MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Seventh Session
February 20, 2013

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:39 p.m. on Wednesday, February 20, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 David R. Parks, Chair
Senator Pat Spearman, Vice Chair
Senator Mark A. Manendo
Senator Pete Goicoechea
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Tick Segerblom, Senatorial District No. 3

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Chris Giunchigliani
Jack Mallory, International Union of Painters and Allied Trades, District Council 15, Nevada State AFL-CIO

Chris Ferrari, Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association
Judy Stokey, NV Energy
Misty Grimmer, Cox Communications
Samuel S. Crano, Assistant Staff Counsel, Public Utilities Commission of Nevada
Daniel Jacobsen, Bureau of Consumer Protection (Consumer's Advocate), Office of the Attorney General
P. Michael Murphy, Clark County
Helen Foley, T-Mobile USA, Inc.
Randy J. Brown, CPA, AT&T Nevada
Randy Robison, CenturyLink
Colleen McCarty, KLAS-TV Las Vegas
Barry Smith, Executive Director, Nevada Press Association
Andrea Engleman
Leonard Cardinale, North Las Vegas Police Supervisors Association, Inc.; Clark County Deputy Marshal's Association; We Are Nevada
Geoffrey Lawrence, Deputy Policy Director, Nevada Policy Research Institute
Vanessa Spinazola, American Civil Liberties Union of Nevada
John Wagner, State Chairman, Independent American Party
Janine Hansen, President, Nevada Families
Keith Uriarte, Chief of Staff, American Federation of State, County and Municipal Employees, Nevada State AFL-CIO Local 4041
Todd Bailey, The Stealth Reporter
Barry Lovgren
Philip A. Olsen, Civil Rights for Seniors
Diana Alba, Clerk, Clark County
Steve K. Walker, Carson City; Lyon County; Truckee Meadows Water Authority
Dotty Merrill, Ph.D., Executive Director, Nevada Association of School Boards
Nicole Rourke, Clark County School District
Lisa Foster, Nevada Association of School Superintendents
C. Joseph Guild III, Nevada Court Reporters Association
Scott Leedom, Southern Nevada Water Authority
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Nancy Parent, Chief Deputy Clerk, Washoe County

Chair Parks:
We will open the hearing on Senate Bill (S.B.) 68.

SENATE BILL 68: Provides for the creation of underground utilities districts. (BDR 20-497)

Senator Tick Segerblom (Senatorial District No. 3):
The concept of S.B. 68 is simple. There are many construction workers who are unemployed and many ugly overhead power lines in southern Nevada cities. If we could put the two together, we could find ways to make cities more aesthetically pleasing and put people back to work.

The idea of a regional underground utility district is designed after the Clark County Regional Flood Control District. The bill contains similar language, which would require Clark County to create a regional underground utility district.

The voters would have to approve some type of tax, which would be used to fund the conversion of overhead utility lines to underground utility lines. The County could be sectioned off and the conversion could be accomplished in phases. Over time, the utility lines, not the larger lines, would be put underground.

This would be mandatory for Clark County, although if the Committee prefers, I would be willing to consider making that optional. It would be countywide and funded by an ad valorem tax, but I am flexible on that also. There may be a better way to create revenue for the funding.

Power lines are ugly as shown in my PowerPoint presentation (Exhibit C). The poles belong to NV Energy, but the cable utility, the telephone utilities and others have strung their lines on the poles. The lines were added repeatedly, making them uglier over time.

Placing the lines underground will involve union workers and will require prevailing wage. Constructions workers need employment. This could be a win-win situation.

Some people are concerned that this bill will destroy this State as we know it. I do not understand why.

Senator Goicoechea:
The bill authorizes, but does not require, the governing board to submit the proposal to the voters in that district. Would you please clarify that for me?

Senator Segerblom:
It is discretionary as drafted, but those who oppose the bill state it is mandatory. The Clark County Board of Commissioners must review the issue and may not decide to put it to a vote of the people. Ultimately, it is the voters who will approve or disapprove the utility district, not the Commission.

Senator Goicoechea:
I am still not clear. If the Commission creates a utility district, is it mandatory to submit a ballot question?

Senator Segerblom:
That is not the intent of the bill, but opponents to the bill have advised me that it is mandatory. If this becomes an issue, in order to pass the bill, I would make it clear that it is discretionary.

Heidi Chlarson (Counsel):
As I read the provisions of the bill, the Clark County Commissioners must form the underground utility district. The Board of Commissioners would have to submit a proposal to the voters only if the Board wanted to issue general obligation bonds. Section 7 of the bill addresses the requirement for voter approval in order to issue bonds. The creation of the district is not subject to the approval of the voters, but the issuance of bonds is.

Senator Segerblom:
When a road is under construction, power lines could easily be put underground, but that does not happen. There would not always have to be general bond funding. As a matter of course, the County could require that power lines be placed underground when a road is torn up and then assess the property owners for the costs.

Chair Parks:
Nevada Revised Statutes (NRS) 271 addresses special improvement districts. You are talking about something that is significantly greater than what could be accomplished through a special improvement district. In a special improvement district, property owners would be required to pay for the costs of putting utilities underground in their respective neighborhoods. That would require a majority of the property owners supporting the special improvement district. Have you considered that?

Senator Segerblom:
I wanted to avoid that. If it were countywide, similar to the Clark County Regional Flood Control District where the voters approve a funding source, the local property owners would not be responsible for the costs. I wanted to provide a larger funding source, but that could be a possibility.

Senator Spearman:
According to your previous statements, part of the implementation would be phased in if there was going to be road construction. The utilities could be placed underground at that time. Would protocols allow adding that as a special line item for building permits?

Senator Segerblom:
It would be up to local jurisdiction. A number of things could be done. The goal is to make it countywide similar to flood control.

Senator Goicoechea:
Are you proposing that the whole County become a utility district?

Senator Segerblom:
That is correct. The County could be divided into seven districts and each Commissioner would have jurisdiction over his or her district. Funds would be distributed to each Commissioner's district to ensure they were used countywide instead of only one area.

Senator Goicoechea:
I am concerned about the outlying areas of Clark County.

Chair Parks:
Are you aware of this being done elsewhere, especially in older cities?

Senator Segerblom:
I am not aware of any. The City of Los Angeles had a program to place utilities underground in the downtown area. I do not know of anything with a scope this broad.

Chris Giunchigliani:
I have long supported the concept of underground utilities, not just because of the aesthetics, although for the older parts of town it is a very valid issue with the constituents, but also for those areas that have a risk factor for wind, ice and snow.

In doing research, I found there are a variety of ways to approach this issue. Senate Bill 68 gets us into that conversation. An example would be in the Clark County zoning, Title 30 Development Code. Chapter 30.32.070.6 of the code (Exhibit D) states:

> Any proposed utility line not shown to be underground shall not be approved unless the Zoning Administrator approves the installation following the approval of a waiver of standards as required by Table 30.16-7, which need not be a public hearing.

We started a process in the Title 30 codes, but it does not go far enough.

When the design standards were done in the "south of Sahara" area, they required all substation utility lines be placed underground. There are also utility improvement requirements in chapter 30.52.060.b of Title 30 that state:

> New utility lines or the modification of existing lines including, but not limited to, electric, water, sewer, gas, petrochemical, and communication transmission and distribution lines and related equipment, shall be located underground ... .

Exhibit D, page D1, cites these excerpts except with certain provisions. We started to address issues in the zoning code, but who will finance this is always a problem.

One idea would be to have the Public Utilities Commission (PUC) do a risk analysis in locations of the State where there is a consistent potential for downed power lines. There could be a cost to human life and property, and there is also an issue of power reliability. The analysis could target existing or future areas in need of underground utilities.

There are five states that have requirements for undergrounding utilities lines, Exhibit D, page D2. California has had a program since 1967 that includes the financing of the underground utilities in a bonding district, similar to that in S.B. 68. The District Attorney in Clark County has had concerns with that approach. The taxpayers should not be burdened versus the ratepayers. This will be part of the debate.

Since 1970, Delaware has required utility lines in new subdivisions or multioccupancy buildings of five or more lots to be placed underground.

Hawaii's law specifies the criteria that the state's PUC must consider whether new electric transmission lines are to be placed underground. Maryland has required undergrounding for new residential customers since 1968.

Since 1970, Montana law has required electric distribution lines that serve new residential and business customers to be placed underground when technically and economically feasible.

You might also consider a phased-in process. Whenever work is done on roadways, power lines and other utilities could be placed underground. That would become part of a policy that at the beginning of construction, the costs for undergrounding would be included in the project.

The Federal Emergency Management Agency has a mitigation grant process for which Missouri qualified. There may be ways to review those riskier areas in the State that may qualify for a mitigation grant.

There is an organization called Power Underground, Inc., Exhibit D, page D8. Its goal is to work with jurisdictions to encourage them to place utilities underground. The reasons for undergrounding power lines are: electric service ceases to be subject to the vagaries of the weather; visual pollution caused by countless poles strung with wires is removed from the environment; and

hundreds of thousands of jobs could be created with the undergrounding program. Those well-paying, living-wage jobs would help the community.

In southern Nevada, in the older neighborhoods, the overhead power lines have become the super highway for roof rats or fruit rats. They chew through the wires, causing fires. There are issues with the older power lines that Senator Segerblom is addressing in S.B. 68.

New areas put power lines underground. Perhaps the requirements in these areas could be explored. A program could be in place that would require power lines be placed underground as repair, replacement or other mitigations in the older areas is done.

I support S.B. 68. I do not think it should be dismissed because of the cost. A cost-benefit analysis of the program should be done. This would be to the betterment of people's lives, especially in northern Nevada and the rural areas where there may be heavy ice and wind issues.

Jack Mallory (International Union of Painters and Allied Trades, District Council 15, Nevada State AFL-CIO):
We support S.B. 68, and we appreciate the emphasis that Senator Segerblom is placing on jobs.

The benefits obtained by the goals set forth in this bill go beyond just jobs and aesthetics. There are also safety and system reliability issues.

I represent working people, and this would be a good opportunity for them. I would like to clarify that any jobs created by this bill would not just be guaranteed union jobs. This work would be performed under a competitive bid situation, which is open to both union and open shop contractors. We would prefer that unions do all the work, but we understand the realities of the market.

Beyond the aesthetic issues, power poles can be obstacles for handicapped people. In some areas with small easements, poles might be in the middle of sidewalks. By removing these obstacles, their quality of life would improve.

As drafted, the bill mandates the creation of the underground utility district. However, Senator Segerblom has indicated he is open to the concept of

a permissive nature for Clark County similar to what is proposed for the rest of the State.

Chris Ferrari (Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association):
We support S.B. 68. A commonly recurring theme this Session has been getting people back to work. This bill is a step in the right direction. Hearing some of the concerns and ideas expressed today, we would be happy to work with all parties to help get this bill passed and put people back to work.

Judy Stokey, NV Energy:
We are neutral on this bill. I spoke to the sponsor of the bill about our concerns, and he addressed most of them in his testimony.

This bill has nothing to do with transferring ownership of the facilities to the cities or the counties. Its purpose is to put distribution lines underground for aesthetic reasons. The other issue is this is just for the distribution lines, not the larger transmission lines.

Sometimes we are not able to put lines underground for safety standard reasons because there might not be enough room. More space is needed to put lines underground versus overhead. The areas about which we are speaking are typically in the older areas of town. Water, sewer, gas and other utilities might already be underground and there might not be enough room to add telephone, cable and electric underground. We would have to make sure, after the engineering is completed, that we have the proper, standard room to add those additional utilities.

We have no problem doing this if all of that is in line. There has to be a way to pay for this so customers are charged for the costs. If there is a mandate for creating a utility district, we would also like a mandate for a financing mechanism to cover the costs.

We work with a utility coordinating committee in Clark County. All the utilities and local governments get together to talk about projects underway in the city and county. We try not to close too many streets at the same time with multiple projects. We coordinate on projects and would continue to do that when adding the projects about which Senator Segerblom speaks. However, we would have to ensure that the standards are followed for safety reasons.

Chair Parks:
Would you please clarify the difference between distribution and transmission lines?

Ms. Stokey:
Transmission lines are the larger lines coming from power plants that bring high voltage to a substation. Distribution lines come from the substation to homes.

Chair Parks:
Any lines that come from the substation would be categorized as distribution lines.

Ms. Stokey:
If the funding mechanism is put in place, we want to make sure that any land rights needed to do this are included in that mechanism. Land rights are important and expensive. We want to make sure that is covered in the expense.

Chair Parks:
In many cases, especially in older areas, there are utility easements on property, as opposed to acquiring the property. Would NV Energy be acceptable to the utility easement concept, where the easement belongs to the property owner, but through a deed restriction, the owner donates the allowance for an easement for utility purposes?

Ms. Stokey:
We would prefer to have an easement. If we end up putting the line in franchise and then in the future we need to move that line for any reason, it becomes a cost to us, which then becomes a cost to the customer. We would want to make sure that if we have an easement for our overhead line, we would be able to reserve that and have an easement for underground lines.

Senator Goicoechea:
How much separation is required between water, sewer, electric, and cable and phone lines when they are in the ground versus on a pole?

Ms. Stokey:
I do not know, but I can get that for you.

Misty Grimmer (Cox Communications):
Cox Communications has concerns about making sure easements are available and there is space in the ground.

We are supportive of the sponsor and what he is trying to do with respect to the beautification and safety in the older parts of town. However, as always the concern is how these things get paid for and how we accomplish them.

We are also concerned with the way the bill is written which makes the establishment of the utility district mandatory. We would encourage the Committee to consider changing that to enabling legislation for Clark County. There is still much research to be done about the best mechanisms to achieve this goal.

However, if the Committee decides to make the utility district mandatory, we would encourage you to make the funding mechanism mandatory also. The way the bill is written, which would allow voters to make the decision to pay for and make this a priority, is workable.

The bill only covers electric and telecommunication services. Cable television facilities and broadband facilities are also on pole. As the bill moves forward, we would encourage the Committee to consider an amendment that would include those facilities as well as the others.

Samuel S. Crano (Assistant Staff Counsel, Public Utilities Commission of Nevada):
The Public Utilities Commission of Nevada (PUCN) is neutral on S.B. 68. We regulate the public utilities in the State including electric, gas, water, sewer and telecommunications providers. We regulate the rates of those providers, including the costs related to installation, maintenance and replacement of facilities used to serve customers.

Senate Bill 68 affects facilities by requiring them to be placed underground. From a broad perspective, the PUCN is responsible for ensuring that customers of the public utilities receive adequate, reliable utility service at reasonable rates. At the same time, utilities must be provided an opportunity to earn a return that will fairly compensate their investors and allow them to remain financially stable and attract capital for development.

Part of that regulatory compact includes public utilities being allowed to include in rates the capital costs of serving customers as well as operations and maintenance costs. When utility facilities are undergrounded, if there are any increased costs for the installation and maintenance of those facilities, they can be passed on to the ratepayers.

In Nevada, the undergrounding of public utility infrastructure, and specifically infrastructure that is not required to be undergrounded such as electricity, has a potential to increase costs. Given that potential, when a specific locality has required utilities be placed underground, the PUCN has directly assigned the cost of that undergrounding to the ratepayers who benefit from it. For example, when Carson City required a line to be placed underground, a surcharge was placed on each of the Carson City customers to pay for that.

Senate Bill 68 seems to address that with the bond mechanism. However, we are unclear on whether the bond is mandatory or permissive and whether there is another funding mechanism for the counties. We are also unclear on whether the underground utility districts will have a role in contributing to future operation and maintenance costs associated with the underground utilities. Such costs can be higher than the operation and maintenance for overhead utilities.

Section 7 of the bill indicates the bond-raised funds could be used for maintenance; however, we are unsure how that would be accomplished. If those maintenance responsibilities fell to the public utilities, the PUCN could potentially take the approach of assigning any increased costs of maintenance and overhead to the ratepayers who benefit from the undergrounding.

I have also submitted written testimony containing our concerns as stated above (Exhibit E).

Daniel Jacobsen (Bureau of Consumer Protection (Consumer's Advocate), Office of the Attorney General):
We are neutral on this bill, but we have some of the same concerns as those expressed by the PUCN and others. If all of the residents in an area were to vote to approve a bond to fund this conversion, we would want to make sure the bond covers not just the cost of the conversion but all of the associated costs.

We want to make sure that rates do not increase because of the conversion. The NV Energy's residential customers pay the highest electricity rates of any state in the Intermountain West. We would like to do anything we can to avoid having the rates increase.

P. Michael Murphy (Clark County):
We are neutral on S.B. 68 but have a concern with section 5, subsection 1, which states "The board of county commissioners in a county whose population is 700,000 or more shall, by ordinance, create ... ." Our preferred language would be " ... may, by ordinance, create ... ." This would allow the county commission to have the opportunity to take this journey, but to take it one step at a time and to take it in an appropriate manner so that all of the issues can be vetted. We do not want to be in a position where we have to make something happen but be able to make something happen.

Helen Foley (T-Mobile USA, Inc.):
The intent of this bill is not to include wireless. Wireless operates through radio waves, which must be above ground. Some equipment can be buried, but the vast majority of it is the cell tower, which uses radio waves. We want to ensure that any language considered by the Committee does not harm the wireless industry through unintended consequences.

Randy J. Brown, CPA (AT&T Nevada):
There are mechanisms in place today that allow for the establishment of utility districts. One occurs with the approval of the utility providers, which are impacted by the undergrounding of utilities, and the second occurs by a vote of the affected property owners. It is important that you are aware there is a mechanism in place.

In the wireless environment, things like antennas and wireless towers are simply not manufactured to function in a subsurface installation.

Randy Robison (CenturyLink):
We have similar concerns as those expressed by previous testifiers. However, we are supportive of the concept. There is still work to be done on this bill.

Senator Segerblom:
I did not realize until today that underground utilities cost more to maintain than above-ground utilities.

Chair Parks:
When various entities create redevelopment districts, do the redevelopment activities undertaken address the issues of overhead utility lines?

Senator Segerblom:
No, not to my knowledge. A hospital in a redevelopment district just did a major redevelopment, and nothing was put underground. Undergrounding utilities could possibly be added.

Senator Spearman:
As recently as 2011, there have been some studies that link certain health issues to overhead power lines. Do you have you any information on that?

Senator Segerblom:
I do not. That was a concern several years ago.

Senator Hammond:
That had to do with being in close proximity to electromagnetic pulses, which were in the high-voltage lines.

Do you have any studies on the increase in reliability when utilities are underground?

Senator Segerblom:
I will get you that information for you because that is true.

Chair Parks:
I have received a letter from Mike Eifert, Executive Director of Nevada Telecommunications Association, stating the Association's opposition to S.B. 68 (Exhibit F).

We will close the hearing on S.B. 68 and open the hearing on S.B. 74.

SENATE BILL 74: Revises provisions relating to public records. (BDR 19-603)

Senator Tick Segerblom (Senatorial District No. 3):
I have a presentation explaining the details of S.B. 74 (Exhibit G).

Senate Bill 74 was drafted at the request of former Senator Terry Care who brought it to me at the request of the Nevada Press Association.

This bill addresses the issues of obtaining public records and the costs charged by some State agencies. Every agency has a different fee structure for copying records. Some charge by the page, some charge for the manpower, but people who are trying to get access to the records, who are our watchdogs, are often impeded by the cost, which can be prohibitive.

There are many items in the bill regarding costs. There will be much testimony in opposition to the bill, but I am willing to work with people to come up with different fee structures.

Access to public records is the key to democracy. Almost everything now is electronic, and it is very easy to get pdf and electronic files free if an entity is willing to do it. A little push from the Legislature would be beneficial.

Colleen McCarty (KLAS-TV Las Vegas):
I am in support of S.B. 74. I did a news story on television on November 12, 2010, which is now a video on the KLAS-TV Website titled "I-Team: Public Records Come at a High Price." This story addresses the difficulties and exorbitant costs to obtain public records (Exhibit H).

Nevada's public records law, NRS 239, allows anyone to enter a public agency during business hours and ask to review any public record free. The agency may charge for the costs of copies and staff time.

If we, as the press, do not advocate for public records, who will? A public record is defined as all public books and public records of a government entity, the contents of which are not otherwise declared by law to be confidential.

I look at public records as a bigger picture. Public records are records of the people's business, paid for with taxpayer dollars and as such, they should be open and available at a reasonable cost.

Many public agencies feel that providing records is a burden because they do not have the money or the resources to do so. It is the duty of public employees to provide these records. It is not an additional burden; it is a fundamental part of the business of government to make these records available.

We use public records daily. For example, we use public records to learn how many guns are registered in Clark County and the number of gun-related deaths, and then we compare Nevada gun statistics to those of other states. We used public records to learn that a 7-year-old little boy, who was allegedly beaten to death at the hands of his parents, was known by the child welfare system, and yet the child welfare system did not respond in time.

We routinely use public records to document spending by government, such as hiring, salaries and travel. A recent investigation revealed that a public official spent $70,000 in a single year on travel. Those are just some of the reasons we use public records and the information that comes from them.

We have seen much improvement in costs, particularly with electronic records. Many agencies are choosing to post these records online, which makes them easily accessible to anyone. They do not create the hassle for staff of having to find and copy them.

Costs and accessibility are different from agency to agency. Some agencies never charge and provide access within the statutory periods every time. Other agencies almost never comply, and we often have to go to court or engage our attorneys to get the records we need. Some agencies charge exorbitant fees, and we get into back-and-forth negotiations in order to get the records. Everyone else falls somewhere in between.

We expect to pay for the cost of copies. Some agencies will send an electronic file with no copying involved. Other agencies will charge $.10 a page, some $.65 and some $1 a page. There is no consistency. This bill would create some consistency and lower the price to $.10 from $1 a page, which is the price you would pay anywhere in town to get a copy made. The law says the charge is the actual cost of copies, not staff time and whatever else may be involved to make the copies.

We found two reasons for exorbitant fees: one, the agency does not want to hassle with providing whatever we are requesting; and two, the agency knows that whatever we are requesting may be embarrassing.

Those records and the resulting news stories that come from them, and the information your constituents find and bring to you on occasion, are the types of information that cause legislative change, policy change and the kind of

change that not only improves government, but often makes people's lives better.

Agencies that hide information by charging exorbitant fees are not serving the public. Sunshine, as they say, is a fabulous antiseptic. Public records should be open and accessible at a reasonable price. We are not asking the agencies to pay for the cost of copies, we are simply asking for something that is reasonable.

Changes to this bill will not affect those agencies that are already providing copies correctly. It is going to affect those that are not, and it is going to force them to come into compliance.

Senator Goicoechea:
I agree with the concept that the real struggle is going to be with "reasonable." What is a reasonable rate? The bill also states "no fee" for some copies. That is going to impose a burden on counties and jurisdictions to provide these records at no cost. Nathan Tod Young, District Judge, Department 1, Ninth Judicial District, says in a letter to the Committee (Exhibit I) that the Douglas County Court would lose $64,000 a year. There will have to be a fiscal note attached to this bill if anyone is required to do this at no charge.

Ms. McCarty:
The bill calls for a cost of 10 cents per copy, and it provides for some recordings to be made available at no cost.

Senator Segerblom:
Anything electronic could be free of charge. We are open to modifications to be reasonable, but $64,000 for the Ninth Judicial District Court seems exorbitant. The Court states this would be a burden, but this number was developed by existing staff people who do this in their spare time. At the end of the day, democracy requires access to records.

Senator Goicoechea:
That came from the Ninth Judicial District and of course, the Court is talking about legal searches and copies. I understand what you are saying, but we have to develop something reasonable. We cannot ask courts to do this for no charge. Ultimately, while the taxpayers own the records, they will have to pay for them again.

Senator Segerblom:
It may be that courts are different from some of the agencies, but that is something we can review.

Senator Hammond:
What is the nature of the copies for which you are asking? Most of them should be electronic, and I noticed you had a provision that all recordings be given free. Do you ask for them in electronic form, and are they free? It would be reasonable for someone to go into an agency with a computer and download the records onto a flash drive. That would be a definition of reasonable. Do you ask for copies in pdf format?

Ms. McCarty:
Yes, we ask for everything electronically. Some agencies are either able and/or comfortable to provide our requests electronically, and some are not. I prefer paper, but whenever we can, we get the electronic file and then print it. We would much rather have things electronically. More agencies are getting to that point, which makes it easier for everybody.

Senator Hammond:
We have a problem with just a few agencies, and we should be dealing with those agencies.

Ms. McCarty:
I have my own internal list, but I could not begin to tell you which agencies are problematic. The majority of agencies we deal with are doing their best to comply and be cooperative, and we have great working relationships. However, we often encounter insurmountable problems. For example, a bill from a city in southern Nevada was $34,000 for a request for information that is reasonably accessible. We cannot pay that. Our option then is either not get the records or engage our attorneys, which also is cost-prohibitive.

Senator Spearman:
Have you looked at the feasibility of most of the agencies going electronic? In addition to the cost, some constituents may be sight-impaired or have limited mobility, and going electronic would give them more access as well.

Senator Segerblom:
The bill does not require agencies go electronic. No state law requires that, but just as a matter of course, most agencies are going in that direction. Some may even charge to create a pdf, disc or flash drive.

Mr. Mallory:
We support S.B. 74, and the concept of "sunlight" and "sunshine." This bill will remove some of the obstacles placed in front of people in their efforts to obtain public records and enrich their own personal knowledge.

Barry Smith (Executive Director, Nevada Press Association):
We support S.B. 74, and I want to reinforce a few things that were said.

This is a media issue. The media does this on behalf of the public. Television and newspapers may have the money to pay for these records, but this is a barrier for individual citizens who may want to do their own research. They cannot obtain the records because they cannot afford them. This is unacceptable.

The public records law does not contemplate the idea that there would be a charge for the agency to do the research, determine where the records are and if they are accessible. People who do not want to provide the records frequently use this. However, that is a minority. Most of the requests are handled routinely and without a big expense. We only have to deal with the few who create barriers.

A fiscal note was mentioned. This gets expensive, but I am concerned that some government agencies use copy charges as a revenue stream. The reason they charge $1 a page is not that it costs them $1 a page, but that if they only charge $.10 a page they would lose 90 percent of the revenue stream to run the office. This is a concern for the agencies when money is scarce. It was not the intent of the public records law to charge a person for something that is the responsibility of the agency in the first place.

When defining reasonable, there is a provision in the law that allows the agency to be compensated for extraordinary use of personnel. That can be done. The mechanism is there if it is extraordinary use. However, I object to an agency creating a funding stream out of normal job duties. The only recourse is to go to court, but that gets expensive for both sides.

The situation with agencies creating roadblocks is that we have to pay an attorney to oppose a government attorney who is paid by taxpayers to fight a taxpayer's requests for the records. Agencies do not see it that way. It is the taxpayer who pays for it.

I would like a system with an intermediate step between the agency and the courts, but we are not there yet.

Andrea Engleman:
We have made progress in access with the public records laws and the Nevada Open Meeting Law. The Open Meeting Law came about in the 1970s when the State Dairy Commission went behind closed doors with its attorneys and raised the price of milk.

In 1992, an interim study was done on public records, which resulted in legislation in 1993 but died at the hands of local governments.

This is one of the first bills I have seen this Session that actually gives something back to the public. It does not raise taxes or fees or cost the public anything. The people will gain from it.

When the Open Meeting Law passed, it was envisioned that agendas, minutes or the supporting documents brought to a committee would cost the public nothing.

During the interim, the Legislature falls under the Open Meeting Law. It is a public body and as such does a great job of following the Open Meeting Law. If everyone were as open as the Legislature, we would have very few problems.

When accessing public records, the press usually has backup in the form of an attorney. However, I am concerned about the average person. It should be easy for senior citizens to access their tax records or to get records from the assessor's office.

A law was passed in the 1980s that allowed clerks to charge $1 a page for copies. Then some local governments deposited their minutes and meeting materials in the county clerk's office, so instead of getting information free, people were being charged $1 a page. This is what Senator Segerblom is trying to stop.

Leonard Cardinale (North Las Vegas Police Supervisors Association, Inc.; Clark County Deputy Marshal's Association; We Are Nevada):
We support S.B. 74. Over the past several years, North Las Vegas has had financial difficulties, and working with employee groups was impeded. Changing the law to make it more transparent for citizens will be beneficial.

I have had a difficult time obtaining accurate, up-to-date financial information. The information was provided, but when I did a follow-up and asked for specifics, the costs went up.

I received a letter recently after requesting financial information. I was advised that the cost estimate for obtaining the information was $11,800 and would take at least 90 days. I would have accepted the information in an electronic file or pdf format. I interpreted that to mean the agency did not want to provide the information unless we paid almost $12,000, and we would have had to pay it up front.

Geoffrey Lawrence (Deputy Policy Director, Nevada Policy Research Institute):
The Nevada Policy Research Institute (NPRI) is excited about every provision in this bill. Outside of the press, NPRI may be the largest requester of public documents in the State. We run a Website called <http://transparentnevada.com> on which we make available various financial documents from all State and local government agencies, including comprehensive financial reports, budget documents and payroll records. Usually, when we request these documents, most agencies comply quickly. A few agencies routinely give us problems.

We always request electronic documents if they are available. One of the roadblocks comes from rural counties. They will provide the documents if we come into the office, but they will not send them electronically. Section 1, subsection 3, of this bill addresses this problem by stating if the documents are available, entities must send them and cannot require someone to come into the office to obtain them.

According to the way the public records law is structured, when we make a request, the agency has to respond within 5 business days. All the agencies have to provide within that time is when the documents will be available. They can tell us that in 3 months they will be able to provide the documents that may

be readily available. That is addressed in section 2 of the bill. It states that if the document is available, it must be provided immediately.

Cost is also a big obstruction. Most agencies send us electronic files at no charge. However, for example, when we requested a payroll record from a rural county, we were quoted a price of $3,000, which included a per page copy fee as well as staff time. We had a hard time believing that any organization operates today without an electronic payroll file. This is a barrier for many people. As a result, NPRI has been involved in several court cases on the transparency issue and obtaining public documents. We have prevailed in every case in which we have been involved. However, there is a tremendous cost associated with hiring a legal team. We can afford this as an organization, but for the ordinary citizen, this is prohibitive. The final section of the bill addresses that issue.

On the fiscal note, one of the things we have seen by making documents available to the public is that when citizens review these things, they point out expenditures that do not make sense. That inspires change at all levels of government. As a result, over the years we have seen a cost savings because public officials, knowing this information will become public, do not want to make any more outrageous expenditures. The cost savings outweigh any staff time costs for fulfilling requests.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
The Nevada American Civil Liberties Union (ACLU) supports S.B. 74 because it promotes open government and transparency. The intent behind NRS 239, which is where most of this falls, is to foster democratic principles.

The Nevada ACLU litigated a case on behalf of Karen Gray against the Clark County School District that initially wanted to charge her $5,000 for some emails. The judge in that case lowered the cost to $135. This is an example of overcharging.

This bill, by putting copies of documents at a fixed rate, will permit citizens to have more access to public records.

John Wagner (State Chairman, Independent American Party):
We also support this bill. As chair of a State party, I have access to the Secretary of State's databases. We are allowed three data dumps of voter registrations per year from each county.

After early voting has closed, we would like to know who has voted without being charged per name for that information. That should be corrected.

It is good that things are being done electronically. The private citizen who needs something would like to get it fast. He or she may not be able to afford a large fee. It would be good if information were transmitted electronically. If it cannot be transmitted electronically, or the requester does not want it electronically, then the information could be put on a DVD or CD.

Janine Hansen (President, Nevada Families):
We are pleased to support this bill. We too are concerned about transparency in government. It is important that the public have access to the records of the bureaucracy.

We believe in reasonableness in terms of cost. We have heard testimony today about how much of this is unreasonable and purposely designed to prevent the public from getting information. We want to ensure that the public has access. This serves a high purpose because the people are responsible for holding the government accountable. We cannot hold the government accountable unless we have the necessary information.

Keith Uriarte (Chief of Staff, American Federation of State, County and Municipal Employees, AFL-CIO Local 4041):
I have a specific example of the importance of this proposed bill. On February 1, we submitted a Freedom of Information Act (FOIA) request to the Department of Corrections (DOC) asking for documentation regarding the DOC's compliance with the DOC Administrative Regulation 319, which addresses workplace safety and staffing in the prisons. Yesterday in another committee hearing, we heard testimony from the Director of the DOC about staffing issues in the prisons.

In October and December, I went before the Board of State Prison Commissioners speaking on this issue. The Director denied that there were staffing shortages and safety issues in the prisons. At that time, I also raised issues with the DOC's compliance with Administrative Regulation 319. On February 1 we submitted the FOIA request and on February 11 I received a phone call from a deputy attorney general (DAG) asking if the AG's Office could work something out with me. I was advised my request would cost thousands of dollars and require thousands of hours of staff time to comply. If these records exist, which they are supposed to, it would take perhaps 1 hour per facility to provide those documents. The DOC Administrative Regulation 319 requires these documents.

In my February 11 response to the DAG, I asked for an itemized statement of the costs for each of the documents. Today is February 20 and I have not yet received the itemization.

This is a relevant example of what is taking place because it is being proposed that the DOC take over another department. It is critical that Legislators understand the condition of the DOC.

Todd Bailey (The Stealth Reporter):
I would like to suggest an amendment to this bill. Until there is either a civil or a criminal penalty for public officials or agencies that refuse to turn over public documents, this problem will not be solved.

Washoe County School District has a bill before the Nevada Legislature regarding capital construction. I asked the District for an update to the 2012 Comprehensive Annual Financial Report, which was completed in June 2012. On January 8, I asked what the balance was of the 2012 funds as of December 31, 2012. I received a total of all the funds, but the District would not provide the ending fund balance, even though the documents are in the accounting office. As taxpayers, we have already paid for a multimillion dollar accounting system, and the District staff just has to print it. It is that simple, but the District will not do it.

This is what is going on, and it is getting worse throughout Nevada as more and more agencies realize they can create obstructions to the most basic public documents if it does not fall in line with what they are trying to achieve.

Unless there is an amendment that specifies a civil or criminal penalty for any public official or agency that does not provide basic public documents in a timely fashion, this problem will be back in front of the Legislature every 2 years.

Chair Parks:
Do you have any suggested wording for an amendment?

Mr. Bailey:
It is very simple. Any public official or public body that refuses to share documents in a timely manner is guilty of a civil penalty of $1 million and a Category D felony.

Barry Lovgren:
Senate Bill 74 would enhance citizen access to public records by restricting the fiscal barrier created by excessive photocopy charges.

I refer you to NRS 239.001 for how important this is:

> The Legislature hereby finds and declares that: 1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law; ... .

This is about democratic process and citizen ownership of government.

Fees for citizen access to public records have become a cash cow for some agencies. They have developed a business model founded on that. A court in Douglas County has done this. When this law was proposed, in A.B. No. 159 of the 76th Session, agency representatives shamelessly testified about supporting agency operations by charging $1 a page for meeting minutes. The agency charged citizens $1 a page to find out what their local officials have been doing.

One hundred years ago, there would have been testimony about how we need to keep poll taxes in place to support agency operations. This is the same thing. Charging for democratic process is wrong.

These fees have the unintended consequence of discouraging the posting of documents online where they can be accessed free. Some agencies charge excessive fees not as a cash cow, but as a way to hide where the bodies are buried. This bill should also prohibit those fees.

For example, about 3 years ago I began looking into why substance abuse treatment for pregnant women has fallen by half in Nevada. I began seeking access to public records held by the Department of Health and Human Services (DHHS), Division of Mental Health and Developmental Services, Substance Abuse Prevention and Treatment Agency (SAPTA). I found a large number of problems including SAPTA certifying a program for hospital-based detoxification that was not even in a hospital. However, SAPTA learned it could hide this by establishing fiscal barriers.

Nevada Revised Statute 239.055 allows an agency to charge additional fees when extraordinary use of resources is required to provide photocopies. However, DHHS policy provides for charging such a fee not just for photocopies, but also for anything.

For example, NRS 233B.050 requires that agency rules of practice be made available for public inspection, such as SAPTA's rules that must be followed to obtain program certification. When I asked to inspect the rules, I was notified that I would first have to pay $200 to have them put in order. Am I to believe that SAPTA's rules of practice for those it certifies are such a disorganized mess that it would take 10 hours of staff time to put them in order just to review them? So much for government for, by and of the people. It costs the people $200 just to find out what the government's rules are.

I would like S.B. 74 to be revised to prohibit this sort of nonsense by including a prohibition against an agency charging a fee that is not authorized by statute for access to or a copy of a public record. It should be stated as a prohibition, not as a mandate, to provide the documents without charging a fee. The statutes are full of feel-good mandates for the agencies. In the end, the agencies ignore them. Have you ever seen the posted notice for copying fees in a State office? I have not, and I have been pestering State agencies for the last

3 years. *Nevada Revised Statute* 239.053 requires posting of that notice, but I have never seen one, and I cannot afford the court costs to get a writ of mandamus to have it posted.

However, violating a statutory prohibition would be a criminal matter. It would be a misdemeanor. We have a built-in mechanism for enforcing misdemeanor violations. If this bill is not revised in this manner, perhaps it could pass as is to establish reasonable fees for photocopies.

Philip A. Olsen (Civil Rights for Seniors):
I support the bill, but I have several amendments to propose. I am here to tell a horror story about a public records request that is similar to other stories heard in this Committee. My story will set the record for money charged by a public agency to inspect public records. That amount was $940,000.

The request was made to the Nevada Supreme Court, Office of Court Administrator, Administrative Office of the Courts (AOC). The AOC is under the direct supervision of the Nevada Supreme Court, the institution we all rely on to zealously safeguard our right as citizens to know what our government is doing.

Our request related to the State of Nevada Foreclosure Mediation Program (FMP). My client, Civil Rights for Seniors (CRS), was concerned about the operations of the Mediation Administrator and the effectiveness of the program in accomplishing the objective of the FMP, which is to keep Nevadans in their homes through the real estate crisis.

Nearly 2 years ago, CRS requested an opportunity to inspect the records relating to the administration of the FMP. The CRS request was directed to the AOC, which is designated by the Supreme Court to serve as Mediation Administrator under the foreclosure mediation law.

The Mediation Administrator has administrative duties with respect to the foreclosure mediation law. It also performs the critical function of either issuing or not issuing certificates, which permit a foreclosing party to proceed with the foreclosure. Since the adoption of the foreclosure mediation law, no one can foreclose on owner-occupied residential real estate without a certificate from the Mediation Administrator.

We wanted to see many records, but among the most important ones were those which would enable us to determine whether certificates were being issued only in proper cases. We ran into a number of obstacles, and all of the amendments we are proposing are designed to overcome them.

The first obstacle is that the Mediation Administrator claims that it is not subject to the public records law. However, it is clear that it is subject to the law. The public records law applies to the records of all governmental entities. However, the AOC takes the position that because the public records law does not specifically state that it applies to the Judicial Branch, of which the AOC is a part, the AOC is not subject to the law.

I have proposed an amendment to NRS 329.005, subsection 4, which defines "governmental entity" for purposes of the public records law (Exhibit J). The amendment would specifically include the Mediation Administrator designated pursuant to NRS 107.086, subsection 8.

The second obstacle that we encountered was the exorbitant charge of $940,000 to review the records. The Mediation Administrator proposed to take each piece of paper in its files, photocopy it at $1 a page, and then pay a clerical person to cross out the names and addresses of the people who participated in the FMP on the photocopies. We would be able to view redacted records only.

There is no provision in the foreclosure mediation law that makes the identities of the participants in the program confidential. In fact, every person who is part of the FMP has already had his or her identity made public because the notice of default and election to sell, which triggers the homeowner's right to participate, is a matter of public record.

This is an example of an agency making it as difficult as possible for a requester in order to obstruct the requester's right to see what his or her government is doing. In particular, the $1 a page charge is outrageous. Copies can be made at the Nevada Law Library for 10 cents a page.

I have struggled with the best way to amend the statute to prevent this from occurring in the future. I have developed an amendment to the statute that would impose the cost of redacting confidential information in public records from nonconfidential information on the entity that claims the information is confidential, Exhibit J. That is the best way to overcome this problem. It would guarantee the public's access to the information and at the same time, it would encourage the public entity to maintain records in a manner that makes public access feasible.

The third proposed amendment deals with the wording of the public records law and the AOC position that the identities of participants in the foreclosure mediation program are confidential, Exhibit J, and therefore, the AOC is not required to give access to records that are not redacted.

The public records law states that all records of governmental entities are subject to inspection unless they are otherwise declared by law to be confidential. The Nevada Supreme Court has carved out a large judicial exception to this provision by stating that records are confidential and not subject to the public records law if the private or governmental interest served by withholding the records clearly outweighs the right of the public to inspect or copy the records. In this case, the AOC stated that keeping the identities of participants in the FMP confidential clearly outweighed the right of the public to inspect the records.

The Legislature never intended there be any exception to the public records law other than those declared by the Legislature to provide for confidentiality. Therefore, I am proposing that the public records law be amended by changing the word "law" to "statute" in NRS 239.010, subsection 1. That would make it clear that there are no judicially created exceptions. The only exceptions to the public's right to view public records are those created by the Legislature.

The AOC allowed CRS to view some of the records, but the AOC created another obstacle. It made the records available in the AOC office, but I was told that if I wanted copies of any records, I needed to put a paper clip on each page and staff would make the copies and charge $1 a page. I had brought my own laptop computer and scanner and said I would just scan them into my computer. The staff member said absolutely not, under no circumstances may you do so. I said I could go downstairs to the Nevada Law Library and use the copier for 10 cents a page, and the AOC said no, you cannot do that either.

Senate Bill 74 states that if requested, the entity is required to make the copy and provide it to the requester. Our amendment would allow the requester to make his or her own copy at his or her own expense.

Someone is hiding something, and we want to know what it is. We hope the Legislature will help us find out.

Diana Alba (Clerk, Clark County):
I submitted a letter addressing my concerns with S.B. 74 (Exhibit K). County clerks throughout the State have met to discuss legislative issues, including this bill. Other county clerks in this State share the same concerns that I have.

In section 5, subsection 2, there is a provision to make copies of minutes from county commission meetings available at no charge. The wording also indicates that the copies have to be available within 30 working days. *Nevada Revised Statutes* 239 states that the minutes or a recording of the meeting must be available within 30 working days. The recording is available almost immediately. That has never been a concern. It would be a burden to have minutes available in 30 days and would be very difficult in Clark County and in other counties.

Our County Commission meetings typically have over 100 items on the agenda. It takes 4 to 6 weeks to complete the minutes. They need to be proofread, approved by the Commission and then, once approved, they are made public. We would like that to be reviewed. It may be an inadvertent consequence of how the bill was written. The intent of the bill was that the minutes be made available at no cost, but within 30 working days.

The other issue is in section 7, which concerns the copy charge of $1 a page. I have been a part of the Clark County Clerk's Office for 27 years. The fee of $1 a page was in place at the time I was hired. Providing a copy of a record is much different from going to Kinko's and having a copy of something made for 10 cents. The records we have to produce often require research and retrieval. My office maintains a library of records from 1909 forward. Many of them are on different formats of microfilm and digitized images, and some are stored off-site. Retrieving a record is not as easy a pushing a button or just making a copy at Kinko's.

I want to mention that county clerks agree with open government. County clerk offices are about open government. We are independent record keepers. We provide information to the public and, we have no reason to protect anyone. We can provide openness.

If this fee were reduced, it would cost my office approximately $120,000. This was the amount of revenue received in my office in 2010 from copy requests only. It does not include staff time. In 2012, the amount of revenue was about $61,000. The reason for the decrease is that many of our records are available online. Since November 2007, County Commission agendas, voting records and minutes have been available online at no cost.

Most of our records from 2002 forward are in electronic form. When someone requests a record, we are happy to provide it electronically. We also provide records by email. We accommodate record requests as quickly and as efficiently as we can. We are endeavoring to be open in our records access.

Senate Bill 74 fails to recognize that not all records are stored electronically. Approximately the last 10 years of records are stored electronically in Clark County, but from 1909 to 2002, they are stored in a variety of formats. The rural counties have records dating back to the 1860s. These are not always easy to access. Before documents can be generated at the push of a button, much computer input has to be done. Digitizing or doing data entry for a long history of records requires staff, data storage and special programs. These all require funding that we do not have. I have 20 percent fewer staff than I did 3 years ago.

Records archival tasks have been put on the back burner. We are doing the best we can just to take care of the daily and weekly work. This bill just does not recognize that we have records that date back 100 years or more. They are not always available electronically, and retrieving them would put a burden on the clerks.

The $1-a-page charge represents more than just making a copy of a document. I am disappointed when I hear stories that agencies have been unwilling to provide records or have created obstacles. That is not representative of most local governments. We want to be open. We recognize that we are public servants, and I hope we will not all be painted with the same broad brush.

This bill does not provide protection against frivolous requests. When anything is free or nearly free, the door for abuse opens. We receive requests in my office that I consider frivolous. It is not unusual for someone to request a large number of records. Someone came into the office who wanted copies of every County Commission agenda item dealing with real estate for many past years. It was a very broad request. After a search, we found hundreds of items and hundreds of pages of backup. It would have been burdensome to fulfill that request. When the requester realized that he would have to pay for some of the records, he narrowed his request to a few specific items. We need to have some controls over these kinds of requests.

Steve K. Walker (Carson City; Lyon County; Truckee Meadows Water Authority):
We oppose S.B. 74 unless it is amended. There is one clerical error in the proposed amendment (Exhibit L). It is in "Amend page 4, line 3, by deleting immediately before shall." The word "before" should be "after."

We have concerns with the addition of oral request in the language. An oral request would be a he-said, she-said issue. Requests for records to a public agency should be in writing.

The second issue is the cost of compliance. We have well over 100 taxing districts in Nevada with officials who require adherence to the Open Meeting Law. An example would be the Washoe County Commission whose agendas and hearing records are readily available online. An example on the opposite side would be the Douglas County Mosquito Abatement District of which I am a board member. We tape our meetings. If you want a record of the meeting before the minutes have been released, you have to go to the secretary. She will copy the tape on a tape machine and give you that copy. That would be free under this bill.

It is a widespread issue. We would like to have a dialogue between the proponents and opponents of this bill to develop language that would exclude smaller entities that do not have the resources or Websites to comply.

As far as costs for reproduction are concerned, I have submitted a form called "Request for Legislative Record" (Exhibit M). I use this quite often, particularly for monitoring interim committee meetings. I find it helpful, but it costs $5 for an audio-only CD and $10 for a CD with 5 hours of audio and video. The Legislative Counsel Bureau is just covering its costs for this service. The Bureau has CDs, the copying equipment and the personnel to do it. It is not a money-making scheme; it is just the cost of doing business.

Mr. Murphy:
We are opposed to the bill as written. We have offered an amendment, Exhibit L, to address our issues and concerns. We understand that we need to be good stewards of the people's information. We are making sure we do that and at the same time balance our business needs and all of the requests we get in an appropriate manner. The amendments we have provided will still allow us to do all of the things we need to do and at the same time address the people's needs.

Dotty Merrill, Ph.D. (Executive Director, Nevada Association of School Boards):
We participated in the drafting of the amendment, Exhibit L, to S.B. 74. Our concern with the bill is in section 5, subsection 2, lines 25 through 27 which refer to minutes and audio-tape recordings of meetings.

In the last 5 years, Nevada school boards have cut millions of dollars from their budgets, and in every school district, the board of trustees has tried to keep cuts out of the classroom as long as possible. This means that district staff is operating at a bare-bones level in all of our districts across the State.

Some of our districts have minutes available online. When copies of minutes are requested, there is a cost in staff time to prepare them. We support the amendment as presented to you.

Nicole Rourke (Clark County School District):
We have similar concerns, as previously stated, regarding costs, time and effort to fulfill records requests. We also support the amendment, Exhibit L.

Lisa Foster (Nevada Association of School Superintendents):
The previous education testifiers adequately explained the position of school superintendents on this bill. We are comfortable with the amendment, Exhibit L. If there is a working group, we would like to be included in it.

C. Joseph Guild III (Nevada Court Reporters Association):
We will be providing a proposed amendment shortly, but I can characterize our position quickly.

The Nevada Court Reporters Association does not oppose access to public records. The statutes creating the certification of court reporters considers the work they do to be important to the health, safety and welfare of the citizens of Nevada, and access to public records is one of those concerns.

An unintended consequence of S.B. 74 is that many court reporters serve agencies on a contract basis, for example, the State Gaming Control Board. Under contract, court reporters provide transcripts of the proceedings of the agency's activities. The agency considers the transcript to be the minutes of the proceedings in some cases. The bill addresses minutes, but the transcript the court reporter creates is his or her property and is part of the income the court reporter enjoys.

If the court reporter had to provide the transcript as free minutes, it would be an imposition on his or her income. I have an idea that would carve out this one exception. This would not prohibit access but would protect the court reporter's income.

Senator Spearman:
Did I understand you to say that the records that are taken are the property of the recorder?

Mr. Guild:
The transcript created by the court reporter is the property of that court reporter. That is statutorily recognized. There is a provision in statute that allows a state agency to contract with a court reporter for those services.

Scott Leedom (Southern Nevada Water Authority):
We support the concept of the bill, but we have some concerns that are similar to those previously discussed, particularly with the issue of oral requests and the immediacy issue in section 2.

We have reviewed the amendment submitted by Clark County and others, Exhibit L, and it addresses many of our concerns. We would like to work with the bill's sponsor and the proponents to ensure our issues are addressed.

Wes Henderson (Executive Director, Nevada League of Cities and Municipalities):
We are opposed to S.B. 74 as submitted. However, we support the amendment, Exhibit L, and would like to assist in working on this bill.

Nancy Parent (Chief Deputy Clerk, Washoe County):
We have submitted a letter from Amy Harvey, Washoe County Clerk (Exhibit N), regarding our position on S.B. 74.

Diana Alba from Clark County mentioned most of the concerns that we have. However, we have two basic ones. It is critical to us that section 5 be changed to state "minutes or recordings" instead of "minutes and recordings," Exhibit N, because we physically cannot accomplish this in 30 days. The Washoe County Board of County Commissioners and many of our other boards cannot get minutes approved in 30 days.

For all of the boards that we clerk, the audio recordings are available the next business day after the meeting. For the Washoe County Board of County Commissioners, not only is the audio available, but we also post a video online of the meeting the next business day after the meeting.

Like Clark County, our records date back to 1861. The bulk of those records, about 140 years' worth, are still on microfilm and are not digital. We are fortunate that we have minutes online dating back to 1995, and we continue to put them on microfilm to keep things current.

Washoe County has been able to post the entire backup for a meeting in advance pursuant to the Open Meeting Law. Any staff reports are posted on the Website with our agenda for the Washoe County Commissioners, and the bulk of their records are available online at no charge to our citizens.

The problem is that our records are not all electronic. Many are in a hardbound book, with some from the 1800s in handwritten form until the 1940s or 1950s when they became typewritten. Anyone can review the records anytime. However, for us to search them, find them, pull them off microfilm and make copies is next to impossible. The records are not as available as we would like.

We are reviewing technology to convert the microfilm to digital. It is expensive and time-consuming, but we are working toward it.

Regarding immediacy of requests, we have never had a problem providing some sort of response to the requester right away. Usually, requesters are pleased about how supportive we are of their requests, how we determine what they want and how we help them narrow down what they actually want.

Many of the things county clerks do have nothing to do with the transparency of government. County clerks provide vital records, such as marriage licenses, fictitious firm names, notary bonds and minister authorizations. Agencies statewide collect a statutory fee for vital records. Perhaps consideration could be given to separating the two. An appropriate fee could be determined for records that apply to open government and another fee to the users of vital records.

We are not in favor of reducing the $1 a page fee to $.10 a page. If that happens, perhaps clerks could be given the authority to waive that fee. Receipting and processing at 10 cents a copy does not make business sense.

Alan Glover, Clerk-Recorder, Carson City Clerk-Recorder's Office supports the amendments proposed by Clark County and Carson City, Exhibit L, and the proposal to change "and" to "or" regarding minutes and recordings, Exhibit N.

Chair Parks:
Senator Segerblom have you seen the proposed amendments?

Senator Segerblom:
I have not had a chance to look at them closely. I would be happy to work with all of the parties.

Senator Hammond:
How did you arrive at 10 cents a page? Can there be an adjustment for the prevailing cost for copying a page?

Senator Segerblom:
There certainly can be.

Senator Hammond:
The word "reasonable" keeps coming up. Were we going to discuss reasonable and in what areas?

Senator Segerblom:
Reasonable is fine, but it is a variable because something reasonable to you may not be reasonable to me. We came up with a number, but it could be 15 cents or 20 cents. The $1 is extraordinary, but that is what is in statute. Maybe we could let clerks have $1.

Senator Hammond:
There might be a difference between a rural area and Clark County where prices vary. We might be able to come up with language to address that.

Senator Segerblom:
We would like to meet with both sides to develop language that all would be happy with.

Senator Spearman:
I continue to hear that some of the records are electronic and then others go back to 1909 or 1861. Perhaps in the discussions you could determine the feasibility of providing the technology to convert records. Someone testified that some of the records are bound in books. There is technology for books that slides over a page and immediately scans it. A fiscal note would be required, but this does not have to happen immediately. Something could be phased in so that the spirit of your bill, which is to allow greater portability of records for public use, can be accomplished.

Senator Segerblom:
The NPRI mentioned that there could be different fees for microfiche and for hard copies. We recognize that this bill needs more work.

Chair Parks:
We will close the hearing on S.B. 74. We will not hear S.B. 79 today.

SENATE BILL 79: Revises provisions governing the use of net profits derived from certain municipal utilities. (BDR 58-449)

Chair Parks:
With no further business to come before the Committee on Government Affairs, the meeting is adjourned at 4:05 p.m.

RESPECTFULLY SUBMITTED:

_____
Suzanne Efford,
Committee Secretary

APPROVED BY:

_____
Senator David R. Parks, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	7		Attendance Roster
S.B. 68	C	8	Senator Tick Segerblom	Senate Bill 68 Creates Underground Utilities District
S.B. 68	D	14	Chris Giunchigliani	Testimony Backup
S.B. 68	E	1	Samuel S. Crano	Written Testimony
S.B. 68	F	2	Nevada Telecommunications Association	Opposition Letter from Mike Eifert
S.B. 74	G	6	Senator Tick Segerblom	Senate Bill 74 Revision of Provisions Relating to Public Records
S.B. 74	H	2	Colleen McCarty	KLAS-TV News Story
S.B. 74	I	5	Ninth Judicial District Court	Letter from District Judge Nathan Tod Young
S.B. 74	J	5	Philip A. Olsen	Civil Rights for Seniors Proposed Amendments
S.B. 74	K	2	Diana Alba	Letter Stating Concerns
S.B. 74	L	2	Clark County, Carson City, Lyon County, Truckee Meadows Water Authority and Nevada Association of School Boards	Proposed Amendment
S.B. 74	M	1	Steve K. Walker	Request for Legislative Record
S.B. 74	N	2	Nancy Parent	Letter from Amy Harvey