MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
May 4, 2005

The Committee on Government Affairs was called to order at 8:13 a.m., on Wednesday, May 4, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7
Senator Mike McGinness, Central Nevada Senatorial District
Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

P. Forrest "Woody" Thorne, Executive Director, Public Employees' Benefits Program, State of Nevada
Gary Wolff, Business Agent, International Brotherhood of Teamsters Local No. 14, Las Vegas, Nevada
Ronald Cuzze, President, State Peace Officers Council, Las Vegas, Nevada
Ronald P. Dreher, Legislative Advocate, representing the Peace Officers Research Association of Nevada
James T. Richardson, Legislative Advocate, representing the Nevada Faculty Alliance
Lucille Lusk, Chairwoman, Nevada Concerned Citizens, Las Vegas, Nevada
Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association
Daniel J. Klaich, Vice Chancellor, University and Community College System of Nevada
Randy Robison, Legislative Advocate, representing the City of Mesquite, Nevada
Bryan Montgomery, City Manager, City of Las Vegas, Nevada
Derek Hughes, Chief, Mesquite Fire and Rescue Services, Mesquite, Nevada
Mark Weir, Marketing Director, Rio Virgin Telephone and Cable Company, Mesquite, Nevada
Fred L. Hillerby, Legislative Advocate, representing Verizon Wireless
Helen Foley, Legislative Advocate, representing T-Mobile USA, Inc.

Chairman Parks:
[Meeting called to order and roll called.]

Senate Bill 479: Makes various changes to provisions governing Public Employees' Benefits Program. (BDR 23-609)

P. Forrest "Woody" Thorne, Executive Officer, Public Employees' Benefits Program (PEBP), State of Nevada:
We have S.B. 479 today. There is a proposed amendment (Exhibit B) that is being passed around, and I will deal with that a little later. There are three areas that are addressed in S.B. 479.

The first of these is in Section 2, which starts on page 4. We have a situation of difference in starting times for new hires because of the short month of February. It affects those who are hired in January and February of each year, and they essentially end up with a one month longer waiting period than those hired during the rest of the year. By changing the language from 90 days to 3 months, we are able to resolve that.

The second item is in Section 3, starting on page 5. For retirees who have left the coverage of the program, they may have gone to work in the private sector or elsewhere once they retired and had employer-provided coverage, then they sometimes come back at a later date. They are able to rejoin the plan in January of even-numbered years. In this section, we want to clarify who they should notify of their intent to return. With the State, they should notify PEBP as opposed to the individual department that they work for, and for a local entity, a retiree then would notify the last public employer. The other piece of this is to make that coverage effective March 1 of each year. The language was to make coverage effective not later than March 31; however, coverage always starts on the first of the month. Thirty days after notice should be sufficient time to handle that.

The third area has to do with the "groups of 300," and that's the amendment (Exhibit B) that you have. Groups of 300 are addressed in Section 1 and in Section 4. In Section 1, it removes the language for developing the procedures for participants who leave the program and procedures for reentry. That is placed in Section 4. On page 7, in promoting and presenting this proposal, the intent was for any group with 300 who left the program, if they were approved to leave, only the participants within that group would be able to leave and would not be joined by others at a later date. If they left, they would not be able to return to the program. That is what is accomplished on page 7, subsection 4. Subsection 5(a) is replacing the language from Section 1, which gives procedures by which a group of participants in the program may leave the program.

The proposed amendment, after we gave this testimony in Senate Finance and shortly before the committee deadlines, we discovered in conversations with LCB [Legislative Council Bureau]—both Fiscal and Legal—that language we had in the bill did not accomplish the intent. It covered the non-return but not the

limitation on that initial group that left. We are proposing that we amend to clarify that by adding a subsection 6: "If a group leaves the program pursuant to this section, no other active or retired state officer or employee may subsequently join that group."

[Woody Thorne, continued.] Finally, in Section 5, it indicates that Section 2, which is addressing the 90-day/3-month issue, is retroactive to January 1 of this year. We can then take care of those hired in January and February of 2005.

Assemblyman Goicoechea:
I just want to make sure I understand your amendment. What you are saying then is that if a group leaves the program, no one else that had any State service could, in fact, go and join that new program that the group of 300 left for?

Woody Thorne:
No. What we are clarifying is that if we have a group of 300 who applies to leave the program, and they are approved and leave the program, they may not return. Under current requirements, based on legal opinions that we have received, we have to allow others to move in and out of that plan every open enrollment. This attempts to limit the group that leaves to that initial group of 300, and when they leave, they may not return. If you have other members who may qualify for membership in that group, and they choose not to leave at the time of the application, they would not be able to join that group that left at a later date. It limits the group leaving the program to the group that applied.

Assemblyman Goicoechea:
Is that legal? I mean, you are defining who can go where.

Woody Thorne:
We are looking at a group of employees and retirees who wish to leave this State insurance program, provided by the State, for a different program. Is that legal? It's in the law, so that makes it legal. If we are going to administer that, we are looking at how to do so in a cost-effective way, to both the plan and the group leaving.

Assemblyman Goicoechea:
It would seem to me we are allowing anyone else in the system to bail out and take another coverage. Down the road, as long as they fit the criteria in the odd and even years, they can, in fact, return. We are going to take this little group of people and say, "Okay, if you leave us now, you can't ever come back," and those that chose not to go with the group at the same time can never leave. It

looks like we are taking some options away, rather than giving options. Really, I think everyone is entitled to find and do the best job you can when you are securing health care benefits.

Woody Thorne:
In responding to that, there are a number of choices or options within the program, whether you are active or a retiree. It does provide those options to the participants. If they choose to leave as part of a group that is saying, "We want to depart from the entire program," this provides a mechanism for them to depart from the program, but if you do so, you may not return to the program. That means the program in its entirety.

Assemblyman Goicoechea:
We had a number of local governments prior to the last session who were facing these tremendous premium increases. Local governments went to other areas and secured other coverage. Then we turned around and we maintain some of those retirees in the system. I have a real heartburn defining this one particular group. It almost seems like we are trying to penalize them.

Woody Thorne:
If I may make a point of clarification, to make sure there is no misunderstanding, this is a group of State employees or State retirees. It does not affect the non-State entities. By the way they are set up in statute, they do have a voluntary mechanism to come into or leave the program.

Assemblyman Goicoechea:
Thank you. I will let it go at that and listen to some more testimony.

Chairman Parks:
I would have to concur with you, Mr. Goicoechea. It sounds like once the train leaves the station, it is gone. Everyone else that comes along is left on the dock. My question would be: how does that affect new hires?

Woody Thorne:
New hires would come into our program just like they do now. If they wanted to opt out of the program in the future, they would have to create another group of 300 or more and join that group.

Chairman Parks:
I do not know if that was the legislative intent when we did this a few years ago.

Assemblyman Grady:
I would like to join my colleagues in stating that I don't care for this amendment. I would like to know if this was voted on by your board.

Woody Thorne:
No, the proposal by the board, which did not come over, was to repeal the groups of 300 opt-out provision entirely from the statute. The compromise position from the administration was to try and come up with a mechanism that would make it easier for a group to qualify and leave, but once they left, they were gone from the programs. There would then be no further impact on the remaining participants.

Assemblyman Grady:
Your board has not endorsed or rejected this amendment.

Woody Thorne:
This was presented to our board as to what was coming over in the bill, and they were made aware of it. They had no objection to it coming over, but they did not take a position one way or the other.

Assemblywoman Parnell:
On page 7, it talks about procedures establishing regulations and procedures. Wasn't that done in 2001 regarding any groups that want to leave? I thought we had those criteria and those procedures in place since the 2001 legislation.

Woody Thorne:
The regulations were put in place in 2002, but if you look at the language on page 3 that it's replacing, it's the procedures for reentry into the program, as well as procedures for leaving. It's moving it from there and putting it where they can leave the program, but there are no longer procedures for reentry into the program.

Assemblywoman Parnell:
I am looking on page 7. The new language simply says, "…procedures by which a group of participants in the program may leave the program."

Woody Thorne:
That is correct.

Assemblywoman Parnell:
Don't we already have that in place? Haven't those criteria been in place for four years?

Woody Thorne:
But we also have another section in there where we have procedures for reentry into the program. That is the language that is being replaced on page 3. It's procedures for not only leaving, but for reentry also. If the statute changed to only allow leaving, we don't need procedures for reentry.

Assemblywoman Parnell:
I guess it would just make me nervous that this language is new, when we already have criteria. That would leave me the impression that the criteria would be changed again by the board.

Woody Thorne:
If you look at page 3, line 14, the first line and most of the second line—line 14 and line 15—are identical to the language that is on page 7. The only thing that changed was the deletion of reference to that particular section of S.B. 479. It deletes lines 16 and 17, which are procedures for reentry. Other than that, there is no change.

We have had review during the session of the bills, and this particular bill was one of them. There was a vote of support from the board on this bill.

Gary Wolff, Business Agent, International Brotherhood of Teamsters Local No. 14, Las Vegas, Nevada:
[Submitted Exhibit B and Exhibit C.] If you will permit me, I want to read something into the record and give a few of the comments. We are adamantly opposed to this bill. As you know, it got over here from the Senate.

Let me clarify something. I take a lot of responsibility that it came over from the Senate. I was in another committee meeting when they had their hearing on this, and I didn't get a chance to go in there and speak to the amendment when they brought it up. Speaking to Senators over there, it's one of the things that happened. If you are a little late, you don't want to hold everybody up to conduct business.

[Mr. Wolff read testimony from Exhibit C, page 2, which is incorporated herein.]

I would like to reiterate what we are trying to do. Over the years, the Teamsters Union has held a personal battle, because our union was the only one that had the resources to fight them. No one else could do this. If you are in a union trust plan, which some of you are in here, consider what it would be like if you were forced into a lesser plan. We could offer you at a substantially lower cost, saving the State substantial money, yet they force you to stay in their plan. If you read the *Nevada Appeal* today, your eyes might get a big awakening

down there. If you really truly knew what was going on in PEBP, you should be scared to death. Not only this, but they do what they want with the subsidies over there.

[Gary Wolff, continued.] This Body, in the 2001 Special Session, declared that the State employee actives should not have to have any out-of-pocket expenses for insurance. Not the case now, because, if you read the charts that PEBP put out, they do not give the State employees the required amount of subsidy for 2005, which is $558. They are literally taking over $109 a month for every State employee and distributing it throughout the system. If you look and see how they are doing it on their own charts, your eyes should really open up to see what is going on in that program.

If you read NRS [*Nevada Revised Statutes*] on the distribution of their funds, it is just unbelievable. NRS 287 specifically says that the active State employee is the insured—not the family, not the children, and not anyone else. We believe the State should insure the families and take care of them. However, you do it under a composite rate as the trust of the unions does. In the Teamsters, you get a composite rate of $644 a month, and that insures the entire family with a much richer plan. Yet, we are constantly denied this. This has created a huge internal problem within the state. This distinguished Body has done its job, but when you take and give it to a commissioner or a board and they ignore the process of this Body, it outrages me.

I came in here in 1999, and we fought hard to get this bill out. We have never been allowed to leave. Now they come in with a bill to say, "If you leave, you can never come back." If that applied to the group that went to Saint Mary's HMO [health maintenance organization] a couple of years ago—there were over a thousand of us then—that would have applied. What would have happened to those thousand people? As long as PEBP has control of it, and if the Teamsters trust were under PEBP, that would be an option. Because it is out of their realm of control, it is no good.

Over in the other House, you have S.B. 484. That is the Governor's bill, which says, "If you are hired after 2006 and you retire from the State, you do not get any health insurance as a retiree." You put yourself in the same position as these people coming into the State plan, and you passed the law telling the counties and cities that they had to subsidize those employees. PEBP is trying to tell us that we are forced to stay in the State plan because we have no choice, but at the end of our careers, we are not going to get any health insurance. We know that the bill will probably be amended, because I do not think the solution is to not provide health insurance. It shows you the mindset of this whole program. I don't know about you, but everybody gets sick and everybody needs

health insurance. It's the single biggest issue in not only the United States, but in the world. Even in Europe, under their so-called "government plans," it is a huge issue.

[Gary Wolff, continued.] We have all of these troopers, and we have all these State officers out here, so right now let's say 300 leave. In open enrollment, PEBP is saying that you cannot leave, and you make your decision: now or never. You can never go. What is fair about that? I will agree that you cannot come back if they will put through an amendment that says "through no fault of the employee." Honestly, we do not want to come back if we are out. There is nothing to say how much money you are going to allocate to the subsidy. They have come in now to reduce the subsidy. So, if you had this group out and you reduce the subsidy, they may be forced to come back to a State plan, because they couldn't afford to stay in the composite rate fund that the union provides. We have no control of how much money you are going to give an employee for insurance. At least, if you give the money, the employee should get that money.

If you look at the proposed amendment (Exhibit B), I think the word "may"—in subsection 4, on line 21—should be changed to "must." If we meet the criteria, they should have to do it. In Section 4, subsection 2, line 28, maybe the word "may" ought to also be changed to "must." Either remove all the language in Section 4, subsection 4, or replace it with an amendment (Exhibit B) to say "through no fault of their own" or some language to that effect. What if the trust fails? There are people here in the union trust, and what if their whole trust failed? Where would those people go? You can't just tell State employees, whom the State is giving money to, that they have nowhere to go. The other is just moving the language down.

We fought very hard for this, and some of you voted for this bill. Some of you sit on the Legislative Commission, and you have heard the outrage of the Commission over what this board has done. I urge you to either change this or do not support this bill. This bill is a vendetta bill against one union that tried to leave. What does that say to everyone else if this entire State program falls apart? What is the message that it sends to other State people?

Assemblyman Grady:
Could you walk me through this? If I am a trooper and I leave as part of the 300, then I change jobs and go from a trooper to another position, still under the State, with this bill I could not come back under the State insurance?

Gary Wolff:
That is correct.

Assemblyman Grady:
I probably could not stay under your insurance or the Teamsters insurance, because I am no longer a member of that group either.

Gary Wolff:
That is not exactly true. State employees are not members of the Teamsters. They are affiliate members. You can do this, and anyone on this board could pay a $35.00 affiliation fee, and if this law passed, any of you could get this insurance—the same as any other State employee. If that State employee was a trooper and left to be a computer designer for NDOT [Nevada Department of Transportation], as long as they stay in the union, they can retain the insurance. Our issue isn't so much with that. If the trust fell—although it has been around since 1954; I don't think it would—it's under Taft-Hartley [Labor-Management Relations Act of 1947], under the Department of Labor, with much stronger restraints than the state has. We don't believe that is fair. We are a right-to-work state. What if you don't want to belong to the union? Say the union is not satisfying my needs, so I don't want to belong to them anymore. Then you leave or you have already left. You are stuck over there, and then you have taken away that choice, too.

Ronald Cuzze, President, State Peace Officers Council, Las Vegas, Nevada:
[Submitted Exhibit D.] It is the State Peace Officers Council's position that this bill, as written, is not only retaliatory, but is an act of discrimination towards a class of people—for example, the state cops.

We have been fighting this battle for six years, like Gary Wolff said, and every time we turn around, there is another roadblock or obstacle in our way. Even if you made the changes that Mr. Wolff suggested, look at the very last line of this bill as written. In Sections 1, 3, and 4 of this act, where the new regulations would become effective July 1, the opt-out period is in June. There is no way we could ever leave, even if we did it right now. For us, this has to become effective on October 1, to give our people the chance to opt out and choose a different health plan. Again, I am sure they knew what they wrote here, and they know that we can't do this. I beg the Committee to make the appropriate changes. Give your state law enforcement officers a choice in health care and, as Mr. Wolff said, a choice to return if something happens. We do want this opt-out provision to go through but not as written in this bill.

Ronald P. Dreher, Legislative Advocate, representing the Peace Officers Research Association of Nevada:
We are here today to ask you to oppose S.B. 479 as written and to echo what Gary Wolff and Ron Cuzze said. We want to go on record asking you to oppose this bill or at least consider the amendment as given to you by Mr. Wolff.

James T. Richardson, Legislative Advocate, representing the Nevada Faculty Alliance:

I have been before this Committee many times, testifying on bills in this area. I did chair the Benefits Committee for six years back in the 1980s, and based on that experience, I have followed this ever since and tried to represent the Nevada Faculty Alliance chapters around this state.

I hope that you will support the first part of the bill, because it does take care of a problem that Woody outlined concerning eligibility. It causes some people, depending on when they were hired, to have to go another month before they get their insurance. That part of the bill is a bit of a cleanup and certainly needs to be dealt with seriously.

I would call your attention to page 4, line 39, where there is a reference to Senators and Assemblymen who are on this program. Some—maybe some on this Committee—are on this program. I wasn't aware until recently of an interesting effect of parts of the law in this regard. You can, by paying the freight—which is sometimes sizable—participate, if you are a member of the Legislature, in the State health plan. I have always argued that the state should pay the freight for you, because I think you are State employees, in a sense. I have failed so far in getting that put into statute. Recently, I became aware that it's now considered against the law for a person who served in the Legislature and then leaves the Legislature—either voluntarily or not—to continue in the State health plan. They cannot continue until they are aged 65. Some were doing that and were recently told they could not do it any longer. It was not legal. I think that is a bit of an oddity. They can be in the plan while they are serving and, at age 65, they can apparently come back into the plan. In between, if they want to participate in the State health plan that they may have been in for many years—and in one instance, were in for 12 years—is no longer allowed. I thought I would call that to your attention, because of the provision on page 4, line 39. You might want to talk about it a little and possibly assign this to a subcommittee.

I also would like to talk about the contentious part of this bill. I do hope that the contentiousness about the later part of this bill does not detract from the fact that some things in the first part of the bill are needed. I have testified against groups being allowed to leave the State health plan over the years. I did that because we are always in favor of enlarging the group, because we think we get better rates because of that. It is a common assumption that the larger the group, the better the rate. It has become clear that some groups, including what Gary represents, think they can get a better deal in some other way, perhaps through a large union group or trust fund health plan.

[James Richardson, continued.] When I have testified against that measure, I have done so, as I said on the record, with some mixed feelings. If the State health plan completely goes to hell in a handbasket, it's quite conceivable that the University System might like an option. Right now, we have no options. We are State employees, and we are in the State health plan for good or ill. The provision that allows groups of 300 or more to leave would allow the University System to leave if it could develop an alternative that was cost-effective. I did testify with mixed feelings, and I just want to put that on the record.

Having said that, I do think that there is a public policy issue of some importance with reference to what this bill tries to do. I do not often quote this, because Gary and I have had our differences, but what do you do if a trust fund goes belly up? What is the right thing to do if there are State employees and they have no option? I think that it's a serious policy issue that is brought before you in this bill. It was brought before you, and that is one of the things we testified to and talked about as you were considering the legislation that would allow groups of 300 to leave. What happens if they leave, someone offers them a good deal, and they enroll, and then the company jacks the rates up sky high? They want to come back again to the State health plan? Obviously, you need to have some control over that kind of shopping. You do not want to encourage that kind of action. On the other hand, if people make a good faith effort and they go out into a health plan that looks fine and is stable, then three years later, they go belly up, are you really going to tell these people that you can't come back in to any kind of State health plan? That is your decision, and I am just raising the question. I think it is a very serious one.

Assemblyman Munford:
I am a retired school teacher. We are State employees until we retire. We are under the State medical plan, but once we retire, we are left with some options. The various options that we are permitted to select from are all extremely expensive. I received so much email from constituents when I ran for this office, and I spoke with many teachers. The first thing they told me to do was to see if we could correct this medical plan that is so expensive for other retired teachers. It comes to about $400 monthly. Where does this fall in with us as public employees? Are retired teachers associated with this plan or this program? We are with PERS [Public Employee Retirement System], but medically, we are confronted with such high obstacles. I don't know what to say to some of my fellow retirees who always confront me. Could you give me a little information, or should I be in another area?

James Richardson:
I sympathize with you. I am not clear on whether you are in the PEBP or in the program for the school district from which you are retired. That might make

some difference. If it's the school district retirement plan, then this would not be the Body that would be discussing policy for that group. If you are in PEBP, then this is the very group that discusses policy for that program and has for years.

[James Richardson, continued.] I am certainly aware of the fact that there are serious concerns about the retiree portions of the PEBP, and some changes that are being proposed may cause your rates to even go up higher than they have been.

Chairman Parks may think that this is not the time to discuss that as a policy issue, but this is certainly the committee that would discuss policy on how to deal with retirees in the PEBP.

Do you know if you are in PEBP?

Assemblyman Munford:
When I retired, they gave me several options. When it came down to it, as far as an economic benefit, there was really nothing, except we were required to pay much more than when we were employed as teachers. We have no other options. This is an ongoing concern, and teachers who have retired are still contacting me about this. I am one of them now, and I was one of them before, when we were colleagues teaching together. They think I can help them up here. I am still in the dark and listening to all this testimony, but nothing says anything about teachers, and we are State employees, also.

James Richardson:
In the 2003 Session, this Committee passed A.B. 286 of the 72nd Legislative Session, sponsored by Assemblywoman Koivisto. That did, in fact, speak to the plight that many school teachers found themselves in. Their local school districts decided not to offer any subsidy for their retirement health benefits. This body sponsored and passed through the Senate a bill that required those local governments that did not subsidize to begin to subsidize the retiree health plan to the extent that the State subsidizes retiree health plans. That resulted in $10 million worth of payments being made on behalf of local government retirees to the State health plan.

This very Committee made a fundamental policy decision that I think was an excellent one, and I supported it, as did virtually everyone else, except some local governments. It resulted in the transfer of $10 million to help with this problem for public employees. That was a good public policy decision.

Assemblyman Grady:
Mr. Richardson, I know you have been on this program and probably know as much about it as anyone in the room. How would you feel if a group—whatever group it was—left this program, and there was something in the statute that said you take all of your retirees with you?

James Richardson:
That was one of the issues at the time. I felt, and others felt, it would be unfair to let a group leave without taking their retirees, because it leaves the retirees in the State health plan, thereby increasing the rates for everyone else. That was one of the issues as to whether the statute could require that. I just felt it was unfair to the rest of us. We knew that if a group of 300 left, and they didn't take their retirees, the rates for the rest of us would go up. The costs for the State would go up if you are subsidizing that certain percentage of those costs.

Woody Thorne:
There are a number of inaccuracies I would like to correct in the testimony you have heard.

Starting with the regulations for the opt-out groups, you heard from Gary Wolff that it required a lawsuit in order to get those in place. In fact, we were three-quarters of the way through drafting other regulations with the Teamsters and their counsel when they filed the suit. There was never any action taken, because the board passed and the Legislative Commission approved the regulations for the opt-out.

As to the comment by Mr. Munford regarding what group he is under, teachers are not State employees. They are local government employees, and there is a significant difference. When we looked at the effects of A.B. 286 of the 72nd Legislative Session, it required local governments to subsidize their retirees who joined PEBP to the same extent that the State does. However, some of the teachers' unions have created health plans or are forced into health plans by their own experience. They were limited to HMO coverage. In effect, they have forced off a good portion of their retirees from that plan, because many of them move out of the HMO area. I know that is an issue that we have had with a number of the teachers.

As to a group not being able to come back, we would be fine with inserting language which indicates that if the fund that they go to goes belly up and that coverage is no longer available, they would be able to return to the program or, if we wanted to, put in language that would allow them to return on a catastrophic basis. We could put in language to allow the board to review the situation and allow them to return. You heard Mr. Wolff speak of the

Teamsters' local plan, how great it is, and how long it's been around. It is to attract members into that program. All of a sudden, when they have to stay in that program through their retired years, what happens if it goes belly up? If it's so strong and attractive, there shouldn't be a problem.

[Woody Thorne, continued.] As to the application of the subsidy, the subsidy is a funding mechanism. It is provided by the State to assist employees and their dependents with the cost. It is at the board's discretion as to how to allocate that most equitably. That is exactly what the board attempts to do. It is no more equitable for an employee to have his coverage paid in full, while those with dependents have to pick up the entire tab or the majority of the tab. I do not think that was the intent of the Legislature either.

Chairman Parks:
Yesterday we heard testimony on S.B. 421, and out of that was a comment relative to the fact that the PEBP board records its minutes using a court reporter.

Woody Thorne:
That is correct.

Chairman Parks:
Could you explain, for the benefit of the Committee members, why you choose to use a court reporter as opposed to the standard process, or more often used process, of recording and transcribing?

Woody Thorne:
It is actually more cost-effective. The big difference between recording and transcribing is that you do not have certification. By using a court reporter, the minutes as transcribed by the court reporter are certified to be accurate.

Chairman Parks:
The question was basically dealing with the cost per copy, and you indicated in your official notification that pages are available at $1.95 a page.

Woody Thorne:
That is dependent upon the State contract with the court reporters that are used by the State. The State has gone out and bid for court reporter services and a contract. I think it's on an MSA [master services agreement] contract and has been in place for a while now. Those are the rates the Sate has contracted for.

Chairman Parks:
If I wanted three pages out of your meeting minutes, would I be able to get just those three pages, or would I need to buy the entire transcript?

Woody Thorne:
You would be able to view the minutes at our offices. We make those available, and it wouldn't cost you anything to view the minutes. If you wanted to make a copy or have a copy, then we would refer you to the court reporter to obtain the copies.

Chairman Parks:
So, you do not provide them.

Woody Thorne:
That is correct.

Chairman Parks:
What I propose to do at this point is to appoint a subcommittee of individuals to be chaired by Ms. Pierce. The other two members will be Ms. Parnell and Mr. Grady. I would like to have them meet to bring back recommendations for S.B. 479.

[Closed the hearing on S.B. 479. Opened the hearing on S.B. 267.]

Senate Bill 267 (1st Reprint): Makes various changes regarding Open Meeting Law. (BDR 19-77)

Senator Terry Care, Clark County Senatorial District No. 7:
I am here to introduce S.B. 267, which is the Open Meeting Law bill passed initially out of Senate Committee on Government Affairs and then out of the Senate as a whole. I should point out that a total of eleven Open Meeting Law bills were introduced in the Senate this session. Many of them came from the Attorney General's Office. I think this Committee heard from Senator Coffin on S.B. 83 yesterday.

The Open Meeting Law has gained some notoriety in the interim largely—but not exclusively—because of meetings held by the regents. I am not suggesting that there was any sort of nefarious conduct involved. It is clear from some of the minutes I reviewed that the regents themselves were tussling with how to apply the Open Meeting Law to some of their meetings. Obviously, there was a great interest in it. These eleven bills were introduced. On the Senate side, they

all went before the Senate Government Affairs Committee, and while Senator Coffin's bill passed out on its own, many of them were subsumed by what is now S.B. 267. We heard from regents and people representing local government. I am not suggesting people agreed with everything, but basically, this is the camel that came out of the Senate committee.

[Senator Care, continued.] I would like to walk through S.B. 267 section by section and explain how we got there and the philosophy behind what is in here now. These sections deserve some explanation. I would like to begin by reading NRS 241.010, regarding the Open Meeting Law legislation and intent. I will quote:

> In exacting 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.

It is with that philosophy in mind that I will plow ahead.

Section 1 has new language. Subsection 1 grants immunity to any member of an elected public body. This is probably case law, but the reason for that is it was fashioned after the speech and debate clause in the *United States Constitution*. It has been suggested that this is a license to lie, and that's not the intent at all. The intent is that when public bodies meet to deliberate and to debate, they need to rest assured that whatever they say is not going to open the members to any allegations of defamation. I realize that tempers get hot sometimes, and people say things without having all the facts. That is a necessary part of the democratic system. Members of Congress have this, and I would suggest, under common law, members of the Legislature have this. This would extend this privilege to county commissioners and city councils.

It is difficult for me to imagine free and open debate without elected officials knowing that they have this privilege. You would hope that they would not abuse the privilege, and if they did, then the voters could take action. We can't—as elected representatives and county commissioners—or should not have to pause before every utterance and say, "I'd better not say this, because I might run the risk of a charge of defamation." Again, I think this is probably common law already, but that is the purpose for Section 1. It is to grant this absolute immunity to members of a public body.

I am talking about only when members of a public body are meeting openly like this to discuss and debate a particular agenda item. If a member of a public body decides to go on a talk show and says something to a newspaper reporter,

or goes out and gives a speech somewhere, this would not apply. Then you are accountable for what you say. I am talking about in the meeting itself that is open to the public. It is confined to that situation.

[Senator Care, continued.] Subsection 2 has an immunity currently granted for witnesses who appear before a public body. I would point out that under NRS 218.5345, we already have this in law for members of the public who testify before a legislative committee. You just heard the testimony of Mr. Thorne saying that he wanted to repudiate the testimony of Mr. Wolff. Obviously, there were some factual disputes in there, but I would suggest that Mr. Thorne and Mr. Wolff meant what they said and thought that what they said was truthful. This is granted to any witness—the reassurance that what he or she says before a public body is immune so long as the person believes it to be true. It is not a knowing misstatement of fact. That person does not have to worry about being sued, being threatened, and that sort of thing. That is the purpose for a new language under Section 1.

In Section 2, we're changing what is contained in an agenda for a public meeting. You will find that in subsection 2(c), 4 and 5. This just simply says that even though you may have closed meetings to consider character, alleged misconduct, and/or professional competence, nonetheless, because of the public's right to know, we are going to post the names on the agenda of those people who are going to be discussed. You may not know what is said because the meeting may be closed, but at least the public will know what sort of business is being discussed. That also applies to administrative actions in subsection 5. Again, we are only talking about putting the names on the agenda so the public will at least have some idea of what the public bodies are up to when they meet, even if in secret.

On the next page, looking at subsection 5, this language would be new. It basically says that proprietary information, as defined under NRS 332.025, would not be open to the public. That is basically referencing "trade secrets." There may be situations where a public meeting—maybe something relating to a contract—would be open to the public, but the proprietary information or trade secret information would be protected. Subsection 6 addresses when the public would get the information. I am talking about the documents. Under 6(a), for example, it states, "If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body," or, under subsection (b), "If the supporting material is provided to the members of the public body at the meeting, provided to the requester at the same time the material is provided to the members of the public body." In other words, if you are a member of the public and there are going to be documents handed out to members of the

public body, you would be entitled to see those at the same time the members of the public body see those documents.

[Senator Care, continued.] Section 3: On page 4, there is going to have to be an amendment, because I learned late last night from staff that there is a drafting error. I will explain that as I go through this section. In Section 3, subsection 2, "A person whose character, alleged misconduct, or professional competence will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection: (a) may be made at any time before or during the meeting; and (b) must be honored by the public body." Let me explain what that is about. It may very well be that you are going to have a closed meeting to discuss the job performance of a State employee. It may be that the State employee is thinking, the only way I have to defend myself is to invite the public to come in and listen to this discourse. Otherwise, what might happen is that at the conclusion of the meeting, members of the public body might say, "You know, it was a closed meeting, and I really can't say anything, since it was a personnel session." The public employee who is being discussed can only say, "Well, I can give you my version of what happened, and I hope you believe me." The situation may arise where the person who is being talked about might just say, "If you are going to put me on trial, I want you to be there and listen to this unfold, and then you can draw your own conclusion." That is the purpose of that amendment.

The amendment that we need is in line 16, where "for physical or mental health" is deleted. That really needs to come back in. Again, that was a drafting error brought to my attention late last night. That is existing law, and we need to keep it that way, because otherwise, it means that subsection 2 would not apply for the physical or mental health of the person being discussed. It is simply a drafting error. Subsection 3—under Section 3, line 28 on page 4—simply says that if a public body is going to close a meeting on a motion, it has to cite the statutory authority on which it is going to close the meeting.

Section 4 on the next page was not without controversy, because if you look at line 11, it adds a person who is appointed to public office. Basically, somebody who is appointed to public office—and I am talking about university presidents, county managers, and city managers—or any discussion of those people as it relates to their character, alleged misconduct, or professional competence would be discussed openly. I have talked to people who hold positions like that, and they have said that they wouldn't mind that. I have also talked to members of public bodies who really take exception to this. When I ask them why they wouldn't want discussions like that to be held in the open, I get this answer: "Well, we just might feel like we really can't say what needs to be said."

[Senator Care, continued.] I take the attitude that university presidents, county managers, and city managers are basically public figures. When you take a position created by the *Nevada Constitution* and by statute, you are agreeing to step into the public limelight. You are going to be in the newspaper a lot and on television a lot. There is no reason to close hearings when the public body is discussing the job performance of people like that. Again, not everybody agreed with that, but I can tell you that I have had people who hold positions like that say they have nothing to hide. This does not mean that you are going to have an open meeting for everybody who comes before the public body. We are only talking about a person who is appointed by a public body.

In Section 5, there is the same drafting error in line 20. Deleted from the bill was "or physical or mental health." That really needs to come back in for this to work. Section 5 is intended to tighten up notice requirements. It is not just that you give notice, but you have to receive proof of service of the notice itself with someone who is going to be discussed before a public body.

If you look down to line 34, subsection (b), it talks about the notice, and it may include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, or professional competence of the person. That stems from an incident we had during the interim. If I remember, it dealt with the Community College and the regents discussing Ms. Giunchigliani. I think you will remember generally what happened, where, arguably, action was taken and the person wasn't even given notice in advance that it was going to happen. This says if you are going to do that, then you are going to have to put that into the notice to the person who is going to be discussed.

On the following page of Section 5, subsection 4, we have new language: "If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, or professional competence of a person, each person to whom notice is required to be given, pursuant to paragraph (a) of subsection 1, must be allowed to attend the closed meeting." If you are the subject of the meeting, you get to be there, or that portion of the closed meeting during which character, alleged misconduct, or professional competence is considered. Again, if you are the subject of the meeting, there is no reason for you not to be allowed to attend the meeting and hear what is said about you.

There is another drafting error on line 7, following "misconduct or professional competence." You need to put back in "physical or mental health," and the

same thing in line 3 following "professional competence." For this bill to work, that language has to be back in there.

[Senator Care, continued.] In subsection 6, on line 22, "for the purposes of this section, casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, or professional competence of the person." That simply means that if you are having a closed meeting—or open meeting, for that matter—and it applies to someone appointed by a public body when something is said about you, you can be there. Your response could be, if you were not present, "It wasn't me who did it; it was John Smith who did it." That could happen spontaneously, and there is no way you would know that would happen. There is no way you could give notice to John Smith that his name or character is going to be discussed in the course of the closed or open meeting. This is what I mean by "casual or tangential references." You can't stop the meeting at that point and say that, since we are going to be discussing John Smith, we need to close the meeting and notice John Smith. That sort of thing is going to happen. We are not talking about substantive conversation about that other person's professional competence, but just a casual or tangential reference to him.

Finally, Section 6 is already in existing law, but when you are talking about taking administrative action or acquiring real property, there are notice requirements. On page 7, subsection 3, it simply says that the notice is not required if you have already given it, pursuant to the notice provisions that I referenced earlier in S.B. 267.

Again, there are many of us who believe that the government operates best if it is operated openly. Sometimes people get their feelings hurt. That is just the price you pay in a democracy. I do not know what the other witnesses are going to testify to. It was one of those rare exercises on Government Affairs where they had as many as three hearings on this and heard from just about everybody who had an issue. A lot came out from the other bills. In fact, in some cases, there were very significant portions of the other bills that were not included after some discussion in this bill. Those bills died. I would regard this bill, in addition to Senator Coffin's bill, as the work of the Senate this session on open meeting revision. I can safely say that it was nonpartisan and cut across party lines.

Assemblyman Grady:
Just to make sure, on Section 4, subsection 1, there is another "physical and mental." Do you want that one included also?

Senator Care:
Yes, in the sense that if you don't include it, then arguably, it could mean that a body could discuss the mental or physical health of somebody. We recognized that there is a constitutional right to privacy. You have to balance the right to privacy with the public's right to see what its public bodies are up to. Clearly, the subject of somebody's mental health and physical health is a sensitive subject. The committee agreed unanimously that it should be off limits. That clearly is a personal private matter.

Assemblyman Hardy:
I guess I am going along the same line of thought that perhaps, tangentially, if we put physical and mental health back in those appropriate places where you suggested, do we need to also make some reference to that? For instance, on page 5, lines 37 and 38, health is considered in those areas, and on page 6 as well. Do we need to put that in the other places as well?

Senator Care:
I don't think so, but that may be a drafting question. Again, it was about 6 p.m. last night when it was brought to my attention by LCB staff about the drafting error, and our combining these 11 bills in an attempt to get them out. I want to be consistent about this. The point is to put it in or to take it out, depending upon where we want to protect the right of privacy, so that subject is not discussed.

Eileen O'Grady, Committee Counsel:
In looking at the bill last night, we realized that taking it out in some of these places would not allow them to hold a closed meeting. We will work with Senator Care to have a proposed amendment ready for the work session and identify the exact places where that should have been fixed.

Assemblyman McCleary:
Section 5, subsection 4, where the person who is the subject of a closed meeting has the right to be there, will it be assumed automatically that they would have the right to the legal counsel as well?

Senator Care:
Yes, absolutely. This wouldn't change whatever the practice is currently. My impression is if you want counsel present, you may have counsel present.

Assemblywoman Pierce:
On page 3, subsection 6, and the part about supplying supporting material to a requestor, I question: for everyone who asks to be notified about a county commission meeting, would this include any emails and anything involving

particular items that have to be sent to all the people who asked to be notified on that meeting? Would this happen at the time that county commissioner gets that piece of paper? This seems really complicated.

Senator Care:
It simply means that if there are documents that are going to be discussed—sort of like our work session documents—then, when those become available to the public body, they should become available to the public, especially if you make that request. It was pointed out that obviously there might be more requests than a public body anticipates, so that's the reason. To the extent that it is available—for example, if enough copies are printed—then it should become available. No—if you mean emails on the subject matter or correspondence with a constituent, we are simply talking about "today on the agenda, we have items 1, 2, and 3, and these are documents we are going to be talking about." If a member of the public wants those, they may not be available until the meeting itself. It basically becomes available to the public upon request, whether that is before the meeting or at the time of the meeting.

I should point out there was an interim committee called the Committee to Evaluate Higher Education. During the course of our meeting, the Legislative Commission directed us to create a subcommittee, chaired by Senator Hardy, to look into application of the Open Meeting Law by the Board of Regents. Our discussions went way beyond the Board of Regents. That also had a lot to do with what you have before you in S.B. 267.

Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada:
We are here in support of this bill. It has gone through quite a process of "sausage making." Nevada Concerned Citizens supports the Open Meeting Law in general and the concept behind it. We do have concerns at times that, perhaps, the Open Meeting Law has become a bit too restrictive. We understand that members of public bodies are sometimes advised they can't even talk to another member of the public body. That concerns us. That is not addressed here, however. I can't help but try to raise your consciousness a little so that you might be aware of it, and if some opportunity arises—either at this or future sessions—to try to find a way to bring that balance back in.

We initially had concerns about the provisions in Section 1, relating to the non-liability for the statements. Among other things, we would like to see the standard be the same for members of the public body as it is for the witnesses testifying. It does make it clear that there is immunity regarding statements the witness may not make knowingly that misrepresent facts. We would like to see that be the same.

[Lucille Lusk, continued.] The important part of this bill, from our perspective, is the portion dealing with providing the supplemental materials. That is found on page 3, Section 6. That must be tied together with existing law, which requires already that upon any request, a public body shall provide, at no charge, at least one copy of any supporting material provided to the members of the public body. That must be provided in advance as it is provided to members of the public body.

The new language makes clear the timing upon which that material must be provided. We find that to be very important for the ability of the citizenry to give informed input. Otherwise, you are coming in cold, and you don't have any idea of what's going on. You make statements that may have no relationship to what is actually being considered.

I would point out that in Section 6(b), the statement, "If the supporting material is provided to the members of the public body at the meeting is provided to the requestor at the same time…" could possibly be misinterpreted. It might seem to require them to provide that material to requestors who may not be at the meeting. You may wish to tighten that up slightly to make it clear that it means it is being handed out to members of the public body and that it is going to be handed out to members of the audience, but it may not be necessarily provided to those who aren't at the meeting. That could be fairly easily tightened up.

The other provisions relate to those who are being considered in closed session. We are in support of those as well. An individual who is going to be considered certainly has a right to advance notice and to participate in those sessions.

Assemblywoman Parnell:
I have the same concern about page 1. I would like to see if we are on the same page. What concerns me in Section 1, subsection 1, is that we don't have the "except that is unlawful" language. So, if we could possibly put that language in subsection 1, then it is covered both places. Then I would completely agree.

Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association:
We are here in support of S.B. 267. I believe that all the statements made about the many bills and the participatory processes on the Senate side were not only accurate, but a real good exercise in academia and discussion on the various issues.

I did mention to Senator Care that on page 3, the issue on supporting materials has also been referred to by Ms. Lusk. We asked, and in paragraph (a), the word "provided," which is an affirmative act, was changed to "made available," but it

was not carried through on paragraph (b). I noticed that last night while I was reading the bill. I do not have any written amendment but would like line 33 to say "...public body at the meeting, made available at the meeting" to the requestor at the same time the material is provided. It meets the requirement of being made available to anyone who requested it, but we don't have to go chasing around to find that person if they are not at the meeting to provide them the materials.

[Madelyn Shipman, continued.] That was the only change that I was going to ask be made to this bill. I met with Senator Care outside in the hallway. He understood that it was sort of a bill draft oversight in the sense that we intended throughout to change the word "provide" to "make available."

I just wanted to raise the other issue because it's more of what I want on the record. On page 6, the provision in paragraph 4 at the top—lines 1 through 16—refers to the second major sentence in regard to the attendance of persons. It authorizes the chairman of whatever board or public body to determine additional persons to attend specific meetings or leave it up to that particular public body. I wanted to make sure, so that it doesn't become a violation issue, that it is discretionary. In fact, if they choose to go forward and have the chairman announce who may be in the closed session, or possibly miss someone, or if someone comes in that they didn't name, it doesn't become a violation.

When I was counsel in Washoe County, the typical closed session was not a personnel session on a public employee, but rather a work permit appeal before the board. The typical session would be someone having an appeal on a denial of work permit, whether it would be security, gaming, child care license, et cetera. Often, during the course of one of those appeal hearings, the chairman might ask if you have anyone that you wish to have speak on your behalf. Sometimes that person may be waiting out in the hall as a supporter. You can't always know who is going to be present. Also, you have training, so you have someone from the Sheriff's Department who is the typical person present, but they may be bringing someone in to teach them how these appeals are being done. You do not always know in advance, not the names or even who is actually going to be present at the hearing. I just wanted to make sure that we are not creating an avenue for violation, and that the record is clear that it is still discretionary, whether or not the indicator is made by the chairman or by the public body.

Daniel J. Klaich, Vice Chancellor, University and Community College System of Nevada:
I had not intended to speak, but I wanted to indicate my support for Senator Care's bill with the comments that had been made this morning.

James T. Richardson, Legislative Advocate, representing the Nevada Faculty Alliance:
I was also on the interim committee for the study of higher education that ended up being turned into a subcommittee. The legislators on that body were to review and make recommendations, and it was chaired by Senator Hardy.

I was very impressed with the level of conversation and stability of the discussion in the Senate Government Affairs Committee. They grappled with eleven bills and had a packet of information about two inches thick that came out of that.

We are in support of this bill, and it represents a very good winnowing out of some provisions we and others thought were problematic. It also represents the inclusion of some things that would make the Open Meeting Law work better. We think the notice provisions, furnishing materials to people, and that sort of thing will be very important. In the future, as some of you are aware, all of these bills that have to do with the Open Meeting Law would probably not have appeared had it not been for some episodes having to do with one of our community colleges. We have a large chapter there that is very interested and very motivated, and I think it will be very happy with this bill.

I do have one comment. Look at page 5, line 11, where he pointed out to you a new addition to the statute. It says, "...a person who is an appointed public officer..." I am not sure what the term "public officer" covers. If it does cover the evaluation of college presidents, I do want to make a comment.

When college presidents are evaluated, it is a lengthy process, and an effort is made to gather information from lots of people in the community. There are surveys done and that sort of thing. A recent experience with that has led me to believe that if evaluations of top officers like that are to be done fully in the open, it may have a chilling effect on what people are willing to do and say in the process of the evaluation. When information is gathered from students, faculty, or townspeople, anything they said could end up a part of the public record in an open hearing. Senator Care did, in a sense, compromise in this section. He had a section in there, which said that the hiring of any of these people would also be completely open. We made the argument, as did others, that this would affect a number of people. For the quality people, perhaps, who would apply for a job, it might cause hesitation if they knew their name was

going to go on the record when they immediately applied for the job. Senator Care agreed to drop that provision, and this one was left in. I just want you to know there is a bit of an issue. I do not have an answer, by the way.

[James Richardson, continued.] If you do think it is a public policy matter that all public officers should have an open hearing and be fully discussed in public, that is your decision. You just need to understand that it may preclude you from getting certain kinds of information that you might find useful.

I would say again that we do support this bill, and we hope, with the kinds of amendments that have been suggested this morning for clarification, that you will pass the bill as well.

Chairman Parks:
When I was listening to Senator Care talk about Section 4, I know the term "appointed public officer." My question was whether this includes all persons who are classified. In reading subsection 2, it would seem to only refer to those individuals who are appointed by a specific body. I know that over the years, I think I was in an unclassified category for my entire employment, but my appointing authority was another employee, not a body itself.

James Richardson:
I am not clear on what the definition is, but that's why I said "if." If it does include college presidents, for instance, there is a cost to that in terms of potentially getting the kind of information the public body might want.

Chairman Parks:
[Closed the hearing on S.B. 267 and opened the hearing on S.B. 30.]

Senate Bill 30 (2nd Reprint): Authorizes certain cities to impose surcharge on access lines and trunk lines of telephone companies for enhancement of telephone system for reporting emergencies. (BDR 21-740)

Senator Mike McGinness, Central Nevada Senatorial District:
Senate Bill 30 would authorize certain smaller cities to impose a monthly surcharge, not to exceed 25 cents a month, on local telephone bills to offset the cost of providing an enhanced 911 system.

The bill is modeled upon existing law that gives the same authority to 16 other counties in the state. This bill was meant for the City of Mesquite to impose a surcharge. The bill also mirrors the provisions in existing law that would actually

prohibit a city council from imposing the surcharge unless they first form an advisory committee to develop a master plan for the operation and maintenance of the system. The advisory committee then recommends the level of surcharge to be imposed, and they would be responsible for updating and revising the master plan as necessary.

[Senator McGinness, continued.] There is one difference between this bill and existing statutes. The Senate took action to remove from the bill the provision that would have the surcharge apply to wireless customers. According to industry representatives, current technology does not allow for the capturing of enhanced information. That means names and locations.

Additionally, the federal government is working on a system that will capture that information by a GPS [global positioning system] type technology, at which time the wireless industry will be required to comply. As a result, wireless customers were removed from this legislation.

Mr. [Randy] Robison has a further amendment. He noticed there should be some language removed. In conclusion, this bill will allow the City of Mesquite the same authority granted other smaller entities in the state. They will be able to recover a portion of the cost of providing enhanced 911 (E911) services to their residents. The bill passed the Senate unanimously, and with the amendment, I respectfully urge your support.

Assemblywoman Pierce:
Could you define a little more completely what a trunk line is and what an access line is?

Senator McGinness:
You have gone beyond my level of expertise.

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
The Senate worked through the issues that were of concern. I think there are some folks here to propose that the wireless charge be extended to wireless. I don't disagree with that. However, the agreement we made within the other House was that they would be excluded, and a deal is a deal. It would be my intention to stick with that deal, with those changes and the minor amendment that Mr. Robison has.

I think this brings Mesquite into some parity with what others are able to do to pay for and fund their enhanced wireless systems, and I think it is meritorious legislation.

Randy Robison, Legislative Advocate, representing the City of Mesquite, Nevada:
I have the City Manager in Las Vegas via videoconference, and he has some testimony that describes the system. He could also answer the question about the trunk line and access line. I will defer to him to give his testimony and answer Ms. Pierce's question.

Bryan Montgomery, City Manager, City of Mesquite, Nevada:
This is relative to the question from Assemblywoman Pierce. A trunk line is a series of lines, whereas one dedicated line would be separate and would be subject and pursuant to the bill and the 25 cents a month. A trunk line could hold as many as 30 or 40 individual lines, and pursuant to the bill, the cap is ten times the amount of the 25 cents for a trunk line.

Existing statute, NRS 244 [*Nevada Revised Statutes*], does allow smaller communities such as Mesquite to do this very thing—impose a surcharge through the telephone companies for E911 services. The Legislature provided for that process in NRS 244, and it makes sense. It certainly makes sense through S.B. 30 also.

Almost all states provide for E911 charges. Just yesterday, I conducted a really quick Google search and found an article that says that your colleagues in Nebraska are considering tripling their surcharge, from 50 cents to $1.50, because of the rising costs. The real intent here for S.B. 30, as well as Chapter 244 as it exists now, is to assist local governments in recovering some of these costs in maintaining and upgrading this very important service.

As done in other states, this bill does require that a committee be formed. There are strict requirements on how these surcharge revenues may be utilized. We will certainly submit ourselves to those if this bill passes. This bill was amended to place a cap at 25 cents, which is similar to what was done in Chapter 244. That will generate only about $25,000 for the City of Mesquite, but we will take it. We feel it is very important as a matter of principle, and it has some means of revenue to offset the existing costs. We are estimating almost $75,000 a year to upgrade and maintain our system.

Assemblyman Grady:
I have two questions, and I think you touched on one. This will only take care of about a third of your current costs. Is that correct?

Bryan Montgomery:
That is correct.

Assemblyman Grady:
Secondly, I see that this will fall under Chapter 266. This will then not cover any city that is not a general law city or any of those who are special charter cities? They would not be covered?

Bryan Montgomery:
Correct.

Assemblywoman Kirkpatrick:
Is this not based on your population, so as it grows—and you are a growing city—your dollar figure will grow? The cap allows you to keep a lot of it in savings.

Bryan Montgomery:
Yes. Certainly, Mesquite is growing rapidly. Currently, about 8,000 phone lines would be subject to this fee if passed. Those phone lines would increase, and so would our fees. Our fees to the local exchange carrier would increase with any increase in lines. We pay a monthly charge to them as well. As we grow, the sophistication of our system will increase. There will be no savings and no extra. This will merely cover about one-third of those costs. As we grow, I would estimate the one-third would continue to be the percentage that this surcharge would cover.

Assemblywoman Kirkpatrick:
I didn't mean that you were going to have a savings account. I meant that this bill allows you to have up to $500,000 in this type of fee that you are going to be collecting, up to the 25 cents. Would it not be correct to assume that, as your city develops and you get farther out, you still would be collecting the money, so you will end up getting more than one-third of the cost? I know it takes a long time to get your infrastructure costs back, but eventually you should get most of that back. Isn't that a fair assumption?

Bryan Montgomery:
I believe that as our community grows, so will our costs. You may be right, and certainly this surcharge, if passed, may cover more than one-third as we grow, but probably not much more, because our costs will continue to grow. As we grow in population, the number of phone lines that are charged to the phone company will grow, too.

Derek Hughes, Chief, Mesquite Fire and Rescue Service, Mesquite, Nevada:
I would like to take this opportunity to talk about the importance of the enhanced 911 system. It is very critical to our work as public safety responders. The system provides for public safety dispatch centers to identify the physical

location of a 911 caller. These callers can include young children, people suffering a stroke, a heart attack, or other medical emergency. Someone who is a victim of a crime often cannot adequately give their location.

[Derek Hughes, continued.] With the E911, it takes only one second to locate the caller. Without E911, it could take up to several minutes, if ever, to find that person. For example, in our community we have an aging population, and a lot of people live alone. An elderly lady had a stroke, and because of that, she was unable to speak but was still able to call 911. We were able to respond to that location.

Part of the concern for the upkeep of this system, though, is that the database continually has to be updated. If they had moved and we didn't take some of this money to update the database, we could have gone to her old location, if she had kept the same phone number, and not have gone to that home in a timely manner.

It is not just about updating the technology, but keeping our database and the dispatchers trained along with the responders.

Assemblywoman Pierce:
I have a question, but I am not sure who this would be for. In the Legislative Counsel Digest, it says existing law authorizes certain counties to collect a surcharge. This authorizes city councils. Is there ever going to be a conflict where a city is going to impose this, but the county already does?

Bryan Montgomery:
We currently are in Clark County. There is currently a different mechanism within Clark County under statute for an E911 surcharge, which the City of Mesquite has not been able to take advantage of. Hence, this legislation. The dispatch center is in a different location, and there is a different PSAP [public safety answering point] for Clark County than for the City of Mesquite. There would be no overlap or duplication. As I stated previously, there is a different mechanism in Clark County for the recovery of this. It is actually through the property tax, which is not the most favored way of recovering revenues from the residents, as you well know.

Randy Robison:
There is one small error still in the bill that was overlooked on the Senate side. This is on page 2, Section 3, subsection 3, paragraph (a), on lines 26 and 27. The last phrase says, "...and may not increase by more than 2 percent each year thereafter." That language was to be stricken on the Senate side. That was part of the original bill as proposed. What that effectively does is negate the

automatic cap of the 25 cents. We definitely want that cap in there, so that the provision that would allow an automatic 2 percent increase should be stricken.

Chairman Parks:
You are saying that on line 26, starting with the comma, "and may not increase by more than," to the end of line 27, should be removed?

Randy Robison:
Correct.

Mark Weir, Marketing Director, Rio Virgin Telephone and Cable Company, Mesquite, Nevada:
Thank you for the opportunity to state our objections to some of the portions of S.B. 30. Under NRS 268, Mesquite is given a fair and equitable method for funding enhancements to their current 911 system, with laws to provide for E911 funding in place, so S.B. 30 is not necessary.

If the Committee deems S.B. 30 necessary, the current version still fails to resolve a number of key issues. As you are aware, under NRS, registered voters must approve a 911 tax. The absence of a clause for voter approval in S.B. 30 is a major departure from current law. The wisdom of the Assembly and Senate, when they adopted that statute, was to let the voters decide. It is our belief that the voters in Mesquite should be afforded the same right as other residents of Nevada to be able to vote yes or no on 911 taxes.

Senate Bill 30 also excludes wireless communications and telephones provided by cable television. Both the Federal Communications Commission and the Nevada Public Utilities Commission recognize these types of companies as direct competition to local telephone companies. Exempting these types of companies from a 911 tax gives them an unfair and discriminatory advantage over our local telephone company.

Senate Bill 30 does not merely reassign taxes. In our opinion, it eliminates the voters' right to choose. It codifies a discriminatory and unfair tax. Residents of Mesquite have a fully operational E911 system. Members of the community will not be put at risk if S.B. 30 fails to pass. A fair and equitable E911 funding method already exists in NRS. Lacking urgency or need, it is our opinion that voters should retain their right to vote yes or no on taxes, and this Committee should uphold the wisdom and foresight found in NRS.

Fred Hillerby, Legislative Advocate, representing Verizon Wireless:
We are in support of S.B. 30. I thought it was appropriate to respond to the proposed amendment that was offered from Clark County. The position of the

wireless industry has always been that when you tax the wireless industry, they should be the recipient of the service for which the tax is generated. Henderson, by the way, is without surcharge out of their general fund and has, in fact, developed an enhanced wireless 911. Nobody else in the state has done so.

[Fred Hillerby, continued.] Over time, our customers have been required to pay that tax for which they receive no service. Right now, because of the technology of call waiting, which almost all of us have, when a wireless caller calls you the phone number is displayed, but you do not know where the caller is. That is true with the PSAP. They can see the number, but they don't know where you are if you are unable to respond. They still don't know where you are, as the earlier gentleman mentioned about someone in a home unable to speak. All you knew was a phone number. That is the reason there just has not, except for Henderson, been the technology developed to do that, and that is the reason we were concerned.

You heard about the small amount of money this would generate. It would be a long time before wireless customers would benefit from the service for which they were paying. If you are talking about competitive situations without knowing the actual numbers, one would have to presume that the majority of wireless customers in Mesquite also have land lines. In fact, you would be asking them to pay the surcharge on their wireless phone and their land line, and only the land line would benefit the recipient. They would be paying twice as much as a land line person who had no wireless service. Those are some of the reasons we discussed in the Senate, and that's the reason the wireless was taken out of this bill.

At one point, the question was raised whether wireless customers call into 911. Yes, they do, and thank goodness, because they are out and about and see things that need to be seen. The money that comes from this fund is for the technology and for the training, but not the day-to-day operations. Those calls, whether from a land line or a wireless line, do not increase the cost of what is in this bill in Section 4. That section defines how this money can be spent.

Chairman Parks:
I have one question on line 34 of page 3. It talks about paying recurring and non-recurring charges and, on line 37, personnel in training. Wouldn't those be operational costs?

Fred Hillerby:
Line 38 is routine maintenance, which is not relative to maintenance on the system itself. The recurring and non-recurring charges for services necessary are not the personnel to man the many calls coming in. One of the things we have

tried to do over time, and wherever it has come up, is not to have the funds used for things other than the equipment that is actually required for this. The service is a part of the deal otherwise.

Chairman Parks:
Just as I read it, you are creating a special revenue fund that is to be strictly used for those costs associated with the enhanced system.

Helen Foley, Legislative Advocate, representing T-Mobile USA, Inc.:
When we heard about the amendment, we had originally supported the legislation as it was written or agreed to by the Senate. I have a letter to distribute from T-Mobile that echoes many of the concerns that Verizon, through Mr. Hillerby, has expressed (Exhibit E).

Assemblywoman Pierce:
Mr. Hillerby, when you talk about the service that this pays for, what do you mean by that?

Fred Hillerby:
The service you pay for is in Section 4. In subsection 2, it creates a special revenue fund for the city. The money in the fund must be used only to enhance the telephone system for reporting an emergency, so that the number and address from which a call is received by the system, as made, may be determined. It includes paying recurring and nonrecurring charges for telecommunication services necessary for the operation of the enhanced telephone system associated with the routine maintenance and updating of the database. Those are the kinds of costs that this fund is to pay for. That section defines the limitations placed on the funds.

Randy Robison:
I wanted to thank you for the opportunity to present this bill and for giving our folks in Mesquite a chance to offer their testimony. I did want to remind the Committee and clarify a couple of things regarding some of the comments that were made. This authority that we are seeking currently exists in 16 other counties across the state. In those counties, the representative governing bodies of those jurisdictions are allowed to impose a surcharge with the same limitations that we are asking for, not to exceed 25 cents. Before they do so, they have to put together an advisory committee, comprised of residents of the jurisdiction, that will help them determine the cost associated with the system and an appropriate level for a surcharge.

Indeed, the residents of the city of Mesquite would have that same ability and recourse as their identical governing body would have. As their representatives,

they would have the ability to impose a surcharge, which amounts to about $3.00 a year, in order to help offset some of the costs.

[Randy Robison, continued.] I would not want the Committee to have the impression that we are in any way denying a right of a resident of any jurisdiction. Again, the representative bodies of every other county in the state make those decisions now, so we are simply seeking the same authority.

Chairman Parks:
Obviously we are going more to a wireless technology, and we know that a lot of people are doing away with their land lines in their own homes. That also begs two questions. Number one, at what point do you foresee incorporating the wireless into E911? Secondly, there is the voice over Internet protocol (VOIP), and my curiosity asks whether it impacts the E911 system.

Randy Robison:
We had those same discussions over on the Senate side. To answer part of your question, the wireless industry representatives communicated to us that information again, and I believe they mentioned either 2006 or 2007. The federal government is working on a separate system that addresses the enhanced wireless PSAP. That system is coming down the line from the federal side of things, both with wireless and VOIP. Part of the reason for the advisory committee developing a five-year master plan is that it may be required to update it on a regular basis, so those issues can be fully vetted. Part of the membership of that advisory committee includes experts in the industry, both on the local side as well as others. As those issues develop, I am sure those discussions will take place. In my opinion, they will be forced to address whether or not the surcharge is still as applicable as it once was.

Chairman Parks:
[Closed the hearing on S.B. 30 and opened the hearing on S.B. 408.]

Senate Bill 408 (1st Reprint): Revises provisions governing Virgin Valley Water District. (BDR S-1161)

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
This is another in a long line of messes I am mopping up from my previous activity in this building. I helped create the Virgin Valley Water District in 1993, and we left out an enabling mechanism to allow the water districts to collect, through liens, delinquent bills for water. Every other water district has that ability to do that. In fact, this language was taken specifically from and just

plucked out of the enabling language for the Las Vegas Valley Water District and other water districts. It allows the Virgin Valley Water District, through the lien process, to collect delinquent bills. This is just cleaning up something we should have done several years ago. It hasn't been an issue until this point. We just want to get it cleaned up.

Chairman Parks:
[Closed the hearing on S.B. 408 and adjourned the meeting at 10:36 a.m.]

RESPECTFULLY SUBMITTED:

_____
Nancy Haywood
Committee Attaché

APPROVED BY:

_____
Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 4, 2005 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 479	B	Gary Wolff / International Brotherhood of Teamsters Local No. 14	Amendment to S.B. 479
SB 479	C	Gary Wolff	Supportive letters and information for amendment
SB 479	D	Ron Cuzze / State Peace Officers Council	Letters from Attorney General's Office
SB 30	E	Helen Foley / T-Mobile USA, Inc.	Letter from T-Mobile asking for an amendment to S.B. 30 to include wireless