

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
February 26, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:48 a.m. on Thursday, February 26, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Kevin Powers, Senate Legal Counsel and Bill Drafting Adviser
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Dennis K. Neilander, Chair, State Gaming Control Board
Joe Guild, Nevada Court Reporters Association
James Jackson, Nevada Judges of Limited Jurisdiction
John Tatro, Justice Court II, Carson City
Jason Frierson, Office of the Public Defender, Clark County
Howard Skolnik, Director, Department of Corrections

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Steve Barr, American Federation of State County and Municipal Employees,
Local 4041
Richard P. Clark, Executive Director, Peace Officers' Standards and Training
Commission
James D. Earl, Executive Director, Technological Crime Advisory Board, Office
of the Attorney General
Rebecca Gasca, American Civil Liberties Union of Nevada
Lee Rowland, American Civil Liberties Union of Nevada
Bart Mangino, Clark County School District
Jenny Reese, Nevada Association of Realtors

CHAIR CARE:

The work session is called to order. Everyone has the work session document ([Exhibit C](#), original is on file in the Research Library). We will begin with Senate Bill (S.B.) 55.

SENATE BILL 55: Makes various changes concerning commercial recordings.
(BDR 7-413)

CHAIR CARE:

This bill is from the Secretary of State's Office. We have amendments from the Secretary of State's Office and the registered agents in [Exhibit C](#), pages C21 through C24. The registered agents' proposed amendment received no opposition from the Secretary of State's Office. Am I correct that the bill would require dormant corporations, upon request by the Secretary of State, to provide information about ownership?

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):

That is correct. However, the penalty for not providing that information, which puts the entity into revocation, would only apply to the entities that are active and in good standing. We could require that information of dormant entities. If they are in a default situation, they could be permanently revoked if they did not comply.

CHAIR CARE:

Is your office getting any push back working with the Uniform Law Commission? Does the Secretary of State have to request the information be made available as a matter of course by the entity?

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MR. ANDERSON:

We have not had any push back from the Uniform Law Commission. However, there is pending federal legislation. I know the Uniform Law Commission is addressing that to reach a compromise regarding U.S. Senator Carl Levin's concerns. We have not seen the final draft. It is dependent upon whether this federal legislation goes forward.

SENATOR PARKS:

The proposed amendment to S.B. 55 suggests language that would amend Nevada Revised Statute (NRS) 77.370 regarding registered agents. Is that correct?

MR. ANDERSON:

I cannot speak for the registered agents. My understanding is this amendment would remove provisions in the Model Registered Agents Act requiring registered agents to provide a listing and specific information about entities they are resigning from. There was some concern this information was considered confidential and was not originally part of the requirement of filing with the Office of the Secretary of State. The list of entities a registered agent is resigning from would include the name of the entity. The registered agent would also provide an affidavit stating they had actually notified those entities they are resigning as their registered agent.

CHAIR CARE:

Hearing no further questions from the Committee, I will entertain a motion.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 55.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARE:

We will now address S.B. 67 in [Exhibit C](#), page C25.

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

CHAIR CARE:

This bill was proposed by the Governor's Office. Alan Glover, the Carson City Clerk-Recorder, had a proposed amendment in [Exhibit C](#), page C26. There was no opposition to the amendment proposed by Mr. Glover. There being no questions from the Committee, I will entertain a motion.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 67.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will now address S.B. 83 in [Exhibit C](#), page C39.

SENATE BILL 83: Makes various changes relating to the regulation of gaming.
(BDR 41-311)

CHAIR CARE:

We have the comprehensive amendment in [Exhibit C](#), page C42; the original amendment in [Exhibit C](#), page C51; and the subsequent amendment in [Exhibit C](#), page C60. The subsequent amendment is dated February 20, 2009, but we also have a letter dated February 23 in [Exhibit C](#), page C63. The subsequent amendment deals with sections 3 and 7 of the bill. The original amendment addressed language in sections 1, 3, 7, 9, 18, 19 and 22.

DENNIS K. NEILANDER (Chair, State Gaming Control Board):

You are correct. We also provided a subsequent amendment, and we amalgamated that with an amendment submitted in Committee. The subsequent amendment we are suggesting was drafted after the Committee hearing based on questions from Committee members. There was a question regarding the privileged section and the confidentiality statutes. We debated whether use of the word "absolute" was necessary in that context. We consulted with the

Attorney General's Office, and as a result, we added the word "absolute." The first section of that amendment remains the same, and the new language says materials prepared by the State Gaming Control Board staff are absolutely privileged.

CHAIR CARE:

You request changing the bill as reflected in the subsequent amendment, correct?

MR. NEILANDER:

Correct.

CHAIR CARE:

What about the sections referenced in the comprehensive amendment?

MR. NEILANDER:

There are no others except those in the subsequent amendment. We eliminated two phrases that were contained in the definition of manufacturer. We discussed this was setting up a mechanism for the Gaming Commission to further define "control program" in the context of a gaming device. There were two phrases that could be read to limit the Commission's ability to adopt whatever regulations it deemed appropriate to define "control program."

CHAIR CARE:

It appears the comprehensive amendment subsumes the amendment proposed by the Association of Gaming Equipment Manufacturers.

MR. NEILANDER:

It does. I had several discussions with them, and they agree with that amendment.

CHAIR CARE:

When we say absolutely privileged, does that mean under no circumstances could a court order those records be produced?

MR. NEILANDER:

Yes. It refers to those records developed by the Board staff—taking other sources of information and developing our own work product.

CHAIR CARE:

That is the Board's work product. We are not talking about the information provided to the Board, we are talking about what you do with it after you receive it. That is untouchable, correct?

MR. NEILANDER:

Yes. The information provided in an application would remain confidential as it always has been, but would not enjoy the absolute privilege. A court, upon proper order, could allow that information to be discoverable under *Laxalt v. McClatchy, et al.*, 116 F.R.D. 455 (D. Nev. 1987), 116 F.R.D. 455 (D. Nev. 1986) and 109 F.R.D. 632 (D. Nev. 1986). Those provisions would not be changed. We drafted the amendment to capture the Board's work product.

SENATOR WIENER:

Is this absolute privilege of work product exclusive to your entity?

MR. NEILANDER:

The absolute privilege exists in other places in the law. With respect to our records, we have a separate provision that is unique to gaming, which is within section 7, subsection 4 of the bill, NRS 463.120.

SENATOR WIENER:

We are not setting a new standard. We are just ensuring the additional protection of that work?

MR. NEILANDER:

Yes. The privilege language is contained in another section in the statute. We are combining these because there has been some confusion about whether the privilege language should be read together with the confidentiality language, which are in two separate statutes.

CHAIR CARE:

The Board is seeking amend and do pass, with the amendment being the comprehensive amendment, except you want to use the language as to sections 3 and 7 in the subsequent amendment.

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LINDA J. EISSMANN (Committee Policy Analyst):

In the work session document, the original amendment distributed at the hearing is labeled No. 2. Then I received the subsequent amendment to sections 3 and 7, which is labeled No. 3. The comprehensive amendment, which is No. 1, incorporates those two. If you want to take the original amendment plus the subsequent amendment to sections 3 and 7, you only need to amend and do pass with the comprehensive amendment.

CHAIR CARE:

There being no questions from the Committee, I will entertain a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 83 WITH THE COMPREHENSIVE AMENDMENT NO. 1.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will now address S.B. 34 in [Exhibit C](#), page C3.

SENATE BILL 34: Makes certain changes concerning the use of court reporters in certain court proceedings. (BDR 14-397)

CHAIR CARE:

We heard testimony from the court reporters, and we have an amendment from them in [Exhibit C](#), page C5. We also have an amendment from Mr. Graham for the judicial branch in [Exhibit C](#), page C4. I have a letter from Judge John Tatro from the Carson City Justice Court clarifying that the Jefferson Audio Video Systems (JAVS) do have backup in ([Exhibit D](#)). I heard from the defense bar, who were not present to testify at the hearing, but there is some sentiment this is not a bad idea.

I have reservations about S.B. 34. It seems this is either a good idea or a bad idea. When you start compromising what may or may not be a good or timely idea, you are splitting the baby for the sake of splitting the baby, as opposed to

making policy. Does anyone want to put anything on the record regarding another approach to S.B. 34 before we act?

JOE GUILD (Nevada Court Reporters Association):

I spoke with Chief Justice James W. Hardesty, and he expressed concern that the bill be processed so the courts referred to in the bill have the flexibility to use audiovisual equipment if they need to, rather than certified court reporters. The Chief Justice indicated he would like to convene a commission during the interim to look at the audiovisual issue. He said he wants to include all interested parties—court reporters, personnel from lower courts, the Supreme Court and State Bar Association. Nevada Revised Statute 3.380 contains some archaic language referring to sound recording equipment and typewriting. Chief Justice Hardesty said perhaps certified court reporters should be the transcribers when this equipment is used. These are issues that would be discussed during the interim.

Mr. Graham's amendment is different from my understanding of what we agreed upon. His amendment says "felony Category A murder" in [Exhibit C](#), page C4. I thought we talked about felony Category A crimes.

CHAIR CARE:

Is there a need for this bill if there is a commission in the interim? It may come back in the 2011 Session and would be for all preliminary hearings, not just this one or that one.

JAMES JACKSON (Nevada Judges of Limited Jurisdiction):

I have had the same discussion with Chief Justice Hardesty as Mr. Guild. Chief Justice Hardesty desires this bill to move. He has promised that he will commission a Supreme Court committee with all the stakeholders so we can determine a statewide standard. He wants this bill to go forward so the lower courts are consistent with the District and Supreme Courts.

I received positive comments for this bill from the defense bar. They said it would allow defense lawyers to have a visual record of the reactions and behaviors of the witnesses and the judiciary during those proceedings. I have not received any negative reaction to this bill except the court reporters and a couple of concerns from district judges.

SENATOR WASHINGTON:

Are you in agreement with the proposed amendment by Mr. Graham?

JOHN TATRO (Justice Court II, Carson City):

We will accept the bill if you vote yes, but we would rather not have it in there. Preliminary hearings are held in Justice Court where the standard of proof is slight or marginal to send a case to District Court just to see if there should be a trial. When it gets to the jury trial requiring proof beyond a reasonable doubt, a court reporter is not required in any case. This was an oversight.

CHAIR CARE:

Mr. Frierson, did you send me an e-mail? We are interested in the perspective of the defense bar on this bill as originally drafted and any of the amendments.

JASON FRIERSON (Office of the Public Defender, Clark County):

We looked at this bill and discussed it with those involved. Mr. Jackson and I had extensive conversations about it. The responses I got from the defense bar varied. In general, they were supportive of the option of having court recordings. They seem to unanimously believe it would be valuable for review, especially in the more serious cases.

Usually at the preliminary hearing stage, the decision on whether the death penalty will be sought is not yet made. The language was changed from the death penalty being sought to death-eligible cases. Category A was considered as a whole because of the span of sentencings for Category A felonies. The defense bar was fine with that. Category B, while I understand why it might want to be expanded to that, includes crimes that are often typical cases. For example, a petty larceny is also often charged as a burglary, which is a Category B. That was not unanimously viewed to be as serious as the Category A crimes. That may have broadened it beyond what the defense bar was concerned about, making sure it was covered.

Sometimes a recording is more valuable because of the ability to observe the physical reactions of people. Court reporters sometimes lose what is actually transpiring when the discussion gets too fast. We value the recording option, especially with those cases.

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CHAIR CARE:

When I read a bill like this, I think of the rights of the criminal defendant. We have the bill, the amendment proposed by Mr. Graham, and the amendment proposed by the court reporters making it a Category B felony or higher.

SENATOR WASHINGTON MOVED TO DO PASS S.B. 34 AS ORIGINALLY DRAFTED.

SENATOR PARKS SECONDED THE MOTION.

CHAIR CARE:

Mr. Wilkinson, do we have it on the record that even if the Committee passes this bill and it becomes law during this Session, the work will still be done in the interim? Is that sufficient?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Yes.

SENATOR PARKS:

We do have the Advisory Commission on the Administration of Justice, which is also an avenue to further research and study this issue.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will now address S.B. 35 in [Exhibit C](#), page C6.

SENATE BILL 35: Repeals the provision that prohibits the prosecution of a person in this State for a crime after the person is convicted or acquitted of the crime in another state, territory or country. (BDR 14-272)

CHAIR CARE:

This bill deals with the dual sovereignty doctrine. We have a proposed amendment from the Attorney General's Office in [Exhibit C](#), page C7. The amendment says that evidence of an acquittal for the same crime following trial in another jurisdiction would be admissible. Does anyone have any questions regarding this bill?

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SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 35.

SENATOR AMODEI SECONDED THE MOTION.

SENATOR MCGINNESS:

I expressed some concern on this bill during the hearing. Mr. Kandt offered this amendment. I am still not comfortable with this.

CHAIR CARE:

I appreciate the discussion I got over the e-mail of *State v. Franklin*, 735 P.2d 34 (Utah 1987) and the research done by the public defenders in [Exhibit C](#), pages C8-C11, and the American Civil Liberties Union (ACLU) in [Exhibit C](#), pages C12-C13 as to what other states have similar statutes.

THE MOTION CARRIED. (SENATORS MCGINNESS AND PARKS VOTED NO.)

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CHAIR CARE:

We will now address S.B. 44 in [Exhibit C](#), page C15.

SENATE BILL 44: Designates certain employees of the Department of Corrections as category II peace officers. (BDR 23-304)

CHAIR CARE:

This bill is from the Department of Corrections. Mr. Skolnik testified on this bill, and we heard from Steve Barr representing the corrections officers. The proposed amendment from the corrections officers makes a total of 15 or 16 people category I peace officers in [Exhibit C](#), page C16. There was no opposition to the bill.

HOWARD SKOLNIK (Director, Department of Corrections):

As we understand the amendment, it has also eliminated all the category II officers in other jurisdictions. The Secretary of State and the Attorney General's Office have been stricken from the bill. That would be of concern to them.

I have some concerns regarding category I peace officer status not being necessary for our investigators. There is a lot of training in traffic investigation and areas we do not participate in. In the original bill, the category II peace officer status meets the Department's needs most effectively. The category III status we currently have is not what we need. We need a change to clarify the status of those individuals. My preference would be to change the status from category III to category II as stated in the original bill. Our investigators perform similarly to the investigators in the Secretary of State's Office and the Attorney General's Office, who are category II peace officers.

CHAIR CARE:

I raised the first concern you expressed with Committee Counsel when I got the work session document because there is reference to the Gaming Control Board, the Fire Marshal, and the Department of Agriculture. My understanding is the proposed amendment with those deletions means that is stricken from the bill. It does not change the status of any officer in any of those departments or agencies.

MR. SKOLNIK:

My understanding is that the class specification for criminal investigator specifies category I peace officer status.

MR. WILKINSON:

The proposed amendment is just taking that section out of the bill because it would no longer be necessary. The only issue here is the original bill makes them category II. The proposed amendment makes them category I. The proposed amendment is not repealing that section of NRS.

SENATOR WIENER:

Are there other components of those additional training hours that would benefit our consideration of this bill to look at category I rather than II?

MR. SKOLNIK:

When we reviewed the training requirements for the category II as opposed to the category I or III, category II was basically the training that our people need. We are not going to be category I peace officers. We are not street cops. If we were in that situation, we would contact local law enforcement to join our people. This affords our people more authority in the community to deal with the public in terms of investigations.

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SENATOR AMODEI:

Does category II allow you to do what you need to do in conjunction with the way you have historically looked for escaped offenders?

MR. SKOLNIK:

That is correct. The current statutes authorize our people, as category III peace officers, to pursue escaped offenders. We do not have some of the training we should have, which has been a problem. Some of the authority that would be helpful is not clearly vested in our category III peace officers, but would be in category II. Three of our people are category I qualified and have maintained their status.

STEVE BARR (American Federation of State County and Municipal Employees, Local 4041):

I have provided you with [Exhibit E](#) and [Exhibit F](#). I understand the concerns of the Director. However, you will see in [Exhibit E](#), page E1, that the Nevada Administrative Code clearly specifies peace officers who engage in criminal investigations should be category I.

The class specification in [Exhibit F](#), page F2, states that criminal investigators would be category I, except the Secretary of State's Office, which would be category II. [Exhibit F](#), page F3, encompasses what our investigators would be doing.

SENATOR AMODEI:

From hearing testimony, category I training is longer, and I assume the Peace Officers' Standards and Training (P.O.S.T.) people do not do category I training for the same cost as category II. Testimony also indicated that you already have category I people in-house. Could management make sure category I employees are designated for those duties? Perhaps a category I certificate could be a prerequisite for taking such a slot rather than training all employees to be category I. If everyone is trained as category I, your bill could be sent to finance. That is not a good place for a bill that started out as policy.

MR. BARR:

I have been advised by a recruiter that the criminal investigator position within the Department of Corrections requires not only a category I, but criminal investigative experience just to qualify for the position. They are not even

looking at correctional officers without those prequalifiers. It is important for the bill to go through with the amendment.

We have tried to take a leadership position in the past with issues the Department presents. Several sessions ago, I represented a bill requiring psychological testing. A fiscal note was placed on the bill, and it died. A session or so later it was brought up again by the Department, and they now have psychological testing.

SENATOR AMODEI:

Mr. Chair, should we have Mr. Wilkinson look into the personnel statutes cited and give us an opinion as to whether these people are already required to be category I versus category II? If so, is this bill needed under existing statutes?

CHAIR CARE:

I will take S.B. 44 off the agenda today and put it on the next work session. If we amend and do pass, will that create a fiscal note?

SENATOR AMODEI:

That is another question the Legal Division can answer for the Committee.

SENATOR PARKS:

Mr. Skolnik, do you have one Inspector General in the Department of Corrections with investigators under him?

MR. SKOLNIK:

That is correct. The Inspector General reports to me in most areas, but when I need to be investigated, he reports directly to the Governor.

RICHARD P. CLARK (Executive Director, Peace Officers' Standards and Training Commission):

The Commission has a responsibility to set minimum standards for the amount of training needed for the categories. Nevada Administrative Code (NAC) 289.130 in [Exhibit E](#), page E1 clarifies the minimum training required for the categories. The difference between category II and category I is an extra 200 hours of training. Last Session, the Legislature allowed us to develop a physical fitness validation study, which has come to fruition and will be approved by the Commission within the next six months. The requirements for category II are less than those for category I.

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CHAIR CARE:

There is no fiscal note on the bill and nobody opposes the bill.

SENATOR AMODEI:

Is category I training required for most police department jobs in the State? Many Highway Patrol officers are trained as category I, and they then enter the job market in other areas that pay more. If corrections officers are trained in category I, would they explore other job opportunities? This has fiscal consequences.

CHAIR CARE:

Senate Bill 44 is vacated and will be on the next work session. We will now address S.B. 45.

SENATE BILL 45: Revises provisions relating to certain criminal cases involving older persons and vulnerable persons. (BDR 14-262)

CHAIR CARE:

We have a proposed amendment from the Attorney General's Office raising the age to 65. Is that correct?

MR. WILKINSON:

Under current law, an older person is defined as aged 60 or older.

CHAIR CARE:

The amendment in Exhibit C, page C20, says if somebody wants a deposition of an older or vulnerable person in a criminal matter, the older person must be aged 65 or older.

SENATOR WIENER:

Mr. Wilkinson, we increased the age in a previous session in order to increase the jury pools. What age did we increase it to?

CHAIR CARE:

The age is 70. I have mixed feelings. If there is going to be an age, I would say 70. I would want "and for good cause" added to the bill.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED TO CHANGE THE AGE TO 70 AND ADD A "FOR GOOD CAUSE SHOWN" REQUIREMENT TO MAKE IT CONSISTENT WITH THE OTHER SECTIONS OF THE STATUTE TO TAKE THE DEPOSITION OF A PERSON AGED 70 OR OLDER IN A CRIMINAL MATTER.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will now consider S.B. 82 in [Exhibit C](#), page C27.

SENATE BILL 82: Makes various changes relating to technological crime.
(BDR 14-266)

CHAIR CARE:

We were going to delete sections 5 and 6 of S.B. 82. Mr. Earl testified at the hearing that this was agreeable. Section 1, subsection 2, paragraph (b) of the bill reflects prior notice to the subscriber or customer from the governmental entity by serving a subpoena. What is the subpoena based on? Section 1, subsection 2, paragraph (a) references obtaining a search warrant pursuant to NRS 179.015, but here we just have a subpoena. I am uncomfortable with that language in paragraph (b) because I do not know the foundation of the subpoena.

JAMES D. EARL (Executive Director, Technological Crime Advisory Board, Office of the Attorney General):

That particular language is the precise language contained in 18 USC section 2703, which requires either a conforming warrant or an equivalent state warrant. The Attorney General's Office believes there is no more equivalent state warrant than one adopting the federal procedures and standards. This relates to particular information defined in section 1, subsection 2, paragraph (b). A law enforcement entity would go to the electronic service provider requesting the information described in subsection 2.

CHAIR CARE:

Would that mean that a law enforcement entity could subpoena information even if they do not have an ongoing investigation?

MR. EARL:

I do not speak for law enforcement throughout Nevada, but it is highly unlikely that law enforcement would issue a subpoena to an electronic services provider, normally an Internet service provider (ISP), without having an open investigation.

CHAIR CARE:

I direct your attention to page 3, line 31 of the bill, where it says "of a subscriber to or customer of such service when the governmental entity obtains a subpoena." That would be a subpoena issued either through paragraph (a) or paragraph (b) in subsection 2 of section 1, is that correct?

MR. EARL:

Yes, that is my understanding.

CHAIR CARE:

It could be based upon a warrant or just an ongoing criminal investigation.

MR. EARL:

That is correct.

CHAIR CARE:

The notes indicate the Washoe County Public Defender's Office, in subsequent e-mails in [Exhibit C](#), page C28, has no opposition to the provisions concerning prepaid cards.

MR. EARL:

Yes, that is correct.

CHAIR CARE:

Are we talking about the deletion of sections 5 and 6 of the bill, which everyone agrees to, and the amendment contained in [Exhibit C](#), page C29?

MR. EARL:

This is the lengthy amendment we introduced at the initial hearing. At that time, the ACLU objected to that amendment. We have had subsequent discussions with the ACLU described in a letter from the Attorney General's Office dated February 19, 2009, and sent to all members of the Committee in ([Exhibit G](#)). Amendment language is attached to our letter modifying the section the ACLU objected to in [Exhibit G](#), page G4. Our discussions with the ACLU regarding their concern focused on a recent decision from the Second Circuit Court of Appeals [Exhibit G](#), page G2 regarding Fourth Amendment challenges.

We redrafted section 7 of the amendment that goes beyond United States Constitution requirements. The redraft in [Exhibit G](#), page G4 makes it clear that section 7 first applies only to financial institutions outside the United States. It requires that significant notice be given, including notice that any seized funds are subject to Nevada's forfeiture statutes. It affords any aggrieved person a judicial hearing similar to that afforded an individual after a seizure pursuant to a court-issued warrant.

In redrafting section 7 of the amendment to S.B. 82, we have used text similar to that used in the prior sections, and the ACLU had no objection. We proposed this amendment text because it provides additional safeguards and additional notice. The additional cost to law enforcement would be minimal because if technically feasible, notice would be made electronically.

CHAIR CARE:

We have the prepaid card amendment, and now we are discussing section 7 in your proposed amendment. I also received a proposed amendment from the Clark County School District, and the Attorney General's Office does not object ([Exhibit H](#)).

MR. EARL:

Yes. This refers to section 1, page 5, lines 15 through 23 of the original bill. The Clark County School District contacted me and requested an amendment to add the language "or school district in this State" so that government entity would include any organized police department of any municipality or school district. The Clark County School District Police Department wanted the benefit of the procedures in section 1 of the bill that implement the same procedures described in 18 USC section 2703 for its forensic investigation of crimes involving child exploitation.

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CHAIR CARE:

We got this late, and there was no testimony.

REBECCA GASCA (American Civil Liberties Union of Nevada):

I am not an attorney. Ms. Rowland worked with the Attorney General's Office to modify the language. Are you asking me to comment on the addition of the school district?

CHAIR CARE:

No. Please comment on the proposed amendment to section 7 in [Exhibit G](#), page G4 dealing with prepaid cards.

Ms. GASCA:

Ms. Rowland was involved in that discussion. While we appreciate the tightening up of the language, we are still against this bill as it stands.

LEE ROWLAND (American Civil Liberties Union of Nevada):

With respect to the newly proposed amendment, we do support the removal of sections 5 and 6. With respect to section 7, the Attorney General's Office worked in good faith to look at current case law and try to follow it. We are concerned that current case law on this issue comes from Circuit Court. The ACLU is still litigating these issues nationally. That decision deals with the nonapplication of the Fourth Amendment outside United States territory.

This bill is inherently seeking to seize the funds of someone who is in the United States. That Second Circuit case deals with someone outside the United States. We do not agree this case covers all the situations propounded by section 7 and may not completely cover the conduct we are concerned about. Getting something without a warrant is a red flag for the ACLU. We still oppose the amendment.

CHAIR CARE:

In section 1, subsection 2, paragraph (b), subparagraph (1) of the bill, a subpoena is mentioned, but not based on a search warrant. It is in the course of a criminal investigation. Paragraph (b) is problematic for me.

MS. ROWLAND:

I addressed that subsection in my written testimony for S.B. 82. We opposed the section that was not pursuant to the court order or warrant, but simply pursuant to the subpoena. However, that in conjunction with section 6 of S.B. 82 concerned me because they both said pursuant to a subpoena. Section 6 references pulling a license if a person is not compliant with the subpoena. Subpoenas are not necessarily court-ordered. We still oppose it because we would like to see it tied to a warrant or court order.

If banks, without penalty, can challenge the subpoena and request a warrant or court order based on their privacy agreement, I have fewer problems with the bill. I am not certain the elimination of section 6 accomplishes that. That may be a question you would ask of the Legislative Counsel Bureau. It is hard to know from this bill whether it is mandatory that banks respond to those subpoenas or whether law enforcement has the right to request it.

MR. EARL:

With the deletion of sections 5 and 6, banks are no longer addressed in any of this legislation. The new section 1 repeals some existing legislation that deals only with subpoenas. Under Nevada law, a law enforcement agency enumerated in NRS 193.340, can compel an ISP to produce a variety of different types of information only with a subpoena. The present requirements, whether with subpoena or search warrant, represent an increased threshold for law enforcement. If Nevada law conforms with the federal requirement, in certain circumstances, a warrant would be obtained rather than the subpoena.

CHAIR CARE:

The focus is the proposed amendment to section 7 of the prepaid card amendment. There is some disagreement.

MR. EARL:

It is my understanding from conversations with the Clark County School District police that they do their own investigation regarding child pornography and child exploitation cases.

BART MANGINO (Clark County School District):

Our school district police department does undertake investigations of child exploitation. The concern is that it would prevent us from continuing this and offering assistance to the entities within Clark County and Las Vegas.

MS. ROWLAND:

We are seeking police powers relating to situations where there is no warrant or notice for particularly sensitive telecommunications data. I need more facts about the setup of the Clark County School District's investigation wing. If they are referring more serious cases to another law enforcement agency, then they should not be included in large law enforcement power. When you are dealing with something as sensitive as the USA PATRIOT Act powers to get something without a warrant, it should be restricted to the more serious law enforcement investigation agencies unless there is an acute reason that fits in with the work they are already doing.

CHAIR CARE:

We are not going to act on this bill today. I want a comprehensive document with all the amendments. Mr. Mangino, you may submit some additional documents.

We will now address S.B. 99 in [Exhibit C](#), page C66.

SENATE BILL 99: Limits the peace officer powers of taxicab field investigators.
(BDR 23-432)

CHAIR CARE:

There were no proposed amendments. Hearing no discussion, I will entertain a motion.

SENATOR AMODEI MOVED TO INDEFINITELY POSTPONE S.B. 99.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will address S.B. 101 in [Exhibit C](#), page C67.

SENATE BILL 101: Makes various changes relating to securities. (BDR 7-416)

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CHAIR CARE:

This bill came from the Secretary of State's Office. There is an amendment proposed from Carolyn Ellsworth [Exhibit C](#), page C68. I subsequently received a request from her asking for one small change on page C70 where it refers to NRS 90.630 ([Exhibit I](#)). She thought according to the amendment that should belong under NRS 90.640.

We have two amendments before us, both from the Secretary of State's Office. Hearing no discussion, I will entertain a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 101 WITH BOTH AMENDMENTS.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will address S.B. 106 in [Exhibit C](#), page C72.

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

CHAIR CARE:

This bill came from the Legislative Committee on Public Lands. There was one proposed amendment from the Nevada Association of Realtors in ([Exhibit J](#)). Senator Dean A. Rhoads has no objection. Hearing no discussion, I will entertain a motion.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 106.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR WASHINGTON:

Just for clarification on this bill, does this permit homeowners or those on open range to construct a fence for livestock to either keep them in or out with a right-of-way?

CHAIR CARE:

The idea behind the bill is to require the seller to put the buyer on notice that in some cases there may or may not be a right-of-way. It is not always possible to make that determination and know that your land is also adjacent to open range. You are on notice and you can do with that as you wish.

We will address S.B. 107 in [Exhibit C](#), page C75.

SENATE BILL 107: Limits the liability of certain nonprofit organizations and their agents, employees and volunteers under certain circumstances. (BDR 3-650)

CHAIR CARE:

There was an amendment from the sponsor of the bill, Senator Warren B. Hardy II, excluding torts arising from the commission of a criminal act by the nonprofit corporation [Exhibit C](#), page C77. Hearing no discussion, I will entertain a motion.

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 107.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS CARE, COPENING, PARKS, WASHINGTON, AND WIENER VOTED NO.)

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SENATOR WASHINGTON:

I would like to reconsider the bill on the next legislative day.

CHAIR CARE:

Can we do this in Committee?

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MR. WILKINSON:

I have never seen it done in a Committee.

CHAIR CARE:

We will note the request was made today. Mr. Wilkinson, will you look into this and get back to us?

We will address S.B. 113 in [Exhibit C](#), page C78.

SENATE BILL 113: Creates statutory subcommittees of the Advisory Commission on the Administration of Justice. (BDR 14-626)

CHAIR CARE:

This bill came from Senator Steven A. Horsford. There was a proposed amendment from Senator Parks requiring that the chair of the two subcommittees be members of the Advisory Commission on the Administration of Justice in [Exhibit C](#), page C78. Senator Horsford had no objection. Hearing no discussion, I will entertain a motion.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 113.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR WASHINGTON:

Rather than reconsidering S.B. 107 on the next legislative day, we can bring it back up since we did not indefinitely postpone the bill. So, I ask that we bring the bill back up for reconsideration whenever.

CHAIR CARE:

On S.B. 106, there was an amendment given to me but not to the members of the Committee.

The hearing is open on S.B. 160.

SENATE BILL 160: Makes various changes to comport with the constitutional doctrines of separation of powers and legislative privilege and immunity. (BDR 3-1164)

KEVIN POWERS (Senate Legal Counsel and Bill Drafting Adviser):

The Legislative Counsel Bureau Legal Division is nonpartisan legal staff. We do not urge or oppose any piece of legislation. However, we do provide advice to the Legislature on the legal scope, impact and consequence of legislation.

The constitutional doctrines of separation of powers and legislative privilege and immunity are at the heart of S.B. 160. Under separation of powers there are three branches of government—the Legislative, Executive and Judicial Branches. Each branch of government has core constitutional functions that the branch must perform without intrusion from the other branches. Official immunity and privilege developed to facilitate separation of powers. Each branch of government is entitled to official immunity and privilege when they are exercising their core constitutional functions. For example, a judge cannot be held liable for damages or punished for how he decides a case.

In conducting the core legislative function, legislators are entitled to immunity and privilege. Senate Bill 160 addresses the legislative immunity and privilege. It codifies in statute the constitutional principles of legislative immunity and privilege and separation of powers.

Legislative immunity and privilege is not a new concept in the law and has been validated by the United States Supreme Court and most state supreme courts. The Nevada Supreme Court has said, under the separation of powers doctrine, legislators should not be punished for voting in a particular way.

Legislative privilege and immunity is not an unlimited constitutional doctrine. It applies only to legislative speech, debate, deliberation and action that falls within the sphere of legitimate legislative activity. Such activity includes voting on legislation, processing legislation through the committee, and activities that are an integral part of the legislative process and an essential part of the legislative function.

Legislative privilege and immunity does not provide Legislators with blanket immunity from the ethics law. Senate Bill 160 amends the Nevada Ethics in Government Law, but only with regard to abstention, disclosure and voting

provisions of NRS 281A.420. When a Legislator chooses to vote on a particular piece of legislation, that is the core constitutional function. The only constitutional body authorized to review or question that Legislator's decision and sanction the Legislator is the Legislator's own House. The Nevada Constitution, Article 4, section 6, gives each House of the Legislature the exclusive constitutional power to determine the rules of its proceedings and to punish its members for improper conduct related to those proceedings.

Several matters have come before the Nevada Commission on Ethics where the Commission has had a lack of appreciation for these constitutional doctrines of separation of powers and legislative privilege and immunity. This bill clarifies in the statutes that in the narrow area of legislative voting, disclosures and abstention the job of enforcing those provisions lies with each House of the Legislature. That is why each House adopts its standing rules. Assembly and Senate Standing Rule 23 lay out specific provisions regarding disclosures, voting and abstention. If there is a violation of those provisions, those alleged violations would be reviewed by committees of the Legislature who would then determine the appropriate recommendation to the full house.

The Legislature does have rules dealing with disclosures, voting and abstention. Those rules under section 6, Article 4 of the Nevada Constitution take precedence over NRS 281A.420. This bill amends NRS 281A.420 to make it clear that the standing rules of the House govern in that narrow area.

Legislators remain subject to the Nevada Ethics in Government Law. For example, legislators would still be subject to the provisions dealing with improper use of governmental property, personnel and time. Legislators are still required to file their Financial Disclosure Statements and their campaign expense reports. Legislators are still prohibited under ethics from engaging in improper conduct or misuse of office, such as accepting compensation for engaging in their legislative activities.

CHAIR CARE:

The hearing is closed on S.B. 160. Hearing no discussion, I will entertain a motion.

SENATOR AMODEI MOVED TO DO PASS S.B. 160.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will go back to the work session and address S.B. 106. I need a motion to reopen the hearing on S.B. 106, which we already amended and passed.

SENATOR AMODEI MOVED TO REOPEN THE HEARING ON S.B. 106.

SENATOR PARKS SECONDED THE MOTION.

JENNY REESE (Nevada Association of Realtors):

In their amendment, the Nevada Association of Realtors want to add unimproved lots, [Exhibit J](#), to provide protection to those purchasing unimproved land.

CHAIR CARE:

Is Senator Rhoads agreeable to this?

MS. REESE:

Yes. I talked to both Senator Rhoads and Assemblyman Pete Goicoechea, and they are both agreeable to the amendment.

CHAIR CARE:

Mr. Wilkinson informed me we do not need an action on this. We can simply include this in the amendment we distributed earlier today in the amended version of the bill.

Referring back to S.B. 44, I spoke with Mr. Barr. We did not take action on S.B. 44. Mr. Barr informed me that the corrections officers are willing to withdraw their proposed amendment. There are no other amendments.

SENATOR AMODEI MOVED TO DO PASS S.B. 44.

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SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

There being nothing further to come before the Committee, we are adjourned at
10:51 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____