

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Fourth Session
June 4, 2007**

The Committee on Ways and Means was called to order by Chair Morse Arberry Jr. at 8:09 a.m., on Monday, June 4, 2007, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Morse Arberry Jr., Chair
Assemblywoman Sheila Leslie, Vice Chair
Assemblywoman Barbara E. Buckley
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Tom Grady
Assemblyman Joseph P. (Joe) Hardy
Assemblyman Joseph Hogan
Assemblywoman Ellen Koivisto
Assemblyman John W. Marvel
Assemblywoman Kathy McClain
Assemblyman David R. Parks
Assemblywoman Debbie Smith
Assemblywoman Valerie E. Weber

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senate District No. 7
Senator Dina Titus, Clark County Senate District No. 7

STAFF MEMBERS PRESENT:

Mark W. Stevens, Assembly Fiscal Analyst
Carol Thomsen, Committee Secretary
Patricia Adams, Committee Assistant



Chairman Arberry indicated that the Committee would hear testimony on S.B. 123 (R2).

Senate Bill 123 (2nd Reprint): Makes various changes to provisions relating to public records. (BDR 19-462)

Senator Terry Care, Clark County District No. 7, stated that S.B. 123 (R2) had quite a history. The bill was introduced on February 20, 2007, and it was now in its second reprint. Senator Care said the bill had previously been heard by four committees and one subcommittee.

According to Senator Care, the bill dealt with the way the government was supposed to respond, and what could be done when the government failed to respond to a request for documents that the requestor believed to be public record. Existing law in the *Nevada Revised Statutes* (NRS) addressed that situation to some degree, but Senator Care did not believe that current law was sufficient.

Senator Care noted that S.B. 123 (R2) was quite lengthy, but the only sections of concern were Sections 2 through 8. The bill stated that if the requestor made a request to the appropriate person from a governmental agency, there must be a response by the fifth business day after the request. Senator Care indicated that the response could be a refusal to release the information, in which case the governmental entity must cite the specific legal authority or NRS that it relied upon in refusing the request. After five days, the entity could advise the requestor that it needed additional time to review the documents and determine whether the documents required redaction prior to release or whether the documents would be released. Senator Care stated that the stipulations of the bill would at least provide some type of response to the request within five working days.

Continuing his presentation, Senator Care noted that S.B. 123 (R2) included a provision that stipulated that the mandates of the bill would also apply to private entities, but only to the extent that they were performing a governmental function. For example, if a city hired a contractor to administer a jail facility or an ambulance service, Section 3, subsection 2, of the bill made it absolutely clear that proprietary personnel records and financial data of the contractor would be off limits, and only those documents generated in the course of conducting the governmental function would be considered public documents, though held by a private entity.

Senator Care explained that redaction was not included in current law, and there was a provision in the bill that stated if the governmental entity deemed that the document contained confidential information under the provisions of the bill the entity could redact the confidential information prior to release of the document. Senator Care noted that action was similar to what occurred under the Freedom of Information Act on the federal level.

Senator Care pointed out that S.B. 123 (R2) included a provision that indicated after a confidential document had been in the legal custody or control of one or more governmental entities for 30 years, a person could apply to the appropriate district court for an order allowing the person to review the document. However, the holder of the document could determine that the reason the document was made confidential still existed. If the requestor went to court, the holder of the document was entitled to make a case for the document to remain confidential. Senator Care stated that there was no provision in NRS

that addressed confidential records, and the bill would benefit historians or writers who requested access to confidential records after a period of 30 years.

According to Senator Care, there were two exceptions to the confidentiality of records contained in Section 6, subsections 3(a) and (b), which indicated that: "The provisions of subsection 1 do not apply to any book or record: (a) Declared confidential pursuant to subsection 4 of NRS 463.120, (b) Containing personal information pertaining to a victim of crime that has been declared by law to be confidential." Senator Care explained that NRS 463.120 pertained to the records of the Gaming Control Board regarding gaming applicants and gaming licensees. The information pertaining to a victim remaining confidential was requested by the Nevada Board of Parole Commissioners. The Parole Board believed that statements made by victims regarding parole hearings should not be made public.

Senator Care referenced [Exhibit C](#), "Fiscal Note Summary for S.B. 123," which indicated that the fiscal note on the original bill was \$1,053,896,828 for FY 2007-08, \$1,089,894,153 for FY 2008-09, and \$2,179,757,583 for future biennia. However, after the first reprint of the bill, the figures were reduced to \$208,157 for FY 2007-08, \$256,973 for FY 2008-09, and \$281,188 for future biennia. With the exemption of statements by victims to the Board of Parole Commissioners, Senator Care believed that the fiscal note on the second reprint might have decreased yet again.

Assemblyman Hardy asked whether S.B. 123 (R2) included records that had been sealed for various reasons by the courts. Senator Care replied that the bill would not change the status of documents that had already been determined confidential or not confidential, with the exception of confidential records held for over 30 years. Senator Care said that one concern voiced about the bill was that confidential documents would become public. He reiterated that the bill would not change the status of documents.

Dr. Hardy asked whether the status of sealed documents would be changed going forward. Senator Care said the bill might change the sealing of documents held over 30 years, but he believed that because there was nothing specific in the bill pertaining to the courts that the status would not change. Court documents determined confidential or which had been sealed could contain proprietary or confidential information, which was usually the reason the documents were sealed. Senator Care did not believe that the status of such documents would change.

Assemblywoman Leslie asked about documents held by local governments. She noted that lawsuits had been filed in Washoe County. Other issues had arisen over public access to documents, and she asked about the effect of the bill on local governmental entities.

Senator Care replied that the provisions of the bill would apply to every governmental entity in the State. He pointed out that the original bill included a two-day response period and stated that if the entity failed to respond, the documents would be deemed public. Senator Care indicated that he had worked with city and county entities, and Washoe County and the city of Reno had written policies pertaining to requests for the release of documents.

Assemblywoman Smith asked how S.B. 123 (R2) connected to the redaction bill that was passed by the 2005 Session and the clean-up bill passed by the current Session regarding the redaction of Social Security numbers and limitations of access to personal records.

Senator Care said that if a person made a request for a document and the entity believed the document should be made public, but the document contained Social Security numbers along with other personal identifying information that would fall under state law, the bill would allow the entity to request more than five days to respond in order to redact personal identifying information in the bill.

Assemblyman Marvel asked about the rationale for the bill. Senator Care replied that the rationale for the bill was that many states had an apparatus in place similar to S.B. 123 (R2), and current Nevada law indicated that a person was entitled to request a document. Senator Care indicated that as a former journalist, he was familiar with the frustration that came with requesting a document, being told that the document would be available in a few days, and then never receiving the document. Senator Care noted that most requests for documents were honored, but failure to provide documents to a requestor still occurred.

Senator Care stated that he had worked with the Nevada Press Association and was familiar with the issue, and he believed in transparency of records. Senator Care noted that during the 2005 Session, he had supported revisions to the Open Meeting Law, and he believed that access to public records was the next step in the process. Generally speaking, governmental entities honored requests for public documents, and oftentimes when entities failed to respond, it was because the documents were embarrassing to the entity.

Assemblywoman Gansert said her concerns were with Section 2, subsection 2, which read, "The provisions of this chapter must be construed liberally to carry out this important purpose," and subsection 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." Ms. Gansert stated that she was concerned about court cases and information that had been sealed; she commented that she did not believe 30 years was a sufficient amount of time.

Senator Care indicated that Section 2 was intended to be a preamble to S.B. 123 (R2), emphasizing that if there was any doubt, the doubt should be resolved in favor of the requestor of the document.

Assemblyman Parks commended Senator Care for his hard work on S.B. 123 (R2), and having worked in the public sector for many years, he believed it was a very good bill. Mr. Parks stated that he would offer his support to the bill.

Barry Smith, Executive Director, Nevada Press Association, testified that the Association supported S.B. 123 (R2). As mentioned by Senator Care, the bill had been heard by several committees and much work had been done to make revisions in the bill that dramatically reduced the fiscal note. Mr. Smith voiced support for the bill.

Assemblywoman Buckley said her concern was with Section 3 of the bill about nongovernmental entities, and she asked Senator Care which entities he envisioned as being included in that category.

Senator Care explained that Section 3 would address the situation in which a request was made to a governmental entity, and the governmental entity had contracted with a private contractor to perform that governmental function and, therefore, could not help the requestor secure the information.

Senator Care noted that under the mandates of Section 3 of S.B. 123 (R2), the nongovernmental entity would be required to consider the request for public records.

According to Senator Care, the bill had been amended in such a fashion that the language in Section 3 did not apply to financial or other proprietary records of nongovernmental entities. The language was intended to mean that only documents that the governmental entity itself would generate while performing the governmental function would be made available to the public by the nongovernmental entity.

Ms. Buckley asked, if Opportunity Village had a contract with the State to provide services for developmentally disabled persons, whether the language of Section 3 would apply to Opportunity Village.

Senator Care said the first question would be whether Opportunity Village was performing a governmental function. He pointed out that programs operating under 501(c)(3) of the Internal Revenue Service were recognized as nonprofit organizations. The language of the bill addressed contractors, such as ambulance companies, that contracted with a local governmental entity to provide services.

Ms. Buckley asked whether a private ambulance company would be subject to the open records law if that company was not contracting with a local governmental entity.

Senator Care said that if a private ambulance company contracted with a local governmental entity to perform a governmental function, the ambulance company would be subject to the mandates of S.B. 123 (R2). Senator Care pointed out that many fire departments offered ambulance service, which was considered a governmental function, but there might be a private company that had a contract with a governmental entity, and in such cases, the mandates of the bill would apply.

Ms. Buckley stated that she was concerned about Section 3. She voiced support for the other sections of the bill, but foresaw significant litigation about contractors performing traditional governmental functions, such as contractors for garbage collection, attorneys contracting for criminal defense services, or conflict attorneys. Ms. Buckley indicated that perhaps Section 3 could be reworded about governmental entities that had privatized certain governmental functions.

Senator Care stated that he would have no objection to rewording Section 3. The Senate Committee on Government Affairs had discussed the issue using the example of a county hiring an accountant, whose private records would not be subject to public record laws. Senator Care explained that there were privileges attached to private companies, even when those companies entered into governmental contracts. In the case of a contract attorney, the attorney-client privilege would apply. Senator Care stated that he appreciated the point brought forward by Assemblywoman Buckley and he was open to suggestions regarding the language of Section 3.

Chairman Arberry asked whether there was further testimony to come before the Committee regarding S.B. 123 (R2), and there being none, the Chairman declared the hearing closed.

The Chairman opened discussion on S.B. 471 (R2).

Senate Bill 471 (2nd Reprint): Revises provisions relating to sex offenders and offenders convicted of a crime against a child. (BDR 14-1426)

Senator Dina Titus, Clark County District No. 7, stated that S.B. 471 (R2), as amended, was a combination of S.B. 232 (R1) and S.B. 471 (R2). The two bills had some issues in common, but also addressed different aspects of the problem facing the State regarding sexual predators.

Senator Titus explained that the bill would: (1) Establish community safety zones, which required certain distances between places where a Tier-3 sex offender, or a sex offender who committed crimes against children under the age of 14, could reside or loiter. That included parks, schools, or places designed primarily for use by children. (2) Require more severe penalties for certain sex offenses against children, increasing the minimum sentence. (3) Provide for DNA testing of all sex offenders. (4) Establish a pilot program for active electronic monitoring of certain Tier-3 sex offenders upon release, the expense for which would be paid by the offender.

According to Senator Titus, the fiscal note attached to the bill represented the cost for DNA testing.

Chairman Arberry asked whether there was further testimony regarding S.B. 471 (R2).

Tray Abney, Legislative Director, Governor's Office, stated that the Governor wanted to lend his full support to S.B. 471 (R2), which combined two great bills into one excellent bill. Mr. Abney offered the Governor's thanks to Senator Titus for her hard work in combining the bills. Mr. Abney indicated that the Governor asked that the Committee support S.B. 471 (R2).

With no further testimony to come before the Committee about S.B. 471 (R2), the Chairman declared the hearing closed.

The Chairman opened the hearing on S.B. 166 (R1).

Senate Bill 166 (1st Reprint): Requires payment of increased salaries to certain school employees holding national certification. (BDR 34-1149)

Al Bellister, representing the Nevada State Education Association (NSEA), stated that S.B. 166 (R1) was introduced by Senator Bernice Mathews at the request of NSEA. Mr. Bellister indicated that the bill dealt with the issue of attracting and retaining highly qualified teachers. The bill addressed persons who had gone through the rigorous process of earning National Board of Professional Teaching Standards certification.

Mr. Bellister explained that the certification process was extremely rigorous, and since NSEA had begun encouraging teachers to complete the process in 1999, only 277 teachers had earned certification from the National Board of Professional Teaching Standards. According to Mr. Bellister, there were 24 areas of certification that were allowed, one of which was librarian.

Mr. Bellister directed the Committee's attention to page 2, line 29, of the bill, which made one minor change by deleting the word "teachers" and inserting the word "employees." He indicated that librarians were not considered teachers, despite the fact they offered instruction; therefore, the amendment was made

to allow librarians to earn certification from the National Board of Professional Teaching Standards, because one of the areas of licensure was a school librarian.

Continuing his presentation, Mr. Bellister referenced page 4 of the bill, which changed the existing *Nevada Revised Statutes* (NRS) to specifically address the issue of school librarians, and allowed librarians to earn the additional 5 percent upon receiving certification by the National Board of Professional Teaching Standards.

Mr. Bellister stated that page 6 of the bill included an appropriation of \$18,078 in FY 2007-08 and \$18,798 in FY 2008-09. From the time the National Board of Professional Teaching Standards certification had been offered, six librarians in Nevada had actually earned the certificate, but because of the current statute, those librarians could not be paid the additional 5 percent.

Mr. Bellister asked the Committee to consider passage of S.B. 166 (R1) so that librarians could reap the reward of their hard work. He pointed out that school librarians were listed on the critical shortage list in Nevada, and any action that could be taken to help attract and retain librarians would be helpful.

Assemblyman Grady indicated that he had heard from representatives in Lyon County about a problem with the date of the certification, which apparently was received in December, but was retroactive, and that caused budgetary problems. He asked whether Mr. Bellister was aware of that problem.

Mr. Bellister stated that he was not aware of the problem in Lyon County. He indicated that the bill required persons who had earned certification from the National Board of Professional Teaching Standards to provide evidence of that certification to their employer prior to September 15. Mr. Bellister said that he had not been in direct contact with any school districts that reported a budgetary problem as a result of passage of the enabling legislation to pay teachers the additional 5 percent, nor had the school districts indicated a problem in adding librarians to the certification process.

Dr. Craig Kadlub, Clark County School District (CCSD), indicated that CCSD would like to offer its support to S.B. 166 (R1).

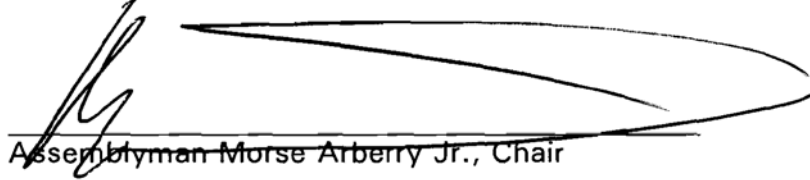
Chairman Arberry asked whether there was further testimony to come before the Committee regarding S.B. 166 (R1), and there being none, the Chairman declared the hearing closed.

Chairman Arberry declared the Committee in recess at 8:37 a.m. [Because of time constraints, the meeting was not reconvened.]

RESPECTFULLY SUBMITTED:

Carol Thomsen
Committee Secretary

APPROVED BY:



Assemblyman Morse Arberry Jr., Chair

DATE: _____

EXHIBITS			
Committee Name: <u>Committee on Ways and Means</u>			
Date: <u>June 4, 2007</u>		Time of Meeting: <u>8:00 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
* * *	A		Agenda
* * *	B		Attendance Roster
SB123	C	Senator Care	Fiscal Note Summary for S.B. 123