

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-third Session
May 4, 2005**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 2:06 p.m. on Wednesday, May 4, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator John Lee (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman John C. Carpenter, Assembly District No. 33
Assemblywoman Heidi S. Gansert, Assembly District No. 25
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblyman Harry Mortenson, Assembly District No. 42

STAFF MEMBERS PRESENT:

Kim Marsh Guinasso, Committee Counsel
Michael Stewart, Committee Policy Analyst
Olivia Lodato, Committee Secretary

OTHERS PRESENT:

Robert L. Crowell, Las Vegas-Clark County Library District

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Laura Mijanovich, American Civil Liberties Union of Nevada
Nicole J. Lamboley, City of Reno
Nancy J. Howard, Nevada League of Cities
Jon L. Sasser, Washoe Legal Services
Ernest K. Nielson, Washoe County Senior Law Project
Robert A. Desruisseaux, Northern Nevada Center for Independent Living
David C. Morton, Executive Director, Reno Housing Authority
Dan Musgrove, Clark County
Christine Robinson, Director, Air Quality and Environmental Management, Clark County
Jeremiah P. Carroll II, Director, Audit, Clark County
Michael Uhl, Air Quality and Environmental Management, Clark County
Marilyn Skibinski, Regulatory Manager, Bureau of Consumer Protection, Office of the Attorney General
John Slaughter, Washoe County
Michael S. Trudell, Manager, Caughlin Ranch Homeowners Association
Ike Eichbaum
Elaine B. Steiner
Steve K. Walker, Truckee Meadows Water Authority
Jeffrey Tissier, Manager, Financial and Administrative Services, Truckee Meadows Water Authority
Jonathan R. Cervas, Intern to Assemblywoman Barbara E. Buckley, University of Nevada, Las Vegas
Michael J. Willden, Director, Department of Human Resources
Buffy J. Dreiling, Nevada Association of Realtors
John F. Wiles, Division Counsel, Division of Industrial Relations, Department of Business and Industry
Rose E. McKinney-James, Clark County School District
James Jackson, Consumer Data Industry Association
Cheryl Blomstrom, Nevada Consumer Finance Association
William R. Uffelman, Nevada Bankers Association
Nancyann Leeder, Nevada Attorney for Injured Workers, Department of Business and Industry
Alan Glover, Clerk/Recorder, Carson City
Kathy Burke, Recorder, Washoe County
Randal Munn, Special Assistant Attorney General, Office of the Attorney General

Chair Hardy opened the meeting as a subcommittee. He said Assemblyman Mortenson and Assemblyman Carpenter would begin the discussions with the introduction of Assembly Bill (A.B.) 351.

ASSEMBLY BILL 351 (1st Reprint): Encourages adoption of regulations to facilitate display and sale of artistic expressions protected by First Amendment in state, county and municipal parks, and recreational and cultural facilities. (BDR S-555)

Assemblyman Harry Mortenson, Assembly District No. 42, said A.B. 351 was inspired by an encounter with an artist in Carson City who said Nevada was a terrible place for embryonic artists. He said they had no place to exhibit their art, and they were not supported in any manner by the State. Assemblyman Mortenson said the artist mentioned the laws were enabling for artists in many states. He said artists showed their work in parks with a minimum of trouble, fees and applications. Assemblyman Mortenson said he wanted to introduce a simple bill to assist budding artists. He said when the bill was introduced in the Assembly Committee on Natural Resources, Agriculture and Mining, there was a great deal of concern the bill might damage organized art exhibits that already existed. He said A.B. 351 was changed to a resolution-style bill. He said it did not have a mandate, but encouraged government to set rules and regulations regarding art displays. Assemblyman Mortenson said the first four sections of the bill alerted counties and the State of the large number of federal and United States Supreme Court decisions on art and art in parks. The bill requested the counties and cities draw up enabling regulations to promote art in parks.

Assemblyman John C. Carpenter, Assembly District No. 33, said the original bill did not appear to do anything to help the artists and art in this State. He said he believed in encouraging the arts and artists. He said he fully supported the bill. Assemblyman Carpenter stated the rural counties had done a lot for artists. He mentioned Elko had an artist of the month, and the community made an effort to help the arts thrive. He encouraged the Committee to support A.B. 351. He said the bill did not mandate anything; it just encouraged the support of artists.

Robert L. Crowell, Las Vegas-Clark County Library District, said he represented a cultural facility which fully supported the intent of the resolution.

Laura Mijanovich, American Civil Liberties Union of Nevada, said she was appearing on behalf of her organization in support of A.B. 351. She added she supported the bill as an individual artist, and was a member of an arts consortium that promoted artistic expression in the region. She said art promoted the economy and enhanced education.

Nicole J. Lambolely, City of Reno, said the City of Reno had concerns about the bill initially, but the bill's sponsor worked with them, and they fully supported the resolution as the bill was now written.

Nancy J. Howard, Nevada League of Cities, said she wanted to thank Assemblyman Mortenson for working so closely with her organization to address their concerns as the bill was written. She said they supported the bill as it now appeared.

Chair Hardy asked if there was any testimony in opposition of A.B. 351. As there was none, he closed the hearing on A.B. 351 and opened the hearing on A.B. 355.

ASSEMBLY BILL 355 (1st Reprint): Provides right of judicial review for certain final decisions of housing authorities. (BDR 25-752)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, said she was appearing to discuss A.B. 355 which granted the ability to have a court review the decisions of public housing authorities, generally referred to as a PHA or public housing agency by the U.S. Department of Housing and Urban Development (HUD). She said the administrative decisions of most state agencies could be reviewed by the courts under the Administrative Procedures Act. She said PHAs were established under chapter 315 of *Nevada Revised Statutes* (NRS). She said PHAs operated a number of programs which provided affordable housing opportunities to low-income, elderly and disabled Nevadans. She stated most funding was from federal monies.

Assemblywoman Giunchigliani said the most common programs were conventional public housing, where the projects were owned and operated by the PHA, and the Section 8 voucher program under the United States Housing Act of 1937, where the PHA contracted with a private landlord to provide the housing. She said in both programs, a tenant's rent was subsidized by federal funds.

Assemblywoman Giunchigliani said decisions terminating a Section 8 voucher required a PHA to offer a tenant the opportunity to request a due process administrative hearing before a housing authority hearing officer to contest the decision. She said Nevada did not have a statute that authorized a recipient to ask for a State court to review the agency's decision. She said Nevada Legal Services requested the bill draft due to receiving a number of hearing decisions from the public housing authorities which they believed were unfair and unlawful. She said A.B. 355 encountered some opposition in the Assembly; in response, an amendment was initiated and adopted which greatly limited the bill's scope. The amendment addressed the concerns expressed by the PHAs in their testimony. She said the bill had been narrowed to only focus on Section 8 vouchers.

Jon L. Sasser, Washoe Legal Services, stated the need to have judicial review of housing authority decisions. He said the bill was narrowed to accomplish three things: a judicial review only for those decisions of Section 8 voucher terminations; a review procedure to mimic the procedures used in the State's Administrative Procedures Act requiring more judicial review before a stay was granted than the original bill proposed; and protection for private landlords who had Section 8 tenants in the complexes. He said if there was a decision to terminate the Section 8 subsidy and the tenant went to court seeking judicial review, the landlord was entitled to receive the rent pending the decision. He said if the landlord did not receive the rent, the normal eviction procedure for nonpayment of rent applied. He said initial concern was the bill would open the floodgates of litigation; after the bill was narrowed, the courts were satisfied it would not have a major impact.

Senator Raggio asked Mr. Sasser if the bill precluded the ordinary remedies for landlord and tenant situations, such as failure to pay rent or the ability to give a 30-day notice to vacate the premises on a month-to-month lease. He asked how the bill affected the applicability of those laws.

Mr. Sasser said the bill did not affect those laws in any way; the private landlord who rented the unit to the tenant had all the normal remedies under the Landlord Tenant Act. He said there were some instances where federal law applied to the lease. He said when the housing authority made a decision to rescind a voucher for a variety of reasons, this bill gave the tenant recourse.

Senator Raggio inquired why a voucher would be taken away from a tenant. He said if a tenant committed a nuisance on a property, he wanted a landlord to have all the ordinary remedies available in a landlord-tenant situation.

Chair Hardy asked if there was further testimony in favor of A.B. 355.

Ernest K. Nielson, Washoe County Senior Law Project, said his organization represented seniors in Washoe County and had opportunities for involvement with the housing authorities. He said his organization was frustrated because the issues were of fact and how evidence was applied. Mr. Nielson read his testimony to the Committee ([Exhibit C](#)). He said A.B. 355 was the only recourse to have cases heard by a court. He said if the bill passed, the quality of the housing authority administrative hearings would improve. He said many of his senior clients could not survive without the Section 8 subsidy. He said it was vitally important to provide some protections for these people.

Robert A. Desruisseaux, Northern Nevada Center for Independent Living, said he was appearing in support of A.B. 355. He said the earlier testimony clarified the intent of the bill. He said he had experience in the past with individuals who contacted him when they lost their Section 8 vouchers based upon lack of proper process. He mentioned an individual moving from one location to another who needed to activate the portability section of his voucher by taking his Section 8 voucher to another housing authority. He said the individual failed to get a written agreement from his landlord releasing him from his lease. Although the individual had a verbal agreement with the landlord, the tenant's Section 8 voucher was going to be revoked for failure to get the written agreement. Mr. Desruisseaux said he circumvented the administrative process because he had a relationship with the director of the local housing authority. He said this type of bill would give the same opportunities to all individuals. He said he only had contact with approximately 1,700 individuals in the State whereas there were approximately 300,000 people with disabilities in Nevada. He urged the Committee's support of A.B. 355.

Mr. Sasser said Anna Marie Johnson with Nevada Legal Services had prepared testimony for the Committee, but she had to testify on another bill in a different committee. He briefly reviewed her comments and gave the Committee her written testimony ([Exhibit D](#), original is on file at the Research Library).

Chair Hardy said he would submit Ms. Johnson's testimony for the record. He asked if anyone wanted to testify in opposition of A.B. 355.

David C. Morton, Executive Director, Reno Housing Authority, said he was not in opposition of the bill as now written, but strongly opposed the original bill. He said some unintended consequences in the original bill were eliminated, and the bill now focused on termination of Section 8 voucher assistance. He said the people affected lived where they wanted to live and were not forced to live in a particular complex with other people who had no choice where they lived. He said that particular group of people had no present process for judicial review, as other groups had in public housing. He said he was neutral concerning the bill.

Mr. Morton suggested the bill might need to clarify that anyone with a Section 8 voucher not only had to pay rent, but they had to remain in good standing under their lease. He said the bill did not say the tenant had to remain in good standing. He said the voucher program assistance was to the individual, not to the property. Mr. Morton said reasons to terminate a Section 8 voucher included fraud or violation of program rules.

Senator Raggio asked if when a voucher was granted, the person receiving assistance was required to enter into a lease or rental agreement with the landlord. Mr. Morton responded it was required. Senator Raggio asked if the lease had to extend for a period of time.

Mr. Morton responded the lease had to be for one year. He said, theoretically, it could be for six months, but the lease currently used was for one year.

Senator Raggio asked if Section 8 vouchers were unavailable unless the tenant had at least a year's lease or rental agreement. Mr. Morton said the tenant received the voucher before he entered into a lease. He said if the housing authority determined an individual was eligible for assistance, was at the top of the list and had all his or her documents, that individual was given a voucher to use for housing.

Senator Raggio asked Mr. Morton what issues would cause a housing authority to withdraw a voucher. Mr. Morton replied the most common reason was fraud. He said most people were terminated from the program because they allowed someone to live with them who was not supposed to be there. He cited

examples of a boyfriend with a good job and plenty of money, and people who had jobs or income unbeknownst to the housing authority. He said usually the housing authority asked the voucher holder to repay the rent money and allowed them to stay in the program.

Senator Raggio asked if there was a waiting list for the vouchers. Mr. Morton replied hundreds of people wanted and needed housing. Senator Raggio asked how much time Mr. Morton thought a judicial review would take.

Mr. Morton said a housing authority agency had to prove a confirmed violation of a portion of the program agreement had occurred, and then there were two hearings after confirmation. The first hearing was with the department director, and the second hearing was held before someone outside of the department.

Senator Raggio reiterated his question concerning a time line for a judicial review. Mr. Morton said the timetable would be the same as set forth in the Administrative Procedures Act (APA), although he could not give specific timetables. He said they could delay the denial of the voucher for several months; they would go to district court under this bill.

Senator Raggio said in Clark County, cases waited for years before being heard. He asked for further information concerning the time line required for judicial review.

Chair Hardy said he was concerned the bill could be used as a tactic for delay. He requested the staff talk to the district court to try to determine the time line if the bill were approved.

Mr. Sasser said as proposed by A.B. 355, the decision for judicial review concerned revoking the Section 8 voucher. He said the bill would not stop the tenant from eviction for breach of lease or nuisance. He said the bill required filing a petition under the APA which was difficult to do without an attorney. He said the people were not able to pay an attorney, so they would go to Legal Services.

Chair Hardy closed the hearing on A.B. 355. He said a group from Clark County was requested to give a presentation to the Committee on the air quality local road paving credit program.

Dan Musgrove, Clark County, introduced Jeremiah Carroll, Christine Robinson and Michael Uhl, and stated they were appearing before the Committee at the request of Senator Titus.

Christine Robinson, Director, Air Quality and Environmental Management, Clark County, said her opening remarks gave background information regarding air quality programs in Clark County, including what had become known as the air quality local road paving credit program. She said discussions led to the proposed creation of a new, regional air quality agency and an accompanying funding package. She said the Governor vetoed S.B. No. 536 of the 71st Session because of the funding package. She said Governor Guinn assigned the Clark County Board of Commissioners as the lead agency for air quality programs in July 2001.

Ms. Robinson said Clark County had not met federal health standards for two air pollutants, particulate matter 10 (PM10), which is dust, and carbon monoxide. She said a state implementation plan was devised and submitted to the U.S. Environmental Protection Agency (EPA).

Ms. Robinson said Clark County made significant progress and all required plans were submitted and approved by the EPA. She said one of the items investigated previously by the committee on S.B. No. 432 of the 70th Session was the local road paving credit program. She said although it was also referred to as an Emission Reduction Credit program (ERC), the road paving credit program was not an ERC. She said the federal Emission Reduction Credit program was outlined under the federal Clean Air Act. She said it required companies that were major sources of emissions over a certain threshold to offset or reduce emissions beyond the threshold if they located in an area which failed to meet federal health standards. She reiterated Clark County had not met the health standards for PM10 and carbon monoxide in the past, and the Las Vegas Valley was defined as the non-attainment area. She said for a major source to locate in the community, they located out of the Las Vegas Valley in surrounding areas. Ms. Robinson said last year's designation of the Valley as a non-attainment area for ozone was much larger than southern Nevada was used to in terms of air quality. She said it was important to recognize the need to meet the requirements of the federal ERC program.

Ms. Robinson said Clark County had the local road paving credit program which was similar in that its purpose was to reduce emissions in exchange for emitting

emissions. She said S.B. No. 432 of the 70th Session requested an audit of that program, and the audit began in June 2002. She said Jeremiah Carroll would discuss the audit.

Jeremiah P. Carroll II, Director, Audit, Clark County, said he reviewed the program under discussion. He said he wanted to discuss the background of the audit for the local roads paving program. Mr. Carroll stated the Clark County District Attorney's office originally reviewed the program. He said they told him they had no evidence of illegal activities, but it appeared there was sloppy paperwork. He said the Clark County Health District tried to have an audit performed at that time, but due to cost, it was not done. He said his scope of work involved looking at the internal controls, ledger balances and conducting discussions with employees concerning past practices ([Exhibit E, original is on file at the Research Library](#)). He said Clark County inherited a local road construction funding program from the Health District that was administratively mismanaged. He said internal controls were not sufficient, and there were inadequate policies and procedures. Mr. Carroll said there was no supervision of data input, and blank records were evident in the nonsecure database. Mr. Carroll continued to discuss the objectives, scope and methodology of the audit as shown on pages 7, 8 and 9 of [Exhibit E](#).

Mr. Carroll said two different formulas were initiated to determine the silt content; one of the later formulas introduced in regulation dealt with silt content. He said companies hired outside firms to measure the silt content; if it had high silt content, typically, a company received a higher ERC number. He said prior to the change in the formula, the silt content was approximately 12 percent. He said the Desert Research Institute said the average silt content was normally 16 percent. He said when he looked at the documents, silt content varied greatly—at least 69 percent of the silt content was higher than 16 percent. At times, the silt content reached 90 percent.

Mr. Carroll said there were concerns about the rate set by the Health District for the purchase of paving credits, as noted on page 9 of [Exhibit E](#). He said credits possibly sold higher than what they were really worth. Mr. Carroll said during the transition period while he was doing the audit, Clark County Air Quality and Environmental Management instituted corrections in the program. He said Mike Uhl would discuss that subject.

Michael Uhl, Air Quality and Environmental Management, Clark County, stated he was an analyst who was given the task of administering the program. He said in parallel to the audit, his department moved forward fixing problems with the program. He said there were two phases; one looked at the local program and the other looked at the federal program. He said there was some crossover in the programs. He said the ERC Registry did the accounting for both the local and federal programs. He said this was one of the significant sources of problems, especially for the local program as there were no internal controls or quality assurance in the system.

Mr. Uhl said he asked Ms. Robinson to put a moratorium on the program. He said he wanted to conduct a review of all the policies and rules. He said the purpose was to understand the history and intent of the old program before designing a new program. He said, eventually, the rules were rewritten in simple, straightforward language, so they were easily understood by any layperson. He said the new program developed a template used for submitting ERC data; policies and standard operating procedures had been developed; and the database and actual software to account for transactions was also redesigned. He said it was a restricted and controlled process which included air checking, validation of data and security restrictions.

Chair Hardy asked the Committee if they had any questions for Mr. Uhl.

Senator Titus said she served on the interim committee that looked at the program. She said at that time, the program was a disaster, and there was a reluctance to admit to the problems or audit the program. She said the bottom line was the Health District gave one paving company credit for paving roads without checking to see if the work was done; the paving company then sold their credits to a "bunch of polluters" at a marked-up rate.

Mr. Uhl responded to Senator Titus by saying at first glance, it might appear as she stated. He said the problem became more of an issue of different jurisdictions that awarded their contracts in terms of established procedures. He said each area had individual procedures to award paving projects.

Senator Titus said only one company did most of the paving. Mr. Uhl said one company did something no other paving company had done. They hired a full-time person to track the release of paving projects by the different areas in

Clark County that allowed them to maximize their ability to acquire those projects.

Senator Titus asked if the company then sold those credits to polluters at a higher rate. Mr. Uhl replied yes, it was a market-based system; the credits were commodities. She asked Mr. Uhl if it was still possible to sell the credits under the new system.

Mr. Uhl said one of the first rule changes removed the ability to generate road paving credits. He said the first action Clark County took was to shut off those credits.

Senator Titus asked what a company did today to receive credits, and if credits existed for doing other things, such as planting trees.

Mr. Uhl said the rule change enacted in March 2005 essentially eliminated all requirements for local offsets. He said after discussion with the District Attorney's office, those credits and the offset requirements attached to them were eliminated. He said that had the effect of terminating the program at that moment.

Senator Titus asked Mr. Uhl again if there were any kind of credits available that could be sold. He replied there were no local credits, only federal ones. She asked what the federal credits entailed.

Ms. Robinson responded that under the federal program and the Clean Air Act, the key was to reduce more emissions than those emitted. She said there were numerous ways to accomplish that, and it was good to have variety in the way emissions were reduced. She said the Clean Air Act clearly stated emission reductions were permanent, quantifiable, surplus and federally enforceable. She said it laid out a prescription for ways to make it work. She said the key was to make the process as public as possible. She said the ERC Registry was on the County's Web site, and there was still a legitimate credit-trading program.

Senator Titus asked if there were good accounting measures to eliminate problems. Ms. Robinson replied she was comfortable with the situation today.

Chair Hardy asked if there were further questions from the Committee. He said the Committee would open discussion on A.B. 323.

[ASSEMBLY BILL 323 \(1st Reprint\)](#): Requires Bureau of Consumer Protection in Office of Attorney General to conduct audit and investigation of rate-setting practices of Truckee Meadows Water Authority. (BDR S-137)

Assemblywoman Heidi S. Gansert, Assembly District No. 25, said [A.B. 323](#) required an audit investigation of the rate-setting practices of Truckee Meadows Water Authority by the Bureau of Consumer Protection within the Office of the Attorney General. She said in 2000, Washoe County and the Cities of Reno and Sparks formed a joint powers authority in order to facilitate the purchase of a water system previously owned by Sierra Pacific Resources. She said the new entity was named Truckee Meadows Water Authority (TMWA), and the TMWA board of directors had rate-setting authority. Assemblywoman Gansert said TMWA issued more than \$4.5 million in bonds to acquire water assets from Sierra Pacific Resources, fund capital improvement projects and stabilize water rates.

Assemblywoman Gansert said after two years, TMWA instituted two rate increases. She said TMWA stated the rate increases and financial difficulties stemmed from the original purchase of the assets from Sierra Pacific Resources when they overpaid for the assets and that put them at a financial disadvantage. She said she agreed too much was paid for the assets.

She stated [A.B. 323](#) was about accountability; TMWA was not receptive to their customers or to outside experts. Assemblywoman Gansert said TMWA had the highest water rates in the entire State, which were 50 percent greater than rates in Las Vegas. Assemblywoman Gansert stated she supplied a substantial package of information for the Committee and wanted to point out some specific issues concerning TMWA. She said TMWA financed the majority of their capital improvements using current rates without bonding over the term the improvements would be used. She cited a letter from John Guastella ([Exhibit F](#)) who concluded TMWA's rate proposals and rate design violated basic rate-making principles of fairness and contradicted the American Water Works Association manual on rate setting referenced on page 4 of [Exhibit F](#).

Assemblywoman Gansert directed the Committee to a sheet she prepared which outlined the discretionary expenditures for TMWA over the past six months ([Exhibit G](#)). She said TMWA granted raises for employees of \$700,000, which were approved last September; these governmental employees who were part of the Public Employees' Retirement System had received \$550,000 worth of

bonuses. Assemblywoman Gansert said the TMWA decided to create a charitable organization using ratepayers' dollars. She referenced a letter from the Office of the Attorney General which stated the TMWA did not have vested authority to create such an organization ([Exhibit H](#)). Lastly, she referred to the final item on page 1 of [Exhibit G](#) which discussed the cost for fire hydrant repair and maintenance.

Assemblywoman Gansert's final reference was to a TMWA staff report for a tentative budget ([Exhibit I](#)). She said the budget was the reason she asked the Consumer's Advocate from the Office of the Attorney General to audit the TMWA. She said the cost of the audit was \$100,000 or less. The Bureau of Consumer Protection intended to use personnel from within their office as well as outside consultants.

Senator Townsend asked if she was familiar with the current request for a 10-percent rate increase of which the majority of the funds were for cash reserves. Senator Townsend said he had sent a letter stating the TMWA did not need the increase. He asked if she knew what occurred in the last rate increase.

Marilyn Skibinski, Regulatory Manager, Bureau of Consumer Protection, Office of the Attorney General, said she was not familiar with the last rate increase request. She said the TMWA was not under their jurisdiction, and they did not participate in rate increases. She said the office had contact with Assemblywoman Gansert and customers of TMWA who contacted them over the past year.

Senator Townsend said he thought the Bureau of Consumer Protection or the Public Utilities Commission of Nevada should become the experts relative to TMWA's financial condition and rate-setting practices. He said this should be discussed with the sponsor of the bill. He acknowledged the unique situation wherein Washoe County now had two water systems and numerous wells.

Ms. Skibinski told Senator Townsend it would be a big change for the Bureau of Consumer Protection to have jurisdiction over a governmental or quasi-governmental entity. She said [A.B. 323](#), with an initial audit to identify and locate problems, was an excellent place to begin with the TMWA.

She said the Bureau of Consumer Protection was in support of [A.B. 323](#). She mentioned initial concern about the funding mechanism for the audit as worded

in the original bill. She said they were pleased with the funding for the audit as now worded.

Chair Hardy said he had a number of people signed up who wanted to speak in favor of A.B. 323. He asked them to come forward to testify.

John Slaughter, Washoe County, said the Washoe County Board of Commissioners reviewed A.B. 323 and unanimously voted to support the bill.

Michael S. Trudell, Manager, Caughlin Ranch Homeowners Association, said he was also representing himself as a residential, metered customer of TMWA and a former member of the TMWA rate-making review committee. He said he provided written testimony to the Committee (Exhibit J, original is on file at the Research Library). Mr. Trudell said he would briefly discuss the high points of his written testimony. He said years ago, the surface water was treated relatively inexpensively. Mr. Trudell cited the Homeowners Association rates of \$85 per month in 1990 for a 2-inch main jumped to \$1,200 per month the next year for the same line after meters were installed. Mr. Trudell read from page 3 of Exhibit J concerning his recommendations to the TMWA as a former member of the rate-making review committee. He concluded his testimony by saying TMWA lacked fiscal and personal accountability and had no creditable mechanism to ensure oversight of operations.

Ike Eichbaum stated he had lived in Reno since 1968, and was a chemical engineer who had worked with water reclamation for the United States Bureau of Mines. He said when he first arrived in Reno, his water bill was a flat rate of approximately \$7 per month. Mr. Eichbaum stated his current flat rate was \$74 per month. He said he had neighbors who were placed on meters and their monthly water bill jumped to \$250 in May and \$350 in June. Mr. Eichbaum stated people living on fixed incomes or retired people could not afford those rates. He said the neighborhood had other problems with TMWA. He said the Attorney General's Office issued an opinion that the TMWA was accountable only to its board. He said any change in the current manner by which the TMWA was regulated would require enabling legislation.

Elaine B. Steiner stated she lived in Reno and was testifying in support of A.B. 323. She said she lived in an older southwest area of Reno served by TMWA. She said they had foregone the flat rate service and had a meter installed to conserve water and pay only for the water used. She said the

present rate structure was inherited from Sierra Pacific Resources. She said the present public consortium paid more than the company was worth; bonds needed to be retired, equipment needed to be repaired or replaced and employees needed to be paid. The board which oversaw the policy functions of TMWA was made up of elected officials from the three governing entities in Washoe County. She said most general improvement districts elected citizens to serve on the governing board. She said the current board could not agree on a nominee for the empty seat on its board.

Ms. Steiner said under the current water rate schedule, the basic residential rate, whether metered or not metered, was determined by the size of the pipe from the street to the residence. She said the larger the pipe, the higher the basic rate. She said the number of gallons of water used was not changed by the size of the water pipe. She added that metered customers paid a monthly customer charge based on the size of the service pipe and her monthly constant charge was \$17. She said TMWA also rounded out under the commodity charge for metered customers who paid a rate for x number of gallons used per billing period. She said by rounding out for billing, the TMWA did not identify the amount of actual water usage for customers and was unable to give customers the exact number of gallons used because of the way the meters were configured. She said her last month's bill was \$22; of that sum, \$17 was the flat charge and only \$5 was for the water she used. She suggested the Legislature find a way to establish an oversight function in which citizens had a greater chance for real participation in governance.

Chair Hardy asked if there was any further testimony in favor of A.B. 323. As there was none, he requested testimony from people opposed to the bill.

Steven K. Walker, Truckee Meadows Water Authority, introduced Jeffrey Tissier, and said Mr. Tissier would make the presentation.

Jeffrey Tissier, Manager, Financial and Administrative Services, Truckee Meadows Water Authority, said TMWA welcomed the audit and investigation as proposed in A.B. 323. He said the TMWA preferred not to pay \$100,000 for the proposed audit, since the only source of revenue for TMWA was from customer rates or development fees ([Exhibit K](#)). He said the TMWA needed to establish credit worthiness and demonstrate the ability to pay their debts. Mr. Tissier read his testimony to the Committee. He referenced the Bureau of Consumer Protection which was involved in the water asset divestiture and

expressed concerns in the interim compliance order that water revenues might not cover the operating expenses of the water authority. Mr. Tissier said the referenced "Interim Compliance Order" was provided to the Committee ([Exhibit L](#), original is on file at the Research Library). Mr. Tissier concluded his presentation by reiterating the TMWA appreciated the concerns of the community and welcomed the audit.

Chair Hardy closed the hearing on [A.B. 323](#) and opened the hearing on [A.B. 334](#).

[ASSEMBLY BILL 334 \(1st Reprint\)](#): Provides for protection of social security numbers and certain other personal information. (BDR 19-874)

Assemblywoman Barbara E. Buckley, Assembly District No. 8, said she was the sponsor of [A.B. 334](#). She introduced her intern, Jonathan R. Cervas, and said Mr. Cervas would present the bill to the Committee.

Jonathan R. Cervas, Intern to Assemblywoman Barbara E. Buckley, University of Nevada, Las Vegas (UNLV), said [A.B. 334](#) provided for the protection of social security numbers and other personal information. Mr. Cervas said it was not uncommon for people to have their identity stolen by fraud and deception ([Exhibit M](#)). He said large volume databases on computer systems made the information more accessible. He said identity theft affected between 500,000 and 700,000 people a year. Mr. Cervas stated social security numbers were readily available from many sources, such as driver's licenses, marriage licenses, and birth and death certificates, as noted on page 2 of [Exhibit M](#). He added Nevada ranked second among states in identity theft victims. [Assembly Bill 334](#) provided measures to prevent identity theft; he outlined those measures and referenced page 3 of [Exhibit M](#).

Senator Titus asked Mr. Cervas about spyware and how it was loaded on someone's computer.

Mr. Cervas said spyware was downloaded from a third-party Web site; by clicking on a link, spyware downloaded to the computer without a person's knowledge. He said it was a growing problem in the computer world, and software programs were under development to prevent it.

Senator Titus asked if UNLV sold lists of student names to credit card companies and whether social security numbers were sold with those lists.

Mr. Cervas said he was unaware of the University selling student social security numbers. Assemblywoman Buckley said a bill was passed last Session to prohibit schools from selling student social security numbers.

Assemblywoman Buckley had additional amendments requested by various people. She said Michael Willden from the State of Nevada, Dan Musgrove from Clark County, Jim Nadeau with the Realtors Association and John Wiles with the Division of Industrial Relations had requested the amendments. She said James Jackson of the Consumer Data Industry Association had also proposed an amendment regarding a typographical error in the bill.

Assemblywoman Buckley said she would briefly discuss the proposed amendments. She said section 1 of the bill required a governmental agency to maintain numbers in a confidential manner; section 3 of the bill stated a person shall not include, and a government agency shall not require, the inclusion of a social security number. The proposed amendment combined section 1 with section 3 to clarify that government agencies may require the numbers as necessary for administration of a program or to apply for federal or State grants ([Exhibit N](#)). Assemblywoman Buckley said paragraph 3 added clarification of the term "as soon as practicable." She said it was proposed by the Nevada Association of Realtors over concern about the meaning of practicable. She said the third suggested amendment in [Exhibit N](#) added the term, "but not later than 30 days after the entity knows or should have known of the breach." The last amendment dealt with the Division of Industrial Relations' (DIR) records. She said DIR currently had personal information on workers' compensation claimants. She said the amendment in [Exhibit N](#) clarified by regulation the personal information would be redacted.

Michael J. Willden, Director, Department of Human Resources, said their concerns were resolved, and subject to the bill drafting language, his Department was satisfied with the bill.

Chair Hardy said if the bill was processed, the amendment would be adopted and all interested parties would be given an opportunity to review it.

Mr. Musgrove said his organization agreed with Mr. Willden.

Buffy J. Dreiling, Nevada Association of Realtors, said her organization approved of the language in the bill and appreciated Assemblywoman Buckley's assistance.

John F. Wiles, Division Counsel, Division of Industrial Relations, Department of Business and Industry, said he supported the amendments and appreciated the work Assemblywoman Buckley had done on the bill.

Rose E. McKinney-James, Clark County School District, stated for the record she had a request for clarification. She had spoken to Assemblywoman Buckley about the questions the School District had concerning the bill. She said the amendment might not address the language referring to "willful." She said the area of concern was in section 4, subsection 5 of the bill. The language allowed an individual to bring a cause of action in the event they suffered any injury consistent with the language of the bill. She said the School District Office of the General Counsel said there was a possibility if the District faced a situation where someone brought a cause of action, absent an indication the District was negligent in some way, it would create a flurry of lawsuits and class actions against the District. The language set forth on page 5, line 44 of A.B. 334, which related to chapter 41 of NRS, did not include the reference to negligence. She said she did not know if the amendment clarified her concern.

Chair Hardy said the bill would not be processed today. He asked her to get her questions clarified and notify Assemblywoman Buckley and him of the answer as soon as possible.

James Jackson, Consumer Data Industry Association, said he had discussed with Assemblywoman Buckley the language concerning whether or not there would be a private right of action. He said they worked on the language, and his interpretation of the bill was there first had to be a violation of the statute. He said that meant if there was a breach, the entity suffering the breach had to fail to notify those who were included in the database. He said until that occurred, no right of action accrued or arose. With respect to the term willful, he said that did not go to the basic cause of action for a failure to notify; willful went to whether or not punitive damages applied for an egregious violation of the statute. He said he would continue to discuss the language with Ms. McKinney-James and Assemblywoman Buckley.

Cheryl Blomstrom, Nevada Consumer Finance Association, said her organization also had conversations with Assemblywoman Buckley, and their concerns were addressed with the addition of the willful language. She said their concern was in a security breach situation because there were two victims. She mentioned the business whose data was breached and the person whose data was taken were both victims. She said she was comfortable with the willful language included in the bill.

Mr. Jackson said he presented the Committee a 1-page amendment ([Exhibit O](#)) to the citation on page 6, section 6, subsection 5 at line 3 of the bill that added the letter "p" to the United States Code to ensure the notification was specific.

William R. Uffelman, Nevada Bankers Association, said he went online to double check and the "p" was the letter designated for a consumer reporting agency. He said his organization supported the bill as amended.

Nancyann Leeder, Nevada Attorney for Injured Workers, Department of Business and Industry, said she supported the amendment proposed by Assemblywoman Buckley pursuant to Mr. Wiles' conversation with her. She said her organization thought it would prevent injured workers' information from being bruited about and perhaps stolen.

Alan Glover, Clerk/Recorder, Carson City, said he wanted to provide more exhibits and information to the Committee. He said Assemblywoman Buckley included the language the recorders needed to refuse a recording. He said his records could not be "Googled." He said his office did not index by social security number or by date of birth, but records in a clerk's office could be attacked because court records had the social security numbers of criminal defendants. He said there was no legal authority for the Clerk's office to collect that information, but it was usually done at booking and included in the information. He said the information was kept in voter registration, but that information was being moved to State jurisdiction. Mr. Glover said marriage license indexes were available, but their social security numbers were not listed, although it was on the application in most of the counties.

He referred to his first exhibit for the Committee as exhibit "A" ([Exhibit P](#)) that showed what was released when the Carson City Web site was checked for a particular name. He said the example showed no social security numbers listed in the information, but the actual document had the social security number.

He said the example labeled "C," as shown in [Exhibit P](#), was a document filed with the court and then with the Recorder's office; it was a State of Nevada Department of Employment, Training and Rehabilitation record, and it always had the social security number listed. Mr. Glover said the other examples showed how to redact out information from forms. He said the information could be manually blacked out. Mr. Glover said his office was motivated to protect identity theft from occurring. He said Nevada was No. 2 in the nation for identity theft, and it was a major problem. He said social security numbers were scattered throughout records from many years. He said Carson City had approximately 19-million pages of documents since 1936.

Chair Hardy said it was time for the Legislature to study the laws of Nevada and determine the areas that compromised privacy rights due to the Internet. He said all the areas needed to be studied and remedied as soon as possible.

Kathy Burke, Recorder, Washoe County, said she agreed identity theft was a huge problem. She said the records in Washoe County were all on microfilm, and it was almost impossible to redact hairline information from the microfilm. She said if one employee redacted 1,000 pages of information per day, it would take 155 years to complete the task.

Chair Hardy asked if there were any further comments on [A.B. 334](#). He suggested the staff make a mock-up of the changes in the bill and discuss those changes with Assemblywoman Buckley.

Assemblywoman Buckley said in response to the Recorder's concern, the wording on page 2 of the bill stated that on or before 2017, the records had to have the social security number deleted, obliterated or otherwise removed from a document; the numbers could continue to be maintained in a confidential manner. She said 12 years gave the government a long enough time to remove the information.

Chair Hardy closed the hearing on [A.B. 334](#) and opened the hearing on [Assembly Bill 426](#).

[ASSEMBLY BILL 426 \(1st Reprint\)](#): Revises provision governing litigation expenses of Attorney General. (BDR 18-121)

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Randal Munn, Special Assistant Attorney General, Office of the Attorney General, said A.B. 426 was a housekeeping bill that originated in the Division of Internal Audits. He said the revolving fund did not have the specific language necessary to accommodate all the different types of litigation the Office of the Attorney General did. He said the fund was created in 1991 and used for witness fees and other immediate litigation expenses that needed to be dealt with quickly. He said it was a unique account in which the Attorney General was allowed to sign his own checks and then reimburse the relevant budget accounts.

Chair Hardy asked how the account was to be used.

Mr. Munn stated the account, as established in 1991, was used for fraud units and litigation vehicles. He said the specific language of the statute limited it to the Special Fund Budget Account 101-1031 ([Exhibit Q](#)).

Chair Hardy asked if there was any further discussion of A.B. 426. As there was none, he closed the hearing on the bill. Chair Hardy adjourned the meeting at 4:28 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____