

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
February 9, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:06 a.m. on Monday, February 9, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Rural Nevada Senatorial District
Assemblyman Pete Goicoechea, Assembly District No. 35

STAFF MEMBERS PRESENT:

Natalee Binkholder, Legislative Counsel
Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Jodi Stephens, Legislative Director, Office of the Governor
Alan H. Glover, Carson City Clerk-Recorder

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Constance J. Brooks, Senior Management Analyst, Office of the County
Manager, Clark County
Teresa McKee, General Counsel, Nevada Association of Realtors

CHAIR CARE:

I will open the hearing on Senate Bill (S.B.) 67.

SENATE BILL 67: Revises provisions governing declarations of homestead.
(BDR 10-440)

JODI STEPHENS (Legislative Director, Office of the Governor):

With me today is Wade Iverson, Legislative Assistant, Office of the Governor. I
will read from my testimony ([Exhibit C](#)) that is the straightforward explanation
of our homestead bill.

CHAIR CARE:

Nothing in this bill would preclude homeowners from going to a legal form shop
to obtain that document, finding it somewhere online or attempting to use that
document at the county recorder?

MS. STEPHENS:

No sir.

CHAIR CARE:

These homestead declarations are usually liberally construed. Are you aware of
any cases where the document is incorrect because of someone's mistake?
There would be less and less of that if we adopt this bill.

MS. STEPHENS:

In our research, we found these forms have specific parameters when people
file them. If they are out of the margins or the paper type is not correct, they
are rejected. What we want to do is streamline the form. If you want to use the
form, we want to make it available; that is the hope of this legislation.

ALAN H. GLOVER (Carson City Clerk-Recorder):

The recorders in this State are neutral on this bill. One problem we have had as
recorders is most of the counties provide these forms for people free of charge.
However, in at least one county, a district attorney's opinion said they should
not give out forms because the county could be held liable if there was

something wrong. Those counties have followed that advice, which they rightfully should. A standard form is a good idea.

The copy of the form handed out ([Exhibit D](#)) is one that we adopted; it was developed by former Assembly Speaker Joseph E. Dini, Jr. when he was running for office a number of years ago. In the 20 years I have been the recorder, we have always given out these forms. This modified version of that form comes into compliance with the statutes this body passed a few years ago on the margins. Setting up the form is simple and does not take anyone long to do. They just take a look at the Clark County form or our form, have the Attorney General's Office look it over for content and approval, and then we put it out for use.

The only area which gives us a problem is page 4, lines 17 and 18 of the bill, which exempts the form from the \$25 fee requirement along with affidavits of death and military discharges for a nonstandard form.

If somebody comes into record on this form, it should be a standard form. That is why we have the lines around it, so they know to put the notary stamp in the correct place. No forms are rejected by a recorder; they can come in on just about any form. The issue is if they do not meet the standards under the statute for margins, they have to pay the \$25 nonstandard fee, and we hate to see that happen. This form will go a long way in preventing that from happening.

On the other hand, we put that provision in to handle scanning of documents. The national standard for recording needs those margins. When you scan, if you are missing part of the signature or the notary stamp is partway off the page, you lose that. We then have to specially handle the form in microfilming and scanning.

We would prefer to have those lines on page 4 deleted. It is a good idea to get a standard form and legally authorize us to give it out, even though some counties are reluctant to do so because of advice from their district attorneys.

CHAIR CARE:

Do we need language to shield the county from liability for issuing a form? Case law says you may actually file a homestead exemption up until the moment before the sheriff sale; it is not something you have to have prior to litigation or prior judgment. An attorney or someone would certainly have time to review the

homestead declaration or get some idea whether the form is valid. You may consider that question and confer with Ms. Stephens because we are not going to act on the bill today.

MR. GLOVER:

That is probably a legal question. Recorders and county government would like to have protection for giving out anything, but I have never seen litigation on the point that the form was incorrect, and forms do vary.

The Governor's Office is aware of companies that charge \$50 to file these documents. However, the public can come down and get the form from us for free and the recording costs them \$14. You can also obtain the forms in a stationery store, but the problem is there are many California forms where you have to blank out "California" and write in "Nevada."

Standard forms Statewide would go a long way to help everybody out, and we are more than happy to give them out for free.

CHAIR CARE:

My other question concerns the fiscal note. The largest fiscal note reported in 2008-2009 for \$7,000 was from Carson City.

MR. GLOVER:

That was a misunderstanding on my part. Our finance department said we record the document for free. The fiscal note does not apply because posting it to the Website does not cost us anything.

CHAIR CARE:

Please run any suggested amendments through the Governor's Office, then we will take another look.

CONSTANCE J. BROOKS (Senior Management Analyst, Office of the County Manager, Clark County):

In the matter of S.B. 67 relating to revising provisions governing the declaration of homesteads, Clark County would like to go on record in support of this bill.

Declarations of homestead are required to be recorded by the appropriate county recorder per Nevada Revised Statute (NRS) 115.010; designated forms needing specific formats are necessary to ensure their validity.

Clark County understands and appreciates both the immediate and long-term benefits of utilizing this standardized form, especially from a customer service perspective. We thank the Governor's Office for recognizing our efforts in customer service.

We have experienced challenges in the past in providing homestead forms. A standardized form would allow a more seamless process and customer-friendly experience. The cost for maintaining the forms at the office, as well as via the Web, is minimal at best. However, this form has the potential to remove obstacles in the provision of the homestead forms to the customer; that benefit is far greater than the cost expended.

Should this bill pass, we look forward to providing input toward the creation of the form and appreciate the opportunity to do so.

CHAIR CARE:

We will close the hearing on S.B. 67. I will open up the hearing on S.B. 106.

SENATE BILL 106: Revises provisions governing the purchase of a home or improved lot that is adjacent to open range. (BDR 10-497)

As Senator McGinness and Senator Amodei know, all three of us—at one time or another in the last 10 years—have served on the Legislative Committee on Public Lands as has Assemblyman Goicoechea. Senator Rhoads has always been the Chair, so I am familiar with this issue.

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

Senate Bill 106 expands existing real estate disclosure requirements for sellers of homes or improved lots adjacent to open range lands by requiring sellers to disclose the presence of certain rights-of-way and record the filing of this and an existing open range disclosure with the appropriate county recorder.

Those who have served on this Committee well know the problem is when people buy a house in a rural area in Nevada and then have a bunch of horses or cattle come onto their place, they call the sheriff and complain. The law is that you have to fence them out; the owner of the livestock does not have to fence them in.

In 2001, I did get a bill passed wherein the contract between the buyer and the seller stated you will occasionally have livestock on your property unless you fence them out. This bill takes it one step further.

ASSEMBLYMAN PETE GOICOECHEA (Assembly District No. 35):
I will clarify on what we are looking for in S.B. 106.

As Senator Rhoads said, the passage of S.B. No. 16 of the 71st Session that became NRS 113.065 required a disclosure that property in open range lands allows livestock grazing unless you fence out. A couple of issues came with that. First, this was only a signed disclosure the seller had to retain. Senate Bill 106 requires the document be recorded with the recorder's office, so with a conflict or issue, you can go to the recorder's office and find if you did have the signed disclosure between the purchaser and the seller.

The other issue is federal Revised Statute (R.S.) 2477 ([Exhibit E](#)) with rights-of-way established by public use over the years. The federal government did cut those off in 1976. After 1976, you could no longer create an R.S. 2477 rights-of-way by public use. However, everything done previous to 1976 still applies. If it was established by public use, that right-of-way is valid. Many rural counties do not have all those R.S. 2477 roads and rights-of-way listed.

The bottom line is that as an unknown purchaser, you come into a rural area or even an urban area encompassed by R.S. 2477 and buy property. As Senator Rhoads explained, the first thing that happens is a bunch of cows or livestock come across your property, so you fence it. By fencing it, you actually take away that R.S. 2477 right-of-way. This bill also incorporates the R.S. 2477 in that your property may be encumbered by an R.S. 2477 right-of-way.

The Nevada Association of Realtors contacted me, and they are concerned about how you determine an R.S. 2477. I suggested we put an amendment into the bill that said you may be encompassed by an R.S. 2477. There would never be any way for sure to say if you buy the property and fence it, that all of a sudden come spring, a rancher will not come up this two-track road and say, "Hey, this right-of-way has been in place. I can go back through my chain of title; it has been in place since the 1800s, and you cannot close this road." That is where the conflict comes with the R.S. 2477.

All S.B. 106 does is say you have to disclose there may be a conflict with an R.S. 2477, and you also understand that through the terms and conditions of NRS 569.440, the fence out does not apply. You will have a disclosure that says: "I am aware I am adjacent to open range, and there may well be an R.S. 2477 right-of-way across the property."

The seller will be responsible for making sure the purchaser is aware of those two areas: No. 1, it is open range; No. 2, you could have an R.S. 2477. An R.S. 2477 is not necessarily a road; it could be a right-of-way for a water right or a ditch right. Those all can be established under R.S. 2477.

CHAIR CARE:

You do not have an issue with the proposed amendment from the realtors?

ASSEMBLYMAN GOICOECHEA:

No, I do not; it clearly makes sense. Neither a realtor nor a seller could guarantee there would not be an R.S. 2477 issue in the future.

TERESA MCKEE (General Counsel, Nevada Association of Realtors):

Assemblyman Goicoechea did a fabulous job of stating our position and our concerns. In this amendment ([Exhibit F](#)), section 1, line 10 talks about open range and what you need to be aware of. I have tried to just add the next section as an additional paragraph. You are buying a type of property that may be subject to these claims.

We would like to have this amendment give the potential property buyer notice that there may be these types of issues and have the property buyer responsible for their own due diligence on the property, assuming the risk of unknown rights-of-way. We do not want the seller to say yes there is or no there is not when the seller may have no ability to know that independently. These types of rights-of-way are often only validated by federal court determination.

MR. GLOVER:

I just mentioned one minor technical correction to Senator Rhoads, since you may amend the bill anyway. On page 2, line 30 the word "file" is not correct, it should be "record." The recorder's office records things; the clerk's office files things. We corrected that about six or eight years ago. If you amend it, that might be worth doing.

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CHAIR CARE:

We will close the hearing on S.B. 106. The Senate Committee on Judiciary is adjourned at 9:30 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____