ASSEMBLY
GOVERNMENT AFFAIRS
April 30, 1977
7:00am

MEMBERS PRESENT: Chairman Murphy
Mr. May
Mr. Craddock
Mr. Jeffrey
Mr. Mann
Mr. Robinson
Mrs. Westall (8:30)
Mr. Jacobsen

MEMBERS EXCUSED: Mr. Moody

Chairman Murphy called the meeting to order at 7:00am.

COMMITTEE ACTION

ASSEMBLY BILL 54- Mr. Jacobsen moved to INDEFINITELY POSTPONE, seconded by Mr. Mann, passed unanimously. Mr. Moody, Mrs. Westall and Mr. Jeffrey were not present for the vote.

SENATE BILL 402

Assemblyman Craddock explained an amendment he proposed to the bill regarding public notice.

Mr. Westergard, State Water Engineer, told the committee that if the purpose of the amendment were to give people notice that rights may be subject to forfeiture were going to be reinstated then he had no problem with the amendment. He continued:I understand that notice will be given to the state engineer too, so if there was a possibility that the right had been forfeited some time before the right was re-instated, the state engineer could begin proceedings to declare those rights forfeited.

Assemblyman Mann asked Mr. Westergard if there was a need for the bill. He replied that the bill was not introduced at his request. He added that he could handle the law the way it is or with the amendment in it, it is up to legislative determination. "I think it would serve some purpose to the people that are financing irrigation systems, etc. I do see that as a positive aspect of it and also the people who may be in a jeopardy of forfeiture, it wouldput some responsibility back on them to protect their right, if in fact it had not yet been declared forfeited. We do have to publish notice of applications when they are filed in the first instance."

Assemblyman Craddock then explained his other amendment (1106A) which provides that each lot be allocated one half acre foot of water per year if the water mechanisms are installed by an approved plan and if there is a bona fide sale of the land.

Mr. Westergard commented that this amendment deviates from the beneficial use concept in that water actually would not be used in a home for it to be recognized as beneficial use in a residential area. He thought the committee should be made aware that there have been instances where the water company had a water right and the time limit expired and it was necessary to preclude further development under that water right when there were still lots subject to development by that water company. He had some basic concerns about deviating from the beneficial use concept.

Assemblyman Mann commented that he had some problems with changing the beneficial use concept and he also asked what was a bona fide purchase and where was it defined in the statute. He asked if it was defined as someone buying a lot and then living in California and holding onto that half acre feet of water or was it defined as someone actually living on the property. It has never been the intent of the Legislature to let somebody living in California buy a lot and sit on a half acre foot of water for ten years. He has to have established beneficial use then he can have the water right.

Assemblyman May expressed some concerns about the term bona fide sale and wondered whether trying to solve the problem would make a bigger mess.

Assemblyman Jeffrey commented that this second amendment was to protect the buyer, it doesn't do anything for the seller or the developer.

The committee discussed the problems in Cold Springs of the Development Company.

COMMITTEE ACTION

SENATE BILL 402 - After a very lengthy discussion of the implications of Mr. Craddock's amendments and the bill as a whole, Mr. May moved to INDEFINITELY POSTPONE, seconded by Mr. Mann. The motion died as only Mr. May and Mr. Mann voted in favor of this motion. Mr. Moody and Mrs. Westall were not present for the vote.

Mr. Craddock then moved to AMEND AND DO PASS, seconded by Mr. Jeffrey. This motion died for lack of a majority with Mr. Craddock, Mr. Jeffrey, Mr. Robinson and Mr. Jacobsen voting in favor; Mr. Murphy, Mr. May, and Mr. Mann voting no; and Mr. Moody and Mrs. Westall absent for the vote.

Chairman Murphy said that the bill would be available for another motion at another time.

SENATE BILL 444

Assemblyman May asked if there were 38 hydrographic basins in Washoe County. Mr. Roland Westergard, State Water Engineer, told him yes there were.

ASSEMBLY BILL 721

Mayor Jacobsen of Carson City submitted the letter attached as Exhibit 1.

ASSEMBLY BILL 597

Assemblyman Robinson discussed a different funding formula which is attached as Exhibit 2.

The committee discussed the protection of the State in this type of negotiation.

COMMITTEE ACTION

SENATE BILL 198- This bill was rerefered to the committee on April 29 and Mr. Mann explained that it was ready to go back to the floor of the Assembly. Mr. Mann moved to AMEND AND DO PASS, seconded by Mr. May, motion passed unanimously. Mrs. Westall and Mr. Moody were absent for the vote. The amendments were the same as when the bill was passed out of committee previously.

SENATE BILL 333

Senator Gojack explained the first reprint of her bill to the committee. The bill includes the following concepts: a meeting is a gathering of a quorum; the State Legislature was deleted; notices have to be published 3 working days in advance; student government is included; attorney client exemptions.

Assemblyman Mann commented that there was no guarantee for closed personnel sessions.

Bob Broadbent, Nevada Association of County Commissioners, spoke in opposition to the bill later in the meeting and said that it would cause many problems for the rural areas. He was concerned with the whole open meeting concept. He said that people just wouldn't run for public office if this kind of restrictions were placed on public officials.

Chairman Murphy commented that people who don't want to follow open meeting regulations shouldn't be in public office anyway.

Mr. Heber Hardy submitted his written remarks which are attached as Exhibit 3, at the end of the meeting.

Chairman Murphy remarked that since the committee was running out of time for this hearing that testimony on this bill would be continued at the next meeting.

ASSEMBLY BILL 675

Assemblyman Kosinski told the committee that this bill provided the final safeguard against closed meetings because it provides transcripts must be made of closed meetings that could be reviewed by a judge if an aggrieved person so requested. He commented that in the open meeting legislation the accomplice loophole needed to be deleted and that the attorney client relationship exception should be maintained.

He added that audio tapes of closed meetings would satisfy the intent of the bill. Subcommittees would not be subject to this bill.

Mr. May expressed several fears regarding this measure. Other members of the committee agreed.

SENATE BILL 376

Robert Cox of the Washoe County School District explained that he would be in favor of the bill is lines 12 and 13 of page 1 were deleted. He added that the teachers organizations agree with this amendment as does Senator Wilson.

COMMITTEE ACTION on S.B. 376

Mr. May moved to AMEND AND DO PASS, seconded by Mr. Jeffrey, passed unanimously. Mr. Moody was absent for the vote.

SENATE BILL 440

Rex Sheldren, Las Vegas Firefighters, told of his support for this bill which provides a pilot program for the last best offer method of negotiations to include only the firefighters. He said that this bill provides a good alternative to a law that is not working now. He added that the firefighters trust arbitration but this bill will allow more items to be worked out at the table.

Julio Conigliaro, Federated Firefighters told of his support because it will help to have reasonable negotiations.

Angus MacEachern, representing the City of Las Vegas, League of Cities, and the Nevada Association of County Commissioners, told the committee

that he was opposed to the bill.

Mr. Dixon, representing Washoe County, told the committee that he had many philosophical problems with the bill. He said that last best offer is a form of binding arbitration and that there should be a two year study.

Robert Cox, Legal Counsel to the Washoe County School District, told the committee that the bill needed amendments to make the entire thing only applicable to the firefighters. He suggested that the committee just allow the present law to work and not initiate this kind of pilot program.

Jim Barry, City of Reno Negotiator, agreed with the previous speaker. He said that it would be a costly experiment for the State of Nevada. The present law is working. Michigan, Oregon and Iowa don't like their last best offer laws.

Bob Warren, League of Cities, told the committee that there was not enough time to start a program like this. He added that binding arbitration of an automatic nature will hinder negotiations. If a negotiator knows that last best offer is last step in the process they will always hold out. He didn't like the time limit on page 1 line 15 and also didn't like the any interested person clause of line 23, page 1. The bill is not workable. The language could be interpreted to mean issue by issue not just package programs.

Assemblyman Mann replied that it is a pilot program for package offers and that it only applied to firefighters. That is the legislative intent.

There being no further business to come before the committee, the meeting was adjourned at 10:00am.

Respectfully submitted,

Kim Morgan

Kim Morgan, Committee Secretary

Exhibit (1)

OFFICE OF THE MAYOR

CARSON CITY, NEVADA 89701

HAROLD J. JACOBSEN
MAYOR

April 26, 1977

Honorable Patrick Murphy
Nevada State Assemblyman
Nevada State Legislature
Carson City, Nevada 89701

Dear Pat:

We are charged, as Mayor and Supervisors, with the administration and operation of all the many services provided for the citizens of Carson City.

We operate on the City-County Manager concept. He serves at the pleasure of the Board and shall perform such administrative duties as the Board may appoint and he may appoint such clerical and administrative assistants as he may deem necessary, subject to the approval of the Board.

We are handicapped in the operation of an efficient City government because our charter conflicts with state law that allows all counties to set up the position of Controller. This is discrimination against Carson City.

When a problem of administration occurs, the "buck doesn't stop at the City Clerk's desk". He already has on several occasions passed it on to me.

It therefore doesn't make sense that the financial officer should be responsible to an elected official other than the Mayor or Supervisors, who in the final assessment are responsible for the actions of such a financial officer.

We have several other departments that should be under the supervision of our financial officer (already in existence) but the Supervisors will not transfer that type of responsibility to an individual who is responsible to another elected official.

In the final analysis, it just makes good sense to recognize that we are a City-County of nearly 30,000 people and should be allowed to do as Washoe and Clark Counties already have done - have a Controller responsible to the Board of Supervisors.

AB 721 is the right answer. If Vaughn Smith has any real objections, we will be pleased to discuss possible amendments.

Sincerely,

Harold J. Jacobsen
Mayor

HJJ:lcm

Exhibit (2)

HOBART RESERVOIR

CONSTRUCTION COSTS

APRIL 22, 1977

DEBT RETIREMENT FOR $6,592,857

At 6% for 30 years $478,971 per year annual cost, based on sliding scale participation costs follow:

	STATE	CARSON CITY
1st Ten Years	30%	70%
Annual Cost	$143,691	$335,280
2nd Ten Years	35%	65%
Annual Cost	$167,640	$311,331
3rd Ten Years	40%	60%
Annual Cost	$191,588	$287,383

PL/sw

Exhibit 3

Open Meeting Law

My name is Heber Hardy, a member of the Public Service Commission of Nevada.

The public has a right to know! Certainly the public has the right to know the actions and decisions of public bodies; the reasons and bases for such actions; and in a multimember body the vote of each member participating in such action.

The present law recites that the intent of the law is that actions be taken openly and that deliberations be conducted openly. Meetings are required to be open and public and all persons shall be permitted to attend any meeting except meetings to consider certain personnel matters. Violation of the law is a misdemeanor. (NRS 241.010-040).

SB 333 seeks to add additional requirements for public meetings and provides for the voidance through court action of any final action taken in violation of the provisions of the bill.

Evidence presented to the Government Affairs Committee of the Senate in support of SB 333 (and related Assembly Bills AB 437 and AB 114) indicated that the present law is vague and either unenforceable or is not being adequately enforced. Examples were recited of City Councils taking actions (making a decision) on certain matters in closed meetings which actions were later found to be in violation of Nevada's Open Meeting law. Sentiment was also expressed by representatives of the media that SB 333 doesn't go far enough in that meetings for certain purposes may still be closed under certain circumstances. At least one witness further proposed that actions allegedly taken in violation should be void and the burden of proof shifted to those accused to prove that no violations were committed in the decision making process.

THE IMPORT OF SHIFTING THE BURDEN OF PROOF IS FRIGHTENING AND UNBELIEVABLE TO ANY PERSON WHO CONSCIENTIOUSLY ATTEMPTS TO CARRY OUT THE DUTIES OF HIS OFFICE. I DO NOT SPEAK FOR ANY OTHER PUBLIC BODY BUT IT SEEMS TO ME THAT IF SUCH PROCEDURE BECAME LAW, THE PUBLIC'S BUSINESS COULD WELL COME TO A GRINDING HALT AS I WILL FURTHER EXPLAIN.

AT THE OUTSET I WOULD NOTE THAT THE MISDEMEANOR PROVISION OF NRS 241.040 REMAINS IN SB 333 AS DRAFTED. WHILE I DO NOT OBJECT TO A VIOLATION OF CHAPTER 241 BEING MADE A MISDEMEANOR AS IT PRESENTLY IS, I DO OBJECT TO THE SUGGESTION THAT THE BURDEN OR PROOF BE SHIFTED TO ALLEGED OFFENDING OFFICIALS. IN THIS CONTEXT THE SHIFTING OF THE BURDEN OF PROOF WOULD APPEAR UNCONSTITUTIONAL TO SAY THE LEAST. THE SAME ARGUMENT WOULD APPLY TO THE SUGGESTION THAT A PUBLIC OFFICIAL FORFEIT HIS OFFICE UPON VIOLATION OF CHAPTER 241.

AS PREVIOUSLY STATED, I AM A MEMBER OF THE PUBLIC SERVICE COMMISSION OF NEVADA. I SINCERELY BELIEVE THAT ACTIONS TAKEN AND DECISIONS MADE BY OUR AGENCY ARE IN SUBSTANTIAL COMPLIANCE WITH THE SPIRIT AND INTENT OF THE EXISTING OPEN MEETING LAW EMBODIED IN CHAPTER 241 OF THE NEVADA REVISED STATUTES. HOWEVER, IF SB 333 AND/OR AB 437 BECOME LAW OUR ABILITY TO PERFORM OUR DUTIES PRESCRIBED BY THIS LEGISLATURE WILL BE SERIOUSLY HAMPERED IF CONSTRUED STRICTLY. TO EMPHASIZE, PERHAPS A BRIEF DISCUSSION OF OUR PROCEDURAL PROCESS IS IN ORDER AT THIS TIME.

OUR COMMISSION HAS THREE MEMBERS. BY STATUTE WE DEVOTE FULL TIME TO OUR DUTIES AND CAN HAVE NO OUTSIDE ECONOMIC INTERESTS. OUR OFFICES ARE LOCATED NEXT TO EACH OTHER WITH CONNECTING DOORS SO THAT WE MAY FREELY CONSULT ONE ANOTHER IN ORDER TO FULFILL OUR DUTIES OF SUPERVISING AND REGULATING THE OPERATIONS AND MAINTENANCE OF PUBLIC UTILITIES AND REGULATED MOTOR CARRIERS. WE ARE KEPT ADVISED ON A REGULAR BASIS OF ALL FILINGS BY PUBLIC UTILITIES AND REGULATED

MOTOR CARRIERS, AS WELL AS COMPLAINTS, PROTESTS, INQUIRIES, ETC., FROM INTERESTED PARTIES OR MEMBERS OF THE GENERAL PUBLIC, IN ORDER TO KEEP ABREAST OF NEW DEVELOPMENTS, PROBLEMS AND NEEDS OF REGULATED COMPANIES AND ALSO TO KEEP INFORMED AS TO WHETHER OR NOT THEY ARE ADEQUATELY SERVING THE NEEDS OF THEIR CUSTOMERS. IT IS VITALLY IMPORTANT THAT WE CONSULT WITH ONE ANOTHER TO OBTAIN THE BACKGROUND, KNOWLEDGE AND EXPERTISE OF ONE ANOTHER WHICH IS NECESSARY TO PROPERLY EXERCISE OUR DUTIES.

SOME MATTERS COMING BEFORE THE COMMISSION DO NOT REQUIRE PUBLIC HEARING AND CAN BE DETERMINED ADMINISTRATIVELY AT OUR REGULARLY SCHEDULED WEEKLY COMMISSION MEETINGS FOR WHICH A PUBLISHED AGENDA OF BUSINESS ITEMS IS UTILIZED. SUCH MEETINGS ARE OPEN TO THE PUBLIC.

OTHER MATTERS COMING BEFORE US REQUIRE PUBLIC HEARINGS AND IT HAS BEEN OUR STATED POLICY TO HOLD A PUBLIC HEARING WHEN REQUESTED OR WHENEVER THERE IS ANY DOUBT AS TO ITS NECESSITY. SUCH PUBLIC HEARINGS ARE PUBLICLY NOTICED IN NEWSPAPERS OF GENERAL CIRCULATION IN THE AREA AFFECTED BY ANY PARTICULAR FILING AND IN THE CASE OF MAJOR RATE CASES WE HAVE REQUIRED UTILITIES TO GIVE FURTHER NOTICE BY BILL STUFFERS OR NEWSPAPERS OR NEWSPAPER ADVERTISEMENTS. COPIES OF NOTICES ARE MADE AVAILABLE TO THE MEDIA AND MOST OF OUR CASES ARE WELL PUBLICIZED. WHERE INTEREST IS EXPRESSED BY MEMBERS OF THE PUBLIC, SPECIAL EVENING SESSIONS ARE SCHEDULED TO PROVIDE AN OPPORTUNITY TO BE HEARD. IN MANY CASES LOCAL POLITICAL SUBDIVISIONS, LARGE CUSTOMERS AND CONSUMER GROUPS MAKE APPEARANCES AND PARTICIPATE FULLY IN THE PROCEEDINGS. AFTER THE HEARING IS COMPLETED THE MATTER IS SUBMITTED FOR DECISION.

THEREAFTER, ONE OF THE COMMISSIONERS ASSUMES PRIMARY RESPONSIBILITY FOR PREPARING A PROPOSED OPINION AND ORDER FOR REVIEW AND DISCUSSION WITH THE OTHER TWO COMMISSIONERS PRIOR TO BEING PLACED

ON THE COMMISSION'S WEEKLY AGENDA FOR FINALIZATION OF A DULY ISSUED OPINION AND ORDER. IT IS DURING THE REVIEWING PROCESS THAT IT IS ABSOLUTELY ESSENTIAL FOR THE THREE COMMISSIONERS TO DISCUSS THE ISSUES RAISED IN ANY PARTICULAR MATTER. IN THIS REGARD, I MIGHT ADD THAT DUE TO COMPLEXITY OF MANY MATTERS COMING BEFORE US, THE REVIEWING PROCESS IS A CONTINUOUS MATTER PRIOR TO REACHING AN ULTIMATE DECISION. I MIGHT FURTHER ADD THAT WITHOUT SUCH DISCUSSIONS IT WOULD BE VIRTUALLY IMPOSSIBLE TO ARRIVE AT A FINAL DECISION WITHIN THE TIME LIMIT OF 180 DAYS ESTABLISHED BY THE LEGISLATURE FOR RATE APPLICATIONS. IT SHOULD BE NOTED THAT OUR OPINIONS CONTAIN A RECITATION OF THE PARTICULAR PRESENTATIONS MADE ALONG WITH A DISCUSSION OF WHY THE VARIOUS POSITIONS TAKEN BY PARTIES ARE EITHER ACCEPTED OR REJECTED TOGETHER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW. DISSENTING OPINIONS MAY ALSO BE FILED. FINAL COPIES OF ALL OUR OPINIONS AND ORDERS ARE PROVIDED TO THE PARTIES OF RECORD, INCLUDING CONSUMERS, AS WELL AS THE PRESS. FURTHER COPIES ARE MADE AVAILABLE UPON REQUEST.

THEREFORE, DECISION MAKING FOR US IS A DAILY ON-GOING PROCESS. TO BE PROHIBITED FROM DISCUSSING MATTERS BEFORE US AT ANY TIME OTHER THAN IN A NOTICED PUBLIC MEETING WOULD BE ASKING US TO WORK IN A VACUUM. FURTHER, IF OUR DISCUSSIONS LEADING UP TO OUR FORMAL WRITTEN OPINION AND ORDER WERE OPEN TO THE PUBLIC, IT COULD LEAVE US OPEN TO UNWARRANTED PRESSURES FROM THE UTILITIES AS WELL AS ANYONE ELSE AFFECTED BY OUR DECISIONS NOT AT ALL UNLIKE ~~TO~~ PRESSURES WHICH COULD BE PLACED UPON JUDGES AND JURIES IN THE JUDICIAL SYSTEM. IT BEARS EMPHASIS THAT THE REASONS FOR OUR DECISIONS ON EACH ISSUE ARE SET OUT IN OUR OPINION AND WE EACH SIGN OUR NAME TO THE ORDER AND/OR DISSENTING OPINION. FURTHER, MINUTES OF OUR COMMISSION MEETING ARE KEPT AND THE MINUTE ENTRY REFLECTS OUR VOTES. SUCH

MINUTE ENTRIES ARE OFFICIAL RECORDS AND OPEN TO PUBLIC INSPECTION.

IT BEARS FURTHER EMPHASIS, THAT BY LAW, OUR DECISION IN A PARTICULAR CASE MUST BE PREDICATED UPON SUBSTANTIAL EVIDENCE OF RECORD. A DIRECT RIGHT OF APPEAL TO THE DISTRICT COURTS OF OUR STATE IS PROVIDED TO PARTIES OF RECORD FOR REVIEW TO ENSURE THAT THE SUBSTANTIAL EVIDENCE MANDATE HAS BEEN MET. UPON A FINDING THAT OUR DECISION WAS NOT BASED UPON SUBSTANTIAL EVIDENCE OR WAS UNREASONABLE OR OTHERWISE UNLAWFUL THE DISTRICT COURT MAY VACATE AND SET ASIDE THE ORDER AND ITS UNDERLYING OPINION.

WE FULLY EXPECT THAT OUR FINAL PRODUCT (DECISION) COULD AND MAY BE SUBJECTED TO CRITCISM. I HAVE OFTEN STATED THAT THE BEST MEASURE OF A GOOD DECISION FROM US IS THAT NO ONE IS HAPPY WITH IT. HOWEVER, OPEN DISCUSSION OVER A PERIOD OF TIME AMONG THE COMMISSIONERS COULD WELL SUBJECT EACH OF US TO UNWARRANTED PRESSURE FROM THE UTILITIES, INTERVENORS, PROTESTANTS, POLITICIANS AND THE PRESS. IN THIS REGARD I FIRMLY BELIEVE THAT THE PRESENT METHOD OF ARRIVING AT DECISIONS BY THE PUBLIC SERVICE COMMISSION KEEPS UNWARRANTED AND POLITICAL PRESSURES OUT OF THE DECISION MAKING PROCESS.

I WOULD RESPECTFULLY SUGGEST THAT IF THE STATED OBJECTIVES OF SOME OF THE SUPPORTERS OF SB 333 AND AB 437 WERE TO BE ACCOMPLISHED, THERE COULD BE NO PRIVATE DISCUSSIONS BETWEEN ANY TWO PERSONS IN ANY BRANCH OF GOVERNMENT OR BUSINESS ON A SUBJECT WHICH AFFECTS THE PUBLIC. THE PROVISION THAT THE PROHIBITION AGAINST DISCUSSIONS ONLY APPLIES TO A QUORUM OF A PUBLIC BODY, IS DISCRIMINATORY AND UNSOUND IN THAT THE AVOWED PURPOSE OF THE BILL COULD BE CIRCUMVENTED IN LARGE BODIES MERELY BY THE CAREFUL AVOIDANCE OF DISCUSSIONS IN ANY GROUP CONSISTING OF A QUORUM. IF THE PURPOSE OF THE PENDING LEGISLATION IS FOR THE PUBLIC TO KNOW EVERY WORD WHICH IS SPOKEN BETWEEN PERSONS AT MEETINGS WHERE DECISIONS ARE MADE IN ORDER TO MAKE SURE

THE PUBLIC KNOWS THE BASIS AND REASONING BEHIND DECISIONS AND TO MAKE SURE NO UNDUE INFLUENCE IS EXERCISED BY ONE PERSON OVER ANOTHER, THEN CONVERSATIONS BETWEEN ANY TWO PERSONS AT A TIME OUTSIDE A MEETING CONVENED TO DISCUSS A MATTER BEFORE THE BODY IS JUST AS OBJECTIONABLE AS BETWEEN TWO MEMBERS OF A THREE MEMBER BODY. THE LEGISLATURE ITSELF MAKES LAWS WHICH AFFECTS THE PUBLIC IMMEASURABLY. HOWEVER, TO PROHIBIT DISCUSSION BETWEEN ANY TWO MEMBERS (AT A TIME) OF THE LEGISLATURE OR A COMMITTEE ON ANY MATTER BEFORE THE LEGISLATURE WOULD APPEAR TO BE LUDICROUS. YET THE ALLEGED EVILS WHICH SB 333 AND AB 437 ARE PURPORTEDLY DESIGNED TO CORRECT ARE JUST AS POSSIBLE IN THE LEGISLATURE AS IN A REGULATORY AGENCY.

HOW WOULD THE PROVISIONS OF SB 333 OR AB 437 BE ENFORCED? FOR THE REASONS STATED ABOVE I DO NOT FEEL I COULD IN ALL HONESTY REASONABLY FUNCTION AS A COMMISSIONER ON THE PSC IF DISCUSSION BETWEEN TWO MEMBERS OF THE COMMISSION WERE PROHIBITED. I DO NOT THINK THIS COMMITTEE IS SO NAIVE AS TO BELIEVE THAT THE PENDING LEGISLATION WILL MAKE A DISHONEST PERSON HONEST BUT IT MAY MAKE A PERSON WHO CONSCIENTIOUSLY ATTEMPTS TO FULFILL HIS DUTIES LEGALLY CULPABLE. TO CATCH ANY TWO MEMBERS OF ANY BODY IN A DISCUSSION OF A MATTER BEFORE THAT BODY WOULD BE NEXT TO IMPOSSIBLE. I ASSUME THAT IS WHY ONE WITNESS BEFORE THE SENATE GOVERNMENT AFFAIRS COMMITTEE SUGGESTED THE BURDEN OF PROOF BE SHIFTED TO THE ALLEGED VIOLATOR.

IT IS NOT EASY TO OPPOSE A BILL LIKE SB 333 BECAUSE IT SEEMS SO MERITORIOUS AND FUNDAMENTALLY SOUND ON ITS FACE. NO ONE CAN REASONABLY ARGUE AGAINST THE PUBLIC'S RIGHT TO KNOW. HOWEVER, THE LITERAL APPLICATION AND ENFORCEMENT OF THE PROHIBITION AGAINST TWO MEMBERS OF THE PUBLIC SERVICE COMMISSION DISCUSSING ANY MATTER BEFORE US, EXCEPT IN AN OPEN PUBLIC MEETING WHICH HAS BEEN NOTICED TO THE PUBLIC A YEAR IN ADVANCE FOR SCHEDULED MEETINGS AND THREE DAYS IN ADVANCE FOR RESCHEDULED OR SPECIAL MEETINGS, IS TOTALLY UNREASONABLE

AND MANIFESTLY UNWORKABLE. IN ORDER TO COMPLY, THE PUBLIC SERVICE COMMISSION WOULD HAVE TO GIVE PUBLIC NOTICE THAT WE MAY BE DISCUSSING SOME MATTER BEFORE US AT ANY TIME OF OUR WORKING DAY AS WELL AS ANY OTHER TIME WE MIGHT BE TOGETHER. WE TAKE OUR DUTIES SERIOUSLY. ISSUES OR POTENTIAL ISSUES ARE CONSTANTLY ON OUR MINDS AND A QUESTION, COMMENT OR LENGTHY DISCUSSION MAY SPONTANEOUSLY ERUPT AT ANY TIME. FURTHER, AS STATED ABOVE, THE COMPLEXITY OF A GENERAL RATE CASE REQUIRES A CONSIDERABLE AMOUNT OF TIME FOR REVIEW AND EVALUATION. IF AGREEMENT CANNOT BE REACHED BY AT LEAST TWO COMMISSIONERS ON AN ISSUE OR ON THE ENTIRE APPLICATION, THE RATES APPLIED FOR BY THE UTILITY GO INTO EFFECT BY OPERATION OF LAW 181 DAYS AFTER THE APPLICATION WAS FILED. PUT A DIFFERENT WAY, A PROHIBITION AGAINST ONGOING DISCUSSIONS COULD WELL LEAD TO A DEROGATION OF OUR LEGISLATIVE MANDATE.

IN CONCLUSION, I WOULD SUGGEST THAT IF THE PROCEDURES USED BY THE COMMISSIONERS OF THE PSC ARE CONSIDERED BY ANY PERSON OR PERSONS TO BE VIOLATIVE OF THE PUBLIC'S RIGHT TO KNOW, THAT THE SPECIFIC OFFENSIVE PROCEDURES BE BROUGHT TO THE ATTENTION OF THE COMMISSION, OR THE LEGISLATURE OR EVEN THE JUDICIARY BRANCH FOR CORRECTIVE ACTION.