ACCESS TO GOVERNMENTAL RECORDS

Bulletin No. 83-2

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

December 1982

ACCESS TO GOVERNMENTAL RECORDS

Bulletin 83-2

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

February 1983

ACCESS TO GOVERNMENTAL RECORDS

TABLE OF CONTENTS

Senate Concurrent Resolution No. 54—Committee on Legislative Affairs

FILE NUMBER 171

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study the provisions of Nevada law governing access to public books and records.

WHEREAS, Much uncertainty has been expressed about the applicability of the provisions of Nevada law which govern access to public books and records; and

WHEREAS, Government officials who are responsible for administering these laws must, for their own protection and the protection of the legitimate right of others to privacy, be provided with clear statutory guidance as to which books and records are available for public inspection and which are not; and

WHEREAS, It is essential that any needed revision of these laws appropriately balance the interest of the public in obtaining access to useful information with the interests of particular persons in maintaining privacy and confidentiality in certain matters; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the legislative commission is hereby directed to study the existing provisions of Nevada law governing access to public books and records and give particular attention to defining precisely what books and records may be made available for public inspection, and under what circumstances, with a view to making the greatest amount of information collected by government available to its citizens consistent with their legitimate need for privacy; and be it further

Resolved, That the legislative commission seek the assistance of representatives of interested governmental agencies, the Nevada State Press Association and other associations representing persons who gather and report the news; and be it further

Resolved, That the legislative commission report the results of the study and any recommended legislation to the 62d session of the legislature.

19 81

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 62ND SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Senate Concurrent Resolution No. 54 of the 61st session of the Nevada legislature, which directs the legislative commission to conduct a study of existing provisions of Nevada law governing public access to governmental records and give particular attention to defining precisely what records may be made available for public inspection, and under what circumstances, with a view to making the greatest amount of information available which is consistent with the legitimate need of citizens for privacy.

The legislative commission appointed the following subcommittee to make the study:

Senator James N. Kosinski, Chairman; Assemblyman Peggy B. Westall, Vice Chairman; Senator Joe Neal; and Assemblymen Bill D. Brady, Robert G. Craddock, Jane F. Ham and Danny L. Thompson.

The legislative commission accepts the subcommittee's report with its suggested legislation and transmits the report to the members of the 1983 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
February, 1983

* *

LEGISLATIVE COMMISSION

Assemblyman Robert R. Barengo, Chairman
Assemblyman Joseph E. Dini, Jr., Vice Chairman

Senator Keith Ashworth
Senator Richard E. Blakemore
Senator Jean E. Ford
Senator Virgil M. Getto
Senator Lawrence E. Jacobsen
Senator James N. Kosinski
Assemblyman Mike Malone
Assemblyman Paul W. May, Jr.
Assemblyman Kenneth K. Redelsperger
Assemblyman Robert F. Rusk

REPORT OF THE SUBCOMMITTEE FOR STUDY OF ACCESS TO GOVERNMENTAL RECORDS

I. THE INTERIM STUDY IN GENERAL

1. Background of the study.

During the 1981 session the attorney general circulated a draft of a proposal to amend Nevada's law on access to governmental records. The draft consisted primarily of a definition of what constituted a "public record" and a provision for civil enforcement of the right to inspect and copy governmental records. This draft drew immediate attention to and debate on the subject from legislators, public officers and members of the public, especially the news media. The legislature determined that the subject was a complex one which would affect all agencies of state and local government and potentially affect all the citizens of the state who seek information from a governmental agency or about whom information to be disclosed may relate, and that a subject of such complexity and debate should be given careful study during the legislative interim.

2. Meetings held.

The interim subcommittee to study access to governmental records was scheduled to meet four times but the subject was of such complexity that in the end it held seven meetings, three in Carson City, three in Las Vegas and one in Sparks. At its first meetings the subcommittee received testimony from the attorney general, state librarian, state archivist and other officials of state and local government and from members of the public, especially the news media and Common Cause. The primary question considered by the subcommittee in these early meetings was what problems were encountered under existing Nevada law on access to governmental records.

At its second meeting the subcommittee reviewed the provisions of the Uniform Information Practices Code with Professor Albert Pearson of the University of Georgia School of Law. In subsequent meetings the subcommittee studied various definitions, procedures for access, exemptions from disclosure and means of enforcement concerning governmental records, as provided in several federal and state laws on the subject. The subcommittee also reviewed four successive drafts of its proposed legislation.

In its final meetings the subcommittee received additional testimony, especially from government officials, on what problems they had with the subcommittee's proposed legislation.

3. Nevada law described.

The principal existing statute is NRS 239.010, which contains a criminal penalty for nondisclosure in subsection 2. Subsection 1 provides that "All public books and records of * * * [governmental officers], the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person * * *." The law does not contain a definition of "public record."

Because use of the adjective "public" implies that not all records in those offices need be disclosed, the legislative counsel has construed the word "public" to refer to those records which are maintained by an agency for the purpose of notifying the public of their contents. An example is the county recorder's records of instruments which affect the title to real property located in the county. If a governmental record is not compiled for the purpose of notifying the public of its contents, under this interpretation the record is not a "public record," and unless it is declared by law to be confidential, it may be disclosed or withheld at the discretion of its custodian.

The existing law also includes sections in Nevada Revised Statutes which afford some form of confidentiality to a class or classes of records in a specific governmental agency. These sections are listed in Appendix A.

Attorney General's comments.

The attorney general at the time of the study, Richard Bryan, testified at the first meeting of the subcommittee that there are two important, competing public interests involved in the study, first the need of the public to have access to information collected by government, and second the right to privacy of the citizens about whom the information relates. He criticized the existing law because, without a definition of "public record" or other clear guidelines as to whether or not a record is accessible to the public, his office is compelled to answer such questions on a case by case basis. This type of question takes up a considerable amount of his staff's time.

The attorney general also said that the existing law places the administrators of governmental agencies on the horns of a dilemma. An administrator must decide whether or not to disclose a record. If he does not disclose it he may be charged with a criminal violation; but if he does disclose it and the disclosure invades the privacy of a citizen, he may be faced with civil liability for damages.

The attorney general recommended that the subcommittee consider including the following three items in any recommended legislation, (1) a definition of the subject matter, (2) clarification of exemptions from disclosure, and (3) a civil remedy in addition to the existing criminal penalty for violating NRS 239.010.

4. Uniform Information Practices Code.

At its second meeting the subcommittee reviewed the provisions of the Uniform Information Practices Code with Professor Albert Pearson of the University of Georgia School of Law. Professor Pearson served for over 3 years as a draftsman and reporter during the drafting of the Code. He appeared before the subcommittee by courtesy of the National Conference of Commissioners on Uniform State Laws.

Professor Pearson explained that the conference originally created a study committee called the Uniform Privacy Act Committee whose first draft legislation was entitled the "Personal Records Privacy Act." The committee decided that it would be unwise to draft a statute dealing with the privacy of personal records without also dealing with access to records, since the two subjects interrelate.

The final product of the committee, the Uniform Information Practices Code, contains five articles, as follows:

Art. I -- Definitions and General Provisions
Art. II -- Freedom of Information [access to governmental records]
Art. III -- Disclosure of personal records [including the right of a person to inspect and correct records pertaining to him, and the disclosure of personal records to researchers]
Art. IV -- (Optional) Office of Information Practices
Art. V -- (Optional) Exemptions [authorizing the governor or Office of Information Practices to adopt regulations which exempt an agency from disclosing all or part of its records]

Professor Pearson said that no state had yet adopted the Uniform Information Practices Code, but in Illinois in 1980 it had passed in the house of representatives but failed in the senate. Also, Minnesota may replace its present act with the Code and Maryland is considering merging its law governing access to governmental records with the provisions of the Code governing privacy of records.

The subcommittee decided that a policy on access to governmental records needed to be established first, and that the right of privacy or of confidentiality of personal records would be considered as a subsidiary issue within the framework of policy on access. The subcommittee also decided that the right of a person to inspect and correct records relating to him and other information practices in Article 3 of the Code were important issues but they could not be dealt with by the subcommittee in the limited amount of time available to it. The subcommittee also decided there was no need to create an "office of information practices" in Nevada (Art. 4) or to give the governor authority to exempt an

agency from disclosing records (Art. 5). Thus, Article 3 was not dealt with and Articles 4 and 5 were beyond the wishes of the subcommittee, and it decided not to recommend to the legislature the adoption of the Code in its entirety.

5. Federal and state laws on access to governmental records.

After reviewing the Uniform Information Practices Code in detail, the subcommittee in its third, fourth and fifth meetings compared the Code's definitions, procedures, exemptions and provisions on enforcement with similar provisions in other federal and state laws on access to governmental records. The other acts reviewed by the subcommittee include:

U.S. Freedom of Information Act, 5 U.S.C. § 552
U.S. Privacy Act, 5 U.S.C. § 552A
California Public Records Law, Calif. Govt. Code, § 6250, et seq.
California Information Practices Act, Calif. Govt. Code, § 1798, et seq.
Michigan Freedom of Information Act, § 15.218, et seq.
Revised Code of Washington, § 42.17.250, et seq.

The subcommittee also reviewed the general policy of maximum disclosure and a minimum number of exemptions in Florida Statutes § 119.01, et seq., and 943.045, et seq., and the procedure for enforcement in Texas Stat. Ann., Art. 6252-17a (Vernon, 1982).

II. PROPOSED LEGISLATION, BDR 19-14

1. Purpose.

The purpose of the act, section 2, is to "enhance governmental accountability" (Uniform Information Practices Code § 1-102(1)). To effectuate this purpose, the draft bill makes clear in section 13 that records of the transaction of public business are governmental property.

2. Definitions.

"Agency." The definition of "agency" in section 4 includes in its scope every unit of state and local government, including the legislature, excepting only individual members of the legislature and the courts. The subcommittee excluded the courts from the operation of the proposed law because the Nevada supreme court held in Goldberg v. Eighth Judicial District Court, 93 Nev. 614 (1977) in an analogous situation involving application of the "open meeting law" (chapter 241 of NRS) to the courts, that such an application was an unconstitutional infringement on the inherent powers of the judiciary which violated the doctrine of separation of powers (Nevada constitution, article 3, section 1).

The subcommittee undertook to apply the proposed law to the legislature as a collective body but not to individual members of the legislature, because the First Amendment to the U.S. Constitution protects the relationship between legislators and constituents, requiring confidentiality. The legislative counsel indicates that the Nevada constitution provides in section 6 of article 4 that "each house * * * shall determine the rules of its proceedings," and in section 15 of article 4 for executive sessions of the senate, and that application of the proposed law to the legislature would unconstitutionally bind each house in the future and make it beholden to the other house and the governor to approve the repeal of such a statute. (See Appendix B.) Application of the proposed law to the legislature may constitutionally be accomplished by a resolution of each house of the legislature, separately, or by joint rules (which are readopted at the beginning of each session).

Although not stated in the definition of "agency," the proposed law also applies to the relevant records of persons who contract with governmental agencies to perform governmental functions (section 14). This provision is based on Florida Statute 119.011(2).

"Governmental record." The definition of "governmental record" in section 5 is intended to include all information maintained by an agency as long as it exists in some physical form. The definition was borrowed from the Uniform Information Practices Code § 1-105(3). The only general limitation on the scope of this definition is found in paragraph (b) of subsection 1 of section 10, which provides that an agency need not disclose "personal notes."

The term "governmental record" was chosen as a neutral term which is descriptive of all the records which are subject to the proposed law, in preference to "public record" which connotes only those records which are made available to the public.

"Maintain." The definition of "maintain" in section 6, which was borrowed from the Uniform Information Practices Code § 1-105(6), is intended to have the broadest possible sweep, including information possessed or controlled by an agency in any way. "Administrative control" is an important part of the definition because it means that an agency which does not have physical custody of its records cannot evade its obligation under the proposed law.

3. Access to governmental records.

The proposed law requires agencies to allow governmental records to be inspected or copied (section 8), except those records specifically exempted from disclosure by statute (section 9).

Procedure.

The subcommittee decided that initially a person should be allowed to make an oral or written request, either in person, by telephone

or by mail, but in case of a dispute over whether a governmental record should be made accessible, the person making the request must reduce it to writing (section 8). The subcommittee felt that 7 working days was an adequate time for an agency to respond to a written request, but also included a provision for extending the time to respond in case of "unusual circumstances." The provisions in section 8 are substantially those found in Uniform Information Practices Code § 2-102.

The subcommittee considered several types of procedures which might be made available to a requester after an agency denies a request, including an appeal within the agency or to an independent hearing officer in another agency, or by permitting a legal action to be brought directly in a district court. The subcommittee felt that any procedure for review of an agency's decision should be speedy, and concluded that an appeal within the agency would be dilatory rather than conducive to a speedy decision and would involve the agency's deciding the question twice when once should suffice.

On the other hand, the subcommittee thought that an initial appeal by way of administrative procedure or in the courts would be time consuming, intimidating and discouraging to the requester, and also costly to him in terms of having to employ an attorney in the case of direct appeal to the courts. The subcommittee decided to provide, in section 8, subsection 6, a procedure for appeals of denials of access to governmental records which is based on the procedure for enforcement in Nevada's "open meeting law." The State of Texas has a similar procedure in Tex. Stat. Ann., Art. 6252-17a, § 7, in which a person whose request for a record has been denied may apply to the attorney general for an opinion whether the denial of access to the record is lawful. The specific details of this procedure are set forth in section 11 of the proposed law, which is discussed below.

Fees for copying records.

The subcommittee was concerned that agencies should not earn a profit from citizens when charging for copies of governmental records. In contrast to "the currently prevailing commercial rate" in the Uniform Information Practices Code § 2-102(e), the proposed law provides in section 9 that an agency may charge a citizen only the "actual cost" of a copy. "Actual cost" is define as the marginal cost of materials and equipment, but not employees services, which are required to produce an additional copy. An agency may charge a business the "reasonable cost" of searching for, reviewing and copying a record.

Subsection 3 of section 9, which permits the public to make additional copies and abstracts of governmental records, is the perpet tion of a provision in NRS 239.010, which is to be repealed. This subsection is not intended to apply to a governmental record which is copyrighted.

4. Exemptions from disclosure.

In deciding which classes of information to exempt from disclosure in the draft bill, the subcommittee reviewed the exemptions in the Uniform Information Practices Code, U.S. Freedom of Information Act, California Public Records Act, Michigan Freedom of Information Act, and the Washington and Florida statutes concerning access to government records.

The subcommittee found that the Florida legislature, in its Public Records law, had created only 3 general exemptions from disclosure, first, an exemption for test questions and answers, second, an exemption for active intelligence and investigative information of law enforcement agencies (including certain other specific types of information in law enforcement records), and third, an exemption for records "presently provided by law to be confidential." F.S. 119.07(3). There are 184 sections in Florida Statutes which are presently provided by law to be confidential. In addition, the Public Records Law enumerates 8 additional sections relating to records that are exempted from inspection by the public, so that there are a total of 192 sections in Florida law in which specific types of records are made confidential or exempted from inspection.

The Florida Public Records Law has the fewest general exemptions from disclosure of any of the statutes examined by the subcommittee:

Uniform Information Practices Code.....12
U.S. Freedom of Information Act..... 9
California Public Records Act.....17
Michigan Freedom of Information Act.....20
Washington Public Records Law.....11

The Florida Public Records Law has so few general exemptions because of the large number of records which are made confidential by specific statute and, more important, because of the Florida policy of requiring the broadest disclosure of governmental records and affording the least confidentiality.

In deciding which exemptions from disclosure should be included in its proposed legislation, the subcommittee's policy was, as in Florida, to retain the sections in Nevada Revised Statutes which currently exempt certain records from disclosure, and to create as few general exemptions as possible. After reviewing other federal and state laws and receiving extensive testimony on the subject, the subcommittee decided that general exemptions from disclosure should be added in section 10 for 15 types of information in which the public interest in nondisclosure outweighs the public interest served by disclosure. These general exemptions from disclosure are not mandatory and do not make the specified types of information confidential; instead, disclosure to the public is simply not required. In addition to these general exemptions from disclosure, specific exemptions were added for

law enforcement information, reports of autopsies and archival records. The references to paragraphs in the underscored leadlines, below, are to the paragraphs of subsection 1 of section 10 of the draft bill in which those exemptions are formed.

Information exempted from disclosure by statute, para. (a).

This type of exemption is in most statutes on access to governmental records and was found in all federal and state laws on the subject which were reviewed by the subcommittee except the Washington law. The exemption in paragraph (a) of subsection 1 of section 10 is not based on the law of any particular jurisdiction and has been formulated in narrow and specific terms.

A search by computer was made of the text of NRS using selected words and phrases in order to identify the sections of Nevada law which make governmental records confidential. A list of the 165 sections which were found appears in Appendix A. The subcommittee examined these specific exemptions in NRS when deciding whether to add the remaining general exemptions to the draft bill.

Personal notes, para. (b).

Just as the general policy concerning exemptions from disclosure was based on the Florida Public Records Law, so this exemption for personal notes is based on a decision of the Florida Supreme Court construing that law. In Shevin v. Byron, et al., 379 So.2d 633, 640 (Fla. 1980) the definition of "public record" in F.S. 119.011(1), "all documents * * * or other material, regardless of physical form * * *" was construed by the Florida Supreme Court to include "any material * * * which is intended to perpetuate, communicate or formalize knowledge of some type." The court contrasted "public records" with notes or drafts which "constitute mere precursors of governmental 'records' and are not, in themselves, intended as final evidence of the knowledge to be recorded." Ibid. In this exemption, the subcommittee has identified the threshold of personal materials, not intended for communication, beyond which disclosure to the public is required. Materials which are intended to be disclosed include all letters, charts and tables which have been typed, all books, accounts and ledgers in which entries have been made in final form, and all memoranda which are intended to communicate, such as a receptionist's list of telephone calls received.

The legislative counsel has stated that the threshold in this exemption is too low because it fails to exempt those advisory, deliberative and consultative letters and memoranda within or between agencies, which are protected from disclosure by the doctrine of executive privilege (see Appendix C).

Questions and answers used in an examination, para. (c).

The criterion for not disclosing test questions and answers, "if disclosure would compromise the fairness or objectivity of the

examination," is derived from the Uniform Information Practices Code § 2-103(a)(4).

Privacy, para. (d).

The U.S. Supreme Court has recognized the right of privacy against disclosure, or of confidentiality of personal information furnished to the government, in Whalen v. Roe, 429 U.S. 589 (1977) and Nixon v. Adm'r of General Services, 433 U.S. 425 (1977), but has not fully defined its nature and extent. This right is also protected in most laws on access to governmental records, either as a separate act, such as the federal Privacy Act or the California Information Practices Act, or as a general exemption such as the one for "individually identifiable records" in the Uniform Information Practices Code § 2-103(a)(12).

The standard of "reasonably expected privacy" was chosen because the courts are accustomed to applying an objective test of reasonableness and the standard should be a flexible one in an area of law that is developing. Another widely used standard, "unwarranted invasion of privacy," is not objective and requires an explanatory list of examples, which makes it inflexible.

Personnel files, para. (e).

Nevada's "open meeting law," in NRS 241.030, permits a public meeting to be closed for the discussion of personnel matters. The subcommittee decided that certain basic information about governmental employees should be expressly made accessible to the public, but that other personnel matters, as in the "open meeting law," should not be made accessible to the public except with the consent of the employee.

Proprietary information, para. (f).

This exemption is based on Uniform Information Practices Code § 2-103(a)(8).

Security of recordkeeping systems, para. (g).

This exemption is based on Uniform Information Practices Code § 2-103(a)(7).

Information in the custody of an agency that performs data processing or microfilming, para. (h).

This exemption was included by the subcommittee at the request of the department of data processing.

Security of prisons, para. (i).

This exemption is based on the Michigan Freedom of Information Act § 15.243(1)(c).

Correspondence of and to the governor, para. (j).

The exemption for "correspondence of and to the governor or employees of the governor's office which is in the files of the governor's office" is based on a similar exemption in Calif. Govt. Code § 6254(l) and was intended by the subcommittee to provide for the confidentiality of three classes of communications respecting a sitting governor and his staff: first, correspondence between the governor and his staff, which recognizes the executive privilege or confidentiality of communications between the governor and his staff; second, correspondence between the governor and the public; and third, correspondence, including interagency memoranda, between the governor and other agencies of state and local government, but copies of such correspondence in the files of those other agencies are not confidential and are accessible by the public at the offices of those agencies.

In the opinion of the legislative counsel this exemption does not fully extend the executive privilege to the office of the governor because advisory, consultative or deliberative letters or memorand which are in the files of other agencies of state and local government are accessible by the public (see Appendix C).

Certain information submitted to an agency that regulates a profession, occupation or business, para. (k).

Most laws on access to governmental records exempt financial infor mation from disclosure, including commercial as well as personal financial information.

Records of arrest are governed by chapter 179A of NRS and are not generally accessible to the public. This exemption makes clear that when the provisions of chapter 179A of NRS do not apply to such records in the files of regulatory agencies, the policies of that chapter may be applied and those records need not be disclosed to the public, even though the person to whom they relate has made them available to the agency.

The subcommittee decided that a special exemption should be inclu for letters of recommendation, because making them accessible wou have a chilling effect on the candor of writers of such letters and render such letters useless.

Material donated to a library, archive or museum, para. (l).

This exemption is based on Uniform Information Practices Code § 2-103(a)(10), but instead of providing for nondisclosure "to the extent of any lawful limitation," the subcommittee decided to include a general limitation on the period of nondisclosure of 30 years or the death of the donor, whichever is longer. The purpose of this limitation on access is to overcome the reluctanc

of private persons to donate their personal papers to the state for preservation, by ensuring the donor of privacy during his lifetime while not restricting access to the papers unreasonably. In addition to this limitation, which would apply if no limitation were specified by agreement, the subcommittee included a provision for "a reasonable period of limitation" established by agreement between the donor and the receiving agency, so that donor could negotiate for a longer period of nondisclosure in special circumstances. A transitory section of the draft bill, section 69, states that this provision and the remainder of the bill do not apply to the records of former elected state officers and other persons who deposited records with a governmental agency upon an agreement providing for their confidentiality.

Appraisals of real property, para. (m).

Before a state or local governmental agency acquires real property, pursuant to NRS 342.230 it must obtain an appraisal of the property and offer the owner "just compensation" or the fair market value of the property. The department of transportation acquires land for federally funded highway projects under similar regulations. The purpose of this type of statute is to prevent the state from earning a profit in land acquisitions at the expense of its citizens, but the state is placed in a weakened bargaining position with no room to negotiate. The exemption of appraisals is intended to protect the agency's investment of money in obtaining appraisals and to counterbalance the agency's statutorily weakened bargaining position.

Existing files of law enforcement agencies, and investigative files of other agencies, para. (n).

Certain types of "active" information of law enforcement agencies are exempted in section 24 of the draft bill. The exemption of existing files, which is based on Florida Statute 119.07(3)(j), permits a law enforcement agency to withhold from disclosure all information which was obtained before the effective date of the act, because much existing information in law enforcement agencies was recorded with an expectation of confidentiality or has been maintained pursuant to grants from the former U.S. Law Enforcement Assistance Administration and is still governed by federal regulations made applicable by those grants.

Investigative files of licensing and other regulatory agencies are exempted from disclosure until an investigation is closed so that unfounded claims will not be the subject of unjustified publicity.

Public interest in nondisclosure outweighs public interest in disclosure, para. (o).

This exemption, which is based on Calif. Govt. Code § 6255, is a precautionary provision. The subcommittee felt that the general policy in the proposed legislation of providing broad

disclosure should be tempered where, in unanticipated specific cases, the public interest is best served by nondisclosure. For example, the subcommittee found that trade secrets are declared to be confidential in nine specific sections of NRS and that a general exemption for "trade secrets" was not needed in the proposed law.

A trade secret is a formula, pattern, device or compilation of information which is used in a business and gives the owner a competitive advantage. The state may require that a trade secret be disclosed for regulatory purposes pursuant to its police power however, if a trade secret, so acquired, is subsequently disclosed to the public, that disclosure is arguably a public use which is compensable pursuant to article 1, section 8, of the Nevada constitution, which provides, "nor shall private property be taken for public use without just compensation having been first made * * *." Compensation under this provision is potentially unlimited as compared to the limited liability of the state found in NRS 41.035.

If a request is made to an agency to disclose a trade secret which is not exempted by a specific statute, the agency may assert under this general exemption that disclosure is not in the public interest.

Law enforcement records.

Section 24 of the draft bill provides a specific exemption in chapter 179A of NRS for "active" information of agencies of criminal justice. This exemption is based on Florida Statute 119.07.

Records of autopsies.

Section 34 of the draft bill provides specifically in chapter 259 of NRS for the confidentiality of written reports of post mortem examinations, because they are medical records not heretofore mad confidential by statute.

Archival records.

The subcommittee found that the status of confidential government records in the archives needed clarification. These confidential records were made accessible by amending NRS 378.270, section 45 of the draft bill, to provide that records declared by law to be confidential must remain confidential for 50 years or until the death of the person to whom it relates, whichever is later.

5. Records not exempted from disclosure.

The subcommittee considered adding to the draft bill a number of general exemptions from disclosure for other classes of information. After reviewing the exemptions from disclosure of those classes of information which are already in specific sections

of NRS, the subcommittee decided that the specific exemptions in NRS sufficiently protected the confidentiality of those classes of information and no general exemptions were required. The general exemptions which were considered by the subcommittee but found to be sufficiently covered by specific statutes are as follows:

Crop reports
Examinations of financial institutions
Geological and geophysical information
Identity of persons who file complaints
Legislative counsel's records, legislative matters
Libraries' circulation records
Medical records
Recipients of welfare and other social services
Sealed bids in government purchasing
Taxpayers' returns and similar information
Trade secrets

Other types of information which the subcommittee determined did not need to be exempted from disclosure are as follows:

Archeological sites
Campaign committees
Collective bargaining at colleges
College transcripts of financially delinquent students
Mailing lists
Plans for deployment and communication codes of law enforcement agencies

Under the proposed legislation, any of these matters may be exempted from disclosure in a particular case if the public interest served by nondisclosure clearly outweighs the public interest served by disclosure.

6. Matters not affected by the draft bill.

Civil and criminal procedure in the courts.

The subcommittee decided that procedure in criminal cases, Title 14 of NRS, including the rules of discovery in NRS 174.235 to 174.295, inclusive, should not be affected by the draft bill. See Florida Statute 119.07(5). As noted, above, section 24 of the draft bill provides an exemption from disclosure for "active" information of agencies of criminal justice, which includes information that is "directly related to a pending prosecution or appeal," so that discovery in criminal cases is not affected by the draft bill.

On the other hand, the subcommittee decided that the Nevada Rules of Civil Procedure relative to discovery should not limit the proposed law on access to governmental records. NRS 2.120, the enabling statute for NRCP, provides in subsection 2 that "Such rules shall not abridge, enlarge or modify any substantive

right * * *," so that no additional statement of the subcommittee's decision is necessary in the draft bill. As a result of this policy, a litigant against a state or local governmental agency may in some civil cases circumvent the rules of discovery because of the proposed legislation, but as was noted, above, an agency's investigative files which relate to civil enforcement proceedings are exempted from disclosure until the investigation is closed.

Testimonial privileges.

The subcommittee decided that the privileges which permit a witness in a court or before a magistrate to refuse to testify about certain subjects, as set forth in chapter 49 of NRS, should not be extended so as to become general exemptions from disclosure of governmental records. In the introductory chapter to Title 4 of NRS, "Witnesses and Evidence," subsection 1 of NRS 47.020 provides, in pertinent part, "This Title governs proceedings in the courts of the state and before magistrates * * *." Thus, the testimonial privileges provided in chapter 49 of NRS do not by implication apply to governmental records or a custodian of those records except in a court or before a magistrate.

The subcommittee also decided that the exemptions in the draft bill should not by implication create testimonial privileges, so sections 10 (general exemptions) and 24 (exemption for law enforcement information) each contain a statement that "The provisions of this section do not impair or extend any privilege otherwise applicable in a judicial proceeding."

7. Enforcement by attorney general.

When a request for access to a governmental record is denied, the requester may appeal by applying to the attorney general or distr or city attorney for his opinion whether the denial of access is lawful (section 8). If a local governmental agency denies the access, the district or city attorney's opinion must be reviewed and approved by the attorney general (section 11). If the attorn general's opinion is that the record must be disclosed, the agenc must forthwith disclose it, and if the agency does not, the attor general must immediately bring an action for a writ of mandate to compel the agency to disclose the record.

The legislature may properly assign to the attorney general the duty of enforcing the proposed law, just as he enforces the "open meeting law" against state agencies. Section 22 of article 6 of the Nevada constitution provides that the legislature may prescribe the duties of the attorney general.

Conflict of interest.

The attorney general's enforcement of the proposed law does creat an apparent conflict of interest, but under Supreme Court Rule 16 a member of the state bar may represent conflicting interests if

the parties consent to it. In this case, the legislature consents on behalf of the state agencies. If the requester objects to the attorney general's representation because of his conflict of interest, the requester may move to intervene in the suit pursuant to NRCP 24, and if the attorney general's opinion is that the record need not be disclosed, the requester may sue the agency himself.

More specifically, under the rule on imputed disqualification in the proposed Model Rules of Professional Conduct of the American Bar Association, Rule 1.10, if a law department of a governmental agency has a conflict of interest, including concurrent representation in litigation, the attorneys who represent the conflicting interests need not abstain from representation if they do not regularly collaborate and are effectively screened from actual access to confidential information of the adverse clients, and the parties consent to the representation.

Testimony from the attorney general's office indicated that it receives approximately 100 requests for legal opinions per year on questions of access to governmental records. It is estimated by the attorney general's office that the number of those requests will increase twofold under the proposed law, requiring the services of one additional deputy attorney general who could devote all of his efforts to enforcing the proposed law, thereby relieving the other deputies of the task of enforcement against the agencies they usually represent in court and eliminating the conflict within the office by screening him from the remainder of the staff. The subcommittee had no independent evidence of the need for an additional deputy if this legislation were enacted.

The subcommittee decided that if the attorney general's office were to enforce the proposed law against state agencies, those agencies must be allowed to obtain private legal counsel when necessary to eliminate any actual conflict of interest. Since the attorney general would also be enforcing the proposed law against local governmental agencies, the district attorneys and city attorneys could continue to represent those agencies without conflict or the necessity of outside counsel.

Administrative and criminal remedies.

The subcommittee decided that the civil remedy, the writ of mandate to disclose improperly withheld records provided in section 11, should be reinforced by the disciplinary provisions in section 15. At the urging of Common Cause, the subcommittee decided to make criminal any repeated, willful denial of access to records with knowledge that access is required by law. Other violations of the proposed law are administrative violations for which a person may be punished by reprimand, suspension or dismissal, except a third offense is a misdemeanor in office, punishable by dismissal or impeachment.

APPENDIX A

APPENDIX A

Sections of Nevada Revised Statutes which exempt records from disclosure.

1.370	Court administrator
1.400	Commission on judicial selection
52.335	Medical records in evidence
62.120	Juvenile probation
62.122	Juvenile probation
62.370	Sealing of juvenile records
90.160	Corporations
90.170	Corporations
119.280	Real estate
125.110	Divorce
126.051	Paternity
126.061	Artificial insemination
126.141	Paternity
126.211	Paternity
126.371	Paternity
126.381	Paternity
127.057	Adoption, consent
127.130	Child-placing agencies
127.140	Adoption
127.283	Identity of child
172.245	Proceedings of grand jury
172.275	Statement of prosecutor
176.156	Parole and probation
176.217	Identity of informants
179.245	Sealing of criminal records: convictions
179.255	Sealing of criminal records: arrests
179.275	Sealing of criminal records in other agencies
179.465	Intercepted communications
179.485	Intercepted communications: recordings
179.490	Intercepted communications: sealing
179.495	Intercepted communications: inventory
179A.090	Records of criminal history
179A.100	Records of criminal history
179A.110	Records of criminal history
200.5045	Child abuse
200.5095	Abuse of elderly person
200.620	Intercepted communications
200.630	Intercepted communications
207.120	Registration of ex-felons
213.1098	Parole and probation
213.1513	Identity of informants

218.5391	Crime statistics for legislature
218.625	Legislative matters
218.823	Auditor's reports
233.190	Equal rights
239.013	Libraries' circulation records
239A.120	Financial information
241.035	Open meeting law
244.335	County business licenses
268.095	City business licenses
268.490	City business licenses
281.511	Executive ethics commission
284.420	Personnel division examinations
286.110	Public employees' retirement system
293B.065	Punchcard ballots
293B.330	Punchcard ballots
324.050	Applications for Carey Act lands
332.165	Local government purchasing
333.300	State purchasing
342.130	Public works relocation payments
353.205	State budget
361.873	Property tax
361.877	Property tax
366.160	Special fuel tax
366.180	Special fuel tax
372.750	Sales and use tax
372.755	Sales and use tax
389.017	Pupils, proficiency tests
408.215	Highway contractors
408.447	Highway relocation payments
412.152	Military reports and communications
412.514	Countersign
416.070	Water and energy emergencies
422.290	Welfare recipients
425.400	Aid to dependent children
426.573	Services to the blind
432.120	Child abuse
433.474	Mental health
433A.360	Mentally ill persons
439.270	Epilepsy register
440.170	Illegitimate children
440.310	Adopted children
440.320	Legitimated children
441.210	Venereal disease
442.260	Abortions
444.762	Hazardous waste
445.311	Water pollution
445.576	Air pollution
449.200	Health and care facilities

449.245	Infants
449.490	Health and care facilities
453.151	Controlled substances
453.296	Controlled substances
453.336	Possession of marihuana, first offense
453.720	Narcotic addicts
458.055	Alcohol and drug abuse
458.280	Alcohol and drug abuse
459.050	Radioactive material
460.020	Hepatitis, blood banks
463.120	Gaming licensees
463.144	Identity of informants
463.330	Gaming investigations
463.335	Gaming employees
463.639	Gaming corporations
482.382	Experimental vehicles
483.340	Driver's license of undercover agent
483.800	Blindness
484.229	Traffic accident reports
522.040	Oil and gas well logs
534A.030	Geothermal well logs
548.285	Conservation districts
576.125	Commercial merchants
583.475	Livestock
584.583	Dairy products
584.655	Dairy products
586.410	Pesticides
588.270	Fertilizer
598.540	Trade practices
598.550	Trade practices
598A.110	Trade practices
612.265	Employment security accounts
615.290	Vocational rehabilitation
616.1701	Industrial insurance
616.355	Industrial insurance
618.365	Occupational health
618.367	Occupational safety
618.425	Occupational safety
624.110	Contractors
624.263	Contractors
629.061	Health care records
630.336	Physicians
633.611	Podiatrists
633A.420	Naturopaths
639.238	Drug prescriptions
641.090	Psychologists
645.180	Real estate brokers
645A.050	Escrow agents

645B.060	Mortgage companies
648A.260	Polygraphic examinations
648A.270	Polygraphic examinations
649.065	Collection Agencies
654.110	Nursing facility administrators
661.115	Bank shareholder lists
662.205	Bank records
665.055	Bank examinations
665.075	Bank examinations
665.085	Bank records
668.085	Bank examinations
671.170	Issuers of money orders
673.041	Savings and loan
673.430	Savings and loan
679B.190	Insurance
683A.0873	Insurance administrators
683A.290	Insurance agents
686B.170	Insurance rate service organizations
686C.310	Life and health insurers
687A.110	Insurance companies
692C.190	Insurance holding companies
692C.420	Insurance holding companies
695A.520	Fraternal benefit societies
696B.550	Delinquent insurers
697.250	Bail bondsmen
704.190	Accident reports of public utilities
706.251	Accident reports of motor carriers
708.080	Oil pipeline carriers

APPENDIX B

LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-564
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-562
ANDREW P. GROSE, *Research Director* (702) 885-5637

April 29, 1982

To: Subcommittee to study Nevada law governing access to public books and records.

In your proposed legislation providing for public access to governmental records, you have requested a provision which would exclude "the courts and individual members of the legislature" from the definition of the term "agency." By necessary implication, the Senate and Assembly of the Legislature of the State of Nevada would be included as "agencies" and would be subject to the provisions of the proposed law.

This would violate article 4, section 6 of the Nevada constitution, which provides that "Each House shall...determine the rules of its proceedings...." In addition, it would violate article 4, section 15, which provides for open sessions, "except the Senate while setting in executive session...."

A house of the legislature which is required to determine the rules of its proceedings may do so either by house rule or by joint rules from which it may withdraw. It may not do so by statute, thereby binding itself in the future and making itself beholden to the other house and the governor to approve the repeal of such a statute. It was for this reason that the legislature was expressly excluded from the definition of "public body" in NRS 241.015, the "open meeting law."

Other legislative bodies have reached the same conclusion. The Constitution of the United States provides in article I, section 5, clause 2, that "Each House may determine the Rules of its Proceedings...." The U.S. Congress included in the Freedom of Information Act the provision that "agency"...does not include...the Congress...." 5 U.S.C. § 551(1)(A). The same provisions are found in article IV, section 7 of the California constitution and in the definition of "state agency" in the California Public Records Act, Cal. Govt. Code § 6252(a).

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD:am

APPENDIX C

:GISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-5640
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5622
ANDREW P. GROSE, *Research Director* (702) 885-5637

February 10, 1982

To: Subcommittee to study provisions of Nevada law governing access to public books and records (S.C.R. 54)

In previous meetings of the subcommittee the question has arisen whether the constitution of the State of Nevada imposes any limitations on legislation proposing to provide for public access to governmental records. This question has been raised especially in reference to the records of officers whose offices are created by the state constitution.

In the case of State ex rel. Lewis v. Doron it was alleged that a statute specifying the duties of the controller had unconstitutionally transferred from the state board of examiners to the controller the power to audit claims. The supreme court found the statute to be constitutional and held that the designation of offices in the constitution of the State of Nevada was, of its own force, a positive delegation of the powers usually incident to those offices. 5 Nev. 399, 413 (1870). In State v. Douglass the court stated the general rule on legislation concerning constitutional offices:

> "It is well settled by the courts that the legislature, in the absence of special authorization in the constitution, is without power to abolish a constitutional office or to change, alter, or modify its constitutional powers and functions." 33 Nev. 82, 92-93 (1910) (citations omitted); Galloway v. Truesdell, 83 Nev. 13, 26 (1967).

One of the powers or prerogatives of the constitutional offices and the executive department is that of executive privilege.

The Supreme Court of the United States has long recognized that executive privilege inheres in the office of President and in the executive branch of the United States government.

In Nixon v. Administrator of General Services the supreme court indicated its purpose:

> [T]he privilege is necessary to provide the confidentiality required for the President's conduct of office. Unless he can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends. The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure; the privilege is not for the benefit of the President as an individual, but for the benefit of the Republic. Therefore the privilege survives the individual President's tenure." 433 U.S. 425, 448-449, 97 S.Ct. 2777 (1977).

The court stated that executive privilege is based on the separation of powers and "the supremacy of the executive branch in its assigned areas of constitutional responsibility." 433 U.S. at 447. The privilege is not absolute, but qualified, and must yield to the judicial branch in cases involving criminal prosecutions.

Congress has also recognized the principle of executive privilege by providing exemptions in the Freedom of Information Act for matters concerning national defense or foreign policy and "inter-agency or intra-agency memorandums or letters." 5 U.S.C. § 552 (b)(1) and (5).

Executive privilege has also been found to apply in state government. In the leading case of Hamilton v. Verdon, 414 A.2d 914 (Md. 1980), 10 ALR 4th 333, the personal representative of an estate of a murder victim demanded a copy of a confidential report prepared for the governor of Maryland by a member of his personal staff. In recognizing that the principle of executive privilege attached to the office of governor, the Court of Appeals of Maryland stated:

> "[T]he governor bears the same relation to this state as does the President to the United States, and generally the governor is entitled to the same privileges and exemptions in the discharge of his duties as is the President." 414 A.2d at 921 (citations omitted).

The court found that executive privilege was based on the constitutional separation of powers in the Maryland Declaration of Rights. 414 A.2d at 921 and 924. The court, following federal precedents, also found that executive privilege applied to department heads and administrators of other state agencies and to their subordinates. The purpose of the privilege is to encourage subordinates to give candid advice to executive heads of agencies.

Based on the foregoing, it is my opinion that the constitutionally derived principle of executive privilege applies to any legislation proposing to provide for public access to records of the executive department. In order to be constitutionally valid, such legislation must provide an exemption for advice and recommendations on policy which are made between agencies or between the head and subordinates of an agency, like the exemption for inter-agency and intra-agency memorandums and letters that is found in the U.S. Freedom of Information Act. A similar exemption is recommended in § 2-103(2) of the Uniform Information Practices Code. Such an exemption need not include factual matters, unless the factual content cannot be readily separated from the advice and recommendations.

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD/WGC:ct

APPENDIX D

SUMMARY--Revises provisions for public access to governmental records. (BDR 19-14)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to governmental records; revising the provisions for public access thereto; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. Sections 2 to 15, inclusive, of this act must be applied and construed to promote their underlying purpose, which is to enhance governmental accountability through a general policy of access to governmental records.

Sec. 3. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this act and NRS 239.005 have the meanings ascribed to them in those sections.

Sec. 4. "Agency" means a unit of government in this state, any political subdivision or combination of subdivisions, a department, institution, board, commission, district, council, bureau, office, officer, official, governing body or other instrumentality of state or local government, or a corporation or other

establishment owned, operated or managed by or on behalf of this state or any political subdivision. "Agency" does not include the courts or individual members of the legislature of the State of Nevada.

Sec. 5. "Governmental record" means information maintained by an agency in written, aural, visual, electronic or other physical form.

Sec. 6. "Maintain" means hold, possess, preserve, retain, store or administratively control.

Sec. 7. "Person" means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

Sec. 8. 1. Except as provided in section 10 of this act, each agency upon request by any person shall make governmental records available for inspection and copying during regular business hours. The request may be oral or written and may be made in person, by telephone or by mail.

2. Unless the information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.

3. Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.

4. If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or

denies it, the agency shall inform the requester of his right to make a written request.

5. Within a reasonable time, but no later than 7 working days after receiving a written request for access which reasonably identifies or describes a governmental record, the agency shall:

(a) Make the record available to the requester, including, if necessary, an explanation of any code readable by machine or any other code or abbreviation;

(b) Inform the requester that unusual circumstances, such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency, have delayed the handling of the request and specify a time and date, not later than 10 working days after the reply would otherwise be due, when the record will be available;

(c) Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or

(d) Deny the request.

6. If a written request for access to a governmental record is denied, in whole or in part, the denial constitutes the agency's final decision. The agency shall notify the requester in writing of the specific reasons for its denial, and identify by name the head of the agency and by name and position or title the person responsible for its denial. In addition, the agency shall inform the requester that an opinion concerning the denial of access may

be sought from the attorney general, or from the district attorney or city attorney if the record is maintained by a county or city, and that a request for the opinion must be filed within 30 days after notification of the denial.

7. Each agency may adopt reasonable regulations to protect its records from theft, loss, defacement, alteration or deterioration and to prevent undue interference with the discharge of its functions.

8. Any person who lawfully discloses governmental records pursuant to this section is immune from civil liability for disclosing it.

Sec. 9. 1. Unless otherwise provided by specific statute, whenever an agency makes a copy of a governmental record pursuant to section 8 of this act, it may charge:

(a) A natural person not more than the actual cost of copying the record. As used in this paragraph, "actual cost" means the marginal cost of materials and equipment which are required to produce an additional copy, but does not include the cost of employees' services.

(b) An association, a partnership, corporation or other business organization, or a corporation or other establishment which is owned, operated or managed by or on behalf of a governmental agency, for the reasonable cost of copying, searching for and reviewing the record.

2. An agency shall furnish a copy certified to be correct to any person who requests it and pays, in addition to the charge

for copying, such reasonable fee as the agency may prescribe for the certifying.

3. Copies, abstracts or memoranda of governmental records which are obtained pursuant to section 8 of this act may be used to supply the general public with copies, abstracts or memoranda of the records or for any other purpose which is of benefit to the copier or the general public.

Sec. 10. 1. Sections 2 to 15, inclusive, of this act do not require disclosure of:

(a) Information which has been exempted from disclosure by any other statute of this state.

(b) Personal notes which the writer does not intend to communicate to another person, except to a secretary for reduction to final form.

(c) Questions (including the information used to prepare them) and answers used in an academic examination or an examination to determine fitness for licensing, certification or employment, if disclosure would compromise the fairness or objectivity of the examination or if a contract governing the use of the examination provides for the confidentiality of the questions or answers.

(d) Information whose disclosure would invade reasonably expected privacy.

(e) Personnel files of governmental officers and employees,

except for the person's name, sex and the fact and date of commencing his employment, his business address and telephone number, the title of his position and his grade, step and compensation, amounts of annual and sick leave taken but not the reasons for taking sick leave, and the date of termination of the office or employment. Other information in a personnel file may be disclosed only with the consent of the officer or employee. If this information identifies or can be readily associated with the identity of any other person, the name and facts which identify the other person must be deleted before the information is disclosed, unless the other person consents to the disclosure.

(f) Proprietary information, such as a valuable computer system or program, operating procedure or manual, which has been created by an agency or is obtained for use by the agency pursuant to a contract which provides for the confidentiality of the information.

(g) Administrative or technical information, including that contained in computer systems and programs, operating procedures or manuals, whose disclosure would jeopardize the security of a record-keeping system.

(h) Information which is in the custody of an agency that performs data processing, microfilming or similar services, but which belongs to another agency that is using those services.

(i) Information which if disclosed would jeopardize the security of a prison, jail or other correctional facility.

(j) Correspondence of and to the governor or employees of the

governor's office which is in the files of the governor's office, but governmental records must not be transferred to the custody of the governor's office to evade disclosure as required by this chapter.

(k) Financial information, letters of recommendation or records of arrest which are submitted to an agency that regulates a profession, occupation or business, unless the record of an arrest is related to the person's qualification for licensure.

(l) Material in a library, archive or museum which has been donated by a private person for the period of the donor's life or 30 years after the receipt of the material, whichever is longer, except for a reasonable period of limitation on disclosure which is agreed to by the donor and the custodian of the material.

(m) Information concerning appraisals of real property that an agency may acquire, until after the property has been acquired.

(n) Information which was collected or received by an agency of criminal justice before the effective date of this act, or the investigative files of any other agency until the investigation is closed.

(o) Any other information if the agency shows on the facts of the particular case that the public interest served by nondisclosure clearly outweighs the public interest served by disclosure.

2. The provisions of this section do not impair or extend any privilege otherwise applicable in a judicial proceeding.

Sec. 11. 1. Within 20 working days after receiving a request for his opinion, the attorney general shall issue his opinion whether a denial of access to a governmental record is lawful. If the request for an opinion is made to a district or city attorney, he shall within 10 working days after receiving the request send his opinion to the attorney general for his review and approval, in which case the attorney general has 10 working days after receiving it in which to issue his opinion. These opinions must be in writing and delivered to the agency and to the person making the request.

2. If the attorney general finds that the governmental record:

(a) Must be made available to the public, the head of the agency which has withheld the record shall forthwith make the record available to the public for inspection and copying. If the head of the agency fails to make the record so available, the attorney general shall immediately bring an action in district court for a writ of mandate to compel the agency to make the record available.

(b) Need not be made available to the public, the person who requested the opinion from the attorney general may bring an action in district court for such a writ.

3. An action brought pursuant to subsection 2 takes precedence over other matters before the court. Upon the hearing of the action the district judge shall examine in chambers the governmental record or part of it which the agency has withheld from

disclosure. The governmental record in question must be sealed by the court unless the writ is issued.

4. When an action is brought by the attorney general against a state agency or instrumentality pursuant to this section, the agency may employ private counsel, who may be paid from money appropriated to or authorized for expenditure by the agency. The district attorney, or the city attorney in the case of a city, shall represent an agency or instrumentality of local government in such an action.

5. If the person who brings such an action prevails, the court, in addition to other relief, shall award him his court costs and reasonable attorney's fees. If the person partially prevails, the court may award him a portion of his attorney's fees.

Sec. 12. 1. The correspondence of and to the governor or employees of the governor's office which is sent or received in the performance of governmental duties is the property of the state and must be transferred to the division of archives as soon as the governor leaves office.

2. The division of archives shall make the correspondence of a former governor available for inspection as provided in this chapter, but if that correspondence identifies or can be readily associated with the identity of any person other than a public officer or employee acting in his official capacity, the name and facts which identify that person must be deleted before the correspondence is disclosed, unless the person so named or identified is deceased.

Sec. 13. Records of the transaction of public business which are made or received by elected officers or employees of state or local governmental agencies are governmental property and must not be destroyed, removed or otherwise disposed of except as provided in this chapter.

Sec. 14. A natural person, association or partnership, corporation or other business organization is subject to the provisions of sections 2 to 15, inclusive, of this act when acting on behalf of an agency and shall permit inspection and copying of its records concerning such an action in the same manner and to the same extent that an agency must disclose its records on that action.

Sec. 15. 1. Any person who willfully prevents public access to and inspection or copying of a governmental record maintained by the agency, with knowledge that public access to and inspection or copying of the record is required by law, is guilty of a misdemeanor in office, or, if not a public officer, is guilty of a misdemeanor.

2. Unless another specific statute provides a greater penalty for the same conduct, any person who violates any other provision of sections 8 to 14, inclusive, of this act under any other circumstances shall be punished, for the:

(a) First offense, for an administrative violation by reprimand or by suspension from office or employment for not more than 15 days.

(b) Second offense, for an administrative violation by suspension from office or employment for not more than 3 months or by dismissal.

(c) Third offense, for a misdemeanor in office by dismissal, or he may be impeached.

Sec. 16. NRS 239.013 is hereby amended to read as follows:

239.013 Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which he used are confidential and not [public books or records within the meaning of NRS 239.010.] subject to disclosure as governmental records. Such records may be disclosed only in response to an order issued by a court upon a finding that the disclosure of such records is necessary to protect the public safety or to prosecute a crime.

Sec. 17. NRS 239.020 is hereby amended to read as follows:

239.020 Whenever a copy of any [public] governmental record is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans' Administration, the official charged with the custody of [such public] the record shall, without charge, provide the applicant for the benefit or any person acting on his behalf or the representative of the Veterans' Administration with a certified copy or copies of such records.

Sec. 18. NRS 239.051 is hereby amended to read as follows:

239.051 1. Unless destruction of a particular record without

reproduction is authorized by a schedule adopted pursuant to NRS 239.080 or 239.125, any custodian of [public] governmental records in this state may destroy documents, instruments, papers, books and any other records or writings in his custody only if those records or writings have been placed on microphotographic film or if the information they contain has been entered into a computer system which permits the retrieval and reproduction of that information. A reproduction of that film or that information shall be deemed to be the original.

2. Microphotographs made pursuant to this section must be made on film which complies with minimum standards of quality approved by the American National Standards Institute.

3. The custodian of the records or writings shall:

(a) Promptly store at least one copy of the microphotographic film or the tape, disk or other medium used for the storage of that information by the computer in such a manner and place as to protect it reasonably from loss or damage; and

(b) Maintain for the use of authorized persons a copy of a reproduction of the film or the information stored by the computer.

Sec. 19. NRS 239.080 is hereby amended to read as follows:

239.080 1. No official state record may be [disposed of] removed or destroyed without the prior [to] approval [by] of the state board of examiners.

2. In cooperation with the state printing and records division of the department of general services, each agency, board and

commission shall develop a [records] schedule for the retention and disposal [schedule] of records which [will specify the total retention value] specifies the period of retention for each type of official state record [.] and other record described in section 13 of this act.

3. Each [records retention and disposal] such schedule must be submitted to the state board of examiners for final approval.

4. The provisions of this section are not applicable to the papers, books and documents of the department of transportation [.] or the legislature.

Sec. 20. NRS 239.200 is hereby amended to read as follows:

239.200 Whenever a county is segregated after the loss or destruction of [the public records thereof, or any part of such records,] all or part of its records affecting the title to real property or water rights situated in the county, and a portion of its territory is included in some new county created by an act of the legislature, all original [instruments] or duly certified copies of such [instruments mentioned in NRS 239.130 shall] records must be recorded in the office of the county recorder of the county in which the property affected thereby is situated after [such] the segregation, and all proceedings to restore lost records as provided in this chapter, which are commenced after the creation of such new county, [shall] must be begun in the county in which the [lands] property or right affected by [such records are] such a record is then situated.

Sec. 21. NRS 90.160 is hereby amended to read as follows:

90.160 1. This chapter shall be administered by the secretary of state. The secretary of state may appoint a deputy and employ other personnel pursuant to chapter 284 of NRS necessary to administer the provisions of this chapter. The position of the deputy [shall be] is unclassified and in addition to the two unclassified positions in the office of the secretary of state authorized by subsection 3 of NRS 284.140.

2. It is unlawful for the administrator or any of his deputies or employees to use for personal benefit any information which is obtained by the administrator and which is not made public. No provision of this chapter authorizes the administrator or any of his deputies or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpena directed to the administrator or any of his deputies or employees.

[3. All applications, statements, documents and other information filed with the administrator pursuant to the provisions of this chapter are public records and shall be open at all times during office hours to inspection by any person.]

Sec. 22. NRS 120A.370 is hereby amended to read as follows:

120A.370 1. There is hereby created in the state treasury the abandoned property trust fund.

2. All money received by the department under this chapter, including the proceeds from the sale of abandoned property, must be deposited by the director in the state treasury for credit to the abandoned property trust fund.

3. Before making such a deposit, the director:

(a) Shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation and the amount due. [The record must be available for public inspection at all reasonable business hours.]

(b) May deduct:

(1) Any costs in connection with the sale of abandoned property.

(2) Any costs of mailing and publication in connection with any abandoned property.

(3) Reasonable service charges.

4. At the end of each fiscal year the amount of the fund balance in excess of $25,000 must be deposited with the state treasurer for credit to the state general fund.

Sec. 23. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk

of any county in the state. Licenses may be obtained at the county seat.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and duly acknowledged before an officer authorized by law to administer oaths.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

[6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. Any county clerk who refuses to permit such an inspection is guilty of a misdemeanor.]

Sec. 24. Chapter 179A of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. An agency of criminal justice is not required to disclose to the public any:

(a) Information which remains active concerning a person or group of persons which has been compiled by an agency of criminal justice in the course of:

(1) Conducting a criminal investigation of a specific act or omission, including but not limited to information derived from laboratory tests, reports of investigators or informants or any type of surveillance; or

(2) Anticipating, watching for or preventing possible criminal activity.

(b) Information revealing the identity of confidential informants or sources.

(c) Information revealing techniques or procedures of surveillance or any employee of an agency of criminal jutice engaged in surveillance.

(d) Information revealing any employee of an agency of criminal justice who is engaged in undercover activity.

(e) Information, including the photograph, name, address or other fact or information, which reveals the identity of the victim of any crime other than homicide, except with the victim's consent.

(f) Information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime.

(g) Home address, telephone number or photograph of any employee of an agency of criminal justice or his spouse or child, the place of employment of the spouse or child or the name and location of any school attended by the child.

This subsection does not limit the disclosure of information tht has been made part of a court file, unless otherwise sealed by court order. A court shall order the sealing of the types of informtion specified in paragraphs (b), (c) and (d).

2. The information which an agency of criminal justice may withhold from disclosure pursuant to subsection 1 does not include:

(a) The time, date, general location and nature of a reported crime;

(b) The name, sex, age and address of a person arrested, or of the victim of a crime except as provided in paragraph (e) of subsection 1;

(c) The time, date and location of the incident and of the arrest;

(d) The crime charged;

(e) Documents given or required by law to be given to the person arrested; or

(f) Indictments or presentments except as provided in NRS 172.245.

3. Any person who lawfully discloses a governmental record pursuant to this section is immune from civil liability for disclosing it.

4. The provisions of this section do not impair or extend any privilege otherwise applicable in a judicial proceeding.

5. As used in paragraph (a) of subsection 1, "active" information means information which is:

(a) Collected with a reasonable belief in good faith that it will lead to the detection of continuing or reasonably anticipated criminal activity.

(b) Related to an investigation which is continuing with a reasonable expectation in good faith of an arrest or prosecution in the foreseeable future.

(c) Directly related to a pending prosecution or appeal.

(d) Related to a case that is not barred from prosecution under

the provisions of NRS 171.080 to 171.100, inclusive, or other limitation on the commencement of criminal actions.

Sec. 25. NRS 179A.070 is hereby amended to read as follows:

179A.070 1. "Record of criminal history" means information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of arrests, detention, indictments, informations or other formal criminal charges and dispositions of charges, including dismissals, acquittals, convictions, sentences, correctional supervision and release, occurring in Nevada. The term includes only information contained in memoranda of formal transactions between a person and an agency of criminal justice in this state. The term is intended to be equivalent to the phrase "criminal history record information" as used in federal regulations.

2. "Record of criminal history" does not include:

(a) [Investigative or intelligence information, reports of crime] Information governed by the provisions of subsection 1 of section 24 of this act or other information concerning specific persons collected in the course of the enforcement of criminal laws.

(b) Information concerning juveniles.

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension.

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed in any other way.

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including permits to work in the gaming industry.

(f) Court indices and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings.

(g) Records of traffic violations constituting misdemeanors.

(h) Records of traffic offenses maintained by the department of motor vehicles for the purpose of regulating the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.

(i) Announcements of actions by the state board of pardons commissioners and the state board of parole commissioners.

(j) Records which originated in an agency other than an agency of criminal justice in this state.

Sec. 26. NRS 228.160 is hereby amended to read as follows:

228.160 1. The attorney general shall keep a record of each case to which the state or any officer of the state in his official capacity [may be] is a party, or of any case on appeal to which a county [may be] is a party.

2. [Such record shall] The record must contain a copy of all pleadings and process, interlocutory and final orders, judgments

and decrees, process issued thereon and satisfaction thereof, and memorandum of sentence.

[3. Such records shall be open to the public for inspection during business hours.]

Sec. 27. Chapter 242 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Information from another agency which is in the custody of the department must not be disclosed by an employee of the department to:

1. Any person outside the department except the persons in the agency to which the information belongs who are entitled to receive it; or

2. Another employee within the department unless he needs the information for purposes of his employment.

Any employee of the department who violates this section is subject to dismissal.

Sec. 28. NRS 244.075 is hereby amended to read as follows:

244.075 1. The clerk shall keep a full and complete record of all the proceedings of the board, together with a full and complete alphabetical index and page citation of and for the record and proceedings, and all such proceedings shall be entered upon the record.

2. The record of each day's proceedings of the board [shall] must be signed by the chairman and the clerk. [In case] If the chairman [shall be] is absent at any meeting of the board, all

documents, records or papers requiring the signature of the board [shall] must be signed by the members present.

3. The books, records and accounts of the board [shall] must be kept at the office of the clerk of the board . [, and shall, during business hours, be kept open to public inspection free of charge.]

Sec. 29. NRS 244.163 is hereby amended to read as follows:

244.163 1. The boards of county commissioners in their respective counties may create by ordinance the office of county coroner, prescribe his qualifications and duties and make appointments to the office.

2. Any coroner so appointed is governed by the ordinances pertaining to such office which may be enacted by the board of county commissioners, and the provisions of NRS 259.150 to 259.180, inclusive [.] , and section 34 of this act.

3. The boards of county commissioners shall require that the county coroner notify a decedent's next of kin without unreasonable delay.

4. For any offense relating to the violation or willful disregard of such duties or trusts of office as may be specified by the respective boards of county commissioners, all coroners holding office by appointment pursuant to this section are subject to such fines and criminal penalties, including misdemeanor penalties and removal from office by indictment, accusation or otherwise, as the ordinance prescribes. This subsection applies to all deputies, agents, employees and other persons employed by or exercising the powers and functions of the coroner.

Sec. 30. NRS 248.300 is hereby amended to read as follows:

248.300 Each sheriff shall keep in his office a fee book in which he shall enter in detail the title of the matter, proceeding or action, and the fees charged therein. [The fee book shall be open to public inspection.]

Sec. 31. NRS 251.030 is hereby amended to read as follows:

251.030 The county auditor shall:

1. Number and keep a record of all demands allowed, showing the number, date, date of approval, amount, and name of the original holder, on what account allowed, and out of what fund payable.

2. Constantly be acquainted with the exact condition of the treasury, and every lawful demand upon it.

3. Report to the board of county commissioners, at each regular meeting thereof, the condition of each fund in the treasury.

4. Keep a complete set of books for the county, [which shall be open to the inspection of the public, free of charge, during business hours,] in which [shall be set] he sets forth in a plain and businesslike manner every money transaction of the county, so that he can, at any time, when requested, tell the state of each fund, where the money came from, to what fund it belonged, and how and for what purpose it was expended, and also the collection made, and the money paid into the treasury by every officer.

Sec. 32. NRS 251.090 is hereby amended to read as follows:

251.090 Each county auditor shall keep in his office a fee book in which he shall enter in detail the title of the matter,

proceeding or action, and the fees charged therein. [The fee book shall be open to public inspection.]

Sec. 33. NRS 258.180 is hereby amended to read as follows:

258.180 Every constable shall keep in his office a fee book in which he shall enter in detail the title of the matter, proceeding or action, and the fees charged therein. [The fee book shall be open to public inspection.]

Sec. 34. Chapter 259 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The written report of a post mortem examination is confidential. At the conclusion of the inquest the justice of the peace shall order his copy of the report to be sealed.

2. The jury shall not disclose the contents of the report except to the extent necessary in preparing the written verdict.

3. The coroner shall not disclose the report except to:

(a) The next of kin, personal physician or executor, administrator or legal counsel of the estate of the deceased, or the authorized representative of any of the persons enumerated;

(b) The district attorney, sheriff or other law enforcement agency; or

(c) An authorized representative or investigator of:

(1) The board of medical examiners of the State of Nevada or the attorney general in the course of an investigation conducted pursuant to NRS 630.314; or

(2) An insurer who needs information concerning the cause of death of the deceased,

and a person who receives a copy of such a report shall not disclose it to any person other than one authorized to receive it by this subsection, except pursuant to a court order or the rules of discovery in legal actions.

Sec. 35. NRS 259.010 is hereby amended to read as follows:

259.010 1. Every county in this state constitutes a coroner's district, except a county where a coroner is appointed pursuant to the provisions of NRS 244.163.

2. The provisions of this chapter, except NRS 259.150 to 259.180, inclusive, and section 34 of this act, do not apply to any county where a coroner is appointed pursuant to the provisions of NRS 244.163.

Sec. 36. NRS 278.732 is hereby amended to read as follows:

278.732 1. The agency shall establish and maintain an office within the region. The agency may rent or own property and equipment. [Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of the State of Nevada shall be open to inspection and copying during regular office hours.]

2. The agency shall be deemed to be a local government for the purposes of the Local Government Budget Act.

Sec. 37. NRS 278.806 is hereby amended to read as follows:

278.806 1. The agency shall establish and maintain an office within the state. The agency may rent property and equipment. [Every plan, ordinance and other record of the agency which is of

such nature as to constitute a public record under the law of the State of Nevada shall be open to inspection and copying during regular office hours.]

2. The agency shall be deemed to be a local government for the purposes of the Local Government Budget Act.

Sec. 38. NRS 308.080 is hereby amended to read as follows:

308.080 1. Except as otherwise subsequently provided in this section, the formation of a special district [shall] must not be approved by any board of county commissioners without the resolution of approval and the service plan required by the Special District Control Law. The approved service plan and the resolution of approval [shall] must be incorporated by reference in the ordinance organizing the district after there has been [a] compliance with all other legal procedures for the formation of the proposed district. If the board of county commissioners fails to approve the service plan for any proposed special district and [such] that failure is determined by any district court in this state for any county in which the district is located to be arbitrary, capricious or unreasonable, the court may order the formation of such district by the board of county commissioners of the county vested with jurisdiction as provided in NRS 318.050 without [such] the resolution of approval; but an acceptable service plan in accordance with the provisions of the Special District Control Law, [shall] must be filed with and approved by the court and incorporated by reference in and appended to the order of the court providing for the organization of the district

after there has been [a] compliance with all other legal procedures for the formation of the proposed district. If the service plan is approved by the board of county commissioners, any interested party as defined in subsection 2 of NRS 308.070, if such party had appeared and presented his objections before the board of county commissioners, is entitled to appear and be heard at the hearing of the board of county commissioners so vested with jurisdiction for the organization of the district, and the district court may dismiss any pending legal proceedings contesting the failure of any board of county commissioners to approve a service plan upon a determination that the decision of the board of county commissioners was not arbitrary, capricious or unreasonable.

2. Upon final approval by a board of county commissioners for the formation of the special district, the facilities, services and financial arrangements of the district [shall] must conform to the approved service plan.

3. After the organization of a special district pursuant to the provisions of chapter 318 of NRS, material modifications of the service plan as originally approved may be made by the board of [such] the special district only by petition to and approval by the board of county commissioners of each county in which the district is located in substantially the same manner as is provided for the approval of an original service plan, except that the processing fee for such modification procedure [shall] must not exceed $100. Such modifications are required only with regard

to changes of a basic or essential nature and are not required for changes of a mechanical type necessary only for the execution of the original service plan.

4. A copy of the plans, specifications and contract for the acquisition of each project or improvement by a special district after its organization [shall] must be filed with the county planning commission or regional planning commission , if one exists , or with the board of county commissioners if no such planning commission exists. [Such plans, specifications and contracts, when filed, are available for public inspection.]

5. Any unreasonable departure from the service plan , as originally approved [, or, if the same has been modified, then from the service plan as] or modified, may be enjoined at any time by a district court upon the motion of any board of county commissioners , from which a resolution of approval is required by the Special District Control Law, or [upon] the motion of any interested party.

Sec. 39. NRS 309.120 is hereby amended to read as follows:

309.120 1. The officers of [such] the district [shall] consist of three, five or seven directors , [as aforesaid,] a president and a vice president elected from their number, a secretary and a treasurer. The board may also appoint an assistant secretary who shall exercise such of the powers and perform such of the duties of the secretary as may be designated by the board of directors, except that [such] an assistant secretary [shall not be invested with authority to] may not sign on behalf of the

secretary any bonds of the district. The secretary and treasurer [shall] must be appointed by the board of directors and may or may not be members of the board. [Such] These officers [shall] serve at the will of the board. One person may be appointed to serve as secretary and treasurer.

2. The directors immediately upon their election and qualification shall meet and organize. The board of directors shall designate some place within the county where the organization of the district was effected as the office of the board, and the board shall hold a regular monthly meeting in its office on [such] the day of the month [as that] fixed upon by resolution duly entered upon the minutes [, and when] . When the time for such a monthly meeting has been fixed it cannot again be changed for 12 months, and it can only be changed by resolution passed at least 2 months prior to the time [such] the change [shall take] takes effect and [upon] after publication in a newspaper of general circulation in the district for at least 2 weeks prior to [such] the change. Should the regular meeting day fall upon a nonjudicial day, [such] the meeting [shall] must be held on the first judicial day thereafter.

3. The board of directors shall hold such special meetings as [shall] may be required for the purpose of transaction of business; but all special meetings must be called by the president or a majority of the board. The order calling [such] a special meeting [shall] must be entered on the record, and the secretary shall give each member not joining in the order 3 days' notice of

[such] the special meeting. The order must specify the business to be transacted at [such] the special meeting; and none other than that specified [shall] may be transacted.

4. Whenever all members of the board are present at a meeting, [the same] it shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board [shall] must be public and a majority of the members [shall constitute] constitutes a quorum for the transaction of business, but on all questions requiring a vote there [shall] must be a concurrence of at least a majority of the members of the board.

5. [All records of the board shall be open to the inspection of any elector during business hours.

6.] At the regular monthly meeting in January next following their elections, the board of directors shall meet and organize and elect a president and vice president and appoint a secretary and treasurer. The appointees [aforesaid] shall file bonds, which [shall] must be approved by the board, for the faithful performance of their duties.

[7.] 6. Any vacancies in the offices of directors [shall] must be filled from the division in which the vacancy occurs by the remaining members of the board. A director appointed to fill a vacancy [, as above provided, shall hold his] holds office until the next biennial election and until his successor is elected and qualified.

Sec. 40. NRS 318.090 is hereby amended to read as follows:

318.090 1. The board shall, by resolution, designate the

place where the office or principal place of the district shall be located, which shall be within the corporate limits of the district, and which may be changed by resolution of the board from time to time. Copies of all such resolutions shall be filed with the county clerk or clerks of the county or counties wherein the district is located within 5 days following their adoption. The official records and files of the district shall be kept at the office so established . [and shall be open to public inspection as provided in NRS 239.010.]

2. The board of trustees shall meet regularly at least once each year, and at such other time or times at the office or principal place of the district as provided in the bylaws.

3. Special meetings may be held on notice to each member of the board as often as, and at such place or places within the district as, the needs of the district require.

4. Three members of the board shall constitute a quorum at any meeting.

5. Any vacancy on the board shall be filled by a qualified elector of the district chosen by the remaining members or member of the board, the appointee to act until a successor in office qualifies as a trustee by taking an oath and causing it and a bond to be filed as provided in NRS 318.080 on or after the 1st Monday in January next following the next biennial election, held in accordance with NRS 318.095, at which election the vacancy shall be filled by election if the term of office extends beyond

such 1st Monday in January next following the election. Nominations of qualified electors of the district as candidates to fill such unexpired terms of 2 years may be made the same as nominations for regular terms of 4 years, as provided in NRS 318.095. If the board fails, neglects or refuses to fill any vacancy within 30 days after the same occurs, the board of county commissioners shall fill such vacancy.

6. Each term of office of 4 years shall terminate on the 1st Monday in January next following the general election at which a successor in office is elected, as provided in NRS 318.095, and the successor's term of office shall then commence or as soon thereafter as the successor qualifies as a trustee by taking an oath and causing it and a bond to be filed as provided in NRS 318.080, subject to the provisions in this chapter for initial appointments to a board, for appointments to fill vacancies of unexpired terms, and for the reorganizations of districts under this chapter which were organized under other chapters of NRS.

Sec. 41. NRS 321.040 is hereby amended to read as follows:

321.040 1. The state land registrar shall keep a record of all applications and contracts and of lands which have been or may hereafter be approved to the state, and of all lands which have been sold by the state. [These records, together with all plats, papers and documents relating to the business of the state land office, shall be open to public inspection during office hours without fee therefor.]

2. The state land registrar shall procure from the Bureau of

Land Management one copy of each township plat of the public surveys now approved or which may hereafter be approved by the proper United States authorities, unless [the same shall have] a plat has been previously obtained. Copies of [such] township plats [shall] must be made upon material of such quality as the state land registrar may prescribe, but the cost [shall] must not exceed $6 for each [such] plat.

Sec. 42. NRS 354.602 is hereby amended to read as follows:

354.602 1. Within 45 days after September 30, December 31, March 31 and within 90 days after June 30 of each year, the governing board of each local government shall cause to be published a report in the form prescribed by the department of taxation showing, for each item of detailed estimate required by NRS 354.600, the amount estimated and the amount actually received or expended. Any approved budget augmentation or short-term financing received [shall] must be included and briefly explained in a footnote. A copy of [such] the report [shall] must be filed immediately:

(a) With the department of taxation;

(b) In the case of school districts, with the state department of education;

(c) With any employee organization upon the written request of the employee organization recognized by such local government; and

(d) In the office of the clerk or secretary of the governing

body . [, as a public record available for inspection by any interested person.]

2. The governing board of each local government employer shall also supply, upon request by any organization entitled to request a report pursuant to paragraph (c) of subsection 1, a copy of each preliminary budget report or other fiscal report pertaining to the financial status of the local government, as [such] these reports are prepared for use and consideration by the local government in the preparation of the budget or its amendments. The contents of [such] these reports [shall] must be superseded as to the period covered by any final budget or amendment thereof.

Sec. 43. Chapter 378 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Except as provided in NRS 239.090 and 378.240 to 378.260, inclusive, the division of archives is the permanent custodian of material with historical value which has been transferred to the division and accepted by the state librarian.

Sec. 44. NRS 378.250 is hereby amended to read as follows:

378.250 The state librarian may:

1. Through the division of archives, inspect the physical nature of any governmental records in the custody of a state or local governmental agency.

2. Receive into the archives any material from a state agency if he finds that it is of historical value.

[2.] 3. With the approval of the state board of examiners,

return to the state agency from which it was received, material in the archives which he finds is not of historical value.

[3.] 4. Receive into the archives any material which has been directed to be deposited in the archives by an order or resolution of the governing body of a local governmental entity, if he finds that it is of historical value.

[4.] 5. With the approval of the state board of examiners, turn over to the Nevada historical society any material in the archives which he finds to be surplus, not properly in the archives, or appropriate to be kept in the custody of the Nevada historical society.

[5.] 6. With the approval of the state board of examiners, bring an action to obtain possession of the records of a state or local governmental agency which are of historical value and are not being properly cared for or are in private hands. In an action to recover possession of such a record which is in private hands, it is rebuttably presumed that a governmental record, which on its face is the original of a document received or the file copy of a document made by a governmental agency is governmental property.

7. Expend any gift of money he is authorized to accept for the purpose specified by the donor or, if no purpose is specified, in any manner which will further the purposes of the division of archives.

Sec. 45. NRS 378.270 is hereby amended to read as follows:

378.270 [The] 1. Except as provided in subsection 2, the

state librarian shall furnish, on request, to any person who has paid the proper fees for it, a copy of any material in the archives, and may certify it if required. The state librarian may charge a reasonable fee for searching archives of the state, for producing copies of and for certifying copies of any material in the archives.

2. Any governmental record in the archives which has been declared by law to be confidential must remain confidential for 50 years after the creation of the record or until the death of the person to whom it relates, whichever is later, unless another period of confidentiality has been fixed by specific statute.

Sec. 46. NRS 445.625 is hereby amended to read as follows:

445.625 [1.] The commission, in cooperation with the department of motor vehicles, shall adopt regulations which establish procedures for collecting, interpreting and correlating information concerning programs to control emissions from motor vehicles and any benefits which result from an inspection program.

[2. All information received by the commission or the department is open to public inspection.]

Sec. 47. NRS 449.490 is hereby amended to read as follows:

449.490 1. Every health and care facility which is subject to the provisions of NRS 449.440 to 449.530, inclusive, shall file with the commissioner the following financial statements or reports in a form and at intervals specified by the commissioner but at least annually:

(a) A balance sheet detailing the assets, liabilities and net worth of the institution for its fiscal year; and

(b) A statement of income and expenses for the fiscal year.

2. The annual financial statements filed pursuant to this section [shall] must be prepared in accordance with the system of accounting and reporting adopted under NRS 449.480. The commissioner shall require the certification of specified financial reports by the institution's certified public accountant and may require attestations from responsible officials of the institution that [such] these reports have to the best of their knowledge and belief been prepared in accordance with the prescribed system of accounting and reporting.

3. The commissioner shall require the filing of all reports by specified dates, and may adopt regulations which assess penalties for failure to file as required, but he shall not require the submission of any annual report sooner than 6 months after the close of the fiscal year, and may grant extensions to facilities which can show that the required information is not available on the required reporting date.

4. All reports, except privileged medical information, filed under any provisions of NRS 449.440 to 449.530, inclusive, are open to public inspection . [and shall be available for examination at the office of the commissioner during regular business hours.]

Sec. 48. NRS 517.040 is hereby amended to read as follows:

517.040 Within 90 days of the date of posting the location notice, the locator of a lode mining claim shall perform the following:

1. In addition to defining the boundaries of the claim as set forth in subsection 1 of NRS 517.030, the locator of a mining claim shall prepare two copies of a map of the claim which [shall] must be of a scale of not less than 500 feet to the inch, and which [shall] must set forth the position of the claim boundary monuments in relation to each other and establish numbers of the claim boundary monuments. Where the land has been surveyed by the United States, [such] the description [shall] must be connected by courses and distances to an official corner of the public land survey. Where the land has not been surveyed by the United States or where such official corners cannot be found through the exercise of due diligence, [such] the description [shall] must be tied by courses and distance to a claim location marker. The claim location marker [shall] must be constructed at some prominent point visible from at least one claim corner. The claim marker site [shall] must be chosen so that it will not be endangered by snow, rock or landslides, or other natural causes. Only one mineral claim marker is required of each contiguous group of claims. The claim marker [shall] must be constructed in one of the following ways:

(a) If constructed of rock, it shall be 4 feet in diameter at

its base and at least 4 feet in height, constructed upon bedrock wherever possible.

(b) A steel post or pipe at least 3 inches in diameter or thickness [shall] must be set in the ground. After setting, the top of the post [shall] must be 5 feet above the level of the terrain surrounding the base.

The description [shall] must also state the township and range, and where the lands are surveyed lands, the section in which the mineral marker and the mining claim is situated. The locator need not employ a professional surveyor or engineer, but each locator shall prepare a map which is in accordance with his abilities to map and properly set forth the boundaries and location of his claim.

2. File the map with the county recorder in the county in which the claim is located together with a filing fee of $15 for each claim. The entire filing fee [shall] must be [utilized] used by the county to establish and maintain a county mining claim map that [shall] accurately [record] records the location of all mining claims filed after July 1, 1971 . [, which shall be a public record as provided in chapter 239 of NRS.] The county recorder shall not refuse to accept a map submitted by the locator unless he can affirmatively show that the map submitted does not accurately reflect the location of all the claims.

3. The county recorder shall send one copy of the map and one copy of the location certificate to the county surveyor as soon as practicable after its receipt.

Sec. 49. NRS 517.100 is hereby amended to read as follows:

517.100 Within 90 days after the posting of the notice of location of a placer claim, the locator shall perform the following:

1. Prepare two copies of a map of the claim which [shall] must be of a scale of not less than 500 feet to the inch. Where the United States survey has been extended over the land embraced in the location, the claim may be taken and described on the map by legal subdivisions as provided in NRS 517.090. Where the land has not been surveyed by the United States or where such official corners cannot be found through the exercise of due diligence, the map [shall] must set forth the position of the claim boundary monuments in relation to each other, establish numbers of claim boundary monuments, and [such] these descriptions [shall] must be tied to a claim location marker as provided in NRS 517.030.

2. File the maps with the county recorder in the county in which the claim is located together with a filing fee of $1 per acre. One-half of the filing fee [shall] must be utilized by the county to establish and maintain a county mining claim map that [shall] accurately [record] records the location of all mining claims filed after July 1, 1971 . [, which shall be a public record as provided in chapter 239 of NRS.] The remaining part of the fee may be used for the same purposes as any other general revenue of the county.

Sec. 50. NRS 532.150 is hereby amended to read as follows:

532.150 1. The records of the office of the state engineer

[are public records and shall] must remain on file in his office . [and be open to the inspection of the public at all times during business hours.]

2. [Such] These records [shall] must show in full all maps, profiles and engineering data relating to the use of water.

3. Certified copies [thereof shall be] of these records are admissible as evidence in all cases where the original would be admissible as evidence.

Sec. 51. NRS 569.090 is hereby amended to read as follows:

569.090 1. The department shall pay, or cause to be paid, the reasonable expenses incurred in taking up, holding, advertising and selling the estray or estrays, and any damages for trespass allowed pursuant to NRS 569.440, and shall place the balance in the agriculture working capital fund of the department. The department shall make a full and complete record of all such transactions, including the marks and brands and other means of identification of an estray or estrays . [, which record shall be open to the inspection of the public.]

2. If the lawful owner of any estray or estrays sold as provided in this section is found within 1 year after the sale of such estray or estrays, the net amount received from the disposal of such estray or estrays [shall] must be paid to the owner if he proves ownership to the satisfaction of the department. If, at the end of 1 year from the date of sale of the estray or estrays, the proceeds from such sale or sales remain unclaimed, such proceeds [shall] must be deposited in the livestock inspection fund.

3. If any claim pending after the expiration of 1 year from the date of sale is denied, the proceeds [shall] must be deposited in the livestock inspection fund.

Sec. 52. NRS 584.195 is hereby amended to read as follows:

584.195 1. If, after the application and inspection, it [shall appear] appears to the satisfaction of the health division of the department of human resources that the applicant has fully complied with the regulations of the state board of health governing the sanitation and grading of milk and milk products, the health division shall issue a permit to the applicant.

2. The health division shall keep a record of all applications for permits and permits issued by it . [, which shall be a public record.]

Sec. 53. NRS 590.505 is hereby amended to read as follows:

590.505 1. The board may adopt a seal for its own use which must have imprinted thereon the words "Nevada Liquefied Petroleum Gas Board." The care and custody of the seal is the responsibility of the secretary-treasurer of the board.

2. The board may appoint an executive secretary and such other technical, clerical or investigative personnel as it deems necessary and fix the compensation of those appointees. The executive secretary and all appointees [shall] must be paid out of the money of the board. The board may require the executive secretary and any other appointees to give a bond to the board

for the faithful performance of their duties, the premiums on the bond being paid out of the money of the board.

3. The board may adopt regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of the gases and the degree thereof.

4. The board may prescribe the method and form of application for a liquefied petroleum gas license, investigate the experience, reputation and background of applicants, issue, suspend, revoke or deny licenses and conduct hearings in connection with the applications for, or revocation of, licenses. In conducting hearings on the issuance or revocation of any license, the board may compel the attendance of witnesses by use of subpena and apply to the district court of the county where the hearing is held for an order citing any applicant or witness for contempt, for failure to attend or testify.

5. The board may suspend or revoke licenses and refuse renewals of licenses when the applicant or licensee has been guilty of acts of conduct, harmful to either the safety or protection of the public.

6. In carrying out the provisions of NRS 590.465 to 590.645, inclusive, and holding its regular or special meetings, the board may adopt bylaws setting forth procedures and methods of operation.

7. The board shall submit to the governor a biennial report before September 1 of each even-numbered year, covering the biennium ending June 30 of that year, of its transactions during the preceding biennium, including a complete statement of the receipts and expenditures of the board during the period.

8. The board shall keep accurate records and minutes of all meetings and [the records and minutes so kept must be open to public inspection at all reasonable times. The board shall also keep] a record of all applications for licenses [,] and licenses issued by it . [, which is a public record.]

9. The board may retain all application and license fees collected under the provisions of NRS 590.465 to 590.645, inclusive, for the maintenance of an office, the payment of salaries and expenses and the carrying out of the provisions of NRS 590.465 to 590.645, inclusive.

10. The board may conduct examinations of any applicant to determine the responsibility, ability, knowledge, experience or other qualification of the applicant for a license under NRS 590.465 to 590.645, inclusive, and may require a reasonable amount of personal injury and property damage insurance coverage.

11. The board may grant variances from its regulations when it deems it [to] in the best interest of the safety of the public or the persons using LPG materials or services.

Sec. 54. NRS 623.230 is hereby amended to read as follows:

623.230 The secretary of the board shall keep an official register of all certificates of registration to practice architecture or residential design issued under the provisions of this chapter, and of the renewals of [the same] them as provided for in this chapter. The register [shall] must be properly indexed . [and shall be open for public inspection and information.]

Sec. 55. NRS 631.190 is hereby amended to read as follows:

631.190 In addition to the powers and duties provided in this chapter, the board shall:

1. Adopt [rules and] regulations necessary to carry out the provisions of this chapter.

2. Appoint such committees, examiners, officers, employees, agents, attorneys, investigators and other professional consultants and define their duties and incur such expense as it may deem proper or necessary to carry out the provisions of this chapter, the expense to be paid as provided in this chapter.

3. Fix the time and place for and conduct examinations for the granting of licenses to practice dentistry and dental hygiene.

4. Examine applicants for licenses to practice dentistry and dental hygiene.

5. Collect and apply fees as provided in this chapter.

6. Keep a register of all dentists and dental hygienists licensed in this state, together with their addresses, license numbers and renewal certificate numbers.

7. Have and use a common seal.

8. Keep such records as may be necessary to report the acts and proceedings of the board . [, which records shall be open to public inspection.]

9. Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

10. Have discretion to examine work authorizations in dental offices or dental laboratories.

Sec. 56. NRS 633.301 is hereby amended to read as follows:

633.301 The board shall keep a record of its proceedings relating to licensing and disciplinary actions. The record [shall be open to public inspection at all reasonable times and shall also] must contain the name, known place of business and residence, and the date and number of the license of every osteopathic physician licensed under this chapter.

Sec. 57. NRS 633A.220 is hereby amended to read as follows:

633A.220 The board shall:

1. Adopt and enforce regulations necessary to enable it to carry out its duties under this chapter, including but not limited to regulations which establish the principles of ethics to be used as the basis for determining whether conduct which does not constitute malpractice is unethical.

2. Keep a record of its proceedings relating to licensing and disciplinary actions. The records [must be open to public inspection at all reasonable times and] must contain the name, known place of business and residence, and the date and number of the license of every naturopath licensed under this chapter.

Sec. 58. NRS 636.105 is hereby amended to read as follows:

636.105 1. The secretary shall accurately make and accurately keep, in behalf of the board, the following records:

(a) A record of all meetings and proceedings.

(b) A record of all prosecutions and violations of this chapter.

(c) A record of all examinations of applicants.

(d) A register of all licensees.

2. The secretary shall accurately make and safely keep, in behalf of the board, an inventory of all property of the board and of the state in its possession.

3. [All records of the board shall be subject to public inspection.

4.] All records of the board [shall] must be kept in the office of the board.

Sec. 59. NRS 641.090 is hereby amended to read as follows:

641.090 1. The secretary-treasurer shall make and keep on behalf of the board:

(a) A record of all its meetings and proceedings.

(b) A record of all violations and prosecutions under the provisions of this chapter.

(c) A record of all examinations of applicants.

(d) A register of all certificates.

(e) A register of all certificate holders.

(f) An inventory of the property of the board and of the state in the board's possession.

2. These records must be kept in the office of the board . [and are subject to public inspection during normal working hours upon reasonable notice.

3. The board may keep the personnel records of applicants confidential.]

Sec. 60. NRS 643.050 is hereby amended to read as follows:

643.050 1. The board [shall have the authority:] may:

(a) [To maintain] Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

(b) [To employ] Employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

(c) [To make] Adopt reasonable [rules and] regulations for the administration of the provisions of this chapter.

2. The board shall prescribe sanitary requirements for barbershops and barber schools.

3. Any member of the board or its agents or assistants [shall have authority to] may enter and inspect any barbershop or barber school at any time during business hours or at any time when the practice of barbering or instruction in such practice is being carried on.

4. The board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of

certificates of registration. This record [shall] must also contain the name, place of business and residence of each registered barber and registered apprentice, and the date and number of his certificate of registration. [This record shall be open to public inspection at all reasonable times.]

5. The board [shall have power to] may approve and, by official order, [to] establish the days and hours when barbershops may remain open for business whenever agreements fixing such opening and closing hours have been signed and submitted to the board by any organized and representative group of barbers of at least 70 percent of the barbers of any county. The board [shall have like power to] may also investigate the reasonableness and propriety of the hours fixed by such agreement [, as is conferred by this chapter,] and [the board] may fix hours for any portion of a county.

6. The board [shall have authority to] may adopt and enforce reasonable [rules and] regulations governing the conduct of barber schools.

7. The board [shall have authority to] may prescribe the course of study of barber schools.

Sec. 61. NRS 644.080 is hereby amended to read as follows:

644.080 The board:

1. Shall prescribe the duties of its officers, examiners and employees, and fix the compensation of those employees.

2. May establish offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

All records and files of the board must be kept at the main office of the board . [and be open to public inspection at all reasonable hours.]

3. May adopt a seal.

4. May issue subpenas to compel the attendance of witnesses and the production of books and papers.

Sec. 62. NRS 645.180 is hereby amended to read as follows:

645.180 1. The division shall adopt a seal by which it shall authenticate its proceedings.

2. [Records kept in the office of the division under authority of this chapter are open to public inspection under regulations adopted by the real estate division, except that the division may refuse to make public, unless ordered to do so by a court:

(a) Real estate brokers' and real estate salesmen's examinations;

(b) Files compiled by the division while investigating possible violations of this chapter or chapter 119 of NRS; and

(c) The criminal and financial records of licensees, applicants for licenses and owner-developers.

3.] Copies of all records and papers in the office of the division, certified and authenticated by the seal of the division, must be received in evidence in all courts equally and with like effect as the originals.

Sec. 63. NRS 648A.090 is hereby amended to read as follows:

648A.090 The board shall keep a record of its proceedings relating to licensing and disciplinary actions. [The record is open to public inspection at all reasonable times.]

Sec. 64. NRS 656.100 is hereby amended to read as follows:

656.100 1. The board shall keep a full and accurate record of its official actions and all proceedings, and of all resolutions, regulations and orders issued or adopted.

2. [Except as otherwise provided by law, the records of the board shall be open to inspection by the public.

3.] The board shall, on or before December 1 of each year, submit to the governor a full and true report of its transactions during the preceding year. The report [shall] must include a complete statement of the receipts and expenditures of the board during the period.

Sec. 65. NRS 679B.190 is hereby amended to read as follows:

679B.190 1. The commissioner shall carefully preserve in the division and in permanent form all papers and records relating to the business and transactions of the division, and shall hand [the same] them over to his successor in office.

2. [Except as otherwise provided by this code, the papers and records shall be open to public inspection.

3. The commissioner may destroy unneeded or obsolete records and filings in the division in accordance with provisions and procedures applicable in general to administrative agencies of this state.

4.] The commissioner may classify as confidential certain records and information obtained from a governmental agency or other sources upon the express condition that they [shall] must

remain confidential [,] or be deemed confidential by the commissioner; but no filing required to be made with the commissioner under this code shall be deemed confidential unless expressly provided by law.

Sec. 66. NRS 690B.045 is hereby amended to read as follows:

690B.045 1. Each insurer which issues a policy of insurance covering the liability of a practitioner licensed pursuant to chapters 630 to 640, inclusive, of NRS for a breach of his professional duty toward a patient shall report to the board which licensed the practitioner within 30 days each settlement or award made or judgment rendered by reason of a claim, if the settlement, award or judgment is for more than $5,000, giving the name and address of the claimant and the practitioner and the circumstances of the case.

2. A practitioner licensed pursuant to chapters 630 to 640, inclusive, of NRS who does not have insurance covering liability for a breach of his professional duty toward a patient shall report to the board which issued his license within 30 days of each settlement or award made or judgment rendered by reason of a claim, if the settlement, award or judgment is for more than $5,000, giving his name and address, the name and address of the claimant and the circumstances of the case.

[3. These reports are public record and must be made available for public inspection within a reasonable time after they are received by the licensing board.]

Sec. 67. NRS 704.070 is hereby amended to read as follows:

704.070 1. Every public utility shall file with the commission, within a time to be fixed by the commission, schedules [which shall be open to public inspection,] showing all rates, tolls and charges which it has established and which are in force at the time for any service performed or product furnished in connection therewith by any public utility controlled and operated by it.

2. In connection with such a schedule, and as a part of it, [there shall also be filed all rules and] the public utility shall also file regulations that in any manner affect the rates charged or to be charged for any service or product.

Sec. 68. NRS 239.010, 239.030, 396.400, 482.170, 512.241 and 686B.080 and section 115 of Article 11 of the charter of Boulder City are hereby repealed.

Sec. 69. The provisions of this act do not apply to the records of former elected state officers and other persons who deposited records with a state or local governmental agency before the effective date of this act upon an express written agreement providing for their confidentiality or limiting their accessibility.

Sec. 70. Section 22 of this act shall become effective one minute after the date and time of effectiveness of NRS 120A.370 if that section is otherwise reenacted by the legislature.

APPENDIX E

APPENDIX E

Minority views of Assemblymen Craddock and Westall

Minority view of Assemblyman Craddock

Mr. Craddock states that while he made a number of objections to items in the draft bill which are recorded in the minutes of the subcommittee, he does not feel it would be helpful to recite all of them again and add to the length of this report. He would, however, point out to the commission the following specific problem in the draft bill.

The definition of "agency" in section 4 of the draft bill includes within its terms the legislature and its houses, the assembly and senate. The proposed law applies to the records of every agency, so defined, and the attorney general has authority in section 14 to enforce the proposed law against agencies.

Because of the doctrine of separation of powers, this legislature should not give to the attorney general authority over records of the legislative department, any more than he should have authority over the records of the judicial department, which has been excluded from the definition of "agency." In order for the attorney general to make an evaluation whether or not (in his opinion) a record should be disclosed, he must first view the record. But the attorney general has no more rights in the chambers and on the floor of the assembly or senate than any other citizen who is not a member of one of those houses, unless, perhaps, he is investigating a crime and the particular house is not in session. For this reason, the legislature, as well as the courts, should be excluded from the definition of "agency."

Minority view of Assemblyman Westall

Mrs. Westall states that she favors only the procedures for enforcement (in section 11) and the penalties (in section 15) provided by the draft bill. She especially objects to the numerous exemptions from disclosure contained in section 10, and would prefer to keep only those provided by paragraphs (d) and (o) of subsection 1: reasonable privacy and clearly predominant public interest. She believes that other sensitive governmental records are sufficiently protected by specific existing statutes, and that the simplicity of present NRS 239.010 better ensures public access than would the detailed and cumbersome procedures proposed.