily applies to state government, not local government. This bill seeks to align those roles with modern governance structures, ensuring the judiciary maintains its autonomy. I think the best way to understand what this looks like in practical perspective is to think about the way that we interact with our legislative assistants here in the Legislature. Our legislative assistants generally are not directly hired and fired by us. We do not set their hours, we do not dock them pay, we do not discipline them, and we also do not set the standards for their performance. However, every legislative assistant is assigned to an elected member of the Legislature individually. There really is not much question about who runs the day-to-day operations within their own office. The legislative assistant works hand in hand with that Legislator to provide a service that is necessary for the functioning of the office.

It is similar with judges. Every judge has their own bailiff or deputy marshal—in Las Vegas at this point, I think they are all deputy marshals—who runs the courtroom for them and maintains safety and security in the courtroom. The issue right now is that there is a blurred line between who is actually the employer of that deputy marshal. This extends to whether they are employed by the individual judge, whether that individual judge would therefore have the ability to hire and fire their marshal or whether the marshals are county employees who would develop their contracts with the county—for whom a senior marshal or a chief marshal would set the standards of their performance by doing things like performance reviews and taking care of any disciplinary action, even though every deputy marshal would continue to be assigned to one individual court and continue to work side by side with one particular judge to ensure order and security within that particular courtroom.

I will just summarize the provisions of S.B. 450 before I turn it over to Mr. Hawkes, who is a deputy marshal in the Eighth Judicial District and can

help explain a little bit more of the history and the need for the bill. The bill does five main things. First, it provides that the bailiffs and deputy marshals are to be considered local and government employees in counties with a population of 700,000 or more. That's just a very clear policy statement indicating that they are county employees and are not employed by any other governmental or nongovernmental agency. Secondly, the bill establishes provisions for assigning the bailiffs and deputy marshals. This replaces the current system where they are technically appointed by a judge or a justice of the peace. Going back to my analogy of the Legislature, it is more akin to our system where they are assigned to a particular office or a particular department, but that individual judge does not take any kind of formal action to appoint a specific deputy bailiff or marshal.

The third section is an important point. The bill removes the requirement for deputy marshals to comply with duties prescribed by judicial officers. Essentially, this ensures that the standards of performance are not set by a judge, but they are set by marshals. They are set by a chief marshal who understands the law enforcement needs in a unique place like a courthouse. It should not be that marshals are having to look to judges to make decisions about how to secure a courtroom, how to properly assess threats and how to handle disruptive people in a courtroom.

Certainly, there is room for a marshal and a judge to work together to understand the particular needs of that courtroom, but in order to preserve our public safety, it is really important that we have law enforcement officers and POST-certified chief marshals setting forth the requirements and the job responsibilities of the deputy marshal or the bailiff.

The section of the bill which strikes the language saying that the marshal complies with duties prescribed by the judicial officer is not intended to suggest that they do not work directly with the judge, but it is intended to clarify that we are not going to put the onus on judges to establish security protocol for their own courtrooms. That is outside of a judge's job. A judge should be able to walk in on the first day that they serve, sit on the bench and know that whoever is standing in the back of their courtroom—that deputy marshal has been properly trained, certified and follows a certain code of conduct in order to keep order and security within the courtroom. That should be the marshal or the bailiff's duty, and that should be both centralized and uniform across every courtroom within a particular courthouse.

The fourth thing that the bill does is just modernization. For one, it authorizes bailiffs and deputy marshals to provide service, so if you have ever seen a movie where somebody slaps a piece of paper down and says "you have been served" to suggest that someone else is being sued—that's what we are talking about. It actually is an important function to be able to ensure that individuals who are being called into court are properly advised of that. This modernizes the language in this section of the *Nevada Revised Statutes* (NRS) to ensure that deputy marshals can effectuate service.

The last thing that this bill does is that it removes the bond requirement for marshals and bailiffs. When the State Constitution was first written and the first bailiffs were being hired back at the turn of the century, we used to require that they would put down $100 of bond when they were first hired as the marshal in order to ensure that they maintain some kind of impartiality. However, it is an antiquated requirement to have employees placing bonds in order to be able to take their posts and fulfill their job duties. As a result, the bill simply removes that requirement. I would now like to turn it over to Deputy Marshal Hawkes.

RANDY HAWKES (Clark County Deputy Marshals Association):
Senator Scheible presented the bill very well. There's not much more I could add to it other than give you a little history of the deputy sheriff bailiffs. In 2007, it changed to deputy marshals with A.B. No. 139 of the 74th Session. We think it was an oversight at that time that our employer was not solidified so that we have not been in limbo all this time. It would have given us the opportunity to then set the standard across every courtroom and every facility that we service. We have the Greystone Building, Family Court and the Juvenile Justice Facility—we cover that when they do exchanges and other things on the weekend. Also, we cover the Regional Justice Center and all the outlying justice courts.

The changes of this bill would then give us an opportunity to make sure that we have a standard across the board that is the same, so no matter which courtroom you walk into, as the officer protecting that courtroom and the public coming into it, the standard would be set so that you knew exactly what was going on. The judiciary has not appointed anybody under the statute.

Since 2007, we have had a pool of available officers that are POST-certified when they come to us or when we send them to the academy to become POST-certified. We have a pool of officers, and they appoint them to service of

the four corners of that courtroom. It is the same for myself; I am assigned to District Court [Department] 12 with District Judge Michelle Leavitt. I am assigned by the agency. She does not want an appointed marshal. She believes that everybody should be under the chief marshal so that we can set that standard and maintain it.

SENATOR ELLISON:
I know there are a lot of places here in the State that are not POST-certified. They do not have to be. I do not like that they are out there in the public, and they are serving people with papers—divorce or lawsuits or whatever—and since they are not POST-certified, they can't carry. I think that is a problem. I know you guys are just saying you are POST-certified so you can carry anywhere you go. However, some of the places in rural Nevada are not. Can you speak on that, or do you have any idea? To me, it seems like we are putting people in harm's way.

SENATOR SCHEIBLE:
I will try to address this question. I think that our service provisions in the NRS have a lot of different facets, and anybody can effectuate service who's over the age of 18, so developing new policies would be a little bit outside the scope of this bill—to ensure that people effectuating service in rural areas were allowed to carry while they did that. This is if you are talking about marshals in rural areas that are effectuating service but are not allowed to carry. I think that that would be a different policy proposal to change that rule.

SENATOR ELLISON:
I did not know if they are under marshal or just deputy servers. I do not know that, but I know that I have had a couple of them come to my office throughout the years and complain that sometimes people get really upset with them, and they have no protection whatsoever. It was just a question to ask because with the marshals that you guys have, they are POST-certified, so they can do anything.

MR. HAWKES:
Sir, you're correct. We have a provision in NRS for process servers. Prior to becoming a deputy marshal and a deputy sheriff, I was a deputy constable—worked for Bobby Groenauer at the Las Vegas Constable's Office. We were all POST-certified officers. We could go anywhere within Clark County and do any service. You are correct in the stance that there are process servers out there

who are not deputies, and they are not able to carry unless they have a CCW [conceal-carry weapon permit]. Those would just be simple process servers, not POST-certified peace officers.

VICE CHAIR FLORES:
We will now move into support testimony for S.B. 450.

TROYCE KRUMME (Las Vegas Metro Police Managers & Supervisors Association):
I am the chairman of Las Vegas [Metro] Police Managers and Supervisors Association. I would like to thank Senator Scheible for bringing this bill; I think it is important. I think this clears up the distinction regarding a potential violation of separation of powers.

Law enforcement has a responsibility to serve within the Executive Branch. Having the county marshals answering directly to—and under the guise of working for—the judiciary causes a lot of confusion within the state law, and I think this bill will do a lot to clean that up and have them placed where they should appropriately be.

JOHN ABEL (Las Vegas Police Protective Association):
Collective bargaining has proven to aid in workers' workplace issues, better pay and better workplace services. For that reason, we support the bill.

DAN GORDON (Nevada Police Union):
We fully support S.B. 450.

JASON LESHER (Washoe County Sheriff Deputies Association):
Mirroring the comments of our colleagues, I will just give that a ditto.

MICHAEL SANFT:
I am an attorney, and I am representing myself in support of S.B. 450. Just to give a little bit of a background, I have been practicing law in the State for 24 years. Over the course of my career, I have had many jury trials in the courthouse. Specifically, when you are dealing with jury trials, you are always constantly in court.

During the time period that I have tried my cases, one of the things I have noticed over time is that there has been an inconsistency on how each courtroom is conducted. This is an issue for two reasons. First of all, as a

matter of public policy and public safety, we have no clear standard of performance among the bailiffs that are there. This means the following: I have asked and spoken with bailiffs specifically about how they are reviewed in terms of their performance in each courtroom, and there's none. As a result, each bailiff is left to their own devices in each courtroom, and they are left to the direction of the judge to which they are in the courtroom for.

I think this bill relieves judges of the burden of having to make decisions with regard to security measures in their own courtroom. It allows judges to be judges and to do judges' duties. It also allows the trained security and marshals to do security duties. I think, as a result of this bill, we avoid circumstances like what happened with the District Judge Mary Kay Holthus, in which there was a clear mess-up in terms of security protocols, because there were no security protocols. I believe at the end of the day that this would be something that would serve our community here in Las Vegas in Clark County. As a result, I support S.B. 450.

VICE CHAIR FLORES:
We will now move to opposition to S.B. 450.

ANDRES MOSES (Eighth Judicial District Court):
We are here in opposition today to S.B. 450 for two primary reasons. The first reason is that we feel that this bill is premature. We currently have ongoing litigation with the Marshals Association. The case is currently pending before the Nevada Supreme Court. It has been fully briefed. We are awaiting scheduling an oral argument and then, hopefully, a decision. We have been overseeing the marshals since 2007 when the sheriff in Clark County was relieved from that duty, and we have invested a lot of resources and training in overseeing this group of employees who make it a safe environment for litigants, our staff and our judges.

The second reason is that we feel strongly that the courts should be responsible for their own security, and we feel that this is an issue that the courts have inherent authority over. We would certainly take any feedback regarding how the marshals should be managed or supervisor-trained.

The last thing I want to address is the collective bargaining component of this. Currently under [Eighth District] Court Rule 1.53, the marshals do have a framework to collectively bargain. If they wish to be recognized by the court,

we'd be happy to entertain and review that. Our management has always been open to that.

JEFF ROGAN (Clark County District Attorney's Office):
I just want to echo the things that Mr. Moses said. Since the decision in *City of Sparks v. Sparks Municipal Court*, the county has considered these deputy marshals to be employed and at the direction of the courts. Consistent with that ruling, we did enter into a memorandum of understanding with the courts—specifically with regard to their control over these deputy marshals. I do not think that there's really any confusion from the county's perspective as to who's in charge of these deputy marshals. If there are concerns about specific policies that are being applied or not applied to these marshals, that is the role of the chief judge of the Eighth Judicial District Court to resolve.

VICE CHAIR FLORES:
We will go ahead and close out the hearing on S.B. 450.

CHAIR SCHEIBLE:
I will open the hearing on S.B. 303.

SENATE BILL 303: Revises provisions relating to civil liability to persons using certain premises for recreational activity under certain circumstances. (BDR 3-1021)

SENATOR ROCHELLE T. NGUYEN (Senatorial District No. 3):
I am here to present S.B. 303. I also have my copresenter here, and he is probably best equipped to answer any legal questions and give you some more background. Just as a way of general background, I am going to talk about the statute that we are addressing here to discuss the state civil liability laws concerning individuals using certain types of private property for recreational activities under very specific conditions.

Recreational use statutes are designed to encourage landowners to make property available for public recreational activities by limiting their liability. In fact, our State's recreational use statute, NRS 41.510, was first enacted in 1963 as a part of a broader nationwide movement to protect landowners from liability when allowing free public access to their lands for recreational purposes such as hunting, fishing and hiking.

Over time, our State's recreational use statute has been interpreted and shaped by new legislation and key court decisions; this has resulted in a move away from the original intent of the law to where you now have local governments citing this statute meant to limit their liability when injuries occur at city parks. I think that it is important to look at that history of the statute because I think what it was meant to do has been distorted, and this is an attempt to bring this back in and give more clarity to the definition in statute—to allow for people to not have unlimited liability protections from things that they should be at fault in.

In this case, I am not going to get too much into some of the language of the bill, but in 1995, we can talk about *Boland v. Nevada Rock and Sand Company* [III Nev. 608, P.2d 988 (1995)]. It was the Nevada Supreme Court decision that further limited the application of NRS 41.510 to rural, semirural and nonresidential plot properties in excluded urban and residential areas. Later that year though, the Legislature amended this to apply to any premises, further expanding some of that liability and taking it out of the rural hunting, camping and hiking areas. They made it applicable to all our city jurisdictions.

However, we have seen increasing broadening of that language to the point that brings us here today and why we need this bill. The purpose of S.B. 303 is to return NRS 41.510 to its original intent. The statute as it currently stands shifts liability from governments and publicly accessible property owners to injured individuals. Urban areas have sidewalks, bike lanes and parks maintained by municipalities. As you will hear in some of the examples that are given by my copresenter, the expansion of this NRS shields local governments from liabilities even in cases of negligent maintenance such as broken playground equipment, defective lighting at crosswalks and poorly designed construction zones.

Injured pedestrians, parents of children at city parks, seniors and cyclists are left without recourse—even when it is clear that negligence contributed to their injuries. As interpreted by the Supreme Court and our district courts, there's no purpose to the way that this is now being interpreted beyond limiting accountability for negligence. With that, I will turn this over to Mr. Watkins to go through the proposed amended language and amendment on this bill and some further descriptions of what we are trying to accomplish.

JUSTIN WATKINS (Nevada Justice Association):
Another thing further necessitating this bill was an interpretation by the Supreme Court in 2024 in which the definition of any premise and recreational activity was so expansive so as to open the door for any activity anywhere in the State that could be deemed to be recreational at some point in time may extend liability immunities to both State and private actors. That is not to say that I am here to say that the Supreme Court got their decision wrong in *Abbott v. City of Henderson*. I think the decision was correct, but the language that was used in the interpretation of the language and the *dicta* that exists in that decision leaves a door open that I think this bill hopes to close and define exactly what we mean by recreational immunity.

I will start by saying that in this State, as in every state, there is sovereign immunity—meaning you can only sue the State or any of its political subdivisions if the State gives you permission to do so. In the State, there are situations in which the State does allow you to sue the State for its own negligence, but many different liability protections exist.

The first would be discretionary function immunity, which is that if the State is acting within the function as described in statute and uses its discretion, they are immune from liability for using that discretion. Secondarily, even if they are negligent, there are negligent liability caps on their damages currently at $200,000. I use that as a framework to go through how the *Abbott* decision is potentially confusing to injured people and litigants without some clarification.

In *Abbott*, a mother and her child were at a city park. The mother tripped, fell and broke her leg in an uneven part of the playground. In interpreting this statute, the Supreme Court said that her activity was considered picnicking under the recreational use statute as listed there but went beyond that to say that walking is a recreational activity. It also went beyond to say that the "any premises" language in the statute really does mean any premise anywhere and that the nonlimiting language in recreational activity is open to interpretation. As a result, one is left to wonder, if you are walking on a sidewalk going to and from work, are you recreating? If you are riding a bike to and from work or for work, are you recreating? If you are traveling to Las Vegas on vacation with your family, are you recreating? When you walk through a casino or on the sidewalk or a public roadway and you are injured through some hazardous condition, is the court going to determine that the parties are immune because you are recreating?

Rather than go through the language of this bill specifically, we have had some very productive conversations with the state jurisdictions, and it has shed some light on ways in which we can move forward and balance the interest of protecting the citizens of the State from injuries while also promoting the continued development and maintenance of recreational opportunities both for Nevadans and for people who travel here for the purpose of recreating.

I will begin by saying that if you look at [section 1,] subsection 1 of this bill, it is describing the original intent of this bill, as interpreted by the Supreme Court prior to 1995, which was that it was supposed to address rural, semirural and nonresidential areas. I think for the purposes of moving forward with some amendment that addresses and balances the concerns that I just discussed, we would be looking toward adding state entities and their political subdivisions for any land anywhere—that would be both urban, rural, semirural and nonresidential for premises that are used solely for the basis of recreational activity. This is not all state land, but it is state lands that are used solely for recreational purposes.

I want to be clear that we are also not intending to remove the immunity that currently exists under statute for private landowners in rural, semirural and nonresidential areas who are granting access to their lands for recreational activities for no fee. That was the original intent of the statute. It is a good public policy that should remain so that people have access to public lands for recreation by way of access of private lands. That immunity shall not extend to private for-profit enterprises and any contractor, vendor or supplier who provides services for those landowners. If you are in the business of creating recreational opportunities, then you should, as a professional, provide those in a safe manner, and if you fail to do so, [you should] be held accountable.

These immunities should not extend to private development or residential areas that are not state-owned. As part of the conversation with the state jurisdictions, we also think it is important to [note that]—you'll see in subsection 4 of this bill—we were removing the nonlimiting language of the definitions of recreational activity. This means that we were closing the list off to just those that were enumerated. We would open that back up.

The cities, states and counties are developing new recreational opportunities that are not in statute. An example of this would be pickleball and developing pickleball courts. We want to continue to promote the development and

maintenance of these opportunities, and we would also work with state entities to ensure that they have direct appeal rights in situations in which their immunity is not recognized at the district court level. This will be done so that they are not caught in litigation for years working their way toward an appeal only after trial has happened. That has been an issue that was not contemplated by this statute or this bill, but it has been brought to our attention through conversations.

Lastly, the immunity should not rise to the level of gross negligence or any willful, reckless or intentional conduct. This is simply immunity for negligence itself. As you guys are aware, the gross negligence standard is a very high standard that requires reckless conduct or borderline intentional conduct. I will extend apologies to some of the members who are here to oppose the bill. We have not gotten to the level of these conversations to resolve this into actual language yet. I had to walk through with the concepts of where we hope to get and then identify that language particularly.

SENATOR ELLISON:
But if this is the way it is—and you see that woman fell and broke her leg and sued—do you think that these smaller parks and trails in issues like this would just shut them down and close them off because of the liability that is out there?

MR. WATKINS:
As we are proposing to amend this language, the answer would be if those are nonprivate parks that are owned by the state, city, county or any municipality, there would not be any liability in that situation there. Immunity would remain specifically for the purposes of encouraging continued development.

SENATOR KRASNER:
I am just trying to understand it because we went from what it was, what it is going to be and then the *Abbott* case. Currently, does the law state that if a parent is with their child at a playground that is owned by the city and there's some big piece of metal sticking up on the slide, then the child goes down the slide and they cut their leg and they have to go to the hospital and get 40 stitches, that the city is not liable?

MR. WATKINS:
I am going to say you are correct in that the city would not be liable, but I am just going to put one clarifier on there. The facts would matter on that situation because that may rise to the level of gross negligence depending on what notice the city had of the condition and their failure to address that condition. If that rose to the level of recklessness, then then there would be no immunity protections—not currently under the law and not under this bill either.

SENATOR NGUYEN:
I just want to clarify some facts about the *Abbott* case. In September 2019, Kathryn Abbott had slipped while assisting her youngest child on a slide at a park in Henderson. There was a rubber surface called Poured-in-Place that surrounded the slide in the park playground. The sand adjacent was not raked to the level, so instead of a gradual drop off between the sand portion and the Poured-in-Place rubbery surface, it was a sharp 90-degree drop-off. The original drop-off was created when the original slide was replaced in 2012, so the edges were not beveled. There was no slope, so it had this very steep drop-off that led to this woman who was playing with her child to be injured, and her leg was fractured in multiple places.

She sued the City of Henderson for negligence. This was a case that did not necessarily rise to that level of gross negligence, but it rose to the level of negligence. The way that the Supreme Court interpreted this NRS was that they found with the City of Henderson that this was in fact a defense, so all her remedies were foreclosed from that.

Another example is Anthony Ozuna, who was killed while riding his bicycle on a busy Las Vegas street in a bicycle lane. He struck a traffic cone because the portion of the street including a marked bike lane was unlawfully or incorrectly closed off by traffic signs, cones and barricades. That wrongful death lawsuit was brought by that gentleman's estate. The court ruled in favor of the contractor based on the same interpretation of NRS 41.510. Obviously, what we are trying to do is get back to the point where in situations like that there are some protections for these people that are injured in areas where in any other circumstance you would assume that they would have the protections of the court; they would have the protections to be able to sue when there is negligence that may not rise to gross negligence, but obviously, there are circumstances that could have prevented the injuries that happened to these individuals.

Those are just two examples. I think we still have some work to figure out how we can thread that needle where we were before 1995 to where we are now. We are hoping to be able to tighten up that language so people in our rural communities that are hiking, biking and playing pickleball—even in the urban communities—are still under the original intent of the legislation. Also, we want to make sure that we are not precluding the situations like the two situations I described before where arguably those people should be able to get their day in court to have those kinds of issues addressed.

SENATOR HANSEN:
In your testimony, you are just saying you are going to put back in the strikeout "includes, but it is not limited to." Is that going back in? Is that what I understood?

MR. WATKINS:
That's correct.

SENATOR HANSEN:
That is good because there's a whole lot of recreational things that are obviously not listed there. The other question is: with all remedies that we just mentioned for the lady that broke her foot, did she have any private insurance or anything like that that you know of?

MR. WATKINS:
I was not the attorney on that case; I do not know the specifics.

SENATOR HANSEN:
That's another remedy that people can have. I got a real heartburn with some of this stuff because obviously, even with the current law, when the state or government agency or whatever is grossly negligent—for example, the example that Senator Krasner brought up where the city knowingly had some barbs sticking out on a slide and some poor kid cut his leg real severely—I have a hard time believing that if the city knew about that, they would not be considered grossly negligent.

When we are trying to thread the needle as Senator Nguyen mentioned, I am kind of wondering if we are not going too far with this because I can think of a thousand examples. A classic one would be if the city people are working on the sprinklers on the football field and then when they backfill around the

sprinkler thing, they leave a hole—which is very common. I have seen these many times. So if you are out there playing, you fall down, and you break your foot, is that going to be considered [gross negligence]? Currently, I think they would say that was a level of negligence, but was it gross negligence? I am just trying to see where that balance should be.

My last question is that this has been the law since 1995; is this the first case you guys have that you can bring up where somebody stuck their foot in a hole at the bottom of a slide that had the rubber rise? Are there other cases that would indicate there is a significant problem that needs to be corrected?

MR. WATKINS:
This is the first Supreme Court interpretation of this case in an urban area since 1995. That is the only way I can answer that question. There are district court opinions that have gone one way or the other, but this is the only direction we have from the Supreme Court. I just want to state that with the amended language that we are proposing to work out with the jurisdictions, the result in the *Abbott* case would not change. The result in the case of the biker on the roadway would change. The roadway is not used solely for recreational purposes. Roadways would still be protected; a park that is solely developed and maintained for recreational purposes would have immunity up until gross negligence. The gross negligence standard—in my 20 years of experience of litigating—is a very difficult standard to meet. It requires some level of actual notice and then an indifference of that known danger and failure to warn.

SENATOR HANSEN:
Well, the fact that for 30 years this is the first case that actually made it to the Supreme Court to make a decision would indicate there's not a huge problem with it. Secondly, regarding the cone issue, I am not familiar with that case. I was familiar with the one about the lady breaking her foot. The cone one is kind of a sensitive one because that is something we do all the time in private practice, right? We put cones out when we are going to be digging something up, and we are making sure nobody is accidentally going where we are going to be digging a hole. In this case, the court clearly found that the contractor, while he was negligent, [his actions] had not risen to the level of gross negligence.

Are you suggesting now that every contractor who may put cones up incorrectly and some poor kid runs into him on his bicycle, that will now be

negligence and will then fall as a liability on every single contractor in the State who uses safety cones?

MR. WATKINS:
My contention is that a contractor would be treated like every other for-profit private business in the State, and that is that if you are negligent, you are responsible for your actions.

SENATOR HANSEN:
I got it, but right now you have a gross negligence concept for recreational things—that is what we are addressing in the bill, right? In this case, a young man was riding his bicycle in a bike lane that would be considered recreational; the contractor—I do not know the details of the case—sounded like he had cones that were put up improperly. The kid then crashes his bike, and in a horrible situation, passed away. Is that correct? Therefore, there is a significantly raised bar there. Look man, if you caused somebody to die versus even hurting your foot in the hole—I think that raises the bar. But even in that situation because it was considered recreational, the court ruled that it was not gross negligence?

SENATOR NGUYEN:
The reason I bring that up is because I think that is a perfect example of a gross distortion of what this bill was meant to do. If you look at it, even with the *Abbott* decision, what our amendment does is it would not change that ruling, but it would potentially change this ruling. Right now, that construction company is taking advantage of a recreational park law that was never intended to be applied to a bike lane on a road. That is not recreating. That's not all of these things that are included in the statute right now like pickleball, hunting, fishing or trapping. This is someone on a public roadway in a bike lane, so all the normal laws that would apply to a negligent situation would apply to that construction company that is liable.

My argument would be that this law was never intended to protect private companies from error, and it is being interpreted that way now. That is why I think it is important to narrow this down; they are trying to take advantage of the same protections and liability protections that the City of Henderson would have at its park.

SENATOR HANSEN:
I got it. I am not sure since I do not know any of the facts of the case. It is interesting that it did go to a court, and even though you had a private party, they used this recreational statute. I do not have any of the details. I would say that I have a hard time believing the court—maybe the contractor was working as a subcontractor for the city in a certain situation and therefore the liability could theoretically pass through the contractor to the government entity.

I can see what you are trying to do here, but I am just kind of worried about weakening the gross negligence part of this statute. If we need some specific carveouts for private parties, I can see it. With the way this thing is worded, I think every municipality in the State has a huge spike in potential liabilities on things that currently they have—unless it is grossly negligent—protection.

MR. WATKINS:
Just to address your comment, Senator, the gross negligence standard is largely encompassed in statute currently. It describes any willful conduct which is a failure to warn or to make safe. If somebody were at a gross negligence standard today, I believe that a court would not find immunity protection. I will just say that we were clarifying the language to just include gross negligence, which is actually the standard that exists in governmental discretionary function immunity. We're just mirroring the language there. I do not think it makes a big shift in where the state's liability begins factually.

SENATOR HANSEN:
Okay. Once I see your amendment, maybe we can pick this up again. The problem is we are talking about a conceptual amendment that nobody's seen except you guys apparently.

CHAIR SCHEIBLE:
We will now move to testimony in support of S.B. 303.

DORA MARTINEZ (NEVADA DISABILITY ACTION COALITION):
Is this the Senate bill that Senator Nguyen is doing?

CHAIR SCHEIBLE:
I believe it is a committee bill that, yes, Senator Nguyen did present.

MS. MARTINEZ:
We wholeheartedly support [this bill]. We do use a lot of state parks. As some of you may know, I am blind, and some of my friends do use wheelchairs and some walkers and then we go out and do self-care at the park. We walk around and listen to birds. We wholeheartedly support this bill.

CHAIR SCHEIBLE:
We will now go to opposition testimony.

BRANDON KEMBLE (City of Henderson):
I want to start by saying we are here to testify about the bill as written. We appreciate and are looking forward to working with former Assemblymember Watkins, Senator Nguyen and other proponents to work toward those goals and those provisions that former Assemblyman Watkins mentioned, but we are just not there yet. We are here to talk about what the bill as written and what you have in front of you would do.

Senator Nguyen eloquently laid out the long history of the bill, and we will concede that the bill has been amended many times throughout history—each time to broaden the types of recreation activities and lands that are covered by those immunities. The only limitation that was adopted in a 1991 amendment was to make it clear that the intent of this statute is to encourage public recreation opportunities. The 1991 amendment made sure that private landowners could not exploit the statute for their profit goals.

This bill as written for the first time reduces the opportunities for public recreation. For that reason, the cities and counties from north to south Henderson, Reno, Sparks, Clark County, North Las Vegas and others are opposed to the bill. The purpose of the recreation land use protections is simple but essential. Past state legislatures, as well as other legislatures from around the country, have long operated under these principles. It is good to encourage the availability and development of recreational lands and activities for the public.

We understand that recreation and adventure come with inherent risks, but if landowners face lawsuits and liability from these inherent risks, they are then less able and less likely to make land available or provide recreational opportunities. These concepts are the same whether land is public or private, rural or urban. The trend across the country—this is just not our State—is

toward liberalizing these recreational use statutes to include more types of land and more types of recreational activities to broaden the shield of liability against lawsuits that would otherwise drain public resources.

Senate Bill 303 as written would remove urban areas and structures from its protections. More states are adapting to modern trends by broadening, not narrowing, the types of lands covered under the recreational use statute protections. Take the trend of providing protections for paved recreational trails in states like California that adopted Government Code section 831.4, which granted immunity for recreational trails, paved walkways and paths.

Other jurisdictions have responded to lawsuits that have limited their statutes by broadening them, not by narrowing them. In 1996, a Virginia court ruled that its recreational use statute did not apply to urban-improved lands. After suffering for two decades under increased litigation and liability, Virginia amended its recreational use statute—Virginia Code section 29.1-509—to include urban recreational lands, including parks and trails. It clarified that it protected both public and private entities.

More recently in 2024, following a lawsuit in Oregon where the Oregon Supreme Court ruled that an improved public trail was not protected by Oregon's recreational use statute, Oregon responded with Senate Bill 1576, clarifying that its recreational-use statute covered public and private entities, landowners, playgrounds and trails as well. There are more examples of states responding to lawsuits and court decisions that attempt to limit recreational protections like Connecticut, Pennsylvania and Rhode Island.

Rather than encouraging recreational paths, S.B. 303 as written asks the Legislature to endorse more paths for liability and lawsuits that probably do not make things safer but certainly impact the recreational opportunities and recreational evolution as they drive up the cost of dealing with reducing risk. For instance, lawsuits in Iowa led to a ban on sledding in all but two of Dubuque's 50 city parks. Last month in Cortland County, New York, officials removed all playground equipment from Dwyer Memorial Park in response to a lawsuit despite the county's belief that it had complied with all the safety standards for its equipment. In Chicago in the 1980s, following lawsuits and increased insurance premiums, Chicago simply tore down all its jungle gyms and slides greater than 6 feet tall.

Parks and recreation are the backbone of the City of Henderson. Our Henderson residents love our parks. I do not think there are many places the government earns 90 percent-plus approval from its residents. In Henderson, 92 percent of our residents love the quality and maintenance of our walking and biking trails. Ninety-two percent are happy with the quality of the youth recreation programs. Ninety-five percent rave about how we run, maintain and make our parks and aquatic facilities available. We have 74 world-class parks within a 10-minute walk of most of our residents. We have miles and miles of trails. We want all of our residents to have maximum access to our two-time National Gold Medal Award for Excellence [in Park and Recreation] and three-time CARPA [Commission for Accreditation of Park and Recreation Agencies]-certified parks and recreation system and facilities—whether they live in one of our rural preservation districts or overlooking Boulder Highway. This bill makes that harder and more expensive.

For instance, the city is currently planning an innovative adaptive-use park with a focus on ADA accessibility and a cutting-edge, ninja-warrior, obstacle-style park as well. If S.B. 303 passes, these types of projects will need to be reconsidered in light of an altered legal and liability landscape. Our residents want projects like these. They want splash pads, skate parks, dog parks, zip lines, climbing walls and all sorts of recreation that comes with inherent risks—risks that they are willing to take on that would be liability nightmares without the protection of our recreational use statutes.

I am sure Henderson residents are not the only ones who love their parks. All the cities and counties in our State want to provide parks and open spaces in forms that suit their residents. Survey the residents; I will wager you'll find that they love their parks and open spaces, and they want more of them because for most of them, their backyards are getting smaller while the cost of private recreation is only going up. Senate Bill 303 as written makes providing public access to recreation harder, more expensive and less likely to happen. The bill as written draws this distinction for the communities that need recreation the most—urban communities that do not have the ability to walk out in a field where a game of baseball can break out. They need intentional recreation from their municipalities.

We are opposed to S.B. 303 as written, but we are hopeful. We have had these discussions with [former] Assemblyman Watkins and other bill proponents about amendments, and we will keep that dialogue going for you. Jeff Rogan from

Clark County District Attorneys' Office is going to step through some of the technical effects and problems with the bill. Brendon Sendall from the City of Sparks is going to give you a view from a little bit closer to home. Nathan Ullyot, the Parks and Recreation Director from Reno, is going to discuss some more impacts of S.B. 303. I will turn it over to Mr. Rogan.

MR. ROGAN:
Even if you think that the recreational immunity statute should be reformed for some of the reasons that were presented by Mr. Watkins and Senator Nguyen, this bill is really not the way to do it. This bill instead creates unworkable and ambiguous standards that litigants, judges and justices of our appellate courts are going to have difficulty interpreting and applying to cases.

As it applies to local governments, I am talking about the definition on pages 3 and 4 about urban public infrastructure. That's the section of the bill that really undermines our ability to provide park services in our communities. This definition is very problematic because if you read it, it is very complicated and ambiguous. It tells us that if there is public land that is located in an urban area—which is defined as not rural, semirural or nonresidential—and it is supported by funds in whole or in part from our government and the premises have been improved for the primary purpose of allowing people to engage in recreational activity or allowing people to access nearby land for recreational purposes, transportation, daily living or employment or work-related purposes, then it loses the protection of our recreational immunity statute. I can say that as an attorney, this is a very complicated definition and is a fact-based definition. It would cause the court much confusion as to whether land falls within the protections of recreational immunity or it does not.

It is problematic because it does not define what we mean by rural, by semirural and by nonresidential. When is a land located in an urban area versus a semirural area? The bill does not tell us. At what density does an area transition from semirural to urban? Is it four dwelling units per acre or eight dwelling units per acre? We do not know. The bill does not tell us. What does it mean to be supported by public funds? If a city or a county gives a $10,000 grant to a nonprofit to build a $50 million recreation center, should that recreation center lose any immunities it has because of that one $10,000 donation that's just a splash in the entire cost of that recreation center? It is unclear from this bill but presumably so.

The bill does not give us the answers to these questions, which means it is left up to our courts, and our courts throughout the State will come to different conclusions. You heard from the bill proponents that this is supposed to be a way to provide uniformity throughout the State. It will do exactly the opposite.

Let me give you a couple of examples of why. In Clark County, we have our beautiful Wetlands Park, and our park sits on that urban-to-suburban divide. To the west of Wetlands Park is a typical suburban neighborhood, and to the east of Wetlands Park is open desert. Under this statute, do you know whether Wetlands Park is in an urban community, a semirural community or somewhere else? I think judges and lawyers could come to different conclusions, and that is a huge problem with this bill. Additionally, a lot of our trails run through many different types of communities. Some would consider them rural; some would consider them urban. Does that mean that parts of our trails are protected by recreational immunity and parts are not? We do not know. The bill does not tell us.

So why is that bad? Well, immunities are supposed to be very simple to apply. Immunities are not simply defenses from liability. They're supposed to prevent a lawsuit from being filed in the first place. They're supposed to be easy to understand so that judges and litigants know whether they should bring a claim or not bring a claim. Right now, a recreational immunity statute is very simple. What are the premises that this injury took place on? Was the person engaging in a recreational activity as defined in the statute? That's very simple, and that is why motions to dismiss are either granted or denied at an early stage based upon those very two straightforward questions.

With this definition of urban public infrastructure, we lose that simplicity and now judges will throw their hands up and say, “Parties, you need to figure this out through the discovery process or in fact at trial. We will let a jury decide,” and by that point, we have lost the purposes of the immunity in the first place.

The second reason that we did not like this bill was the closed list of recreational activities, but we have heard today that the trial attorneys and the proponent are willing to amend that through our conversations to remove that, so I will not go into it with great detail.

But in sum, I think that this bill, based upon its definitions and its language, creates more problems than provides solutions. As my colleague from the City

of Sparks will now tell you, if passed, this bill will also cause our local jurisdictions to reconsider what types of recreational activities should be provided to our constituents and your constituents.

BRANDON SENDALL (CITY OF SPARKS):
I am a senior assistant city attorney from the City of Sparks. I think we are all familiar with what has happened with the insurance industry over the last few years. Even on our personal auto insurance, homeowners' insurance, renters insurance, rates are drastically increasing. The same is true for government entities. The City [of Sparks] in the last couple of years has had a lot of difficulty getting reasonable and affordable insurance coverage. With what this bill does as presented, there are very real conversations going on about shutting down certain public facilities—many parks and trails. There have been discussions about the trail system—the Tahoe-Pyramid Trail system, the walkway around the Sparks Marina and Golden Eagle Regional Park.

At the risk of spilling into Assembly Joint Resolution 1, the property tax issues and the structural funding issues in the State, it has been no secret—especially up north—that local governments are not doing well right now, especially within Washoe County because of our geographic limitations on growth. Right now as we speak, our mayor, city council, city manager's office, city attorney and all of our department heads are in a workshop trying to figure out how to deal with the structural deficit. They are doing this for many reasons—one of which is the PERS increase—but it is just stagnating revenues at this point without significant growth.

ASSEMBLY JOINT RESOLUTION 1: Proposes to amend the Nevada Constitution to revise certain provisions relating to property taxes. (BDR C-185)

As a reminder for context, we are in a Dillon's Rule state where cities do not have the power to act unless the State has given them that authority. Specifically, cities cannot raise taxes, so we have the pot of money that is given to us under state law each fiscal year. But in that same context of stagnating revenues and decreased staffing—because I can tell you right now it has not been a secret—layoffs are happening, and the extents in which departments are being worked out right now looks like it is across the board, at least partially, and that includes public works maintenance and parks maintenance.

Now, that is not to say that we are just going to throw our hands up and not maintain parks, but we are dealing with a limited bucket of money in each fiscal year for ongoing maintenance. We're talking about a crash at a skate park and a sledding collision at a public park. I live off Wedge Parkway in south Reno. Those are popular hills in county parks. That would be a serious source of liability for the government entities.

Now, we understand the desire to want to make people injured whole, but it must be weighed against the acknowledgment that government entities are managing hundreds and thousands of acres of parks. One of the biggest complaints we get in Northern Nevada is the lack of flat fields for soccer, softball and whatever team sports. At what level do we need to shut down a field if there are gopher holes? If there are marmot holes? If a kid comes out with a shovel and starts digging a hole? It creates a lot of uncertainty, and the City of Sparks is very worried, to be blunt. It's being worked out right now for the City of Sparks, but I can't speak for the other government entities.

If this passes in its current form—and I appreciate that Mr. Watkins has brought up some amendments here—the City of Sparks may become uninsurable, and we are absolutely looking at closing public facilities.

SENATOR HANSEN:
The City of Sparks is near and dear to my heart since I am a native of the City of Sparks. I know you guys are facing a 10 percent budget deficit—I think I heard it was $18 million—and that is under the current law. So your testimony is that if in fact this law essentially eliminates the gross negligence statute, you guys are going to see a further escalation of insurances and the possibility from other testimony that you are going to see the need to shut down recreational areas such as playgrounds and slides where there is an enhanced possibility of any negligence now that the city could face a lawsuit. Is that correct?

MR. SENDALL:
Yes. Those conversations are definitely in place. Those conversations are happening. We are working out the fiscal year budget as we speak.

SENATOR HANSEN:
So in other words, what we are trying to do here could theoretically further eliminate opportunities for kids in the very areas we are talking about—to have recreational opportunities provided by the city—because the money will go to

insurance policies instead of going to help build parks and things like that. Correct?

MR. SENDALL:
Yes.

SENATOR HANSEN:
Has anybody from any of the municipalities approached an insurance carrier to ask, "If this law passes, what will our insurance rates do?"

MR. SENDALL:
Not yet, and that would be the next step. We would need to work with our risk management division and our insurance carrier to see the extent to how much this will affect it, whether it is an increase in deductibles and increase in premiums or just insurance companies withdrawing from the market—which is already happening.

SENATOR HANSEN:
One thing is for certain, you will not see a reduction in your insurance costs to maintain the same level of policy.

SENATOR ELLISON:
Thank you for your statements because I was worried about this, and I brought that up at the very beginning. What scares me is trails because if you get a bunch of kids on bicycles on trails and they wreck, then the liability is still going to go back on that city. Is that correct?

MR. SENDALL:
As submitted, yes, it would. As Mr. Kemble said, we are concerned especially with trails and grass fields because … I lost my train of thought. But yes.

SENATOR ELLISON:
I know this is not in your area, but we have got several bills that are looking at trails which are going to be up in the Tahoe area—that could affect them also. They are pretty long trails; they are planning on doing walking and biking and that kind of stuff out there. Wouldn't that happen there too?

MR. SENDALL:
Yes, it is a big concern for us.

CHAIR SCHEIBLE:
I just wanted to clarify for the City of Sparks about the projected costs. Do you have an estimate for how much this would increase insurance premiums? Have you done a look back for the last ten years and looked at how many lawsuits you would have had to pay out if this had been the law at the time?

MR. SENDALL:
No, it is hard to know what lawsuits would have been filed that weren't. We have not had that conversation yet with our insurance carrier. I believe this bill just came out about three or four weeks ago, and we are scrambling on the budget right now, but that would be a discussion very soon.

CHAIR SCHEIBLE:
So the budget problems remain whether or not this bill passes?

MR. SENDALL:
Yes, I think this would exacerbate the problem.

SENATOR LANGE:
What kind of schedule are the municipalities and upkeep for the parks on? I ask this because as I go around, I see new parks that look nice and beautiful. I see other parks that were built a while ago and have not had any repair done to them. How can we assess whether these lawsuits are happening because there has not been a regular schedule of repairing parks? As we repair our homes and keep them nice, parks need the same kind of care.

MR. KEMBLE:
The maintenance schedules will vary by jurisdictions and who can afford different levels of maintenance. It's so broad that I could not really tell you. In the City of Henderson, we have a number of maintenance coordinators assigned to each park. There are usually daily visits to each of our parks in Henderson. In Henderson, we are a jurisdiction that is able to focus at this point on parks, but those costs are rising, and it will become more difficult to comply with those schedules. There are different schedules for different folks based on what … [unintelligible statement] … and focus are.

SENATOR LANGE:
In reference to this bill, I would think if a municipality were building parks, they build the upkeep it is going to take to keep those parks in good shape into their budget so we have the least opportunity.

Kids are kids in parks, so there are going to be things that happen, but I just think that if we can't maintain the parks, then we should not build as many.

MR. KEMBLE:
Regarding this bill, we do that with budgets. We do try to forecast the cost for maintenance for those parks, but it is difficult to forecast how a bill like this might affect that. If we go in and allocate an amount for maintenance in the park, a $200,000 or $400,000 lawsuit would absolutely blow away the cost that we apply to the maintenance of that park.

SENATOR ELLISON:
That brings up a good, valid question because usually the planning commissions dictate or direct developers to put in parks. That creates another problem of its own because in Elko, if you are putting a subdivision in, they'll make you put in some kind of park or recreational area that is going to create another burden back for you guys as you work. Is that not true? I know that happened outside Elko. I know that for a fact.

MR. KEMBLE:
Through all kinds of development requirements, agreements, city plans, those types of parks are required. The developers sometimes take on the cost of building those parks, but it is usually left to the jurisdictions to maintain those. We can dictate the standards, and we can have the park built, but it is our [responsibility] to maintain going forward in most cases.

CHAIR SCHEIBLE:
I wanted to clarify with everybody in opposition. I wanted to point out the phrasing in subsection [paragraph] (a) of subsection 5 on page 3, line 11 where the current version of the bill strikes out “includes, but is not limited to.” We heard in the presentation that the intent was to leave that in. Was it your understanding as you were analyzing the bill that it would still be “includes, but is not limited to” [with] those lists of recreational activities?

MR. SENDALL:
No. As we were preparing, our understanding was that was going to be restricted to a closed list.

MR. ROGAN:
When we were preparing for our opposition to this bill, we were under the understanding that it would close off that list, and as Mr. Watkins rightfully told you, that was a problem for us because recreational activities grow and change over time. The example that he used about pickleball is one of the ones that I used too. I think five years ago, I had never heard of pickleball, but now in Southern Nevada, it is the fastest growing recreational activity.

A closed list would mean that we would have to come back to you every two years with a whole new list of things that we think are recreational, and that is not something that we want to do, but in our conversations, they recognize that issue and were agreeable to removing that provision that would have closed the list of recreational activities.

NATHAN ULLYOT (City of Reno):
The benefits of parks in our community extend from economic, health, environmental and public safety. This bill as written provides some challenges to that, where, as my colleague from Sparks said, we may have to make decisions if it is put into place as written where we may be closing off portions of the Tahoe-Pyramid Trail that runs through the City of Reno just because it starts to go through an urban space. It is not designed to be a perfect flat trail all the way through.

There would be some difficult decisions to make there, along with our playgrounds where a portion of a playground structure may be broken, and it may require now that we would close off the entire section rather than just to close off that section that was damaged or broken in that short-term replacement. Parts for playgrounds can take six to nine months to fabricate since many of the playgrounds are outdated, and there are no parts just sitting on a shelf. It is very important to understand just what this could do. As my colleague from Sparks said, we have had about two to three weeks from my perspective to start preparing for this, but it was quite an alarming thing for us to consider.

CHRIS CRAFT (City of North Las Vegas):
First, North Las Vegas would echo the sentiments of my counterparts. The main concern is the impact this would have on our provision of services in the form of parks, which are of enormous importance to our residents. Increasing the city's liability for accidents which occur on our premises runs the risk of decreasing the amount of parks that we can maintain.

I also take issue with the proposed bill—and this is the version that was in front of us as opposed to the promised upcoming changes from Mr. Watkins, which give me some hope. The bill is sort of telling the Legislature what it meant when it recently revised NRS 41.510 to apply to any premises. That change was very clear as far as I was concerned, and the Nevada Supreme Court's plain reading of that was absolutely correct in *Abbott*. The change made makes sense. If the logic and the point of NRS 41.510 is to limit liability because there's no way a landowner can keep a close eye on everything in an open land area, that logic applies to large parks as well. That is a very real concern for the City of North Las Vegas. Our biggest park, Craig Ranch Regional Park, covers 170 acres. A lot of that is open areas for people to do pretty much whatever they want.

So changing the rules as proposed has a detrimental effect on further development of parks, as we are constantly trying to expand the size of Craig Ranch and other parks. If we are not liable for open land but we are for developed parks, we have to take that into account. Fewer parks are not a valid goal.

Finally, I would point out that the statute in its current form does not give us leave to simply ignore safety concerns in our parks. Mr. Watkins referenced NRS 41.032 regarding discretionary immunity. However, the more salient statute that we have to rely on is NRS 41.033 which states that we do not have any liability for dangerous conditions of which we did not have any actual prior notice. However, the reality is that we do inspect and maintain our parks as well as we can, and we are not relying on just our own people either. The city hires an outside consultant to basically comb through our premises, report findings and make recommendations which we follow.

In response to Senator Lange's query in that regard, we do this every year. Essentially, we are putting ourselves on notice and taking away our own liability, even though we have no duty to maintain or inspect. We do it anyway because it is the right thing to do. This approach also lines up with NRS 41.510

in its current form, which has an exception for immunity for willful or malicious actions.

We are already getting well under that bar of liability, and I think we are doing a very good job at it. That is why you have the lack of cases that are coming down which happened with accidents at parks. I would just close by saying that if the goal is safety, we are already meeting that goal with the statute in its current form and no further amendment is needed.

VINSON GUTHREAU (Nevada Association of Counties):
I do not need to belabor the point. I think the opposition presenters did a decent job. We are in opposition to the bill as written. I do know—as a litany of individuals have mentioned—that conversations are ongoing. We look forward to being able to not be opposed any longer, but as written, we are in opposition.

KELLY MCNEIL (Nevada League of Cities):
The League has concerns regarding the bill's potential impact on local governments. By expanding civil liability for landowners permitting public recreational use, S.B. 303 could increase the responsibility of municipalities that manage public lands—potentially leading to higher legal and financial burdens. The bill's provisions lack clarity in defining recreational activity and the scope of premises, which could result in inconsistent applications and challenges for municipalities and policy enforcement. Municipalities may need to allocate additional resources to monitor and maintain lands open for public recreation under the expanded liability—impacting our local governments, our local budgets and operations. For these reasons, the League is opposed to S.B. 303.

ISAAC HARDY (City of Boulder City; City of Mesquite):
We echo comments in opposition.

CHAIR SCHEIBLE:
Seeing no neutral testimony, I will now close the hearing on S.B. 303. I will now turn the gavel over to Vice Chair Flores.

VICE CHAIR FLORES:
I will now open up the hearing on S.B. 404.

SENATE BILL 404: Revises provisions relating to estates. (BDR 12-901)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
I am going to hand the presentation over to my incredibly capable intern Soraia Bohner.

SORAIA BOHNER (Intern, Senator Scheible):
Today, I will also be joined by Kenny Lee, who works in probate in Las Vegas, and Michaelle Rafferty, who is cochair of the Nevada State Bar Probate and Trust Legislative Committee.

Senate Bill 404 addresses a troubling pattern uncovered by a *Las Vegas Review-Journal* investigation published in January 2024. The investigation revealed how a small group of private administrators, real estate agents, attorneys and house flippers exploited vulnerabilities in Nevada's probate process, particularly in Clark County, to profit from the estates of deceased individuals, often without family involvement or knowledge. For years, these individuals routinely secured authority to manage probate cases and sell homes through a legal process designed for efficiency but lacking sufficient oversight. Under the independent administration option, home sales in probate can proceed without a judge's approval or any competitive bidding. In practice, this has created a system ripe for abuse, where properties are often sold in short sales, undervalued and transferred to insiders at a loss to the estate.

While current law prioritizes family members to administer probate cases, it also allows anyone legally qualified to step in, often before heirs are even aware proceedings have begun. As a result, families are left out and estates are depleted through under-market transactions.

Senate Bill 404 is about restoring fairness, transparency and integrity to the probate process. It aims to ensure that families are properly notified and given a real opportunity to manage the affairs of their loved ones and that independent administrators are subject to greater scrutiny. Probate should serve families, not facilitate private profit at their expense. This legislation closes critical loopholes while preserving efficiency for cases where heirs are in agreement.

Next, I would like to provide a brief section-by-section overview of this bill. Section 1 revises the qualifications for any person or persons legally qualified to serve as an administrator so that they may only serve if there is a finding of good cause based on evidence showing there was due diligence to find any living heir and proof of contact with any potential heirs identified. The person

seeking appointment must also submit a statement demonstrating their qualifications.

For section 2, I would ask that you refer to the amendment (Exhibit C) on NELIS or the one that has been provided to you. The amendment deletes the original language in the bill and instead requires that only a personal representative who is named in the will or as a person described in paragraphs (a) to (f) of subsection 1 of NRS 139.040 may be granted authority to administer an estate. This amendment aims to prevent specific parties from gaining independent administration in probate cases. While these parties could still serve as administrators, they would need court authority for certain actions like the sale of real property.

Finally, section 3 requires the court, when determining whether to revoke the authority of a personal representative, to give preference to any interested person based on the order of priority set forth in subsection 1 of NRS 139.040. I would also like to note that any of the amendments that were suggested are something that the author of the bill is accepting of. No grieving family should discover that a stranger has taken control of their loved one's estate, sold their home in secret and walked away with the profit.

This bill closes critical gaps in our state's probate system by balancing efficiency with accountability. It ensures that independent administration, while still available for cooperative families, no longer serves as a loophole for private profiteering at the expense of rightful heirs.

KENNY LEE (Lee Keifer & Park):
I will just take a quick minute to provide the practitioners' insight into what independent administration is and how it works. Probate is a unique area of the law; it is a little bit different from many other areas that you may be familiar with. In order to really understand what has happened and what may need to happen, it is critical to understand how independent administration works in the probate world.

To be clear, independent administration is intended to expedite the probate process in the State and reduce the administrative costs. The question must be asked: who is it intended for? Independent administration is targeted in situations where the family all gets along and there is no need to overcomplicate the probate process by causing unnecessary expense and delay. Who is it not

for? Independent administration is not for situations where there are disputes, contested issues or when there are unknown heirs. If there are unknown heirs and beneficiaries, independent administration does not work.

The primary benefit when independent administration is used in the probate arena is to sell real property in an efficient manner. There are other steps and actions that can be taken under independent administration, but by far and away, the primary benefit that is used is to sell real property.

In order to understand how that works, we must first understand what the normal process is. In probate, when a piece of real property is going to be sold, the personal representative—which is the term I will use; in the probate court, there are terms of executor administrator and special administrator—is defined as the term that encompasses all those fiduciary roles. For simplistic conversation, we will use the term personal representative. The personal representative must ask the probate commissioner who must petition to confirm the details of the sale and provide the contract price along with all other relevant information. At the hearing, the probate commissioner will ask if there are any other parties willing to offer more than the current contract price. Just to be clear, when there is a petition, a copy of that petition must be provided and the information must be provided to all interested parties including the heirs so they know what is going on. At the hearing when the commissioner asks for any parties that may be willing to offer more, the courtroom essentially becomes a mini auction. Sometimes, there are individuals who are willing to pay more, and sometimes there are not. This helps to ensure that the property is sold for the right price and that the estate is receiving the value that it should.

Independent administration can skip the court confirmation process where the petition is not required to be brought to the probate commissioner. This is done for a variety of purposes. Sometimes the heirs all feel the price is fair; they're all getting along; they are all communicating; they’re siblings; they’re cousins; they are close family members; and they're all doing just fine. They are not looking to squeeze every single possible penny out of a sale, and they just want to move forward in an efficient manner.

In such a case, they may desire to just move forward on the terms that the personal representative has obtained. Conversely, sometimes there's a specific buyer who may not even be the top dollar but because of other nonmonetary reasons, they want to sell the property; it is a close friend, family member or

someone who has ties to the property. Maybe there were some expressions of desire that this person could buy the property but for whatever reason, the family is good without a top dollar sales price, and so they do not care about having the court confirm it and ask for the overbid process.

However, the important thing to understand is that when there is an independent administration, the personal representative must give all the heirs and the beneficiaries notice regarding the details of the sale. The same details that would be presented in a petition to the court will be presented to the heirs in what we call a notice of proposed action. This notice of proposed action must be given to all the heirs. They will then have a certain period of time to either consent or object to the proposed action. If they do not object, they are deemed to have consented; and so it is a negative consent situation. However, because of the notice of proposed action, the personal representative—even through independent administration—does not have the ability to force an action on the heirs that they disagree with. They can't ram it down and unilaterally take action that may not benefit the estate; they have the right to object. Therefore, once the objection has been made, all power regarding independent administration for that particular issue is taken away and must be done under court oversight.

SENATOR SCHEIBLE:
There are two conceptual amendments proposed to the bill. I proposed one of them, and it is titled as S.B. 404 conceptual amendment, Exhibit C. There's also a conceptual amendment (Exhibit D) from the Probate and Trust Section of the Nevada State Bar. That is a friendly amendment. I would like Ms. Rafferty to present that amendment now.

MICHAELLE RAFFERTY (Legislative Committee, Probate and Trust Section, State Bar of Nevada):
This [State Bar's committee] is, for your information, a nonpartisan committee, a group of practitioners and lawyers in the community—both north and south statewide. There's no limitation on who can join the committee, and it is welcome to those of the entire Bar who wish to participate. We come together to review Probate and Trust Section materials, planners, administrators and litigators. As a result, it addresses all different aspects of the very important area of trust and estates which impacts all of the citizens of the State, especially those with smaller or simple estates that really have a huge concern relative to the cost of administration. It also addresses the time that it takes for

them to be able to administer their estates and trusts. Our proposals are designed to focus on those areas and help them regardless of the value of the estate. It encompasses all areas.

In amendment 1 that we have proposed, [we want to note that] in our State there is no breach of fiduciary statute of limitation in NRS. This creates a lot of questions when there have been allegations of a fiduciary breach. The proposal is to add a limitation in [subsection 4] to NRS 11.190 that would recognize that interested persons do have the ability to bring a breach claim and to indicate that the two-year statute for nonfraudulent breaches would apply. There is a longer statute that would apply if there are any allegations of fraud.

In addition, the proposal in our remaining amendments affect chapter [Title] 12 [of NRS]. The design here is to treat executors and administrators—who are both personal representatives of estates and trusts—similarly. Currently, we have a few areas within the code that are identified in the amendment provisions where perhaps there was an error oversight in the prior legislation where an executor might be required to file an inventory of the estate assets, but the administrator is not. We would want both to be able to be covered by those provisions.

In addition, we support the idea of addressing the priorities of who has the rights relative to independent administration but also the rights to be the administrator in an estate that does not have a will or an identified executor. Currently, we have a variety of priorities that are set forth in there. We have an old provision in there that does not treat the half-blood heirs the same as whole bloods. We would like to remove that and clean that up, making sure that errors are treated similarly within the statute.

The additional item that we noted in a number of the sections is that there are small estate provisions—that we allow for smaller estates that are under $300,000—to have a truncated process to move that through the probate instead of having to go through the long probate process. We like to increase those dollar amounts because of the cost of inflation for those particular families. For example, [we are] proposing that the summary administration at $300,000 would be increased to $500,000, and that the set-aside proceedings—where they do not have to go through a formal probate administration and only have one hearing—would be increased from $100,000 to up to $150,000 estates. Then, also for surviving spouses, they have the

ability to file an affidavit in those cases rather than go through probate, and that would also be increased from the current $100,000 up to $150,000.

In addition, the proposal also addresses several areas—four specifically—that affect Title 13 of NRS that covers the trusts and estates. Many of the provisions overlap because of the notice provisions that are set forth in Title 12 of NRS but apply to Title 13 of the NRS. The first one we have proposed for amendment here would affect the right of a fiduciary to reimburse the grantor for income taxes that are paid by the grantor on behalf of the trust. This is already in our statute, but it specifically requires that the trust instrument grant that authority. Across the nation, the trend has been to have the default rule—that the trustee has the ability to do that and only does not if for some reason the instrument prohibited that.

In addition, we have proposed amendment 22 to clarify the documentation that beneficiaries are entitled to receive in the event of a death so that their time to contest the instruments is very clear. Currently, it is 120 days, and we would keep the 120 days, but it is just clarifying the time frame of the instruments that would have to be given to those individuals—so that they know how to assert their rights if they choose to—when somebody amends their trust and estate.

Amendment 23 addresses what we all see right now as the number of trusts that are being brought to the State that are from outside the State. There's some lack of clarity as to when the state law would apply as opposed to the laws of another jurisdiction, and we would like to clarify that the administration of trust being administered here would be governed by the State's administrative law unless the trust specifically prohibits that. That will give our court clarity as well as the beneficiaries and the trustee.

Lastly, on amendment 24 we have proposed just to clarify that once a trustee gives an accounting and runs the time frame—which is currently 90 days for objections—that the trustee would be released of further liability to further account unless there's an objection that is made to that.

SENATOR ELLISON:
I am really happy that you raised it from $250,000 or $300,000. I did not know it went up to $300,000. I thought it was $250,000 and it went to $500,000. I get those calls all the time.

[The amendment] said breach claims; how long has that been in existing law right now? The reason I asked that is that somebody could go in later and add that to the books or whatever. Regarding the breach, you said there were breaches out there right now. Maybe I misunderstood that, but I think the breaches were important if somebody's out there trying to come in and take over. I believe in living trusts, and I got all our LLCs, but the living trust does not seem like that is changing at all, is it?

MS. RAFFERTY:
If the question is regarding breach of trust, we currently do not have a statute of limitation that even addresses the time to bring a claim for breach. That is what this is proposing to address so that we make sure it becomes clear that there is a time frame to bring your action and within that action. Now, that is just for ordinary breach. Of course, if there's any fraud or gross negligence—anything that goes beyond the ordinary breach—it is going to fall under the fraud statutes which are longer. For ordinary breach, there is currently no statute of limitations for a breach of fiduciary duty.

SENATOR ELLISON:
... [unintelligible statement] ...

MS. RAFFERTY:
This would only affect trusts because the breach of fiduciary duty on a trust would cover that. In an estate proceeding, [it would be] the same thing. That would cover those estate proceedings. This is for any sort of breach of fiduciary duty; it would add a specific provision recognizing the applicable statute of limitations. Again, this has been a source of a lot of litigation because there is no guidance right now; courts are left to interpret whether to apply a negligence standard or a fraud standard and what statute of limitations would be applicable. This will clarify what the time frame is and eliminate that question.

SENATOR ELLISON:
That clarifies a lot of information that I need to know when I get these calls or for personal reasons.

VICE CHAIR FLORES:
We will now invite those wishing to testify in support of S.B. 404 to please come forward.

JEFF LUSZEK (Legislative Committee, Probate and Trust Section, State Bar of Nevada):
I have nothing to say other than I support everything that Ms. Rafferty said toward our proposed amendment (Exhibit E) [in an executive summary, identifying each amendment as a section].

VICE CHAIR FLORES:
The committee has been sent two letters in opposition (Exhibit F). Seeing no one in opposition or neutral, and seeing no closing remarks from our presenters, we'll close out the hearing on S.B. 404.

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CHAIR SCHEIBLE:
Seeing no one coming to give public comment, we are adjourned at 2:57 p.m.

RESPECTFULLY SUBMITTED:

Timothy Gibbs,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 404	C	33	Soraia Bohner	Conceptual Amendment-Senator Melanie Scheible
S.B. 404	D	35	Probate and Trust Section, State Bar of Nevada	Proposed Amendments
S.B. 404	E	39	Jeff Luszeck	Proposed Amendment-Michaelle Rafferty
S.B. 404	F	39	Senator Edgar Flores	Two Letters in Opposition