

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
February 19, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:13 a.m. on Tuesday, February 19, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced 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 [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jason Frierson, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Wesley Duncan  
Assemblywoman Michele Fiore  
Assemblyman Ira Hansen  
Assemblyman Andrew Martin  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Olivia Diaz (excused)  
Assemblywoman Ellen B. Spiegel (excused)

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Karyn Werner, Committee Secretary  
Gariety Pruitt, Committee Assistant

**OTHERS PRESENT:**

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State  
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General  
Kevin Benson, Deputy Attorney General, Office of the Attorney General  
Nicole Lamboley, Chief Deputy, Office of the Secretary of State  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
Leslie Pittman, representing United Way of Southern Nevada  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; representing Washoe County Public Attorney's Association, and the Washoe School Principals' Association  
Karen Layne, President, Las Vegas Valley Humane Society  
Sam Lieberman, representing Easter Seals Nevada  
Elliot B. Karp, President & CEO, The Jewish Federation of Las Vegas  
Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15, and the Southern Nevada Building and Construction Trades Council  
Geoffrey Lawrence, Deputy Policy Director, Nevada Policy Research Institute, Las Vegas, Nevada  
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
Carole Vilaro, President, Nevada Taxpayers Association  
Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates  
Janine Hansen, representing Nevada Families for Freedom  
Lynn Chapman, representing Nevada Families for Freedom  
Mark Foxwell, Legislative Liaison, Knights of Columbus  
Richard Ziser, Chairman, Nevada Concerned Citizens, and Coalition for the Protection of Marriage  
Juanita Clark, representing Charleston Neighborhood Preservation  
Clara Andriola, Chief Executive Officer, American Red Cross  
Phil Johncock, Interim Executive Director, Alliance for Nevada Nonprofits  
Scott Swain, Partner, McDonald Carano Wilson LLP

**Chairman Frierson:**

[Roll was called. Committee protocol and rules were explained.] Today we have a presentation from the Office of the Secretary of State.

**Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:**

I am presenting a briefing of the Commercial Recordings Division of the Secretary of State Ross Miller's office ([Exhibit C](#)). This briefing is to help the new members, as well as the previous members, to understand what we do in the Office of the Secretary of State in the Commercial Recordings Division.

The Commercial Recordings Division is responsible for accepting, filing, and the placing of the public record of the organizational and amendatory document for entities formed, or qualified, pursuant to Title 7 of the *Nevada Revised Statutes* (NRS). These entities may be Nevada entities or foreign entities qualifying to do business in Nevada. These include: corporations, nonprofit corporations, limited liability companies, limited partnerships, and business trusts. The Division is also responsible for processing lien and financing statements under Article 9 of the Uniform Commercial Code (U.C.C.), the registration of trademarks, trade names, service marks, and rights of publicity. We also process the state video franchise filings. In October 2009 the Division took over the responsibility for administering the state business licenses.

The Division also accepts service of process, provides a "live" customer service hotline for those needing it, and filing assistance or information regarding Nevada entities. Our Copies Division provides customers with copies and certificates relating to entities currently on file, and those that have ever been on file with the Secretary of State.

In recent years, we have also been given the authority to investigate instances of forged or fraudulent filings and to correct the public record. More recently, we were given the authority to investigate those doing business in Nevada without filing or maintaining the proper formation documents, or without maintaining a state business license.

[Read from PowerPoint presentation ([Exhibit C](#)).]

In addition to the 282,000 Title 7 entities, there are another 39,000 holding just a state business license or certificate of exemption.

In fiscal year (FY) 2012, the Commercial Recordings Division generated over \$133 million in General Fund revenue. That is compared to the \$108 million in FY 2010, and \$129 million in FY 2011. Of the \$133 million generated,

nearly \$65 million is attributable to the state business license, with \$118 million over the biennium. We expect that approximately \$68 million will be generated just from the state business licenses with approximately \$65-\$68 million more generated from the rest of the Commercial Recordings' functions.

The Commercial Recordings Division does this with 60 staff in two offices; one located in Carson City and one in Las Vegas. In addition to the staff, we also provide online services for most of the filings we process, including the articles of incorporation; organization for domestic corporations and limited liability companies (LLC); initial, annual and amended lists of officers; name reservations; certificates of good standing; state business license applications; and U.C.C. filings.

Many online filings are processed by what is known as "Nevada SilverFlume," Nevada's business portal found at [www.nvsilverflume.gov](http://www.nvsilverflume.gov). What SilverFlume does is to consolidate forms and information necessary to start and run a Nevada company. It also allows LLCs forming in Nevada to utilize the Nevada Digital Operating Agreement, which aids in the creation of operating agreements allowing members of LLCs to digitally collaborate in the process of establishing mutually agreeable terms and defining governing rules. This is the first application of this type in the country.

Included in SilverFlume is the common business registration that allows businesses to enter information that may be used in determining registration requirements with other agencies. Those agencies can use that information for their purposes. There is an example of SilverFlume in your handout ([Exhibit C](#)). This will start the process.

Nevada has built a strong pro-business reputation through its business friendly laws, tax structure, and filing practices. As such, we are considered a top-ten filing state, second only to Delaware in per capita filings. The Commercial Recordings Division is highly regarded due to our knowledgeable and professional staff, our minimal turnaround times, and the overall efficiency of the Division. However, Nevada has also gained negative notoriety and has come under significant federal, international, and media scrutiny due to our ease of filing requirements, as well as some questionable practices of some registered agents and filing agents. Recently, Nevada was named in a Brigham Young University study as the easiest state in which a shell company may be created.

During this session, we are proposing legislation that will not only improve our efficiency, but also to address many of these issues that have been brought forth by these studies. It has been brought forth through federal and

international scrutiny. Senate Bill 60, which has been heard by colleagues in Senate Judiciary, addresses and prohibits certain activities, and adds provisions that will assist in investigations of noncompliant businesses and criminal investigations. This will help level the playing field and will protect legitimate Nevada businesses and those doing business with Nevada entities. In addition, you will hear testimony today on Assembly Bill 60.

**Chairman Frierson:**

You mentioned registered agents. I believe Assemblywoman Flores has a bill dealing with commercial registered agents. Is that bill, and we have already heard the bill here, an effort to address the problem that you mentioned regarding Nevada becoming known as a haven for bad actors, or questionable practices?

**Scott Anderson:**

That bill encompasses registered agents because they are document preparers and that bill addresses document preparers in general, anyone who is giving legal services. The registered agents happen to fall within that population. There were some concerns issued by the registered agents, and testimony from Secretary of State Miller with his concerns regarding some of the practices out there and the scrutiny that Nevada has come under. We feel that, not only do the provisions of S.B. 60 address these issues, but so does A.B. 74 that was heard last week.

**Chairman Frierson:**

Can you elaborate if you have information on the scrutiny that Nevada is facing on these issues, and from whom?

**Scott Anderson:**

Absolutely. It started in 2004 and 2005 with Senator Carl Levin, culminating in some Senate hearings of the Permanent Subcommittee on Investigations of the United States Committee on Homeland Security. I had the opportunity to testify at those hearings, mainly because Nevada, along with Delaware and now Wyoming, was coming under some significant federal and international scrutiny. Some international agencies stated that the entities created in Nevada under Nevada's minimal filing requirements, and the practices of some of the formation agents, could be used for unlawful purposes, including terrorist financing, drugs, and money laundering. We felt it necessary for us to move forward and address some of these issues.

**Chairman Frierson:**

Are we looking at any real consequences if we do not act to address some of those problems?

**Scott Anderson:**

If we do not address these problems, more than likely the federal government is going to pass legislation through the United States Senate. The issue that comes forth is that we are already trying to do things; we have provisions that have passed during the last several sessions that address many of these issues. However, most other states are not doing anything; they do not see this as a problem in their states. It creates an uneven playing field. As Nevada becomes more stringent, some of the other states are less stringent and, therefore, there could be flight of businesses to these other states. However, we feel that putting these provisions in place and making Nevada more legitimate makes us stronger and that much more attractive to the legitimate businesses that want to come to Nevada.

**Chairman Frierson:**

Have you seen any of the language that might be in a piece of legislation from Senator Levin?

**Scott Anderson:**

The main provisions are that the beneficial ownership information would be required to be collected by the Secretary of State's Office, or any other filing jurisdiction similar to the Secretary of State's Office. Most states do not have the resources. This would be a significant increase in filing, filing processes, and staffing. There has been difficulty in identifying what exactly a "beneficial owner" is, which is problematic. There has been resistance from the National Chamber of Commerce, International Association of Commercial Administrators, and others to have these provisions administered more by the Internal Revenue Service (IRS) or other agencies that may already have the information necessary to identify the beneficial owners.

**Assemblyman Hansen:**

There is a lot of talk about alleged criminal activity and that we are not catching the bad guys, but when I went through the bill I saw all of the registration requirements. They are all in line with the IRS forms that everyone has to fill out. Registration must include, without limitation, the exact name of the corporation as filed with the IRS. Are we not duplicating what the federal government is already doing in this case?

**Chairman Frierson:**

We are not on the bill yet. This is just a presentation.

**Assemblyman Ohrenschall:**

Regarding the business portal, I remember when Speaker Oceguera and the Secretary were working on that. It was hoped that it would lead to a lot of

investment in Nevada. What kind of traffic do you see on the business portal, and do you think it has brought about the investment that we were hoping for?

**Scott Anderson:**

As far as business filings in our office, all of our online filings are available through <nvsilverflume.gov>. Approximately 70 percent of the online filings are processed through them. We have had several hundred digital operating agreements formed using the portal as well. Granted, it is relatively new; it has only been in existence for about six months. We are still seeing utilization, and seeing the integration of other agencies into the portal, such as the Department of Taxation and the Department of Employment, Training, and Rehabilitation.

**Assemblyman Ohrenschall:**

You mentioned that 70 percent of digital filings are through Nevada SilverFlume, the portal. What percentage of the filings are digital versus the old paper?

**Scott Anderson:**

Overall, about 65 percent of the filings are digital. Of those, 60 percent went through Nevada SilverFlume, and the other 40 percent go through website direct access for both filings using "bots," our automated services, and are hitting our system directly. We are in the process of developing the business-to-government processes to allow those filings to go through SilverFlume.

**Assemblyman Hansen:**

What is the level of criminal activity that we are detecting now? Is there a consistent pattern where Nevada is being taken advantage of by shady operators? Do you screen that, or who does?

**Scott Anderson:**

We recently received the authority to deal with business entity compliance, as well as certain registered agent activities. As has been testified on previously, these reports have included any number of instances where a registered agent service has been used to create shell companies to evade taxes. Those are the things that we are going after. I could not give you an actual number of how many times this is happening. Due to the increased federal and media scrutiny, we are looking at this and addressing it. For example, the most recent Brigham Young University study showed Nevada at the very bottom of the states where it is most likely that a shell company could be formed for unlawful purposes because of the information that is provided.

**Assemblyman Hansen:**

Who is the enforcement mechanism on that?

**Scott Anderson:**

There was one instance in 2010 where a registered agent service, Powerpoint Management, was creating business entities mainly in China. We tried to serve process on them regarding the state business license. Ninety-nine percent of their entities were claiming the state business license exemption, including Powerpoint Management, which had offices in Las Vegas. When we went to serve this entity, the entity was closed. We could not serve process on it. There was a pile of mail in front of the door. We were able to fine them \$48,000, along with having them pay all the back fees and penalties associated with any of these entities. All of the entities were put into revocation. We do have a mechanism in place where we can address a number of these issues.

**Chairman Frierson:**

Are there any other questions? I see none. You stated, "We recently received the authority." Can you expand on how that occurred and by whom?

**Scott Anderson:**

We were given authority in the 2009 session, and we have been moving forward. We recently put into place some guidelines regarding business entity compliance. We are, in fact, in the process of hiring a new compliance investigator to investigate complaints of businesses coming into Nevada without proper registration. A lot of the complaints come in through competitors, such as "John down the street does not have the same business license that I am required to have. Would you take a look at that?" We also found a number of business segments that were failing to maintain a state business license. We are trying to level the playing field, to make sure anyone who is doing business in Nevada is properly registered, maintains a state business license, and keeps those documents up to date.

**Assemblyman Wheeler:**

Obviously there are laws in place now since you have an Enforcement Division fining people. Why would new laws, such as this one, enable you to catch more people? This seems like an enforcement problem to me, not a law problem.

**Chairman Frierson:**

Again, we are not to the bill yet. I would ask that questions pertaining to the bill wait until we present the bill. Many of them may be answered. Are there any more questions for Mr. Anderson regarding his presentation? I see none.



We will now move on to Assembly Bill 60 and open the hearing.

**Assembly Bill 60: Establishes requirements for solicitation of charitable contributions by nonprofit corporations and other charitable organizations. (BDR 7-217)**

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:**

Assembly Bill 60 is submitted for your consideration in partnership with the Office of the Secretary of State. The bill establishes certain requirements in the Articles of Incorporation for nonprofit corporations that intend to solicit charitable contributions in the state. It also requires solicitors to disclose whether their contribution is tax deductible. The purpose of this bill is to protect consumers against potential scams and to provide more transparency about the entities soliciting charitable contributions by requiring certain relevant information to be made public. [Read from Attorney General's support letter ([Exhibit D](#)).]

Today I am joined by Chief Deputy Secretary of State Nicole Lamboley and Senior Deputy Attorney General Kevin Benson who represents the Secretary of State's Office. They will provide you with a detailed section by section review of this bill.

**Kevin Benson, Deputy Attorney General, Office of the Attorney General:**

I represent the Secretary of State. As Mr. Kandt indicated, this bill essentially does two different things: the first is to provide more information as part of the annual filing requirements for corporations that intend to solicit charitable contributions in this state; and the second is the disclosure requirement on the solicitations themselves.

The purpose of this bill is to give consumers more information about these entities that are soliciting them. Americans are very generous. In 2011 alone, based on estimations from *The Chronicle of Philanthropy*, Nevadans gave \$951 million, almost a billion dollars, in charitable contributions. Overall, in America, the total is estimated to be about \$298 billion nationwide. We tend to open our hearts and our wallets, especially in times of disaster like Hurricane Katrina and Hurricane Sandy, and that is when you see an increase in solicitation as well. Most of these groups are legitimate and are operating for legitimate purposes, but not all of them. Unfortunately, you have probably heard about, or maybe even personally experienced, scammers who try to take advantage of people's willingness to give and to help out, especially in the wake of these types of disasters.

One of the purposes of A.B. 60 is to provide a little more information so that a donor who wants to give a contribution can go online and easily find basic information about the group. When the donor gets the solicitation, it will have more information to help facilitate him or her in finding that information. It will also have a disclosure showing whether that contribution is tax deductible.

One of the problems that we frequently run into is the notion that a nonprofit corporation is necessarily a charity. That is not the case. Anyone can set up a Nevada nonprofit corporation simply by filing through the business portal as Mr. Anderson presented earlier. Just because you are a Nevada nonprofit corporation does not mean you are a charity. That status is only conferred through the IRS. There are many types of nonprofit corporations that are not charities, which means that contributions to them are not tax deductible, but they are legitimate corporations. We have all heard of 501(c)(3) corporations; those are charities where contributions are tax deductible.

**Assemblywoman Fiore:**

Many times during presentations, I hear national numbers. Do you have Nevada numbers for us since we are not federal?

**Kevin Benson:**

As far as the amount of giving, that was the first number that I threw at you. It is estimated that \$951 million in charitable contributions were collected in 2011 alone. Ms. Lamboley has some additional information on how many nonprofits we have registered in Nevada.

**Chairman Frierson:**

So you are saying \$951 million in Nevada?

**Kevin Benson:**

Speaking of the distinction between nonprofit corporations and charities, there are many types of nonprofits that are legitimate organizations, for example, schools, sports teams, and different causes. However, they do not have 501(c)(3) status and contributions to them are not tax deductible. Most consumers do not understand that distinction and often give expecting their contribution to be tax deductible and they get quite a shock when they find out that it is not. That is one of the main purposes of the disclosure piece of this bill, to state clearly whether the contribution qualifies for a tax deduction.

**Assemblyman Martin:**

I am confused on part of your testimony. Normally, when a charitable organization sends out a solicitation, it clearly says on the bottom of the form, because it is an IRS regulation, that this organization is a 501(c)(3) and

accordingly your contribution is tax deductible. In the case of a sporting event or a dinner or something to that effect, it will go on to tell you how much of the contribution is not tax deductible. Does a Nevada nonprofit not have to follow the IRS standard? There is no exemption in the law that I am aware of. You make it sound like they can do what they want and are not subject to this regulation. There must be some registration requirement in this state.

**Kevin Benson:**

With regard to the first point, whether they are supposed to be following the IRS, yes, presumably they are. It seems to me that, potentially, many of them are not, because often solicitations go out that have no disclosure or disclaimer on them at all. This bill does something a little different in that it requires the statement to be there showing whether they are tax deductible. That means that those nonprofits that are 501(c)(4), for example, would have to disclose that the contribution is not tax deductible.

**Assemblyman Martin:**

If I were in a charitable organization and was going to do something mischievous, even though I was registered with the IRS, I would be far more worried about the IRS's response to any inappropriate statements or behaviors. They are really on top of this stuff. I have audited a number of nonprofits. I am wondering what the additional state regulations are going to add in terms of compliance. My experience is that the IRS will come down hard, heavy, and fast on nonprofits. Are you finding something different in your daily work experience?

**Nicole Lamboley, Chief Deputy, Office of the Secretary of State:**

As I walk you through the process, I will explain where we find the problems and, hopefully, it will address your question and concern. The state cannot enforce the IRS rules, but it is more complicated than that. We do not necessarily see the problems with the sophisticated nonprofit that operates not only in Nevada, but nationwide. They do follow the IRS rules. This does not correct a problem for them since they do file that disclosure. It is what happens when a Nevada nonprofit corporation is established.

Under *Nevada Revised Statutes* (NRS) Chapter 82, anyone can create a nonprofit by filing Articles of Incorporation and paying a \$50 fee. If you are an organization outside of the state, you can be a foreign qualified nonprofit. There are no rules when you file those formation documents. You provide the name of your corporation; a registered agent and an acceptance of appointment of registered agent; the name and address of the registered agent; the names and addresses of your board of directors or trustees; the purpose statement; and the name, address, and signature of the incorporator. That is all that is

required to file incorporation documents. Following that, you must file a list of your officers, and then file a list of your current officers annually. That is just a restatement of who those officers are. We do not collect any information about the type of nonprofit you intend to be under the IRS code. The distinction of a nonprofit is a state-created entity and in Nevada it is under Chapter 82 of the NRS. The IRS website will define entities under 501(c)(3) as a nonprofit. They have other distinctions, whether it be trusts, charitable organizations, religious organizations, et cetera. I believe there are 30-plus designations under 501(c)(3) status. Only the 501(c)(3) status is charitable.

What we find is when people solicit in Nevada, they have filed their articles of incorporation, got a charter that says they are a Nevada nonprofit corporation, and they use that to solicit funds from prospective donors. They make no statement about what their IRS status is. You do not need to have a 501(c)(3) to solicit. We are not trying to curb the practice of solicitation; we believe a nonprofit corporation has a right to solicit. We do want to inform prospective donors of what type of contribution they are giving. The neighborhood soccer group that raises money to travel or to pay for their uniforms may create a legal entity under Nevada law and can solicit funds. However, we get calls from businesses or individuals who supported that organization and when they asked for a letter for their tax records, they find out that their contribution did not qualify for a tax deduction under the IRS code. The organization did not do anything illegal, but to the donors nonprofit automatically meant charitable, and that is not accurate.

What we are trying to do with this law is to add additional information as part of the existing filing for these corporations. The first question would be if they intend to solicit charitable contributions. If the answer is "Yes," we are going to ask for their federal tax identification number, as well as their status with the IRS. What did they file for? Then we will ask for some additional information, such as what is the name of the entity in Nevada under which you intend to solicit. If you are an organization that has operations in the western states and you want to come to Nevada, but you want to change your name for some reason, we are going to ask you what your fictitious firm or doing-business-as name is. We will ask you for the name, address, and telephone number of your principal place of business. If you do not maintain an office in this state, who has custody of the financial records so we know who is behind the nonprofit organization should there be an issue? We will then ask for some additional financial information. The bill states that we can use the Form 990, which is the federal tax return. There are several distinctions in the Form 990: the long form, which a sophisticated major nonprofit might have to file; the EZ form; and the federal postcard that certain 501(c)(3) Nevada nonprofit organizations can file. What we intend to do is ask for some basic information and work with the

nonprofits in Nevada to determine what financial information would be beneficial to a prospective donor; what would help a donor know more about the organization.

Currently, there are 40 states that have charitable registries. Most of those are in the Office of the Attorney General. This is not a new proposal; it has been before the Legislature for several years in various forms, some more extensive. When we looked at this, we thought we could do something using an existing system. We do not need to create a new registry or database, or have additional filing requirements or forms. Nonprofits are already taxed with challenges of managing their organizations. They are out providing a service and do not want to spend their time completing more forms. That is why we structured this bill this way.

**Chairman Frierson:**

You mentioned that 40 states currently collect information. Of those 40 states, is the method and breadth of their collection similar to what is proposed in this bill?

**Nicole Lamboley:**

It is actually much more extensive and, in some cases, I would consider it more onerous. There is a multistate form that is about nine pages. I looked at it and decided that we do not want to go that route because that is not what we are attempting to do. We are attempting to give just a little more information on our existing public record.

**Chairman Frierson:**

Would you please provide the Committee with that form so we can see what other states may be doing?

**Nicole Lamboley:**

Certainly. I was going to give you some statistics on filings in our office.

**Assemblyman Hansen:**

If I gave money to a nonprofit and felt that there was a question whether it was tax deductible, I would go to the IRS. I am wondering where there is a hole that is not already plugged by the IRS rules and regulations. Everything I see is an IRS form, right down to the Form 990. All of this is already being done on the federal level from what I can tell. There is a much stronger enforcement factor with the IRS. I would be more intimidated by the IRS coming after me than the Secretary of State. What in here do you feel the IRS has missed?

**Nicole Lambolely:**

If it was a Nevada nonprofit that solicits without a 501(c)(3) IRS tax status, I do not think you would get much help from the IRS. They would say, "Not our jurisdiction; that is a Nevada issue." Unfortunately, we do not have any authority to assist the consumer who calls us. I can speak for the Secretary of State's Office, and we talk with the Attorney General's Office and bounce ideas back and forth, but neither of us have the jurisdiction or the ability in law to assist the customers who call. I can give you an example about Hurricane Katrina. Nonprofit organizations were created to raise money to assist victims, but we received a lot of calls that said they had given to this organization and now find out they are not a legitimate 501(c)(3) entity. That is why the American Red Cross often puts out messages to potential donors to verify to whom they are giving money. There are legitimate organizations that are not 501(c)(3) charitable organizations and they sometimes mislead the consumer.

**Assemblyman Hansen:**

I agree and that is interesting, but from the beginning of your process they are required to already be registered with the IRS. The form says to indicate the exact name the corporation is registered under with the IRS. The federal tax identification number is already the starting point for you. The corporation has already had to do that on the federal side.

**Nicole Lambolely:**

Yes, that would be true for those who want to put on the Nevada public record that they intend to solicit charitable contributions in this state. If they do not intend to solicit charitable contributions, they would just continue to file as they currently do.

We want to enhance the public record search. We want to add some fields on the search that the Nevada consumer can easily access to determine if the organization has filed an application or received its designation from the IRS as a 501(c)(3).

**Assemblyman Hansen:**

That is not on the IRS websites?

**Nicole Lambolely:**

Yes, you can go to the IRS website, but it is not always easy. I was trying to find some organizations and all I kept getting was a laundry list of organizations. The IRS currently says there are 4,681 tax exempt organizations that are eligible to receive tax deductible contributions in the State of Nevada. In our nonprofit database, we currently have 12,164 active domestic and foreign organizations.

That means there are approximately 7,500 entities in our records that may be soliciting contributions that appear to be tax deductible but are not. We have quite a number of nonprofit corporations. All totaled, our records show 27,000 nonprofit records that include active, defaulted, revoked, or permanently revoked organizations.

**Assemblyman Duncan:**

If section 6 says that the Secretary of State can basically investigate the solicitations of any entity, is the Secretary of State going to be using regulations or laws under the Internal Revenue Code or some other law? As a legal matter, do you see any preemption problems with that? Did you anticipate that, or think about those issues?

**Kevin Benson:**

We only have the jurisdiction to enforce Nevada statutes and regulations; therefore, we cannot enforce any potential breach in the IRS regulations. That is outside of our jurisdiction.

The purpose of section 6 is to give some investigative and enforcement authority to the Secretary of State's Office to enforce provisions of this bill specifically, and any regulations that are made pursuant to this bill.

**Assemblyman Duncan:**

Is there a law governing solicitations, or does that generate from this bill? If it is not in statute, have you started putting together the regulations to govern them? Will it mirror the IRS code? Is it in the works?

**Kevin Benson:**

Currently, there are some laws in the deceptive trade practices in Chapter 598 of NRS that deal with misleading solicitations. That currently is within the Attorney General's authority to investigate. This bill expands on those requirements, and gives that authority to the Secretary of State to investigate as well.

**Nicole Lamboley:**

If we get a complaint or someone calls about an organization and asks for more information, we can only tell them what is on the public record. We have no more information available to us, and we have to tell them that we do not have the authority to investigate. We bounce them over the Attorney General's Office to see if there is a deceptive trade practice occurring. I am not an attorney, so I cannot speak to what the elements are of determining something as a deceptive trade practice. We get calls from customers who are frustrated by our inability to know tax statuses. They can go to the IRS, but they often

think we should be able to tell them about the Nevada nonprofit operation. To bounce them to either another state agency or a federal agency only frustrates them more. It is unfortunate for the nonprofits that do operate legitimately.

**Assemblyman Duncan:**

I am curious as to what standards both the Attorney General's Office and the Secretary of State's Office anticipate using under section 6, subsection 1, paragraph (a) which says, "The purposes of the corporation are being carried out in accordance with the articles of incorporation or any other instrument setting forth the purposes of the corporation." We have received emails about this issue. When I read this, it looks like it gives very broad discretion. This appears to give the Secretary of State's Office and the Attorney General's Office very, very broad powers. What standards are you going to use to enforce that?

**Nicole Lamboley:**

Under Title 7, which is all of our statutes regarding entities formed in Nevada, you can state any lawful purpose for incorporating. I will defer to the Office of the Attorney General, but when we get complaints about corporations—whether nonprofit, an LLC, or a private corporation—we have to determine whether they really violated what the lawful purpose is. There would have to be some rules of practice adopted as to what authority and discretion we would have. That would be only one element of proceeding along with any investigation. As the agency that represents the Secretary of State and ultimately would prosecute any claims, the Attorney General's Office would advise us whether there was merit to the case. It is open to discretion, but you would have to determine what lawful purpose is under existing law.

**Kevin Benson:**

The most obvious example of not complying with your lawful purpose is where someone has set up a corporation, solicited some donations, and then pocketed the money. That is a simplistic example but we have received numerous complaints of exactly that happening. There was an organization called "Help Build Hope Haiti" that was ostensibly building housing in Haiti after the earthquake. You may have heard about it in the news, because he was recently indicted by the federal government for lying on his federal government grant application. As far as standards go, this would have to be brought and enforced in a civil action in court. Ordinarily, it is a preponderance of the evidence standard which, as the plaintiff, the state would have the burden of proof. The case would go before a judge, and the party would have all of his due process.



**Assemblyman Duncan:**

Although it can be filed as a civil action, the statute also says it can be used to investigate. Right now, as I read this, we have no parameters for the standards that will be used, not just to bring a civil action, but also to investigate. It is a legitimate concern that down the road a new Secretary of State can use this broad power in the statute to investigate different organizations. I do not know if there has been any discussion regarding tightening those parameters. I understand your examples, and I am not ascribing any malicious intent to the Secretary of State's Office, but I am just saying there are oftentimes unintended consequences to these bills. I hope we can have a dialogue about that. The investigative language in there troubles me.

**Kevin Benson:**

I appreciate that concern and we are certainly open to having that conversation with you. I want to note that the Secretary of State currently has investigative authority regarding business filings in general, particularly with regard to fraudulent filings in that office. Usually, that takes place following a written complaint that is signed by the complainant under penalty of perjury stating that this is what he knows has happened, and whether he would be willing to testify in a court of law if that is the case. We go through those complaints and many of them we do not take any action on. That is the starting step for those filings. I believe it would be something along those lines, but we are open to discussions.

**Assemblyman Hansen:**

My statement was on the Help Build Hope Haiti fund. Is that not funded by the federal government? When you find fraudulent actions, there are enforcement mechanisms already in place. I see this as duplication.

**Kevin Benson:**

The federal government's indictment was based on misuse of a federal grant, not the actual failure to utilize funds from the public for the purpose for which they were solicited.

**Nicole Lambole:**

We currently have a public entity search called "The Nevada Business Entity Search" that is a searchable database of all entities domiciled or qualified in the State of Nevada. This includes current Chapter 82 of NRS nonprofit corporations. We would expand the information on the public record through this bill so that individuals could look up a nonprofit corporation to determine what they have filed with our office.

There are a couple of amendments that we would like to address. Members of the Committee have talked about some of the enforcement provisions and why we feel those are important, as well as the disclosure. We are not interested in limiting the nonprofit sector in the state. People who create nonprofits provide great service to our constituents whether they provide social services, support arts and culture, education, sporting groups, or you name it. We do want to make sure we have a strong and vibrant nonprofit sector in our state and that our citizens are not duped by people who want to prey on their good-hearted nature.

**Kevin Benson:**

We have a few proposed amendments to this bill ([Exhibit E](#)). One regards section 5. The way the bill is currently drafted it speaks of a delinquency fee of \$50. This proposed amendment is to clarify that that is not intended to be a new fee. It is the existing late fee in current law. The proposed amendment would refer to that current statute, which is NRS 82.193.

The second amendment pertains to section 12 and the disclosures that are required. Currently, the bill reads that the disclosure would require a statement of whether the charitable organization or nonprofit corporation is tax exempt pursuant to the applicable IRS code. What we are looking at is whether the donation to the organization is tax deductible rather than whether the organization itself is tax exempt. As we discussed earlier, there are a lot of types of organizations that are tax exempt in the sense that the organization itself is exempt from income tax. These proposed amendments would change that to whether the donation may be tax deductible. It is a technical change to clarify that. That occurs in two places: section 12, subsections 1 and 3.

There are also some additional proposed amendments ([Exhibit F](#)). One amendment is to amend section 3 to define the term "solicit charitable contributions." This pulls the definition from the deceptive trade practice statutes in NRS Chapter 598 to define it as "any solicitation by mail, commercial carrier, telephone, facsimile, email, any other electronic devise, or face-to-face meeting." The term includes solicitations that are made from a location within the state, and those made from a location outside of the state to persons within the state. However, we are defining it by this amendment to exclude solicitations that are made to a total of fewer than 15 persons or persons who are related within the third degree of consanguinity or affinity to the officers, directors, trustees, and executive personnel of the corporation. The intent behind this proposed amendment is to exempt those private foundations that only solicit additional contributions from the founding family members of that foundation. It is also to exempt very small solicitations as well.

A similar amendment has also been made to section 12 of the bill in defining the term "charitable solicitation" similarly by adding "email" to the explicit modes it includes and by exempting the solicitations that are made to fewer than 15 persons or persons within the third degree of consanguinity or affinity.

**Chairman Frierson:**

Concerns have been raised. For example, if we are talking about foreign, or non-Nevada corporations, how do we enforce these provisions on them? Someone mentioned that he signed up for newsletters of organizations and immediately got an email response soliciting a contribution. How do we deal with that? How broad are you intending to reach?

**Nicole Lamboley:**

Under current law, anyone doing business and/or soliciting in Nevada and based in another state must be registered as a foreign qualified nonprofit. Working with our colleagues in other agencies throughout the country, we could exchange information. When we get a complaint about someone in this state, either a nonprofit or regular corporation, we often confer with the state they tell us they are doing business in to see if they are registered. Typically they are. We send them a letter indicating that, since they are conducting business in the state of Nevada, they need to be foreign qualified.

We do have regulation authority in this bill and, since these questions are valid, they would need to be looked at and best addressed through the regulatory process.

**Chairman Frierson:**

A corporation has a website where they can solicit or accept contributions. Is it typical that they would automatically register in every state, since they potentially could receive a contribution from anyone in any state?

**Nicole Lamboley:**

There is a difference in who initiates contact. I think the issue, as defined in this bill, is if your organization initiates the act of soliciting an individual. If an individual, on his own, goes to a website or makes a direct contribution to the organization without receiving any communication, he has initiated the process, so at that point it is up to him. We would not regulate that. This addresses those organizations that come into the state and actively solicit our residents.

**Chairman Frierson:**

I have an organization where I am not actively seeking contributions, but someone signs up for a newsletter and I have an auto response that says,

"Thank you for signing up for my newsletter. If you have an extra \$20, it would be a great help." What then?

**Nicole Lamboley:**

We would have to look at that, but the initiation was by the individual and he reached out, not the organization.

**Chairman Frierson:**

So what you are saying is the interaction with the nonprofit was initiated by someone reaching out to them, so it might not be covered under this proposal?

**Nicole Lamboley:**

Right.

**Chairman Frierson:**

I am looking at page 3 of the original bill, subsection 3, paragraph (k), where it says, "Any other information deemed necessary by the Secretary of State." What kind of information would be included in that catchall? Do we need that catchall?

**Nicole Lamboley:**

A lot of our corporation statutes have this language. Generally, if we determine a change in filing requirements is needed for whatever reason, we do that through the regulation process. For instance, since our forms were created prior to the popular use of email, we cannot put on the form that we need the email address without statute saying we can ask for that additional information. It would be for things like that.

**Chairman Frierson:**

On page 5, section 5, subsection 3, I have not seen a statutory provision that limited the review process to this extent. I wonder if that exists anywhere else. I am assuming that this was intended to limit litigation to the extent that it can. Does it exist anywhere else?

**Nicole Lamboley:**

I will defer that to the Attorney General's Office.

**Kevin Benson:**

I do not know if this exists in other statutes. I have not canvassed the statutes thoroughly to see if that same language exists in other statutes. I can do that and get back to the Committee if you like.

You are correct that the purpose of this provision is to limit litigation to the extent practicable, because we are talking about penalties for not filing the information before you do a solicitation. The intent is to get people in compliance. It may be that they did a solicitation, but did not realize they had to fill out this information. This allows them to complete the information rather than bring down the hammer. The intent is to streamline it and to fix it without extensive and ongoing litigation over a delinquency fee.

**Chairman Frierson:**

On pages 6 and 7 of the bill, I wonder if the intention is to have a process for an appeal of a decision beyond what seems to be apparent in the language. There seems to be the potential for loss of status and other things. Are you contemplating a process to appeal a decision to ensure a nonprofit that is trying to comply, or who misunderstood, has an opportunity to remedy the situation? I realize there are a couple of timelines, but it does not seem to me that there is a process to appeal.

**Kevin Benson:**

Are you referring to section 6? That is the section that deals with enforcement by the Secretary of State for issues where someone has violated the solicitation requirements. As I mentioned earlier, it would be brought through a civil action and would entail all of the usual moves to appeal.

**Chairman Frierson:**

Section 5 deals with the revocation of a charter. Will there be an opportunity to appeal the decision prior to revocation?

**Kevin Benson:**

There are provisions for judicial review under NRS Chapter 233B. There is also the ability to bring a corporation back into good standing after its charter has been put into default or revocation.

**Nicole Lambole:**

In Nevada law, an entity can bring itself back into full, good standing, and active status by paying the back fees and any reinstatement fees that may exist.

**Assemblyman Wheeler:**

In this law, you have some pretty unprecedented investigatory powers. Are you willing to put a trigger event to launch an investigation somewhere in this bill? From what I read, you can investigate any corporation that is registered. You could flip a coin to decide who you will go get. There is no trigger event for

you to launch an investigation of a corporation. Am I incorrect in my assumption, or are you willing to put a trigger event in through an amendment?

**Nicole Lamboley:**

I guess I would agree that there is no trigger event per se; however, there is no fiscal note attached to this, which means we are not creating a whole investigative unit to go out and audit. Our Securities Division can audit organizations for compliance with NRS Chapter 90 on a scheduled basis. This does not require a trigger event. However, what generally happens, and can happen in any of our statutes, the audits are all based on a complaint. When we learn of a potential violation, our procedure is to communicate with the person who has been alleged to have committed the violation. We do not have the staff or the resources to just go out.

**Assemblyman Wheeler:**

I understand that it is normally done by complaint. My question was, are you willing to put a trigger event in here? We may have a Secretary of State that is not as nice as the one we have now who wants to go out and investigate everyone. Once this is codified in law, it is codified in law, and those unintended consequences start. In my opinion, there needs to be a trigger event in this bill if it is to go through. It needs to say that the Secretary of State may not investigate unless a, b, c, and d happens; that makes sense to me.

**Nicole Lamboley:**

I certainly can take this back and discuss whether it should be based on a received complaint or something. I would be happy to consider that.

**Assemblyman Duncan:**

How will family charities and private charities be handled under this statute? Are they going to be subject to all of these things?

**Kevin Benson:**

I presented two amendments and that is the second one. It mainly pertains to private foundations. We have excluded people who are related within the third degree of consanguinity from the definition of solicitation of charitable contributions, along with foundations of 15 or fewer people. In that way, both family foundations and those between business partners who are not related by blood or marriage are excluded.

**Assemblyman Duncan:**

In section 6, page 6, line 17, how are we going to define "executive personnel"? I would like to know what you intend executive personnel to encompass. It looks pretty broad.

**Nicole Lamboley:**

Executive personnel could be anyone the corporation deems to be the person who manages the day-to-day functions. In some cases, they may not actually have an individual who is managing the day-to-day functions, but in an office any person on the staff might fit that executive personnel definition. We have discussed the term executive "director", but by limiting it to one term in statute, someone could say their title is not "director" so they would be exempt. That is something we can further define by regulation. We understand that many nonprofit organizations may not have an executive director technically, but they may have an office manager. It would be up to them if they have someone who fits that term. Depending on the size of the organization, they may choose to have more than one person.

**Chairman Frierson:**

I see no other questions. We will move to those in Carson City who want to testify in support of A.B. 60.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

We are in support of this legislation, because anything that would strengthen fundraising or encourage nonprofits to be more forthright in their representations would be much better. I do not know if this bill will do that. Under current statute there are provisions that telemarketing firms or solicitors can be prosecuted if there are deceitful representations. I am not sure that this bill will make that any stronger, but anything that we can do to make them more accountable would be better.

We currently have a problem with another group. There is another organization called the Nevada State Fire Fighters Association that represents the volunteer fire fighters, not the professionals. They play a significant role in the state, and we understand that. They do a large portion of their organization's fundraising in southern Nevada where there is a very limited number of volunteer fire fighters. They do not disclose that they are fundraising on behalf of volunteers. They represent that they are fundraising on behalf of fire fighters in general. I, in turn, get numerous calls from citizens and fire fighters asking if we are collecting money. We are not. We are forced to put an ad in the newspaper to state that we are not collecting money, and that we do not do telemarketing. We do not solicit contributions for our charitable organization.

They take advantage by being deceitful and not saying whom they collect for. They use a company called Xentel, which is a national fundraising company. They have been brought up on charges in numerous states for deceitful representation. They represent that they are fire fighters; that the money stays here and is used for local fire fighters when in reality it is not. Approximately 75 percent of the fundraising they do stays with the company; only 25 percent goes to the corporation that they are raising money for. We think this is deceitful. Anything you can do, including passing this bill, will be a better situation for us.

**Chairman Frierson:**

That corporation is a registered corporation, but is it your understanding that they are operating beyond the scope of what they should be?

**Rusty McAllister:**

I believe they are registered in many states and are based out of Florida. We believe they are not being forthright in their representation of who they represent.

**Chairman Frierson:**

Are there any more questions? I see none.

**Leslie Pittman, representing United Way of Southern Nevada:**

We are in full support of A.B. 60 with the recommended amendments. We believe the language in the bill provides greater transparency for Nevada donors through greater distinctions on 501 status, but also provides additional information that is easily obtainable on the Secretary of State's website. We also believe the enforcement mechanisms in the bill to go after the bad actors will bring greater credibility to both Nevada and its nonprofit community.

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; representing Washoe County Public Attorney's Association, and the Washoe School Principals' Association:**

We, too, are in full support of this legislation, along with the amendments for the same reasons as Mr. McAllister. For the last twenty-some-odd years, our organizations have solicited funds from senior citizens in the north. Law enforcement associations that are not very reputable in taking money from senior citizens would fall under what section 12 would do. This is deceptive trade practice. There are five items in the bill under section 12 that I saw that answered Mr. Wheeler's and my questions that dealt with a trigger. If you look at that section, you find that you have to give us the name of the organization, whether it is a 501(c)(3), and what the purpose of the charitable organization is.



If you do not fulfill those particular things, it does trigger the investigation, or it should.

We have had to make public statements and ask that no one contribute to these organizations; they are deceptive. Mr. McAllister gave Xentel credit for giving out \$0.25 on every \$1, but we do not get \$0.25. We may get a penny out of every dollar. That has been my experience over the years that I have done this. I think this bill will help; it is a start. It provides what we need to stop some of these deceptive practices and taking advantage of seniors in this community. I believe it is good legislation and I ask you to support the bill.

**Chairman Frierson:**

Are there any questions? Is there anyone else here to support A.B. 60? I see no one, so I will move down to Las Vegas. Is there anyone down there to testify in support of the bill?

**Karen Layne, President, Las Vegas Valley Humane Society:**

We are in support of this bill. There is a large number of animal welfare groups in Nevada. We are also seeing an influx of groups. We work very hard to resolve the animal overpopulation problem that exists in southern Nevada. What we are seeing now are the large numbers of groups coming in from California and Arizona bringing animals into the Valley. They are soliciting for animals that have been rescued from shelters, not always telling people that the animals were not rescued locally. Anything that can be done to resolve or clarify these issues and provide transparency is extremely important. The Las Vegas Valley Humane Society posts its Form 990 on its website, and makes any information available to people who contact us. We think that using someplace outside of Charity Navigator or GuideStar to provide information for charities in southern Nevada would be a good idea.

**Sam Lieberman, representing Easter Seals Nevada:**

As a long-term member of the nonprofit charitable community in southern Nevada, we support this measure and appreciate the diligence of the Committee and all involved.

**Elliot B. Karp, President & CEO, The Jewish Federation of Las Vegas:**

We enthusiastically endorse A.B. 60. We have had the pleasure of working with both the Office of the Secretary of State and the Office of the Attorney General in the drafting of this legislation. We are committed to effective, efficient, and transparent operations of all nonprofits to benefit our communities, and we believe A.B. 60 goes a long way in providing significant transparency for the donor public. We also believe this will help nonprofits become more collaborative and cooperative in serving our communities.

Anything we can do to improve the nonprofit standing in our state and help donors make informed, educated, and transparent decisions will help deliver social services and nonprofit services. We encourage the Committee to pass this legislation.

**Assemblyman Ohrenschall:**

Dr. Layne, do you have any specific examples of people raising money that was allegedly for the benefit of animal welfare societies, but was a sham and took charitable dollars away from organizations like yours?

**Karen Layne:**

We frequently get complaints. The unfortunate problem is that people do not distinguish between animal groups. They often equate one group with the other. People assume that the name "humane society" distinguishes that name, but there are several humane societies. That is our biggest issue. We have difficulty determining if a group is legitimate, or if they even exist.

**Chairman Frierson:**

Are there any questions? I see none. Is there anyone else to testify in Las Vegas? I see none, so we will come back up to Carson City and those who are going to testify in opposition to A.B. 60.

**Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15, and the Southern Nevada Building and Construction Trades Council:**

I initially signed in to support this legislation and did not intend to speak. We support the concept of what the Secretary of State's Office is trying to achieve. However, we also believe there are preemption issues that need to be addressed in the legislation. Labor organizations are governed by the Department of Labor and the Secretary of State. The state itself has very limited authority in what it can pursue against labor organizations related to its organizational status, its charter, et cetera, and has very limited authority in the penalty provisions that are contained in this proposed legislation.

Labor unions are not typically required to register as nonprofit organizations with the Secretary of State's Office. Ours are not and we engage in solicitations for nonprofit organizations. We have no issues with the requirements of the disclosures. I think they are appropriate and identify who we are, and what we are soliciting for. I do not think that is an issue. The Southern Nevada Building Trades Council holds an annual charitable fundraiser for Dollars Against Diabetes. My organization periodically does charitable fundraising for our own international union charity, the Painters and Allied Trades for Children's Hope.

We need to further define what a nonprofit corporation is and how it relates to this legislation.

**Chairman Frierson:**

Are there any questions for Mr. Mallory? I would invite you to speak to the Secretary of State about any ideas you have that might provide clarification.

**Geoffrey Lawrence, Deputy Policy Director, Nevada Policy Research Institute, Las Vegas, Nevada:**

There are a few items in here that I take issue with. One is in section 12, although I think it might have been addressed. The other issue that I have is in section 6, and I know there has been discussion about that. It centers on the investigatory and subpoena powers granted to the Secretary of State for nonprofits that may be operating outside of their articles of incorporation. For most nonprofits, the articles of incorporation are very broad statements about policy directives for the organization. There probably are not a lot of nonprofits operating outside of those broad statements. I am concerned about how these evaluations will take place without having some type of statutory criteria for the evaluations. Will they be applied arbitrarily? Not knowing who the Secretary of State may be in the future, is there a possibility that a legitimate nonprofit organization might be the subject of harassment under these provisions since the powers are not clear?

**Assemblyman Duncan:**

Do you have any examples that would set up criteria that might be helpful to the stakeholders of this bill?

**Geoff Lawrence:**

I do not have that yet, but I will think about it and get back to you. I am also concerned that nonprofits may make fraudulent claims. There are some solicitations that are already illegal and have criminal penalties attached to them. Going after a nonprofit for deceptive trade practices would be something new, and we need to explore that more.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:**

We are a nonprofit organization; a 501(c)(5). We are also affiliated with a 501(c)(3) organization that is duly registered as we are with the Secretary of State. We believe this legislation is unnecessary because of the requirements that we are obligated to fulfill under the IRS code. More government is not the solution for this particular situation. There needs to be greater emphasis on education. Consumers could be provided with public service messages that, when a solicitation is underway and donors are expecting to receive a tax deduction for their contribution, they can request

letters from the IRS indicating the solicitor's status as a 501(c) entity. The problems are going to be solved through an education program versus this type of legislation.

**Chairman Frierson:**

Thank you for offering a solution to the problem. The problem of folks not knowing whether their charitable contribution is tax deductible is one thing, but what about folks fundraising under a much broader cause than they are licensed to do. Do you have any thoughts on how to address that problem?

**Doug Busselman:**

One thing we need to make clear to the general public is the idea that, if they have questions about whom they are giving their money to, they probably should not be giving it to them. However, you cannot protect people from themselves in an ironclad way.

**Carole Vilardo, President, Nevada Taxpayers Association:**

I do not necessarily oppose the intent of the bill. I understand the need to have a mechanism that our citizens can feel comfortable with. I think the bill is overbearing. If you process the bill, I would like to make a suggestion. I have a concern about smaller charities that may not have a full-time Executive Director. It is conceivable to me that by sheer accident, not intent, that small group would not know about the provisions in this bill. Yet when I look at the bill on page 5, lines 15 through 30, particularly subsection 3 on lines 29 and 30, we wind up with judicial review, which can be a very expensive process for a very small group. The concern I have is that we do not have a due process provision that allows an appeal on another level and, if the bill is to be processed, it should be added. In NRS Chapter 233B, the beginning sections identify regulations and process fees that can be used to appeal. For example, if you mail something late to the Nevada Department of Taxation, they assess penalties and interest. You believe there were extenuating circumstances for its lateness and you would like to have the penalty removed. You can write a letter to the Department and it can either adjudicate at the director's level, or they can put it before the hearing officer. If you are not satisfied with the decision of the hearing officer, you can appeal to the Tax Commission. You can do this as an individual without an attorney. If you still do not like the decision, according to NRS Chapter 233B, you have a judicial review. But that becomes the very last step. I would urge you, if the bill is processed, that you create some type of due process provision that does not put you in court immediately.

**Chairman Frierson:**

I asked earlier about an appeal process. Is it your position that you are in opposition to the bill, but would be supportive with the changes you suggested?

**Carole Vilardo:**

I have some other suggested changes too. When more information is needed, add more lines to your forms; do not make a new form.

Next, I realize that it can be difficult to look things up on the IRS website, but I am sure we could get a link to the IRS website that could be put on the Secretary of State's website. When someone goes to the Secretary of State's website to get more information, you can give them the information you have, and then suggest they use the link to the IRS website and explain how to do so.

Those are my other suggestions. I have no problem with transparency. Everyone wants to be sure the money they are giving goes to the right cause or for the right purpose. I would probably support the bill after I see the amendments.

**Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates:**

We have both a 501(c)(3) and a 501(c)(4) organization under the IRS regulations, which require a distinct disclaimer. That is part of the IRS law, so we already have to tell donors to our different organizations if their contributions are tax deductible. I agree with the previous speakers; I understand the intent behind this bill. We have two very specific concerns we would like to see addressed if you move forward. Without these changes we would be in opposition to the bill. [See ([Exhibit G](#)).]

One concern deals with the area of investigations. Planned Parenthood organizations across the country have seen enthusiastic Secretaries of State, using legislation like this, investigate our health center operations far beyond any triggering event that might be reasonable and can only be described as harassment. If you are moving forward with this section—and I have discussed this change with the Attorney General's Office—we would like to see a change that only public information could be subpoenaed, not every possible book, document, memorandum, correspondence, agreement, record, and piece of paper in the office. Certainly, transparency and the right to public information is important; however, this is a very sweeping statement.

Because we run health centers and have Health Insurance Portability and Accountability Act (HIPAA) concerns, we would like to see an affirmative statement in the law that says nothing in this section would require a nonprofit organization to provide information or records that would violate the HIPAA laws. That is a federal law that would trump this law, but we do not want to end up defending our position. We would like to see that provision included.

There is an important sentence on page 7, section 8, line 31 of this bill that says, "In the discretion of the court, a judgment in a suit or action pursuant to this section may be a judgment against the responsible officers of the corporation." The way I read this sentence, a court could decide if the officers of the board of directors are financially liable for any judgment, penalty, fine, or fee against a nonprofit organization. This removes the protection for nonprofit board members from liability of the operations of the nonprofit organization. I would immediately resign from any nonprofit board I was on. I would also have an impossible time recruiting board members if they might be financially liable for the nonprofit organization. I believe nonprofit organizations provide protection for their volunteer board members. This would change the entire nonprofit board service experience. I do not know if that was the intent. I had a very quick conversation about this issue with the Attorney General, but did not get a resolution.

**Chairman Frierson:**

Are there any questions? I see none.

**Janine Hansen, representing Nevada Families for Freedom:**

We oppose this bill. Many of our objections have already been brought up, but I would like to point out a few of our other concerns. We heard from some large nonprofits today, but the greatest impact of this bill will be on the many smaller nonprofits. Since organizations such as 501(c)(4)'s that have less than \$50,000 in gross receipts do not have to file with the IRS, they would not have a Form 990 readily available to file with the Secretary of State. These filings become burdensome and difficult, especially when an organization is completely dependent on volunteers. Most nonprofits are doing well in their communities, but this will stifle them. I talked to our national attorney this morning and he said that, in some states, the cost of meeting all of the requirements often keep people from organizing. I think 501(c)'s are confusing and that is one of the problems with this bill.

**Chairman Frierson:**

You are going too fast. Would you go back to the last point about other types of 501(c)'s. What section were you referring to?

**Janine Hansen:**

It specifically mentions 501(c)(3)'s in this bill, then nonprofit corporations. They can be any of 32 different nonprofits. It is a bit confusing whether this applies specifically to 501(c)(3)'s or all 501(c) organizations. After listening to the testimony, I assume it applies to everyone. It is not clear in the bill.

Section 6 talks about the Secretary of State and investigating solicitation, relationships, and transactions to ascertain whether the purposes of the corporation are being carried out. There is no probable cause or wrongdoing. The Secretary of State, for any capricious or arbitrary reason, can determine that you are not politically correct or you are outside his comfort zone, so you may be the subject of harassment or investigation. I think this is very dangerous.

We know that the Supreme Court of Nevada has often stated that corporations do not lose their constitutional rights, because they represent individual people. We find in the *Nevada Constitution* in Article 1, section 18, information that would apply to section 6 of the bill, which says that they may subpoena witnesses, or require the production of any books, papers, correspondence, memorandum, agreements, or other documents or records by subpoena. It was already noted that it is extremely broad and they could subpoena anything. In the *Nevada Constitution*, Article 1, section 18 assumes the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. That is essentially denied in this bill. There is no protection whatsoever and that is of great concern. Not only are there no reasons stated for initiating an investigation, but they also can do it for whatever reason at whatever time they want. The Secretary of State can also subpoena not only the records of the corporation but, as I read this, also the records of individual members and directors. It is a great concern to me that this violates our basic liberties.

I am also very concerned about section 5, subsection 3, on page 5. It discusses the issue of judicial review. It almost precludes an individual from any kind of justice. It says on line 32 that "the court may reverse or modify an action of the Secretary of State only if the court finds that the Secretary of State lacked authority to take the action or that the amount of a civil penalty imposed by the Secretary of State is unconscionable under the circumstances." I have had significant experience with the arbitrary and capricious nature of the Secretary of State, not only this one, but others because I belong to a minor political party. I am significantly concerned that there is no justice here. You only receive justice if you have a lot of money, have an attorney, and an accountant, and can go to court to defend yourself. As you have stated, there is no appeal process in here whatsoever. There is no way to resolve things in advance, and there is no due process.

About ten years ago, the Assembly passed a bill that would have allowed for a *trial de novo* in the administrative courts. That is another place where many of the constitutional rights are denied. This does not even provide as much protection as an administrative court does. It simply allows the

Secretary of State to be the single arbitrator of all of these issues without any kind of appeal, protection, or constitutional protection for the corporation or the individual members who are officers of that corporation. It denies those basic foundational liberties that are so important in the United States of America. It makes the Secretary of State the judge, jury, and executioner. There is no separation of powers in this bill.

I also have concerns about section 8 making individual officers responsible financially for the actions of the corporation, and "executive personnel" being undefined. There are many questions regarding this bill.

I want to mention one other thing. The Supreme Court decision on *American Communications Association v. Douds*, 339 U.S. 382 (1950) said, "It is not the function of our government to keep the citizen from falling into error, it is the function of the citizen to keep the government from falling into error." In other words, we cannot protect them in everything they might make a mistake about. The reason I have come to oppose this bill today is because I believe this bill will be encouraging the government to fall into error, and to interfere with our constitutional liberties.

**Chairman Frierson:**

When we talk about unprecedented powers, if 40 other states are doing something more than what we are doing, I wonder if it really is that unprecedented. I am looking forward to getting the information about what the other states are doing. I believe they said the other states have this through the Attorney General's Office, but it is still being done.

**Janine Hansen:**

I have told my children just because everyone else is doing it does not mean it is the right thing.

**Chairman Frierson:**

I had a feeling that would be your response.

**Lynn Chapman, representing Nevada Families for Freedom:**

I am coming before you as a small group. We are all volunteers. We only have so much time, because we all have outside jobs, families, and other interests. I am concerned about the paperwork and all the other things that have been previously mentioned.

I want to bring up one point that I think is important. I am also the Poppy Chairman. Poppies are the budding poppies that are given out in return for a donation. The poppies are made by the veterans and hospital, and I have



to get them to the Reserve Officers' Training Corps kids from the high school who help us solicit the donations and give the poppies out to the people. I have to go to the police department before we can collect donations. I have to fill out paperwork to tell them who we are, et cetera, and give them all of that information, and a small fee. I am already doing that, and now I have to do it all every year for the Secretary of State. I think it is intrusive. This is a bad bill and I would ask you to vote no.

**Mark Foxwell, Legislative Liaison, Knights of Columbus:**

I represent the 41 councils and 15 different assemblies of the Knights of Columbus in Nevada. The Knights of Columbus is not a 501(c)(3); it is a 501(c)(8), called a fraternal services organization. I came here to see what this bill is trying to accomplish and how it is going to do it. I learned quite a bit this morning. What is not clear is how this bill will affect the Knights of Columbus in Nevada. We do not collect charitable contributions. If we did, they would not be tax deductible. We give charitable donations. We have had two of our attorneys look at the content of this bill as written and they think we are now going to become liable to the state for extensive reporting that we have never had to do before. We have to file IRS Form 990 because we are tax exempt, but we do not get tax deductible contributions, and that is the distinction. We have been doing our work for over 100 years and no one has ever complained about it. If this bill is passed as written, it will be a huge burden on all of us, especially if each individual council has to provide all of these different reports and filings. The burdens were already expressed by the two previous speakers. I am asking all of the members to oppose this bill. It incurs burdens on organizations like ours, and that is not the intent.

**Chairman Frierson:**

My reading of the bill says it applies to corporations that intend to solicit charitable contributions in the state. I do not believe it will apply to you, but I understand your concern. I will be asking a follow-up question along that line of the sponsors of the bill.

**Mark Foxwell:**

I read one line in there that said a charitable contribution under the terms of this legislation does not just mean a contribution; it means a tax deductible charitable contribution. I do not know why our lawyers think this is going to affect us.

**Chairman Frierson:**

Neither do I, but hopefully we will get some answers when we have the sponsors come back up.

Is there anyone else in Carson City who wants to testify in opposition of the bill? I see none, so we will go down to Las Vegas. If you would like to testify in opposition, please come forward.

**Richard Ziser, Chairman, Nevada Concerned Citizens, and Coalition for the Protection of Marriage:**

You have my written testimony ([Exhibit H](#)), which is relatively brief. Anything that I would cover has already been covered, so I will not belabor those issues. We strongly agree with Ms. Hansen and the comments made by Planned Parenthood. We do understand the concept of transparency and believe that it is needed. I think there are larger issues even within the larger organizations, which tend to be the organizations that are in support of this bill. Internal transparency is probably more concerning to me in terms of large salaries and the percentages of the funds that are actually going to solve the problems that the organization has been set up to do. That is not within the auspices of this bill, nor do I think it should be.

**Chairman Frierson:**

Are there any questions? I see none. There is one other person to testify.

**Juanita Clark, representing Charleston Neighborhood Preservation:**

You should have a copy of our testimony ([Exhibit I](#)). Within our testimony is a copy of two articles and sections from our *Nevada Constitution*, along with the *United States Constitution*. I will add that we have \$50 in our treasury and we do not solicit funds. I do not see this as unprecedented; other states do have something similar. On a nationwide basis, we see that there is an encouragement to discourage to the point of prevention. Things are being done to put government in charge instead of "we the people." We have great concern that we need to watch this. We do not want to go down the slippery slope even if other states do. We want to maintain our "we the people" representation.

**Chairman Frierson:**

Are there any questions? [There were none.] Is there anyone else in Las Vegas who wishes to testify in opposition? Seeing none, I will come back to Carson City for testimony in the neutral position.

**Clara Andriola, Chief Executive Officer, American Red Cross:**

We are taking a neutral position and would like to reserve an opportunity to work with the sponsor as the information is analyzed by general counsel.

**Phil Johncock, Interim Executive Director, Alliance for Nevada Nonprofits:**

We are also neutral on this, because we have not had a chance to speak with our members, nor do they understand the ramifications of this legislation. Last week we conducted a survey, and you have my testimony ([Exhibit J](#)). We conducted a survey of just 60 people and 38, or 63 percent, of them had not looked at the bill yet. Fourteen of them were neutral, six were against, and six were in support. We have been in contact with the Secretary of State and the Attorney General, and we have set up a teleconference for tomorrow to speak to our group to get their questions answered.

The testimony speaks to one of the concerns regarding communication. That is an issue in the nonprofit sector. Specifically, if this is passed, how will information be passed on to the nonprofits, especially the smaller ones? We know that 69 percent of the nonprofits in the state have budgets less than \$250,000, so we have quite a few people that this would affect. In June 2011 the IRS issued a list of 1,744 Nevada nonprofits whose federal tax exempt status had automatically been revoked by the IRS because they did not receive the notice that the IRS sent by mail. Our concerns have already been expressed to the Secretary of State and Attorney General's Office. We look forward to future discussions around how we can communicate to a group by mail that may not get the memo; specifically, the penalties that they could receive since they did not get the letter.

Most of the nonprofits have spoken up and have said that they initially resisted the additional reporting requirements, but now see that the reporting is minimal and mostly things that we are collecting already. It will go a long way towards eliminating the fraudulent practices that prey on people's generosity. After looking at it closer, the increased transparency can only help the nonprofit sector. There are some concerns that are starting to emerge from our group, so we look forward to exploring those with the Secretary of State and Attorney General, as well as with you if appropriate. We plan to have a statement by the end of this week that will give you more clarity about whether we will be for the bill.

**Chairman Frierson:**

I see no questions, so we will go down to Las Vegas for neutral testimony.

**Scott Swain, Partner, McDonald Carano Wilson LLP:**

I have had the opportunity to discuss some of the language of [A.B. 60](#) with Mr. Benson and Ms. Lamboley. I am sympathetic to the purpose of the bill in eliminating the bad actors who give Nevada nonprofits a bad name in the public eye. First, I want to mention that I am very much in favor of the amendment

that would exempt private foundations that solicit only among family members or within a small group of associates.

We represent other law firms in the state and large families who form private foundations here in this state because of our favorable business climate. Those foundations use our services sector, and our financial sector, like banking, and are a benefit to our economy. I believe this exemption would carve out that entity. These are not really the people we are concerned about since they do not solicit to the general public. I believe that is a very important part of this legislation.

There are other issues that I have discussed that have not been addressed in the current language. One was raised by Assemblyman Duncan relating to the definition of what constitutes "executive personnel." In my view, that is a very broad term and should be more narrowly defined in the statute.

The second issue relates to the reporting requirement that a Nevada nonprofit indicate in its filing with the Secretary of State its tax exempt status. That, of course, contemplates a determination by the IRS of their tax exemption. For a 501(c)(3) charity, the form that is filed to apply for that exemption is not due for 27 months after the nonprofit corporation is first formed. There is a potential delay before the application is even submitted to the IRS. It could take the IRS six to nine months to act on that filing. The problem you have is, the Secretary of State is asking for information that may not be forthcoming from the IRS for up to three years. That particular requirement could be unworkable for a newly formed Nevada corporation, and I believe that is something that should be addressed in the legislation.

**Chairman Frierson:**

Are there any questions? I see none. I appreciate your view of the bill as an attorney who works with nonprofits. I would encourage you to work with the Secretary of State and provide any suggestions of actual language that would satisfy any concerns.

**Scott Swain:**

We have been doing that and will continue to do so.

**Phil Johncock:**

There are two things that came up today that I wanted to address. One was the process the gentleman just spoke about. You incorporate first, before you file with the IRS, so if the Secretary of State is asking if you are planning to solicit donations, they should probably also ask if you intend to file with the IRS for a 501(c)(3). Otherwise, they will not know, and that process will take

a long time, as mentioned. It might behoove them to ask you up front if you plan to file with the IRS.

The second thing is regarding the earlier discussion about linking to the IRS page for information. If you do a link, the IRS provides a master list of all nonprofits in Nevada. That list, as of today, shows 8,016 nonprofits. But of that, how many of those are 501(c)(3)'s? It is not easily determined in the IRS master file. If there is a link, or connection, with the IRS database, there is also further education available of the tax-exempt agencies, which are 501(c)(3) organizations. That might open up another 4,500 nonprofits that are not 501(c)(3)'s but appear on the IRS database. I think the issue is tax exempt donations, so it is important to make the distinction between tax exempt donations and tax exempt organizations.

**Chairman Frierson:**

Coming back to Carson City, I have a few questions that came up. I indicated that one was on the different types of 501(c)'s. In my conversations in reviewing the bill, I was under the impression that not all of those 501(c)'s are considered by the IRS to be an entity that would be addressed in this bill. I wonder if we are talking strictly 501(c)(3)'s or would that include other 501(c) corporations. There was also mention of small organizations that do not file with the IRS. My reading was that they would not be included, but I do not want to assume that. This is not my area of expertise. If you would please address those two points.

**Nicole Lambole:**

There are two processes in this bill. The first is, every nonprofit that exists in Nevada should be registered already with the Secretary of State. If you intend to solicit charitable contributions pursuant to the IRS 501(c)(3) standard, you would file additional information. If you are any other 501(c) organization, you would just file your regular articles of incorporation and annual list of officers. It is only if you are a 501(c)(3) intending to solicit charitable contributions that you would be required to provide the additional information. The financial information is limited to those who intend to solicit charitable contributions.

All 501(c) nonprofits in Nevada, in the disclosure requirement, would be required when they solicit to indicate whether the contribution is eligible for a tax deduction. For instance, regarding Mr. Foxwell's question that we discussed, if the Knights of Columbus were to solicit to the general public, it would have to state that this contribution may not qualify for a tax deduction under the federal code. The United Way, however, when they solicit, would say, "Your contribution may be deductible to the extent practicable under federal law," which is what they already say on their solicitation.

**Chairman Frierson:**

I have one other question. Regarding section 8, which deals with attorney fees, I wonder if that automatic awarding of attorney fees for investigations exists anywhere else. That strikes me as different, something that I have not seen before.

**Kevin Benson:**

You have to be the prevailing party since that is not automatic in that sense. There is authority in NRS 225.084 pertaining to investigations related to commercial recordings filings that allows the Secretary of State to recover its attorney's fees and investigation fees if it prevails in that action. There are also places in the campaign finance statutes in NRS 294A.410 and NRS 294A.420 that provide similar language to recover those costs of the litigation.

**Chairman Frierson:**

In those other sections, is it an automatic awarding of attorney fees, or does it allow for the prevailing party to request attorney fees?

**Kevin Benson:**

It states that the Secretary of State is entitled to fees, or shall recover fees, or language along those lines, but it appears to be mandatory.

**Brett Kandt:**

In closing, we appreciate the Committee's careful attention to this bill today. I think you see the reasons behind our bringing this bill in partnership with the Secretary of State's Office. There is information that was requested by the Committee and we will follow up with you and get you that information, including the multistate form information from the other states that have similar requirements to what is proposed in this bill, and any other information you may request. Please forward your request and we will get that information to you. Once again, we will work with the stakeholders to address some of the concerns that were raised today with regard to the enforcement provisions and other sections of the bill. We were not aware of many of those concerns until the testimony was provided at the hearing today. We will work with everyone who has a stake in this to try to address all of the concerns.

**Chairman Frierson:**

With that, I will close the hearing on A.B. 60. If you have follow-up information, concerns, or thoughts, I would encourage you to provide them to the Committee so we can circulate them.

We have a bill draft request, BDR 5-62, that I need a motion for.

**BDR 5-62**—Makes various changes relating to sexually exploited children.  
(Later introduced as [Assembly Bill 152](#).)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE  
BDR 5-62.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN DIAZ AND SPIEGEL  
WERE ABSENT FOR THE VOTE.)

The Committee on Judiciary is adjourned [at 10:42 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman Jason Frierson, Chairman

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

**EXHIBITS**

**Committee Name: Committee on Judiciary**

**Date: February 19, 2013**

**Time of Meeting: 8:13 a.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State	Secretary of State Commercial Recordings Overview
A.B. 60	D	Brett Kandt, Special Deputy Attorney General, Office of the Attorney General	Letter of Support dated January 28, 2013, from the Office of the Attorney General
A.B. 60	E	Kevin Benson, Deputy Attorney General, Office of the Attorney General	Proposed amendments
A.B. 60	F	Kevin Benson, Deputy Attorney General, Office of the Attorney General	Proposed amendment
A.B. 60	G	Elisa Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates	Memorandum from Planned Parenthood
A.B. 60	H	Richard Ziser, Chairman, Nevada Concerned Citizens, and Coalition for the Protection of Marriage	Memorandum from Nevada Concerned Citizens
A.B. 60	I	Juanita Clark, representing Charleston Neighborhood Preservation	Memorandum From Charleston Neighborhood Preservation
A.B. 60	J	Phil Johncock, Interim Executive Director, Alliance for Nevada Nonprofits	Written testimony