**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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| LAS VEGAS METROPOLITAN POLICE DEPARTMENT,<br><br>Appellant,<br><br>vs.<br><br>LAS VEGAS REVIEW-JOURNAL,<br><br>Respondent. | Case No.: 78967<br><br>Appeal from the Eighth Judicial District Court, The Honorable Joe Hardy Presiding. |



**APPELLANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S, APPENDIX, VOLUME 12**
**(Bates Nos. 2578-2827)**

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**DISTRICT COURT**

**CLARK COUNTY NEVADA**

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| LAS VEGAS REVIEW-JOURNAL,<br><br>Petitioner,<br>v.<br><br>LAS VEGAS METROPOLITAN POLICE DEPARTMENT,<br><br>Respondent. | Case No.: A-18-775378-W<br><br>Dept. No.: XV |



**LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS)**

Petitioner the Las Vegas Review-Journal ("Review-Journal"), by and through its undersigned counsel, hereby submits this Response to the Las Vegas Metropolitan Police Department's Supplemental Brief in Support of its Response to the Review-Journal's Petition for Writ of Mandamus. This Response is supported by the attached memorandum of points and authorities, any attached exhibits, and the pleadings and papers on file with this Court.

DATED this the 7th day of September 2018.

*/s/ Margaret A. McLetchie*
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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The Review-Journal properly requested unit assignments of Metro officers. While Metro has never bothered to provide evidence supporting its arguments against proving the records, to try to resolve issues without protracted litigation, the Review-Journal has agreed to limit its request for unit assignments to a subset of Metro officers, patrol officers.[1] (*See* Review-Journal's 8/20/18 Supplemental Brief (on file with the Court), at p. 13:16-26.) (hereinafter "8/20/18 RJ Supp.") Thus, the narrow question at issue herein is whether patrol officer assignments can be disclosed.

At the August 22, 2018 hearing in this matter, the Court ordered Metro to provide a supplemental brief to provide it with "more detail and more evidence" justifying Metro's assertions that releasing officer unit assignments would endanger officer safety. (*See* Transcript of August 22, 2018 hearing (on file with the Court) at pp. 65:24-66:10; pp. 69:17-70:1.) In directing Metro to file a supplement, the Court warned that this was Metro's "last chance . . . to give me something more than general statements." (*Id.* at p. 66:9-10.)

As a preliminary matter, it is the Review-Journal's position that Metro has already missed no fewer than four formal opportunities to provide support for its assertions that releasing officer unit assignments would endanger safety. Having failed to do so, the Review-Journal contends that Metro should not be allowed to now have yet another opportunity to make its case.

Even setting that issue aside, Metro's Supplement and the attached declaration of Steven Gramma still fail to establish its heavy burden under the NPRA, as does the prior arguments and declaration of Sheriff Lombardo. Metro attempts to obscure the lack of evidentiary and logical support for its argument by misrepresenting to this Court that it must

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[1] The Review-Journal makes this compromise without waiving future rights to other information that can be properly obtained under the NPRA.

apply the balancing test set forth in *Donrey*, when in fact that balancing test first accepted in *Donrey* has been drastically modified in favor of disclosure by multiple legislative amendments. *Donrey's* statement of the balancing test is simply no longer good law, and Metro's reliance on the *Donrey* framework is thus fatal to its arguments.

Rather than comporting with the NPRA's current requirement that a governmental entity must prove by a "preponderance of **the evidence**" (Nev. Rev. Stat. § 239.0113(2) (emphasis added)) that some governmental interest clearly outweighs the presumption of public access, Metro relies on declarations that still include little more than general statements. The declarations fail to provide the Court with the "detail and evidence" establishing that Metro's governmental interest outweighs the NPRA's presumption of public access. Instead, Metro's supplement and the declarations discussed therein are another iteration of Metro reciting generalized and speculative concerns about officer safety without tethering those concerns to concrete evidence that any officer would be endangered by the release of officer unit assignments from several years ago.

The conclusory assertions that releasing the information would pose danger is also belied by the fact that the Review-Journal has limited its request to patrol officer assignments. It is simply not the case that all officers are either patrol officers or are assigned to undercover and covert positions. Thus, Metro's contention that someone will be able to compare the list previously provided to the Review-Journal during pre-litigation negotiations in this case with a list of patrol officers and be able to discern which officers are undercover and covert is based on logical fallacy. Indeed, the Review-Journal does not intend to use any records to "out" any current or former undercover officers, and Metro cannot support the contention that it does.

Metro's Supplement also fails because it mistakenly relies on case law interpreting FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F). ("Las Vegas Metropolitan Police Department's Supplemental Brief in Support of its Response to Las Vegas Review-Journal's Petition for Writ of Mandamus" (On file with the Court) at p. 2:7-20.) (hereinafter "8/29/18 LVMPD Supp.") Metro's reliance on this case law fails for two reasons. First, Exemption

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7(F) does not exist in the NPRA and the types of interests that can justify non-disclosure have been circumscribed. Second, it permits withholding of "records or information compiled for law enforcement purposes" that, if disclosed, "could reasonably be expected to endanger the life or physical safety of *any individual*." 5 U.S.C. § 552(b)(7)(F) (emphasis added). As one court has explained, "by conditioning its application on a reasonable expectation of danger *to an individual*," Exemption 7(F) "excludes from consideration risks that are speculative with respect to any individual." *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec*., 777 F.3d 518, 524 (D.C. Cir. 2015) (emphasis in original; citation and internal quotation marks omitted). As noted above, rather than focusing on individual risk, Metro relies on broad generalizations about speculative potential harms officers could face if this Court orders it to release the requested officer unit assignments. They fail to pass the test under either the NPRA or FOIA.

Accordingly, this Court should direct Metro to disclose the officer unit assignments the Review-Journal requested approximately eighteen months ago—and should do so without further delay.

Should this Court be inclined to rule otherwise, the Review-Journal contends that the Court should conduct an evidentiary hearing.[2]

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[2] Nev. Rev. Stat. § 34.200 provides that, in a proceeding for a writ of mandate, "If an answer is made, which raises a question as to matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for a writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court.." The Review-Journal and Metro both agree to waive any rights to a jury trial in this case and, thus, the Court should instead conduct an evidentiary hearing.

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## II. ARGUMENT

### A. Metros Gamesmanship Should Not Be Rewarded.

Metro has already missed fourth opportunities to provide its support for its assertions that releasing officer unit assignments would endanger safety. First, as detailed in the Opening Brief p. 16:2-15and Reply pp. 1:14 – 2:2 on file with the Court,[3] Metro should have provided citation to specific authority within five (5) days of receiving Review-Journal reporter Brian Joseph's request for these records, as required by Nev. Rev. Stat. § 239.0107(1)(d)(2). Second, Metro was required to answer the Petition (*see* EJDCR 2.15(b)), and that was its opportunity to explain the evidence supporting its claims (*see* Nev. Rev. Stat. § 239.0113; *see also* Nev. Rev. Stat. § 34.210-220). Third, Metro also failed to present any evidence at the hearing on the Petition that was conducted on August 8, 2018 (*See generally* Transcript of 8/8/18 hearing on file with the Court; *See also* 8/8/18 Court Minutes on file with the Court). Fourth, Metro failed to sufficiently address the basis for its arguments regarding the confidentiality of unit assignments in its August 20, 2018 Supplement (on file with the Court).

Thus, the Review-Journal asserts that Metro's Supplemental Brief should not be considered by this Court because allowing it rewards Metro's hide-the-ball tactics in this case and run afoul of the mandate contained in Nevada's Public Records Act (the "NPRA," Nev. Rev. Stat. § 239.001 et seq.) to expedite petitions to enforce its terms (Nev. Rev. Stat. § 239.011(2)) as well as the general principles in the NPRA favoring expeditious access to public records. It also unnecessarily complicates and compounds the cost of litigation—which will likely be borne by the taxpayers in this case. *See* NRS 239.011(2).

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[3] The Review-Journal incorporates the arguments it made in prior filings in this matter as well as arguments made at hearings and status checks in this matter.



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**B. Metro Misrepresents the Applicable Legal Standard and Its Argument Is Thus Built on a House of Cards.**

Metro asserts that "this Court must utilize the balancing test outlined in *Donrey* to determine whether disclosure of officer unit assignments is appropriate." ("8/29/18 LVMPD Supp. at p. 1:22-23") (*citing Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P. 2d 144 (1990).) Thus, the entire framework for Metro's supplemental argument is centered on the 1990 *Donrey* decision, which first articulated the application of the balancing test in NPRA matters. However, the balancing test in *Donrey* has been drastically modified in favor of disclosure by subsequent legislative amendments, as recognized by Nevada Supreme Court case law. Thus, Metro's entire argument is built on a house of cards that necessarily fails.

To combat the very governmental misuse and overreliance on *Donrey* that has been demonstrated by Metro in this case, the Legislature has repeatedly amended the NPRA to strengthen the NPRA and heighten the burden governmental entities bear in NPRA cases. In 1993, the NPRA was amended to strengthen its provisions. The 1993 Amendments included, *inter alia*, the provision allowing for court intervention (Exh.88 (Assembly Bill No. 365) at LVRJ1564:3-9) and were intended to make access easier, and to correct governmental over-reliance on *Donrey*. (Exh. 88 at LVRJ1561 – LVRJ1626)..) In response to questioning from Assemblywoman Lambert, the general counsel for the Nevada Press Association explained that the amendments arose "because some years ago the Nevada Supreme Court decided a case called Bradshaw…I have yet to hear of a situation where somebody has asked for governmental records … and the AG's office or District Attorney has said, 'We balanced it and you won, you get these records." (Exh. 88 at LVRJ1568) 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." (*Id*.)

In 2007, the NPRA was amended again to facilitate access. The 2007 Amendments made the burden on governmental entities resisting disclosure heavier. Then-State Senator

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Terry Care explained that he brought the bill to address "problems [that] persist" with governmental entities' responses to public records requests (1 RA073) by providing a framework for response obligations. (Exh. 89 at LVRJ1637) (SB 123 "codifies [that the] burden is on the government to demonstrate that confidentiality exists").) As the Nevada Supreme Court explained:

> In 2007, in order to better effectuate these purposes, the Legislature amended the NPRA to provide that its provisions must be liberally construed to maximize the public's right of access.

*Gibbons*, 127 Nev. at 878, 266 P.3d at 626. In 2007, the Nevada Legislature specifically added key provisions.

Two changes in 2007 are of particular relevance to the applicable balancing test. First, the Legislature added the declaration of the NPRA's important purpose (Nev. Rev. Stat. § 239.001(1)) and its mandates directing this Court to interpret all its provisions in favor of access (Nev. Rev. Stat. § 239.001(2)) and any limitations on access narrowly (Nev. Rev. Stat. § 239.001(3). (Exh. 89 (Senate Committee on Government Affairs) at LVRJ1634; (Assembly Committee on Government Affairs) at LVRJ1798; (Journal of the Senate) at LVRJ1822 ¶ 3, LVRJ1956 ¶ 3.) Second, the Legislature added Nev. Rev. Stat. 239.0113(2) which mandates that a governmental entity now must meet is burden to overcome the presumption in favor of access "by a preponderance of the evidence." (Exh.89 (Journal of the Senate) at LVRJ1824, LVRJ11957.)

The Nevada Supreme Court also spelled out exactly how these 2007 Amendments changed the burden and expressly modified *Donrey*:

> Prior to the amendment of the Act, this court routinely employed a balancing test when a statute failed to unambiguously declare certain documents to be confidential….This balancing test equally weighed the general policy in favor of open government against privacy or law enforcement policy justifications for nondisclosure… However, in light of the Legislature's declaration of the rules of construction of the Act—requiring the purpose of the Act to be construed liberally and any restriction to government documents to be construed narrowly—the balancing test under Bradshaw [Donrey] now requires a narrower interpretation of private or government interests promoting confidentiality or nondisclosure to be weighed against the liberal policy for an open and accessible government.



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> ... We emphasize that the balancing test must be employed in accordance with the underlying policies and rules of construction required by the Nevada Public Records Act. . .

*Reno Newspapers v. Sheriff (Haley)*, 126 Nev. 211, 217-18, 234 P.3d 922, 926 (2010). In light of the current language of the NPRA and case law interpreting it, it is patently false that "this Court must utilize the balancing test outlined in *Donrey* to determine whether disclosure of officer unit assignments is appropriate." Indeed, *Donrey's* statement of the balancing test and interests that outweigh disclosure are no longer good law.

Instead, as the Nevada Supreme Court has explained, courts must begin with the presumption that all government records are open to disclosure. *Reno Newspapers v. Sheriff (Haley)*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010); *accord Reno Newspapers, Inc. v. Gibbons,* 127 Nev. 873, 880, 266 P.3d 623, 628 (2011). As noted, the NPRA mandates that the governmental entities resisting disclosure and asserting that a record is confidential "has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential." Nev. Rev. Stat. § 239.0113(2). In a case such as this one where, as Metro agrees, there is no statute explicitly rendering the records at issue confidential, a governmental entity can still meet its burden—but only if it establishes by such a preponderance of the evidence that: (1) the records are subject to some other claim of confidentiality; and (2) the interest clearly outweighs the presumed interest in favor of access. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011)

In meeting this heavy burden, the Nevada Supreme Court has repeatedly emphasized that a governmental entity cannot rely on "non-particularized showing[s]" or by "expressing hypothetical concerns." *Gibbons,* 127 Nev. at 880, 266 P.3d at 628 (citing *DR Partners v. Board of County Commissioners*, 116 Nev. 616, 627-28, 6 P.3d 465, 472-73 (2000) and *Haley*, 126 Nev. at 218, 234 P.3d at 927).

**C. The Declarations of Sheriff Lombardo and Steven Grammas Do Not Establish Metro's Burden by a Preponderance of the Evidence.**

Metro submitted declarations that rely on the type of speculation that cannot meet Metro's burden. Metro creatively divines, without evidence, that physical danger to officers will

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necessarily result if the Review-Journal were to succeed in its records request. Sheriff Lombardo's declaration contains unsupported, conclusory statements about danger to officers that are speculative at best. The Review-Journal has limited its request to patrol officer assignments. Yet Lombardo asserts that "Of particular concern, it would be dangerous to reveal the names of officers who work undercover. Revealing the names of officers assigned in overt operations ***could*** reveal the names of officers assigned in covert operations, by process of elimination." (8/20/2018 Supplemental Brief Regarding Las Vegas Metropolitan Police Department's Response to Las Vegas Review-Journal's Petition for writ of Mandamus (on file with the Court), at Exh. V.) (hereinafter "Lombardo's Decl.") Many officers within Metro are neither patrol officers nor vice officers, and to assert otherwise is a false dichotomy fallacy.

Grammas' declaration is also rife with unsupported statements, speculation, and hypothetical concerns. For example, in his declaration, Grammas states without any support that disclosing current unit assignments for patrol officers who once worked in an undercover capacity "could allow individuals, who previously interacted with the unknown undercover officer, to seek retribution or retaliation." (8/29/18 LVMPD Supp. at Exh. W, p. 1, ¶ 6.) (hereinafter "Grammas Decl.") This is the very definition of speculation. Grammas provides no information to support this assertion, nor does his declaration even establish that he has the necessary knowledge and experience to make such a broad assertion.

The same is true of all of Grammas' other assertions. Grammas asserts that redacting the names of patrol officers that served in an undercover capacity "would easily reveal the officers previously assigned in covert operations by process of elimination." (*Id.*, ¶ 7.) Again, however, Grammas provides no support for this non-particularized, conclusory assertion. Grammas also asserts that disclosing the unit assignments of past patrol officers "could jeopardize an officer's current undercover or covert operation." (*Id.*, ¶ 8.) This assertion is also unsupported and is also too non-particularized to satisfy Metro's burden of proof.

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The Court gave Metro this "last chance" to meet its burden of proving by a preponderance of evidence that Metro's interest in officer safety outweighs the presumption of public access to officer unit assignment. At the August 22, 2018 hearing, the Court stated "I understand some of the arguments and some of the general statements in the declaration, but I also, as I sit here, I need more detail and more evidence that those concerns are justified . . . " (8/22/18 Transcript, p. 66:1-4.) Metro, however, has failed to provide any detail or evidence, instead reiterating the same arguments it has made throughout the case. Because Metro has still failed to demonstrate by the preponderance of the evidence that the officer unit assignments the Review-Journal requested should be kept confidential, the Court should order Metro to disclose them immediately.

**D. Metro's Argument Is Based on the False Assertion that All Officers Are Either Under Cover/Covert or Patrol Officers.**

The logical bases for Grammas' conclusory assertions that disclosing current unit assignments for patrol officers who once worked in an undercover capacity "could allow individuals, who previously interacted with the unknown undercover officer, to seek retribution or retaliation." (Grammas Decl., p. 1, ¶ 6) and that redacting the names of patrol officers that served in an undercover capacity "would easily reveal the officers previously assigned in covert operations by process of elimination" (*id.*, ¶ 7) are unclear. Metro's arguments appear to be predicated on the un-proven, conclusory, and **false** assumption that if an officer is not a patrol officer, the officer must be a covert/undercover officer.

In fact, there are multiple divisions within Metro and numerous possible assignments. There are many types of officers at Metro besides patrol officers and covert/undercover officers. (Printout attached as Exh. 90 ("Las Vegas Metropolitan Police Department: Police Officer 1 – Lateral Entry Information Booklet") at LVRJ2133- LVRJ2143.) (listing many

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examples in a non-exhaustive list of assignments).[4] Metro's website reflects that it has multiple bureaus in which it utilizes officers. (Exh. 91 ("Bureaus") at LVRJ2144 - LVRJ2145.)[5]

Indeed, Metro's February 17, 2018 organizational chart reflects that there are multiple offices, bureaus, groups, and divisions within the department. (Exh. 92 ("Organizational Chart") at LVRJ2147.)[6] For example, the "Detention Services Division" includes officers who work at the Clark County Detention Center. (Exh. 93 "Detention Services Division 2016 Annual Report" at LVRJ2148 - LVRJ2197.)[7]

**E. Metro's Reliance on FOIA Exemption 7(F) Is Misplaced.**

Metro's reliance on case law interpreting FOIA Exemption 7(F) (Resp., p. 2:7-20) does not advance its argument for multiple reasons.

**1. Confidentiality Interests Are Interpreted More Narrowly in the Post-*Donrey* World.**

First, as detailed above, *Donrey's* application of the balancing test has been drastically modified. Metro nonetheless argues that this Court should look to FOIA cases involving what it deems to be similar requests because the "*Donrey* court acknowledged that the policy considerations enumerated by the Court were 'virtually identical' to Exemption 7 of the Freedom of Information Act ('FOIA')." (8/20/18 RJ Supplement, at p. 2:2-4 (citations omitted).) This reliance on a footnote in *Donrey* is not well-founded in light of the modifications to *Donrey*. As discussed above, "the balancing test … now requires a

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[4] Also available at: https://www.lvmpd.com/en-us/ProtectTheCity/Documents/Lateral%20PO%20information%20booklet%202015%20FINAL.pdf (last checked 9/7/18).

[5] Also available at: https://www.lvmpd.com/en-us/Pages/Bureaus.aspx (last checked 9/7/18).

[6] Also available at: https://www.lvmpd.com/en-us/Documents/LVMPD-Org-Chart-2-17-18.pdf (last checked 9/7/18).

[7] Also available at: https://www.lvmpd.com/en-us/Documents/CCDC-Annual-Report-2016-FINAL.pdf (last checked 9/6/18).



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narrower interpretation of private or government interests promoting confidentiality or nondisclosure to be weighed against the liberal policy for an open and accessible government." *Reno Newspapers v. Sheriff (Haley)*, 126 Nev. 211, 217-18, 234 P.3d 922, 926 (2010). Since the Nevada Supreme Court had held that a narrower interpretation of interests now applies, the fact that *Donrey* considered policy considerations detailed in Exemption 7 to FOIA is no longer particularly relevant.

**2. *Donrey* Did Not Adopt FOIA Exemptions into Nevada Law.**

Second, Metro makes too much of the language it relies on in *Donrey*. All that the footnote it relies on says is:

> The dissent suggests that we should adopt a "categorical" balancing test similar to that involved in the federal Freedom of Information Act. 5 U.S.C. § 552(b)(7) (1988). Contrary to the dissent's characterization of our balancing test as "ad hoc," however, we do not believe that there is a meaningful difference between the two tests, especially where a number of the considerations listed in federal Exemption 7 are virtually identical to policy considerations mentioned here. Furthermore, we do not perceive that it would be any less burdensome to judicially screen these records under the dissent's proposed categorical test, if indeed judicial screening is unduly burdensome at all.

*Donrey*, 106 Nev. at 636, 798 P.2d at 148. Thus, the footnote addresses the dissent's argument regarding how a balancing test should be applied than anything else and does not, as Metro suggests, constitute a wholesale adoption of Exemption 7 into Nevada's NPRA case law.

Importantly, while FOIA Exemption 7(F) statutorily permits withholding of "records or information compiled for law enforcement purposes" that, if disclosed, "could reasonably be expected to endanger the life or physical safety of any individual" (5 U.S.C. § 552(b)(7)(F)), no such exemption exists in the NPRA. Just because the *Donrey* court mentioned that it considered the same policy considerations statutorily reflected in FOIA Exemption 7(F), that does not change the fact that the current NPRA balancing test and statutory requirements still apply when considering any claims against disclosure. In this

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NPRA case, rather than conjecture about danger, Metro must produce evidence that a risk actually applies (by a preponderance of the evidence) and that the interest **clearly** outweighs the strong presumption in favor of access. *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 777 F.3d 518, 524 (D.C. Cir. 2015)[8] It is not enough to bootstrap, as Metro attempts to do, by relying on FOIA cases operating under a different analytical rubric.

**3. Patrol Officers Are Not Akin to Federal Agents.**

Third, Metro's arguments presume that the disclosure of Metro patrol officers—officers that are, by design, expected to be known to and engage with the community—present the same type of safety risk as the types of information courts have found to be protected in the FOIA cases Metro relies on. For example, Metro relies on *Adiobser v. Dept. of Justice*, 811 F.Supp.2d 284, 301 (D.D.C. 2011), a case that found that the Drug Enforcement Agency could protect employee information. Those employees, in contrast to patrol officers, are not expected to be known to the community. Nor are patrol officers akin to the Supermax officers' employees at issue in *Jordan v. U.S. Dep't of Justice*, 668 F.3d 1188, 1198 (10th Cir. 2011).

**4. Metro's Arguments Do Not Even Satisfy FOIA.**

Fourth, Metro's claims would not even meet the requirements of FOIA Exemption 7(F), permitting withholding of "records or information compiled for law enforcement purposes" that, if disclosed, "could **reasonably be expected to** endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F) (emphasis added). As the Circuit Court of Appeals for the District of Columbia has explained, "by conditioning

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[8] Moreover, even considering the policy underpinnings of Exemption 7 and applying a version of the balancing test far less heavily weighed in favor of disclosure, the *Donrey* court still rejected the arguments made against disclosure in that case and ordered disclosure of the law enforcement investigatory report at issue in that case. *Donrey* 798 P. 2d at 635-36, 147-48; *see also, e.g., Haley*, 126 Nev. at 219, 234 P.3d at 92 (rejecting safety and privacy arguments and ordering disclosure of records pertaining to individual concealed-carry permits due to lack of evidence supporting such claims).

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its application on a reasonable expectation of danger *to an individual*, [Exemption 7(F)] excludes from consideration risks that are speculative with respect to any individual." *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 777 F.3d 518, 524 (D.C. Cir. 2015) (emphasis in original; citation omitted).

In interpreting the meaning of "any individual," the Second Circuit found that the phrase "may be flexible, but is not vacuous," and concluded that on light of courts' obligation to construe FOIA's exemptions narrowly, Exemption 7(F) "cannot [be] read ... to include individuals identified solely as members of a group so large that risks which are clearly speculative for any particular individuals become reasonably foreseeable for the group." *Am. Civil Liberties Union v. Dep't of Def.*, 543 F.3d 59, 67 (2d Cir. 2008), *vacated on other grounds*, 558 U.S. 1042 (2009). However, that is precisely the sort of interpretation Metro is encouraging the Court to adopt here. Rather than tethering its concerns about officer safety to a defined group of officers who would be endangered by disclosing officer unit assignments, Metro broadly argues that any individual who might have once worked in an undercover capacity in any unit would put any of those officers at risk. Thus, Metro's argument fails.

**F. The New York Case Cited by Metro Is Inapplicable.**

Metro relies on *Ruberti, Girvin & Ferlazzo P.C. v. New York State Div. of State Polic*e, 218 A.D.2d 494, 641 N.Y.S.2d 411 (1996) for the proposition that other courts have refused to require disclosure of officer unit assignment. (Resp., p. 2:17-20.) Metro's reliance on this case is misguided for multiple reasons.

First, the court's ruling in that case, was premised on a New York statute regarding records that are exempted from disclosure under New York's Freedom of Information Law (FOIL) which imposes a much easier burden of proof than the NPRA. That law, N.Y. Pub. Off. Law § 87, statutorily exempts from disclosure documents which, "if disclosed would endanger the life or safety of any person." To invoke this exception, the agency in question need only demonstrate "a possibility of endanger[ment]." *Ruberti*, 218 A.D.2d at 499 (quoting *Matter of Connolly v. New York Guard,* 175 A.D.2d 372, 373,



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572 N.Y.S.2d 443 (1991)) (alterations in original). By contrast, as discussed above and throughout the briefings in this matter, the NPRA requires a governmental entity to prove by "preponderance of the evidence that the public book or record, or a part thereof, is confidential," Nev. Rev. Stat. § 239.0113(2) and that its "interest in nondisclosure clearly outweighs the public's interest in access." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citations omitted) Moreover, as discussed above, rather than requiring a governmental entity to establish only a "possibility" of endangerment, the Nevada Supreme Court has repeatedly stated that a governmental entity cannot rely on "non-particularized showing[s]" or by "expressing hypothetical concerns." (citations omitted). Metro has not met this heavy burden, despite repeated opportunities to do so. Accordingly, this Court should order Metro to disclose the officer unit assignments.

Second, the issue Metro relies on the case for was not discussed in detail. *Id.* at 415 ("The arguments raised by petitioner on its cross appeal do not merit extended discussion."). Instead, the appellate court just found that it was "satisfied that respondent met its burden of demonstrating that the disclosure of the troop, zone and station assignments of each of its sworn members could endanger the life and safety of those officers." *Id.* As noted above, that applicable burden and the framework are different in New York. *Id.*

Third, unlike here, the request at issue had not been limited to patrol officers. *Id.* As detailed above and in the Review-Journal's August 20, 2018 Supplement (8/20/18 RJ Supp. at p.13:22-23), Metro's patrol officers are tasked with being involved with the community. They identify themselves to the public, and their identities should thus be presumed to be public knowledge. *See, e.g., Physicians Comm. for Responsible Med. v. Hogan*, 29 Misc. 3d 1220(A) (Sup. Ct. 2010) (distinguishing *Ruberti* because it did not address "the withholding of information pursuant to the life/safety exemption where substantially similar information is available to the public."

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**G. Abundant Case Law from Other Jurisdictions Supports Disclosure.**

Numerous cases support disclosure of information regarding police officers, despite safety and privacy claims. These cases also often specifically reject the kind of unsupported, attenuated arguments made by Metro in this case.

For example, in *King County v. Sheehan*, 57 P.3d 307 (2002), the Court of Appeals of Washington ruled that operators of web sites critical of police agencies were entitled to the full names and rank of every police officer employed in King County. In so doing, it rejected the very type of claim that Metro makes here: that access to the information sought could be used to extrapolate and discern private, protected information, including of undercover officers. *See, e.g., id.* at 314 ("According to the County, all of the precautions it takes to protect the identity of its undercover officers would be useless if a full list of officers' names could be obtained through the act.") The Washington court recognized but nonetheless rejected the safety and privacy interests asserted as sufficient to overcome disclosure, noting:

> … the County admits that it regularly releases the names of its officers, including undercover officers, to the legitimate news media and indeed to anyone else who requests them, in connection with specific incidents. Officers who are not operating undercover disclose their own names each day, on the name tags that they wear on their uniforms, on the tickets and citations that they issue, to suspects whom they interrogate, to witnesses whom they interview, and on the public record when they testify in open court—even undercover police officers use their real names when testifying in open court. The County has failed to explain why disclosure of a general list of names pursuant to the public records act request will somehow result in more danger and stress than all of these other individual daily disclosures. The County's policy of releasing officer names on a per-incident basis, quite possibly to angry suspects with an axe to grind, would seem to be as dangerous to police, if not more so, as releasing a general list of all officers unconnected to any specific incident.

*Id.* at 314-315. Likewise, here Metro has failed to explain how release of the records would cause more danger than already exists.

The Washington court also rejected the very type of attenuated argument Metro makes. Without sufficient support, in this case Metro claims that somehow releasing names

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of just patrol officer assignments could be somehow used to figure out who undercover officers are. While the government made clearer arguments there, the Washington court still rejected an argument that names could be used to get access to other, private information. It explained;

> It is a fact of modern life in this age of technology that names can be used to obtain other personal information from various sources, but we conclude that this is not sufficient to prevent disclosure of the names of police officers under the act.

*Id.* at 317-8. Thus, just because public records can be used to glean or obtain other information, that does not vest the public records with protection from disclosure.

In *Times Leader v. Hazleton Police Civil Serv. Comm'n,* 909 A.2d 434, 438 (Pa. Commw. Ct. 2006), a reviewing court in Philadelphia overturned a denial of access to officer names and test results. In *Comm'n on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 300 (2007), the court rejected a categorical, conclusory claim that "information concerning where and when a particular individual has served as a peace officer" was protected.

In *Henderson v. City of Chattanooga,* 133 S.W.3d 192 (Tenn. Ct. App. 2003), the police department resisted disclosure of certain officers' photographs. The reviewing court rejected the argument that disclosure should not be permitted because the officers would not then be able to later serve as undercover officers. The reviewing court in Tennessee found that applying an undercover officer exemption was not permitted because "it would mean that no police officers' photo would be required to be produced. The undercover exception would become the rule ...." *Id.* at 208–09. The Tennessee court also explained that allowing such a broad application of an exception would be "contrary to the stated legislative intent that the [Tennessee Public Records] Act is to be construed "so as to give the fullest possible public access to public records." *Id.* (citing Tenn. Code Ann. § 10–7–505(d)). Just like Tennessee, Nevada's public records law must be interpreted to promote access as much as possible. *See, e.g.,* Nev. Rev. Stat. § 239.001(1)-(3). Thus, just like in the Chattanooga case, this Court should not allow exceptions to be extrapolated and bootstrapped such that they

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swallow the rule in favor of access, particularly in light of the flimsy "evidence" presented by Metro. In short, just because undercover officer assignments merit protection, that limitation cannot be applied so broadly that even patrol officer assignments are withheld.

To give a final example of a court rejecting the type of claim Metro makes, in *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 75 (2014), the Supreme Court of California rejected a blanket claim that the names of officers involved in shootings due to the failure to support safety claims. The California court found that the parties resisting disclosure did not make "the particularized showing necessary to outweigh the public's interest in disclosure" because "the Union and the City relied on only a few vaguely worded declarations making only general assertions about the risks officers face after a shooting." *Id.* Here, likewise, all Metro has done is included vague declarations that make general assertions about the danger of disclosure. Its arguments must be rejected, and the Court should order disclosure without further delay.

## III. CONCLUSION

For these reasons, and for the reasons set forth in the papers and pleadings on file in this matter and the arguments of counsel at the two hearings the Court has conducted, the Review-Journal respectfully requests that this Court direct Metro to disclose the requested officer unit assignments.

Respectfully submitted this the 7th day of September, 2018.

*/s/ Margaret A. McLetchie*
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*Counsel for Petitioner, Las Vegas Review-Journal*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7th day of September 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing "LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS)" in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department,* Clark County District Court Case No. A-18-775378-W, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record.

I hereby further certify that on this the 7th day of September 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing "LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS)" by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Email: canderson@maclaw.com; ncrosby@maclaw.com;
jnichols@maclaw.com
*Attorneys for Las Vegas Metropolitan Police Department*

*/s/ Lacey Ambro*
An Employee of MCLETCHIE SHELL LLC

**DECLARATION OF MARGARET A. MCLETCHIE**

I, MARGARET A. MCLETCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330, as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada.

3. I am a partner at the law firm of McLetchie Shell, LLC, and I am lead counsel for the Las Vegas Review-Journal in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department,* Clark County District Court Case No. A-18-775378-W.

4. I am making this declaration to provide information in this case, to authenticate documents attached as exhibits in support of Petitioner Las Vegas Review-Journal's Response to Las Vegas Metropolitan Police Departments' Second Supplemental Brief in Support of its Response to Las Vegas Review-Journal's Petition for Writ of Mandamus (Addressing Unit Assignments), and to verify factual representations contained in the Motion.

5. Exhibit 88 is a true and correct copy of Legislative History of Assembly Bill 365, 67th Session.

6. Exhibit 89 is a true and correct copy of a Legislative History of Senate Bill 123, 74th Session.

7. Exhibit 90 is a true and correct copy of Las Vegas Metropolitan Police Department's "Police Officer 1 – Lateral Entry Informational Booklet" (downloaded from https://www.lvmpd.com/enus/ProtectTheCity/Documents/Lateral%20PO%20information%20booklet%202015%20FINAL.pdf).

8. Exhibit 91 is a true and correct copy of a Listing of Bureaus from LVMPD (downloaded from https://www.lvmpd.com/en-us/Pages/Bureaus.aspx).

9. Exhibit 92 is a true and correct copy of Las Vegas Metropolitan Police Department's Organizational Chart (downloaded from https://www.lvmpd.com/en-us/Documents/LVMPD-Org-Chart-2-17-18.pdf).

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10. Exhibit 93 is a true and correct copy of Detention Services Division 2016 Annual Report (downloaded from https://www.lvmpd.com/en-us/Documents/CCDC-Annual-Report-2016-FINAL.pdf).

I certify and declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas, Nevada, the 7th day of September 2018.

MARGARET A. MCLETCHIE

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**EXHS**

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*Counsel for Petitioner, Las Vegas Review-Journal*

**EIGHTH JUDICIAL DISTRICT COURT**
**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

Respondent.

Case No.: A-18-775378-W

Dept. No.: XV

**APPENDIX OF EXHIBITS TO LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS)**

**INDEX OF EXHIBITS[1]**

| Exh. | Description | Date | Bates Nos. |
|---|---|---|---|
| 88 | Legislative History of Assembly Bill 365, 67th Session | 10/14/1993 | LVRJ1561 - LVRJ1626 |
| 89 | Legislative History of Senate Bill 123, 74th Session | 2/20/2007 | LVRJ1627 - LVRJ2132 |
| 90 | LVMPD's "Police Officer 1 – Lateral Entry Informational Booklet" | 9/7/2018 | LVRJ2133 - LVRJ2143 |
| 91 | Listing of Bureaus from LVMPD website | 9/7/2018 | LVRJ2144 – LVRJ2146 |
| 92 | LVMPD Organizational Chart | 2/17/2018 | LVRJ2147 |

[1] The other exhibits were submitted in connection with the Petition, Opening Brief, Reply Brief, and 8/20/18 Supplemental Brief.

| INDEX OF EXHIBITS[1] | | | |
|---|---|---|---|
| **Exh.** | **Description** | **Date** | **Bates Nos.** |
| 93 | Detention Services Division 2016 Annual Reort | 2016 | LVRJ2148 - LVRJ2197 |

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7th of September, 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing APPENDIX OF EXHIBITS TO LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS) in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department*, Clark County District Court Case No. A-18-775378-W, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record.

I hereby further certify that on this the 7th of September, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing APPENDIX OF EXHIBITS TO LAS VEGAS REVIEW-JOURNAL'S RESPONSE TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS (ADDRESSING UNIT ASSIGNMENTS) by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
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*/s/ Lacey Ambro*
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# EXHIBIT 88

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)

LVRJ1561

# 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.

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.

COUNTY GOVERNMENT

# 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.

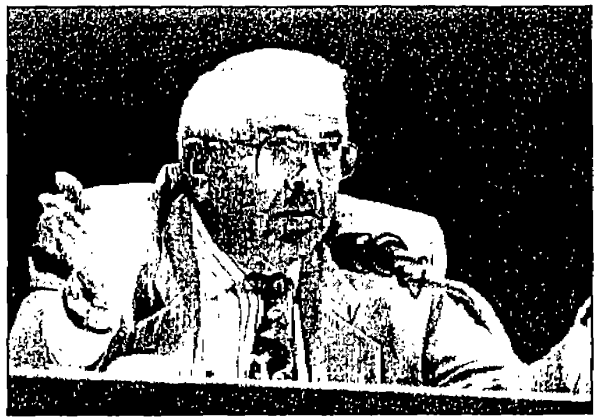
"For the benefit of the commissioner who does not understand his job ... and for the benefit of the chair, who is old enough to know better," Christensen said he would ask Deputy District Attorney Mahlon Edwards to explain tabling.

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.



**PAUL CHRISTENSEN** calls for an end to the argument.

PHOTOS BY BRAD TALBUTT / STAFF

**DON SCHLESINGER** demands county banking records.


# 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

LVRJ1580 EXHIBIT E 1022 19

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

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: | | Date: | | |
| Initial: | | Initial: | | |
| Concurred in | ☐ | Concurred in | ☐ | |
| Not Concurred in | ☐ | Not Concurred in | ☐ | |
| Date: | | Date: | | |
| Initial: | | 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.

(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.

(30)

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.)

* * * * *

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.

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# EXHIBIT 89

# SB 123 - 2007

**Introduced on:** Feb 20, 2007

**By** Care

*Makes various changes to provisions relating to public records. (BDR 19-462)*

**DECLARED EXEMPT**

**Fiscal Notes** View Fiscal Notes

Effect on Local Government: *May have Fiscal Impact.*
Effect on State: *Yes.*

**Most Recent History Action:** Chapter 435. **Effective October 1, 2007.**
**(See full list below)**

## Past Hearings

| | | |
|---|---|---|
| Senate Government Affairs | Feb-26-2007 | Assigned to Subcommittee |
| Senate Judiciary | Mar-28-2007 | Mentioned Not Agendized |
| Senate Government Affairs | Apr-04-2007 | Discussed in Subcommittee |
| Senate Government Affairs | Apr-09-2007 | Discussed in Subcommittee |
| Senate Government Affairs | Apr-11-2007 | No Action |
| Senate Government Affairs | Apr-13-2007 | Amend, and do pass as amended |
| Senate Finance | May-04-2007 | No Action |
| Senate Judiciary | May-11-2007 | Mentioned Not Agendized |
| Senate Finance | May-15-2007 | Mentioned Not Agendized |
| Senate Finance | May-21-2007 | Mentioned Not Agendized |
| Senate Finance | May-26-2007 | Amend, and do pass as amended |
| Assembly Government Affairs | Jun-02-2007 | Do pass |
| Assembly Ways and Means | Jun-04-2007 | No Action |
| Assembly Ways and Means | Jun-04-2007 | Amend, and do pass as amended |
| Senate Finance | Jun-04-2007 | Concur |

## Votes

| | | | | | | |
|---|---|---|---|---|---|---|
| **Senate Final Passage** | Jun-01 | Yea 21, | Nay 0, | Excused 0, | Not Voting 0, | Absent 0 |
| **Assembly Final Passage** | Jun-04 | Yea 35, | Nay 7, | Excused 0, | Not Voting 0, | Absent 0 |

**Bill Text (PDF)** As Introduced 1st Reprint 2nd Reprint 3rd Reprint As Enrolled

**Statutes of Nevada 2007** Chapter 435

**Amendments (PDF)** Amend. No.415 Amend. No.1107 Amend. No.1161

## Bill History

Feb 20, 2007 Read first time. Referred to Committee on Government Affairs. To printer.

Feb 21, 2007 From printer. To committee.

Apr 09, 2007 Notice of eligibility for exemption.

Apr 23, 2007 From committee: Amend, and do pass as amended.
Placed on Second Reading File.
Read second time. Amended. (Amend. No. 415.) To printer.

Apr 24, 2007 From printer. To engrossment. Engrossed. First reprint.
Rereferred to Committee on Finance. To committee.
Exemption effective.

May 30, 2007 From committee: Amend, and do pass as amended.
Placed on General File.
Read third time.
Amendment No. 1049 withdrawn.
Taken from General File. Placed on General File for next legislative day.

May 31, 2007 Taken from General File. Placed on General File for next legislative day.

Jun 01, 2007 Read third time. Amended. (Amend. No. 1107.) To printer.
From printer. To reengrossment. Reengrossed. Second reprint.
Placed on General File.
Read third time. Passed, as amended. Title approved, as amended. (Yeas: 21, Nays: None.) To Assembly.

Jun 02, 2007 In Assembly.
Read first time. Referred to Committee on Government Affairs. To committee.
From committee: Do pass.
Declared an emergency measure under the Constitution.
Taken from General File.
Placed on Chief Clerk's desk.

Jun 03, 2007 Taken from Chief Clerk's desk.
Rereferred to Committee on Ways and Means. To committee.

Jun 04, 2007 From committee: Amend, and do pass as amended.
Placed on General File.
Read third time. Amended. (Amend. No. 1161.)
Reprinting dispensed with.
Read third time. Passed, as amended. Title approved, as amended. (Yeas: 35, Nays: 7.)
To printer.
From printer. To reengrossment. Reengrossed. Third reprint.
To Senate.
In Senate.
Assembly Amendment No. 1161 concurred in. To enrollment.

Jun 07, 2007 Enrolled and delivered to Governor.

Jun 13, 2007 Approved by the Governor.

Jun 14, 2007 Chapter 435.

**Effective October 1, 2007.**

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

# BILL SUMMARY

74th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

## SENATE BILL 123

### Topic

Senate Bill 123 relates to public records.

### Summary

Senate Bill 123 declares that the provisions of Chapter 239 of the *Nevada Revised Statutes* concerning public records are designed to foster democratic principles by providing the public with access to inspect and copy public records as permitted by law. The measure proclaims that the provisions of the Chapter should be construed liberally.

Senate Bill 123 further provides that the person having legal custody over public records must, by the end of the fifth business day after receiving a written request for the record or records, either allow the requester to inspect or copy the record or notify him of the circumstances as to why he is unable to view the record. If the public record is not available by the end of the fifth business day, the requester may inquire regarding the status of the request. Any denial of public records inspection due to confidentiality must be in writing and cite the specific legal or statutory authority making the document confidential. The governmental entity, in a judicial or administrative proceeding, bears the burden of proof in asserting that a public record is confidential.

With the exception of certain confidential records relating to crime victims and gaming licenses and, notwithstanding any provision of law that has declared a public book or record to be confidential, a person may apply to the appropriate district court for an order allowing him to inspect or copy a public book or record that has been in the custody of one or more governmental entities for a period of at least 30 years. The bill also clarifies that if the public book or record pertains to a natural person, a person may not apply for a court order allowing the public record inspection until the record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.

The bill provides that a governmental entity having legal custody or control of a public record shall not deny a request to inspect or copy that record because it contains information that is

confidential if the governmental entity can redact the confidential information. However, the confidential documents of the Gaming Control Board relating to applications for gaming licenses must remain confidential.

Finally, the bill clarifies that provisions in the measure must not be construed to prohibit an oral request to inspect or copy a public record.

**Effective Date**

The measure is effective on October 1, 2007.

# LEGISLATIVE HEARINGS

## MINUTES AND EXHIBITS

**MINUTES OF THE**
**SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session**
**February 26, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:36 p.m. on Monday, February 26, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John J. Lee

**STAFF MEMBERS PRESENT:**

Olivia Lodato, Committee Secretary
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

**OTHERS PRESENT:**

Cecilia Colling, Deputy Administrator, Bureau of Vocational Rehabilitation, Rehabilitation Division, Department of Employment, Training and Rehabilitation
James E. Keenan, Nevada Public Purchasing Study Commission
Ed Guthrie, Executive Director, Opportunity Village
John Balentine, Purchasing and Contract, Washoe County
Jay David Fraser, Nevada League of Cities and Municipalities
Joseph A. Turco, American Civil Liberties Union of Nevada
Barry Smith, Nevada Press Association

JAY DAVID FRASER (Nevada League of Cities and Municipalities):
We support S.B. 137. Some of our smaller entities want a lower amount before the governing body. The final section in section 1 indicates they can set a lower level.

CHAIR HARDY:
That is the existing law, and it is not our intent to change. We close the hearing on S.B. 137 and open the hearing on S.B. 123. This bill will go to subcommittee; there will be ample opportunity to work with Senator Care and amend S.B. 123.

**SENATE BILL 123**: Makes various changes to provisions relating to public records. (BDR 19-462)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):
I came to Nevada in 1979 as a reporter for the American Broadcasting Company television affiliate in Las Vegas. I continued to be a print and electronic media journalist until 1986. I have retained an interest about what is a public record and why. In 1991, the Nevada State Legislature commissioned an interim study that resulted in two bills: A.B. No. 364 of the 67th Session and A.B. No. 366 of the 67th Session. One bill intended to clarify a public document; the other assessed how to obtain a public document. Both of those bills died. In 1997, the Legislature tried again with A.B. No. 289 of the 69th Session, which was another attempt to clarify a public document. That bill also died, and there have been no attempts since then. An article in the *Las Vegas Sun* (Exhibit D) deals with financial travails of the University Medical Center (UMC) in Clark County. The last section of the article states the *Las Vegas Sun* requested a list of meeting minutes and other information. The hospital refused to grant any of the requests. I take that as a response of drop dead. Another article (Exhibit E) in the *Las Vegas Review-Journal* deals with a consultant to the Department of Family Services for Clark County excluding certain information from documents turned over not pursuant to a request by the press. I bring this up to show that on rare occasions, there is a cavalier attitude about the taxpayer's right to see what the government is doing. That means the right to inspect documents generated and obtained by the government. There are exceptions, and in Nevada, about 300 statutes govern those exceptions. However, problems persist which is why I come before the Committee with this bill.

Last week after Senator Reid spoke and we adjourned the Senate side, I went back to my desk and on it was the material telling me I could introduce S.B. 123. I stood on the Senate Floor and commented I was not entirely happy with the bill as drafted. Since some Legislators have not received bill drafts, I introduce the bill as written and work out the problems in Committee. I received the amendments today (Exhibit F), so many people who reviewed S.B. 123 have not reviewed my amendments.

The general rule in Nevada is all public books and records of government are open unless the contents are declared confidential by law. This bill does not change the status of anything confidential pursuant to statute or case law. I am more concerned with how the statutory apparatus works when requesting a document that is not confidential.

Section 2 of the original bill and Exhibit F are the same. The Committee should read section 2 as a preamble. Documents held by the government are of such importance that you need a statement of policy. All laws under NRS 239 are to be construed liberally, but any exemptions are narrowly construed. We favor the policy of openness.

Section 3 is a matter of contention. On occasion, the government farms out, by contract, some services it normally performs. Let me give a hypothetical example. If the county decides it needs to privatize the jail, it is absurd to think once that happens, the public has no right to know what goes on inside the jail or how the jail is run. I am not suggesting because a private entity receives public funds, everything it does or every document it has is open to scrutiny or inspection. If an accounting firm is retained to perform certain services, the accounting firm's records concerning other clients should not be open to public scrutiny. In the case of the jail, let us suppose a reporter finds enough cases to convince him or her a process of abuse is going on and wants to see records generated on the performance of that private company carrying out the governmental function. Those records would be public records. That is the intent of sections 3 and 7 of this bill. Section 7 contains definitions including a definition of a nongovernmental entity.

SENATOR RAGGIO:
If those same records were deemed confidential under existing statutes, were it not for the fact it is a nongovernmental entity, would this language preserve that confidentiality status?

SENATOR CARE:
That would not change.

SENATOR BEERS:
If a health care provider uses Medicaid to treat a patient, that patient's medical record is confidential. I do not see that happening in the proposed wording in S.B. 123.

SENATOR CARE:
All I can do today is express the intent. It is not possible to think of every hypothetical when you draft a bill like this, which is probably why we have over 300 statutes governing confidentiality.

CHAIR HARDY:
It is important we establish concerns with the bill and Senator Care's intent and make note of that. When we go to subcommittee, we can work through those issues to assure the intent is accurate.

SENATOR RAGGIO:
That could probably be addressed in the bill by saying the confidential status remains, even in a nongovernmental entity, if otherwise provided.

SENATOR CARE:
That would clarify it. Section 4 of the bill is different than Exhibit F to some degree. If a reporter makes a request, he or she is entitled to know when the government is going to respond. There is no law like that. The biggest concern people expressed to me is the two-day time period. Washoe County has a two-day policy. The city of Reno has a five-day policy. Washoe County has language in the policy that is not absolute. The requestor should know once they make a request, they will get a response within a certain time. If it is not possible to get a response within that time, the requestor can get an explanation why the information cannot be obtained in that time. An entity cannot respond within two days if the information is in boxes and you have to search. The county recorders told me they had a request from Kansas wanting every single document with the county recorder. Clearly, these are extraordinary circumstances that cannot be done in two days. I would like to work this bill with people who brought legitimate concerns to me; there has to be some way the reporter knows the deadline.

Section 4, subsection 1, paragraph (d), subparagraph (2) of the amendment is different, although the principle is the same. If the governmental entity says to the requestor, "We are not going to give it to you, we do not have to," then you have to cite the legal authority. Ultimately the entities that refuse to turn information over for reasons of confidentiality do so because they place faith in a specific statute. I thought about saying case law, but any case law will take you back to a specific statute. You cannot say no without saying why. Another provision in section 4 states if the governmental entity responds by citing a statute, it is stuck with the original position and cannot come up with another position if the requestor petitions the court later.

Section 4, subsection 2 is drafted so if the governmental entity fails to provide notice of the extraordinary circumstances, it waives any reliance it might have upon a statute for confidentiality.

CHAIR HARDY:
Can we do that? We may not be able to waive that.

SENATOR CARE:
What recourse is there when an entity knows it is supposed to turn over documents and says "let them sue us, they will never do it?" If it is not a waiver of confidentiality, there must be some other mechanism.

In Exhibit F, section 4, subsection 2, paragraph (b), lines 20 through 22, I struck the provision regarding personal privacy to avoid giving a clerk the unbridled discretion to say we are not turning this information over because it is a private matter. That is usually the reason an entity does not want to relinquish it; it is embarrassing. If a document is already confidential pursuant to statute, it is because of a policy, security or confidentiality concern. The language "personal privacy rights" does not have to be there. It is assumed in current law.

Section 4, subsection 3, lines 26 through 29 have language stricken. That addresses where the government entity will not turn over the document, and the aggrieved party would not have to seek an administrative hearing; they could go straight to court. That language does not belong there. There is a presumption of bias when the hearing officer is under the same department that denied the request.

Section 4, subsection 4 addresses what happens when confidentiality is waived and damages result to the third party. The bill is drafted to say the government is liable for damages in the event the third party sues and can demonstrate damages.

Section 5 codifies burden is on the government to demonstrate that confidentiality exists. Section 6 says if the document is confidential today, ten years from now, the presumption is it is no longer confidential. However, if the governmental entity can demonstrate it ought to remain confidential, it shall remain confidential. When I drafted this section, I had in mind the State Gaming Control Board. I would love to see the Howard Hughes file. My understanding is that it is confidential in perpetuity. There might have been a reason to keep a document confidential, but deaths, time and events lead to reasons why a document should not remain confidential after a certain point. In my research, I discovered some states had a provision like this.

Section 8 of the bill is new to Nevada. It is the redaction provision. I do not want the government to say, "We have a document that is confidential because on one page, there is a sentence that has confidential information so we will not turn it over." Section 8 says redact it, but turn over the part of the document that does not contain confidential information. The Freedom of Information Act (FOIA) has a similar provision.

Originally, section 10 meant to say ten years after passage of the bill, presumably October 1, the clock starts ticking on the ten years. The revision in Exhibit F says if the bill becomes law on October 1—assuming section 6 with the ten-year provision is still there—those documents held confidential prior to October 1, 1997, would not be confidential unless the courts agreed.

I followed this discussion for years. By and large, the governmental entities perform and honor those requests without incident, but on occasion, they do not. That is the basis for S.B. 123. You are going to hear legitimate objections. There is an example (Exhibit G). I could not have contemplated all the scenarios you are going to hear. I am willing to work with anybody on this bill, but I would like my basic points to survive in some form.

SENATOR RAGGIO:
This bill seems to be one-sided. The requests are going to come mostly from the media. This puts the burden on the governmental entity. What concerns me is

the example you gave where somebody requested copies of all your public records. Should there be some requirement for a specific request in written form? Who is going to pay the cost?

SENATOR CARE:
In current law, the entity is allowed to charge a fee associated with the cost of copying, not the overhead. The reason for that is, as a matter of public policy, requests for public documents are of significance, and when employees of the entity are making copies of those documents, they are working for the taxpayer. The Majority Leader raises a good point. The answer to his question is you cannot honor some requests and not others. Ultimately, there has to be a workable time frame.

SENATOR RAGGIO:
If you require the government entity to reply in written form, you should require the requestor to do so in writing and make a specific request so the items they are looking for are known.

SENATOR CARE:
Under FOIA and the Privacy Act, a form is filled out. However, there are situations where a reporter may need the information for a story to be published tomorrow. That reporter knows somebody in the office knows the whereabouts of the information, picks up the phone and the document is in front of him or her. We can talk about a written request, but I do not want a layman to come into an office, request a document and the clerk says, "You have to send us a letter and fill this form out in triplicate ... ." An oral request should be sufficient. If it is lengthy, it probably has to be in writing.

SENATOR BEERS:
What about the specificity issue Senator Raggio was suggesting?

SENATOR CARE:
An entity cannot respond to a request unless it understands the request. If the request is in writing, you know what that is. Therein lies the problem. On the other hand, I do not know what happened in the case of the *Las Vegas Sun*, but I have a feeling the request to UMC was not in writing. The request seemed perfectly legitimate, and there was no confusion about what documents had been requested.

CHAIR HARDY:
I am wondering about the precedent we are setting. If we are saying these must be liberally carried out, and narrowly carried out on other side, does that have a far-reaching impact on other statutes we do not say that on? I want that as part of the discussion and something for Legal Division to consider.

SENATOR CARE:
The language goes to chapter 237 in NRS, not anywhere else.

CHAIR HARDY:
I want to ensure we are not setting some standard that if this language is not included in every other statute, we are creating some difficulty in the other statutes. The other issue is the part where it states, "extraordinary circumstances exist which make it impossible ... ." I do not know how you would determine what is impossible. These questions are for consideration of the subcommittee and Legal Division.

SENATOR CARE:
I mentioned the case of an entity that knows it has to turn over documents, refuses and takes the let-them-sue-us approach. If they lose, they have to pay reasonable costs and attorney fees. My understanding is there are jurisdictions that impose misdemeanors on public officials who, in spite of knowing better, violate public record law. That language is not in this bill but is a subject I would like to explore during subcommittee.

CHAIR HARDY:
My concern is the example where the requestor wanted all public documents. You and I would say it would be impossible to do that in two days. However, if we put the entire staff on it, the project would not be impossible. We need to be careful about using the word impossible. My intent is to send this to subcommittee with Senator Care as chair and Senators Beers and Townsend.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):
This bill is an important bill, and people are interested. We favor it because it addresses weaknesses the American Civil Liberties Union has to deal with regularly. Without a time limit, we are faced with dilatory behavior on the side of those who maintain the records. They vacillate and ignore our requests because they can under the present law. Section 8 is important. As the law stands, if a portion of a book or document to be obtained contains confidential

material, the entire document is deemed confidential. Allowing the maintainer of the book or record to redact what is confidential serves the legitimate purpose of the state to protect confidential information as defined. Section 8 is well-crafted because it strikes that balance between public and government. This bill will be tweaked, but the ultimate principle is important for democracy and is nonpartisan.

BARRY SMITH (Nevada Press Association):
Before you are prepared remarks (Exhibit H) with comments and quotes. I am in support of S.B. 123. It strengthens and clarifies the Open Records Act. Two quotes by James Madison and George W. Bush in Exhibit H are examples of the importance of open records. Over the past 200 years, the standard has not changed. The public's right to know should not be replaced by a government-knows-best policy of the need to know. It has to be a right to know for citizens to inform themselves in a democracy. George Bush had it right when he called for a "citizen-centered and results-oriented approach." That is what S.B. 123 can accomplish.

Requests for information are handled regularly and routinely by state and local government which tells me they are fully capable. Section 2 of the bill makes an affirmative statement about the importance of open records similar to the statement made in NRS 241, as shown in Exhibit H. The biggest deficiency in the law is lack of accountability, and S.B. 123 sets out that time line and consequences if there is no response. Members of the Nevada Press Association tell me too often their requests go unanswered. The only recourse is to go to court which does not change under S.B. 123, but it does lay out procedure for the governmental entity to handle requests properly and promptly.

Another important aspect of the bill is justification for withholding a record. I propose the language be amended in section 4, subsection 1, paragraph (d), subparagraph (2) from "legal authority" to "statute." I suggested another amendment to take out the section dealing with personal privacy rights because that is covered elsewhere in the sections.

The Press Association supports S.B. 123. It substantially enhances the state's open records statute and has a significant benefit in ensuring open and transparent government in Nevada through a citizen-centered, results-oriented approach.

CHAIR HARDY:
The processes of government have to be transparent, and I have been privileged to co-sponsor legislation each session I have been here with Senator Care. I look forward to a good-faith effort on this bill.

SENATOR LEE:
By the end of the second business day, the requestor would like an answer, but the presumption is there is a reason why somebody cannot get to it. In your eyes, the presumption is wrong and they should comply much sooner. How do you expect to force, other than the threat of lawsuit, this bill?

MR. SMITH:
This bill does an excellent job of setting parameters, but the only recourse is district court.

SENATOR LEE:
If you think something should take two days to get to you, and the government entity says they cannot give it to you for seven days, does that start a process of legal action? If so, have we really accomplished anything with this bill?

MR. SMITH:
We have accomplished quite a bit. These are generally extraordinary circumstances. To get a response and set a time frame is an accomplishment. This bill says a response within two days and if not the record, a response that says when we will get that document within ten days.

SENATOR LEE:
After ten days, you have the right to threaten a lawsuit?

MR. SMITH:
The court has to decide if this is a public record or not.

TOM PORTA (P.E., Deputy Administrator, Corrective Actions, Mining and Water Programs, Division of Environmental Protection, State Department of Conservation and Natural Resources):
With me today is Dave Emme, Chief of Administrative Services for the Division of Environmental Protection. We appreciate working with Senator Care on S.B. 123. With certain changes, we can support the bill and avoid conflicts with some of our statutory requirements as well as create a transparent government

and protect our regulated communities' right to reasonable confidentiality in matters such as trade secrets and propriety processes. As written, S.B. 123 conflicts with existing statutes and regulations which have confidentiality requirements based on private business practices and trade secrets. We are concerned the bill would require us to release this trade secret information and conflict with our statutes. We are also concerned with potential litigation expenses in the event there is a dispute regarding, for example, the release of a permit applicant's trade secrets. Our suggested amendment (Exhibit I) would add the reference "trade secrets" in section 4, subsection 2, paragraph (b). In addition, we recommend section 6 be deleted entirely or amended to exclude trade secrets and personal information from the provision that allows release of such information after ten years.

The specific time frames for responding to requests pose problems for us. We suggest section 4 clarify such requests must be in writing. Tracking of this information when a person makes the request by phone would likely create uncertainty in interpreting the request and be difficult to implement. Additionally, we suggest the two-day time frame in section 4 be changed. For example, FOIA's time frame is 20 days. In most cases, we grant access to most files immediately. In some cases, we need to retrieve archived files or consult with our attorney before granting access. The two-day time frame does not allow us sufficient time to get the information. If we extend that time frame, it avoids justifying whether it was an extraordinary circumstance or impossible to get.

The agency wants to comply with S.B. 123 if it becomes law. In order to do so, we need to resolve conflicts with other statutes, provide reasonable time frames for the agency to respond and provide some level of confidentiality to our regulated community.

SENATOR CARE:
The ten-year conflict is connected with trade secrets. Give an example of what you run into where the presumption of nonconfidentiality after ten years would not hold?

MR. PORTA:
In our Chemical Accident Prevention Program, engineers look at the processes requested by industry to be kept confidential. These industries have been in

business for more than a decade and want their processes to keep a competitive edge and an equal playing field to remain confidential.

PAUL LIPPARELLI (Washoe County District Attorney's Office):
We pledge our support to work with Senator Care in subcommittee. I have been advising local governments on the law for 15 years and responded to a number of public requests over the years. One important thing we use in that process is the balancing test created by the Nevada Supreme Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). We would be concerned about a statute that eliminated discretion necessary in deciding whether a record is a public record. In absence of a comprehensive definition of public record, the balancing test becomes critical in deciding whether a document is a public record. We urge the Committee's support for the concept of the balancing test.

We are concerned about the penalty that results from failure to comply with section 2 of S.B. 123. We live with a two-day, self-imposed turnaround that is a feature of Washoe County's existing public records policy. If we cannot comply with a request within two days, we do not waive or forfeit the confidential nature of the record. We are concerned how to square that with our obligations under federal law to protect certain records we hold. The person who suffers is the person with interest in the privacy of the record, which may be a medical record in the Health Division.

We are concerned about the damages provision in section 4. If the Committee imposes a provision on damages, the citizens of Washoe County should be permitted all rights as in an ordinary trial, including the right to a jury to decide damages. This may cost millions of dollars, especially when talking about trade secrets or land development deals where there are demonstrable losses.

We are concerned about section 5 of S.B. 123 where the county would have opportunity to participate in judicial or administrative proceedings where the public record issue arose. If we are not a party, we do not have the opportunity to be involved.

The ten-year provision in section 6 removes the confidentiality of some records and creates rebuttable presumption. We had a request for the architectural plans for the Washoe County Jail. We cannot figure out the public's interest but

understand why some folks might want to know. There are records we might want to perpetually maintain.

Concerning the redaction provision in section 8, whose discretion is employed in that redaction? It would be easy to take a black marker and black out some paragraphs, but two days is a short period to respond to a request involving thousands of pages of documents. The bill would permit us to give the requestor information on how long it will take, but some discretion should be employed in determining what is private.

We suggest requiring requests in writing. It helps decide what records to produce. For the protection of the public, we urge the Committee declare requests for public records confidential. Some people requesting records would not want others to know what they were getting. The provisions in S.B. 123 could bring several Washoe County departments to a halt in complying with records requests, particularly if failure to comply carries severe penalties.

FREDERICK SCHLOTTMAN (Administrator, Offender Management Division, Carson City, Department of Corrections):
Department of Corrections has concerns specifically related to conflicts we have with other governmental agencies providing information. We get documents from the courts, Department of Homeland Security and Federal Bureau of Investigation that are all confidential. We have to resolve the conflict so we do not create a situation where we are declassifying documents from another agency. We have to provide protection for inmates. For instance, inmates who serve over ten years have reasonable expectations information contained in their files related to their crime does not become public. Other inmates in protective custody or who are safekeepers we would not wish identified. We have documents relating to staffing and facilities that could be used to perpetuate an escape.

CHAIR HARDY:
We are not talking about the definition of a public record. The intent of this bill is access to public records. I would like to focus on the intent of the bill.

SENATOR LEE:
Senator Care, how did you perceive minutes of meetings?

SENATOR CARE:
I did not say whether UMC minute meetings were confidential. It is a county hospital. The article indicates the hospital said no without citing to authority. They may have been confidential, but no is not a sufficient response.
SENATOR LEE:
Are there records you feel are misused more than others so I could better understand this bill?

SENATOR CARE:
It is difficult to decide whether a document should be confidential or a statute stay on the books. I do not want to get into that. I am saying when you have a document kept by the government, presumed to be a public record, what mechanism do you have so citizens can request a document? If the request is denied, after an acceptable period, what recourse does that citizen have?

MR. SCHLOTTMAN:
Regarding inmate litigation, we would have substantial record-keeping and litigation costs with this bill as written. Our Department has been asked to provide a fiscal note.

WAYNE CARLSON (Nevada Public Agency Insurance Pool; Public Agency Compensation Trust):
There are unintended consequences because of some unique structure that we have. I have a private company that manages these two insurance pools because it was cost-effective when they first started. Drawing a line between a private business record and a public record can be difficult. In addition, we have a private claims administration firm, a private managed care organization, a private loss control safety inspection firm and a nonprofit organization that the pools fund to provide human resource consultation to public sector members. Our public sector members are small governmental agencies. Because nonprofit or for-profit agencies administer a program, some information can be confidential. In the hands of the governmental entity, it may lose this confidentiality. For example, a personnel record under certain statutes is confidential. The advice given by the nonprofit human resource advisors may not fall within that confidentiality because it goes to the public entity. I am not sure it is adequately addressed in other places. If the advice becomes public, it can harm the employer-employee relationship and the issues they face. We also have attorneys who give advice to the nonprofit or to me, as the private

company managing the program. Do those confidentiality privileges get lost because those entities become public entities in this nongovernmental situation?

We have concerns with time limits. We are a small office with a staff of six. I am not going to delegate something as significant as a public records request if those records belong to our members or arise out of a claim. Two days may not be sufficient given our small staff.

CHAIR HARDY:
Everyone testifying in opposition to S.B. 123 thinks the two-day time period is a problem.

MR. CARLSON;
In section 4, citing a specific or legal statutory authority sometimes requires an attorney's opinion; attorneys are not always available. Under section 4, subsection 2, confidential settlement agreements with minors may be a problem if it becomes a public record in ten years.

In section 4, subsection 3, the amendment took out provisions of the administrative law. That is good because local governments are not subject to that, and if not taken out, it makes them subject to the provision. Because we provide protection against government entities for liability and bear the first $500,000 loss from our self-insurance fund, we would expect potential activity now that damages would be available as a remedy. We hardly have requests for public records. We had one, and we responded without a problem. However, we may be defending many more cases and incur additional costs. There are criminal penalties for violations of the Nevada Open Records Act and destruction of records. Those penalties might be sufficient to take care of damages. There is legislation on the privacy and protection of confidential information in other settings. If those damage provisions remain, are they subject to NRS 41, which is the cap on damages for local governments?

I am concerned about section 7, subsection 4, paragraph (e). We have a private firm doing appraisals, and those appraisals go to government entities and become public record. That will not be a big issue because we do not release data behind the appraisals. However, we do cover property on law enforcement facilities. Facility information could become public when the private company does the appraisals; there could be consequences.

Section 9 provides a good-faith defense for a public officer employee. What about private persons who are running a public program? This bill does not address what happens to those people. For example, as executive director on behalf of the Nevada Public Agency Insurance Pool and the Public Agency Compensation Trust, am I afforded the same protections as a public entity official when I am caught up in the public records law environment and subject to the reach of that as a private organization?

WILLIAM HOFFMAN (General Counsel, Clark County School District):
We oppose this bill, and I would like to participate in the subcommittee discussions.

JOHN REDLEIN (City of Las Vegas):
I am designated the public records specialist for the City of Las Vegas. I take care of all special public records issues and have done so for ten years. Before I came to work for Las Vegas, I was in charge of the Office of the Attorney General's Las Vegas operations and the public records specialist. I was in charge of advising state clients on the proper disposition of public records and the Attorney General's enforcement issues.

There is a conceptual problem because, despite not wanting to talk about what is a record, this bill is full of the phrase confidential records and there are no such things. We have public records. We have a global declaration in NRS 239 that says everything we generate or obtain and retain for purposes of performing our public duties constitutes public records unless declared by law to be confidential. The Attorney General told us local governments and divisions do not declare any records confidential. The Legislature declared every confidential record that exists in Nevada confidential. When somebody asks for a record, our analysis is simple: We look to see if it is declared confidential and our answer in that instance is we have no such public record. If it is a public record, we try to hand it over in three days. Any entity that does not have a policy for a quick response on requests is making a mistake because concealing a public record is a felony. I have never heard of anybody ignoring public records requests when they have been to the custodian of public records. The confidentiality the Legislature specified for public records is limited. A few years ago, I researched all categories that existed and there were fewer than three dozen. I discovered in researching this subject today that the Legislature allowed certain administrators to designate records within their divisions or departments as confidential. I have counted every confidential record the city possesses and

there are seven. Records of medical treatment, criminal history information, gross revenue figures for our business tax purposes on private business et cetera are confidential by law, and we refuse all requests for them.

A third category is the confusion that caused this bill to be written. There is an unwritten exception to the black-and-white rule of public and confidential documents. This exception is public records where there is good public policy or public interest reasons why they should not be given out. In the past, if somebody requested blueprints for our jail, we asked why they wanted them and examined whether they should be released. If we thought there were good reasons why we should not give them out, we prepared to go to court and follow the mechanism that exists for anybody refused a public record. Someone refused a record declared confidential by the Legislature has no business in court. With regard to making private company records public, it is probably impossible. If somebody went to a private company and asked to see a record, the company could shred the document. There is nothing unlawful about shredding a public record unless it is in violation of a retention schedule set by a state committee. Private entities do not have to comply with those schedules and probably never will.

The provision of S.B. 123—opening records that are in the possession and generated by private companies—appears to earmark a dispute we had 18 months ago with a private contractor over a job gone bad. The contractor wanted all the architect's records. Every single record the architect gave us is a public record and we handed it over. The contractor wanted all the records, including internal memos, correspondence and time cards. We never possessed or retained those records; therefore, they are not public records. That was the only time anybody has taken the City of Las Vegas to court over a public records dispute. It was quickly disposed of because the provision in section 3 did not exist.

There is a problem with the confidentiality of a record expiring after ten years. Your criminal history is something we keep confidential after ten years. A provision in the *Nevada Administrative Code* about obligations for destruction of public records says at the end of ten years, when a confidential record becomes public, I can dispose it. That includes items like criminal history and medical records.

There is an issue with the damages flowing from our refusal to release a "confidential public record." If we have consequences for damages, including punitive damages, for not giving out a confidential public record, why would we keep the confidentiality of the records the Legislature declared confidential? I would hand them over instead of assuming the burden of proof for arguing why the Legislature decided something ought to be confidential. I would run the risk of losing and paying the damages.

SENATOR CARE:
I was not aware of the dispute with the architectural firm. That had nothing to do with the bill. When somebody requests a public document, it is inappropriate for somebody from the government to ask why they want it.

MR. REDLEIN:
The issue about the identity and address of the requestor has surfaced. We have a form for people to fill out that includes name and address information. If they do not want to give you that information, you still give them the record. Nothing in NRS 239 says someone is not entitled to anonymously request a public record.

In response to Senator Care, if it is a confidential record, we do not ask why they want it, we do not give it. If it is a public record, we give it. It is only that category, like blueprints to the jail, when we might ask why. That is the usual predicate to our determination whether we might refuse to give a public record. It almost never happens, but it involves an analysis of why and what harm.

MICHAEL PAGNI (Truckee Meadows Water Authority):
Privileges exist, other than statutory, in common law: decisions from the court system. I ask the subcommittee to consider those privileges and the scope of this bill as it applies to nongovernmental entities. In our case, we are concerned about engineering firms that may have blueprints of water systems that would fall within Homeland Security issues, law firms or building services.

SENATOR CARE:
I disclose Mr. Pagni is a partner with the law firm of which I am a partner.

DINO DICIANNO (Executive Director, Department of Taxation):
We have concerns with respect to sections 5, 8, and 10 of S.B. 123. We deal with taxpayer information which is considered confidential. We would like to

work with the subcommittee to express those concerns and provide information. If we inadvertently release confidential information, there are criminal penalties against the Department of Taxation, employees and officers of the Department.

RICHARD J. YEOMAN (Administrative Officer III, Nevada Department of Transportation):
Our concerns pertain to the two-day response period and confidentiality. I have provided written comments (Exhibit J). We look forward to working on the subcommittee so we can draft legislation. The Nevada Department of Transportation is receptive to the idea of open government and provides records consistently and as thoroughly as we can. We have complex records scattered all over the state.

VIRGINIA (GINNY) LEWIS (Director, Department of Motor Vehicles):
All records of the Department of Motor Vehicles are confidential as defined by statute. We receive over 300,000 requests a year and have staff dedicated to handling those requests. We operate under NRS 481 which dictates what we release, who we release it to and how those records are released. We maintain a five-day turnaround. Our biggest concern is the two-day time limit. If we do not meet the two-day limit, we waive our right to determine those records are confidential.

SENATOR BEERS:
What period of time is comfortable for you?

MS. LEWIS:
We prepared a fiscal note to address the two-day issue. A ten-day time period would reasonably meet the turnaround and ensure we do not release anything confidential.

GUY LOUIS ROCHA (Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs):
My principal concern is addressing section 6 of S.B. 123. In 1981, we had records in the Division of State Library and Archives that were confidential and deemed confidential in perpetuity. I believe in open government and, for research purposes, what is the use of having a confidential record if you never

see it? *Nevada Revised Statute* 378.300 says,

> Public records acquired by the Division which have been declared by law to be confidential must remain confidential for 30 years, or if the record relates to a natural person, until his death, whichever is later, unless another period has been fixed by specific statute.

We are looking at a record being closed forever and no one seeing it or it being opened too soon. We do not want individual rights of privacy compromised or third-party concerns, particularly correction or state mental institute records. This could mean psychiatrists, doctors, snitches or people, other than the media, seeing the record and bringing personal vendettas against people if they get the information too soon. If we had Howard Hughes' gaming license case file, under NRS 378.300—since he died in 1976 and 30 years have elapsed—I could make this file available to the public. With this statute, we tried to include a period that addresses both rights and access to public information for researchers and others without compromising rights of individuals in any acceptable level of privacy. If records were available at ten years, it could raise issues of individuals being compromised with information in these records. The agencies may not transfer those records, but we try to get them to work with us and our retention schedules.

SENATOR CARE:
How do the documents end up in State Archives? If the State Gaming Control Board were to say we are never going to turn the Howard Hughes' files over, you would never have them for the public to see. Is that correct, unless there was some provision in section 6 of this bill?

MR. ROCHA:
That is correct.

SENATOR CARE:
Do you periodically go to state agencies and ask for files for State Archives?

MR. ROCHA:
We maintain state records and generate records retention schedules. In those records retention schedules, which are reviewed by our State Records Committee, we recommend records be transferred to State Archives after a specified period of time. We cannot compel the agency to transfer those

records. We advise them it is the proper thing to do in the interest of research, but we do not have law enforcement authority.

MICHAEL FISCHER (Director, Department of Cultural Affairs):
The broader the recommendation for records, the more fiscal impact it has on a small department like the Department of Cultural Affairs. We are basically neutral on S.B. 123. However, if someone requests all our records, we do not have staff to provide some of those documents in Archives. It is not that the staff does not know where the documents are, but some of them have not been collated, as with former Governor Kenny C. Guinn's records. Mr. Rocha, could you tell us how many cubic feet exist in records?

MR. ROCHA:
Governor Guinn transferred approximately 500-cubic feet of records. We have a staff of two professional archivists, and we try to do a preliminary inventory. To know things down to the individual file or sheet of paper is impossible in a short period of time.

MR. FISCHER:
If someone requests our files, the staff has to leave their regular jobs to carryout that request. It would impact our ability to perform other services.

MR. FRASER:
Our concerns have been enunciated, and we would like to participate in the subcommittee. Vinson Guthreau with the Nevada Association of Counties asked me to convey the same on his behalf. Our members would also like to be involved in that discussion.

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
We share many of the concerns voiced; however, we see value in proper access to public records considering what we do is the public record. I sit on behalf of the Office of the Secretary of State as chair of the State Records Committee. We have yet to address this issue with the Committee in open meeting and may need to do that before we can give any information.

SABRA SMITH-NEWBY (Clark County):
Clark County is in favor of open government but finds many of the provisions in this bill troublesome and difficult to administer. One issue is with the courts,

and I will submit more information on that topic later. Clark County handles the hospital and family services. An infant who enters our care will still be underage in ten years.

DAN MUSGROVE (University Medical Center of Southern Nevada):
A letter was sent to us from the *Las Vegas Review-Journal* (Exhibit K) asking for documents. University Medical Center has been under the lights lately due to issues taking place in southern Nevada, and the press has been active in asking for documents. While we tried to respond to the voluminous request in Exhibit K, this information is not easily produced in the manner they asked. Even though the request was in writing and specific, it takes staff time and resources, a week to ten days, to determine how to bring the information together and produce it in a manner the newspaper would like to see. We are willing to do so, but it displaces job functions at the hospital that need to take place. We responded to the *Las Vegas Review-Journal* with a letter seeking payment for staff time to produce this information. Senator Care felt taxpayers pay our salaries and we should set aside normal duties to produce the documents. That is not in the best interest of our hospital to set aside important duties such as financial collections and invoices to work on public requests. How quickly we turn the request around and at what cost to the hospital staff resources becomes a logistical matter. We would like to work with the subcommittee on addressing those matters.

SENATOR CARE:
If an office gets a request for documents and there is time for staff to retrieve and copy the documents, it would not be the most important function the office serves, but those people would work for taxpayers at that time by satisfying a taxpayer's request for public records. Overhead costs would have to be eaten as a matter of public policy. Whatever happened with the request for a check for staff time?

MR. MUSGROVE:
I have not seen an answer to that. We were looking at staff time of at least two weeks to garner this information. That is a lot of time to take away from normal duties. One good thing about S.B. 123 is it covers nongovernmental entities. The *Las Vegas Sun's* request was about our Medical Executive Committee's (MEC) votes on contracts we were using. The MEC is not part of UMC, and we cannot force them to provide information. The *Las Vegas Sun* claims UMC refused to provide information. There was not a refusal by UMC,

which is the governmental entity; it was a refusal by the MEC, which is a panel that does not operate under the Open Meetings Act. With some provisions in this bill, including the ability to redact information, the MEC would have been willing to provide some of those minutes.

MAUD NAROLL (Chief Planner, Department of Administration):
I have sat on the State Records Committee for the Director of the Department of Administration since the mid-1990s. I cannot speak for the Records Committee because we have not met in open meeting on this issue. I worked on the last set of record bills introduced and will be happy to work with the subcommittee. I have concerns about the two-day and ten-year time periods. Temporary Assistance for Needy Families records need to be kept confidential longer than ten years, and there is a concern about domestic violence issues with home addresses. If someone wants to invoke clauses in this bill, the requests should be in writing. However, I do not want to preclude members of the press from asking—and us from telling the press and the public—about how their tax dollars are being spent.

CHAIR HARDY:
We will close the hearing on S.B. 123 and open the hearing on S.B. 136.

**SENATE BILL 136**: Designates the month of May of each year as Archeological Awareness and Historic Preservation Month in Nevada. (BDR 19-213)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
This is one of five bill drafts from the Protection of Natural Treasures interim study committee which I chaired. This bill recognizes the month of May as archeological awareness and historic preservation month and requires the Governor to annually issue a proclamation to that effect. It will recognize the important contribution of many cultures to the history of Nevada and the importance of specific historic archeological and cultural sites. Our committee traveled around the state during the last interim visiting the locations of many of our natural treasures and came to realize that as more people move to Nevada and spend time in the rural part of the state, we are at risk of destroying these treasures. We also heard that Tule Springs in Floyd Lamb State Park is especially known for paleontologic sites in Western North America. Scientific evidence shows areas once covered with sagebrush and bordered by white pine forests have many springs that are the centers of activity for big game hunters and human predators, so the fossils in these areas are irreplaceable. That is why

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Photo: UMC Chief Executive Lacy Thomas

Las Vegas SUN

December 08, 2006

# Again, hospital lacks out clause

**By Tony Cook <tony.cook@lasvegassun.com>**
Las Vegas Sun

Only two months after being faulted for not having an adequate termination clause in a major hospital contract, University Medical Center administrators were prepared to move ahead last month with a $1.8 million contract that also lacked such standard business deal language.

Absent a sufficient termination clause, the hospital might not have been able to cancel the contract even if the firm it hired did not live up to its end of the deal.

Hospital Chief Executive Lacy Thomas brought the most recent contract - a three-year agreement with Hospitalist Medicine Physicians (HMP) to provide eight in-house physicians and two physician assistants for UMC - to county commissioners for approval Nov. 8.

But because of previous concerns - including a September audit in which County Auditor Jerry Carroll criticized the earlier contract for, among other things, problems with the termination clause - Clark County commissioners, who sit as the hospital's board of trustees, asked the district attorney's office to review the contract before they signed off on it.

The missing termination clause came to light during that review, was inserted into the contract and approved by commissioners Tuesday.

Still, the fact that the termination clause was missing in the first place - so soon after the issue was highlighted - disturbs some top county officials.

"This is a real standard provision," county attorney Mary-Anne Miller said. "I thought that was unusual."

County Commissioner Tom Collins said he also had concerns about the contract.

"There needs to be some more light shining on the hospital," he said.

Thomas could not be reached for comment.

Don Haight, UMC's executive director of contract management, said Thursday the omission was simply an oversight when he prepared the 36-page document.

"It should have been in there," he said.

The omission in the HMP contract also raises questions about how hospital contracts are reviewed.

Other county contracts are reviewed and signed by the district attorney's office. Haight said the district attorney's office reviews all hospital contracts, but does not sign them.

"Whether or not the DA signed the contract, it wouldn't have changed anything," he said. "We will continue with our procedure of having the DA review everything."

Asked why hospital contracts should not require the district attorney's office approval, Haight said: "Maybe it's a matter of pride, but I've been an attorney since 1977 and I am supposed to have my stuff approved by someone who has been in the DA's office for four years? Sometimes that frustrates me."

The earlier hospital contract, though, shows why it might be a good idea.

Three months ago, Carroll released an audit of the hospital's contract with ACS Consulting, which outsourced revenue-generating functions such as admitting, billing and debt collection.

Although the deal was supposed to be a pay-for-performance contract, several flaws resulted in a $6 million drop in revenue collection during its first year even while the company collected more than $1 million in fees.

Carroll also found that contract did not contain an adequate termination clause.

Hospital officials argue that a strong termination clause would have been unfair to ACS, because it would take the company two to three years to recover its significant costs in setting up the operation and begin to make a profit.

After the audit, though, the hospital amended the termination clause.

The contracts are not the only financial matters on which county commissioners have had questions for hospital officials recently.

Until last month, the hospital also had failed to provide commissioners with monthly financial statements for six months.

Thomas attributed the delay to problems with a new financial management system implemented by the county in fall 2005, even though the hospital had submitted, in May, a statement for January.

Thomas also revealed last month that the hospital lost more than $6 million beyond the $12.7 million shortfall that it had budgeted for the fiscal year ending June 30.

A complete financial audit of the hospital is due later this month.

The new HMP contract was controversial even before the missing clause was discovered.

Several local physicians called commissioners before the Nov. 8 meeting to object to the contract. Among their objections was that HMP is an out-of-state firm that will have to recruit doctors, a process that could take several months. Eight other groups sought the contract, some of which had doctors who already worked at UMC.

Moreover, the hospital's Medical Executive Committee, a group of medical staff at UMC, refused at two separate meetings to endorse Thomas' selection of HMP.

The Sun requested the minutes of those meetings and a list of the committee's members. The Sun also asked to view the scoring of the bids and Thomas' recommendation to the committee. The hospital has refused to grant any of those requests.

*Tony Cook can be reached at 455-6175 or at tony.cook@lasvegassun.com.*

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Photo: UMC Chief Executive Lacy Thomas
Las Vegas SUN main page

reviewjournal.com

PRINT THIS

Jan. 31, 2007


# DEPARTMENT OF FAMILY SERVICES: Child abuse report censored

## Report's missing pages listed examples of county agency's failures

By LISA KIM BACH
REVIEW-JOURNAL

Specific examples of how Clark County's Department of Family Services failed in its mission to protect abused or neglected children were excised from an independent consultant's report released to the public in December.

The censored material, obtained by the Review-Journal Tuesday, included eight pages of case details that illustrate why independent reviewers for the county were doubtful about the safety of more than one-third of the children in 1,352 cases reviewed by consultants. Child Welfare Consultant Ed Cotton conducted the review for Clark County from May to October of 2006.

"Were you asked by anyone in the department to take out or change anything?" Assemblywoman Susan Gerhardt, D-Henderson, asked Tuesday, when Cotton gave a presentation to the state-appointed Blue Ribbon Panel on Child Death Review for Southern Nevada.

"I wasn't told to take them out; I was asked to consider it," Cotton said during his first appearance before the panel.

Cotton complied with the request from Clark County Deputy District Attorney Mary-Anne Miller. He said it was his understanding that immediate action would be taken in cases where a child's safety was in question.

Cotton doesn't know whether that happened.

"So, has nothing been done to check on the status of the children in this report?" Gerhardt asked.

Clark County Department of Family Services Director Tom Morton couldn't answer that question. Morton said Tuesday was the first day the county had a complete list of the identities of the children in the cases highlighted by Cotton.

Cotton turned over the last of the names to Morton at Tuesday's meeting of the Child Death Review panel.

Morton said he had been directed not to talk about the eight pages in question.

"Under the specific direction of the district attorney, I've been asked not to comment on any part of the report that is not public," he said.

In a copy of the censored section obtained by the Review-Journal, the 57 highlighted cases included instances in which:

• A caseworker placed children removed from a drug-abusing mother with their father, who has a history of sexually abusing minors. That caseworker had not read the children's case file.

• Children taken from a father who killed the mother were placed with relatives who were illegal immigrants likely to be deported.

• A caseworker reunited six children with their natural mother although she failed to meet parenting goals. Afterward, family services received multiple complaints from people telling them the children were begging for food, but no investigation was conducted. The report noted: "The worker claims that pieces of food on the floor were 'reasons to believe' that the kids are fed enough!"

• A pediatrician expert documented Shaken Baby Syndrome in a child death. But no charges were filed.

• A stepfather abused a 5-year-old boy. Although the child's body, including his penis and anus, were "covered with bruises," police were never called. When the caseworker was asked by a reviewer why police weren't contacted, the worker said: "I don't know."

• A 10-month-old child was removed from his drug-abusing mother and placed with two aunts in succession. At the time of Cotton's review, the child had not been seen by a case worker since March 12. Phone numbers for both aunts were disconnected. "It is unknown where the child is at this time," the report said.

Gerhardt said she received a copy of the censored case vignettes Monday night.

Since the Blue Ribbon Panel on Child Death Review was empowered to make recommendations to lawmakers for improving child welfare and the death review process, Gerhardt said, she thinks other panel members should have the information as well.

Assistant Clark County Manager Darryl Martin was asked by panel members if he had any objections to the panel members receiving the information.

"I can't say you can or can't release the information," Martin said, adding that the deputy district attorney's motivation in excluding the material was to protect the privacy of the minors involved. "The biggest concern was for the confidentiality of the children."

In the end, Cotton agreed to rewrite the eight pages of case details in a more general fashion and release it to the panel.

Panel member Stu Fredlund said it seemed to him that obtaining information from the county has always

been a challenge.

"It's a lack of trust," Fredlund said. "Information is not provided, and once again, it's exactly the same old issue."

Gerhardt agreed and added that withholding this type of information does nothing to restore the public's faith in the system.

"If what we're trying to accomplish is to move forward and change the public perception ... this doesn't do much to change the public perception," Gerhardt said.

**Find this article at:**
http://www.reviewjournal.com/lvrj_home/2007/Jan-31-Wed-2007/news/12299287.html

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SENATE BILL NO. 123–SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public records. (BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take action within a certain period in response to a request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; providing in skeleton form a mechanism pursuant to which a person may apply to a district court for an order to allow the person to inspect or copy a confidential public book or record that has been in the custody of a governmental entity for at least 10 years; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours for inspection and copying. (NRS 239.010)

**Section 4** of this bill provides that if a governmental entity receives a request to inspect or copy a public book or record, the governmental entity must, within 2 business days after the date on which the request was received, allow the requester to inspect or copy the public book or record, or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied. If a governmental entity is unable to release a public book or record to a requester [~~because it has been declared by law to be confidential~~] ***under certain circumstances*** and the governmental entity fails within 2 business days to provide notice of that



EXHIBIT F Committee on Government Affairs
Date: 2/26/07 35 Page 1 of 7

fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is ***currently unavailable based on extraordinary circumstances or is*** confidential, ***as applicable,*** and must allow the requester to inspect or copy that public book or record. If a person is proximately harmed by such a deemed waiver ~~[of confidentiality,]~~ the person may bring an action for damages against the governmental entity.

**Section 6** of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 10 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. ~~[Section 10 of this bill provides that a person may not apply for such an order until October 1, 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective date of the bill.]~~

**Section 5** of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has custody of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

**Sections 3 and 7** of this bill provide that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law (chapter 239 of NRS), the records of a nongovernmental entity are public records that must be open for inspection and copying only if such records: (1) are created, obtained, maintained or preserved in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and (2) would otherwise be considered public records within the meaning of NRS 239.010.

**Section 8** of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that has been declared by law to be confidential if the governmental entity can redact the confidential information.

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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 to 6, inclusive, of this act.

**Sec. 2.** ***The Legislature hereby finds and declares that:***

***1. The purpose of this chapter 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;***

***2. The provisions of this chapter must be construed liberally to carry out this important purpose; and***

*3. Any 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.*

**Sec. 3.** *Records of a nongovernmental entity are public records that must be open for inspection and copying only if such records:*

*1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and*

*2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005.*

**Sec. 4.** *1. Not later than the end of the second business day after the date on which it receives a request from a person to inspect or copy a public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have custody of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has custody of the public book or record, if known.*

*(c) If extraordinary circumstances exist which make it impossible for the governmental entity to allow the person to inspect or copy the public book or record by the end of the second business day after the date on which the person made his request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, has been declared by law to be confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific legal authority that declares the public book or record, or a part thereof, to be confidential.*

*2. If a governmental entity ~~[must deny]~~ cannot comply with a person's request to inspect or copy a public book or record ~~[because the public book or record, or a part thereof, has been declared by law to be confidential]~~ by the end of the second business day after the date of receipt of the request for the reason set forth in paragraph (c) or (d) of subsection 1, but the governmental entity fails to ~~[comply with the provisions of]~~ provide the notice and other information required by paragraph (c) or (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that extraordinary circumstances exist that make it impossible to allow the inspection or copying of the public book or record or that the public book or record is confidential , as applicable, and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that ~~[:~~*

*~~(a) The]~~ the failure of the governmental entity to comply with the provisions of paragraph (c) or (d) of subsection 1 was due to excusable neglect . ~~[; or~~*

*~~(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.]~~*

*3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. ~~[A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.]~~*

*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that extraordinary circumstances exist that make it impossible to allow the inspection or copying of a public book or record or that the public book or record is confidential , as applicable, and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages , costs and ~~[any punitive damages which the facts may warrant.]~~ reasonable attorney's fees.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has custody of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*➥ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. Notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the custody of one or more governmental entities for at least 10 years, a person may apply to the district court of the county in which is located the governmental entity that currently has custody of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof.*

*2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.*

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ *; or*

*(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.*

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

***2. A governmental entity shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that has otherwise been declared by law to be confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that has not otherwise been declared by law to be confidential.***

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ ***4.*** A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has custody of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** NRS 239.012 is hereby amended to read as follows:

239.012 ~~[A]~~ ***Except as otherwise provided in subsection 4 of section 4 of this act, 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. 10.** ***1.*** For the purposes of section 6 of this act, a person may ~~[not]~~ apply to a district court ~~[before]~~ ***on or after*** October 1, ~~[2017,]~~ ***2007,*** for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, ~~[regardless of whether]~~ ***if*** the public book or record ~~[will have]~~ ***has*** been in the custody of a governmental entity for a period of 10 years or more ~~[before that]~~ ***on the*** date ~~[.]~~ ***of the application.***

* S B 1 2 3 *

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***2. As used in this section, "governmental entity" has the meaning ascribed to it in NRS 239.005, as amended by section 7 of this act.***

H


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# Nevada System of Higher Education

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**System Administration**
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February 26, 2007

Senator Terry Care
Nevada State Legislature
401 South Carson Street
Carson City, NV 89701

*Re: Senate Bill 123*

Dear Senator Care:

As you are aware, today the Senate Committee on Government Affairs will hear your bill on public records. Specifically, Senate Bill 123 (BDR no. 19-462) requires governmental entities to take action within two business days in response to a request to inspect or copy a public book or record. The bill also provides that records must be produced, in all circumstances, not later than ten business days following the request. While the merits of this legislation are clear in the public's right to have access to such information, I am concerned that it may have considerable implications for the Nevada System of Higher Education (NSHE) and its ability to respond to requests in a short period of time.

First, the bill does not specifically address the scope of a request. For example, a request for information could be as small as a few hardcopy pages, but it is also possible that a request could be as voluminous as several hundred or even thousands of pages. Some requests may also involve significant redaction. It would be beneficial to the NSHE and other governmental entities subject to these provisions, if the scope of the measure is defined to provide some measure of relief for voluminous requests.

Second, I would also recommend that the measure require that such requests be placed in writing, and authorize the public entity to designate a central location for all such requests to be submitted. This would help minimize disputes and assist public entities in addressing logistical challenges in ensuring timely responses where potentially such requests could be made to many departments or units within a public entity.

Again, I firmly believe that the public should have access to public records and information, but such requests should be formalized and reasonable in scope to meet the objectives of timely response. Thank your for your foresight on this important matter and for taking the time to consider these recommendations. If you have any questions or concerns, please feel free to contact me directly at 775-784-4901.

Sincerely,

Daniel J. Klaich
Executive Vice Chancellor

cc: Senator Warren Hardy, Chairman, Senate Government Affairs
NSHE Presidents



EXHIBIT G Senate Committee on Government Affairs
Date: 2/26/07 Page 1 of 1

Feb. 26, 2007

Testimony of Barry Smith, executive director of Nevada Press Association, on Senate Bill 123 (open records):

I'm speaking today in support of Senate Bill 123. This is an important bill to strengthen and clarify Nevada's open records laws.

James Madison wrote in 1822: "A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors must arm themselves with the power, which knowledge gives."

In December 2005, President George W. Bush issued an executive order to federal agencies instructing them to take a "citizen-centered and results-oriented approach" to responding to requests under the federal Freedom of Information Act.

"The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed," President Bush wrote in his order.

Over the past 200 years, the standard hasn't changed: The public's right to know should not be replaced by a government-knows-best policy of the "need to know" in which a handful of government officials become the arbiters of whether citizens should have access to information.

You may have read about the ongoing concern in Clark County about child deaths and the information that has been kept, not only from the public, but from state and county officials trying to get to the bottom of this issue. Open records can be a life-and-death matter.

George Bush had it right when he called for a "citizen-centered and results-oriented approach," and that's how I see the intent of SB123.

• I first want to say that many open-records requests by the press and public are handled routinely, without difficulty, throughout the state. This tells me that state and local-government offices are willing and capable of complying with the existing open records law, NRS 239, which has as its underlying basis the fundamental openness of government to the public.

SB123 reinforces this concept by making affirmative statements about the importance of open records and setting out a clear legislative intent toward a presumption of openness, much the same way as the open-meetings law, NRS 241.

"In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." N.R.S. 241.010.

• The biggest deficiency in the existing law — one that would be cured by SB123 — is the lack of accountability. SB123 sets out timelines for responding to requests for

EXHIBIT H Senate Committee on Gov't Affairs

Date: 2/26/07 Page 1 of 2

records and the consequences if there is no response. This would close a big loophole in the existing law.

I have heard from several members of the Press Association that records requests too often simply go unanswered. As one put it, "It's the same as if we'd thrown it into a deep, dark well."

The only recourse is to go to court. While the courts remain the final arbiter under SB123, it makes clear that records requests must be handled promptly and lays out a reasonable procedure for doing so.

• Another important part of SB123 is the justification for withholding a record, Sec. 4(d). We believe it's important for the governmental entity to cite the specific statute under which it is withholding a record from the public. Nevada law contains a number of exceptions to the open-records law, and this section would clarify how an agency or official goes about declaring a record to be confidential.

I would offer an amendment to Sec. 4(d)(2) to change "legal authority" to "statute."

• SB123 also would improve existing law by addressing the issue of redacting confidential information in otherwise open records, Sec. 8. We now have situations around the state in which entire documents are being withheld because they may contain a single Social Security Number. This is clearly outside the intent of the open-records law and outside the intent of confidentiality exceptions in other statutes.

Since Sec. 8(2) deals directly with the issue of redacting or separating confidential information from the document as a whole, I suggest another amendment: Delete Sec. 4(2)(b), which talks about "personal privacy rights" because it's unnecessary and overly broad.

• In conclusion, the Nevada Press Association supports SB123 as a substantial enhancement of the state's open-records statute and, therefore, of significant benefit in ensuring open and transparent government in Nevada through a citizen-centered, results-oriented approach.

**Suggested amendments:**

Sec. 4(d)(2): A citation to the specific [~~legal authority~~] *statute* that declares the public book or record, or a part thereof, to be confidential.

Sec. 4(2)(b): ~~[Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.]~~

Page 2 of 2

**Suggested Amendments to SB123 by the Division of Environmental Protection**
**February 26, 2007**

***Sec. 4. 1. Not later than the end of the fifth business day after the date on which it receives a written request from a person to inspect or copy a public book or record, a governmental entity shall do one of the following, as applicable:***
***(a) Allow the person to inspect or copy the public book or record.***
***(b) If the governmental entity does not have custody of the public book or record, provide to the person, in writing:***
***(1) Notice of that fact; and***
***(2) The name and address of the governmental entity that has custody of the public book or record, if known.***
***(c) If extraordinary circumstances exist which make it impossible for the governmental entity to allow the person to inspect or copy the public book or record by the end of the fifth business day after the date on which the person made his request, provide to the person, in writing:***
***(1) Notice of that fact; and***
***(2) A date and time after which the public book or record will be available for the person to inspect or copy. Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.***
***(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, has been declared by law to be confidential, provide to the person, in writing:***
***(1) Notice of that fact; and***
***(2) A citation to the specific legal authority that declares the public book or record, or a part thereof, to be confidential.***
***2. If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:***
***(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or***
***(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights or disclose information declared to be a trade secret.***
***3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial***

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EXHIBIT I Senate Committee on Gov't Affairs

Date: 2/26/07 Page 1 of 2

*review. A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.*
*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*
*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*
*2. The governmental entity that has custody of the public book or record asserts that the public book or record, or a part thereof, is confidential,*
*the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. Notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, excluding information considered to represent a trade secret or personal information relating to employees, if a public book or record has been in the custody of one or more governmental entities for at least 10 years, a person may apply to the district court of the county in which is located the governmental entity that currently has custody of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof.*
*2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.*

SENATE COMMITTEE ON GOVERNMENT AFFAIRS
Monday, February 26, 2007, 1:30 p.m.

Testimony of Richard J. Yeoman,
Administrative Services Officer and Custodian of Records,
Nevada Department of Transportation

Mr. Chairman and members of the Senate Committee on Government Affairs, for the record, I am Richard J. Yeoman, Administrative Services Officer and Custodian of Records for the Department of Transportation. I express my gratitude to the Committee for the opportunity to present the Department's position on this legislation. The Department is opposed to this bill as written for the following reasons: (1) The response time frames are unreasonable in light of requirements for records under other similar conditions; (2) The determination of privilege and/or confidentiality requires a legal review and the Department does not have the necessary expertise on staff so must rely on the Attorney General to assist; (3) The Department cannot meet the 2-10 working day response time with current resources; (4) The waiver of confidentiality of a particular record is of great concern; and (5) the penalties suggested for non-compliance will create unknown liabilities for the agency and further clog the court system.

Pertaining to items #1, #2 and #3, the Department's records are more complex than any other agency and are located all over the State. When a request for public records is received, Department staff must contact various Divisions and Districts to determine if the records exist, collect available records, and provide an opportunity for Attorney General staff review to ensure the records can be released and are not "work product", attorney-client privileged, that the record is not involved with ongoing litigation, or is confidential under either a State or Federal statute or regulation. For instance, if a request for public records is received and there is pending litigation, then the proper method to release documents is through the discovery process. This ensures that all parties have the same information and keeps the playing field level. Depending on the nature of the request for public records, this process can take weeks due to volume alone. Many requests are vague and ambiguous so it is difficult to determine exactly what records are sought. Many times this process is used as a fishing expedition and requires the review of hundreds to thousands of documents. Additionally, The Freedom of Information Act (FOIA) provides a 30-day response period and doesn't require that the document(s) be provided, just that the request is acknowledged. Also, a subpoena duces tecum and the discovery process usually provide a 30-day response period.

Pertaining to items #4 and #5, various records have been designated by law as confidential and are so identified throughout the NRS, NAC and other Federal statutes and regulations. As a result, this legislation becomes problematic as it conflicts with various other laws and regulations. For example, some records are confidential by Federal Statute - Title 23 United States Code (USC), section 409. This statute pertains to Police Accident Report data used by the Department's engineers to perform analyses regarding engineering solutions to the State's roadway infrastructure. This information is non-discoverable and there are no time limits whereby the records become public. Also, confidentiality is imposed under NRS Chapter 239, which pertains to Homeland Security.

The Department does not have dedicated staff to handle and process requests for public records. To handle the requirement proposed in this legislation would require at least two full time positions, a Grade 36, Paralegal, and a Grade 25, Administrative Assistant II. Based on the current pay schedule for employees of these grades, these positions would cost the Department $115,524.96 per year. However, it is questionable that these two full time employees, dedicated to processing requests for public records, could meet the 2-10 working day response requirement due to the current disposition of the Department's records. The potential liability cost to the Department, the State, and the taxpayer regarding the inadvertent disclosure of confidential records is incalculable.

This concludes my testimony. I am available for any questions the Committee may have for me at this time.

Again, I thank you for this opportunity to provide the Department of Transportation's position on this legislation.

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LVRJ1673

REVIEW-JOURNAL
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Las Vegas, NV 89125-0070
702-383-0211

Jan. 26, 2007

Kathy Silver, acting chief executive officer
Administration
University Medical Center
1800 W. Charleston Blvd.
Las Vegas, NV 89102

Ms Silver:

This letter is a formal request for provision of records under the requirements of NRS 239.010. The records must be made available in electronic form in Excel or in tab-delimited text.

Since it is my understanding that the records I am requesting are available presently, and do not need to be compiled in any fashion, I would like to receive those records no later than Feb. 9, 2007. I can pick them up at your office as soon as they are ready. If the records will not be available within 10 business days, please notify me immediately at (702) 383-0277.

I request the following records:

1) The calendar year 2004, 2005 and 2006 salaries for all employees at University Medical Center; including a breakdown of each salary by pay type including, but not limited to, total wages, regular wages, overtime wages, call-back wages, shift-differential compensation, assignment-differential compensation and any and all other types of wages. The figures included in breakdown for each employee should add up to equal total wages for the year for each employee. The breakdown for each employee should also include the employee's name, the employee's position at UMC, whether the employee is a union or at-will employee and the hire date for each employee.

2) For management personnel at University Medical Center for calendar years 2004-2006, all information on any and all salary bonuses, pay raises, cash advances, loans, health coverage and any and all other benefits (i.e. car allowance, paid lunch hours, mileage reimbursement, paid days off) and any and all other financial considerations extended to each member of management in calendar years 2004, 2005, and 2006. Please include the hire dates for all management personnel.

3) For management personnel at University Medical Center, all information on trips taken by executives at the expense of the hospital, including, but not limited to, reason for the trip, destination, dates of travel, airline costs, ground-transportation costs, hotel costs, meal costs, entertainment costs

mented quotes. In a brief survey of some of our members, purchase orders range begin in value at $5,000 and go upward from there, averaging $30,00 to $45,000. A $50,000 threshold would greatly increase procurement efficiencies by allowing more use of the simplified purchase order process with no additional risk to the local government.

**Conclusion:** It is time to again recognize current and future economic conditions and raise the bidding thresholds accordingly.

**Recommendation:** Pass **SB 137** as written.

John Balentine, C.P.M.; C.P.P.
Chairman, Nevada Public Purchasing Study Commission
Purchasing and Contracts Administrator, Washoe County, Nevada
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**MINUTES OF THE**
**SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session**
**March 28, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:16 a.m. on Wednesday, March 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

**OTHERS PRESENT:**

Hector R. Garcia, Chief of Police, Clark County School District Police Department
Ken Young, Lieutenant, Clark County School District Police Department
Timothy Kuzanek, Washoe County Sheriff's Office
Brian O'Callaghan, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Cotter C. Conway, Washoe County Public Defender
Douglas E. Smith, Las Vegas Township Justice Court, Department 2, Clark County
Robert Roshak, Las Vegas Metropolitan Police Department

comprehensive rather than allow everything to go out of control with no incentive to keep growth down and simply contract those duties to people who lack accountability

CHAIR AMODEI:
Is it your testimony this should not be one of the tools we deal with under any circumstance even though this is not the primary source for dealing with overcrowding? Are you saying this should not be an option for county commissioners even though it would be the subject of a local hearing where any of those issues could be addressed?

MS. ROWLAND:
That would be the position of the American Civil Liberties Union (ACLU); we are fundamentally against privatizing prison services.

SENATOR CARE:
Let me ask you about accountability. I think you would agree that if the bill is approved and used in southern Nevada, the private entity is still a state actor. The constitutional rights of the inmates do not evaporate. When you say lack of accountability, I am not sure what you are getting at because the standard is not lowered.

MS. ROWLAND:
The Constitution still applies; even if the state is contracting with private entities, they are going to abide by the rules. In practice, we frequently see less accountability because a number of their internal workings are not public documents. They are not open to scrutiny. They are not directly accountable to a state agency. The bill provides permission in a most skeletal form without providing safeguards or requirements of accountability. This bill is literally a blank check to rent out to anyone.

Constitutional rights are frequently more difficult to uphold. This bill does not provide oversight, accountability or guarantee the workings of a private prison are going to be open to the public. This bill is opening up a door with no checks or balances.

SENATOR CARE:
Senate Bill 123 was introduced as a public records bill. It specifically says the documents generated by a private entity performing a governmental function are

subject to the same statutes and regulations as to confidentiality and nonconfidentiality

**SENATE BILL 123**: Makes various changes to provisions relating to public records. (BDR 19-462)

MS. ROWLAND:
I will testify to that bill. As the law stands, the public records law does not clearly cover the kind of operations a private prison would be performing.

CHAIR AMODEI:
We will close the hearing on S.B. 438 and go back to S.B. 435.

SENATOR CARE MOVED TO DO PASS S.B. 435.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
Is there anybody here to testify on S.B. 380?

**SENATE BILL 380**: Makes various changes concerning defendants in criminal actions. (BDR 14-279)

CHRISTOPHER J. LALLI (Clark County District Attorney's Office):
Senate Bill 380 is a bill on behalf of the Nevada District Attorneys Association. It is a comprehensive bill addressing insanity issues within the criminal justice system. It is a very large bill. The majority of the pages address housekeeping matters as a result of restoring the plea of guilty but mentally ill.

Senate Bill 380 restores the concept of guilty but mentally ill and statutorily defines and allows defendants to offer the defense of not guilty by reason of insanity (NGRI). The definition of not guilty by reason of insanity also includes a specific exclusion for voluntary intoxication. A person suffering a mental

**MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session**
**April 4, 2007**

The subcommittee of the Senate Committee on Government Affairs was called to order by Chair Terry Care at 12:36 p.m. on Wednesday, April 4, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**SUBCOMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair
Senator Bob Beers
Senator Randolph J. Townsend

**STAFF MEMBERS PRESENT:**
Candice Nye, Assistant to Committee Manager
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

**OTHERS PRESENT:**

Stephen Dahl, Nevada Judges Association
Nancy K. Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County
Nicholas C. Anthony, Legislative Relations Administration, City of Reno
Kimberly McDonald, City of North Las Vegas
Dan Musgrove, University Medical Center of Southern Nevada
Mendy K. Elliott, Director, Department of Business and Industry
Paul Lipparelli, Washoe County District Attorney's Office; Washoe County
Guy Louis Rocha, Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs
Fred L. Hillerby, Regional Transportation Commission of Washoe County
Richard Daly, Laborers International Union of North America Local 169

CHAIR CARE:
I call the subcommittee on Senate Bill (S.B.) 123 to order and present Karen Gray and John Redlein's testimony for the record (Exhibit C and Exhibit D).

**SENATE BILL 123**: Makes various changes to provisions relating to public records. (BDR 19-462)

CHAIR CARE:
On the night United States Senator Harry Reid spoke to the Legislative Joint Session, the Senate conducted business before we adjourned. I was told to introduce S.B. 123. I moved for the introduction of the bill and commented that S.B. 123 as drafted did not meet my satisfaction, and I would seek amendments. I have made changes to the bill (Exhibit E); because there has been no action on the bill, it has not been formally amended. I have received many comments directed toward language not in the modified S.B. 123.

No one stated there should not be a response period, but everyone who commented on the bill stated the two-day response period is unworkable. If it is a voluminous request, it cannot be done in two days. I agree with that. I would like to hear suggestions. Someone stated it is not clear from the bill if the two- or five-day response means the production has to take place within that period. It seems to me that on a certain date, a governmental entity has to notify the requestor they have the request and it is in work. Then the agency can say they will get back to the person within a certain number of days. We need to work out the mechanics.

There was discussion about requiring excessive notices to individuals who come before that department and concern that section 2 of the bill damages the *Donrey* balancing test set by *Donrey of Nevada, Incorprated v. Bradshaw,* 106 Nev. 630, 798 P.2d 144 (1990). I will have Committee Counsel look into that issue.

This bill does not make a current, confidential document nonconfidential. The bill does not change that. Statutes and regulations cover trade secrets and other proprietary information. This bill is not intended to change the status of any document a governmental entity may hold. There was some concern about the language "documents generated by a private entity performing a governmental

service" in that this provision might discourage private entities from entering into contracts with political subdivisions, counties and cities.

There was a comment made about the Nevada Administrative Procedure Act and the abuse of discretion standard if a court were to examine what a hearing officer might rule on a denied request. In the amended S.B. 123, I took out any language dealing with the Administrative Procedure Act. My intent is to say if the requestor is denied, the requestor may petition the court.

There was some confusion over what records would be made public. You never know until the situation arises. For example, a governmental entity contracts with a private ambulance service. If a reporter goes to the ambulance service wanting to know how many responses you answered last month, the government could say we do not have that information and you cannot get it from the private company because that is not a public document. That is fair. I am not interested in personnel records or proprietary information. I am concerned about information normally made public if the government were running the service contracted out to a private party.

CHAIR CARE:
Someone used the example of jail blueprints in the hearing. What happens if there is a request for a document not confidential by existing statute? Could the court still use the *Donrey* balancing test and say, "It is not in statute, but we are going to say it is confidential because it would be bad public policy to turn the document over"? I cannot see that happening. The Legislature promulgates the statutes, and there are statutes to determine what is confidential.

There were responses about a confidential document becoming nonconfidential after ten years. Somebody could petition the court, and the court could determine whether that document remains confidential beyond the ten years. The burden is on the governmental entity to demonstrate the document should remain confidential. In looking at laws and other jurisdictions, ten years is unrealistic. I would like to hear thoughts on whether there should be some expiration period. During testimony on the bill, I used the example of the Howard Hughes file and the State Gaming Control Board. I cannot imagine why those documents should not be public.

One objection to the redaction provision was that it might be meaningless when applied in certain circumstances, but the information could still be discerned by

reading between the lines. Other than the one objection, no one said there should not be a redaction provision. In the law, there is no provision for this. If you have a document that is confidential or has confidential language, it does not get produced.

There was discussion about implications of federal law. Some people suggested the bill is not clear on how to make documents public. Would the requestor be allowed to stand over the copy machine and make copies or does the governmental entity make copies? Is there a difference between obtaining, making and producing documents? We need clarifying language.

Another comment on language concerned the definition of "extraordinary circumstance." We need to clarify that definition does not apply to copyrighted material. There needs to be some discussion about verbal requests versus written requests.

I have touched on the primary objections. I would like to flush out some of the issues today by calling out a particular issue, and you can come up and share your thoughts. We will look at the two-day response period first.

STEPHEN DAHL (Nevada Judges Association):
Part of our concern is the preamble and the noble purposes the bill intends, but we deal with things not so noble. I have had requests from the *Judge Judy* show and other judge-type television shows to look at all our open, small claims cases to find someone for their shows. We get record and background check requests, sometimes up to 100 per day. We cannot respond to those requests within 48 hours. We have followed the policy of many state courts throughout the country and adopted policies that require specific requests in writing. We let them know in advance how many of their requests we will process. We respond within a day or two with how long the process will take.

One size fits all will not work with the courts. There are large courts in Las Vegas and Washoe, medium courts in North Las Vegas and small rural courts. They need to adopt policies that let them continue as courts and without being swamped with requests. The liability section also concerns me. If you deemed to have waived the time period, you could be held liable for releasing documents.

CHAIR CARE:
The liability section is out of the bill.

MR. DAHL:
That is good. I suggest you let individual agencies adopt reasonable policies and procedures that are responsive but let them conduct business. Our choice is to let people line up in the lobby for an hour or take care of all these requests within a day. We need a balance.

CHAIR CARE:
What do you tell the people from *Judge Judy*?

MR. DAHL:
I tell them the same as I tell everyone else. We need a case number and name, and you can look at the case. We post our calendars on the Website, and they can find the names and case numbers. If they bring those in, we tell them we will give them five a day. With legislation passed last session about Social Security numbers, we have to go through every page of every file and make sure no Social Security numbers appear on any of the files requested.

CHAIR CARE:
We heard testimony from former State Senator Alan Glover who said he got a request from an organization in Kansas wanting a copy of every public document in the Carson City Clerk/Recorder's office.

MR. DAHL:
We do not have anything that big, but some requests would entail pulling thousands of cases and tossing them to somebody if we did not have to comply with any policy and procedure.

CHAIR CARE:
Do you see a problem with a two- or three-day period where a clerk says to the requestor "we have your request, this is what we are going to do with it"?

MR. DAHL:
I should let the bigger agencies respond to that because my turnaround on responses is one or two days, but we are a smaller court. We do not get the volume of requests the bigger agencies get.

NANCY K. FORD (Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services):
The two-day turnaround time frame is too restrictive. We have many offices around the state that accept requests. Those offices send requests to the central office; it takes more than two days to get there, and we may need legal support to determine whether the record is confidential. We have programs within the Department of Health and Human Services that have to comply with federal regulations that mandate these records be kept confidential. If I miss the two-day time frame, I will not be able to send those records out without jeopardizing our federal funding. I would put in a billion-dollar fiscal note if I had to comply with the original bill. I have presented written testimony and amendments for the record (Exhibit F).

CHAIR CARE:
Are two days unrealistic to produce the documents or let the requestor know you received the request and it is under review?

MS. FORD:
It is still unreasonable because the request could come to my office in Hawthorne, and it would take two days to get the request to the main office. It is my understanding that even with subpoenas, the response time is 15 days. You have to pick something that gives us a reasonable time to get the request to the central office. Nothing in the statute states where requests have to go to be considered, they just have to go to a public agency. We have numerous public agencies.

CHAIR CARE:
When is the last time you received a request?

MS. FORD:
It has been a while. The last request we received was for public records, which we give out. It took some time because it was a voluminous request.

CHAIR CARE:
How long did it take?

MS. FORD:
It took about two weeks.

CHAIR CARE:
How soon after you received the request did you realize it would take two weeks?

MS. FORD:
We let the requestor know right away it would take some time to pull it together because the information was not in one location.

SENATOR BEERS:
Did that request start with your office?

MS. FORD:
Yes. The request came in through the central office. Generally, we pick up the phone and call the requestor to talk to them about what their request is, what we can provide and how long it will take.

SENATOR BEERS:
An agency that did not acknowledge receipt spawned this legislation. The Chair wants to have a period in which you acknowledge receipt of the request and say, "We will do this with your request." If we could somehow craft legislation to direct requests for documents to the director of an agency, then once the director receives it, they have a certain time period to acknowledge receipt of the request and broadly outline what is going to happen. We are looking for language that does not impinge on your life but control someone who is not doing it right.

MS. FORD:
One suggestion is to provide in *Nevada Revised Statute* (NRS) 239 that agencies have regulatory authority to adopt regulations regarding where records requests have to be submitted before deemed received. That way, we could adopt a regulation stating it has to come to my office, not Hawthorne or Yerington. Two days is pretty short, especially if we have to consult with the Attorney General's Office. Seven calendar days is enough time.

CHAIR CARE:
Let us say that within five days, the requestor is told we have your request and a requirement that the governmental entity inform you after five calendar days that it is still in working. The requestor knows he or she has not been forgotten. Does that seem reasonable to you?

MS. FORD:
That is reasonable, but I would need a designated staff person to track these things so nothing unintentionally falls through the cracks.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):
Our concern is the two-day limit. We try to get things out by seven days, but that does not always work. We would like the time frame to be ten days. If the request takes longer than seven days, letters are sent out to notify the requestor. If a request comes in by mail and it goes to the wrong desk and other people, it takes a few days to get it to the right person.

SENATOR BEERS:
It sounds better for the Las Vegas Metropolitan Police Department if the period we are talking about was not to comply but acknowledge the receipt of the request as well as the ability to designate the office of receipt. Is that more workable?

MR. O'CALLAGHAN:
That does sound workable.

SENATOR BEERS:
It gives you the ability to describe a process for the agency to officially receive a request by going to this individual at this address and phone.

MR. O'CALLAGHAN:
Once the designated person receives the request, the time period starts. Two days is still too short of a time period.

SENATOR BEERS:
What about a five-calendar day time period as Senator Care suggested?

MR. O'CALLAGHAN:
That sounds reasonable, but I have to ask other people.

SABRA SMITH-NEWBY (Director, Intergovernmental Relations, Clark County):
Clark County would be alright with a five-to-seven day window to respond to the request. We want to start the clock when the person who has the record receives the request. Someone might go to one department thinking they have the document when, in fact, another department has it. Working its way

through may take some time. We also ask that when they request a document, it be in writing so we all know the date of submission and who to contact about the record. We like the time period to stop when we send out the notice, not when they receive it in their mailbox.

NICHOLAS C. ANTHONY (Legislative Relations Administration, City of Reno):
The *Reno Municipal Code* provides five working days to either produce the documents or to prepare an estimate of costs. That allows us time on the voluminous requests.

KIMBERLY MCDONALD (City of North Las Vegas):
We would like you to consider an eight-to-ten day response time.

CHAIR CARE:
Let us go to the issue of redaction. It comes into play because it can delay the process of producing the documents.

DAN MUSGROVE (University Medical Center of Southern Nevada):
The redaction point is excellent, and we would appreciate that going forward. With the records we have, there is old patient information. As long as we can redact it to produce the information, we would agree to go forward.

MR. DAHL:
Our concern on redaction is with criminal records. If it is Social Security numbers we worry about redacting, that is not too onerous. However, if the Assembly bill passes that turns Social Security numbers into personal information, that could become burdensome for staff to search through and find every bit of information that falls under the new statute. Our concern for this bill is if the Assembly bill passes.

Mendy K. Elliott (Director, Department of Business and Industry):
As long as I acknowledge that it will take me ten days at the end of five days, I am in compliance with the statute. At the end of ten days if I see it takes longer, do I have the opportunity to send a secondary acknowledgement to say I have it, but I need another ten days to redact the information?

CHAIR CARE:
That is our struggle. At the end of ten days if the issue is not resolved within the agency, the requestor is told something. A point comes where, if the

requestor feels he or she is strung along after two or three months, the matter is ripe for a judicial petition. I am looking for a way in which a requested agency continues to work to produce the document or reach the conclusion they cannot turn the document over under state law.

MS. ELLIOTT:
I concur with that. That is an excellent direction to go.

MR. MUSGROVE;
That is where we need to go. Perhaps the first five-day time period goes in statute, but we are legislated to cooperate and keep in tune with those deadlines that we set. Then, there is a link of communication between the requesting agency and the person who is working to provide those documents. If after a certain length of time the requestor feels we are dodging it, they have the ability to another step. That is a doable method of achieving and producing these documents.

SENATOR BEERS:
The more testimony we hear, the more it sounds like one size will not fit all. We may be unable to prescribe a statute that works. If we prescribe a statute directing agencies to develop their own customized solution to this problem, this bill is reduced to a vague set of directions that are potentially unenforceable and may not resolve the problem you seek to fix.

CHAIR CARE:
We need statutory language about good faith duty to produce or determine whether the documents can be produced.

PAUL LIPPARELLI (Washoe County District Attorney's Office; Washoe County):
On the issue of redaction, I urge the Committee to consider the idea that the existence of the record at all is confidential. If we had an inventory of people in our health district under treatment for an infectious disease, when you request that record, the whole thing would be redacted. I suggest an exception for records which by their nature are entirely confidential. Somebody has to employ discretion in determining what information is confidential, and we would do that in good faith. However, if the government entity redacts a document, I suggest discretion be used to decide the confidential not be the basis for a penalty provision in a later court petition. We are sensitive to the goal.

CHAIR CARE:
If you have a document where everything needs redaction, your response might be "we have the document, but they are confidential by nature and we cannot turn them over." A provision in the bill says if an agency says no, it has to cite the "legal authority." The modified version says "legal statute" because the confidentiality rests upon a statute somewhere.

MR. LIPPARELLI:
Confidentiality rests on the construction of statutes, but the notion of whether a record is a public record at all sometimes depends upon the common law. The broader term "legal authority" is better.

CHAIR CARE:
Let us jump to the issue of whether there comes a time where the justification of keeping a document confidential pales in comparison to the public interest. Mr. Rocha, what happens with those documents that come to the Division of State Library and Archives?

GUY LOUIS ROCHA (Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs):
*Nevada Revised Statute* 378.300 is a statute I pursued in 1983 and amended in 1995. We found records transferred to the State Archives deemed confidential, but they were in the Archives which is a research institution. For them to be closed in perpetuity defeats the purpose of research. The statute reads 30 years or death of the individual, whichever comes later. There is a point when sensitivity of records diminishes over time. States, in their public policy, define that point. Our concern is with third-party instances where there are psychiatric evaluations or correctional officer statements. We want to protect people who are still alive.

CHAIR CARE:
Would anyone like to talk about moving the 10-year time frame for keeping records confidential to 30 years or the death of the subject?

MR. ROCHA:
When we talk about the 30-year time frame, we are talking about a natural person. I do not deal with corporation records or records dealing in trade secrets.

CHAIR CARE:
When should a request be in writing as opposed to a phone call? Someone suggests the request in writing because the agency is not always clear what the request concerns.

MR. LIPPARELLI:
Our voluntary records policy in Washoe County urges the record request be in writing as good public policy. It protects the requestor because the request is articulated and ensures no later arguments about the request. It protects the responding government agency by defining the request and marking the point in time of receipt. If the Committee agrees to requests in writing, those requests should be declared confidential because the mere asking of public records can be something not everyone wants. Most people comply with our voluntary written requests. We counsel our clients to document the request and send that documentation to the requestor to ensure understanding of the request.

CHAIR CARE:
In the case of the reporter who has a working relationship with an agency and makes a phone call, would you suggest a request like that in writing? Are there circumstances where the request can be oral?

MR. LIPPARELLI:
Perhaps we can have the agency do the documentation and add a cover sheet to capture the time frames and message. We have offices in different places in Washoe County. It would help coordinate a response from outlying departments to have those requests in writing.

MR. O'CALLAGHAN:
It would be a good idea to have written requests.

MS. FORD:
If we trigger the provisions in this statute for requests writing, it does not preclude us from responding to oral requests.

CHAIR CARE:
If you do not understand an oral request, you could ask for a written request.

MS. FORD:
Correct. If someone called and verbally asked for the information and we verbally respond, that is fine. However, for us to respond in writing when they can ask orally, you do not know when the time frames start. In order to trigger the statute and time limits, we would like a written request.

SENATOR BEERS:
A requestor could trigger the provisions of the statute by making a request in writing, but they could also make an oral request?

CHAIR CARE:
That is the way it works in other jurisdictions. Language elsewhere provides for that.

FRED L. HILLERBY (Regional Transportation Commission of Washoe County):
With the request in writing, you can measure compliance. If it is not in writing, how do you measure whether an agency complied with the request?

SENATOR BEERS:
If the requestor has problems getting the request fulfilled by oral agreement, they can submit a request in writing and start the more formal structured process. However, there are many routine requests filled in the normal course of business that I would hate to see bound up in a paper trail.

RICHARD DALY (Laborers International Union of North America Local 169):
If you look at federal Freedom of Information Act (FOIA) requests, they have a FOIA officer and address for each agency and redaction provisions. All those things have been used as tools by those agencies to not give you information. All the time frames and written requests are done federally. Our law is more open. I like our law under NRS 239.010 where I can walk into whatever agency and request to look at a public record during business hours. That seems the best way. We do not want to alter current law too much.

CHAIR CARE:
This bill is a work in progress. Our Committee Policy Analyst and Committee Counsel will take the comments from today and put them into a mock-up of the bill. We have another subcommittee meeting about this bill so we can come up with a comprehensive amendment to S.B. 123. This Subcommittee meeting is adjourned at 1:32 p.m.

RESPECTFULLY SUBMITTED:

_____
Erin Miller,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE: _____

# DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

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Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

**Care, Terry Senator**

**From:** K.G. [fape4u2@cox.net]
**Sent:** Sunday, March 04, 2007 11:36 PM
**To:** Care, Terry Senator
**Cc:** Hardy, Warren Senator
**Subject:** Fw: SB 123 Testimony

Dear Senator Care,

Recently I sent you the below e-mail as testimony for SB123. In reviewing the email, I noticed a mistake, which needs to be clarified. Please note the correction below in red, bold, italics. If placed into record, please correct the record.

I apologize for having last minute email testimony. I had a family emergency. I hope to be at the hearing for the next read; it's on my bill tracking!. Most certainly, my email does not cover the whole of my situation.

Again, I fully support your proposal. It's greatly needed.

Karen Gray
702-302-2987
----- Original Message -----
**From:** K.G.
**To:** tcare@sen.state.nv.us
**Cc:** whardy@sen.state.nv.us
**Sent:** Monday, February 26, 2007 11:51 AM
**Subject:** SB 123 Testimony

Dear Senator Care,

My name is Karen Gray and I would like to enter testimony regarding SB 123. If permissible, could you please forward this email to committee members and place into the record.

In November 2006, I requested inspection of emails and cell phone payments/records for the Clark County School Board of Trustees. I requested inspection back one year. The school district, several weeks later, sent me a letter charging me appox. $5,000.00 to inspect the email records, charging me to make the archived records public ready, such as payment to extract from the mainframe, read and redact confidential information. They promised access to the cell phone payment records, but have not made those available, as yet.

In the interim, The school district revised their charges closer to $4,000.00, but have been non-responsive to my requests for a written revised statement and accounting of the charges. Also, they have provided me an excel type document listing cell phone payments, but have been non-responsive to my requests to have the created document placed on letterhead or some other form of heading to authenticate the list as a CCSD record. I have ***not*** been granted access to the actual cell phone payment documents.

It has been over three months and I have yet to gain access to the records.



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thank you for your efforts. I fully support SB 123.

Respectfully,
Karen gray
702-302-2987

I

**Miller, Erin**

**From:** John Redlein [JRedlein@LasVegasNevada.GOV]
**Sent:** Thursday, April 05, 2007 3:14 PM
**To:** Stewart, Michael
**Subject:** SB 123 COMMENTS
**Importance:** High

I am submitting this e-mail as a mechanism for getting comments from the City of Las Vegas into the record for the Committee on Government Affairs on this Bill. I appeared yesterday at the designated conference room in Las Vegas for the Subcommittee meeting session on this bill and I know I was not the only attendee who signed in indicating a wish to be heard. The custom of waiting to be called upon when tied in by video from a remote location did not allow us to be heard yesterday. If those of us who wished to speak from Las Vegas should have interrupted during the time Carson City attendees were being heard, then the fault was ours.

I previously submitted lengthy written comments opposing the Bill. Please accept this message as a supplement which only addresses statements made at the Subcommittee session on April 4th. These are remarks which I would have delivered to the Subcommittee if I had been able to speak yesterday. Additionally, I ask that you pass this message on directly to Senators Care and Beers.

1. It was observed that "nobody" responding with written comments had taken the position that imposition of the obligation of a records custodian to make a written response to a person requesting records was objectionable. That is inaccurate. The City of Las Vegas absolutely opposes the proposed response requirement on the grounds that serious consequences are imposed by the Bill if these new response requirements are not complied with.

First, that a confidential record is transformed into a public record if the custodian fails to respond or fails to respond in a timely manner. Section 4 Subsection 2.

Second, that the Bill designates the response as a binding element of any future court contest regarding production of the record in precisely the same sense that the formal Answer to a civil lawsuit binds the respondent to the stated theory of defense. This gives every response such potential importance as would suggest they should only be prepared by legal counsel....at taxpayer expense. Section 4 Subsection 3.

Third, that failure to prepare a response, to prepare a timely response or to state the correct theory in a response can result in civil damages against the government. Section 4 Subsection 4.

2. If all of these legal consequences for a failure to respond or to respond perfectly were eliminated from the Bill, the City's objection to the response requirement would become more limited.

First, the written response requirement has no provision for being excused when oral or anonymous requests for records are made.

Second, a written response sometimes may be construed as an acknowledgment of the existence of a record when the law forbids or prudent practices discourage, such an acknowledgment, as when a criminal history record is requested or a medical record is requested. By federal law, a records custodian is prohibited from acknowledging that he possesses a medical record on any particular person. In such circumstances, any response which acknowledges possession of a record, then requires citation to the legal authority which prevents production of that record would be inappropriate.

For all of these reasons, the City is generally opposed to the imposition of any requirement of a written response to a request for records.

3. The City strongly urged that one of the fundamental faults with the Bill is that it was designed to create an array of circumstances which could force the production of records which the legislature had previously designated as being confidential because of some conduct of the custodian having nothing to do with the sensitivity of the record. Yesterday, it was asserted that the Bill did not have any such effect. Please refer to Section 4 Subsection 2, in which it is perfectly plain that a custodian's failure to comply with the proposed response requirements of the Bill would have two effects:

First, that the government waives any right to later claim that a record is confidential.

Second, that the government must allow the record to be inspected or copied.

These consequences of conversion from confidential record to public record are so strict that even if a custodian promptly responds to a request for a record which is confidential by law, with a response which simply states that fact-(failing to cite the precise statute which has declared the record to be confidential)-then the ability to later assert confidentiality in a court contest will be lost and the record must be produced for inspection and copying. Section 4 Subsections 1 & 2. The City's view is that any such conversion from a confidential to a public record is intolerable and trusts that the legislature would share that view. At the time the Bill was introduced, it was made plain that whatever reason was initially given in the

response for refusal to produce a record cannot, subsequently, be modified in any court contest.

4. Finally, the effort to create a specific and absolute limit for the term during which a record may be treated as confidential is opposed by the City. Even if as long as 30 years, a single specified term of years will never be practical to apply to all confidential records. Consider that 30 years after one is arrested or 30 years after one takes short-term employment with the government, a person submits public records requests for those criminal history records or the social security number of that former government employee from the government agency which acquired the record 30 years previously. Along with medical records and a variety of other sensitive records in the possession of the government, these items should be kept confidential permanently. Any revision of the records categories designated as "confidential" and the term during which such a designation applies must be made on a case-by case-basis.

John Redlein
For the City of Las Vegas

SENATE BILL NO. 123–SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public records. (BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take action within a certain period in response to a request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; providing in skeleton form a mechanism pursuant to which a person may apply to a district court for an order to allow the person to inspect or copy a confidential public book or record that has been in the custody of a governmental entity for at least 10 years; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours for inspection and copying. (NRS 239.010)

**Section 4** of this bill provides that if a governmental entity receives a request to inspect or copy a public book or record, the governmental entity must, within 2 business days after the date on which the request was received, allow the requester to inspect or copy the public book or record, or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied. If a governmental entity is unable to release a public book or record to a requester [~~because it has been declared by law to be confidential~~] ***under certain circumstances*** and the governmental entity fails within 2 business days to provide notice of that



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fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is ***currently unavailable based on extraordinary circumstances or is*** confidential, ***as applicable,*** and must allow the requester to inspect or copy that public book or record. If a person is proximately harmed by such a deemed waiver, ~~[of confidentiality,]~~ the person may bring an action for damages against the governmental entity.

**Section 6** of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 10 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. ~~[Section 10 of this bill provides that a person may not apply for such an order until October 1, 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective date of the bill.]~~

**Section 5** of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has custody of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

**Sections 3 and 7** of this bill provide that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law (chapter 239 of NRS), the records of a nongovernmental entity are public records that must be open for inspection and copying only if such records: (1) are created, obtained, maintained or preserved in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and (2) would otherwise be considered public records within the meaning of NRS 239.010.

**Section 8** of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that has been declared by law to be confidential if the governmental entity can redact the confidential information.

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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 to 6, inclusive, of this act.

**Sec. 2.** ***The Legislature hereby finds and declares that:***

***1. The purpose of this chapter 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;***

***2. The provisions of this chapter must be construed liberally to carry out this important purpose; and***

*3. Any 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.*

**Sec. 3.** *Records of a nongovernmental entity are public records that must be open for inspection and copying only if such records:*

*1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and*

*2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005.*

**Sec. 4.** *1. Not later than the end of the second business day after the date on which it receives a request from a person to inspect or copy a public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have custody of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has custody of the public book or record, if known.*

*(c) If extraordinary circumstances exist which make it impossible for the governmental entity to allow the person to inspect or copy the public book or record by the end of the second business day after the date on which the person made his request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, has been declared by law to be confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific legal authority that declares the public book or record, or a part thereof, to be confidential.*

*2. If a governmental entity ~~[must deny]~~ cannot comply with a person's request to inspect or copy a public book or record ~~[because the public book or record, or a part thereof, has been declared by law to be confidential]~~ by the end of the second business day after the date of receipt of the request for the reason set forth in paragraph (c) or (d) of subsection 1, but the governmental entity fails to ~~[comply with the provisions of]~~ provide the notice and other information required by paragraph (c) or (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that extraordinary circumstances exist that make it impossible to allow the inspection or copying of the public book or record or that the public book or record is confidential , as applicable, and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that ~~[:~~*

*~~(a) The]~~ the failure of the governmental entity to comply with the provisions of paragraph (c) or (d) of subsection 1 was due to excusable neglect . ~~[; or~~*

*~~(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.]~~*

*3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. ~~[A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.]~~*

*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that extraordinary circumstances exist that make it impossible to allow the inspection or copying of a public book or record or that the public book or record is confidential , as applicable, and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages , costs and ~~[any punitive damages which the facts may warrant.]~~ reasonable attorney's fees.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has custody of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*➥ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. Notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the custody of one or more governmental entities for at least 10 years, a person may apply to the district court of the county in which is located the governmental entity that currently has custody of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof.*

*2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.*

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ *; or*

*(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.*

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

***2. A governmental entity shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that has otherwise been declared by law to be confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that has not otherwise been declared by law to be confidential.***

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ ***4.*** A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has custody of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** NRS 239.012 is hereby amended to read as follows:

239.012 ~~[A]~~ ***Except as otherwise provided in subsection 4 of section 4 of this act, 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. 10.** ***1.*** For the purposes of section 6 of this act, a person may ~~[not]~~ apply to a district court ~~[before]~~ ***on or after*** October 1, ~~[2017,]~~ ***2007,*** for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, ~~[regardless of whether]~~ ***if*** the public book or record ~~[will have]~~ ***has*** been in the custody of a governmental entity for a period of 10 years or more ~~[before that]~~ ***on the*** date ~~[.]~~ ***of the application.***

***2. As used in this section, "governmental entity" has the meaning ascribed to it in NRS 239.005, as amended by section 7 of this act.***

H

JIM GIBBONS
*Governor*

STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
**DIVISION OF WELFARE AND SUPPORTIVE SERVICES**
1470 College Parkway
Carson City, Nevada 89706-7924
(775) 684-0500 • Fax (775) 684-0646

MICHAEL J. WILLDEN
*Director*

NANCY KATHRYN FORD
*Administrator*

**BILL: SB 123 Makes various changes to provisions relating to public records**

**NEVADA STATE DIVISION OF WELFARE AND SUPPORTIVE SERVICES**

**CONTACT: NANCY K. FORD, ADMINISTRATOR**

**PHONE: 684-0504**

Good morning Chairman Hardy and members of the Government Affairs Committee. I am Nancy Ford, Administrator of the Division of Welfare and Supportive Services. I am here to oppose certain portions of SB 123 which makes amendments to the public records law.

The Department of Health and Human Services and my Division supports the concept of open public records and expeditious provision of those records upon legitimate request and in appropriate circumstances. The bill as drafted, however, raises various concerns.

Currently, public records requests can come to various offices, as they are all public agencies. Those requests are routed through our Administrative office and potentially our Deputy Attorney General since our records are highly confidential. The bill requires a response within two business days even if records are confidential. It is unlikely the request will reach the proper office within that timeframe to be responded to timely.

As mentioned, records held by the Division and many other Divisions of the Department are highly confidential and contain recipient and patient information,

including personally identifiable information. The records are made confidential by Federal and State statute. In the case of the Department, there are legitimate reasons the records have been made confidential by statute. If there is a problem with a specific statute on confidentiality, it should be dealt with specifically rather than presumptively making records that are confidential by law subject to public scrutiny. It should further be noted that the client holds the right to keep his record confidential, not the governmental entity. The governmental entity holds the obligation to protect that record. In this day and age, making such information public because a written notice was not sent within two business days is contrary to concerns regarding personal privacy and the prevalence of identity theft.

The programs administered by the Division and many of the other Divisions in the Department are subject to Federal laws on confidentiality. In order to maintain our Federal funding streams, we are required to maintain the confidentiality of our clients' records. Failure to do so could result in loss of Federal funds for failure to comply with those requirements. In addition, to the extent state law conflicts with Federal law, Federal law takes precedence. Therefore, if this statute passed as is, we would be unable to comply with the concept that we waived confidentiality without significant loss of funding. In addition, it would seem to be misleading to the public in Nevada to indicate the records become public when they can not. Attached are examples of the federal requirements for several of the Division's programs. Also attached are proposed amendments which may address these concerns.

I would be happy to answer any questions the committee may have.

**PROPOSED AMENDMENT TO SB 123**

**Sec. 4.** *1. Not later than the end of the second business day after the date on which it receives a request from a person to inspect or copy a public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have custody of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has custody of the public book or record, if known.*

*(c) If extraordinary circumstances exist which make it impossible for the governmental entity to allow the person to inspect or copy the public book or record by the end of the second business day after the date on which the person made his request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.*

*2. ~~(d)~~ If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, has been declared by law to be confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific legal authority that declares the public book or record, or a part thereof, to be confidential.*

~~*2. If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:*~~

~~*(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or*~~

~~*(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights; or*~~

~~*3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.*~~

~~*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.*~~

# EXAMPLES OF FEDERAL STATUTES ON CONFIDENTIALITY

## MEDICAID

### § 1396a. State plans for medical assistance

**(a) Contents**

A State plan for medical assistance must—

. . . .

**(7)** provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

**(A)** the administration of the plan; and

**(B)** at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], in accordance with section 9(b) of that Act [42 U.S.C. 1758 (b)], using data standards and formats established by the State agency;

. . . .

# TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

## § 602. Eligible States; State plan

### (a) In general

As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

#### (1) Outline of family assistance program

**(A) General provisions --**A written document that outlines how the State intends to do the following:

. . . .

**(iv)** Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

. . . . .

# CHILD SUPPORT ENFORCEMENT

## § 654. State plan for child and spousal support

A State plan for child and spousal support must—

**(26)** have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

> **(A)** safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;
>
> **(B)** prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;
>
> **(C)** prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;
>
> **(D)** in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653 (b)(2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and
>
> **(E)** procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653 (c)(2) or 663 (d)(2)(B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653 (b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;

# FOOD STAMPS

## § 2020. Administration

. . . .

**(e) Requisites of State plan of operation**

The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

. . . .

**(8)** safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally assisted State programs, except that—

**(A)** the safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law;

**(B)** notwithstanding any other provision of law, all information obtained under this chapter from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this chapter or any regulation issued under this chapter;

**(C)** the safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of coupons, as determined under section 2022 (b) of this title, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of title 5 or a Federal income tax refund as authorized by section 3720A of title 31;

**(D)** notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer

furnishes the State agency with the name of the member and notifies the agency that—

**(i)** the member—

**(I)** is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

**(II)** has information that is necessary for the officer to conduct an official duty related to subclause (I);

**(ii)** locating or apprehending the member is an official duty; and

**(iii)** the request is being made in the proper exercise of an official duty; and

**(E)** the safeguards shall not prevent compliance with paragraph (16) or (20)(B);

**MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session**
**April 9, 2007**

The subcommittee of the Senate Committee on Government Affairs was called to order by Chair Terry Care at 12:53 p.m. on Monday, April 9, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**SUBCOMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair
Senator Bob Beers
Senator Randolph J. Townsend

**STAFF MEMBERS PRESENT:**

Candice Nye, Assistant to Committee Manager
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

**OTHERS PRESENT:**

Barry Smith, Executive Director, Nevada Press Association
Frederick Schlottman, Administrator, Offender Management Division, Carson City, Department of Corrections
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Trevor Hayes, Nevada Press Association
Wayne Carlson, Nevada Public Agency Insurance Pool
Morgan Baumgartner, Medic West
Richard Yeoman, Administrative Services Officer III, Nevada Department of Transportation
David Emme, Chief, Administrative Services, Division of Environmental Protection, State Department of Conservation and Natural Resources
Maud Naroll, Chief Planner, Budget Division, Department of Administration

CHAIR CARE:
We open the subcommittee meeting for Senate Bill (S.B.) 123.

**SENATE BILL 123**: Makes various changes to provisions relating to public records. (BDR 19-462)

CHAIR CARE:
There is a mock-up of S.B. 123 (Exhibit C) that covers most of the issues we discussed in the last subcommittee hearing. The language in section 4 was changed to have a response to the request by the seventh business day as opposed to the second. There was testimony about what happens when you have an agency in Carson City but the request is submitted in Hawthorne. The seven days is to allow time to forward the request to the person who has custody or control. That is the intent of the new language.

Reading further in section 4, it says if the government agency is unable to make the public record available by the seventh business day, the person who has custody or control will notify the requestor of that fact and provide a date and time after which the record will be available for the requestor to inspect their copy. We have deleted the language about the tenth business day and added language, "If the public book or record is not available ..., the person may inquire regarding the status of the request." There is no final date when the request has to be resolved. It allows the requestor, if he or she feels they are being ignored, to inquire of the entity, and the entity will have to respond at the risk of facing suit.

There were some issues with line 39. My thought was in all cases, there would have to be statutory authority. I am told that is not necessarily true, and that is the reason it now reads "statute or other legal authority." Does anyone want to address what we have done in section 4?

BARRY SMITH (Executive Director, Nevada Press Association):
I would like to see five business days or seven calendar days as a compromise on the time period issue.

CHAIR CARE:
The testimony was for five or seven days. I met with staff this morning and told them to put seven days to see what happens.

MR. SMITH:
These are good changes. We still have to deal with the issue of the clock starting on a written request. That is a good and fair idea.

FREDERICK SCHLOTTMAN (Administrator, Offender Management Division, Carson City, Department of Corrections):
I have an inquiry as to how this legislation would work. Presumably, a member of the public or an inmate would make a records request with no limitations on the broadness of the request. It would be upon the Department to provide those records within seven business days. If they could not provide those records within seven days, at what point would those records become declassified or would the Department have to produce those records?

CHAIR CARE:
I do not know what you mean by declassified.

MR. SCHLOTTMAN:
The Department of Corrections has information that is classified from the Federal Bureau of Investigation. The information is retrieved from the National Crime Information Center computer system. The Department Director does not have the authority to declassify that information, and that information is not available to the public.

CHAIR CARE:
If it is not a public record, it would not fall under this statute.

MR. SCHLOTTMAN:
That would be a question of litigation. An inmate could say they would want to see the records because they pertain to their criminal history and might have an effect on their standing in the Department.

CHAIR CARE:
We have a separate statute that talks about who may request records from the criminal repository. What do you do presently?

MR. SCHLOTTMAN:
We turn down the request because that information is not available to the inmate.

CHAIR CARE:
This is not intended to change anything that is currently not a public record.

MR. SCHLOTTMAN:
At what point would the Department have to comply with a records request if it could not meet that request within seven business days?

CHAIR CARE:
If it is a public record, they have to let the requestor know within seven days that they are working on it. The theory here is that the governmental entity will be attempting to comply in good faith. If a requestor does not think so, a judge can make that determination.

We added "custody or control" in section 5 to clarify language. We did not change the burden language. We talked about the point at which a confidential document becomes public. The 10-year time limit is replaced with 30 years. Somebody talked about a trade secret being confidential beyond 30 years. There is a presumption that after 30 years, the need is no longer there for it to be confidential, but it is a rebuttable presumption. Guy Louis Rocha, Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs, talked about the policy of the Division of State Library and Archives where it is 30 years or the death of an individual, whichever comes later. Is 30 years problematic for anyone so long as you would have an opportunity to say the information should not be public and why?

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
In dealing with agencies with regard to records retention schedules, we come across a lot of confidential information. The rebuttable language helps, but there could be a number of agencies affected by this. There could be information that retains its confidential nature well after the 30-year period. For example, a document regarding minors or an incident that happens early in someone's life could have a need to remain confidential after 30 years.

CHAIR CARE:
You are talking about records that deal with an individual. You say the rebuttal presumption helps, but I do not know what else to do with it. If someone makes the request, the entity could appear in court and explain to the judge why the information needs to be confidential.

MR. ANDERSON:
The 30 years or upon the death of the individual, whichever comes later, is a good standard.

CHAIR CARE:
I will see if we can get that language in the bill. Section 8 is the redaction provision. Can Committee Counsel address where we have the deletion in section 8, subsection 2?

EILEEN O'GRADY (Committee Counsel):
That was to address the same issue as it might not be declared confidential by law, but it might be confidential under a balancing test.

CHAIR CARE:
Section 9 is deleted. That was the section about liability. There is no waiver of the confidential status of the document if the government fails a timely response. There is no original language about written requests. Trevor Hayes has ideas about what to do concerning oral versus written requests. I can see both sides of the issue.

TREVOR HAYES (Nevada Press Association):
I have looked at the laws in this area and in all 50 states. A number of states that have time provisions and other mechanisms to enforce an open records law allow oral requests. We do not want language to preclude oral requests because the Nevada Press Association uses this method often and most entities respond. A good compromise would be to allow oral requests, but the mechanisms that are created by this law would not go into place until a written request was submitted. The time frame would not start until a written request, including e-mail and fax, is submitted.

CHAIR CARE:
Would that mean that after five or seven days of submitting an oral request, if you have received no response, your next step is to submit a written request?

MR. HAYES:
Yes. If you have a voluminous request, you might want to start from a written standpoint, but most requests are handled by calling an agency and asking for records.

SENATOR BEERS:
Would the redaction provision pose a fiscal impact?

CHAIR CARE:
We can have Committee Counsel and Research Division look at that.

MR. HAYES:
With regard to time frames, I researched other states. Nine states have 3 days or less response time, and 17 states have 5 days or less. There are 33 states that have a time limit. In previous testimony, people were fearful of litigation, but current law has no time limit. There is no provision stopping litigation from commencing immediately. This bill gives the governmental entity time to work. Litigation is expensive and no one wants to deal with it.

WAYNE CARLSON (Nevada Public Agency Insurance Pool):
I have written testimony (Exhibit D). It was written before I saw the modified version so some of it can be disregarded, but some of it still applies. I have trouble with the language in section 3 pertaining to the private organization maintaining records that are public. There are records that are private business records, and I cited examples in Exhibit D. It is unclear which records are public and which are private business records. The language does not narrow it down, and it affects section 7 because the definition subjects a "person" to these issues. A person is an individual or an organization of legal structure. Therefore, it is possible an individual's personal records could become public because that individual administers a program on behalf of a public entity under a private contract.

CHAIR CARE:
I am only talking about those documents generated by the private entity that would be comparable to documents generated by the government had it done that function. This would not include personnel or proprietary information. We cannot address every situation, but I will ask Committee Counsel to craft language that might give you more comfort.

MR. CARLSON:
We ask our vendors to maintain records they create on behalf of our program as if they were government records. Perhaps something saying "created for the purpose of being a public record" would narrow that definition.

MORGAN BAUMGARTNER (Medic West):
I support what Mr. Carlson said. My company has a franchise agreement. I am not sure if a franchise agreement reaches the level of contracting or works like a business license, but we provide certain records to the government entity with which we have the franchise agreement. Those are public records, but we have the same concerns. With the way the bill is drafted, it seems like you could reach into our personnel and financial records. That is not your intent, but we would like to see language that addresses that specific concern.

CHAIR CARE:
I am trying to let taxpayers have the opportunity to know what their tax dollars are doing.

MS. BAUMGARTNER:
Our franchise agreement would have standards—such as ambulance call times—we have to submit to the public entity with which we contract. Maybe you can craft something that states those are the public records or something narrowly tailored along those lines.

RICHARD YEOMAN (Administrative Services Officer III, Nevada Department of Transportation):
We get requests all the time and have a lot of complex records. There is a necessity to put those requests in writing. There needs to be some sort of specificity addressed. I just finished a request that took 52.5 staff hours to fill. It was a "give me everything you have from here to here" request that was difficult to sort through. We had to ask them to specify their needs so we could fill the request. On the redaction point, it would take two copies to get the redacted copy to the individual. You have to make a copy of the original document, use a black marker which can be read through and make another copy to obliterate the words behind the marker. There is a minor fiscal impact but a bigger impact on time.

DAVID EMME (Chief, Administrative Services, Division of Environmental Protection, State Department of Conservation and Natural Resources):
From a practical standpoint, you have addressed our concerns. I would ask you to consider an explicit exception for the trade secret or confidential business information at the beginning of section 6.

MR. SCHLOTTMAN:
The Department of Corrections does not have any in-house legal staff to do redactions and limited staff to handle records. I would anticipate a substantial fiscal impact given the number of vexatious litigators within the Department.

CHAIR CARE:
In the case of litigation, it will be different. If they are going to sue, they will sue. This statute aside, they will be entitled to certain documents.

MR. SCHLOTTMAN:
Given the organized nature of some inmate groups, they would attempt to overwhelm the Department with information requests. For us to show good faith effort to honor those requests would be a substantial undertaking.

CHAIR CARE:
Do we have a vexatious litigator statute in Nevada?

MR. SCHLOTTMAN:
Yes, we do. It is not used very often.

SENATOR BEERS:
Can we exempt inmates from utilizing the statute?

CHAIR CARE:
I would hate to get into that today.

MR. SCHLOTTMAN:
That would be an interesting way to pursue this. How would inmates keep these documents in a small cell? There are logistical problems involved.

MAUD NAROLL (Chief Planner, Budget Division, Department of Administration):
The custody or control language in section 4 is an issue. If that could be changed to "legal custody," that would be better. The records center has physical custody of many agency records but not legal custody. We would appreciate that the request be in writing in order for the statute to apply.

CHAIR CARE:
I would like to recommend to the Committee that we move to amend and do pass except in section 3, the language needs to be amended to give more

comfort to the private agencies. We also need to clarify the language of custody or control to "legal custody or control." Do the Subcommittee members have a preference for five or seven days? My preference is five business days.

SENATOR BEERS:
Five days is fine with me.

SENATOR TOWNSEND:
I am fine with five days.

CHAIR CARE:
We will also clarify the 30-years provision to "30 years or the death of the individual, whichever comes later" on records pertaining to an individual. The language suggested by Mr. Hayes that the requests may be oral but written requests will start the time frame should also be added. These will be my recommendations to the full Committee. This meeting is adjourned at 1:30 p.m.

RESPECTFULLY SUBMITTED:

_____
Erin Miller,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

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MOCK-UP

# PROPOSED AMENDMENT 3229 TO SENATE BILL NO. 123

*PREPARED FOR THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS ON S.B. 123*
*APRIL 9, 2007*

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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 to 6, inclusive, of this act.

**Sec. 2.** ***The Legislature hereby finds and declares that:***

***1. The purpose of this chapter 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;***

***2. The provisions of this chapter must be construed liberally to carry out this important purpose; and***

***3. Any 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.***

**Sec. 3.** ***Records of a nongovernmental entity are public records that must be open for inspection and copying only if such records:***

***1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or***

EXHIBIT C Senate Committee on Government Affairs
Date: 4/9/07 Page 1 of 5

*regulating an activity, program, institution or facility for or on behalf of a governmental entity; and*

*2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005.*

**Sec. 4.** *1. Not later than the end of the ~~[second]~~ seventh business day after the date on which ~~[it]~~ the person who has custody or control of a public book or record of a governmental entity receives a request from a person to inspect or copy ~~[a]~~ the public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have custody or control of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has custody or control of the public book or record, if known.*

*(c) ~~[If extraordinary circumstances exist which make it impossible for]~~ Except as otherwise provided in paragraph (d), if the governmental entity is unable to ~~[allow the person to inspect or copy]~~ make the public book or record available by the end of the ~~[second]~~ seventh business day after the date on which the ~~[person made his]~~ person who has custody or control of the public book or record received the request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. ~~[Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.]~~ If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, ~~[has been declared by law to be]~~ is confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific statute or other legal authority that ~~[declares]~~ makes the public book or record, or a part thereof, ~~[to be]~~ confidential.*

*2 ~~[. If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d)~~*

~~*of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:*~~

~~*(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or*~~

~~*(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.*~~

~~*3.]*~~ *Any decision made pursuant to subsection* ~~*[2]*~~ *1 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review.* ~~*[A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.*~~

~~*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.]*~~

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has custody of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*➥ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. Notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the custody of one or more governmental entities for at least* ~~*[10]*~~ *30 years, a person may apply to the district court of the county in which is located the governmental entity that currently has custody of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof.*

*2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.*

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ ***; or***

***(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.***

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. ***A governmental entity shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that*** ~~***[has otherwise been declared by law to be]***~~ ***is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that*** ~~***[has]***~~ ***is not otherwise*** ~~***[been declared by law to be]***~~ ***confidential.***

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ *4.* A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has custody of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** ~~[NRS 239.012 is hereby amended to read as follows:~~

~~239.012 [A] *Except as otherwise provided in subsection 4 of section 4 of this act, 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.~~] **(Deleted by amendment.)**

**Sec. 10. 1.** For the purposes of section 6 of this act, a person may ~~[not]~~ apply to a district court ~~[before]~~ **on or after** October 1, ~~[2017,]~~ **2007**, for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, ~~[regardless of whether]~~ **if** the public book or record ~~[will have]~~ **has** been in the custody of a governmental entity for a period of ~~[10]~~ **30** years or more ~~[before that]~~ **on the** date ~~[.]~~ **of the application.**

**2. As used in this section, "governmental entity" has the meaning ascribed to it in NRS 239.005, as amended by section 7 of this act.**

H

Commentary on SB 123
By
Wayne Carlson
Executive Director
Nevada Public Agency Insurance Pool
Public Agency Compensation Trust
April 2, 2007

**Overview:**

The Nevada Public Agency Insurance Pool and Public Agency Compensation Trust are self-insured risk pools comprised of local governments primarily in rural Nevada. The pools are governmental agencies by operation of the Interlocal Cooperation Agreement that created them.

The pools operate utilizing several private and non-profit organizations to administer the programs including general administration, risk management, loss control, human resource management consulting and claims services. In the course of providing these services, the organizations obtain various documents that may be public records in the hands of the pool members and create documents that become public records of the pools themselves.

While we fully respect the intent of the public records laws, SB 123 creates numerous challenges and consequences that need to be addressed and to clarify when a record remains private to the nongovernmental entity and when it becomes public. Some of the issues were addressed in my testimony to the committee and I am adding more detail in this commentary.

**Section 2:**

This section seeks to establish an overall public policy that public records should be readily accessible, a policy with which we agree. However, in subsections 2 and 3, the provisions do not seek to follow the well-established balancing test as to whether a record not otherwise declared confidential is a public record. Rather it tilts the balance to a narrow interpretation regarding exemptions, exceptions or balancing of interests. The current balance of interest test is appropriate and has served the public effectively over time.

**Section 3:**

Making records of a nongovernmental entity public records in the broad language in this section creates substantial questions as to how a private organization can maintain its records as private under any circumstance. For example, under subsection 1, a private firm will "in the course of administering...a program for or

on behalf of a governmental entity" create records for its own business operations that should not be public records (financial, payroll, etc.) as well as records that may be public records by intent. However, because the language states without exception that if the record is created "in the course of administering..." any record of the organization becomes by default a public record. This language does not afford the service provider any protection for its private business operations that may include proprietary and confidential business records. This provision making nongovernmental entity records public records should be removed from the bill. Alternatively, narrowing the requirements to records created in the "course and scope of administering... and for a public purpose" would create some barrier of protection.

In the case of the pools, for example, we contract with a private firm for claims management services and for defense attorneys on litigated cases. Since the claims services include "administering, managing" a program and involve attorney communications, it appears possible that privileged communications by attorneys would become public records in addition to the actual claims files created by the claims management company "in the course of administering, managing" the program. This consequence should not be permitted in the bill.

Another example arises from a nonprofit organization under contract with the pools to provide human resources training and consultation to members. When they assist a member with a personnel matter, they may obtain confidential public records from the member and may create records that otherwise should remain confidential, but would not under this bill because they were created "in the course of administering" a program. It is important for protection of the public agency member's confidential records, that they not lose their confidentiality simply because a private organization may assist them.

**Section 4:**

Clearly, testimony received by the Senate Committee found the two-day time frame in subsection 1 difficult to sustain particularly in small agencies. Even responding within two days in writing under subsection 1 (c) may become problematic when a legal opinion may be necessary to determine whether a record actually is a public record or a confidential record. Determining a time certain on which the record would be made available not more than 10 days later [subsection 1 (c) (2)] may not be possible if the legal research required is extensive. Likewise, if the record is in a storage location, not readily accessible and there is limited staff available to manage the other public business or records requests, there is no provision to allow for additional time if needed.

From testimony, I recall that Senator Care was planning to change the term "legal" authority in Subsection 1 (d) (2) to "statutory" authority. This change would improve the bill; however, it only applies to records that are declared confidential and does not appear to apply to records determined to be

confidential based upon the application of a balancing test. It is unclear whether such an inability to cite specific statutory authority violates this provision. There was some indication that the intent of the bill was to require that the statutory reason must be the only reason and not a subsequent legal position, which also would ignore the balancing test determination.

In an amended version of SB123 handed out at the hearing by Senator Care, changes were made to Section 4, subsection 2 to attempt to avoid problems generated by the automatic loss of confidentiality of certain records as a result of failure to allow the records to be viewed timely. The amended version, while seeking to resolve some concerns, unfortunately was not successful. The bill still waives rights of the governmental entity to assert extraordinary circumstances that may exist and confidentiality of a record that may be in public possession, but which confidentiality rights belong to the persons about whom the record was made. Waiving a third party's rights because of an error or delay by the governmental entity creates a legal quagmire. For example, settlement agreements with minors often are confidential in order to protect the minor and public policy is not served when a delay by the governmental entity removes the essential confidentiality designed to protect the minor.

Section 4, subsection 2 of the bill states that failure of the governmental entity to comply with the deadlines deems that the government waived its right to claim "extraordinary circumstances exist that make it impossible to allow the inspection..." (amended language), but the bill does not clarify what constitutes an extraordinary circumstance and the term "impossible" is troublesome. Few tasks are impossible given enough additional expense (such as hiring temporary staff to comply with a single, large public records request), but many small entities cannot afford such an extraordinary expense. To automatically waive those rights invites problems and litigation. Another undefined term is "excusable neglect" which can create interpretation problems regarding compliance.

Section 4, subsection 2 (b) was removed in the amended version ostensibly because current law already addresses this issue according to comments from Senator Care. This should remain removed.

Section 4, subsection 3 removed the second sentence in the amended version. This is appropriate because local government is not subject to the state administrative procedures act requirements.

Section 4, subsection 4 again includes undefined terms cited previously. In the amended version, the phrase "any punitive damages which the facts may warrant" was removed appropriately. Inclusion of damages provisions in the bill appears unnecessary since the public records laws already have provisions for criminal penalties for violations as does the Open Meeting Law. We oppose inclusion of any provision for damages under the bill, but if those provisions are retained it should be made clear that the remaining language for recovery of

damages, costs and attorney's fees will be subject to the tort cap provisions of NRS Chapter 41.

**Section 5:**

This section imposes the burden of proof on the governmental entity to show by preponderance of the evidence that a public record is confidential. This provision is unnecessary since the public records law declares the records public unless a specific declaration of confidentiality is made. Case law allows for the "balancing test" to be used with regard to records that have not clearly been declared confidential. The balancing test is important to protect records that for reasons such as homeland security should not be made public. By imposing this burden of proof, a governmental entity may be forced to reveal records they believe should not be made public in order to prove their case. This issue better would be resolved by relying on the courts to review the issues and make a determination using its judicial acumen while retaining the confidential nature of the records until a determination is made.

**Section 6:**

As with other provisions previously discussed, deeming a record public after a certain period of time (10 years in the bill) creates unintended consequences such as a settlement agreement with a minor. For example, a 5 year old still is a minor ten years later and the release of their agreement would be a privacy violation and waive a right they hold, not the governmental entity.

**Section 7:**

Subsection 4 (e) states that any other "person or nongovernmental entity" is included in the definition of governmental entity. As stated previously, lack of clarity regarding which records of a nongovernmental entity are not public already creates problems. However, the definition goes further and subjects a "person" to these issues. As I understand it a person not only is an individual, but also any corporation, association, partnership, etc. Thus, an individual's personal financial, medical or other records that are created "in the course of administering" become public.

**Section 8:**

While the provisions of subsection 2 allow for the redaction of confidential information, redaction of certain records such as microfiche can be time consuming and difficult to accomplish within the time frames stated in the bill. Such redactions should be exempted from the time frames as a defined extraordinary circumstance.

**Section 9:**

Existing law immunizes a public officer or employee who acts in good faith with respect to public records handling. No such immunity extends to nongovernmental entities who would become subject to the reach of the public records laws. Likewise, if the tort cap of NRS Chapter 41 is to apply to the damages provisions of this bill, then the reach of the cap should also extend to nongovernmental entities subject to this bill. Preferably, the damages provisions of the bill will be removed entirely for all handlers of public records, but the immunity provisions should be extended if nongovernmental entities are included as subject to the public records laws.

# MINUTES OF THE
# SENATE COMMITTEE ON GOVERNMENT AFFAIRS

## Seventy-fourth Session
## April 11, 2007

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:48 p.m. on Wednesday, April 11, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John J. Lee

**GUEST LEGISLATORS PRESENT:**

Senator Bernice Mathews, Washoe County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Olivia Lodato, Committee Secretary

**OTHERS PRESENT:**

Lora E. Myles
Shawn M. Elicegui, Utilities, Incorporated of Central Nevada
Jennifer Lazovich, Focus Property Group
Laura Billman, Nye County
Pat Hines

**SENATE BILL 123**: Makes various changes to provisions relating to public records. (BDR 19-462)

Chair Hardy said there was a separate mock-up of proposed amendments on S.B. 123 (Exhibit D).

Senator Care said the Subcommittee members, Senators Townsend, Beers and himself, met twice to take additional testimony and hear concerns raised on the initial hearing of the bill. He said the second hearing produced the Proposed Amendment 3229 to Senate Bill 123, Exhibit D. Senator Care stated section 3 went to nongovernmental entities. He said the language had been amended for private companies fulfilling a public purpose. He said the companies were concerned about personnel records and data becoming public. The amendment stated the documents were directly related to the administration, management or regulation of an activity. He said the amendment stated it did not apply to financial or other proprietary records.

Chair Hardy asked about bid documents. He asked if the documents were proprietary except in cases where there was a dispute.

Senator Care said the bill did not make any document public today that was not currently public. He said if the bid documents were not public, the bill would not make them public.

Chair Hardy said it was important to establish for the legislative record that bid documents were not public record.

Senator Care said section 4 clarified the language concerning the production of records. He said the amendment said the fifth business day after the date a written request was received. He said it required a response by the fifth day, not necessarily producing the actual documents. He said the intent was to ensure a response occurred within a certain amount of time. He said there was no time constraint in the amendment due to the complexity of the possible requests for information. Senator Care said language was added in lines 42 and 43 saying a government entity had to cite specific statute or legal authority when refusing to release requested material. Senator Care said lines 29 and 30 were added to ensure an oral request was not prohibited.

Senator Care said language was changed in section 6 to enable a confidential book or record to become public after 30 years. He said the party holding the document could go to court and demonstrate the document was still or should be nonpublic. He said section 7 remained unchanged, section 8 went to redaction and section 9 was deleted completely. He said that summed up the changes in the bill.

Chair Hardy said he wanted to be certain the language in the bill said anything not a public record should not be made a public record by the act. He closed the hearing on S.B. 123.

Chair Hardy opened the hearing on S.B. 200.

**SENATE BILL 200**: Extends the duration of certain redevelopment plans. (BDR 22-358)

Senator Raggio asked for clarification on the extent of the redevelopment areas. He said he wanted assurance the extension of a redevelopment district to a 45-year limitation only applied to the redevelopment plan of the City of North Las Vegas (Exhibit E). He said the present law retained the 30-year period for the other applicable redevelopment areas. He said he was reluctant to extend the life of redevelopment districts beyond the existing 30 years. He said he supported this measure because of the case made on behalf of the City of North Las Vegas.

Chair Hardy said the legislative intent was to assure such extensions were brought to the Legislature on an individual basis for consideration.

SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 200.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Hardy opened the hearing on S.B. 201.

# DISCLAIMER

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Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

# SENATE COMMITTEE ON GOVERNMENT AFFAIRS

## RECOMMENDATIONS OF THE SUBCOMMITTEE ON SENATE BILL 123

Senator Terry J. Care, Chairman
Senator Bob Beers
Senator Randolph J. Townsend

**SENATE BILL 123**
Makes various changes to provisions relating to public records. (BDR 19-462)

| | |
|---|---|
| Sponsored by: | Senator Care |
| Date Heard: | February 26, 2007; April 4 and April 9, 2007 (Subcommittee) |
| Fiscal Impact: | Effect on Local Government: May have Fiscal Impact<br>Effect on the State: Yes |

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours for inspection and copying. The bill provides that if a governmental entity receives a request to inspect or copy a public book or record, the governmental entity must, within two business days after the date on which the request was received, allow the requester to inspect or copy the public book or record, or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied. If a governmental entity is unable to release a public book or record to a requester because it has been declared by law to be confidential and the governmental entity fails within two business days to provide notice of that fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is confidential, and must allow the requester to inspect or copy that public book or record. If a person is proximately harmed by such a deemed waiver of confidentiality, the person may bring an action for damages against the governmental entity. The measure further provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 10 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. Senate Bill 123 also provides that a person may not apply for such an order until October 1, 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective date of the measure.

The measure provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has custody of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality. The measure also provides that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law, the records of a nongovernmental entity are public records that must be open for inspection and copying only if such records: (1) are created,

**obtained, maintained or preserved in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and (2) would otherwise be considered public records within the meaning of NRS 239.010. Finally, Senate Bill 123 provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that has been declared by law to be confidential if the governmental entity can redact the confidential information.**

**BRIEF REPORT OF THE SUBCOMMITTE:**

**The subcommittee met on April 4, 2007, and April 9, 2007, to receive comments on Senate Bill 123. The attached mock-up addresses many of the concerns expressed by interested parties. These concerns related to:**

1. **The requirement that the public records of nongovernmental entities be open for inspection and copying;**

2. **The time frames by which a governmental entity must allow for the inspection of a requested document or at least respond to the requester concerning the status of the request;**

3. **Issues regarding the confidentiality of certain documents and the duration of time certain records must remain confidential; and**

4. **Issues concerning the redaction of confidential information.**

**Senator Care, Chairman of the Subcommittee, is present today to discuss the proposed mock-up amendment in greater detail.**

MOCK-UP

# PROPOSED AMENDMENT 3229 TO SENATE BILL NO. 123

*PREPARED FOR SENATE COMMITTEE ON GOVERNMENT AFFAIRS*
*APRIL 11, 2007*

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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 to 6, inclusive, of this act.

**Sec. 2.** ***The Legislature hereby finds and declares that:***

***1. The purpose of this chapter 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;***

***2. The provisions of this chapter must be construed liberally to carry out this important purpose; and***

***3. Any 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.***

**Sec. 3.** ~~***[Records]***~~ ***1. Except as otherwise provided in subsection 2, records of a nongovernmental entity*** ~~***[are public records that must be open for inspection and copying only if such records:***~~

~~***1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating]***~~ ***that are directly related to the administration, management***

*or regulation of an activity, program, institution or facility by the nongovernmental entity for or on behalf of a governmental entity~~[; and~~*

~~*2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005.]*~~ *are public records that must be open for inspection and copying.*

*2. This section does not apply to the financial or other proprietary records of the nongovernmental entity.*

**Sec. 4.** *1. Not later than the end of the ~~[second]~~ fifth business day after the date on which ~~[it]~~ the person who has legal custody or control of a public book or record of a governmental entity receives a written request from a person to inspect or copy ~~[a]~~ the public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.*

*(c) ~~[If extraordinary circumstances exist which make it impossible for]~~ Except as otherwise provided in paragraph (d), if the governmental entity is unable to ~~[allow the person to inspect or copy]~~ make the public book or record available by the end of the ~~[second]~~ fifth business day after the date on which the ~~[person made his]~~ person who has legal custody or control of the public book or record received the request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. ~~[Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.]~~ If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, ~~[has been declared by law to be]~~ is confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific statute or other legal authority that ~~[declares]~~ makes the public book or record, or a part thereof, ~~[to be]~~ confidential.*

*2. ~~If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:~~*

*~~(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or~~*

*~~(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.~~*

*~~3.~~ Any decision made pursuant to subsection ~~2~~ 1 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. ~~A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.~~*

*~~4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.~~*

*3. The provisions of this section must not be construed to prohibit an oral request to inspect or copy a public book or record.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. ~~Notwithstanding~~ Except as otherwise provided in this subsection, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the legal custody or control of one or more governmental entities for at least ~~10~~ 30 years, a person may apply to the district court of the county in which is located the governmental entity*

*that currently has legal custody or control of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof. If the public book or record pertains to a natural person, a person may not apply for an order pursuant to this subsection until the public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.*

***2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.***

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ *; or*

***(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.***

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the

advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. *A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that ~~[has otherwise been declared by law to be]~~ is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that ~~[has]~~ is not otherwise ~~[been declared by law to be]~~ confidential.*

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ *4.* A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has *legal* custody *or control* of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** ~~[NRS 239.012 is hereby amended to read as follows:~~

~~239.012 [A] *Except as otherwise provided in subsection 4 of section 4 of this act, 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.]~~ **(Deleted by amendment.)**

**Sec. 10. 1. ~~[For]~~ Except as otherwise provided in this subsection, for** the purposes of section 6 of this act, a person may ~~[not]~~ apply to a district court ~~[before]~~ **on or after** October 1, ~~[2017,]~~ **2007,** for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, ~~[regardless of whether]~~ **if** the public book or record ~~[will have]~~ **has** been in the **legal** custody **or control** of a governmental entity for a period of ~~[10]~~ **30** years or more ~~[before that]~~ **on the** date ~~[.]~~ **of the application. A person may apply to the district court on or after October 1, 2007, for an order directing a governmental entity to allow the person to inspect or copy a public book or record that pertains to a natural person if, on the date of the application, the public book or record has been in the legal custody or control of a governmental entity for a period of 30 years or more or the natural person has died, whichever is later.**

**2. As used in this section, "governmental entity" has the meaning ascribed to it in NRS 239.005, as amended by section 7 of this act.**

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# MINUTES OF THE
# SENATE COMMITTEE ON GOVERNMENT AFFAIRS

## Seventy-fourth Session
## April 13, 2007

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:01 p.m. on Friday, April 13, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John J. Lee

**GUEST LEGISLATORS PRESENT:**

Senator Michael A. Schneider, Clark County Senatorial District No. 11

**STAFF MEMBERS PRESENT:**

Gary L. Ghiggeri, Senate Fiscal Analyst
Candice Nye, Assistant to Committee Manager
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

**OTHERS PRESENT:**

Nancy K. Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Ivan R. Ashleman, Chair, State Public Works Board
R. Ben Graham, Nevada District Attorneys Association

CHAIR HARDY:
The Committee Policy Analyst handed out the work session document (Exhibit C, original is on file in the Research Library). We will look at Senate Bill (S.B.) 123.

SENATE BILL 123: Makes various changes to provisions relating to public records. (BDR 19-462)

SENATOR CARE:
The mock-up on pages 3 through 7 in Exhibit C is a product of two subcommittee meetings. Section 2 has not changed. Section 3 gives more comfortable language to a private entity that has entered into a contract with a governmental entity. It specifically states we are not seeking their "financial or other proprietary records." It would only include those documents generated in the course of fulfilling the governmental function. Section 4 was changed in the subcommittee to the fifth business day after the person who has legal custody or control gets the request as opposed to the second. The clock would not start ticking until the appropriate person has the request in hand. Section 4, lines 34 through 36, intends that if you have not heard from the entity you have made the request from, you can inquire about your request. This reminds the entity it is under a duty to respond or at risk of the requestor deciding they are not being treated fairly and may seek legal redress. Section 4, subsection 1, paragraph (d), subparagraph (2) has "statute or other legal authority." The original draft just had legal authority to give comfort to people who thought the statute might be too narrow.

Page 5 of Exhibit C has multiple deletions. After talking with Legal Counsel, we have come to the conclusion lines 15 through 17 on page 5 are not necessary. If the requestor filed suit, the requestor would say this is what they have decided. I would be agreeable to strike these lines.

CHAIR HARDY:
Section 4, subsection 2 would be entirely stricken.

SENATOR CARE:
That is correct. Section 4, subsection 3 is a result of a discussion about whether the requests should be oral or written. If the requestor has a relationship with the governmental entity, the reporter can get on the phone and request the document. However, if you are the governmental entity and not

clear of the request, you can request a written request. This language allows the request to be oral or written.

The new language in section 5 clarifies "legal custody or control," so we narrow it down to the supervisor. In the original draft, there was a rebuttable presumption that after the document is confidential for ten years, it becomes public. The subcommittee extended that to 30 years. The Nevada Resort Association pointed out the application for a gaming license is a lengthy, detailed document that could include family and financial information. They would like to be exempt. I am not agreeable to that, but I am agreeable to changing it to 40 years or 10 years after death, whichever is later in the case of an applicant. That is quite an extension of time. Section 9 is deleted by amendment. There is nothing in the bill about liability or the privilege of confidentiality being waived for failing to respond timely.

SENATOR RAGGIO:
The State Gaming Control Board goes into personal information unlike any place else in government; 30 or 40 years is not an adequate length of time before the personal information goes public because these people have families. If that information were released, it could be damaging. The Gaming Control Board should be exempt.

SENATOR CARE:
I wrestled with that. When I originally testified, I gave the example of Howard Hughes. I cannot imagine why that information is still confidential after 40 years. People have a right to know. It is a privilege license, and they avail themselves to the government to get that license. As an accommodation to the Resort Association, I added the ten years.

SENATOR RAGGIO:
I have been in on some Gaming Control Board investigations. I am not concerned about Howard Hughes; I am concerned about clients who have had to get into extremely personal information. Whether it is 40 years or not, this information affects the family. I do not see why it is something the public has to know. There is no due process or protection when you apply for a gaming license.

SENATOR CARE:
It is a rebuttable presumption the documents need to be public. If a family member wanted to make the case for the document to remain confidential, they would be free to do that.

SENATOR RAGGIO:
That sounds good, but it entails going to court. I would not support the bill unless you exempt the Gaming Control Board.

SENATOR BEERS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 123.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HARDY:
We will move to S.B. 325.

SENATE BILL 325: Makes various changes concerning the English language. (BDR 19-760)

SENATOR BEERS:
There is a mock-up amendment (Exhibit D). It incorporated extensive language about legislative intent to improve the lives of immigrants by urging them to master English. There are two additional changes.

CHAIR HARDY:
Does your amendment take into account amendments offered by Nancy K. Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services?

SENATOR BEERS:
It does not. On page 2 of Exhibit D, lines 20 and 21 are deleted. This would allow official publications of the state to be printed in languages other than English. The other change is the deletion of section 3, which required tracking the expenses of providing government services in languages other than English.

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# WORK SESSION

## SENATE COMMITTEE ON GOVERNMENT AFFAIRS

**April 13, 2007**

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

### Bills Under Consideration

The following measures may be considered for action during today's work session. In some cases, possible amendments are noted. These amendments were either suggested during testimony or submitted after the hearing and do not necessarily have the approval of the Committee.

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

# SENATE COMMITTEE ON GOVERNMENT AFFAIRS

The following measure may be considered for action during today's work session:

**SENATE BILL 123**

**Makes various changes to provisions relating to public records. (BDR 19-462)**

| | |
|---|---|
| **Sponsored by:** | **Senator Care** |
| **Date Heard:** | **February 26, 2007; April 4 and April 9, 2007 (Subcommittee); April 11, 2007 (Work Session)** |
| **Fiscal Impact:** | **Effect on Local Government: May have Fiscal Impact**<br>**Effect on the State: Yes** |

**Summary of Mock-up:**

**SECTION 1:** **Preamble language.**

**SECTION 2:** **Sets forth a Legislative declaration setting for the purpose of Chapter 239 of the *Nevada Revised Statutes* (NRS) and providing that this provision of the Chapter be construed liberally.**

**SECTION 3:** **Relates to the records of nongovernmental entities. Specifically, it provides that the records of a nongovernmental entity that are directly related to the administration, management, or regulation of a program or activity for or on behalf of a governmental entity are considered public records. This does not apply to the financial or other proprietary records of the nongovernmental agency.**

**SECTION 4:** **Declares that the person having legal custody over public record must, by the end of the fifth business day after receiving a written request for the record or records, either allow the person to inspect or copy the record or notify the requestor of the circumstances as to why he or she is unable to view the record (i.e. the official does not have legal custody, etc.). If the public record is not available by the end of the fifth business day, the requester may inquire regarding the status of the request. Any denial of public records inspection due to their confidentiality must be in writing and cite the specific legal or statutory authority making the document confidential.**

**Section 4 also provides that any decision by a governmental entity concerning the provisions in the previous paragraph is the final decision for purposes of judicial review. Finally, those provisions must not be construed to prohibit an oral request to inspect or copy a public record.**

SECTION 5: Declare that the governmental entity, in a judicial or administrative proceeding, bears to the burden of proof in asserting that a public record is confidential.

SECTION 6: Provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 30 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. This section also clarifies that if the public book or record pertains to a natural person, a person may not apply for an order pursuant to this subsection until the public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.

SECTION 7: Clarifies that a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law.

SECTION 8: Provides that a governmental entity having legal custody or control of a public record shall not deny a request to inspect or copy that record because it contains information that is confidential if the governmental entity can redact the confidential information.

SECTION 9: Deleted in the mock-up.

SECTION 10: Provides for an effective of October 7, 2007, for the purposes of applying to the District Court for an order directing a governmental entity to allow the person to inspect or copy a public book or record that pertains to a natural person if, on the date of the application, the public book or record has been in the legal custody or control of a governmental entity for a period of 30 years or more or the natural person has died, whichever is later.

POSSIBLE FURTHER AMENDMENTS:

Senator Terry Care, Chairman of the S.B. 123 Subcommittee, will offer a few clarifying amendments to the attached mock-up.

MOCK-UP

# PROPOSED AMENDMENT 3229 TO SENATE BILL NO. 123

*PREPARED FOR SENATE COMMITTEE ON GOVERNMENT AFFAIRS*
*APRIL 11, 2007*

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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 to 6, inclusive, of this act.

**Sec. 2.** ***The Legislature hereby finds and declares that:***

***1. The purpose of this chapter 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;***

***2. The provisions of this chapter must be construed liberally to carry out this important purpose; and***

***3. Any 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.***

**Sec. 3.** ~~***[Records]***~~ ***1. Except as otherwise provided in subsection 2, records of a nongovernmental entity*** ~~***[are public records that must be open for inspection and copying only if such records:***~~

~~***1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating]***~~ ***that are directly related to the administration, management***

*or regulation of an activity, program, institution or facility by the nongovernmental entity for or on behalf of a governmental entity~~[; and~~*

*~~2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 1 of NRS 239.005.]~~ are public records that must be open for inspection and copying.*

*2. This section does not apply to the financial or other proprietary records of the nongovernmental entity.*

**Sec. 4.** *1. Not later than the end of the ~~[second]~~ fifth business day after the date on which ~~[it]~~ the person who has legal custody or control of a public book or record of a governmental entity receives a written request from a person to inspect or copy ~~[a]~~ the public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.*

*(c) ~~[If extraordinary circumstances exist which make it impossible for]~~ Except as otherwise provided in paragraph (d), if the governmental entity is unable to ~~[allow the person to inspect or copy]~~ make the public book or record available by the end of the ~~[second]~~ fifth business day after the date on which the ~~[person made his]~~ person who has legal custody or control of the public book or record received the request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. ~~[Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.]~~ If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, ~~[has been declared by law to be]~~ is confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific statute or other legal authority that ~~[declares]~~ makes the public book or record, or a part thereof, ~~[to be]~~ confidential.*

*2. ~~[If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:~~*

*~~(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or~~*

*~~(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.~~*

*~~3.]~~ Any decision made pursuant to subsection ~~[2]~~ 1 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. ~~[A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.120 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.~~*

*~~4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.]~~*

*3. The provisions of this section must not be construed to prohibit an oral request to inspect or copy a public book or record.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. ~~[Notwithstanding]~~ Except as otherwise provided in this subsection, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the legal custody or control of one or more governmental entities for at least ~~[10]~~ 30 years, a person may apply to the district court of the county in which is located the governmental entity*

***that currently has legal custody or control of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof. If the public book or record pertains to a natural person, a person may not apply for an order pursuant to this subsection until the public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.***

***2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.***

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ ***; or***

***(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.***

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the

advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. ***A governmental entity*** ***that has legal custody or control of a public book or record*** ***shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that*** ~~***[has otherwise been declared by law to be]***~~ ***is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that*** ~~***[has]***~~ ***is not otherwise*** ~~***[been declared by law to be]***~~ ***confidential.***

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ *4.* A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has ***legal*** custody ***or control*** of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** ~~[NRS 239.012 is hereby amended to read as follows:~~

~~239.012 [A] *Except as otherwise provided in subsection 4 of section 4 of this act, 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.~~] **(Deleted by amendment.)**

**Sec. 10. 1.** ~~[For]~~ **Except as otherwise provided in this subsection, for** the purposes of section 6 of this act, a person may ~~[not]~~ apply to a district court ~~[before]~~ **on or after** October 1, ~~[2017,]~~ **2007,** for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, ~~[regardless of whether]~~ **if** the public book or record ~~[will have]~~ **has** been in the **legal** custody **or control** of a governmental entity for a period of ~~[10]~~ **30** years or more ~~[before that]~~ **on the** date ~~[.]~~ **of the application. A person may apply to the district court on or after October 1, 2007, for an order directing a governmental entity to allow the person to inspect or copy a public book or record that pertains to a natural person if, on the date of the application, the public book or record has been in the legal custody or control of a governmental entity for a period of 30 years or more or the natural person has died, whichever is later.**

**2. As used in this section, "governmental entity" has the meaning ascribed to it in NRS 239.005, as amended by section 7 of this act.**

SENATE BILL NO. 123–SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public records. (BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take action within a certain period in response to a request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; providing in skeleton form a mechanism pursuant to which a person may apply to a district court for an order to allow the person to inspect or copy a confidential public book or record that has been in the custody of a governmental entity for at least 10 years; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours for inspection and copying. (NRS 239.010)

**Section 4** of this bill provides that if a governmental entity receives a request to inspect or copy a public book or record, the governmental entity must, within 2 business days after the date on which the request was received, allow the requester to inspect or copy the public book or record, or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied. If a governmental entity is unable to release a public book or record to a requester because it has been declared by law to be confidential and the governmental entity fails within 2 business days to provide notice of that fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is confidential, and must allow the requester to inspect or

copy that public book or record. If a person is proximately harmed by such a deemed waiver of confidentiality, the person may bring an action for damages against the governmental entity.

**Section 6** of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 10 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. **Section 10** of this bill provides that a person may not apply for such an order until October 1, 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective date of the bill.

**Section 5** of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has custody of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

**Sections 3 and 7** of this bill provide that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law (chapter 239 of NRS), the records of a nongovernmental entity are public records that must be open for inspection and copying only if such records: (1) are created, obtained, maintained or preserved in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and (2) would otherwise be considered public records within the meaning of NRS 239.010.

**Section 8** of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that has been declared by law to be confidential if the governmental entity can redact the confidential information.

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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 to 6, inclusive, of this act.

**Sec. 2.** *The Legislature hereby finds and declares that:*

*1. The purpose of this chapter 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;*

*2. The provisions of this chapter must be construed liberally to carry out this important purpose; and*

*3. Any 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.*

**Sec. 3.** *Records of a nongovernmental entity are public records that must be open for inspection and copying only if such records:*

*1. Are created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and*

*2. Would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005.*

**Sec. 4.** *1. Not later than the end of the second business day after the date on which it receives a request from a person to inspect or copy a public book or record, a governmental entity shall do one of the following, as applicable:*

*(a) Allow the person to inspect or copy the public book or record.*

*(b) If the governmental entity does not have custody of the public book or record, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) The name and address of the governmental entity that has custody of the public book or record, if known.*

*(c) If extraordinary circumstances exist which make it impossible for the governmental entity to allow the person to inspect or copy the public book or record by the end of the second business day after the date on which the person made his request, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A date and time after which the public book or record will be available for the person to inspect or copy. Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.*

*(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, has been declared by law to be confidential, provide to the person, in writing:*

*(1) Notice of that fact; and*

*(2) A citation to the specific legal authority that declares the public book or record, or a part thereof, to be confidential.*

*2. If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to*

*inspect or copy the public book or record, or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:*

*(a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or*

*(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.*

*3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 233B.130 to 233B.150, inclusive, for the review of decisions of administrative agencies in contested cases.*

*4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant.*

**Sec. 5.** *Except as otherwise provided in section 6 of this act, if:*

*1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and*

*2. The governmental entity that has custody of the public book or record asserts that the public book or record, or a part thereof, is confidential,*

*➥ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.*

**Sec. 6.** *1. Notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the custody of one or more governmental entities for at least 10 years, a person may apply to the district court of the county in which is located the governmental entity that currently has custody of the public book or record for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof.*

*2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to*

*inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.*

**Sec. 7.** NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~[or]~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~[.]~~ *; or*

*(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.*

**Sec. 8.** NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~[All]~~ *Except as otherwise provided in subsection 2, all* public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. *A governmental entity shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains*

*information that has otherwise been declared by law to be confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that has not otherwise been declared by law to be confidential.*

*3.* A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

~~[3.]~~ *4.* A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has custody of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

**Sec. 9.** NRS 239.012 is hereby amended to read as follows:

239.012 ~~[A]~~ *Except as otherwise provided in subsection 4 of section 4 of this act, 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. 10.** For the purposes of section 6 of this act, a person may not apply to a district court before October 1, 2017, for an order directing a governmental entity to allow the person to inspect or copy a public book or record, or a part thereof, regardless of whether the public book or record will have been in the custody of a governmental entity for a period of 10 years or more before that date.

**MINUTES OF THE**
**SENATE COMMITTEE ON FINANCE**

**Seventy-fourth Session**
**May 4, 2007**

The Senate Committee on Finance was called to order by Chair William J. Raggio at 8:44 a.m. on Friday, May 4, 2007, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator William J. Raggio, Chair
Senator Bob Beers, Vice Chair
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Bob Coffin
Senator Dina Titus
Senator Bernice Mathews

**GUEST LEGISLATORS PRESENT:**

Senator Terry Care, Clark County Senatorial District No. 7
Senator Steven A. Horsford, Clark County Senatorial District No. 4

**STAFF MEMBERS PRESENT:**

Gary L. Ghiggeri, Senate Fiscal Analyst
Cynthia Clampitt, Committee Secretary

**OTHERS PRESENT:**

Jean Gunter, Manager, Office of Vital Records, Bureau of Health Planning and Statistics, Health Division, Department of Health and Human Services
Louise Bush, Chief, Child Support Enforcement, Division of Welfare and Supportive Services, Department of Health and Human Services
Lawrence Casey, Executive Director, Nevada Commission on Homeland Security
Morgan Baumgartner, Nevada Resort Association
Tom Porta, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Richard J. Yeoman, Administrative Services Officer, Nevada Department of Transportation
Paul Sawyer, Oregon, Nevada, California Emigrant Trail Association
Acting Major Mark Woods, Executive Officer, Division of Parole and Probation, Department of Public Safety
Tray Abney, Legislative Director, Office of the Governor
Andrew Clinger, Director, Department of Administration
Leo Drozdoff, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Gary Stagliano, Deputy Administrator, Program and Field Operations, Division of Welfare and Supportive Services, Department of Health and Human Services

CHAIR RAGGIO:
Is the amendment you are discussing already incorporated into the first reprint of S.B. 90, or would this be an additional amendment?

MR. CASEY:
The amendment is not included in the first reprint. It is my understanding it was sent to the Legislative Counsel Bureau by Senator Nolan's staff yesterday.

GARY L. GHIGGERI (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
I received a copy of the amendment last evening during a meeting. I have not had an opportunity to review its contents.

CHAIR RAGGIO:
The original fiscal note was nominal. It requested $11,400 annually. We will await staff's review and report to the Committee as to whether or not the fiscal note is removed in its entirety. It is only fair the nonvoting members should receive at least some compensation.

I hereby close the hearing on S.B. 90 and open the hearing on S.B. 123. This measure was heard in the Senate Committee on Government Affairs. We are reviewing a first reprint of the bill.

**SENATE BILL 123 (1st Reprint)**: Makes various changes to provisions relating to public records. (BDR 19-462)

SENATOR CARE:
The focus of S.B. 123 is found in sections 1 through 10. Sections 11 and forward make reference to section 6 which provides that after 30 years, with the exception of gaming documents, there is a presumption the records would be open to public inspection. It is a rebuttal presumption, that the holder of the records can demonstrate to the satisfaction of the court, the records should remain sealed. That language affects a number of entities and is the reason for the length of the measure.

Senators Beers, Townsend and I sat on a subcommittee that took public testimony twice on this bill. It was again discussed during a work session of the Senate Committee on Government Affairs. The measure was passed in its amended form.

A number of entities participated in the hearings. Many fears concerning the original language of the bill had to be alleviated. To my knowledge, the fears have been addressed and the measure now has the approval of most of those entities.

CHAIR RAGGIO:
At the time the Senate Committee on Government Affairs passed S.B. 123, it was well accepted. Is this the bill that excludes the application for licensing under the Gaming Control Board from being opened after 30 years?

SENATOR CARE:
Yes, sir. That is found in section 6, subsection 3.

CHAIR RAGGIO:
I believe there is a request for an amendment to S.B. 123. Was the sponsor of the bill informed of the minor amendment proposed?

SENATOR CARE:
Yes, sir.

MORGAN BAUMGARTNER (Nevada Resort Association):
This is a simple amendment to section 6 of S.B. 123 (1st Reprint). The language in the first reprint only excluded that information submitted pursuant to an application being submitted. It would not cover a license holder and all currently confidential information as specified in NRS 463.120. The amendment would ensure all gaming control records currently considered confidential would remain confidential.

CHAIR RAGGIO:
The amendment under section 6, subsection 3, would read, "The provisions of subsection 1 do not apply to any book or record declared confidential pursuant to subsection 4 of NRS 463.120."

MS. BAUMGARTNER:
That is correct. Chapter 463 of the NRS is the gaming control chapter.

CHAIR RAGGIO:
The amendment would include not only applicants but persons who are licensed?

MS. BAUMGARTNER:
There is an articulated list of confidential information in NRS 463.120.

CHAIR RAGGIO:
Is the proposed amendment acceptable to the sponsor of S.B. 123?

SENATOR CARE:
I concur. That is consistent with the sentiment of the original committee.

SENATOR COFFIN:
Does the bill involve the Legislature in any way?

SENATOR CARE:
It does not. This bill does not change in any way the status of documents already deemed confidential.

SENATOR COFFIN:
My next question is concerning board memberships consisting of private and public entities. Have we drawn in any organizations such as Las Vegas Events, development authorities and others?

SENATOR CARE:
I have had discussions previously about Las Vegas Events. It is not a governmental entity, or a private entity, that holds a contract to perform a governmental service. Those documents would not be available for public inspection. This bill does not implicate, in any way, the Open Meeting Law.

CHAIR RAGGIO:
The Committee will consider the fiscal notes if the measure is passed. There are a number of fiscal notes attached to the original bill. One by the Nevada Commission on Homeland Security was minimal. The Office of the Attorney General and the Office of the Secretary of State had substantial fiscal notes. The Department of Health and Human Services indicated substantial loss of revenue as a result of S.B. 123.

TOM PORTA, P.E. (Deputy Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources):
The amendments that have been provided allow the Division of Environmental Protection to withdraw our fiscal note.

RICHARD J. YEOMAN (Administrative Services Officer, Nevada Department of Transportation):
I am the custodian of records for the Nevada Department of Transportation (NDOT). We worked with Senator Care and the subcommittee which alleviated many of our concerns. However, our fiscal note is minor. We feel two additional positions will be needed to address the bill requirements.

CHAIR RAGGIO:
Has the NDOT submitted a new fiscal note to that effect?

MR. YEOMAN:
The original fiscal note from the NDOT includes that request.

CHAIR RAGGIO:
Staff, please contact the other agencies that have submitted fiscal notes on this measure, and who are not present at this hearing, to determine the status of their fiscal notes with the first reprint of S.B. 123.

I hereby close the hearing on S.B. 123 and open the hearing on S.B. 215. This bill requests an appropriation to Elko County for acquisition and maintenance of exhibits for the California Trail Interpretive Center.

**SENATE BILL 215**: Makes an appropriation to Elko County for the acquisition and maintenance of exhibits for the California Trail Interpretive Center. (BDR S-884)

SENATOR RHOADS:
I am pleased to tell the Committee the California Trail Interpretive Center is under construction. Mr. Paul Sawyer, the inspiration for the project, is present.

PAUL SAWYER (Oregon, Nevada, California Emigrant Trail Association):
I have provided a packet of information (Exhibit D) in support of the request in S.B. 215. The bill relates to the funding of some of the interpretive exhibits for the California Trail Interpretive Center located approximately eight miles west of Elko.

Currently, the site improvements, the infrastructure items and building are under construction on a 40-acre site, and a road easement has been donated by the Bill Searle family of the Maggie Creek Ranch. The underlying mineral estates have also been donated by several parties. The contract for this portion of the project is $9.4 million and it is being fulfilled by the West Coast Contractors of

# MINUTES OF THE
# SENATE COMMITTEE ON JUDICIARY

## Seventy-fourth Session
## May 11, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:06 a.m. on Friday, May 11, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Valerie E. Weber, Assembly District No. 5

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

**OTHERS PRESENT:**

Ken Lightfoot, Director of Loss Prevention, Scolari's Food and Drug Company
Lea Lipscomb, Retail Association of Nevada
Samuel P. McMullen, Retail Association of Nevada
Jesse Wadhams, American Insurance Association
Jeanette K. Belz, Property Casualty Insurers Association of America
Ray Bacon, Nevada Manufacturers Association

item out of the store. The people involved in the ring might be involved in acts beyond taking the property in their hands. As to whether persons include juveniles, I believe it would.

SENATOR HORSFORD:
Under that scenario, two children who are with their parent and commit this "retail theft ring" could be charged with a Category B felony if the value is as high as the bill states?

MR. WILKINSON:
The children will have to be willing participants in the ring, fall under the juvenile court system and not be subject to adult penalties; the adult will be charged with a Category B felony. I do not know if other states that have this law have faced this kind of situation.

SENATOR WIENER:
In my first session, we passed law that if an adult used a child in a commission of a crime, there was an enhancement for the adult. That would be a substantial inducement not to use a juvenile. How would that law play in the scenario Senator Horsford gave?

MR. WILKINSON:
I believe you are correct. It would fall under enhancements statute and there would be an additional penalty.

CHAIR AMODEI:
Is there anyone else to testify on A.B. 421? We will close the hearing and reopen the hearing on A.B. 519.

**ASSEMBLY BILL 519 (1st Reprint)**: Enacts provisions concerning the sealing of certain court documents. (BDR 1-1404)

JESSE WADHAMS (American Insurance Association):
A letter was submitted (Exhibit C) to cover the points we would like to make. We oppose this bill.

MR. MCMULLEN:
I oppose A.B. 519. Many of us believe the sealing of court records would drive a supreme court to look at that issue comprehensively. It ought to be given a

chance to work. This has been a continuous issue. If you look at this law, the important point is no record would ever be sealed.

Testimony by Kathy A. Hardcastle, Chief District Judge, Department 4, Eighth Judicial District, showed how this language is broad and reasons were given for keeping information open. If we look at the process and take a case such as a slip and fall, it would affect businesses, retail or restaurant establishments and could be a public hazard. As part of the settlement, depositions and other evidence in the records were sealed. The process envisioned on page 2 of Exhibit C takes an individual case and its costs for litigation. Other people will participate and cause costs and a lot of disruption of judicial economy. I do not know the fiscal impact on the judicial system. If the attorney prosecuting a case has to decide whether records should be sealed, this adds a different process and costs to the case. This would be an interesting point for the Committee to consider in terms of whether it is the right thing to enhance the settlement of these cases.

A lot happens in litigation; people want to know about them and sometimes profit from them. Cases get resolved, sometimes through settlement; this is a feature of the judicial system. When you change that, you change the playing field for bargaining and balance.

SENATOR CARE:
It has been framed in terms of all or nothing. By that, I mean a case is sealed or it is not sealed. Let me use the analogy from my public records bill, Senate Bill (S.B.) 123. Under state law, the government may refuse to produce a document if it contains confidential information. Senate Bill 123 would say, no, you redact the confidential information and produce the rest of the document. The only documents we are talking about would be those documents filed with the courts and the exhibits attached to those documents, not the settlement agreement or the deposition transcripts unless they are attached to a particular motion.

What would be wrong in a products liability case, for example, with saying the case may not be sealed except for trade secrets, proprietary and confidential information and such? I am trying to imagine the rationale for sealing a products liability case.

MR. MCMULLEN:
That question was addressed in past legislative hearings. In a general sense, most of these cases, whether a slippery tile or a chair that breaks, are products liability cases. A blanket allowance of all of those might have a great effect on settlement and judicial economy. The litigation and disclosure systems are not perfect, but the point is it does work and there is a balance with plaintiffs gaining settlement on difficult cases without a lot of court costs because of the opportunity to settle.

We are talking about depositions filed which contain a large amount of testimony about processes and such. I am not sure redaction would work in those cases, but it might. It is far-ranging testimony of very probing questions about products liability, manufacturing processes, business processes and care and control processes. That is a lot of information. Unfortunately, we have found these depositions marketed on the Internet and other places, and people try to use them in fostering other cases. Having a blanket opening of that kind of information under the theory that products liability should be out in front of the world might be much more damaging. We do not know the effect of this; it sounds great, but it could be a serious disruption of existing processes.

CHAIR AMODEI:
Is there anything else for these testifiers from the Committee?

JEANETTE K. BELZ (Property Casualty Insurers Association of America):
I have a letter from my client, Sam Sorich, Vice President and Regional Manager, Property Casualty Insurers Association of America (Exhibit D). This bill burdens the court, drains judicial resources and discourages settlements. We urge this judicial body to allow the Nevada Supreme Court to do its job.

RAY BACON (Nevada Manufacturers Association):
We also oppose A.B. 519.

CHAIR AMODEI:
Senator Care, you had a proposed amendment from the Nevada Supreme Court; can you bring us up to date?

**MINUTES OF THE**
**SENATE COMMITTEE ON FINANCE**

**Seventy-fourth Session**
**May 15, 2007**

The Senate Committee on Finance was called to order by Chair William J. Raggio at 4:23 p.m. on Tuesday, May 15, 2007, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator William J. Raggio, Chair
Senator Bob Beers, Vice Chair
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Bob Coffin
Senator Dina Titus
Senator Bernice Mathews

GUEST LEGISLATORS PRESENT:

Joseph J. Heck, Clark County Senatorial District No. 5
Randolph J. Townsend, Washoe County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Bob Atkinson, Senior Program Analyst
Sarah Coffman, Program Analyst
Joi Davis, Program Analyst
Jeffrey A. Ferguson, Program Analyst
Gary L. Ghiggeri, Senate Fiscal Analyst
Eric King, Program Analyst
Melinda Martini, Program Analyst
Michael Bohling, Committee Secretary

OTHERS PRESENT:

Hatice Gecol, Ph.D., Director, Nevada State Office of Energy
Rose McKinney-James, Clark County School District
Scott Craigie, Arizona Public Service Energy Services Company
Carole A. Vilardo, Nevada Taxpayers Association
Patrick Cates, Administrative Officer, Division of Health Care Financing and Policy, Department of Health and Human Services
Steven W. Kondrup, Acting Commissioner, Division of Financial Institutions, Department of Business and Industry
Ted J. Olivas, City of Las Vegas
David K. Morrow, Administrator, Division of State Parks, State Department of Conservation and Natural Resources
Allen Biaggi, Director, State Department of Conservation and Natural Resources
Kenneth E. Mayer, Director, Department of Wildlife
Gloria P. Dopf, Deputy Superintendent for Instructional, Research and Evaluative Services, Department of Education

CHAIR RAGGIO:
We will close the hearing on S.B. 38 and open the hearing on S.B. 71.

**SENATE BILL 71 (1st Reprint):** Enacts certain provisions of the Uniform Parentage Act. (BDR 11-719)

CHAIR RAGGIO:
Were any amendments proposed on this bill?

MR. GHIGGERI:
An amendment was proposed by a representative of Child Support Enforcement. At that hearing, the Committee requested that Senator Terry Care provide a copy of the proposed amendment to whoever requested the legislation. I have attached a copy of the amendment and a response provided for the Committee's review as well as a revised fiscal note for the bill as amended (Exhibit F). The implementation cost for the Health Division is approximately $9,800 in FY 2007-2008 and an estimated loss to the General Fund for vital statistics fees of $69,000 each fiscal year of the biennium.

It appears there is a conflict between the suggested amendment from Child Support Enforcement and the information provided by Senator Care.

CHAIR RAGGIO:
Senator Care is not present. We will hold this until we can hear from him.

We will close the hearing on S.B. 71 and open the hearing on S.B. 123.

**SENATE BILL 123 (1st Reprint):** Makes various changes to provisions relating to public records. (BDR 19-462)

CHAIR RAGGIO:
Senate Bill 123 was first heard in the Senate Committee on Government Affairs, then in this Committee. We have an updated fiscal note (Exhibit G), and I believe there was a significant amendment. We received a subsequent letter from the Division of Parole and Probation indicating concerns and a response from Senator Care. In deference to Senator Care, we will hold this bill until he and others concerned with the issue are here.

We will close the hearing on S.B. 123 and open the hearing on S.B. 186.

**SENATE BILL 186:** Makes an appropriation to the Office of the Governor to purchase replacement computer hardware and software and to purchase office furniture and machines. (BDR S-1202)

CHAIR RAGGIO:
Senate Bill 186 is an appropriation in the budget to purchase replacement computers; there is a proposed amendment which changes the amount of the appropriation (Exhibit H).

MR. GHIGGERI:
This legislation was heard in this Committee on March 28, 2007. A revised recommendation from the Governor is in Exhibit H. We have updated the Governor's revised recommendation with current prices for the equipment. This

# DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

## FISCAL NOTE SUMMARY FOR S.B. 123

| Agency | Original Bill | | | First Reprint | | |
|---|---|---|---|---|---|---|
| | FY 2007-08 | FY 2008-09 | Future Biennia | FY 2007-08 | FY 2008-09 | Future Biennia |
| Governor's Office | No Impact | | | No Impact | | |
| Lt. Governor | No Impact | | | No Impact | | |
| Attoney General | $179,851 | $213,367 | $213,367 | No Impact | | |
| Controller's Office | No Impact | | | No response | | |
| Secretary of State | $121,180 | $119,610 | $240,773 | No Impact | | |
| State Treasurer | No Impact | | | No Impact | | |
| Administration | No Impact | | | No Impact | | |
| Taxation | Indeterminate Fiscal Impact | | | Indeterminate Fiscal Impact | | |
| Information Technology (DOIT) | $1,711 | $1,711 | $3,422 | $1,711 | $1,711 | $3,422 |
| Personnel | $4,349 | $4,349 | $8,699 | No Impact | | |
| Education | No Impact | | | No Impact | | |
| Nevada System of Higher Education | Indeterminate Fiscal Impact | | | Indeterminate Fiscal Impact | | |
| Cultural Affairs | $12,625 | $12,625 | $25,250 | No response | | |
| Agriculture | No Impact | | | No Impact | | |
| Gaming Control Board | No Impact | | | No Impact | | |
| Transportation Services Authority, B&I | No Impact | | | No Impact | | |
| Consumer Affairs Division, B&I | No Impact | | | No Impact | | |
| Real Estate Division, B&I | No Impact | | | No Impact | | |
| Financial Institutions Division, B&I | No Impact | | | No Impact | | |
| Housing Division, B&I | $220 | $250 | $500 | No Impact | | |
| Mortgage Lending, B&I | No Impact | | | No Impact | | |
| Insurance Division, B&I | No Impact | | | No Impact | | |
| Industrial Relations Division, B&I | No Impact | | | No Impact | | |
| Athletic Commission, B&I | No Impact | | | No Impact | | |
| Taxicab Authority, B&I | No Impact | | | No Impact | | |
| Health & Human Services | $1,016,048,854 | $1,051,179,489 | $2,102,357,989 | $ 92,004 | $ 126,030 | |
| Corrections | $877,256 | $1,120,608 | $2,408,688 | $96,786 | $127,744 | $274,696 |
| Employment, Training & Rehabilitation | $34,803,652 | $34,802,430 | $69,611,766 | No Impact | | |
| Research & Development, DMV | $1,645,442 | $2,241,197 | $4,482,394 | $16,200 | $0 | $0 |
| Director's Office, Public Safety | $646 | $678 | $1,425 | $646 | $678 | $1,425 |
| Homeland Security, Public Safety | $410 | $410 | $845 | $410 | $410 | $845 |
| Office of Professional Responsibility, Public Safety | No Impact | | | No Impact | | |
| Records & Technology, Public Safety | No Impact | | | No Impact | | |
| Emergency Management, Public Safety | No Impact | | | No Impact | | |
| Criminal Justice Assistance, Public Safety | No Impact | | | No Impact | | |
| Highway Patrol, Public Safety | No Impact | | | No Impact | | |
| Investigation Division, Public Safety | No Impact | | | No Impact | | |
| Parole & Probation, Public Safety | No Impact | | | No Impact | | |
| Capitol Police, Public Safety | No Impact | | | No Impact | | |
| Training Division, Public Safety | No Impact | | | No Impact | | |
| Traffic Safety, Public Safety | No Impact | | | No Impact | | |
| Fire Marshall, Public Safety | No Impact | | | No Impact | | |
| Emergency Response Commission, Public Safety | No Impact | | | No Impact | | |
| Parole Board, Public Safety | Indeterminate Fiscal Impact | | | No Impact | | |
| State Lands, Conservation | $360 | $540 | $540 | No response | | |
| Environmental Protection, Conservation | $78,157 | $83,661 | $179,982 | No Impact | | |
| Wildlife | No Impact | | | No Impact | | |
| Transportation (NDOT) | $121,715 | $112,828 | $221,143 | No Impact | | |
| Office of the Military | $400 | $400 | $800 | $400 | $400 | $800 |
| **Total, All Agencies** | **$1,053,896,828** | **$1,089,894,153** | **$2,179,757,583** | **$208,157** | **$256,973** | **$281,188** |
| Does not include indeterminate impact. | | | | | | |

## Harvey, Cheryl

**From:** Alison A. Gordon [aagordon@doit.nv.gov]
**Sent:** Tuesday, May 08, 2007 8:41 AM
**To:** Harvey, Cheryl
**Subject:** RE: Request for Fiscal Impact of Senate Bill 123, as Amended.

Cheryl,

The original fiscal note submitted by the Department of Information Technology still applies to the amended bill.

Thanks,

Alison Gordon

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**From:** Harvey, Cheryl [mailto:CHarvey@lcb.state.nv.us]
**Sent:** Friday, May 04, 2007 3:23 PM
**To:** Mary Keating; Kathy Besser; tasulli@ag.state.nv.us; reinhard@controller.state.nv.us; Miles Celio; Kate Thomas; Renee Parker; Maureen L. Groach; Susan M. Injayan; Rex Reed; Alison A. Gordon; drexwinkel@doc.nv.gov; Scott Sisco; Keith Rheault; Mike Willden; dcolling@dmv.state.nv.us; Mark Anastas; mteska@dps.state.nv.us; Dino Dicianno; dbaughman@dot.state.nv.us; wiswell@nevada.edu; Anthony Grossman; ccchair@gcb.nv.gov
**Cc:** Ghiggeri, Gary; Calilung, Tina
**Subject:** Request for Fiscal Impact of Senate Bill 123, as Amended.

Please find attached the first reprint of Senate Bill 123, which was heard by the Senate Committee on Finance. Pursuant to NRS 218.273, Chairman Raggio has requested a revised fiscal note. Please review the amended bill and provide a revised statement of fiscal impact, if necessary, to the Fiscal Analysis Division. If the original fiscal note submitted by the agency still applies to the amended bill, please advise. Given the very limited timeframe in which the Legislature can act, please provide your response as soon as practicable, but no later than Tuesday, May 8. You may submit your response by reply email.

Your attention to this matter is greatly appreciated.

Best regards,

Tina Calilung
Deputy Fiscal Analyst
Fiscal Analysis Division
Legislative Counsel Bureau
(775) 684-6465
tcalilung@lcb.state.nv.us

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | **Department of Health & Human Services** | | | | | | | | | |
| | Fiscal Note- BDR 19-462 | | | | | | | | | |
| | | | | | | | | | | |
| | Changes to provisions regarding Public Records | | | | | | | | | |
| | | | | | | | | | | |
| | **Costs** | | | | | | **Total** | | | |
| | | | | | | | **SFY 08** | **SFY 09** | | |
| Category 01 | Personnel | | | Grade/step | FTE | | | | | |
| | 4.230 | Archivist I | | 31/6 | 1.00 | | $48,512 | $70,629 | | |
| | 2.212 | Administrative Assistant II | | 25/1 | 1.00 | | $32,968 | $47,996 | | |
| | | | | | | | | | | |
| Category 03 | In-State Travel | | Number of trips | Per Diem rate | Airfare | | | | | |
| | | | 5 | $26.00 | $250.00 | | $1,380 | $1,380 | | |
| | Travel to gather information, records, etc | | | | | | | | | |
| | | | | | | | | | | |
| Category 04 | Operating | | Number SF | Cost per | # month | | | | | |
| | Operating- leased space | | 200 | $2.09 | 12 | | $3,762 | $5,016 | | |
| | Operating Supplies | | 2 | $250.00 | | | $500 | $500 | | |
| | | | | | | | | | | |
| | | | | Cost per | # month | | | | | |
| Category 26 | Phone | | 2 FTE | $12.27 | 12 | | $221 | $294 | | |
| | Voicemail | | 2 FTE | $4.22 | 12 | | $76 | $101 | | |
| | Email | | 2 FTE | $4.74 | 12 | | $85 | $114 | | |
| | | | | | | | | | | |
| | PC set-up x2 | | 2 FTE | | | | $4,500 | $0 | | |
| | | | | | | | | | | |
| | | | | | | | $92,004 | $126,030 | | |

SB 123/ BDR 19-462 requires the State Health Division and other governmental agencies to establish a protocol by which persons may request to inspect and/or copy certain public books or records.

The Health Division interprets BDR 19-462/SB 123 to require that the agency define a mechanism to respond to such inquiries within 5 days of receipt of the written request, per the language in the bill. There are provisions in the language which allow for the confidentiality of information to be addressed, however if the above timeline is not met, the allowance for stipulation of confidentiality is withdrawn, therefore meeting this timeline is essential. Action is required within the required timeline which is interpreted to mean that the document would need to be obtained, reviewed, redacted, and made available in order to avoid any potential consequence, as mentioned above. Duties include the management and collection of all Division records with a defined mechanism for storage, access and a defined practice for discerning the level and nature of the request and it's confidentiality implications.

The Division's workload estimates are defined by initial set-up, re-organization of records, and anticipated requests although the volume is not currently known. As the Division provides services and performs functions statewide, there would need to be a central repository for records, yet day-to-day access in the rural counties may become problematic. Additionally, based the multitude of programs significant workload would be indicated if record requests are in large quanitity.

(3)

2820

NDOC Fiscal Note Calculation
BDR 19-462
SB 123
Revised May 7, 2007

| NEED | EXPLANATION | FY 08 | FY 09 | FY 10 | FY 11 |
|---|---|---|---|---|---|
| 2 - Public Information Officers | Given the many requests for public information received by NDOC are from the media, it would be necessary to create two information centers, one in the North and one in the South. | 87488 | 125950 | 132248 | 138860 |
| Equipment | Computers and Desks | 7744 | 0 | 0 | 0 |
| Operating | $40 x 2 employees x 12 months | 720 | 960 | 960 | 960 |
| Assessments | Bonds, Tort, Doit | 834 | 834 | 834 | 834 |
| | | $ 96,786 | $ 127,744 | $ 134,042 | $ 140,654 |
| | | | | | $ 274,696 |

NOTE: This revised fiscal note reflects a change in the proposed bill from two days to five days to respond to requests for information. Additionally, we have assumed the five days starts when the actual person who has the record receives the request, not any staff member who works for the Department.

(4)

2821

BDR
AB
SB 123

**Executive Agency**
**Fiscal Note**

State Agency's Estimates Date Prepared: 5/8/2007

Agency Submitting: Department of Motor Vehicles
Division Submitting Research and Development

| Category Type | Items of Revenue or Expense | FY 2006-07 | FY 2007-08 | FY 2008-09 | Effect on Future Bienna |
|---|---|---|---|---|---|
| Expense | Programming Costs | $0 | $16,200 | $0 | $0 |
| | | $0 | $0 | $0 | $0 |
| | | $0 | $0 | $0 | $0 |
| | **Total** | **$0** | **$16,200** | **$0** | **$0** |

Explanation (Attachments may only be 8 1/2 x 11)

Senate Bill 123, as amended, will require the Department to respond within five (5) business days to record requests. The Department does not maintain statistics on requests for information that are denied due to the confidential nature of those records. Therefore, the Department cannot accurately estimate the potential fiscal impact for increased mailing and postage costs, although there will certainly be some impact. The only fiscal impact the Department can identify at this time is the cost for programming (120 x $135 per hour = $16,200).

The Department intends to use the Reserve for Reversion (CAT 85 / BA 4711) account to offset any mailing or postage increases caused by the passage of SB123. There will be $500,000 in this account as of July 1, 2007.

**Budget Unit Approval:**

Signature Date

**Signature(s) of Administrator(s) of affected Division(s)**

ASD Administrator Signature Date

R & D Administrator Signatı Date

Signature Date

Signature Date

Signature Date

Signature Date

# Department of Public Safety

Fiscal Impact of Amendments to SB 471, SB 232, SB 123

| | SB 471 (14-1426) | | SB 232 (14-17) | | SB 123 (19-462) | |
|---|---|---|---|---|---|---|
| | Orig. Fiscal Note | Revised Fiscal Note | Orig. Fiscal Note | Revised Fiscal Note | Orig. Fiscal Note | Revised Fiscal Note |
| Capitol Police | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Criminal Justice Assistance | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Director's Office | No fiscal note requested/ submitted | N/A | N/A | N/A | FY 08: $646<br>FY 09: $678<br>Future: $1,425 | FY 08: $646<br>FY 09: $678<br>Future: $1,425 |
| Emergency Management | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Emergency Response Commission | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Fire Marshall | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Highway Patrol | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Homeland Security | No fiscal note requested/ submitted | N/A | N/A | N/A | FY 08: $410<br>FY 09: $410<br>Future: $845 | FY 08: $410<br>FY 09: $410<br>Future: $845 |
| Investigation Division | No fiscal note requested/ submitted | N/A | No impact | No impact | No impact | No impact |
| Office of Professional Responsibility | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Parole & Probation | No fiscal note requested/ submitted | FY 08: $297,759*<br>FY 09: $281,846*<br>Future: $579,605* | FY 08: $2,564,643<br>FY 09: $2,425,177<br>Future: $4,850,354 | FY 08: $297,759*<br>FY 09: $281,846*<br>Future: $579,605* | No impact | No impact |
| Parole Board | No fiscal note requested/ submitted | No impact | No impact | No impact | Has impact, unable to determine. | No impact |
| Records & Technology | No fiscal note requested/ submitted | No impact | No impact | No impact | No impact | No impact |
| Traffic Safety | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |
| Training Division | No fiscal note requested/ submitted | N/A | N/A | N/A | No impact | No impact |

* **NOTE:** If the Division of Parole and Probation's 08/09 budget amendment request for 2 DPS Officers for Parole and Probation (and associated costs) for GPS tracking of certain sex offenders is approved in their final Legislatively approved budget for 08/09, there would be no additional fiscal impact to Parole and Probation with the passage of SB 471 and SB 232. The referenced budget amendment was submitted to the Budget Division on March 2 and forwarded on to the Legislative Counsel Bureau, Fiscal Division on March 16. If the budget amendment is not approved as part of the P&P final Leg Approved Budget the fiscal impact associated with these bills would be as stated above.

**MINUTES OF THE**

**SENATE COMMITTEE ON FINANCE**

**Seventy-fourth Session**
**May 21, 2007**

The Senate Committee on Finance was called to order by Chair William J. Raggio at 8:10 a.m. on Monday, May 21, 2007, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator William J. Raggio, Chair
Senator Bob Beers, Vice Chair
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Bob Coffin
Senator Dina Titus
Senator Bernice Mathews

**GUEST LEGISLATORS PRESENT:**

Senator Terry Care, Clark County Senatorial District No. 7
Assemblyman John W. Marvel, Assembly District No. 32

**STAFF MEMBERS PRESENT:**

Michael J. Chapman, Senior Program Analyst
Sarah Coffman, Program Analyst
Rick Combs, Program Analyst
Laura Freed, Program Analyst
Gary L. Ghiggeri, Senate Fiscal Analyst
Robin Hager, Program Analyst
Eric King, Program Analyst
Mark Krmpotic, Senior Program Analyst
Larry L. Peri, Principal Deputy Fiscal Analyst
H. Pepper Sturm, Chief Deputy Research Director
Michael Archer, Committee Secretary

**OTHERS PRESENT:**

Gaylyn Spriggs, Nevada Taxpayers Association
James Richardson, Nevada Faculty Alliance
Martin Bibb, Retired Public Employees of Nevada
George Ross, Las Vegas Chamber of Commerce
Kimberly M. Surratt, Nevada Trial Lawyers Association
Nancy K. Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Alexander Haartz, M.P.H., Administrator, Health Division, Department of Health and Human Services
Lori Bagwell, Chief of Fiscal Services, Department of Corrections
Keith Rheault, Ph.D., Superintendent of Public Instruction, Department of Education

MR. HAARTZ:
The language in S.B. 67, section 18 indicates there should not be fees charged for providing search information. This sets up a conflict with the *Nevada Revised Statutes* (NRS) 440.700 which provides the fees for vital records. Currently the statute says "For establishing and filing a record of paternity (other than a hospital-based paternity) and providing a certified copy of the new record." the statute calls for a $20 fee.

CHAIR RAGGIO:
If the Office of Vital Records will still be charging a fee, why are you anticipating a loss of revenue?

MR. HAARTZ:
There may be a conflict which will require clarification. In S.B. 67, section 18, subsection 2, the law allows a fee of $8 for making a file search for one name with no copies made.

However, S.B. 71 is where we are more concerned about the revenue loss. In section 41 of the first reprint, the Registrar of Vital Statistics may not charge a fee in a filing for either an acknowledgement or denial of paternity. The loss of this fee revenue would cost $69,394 in each year of the upcoming biennium.

CHAIR RAGGIO:
We will close the hearing on S.B. 67 and S.B. 71 and open the hearing on S.B. 123.

**SENATE BILL 123 (1st Reprint)**: Makes various changes to provisions relating to public records. (BDR 19-462)

CHAIR RAGGIO:
The fiscal note indicates a cost of $208,157 in the first year of the upcoming biennium and $256,973 in the second year.

SENATOR CARE:
Senate Bill 123 is a public policy issue. I do not feel its passage will increase the number of requests for copies of public records.

SENATOR BEERS:
Unless these costs represent something other than employee time, will this bill result in an increase in State spending?

MR. GHIGGERI:
The only two agencies who have reported a need are the Health Division, for two positions, and the Department of Corrections (DOC) for two positions. Please see the handout entitled "Fiscal Note for Summary for S.B. 123" (Exhibit F).

SENATOR BEERS:
I would like to exempt those two agencies for two years. The Health Division will be getting their data warehouse and may not need the positions, and the DOC will have their data system fully implemented in two years.

SENATOR TITUS:
We need an independent body to provide these fiscal notes. I agree that these computer systems will soon allow greater accessibility and accountability.

SENATOR BEERS:
Is there an outside time limit during which these compliances must be met?

SENATOR CARE:
No. If, within the five days, they cannot comply with an Open Meeting Law request, or the document will not be provided, the agency must notify the requester. If the requester believes he or she has not been dealt with fairly, they can, under current law, seek legal redress.

CHAIR RAGGIO:
Whether we like the process or not, the Legislature set up the process to require fiscal notes on these bills and, in preparing a budget, we must utilize the fiscal notes.

SENATOR BEERS:
I would like to know from these two agencies specifically how they would be affected by not getting these positions.

MR. HAARTZ:
I will provide that information after I review the first reprint of this bill and check with my staff.

LORI BAGWELL (Chief of Fiscal Services, Department of Corrections):
The DOC reviewed the first reprint of S.B. 123 and determined we would need two staff positions, one in northern Nevada and one in Southern Nevada, to respond to these requests. Statute now requires us to redact many documents. This is labor intensive. The DOC does not have a position dedicated to responding to requests for public information. To comply with such requests, we use existing staff members.

SENATOR CARE:
The Board of Parole Commissioners has submitted a letter (Exhibit G) with some concerns about S.B. 123. I would agree to exempt the 30-year time limit for victims.

CHAIR RAGGIO:
We will close the hearing on S.B. 123 and open the hearing on S.B. 540.

**SENATE BILL 540**: Revises provisions governing the system of public education in this State. (BDR 34-113)

H. PEPPER STURM (Chief Deputy Research Director, Research Division, Fiscal Division, Legislative Counsel Bureau):
Proposed amendments to S.B. 540 are described in the handout entitled "Mock-up: Proposed Amendment to Senate Bill 540" (Exhibit H, original is on file in the Research Library).

The State Board of Education retains its current regulatory and policy role by deletions of various sections throughout the original bill. The proposed amendment deletes those sections of the bill that made the State Board of

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