

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Ninth Session  
February 16, 2017**

The Committee on Government Affairs was called to order by Chairman Edgar Flores at 8:31 a.m. on Thursday, February 16, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chairman  
Assemblywoman Dina Neal, Vice Chairman  
Assemblyman Chris Brooks  
Assemblyman Richard Carrillo  
Assemblyman Skip Daly  
Assemblywoman Amber Joiner  
Assemblyman Al Kramer  
Assemblyman Jim Marchant  
Assemblyman Richard McArthur  
Assemblyman William McCurdy II  
Assemblywoman Daniele Monroe-Moreno  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblyman John Ellison (excused)  
Assemblywoman Shannon Bilbray-Axelrod (excused)

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
Lori McCleary, Committee Secretary  
Carol Myers, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General  
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas  
Metropolitan Police Department  
Barry Smith, Executive Director, Nevada Press Association  
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office  
Judith Miller, Private Citizen, Incline Village, Nevada  
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada  
Aaron Katz, Private Citizen, Incline Village, Nevada  
Ben Graham, Government Relations Advisor, Administrative Office of the Courts  
Andres Moses, Staff Attorney, Eighth Judicial District Court  
John Fudenberg, Coroner, Office of the Coroner/Medical Examiner, Clark County

**Chairman Flores:**

[Roll was called. Committee rules and protocol were explained.] We will start with a presentation from the Office of the Attorney General, and then move on to the presentation of Assembly Bill 42.

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:**

The Office of the Attorney General consists of approximately 370 dedicated and hardworking individuals committed to enforcing Nevada law for the protection and benefit of our citizens ([Exhibit C](#)). The Attorney General serves as the state's chief law enforcement officer, representing the state of Nevada in state and federal trials, criminal and civil matters, and appellate courts. The Attorney General serves as legal counsel to the Executive Branch's state officers, state departments, and most state boards and commissions. The Attorney General also assists Nevada's 17 district attorneys.

In 2016, this Office defended the state from approximately \$662,078,449 in potential liabilities. During the last legislative session, this Office defended the state from approximately \$1.27 billion in potential liabilities. The difference is due to significant victories, favorable settlements, and proactive management.

The Office of the Attorney General is committed to ensuring that all actions taken by the state are lawful and legally defensible. We seek to enforce transparency and accountability in government, justice for victims of crime in Nevada, and keeping our families and communities safe by holding criminals accountable for their actions.

In 2015, Attorney General Laxalt advocated for an office reorganization which was approved by the Legislature. By increasing management oversight in complex cases and training our staff and clients, the reorganization has made our office more effective, efficient, and proactive in providing services to Nevada.

The Office of the Attorney General is organized into five major bureaus: the Bureau of Criminal Justice, the Bureau of Litigation, the Bureau of Consumer Protection, the Bureau of Gaming and Government Affairs, and the Bureau of Business and State Services. Additionally, the Office of the Attorney General has an Administration Division responsible for all administrative matters relative to running the functions of our office which includes: information technology, accounting, personnel, and grants unit [page 2, ([Exhibit D](#))].

The Bureau of Criminal Justice consists of the Criminal Prosecution Unit and the Post-Conviction Unit [page 5, ([Exhibit D](#))]. This Bureau investigates and prosecutes Medicaid fraud, insurance fraud, workers compensation fraud, securities fraud, mortgage fraud, sex trafficking, cybercrime, and public integrity cases. Our financial fraud prosecutors work to combat instances of financial fraud and elder exploitation. They prosecute crimes that occur within the Department of Corrections facilities and support local prosecutors that must recuse themselves due to a conflict of interest.

In addition to financial fraud prosecutors, the Office of the Attorney General maintains an Investigations Division consisting of approximately 60 sworn peace officers [page 7, ([Exhibit D](#))]. The investigators work hand in hand with the financial fraud prosecutors and local law enforcement. They investigate a wide variety of crimes in the areas of financial fraud, cybersecurity, human trafficking, child exploitation, and terrorism. The peace officers work on multijurisdictional task forces, such as the Internet Crimes Against Children and with the Joint Terrorism Task Force of the Federal Bureau of Investigation, U.S. Department of Justice, investigating cybercrime. The Post-Conviction Unit handles petitions for habeas corpus cases in state and federal court.

The Bureau of Litigation is composed of the Public Safety Division and the Transportation Division [page 4, ([Exhibit D](#))]. This Bureau oversees appeals before the Nevada Court of Appeals, the Supreme Court of Nevada, and the United States Circuit Court of Appeals for the Ninth Circuit. The Public Safety Division advises the Nevada Department of Corrections and provides representation in all inmate-related litigation, including property and constitutional claims.

The Public Safety Division provides day-to-day transactional advice to the Department of Corrections in all aspects of their organization. The Transportation Division provides litigation and transactional services to the Department of Motor Vehicles, the Department of Public Safety, and the Department of Transportation. This includes state highways, the licensing of motor vehicles and trailers, emergency management, parole and probation, the transportation of hazardous materials, eminent domain, and inverse condemnation cases.

The Bureau of Gaming and Government Affairs includes the Gaming Division, the Government and Natural Resources Division, and the Boards and Open Government Division [page 3, ([Exhibit D](#))]. This Bureau represents all the state constitutional officers, the Department of Administration, and various Executive Branch state agencies.

This Bureau provides advice and legal representation to the boards and commissions that license and regulate occupations and professions in Nevada. It enforces provisions relating to each of these professions for the protection and benefit of the public. Additionally, this Bureau enforces, trains, and provides legal advice for the Nevada Open Meeting Law and the Nevada Public Records Act, both of which ensure transparency in government. Upon request, this Bureau provides legal opinions on questions of law to Nevada's district and city attorneys.

The Bureau of Business and State Services provides legal advice and representation to the Department of Taxation, the Department of Business and Industry, and the Department of Health and Human Services [page 3, ([Exhibit D](#))]. This Bureau represents all departments, boards and commissions, and all Executive Branch agencies in personnel matters, including employee discipline. This Bureau also prosecutes a wide variety of regulatory and tax matters before administrative tribunals and on appeal before district and appellate courts.

The Bureau of Consumer Protection has three areas of primary responsibility: Advocacy for ratepayers—before the Public Utilities Commission of Nevada and the Federal Energy Regulatory Commission—antitrust, and civil enforcement of *Nevada Revised Statutes* (NRS) Chapter 598, which establishes provisions for deceptive trade practices [page 7, ([Exhibit D](#))].

During the biennium of state fiscal year (FY) 2016 and FY 2017, this Bureau participated in approximately nine multistate consumer protection settlements. Most notably, the Bureau negotiated a \$1.7 million consumer protection settlement allocated to reduce Nevada's decade-long rape kit backlog and approved by the Legislative Counsel Bureau's Interim Finance Committee (IFC).

In the current fiscal year, the Grants Unit was awarded \$6 million in federal grant program awards. Approximately \$3 million was funding received under the federal Violence Against Women Act of 1994. This grant provided resources to over 50 law enforcement and victim service recipients at the state and local level.

The Office of the Attorney General secured funding from the 2015 and 2016 Sexual Assault Kit Initiative grant to reduce the backlog of nearly 8,000 untested sexual assault kits. The total of those awards is over \$3 million. Another award is the Sexual Assault Forensic Evidence-Inventory, Tracking, and Reporting grant. This grant will help the Office of the Attorney General establish a tracking system for sexual assault kits which is vital to preventing future backlogs.

The Office of the Attorney General received two awards for the first time this past year. The Office of Traffic Safety, Department of Public Safety grant will help in training local

prosecutors with driving under the influence prosecutions. Because of the passage of the marijuana initiative and the legalization of marijuana for recreational use, that training will focus on properly prosecuting cases involving driving impairment by marijuana. The Stop Abuse in Later Life discretionary grant program will assist Nevada in developing the necessary knowledge and organization to improve collaborative state and local responses to elder abuse and exploitation.

In the summer of 2015, the Office of the Attorney General obtained a federal grant to assist local law enforcement agencies with sex offender registration, location monitoring, and compliance checks, thus making our communities safer from sexual predators. Through the years, the Office has secured federal grants to embed our prosecutors within district attorneys' offices in six rural counties for prosecuting domestic violence and sexual assault cases. These cases are supervised by the appropriate district attorney. Unfortunately, domestic violence continues to tear at the fabric of our society, and Nevada is continually ranked among the top states in both instances of women killed by men and in the commission of domestic violence offenses. The Office of the Attorney General performs many statutory functions in the fight against domestic violence.

Under the leadership of former attorney general Catherine Cortez Masto, the Office of the Attorney General applied for and received federal grant funding to implement and manage a statewide automated victim notification system. The Nevada Victim Information Notification Everyday (VINE) system is fully implemented, and this Office oversees its management. Nevada VINE provides real-time alerts regarding the custody status of a victim's offender. Victims receive changes in custody status so they may take the necessary steps to protect themselves and their families.

The Office of the Attorney General administers four statutory boards that perform important functions that in some instances overlap: the VINE Governance Committee; the Committee on Domestic Violence; the Nevada Council for the Prevention of Domestic Violence; and the Statewide Domestic Violence Fatality Review Task Force.

During the past two years, the Office of the Attorney General has convened the Statewide Domestic Violence Fatality Review teams. These teams reviewed domestic violence homicide cases in two different rural communities and made a recommendation for system improvement to save lives in the future.

The Office of the Attorney General has an ombudsman on staff who serves as a liaison with all state and local partners on issues related to domestic and intimate partner violence, sexual assault, and human trafficking. The ombudsman serves as a state-level coordinator with oversight of the programs and initiatives mentioned.

The Attorney General is a member of many statutory boards and commissions pursuant to the *Nevada Constitution* and NRS. These include the State Board of Examiners, the Board of State Prison Commissioners, the State Board of Pardons Commissioners, the Executive Branch Audit Committee, the Advisory Commission on the Administration of Justice, the

domestic violence-related councils previously mentioned, the Substance Abuse Working Group, the Advisory Council For Prosecuting Attorneys, and the Technological Crime Advisory Board.

In addition to the mandated boards and commissions, Attorney General Laxalt has undertaken several initiatives in service of our state. Attorney General Laxalt chairs the Sexual Assault Kit Backlog Working Group, a very large working group that meets on a monthly basis.

**Chairman Flores:**

I apologize for interrupting. One of our Committee members has a question.

**Assemblyman McCurdy II:**

May I ask why the Committee does not have your presentation so we may follow along?

**Brett Kandt:**

I would be happy to provide a copy of my presentation ([Exhibit C](#)) immediately following the committee meeting. If there are any questions relative to my presentation, I am happy to follow up with the Committee.

**Assemblyman McCurdy II:**

It would be very helpful because it is difficult to keep up without any reference material.

**Assemblyman Kramer:**

I am interested to know why the rape kits were not processed on a timely basis.

**Brett Kandt:**

The delay in processing the rape kits was due to a capacity issue and available resources. Currently, the Office of the Attorney General is focused on addressing the backlog and preventing future backlog. Assembly Bill 55 will address these issues. It proposes mandatory submission of rape kits from law enforcement to crime labs within a certain period of time, mandatory testing within a certain period of time, and tracking of the rape kits.

**Chairman Flores:**

There are no more questions. Please continue.

**Brett Kandt:**

The Office of the Attorney General handles extraditions of transferring criminal defendants to and from Nevada. In the past year, the Extraditions Unit handled about 548 extradition matters.

The breadth and depth of the Office's legal responsibilities and the issues addressed on a daily, weekly, and yearly basis are substantial. I will provide this presentation and some

backup material for the Committee's review, and if there are any questions, please do not hesitate to reach out to me.

The Attorney General initiated additional outreach to our local law enforcement and rural communities to keep Nevada as safe as possible. In the last two years, this Office has hosted four law enforcement summits. The summits brought together representatives from Nevada's 17 counties. These included local sheriffs, police chiefs, and county district attorneys. The discussion included emerging crime trends in Nevada and identifying the most effective strategies to address those crime trends. Several local task forces have been formed as a result of these summits.

The Office of the Attorney General has assisted local jurisdictions on guardianship investigations and prosecutions and created the Southern Nevada Guardianship Taskforce. The Office of the Attorney General provides training and has created policy proposals on important law enforcement issues such as body cameras. We have augmented office resources to address increased financial fraud and elder exploitation. Elders are Nevada's most vulnerable population, and the Office of the Attorney General believes preventing elder exploitation is a core responsibility of our office. That mission includes investigating and prosecuting crimes against the elderly—especially those involving financial fraud.

The Office of the Attorney General identified nontaxpayer settlement monies to assist investigation and prosecution of financial fraud matters in our state. On June 30, 2016, the IFC unanimously approved the Office's proposal to create a Financial Fraud Unit. The Financial Fraud Unit has been a success and the Office of the Attorney General has become more flexible, effective, and efficient in responding to the financial fraud problem.

Attorney General Laxalt is a former lieutenant in the United States Navy. He is committed to our military and veteran communities. With the consent of the Legislature, he created the Office of Military Legal Assistance, the first of its kind in our nation. The Office of Military Legal Assistance acts as a single point of contact for military veterans, reservists, and active duty personnel needing assistance in certain civil legal matters. Since its creation, the Office of the Attorney General has partnered with local legal service providers, attorneys, and firms in the private sector to provide assistance to nearly 1,000 service members and veterans. We are proud to assist them in recognition of everything they have done for our country.

**Assemblyman Carrillo:**

I missed the first part of the presentation, and I was wondering why the Attorney General is not presenting. The Legislature is here 120 days every two years. It would be nice to have a visit from him.

**Brett Kandt:**

I will convey your invitation to the Attorney General.

**Assemblyman Brooks:**

When will your presentation ([Exhibit C](#)), organizational chart ([Exhibit D](#)), and other data be available to the Committee?

**Brett Kandt:**

The Office of the Attorney General is preparing our budget presentation before the money committee scheduled for the first week of March. A lot of the information in our budget presentation will be helpful to this Committee, and I will provide that information. I am aware not all of you sit on the money committee.

**Assemblyman Carrillo:**

Over the last couple of years, the Office of the Attorney General has sued the Obama Administration over issues such as overtime pay, immigration, and Internet policies. Are there any plans for your Office to sue the Trump Administration over its executive orders and obvious executive overreach? What does the process look like? Is it at the sole direction of the Attorney General?

**Brett Kandt:**

The determination of whether to initiate litigation is one that is considered among a team of attorneys. Litigation in the past was based on whether the actions of the Obama Administration were lawful and constitutional. That was the core analysis that led Nevada to join or participate in certain litigation. I am assuming that will be the core analysis for future litigations.

**Assemblyman McCurdy II:**

Do you feel comfortable commenting on a recent article about Attorney General Laxalt attempting to intervene in an ongoing investigation into a gaming company?

**Brett Kandt:**

I have no personal knowledge of that matter, and it involves a client that is not within my purview.

**Chairman Flores:**

At the onset of your presentation, you discussed the Office of the Attorney General's priorities and areas of involvement. Is that through statute? Will the A.G.'s Office consider pursuing other types of cases that are not necessarily the emphasis or focus of what is occurring through statute?

**Brett Kandt:**

The Office of the Attorney General is tasked with certain duties and responsibilities by statute. These include exclusive jurisdiction to prosecute certain types of cases such as Medicaid fraud, insurance fraud, and workers compensation fraud. Generally, criminal prosecution responsibilities lie with Nevada's 17 county district attorneys, but there are certain areas where the Office of the Attorney General is responsible and has exclusive jurisdiction. Additionally, there are a handful of areas where the Office and county district



attorneys have concurrent jurisdiction to prosecute a particular crime. Examples of concurrent jurisdiction are human trafficking, cybercrime, and elder exploitation. In those instances, the Office of the Attorney General works with local criminal justice partners to determine who has responsibility for a particular case in order to serve the interest of the citizens.

**Chairman Flores:**

Is there a relationship between the Office of the Attorney General and the U.S. Department of Homeland Security? How much information travels back and forth? Are there any shared resources? What are the dynamics of the relationship? Here is one scenario. The Department of Homeland Security has requested information on a particular individual. Would the Office of the Attorney General provide it? Would the Office of the Attorney General join the Department of Homeland Security in any type of investigation? Would the Office of the Attorney General provide resources to aid an ongoing federal investigation?

**Brett Kandt:**

The Office of the Attorney General is tasked with providing legal advice and representation to state Executive Branch agencies. The Office of the Attorney General interfaces with some federal agencies, but our primary responsibilities and primary working relationships are with state agencies. The Office of the Attorney General forms partnerships with federal agencies to address certain types of crime such as cybercrime, Internet crimes against children, and multi-jurisdictional task forces. Collectively, federal, state and local partners focus on a particular issue such as Internet crimes against children.

**Chairman Flores:**

Can you discuss Nevada's homeland security efforts at the state level?

**Brett Kandt:**

Nevada has the Office of Homeland Security housed under the Department of Public Safety. The Office of Homeland Security is part of the Executive Branch and is one of our clients. We provide them legal advice and representation as we do all the other state Executive Branch agencies.

**Assemblywoman Neal:**

What does the Office of the Attorney General use the money from the Master Settlement Agreement (MSA) for?

**Brett Kandt:**

The MSA is an agreement that resulted from a 1998 lawsuit initiated by 46 states, 5 U.S. territories, and the District of Columbia against the five largest tobacco manufacturers. As a result of that settlement, certain monies come to Nevada. I am not prepared to give a detailed breakdown of how the MSA monies Nevada receives are utilized. I will follow up with you and provide that information.

**Assemblywoman Neal:**

I would appreciate it because I know there is a request by the Office of the Attorney General for a change in use.

**Brett Kandt:**

Assembly Bill 62 is a bill that makes some changes to NRS Chapters 370 and 370A concerning tobacco enforcement. The purpose of the bill is to make necessary changes to Nevada law to demonstrate that the Office of the Attorney General is diligently enforcing the MSA in Nevada. We must demonstrate diligent enforcement on a consistent basis in order to comply with the terms of the MSA. The bill is assigned to the Taxation Committee, and the Office of the Attorney General has provided a bill every session to make the necessary changes to Nevada law for compliance.

**Assemblywoman Monroe-Moreno:**

You mentioned there are 370 employees in the Office of the Attorney General?

**Brett Kandt:**

Yes, approximately 370.

**Assemblywoman Monroe-Moreno:**

How many of them are attorneys who have been certified by the State Bar of Nevada?

**Brett Kandt:**

We have approximately 175 state-certified attorneys in our office.

**Assemblywoman Monroe-Moreno:**

Is each of the bureaus and divisions at the Office of the Attorney General headed by an attorney?

**Brett Kandt:**

Each of our bureaus is headed by an attorney, and each of our divisions within the bureau is headed by an attorney. Our administration officers are not attorneys but professionals in their responsible areas. We have a chief personnel officer, a chief financial officer, and a chief information technology officer.

**Assemblywoman Monroe-Moreno:**

When you send the briefing, please send the employee breakdown structure.

**Brett Kandt:**

I will send the Office of the Attorney General's organizational chart, and it will have the complete employee breakdown structure ([Exhibit D](#)).

**Assemblyman Daly:**

The Office of the Attorney General does not represent the average citizen. If they have a complaint against a state agency, your Office actually defends the state agency against

the complaint. Has your Office taken up unsolicited cases where there was not a complaint against an agency? Has the agency defended an agency's denial determination in court?

**Brett Kandt:**

That is a difficult question to answer because the Office of the Attorney General has a broad range of responsibilities and manages a large number of cases at any given time. We have the responsibility to defend the state anytime the state or a state officer is sued. That authority is granted under NRS Chapter 228. Perhaps we could talk offline on your exact interests, and I will follow up with you.

**Assemblyman McCurdy II:**

What is each attorney's caseload? What is the attorneys' salary scale?

**Brett Kandt:**

I cannot provide a caseload per attorney because of the Office's broad range of responsibilities. The civil caseload is different from the criminal caseload. The criminal caseload depends on the area of fraud such as Medicaid fraud, insurance fraud, worker's compensation fraud, and inmate litigation handled by the Habeas Unit. Salary scale is established by the Legislature every biennium in the unclassified pay bill.

**Assemblyman McCurdy II:**

What is the caseload between criminal and civil cases?

**Brett Kandt:**

I do not have the caseload per attorney information. I will follow up with you. I could provide the total number of cases that each of our criminal divisions handled in the past year, maybe even the past two years. It is broken down by the case load total for each division and unit.

The Bureau of Criminal Justice's Prosecution Unit opened 375 cases, resolved 403 cases, and filed 331 cases. This unit obtained 140 felony convictions, 28 gross misdemeanor convictions, 7 misdemeanor convictions, and obtained orders of restitution in the amount of \$2,472,976.04.

The Medicaid Fraud Control Unit opened 115 investigations, closed 67 investigations, and successfully prosecuted 27 criminal cases involving Medicaid fraud. This unit recovered \$5,449,658.01 for FY 2015 and \$4,883,176.42 for FY 2016.

The Worker's Compensation Unit filed charges in 152 cases and recovered \$389,993.12 in restitution for FY 2015. In FY 2016, the unit filed charges in 111 cases and recovered \$482,498.98 in restitution.

In FY 2015, the Insurance Fraud Unit filed charges in 28 cases and recovered \$439,585.49 in restitution. In FY 2016, the unit filed charges in 53 cases and recovered \$292,504.39 in restitution.

**Assemblyman Carrillo:**

Maybe the Attorney General could bring the Committee's requests, and we could have an opportunity to meet with him.

**Brett Kandt:**

I will take that back to him.

**Assemblyman McCurdy II:**

Will we have an opportunity to know the average salaries of the attorneys?

**Brett Kandt:**

That is established in the unclassified pay bill that this body enacted into law the last session; it is available online. I do not know the assembly bill number for this session, but it establishes the salaries for all the unclassified personnel in state government which includes all the attorneys and other professionals in our office.

**Chairman Flores:**

I will now open up the hearing on Assembly Bill 42.

**Assembly Bill 42: Revises various provisions relating to public records. (BDR 19-389)**

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:**

Assembly Bill 42 deals with the Nevada Public Records Act established in *Nevada Revised Statutes* Chapter 239. The Public Records Act is one of the most important laws for ensuring the business of government is conducted in the open. It straightforwardly provides that any records that are not otherwise declared confidential by law shall be open to inspection and copying by the public.

The Office of the Attorney General under the leadership of former Attorney General Cortez Masto formed an Open Meeting Law Task Force. The task force met every interim over the course of her tenure to look at our open government laws and make recommendations for improvement. That led to many bills enacted by this body changing both the Public Records Law and the Nevada Open Meeting Law. Under Attorney General Laxalt the task force has continued to meet over the past interim. I have had the privilege of chairing the task force composed of various representatives of local governments, the American Civil Liberties Union, and the press. Most of the recommendations presented in A.B. 42 are from the efforts of the task force.

Assembly Bill 42 proposes four modifications ([Exhibit E](#)). The first proposal suggests a change to the organization of exemptions in the Nevada Public Records Act. All records are assumed public unless otherwise declared confidential by law. There are various provisions in the NRS in which a particular record has been declared confidential by law. Several sessions ago all of those existing statutory exemptions were listed in

NRS Chapter 239. *Nevada Revised Statutes* Chapter 239 lists about a page and a half of NRS citations. In order to understand what the exemptions are it is necessary to look up each NRS listed.

The working group looked at the organization of the federal Freedom of Information Act (FOIA) with the idea of making similar changes to the Nevada Public Records Act. The federal FOIA organizes its existing exemptions into subject matter categories. The working group proposed the organizing by subject matter categories to the Legislative Counsel Bureau (LCB).

The Legislative Counsel Bureau staff organized the concept into a proposal that is before the Committee today. The sections are sections 2 through 10 and section 12 of A.B. 42. The list of existing exemptions is organized into categories based on FOIA's categories. It is not the task force's intention to change, limit, expand, eliminate any existing exemptions, or create new exemptions. This is a very important point.

In conversations with various stakeholders, especially local governments, there is concern that material changes have been made by the drafted language. The intent is to create categories of the existing exemptions to make the Public Records Act more user-friendly. The bill proposes nine categories based on the FOIA model, but perhaps there are other categories to consider with this concept.

The second proposal ([Exhibit E](#)) in A.B. 42 considers the definition of "person." Currently, the definition of "person" refers to both an individual making a public records request and an individual responding to the request on behalf of the governmental entity. This creates confusion and an unintended consequence. The assumption is a governmental entity can make a public records request of another governmental entity. Because the definition is unclear, there have been instances where one governmental entity requesting documents from another was told, "You are not a person under the Public Records Act, and we do not have to respond." The Office of the Attorney General submits this is contrary to the spirit of the Public Records Act and does not serve the interest of transparency in government. Section 11 of A.B. 42 proposes to clarify the definition of "person." A person requesting a document would include a governmental entity and a person responding on behalf of a governmental entity would be known as a public officer or an employee.

Section 11, subsection 9, paragraph (a), contains the language, "Is an employee, agent or independent contractor of a governmental entity." There is a concern about the use of the term "independent contractor." The Supreme Court of Nevada issued an opinion regarding a public record request a few years ago, and it was a matter that was litigated between the Las Vegas Metropolitan Police Department (Metro) and a requestor, Blackjack Bonding, Inc., a bail bonds company.

Metro had a contract with an independent contractor. In the course of performing services under that contract, public records were generated and physically stored at the independent contractor's location. Blackjack Bonding, Inc. requested the records from Metro.

The Nevada Supreme Court held that Metro had an obligation to provide the public records even though they did not have physical custody. Metro had the responsibility to obtain the public records within the scope of the request and provide them to Blackjack Bonding Inc.

If the term "independent contractor" is included in the language, it could imply that a requestor could go directly to an independent contractor with their public records request. The request should be made to the governmental entity that has legal custody and control of the public records. If a third-party contractor has physical custody of that record, it is the responsibility of the governmental entity to retrieve the public record from the independent contractor. The term "independent contractor" should be deleted from the definition in section 11, subsection 9, paragraph (a).

The third proposal ([Exhibit E](#)) for this bill appears in section 15 and is a clarification of the law. *Nevada Revised Statutes* 239.012 affords a governmental entity good faith immunity when they refuse to disclose a particular record in response to a public records request. This immunity is important because records may contain personal information and the disclosure may violate privacy rights. Agencies face the difficult question of determining whether a particular record or a portion of it should be disclosed. This occurs primarily on a local level.

One example is this: an agency refused in good faith to disclose a public record because it would violate some privacy interests. The parties litigated the issue in court, and the court applied the *Donrey* balancing test. The test refers to a Nevada Supreme Court case, *Donrey of Nevada, Inc. v. Bradshaw*, [106 Nev. 630, 798 P.2d 144 (1990)], where the court laid out a balancing test for judges to utilize. In the *Donrey* test, the court must balance the public's right to know the information being requested with the individual's right to privacy.

There have been incidences where the court has conducted the *Donrey* balancing test, made a decision, and asked the governmental entity to disclose the information that they were concerned about. The governmental entity's refusal to disclose was in good faith covered by the immunity provisions of NRS 239.012. There have been instances where governmental entities have had to face significant attorney fees, eventually borne by the taxpayers. The Office of the Attorney General is proposing to clarify section 15 to state that good faith immunity includes immunity from damages or attorney fees.

The last proposal ([Exhibit E](#)) in A.B. 42 concerns a method for intermediary appeals options. The federal government provides some opportunities for an individual when a citizen's federal FOIA request is denied. One option is to contact the Office of Government Information Services, U.S. National Archives and Records Administration. This office acts as an ombudsman. It is made up of public records experts that mediate disputes between a private citizen who has made a public records request and a federal agency that has denied the request. Secondly, under federal law, if an individual has an FOIA request denied, they could seek a review of the denial before an administrative law judge. If the individual is unhappy with the finding, they can go to federal court.

Nevada law does not provide any intermediary appeals options to citizens denied a public records request. Under the Nevada Public Records Act, if a citizen is denied a document their only option is to file in state district court and litigate the matter. The task force heard the concerns of Nevada citizens that there are no intermediary appeals options after a public records request has been denied. The proposed amendments ([Exhibit F](#)) to sections 14 and 20 of [A.B. 42](#) are an effort to craft something that might be helpful.

A body of experts could render an advisory opinion to a citizen when their public records request is denied to determine if it was sufficiently articulated. This is similar to the ombudsman role performed by the federal Office of Government Information Services. The task force was mindful to propose something that did not have a significant fiscal impact and identified an existing committee—the Committee to Approve Schedules for the Retention and Disposition of Official State Records (State Records Committee) within the Division of State Library, Archives and Public Records. The task force thought the State Records Committee would have the requisite expertise to issue nonbinding advisory opinions, provide guidance to agencies, and ensure a consistent approach when responding to a public records request. Oftentimes when a citizen is upset about a denial of a public records request, it is because the denial is not sufficiently articulated.

There are concerns with assigning this responsibility to this Committee. I had a chance to talk with the State Records Committee about the task force's proposal. First, the State Records Committee is concerned if there would be a significant fiscal impact because sufficient data is not available on how many requests might be received. Second, the responsibility of reviewing and updating the records retention disposal schedule is outside the State Records Committee's established statutory role. Thirdly, LCB staff pointed out that the State Records Committee is a state entity and would not have the authority to issue an opinion at the local level. Most litigation, with the exception of the Public Employees' Retirement System, arises at the local government level. Taking all those considerations into account, the Office of the Attorney General would like to amend the bill and delete sections 14 and 20 of [A.B. 42](#).

I think there is value in bringing this to the Committee's attention. Unlike the FOIA that affords a citizen some intermediary level of appeal and recourse, an individual's only recourse in Nevada is to go to court.

**Assemblyman Joiner:**

When you first presented you mentioned the intent was not to change any of the provisions. I am not sure whether the recategorization of the exemptions increases transparency. Do these provisions increase transparency? What is the intent?

**Brett Kandt:**

I think you hit the heart of the matter. What can we do to increase transparency? The task force thought these proposals would increase transparency and it was worthy of the

Committee's time and consideration. If the model of subject matter categories is helpful to the federal FOIA, it may be worth considering at the state level because of the size and the sheer number of requests FOIA receives.

Once again, the task force's intention was not to change existing law with regard to exemptions. If the crafted language has had an effect in one instance or another, the task force is open to amendments to ensure the exemptions remain status quo. There are nine FOIA categories, but this Committee has the option of creating categories specific to Nevada. The task force's goal is to increase transparency in government and make the Public Records Act user-friendly.

**Assemblyman Joiner:**

Section 23 appears to add an exemption for a governmental entity, and that concerns me. Language in section 23 reads, "A person, other than a governmental entity, who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office . . . ." This reads as the governmental entity is exempted from any penalties. Everyone else receives a category C felony, but the governmental entities do not. Would the individuals in that governmental entity be accountable and not the entity itself?

**Brett Kandt:**

I will defer to LCB staff. I think this is referred to as a conforming amendment. As I indicated previously, the second proposal is clarifying what person means in the NRS chapter because currently it is used interchangeably. The task force proposes to distinguish that person means the person making the request. In section 23, LCB staff are making a conforming amendment to acknowledge that distinction. I defer to your legal counsel and staff whether that is really the case.

**Assemblyman Joiner:**

Was that during the drafting of the amendments?

**Brett Kandt:**

Yes, that is the way it was drafted.

**Assemblyman Kramer:**

Section 21 specifically uses the term "natural person." A "natural person" is a human being as opposed to a limited liability corporation, business, or government entity. Whenever a governmental entity does something, it is performed by a person. If a person cannot be identified, is no one guilty? I am unsure why the term "natural person" is used in this particular section.

**Brett Kandt:**

That language is referred to as a conforming amendment and was drafted by LCB staff. I would refer to their interpretation.



**Assemblyman Brooks:**

Earlier you mentioned that there were some inadvertent exemptions that may have been excluded from the process of organizing the classifications to line up with FOIA. What are the exemptions that were excluded? What are the classifications that changed?

**Brett Kandt:**

Much of this was brought to the task force's attention by governmental entities affected by the amendment. Some of these entities may be testifying today and will point that out. In a conversation with Assemblyman Daly yesterday, he had a concern with the crafting of categories. Let me provide an example. Sections 2, 3, 4, 5, 6, 7, 8, 9, and 10 separate the existing exemptions with a descriptor for the category. After each category descriptor and immediately before each group of existing statutory exemptions is listed, the words "including, without limitation" are written. Assemblyman Daly's concern is it appears to create a broader exemption within the precatory language.

For instance, in section 9, the provisions do not apply to the records "... which are declared by law to be confidential, as geographic information relating to demographics, natural resources, agriculture, food and the environment, including, without limitation ... ." Then the citations are listed. If the language "including, without limitation" is dropped, it appears to create a broader category of documents that governmental entities might argue are not subject to disclosure.

Assemblyman Daly mentioned the language should read, "to the extent provided in" rather than "including, without limitation." That is one example of how the language that was crafted may need to be revised. The intent was not to change any existing exemptions.

**Chairman Flores:**

As a point of clarification, the committee counsel, Jim Penrose, will answer the question posed by Assemblyman Kramer and Assemblywoman Joiner.

**Jim Penrose, Committee Counsel:**

The preliminary chapter of the NRS is Chapter 0. The preliminary chapter defines a person as a human being or some form of business entity. That section provides that unless otherwise provided, the term "person" does not include any governmental entity. That is why Mr. Kandt is correct in his response to the two questions asked earlier concerning the usage of "person." It is a conforming amendment intended to make it clearer that a "person" is a human being or a business entity.

**Assemblyman Kramer:**

Section 23 states, "... a person, other than a governmental entity, who ... ." The term "person" includes businesses because it is not a natural person. I am unclear whether "governmental entity" means county, city, or whether it means a department under a county, city, or both. It seems like it is a get-out-of-jail-free card for any governmental entity to

change whatever they want, replace whatever they want, or just pull something in order not to disclose it. Section 21 refers to a "natural person," which is not an individual and also not a governmental entity that would be subject to the penalties for wrongdoing.

**Jim Penrose:**

I will use section 21 as an example to explain sections 21 and 23. Existing law provides that "person" means only a human being or business. A governmental entity that steals, embezzles, or corrupts any of the records described is not within the scope of the statute. The term "natural person" was added so there is no change to the existing provision and the same is true for section 23. Assembly Bill 42 can be amended to include a governmental entity, but from the viewpoint of LCB staff, that would represent a change in existing law.

**Assemblyman Kramer:**

Does the term "natural person" in section 21 exclude a governmental entity?

**Jim Penrose:**

Yes, it does.

**Assemblyman Kramer:**

Does "natural person" exclude an employee of the government?

**Jim Penrose:**

That is a good question, and I do not have an answer. I will follow up with you off the record. In that case, the question would be whether the person was acting pursuant to a governmental authority or on their own volition.

**Assemblyman Kramer:**

It does not matter if they are working on their own behalf or under the direction of governmental authority. If they willfully conceal, forfeit, or falsify a public record, there should be a penalty.

**Jim Penrose:**

If, as a matter of policy, a city council or board of county commissioners directs their employees to take certain action and an agent of the government takes action in response to that directive, that arguably falls within the scope of this section. The real question is can those persons in those circumstances be prosecuted for committing a crime.

**Assemblywoman Neal:**

Clearly, the bill adds in "governmental entities" to the definition of person. I would like a little more explanation on NRS 0.025. It states, "Except as otherwise expressly provided in a particular statute or required by the context." The word "context" appears to open the door for interpretation. I read section 23 as the governmental entity would not be guilty if they falsified or forged documents.

**Jim Penrose:**

Yes, that is certainly the intent of the language.

**Assemblyman Daly:**

*Nevada Revised Statutes* (NRS) 116B.880 concerns the confidentiality of condominium records. It provides that certain records relating to a complaint may be deemed confidential. My concern is it absolutely broadens the specific language in the statute. I probably have as much or more experience than anyone on this Committee making public records requests. I have received denial letters that cite cases from other states and not NRS. The only option is to go to court.

The example that Mr. Kandt provided for section 9 may have sections that do not apply to environmental issues, but now a governmental entity may say it relates and deny the request. That is my issue, and it may be worth the Committee's time to research it. Many governmental agencies will hire a third party who has physical custody, and I think there should be a provision that states it would be their responsibility to disclose back to the governmental agency they contracted with.

**Brett Kandt:**

A requestor must go to the governmental entity to submit a public records request. It is the governmental entity's responsibility to obtain the requested records from the third-party contractor. This is consistent with the Nevada Supreme Court's ruling in *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.*, [131 Nev. Adv. Op. 10, 343 P.3d 608 (2015)] and the current state of the law.

**Assemblyman Daly:**

I agree the request should go to the governmental entity. I think the agency's contract with the third party should require a contract clause stating that if the third party has physical custody of public records, it is their duty to provide them at the agency's request. They cannot say the records have been lost.

**Brett Kandt:**

State standard contract terms provide that records and information generated in the course of performance are generally the property of the state, and the state has the legal right to the records. I am not aware of an instance where the state was unable to obtain public records that were in the physical custody of a third party contractor. I do not know if that has been a problem.

**Assemblyman Daly:**

I brought that up because it was an issue. I made a public records request, and the agency sent me to their third-party contractor. The third party contractor responded that the request must go through the agency.

**Assemblywoman Neal:**

Section 7, subsection 1, states "Could reasonably be expected to interfere with enforcement proceedings." Who is making the decision on the reasonableness? Does that come from a precedent?

**Brett Kandt:**

The Legislative Counsel Bureau crafted the language for A.B. 42. Perhaps one of the law enforcement representatives present may offer testimony and provide guidance or illumination whether that reflects the current state of the law.

**Assemblywoman Neal:**

I had asked Jim Penrose before I asked this question. It leaves the courts to determine what is reasonable. It seems to be broad, and I am not comfortable with this section. If there is a law enforcement representative who could come to the table and explain with specific examples that would be helpful.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

I am not an expert in public records, and Metro's general counsel was not able to attend due to the unavailability of the video conferencing. Metro submitted a letter that expresses our support for A.B. 42 and comments concerning the amendments ([Exhibit G](#)).

An example of section 5 is the Special Weapons And Tactics (SWAT) sections manual. A public records request is made by an individual who wants to see the SWAT procedures. I think it would be reasonable to assume making the manual public could put law enforcement officers at risk.

Section 7, subsection 5, states, ". . . law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This would apply to documents generated during a case. Detectives may have discussed a specific technique that was used during an investigation.

Hypothetically, detectives used the kiosk machines that recycle cell phones for cash to track a suspect. If that information is made publicly available, the criminal element would know an investigative technique used by the detectives. I made that scenario up, but the key is to prevent the release of any document that might jeopardize future cases because the criminal element might learn how to circumvent detective procedures.

**Assemblywoman Neal:**

My example concerns information on faulty drug test kits. I was looking for the actual training manual used by the forensic labs to find out if what the manufacturer stated was in the training manual. This section would deny me from finding the information I needed to develop a timeline on how long individuals at the forensic labs had been following the manufacturer's instructions.

**Chuck Callaway:**

I understand your concern. Our general counsel pulls the records in a public records request. The records are analyzed on a case-by-case basis to determine if personal information must be redacted and if the request falls under section 5. If legal counsel felt a procedure or tactic would jeopardize future cases, the decision to release may be denied. The statute is referring more to an in-depth investigation where detectives are using a specific technique to track and catch criminals. The release of that documentation might allow future criminals engaged in the same activity to circumvent the process.

**Assemblywoman Neal:**

Section 7, subsection 3, states, "Could reasonably be expected to constitute an unwarranted invasion of personal privacy." Can you give me an example of this type of situation?

**Chuck Callaway:**

In the case of Metro, all public information requests go through our general counsel. The general counsel attorneys are trained specifically in public records law and are experts in this area. They are trained to look at statutes and make decisions whether requests are in compliance, whether the request violates the statute, or if the request can be released, but certain information must be redacted.

**Assemblywoman Neal:**

It is helpful to me to have real life examples because once it is made law, the Committee does not meet for another two years. The Committee is on the hook for not asking good questions and not digging deep enough on what the implications of the law may be.

**Jim Penrose:**

The various descriptors that are used in sections 2 through 10 are drawn from the FOIA. Do you contemplate that the case law developed under FOIA would be used in interpreting these descriptors?

**Brett Kandt:**

That is a policy question. Is that something the Committee would be interested in? Case law was not part of the original concept behind using the FOIA categories, but it is something to consider.

**Jim Penrose:**

We have discussed the use of the term "without limitation." I agree with the interpretation of the language and what it offers the variously cited sections. It simply expands the kind of records that are described in the precatory language of each of the sections. If it is desired to limit the scope of each of those sections to the enumerated sections, that language will have to change. Is it the intention of the Office of the Attorney General to define the limits of those sections?

**Brett Kandt:**

Yes. I know I have reiterated this several times, but it was never our intent to alter the existing exceptions in any way, shape, or form. It was drafted by LCB staff, and the language may have altered the existing exceptions to some extent, but that is contrary to the intent.

My conversation with Assemblyman Daly brought up the fact that the descriptor and the inclusions of "without limitation" could be argued to create a broader exemption of the statutory citations subject to nondisclosure. A possible language change might be "to the extent provided in" and then list the statutory citations.

**Jim Penrose:**

You mentioned the *Donrey* balancing test that was established by the Nevada Supreme Court in *Donrey*. Even in a situation where there is no specific statute that declares a particular record to be confidential, my understanding is a court ultimately will balance the competing interests of the parties in determining whether a release of the record will be ordered. What is your view on the *Donrey* balancing test? Does it maintain, eliminate, or change the release of public records?

**Brett Kandt:**

It was not our intent, and I would not want to support a bill that would alter the current status of the law with regard to the *Donrey* balancing test. The *Donrey* balancing test was articulated by the Nevada Supreme Court to guide judges in balancing the public's interest in access with privacy. An agency should conduct a *Donrey* balancing test to articulate to the court the basis for refusal to disclose or the decision to disclose for purposes of the good faith immunity.

The *Donrey* balancing test is not an appropriate response by an agency to a public records request. This is not a legitimate basis to disclose a record or portion thereof. However, an agency may refuse to disclose or make a decision to disclose taking into account the *Donrey* analysis. The agency must articulate that analysis to the requestor. The agency is setting up the basis should it end up in court. The court can analyze and conduct the *Donrey* balancing test and render a decision.

**Assemblyman Daly:**

Would any of the specific statutes that are referenced allow for the denial or withholding of the information request based on the example provided? If not, that should be a separate question that could be brought up in a separate bill to amend the specific statute needed. The Committee could look at that in context rather than this broad language that gets applied across the board to every agency. Do you know if those examples are actually excluded in those statutes that might be referenced there? Or would that descriptor be expanding the exemption?

**Chuck Callaway:**

There are a lot of statutes listed, and I would be speculating. I will have our general counsel look at section 7, provide the answer to your and Assemblywoman Neal's questions, and get back to the Committee.

**Assemblywoman Neal:**

Is Section 10 a category of "other?"

**Brett Kandt:**

Yes, there are certain statutory exemptions that did not fall neatly into the nine FOIA categories. Section 10 is a catchall.

**Chairman Flores:**

Is there anybody here in support of this bill? Please make your way to the witness table and state your name for the record.

**Barry Smith, Executive Director, Nevada Press Association:**

I signed up in support. As evident with the testimony today, there is a lot of uncertainty about the Legislature's intent of how the Public Records Act is used, how the public is able to respond, and what remedies are available. This is a great discussion, and I encourage it to continue. I have concerns about some of the specific language interpretation and understand how it may be misread. I would like to back up a little and address some of the things that came up in the task force meetings.

The exemptions to the records statute are very much a *Where's Waldo* puzzle; not only trying to find where the exemptions are and what they cover, but what was the justification for those exemptions that put them into the statute in the beginning? The concept behind the categorization of A.B. 42 is the federal FOIA subject matter categories. The concept is in the reverse of what I have heard today. Not to expand those definitions and not to expand those exemptions, but to say of those hundreds of exemptions that do exist in law, what is the rationalization and reason behind them. Did they come about because of U.S. Department of Homeland Security issues? Were they because of privacy issues? When there is a category of "other," why do those exist? Are they consistent throughout other statutes and the other exemptions?

It was an attempt to categorize and define what we are trying to do with all those hundreds of exemptions that are in the statute. There are valid concerns about how that came about and the language that is there, but I wanted to explain the idea behind it. There are many examples in states around the country of an outside independent intermediary ombudsman. Not having this intermediary step is definitely a barrier to making public records requests. I understand there are concerns about the cost of having an intermediary step and the process for creating it, but I ask you to consider the cost and time it takes to litigate those issues.

I come back to the overarching intent of the Public Records Act that all records are considered public unless there is a specific exemption. The way the law is structured is these are specific exemptions for specific reasons. There should be categorized exemptions and an intermediary way to resolve the issues besides going to court.

**Chairman Flores:**

Do we have anybody else who would like to speak in support of this bill?

**Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:**

I represent the Washoe County Sheriff's Office, and we stand in support of A.B. 42. For brevity, I will keep it to that. We believe that this process will help our records division disseminate public information more equitably, in a timely manner, and protect the integrity of the confidential information.

**Assemblyman Carrillo:**

Section 12 strikes out all the *Nevada Revised Statutes*. For my clarification, if all these are struck out, will all the information pertained in these become public information? As a citizen, I want records concerning NRS 445B.570. Does this give me full access to that information?

**Barry Smith:**

No, those categories are moved into other sections. The amendment does not add or delete exemptions to the statute.

**Assemblyman Carrillo:**

Section 12, subsection 1, stood out to me because I deal with a lot of DMV issues. Do all these exemptions get moved into NRS 239.010 or amended? This is just for clarification because if I am a constituent and I see all this struck out, it raises concerns.

**Barry Smith:**

That is the intent. Not to delete or add but to categorize. If you are looking for something that had to do with privacy, it will fall under that paragraph. If you had something to do with security, it would fall under that paragraph.

**Chairman Flores:**

Is there anybody here to speak in opposition?

**Judith Miller, Private Citizen, Incline Village, Nevada:**

Some of my concerns based on the presentations today have been addressed. Specifically, the language that seemed to broaden the public records, not to limit them. Another concern was having some kind of intermediary body giving an advisory opinion, and it sounds like that part is being withdrawn from A.B. 42.

The Office of the Attorney General has a process for open meeting complaints, and I would hope that something similar could be established for public records. I understand the



problem is a financial one, but I think it is very important to have an advisory body. This relieves the heavy burden put on the citizen to initiate a legal proceeding when a public record is denied.

I am not objecting to the goals of the bill but the way it is drafted. It appears that if there is anything in a security document that was developed for security the records request could be refused. That has happened to me.

I was a former information technology (IT) director at a San Jose airport. Security is of great concern to me. When I requested an IT plan for a recreation district, my request was denied. There may be parts of the plan that concern security but the vast bulk of that document had nothing to do with security. I would like to make it very clear that the documents, unless they are almost in their entirety aimed at security, should be available to the public ([Exhibit H](#)).

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**

The American Civil Liberties Union (ACLU) is opposing this measure unless amended. This is unfortunate because the ACLU started out in support. We support the intent of this bill, but after hearing today's testimony and looking at the language, the intent is not being met. There was never an intention for this to add any more exemptions to the public records law.

Our executive director, Tod Story, is also on the Open Meeting Law Task Force, and he weighed in on a lot of the consideration for this legislation. As a member of the task force, he did not agree with all these provisions beyond the clarifying categorizations and the accountability measures. The need to clarify the exemptions is absolutely necessary.

Many public records request denials are returned to our office with citations to dozens of statutory exemptions and no explanation of what those exemptions contain. The proposal is meant to provide that much-needed clarity for the public and the public educational organizations that process these requests for the public benefit. We are supportive of the efforts to reorganize the exemptions, but we certainly do not want to create any more.

For example, I am concerned with section 5. I have interns frantically looking to make sure none of the provisions of section 5 affect body camera access for example. We will get some clarification for you to take another look at this. We also need to clarify the independent contractor issue. The public should be allowed to access the records from independent contractors working on behalf of the government.

Finally, section 23 did come up, and we are not advocating that a category C felony be imposed on the public. We do find it interesting that a category C felony will be imposed on a member of the public but not on a governmental entity that is falsifying documents. I think that is another concern that needs to be addressed. We believe in the spirit of this legislation and want to work with the Office of the Attorney General to get this to a place where we can support this measure.

**Aaron Katz, Private Citizen, Incline Village, Nevada:**

I am a resident of Incline Village. Our local government is the Incline Village General Improvement District (IVGID). It is supposed to be worlds apart from your standard municipality, but the way this Public Records Act is drafted, it applies to us just as equally as it applies anywhere else in the state, except our little entity does not recognize its government. It thinks it is in the for-profit recreation business, and they also make profits on their providing of utilities. They operate as if they are a series of private businesses and only reluctantly comply when they have to with the Public Records Act. Since they are operating as a regular business, there are many activities that take place that do not happen anywhere else in the state.

In fact, IVGID is operating these recreational facilities at a financial loss of nearly \$7 million a year, and it does not have the money to cover the loss, so they have invented what I characterize as an invalid tax against real property to cover it. I am a property owner, and I have to pay the tax, and when you are losing \$7 million a year—and by the way, this is in addition to ad valorem taxes, and it is in addition to all other fees—everything you spend contributes to the loss, so local property owners have a direct interest in finding out what is going on, what is contributing to the loss, and then mobilizing other property owners so we can do something to bring a change.

We have a governmental entity that is intentionally concealing public records, and I have personal experience. I have made hundreds of requests for documents. I had to go to court on litigation which I will speak about in a moment. For instance, they have set up somebody that is called a public records officer. This person does not have custody and control of public records; they are a mouthpiece for somebody else who has custody and control of records. This person goes to the person who does have custody and control and asks how should the request be responded to and what documents should be provided. The public records officer is told whatever she is told then she comes back and regurgitates whatever it is. Is she acting in good faith when she responds? Is she producing documents in good faith? No, she is not. She is a straw person for somebody else.

What has happened at IVGID is they have a legal counsel who has become a wing man for staff. Whenever a request comes in for something that is embarrassing to the staff, they go to the attorney. The attorney steps in and says, "You are not going to get the records." Now, I am going to refer to section 15. You want to take out the attorney fees provision that somebody has to go to court to get public records, and all the public records officer has to say is, "Gee, I am acting in good faith." I went to another person who had the records and they told me this. I did not know it was not true. Or I went to the attorney, and the attorney took over. I am relying upon counsel; I acted in good faith.

Once you throw out the ability to get attorney fees, if you have to go to court to get public records, which you have in essence done, it dissuades anybody to ever go to court. It costs hundreds of thousands of dollars if you are going to do a real public records action, and if you take away the ability to get the attorney fees, you have taken away the ability for the public to pursue.

I have referenced that I had a Public Records Act request. I had litigation on it. I thought that NRS 239.011, subsection 2, only allowed a prevailing requestor of public records to receive his attorney fees not the governmental agency to receive the attorney fees. The Incline Village General Improvement District circumvented what I thought was that limitation and relied upon NRS Chapter 18 to get attorney fees from me because I am a disgruntled citizen. I asked to get records; I went to court to try and get them.

Unbelievably they received a judgment for \$229,000. I am in appeal on that, but what sort of message do you think that sent to the citizens of this state? Nobody in our community will ever push the issue of public records with IVGID because if they have to look at a judgment like that, it just is not worth it. You need to firm up this legislation to protect people from that.

**Assemblywoman Neal:**

Was the \$229,000 judgment about harassment? What happened?

**Aaron Katz:**

The Incline Village General Improvement District knew it could not seek attorney fees under the Public Records Act. The IVGID decided to use NRS Chapter 18 and claim the request for the public records was frivolous, harassing, and it was not in good faith. The IVGID did not incur \$229,000, but they claimed they did and a district court judge, Judge Flannigan, awarded it under NRS Chapter 18.

There is supposed to be protection for citizens in this state under anti-SLAPP [Strategic Lawsuit Against Public Participation] legislation in NRS Chapter 41. If you are communicating something of public interest, like public records, you are supposed to be 100 percent immune from any civil liability. However, the judge took the view that if someone files an action against a person and you are exercising your right to freedom of expression, you are immune from liability. If somebody files a motion for the same thing then all of a sudden you do not have that immunity, so I was not able to raise it as immunity.

The IVGID took every penny they spent on everything for defending, and by the way, they had insurance under the Nevada Public Agency Insurance Pool. That entity was covering the cost of the defense until they realized they had no liability because I was not seeking any money damages. Yet IVGID went to get all the money that the Nevada Public Agency Insurance Pool had paid for the attorney fees.

I am against sections 3, 4, 5, and 6. I have a written document ([Exhibit I](#)) that goes into more detail, and the reason I am against those is, as they are written, they will allow IVGID to conceal public records claiming they are internal. If it is an interagency email, it deals with personnel files like when they pay off their employees with hush money under a severance agreement, and they will not provide the agreement. I view this legislation as not providing transparency and not providing accountability. You are better off with it just the way it is, and if you are going to touch it, make it better.

**Chairman Flores:**

Is there anybody who is here to speak in the neutral position?

**Ben Graham, Government Relations Advisor, Administrative Office of the Courts:**

I want to apologize for signing in as neutral. It was not the intent of this legislation to include the Judiciary Branch in A.B. 42 because of our own public records rules and regulations ([Exhibit J](#)). The amendment clarifies the Office of the Attorney General's intent, and the Judicial Branch is excluded from the amendments of A.B. 42 ([Exhibit K](#)).

**Andres Moses, Staff Attorney, Eighth Judicial District Court:**

I echo the comments of Mr. Graham. I would add to clarify that the courts are excluded from NRS Chapter 239 pursuant to the separation of powers doctrine in the *Nevada Constitution*. Our concern was in section 11, subsection 9, paragraph(b), that may confuse citizens that the Judiciary Branch is included. Our general rule is that if the case is not sealed, it is open to the public. We have online records where citizens can view the register of actions, minutes, and hearing dates. Our motto is transparency, and we wanted to clarify this because of the confusion in that section.

**John Fudenberg, Coroner, Office of the Coroner/Medical Examiner, Clark County:**

The intent of the Office of the Coroner/Medical Examiner's amendment ([Exhibit L](#)) is to protect the confidential records of child abuse and neglect cases provisioned in NRS 432B.280. Section 2, paragraph (d), of NRS 432B.290 provides an exception allowing the Coroner's Office to release reports to law enforcement requiring the information in connection with a child abuse and neglect investigation. Section 7 of A.B. 42, allows for inspection of law enforcement information with six exceptions. The Coroner's Office does not believe section 7 will protect the Division of Child and Family Services, Department of Health and Human Services, records from being viewed as part of a law enforcement FOIA request. Therefore the Coroner's Office amendment clarifies the issue. This will ensure the confidential information provided to law enforcement is not subject to an FOIA request because the records are confidential as detailed in NRS 432B.280.

**Chairman Flores:**

All three of you are in the neutral position because you are assuming that the amendments each of you have proposed will be accepted. Should any amendments not be accepted, then all three of you would be in opposition to this bill, is that correct?

**Ben Graham:**

Yes, all three of us would have opposition to A.B. 42.

**Assemblywoman Neal:**

Did any of you see mistakes concerning the sections that were recategorized and the existing law? I am asking this for assistance.

**John Fudenberg:**

I have not seen any mistakes with the categorization. I do not believe the Clark County deputy district attorney has any issues concerning the amendments. I am not a public records expert, and the Clark County deputy district attorney was not able to testify this morning.

**Chairman Flores:**

Is there anybody else in the neutral position that would like to testify? [There was no one.] Will the presenter of the bill please provide closing comments?

**Brett Kandt:**

On behalf of the Office of the Attorney General, A.B. 42 amendments are to ensure transparency and accountability in government and the commitment to open government. The Office of the Attorney General appreciates the opportunity to work with this Committee, committee staff, and the stakeholders to craft amendments on the concerns that have been raised today.

**Chairman Flores:**

The Public Records Act is a very technical area. Hopefully, the Office of the Attorney General can work directly with the Committee members who raised concerns and propose amendments that are amicable. The hearing on A.B. 42 is closed. Is there anyone here for public comment? [There was no one.] The meeting is adjourned [at 10:59 a.m.].

**Assembly Bill 57: Revises provisions relating to coroners. (BDR 20-375)**

[This bill was rescheduled to another hearing.]

RESPECTFULLY SUBMITTED:

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Carol Myers  
Committee Secretary

APPROVED BY:

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Assemblyman Edgar Flores, Chairman

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document titled "Attorney General's Office Overview Presentation," presented by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit D](#) is an organizational chart titled, "Nevada Attorney General's Office, Organizational Chart," submitted by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit E](#) is a letter dated January 30, 2017, in support of [Assembly Bill 42](#) to Chairman Flores of the Assembly Committee on Government Affairs, authored by Adam Laxalt, Attorney General, Office of the Attorney General.

[Exhibit F](#) is a document titled "Proposed Amendments to AB 42," presented by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit G](#) is a letter dated February 15, 2017, in support of [Assembly Bill 42](#) to Chairman Flores and members of the Assembly Committee on Government Affairs, authored for Joseph Lombardo, Sheriff, Las Vegas Metropolitan Police Department by Charlotte M. Bible, Assistant General Counsel, and submitted by Chuck Callaway.

[Exhibit H](#) is a letter dated February 15, 2017, in opposition to [Assembly Bill 42](#) to members of the Assembly Committee on Government Affairs, authored by Judith Miller, Private Citizen, Incline Village, Nevada.

[Exhibit I](#) is a letter dated February 15, 2017, in opposition to [Assembly Bill 42](#) to Chairman Flores and members of the Assembly Committee on Government Affairs, authored by Aaron Katz, Private Citizen, Incline Village, Nevada

[Exhibit J](#) is a letter dated February 7, 2017, regarding [Assembly Bill 42](#) to Chairman Flores of the Assembly Committee on Government Affairs, authored by Ben Graham, Government Relations Advisor, Administrative Office of the Courts.

[Exhibit K](#) is a proposed amendment to [Assembly Bill 42](#) presented by Ben Graham, Government Relations Advisor, Administrative Office of the Courts.

[Exhibit L](#) is a proposed amendment to [Assembly Bill 42](#) presented by John Fudenberg, Coroner, Office of the Coroner/Medical Examiner, Clark County.