

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

**Eighty-Second Session
March 7, 2023**

The Committee on Government Affairs was called to order by Chair Selena Torres at 9:04 a.m. on Tuesday, March 7, 2023, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Selena Torres, Chair
Assemblywoman Bea Duran, Vice Chair
Assemblyman Max Carter
Assemblyman Rich DeLong
Assemblyman Reuben D'Silva
Assemblywoman Cecelia González
Assemblyman Bert Gurr
Assemblyman Brian Hibbetts
Assemblyman Gregory Koenig
Assemblyman Richard McArthur
Assemblyman Duy Nguyen
Assemblywoman Angie Taylor
Assemblywoman Clara Thomas

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Ken Gray, Assembly District No. 39
Senator Rochelle T. Nguyen, Senate District No. 3

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Judi Bishop, Committee Manager

Minutes ID: 383



Geigy Stringer, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Ondra L. Berry, Major General, Adjutant General of Nevada, Nevada National Guard, Office of the Military
Andrew LePeilbet, Nevada Chairman, United Veterans Legislative Council
James Wingate, Executive Director, Underground Service Alert of Northern California and Nevada
Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties
Stacy Woodbury, Manager, Public Affairs, Southwest Gas Corporation
Dan Musgrove, representing Google Fiber
Devlin Daneshforouz, Manager, Government Relations, NV Energy
Matthew F. Lawton, State Demographer, Department of Taxation
Pete Olsen, Private Citizen, Fallon, Nevada
John T. Jones, Jr., representing Nevada District Attorneys Association
Joseph Sanford, Chief Civil Deputy District Attorney, Churchill County District Attorney's Office
Nathan Edwards, Assistant District Attorney, Washoe County District Attorney's Office
Brigid J. Duffy, Assistant District Attorney, Juvenile Division, Clark County District Attorney's Office
Steve K. Walker, representing Lyon County
Amity C. Latham, Member, Clark County Prosecutors Association

Chair Torres:

[Roll was taken. Committee rules were explained.] Welcome to the Assembly Committee on Government Affairs. I have already spoken with the presenters; we are going to go out of order today. We are going to begin with Assembly Bill 174, then we will move on to Assembly Bill 177, and then to Assembly Bill 92. I will now open the hearing on A.B. 174. Assemblyman Gray, when you are ready you may begin.

Assembly Bill 174: Revises provisions governing the state militia. (BDR 36-734)

Assemblyman Ken Gray, Assembly District No. 39:

Today I am carrying Assembly Bill 174 on behalf of the Nevada National Guard. I am accompanied today by Major General Ondra Berry, the Adjutant General for the Nevada National Guard. He oversees both the Nevada Army and the Air National Guard components for the State of Nevada. Each state, territory, and the District of Columbia has an adjutant general. In Nevada, the adjutant general is appointed by the governor of the state. The intent of A.B. 174 is to clarify the requirements to serve as the adjutant general for Nevada and bring state law into conformity with Title 10 of the *U.S. Code* regarding the maximum age to which an adjutant general may serve.

The specific changes to current law being proposed by A.B. 174 are threefold. One requires the assistant adjutant general and the adjutant general to be selected from members of the Nevada National Guard; two raises the maximum age to which a commissioned officer may serve from age 64 to 66. This change is to conform with Title 10 of the *U.S. Code* and the mandatory retirement age for a major general of 66; and three changes the eligibility requirements for appointment to the office of the Adjutant General, requiring that they must have completed at least six years of service in the Nevada National Guard as a federally recognized officer. Madam Chair and the Committee, thank you for this opportunity today. I urge you to vote this out of Committee and send it on to the whole body. We are now ready to answer any questions you may have regarding A.B. 174.

Chair Torres:

I will open up for any questions from members.

Assemblywoman Taylor:

I have had an opportunity to talk to each of you about this a little, but for the Committee, I would like to hear from you, Assemblyman, and also from the general: Why do we need this bill?

Assemblyman Gray:

I will turn that over to the general. I could wax eloquently about it, but he can speak specifically to it.

**Ondra L. Berry, Major General, Adjutant General of Nevada, Nevada National Guard,
Office of the Military:**

One of the reasons we have requested the change is because in most states, they require the adjutant general to have experience and to know their state and to know the requirements and to know their constituents. One of the differences between the active component and the National Guard is we are a community-based organization. We do not take from the active component in terms of our day-to-day responsibilities, even though we do some of the same functions. We talk about our priorities. Community is a big priority for us. Readiness is a priority. Diversity, equity, and inclusion is a priority for us. All those components come from our work with the community. The change, in terms of bringing the position from within, is for somebody who knows the state already. The majority of states that you will research bring their adjutant general from internal. To be fully transparent, it is sometimes not the same for the assistant adjutant general, but it is for the adjutant general in most circumstances. In terms of the age requirement, we just want to match the federal requirements where you are asked to retire at age 66; right now, our state law says 64. Those are the two biggest reasons why we need this bill.

Assemblyman Gray:

The bill does not guarantee them to work until age 66. It just allows them to serve until age 66, especially in the case of the adjutant general and other senior staff. They do serve at the pleasure of the Governor, but it also prevents the Governor from losing a qualified person

simply because they are now too old. I mean, look at General Berry; he is still young, trim, and fit, and ready to keep going.

Chair Torres:

But not quite as young as Assemblyman McArthur.

Assemblywoman González:

Is this what other states do to be in line with the federal requirement?

Assemblyman Gray:

I think it is safe to say that most states match the Title 10 requirement. The way states choose their adjutant general is different. Some states even have it up for election, but in Nevada it is by appointment of the Governor and the Adjutant General is a member of the Governor's cabinet.

Assemblyman Nguyen:

I want to make sure I understand the time requirement of six years of service. Is that six-year number based on a formula, or is that just standard across the board?

Assemblyman Gray:

The six-year requirement is six years of service within the Nevada National Guard. As General Berry pointed out, that time is needed to understand state-specific requirements and to build relationships with other agencies and the communities within the state and also to have the experience to meet the requirements that go along with that job.

Ondra Berry:

The biggest requirement is to know your state. That is why we ask for six years. One of the differences between the National Guard and the active component is we have two services: I have the Army National Guard; I also have the Air National Guard. Another difference is we are statewide. Where most active components are at an installation or a base, we are responsible for the entire state. The 4,700, almost 5,000, people we have are statewide. We have installations all over the state, and the person in this position is responsible for the daily—we call it the "man training equip"—of those personnel. It helps not just to have the understanding and knowledge but also the experience. The minimum six years requirement is pretty much in line with what you will see across the nation. Somebody could technically come from outside the state as maybe a major and then serve in the Nevada National Guard for six years and reach the rank of colonel—that makes them eligible also. That is usually a pretty good indicator that you have been in the state long enough to have an understanding of the populace requirements, et cetera.

Assemblyman Nguyen:

Would anybody be disadvantaged if he meets all the qualifications but does not have the years of service? Let us just say we have a rock star who is going through the ranks pretty quickly and he has all the knowledge. But no, that means he just has to wait a minute for the six years to be up before he is qualified to do this. Is that what I am hearing?

Ondra Berry:

That is why some states will waive some of the requirements for an assistant position versus the adjutant general position to make sure there is not a disadvantage. It just depends on the state's expectation or what the state is looking for in the organization. When I was doing my research to find out whether there was a leaning one way in terms of having more assistant adjutants coming from outside the state, I found the majority came from inside the states, under the requirement of six years. But again, that is why some states will give the opportunity to work as the assistant to ensure there is not a disadvantage.

Assemblywoman Thomas:

I see we are amending section 2, subsection 1 where it states, "The military staff of the Governor consists of the Adjutant General and not more than two Assistant Adjutants General selected from the commissioned officers of the Armed Forces of the United States." We are amending that and making it "Nevada National Guard" specifically. Then in section 3, subsection 2 you are also amending "Armed Forces of the United States" to make it "Nevada National Guard." To me, it looks like you are closing your pool and you are not using the extent of the United States Armed Forces to select your adjutants general. Why are you specifically looking just within Nevada? I am directing this to the Assemblyman and General Berry, please.

Assemblyman Gray:

Assemblywoman Thomas, that is very astute. The reason, plain and simple, is we want experienced people in Nevada to be able to lead the Nevada National Guard. If you read this by the letter of the current law, it would not make sense to want a Navy admiral coming in from Maryland to command Army and Air Force troops who has never had experience doing that, or had any experience in the National Guard; or had any experience, more importantly, with the laws that govern the National Guard. It is a pretty simple answer, and that is why that was narrowed. I cannot understand for the life of me why that would have ever read that way. It should be an Army or an Air National Guard member in the state of Nevada.

Ondra Berry:

I will start off with this. Let us just use the example of an active component Navy officer. The National Guard has three roles. We do the federal—what we call the war fight. We also do the homeland; when you saw the National Guard doing COVID-19 efforts, to wildfires, to floods, to working in senior citizens' homes, et cetera—that is a part of the Guard. Also, what is unique to the Guard is what are called state partnerships. Every state, territory, and district of the Guard has a state partnership; our Nevada Guard's are with Tonga, Fiji, and Samoa. That is unique to the National Guard. The active components do not do that.

When you ask someone to come in from a different service, maybe a different state, and he has no National Guard experience—immediately he is in the Governor's cabinet. He is a part of the cabinet, part of the community, and may have a federal mission and have to take on state partnerships duties and have a homeland mission too. If you go back and look at every emergency that we have had—I know the state; I know law enforcement; I know fire departments; I know public works; I have worked in communities; I know nonprofits; so,

I hit the ground running. I do not have to go ask questions. I do not have a learning curve. I already understand the community. I have been in all 17 counties. I understand the rurals versus the urban. That is what you bring to the table when you have worked in the organization already. I have been to Tonga probably four times. I have been to Fiji; I have not been to Samoa yet; I already understand the partnerships.

The other thing is, I understand the National Guard Bureau. If you work in the active component, you do not work with the National Guard Bureau. You work through the Pentagon, the U.S. Department of Defense (DOD)—that is the difference. Already, I have the relationships. I worked in the DOD for seven years, so coming into the job, I already can hit the ground running.

If you look at some of our ask, I understand and know where the deficits are in the state. I understand what we are missing as an organization. I can come to the body, and I can come to the federal side and put in place those strategies and goals that we are missing. I know every single member of my congressional delegation. I have worked with them. I have spent time with them. I could go on and on about the advantage. I will go back to this again—that is why some states will open up the assistant adjutant across the nation; they sometimes want to go after that experience they may be missing or look for exposure to expertise they may not have. That is sometimes the wind behind it. But from the adjutant position, you hit the ground running.

Assemblyman Gray:

Another key point is, as General Berry mentioned earlier, there is a two-pronged mission; there is federal and state. I have deployed several times on behalf of the National Guard. I am retired active duty—I am not going to go through the whole thing—but I have a lot of experience. There is a mindset difference. Take, for instance, when we went to Hurricane Katrina. We were there on the ground running. It was part of our homeland mission. We knew the people; we were there assisting; we were there to assist, provide medical care, provide law and order, things that are different from the active duty mindset. The active duty mindset is, there are friendly forces and there are opposition forces. When the 82nd Airborne Division was trying to control the crowds at the Superdome, it was an us-versus-them mentality. When we finally got those guys on board, it was, We are all in this together. These are citizens and residents of this community. They are not the enemy; we are here to help them. We also saw the same thing in the Los Angeles riots. When the U.S. Marines were brought in, it was an enemy—not the community, we are not there to assist—we are there to combat the enemy. There is definitely a mindset that is different between the National Guard and active component forces.

Assemblyman Carter:

Has this been a problem? Have we had governors in this state appointing incompetent adjutants? Is this an attempt to tie the hands of our governors? Should our governors not have the freedom to appoint who they believe is the appropriate person? Why are we adding a layer onto this procedure? We elect the governor; should we not trust him? Can you explain why?

Ondra Berry:

It is not to tie the hands of the Governor. The Office of the Governor is fully aware that we are here testifying on this bill. First of all, if I believed there was an issue or challenge, I would not be here if he did not agree to it. Second of all, I do not believe it ties the hands of the Governor. Up until the last legislative session, it had been a Nevada Guardsman who would be appointed to be the Adjutant General or the Assistant Adjutant General for the State of Nevada. Up until last session when it was changed, this law was in place and we are requesting to go back to it with some modifications. Again, if I thought it would tie the hands, I do not think I would be able to come here and honestly say that the Governor is okay with our going forward.

Chair Torres:

You referenced a law change. Can you get us the bill number for that change? If you cannot at this time, could you get back to the Committee with that?

Assemblywoman Taylor:

General Berry, I want to get into the detail of this. You said that you found this to be the practice across the country. Have you found it to be best practice? Has it been limiting in cases that you know of?

Ondra Berry:

I have not in my research, and I have also had conversations. Let me back up for a second. You have what is called the National Guard Association of the United States, which represents the officers, and you have the Enlisted Association of the National Guard of the United States, which represents the enlisted, and both have supported this. I have talked to both, and I understand through their counterparts that there have not been challenges to the way that we have recommended to go or that it is not the common practice. That is why both support it.

I have another 53 just like me across the nation right now. There are two, maybe three, who go through an election process. The majority have the same process that we are talking about. The majority of them—when I say majority, probably over 90 percent—come from within the state. Sometimes they will leave the state and go work at the National Guard Bureau and come back to the state. This is very much the common practice you will see across the country. I will keep reiterating: some states will allow an assistant to have the flexibility to come from other services outside of not being a member of that state's militia to be selected. But up until now, I have not found where this has been a problem or challenge across the country.

Assemblywoman Taylor:

I want to follow up on that. Part of the rationale is, you talked about the community standpoint. I know of the role that your leadership played during the COVID-19 crisis when supplies could not get out across the state to various areas and rurals and so on. The National Guard stepped in and did it. I see that as one of the advantages of getting people who know the state, that know the community, that know how to get things done and out. You set up

those temporary places for people to go if they needed. Thank you for that—that is a great example.

Ondra Berry:

That is a great example. When there was a deficit in personal protective equipment, because of having prior working relationships with him, we used the former chairman of the MGM Grand Las Vegas to find additional supplies. We also worked with our convention authorities, specifically down south, when we needed some assistance, based off of relationships we had had previously. One of the advantages you have when you have somebody who is very familiar with the state is usually a phone call based off of a prior relationship or prior interaction makes things so much easier.

As I said before, a big part of the role of your National Guard is when you are in a state active duty status, your governor is your commander in chief and directs your duties and responsibilities and can activate you. Knowing and having the connections, the relationships, and the collaborations makes your job so much easier versus having to go from a startup or having to develop those. We work very hard, extremely hard, at making sure we maintain those, not just when we have emergencies but on a day-to-day basis.

One more thing. In the last legislative session, we put the Division of Emergency Management under the Office of the Military, and that is a very heavily community-based organization. I work with the chief of the Division of Emergency Management on a regular basis. For this position, it makes it easier when you know your community, you have the relationships, and you are able to have a full sense of urgency about getting things done, based off of your understanding of the state that you live in.

Assemblyman D'Silva:

I want to say one thing for the record. This is a conversation that not only our National Guardsmen are having; this conversation is happening across the country. Recently, I participated in a civil affairs military conference at West Point hosted by Yale, Hamilton University, New York State, and Connecticut. This was brought up specifically; it was one of the themes of the conference. Our commanders are having to know the landscape, especially when it comes to the National Guard, knowing those intimate relationships are extremely necessary in effectively carrying out leadership duties within the state. Having actual knowledge of the state is pivotal. I want to thank you both for bringing this bill. This is not something that is taking place just here in Nevada. This is a conversation that is being held across the country. It is going to make for a more streamlined approach in effectively carrying out the duties of the National Guard and the Air National Guard here in Nevada.

Chair Torres:

To clarify for the record, Assembly Bill 485 of the 81st Session made those changes. I look forward to continuing to have a conversation because I think there is still some unease regarding the change in 2021 and why are we changing it back. I want to know the history of that, and I do not think that you have been able to provide that to us today. I hope we can have that conversation before we have a work session.

At this time, I will close for additional questions and move on to invite individuals wishing to testify in support of A.B. 174. When you are ready, you may begin, sir.

Andrew LePeilbet, Nevada Chairman, United Veterans Legislative Council:

I have been the chairman of the United Veterans Legislative Council in the state of Nevada since 2019. We represent the approximately 279,000 veterans in the state of Nevada, and when you count their immediate families, that is 500,000-plus Nevadans who are either veterans, active military, or direct family of a veteran.

We are in full support of this bill. However, we wish the age were raised to 68 instead of just to the federal level. That is going to be the retirement age pretty soon. We are starting to tell our younger people—by the way, I am the older guy in the room, just so you know, Assemblyman McArthur. I am a commissioned infantry officer from Vietnam, a combat officer. I have a younger brother who passed away a year ago who was a retired National Guard Army general. I have been the leader in the United States of a worldwide company, so I have a lot of executive experience. I can tell you the job of the adjutant general in any guard is an amazingly difficult job. We are asking a branch of service to manage, lead, and inspire different branches of the military with different customs, different behaviors, different training programs, different assets, and it takes a while to develop that skill. Pushing them out before they are done and while they can still serve is a difficult thing. When we get a new adjutant general, it takes anywhere from a year to two years for him to become effective just because it is such a unique responsibility. We support this bill. We wish it were 68 years old, by the way, instead of 66.

Chair Torres:

Is there anyone else wishing to testify in support of A.B. 174? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral to A.B. 174? [There was no one.] I invite the sponsor for any closing remarks.

Assemblyman Gray:

Thank you, Madam Chair and Committee members. We urge you to support this bill and move it out. It would be good for the state, good for the residents. It would be good for our National Guard and our overall readiness. If you have any questions, please get ahold of me.

Chair Torres:

I invite the bill sponsor to reach out to me and the Committee members. Assemblywoman Thomas will be taking the lead on this bill so we can continue to have a conversation if there need to be any amendments made to this bill. Thank you. At this time, we will close the hearing on A.B. 174 and I will open the hearing on Assembly Bill 177. We have our very own Assemblyman Gurr presenting—whenever you are ready.

Assembly Bill 177: Revises provisions governing parcel datasets. (BDR 20-715)

Assemblyman Bert Gurr, Assembly District No. 33:

Thank you for the opportunity to present Assembly Bill 177, which revises provisions governing parcel datasets. Also, thank you to Chair Torres for allowing the primary proponent of the bill, James Wingate, executive director of the Underground Service Alert of Northern California and Nevada (USA North 811) to be with us on Zoom today, as winter weather has made travel very difficult. Before we walk through the bill, I am going to provide an overview of *Nevada Revised Statutes* (NRS) Chapter 455, which is where this bill will go, and then Mr. Wingate will discuss the need for the bill and answer any technical questions.

To understand how A.B. 177 will enhance public safety, I would like to provide an overview of NRS Chapter 455, which deals with excavation near subsurface installations. *Nevada Revised Statutes* defines "subsurface installations" as "a pipeline, force main, supply line, conductor, conduit, cable, duct, wire, communications line, sewer line, storm drain, other drain line or other structure that is located underground." *Nevada Revised Statutes* also sets forth Nevada's Call Before You Dig law, which is designed to protect underground facilities from excavation, which includes auguring, backfilling, boring, digging, ditching, grading, plowing-in, ripping, scraping, trenching, and tunneling. State law defines "operator" as "any person who owns, operates or maintains a subsurface installation with the exception of the Nevada Department of Transportation." There are 205 operators within Nevada, ranging from utility companies to water and sewer districts to general improvement districts. Every county, city, and town in Nevada is also an operator.

In Nevada, both residents and operators are required to call 811 at least two working days before digging in the ground. That call goes to the Underground Service Alert of Northern California and Nevada, commonly known as USA North 811. Underground Service Alert of Northern California and Nevada then notifies its members of the location of the excavation. The operators will then locate the area of their facilities and mark them with items such as flags, paint, and stakes. The colors of the markers indicate what type of infrastructure is below. For example, electric is red, water is blue, and natural gas is yellow. This proactive marking process is designed to avoid excavation from damaging underground infrastructure. With that background, I will walk you through A.B. 177.

Existing law requires each county assessor to annually provide the Nevada state demographer with a parcel dataset which the demographer is to keep confidential. Section 1 of A.B. 177 authorizes the demographer to provide the dataset to an association of operators, which is USA North 811. That change is made in a number of places throughout NRS for consistency, and subsection 9 of section 1 cross-references an association of operators with its definition in NRS, and it specifically mentions the Underground Service Alert of Northern California and Nevada or its successor organization. By authorizing the state demographer to provide them the parcel dataset, USA North 811 will have the most accurate parcel descriptions available to aid its members in locating underground facilities prior to

excavation. The state's parcel dataset is more accurate than commercially available parcel data.

To give you an idea of the importance of parcel data accuracy, Nevada's 205 operators collectively processed more than 193,000 line locate requests last year, with more than 131,000 of those being in Clark County. That is a lot of digging. At this point, I will turn it over to Mr. Wingate.

James Wingate, Executive Director, Underground Service Alert of Northern California and Nevada:

Underground Service Alert of Northern California and Nevada is commonly known as USA North 811. That is a mouthful. We are talking about underground utilities today. Assemblyman Gurr correctly described what is happening. But let me see if I can put it in layman's terms, not because you need layman's terms, but because this specific section of the law has a lot of jargon and I want to make sure we understand what we are talking about today.

Let us think about what is happening in this building right now in Carson City: You have light, you have heat, you have water, you have sewer, you have communications that are enabling me as well as Las Vegas to connect remotely. All of this is happening because of underground utility lines that crisscross the state and provide these essential services that allow our economy to thrive, government to function, businesses to prosper, even in our own individual homes. Correct? The biggest risk to underground utility lines not doing their job is, surprisingly, not from lack of maintenance or terrorist activities but actually from people who are digging and damaging them accidentally.


The phone number 811 was set aside by the Federal Communications Commission in 2005. This all actually started in the 1970s with utility operators getting together saying, Hey, we are damaging each other's lines. How can we coordinate and prevent this? It started as a voluntary process but in the '80s it became mandatory. I am going to share my screen now [[Exhibit C](#)]. Hopefully you have seen this green logo, 811. We are an association of operators—operators is the legal term for utility owners. Most people think utilities and they think, Southwest Gas, NV Energy, CenturyLink, AT&T, things like that. But really there are actually a huge number of public sector agencies that are part of that, including cities, counties, and water districts; we have 205 of these utility operators in Nevada, and they all cooperate together to run a call center. They run that in cooperation with the utility operators from Northern California. This is just a way to save money in the start-up costs of building a phone system, database, call center staff, et cetera.

Chair Torres:

I apologize. I need to interject because a couple of Committee members have reached out to me. You all have a copy of this handout too [[Exhibit C](#)]. If you are having trouble reading this—I know I would—it is available on Nevada Electronic Legislative Information System. Please proceed.

James Wingate:

The goal is, you do not want someone who is digging to have to guess what utility lines are in the area. If you are a homeowner working in your own yard, you probably have an idea of what utility lines are there because you know whom you pay your monthly utility bills to. But if you are a contractor and someone hires you to turn a vacant field into a new subdivision and that is not your neighborhood—how do you know what utilities are there? After all, there are 205 different utility companies/agencies throughout the state, right? So, USA North 811 acts as a dispatch, very similar to 911. If you call 911 and say, Help, they are going to determine, based on your location, who has jurisdiction to provide police, fire, and medical services at your location. We do the same thing for utilities. Someone calls us and tells us where they want to dig. We gather information about the project, use our fancy map system to determine which utility operators are going to be affected by the digging, and tell them about the digging projects so they can send people to the field to use the colored paint and flags to protect those underground utilities so they will not get damaged when the excavator digs. Does the system work perfectly? No, there are lots that we can talk about. But specifically today, this bill is to help us at the call center do our job better in dispatching.

On this handout [[Exhibit C](#)]—you do not have to worry about all the text right now—but take a look at the two images. This is Google Maps yesterday for an area in northwestern Las Vegas. These are highways 95 and 157. Here is what it looks like on the Clark County GIS [geographic information system] department's online map viewer that is open to the public and free. You can zoom in and see all the individual lots that you see are missing here. Well, where is digging happening? Obviously, where new construction is happening, right? This is what we struggle to keep up with at the call center—the new growth that is happening—and each county does their own thing as far as having their own mapping systems and how they store databases. It is a hassle for us to round that up—17 counties individually. Plus, I have to do it for California, too, which is another 49 counties that I cover. So, long story short, the state is already aggregating parcel data—parcel, again, being the technical term for property—an individual property is a parcel. We want the state to share this with us so that we can effectively help protect the underground infrastructure in Nevada. We will not share it with any other parties. It is all in the name of public safety, and I am happy to answer questions that you have.

Assemblyman Gurr:

I left out the definition of what a parcel dataset is. It includes information on each parcel in the county, including without limitation information concerning ownership, parcel number, address, land designation and zoning improvements, and if applicable, the date and price of sale. Current law prohibits a person from conducting an excavation in an area that is known to contain subsurface installations without first notifying the appropriate association or operators. This bill adds one more organization to those receiving these notifications and you will notice that there was no fiscal impact on this bill when we put it in. Realizing that this is a policy committee, there is no fiscal impact to this bill. The operators end up paying USA North 811. That is the presentation, unless Mr. Wingate has more.

James Wingate:

I just realized that I forgot to mention the critical question that you are going to ask: Who is paying for all this? Ultimately, the utility ratepayers pay for it because the utility operators, which are public sector agencies and private sector companies cooperating together to run the call center, pay for the call center. We have roughly a \$10 million budget to cover the northern two-thirds of California and the entire state of Nevada—utility operators pay for that. Ultimately, that goes back to the utility ratepayers, which makes sense because they are the ones who are investing and using the utility infrastructure; they want to protect it, very similar to roads. The people who are driving on roads pay for the roads through gas tax and so on—very similar in that way with utilities.

Chair Torres:

I will go ahead and open it up for any questions. Members, are there any questions at the moment?

Assemblyman Carter:

Section 1, subsection 9, paragraph (a) talks about "Association for operators" and refers to its definition in NRS 455.084, but it goes on to name specifically Underground Service Alert of Northern California and Nevada. Why are we putting a specific organization into statute when apparently, the way it reads, the broader scope is already defined in statute?

Assemblyman Gurr:

I am going to defer to Mr. Wingate.

James Wingate:

We could leave that part out. It makes clear that it is us we are talking about. To be honest, I do not anticipate any lack of cooperation from the state demographer or the Department of Taxation. We have talked with them about that before, so I do not think it would be unclear. But for the record, we prefer to have our name listed specifically because there is no other association of operators in Nevada. Most states only have one. There are a few states that have multiple; California has two. If you saw in the bottom of that handout, Southern California does its own thing. New York City does its own thing. Chicago does its own thing. But many other areas combine into one. By having our name specifically linked on there, there will not be any technical barriers to sharing that data and our signing confidentiality agreements. In fact, I do want to clarify one thing in there.

When Assemblyman Gurr was describing a parcel dataset, I want you to know some of the data in there we have no intention of using. It is not relevant to our work; specifically, how the property is valued and who owns it. We care where it is and how big it is; what is its address; what is the geometry of the parcel; what is the parcel number. That is all we care about. We do not care how it is zoned, who owns it, when it was last sold, or how much it is worth on the market. Those factors are important for the counties because that is an assessment which goes toward taxes to fund all of this we are talking about here for state government. But for our purposes, we will not be using that data, and those are the attributes of the data that are often considered sensitive by the counties that sell that data to realtors and

things like that as a revenue stream to offset some of their costs. We have no intention—and this bill, of course, would also prohibit—sharing that data with anyone else. We only care about where and what the location is basically. [Testifier submitted [Exhibit D](#) in support of [A.B. 177](#).]

Chair Torres:

I am going to give that question to Legal Division as well. My understanding is there are a couple of other places in statute where we have put something similar, where we have put the entity that is fulfilling that role now "or its successor organization." We will get that answer from Legal, and we will send it out to members of the Committee, including our bill presenter.

Members, are there any additional questions? [There were none.] It does not look like we have any additional questions. Thank you. A great presentation, Assemblyman Gurr. At this time is there anyone wishing to testify in support of [A.B. 177](#) here in Carson City?

Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties:

I am presenting an amendment [[Exhibit E](#)] to [Assembly Bill 177](#) on behalf of the Nevada Association of Counties (NACO), whose members represent all 17 of Nevada's counties. This amendment has been shared with the sponsor and is friendly. It makes an addition to section 1, subsection 8 to clarify that employees and agents of associations of operators cannot disseminate parcel dataset information. The intent is to control the unlawful dissemination and publication of this information. We believe that this edition strengthens the confidentiality of the dataset.

Stacy Woodbury, Manager, Public Affairs, Southwest Gas Corporation:

Southwest Gas is an operator under Nevada's Call Before You Dig law and a member of USA North 811. We appreciate the important service provided by USA North 811. Last year, Southwest Gas processed 153,292 line locate requests in Nevada with 82 percent of them being in Clark County. Accurate parcel data is critical to the line locate process to protect Nevada's critical underground utility infrastructure. Southwest Gas strongly supports the electronic provision of partial datasets from the Nevada state demographer to USA North 811 for this purpose. We also support the friendly amendment provided by NACO. We hope you will support passage of this measure.

Dan Musgrove, representing Google Fiber:

Google is coming to Nevada, and we have identified the fact that we hope to be a big participant in laying fiber, especially for southern Nevada. Accurate and timely line locates are very important to Google—they are critical to broadband infrastructure. Google Fiber supports the transparency of this bill, the locates process, and believes that timely dissemination of this data is important to that work, and protecting Nevada's infrastructure and our underground utilities is absolutely paramount—that is what Google likes to do when it comes to a municipality. We support this bill wholeheartedly, including the amendment.

Devlin Daneshforouz, Manager, Government Relations, NV Energy:

I echo what some of my colleagues here have already said. NV Energy is in support of A.B. 177. It promotes the safety of our employees and the community, and it aligns with our damage prevention strategy.

Chair Torres:

Is there anyone else wishing to testify in support of A.B. 177? [There was no one.] Is there anyone wishing to testify in opposition to A.B. 177? [There was no one.] Is there anyone wishing to testify neutral to A.B. 177?

Matthew F. Lawton, State Demographer, Department of Taxation:

Chair, I am just making myself available in case there are any questions regarding this.

Chair Torres:

Thank you. Members, are there any questions?

Assemblyman DeLong:

One question: What kind of burden will this bill place on your office?

Matthew Lawton:

I did not identify any fiscal impact on the Office of the State Demographer. This would just be another transmission of the data that is already received.

Chair Torres:

I appreciate that. Is there anyone wishing to testify neutral? [There was no one.] All right, I will invite the bill sponsor for any closing remarks from you or from Mr. Wingate.

Assemblyman Gurr:

I want to thank the Chair and the Committee for your indulgence and your patience. That is all at this time.

[[Exhibit F](#) was submitted in support of A.B. 177.]

Chair Torres:

We will go ahead and close the hearing on A.B. 177 and have a recess.

[The Committee recessed at 10:01 a.m., and reconvened at 10:03 a.m.]

Chair Torres:

We will go ahead and reconvene. Our Committee is very excitable today. We are just having a blast here in the Assembly Committee on Government Affairs. I think the word of the day is "blast." I look forward to seeing how that is incorporated into this presentation about blasting our county counsels. You said it, not I. At this time, we will go ahead and open up the hearing on Assembly Bill 92. I will invite the sponsor to start the presentation when you are ready.

Assembly Bill 92: Authorizes a board of county commissioners to create the office of county counsel. (BDR 20-619)

Assemblyman Gregory Koenig, Assembly District No. 38:

I am pleased to come before you this morning to present Assembly Bill 92, which authorizes the board of county commissioners to create the office of county counsel. Prior to being elected and serving in the Nevada State Assembly, I served on both the Churchill County Board of County Commissioners and the Churchill County School Board. I feel very fortunate to be serving on this Committee and having the opportunity to continue working with local governments in a different capacity.

I want to acknowledge that this is not the first time this proposal has been brought forward but in a slightly different iteration. The Assembly Committee on Government Affairs introduced Assembly Bill 539 of the 80th Session. The bill was introduced very late. To be exact, it was introduced on the 108th day of the 120-day session, on May 22, 2019. It was presented by Yolanda King, then county manager of Clark County. The bill died in the Assembly. Again in 2021, then-Assemblywoman Rochelle T. Nguyen requested Assembly Bill 147 of the 81st Session and introduced the bill on February 18, 2021, allowing sufficient time for it to be heard and processed by both houses. The bill passed the Assembly. It died in the Senate Committee on Government Affairs. We are hoping the third time is a charm. With that acknowledgment, I would like to turn the time over to Senator Nguyen to summarize the bill and to point out the changes.

Senator Rochelle T. Nguyen, Senate District No. 3:

I am hoping the third time is a charm. It is a unique cast of characters who have sponsored and supported this bill in previous sessions. As my colleague in the Assembly mentioned before, this was first brought as Assembly Bill 539 of the 80th Session. It was a leadership bill granted to this Committee by then-Speaker Jason Frierson. An important thing to note about that particular bill and the introduction by that particular member is the fact that at the time, the member actually worked for one of the divisions that came into question; and having enabling language, Clark County potentially would have been able to undo some of those conflicts if they had chosen to do so.

I also brought this bill, and obviously we are in a unique position because we have a former county commissioner, and there are several who are also serving in this body who have a unique perspective on this as well. I want to point out that this bill is just enabling language. There is nothing mandating any county commission to create a separate, independent county counsel department. If Clark County chooses not to, they do not have to; if Washoe County chooses not to, they do not have to.

There are several things in the bill. I am going to highlight some of the things, and I would encourage this Committee, if they have not already done so, to read the minutes or watch the hearings from the 2019 Assembly hearing on A.B. 539 of the 80th Session as well as the 2021 legislative hearing or minutes on A.B. 147 of the 81st Session if you have any further

follow-up questions. I know there will be ample opportunity for the opposition to this bill to also come and testify. I would encourage questions for those organizations.

I am going to highlight some of the opening remarks that Yolanda King, the county manager of Clark County at the time, had indicated in support of A.B. 539 of the 80th Session, as I think they are still worthy of reporting and getting on the record for this hearing.

For background, I will give you some information on the county counsel and how it works in Clark County. I am giving you the example of Clark County because that is the county that I am most familiar with, but this is a similar procedure that takes place in counties around the state. The county counsel for the board of county commissioners, the county manager, and all officers of the county are currently—pursuant to *Nevada Revised Statutes* (NRS) Chapter 252—under the direction of the office of the district attorney, which is a separate, elected office. The office of the district attorney is also the department counsel for Clark County and the board of commissioners. The district attorney, through county counsel—you will hear us use the term county counsel, but they are in fact civil district attorneys and it is a civil district attorney's office which is a branch of that elected district attorney's office—is the legal adviser for the board of county commissioners, the county manager, and all county departments and is also responsible for defending them in all civil actions against the county, its officers, boards, commissions, and employees. The county counsel is also the legal adviser for county departments, the commissioners as well as the county manager, and honestly should be independent like any other county department, just as we are requesting in this bill.

What this bill would do is allow the counties to have the same permissive authority to create an office of county counsel under the county manager or the commissioners' office. Counties currently do not have the authority to create a county counsel office because that authority currently sits within the district attorney's office. In addition, you will see there are some provisions that are also included in this bill where county counsel is currently required to attend school board meetings. If there is a private attorney employed by the school district, then Clark County county counsel, under the directive of the district attorney's office, should not have to attend those meetings as well. This would get into some of that.

There are several of you who have now heard this going on your third time and there are some people who are new to this. I want to make sure we understand that this is enabling language. This does not mandate anyone to do this. There are lots of counties that are perfectly happy with their arrangement. They are smaller counties. When a conflict arises, they are able to work that out internally. But this is a situation where this gives larger counties and larger jurisdictions the ability to create this independent counsel. There are, I believe, 73 pages in this bill, so rather than going through it line by line, I will trust that this hardworking Committee on Government Affairs in the Assembly has already prepared, and with that, we will turn it over for any questions you might have.

Chair Torres:

This is really a "Nguyen-Nguyen" situation here in the hardest-working committee in the Assembly. Members, are there any questions?

Assemblywoman Thomas:

Chair Torres, Senator Nguyen, and Assemblyman Koenig, I really do appreciate your bringing this bill back. I think it is necessary. This is, after all, the twenty-first century. We have to have changes. I just have that comment to share.

Assemblyman DeLong:

I have two questions. The first one is, you imply that this is primarily focused on Clark County—that is the way you phrased it. Why did you not put a population cap into statute? Second question is the district attorneys are elected officials representing the citizens of the county and are the attorneys for the county. By having the county commissions hire their own attorney, is there a bit of a disenfranchisement of the citizens who voted for the district attorney? I look forward to your responses.

Assemblyman Koenig:

I will attempt to answer that first, and then Senator Nguyen can clean up my mistakes. I think she was talking about Clark County because that is what she was most familiar with. I am coming from Churchill County, which is a small county, and I sat on the board of county commissioners, and I can see the need in the rurals just as much as in Clark County. I do not think it is something that is only of interest to Clark and Washoe Counties. I think there are other counties. One of the things that is telling and a little bit scary is that I have had numerous people in certain positions tell me they would support this, but they are not willing to come out in public to support it because they are concerned about reprisals from the district attorney's office. That right there is telling. The district attorney is elected by the people, but the county commission is also elected by the people; why should you have one elected body controlling a second elected body? There is the issue with checks and balances. The check is if the county breaks the law, the district attorney is able to prosecute them; that is the check. The check is not that every legal opinion that counties have or any decision or any advice the counties get has to come from the district attorney. That is not a check. The check is not defense, the check is prosecuting, so to say that the district attorney is underrepresented if they are not representing the county commission, I do not think is the case.

Senator Nguyen:

I could not say it better. I think the Assemblyman's experience, being elected in that body, highlights that conflict and the checks-and-balances system perfectly.

Assemblywoman Taylor:

In my experience coming from the school board, I actually lived through both of these. We have counsel for the school district that has a dotted line to the board. Additionally, we have had times when we brought in outside legal counsel to sit as board counsel along the way. I found the need for that at some point because they were so busy within the district's

attorney's office. At another point we had so much going on on the board that specific attention to the board was necessary. Additionally, there are times when so much goes on that that person of legal counsel has to sometimes wear two hats. I mean, you prosecute if something wrong happens, but then you also defend in the same way, and that could certainly lead to a conflict. I like the fact that this is permissive; it does not mean it has to happen. But having lived in each and having seen both work well when they needed to—I can certainly see the need for this. I thank you for bringing it forward,

Assemblyman Koenig:

I want to add a comment to your comment. I served on the school board for 12 years, and we had our own legal counsel whom we hired. Having watched these previous sessions' hearings, along with the letters against that I am receiving, and from people I have talked to, one of the biggest concerns they have, they say, Well, if the county hires their own legal representation, their attorneys are only going to tell them what they want to hear so they will keep their job. As a doctor, we have a Hippocratic Oath; I am pretty sure attorneys have something along those same lines. One, they are disparaging other attorneys, saying the only reason you are going to give counsel is so that you keep your job. But as a member of the school board for 12 years, I found that our legal counsel definitely argued with us and did not tell us what we wanted to hear, because the best way to lose your job is to give bad advice even if that is what the board wants. The attorney who gives them poor advice knowing it is poor advice, but giving it because that is what they want to hear, is not going to keep their job for very long. I think that actually is not a valid point.

Senator Nguyen:

We also have ethical duties as lawyers, and that is my perspective. I see the district attorney's office, I see the potential office of county counsel, as individual law practices. I think the Clark County District Attorney's Office is one of the largest law firms in the state, if not the largest law firm in the state. It employs many different attorneys who are prosecuting laws. That is how we typically think of them, but they do have a civil division. I think exactly what the Assemblyman has indicated. I saw all those letters. I heard that testimony. I have watched it again from 2019 as well as 2021; I am sure we will hear some of that again today in 2023: That the board of county commissioners will influence the county counsel who will feel compelled not to give legal advice that is prudent and lawful because they are afraid for their jobs. I do not understand how that argument flies in the face of the fact that they are currently employed by another elected official—the same thing could be said. It is a unique experience. I will point out, too, that what is unique is what we have in the state of Nevada. At this time, all of our surrounding states—Colorado, Washington, California, Oregon—have this model of a county counsel, so we are actually unique in the fact that we do not have this, and that we have this inherent conflict between two elected officials and two groups of elected officials. This is enabling language—permissive language that does not mandate anything if it is too expensive or people are happy with their current setup. Counties do not have to do this, but it does give people the opportunity, so should they want to do this, they can.

Assemblywoman Taylor:

I did not find that to be the case when we had outside counsel on the board. We did it on two different occasions for a year or so each time when I was on it. There were plenty of times as the president when I disagreed with the legal advice that we received from outside counsel or internal counsel, quite frankly. But their job is to give us the best advice they can, and the best way to lose the job is to not do that and then be wrong. Then you are not well representing the board or the citizens.

Assemblyman Hibbetts:

For the record, we have heard you say many times that this is permissive language. In layman's terms, that means that if the county is happy with the representation of the district attorney's office, they are free to keep them. If they are not happy with the representation of the county district attorney's office, they are free to fire them and hire their own attorneys. Is that correct?

Assemblyman Koenig:

Fire might be a little bit of a harsh term. They are not firing the district attorney's office, they are just creating someone to replace them.

Assemblyman Hibbetts:

By that I mean, they are no longer going to use them for their own counsel; they would not have any effect on the district attorneys themselves or their office.

Assemblyman Koenig:

The big talk is checks and balances. Going to this model is actually a check. A majority of the counties are going to keep the district attorneys (DA) as their representation. This will be there so that if the district attorneys are not meeting the needs or are not what the county feels is appropriate, they do have an option. This is another check. They are talking about checks and balances. I think this is another check that keeps the district attorneys honest, because if the counties are not happy with it, they do have a second option, which would be another check.

Assemblyman Nguyen:

It is a blast to have Senator Nguyen in the room because it is always a "Nguyen-Nguyen" situation when we are both in the room, right? I got a laugh this time. My question in terms of the county counsel is, are we able to expand the need to their supporting other elected boards in the counties that may need their own counsel, as is currently being provided by the district attorney? Would the county counsel be able to expand into supporting advisory boards or elected boards that are under the same county structure?

Assemblyman Koenig:

I was going to turn it over to Senator Nguyen, but she told me to handle this. That is one of the duties of the legal representation for the counties. I was on a library board where counsel attended the library board meetings. They attend all of those advisory board meetings. The

district attorney's office is doing that now; the county counsel, when created, would be doing that also. They would be advising not only the county but all of the county's advisory boards.

Senator Nguyen:

Ditto.

Chair Torres:

For the record, it is important to note that when we heard this bill in March of 2021, I also said that it was a double win, but it feels almost like a triple win now.

Assemblywoman Duran:

We are just blasting it today, are we not? Can you give an example of a conflict where the district attorney has to represent somebody on the civil side, to fight for a child for example, in a matter that may be conflicting?

Senator Nguyen:

This is where it becomes interesting because we do have an atypical model. Again, I am going to be referring to Clark County, although I think Washoe County is under the same model. There is not a statutory provision, but there is a memorandum of understanding. The district attorney's office currently represents the child welfare agency as well. But they also are in the process of prosecuting individuals as well for cases of child abuse and neglect. Most people, when they think of the district attorney's office, think they are prosecuting crimes. In the current model, we have a situation where we have essentially three different responsibilities within the district attorney's office. We have the civil division, the one we are talking about creating a division of county counsel that is independent from the district attorney's office—advising the county's separate elected agents and agencies, and we have the criminal division that does prosecution, which is what most people typically think of when they think of the district attorney's office.

But then we all have the juvenile division. I am not sure if Ms. Brigid Duffy will be here to present or answer any questions, but she is your expert on this as she has lived and breathed and created and fostered this division, that is to the benefit of children, especially in Clark County which I am familiar with. They do have this unique agreement, so there can be differences. In reviewing some of the previous minutes, Ms. Duffy indicated that this is not a typical model and that while, yes, there could be a situation where in one court they are advocating on behalf of an agency for reunification of children, in a different court, with the same law firm and the same lawyers, they are potentially arguing for a no-contact order regarding that same child. You have the same law firm that is going through and arguing two competing and conflicting things.

We have talked about whether or not in statute there are enough protections to create that screen or create that wall or create a conflict check system. You would be surprised how little communication there is between those lawyers, but I do not think that should give our state the confidence that just because an office is big and located in different locations, they are officially screened off. That is the statutory protection that we need to create—that

independence. I wonder, if they had a more streamlined position where they were able to communicate more efficiently and they have common systems within their office, that is where you potentially see that, in that family division.

I know that Assemblyman Koenig could talk about examples of those conflicts that take place within the county's civil division and the county counsel, and why that is needed. I will turn it over to him if he has examples.

Assemblyman Koenig:

At this point I want to hold off on that. I believe there might be testimony that may highlight some of these conflicts. If that conflict does not come out, I will tell it briefly in my closing comments.

Chair Torres:

Members, are there any additional questions?

Assemblyman D'Silva:

Just a quick clarification; I know this is probably addressed in sections 5 and 6. One, if a county wants to allow this office within its jurisdiction, the county can create an office. It will not be just one individual, correct? They can have deputy county counsel? Number two, will this office be directly under the jurisdiction of the county commissioners, or will there be a subset of administrative oversight, maybe a county manager?

Assemblyman Koenig:

Yes, they can hire as many as they need. The smaller counties probably have one, and you could not expect one person to handle Clark County. They would have as many deputies—whatever they need to get the job done. I had the answer to the second question, but I forgot what it was. My Fitbit thinks I am only heavily exercising and not really having a heart attack. Could you remind me of your second question?

Assemblyman D'Silva:

Who would the county counsel answer to? Would it be to the county commissioners themselves or the county manager? What is the policy there?

Assemblyman Koenig:

Ultimately, to the county commissioners. I am sure they would probably delegate to the county manager to handle day-to-day things, but ultimately they would be responsible to the county commission. That is one of the small changes in the bill from when Senator Nguyen proposed it. In her version, the county manager actually appointed the county counsel. In my version, the county commissioners will be appointing the legal counsel, so it will be answering directly to them.

Senator Nguyen:

I think that change is why this bill will be successful this third time around. We are blasting into the future. Ultimately, it should fall under those elected officials under the board of

county commissioners who were elected in their own right to have their choice over the independent counsel whom they choose to hire.

Chair Torres:

We would be remiss not to note that Assemblyman Koenig's heart has been blasting through this presentation, but I think you are doing a phenomenal job. Members, do you have any additional questions?

I have one clarification. In preparation for this hearing, I had the opportunity to look over the minutes from 2019 and 2021. One of the things I noted—and correct me if I am wrong—but in NRS Chapter 266, the cities currently have the authority to create the city attorney's office. I believe some of our cities are currently doing this, so this would make counties up to par with what the cities are doing. Is that correct?

Senator Nguyen:

I know there are representatives here from the Nevada District Attorneys Association, and I know they also represent city attorneys and city prosecutors. From my experience, I think they are all appointed by the city council. The city councils are appointing the city attorneys in the various jurisdictions within Clark County. They are not elected. This would put us in line with that similar policy and system.

Chair Torres:

To clarify, that would be only if the county decided to do that, right? Because this seems to me to be permissive language. It does not require the counties to do that. So that can be another conversation that can be had at the county level, whether it makes sense for individual counties. Correct?

Senator Nguyen:

That is correct.

Chair Torres:

Members, are there any additional questions?

Assemblywoman Thomas:

Could the county commissioners use the current employees of the civil division of the district attorney's office as their civil attorneys?

Senator Nguyen:

That would be up to them. Currently, at least in Clark County, even the civil division of DAs is housed within the Clark County building. It would make sense that they would want to do that. If they chose to do that, that would be completely up to the elected board of county commissioners in how they chose to fund, hire, fire, or create new positions, but it is set up where it could be a seamless transfer.

Assemblyman Koenig:

I would think the counties would welcome the people who are serving those positions at this point. They would have to resign their position with the district attorney, so they would not be called district attorneys anymore. But those individuals would be welcome. I would hope that those would be the people who would end up applying and being hired as the county counsel.

Chair Torres:

Members, are there any additional questions? [There were none.] All right. At this time, for anyone wishing to testify in support of A.B. 92 here in Carson City, it is your mic, sir.

Pete Olsen, Private Citizen, Fallon, Nevada:

I am here testifying in favor of A.B. 92. I have spent the last 12 years as a member of the Churchill County Commission, the last eight as chair. I am here to tell you a couple of instances where we have had some conflicts in matters where we were trying to conduct business as a county commission. When it comes to matters of the public defender, in the past we had hired contractual public defenders. That left us with counsel who were civil DAs. They would have to review the contracts that we were having with potential public defenders whom we were looking at. When you are reviewing the contract of the person you are going to be meeting in court every week, that is obviously a conflict.

Fast forward a little bit. Churchill County decided to have our own public defender's office. We hired our own attorneys and stood up our own public defender's office. At the direction of the Department of Indigent Defense Services, we were told we could not use our civil DAs in order to advise us in the process of standing up that office. Also, there are times when the DAs are there for budgetary matters, and they would be put in the uncomfortable position of having to advise us as to whether something is good or not good for them in particular or that we should or should not provide something to that office based on their recommendations legally. I have also heard that there are some folks who would say, as mentioned earlier, that we would be corrupted by the opportunity to hire our own counsel. All these other agencies from the school board, the cities, all the way up to the governor would also be corrupted, and that just does not make sense. That is not true.

Chair Torres:

Thank you, Commissioner. At this time, I will invite anyone else wishing to testify in support of A.B. 92 here in Carson City. [There was no one.] Is there anyone in Las Vegas wishing to testify in support of A.B. 92? [There was no one.] Is there anyone on the line wishing to testify in support of A.B. 92? [There was no one.] At this time, I will invite the opposition to come up. I will let the Committee know that I had the opportunity to speak to Mr. John Jones yesterday, and I will be allowing the opposition to have 10 to 15 minutes to give their remarks so that we can make sure that we adequately and fairly get the opposition to this piece of legislation. Whenever you are ready.

John T. Jones, Jr., representing Nevada District Attorneys Association:

For those of you who do not know, this is my first time in the Assembly Committee on Government Affairs this legislative session. The Nevada District Attorneys Association is composed of the 17 elected district attorneys in Nevada. Also present with me at the table are Joseph Sanford, chief of civil division for the Churchill County District Attorney's Office; Nathan Edwards, who is the assistant district attorney of the civil division in the Washoe County District Attorney's Office; and Brigid Duffy, who is the assistant district attorney in the Clark County District Attorney's Office.

I want to start off by saying that government service is different, and we believe as district attorneys that it is sound policy that public officials, boards, and agencies be given legal advice that they need to hear, not legal advice that they want to hear. With that in mind, it is important to fashion a representation model that best leads to that outcome. Making a public attorney provide legal advice to a governmental agency answerable to a separately elected official provides a measure of independence to that attorney, better ensuring a legally and ethically sound opinion or advice. This objectivity, this independence free from the threat of reprisal, ensures that advice is in the best interest of the county and its citizens.

The model we have now is similar to the model we have at the state level, where the attorney general, a separately elected official, provides legal advice and representation to the other agencies of the Executive Branch. And no matter what your political party, one need not look any further than our federal system to see what happens when there are constant questions surrounding whose interest a public attorney is working to advance. The attorney general at the federal level, a presidentially appointed individual, constantly faces questions about whose interest he is actually serving. We do not have that issue at the county level in Nevada. This bill does disenfranchise the citizens of Nevada because right now they have a direct say in who provides legal advice to the county commissions of their county—a direct say—and this bill could change that.

It has also been said that A.B. 92 is just enabling. But even though it is an enabling legislation, it could be used as a hammer against DAs providing independent advice. If a county does not like the advice that they are given, they could threaten to create the office of independent counsel, causing a crack in the independence that we feel provides the best legally and ethically sound advice.

I do want to note that on December 3, 2022, the Churchill County Board of Commissioners considered a bill draft resolution that really mirrors A.B. 92. After some discussion, that board took no action on whether or not to endorse that measure. The question you need to answer as a policy committee is, what is the best model of representation for the citizens of this state, the citizens of that county? We submit to you it is the current model. With that, Chair Torres, I would like to turn it over to Mr. Sanford. [Testifier submitted [Exhibit G](#) in opposition to A.B. 92.]

Joseph Sanford, Chief Civil Deputy District Attorney, Churchill County District Attorney's Office:

The district attorney represents all elected officials, including the county commission. Our job is not to tell them what to do; it is to help them do their jobs in the most legally sound, ethical manner possible. Personal opinion is not something to be considered. For example, even though I am testifying in opposition to this bill today, if it were to pass and our county commission asked for it to be drafted and adopted, I would still draft that ordinance at their request.

Commissioner Olsen mentioned that there were some conflicts between the district attorney's office and, for example, the public defender's office. I want to make it clear that there is no conflict between the district attorney's office and the county commission as it relates to this. As it stands, we provide advice to our newly set up public defender's office. They get the same advice that any other office would receive. Now, I think it is fair to say that there was some strong-arming of the counties in how the public defense stuff was set up with the request that they not speak with their counsel. I think that is pretty clearly in error and should never have happened.

The district attorney's office is there to provide advice to help make sure that it is done the right way. We are not going to tell the county commission whom to select or how much to pay them. We are there to make sure that the contract is fair, that it is legal, and that everybody is getting exactly what they agreed to. If you have any questions, I would be happy to answer them as they relate to the work of the county civil division.

[\[Exhibit H\]](#) was submitted in opposition to [A.B. 92.](#)

Nathan Edwards, Assistant District Attorney, Washoe County District Attorney's Office:

The Washoe County District Attorney Civil Division is under my umbrella. I have been in that position for about a year and a half now, a product of the Washoe County School District. I heard a lot of comments made about the proposed bill and why it would be an improvement. For example, I heard Assemblyman Koenig ask why should one elected body be able to control the county commissioners, the other elected body. But in Washoe County, for example, there are 12 elected officials and this bill would turn the decision of who the legal representative would be over to 5 of those elected officials. The other 7 would not get to have a say in who it was that represented them, whereas now it is the voters who make that call. I think that is a nice place to err on the side of in our system.

When I took this position a year and a half ago, I immediately instituted something called the conflicts panel within our office. We take it very seriously. We conduct very gritty analyses of whether a conflict exists. We have done a number of those analyses along the way, and I can tell you one thing: In my experience, when you conflict off a case, clients get angry with you—they get very angry with you. Between a county counsel and a separately elected district attorney's office, the DA's office is in a better position to give that objective analysis because though the county commission will get angry if we do decide to conflict off a case—

and we have done that, and this has happened—we are protected from backlash or retaliation for political reasons or those types of things. That has worked very well within our office.

The assurances that you were hearing a bit earlier about county counsel who is appointed by and answerable to the county commission would not be subject to influence in their legal advice and the way they handle their legal representation simply because they have an abstract duty of candor and loyalty and those types of things. That is aspirational. In reality, that is not what you are going to see. On the one hand, you have assurances that they will remain independent, and on the other, this law would allow them to get rid of the DA's office if they are not happy with them. Does that not make the exact opposite point? I think it does, and the pressure will be there once this law is in place, though it is styled as permissive. District attorneys at that point will be looking over their shoulder in terms of the way they give their advice, or at least that pressure will be there.

There was some discussion about conflicts between, for example, the criminal prosecutors and the civil division attorneys in child protective services (CPS) matters. In most of the jurisdictions of the state, the state is the agency that provides the CPS function—Division of Child and Family Services provides that, so that is separate from the district attorney's office in any event. If you migrate the representation to a county counsel office, you are still going to have those same types of conflicting scenarios, as it were. You are going to have, for example, the county counsel representing the sheriff's office. The sheriff's office in many of these cases is going to be the one that made the arrest of the parents in those cases, and why they are sitting in jail and why a case was submitted to the district attorney's office for prosecution in the first place. At the same time, those attorneys are going to be representing CPS in the reunification hearings, or alternative permanent placement hearings, or potentially in termination of parental rights hearings, and they are going to have to make judgment calls within that realm as well.

The current conflict system allows for the official attorney under NRS Chapter 41 to conflict off the case if they need to and to provide outside counsel and assist the client in obtaining outside counsel if they want it. We have done that multiple times in my tenure at the Washoe County District Attorney's Office, and we have had, for the most part, success in doing that apart from the initial reaction to our decision to conflict off that I referenced earlier.

I want to point out one more thing before I turn it over. With respect to the diminishment of voting rights, it does that in two ways. One, it takes away the voter's right to choose who the legal adviser is going to be for the county commissions. But also, this bill would potentially allow a county commission to change that midstream, for example in the middle of the term of an already-elected district attorney where the voters chose that person to be the representative of the county commission. It would allow that county commission to step in, basically undo that election, take that portion of the DA's office away, and invest it into a county counsel's office. It is a twofold disenfranchisement factor when you think of it in those terms. I have other points, but I know we are short on time, so I am going to turn it over.

Brigid J. Duffy, Assistant District Attorney, Juvenile Division, Clark County District Attorney's Office:

For those who do not know me—and I know many of you from interim committees and through the sessions—I have dedicated 23 years of my entire career in the state of Nevada to child welfare agency issues in various roles. You can read my bio if you want. In 2012, I was appointed by now-DA Steve Wolfson to the position of overseeing the entire juvenile division in Clark County. That came with a very big responsibility because in 2012, when Mr. Wolfson put me in the position, he said that the community wants my juvenile division to represent the child welfare agency in all matters under NRS Chapter 432B. At that time, I had to take the prosecutors I had in my division and convince them that it was a good thing to do.

This bill is very personal to me because I led a group of people who went to law school and were hired by a district attorney's office as prosecutors to become agency attorneys and to still prosecute those cases of abuse and neglect in family court to protect children. Now they are all faced with losing those positions, maybe being fired, and maybe they would be offered a job in the county counsel's office, whatever it is. But that is not what got us here or them there—it is very personal to my division.

We built an incredible division, and this bill will fracture that division because not only do I have 21 attorneys who oversee child welfare cases, I have 9 attorneys who handle our delinquency matters. It is through my leadership that I have gotten these 30 attorneys, these 30 DAs with various years of experience, to come to great understandings of how children behave and function, their brain development, how trauma impacts them, and how to work with other county representatives to get the best outcome for the children in our communities. Without 2012 and my coming to my division and saying, We are going to enter into this agreement to represent the child welfare agency—you are going to hear from the opposition from one of my attorneys—they would not be faced with having to leave a union and take on a whole different role within the county. Some of them have been attorneys in the division for many, many years.

Having said that, I want to discuss the conflicts that were mentioned, and I thank Senator Nguyen for her kind words as to my leadership and representation of children in our community. Both the criminal division and the juvenile division have child protection in mind. I do not think that is a difference. Criminal is very punitive; child welfare, we have state and federal guidelines and timelines to meet for federal funding to work towards reunification of children with families if safe. My prosecutors handle child sexual abuse, they handle child physical abuse, they handle cases where a child has been killed and there are surviving siblings. It is not just your basic drug cases. They are all very trained prosecutors. There are also two DAs in the civil division who handle personnel matters for the child welfare agencies and lawsuits, so if a family sues the agency for abuse in foster care, that is not what my agency does. My division prosecutes petitions. We have the safety model.

Furthermore, current statute in NRS Chapter 432B permits communication, encourages communication, between the child welfare agency and law enforcement and the district attorney's office investigating and prosecuting cases of abuse and neglect. It is encouraged that we communicate so that we have the safety and protection of children in mind. Furthermore, all of our cases are overseen by courts. In my case, we have a juvenile court that oversees whether or not it is safe for a child to go home. Everybody has lawyers. The child has a lawyer. The parents have a lawyer. The agency has a lawyer. The court determines whether or not there will be contact or no contact. In a criminal case, there is a whole separate judge who will decide whether or not there is contact or no contact. Furthermore, the attorneys for the parent in that criminal court have every right to the same communications that my criminal team gets. The statute permits us to share all the child welfare information with the parent or their attorney. If it is not a parent, if it is a boyfriend or some other person in the home, they are also permitted to get that information. Everybody gets the same information. Everybody is entitled to the same information; how they use it in their cases is up to them.

To sum up, I have 68 staff—31 attorneys and the rest are staff—in the juvenile division. We work really hard to be trained and experts in juvenile law, in juvenile brain development, and in trauma impacts on children's development. If this bill passes and the county commission determines to create the office of county counsel, I do not know where my job is because I oversee an entire division: delinquency and child welfare. I have done a lot for our community to make sure that we are thoughtful in every decision we make for children. Thank you for allowing us the extra time, Chair.

Chair Torres:

Thank you. Let the record reflect that the opposition did have 17 minutes to present their case. I do know that a couple of members have questions, but I would remind the Committee that we also have floor. I would like to open it up for questions because that is how we make sure we have a good bill hearing. Members, are there any additional questions? [There were none.]

I will go ahead and ask a question. Ms. Duffy, can we get clarification on what the interaction is currently between the county's office when you are looking at civil cases? For example, when we are looking at family reunification, what happens when we are also prosecuting for child neglect? My understanding is both of those cases would be under the district attorney's office. I want to know how the agencies are interacting with one another.

Brigid Duffy:

Currently the process in place, whether it be a DA from the criminal division of the district attorney's office or a public defender representing a parent in a criminal case, is they would do a records request, which is a formal request that gets siphoned through a computer system. It comes out; one of my staff members makes sure that it fits statute, that we are permitted to provide them with information on what is going on with the case. If it does, they redact any information that they would not be entitled to by statute. That statute I am referring to is NRS 432B.290. Then they would provide that packet of information to the criminal division.

In full transparency, during an investigation of, say, a child death or a child sexual abuse case, we do have joint meetings with law enforcement because criminal is beyond a reasonable doubt whereas child protection cases are preponderance of the evidence. So criminal may never even open a case, but in order to get all the information at once, we meet together as a multidisciplinary team with law enforcement to see what the evidence is and determine whether or not we need to protect the children and provide services for the family or whether or not there is also possibly enough to move forward with a criminal case. Oftentimes my division is the only division taking that case forward because of evidentiary issues but offering services to families.

Chair Torres:

I am not an attorney, so could you clarify whether in the private sector, attorneys would be able to represent both criminal and civil cases where they are representing different parties? Would that be allowed in the private sector?

Brigid Duffy:

Potentially you could hire one attorney for your civil case and one attorney for your criminal case, if that is your question.

Chair Torres:

But that one firm would not be able to represent me and my opponent; represent me in the criminal case and then represent my opponent in a civil case at the same time in the same matter?

John Jones:

We are governed by the rules of professional conduct. Rule 1.7 of *Nevada Rules of Professional Conduct* says a conflict occurs if representation of one client will be directly adverse to that of another client. What we are hearing here a lot is the use of the word "conflict" thrown around. But "conflict" in Nevada has a specific statutory meaning. There is no conflict when a DA in the criminal setting argues within the bounds of the law for a legal outcome, and an attorney in a different division representing an agency of DFS [Clark County Department of Family Services] argues for a different outcome on behalf of the agency. There is no conflict there. The Department of Family Services has little interest in the specific outcome of the criminal setting. Now, different outcomes may happen in both settings, but that is how our system is set up. As Ms. Duffy indicated, current law encourages collaboration between the two divisions.

Chair Torres:

Thank you. Members, are there any additional questions?

Assemblywoman Taylor:

I thank all of you for being here and a special shout-out to Washoe County. You have raised quite a few issues and challenges that could arise from a bill like this being passed, and I want to make sure that I am clear. My understanding is that really, the main objective of this bill is to allow—remember my context is a school board context—the county

commission itself to bring in outside counsel for items and legal issues pertaining to the county commission, not to the county.

John Jones:

This bill is actually broader than that. When you look at section 5, there are a whole host of other things that the board is allowed to add into the job of the county counsel, including representing the agency in civil matters related to the abuse or neglect of a child pursuant to NRS Chapter 432B. They could include that as part of their office of county counsel. What Ms. Duffy is indicating, her juvenile division, which works closely with the NRS Chapter 432B proceedings, would remain in the DA's office, but the child welfare agency attorneys would go off to the county counsel, thus causing a split in the agency that she has worked so hard to pull together.

Chair Torres:

Members, are there any additional questions? [There were none.] As a reminder to the Committee, we are still in opposition for A.B. 92. When you are ready, you may begin, sir.

Steve K. Walker, representing Lyon County:

For the record, the Board of Lyon County Commissioners has voted to oppose A.B. 92.

Chair Torres:

Thank you. If only we had all opposition testimony be that concise. It makes your point very clear. Is there anyone else wishing to testify in opposition to A.B. 92? Seeing no one here in Carson City, is there anyone in Las Vegas wishing to testify in opposition to A.B. 92? Everybody who is wishing to testify in opposition feel free to come up, and every person can speak on their own time. Please begin when you are ready.

Amity C. Latham, Member, Clark County Prosecutors Association:

I am a member of the Clark County Prosecutors Association. My job is chief deputy district attorney in the juvenile division in the Clark County District Attorney's Office. On behalf of the Clark County Prosecutors Association, I am here in opposition to A.B. 92. The Clark County Prosecutors Association would like to echo Ms. Duffy's and Mr. Jones's opposition to the bill.

I have been employed by the Clark County District Attorney's Office for 18 years as of March 28, 2023, and I have been a chief deputy for 13 of those years. For over 17 of those years, I have been assigned to the juvenile division. I am assigned to Ms. Duffy's division, but I have worked for other leaders in that division, and I have the unique experience of having done both delinquency cases and also child welfare cases. I am currently assigned as a child welfare team chief, and I supervise six attorneys handling child welfare cases. Like Ms. Duffy, I have dedicated my career to being a district attorney and specifically to being a district attorney in the juvenile division in Clark County.

As child welfare deputies, my colleagues and I under Chapter 432B of the *Nevada Revised Statutes* are required to represent the interests of the public in all child welfare proceedings.

I am one of those attorneys whom Ms. Duffy led down the path of agency representation. We function as representation for the Department of Family Services in cases of child abuse and neglect suffered by children in Clark County at the hands of their parents, guardians, or caregivers. [A time expiration notice was given.] In conclusion, in 2020, during a global pandemic, we continued to work under extreme stress in a stressful position, working on child welfare cases. We are members of the Clark County Prosecutors Association. By putting us in the office of county counsel, we would be excluded from membership in this association. It is not just a collective bargaining unit, it is a group of individuals—

Chair Torres:

Ma'am, your time is up. Thank you for your time. I will ask you to give any written remarks to the Committee staff in southern Nevada. We will make sure we get it to our Committee members.

[[Exhibit I](#) was submitted in opposition to [A.B. 92](#).]

Is there anyone else wishing to testify in opposition to [A.B. 92](#) in Las Vegas or on the line? [There was no one.] At this time, I will invite anyone wishing to testify neutral to [A.B. 92](#) in Carson City or Las Vegas. [There was no one.] Is there anyone on the line wishing to testify in neutral to [A.B. 92](#)? [There was no one.] We will invite the bill sponsor, Assemblyman Koenig, for any closing remarks.

Assemblyman Koenig:

I know that we are in a time crunch. I will keep this short. I am just the eye doctor from Churchill County. Senator Nguyen is the high-powered attorney from Clark County. She had some responses to the questions or the concerns about child welfare. She would be happy to answer those if you need questions answered. It was technical and I did not quite understand it, so she would be the one to ask on that.

In closing, [Assembly Bill 92](#) authorizes the board of county commissioners to create, by ordinance, the office of county counsel to perform many of the noncriminal duties assigned to the district attorney.

I want to end with a couple of other comments. The opposition kept bringing up, as far as the county counsel, whose interests are they serving? I want to bring up the example of Mr. Joe Sanford. I like him. I think we are friends. I think we get along well, but he is an employee from the district attorney assigned to represent the county. Yet he is here testifying in favor of the district attorney's office, so whose interest is he serving? Is he serving the interests of the county commission or is he serving the interests of the district attorney? All you can ask for as a county commissioner is to have as your legal representation someone who has your back and does not have the district attorney's back. They say that the county counsel will be influenced by the board. Well, right now the county counsel is influenced by the DA. There is a conflict there. There are more conflicts I could go into, but I know we need to be on the floor. I will end my hearing at this time. Thank you all for listening to this long hearing.

Chair Torres:

Thank you, Assemblyman Koenig. Do not sell yourself short—you are also the Assemblyman, and we are so fortunate to have you as a member of this Committee. Thank you, I appreciate it. At this time, we will close the hearing on A.B. 92. That definitely was a blast. I will now go ahead and invite anyone wishing to testify in public comment. [Rules for public comment were reviewed.]

[Public comment was given.]

Chair Torres:

Is there anyone else on the line for public comment? [There was no one.] Are there any remarks from the Committee members? [There were none.] [Meeting reminders were given.] The meeting is adjourned [at 11:11 a.m.].

RESPECTFULLY SUBMITTED:

Geigy Stringer
Committee Secretary

APPROVED BY:

Assemblywoman Selena Torres, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a document titled "Why is AB 177 Important?" submitted by James Wingate, Executive Director, Underground Service Alert of Northern California and Nevada.

[Exhibit D](#) is a letter dated March 3, 2023, submitted by James Wingate, Executive Director, Underground Service Alert of Northern California and Nevada, in support of Assembly Bill 177.

[Exhibit E](#) is a proposed amendment to Assembly Bill 177 dated March 6, 2023, submitted by Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties.

[Exhibit F](#) is a letter dated March 7, 2023, submitted by Tyler Byrd, President, National Utility Contractor's Association of Las Vegas, in support of Assembly Bill 177.

[Exhibit G](#) is a letter to the Assembly Committee on Government Affairs from John T. Jones, Jr., and Jennifer Noble on behalf of the Nevada District Attorneys Association in opposition to Assembly Bill 92.

[Exhibit H](#) is a letter dated March 6, 2023, submitted by Arthur E. Mallory, Churchill County District Attorney, in opposition to Assembly Bill 92.

[Exhibit I](#) is written testimony submitted by Amity C. Latham, Member, Clark County Prosecutors Association, in opposition to Assembly Bill 92.