IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

SUPREME COURT CASE NO.: 75095

DISTRICT COURT CASE NO.: A-17-758501-W

OPPOSITION TO EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

Respondent Las Vegas Review-Journal ("Review-Journal"), by and through its counsel, Alina M. Shell, hereby respectfully submits its Opposition to Emergency Motion for Relief Under NRAP 27(e) submitted by the Clark County Office of the Coroner/ Medical Examiner.

DATED this the 20th day of March, 2018.

/s/ Alina M. Shell

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The only issue in Appellant's Emergency Motion for Stay Relief (the "Motion to Stay") is money—specifically, whether it must pay the district court's attorney fee award immediately. Appellant Clark County Office of the Coroner/ Medical Examiner (the "Coroner's Office") argues that it is entitled to a stay pursuant to Rule 27(e) of the Nevada Rules of Appellate Procedure. It is not. The Coroner's Office must meet its burden of demonstrating that the circumstances merit such an exercise of this Court's discretion pursuant to the four factors this Court applies to motions for stays,[1] and it cannot do so for several reasons.

First, immediate payment of fees and costs to the Review-Journal would not defeat the purpose of the appeal; it would merely delay a return to the status quo ante if the Coroner's Office prevails on appeal. Second, denial of a stay will not irreparably harm the Coroner's Office. Any argument that Coroner's Office—part of a municipality with a budget of over six billion dollars ($6,000,000,000.00)—will be "irreparably harmed" by immediately paying fees and costs of approximately thirty-three thousand dollars ($33,000.00) is unsupportable.

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[1] Nev. R. App. P. 8(c); *accord Hansen v. Eighth Judicial Dist. Court ex rel. Cty. Of Clark*, 116 Nev. 650, 657, 6 P.3d 36, 38 (2000).

Third, the Coroner's Office cannot demonstrate that their appeal raises any "serious legal questions," let alone that they have any probability of prevailing on appeal. Far from upholding the Nevada Public Records Act's (the "NPRA") explicit mandate that any restrictions on its provisions be narrowly construed[2], the Coroner's Office argues that this Court should read non-existent restrictions on prevailing requesters recovering attorney's fees and costs. This straw-grasping argument ignores the plain, unambiguous language of the NPRA, which ***entitles*** prevailing requestors to attorney's fees and costs, full stop. The Coroner's Office relies largely on a district court order, which is not binding precedent.

More generally, in the underlying case the Coroner's Office is not likely to prevail. The records sought are presumptively public records pursuant to the terms of the NPRA and this Court's precedent, and precedent from courts around the country holding that autopsy reports are public records.[3]

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[2] Nev. Rev. Stat. § 239.001(3).

[3] *See Bozeman v. Mack*, 744 So.2d 34, 37(La. App. 1 Cir. 1998) ("[A]n autopsy report is a public record when it is prepared by a coroner in his public capacity as coroner"); *Swickard v. Wayne Cty. Med. Exam'r*, 438 Mich. 536, 545, 475 N.W.2d 304, 308 (1991) (Autopsy report and toxicology test results prepared by the county medical examiner's office were prepared "in the performance of an official function" and were "public records" for purpose of Freedom of Information Act); *Schoeneweis v. Hamner*, 223 Ariz. 169, 174, 221 P.3d 48, 53 (Ct. App. 2009) (holding that an autopsy report is a public record and not statutorily privileged under Arizona's public records law); *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio. St. 3d 580, 583, 669 N.E.2d 835, 839 (1996) (holding that a county coroner's records in which the cause of death was suicide were "unquestionably public records" under

Finally, while the Coroner's Office argues that the district court erred in considering the nature of this case in determining whether a stay should be granted, it does matter that this is an NPRA case. As the district court properly noted, the attorney fee provisions of the NPRA are mandatory ("If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees . . .")[4] and the Nevada Legislature also made clear that all provisions of the NPRA (which includes the fee provision) must be interpreted liberally in order to further access. Timely compensating requesters—who could not have obtained records without filing suit—for attorneys' fees and costs undoubtedly furthers access. A governmental entity cannot automatically delay this compensation by just filing an appeal. Moreover, whether to grant a stay is an equitable decision[5], and this Court should deny the stay to uphold the public interest in governmental transparency and deter governmental entities from hiding public records from the public to whom they are accountable.

Ohio's public records laws); *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Ct. App. 1988) (autopsy reports are public records subject to public inspection unless they are implicated in a "criminal detection effort").

[4] Nev. Rev. Stat. § 239.011(2).

[5] *See Hansen*,116 Nev. at 659, 6 P.3d at 987 (holding that "the movant must 'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay'") (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)).

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

On April 13, 2017, the Review-Journal sent the Clark County Coroner's Office a request pursuant to the NPRA seeking autopsy reports related to child deaths since 2012. Following the Coroner's Office's months-long refusal to accommodate this request, on July 17, 2017, the Review-Journal filed a Petition for Writ of Mandamus pursuant to Nev. Rev. Stat. § 239.011. At a September 28, 2017 hearing, the district court granted the Review-Journal's motion, ordering the Coroner's Office to disclose the requested records in unredacted form. The Coroner's Office is appealing that ruling but is not likely to succeed on the merits.

On November 29, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs pursuant to Nev. Rev. Stat. § 239.011(2), which ***entitles*** a prevailing requester to costs and reasonable attorney's fees. After a January 11, 2018 hearing, the district court ruled in favor of the Review-Journal, ordering that the Review-Journal was entitled to $31,552.50 in attorney's fees and $825.02 in costs. The district court entered an order to this effect on February 1, 2018. On February 5, 2018, the Coroner's Office filed Notice of Appeal with this Court. On February 12, 2018, the Coroner's Office served the Review-Journal with a Renewed Motion for a Stay of the district court's February 1 order Awarding Fees and Costs to the Review-Journal. The district court entered an order denying the Coroner's Office's renewed motion on March 7, 2018. The Coroner's Office filed an Emergency

Motion for Stay ("Motion for Stay") with this Court on March 8, 2018. The Review-Journal now opposes that motion.

III. LEGAL ARGUMENT

A. Legal Standard for Issuing a Stay Pending Appeal.

1. Nev. R. App. P. 8(c) Factors.

As similarly set forth by the Coroner's Office, this Court must consider the following factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant/petitioner is likely to prevail on the merits in the appeal." *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing Nev. R. App. P. 8(c) and *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)); *accord Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

2. Under the Applicable Standard, the Equities—and, thus, the Public Interest, Is Relevant.

In an effort to have this Court ignore both the context and equities of this case, the Coroner's Office contends that "the 'public interest' is not a factor for consideration under Nevada law." (Motion for Stay, p. 5.) However, both the context of the case and the equities matter. As this Court explained in *Hansen v. Eighth*

Judicial Dist. Court ex rel. County of Clark, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (cited in Motion to Stay, pp. 8-9):

> when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant must "present a substantial case on the merits when a serious legal question is involved and show that the ***balance of equities weighs heavily in favor of granting the stay***."

Id. (*quoting* from and *citing Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)) (emphasis added). While the Coroner's Office cites this portion of the *Hansen* case within its brief, it ignores it in its discussion of the legal standard. It also ignores that whether to grant a stay is inherently an equitable decision—and that considering the public interest lies with timely payment of attorney's fees to the Review-Journal is necessarily part of balancing the equities.

Indeed, it is black-letter law that when considering any sort of stay, courts consider the equities and the public interest. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981), was cited and quoted by this Court in *Hansen* for a proposition relied on by the Coroner's Office—that a movant need not always show a probability of success on the merits if there is a serious legal question and the equities support a stay. (Motion to Stay, pp. 8-9.) In *Ruiz*, the Fifth Circuit considered whether to issue a stay pursuant to Rule 8 of the Federal Rules of Appellate Procedure and evaluated "whether the granting of the stay would ***serve the public interest***." *Ruiz*, 650 F.2d at 565 (citations omitted) (emphasis added).

This Court has "not indicated that any one factor carries more weight than the others," and instead "recognizes that if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)). However, "if the balance of equities (i.e. consideration of the other three factors [besides likelihood of success on the merits]) is not heavily tilted in the movant's favor, the movant must then make a more substantial showing of likelihood of success on the merits in order to obtain a stay pending appeal." *Ruiz*, 650 F.2d at 565–66; *cf. Hansen*, 116 Nev. at 659, 6 P.3d at 987. Here, the equitable factors are not tilted in the Coroner's Office's favor, and the Coroner's Office does not and cannot meet a heightened standard of showing likelihood of success on the merits. Thus, granting a stay would be improper.

3. The Purpose of a Stay is to Maintain Status Quo to Protect Judgment Creditor.

The Coroner's Office cites to federal district court dicta for the proposition that "the purpose of a stay of a district court judgment pending appeal is to preserve, not change, the status quo." (Motion for Stay, p. 5 (citing *US v. State of Mich.*, 505 F.Supp. 467 (W.D. Mich. 1980)). But Nevada is different. This Court has held that the purpose of a stay pending appeal is to preserve the status quo ***to protect a judgment creditor***. *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252, 1254 (2005). Appellant says so in its own motion: "[t]he purpose of a security for a stay pending

appeal is to ***protect the judgment creditor's ability to collect the judgment if it is affirmed*** by preserving the status quo." (Motion for Stay, p. 5 (citing *Nelson*, 121 Nev. 832, 122 P.3d at 1254, n. 8)) (emphasis added).

Unlike the Federal District Court for the Western District of Michigan, this Court explicitly premised the desirability of preserving the status quo on protecting the judgment creditor's ability to collect. *See Nelson*, 121 Nev. 832, 122 P.3d at 1254. In the instant case, by having its Motion for Attorney's Fees and Costs granted by the district court, the Review-Journal is the judgment creditor, and the Coroner's Office is the judgment debtor. Preservation of the status quo does not protect the Review-Journal's ability to collect if the district court's judgment is affirmed. Instead, it protects the Coroner's Office from having to pay now rather than having to pay later. Because preservation of the status quo in this case does not protect the judgment creditor, a stay cannot be justified on the basis that it preserves the status quo.

4. Stays for Monetary Judgments are not Allowed as a Matter of Right.

The Coroner's Office, which cannot satisfy the factors set forth by Nev. R. App. P Rule 8(c) and this Court's precedent, attempts to argue that it is entitled to a stay as a matter of right. (Motion for Stay, pp. 6-7.) For this proposition, the Coroner's Office cites to Nev. R. Civ. P. 62(d) and its federal analog, Fed. R. Civ. P. 62(d), which allow appellants to obtain a stay pending appeal by posting a

supersedeas bond. (Motion for Stay, p. 6.) The Coroner's Office further cites to a case in which the Eleventh Circuit Court of Appeals held that appellants are entitled to a stay as a matter of right upon filing a supersedeas bond. (Motion for Stay, p. 6 (citing *US v. Wylie*, 730 F.2d 1401, 1402, n.2 (11th Cir. 1984)). As a governmental entity, the Coroner's Office is exempted from posting a supersedeas bond upon appeal. *See* Nev. R. Civ. P. 62(e); Nev. Rev. Stat. 20.040(1). Thus, according to the Coroner's Office, governmental entities in Nevada are always entitled to a stay "as a matter of right due to the adequate security." (Motion for Stay, p. 7.) This argument is unavailing for several reasons.

As a threshold matter, Nev. R. Civ. P. 62 does not apply to the instant motion. *See* Nev. R. Civ. P. 1 ("These rules govern the procedure ***in the district courts*** in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81.") (emphasis added); *see also* Nev. R. Civ. P. 81(a) ("Appeals from a district court to the Supreme Court of Nevada, and ***applications for extraordinary writs in the Supreme Court*** are governed by the Nevada Rules of Appellate Procedure.") (emphasis added). The Coroner's Office's Emergency Motion for Relief Under NRAP 27(e), as its title indicates, is within the scope of the Nevada Rules of Appellate Procedure—not the Nevada Rules of Civil Procedure. Thus, the Coroner's Officer cannot use rulings based on either the Federal or Nevada Rules of Civil Procedure to justify the claim that it is entitled to a stay as a matter of

right.

Even if Nev. R. Civ. P. 62 were applicable to the instant Motion to Stay, it would not grant an automatic a stay upon appeal. Rather, it provides that if a stay is granted, the governmental entity need not post the bond. The text of Nev. R. Civ. P. 62(e) is as follows:

> **(e) Stay in Favor of the State or Agency Thereof.** When an appeal is taken by the State or by any county, city or town within the State, or an officer or agency thereof ***and the operation or enforcement of the judgment is stayed***, no bond, obligation, or other security shall be required from the appellant.

(Emphasis added.) According to the plain language of Nev. R. Civ. P. 62(e), a district court's decision to grant a stay to a governmental entity on appeal is made independently of the governmental entity's exemption from posting a bond. Moreover, the Coroner's Office's interpretation is not consistent with the fact that Nev. R. Civ. P. 62(a) addresses "automatic stays" and does not state that all judgments against a governmental entity are stayed pending appeal. Thus, the Coroner's Office is not entitled to a stay from this Court as a matter of right or, as argued below, at all.

B. The Coroner's Office Does Not Satisfy the NRAP 8(c) Factors for this Court to Enter a Stay Pending Appeal.

1. The Object of the Appeal Will Not Be Defeated by Denying the Stay.

Here, as in district court, the Coroner's Office does not even attempt to argue

that the object of its appeal—avoidance of paying the Review-Journal's attorney's fees and costs in this litigation—will be defeated by delaying the stay. Rather, it argues that it will be inconvenienced: "if the status quo is not maintained, the Coroner will be at a severe disadvantage by having to satisfy the $32,377.52 judgment in favor of LVRJ, without having the opportunity for this Court to review the incorrectness of the award." (Motion for Stay, p. 7.) Again, the Coroner's Office provides no citation for the proposition that having to collect the money back amounts to "defeating" the purpose of the appeal. The Coroner's Office's insinuation—that if it pays attorney's fees and costs now, the Review-Journal will defy this Court's order to repay the Coroner's Office should it prevail on appeal (*id.*)—is both insulting and untrue. Denial of this stay will not affect the ultimate outcome of this appeal one way or the other, and therefore this factor weighs in favor of the Review-Journal.

2. The Coroner's Office Will Not Suffer Irreparable or Serious Injury if the Stay is Denied.

As the Review-Journal argued in district court, the only harm the Coroner's Office alleges is that it will have to pay fees now, rather than in the future. "Simply put, the alleged harm is wholly monetary . . . [i]n other words, the harm is not irreparable." *In re Capability Ranch, LLC*, No. 2:13-CV-1812 JCM, 2013 WL 6058198, at *3 (D. Nev. Nov. 15, 2013) (holding that forcing losing party to pay attorney's fees does not constitute irreparable harm); *see also Orquiza v. Walldesign,*

Inc., No. 2:11-CV-1374 JCM CWH, 2013 WL 4039409, at *2 (D. Nev. Aug. 6, 2013) ("Monetary damages alone do not amount to irreparable harm"); *Taddeo v. Am. Invsco Corp.*, No. 2:12-CV-01110 APG NJK, 2014 WL 12708859, at *1 (D. Nev. Sept. 19, 2014) ("simple monetary damages generally are not considered to be irreparable harm").

In its Motion for Stay before this Court, the Coroner's Office has abandoned the argument that paying $32,377.52 to the Review-Journal now, rather than later, would cause it irreparable or serious injury. Thus, the second factor in the Nev. R. App. P 8(c) analysis weighs in favor of the Review-Journal.[6]

3. The Coroner's Office is Unlikely to Prevail on the Merits of its Appeal.

The Coroner's Office argues that "the issue is the application and interpretation of NRS 239.011 and 012, the legislative history, and whether a governmental entity is subject to attorney costs and fees when it acts in good faith." (Motion, p. 7:12-15.) This, however, is a non-issue—the NPRA's provisions are crystal clear. "If a statute is clear on its face a court cannot go beyond the language of the statute in determining the legislature's intent." *Thompson v. First Judicial Dist. Court, Storey County*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984).

[6] The Coroner's Office argues that the third factor in the Nev. R. App. P 8(c) analysis weighs in its favor. (Motion to Stay, p. 8.) As it did when opposing the Coroner's Office's Motion to Stay in the district court, the Review-Journal concedes that it will not be irreparably harmed by issuance of a stay.

The NPRA provides that "…[i]f the requester prevails, the requester is ***entitled*** to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." Nev. Rev. Stat. § 239.011(2). (emphasis added) As the Nevada Supreme Court has explained, "… by its ***plain meaning***, [NRS 239.011(2)] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015) (emphasis added).

If the legislature had intended to make an entitlement to attorney's fees and costs contingent on the governmental agency's bad faith, they could easily have made it explicit in Nev. Rev. Stat. § 239.011. The legislature chose not to. Instead, the legislature chose to specifically make immune from "liability ***for damages***"[7] "a public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee." (emphasis added). Nev. Rev. Stat. § 239.012. As reiterated by the district court at the January 11, 2018

[7] Notably, Nev. Rev. Stat. § 239.012 does not grant immunity from "liability for damages and attorney's fees and costs." Essentially, the Coroner's Office expects this Court to believe that the legislature meant to include attorney's fees and costs in this good faith safe harbor, but accidentally forgot about their existence between drafting Nev. Rev. Stat. § 239.011 and Nev. Rev. Stat. § 239.012.

hearing, damages and attorney's fees are not the same thing. Furthermore, the NPRA was designed to revamp and strengthen access to public records. It therefore does not make sense that such a bill would grant the prevailing party an ***entitlement*** to attorney's fees, then cryptically rescind it in a section that does not even mention attorney's fees.

The Coroner's Office's arguments are particularly hollow in light of the NPRA's explicit command that "[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." Nev. Rev. Stat. § 239.001(3). Asking this Court to read an invisible "bad faith" requirement into Nev. Rev. Stat. § 239.011 and an invisible "attorney's fees actually count as damages" provision into Nev. Rev. Stat. § 239.012 is asking this Court to do the exact opposite of "narrow construction." The Coroner's Office's appeal does not present a "serious legal question;" it simply asks the Court of Appeals to pretend the NPRA says something it does not. Therefore, this factor weighs heavily in favor of the Review-Journal.

C. The Strong Public Interest in Disclosure and Government Transparency Weighs in Favor of Denying the Stay.

The explicit mandate of the NPRA is to "foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law." Nev. Rev. Stat. 239.001(1). It further mandates that "[t]he provisions of this chapter must be construed liberally to carry

out this important purpose; [and] [a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." Nev. Rev. Stat. § 239.001(2)-(3).

Governmental entities face strong incentives to resist transparency. As seen in this case, it takes the hard work of several attorneys and staff and the resources of the largest newspaper in Nevada to drag public records produced by the Coroner's Office into the light of day. Entitling a prevailing requestor to attorney's fees and costs creates incentives that further the NPRA's important purpose. First, it incentivizes attorneys to fight for public records on behalf of the public (or journalistic outlets that are both part of and proxies for the public, such as the Review-Journal). Without the prospect of recouping fees, many important quests for public records would undoubtedly be aborted *ab initio*. Second, it incentivizes governmental entities to provide public records efficiently without the type of needless resistance that results in protracted litigation and hefty bills that are ultimately shouldered by taxpayers. Thus, the balance of equities, and upholding the mandate of the NPRA, weighs in favor of denying a stay.

The Coroner's Office cannot have it both ways: just as it argues that the Review-Journal can collect once this Court affirms the district court, in the unlikely event that this Court does not affirm the district court's order, the Coroner's Office can likewise collect against the Review-Journal. While a delay in payment for either

side is not technically irreparable harm, there is a strong public policy in favor of paying the Review-Journal now. Payment of fees under the NPRA is designed to facilitate requesters' petitions for access under the NPRA, as demonstrated by the legislative history of Nev. Rev. Stat. § 239.011, and the animating purpose behind the NPRA.

The current version of § 239.011 was adopted by the Nevada legislature during the 1993 legislative session. (*See* Exhibit 1 (legislative history of Assembly Bill 365).) As the Society for Professional Journalists explained, the bill was designed "so a signal is sent to the public employees who hold public records that it is their job to ensure the public has easy access to those documents which indeed are open to review by taxpayers." (Exhibit 1, p. 15.) More critically, payment of fees is consistent with the purpose animating the NPRA, which is "foster[ing] democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law." Nev. Rev. Stat. § 239.001(1).

D. If the Stay is Granted and the Review-Journal Prevails on Appeal, the Review-Journal Will be Entitled to Interest on the Fees and Costs.

Nevada mandates that a judgment "draws interest from the time of service of the summons and complaint until satisfied … at a rate equal to the prime rate at the largest bank in Nevada … plus 2 percent." Nev. Rev. Stat. § 17.130(2). If this Court grants the Coroner's Office's Motion, and the Coroner's Office subsequently loses on appeal, the Review-Journal will move to seek interest pursuant to § 17.130(2).

Thus, in addition to wasting taxpayer dollars fighting this case, the Coroner's Office may be forced to pay a significantly larger sum by virtue of its repeated, protracted delays in payment. For these reasons, this Court should not grant a stay.

IV. CONCLUSION

As argued above, The Coroner's Office cannot meet its burden, as the factors set forth under NRAP 8(c) urge against a stay. This Court must therefore exercise its discretion and deny the Coroner's Office's Motion for a stay of the district court's February 1, 2018 Order awarding the Review-Journal attorney's fees and costs.

DATED this the 20th day of March, 2018.

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing OPPOSITION TO EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e) was filed electronically with the Nevada Supreme Court on the 20th day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven B. Wolfson and Laura Rehfeldt
Clark County District Attorney's Office

Micah S. Echols
Marquis Aurbach Coffing

Counsel for Appellant,
Clark County Office of the Coroner/Medical Examiner

/s/ Pharan Burchfield
Employee of McLetchie Shell LLC

EXHIBIT 1

1993

AB 365 By Commerce PUBLIC RECORDS

Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

03/16	30	Read first time. Referred to Committee on Government Affairs. To printer.
03/17	31	From printer. To committee.
03/17	31	Dates discussed in committee: 4/13, 4/14, 4/20, 4/23, 5/3, 5/7, 5/11, 5/25 (A&DP)
06/01	84	From committee: Amend, and do pass as amended.
06/01	84	(Amendment number 510.)
06/02	85	Read second time. Amended. To printer.
06/03	86	From printer. To engrossment.
06/03	86	Engrossed. First reprint.
06/04	87	Read third time. Passed, as amended. Title approved. (41 Yeas, 0 Nays, 1 Absent, 0 Excused, 0 Not Voting.) To Senate.
06/05	87	In Senate.
06/05	87	Read first time. Referred to Committee on Govt Affairs. To committee.
06/05	87	Dates discussed in Committee: 6/18, 6/25 (DP)
06/26	104	From committee: Do pass.
06/26	104	Declared an emergency measure under the Constitution and placed on General File for next legislative day.
06/26	104	Placed on General File.
06/26	104	Read third time. Passed. Title approved. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
06/27	106	In Assembly.
06/27	106	To enrollment.
06/29	108	Enrolled and delivered to Governor.
07/02	111	Approved by the Governor.
07/06	0	Chapter 393. Section 5 of this act effective 12:01 a.m. October 1, 1993. Remainder of this act effective October 1, 1993.

(* = instrument from prior session)

NEVADA LEGISLATURE

SIXTY-SEVENTH SESSION

1993

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

A.B. 365 (Chapter 393)

Assembly Bill 365 removes the criminal penalty for a state officer who refuses to allow access to a public record. Instead of the criminal penalty, the measure substitutes a procedure for civil enforcement of the laws governing access to public records. The bill also grants immunity from liability for damages to public officers, employees and their employers who act in good faith in disclosing or refusing to disclose information.

Referred to Assembly Committee on Government Affairs
ASSEMBLY VOTE: 41-0-1
Referred to Senate Committee on Government Affairs
SENATE VOTE: 21-0-0
Effective October 1, 1993

ASSEMBLY BILL NO. 365—COMMITTEE ON COMMERCE

MARCH 16, 1993

Referred to Committee on Government Affairs

SUMMARY—Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

365

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and attorney's fees in the proceeding from the agency whose officer has custody of the book or record.*

Sec. 3. *A public officer or employee who acts in good faith in disclosing or refusing to disclose information is immune from liability for damages, either to the requester or to the person whom the information concerns.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 [1.] All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, [shall] *must* be open at all times during office hours to inspection by any person, and the [same] *books and records* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the [same] *books and records* may be used to the advantage of the owner thereof or of the general public.

[2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.]

Sec. 5. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state, at the county seat of that county.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

Executive Director, Nevada Association of Counties; William Isaeff, Chief Deputy City Attorney, City of Reno; Michael Pitlock, Member, Nevada Public Service Commission; Myla Florence, Administrator, Welfare Division; Brooke Nielsen, Assistant Attorney General, Office of Attorney General; Debbie Cahill, Nevada State Education Association; Mike Dyer, General Counsel, Nevada State Education Association; Jim Weller, Director, Department of Motor Vehicles and Public Safety; Darcy Coss, Deputy Attorney General, Department of Motor Vehicles and Public Safety; Orland Outland, Self; Robert Gagnier, Executive Director, State of Nevada Employees Association; Frank Barker, Captain, Las Vegas Metropolitan Police Department; Arlene Ralbovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department; Joe Melcher, Washoe County Recorder; James Wright, Chief Deputy Recorder, Washoe County, Robert Cox, Nevada State School Board Association and Washoe County School District; and Jim Richardson, Nevada Faculty Alliance.

ASSEMBLY BILL 364 - Makes various changes regarding access to public books and records.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

ASSEMBLY BILL 367 - Defines "public record" to accommodate various forms in which records are maintained.

ASSEMBLY BILL 368 - Requires charges for copies of public records not to exceed cost.

Assemblyman Gene Porter, District 8, testified AB 364, AB 365 and AB 366, as well as AB 367 and AB 368 scheduled to be heard on Wednesday, April 14, resulted from an interim subcommittee which he had chaired, to study Nevada's laws governing public books and records. Committee members, a twelve member advisory group appointed by the Governor to assist in deliberations, and the results of the study can be found in Bulletin No. 93-9, Research Library, Legislative Counsel Bureau. Mr. Porter then described how the study was carried out with the results leading to the adoption of 22 recommendations. It was those 22

recommendations which now made up the aforementioned five bills. Continuing, Mr. Porter said, "The issues involved with public records are difficult ones. There are few areas of public policy that have as many competing interests. The government's need for information, the people's right to have access to that information and the fundamental right to privacy must be delicately balanced. The task before the subcommittee and advisory group was enormous. Our public record's law has not been significantly amended since 1911. What you have before you is our attempt to balance those significant competing interests." Mr. Porter then gave the committee a brief overview of all the bills. In closing, Mr. Porter urged the committee to read the study and said, "The deliberations that you will undergo for the next two days, and subsequent work sessions, force you to balance the information contained, and which is now available in the technology age, with the public's right to know what its government is doing. Government has a lot of information on each of us, private industry has a lot of information on each of us....what the ACR subcommittee tried to do was formulate a broad, general policy that anything done on taxpayer time or expense within the public arena was accessible to the public." He explained the only exception dealt with medical records within a public facility, those records would be kept confidential. He then advised the committee to not try and craft exemptions to accommodate those in the audience who would testify to their own respected interest, as several hundred already existed in Nevada law and a subsequent interim study had been recommended to study those exemptions.

Mrs. Lambert questioned the meaning of the definition "governmental entity." She gave an example utilizing Chapter 624. Mr. Porter replied the subcommittee's definition was contained in Section 2 of AB 364. Mrs. Lambert then asked, "You think having 'funded by public money' will preclude any exemptions, like the example I gave you for the general improvement districts?" Mr. Porter answered he did not see any conflict in the two definitions. Further discussion followed.

Mr. Neighbors asked if a fiscal impact had been determined on any of the bills, specifically AB 366. Mr. Porter responded AB 366 merely outlined how to acquire a record, explaining the process.

Ande Engleman, Nevada Press Association (NPA) introduced Laura Wingard, City Editor, Las Vegas Review-Journal and President, Society of Professional Journalists.

Ms. Wingard presented prepared testimony (EXHIBIT C) to the committee.

Ms. Engleman then introduced Evan Wallach, General Counsel, Nevada Press Association, citing his background.

Mr. Wallach stated the public not only had the right to know, but the need to know, in order to make intelligent decisions and to give informed consent. He then proceeded to elaborate on his statement, addressed Mrs. Lambert's concern regarding the definition of "governmental entity, and explained the objectives of each bill.

Mrs. Lambert queried Mr. Wallach regarding Section 3, page 2 of AB 364. She asked, "Who is going to determine this and will they need guidelines?" Mr. Wallach answered, "This section arises because some years ago the Nevada Supreme Court decided a case called Bradshaw." He then gave his interpretation of the Bradshaw case and its interpretation across the state by governmental entities. He added, "I have yet to hear of a situation where somebody has asked for governmental records which are open by law, and the AG's office or District Attorney has said, 'We balanced it and you won, you get these records.' That's wrong, that's dead flat wrong. That's what this is in here to correct." Further discussion ensued regarding balancing.

Ms. Engleman testified this was not the first attempt to bring Nevada's public record's law into the twentieth century. She referenced the interim study performed in 1982 and the access the public presently had under Nevada Revised Statute 239. In addition, she presented the committee with Exhibit D and said, "You see an article there before you where a Clark County Commissioner could not even access public information as to the financial status of his own County from the County Treasurer who was another elected official....We are not set up to help the public, other than to give them some non-legal advice on things they might ask for when they go in....There really is no one to help the public at all at the present time." She then described the various problems encountered when attempting to acquire public records, the NPA's reluctance to participate in the interim study, the results of a private study she herself had conducted via telephone with each school district in an attempt to find out how much the County Superintendent of Education was paid, and pointed out the bills were a result of compromise. In conclusion, she directed the committee's attention to Exhibit E, a survey commissioned by NPA, and the removal of punitive

affects on a public employee for refusing access to public records.

Mr. Williams asked for more clarification on Section 3. He suggested balancing dealt with a specific situation at a specific time but did not take into consideration future potentialities of abuse to the public. Mr. Wallach replied records closed by law were the only ones being dealt with. He said, "We are not asking that you mandate that somebody provide the information, because if we did and you did it, you would be saying it was open. We are not saying this laundry list of things which should be closed is something which should be opened. All we are saying in here is stop and consider. The situation that you pose is one factor to consider. But there are so many varieties in human experience, that all you can do is ask somebody in the law to apply it on a situation-by-situation basis. It's not perfect but it is the most workable thing we could create and it, at least, addresses your concern."

Mrs. Augustine commented on the survey saying, although statewide, it was such a small sample. A discussion ensued regarding statistical sampling.

In one last comment, Ms. Engleman clarified why it was important to open personnel files.

Karen Kavanau, Director, State Department of Data Processing, stated she had served on the advisory committee adding, "AB 367 which you will hear tomorrow declares electronic or computer records as a public record. AB 366 describes the procedure for accessing a public record. The Department of Data Processing is neutral as to what records should be accessible. This is clearly a legislative decision. I am here today to request two minor modifications to AB 366 and to emphasize a third point. If you would refer to Section 2 of AB 366 it reads,....I would ask that you would strike the words 'or other electronic means.' The reason I say that is because, if you don't, this could be interpreted to permit direct on-line access to government's databases and data communication networks. I don't believe that's your intent and I can tell you that state government simply isn't prepared for it. In Section 3, subsection a, subsection 2, if you would insert the word paper in the sentence that reads,....if you would amend that to say facilities for making 'paper' copies. The reason I ask that is, if you don't, it could be interpreted that government would have to provide facilities to make diskettes and tapes which could be very expensive. And finally, in Section 5, it reads,....I would like you to clarify....that we are talking about the government

entity that actually does gather and use that data, not the data keeper. The word custody is somewhat vague." She then gave an example, adding, "I just need some clarification in that section to make that perfectly clear that the department of data processing or its equivalent in other government organizations is not required to provide information that it does not have authority over."

Chairman Garner asked Ms. Kavanau to provide him with a list of proposed amendments as well as a copy for Mr. Wallach.

Mr. Porter pointed to Section 2 of AB 366 and said what the committee had envisioned was simply a fax machine, therefore, he did not object to the proposed amendment in that area.

Mr. Garner explained he was going to hear all testimony regarding all the bills pertaining to public records, but no action would be taken until a thorough study had been performed.

Tom Grady, Executive Director, Nevada League of Cities (NLC), stated after joint meetings with Nevada Association of Counties (NACO) and the cities and counties, he was pleased to submit the joint statement of the two organizations (Exhibit F) which supported most of the legislation with amendments.

Robert Hadfield, Executive Director, NACO, testified he had been a member of the advisory committee. He agreed with Mr. Porter the proposed legislation affected everyone; and with NPA that there was a spirit of cooperation in the effort to come up with recommendations for the committee. However, he said he thought it was necessary to present the dialogue which had taken place during the study but was not contained in the recommendations. When Mr. Hadfield asked Mr. Garner if he should step through Exhibit F, item by item, or if the committee would prefer to read it at its leisure, Chairman Garner replied he preferred the latter choice. Mr. Hadfield then summarized the concerns of NLC and NACO.

William Isaeff, Chief Deputy City Attorney, City of Reno, stated he had served on the advisory committee and generally was in favor of AB 364, AB 365 and AB 366 with proposed amendments. Regarding AB 364, Mr. Isaeff discussed the definition of "governmental entity," suggesting two definitions were being offered, both differing among the five bills and needing resolution; the reverse balancing test and the results it could render; violations of the supremacy laws of the United States by district or state judges; and open personnel records. Expressing his concerns regarding AB 365, Mr. Isaeff said they

pertained to criminal proceedings against public employees for not providing public records and attorney's fees and costs. He next referenced AB 366 and supported Ms. Kavanau's suggestions, stating his reasons why; expressed his concern regarding Page 1, lines 20-22, which he felt would be creating new records from old records; and said he would appear to testify further on AB 367 and AB 368 at the scheduled hearing. In closing, Mr. Isaeff said, "We think that a good effort has been made here. We obviously don't agree with everything that's in the report. As a member of that advisory committee, I strongly argued for things that did not make it into the report. But this is the legislation before you and we're prepared to support this as much as we can, with amendments we feel will improve the effort."

Mr. Garner asked for written copies of Mr. Isaeff's comments and amendments.

Mrs. Segerblom asked Mr. Isaeff, "Are you suggesting that a government contract with a private company should not be public?" Mr. Isaeff replied absolutely not, with comment.

Michael Pitlock, Member, Nevada Public Service Commission, supported the concept of the legislation but intimated clarification was necessary. He said he would provide the chair with proposed, written amendments.

Myla Florence, Administrator, State Welfare Division, supported concepts but stated concerns. Written testimony, including proposed amendments, was provided to the committee. **Exhibit G** pertained to AB 364, **Exhibit H** to AB 366.

Brooke Nielsen, Assistant Attorney General, Office of Attorney General, introduced Melanie Crossley, Deputy Attorney General, Office of Attorney General, who had participated on the advisory committee. Ms. Nielsen testified she should have signed up in support of the legislation but with amendments. She then provided the committee with **Exhibit I**, written testimony, and proceeded to summarize it.

Debbie Cahill, Nevada State Education Association, introduced Mike Dyer and Jim Penrose, Attorneys, Nevada State Education Association. She then turned the floor over to Mr. Dyer who spoke as general counsel for the organization. Mr. Dyer explained his comments were directed to personnel files of educational employees only and did not support or oppose any other part of AB 364 or the other bills. He said educational

employees were unlike other employees, stressing teachers were subject to questioning by parents and other members of the public on a constant basis. Therefore, he did not think teachers should have their personnel records open to anyone and everyone who could pay the $2.00, $5.00 or $10.00, especially students who could circulate the files around campus and faculty. Mr. Dyer then gave reasons and examples why it would not be good to open personnel records of teachers. In conclusion, Mr. Dyer asked for an amendment to AB 364 to exempt the records of educational employees unless there was a pending civil or criminal action requiring a disclosure of those records.

Mrs. Segerblom asked what information was available on teachers, Mr. Dyer replied under AB 364, everything; under current law, the balancing test and Bradshaw applied. He then gave an example of a legitimate request. When asked how long employee records were kept, Mr. Dyer answered it varied from district to district.

Jim Weller, Director, Department of Motor Vehicles and Public Safety, introduced Darcy Coss, Deputy Attorney General, Department of Motor Vehicles and Public Safety, and said the department's position on the legislation was neutral, but he wanted to express the department's concerns to the committee, which he did.

Darcy Coss concurred with the statements which had been made by previous testifiers and added her own reasons why records should not be opened. In conclusion, Ms. Coss said she would provide her statements in writing to the chair and Mr. Wallach.

Mrs. Kenny questioned the release of names and addresses. Ms. Coss explained those names were released under current law for legitimate purposes such as law enforcement, insurance or accident reports. When asked if a form containing the reason why the request was being made was prepared in these instances, the reply was yes.

Mrs. Freeman asked for clarification regarding the DMV providing lists to catalogs. Mr. Weller responded DMV did sell mailing lists to catalogs, stating the department had realized $21,916 in 1992 and, to date, $21,067. The lists contained name, address and the information requested. Mr. Weller said it would be good if each assemblyman checked with their constituents to see if they would like to have their names sold, as currently, there was no law saying a person could remove their name from the mailing list.

Mrs. de Braga queried if the request to not give out that information was honored. Mr. Weller replied there was nothing to preclude the department from doing that now.

Mr. Hettrick requested clarification on AB 366, lines 4 and 5, suggesting language should be tightened to exclude telephone modems as well.

A discussion ensued between Mr. Ernaut, Mr. Weller and Ms. Coss regarding the denial of access to records by a private citizen versus the selling of name and address lists to catalog businesses.

Mr. McGaughey said, from past legislative sessions, he remembered the reason for selling records had been budgetary, therefore he asked Mr. Weller to enlighten the committee in that regard.

Mr. Weller responded, "As I mentioned, the commercial sale accounts for around $21,000 to $22,000. That is just a small part of the $3.9 million the department's record section brings in for giving out those records. So, you are right, it would have a financial impact. If we did not give out as much as we did, it would reduce staff."

Mr. McGaughey then said, "There is the issue. Do we want to fund $3.9 million someplace else and retain privacy, or do you want to compromise the privacy?"

Orland Outland, speaking for himself, commented against the legislation. In addition, he gave the definition of "malfeasance," and said the legislation was blatantly an act of malfeasance, and the essence of malfeasance needed to be written into the statute with a three-step type penalty. In conclusion, he said he was highly supportive of openness in records, except for those he had spoken against, which he said would compound the problem for the individual constituent.

Mrs. Freeman asked Mr. Outland for his ideas regarding public and private partnerships in access of information. Mr. Outland replied, "I would hate to see it develop as a sham, as a mechanism to avoid accountability. If you are going to have advisory boards or commissions that will fall under this purview, then I feel that those types of activity should fall in the same type of oversight. I would hate to see it developed as an escape clause, as a mechanism to get around accountability. There is a little too much of that now."

Robert Gagnier, Executive Director, State of Nevada Employees Association, addressed AB 364. He cited Page 2, subsection 2, starting on line 27 and said, "All the information you see there, except J on line 38, is currently public record as far as state employees are concerned. We have a law which specifies what is open, public record for classified state employees and it includes almost all of this information. We do have some problem, however, with adding J when you start talking about sick leave." Mr. Gagnier continued by saying he endorsed many of Mr. Isaeff's comments, but he was in opposition to some of the language which he then cited and proposed amendments to. In conclusion, Mr. Gagnier told Mr. Garner he would provide written copies of his amendments to the chair.

Frank Barker, Captain, Las Vegas Metropolitan Police Department, spoke in opposition to the legislation, providing Exhibit J to support his testimony.

Arlene Ralbovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department, presented opposing testimony as outlined in Exhibit K.

Mrs. de Braga asked if a great number of requests for information was being turned down due to a lack of staff. Ms. Ralbovsky said the department was not turning down requests, only delaying them due to staffing. Mr. Barker added the staff limitations in the records department was overflowing into his department and he explained why.

Joe Melcher, Washoe County Recorder, speaking against the legislation, expressed his concerns to the committee and suggested adding language designating what kind of control the County Recorder would have of the records as there were many abuses which currently existed.

Mrs. Lambert queried issuing a subpoena to enforce a real estate transfer tax and asked if the tax statute specifically kept the information confidential. Mr. Melcher said he was not sure because no one had ever asked for that information although the information was available to the public. Further discussion followed.

James Wright, Chief Deputy Recorder, Washoe County, testified his concern was at what point a document became a public record; his department's ability to make a copy of the record before releasing it to the public; and the ability of the public to utilize equipment to make copies. Mr. Melcher agreed the last concern posed several problems for the department.

Robert Cox, Nevada State School Board Association and Washoe County School District, echoed the reservations of Mr. Isaeff, Ms. Nielsen and Mr. Dyer, and requested amendments in those areas. In addition, Mr. Cox addressed the litigation section of AB 364 and stated his argument; AB 365, the balancing test, costs, and attorney fees. In conclusion, Mr. Cox said he would address a letter to the chair and Mr. Wallach stating his concerns and containing proposed amendments.

Chairman Garner explained the committee was running out of time, therefore, he would allow those who did not have the opportunity to testify to sign the attendance roster for the hearing on April 14, 1993, and he would permit them to speak prior to hearing the other bills on the agenda.

Jim Richardson, Nevada Faculty Alliance, expressed his concerns regarding AB 364, especially personnel records of educators. He asked that Section 3, the balancing test, be dropped, and suggested a notification procedure be included. He then cited what he believed to be other problems with the legislation.

There being no further business to come before committee, the meeting was adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Betty Wills

BETTY WILLS
Committee Secretary

Society of
Professional Journalists
Las Vegas Professional Chapter

ASSEMBLY GOVERNMENT AFFAIRS
Testimony on Open Records Bills
Assembly Bills 364, 365, 366, 367, 368

Good morning. Chairman Garner, members of the committee, my name is Laura Wingard. I'm the city editor for the Las Vegas Review-Journal and am here today in my capacity as president of the Las Vegas chapter of the Society of Professional Journalists, which includes members from newspapers, TV and radio.

My purpose today is not to go line by line through the public records bills before you but to stress to you why they are important and needed.

First, Nevada has more than 165 statutory exemptions to its so-called Open Records Act. The number of exemptions more than doubles when exclusions made through administrative regulations are included. This should disturb anyone committed to making sure that the business of government is done in the open.

Because there are so many exemptions, it is important that these bills pass so a signal is sent to the public employees who hold public records that it is their job to ensure the public has easy access to those documents which indeed are open for review by taxpayers. Journalists, in the course of trying to inform the public about the business of government, frequently encounter roadblocks in gathering open records. Too often, government agencies try to discourage reporters by first refusing access, then delaying access and finally releasing the record.

For example, a Review-Journal reporter told me on Friday the trouble she had obtaining a sexual assault report filed with the Metropolitan Police Department. First, she stood in line in the records department for the report. The records clerk went to pull the report and then refused, saying she could release no sexual assault reports. The reporter knew this was wrong, so she went and tracked down Metro's public information officer, who then intervened on the reporter's behalf. The reporter then returned to the records department and patiently waited for the records clerk to black out information that would identify the victim's name or address. She then paid the $5 Metro requires for

any police report -- whether it's one page or 100 pages. If Metro's public information officer had not been available on Friday, the reporter would have left empty handed when there was no reason to withhold the public report.

This is not an isolated incident. Not a week goes by at the Review-Journal that a reporter does not complain to me about problems in obtaining public records. Some government agencies don't want to provide contracts they've made for lobbying services. Others don't want to reveal details of contracts with consultants and others. Some won't release the individual salaries of public employees. I would argue that all of these records should be open and available for public review.

Some have said the news media should stop whining about lack of access to public records and instead take government agencies to court every time a public record is refused. This would be a costly and unworkable solution. As I've said, my newspaper alone is refused public records every week. Add up all the other news organizations in the state -- not to mention citizens -- who are refused public documents, and the courts would face a glut of such cases. More importantly, lawsuits are public documents. A news organization does not want all of its competitors knowing it is suing for certain records, which -- if the courts ruled they were public -- then would be made available to everyone but with only one news organization having paid for the costly litigation.

So, in an effort to make it easier for the public to access the very records they paid to create through taxes, I urge you to pass these open records bills. By so doing, you would send a powerful message that you believe government's business should be done in the open and without fear of public scrutiny.

Thank you for listening to me. I'd be happy to try to answer any questions you may have.

Treasurer spars with Schlesinger

Aston, commissioner argue over banks

By Mary Manning
LAS VEGAS SUN

County Commissioner Don Schlesinger threatened to take legal action against county Treasurer Mark Aston after Aston refused to provide a list of banks doing business with county funds.

Aston turned down Schlesinger's month-old request for further financial details Tuesday. "I don't feel by providing it that that information would be of any value to you," he said.

Schlesinger is seeking more information on the banks that handle county investments in an attempt to determine if the banks have good records in dealing with minorities.

But Aston said the information, in the hands of an untrained person, could be misconstrued or misused to the county's detriment.

"I will do whatever it takes to make this information public," Schlesinger said. That includes requesting the Nevada State Press Association to become involved, he said.

"I share with Commissioner (Karen) Hayes my outrage that the public discussion was cut off by the treasurer and any other member on the board," Schlesinger said.

Aston said business with Valley Bank and brokerage houses are listed in monthly reports available to commissioners, County Manager Pat Shalmy and Comptroller Guy Hobbs.

Schlesinger pressed the treasurer for information on other funds connected to McCarran Airport, the Sanitation District or the Water District.

"On what basis do you need that information?" Aston asked.

A startled Schlesinger – his voice rising – responded: "We have the right to find out this information. ...

"I want to know all the banks. It is clear I do not have the information. It is clear the press does not have the information. It is clear the public does not have this information."

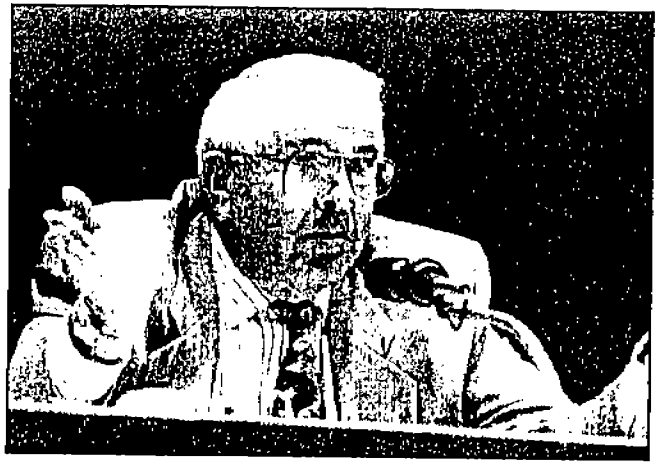
"Actually, Don, I don't have to give you the time of day," Aston responded.

"I'm not asking for the time of day," Schlesinger said. "I'm asking for the documents."

"I am not going to put the county's deposits at risk," Aston said.

At that point, Commissioner Paul Christensen moved to table the discussion. That prompted Commissioner Karen Hayes, chairing the meeting in the absence of Chairman Jay Bingham, to ask what was to be tabled.

"We're tabling the public's right to know, let's not kid ourselves," Schlesinger said.



PAUL CHRISTENSEN calls for an end to the argument.

PHOTOS BY BRAD TALBUTT / STAFF

DON SCHLESINGER demands county banking records.

"For the benefit of the commissioner who does not understand his job ... and for the benefit of the chair, who is old enough to know better," Christensen said he would ask Deputy District Attorney Mahlon Edwards to explain tabling.

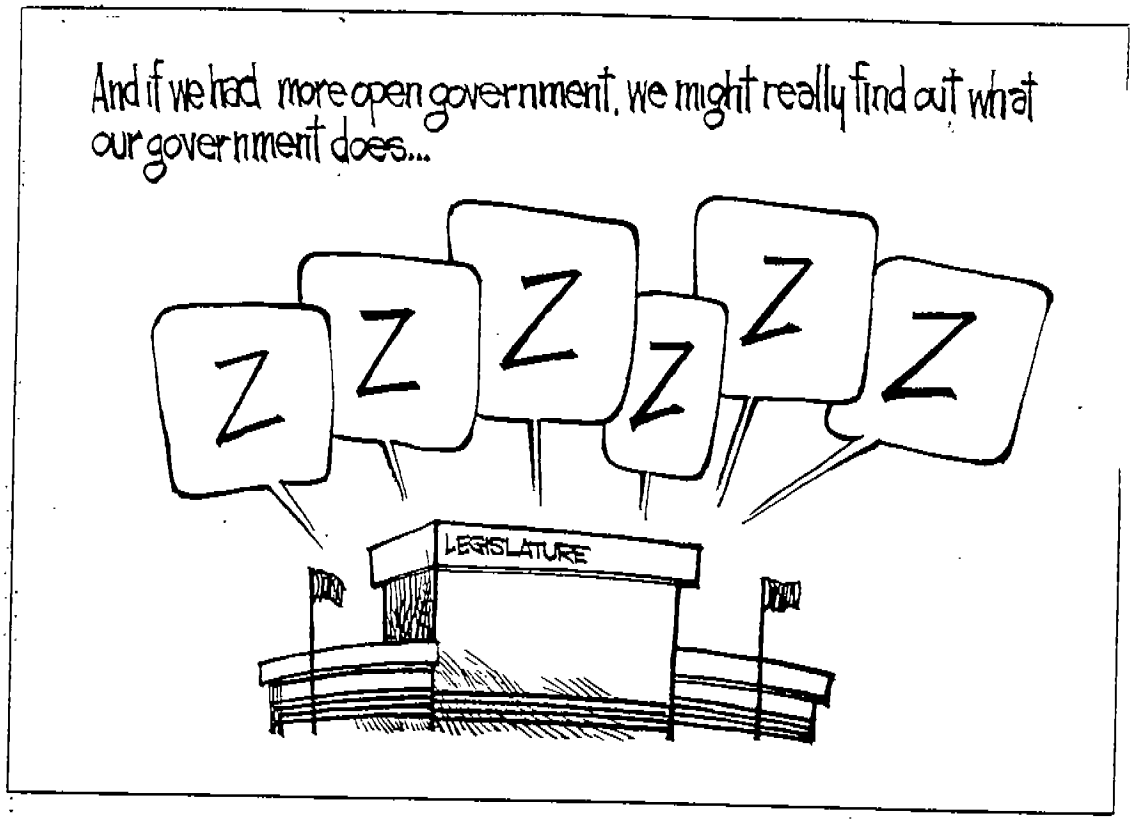
The motion to table was approved 3-2 with Commissioners William Pearson, Thalia Dondero and Christensen in the majority. Hayes and Schlesinger voted against it. Commissioners Bruce Woodbury and Bingham were absent.

Schlesinger said the issue might wind up in court.

He also asked County Manager Pat Shalmy to draft a disclosure law applying to county records.

Hayes said that the county's investment policy should be reviewed. The board examined it in October.

EXHIBIT D 1020



Legislature should open the doors on government

The media have long been pushing for it. Now, the public agrees: State government must be open.

Legislators should pay attention to a survey released earlier this week, showing Nevadans strongly support an end to secrecy in government.

The survey, conducted by the Nevada Press Association, indicated 92 percent of Nevadans want their government agencies to provide their meeting agendas free of charge to the public.

The 500 residents in the survey believe the public's right to know outweighs a public servant's desire for privacy as it relates to job performance, qualifications or possible illegal actions.

Interestingly, even the majority of government workers polled favor open personnel records. That makes us wonder if most of the objections are coming from management positions in government.

Those polled prefer open government by wide margins. Ninety-five percent want records on government spending open, and more than 60 percent want public birth and death certificates. Support was strong for continuing the public notice requirements which newspapers regularly publish.

The association's survey shows what we've long suspected. People don't trust government agencies that operate behind closed doors or hide documents relating to their activities. Voters know open government is more responsive.

A legislative subcommittee has recommended opening more public records and limiting government power to keep its affairs secret. If the Legislature approves, the recommendations would be the first major changes in a law that has survived basically intact since 1911.

The association survey adds ammunition to the subcommittee's recommendations. Government should be more open. Documents should be subject to public review. Agencies should not be permitted to operate in secret.

Historically, government secrecy has been advocated by special-interest groups or well-meaning bureaucrats who think the public should only know what others think it needs to be told.

There are undoubtedly those who will tell the Legislature they need secrecy to to conduct business effectively. But, that's like telling your boss you work better when he isn't aware of what you're doing. Neither he, nor the public, will believe you.

The public must be able to review its government's workings. Without open government, the public cannot ascertain what it is doing. And if the public does not know what the government is doing, it can't make intelligent decisions at the ballot box.

Open government is the essential ingredient for democracies to work.

Research Report

Nevada Press Association, Inc.

1992-93 Statewide Survey
of Registered Voters

Consumer Data Service

3601 North Lincoln
Oklahoma City 73105
(405) 524-0021

EXHIBIT E

BARRY NEWTON
DIRECTOR

DR. ERNEST F. LARKIN
RESEARCH CONSULTANT

Consumer Data Service

3601 North Lincoln Blvd. • Oklahoma City, OK 73105 • 405/524-0021

TO WHOM IT MAY CONCERN:

The data in this report was generated through an extensive market research study conducted jointly by Consumer Data Service (CDS), a market research firm, and the Journalism Research Center at the University of Oklahoma.

The study was commissioned by the Nevada Press Association, Inc. The purpose of the study was to determine attitudes towards government records and the publication of legal notices by registered voters in the state of Nevada.

In order to gain valid insights into citizen preferences and tendencies, a structured questionnaire was developed and tested.

The questionnaire, constructed by Dr. Ernest F. Larkin, director of the Journalism Research Center at OU, was designed to be administered via telephone interviews with a random sample of registered voters in the state of Nevada.

Consumer Data Service and the Journalism Research Center are responsible for the design and execution of the study. All data were processed by CDS and the Journalism Research Center, and the report was prepared by us. I can certify that the data in this report are, to the best of my knowledge, valid and correct.

Respectfully,

Barry Newton
CDS Director

Nevada Press Association, Inc.

1992-93 Statewide Survey of Registered Voters

Executive Summary

Nevada's registered voters are sensitive and alert to issues affecting them personally and to issues and records under the control of their state and local governments. By a substantial majority Nevada's registered voters believe most, if not all, records obtained by government agencies should be accessible by private citizens. Registered voters believe the public's right to know outweighs a public servant's or public employee's contention to privacy with matters relating to job performance, qualifications and illegal actions. Even a majority of government employees are in favor of openness with respect to personnel records.

While Nevada's voters are strongly in favor of open records, they are not insensitive to the cost to provide such records. A majority of Nevada's citizens believe individuals should pay for public records they request, however they do not believe the government should make a profit on public records provided.

A desire for openness in government was expressed by each public sector examined. No significant differences were demonstrated by respondent age group, income category, gender, or rural or metropolitan residence. The basic message received from the survey was that citizens deserve to know what actions their government takes and have a right to access records and information a government may keep and maintain.

The following summary highlights the results of questions asked to 500 registered voters in Nevada regarding their attitudes toward state government records and their usage and feelings toward the publication of legal and public notices. Comparisons by the respondents' residence or by having a government employee in the household are indicated in the text headings accompanying the specific questions asked.

Voter Access to Government Information

Registered voters to the statewide survey were asked if Nevada citizens should have access to specific types of information that were part of present day public records or information collected by public agencies. Of the 500 interviews, respondents were divided by metro and non-metro locations and by government and non-government employment status. By every measure examined, respondents were strongly in favor of openness to the following categories.

Q. Should private citizens have access to information on . . .

Response (N=500)	% of total sample	Metro respondents	Non-Metro respondents
Expenditure of taxpayer dollars by gov't agencies	95.8	95.6	96.0
Birth and death certificates	63.0	64.4	61.6
Work experience of public employees	76.2	73.2	79.2
Illegal actions by public employees	88.8	86.8	90.8
Job performance data on Dept of Welfare employees	75.2	74.8	75.6
Court information on hazardous products	93.4	91.6	95.2
Payment of settlements in suits against the government by private citizens	75.2	74.8	75.6
Job performance and job qualifications information on			
Gov't agency heads	90.0	90.0	90.0
Gov't department heads	90.8	89.6	92.0
Government or public agency administrators	90.4	89.6	91.2
All public employees	70.6	66.8	74.4
Teachers in public schools and colleges	77.0	78.4	75.6

	Households with public employee	Household without public employee
Expenditure of taxpayer dollars by gov't agencies	96.2	95.7
Birth and death certificates	63.2	62.4
Work experience of public employees	74.4	77.2
Illegal actions by public employees	86.5	89.9
Job performance data on Dept of Welfare employees	66.9	78.9
Court information on hazardous products	97.0	92.8
Payment of settlements in suits against the government by private citizens	73.7	76.6
Job performance and job qualifications information on		
Gov't agency heads	87.2	91.6
Gov't department heads	88.7	92.2
Government or public agency administrators	87.2	92.5
All public employees	64.7	73.1
Teachers in public schools and colleges	69.9	79.8

Other results from questions relating to government records and meetings revealed that...

- 94.2% believe government agencies should continue to provide agendas of open meetings free of charge to the public.

- 86.0% believe private citizens should have access to all information which government agencies may have about them.

- 58.2% believe private citizens should pay for copies of records they request from government agencies, but...

- 78.7% do not believe government should make a profit on public records they sell or provide to citizens.

- 80.2% do not believe government agencies should arbitrarily close records which presently are open to the public.

Q. *Should government agencies continue to provide agendas of open meetings free of charge to the public?*

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	94.2	94.0	94.4	96.2	93.1
No	3.2	3.6	2.8	2.3	3.8
DK/NR	2.6	2.4	2.8	1.5	3.2

Q. *Should private citizens have access to all information which government agencies may have about them?*

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	86.0	85.2	86.8	85.7	86.7
No	10.8	10.8	10.8	12.0	10.1
DK/NR	3.2	4.0	2.4	2.3	3.2

Q. *Should private citizens have to pay for copies of public records they request from government agencies?*

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	58.2	55.2	61.2	69.2	52.6
No	38.6	40.4	36.8	27.1	44.2
DK/NR	3.2	4.4	2.0	3.8	3.2

Q. *Should the government charge enough to make a profit on public records they sell to private citizens?*

Response (N=291)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	20.3	23.2	17.6	17.4	20.3
No	78.7	75.4	81.7	82.6	78.0
DK/NR	1.0	1.4	.7	0.0	1.6

Q. *Should government agencies be able to close records to the public which are now open?*

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	12.2	10.0	14.4	9.8	11.8
No	80.2	81.2	79.2	82.0	80.9
DK/NR	7.6	8.8	6.4	8.3	7.2

Nevada League of Cities
P.O. BOX 2307
CARSON CITY, NV 89702
(702) 882-2121

NACO
NEVADA ASSOCIATION OF COUNTIES
308 N. CURRY ST., SUITE 205
CARSON CITY, NV 89703
(702) 883-7863

April 12, 1993

To: Val Garner, Chairman
Assembly Government Affairs
and Members of the Committee

Re: Assembly Bills 364 - 368

Dear Chairman Garner,

During the interim both the Nevada League of Cities and the Nevada Association of Counties participated in the discussions of the ACR 90 study of public records. Both memberships agreed for the need to clarify certain issues regarding public records. Following the introduction of Assembly Bills 364 - 368, our respective memberships reviewed these proposals and would like to provide you with our comments and suggested amendments to clarify our areas of concern.

Some of our major concerns regard proposed changes to confidential records which could be in conflict with existing federal statutes without further clarification. Many documents including sexual discrimination, disabilities and affirmative action records need to remain confidential to assure that we do not conflict with prior court decisions and state regulations.

We ask that you also consider the fiscal impact of implementing certain aspects of these proposals. It is imperative that local governments retain the right to recover costs associated with providing these services to the public. Keeping in mind that some of the searches and compilation of public records can be extremely time consuming, we are concerned that unrealistic time frames could add significantly to the cost of providing this service as staffing levels may have to be increased or additional overtime accrued to ensure that the agencies will be in compliance with any new statutes.

Attached is a copy of these and other areas of concern for which we would like to offer amended language for your consideration.

Sincerely,

Thomas J. Grady, Executive Director
Nevada League of Cities

Robert S. Hadfield, Executive Director
Nevada Association of Counties

EXHIBIT F

PROPOSED AMENDMENTS
Rev 4/9/93

A.B. 365

Section 2 (pg. 1 line 7)

Replace sentence beginning with "if the requester prevails,..." with the sentence "The court may allow the prevailing party to recover court fees and reasonable attorney fees from the losing party."

This section (1) clarifies costs, (2) gives the court discretion in the awarding of costs and (3) allows the prevailing party, whether governmental or private, the opportunity to recover fees.

Section 3 (pg. 1 line 10)

Replace Section 3 with "A public agency, public officer, or employee is immune from liability for damages, either to the requester or the person whom the information concerns, if the public officer or employee acts in good faith in disclosing or refusing to disclose information.".

This clause extends to the public agency the immunity to liability if the employee acts in good faith.

TESTIMONY BEFORE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS
AB 364, AB 365, AB 366

OFFICE OF THE ATTORNEY GENERAL

BROOKE NIELSEN, ASSISTANT ATTORNEY GENERAL

APRIL 13, 1993, 8:00 A.M.

A clear definition of what is a public record and clear guidance regarding access to records is welcomed by everyone who must deal with public records and the public who is entitled to have access.

While generally in support of this monumental effort to reform our public records law, I have concerns regarding eight areas in these bills and I have recommendations to amend or delete them.

Six items of concern are in today's three bills and two are in AB 368 to be heard tomorrow.

AB 364

FIRST: AB 364 Section 3 , provides that records that are confidential by law are still subject to being opened if a judge can be convinced that public policy justifies opening the particular record. It is a novel approach for a legislature to make all confidential records potentially open by letting a judge decide if there is justification to do so. The legislature determined the public policy when it made the record confidential and the public has a right to rely on that.

This section will generate unnecessary litigation costs because the government will have to defend every attempt to open a confidential record, unless appropriate waivers of confidentiality can be obtained. Inmates with nothing else to do will have a field day with this section.

SECOND: It is of great concern that the words "state regulations" are omitted in Section 4(2)(a). This section restricts access to records that are presently made confidential by federal statute, federal regulation and state statute, but opens information that is currently made confidential by state regulation.

There is a companion resolution, ACR 29, to be considered in the Assembly Committee on Elections and Procedures April 20, which will authorize an interim study regarding exemptions to disclosure in public records to determine if they should be repealed, amended or added. You should not toss away regulations that restrict access until you have the benefit of ACR 29.

I recommend that Section 4(2)(a) be amended by adding "state regulations of this state or political subdivision" to the list.

THIRD: Section 4(2)(b), while appearing to restrict access to medical records, does so only to the extent that the information would reveal the person's identity. All other information in the record is public. Since AB 366 Section 3 requires that the presence of confidential information in a record is not a reason to withhold the public information, the medical record would have to be edited to eliminate identity information, a very labor intensive task. These are records that should be confidential, I urged you to delete the words at the end of the paragraph which state "but only to the extent that the information would reveal a persons's identity."

FOURTH: Section 4(2)(c) addresses records customarily in the personnel files. This section makes very personal information including home addresses, medical information and evaluations in a personnel file open to anyone if it is related to hiring, retention, promotion, demotion or termination of employment. Opening personnel records may subject employees to harassment or threats, and undermine the rehabilitative purpose of progressive discipline.

There are others in attendance today who will express in detail the concerns that we all share about having personnel files open to the world.

FIFTH: Section 4(2)(g) restricts access to an open investigation file but does not restrict access to that file once the investigation is closed. There are very strong reasons to keep an investigation file confidential even after the matter is closed. An investigation file contains a wide variety of information

which may be rumor, innuendo, untrue or unverified. In some cases release of information garnered in an investigation will risk lives or ruin reputations.

In addition, making an investigation file public once the investigation is closed will have a very detrimental effect on the ability of law enforcement or regulatory bodies to gather information. The Chief investigator for the Attorney General's office advised me that people talk freely to investigators only if they are assured that what they say will remain confidential. You must consider that governmental investigations include complaints against licensees and investigations preparatory to licensure in addition to criminal investigation. It is sobering to think that every inmate in our system will have access to investigation files simply because the investigation is closed.

Though the identity of a confidential informant and investigation techniques are protected elsewhere, there is cause for concern if any information in an investigation file becomes public information.

Subsection (g) must be amended to delete "unless the investigation has been closed."

SIXTH: Section 4(2)(i) & (j) of AB 364 appears to protect information prepared in anticipation of and during lawsuit to the extent it is privileged or not discoverable under the discovery rules. However, in order for the protection for information prepared in anticipation of a lawsuit to be applicable, the lawsuit must be filed. Prior to the lawsuit, access to information prepared in anticipation is not restricted by this language. This gives a great unfair advantage to a plaintiff who is anticipating suing the state or local government. While attorney-client privilege may protect some information, that privilege does not apply to all materials.

I recommend that Section 4(2)(i) be amended by deleting lines 40 and 41, and making line 42 be subsection (i).

Subsection (i) would then read: "It has been filed with a court and contains material which was prepared in anticipation of or during litigation."

Subsection (j) would remain the same.

Next, I would direct your attention to AB 365.

This bill sets forth procedures for appeal of the denial of access to a public record directly to district court. The attorney general opposes the provision which entitles the prevailing requester, but not the prevailing party, to recover attorney fees and costs. It does not permit the agency to recover fees if the agency was correct in the denial of access. Rather than mandatory fees for the requester, it is recommended that AB 365 be amended to provide that "the prevailing party may recover his court costs and reasonable attorney fees in the proceeding at the discretion of the court. The judge can decide on the facts of the case whether attorney fees and costs are appropriate.

AB 366

AB 366 Section 6 sets out procedure for requesting public records and statutory time limits to either deny the request or to fulfill it. While three working days may be sufficient time to produce the requested information or determine whether it is restricted, 13 working days may not be enough time to copy a large volume of records for an agency that does not have adequate copy equipment and enough staff to fill the request and still carry on the tasks of the agency. This is especially problematic if the large volume contains commingled confidential and public information. Sufficient time must be given to do the job with the resources available.

I recommend that, under unusual circumstance at least thirty working days be allowed.

One other correction is needed related to "unusual circumstances." Section 6(4) should be amended to state "unusual circumstances includes but is not limited to"

Section 6(3).

This section is redundant. Section 6(1) already provides that the book or record may be inspected unless the request has been denied.

This concludes my testimony. I am happy to answer any questions.

Press Association; William Isaeff, Chief Deputy City Attorney, City of Reno; Carole Vilardo, Nevada Taxpayers Association; Nancy Carr, Lyon County Recorder; Joe Melcher, Washoe County Recorder; Margi Grein, Director of Finance, Nevada State Contractors Board; Melanie Crossley, Deputy Attorney General, Office of the Attorney General; Arlene Rablovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department; Wally Lauzan, Assistant Chief of Administrative Services, Department of Motor Vehicles; Darcy Coss, Deputy Attorney General, Department of Motor Vehicles; Lucille Lusk, Nevada Coalition of Conservative Citizens; Anita LaRuy, City of North Las Vegas; and Eric Dabney, Director of Library, Parks & Recreation, City of North Las Vegas.

ASSEMBLY BILL 364 - Makes various changes regarding access to public books and records.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Chairman Garner opened the hearings on AB 364, AB 365 and AB 366 as there were those who had not had the opportunity to testify on April 13, 1993. Mr. Garner called the testifiers in order as they appeared on Exhibit B.

Jerry Zadny, Administrator, Division of Mental Health and Mental Retardation, was unable to appear but, for the record, submitted prepared testimony (Exhibit C) in opposition to AB 364.

Guy Rocha, Administrator, State Archives and Records, in opposition to AB 364, AB 365 and AB 366, read his opposing testimony (Exhibit D) into the record.

Pat Coward, Economic Development Authority of Western Nevada (EDAWN) and Nevada Development Authority (NDA), explained the purpose and mission of the development authorities, how competitive it had become with other states to draw new business, and how crucial it was to keep the confidentiality of information when dealing with potential businesses moving into the area. He said, "This is something that has a lot of the people concerned, maintaining that confidentiality....A business looking at making a move requires as much as two years work

before anything materializes and a firm decision is made." He gave the committee an example of a business which ultimately did not choose the Reno area due to information which had been leaked. He recognized the need to maintain open records for the public in many areas but not necessarily when dealing with potential clients coming into the area. Mr. Coward then proposed an amendment to AB 364 which would provide client confidentiality (Exhibit E).

Mrs. Lambert asked if the boards of EDAWN and NDA were covered by the open meeting law, the answer was no.

Mr. Garner again asked the audience to provide written amendments to the chair.

O.C. Lee, Nevada Conference of Police and Sheriffs, and representing Mark Balin, Professional Fire Fighters of Nevada, said, "We are opposed to the personnel section of the records in AB 364. That does not mean that we have any opinion of any other portion of the bills before you." Mr. Lee referenced the yearly physical examinations, required by law of all police officers and fire fighters, which went into the personnel records. He suggested health records would immediately become public information, therefore, he strongly opposed that section of the bill.

Mrs. Augustine asked if it was true police officers did not have home addresses and telephone numbers published for their own protection, Mr. Lee agreed.

Mike Johaneson, Service Employees International Union, said he too was speaking against the personnel section of AB 364. He continued, "Presently there is quite a body of law regarding the differences, the arguments between privacy and public record, and access to public files, personnel files, that have come about through the Freedom of Information Act. What this bill does is it goes far beyond the existing law and what is accessible by the media and the public record. There is a lot of stuff in personnel files that are very private and would create significant problems for a number of employees. We've gone through this with other bills and if the committee would like, I will provide some court background, some case law on this thing from the Freedom of Information Act. But I don't see anything this bill does but replace existing federal law and go beyond the Freedom of Information Act to allow media access to personnel files. Accordingly, we strongly oppose that section of the law. The other thing I would like to suggest, is if you are going to entertain amendments excluding certain employees

from this bill as was discussed yesterday, I would hope you would also add county and state employees."

Donald Klasic, General Counsel, University of Nevada, testified he too had served on the advisory committee. Additionally, he said the Board of Regents had authorized him to inform the committee the Board supported all five bills with two exceptions, both in AB 364. He identified one objection as being on Page 3, lines 24-29 saying the committee had heard enough testimony, specifically Mr. Dyer's, stating why the records ought to be closed and presented the committee with the document which had been generated out of the deliberations of the advisory committee (Exhibit F). He then pointed out the language which the University proposed as amendments and also the original language the advisory committee had recommended. The second objection was Section 3 of AB 364, the reverse balancing test. Again, he referenced previous testimony, specifically that of Mr. Isaeff, and detailed how it would work. In further testimony, Mr. Klasic explained his understanding of the Bradshaw case, the correct rendering of the reverse balancing test, his desire to avoid litigation over what constituted public records, how criminal investigations worked, and mentioned a possible fiscal note.

Mrs. Augustine queried the date shown on the bill versus the date shown on the proposed amendment. Mr. Klasic explained the intent had not been to postpone the legislation to 1995, but to retain the 1994 date. The error had occurred in the drafting process.

Mr. Hettrick commented, "You just said files could be open on an investigation if it wasn't going to harm anyone." He then asked, "Is that the actual language? The question which was raised yesterday, as I recall, is we could have an investigative file with all kinds of allegations, and etc., and that releasing that file could harm people. If in fact the judge's ruling in Bradshaw says you can't release information that would be harmful, is that going to protect those kinds of files."

Mr. Klasic responded, "It might not. I agree that is going to be a problem." He described how the Bradshaw case applied and said, "The courts don't get down to the nitty gritty about the raw data which may actually contain defamatory and false information, and there is a true problem there."

Exhibit G was submitted to the committee secretary on behalf of James Penrose. It contained the amendments as suggested in the testimony of Mike Dyer on April 13, 1993.

Evan Wallach, General Counsel, Nevada Press Association, was given the opportunity to respond to the testimony of those in opposition to AB 364, AB 365 and AB 366.

Mrs. Lambert, in an effort to understand the balancing test, stated an example. Mr. Wallach replied the employee, as stated in the example, was exempt if the information was released in good faith. Mr. Wallach then gave his own examples of safety valves.

Mrs. Augustine wanted clarification on the statement "request for documents were always denied." Mr. Wallach clarified, "When it comes to me as counsel for the Press Association, and I get into it, my uniform experience has been when dealing with government officials applying the balancing test, they have always applied the balancing test against my clients. And that is true, every single time."

Ande Engleman, Nevada Press Association, added, "Mr. Wallach is not called in on an instance where the press has no problem obtaining documents. He is only called when a problem has evolved."

The hearings on AB 364, AB 365 and AB 366, were closed with no action taken.

ASSEMBLY BILL 367 - Defines "public record" to accommodate various forms in which records are maintained.

ASSEMBLY BILL 368 - Requires charges for copies of public records not to exceed cost.

Mr. Wallach explained the purpose of AB 367 and AB 368. He agreed with Mr. Isaeff's testimony of April 13, 1993, saying there definitely was a conflict with the definition of "governmental entity" in AB 367 which would have to be resolved. He said he preferred the broader of the two definitions. As for AB 368, he said it was the intent of the subcommittee to balance the cost of providing the service with the need to make the cost reasonable to the public, detailing the compromise which was reached.

Ande Engleman added she believed AB 368 set up reasonable costs for copies and hoped the copies would not run more than 25 cents per copy. She pointed out the Secretary of State's budget was largely supported by copying fees and, therefore, urged deleting

APRIL 14,1993

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD, MY NAME IS GUY ROCHA, THE STATE ARCHIVES AND RECORDS ADMINISTRATOR. I AM REPRESENTING THE STATE LIBRARY AND ARCHIVES AND SERVED AS A MEMBER OF THE EXECUTIVE ADVISORY COMMITTEE. I WAS ALSO CLOSELY ASSOCIATED WITH THE INTERIM LEGISLATIVE STUDY IN 1982 STUDYING PUBLIC BOOKS AND RECORDS, WHICH AS ANDE ENGLEMAN POINTED OUT YESTERDAY, DID NOT RESULT IN UPDATING OUR BADLY OUTDATED PUBLIC RECORDS LAW.

NEVADA IS AMONG THE LAST STATES IN THE NATION TO TRY AND COMPREHENSIVELY ADDRESS THIS COMPLEX AND CONTROVERSIAL PUBLIC POLICY ISSUE WITH ALL ITS MYRIAD FISCAL AND TECHNOLOGICAL RAMIFICATIONS. I HOPE THE EXTENSIVE TESTIMONY WE HEARD YESTERDAY, AND I AM SURE WE WILL HERE AGAIN TODAY, WILL NOT RESULT IN THE TYPE OF PUBLIC POLICY PARALYSIS WE ENCOUNTERED SOME TEN YEARS AGO. LACK OF ACTION THEN HAS ONLY EXACERBATED PUBLIC DISCLOSURE ISSUES WHICH ARE NOW HEIGHTENED BY THE PROLIFERATION OF THE MICROCOMPUTER, ELECTRONIC MAIL, AND OPTICAL IMAGING SYSTEMS. OUR FAST-PACED TECHNOLOGICAL ADVANCEMENTS IN RECORD CREATING AND KEEPING ARE OUTSTRIPPING OUR ABILITY TO LEGISLATE ACCESS TO, AND CONFIDENTIALITY FOR, THESE GOVERNMENTAL RECORDS.

AND WE HAVE CERTAINLY LEARNED THERE ARE INHERENT AND SIZEABLE COSTS TO OPEN GOVERNMENT AND PUBLIC ACCESS IN THE ONGOING DEMOCRATIZATION OF OUR POLITICAL SYSTEM. THE ALARMING IRONY IN THIS ISSUE WE CONFRONT TODAY IN BALANCING RIGHTS OF PRIVACY VERSUS PUBLIC DISCLOSURE IS THE ONGOING REALITY OF CENSORSHIP THROUGH BUDGET

CONSTRAINTS.

JOAN KERSCHNER, STATE LIBRARIAN, AND ALSO A MEMBER OF THE EXECUTIVE ADVISORY COMMITTEE COULD NOT BE HERE. THE STATE LIBRARY AND ARCHIVES HAVE NO PROPOSED AMENDMENTS, BUT I AM HERE TODAY TO ADDRESS ANY SPECIFIC QUESTIONS REGARDING THE PUBLIC RECORDS BILLS BEFORE YOU NOW, OR AT A LATER DAY.

Chairman Garner named the subcommittee to hear AB 364, AB 365, AB 366, AB 367 and AB 368. It consisted of Mr. Bennett as chairman, Mr. Ernaut and Mrs. Freeman.

Chairman Garner requested committee introduction of the following Bill Draft Request 23-1960.

BILL DRAFT REQUEST 23-1960 - Allow employee to be represented at certain hearings before personnel commission by person of his own choosing.

ASSEMBLYMAN BENNETT MOVED FOR A COMMITTEE INTRODUCTION ON BDR 23-1960.

ASSEMBLYMAN BACHE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL NO. 445 - Provides for creation of earthquake safety council.

Assemblyman Rick Bennett, District 16, testified he, along with Assemblyman Bernie Anderson, had represented the State Assembly on an advisory group looking at earthquake safety. He gave the various reasons why he supported the proposed legislation, more so since he had personally experienced the Lander earthquake which had convinced him earthquake safety was indeed needed. He then proceeded to give an in-depth explanation of AB 445.

Assemblyman Bernie Anderson, District 31, stated the bill was noteworthy as Nevada was the third most active earthquake state in the United States, but the state was without legislation regarding earthquake safety. He felt AB 445 would clearly send a message to the public the legislature was concerned about public safety in the state.

Chairman Garner referenced section 8, and asked if retrofitting was being discussed by the word "mitigating." Mr. Bennett replied there were many older buildings, particularly in northern Nevada, which needed to be looked at but it was not the purpose of the council to authorize changes, only to suggest to local government they review ordinances regarding earthquakes and buildings in the area. More discussion followed with Mr. Anderson joining in.

Mr. Garner then pointed to the membership of the council and said, "Under (i), you've included the Division of Emergency

ASSEMBLY BILL 357 - Directs librarian to establish pilot project to provide grants to certain public libraries for purchase of books and library materials.

Mrs. Augustine indicated an amendment had been proposed at the subcommittee meeting (Exhibit M) and stated everyone was satisfied with AB 357 with the amendment.

> ASSEMBLYMAN ERNAUT MOVED TO AMEND AND DO PASS A.B. 357.
>
> ASSEMBLYMAN AUGUSTINE SECONDED THE MOTION.
>
> THE MOTION CARRIED. Assemblymen McGaughey and Bennett were not present.

Chairman Garner indicated the bill would go to Ways and Means Committee.

ASSEMBLY BILL 359 - Makes various changes regarding administration of program of deferred compensation for public employees.

Mr. Bache introduced a proposed amendment to AB 359 and a letter from Mr. Will Keating (Exhibit N).

> ASSEMBLYMAN BACHE MOVED TO AMEND AND DO PASS A.B. 359.
>
> ASSEMBLYMAN HETTRICK SECONDED THE MOTION.
>
> THE MOTION CARRIED. Assemblymen McGaughey and Bennett were not present.

Chairman Garner requested Mr. Bache handle AB 359 on the floor.

ASSEMBLY BILL 364 - 368 - Public Records Bills.

Chairman Garner indicated these bills were being handled in subcommittee and no action would be taken until they came out of subcommittee.

Chairman Garner announced the subcommittee would be expanded to include Mrs. Segerblom and Mrs. de Braga.

ASSEMBLY BILL 415 - Raises threshold for requiring advertisement of competitive bids for purchases by local government.

MINUTES OF THE
ASSEMBLY SUBCOMMITTEE ON GOVERNMENT AFFAIRS

Sixty-seventh Session
May 3, 1993

The Assembly Subcommittee on Government Affairs was called to order by Subcommittee Chairman Rick Bennett, at 9:07 a.m., on Monday, May 3, 1993, in Room 330 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

SUBCOMMITTEE MEMBERS PRESENT:

Mr. Rick C. Bennett, Subcommittee Chairman
Ms. Marcia de Braga
Mr. Pete Ernaut
Ms. Vivian L. Freeman
Ms. Gene W. Segerblom

OTHERS PRESENT:

George Cotton, Clark County Affirmative Action Manager
David Reese, Nevada State Contractors' Board
Lucille Lusk, Nevada Coalition of Concerned Citizens
David Edwards, Clark County Geographic Information System
Ande Engleman, Nevada Press Association
Joe Melcher, Washoe County Recorder
Melanie Mehan-Crossley, Deputy Attorney General
Margaret Lowther, Storey County Recorder
Nile Carson, Reno Police Department
Suzanne Beaudreau, Douglas County Recorder

GUEST LEGISLATORS PRESENT:

Assemblyman Gene Porter, Clark County District 8

Following opening remarks, Subcommittee Chairman Rick Bennett opened the hearing on AB 365.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

Ande Engleman, Nevada Press Association, observed except for one suggested amendment regarding public payment of court costs, AB

365 had probably gained the most support from public employees. She said the present law stated denial of access to a public record was a misdemeanor and a crime. Without a statutory definition of what constituted a "public record," it was sometimes difficult for public employees to make a decision as to what was public and what was not. She said her organization supported removing the misdemeanor charge for refusing access to public records for a public employee. She also supported language on page 1, lines 3-9 as a compromise since they could not agree on an administrative procedure for appeal on denial of public records. The favored procedure, Ms. Engleman stated, would have carried a large fiscal note, and this did not appear to be an opportune time to bring forward anything of that nature.

Ms. Engleman said some Legislators had come to her saying they would favor an out-of-pocket, personal civil penalty as usual in most other states. This would apply in instances where an individual had purposely denied access to public records because the information would have proven embarrassing. She said they opposed having the public pay for court costs and attorneys' fees if a case was lost. The taxpayer had already paid for the other side's attorneys and court costs, through tax dollars.

Taxpayers were also paying the fees for the agency, Mr. Bennett observed. The question was, should the taxpayers, in general, have to cover those costs when the suit might be rather frivolous. Ms. Engleman noted the bill did not grant court costs and attorneys' fees if a suit was over a record everyone had thought to be confidential. Court costs and attorneys' fees were granted only when it was a denial of what was clearly a public record. Therefore, she did not think there would be frivolous lawsuits.

Mr. Bennett questioned the aspect of the judge's discretion in determining who should be awarded costs. Ms. Engleman opined the courts were generally very conservative. If an agency had truly withheld a record which should have been public, Mr. Bennett said he hoped the court <u>would</u> penalize the agency in some way by making them pay the costs.

Drawing attention to Section 3, Mr. Bennett said he had received communication suggesting the possibility of including a public "agency" in the language on page 1, line 10. Ms. Engleman said they had tried to look at the issue from everyone's point of view, but she did not think there would be a problem adding "agency."

Referring to Section 2, Mr. Ernaut asked if the language should specify "a reasonable request." In response, Ms. Engleman said she thought this was addressed in another bill and she did not see the need for additional language.

Representing the Attorney General's Office, Deputy Melanie Mehan-Crossley came forward to respond to Ms. Engleman's testimony. Ms. Crossley reported the Attorney General had asked that the court be given the discretion of granting attorneys' fees and costs when faced with this kind of lawsuit. She said she thought Ms. Engleman's testimony went to giving the court that discretion.

Mrs. Freeman questioned whether they preferred more flexible language than the language on page 1, line 8, "he is entitled to recover his costs. . .". Ms. Engleman said, "Yes," and they had submitted suggested language in earlier testimony.

Representing the State Contractors' Board and the City of Lovelock, David Reese asked the committee to consider loosening the language regarding attorneys' fees and costs to be awarded to the requester. He said there were many situations in which an existing confidentiality statute put the burden on the agency, commission or board, to make certain confidential records remained confidential. He felt there were good reasons why fees or costs awarded to the requester should be discretionary with the judge.

Addressing Mr. Reese's remarks, Ms. Engleman said where there was an exemption stating something was confidential, it should not be called into question as the material was clearly confidential. She said she thought the attitude of government, particularly over the past 10 years was, "when in doubt, keep it closed." She said they were trying to change this attitude to one of "where there is no exemption saying information is confidential, when it doubt it should be released."

Although Mr. Bennett acknowledged Ms. Engleman's remarks, he said he thought even though there had been a great deal of work done on AB 364 in trying to more clearly indicate what was open and what was closed, there would still be gray areas at least until people became more familiar with the new statutes.

Lucille Lusk, Nevada Coalition of Concerned Citizens, remarked from the individual citizen's point of view, the process for using the courts to resolve questions of confidentiality was extremely difficult, if not impossible. She asked if there

would be an internal agency appeal process. Ms. Lusk believed there should be a way for an individual (as opposed to an agency) to appeal to a higher authority if there was disagreement as to confidentiality. Mr. Bennett suggested Ms. Lusk should address this further when AB 366 was discussed.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Both Ande Engleman and Dennis Neilander, Legislative Research Analyst, came forward. Ms. Engleman noted this bill was a compromise. In Section 2, the words, "other electronic means," was intended to mean FAX machines and public electronic data bases such as NELIS -- information the courts had ruled should be equally accessible by the public. Ms. Engleman said they had no intention or thought of trying to tap into confidential data bases in state government. She said the Press Association would have no problem with clarifying this section.

Also clarifying, Dennis Neilander explained there was a provision in AB 364 which provided security systems (or hardware system) would be confidential. Referring to AB 366, Mr. Neilander said the bill was largely based on the federal Freedom of Information Act and a study done 10 years ago, which made a similar recommendation regarding procedures for access. He said the law was currently void of any procedures for access and did not provide any procedural mechanisms for someone to either request a record or for the custodian of a record to respond. Thus, in subsection (2) of Section 3, page 1, if a public record contained both confidential and nonconfidential information it would redact out the confidential information.

Referring to language on page 1, line 26 speaking of an exemption provided in NRS 481.063, Mr. Neilander said this dealt with existing law requiring the Department of Motor Vehicles (DMV) to make an inquiry when someone asked for information regarding motor vehicle registration. If the Department determined the information would be used for illegal purposes, it could not release the information. Therefore, except as it applied to the DMV, the language of AB 366 stipulated the agency could not ask why the information was required.

Speaking to the subject, Ms. Engleman noted there had been an earlier bill in the Senate in which a public agency wanted the same permission to determine whether information was going to be used illegally. The DMV statute was clearly unconstitutional,

Acknowledging his support of public/private enterprise, Mr. Ernaut said nevertheless, as a contest between a list and the amendment on Exhibit D, he would be more comfortable with a list. Ms. Morgan said she would work with the Attorney General's Office to tighten the language.

Chairman Bennett invited Brooke Nielsen, Assistant Attorney General, to come forward to address the language of the amendment. Assistant Attorney General Nielsen agreed the language could and should probably be tightened up. The words "substantially" and "directly" were common legal terms which were generally understood and in this instance would refer to a direct connection to the public business. Obviously, she said, someone could not reach into the records of a private company on things that company was doing in another part of the world which had nothing to do with what was going on in Nevada. Assistant Attorney General Nielsen said she would be happy to work with Ms. Morgan in adopting tighter language.

Assistant Attorney General Nielsen said by the language in Exhibit D they were trying to say there was a right to privacy for the business interest; yet at the same time, the public had a right to access those things which directly affected what the company was doing for the public.

Chairman Bennett supported Mrs. Freeman's request for Assistant Attorney General Nielsen and Ms. Morgan to work together to develop more appropriate language.

Another amendment to page 3, lines 37 and 38, proposed by the Attorney General's Office, would delete the words, "unless the investigation had been closed."

Chairman Bennett indicated he had read and considered the case presented by the Attorney General's Office and Mr. Porter (who chaired the interim study committee), and he was not swayed to the extent he was prepared to support changing the language relating to investigation, court cases, etc.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

Two sections had received comments, Chairman Bennett noted. In Section 2 there had been considerable discussion regarding the recovery of costs and attorneys' fees. As currently written, if the requester prevailed, he was entitled to recover his costs

and attorneys' fees in the proceeding, from the agency whose officer had custody of the record.

Chairman Bennett also recalled there had been discussion regarding whether the agency should also be able to recover the costs and attorneys' fees associated with the action, if the agency prevailed. The primary argument against the agency recovery, was this would restrict people from going to court to try to gain access to certain closed records. As AB 364 was written, Chairman Bennett stated there was a large gray area presented which would lead to increased litigation. Limiting some of the gray areas in AB 364 would somewhat alleviate the number of suits which might be brought regarding access to records.

Chairman Bennett said he was of a mind to leave the language as it was written except to add the word "reasonable" before the words "attorney's fees."

ASSEMBLYMAN FREEMAN MOVED TO INSERT THE WORD REASONABLE ON PAGE 1, SECTION 2, LINE 8, MAKING THE LANGUAGE READ ". . . COSTS AND REASONABLE ATTORNEY'S FEES."

ASSEMBLYMAN ERNAUT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Discussing Section 3, Chairman Bennett reminded the subcommittee there had been some testimony having to do with expanding the "public officer or employee" to also state, "governmental entity." After discussing this with the bill drafters, they believed the words "And his employer" could be inserted making the language read, "A public officer or employee and his employer who act in good faith in disclosing or refusing to disclose information is immune from liability for damages either to the requester or to the person whom the information concerns."

ASSEMBLYMAN SEGERBLOM MOVED TO INCLUDE THE WORDS "AND HIS EMPLOYER" ON PAGE 1, SECTION 3, LINE 11.

ASSEMBLYMAN FREEMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Mrs. Freeman asked to have the word "malfeasance" defined. She said earlier testimony had suggested when a person was unable to

get information, there needed to be some definition given to the word "malfeasance." Dennis Neilander, Legislative Counsel Bureau Research Analyst, came forward to clarify. Mr. Neilander said a number of options had been put forward and one was related to the notion of malfeasance. This was for a civil penalty to be imposed on a public employee who acted in bad faith. Although some states had taken this approach, Mr. Neilander said the Nevada subcommittee had rejected the approach, deciding a civil penalty would not be appropriate. Additionally, the misdemeanor penalty would possibly prove unconstitutional because there was no definition of public record. The subcommittee had finally approved the allowance for expedited process.

Mr. Neilander told the committee the operative language in Section 3 was a "good faith" standard. If, indeed, there was a lack of good faith shown on the part of a public employee, NRS 41, which addressed discretionary acts, would take force.

Recapping, Chairman Bennett indicated the rest of AB 365 would remain as written.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Chairman Bennett drew attention to Section 2. Concerns had been expressed regarding the language on line 5 regarding the words, "or other electronic means." Primarily, the interim study had assumed this to mean a FAX machine. If this, indeed, was the intent, Chairman Bennett suggested deleting the words, "other electronic means," and stating, "facsimile machine, if available." (See Exhibit E.)

Mr. Ernaut thought the Chairman's language was too narrow and the present language of the bill was too broad. Discussion followed.

ASSEMBLYMAN SEGERBLOM MOVED TO ADOPT THE AMENDMENT PROPOSED IN EXHIBIT E.

ASSEMBLYMAN FREEMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Following a short break, Chairman Bennett resumed discussion on AB 366, Section 3. Reviewing, the Chairman said he had heard concerns regarding the problems for state or local offices in

ASSEMBLY BILL 314 - Makes various changes to application process for permit for appropriation of public waters and to fees assessed by state engineer.

Mr. Bennett indicated proposed amendments for AB 314 had been taken down to be drafted but had not been received back. Mr. Bennett and Mrs. Lambert reviewed the proposed changes (Exhibit H).

Discussion among committee members ensued.

Chairman Garner indicated there would be no action taken until the amendments had been returned.

ASSEMBLY BILL 352 - Authorizes unincorporated towns to impose impact fees.

Mr. McGaughey briefly reviewed AB 352 stating it had to do with Fernley water impact fees and indicated he had attended a meeting with the city attorney and representatives of the town board and the district trying to find a better way to solve the problem other than using impact fees.

ASSEMBLY BILL 364 - 368 - Public records.

Mr. Bennett indicated several subcommittee meetings and a work session had been held which considered all five bills. He stated there were several proposed amendments approved by the subcommittee being drafted and as soon as the amendments were received back he would give a full report to the committee. Mr. Bennett noted there had been some amendments put forth which had not been accepted by the subcommittee and those would be presented with the report.

ASSEMBLY BILL 378 - Imposes temporary moratorium on adoption of state regulations and creates advisory committee to study such regulations.

Chairman Garner stated he had not heard back from Mr. Humke and it seemed the only viable solution was to look at a study of the subject. He indicated he would not be taking action on AB 378 unless Mr. Humke came forward with a proposal to move the bill.

ASSEMBLY BILL 397 - Provides procedure to verify preference claimed by bidders on public contracts on account of taxes paid.

Mr. Hettrick stated he held a meeting with the north and south AGCs and it appeared to him those at the meeting did not think

Mr. Bennett asked if her amendment dealt with page 2, line 38 regarding the amount of annual and sick leave. Mrs. Segerblom agreed.

Mr. Bennett stated that had been discussed as well as various other information which would be included in subsection 2, defining employment information. He said many concerns had been voiced that this would somehow provide access to reasons for taking sick leave and otherwise open medical information. Mr. Bennett remarked it was his feeling the information regarding annual and sick leave accumulated and number of hours or days taken would be easily handled through payroll records and would in no way divulge reasons for taking leave or medical information. He was not supportive of the amendment.

Mrs. Segerblom stressed she felt a public employee had a right to the sick leave accrued, and if an employee used an excessive amount at any given time, it should be up to the supervisor to handle. She did not feel anyone else should have the right to the knowledge of how much time was taken.

Discussion ensued.

ASSEMBLYMAN SEGERBLOM MADE A MOTION TO AMEND A.B. 364 TO DELETE LINE 38 ON PAGE 2, SECTION 2.

ASSEMBLYMAN WILLIAMS SECONDED THE MOTION.

THE MOTION FAILED.

Chairman Garner stated all amendments to AB 364 had been considered and he would accept a motion to amend and do pass AB 364.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS A.B. 364.

ASSEMBLYMAN MCGAUGHEY SECONDED THE MOTION.

THE MOTION CARRIED. Assemblymen Lambert, Ernaut and Williams opposed.

Chairman Garner requested Mr. Bennett handle AB 364 on the floor.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

Mr. Bennett reviewed minor amendments to AB 365 (Exhibit H).

Discussion ensued.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS A.B. 365.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Mr. Bennett reviewed minor amendments to AB 366 (Exhibit I) including the language, "other electronic means."

Mr. Ernaut referenced Section 5 and asked if there had been discussion about the word "custody" in line 3, as there was a problem with archives actually having custody of records. Mr. Bennett indicated he recalled the discussion but did not think any action was taken in subcommittee to amend.

Further discussion ensued.

Mrs. Augustine indicated she had a notation regarding Section 3, line 3 to allow facilities for making paper copies, abstracts or memoranda as there was a concern that microfiche copies could not be duplicated.

Mr. Bennett stated the subcommittee held extensive discussion on Section 3, both relating to paper copies and defining "readily available" and the subcommittee chose to leave the language as written.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS A.B. 366.

ASSEMBLYMAN DE BRAGA SECONDED THE MOTION.

Mrs. Augustine proposed to amend the motion to add facilities for making paper copies, abstracts or memorandum of the book or record.

ASSEMBLYMAN AUGUSTINE MOVED TO AMEND THE AMENDMENT TO A.B. 366 TO ADD THE WORD "PAPER" IN SECTION 3, LINE 10.

1993 REGULAR SESSION (67th)

ASSEMBLY ACTION		SENATE ACTION		
Adopted	☐	Adopted	☐	Assembly Amendment to Assembly Bill No. 365 BDR 19-393 Proposed by Committee on Government Affairs
Lost	☐	Lost	☐	
Date: Initial:		Date: Initial:		
Concurred in	☐	Concurred in	☐	
Not Concurred in	☐	Not Concurred in	☐	
Date: Initial:		Date: Initial:		

Amendment No. 510

Replaces Amendment No. 497.
Resolves conflict in section 5 with A.B. No. 146.
Makes substantive changes.

Amend sec. 2, page 1, line 8, after "*costs and*" by inserting "*reasonable*".

Amend sec. 3, page 1, line 11, by deleting "*is*" and inserting:

"*and his employer are*".

Amend sec. 5, page 2, by deleting lines 7 and 8 and inserting:

"obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch office is established in a county office building which is located outside of the county seat.".

Amend the bill as a whole by adding a new section designated sec. 6, following sec. 5, to read as follows:

"**Sec. 6.** Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993.".

Drafted by: DC:cm

Date: 5/12/93

A.B. No. 365--Substitutes civil enforcement of access to public records for criminal penalty.

upon the completion of the project; and providing other matters properly relating thereto.

Assemblyman Porter moved that the bill be referred to the Committee on Commerce.

Motion carried.

By the Committee on Commerce:

Assembly Bill No. 716—An Act relating to architects; requiring a person who claims any of certain exemptions from the provisions relating to architects to file an affidavit asserting the basis for the exemption when obtaining a building permit; providing a penalty; and providing other matters properly relating thereto.

Assemblyman Porter moved that the bill be referred to the Committee on Commerce.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 365.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 510.

Amend sec. 2, page 1, line 8, after "*costs and*" by inserting "*reasonable*".

Amend sec. 3, page 1, line 11, by deleting "*is*" and inserting: "*and his employer are*".

Amend sec. 5, page 2, by deleting lines 7 and 8 and inserting: "obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch office is established in a county office building which is located outside of the county seat.".

Amend the bill as a whole by adding a new section designated sec. 6, following sec. 5, to read as follows:

"Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993.".

Assemblyman Bennett moved the adoption of the amendment.

Remarks by Assemblyman Bennett.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 368.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 626.

Amend the bill as a whole by deleting sections 5 through 7 and renumbering sec. 8 as sec. 5.

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(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT A.B. 365

ASSEMBLY BILL NO. 365—COMMITTEE ON COMMERCE

MARCH 16, 1993

Referred to Committee on Government Affairs

SUMMARY—Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

365

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record.*

Sec. 3. *A public officer or employee who acts in good faith in disclosing or refusing to disclose information and his employer are immune from liability for damages, either to the requester or to the person whom the information concerns.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 [1.] All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, [shall] *must* be open at all times during office hours to inspection by any person, and the [same] *books and records* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the [same] *books and*

records may be used to the advantage of the owner thereof or of the general public.

[2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.]

Sec. 5. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch office is established in a county office building which is located outside of the county seat.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993.

Assemblyman Arberry moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 365.

Bill read third time.

Remarks by Assemblyman Bennett.

Roll call on Assembly Bill No. 365:

YEAS—41.

NAYS—None.

Absent—Toomin.

Assembly Bill No. 365 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 368.

Bill read third time.

Remarks by Assemblyman Bennett.

Roll call on Assembly Bill No. 368:

YEAS—38.

NAYS—Carpenter, Collins, Haller—3.

Absent—Toomin.

Assembly Bill No. 368 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 655.

Bill read third time.

Remarks by Assemblyman Gibbons.

Roll call on Assembly Bill No. 655:

YEAS—41.

NAYS—None.

Absent—Toomin.

6-4

Assembly Bill No. 655 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 210.

Bill read third time.

The following amendment was proposed by the Committee on Labor and Management:

Amendment No. 730.

Amend sec. 2, page 2, lines 1 and 2, by deleting: "of Nevada System; and" and inserting: "and Community College System of Nevada;".

Amend sec. 2, page 2, line 5, by deleting the period and inserting "; and".

Assemblyman Porter moved the adoption of the amendment.

Remarks by Assemblyman Porter.

erection of a structure within the national recreation area with the exception, or other than a structure developed at the request of the Nevada Division of Wildlife."

Mr. Sukimoto stated that would be acceptable to his division.

Doug Busselman, Executive Director, Nevada Farm Bureau, testified on S.B. 544. He stated his division has a problem with the generic identification of a national conservation area. He explained some of the trends his division is seeing coming out of Washington, D.C. from a federal policy perspective leaves them worrying with regard to establishing this wording in state law. He further explained as future conservation areas come upon them, they will be put under this bill although the intention now is not to do that. He told the committee he has shared with Senator Callister their concerns on this bill and hope they can make a language change. He suggests they specifically mention in the bill the intended area right now so there is not a problem in the future when additional conservation areas are created with more restrictions than they are seeing now. He urged the committee to add the specific designation of Red Rock National Conservation Area into the language of the bill with the amendment and then they will be in agreement with this bill.

Senator Callister stated he spoke earlier with Mr. Busselman and he agrees the amendment should be specific as to the Red Rock National Conservation Area. He told the committee he feels this is appropriate.

Stephanie Lyte, Lobbyist, Nevada Wool Grower's Association, testified on S.B. 544. She told the committee her concernes are the same as Mr. Busselman's regarding the specific designation. She explained they would not have any objection to the bill if they had it designated as the Red Rock Conservation Area.

Joe Johnson, Sierra Club, told the committee his organization supports S.B. 544 with the amendments proposed.

Chairman O'Connell closed the hearing on S.B. 544 and opened the hearing on Assembly Bill (A.B.) 365, Assembly Bill (A.B.) 366 and Assembly Bill (A.B.) 368.

ASSEMBLY BILL 365: Substitutes civil enforcement of access to public records for criminal penalty.

ASSEMBLY BILL 366: Establishes procedures for public inspection of public records.

ASSEMBLY BILL 368: Requires charges for copies of public records not to exceed cost.

Dennis Nielander, Senior Research Analyst, Legislative Counsel Bureau, spoke to the committee on these bills. He told the committee these bills were the result of the study of laws governing public books and records. He started by explaining A.B. 365. He told the committee this bill addresses enforcement. He stated the existing public records law has not been amended significantly since 1911 and in the current provisions for enforcement it contains a criminal penalty which is a misdeamenor for an individual to release a public record in violation of the statute. He stated what this bill does is it removes the criminal penalty and replaces it with an expedited process procedure whereby if a person has been denied access to a public record, they have the opportunity to file in district court and the court is required to give that matter priority on the calendar. He explained if the requestor prevails they are entitled to reasonable attorney fees and costs. Mr. Nielander stated in section 3 it grants immunity for good faith disclosure or nondisclosure and as long as it is done in good faith the public employee is then immune from civil liability.

Chairman O'Connell asked in which one of these bills they should incorporate the definition of a public record.

Mr. Nielander stated the definition is in another bill which has not left the assembly, but they could amend that into A.B. 366 because this bill amends Nevada Revised Statutes (NRS) Chapter 239 which is where the definition has to go and A.B. 366 establishes a procedure for access and currently the law is void of any procedure for getting access. He stated in addition it is void of having a definition.

Mr. Nielander stated A.B. 366 is the bill which establishes procedures for either granting or denying access to records. He explained the law is currently void of any procedural mechanisms to either allow a person to make a record public or to keep it closed. He pointed out this is based in part on the Federal Freedom of Information Act, at least the fundamental concepts are based on that law and also a study which was done 10 years ago on this issue. He explained at that time the subcommittee recommended a procedure similar to this and that bill did not surface from the legislature in 1982. He told the committee this bill says an individual may request a public record in person, by telephone or by FAX machine. He further explained this bill sets forth the duties of the person who is the custodian of the record and what they must do once they have received a request. He stated subsection 2 of section 3 makes it clear that a custodian of a public record cannot release the confidential information with the public information. He explained subsection 3 of that section states they do not have to compile a summary unless it is readily available. Mr. Nielander stated subsection 4 is something that is put in because of first amendment concerns and the fact that the argument is the government should not have a right to know why an individual is requesting that information unless it is to clarify what the

information is they are after. He stated section 5 begins to specify what the custodians must do once they receive a request. He told the committee the procedural mechanism is addressed in lines 17 through 25 and they are the four things that the custodian has to do within a reasonable amount of time, but no later than 3 days after receiving the written appeal. He mentioned they could inform the individuals that unusual circumstances have delayed the request, in which case they have 15 days to comply and inform the requester they do not have the record or deny the appeal. He stated the next section defines what is unusual circumstances which will trigger that 15-day window. He pointed out subsection 3 of section 7 which is another immunity clause for the employee who permits inspection unless they have actual knowledge that the record is not a public record.

Senator Hickey interrupted the testimony by Mr. Nielander to ask the chairman for a bill draft request. He told the committee he wanted to draft a bill which would limit terms in office including federal offices down through county offices.

> SENATOR HICKEY MOVED FOR COMMITTEE INTRODUCTION FOR A BILL DRAFT REQUEST REGARDING TERM LIMITATIONS.
>
> SENATOR LOWDEN SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATOR CALLISTER VOTED NO. SENATOR RAGGIO AND SENATOR NEVIN WERE ABSENT FOR THE VOTE.)

* * * * *

Mr. Nielander explained A.B. 368 to the committee. He stated this bill addresses cost. He pointed out subsection 1 of section 1 provides that the fees shall not exceed the cost to the agency and that takes into account the cost of supplies and material, but not time spent by personnel. He explained this is adopted from an Idaho law which essentially reads the same as A.B. 368. He pointed out there is a formula they use to come to the right amount to charge for photocopying and he added the bottom line is they arrive at a total cost per copy. He told the committee each agency in Idaho is required to use this formula to arrive at a per copy cost.

Chairman O'Connell asked if this formula would apply to every agency and an individual could ask for a cost from any division or agency and the cost would not exceed the actual cost.

Mr. Nielander stated that is correct and the provision provides that unless free copies are required by statute. He explained if there is not some other statute that establishes a cost then it must not exceed the actual cost. He continued to explain A.B. 368 to the committee. He stated subsection 2 of the bill provides that an agency may search

Mr. Wright stated if they lose that $62,000 of revenue they will have to ask for more money from the county. He explained the money will have to come from somewhere and if not from copy fees it will be from the taxpayers.

Joe Melcher, Recorder, Washoe County, testified against these bills. He told the committee they should be paying for the service they get and uniformity and standardization of fees is vital to these organizations. He gave the committee some written testimony and statistics on copy fees (Exhibit K).

Ms. Beaudreau stated the Storey County Recorder, Margaret Lowther, had to leave, but wanted it on the record that she opposes these bills.

Melanie Meehan Crossley, Deputy Attorney General, Attorney General's Office, spoke in opposition of these bills. She stated she served on the interim study committee and had not planned to speak today, but felt she must make a few comments regarding adopting an amendment into these bills with the definition of public records. She told the committee what they are trying to do here is a piece of legislation that addresses a vast range of records that are both confidential and not confidential. She gave the committee some suggestions on the language for the amendment.

Mary Henderson, Lobbyist, Washoe County, stated for the record that in Washoe County for their agenda items and backup materials, if people go to the county manager's office they are provided a copy free. If they go to the clerk's office the standard procedure is to send them to the county manager's office so they are not caught up with the fees that the clerk charges for court proceedings. She stated they feel it is essential and it is the public's right to have access to this. She told the committee the only thing they would request is if they do put this into statute in terms of agendas, ordinances, backup materials that it be restricted to one free copy and some nominal fee. She explained her office is not staffed to be a copy service for attorneys and the court system within Washoe County. She feels no county in the state can absorb that type of burden. She stated it is very important to take into consideration the fact that recorder fees have not been increased for over 10 years.

Michell Bero, Lobbyist, Nevada Association of Counties (NACO), stated the previous testimony pretty well explains their position.

Nancy Howard, Lobbyist, Nevada League of Cities, spoke in opposition to these bills. She stated one of their concerns is in A.B. 366 it requires them to provide facilities for making copies and she stated many of her cities do not have these facilities. She explained some of them have a copy room which is also the mailroom and it would be expensive for them to create these facilities.

Sam McMullen, Lobbyist, Nevada Broadcaster's Association, stated they are very strongly in favor of these bills. He told the committee the policy decision clearly put forth by this bill is should the individuals pay a fair approximation of the actual search time related to copying a particular document or should they pay a flat fee.

Ms. Engleman told the committee these bills attempt to address a myriad of problems both bringing Nevada into the 20th Century and trying to prepare Nevada for the 21st Century. She explained some of the problems heard during the interim study were from agencies who had put all of their information on a computer. She further explained if an individual came into this agency requesting some information they were told the information they needed was on the computer and it could not be accessed at that time so the individual wanting the information would have to return the next day. She emphasized individuals need to have access to information and the ability to make copies or even write down notes. She reiterated the proponents of these bills are simply trying to get the cost of copies down to actual costs, not just a simple across-the-board charge since some of the agencies may have a higher charge than others.

Ms. Henderson stated she feels the system in her agency is very simple and straight forward. She explained if they are in a situation where they must identify documents which are simple to pull and copy versus documents which are sitting in a bound volume or sitting in a computer or microfiche she feels they will get into a very difficult and cumbersome bill. She emphasized to the committee they cannot imagine the types of documents county government offices handle. She explained some of the documents are readily accessible and some are not. She told the committee the system they use now is very effective and has worked for several decades. Ms. Henderson pointed out to the committee many of the individuals who request documents do not pay taxes in the state of Nevada. She explained they are individuals who got married in Nevada or individuals in real estate transactions who live out-of-state and therefore do not pay state taxes. She stated these are user fees which have been in place for at least 20 years which help offset some of those costs, so she feels it is wrong to state the taxpayers have also paid for this service, because she feels it is also a service being used by individuals who are not taxpayers.

Senator Hickey asked if part of the storage and copying problem is due to lack of space.

Ms. Henderson stated there is an issue of the lack of space and also an issue of how the documents are stored. She explained some of the documents are stored electronically, some in filing cabinets and other documents are stored in bound volumes.

Chairman O'Connell closed the hearing on Assembly Bill (A.B.) 365, Assembly Bill (A.B.) 366 and Assembly Bill (A.B.) 368 and opened the hearing on Senate Bill (S.B.) 536.

SENATE BILL 536: Requires certain licenses to engage in business to be granted in certain circumstances.

SENATOR NEVIN MOVED TO DO PASS S.B. 536.

SENATOR HICKEY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO AND SENATOR CALLISTER WERE ABSENT FOR THE VOTE.)

* * * * *

There being no further business, Chairman O'Connell adjourned the hearing at 5:30 p.m.

RESPECTFULLY SUBMITTED:

Tanya Morrison

Tanya Morrison,
Committee Secretary

APPROVED BY:

A. J. O'Connell

Senator Ann O'Connell, Chairman

DATE: _____

THE MOTION CARRIED. (SENATORS RAGGIO, HICKEY AND CALLISTER WERE ABSENT FOR THE VOTE.)

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The next measure brought for discussion was A.B. 365.

ASSEMBLY BILL 365: Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

Ande Engleman, Lobbyist, Nevada Press Association, testified the purpose of A.B. 365 is to remove the criminal penalty for violation of the public records law and provides that court costs and attorney fees can be collected. Ms. Engleman reminded the committee there was no opposition to the measure.

SENATOR RHOADS MOVED TO DO PASS A.B. 365.

SENATOR NEVIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS RAGGIO, HICKEY AND CALLISTER WERE ABSENT FOR THE VOTE.)

* * * * *

ASSEMBLY BILL 366: Establishes procedures for public inspection of public records. (BDR 19-397)

Ms. Engleman explained there was no opposition to A.B. 366; however, there was concern with the other two public records bills. She indicated she was proposing the definition of a public record taken from A.B. 364, and an additional new section be amended into A.B. 366. The proposed new section requested by Ms. Engleman is referenced as Exhibit G.

ASSEMBLY BILL 364: Makes various changes regarding access to public books and records. (BDR 19-399)

Chairman O'Connell requested Ms. Engleman to read the proposed definition of a public record. Ms. Engleman read the definition from section 2, paragraphs (a) and (b), lines 3-14 of A.B. 364. It was explained that A.B. 364 was not likely to be passed out of the assembly.

Senator Nevin questioned if that language would open the personnel records of city, county or state employees. He expressed concern since those records were not considered confidential in what was outlined by Ms. Engleman.

Senator Rawson moved that Assembly Bills Nos. 578, 584 be taken from the General File and placed on the General File for the next legislative day.
Remarks by Senator Rawson.
Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 103.
Bill read third time.
The following amendment was proposed by Senator Townsend:
Amendment No. 1137.
Amend section 1, page 1, line 11, by deleting "*primary or*".
Amend section 1, page 1, line 15, by deleting "*primary or*".
Amend the title of the bill, sixth line, by deleting "primary or".
Senator Townsend moved the adoption of the amendment.
Remarks by Senator Townsend.
Amendment adopted.
Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 66.
Bill read third time.
Roll call on Assembly Bill No. 66:
YEAS—21.
NAYS—None.

Assembly Bill No. 66 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 211.
Bill read third time.
Roll call on Assembly Bill No. 211:
YEAS—21.
NAYS—None.

Assembly Bill No. 211 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 244.
Bill read third time.
Remarks by Senator James.
Roll call on Assembly Bill No. 244:
YEAS—21.
NAYS—None.

Assembly Bill No. 244 having received a constitutional majority, Madam President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 365.
Bill read third time.
Remarks by Senators Brown and O'Connell.

Roll call on Assembly Bill No. 365:
YEAS—21.
NAYS—None.

Assembly Bill No. 365 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 435.
Bill read third time.
Remarks by Senator Glomb.
Senator Glomb moved that Assembly Bill No. 435 be taken from the General File and placed on the General File for the next legislative day.
Remarks by Senators Glomb and Neal.
Motion carried.

Assembly Bill No. 535.
Bill read third time.
Remarks by Senators Coffin, Rhoads and Adler.
Roll call on Assembly Bill No. 535:
YEAS—20.
NAYS—Coffin.

Assembly Bill No. 535 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 589.
Bill read third time.
Roll call on Assembly Bill No. 589:
YEAS—21.
NAYS—None.

Assembly Bill No. 589 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 643.
Bill read third time.
Remarks by Senators Raggio, O'Donnell and Rawson.
Roll call on Assembly Bill No. 643:
YEAS—19.
NAYS—McGinness, O'Connell—2.

Assembly Bill No. 643 having received a constitutional majority, Madam President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 644.
Bill read third time.
Roll call on Assembly Bill No. 644:
YEAS—21.
NAYS—None.

6-26

Assembly Bill No. 365—Committee on Commerce

CHAPTER 393

AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

[Approved July 2, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record.*

Sec. 3. *A public officer or employee who acts in good faith in disclosing or refusing to disclose information and his employer are immune from liability for damages, either to the requester or to the person whom the information concerns.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 [1.] All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, [shall] *must* be open at all times during office hours to inspection by any person, and the [same] *books and records* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the [same] *books and records* may be used to the advantage of the owner thereof or of the general public.

[2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.]

Sec. 5. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch

office is established in a county office building which is located outside of the county seat.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993.