

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 2, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Tuesday, March 2, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Sally Ramm, Committee Secretary

OTHERS PRESENT:

John Piro, Clark County Public Defender's Office
Russell Kuhlman, Nevada Wildlife Federation
Colby Prout, Nevada Association of Counties
Alex Ortiz, Clark County
Kendra Bertschy, Washoe County Public Defender's Office

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bill is concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

I will now open the hearing on [Senate Bill \(S.B.\) 94](#).

SENATE BILL 94: Revises provisions relating to public highways, roads and ways. (BDR 15-440)

SENATOR JAMES SETTELMAYER (Senatorial District No. 17):

Senate Bill 94 started out as an offshoot of two bills from last Session. The first one this Committee passed was S.B. No. 221 of the 80th Session. The bill solved the issue that if land is cultivated, it is assumed to be private property and, therefore, people should not hunt and fish on other people's cultivated lands without asking permission.

As a result of that, one of my colleagues, Senator Hansen, had an issue with which I agreed. People should not lock off public property to the public. Unfortunately, we had some bad actors out there who were putting locks on gates that are on public roads. However, as an unintended consequence of S.B. No. 316 of the 80th Session, the bill states that it would be a nuisance for any person to fence or otherwise enclose a road. The consequence has some district attorneys saying the plain reading of this language means that you no longer have a right to have a gate on roads in the middle of nowhere. That of course creates another problem. Maps show parcels surrounded by property owned by the Forest Service, and a person has a private lot in the direct middle of Forest Service property. Does this mean a person does not have a right to fence off that property, or can the property be fenced, but there cannot be a gate when a road goes through the property? This would be problematic, and I do not believe that was this Body's intent when we passed S.B. No. 316 of the 80th Session. However, county officials are saying it is, including Douglas County Assistant District Attorney Sam Taylor and Humboldt County Sheriff Mike Allen. Since then, S.B. 94 language makes it clear that a person does have a right to have a gate.

Then it was determined important to mark this as a public road because we also had situations where individuals had a gate stating private property but it was a public road. Some people were coming up to the gate thinking they did not have a right to be there, so then they turned around. That is wrong. That landowner was using the terminology on a sign to scare people away. We put language in—working with Sam Taylor from Douglas County to alleviate these problems—that, unfortunately, created many issues within the Nevada Cattlemen's Association and the Nevada Farm Bureau because the signage could increase cost. Also, who does the upkeep on the sign? When we had rangeland in California, we just took out a router and made a sign; then I got the thrill of

having to paint it and upkeep it every year. But here we started getting arguments about signs.

The Nevada Association of Counties (NACO) has many concerns. They are worried the bill creates a burdensome problem for the counties to make the determination. I continue to meet with John Piro, as he is concerned with section 1, subsection 5 and wants it to go away. Alex Ortiz, the Cattlemen's Association and Farm Bureau representatives are also meeting to find a solution. Some people want to go with language such as "this only affects roads that have quiet titles through civil action." However, certain district attorneys are saying there are too many of those, or there are not enough of those.

The most logical thing to do, which I am running by these individuals as we speak, is going back to Senator Hansen's bill and saying that instead of by force or intimidation or by fencing, we clearly state within statute that a person does have a right to have a gate on a public road, they just do not have a right to put a lock on it. That may be the easier solution to accomplish what we want, which is that individuals with fences around their property need to have a gate, otherwise the fence does not have a lot of use.

SENATOR HANSEN:

Unfortunately, our legal counsel is not here today, and I have these questions. We may have to wait on some of this because there are a couple of things in the law that help to address concerns brought up here. One is statute. Right now, if you come to a gate, you have to leave the gate in the same position you find it. If it is open, leave it open; if it is closed, then close it. An implication in law already allows gates on roads that could be public easements. That is something I would like for counsel to address. The other concern is, though the Humboldt County District Attorney is in my district and I have not had a chance to talk to any of these guys, I did send out feelers about this, so I am hoping some of the district attorneys will testify today about that.

My concern with the bill from last Session is the right of the public to access public domain. Over the years in Nevada, slowly but surely, private landowners are locking these gates on roads that are essentially either R.S. 2477 permanent easements under federal law or prescriptive easements that have been used for a long time. I think this is already addressed in law, but I share with Senator Settelmeyer's concern to make sure that these easements the public uses to access public land for multiple use purposes remain open. I am going to

work with Senator Settelmeyer on many of these things. We have some issues here that may not really be issues if we had some legal counsel to address that.

CHAIR SCHEIBLE:

As all of you know, our Committee Counsel, Nicolas Anthony, is busy drafting the bills we want to introduce and run this year. We will follow up with him. I will ask him your questions specifically. It sounds like there may be changes to S.B. 94 coming anyway. We will run all of those by Mr. Anthony who will provide the answers to the whole Committee if a work session is scheduled for this bill. Senator Settelmeyer, would you like to weigh in as well?

SENATOR SETTELMAYER:

Nevada Revised Statutes (NRS) 207.220 describes penalties associated with not closing a gate. I found that just as we were talking, so I will continue to work with Senator Hansen on that particular issue. If I could redirect to Senator Hansen, I think you do agree on the record that the intent of the bill was never to create a situation where someone did not have a right to have a gate on their private road, it was just that they did not have a right to lock people out of the utilization of that road if it is a public road.

SENATOR HANSEN:

Madame Chair, may I have a response?

CHAIR SCHEIBLE:

Not right now. I am going to ask that members of the Committee ask questions of the sponsors of the bill. If the sponsors want to clarify with them as a Committee offline, you are welcome to do that.

JOHN PIRO (Clark County Public Defender's Office):

Our objection is to one small part of the bill. It is section 1, subsection 5, paragraph (a), subparagraph (5) which includes the phrase "public way." This language is broad and may have some unintended consequences. I have watched for the last three sessions where Senator Settelmeyer has tried to solve these issues and all of the crazy things that come up in this bill. I am grateful for all of his efforts and putting us into this conversation. I will let him know that the American Civil Liberties Union of Nevada would like to be added to the conversation as well.

RUSSELL KUHLMAN (Nevada Wildlife Federation):

My comment is regarding section 2. This wording is fairly broad. My concern is that this means if I was to access a public road on a weekly basis and cause rut marks or become involved in an accident, slide off the road and damage nearby property, I could be held accountable to advise that property owner. That wording should be more about deliberate damage of private property instead of the blanket language it uses.

COLBY PROUT (Nevada Association of Counties):

We oppose S.B. 94 as written. Based on the discussion today, we would like to take the time to highlight our concerns, particularly with section 6. First, section 6 does not describe with specificity the process or requirements for making determinations as to where the particular landowner can restrict access and would put counties in a difficult position of making such a determination when there is no criteria for doing so. Secondly, the status or title of many roads or rights-of-way throughout the State is unknown, especially of the roads on public lands. However, if a county orders strict access to that road under an application made under this section, it may undermine the county's own right of access or title to that public way or even contravene the State's rights or ownership over the public way. This could create a long-term controversy between property owners and counties and even federal agencies at expense to all parties. Most importantly, it may detrimentally impact otherwise existing rights.

We do have other concerns with this section of the bill, including the bill's efforts to give private landowners a cause of action against one who damages the property while using a public way. This section does not add a right that does not already exist under State law. Instead, adding this language may confuse the parties involved or courts as to the proper remedies. The same confusion would result from the section pertaining to signage and again put the onus on counties to patrol signage, fencing and disputes on distant and remote lands and roads, incurring considerable cost. Nevada Association of Counties looks forward to continuing to provide input when invited and help clarify issues.

ALEX ORTIZ (Clark County):

Clark County opposes S.B. 94 as written. Some of the concerns we have relate to section 1. It appears that it allows for the posting of no-trespassing signs or other signs on any highway or road where a governmental body has an

easement. In Clark County, there are many streets and roads where the governmental entity has an easement interest and a private property owner owns the underlying fee interest. Conceivably, these signs could be placed all over the county, including federal and State highways. These signs may be confusing to the public using roads and would not necessarily change the status of the road.

Section 2 is very broad where it gives the private property owner upon which a highway or road is located a right of action if a user of the highway or road causes damage or injury. Does it only pertain to a highway or road that is not encumbered? If it does, that could be problematic to the governmental entity as the owner or maintainer of the highway or road.

Also, what roads are intended to be defined as a public way in section 1, subsection 5? Lastly, we have similar concerns as NACO with section 6 amending NRS 405, allowing the owner of private property with a public road to erect and maintain a fence on the road if the governmental entity receives a request and finds it will not be inconveniencing the traveling public; subject to conditions. Such a gate must be kept unlocked and private for public access. Even though the gate would be acceptable, there is an argument it would inhibit the public. Roadway access is taken seriously as demonstrated in NRS 405.195 which provides a stringent process for closing a road that could be potentially burdensome for the public. Further, it is unclear how the governmental body makes a determination for the gate.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

We look forward to working with Senator Settelmeyer to ensure that the unintended consequences from this legislation are taken care of.

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CHAIR SCHEIBLE:

That concludes our hearing on S.B. 94. This concludes our meeting.

RESPECTFULLY SUBMITTED:

Sally Ramm,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda