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March 19, 2003

Senator Ann O'Connell, Chair
Senate Committee on Government Affairs
Nevada Senate
401 South Carson Street
Carson City, Nevada 89701

Re: SB 229

Dear Senator O'Connell:

I am writing to bring your attention to possible unintended consequences of Senate Bill 229. Section 1 of this bill states, in part, that a "public body may not take action by vote on an item on the agenda of a meeting on which action may be taken until public comment on the item has been allowed." The concern is the application of this section to contested cases being heard by an administrative body, such as disciplinary cases in front of a professional licensing board or cases in which an administrative penalty might be imposed for illegal conduct or other instances when the public body is making determinations that impact the rights of individuals.

If the public is allowed to address the public body prior to a vote in a contested case, the due process rights of the accused may be violated, subjecting any adverse decision to reversal on judicial review. Due process rights may be violated if the public body considers the public comment prior to making a decision because the content of the public comment may be unduly prejudicial to the accused and the public comment would not be subject to the evidentiary and other rules in place to protect the rights of parties to administrative hearings. The public comment would not be under oath as is required for witnesses in administrative hearings and the accused would not be able to cross-examine members of the public. Members of the public could possibly influence decisions in contested cases with information that might not be admissible or relevant evidence. The public might bring forward issues that were not contained in the administrative complaint and thus the accused would be prejudiced by the public body hearing issues that he was not prepared to defend. Therefore, we suggest that contested cases, as defined in NRS 233B.032, be exempted from the requirements of Section 1. In these cases, public comment could be allowed after the public body has made its decision.

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I appreciate your consideration of these comments.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:



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