

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
April 15, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 9:08 a.m. on Friday, April 15, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

COMMITTEE MEMBERS ABSENT:

Senator Sandra J. Tiffany (Excused)

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

Patrick T. Sanderson, Laborers Local No. 872
Valerie M. Rosalin, R.N., Director, Office for Consumer Health Assistance,
Office of the Governor
Redentor Villanueva, Quality Assurance Specialist, Office for Consumer Health
Assistance, Office of the Governor
Robert A. Ostrovsky, Nevada Resort Association

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Keith Lee, Board of Medical Examiners

CHAIR TOWNSEND:

We will now discuss the mock-up amendment to Senate Bill (S.B.) 47 (Exhibit C).

SENATE BILL 47: Revises provisions governing licensure of athletic trainers and requires study concerning regulation of personal trainers and other fitness instructors. (BDR 54-12)

SENATOR CARLTON:

With reference to the second page on Exhibit C, section 2, there is an advisory committee which will allow the new board to comply with the mandates we have given them and move forward to accomplish their goals. I apologize to Senator Wiener that this bill was overlooked when we discussed other Title 54 bills.

SENATOR HECK:

The only potential issue I have is in section 2 concerning the composition of the advisory board. I have an issue with regulating an entity or a profession without having any representation from that entity on the advisory committee. I think the advisory committee should have representation from the personal-trainer community as they begin to adopt regulations that will impact their profession. I would recommend changing the makeup of the advisory committee to include two representatives who are personal trainers. Senator Wiener was amenable to this change.

CHAIR TOWNSEND:

Senator Carlton, are you comfortable with that change?

SENATOR CARLTON:

If Senator Heck has discussed this with Senator Wiener and she is amenable, then I am fine with it.

CHAIR TOWNSEND:

I would endorse Senator Heck's recommendation.

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SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 47 WITH THE CHANGES IN SECTION 2 OF EXHIBIT C TO REFLECT TWO MEMBERS OF THE NEVADA PHYSICAL THERAPY ASSOCIATION, TWO MEMBERS OF THE STATE BOARD OF ATHLETIC TRAINERS, TWO MEMBERS REPRESENTING PERSONAL TRAINERS IN THIS STATE AND ONE MEMBER OF THE PUBLIC.

SENATE HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TIFFANY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
I now open the hearing on S.B. 126.

SENATE BILL 126: Establishes Office for Injured Employee Assistance.
(BDR 18-246)

SENATOR SCHNEIDER:
I am waiting for an amendment to this bill. This bill indicates there is no fiscal note. There has to be a fiscal note because it creates an office within the Office of the Governor.

CHAIR TOWNSEND:
Mr. Powers, does that happen very often? The bill says no effect on the State and yet it would create another office within the Office for Consumer Health Assistance (OCHA), Office of the Governor.

KEVIN POWERS (Committee Counsel):
... I did discuss this with legislative counsel before the bill was heard the first time Currently the Office of Consumer Health Assistance already exists in the Office of the Governor and it is already funded through the fee structure. All this would do would break off part of the function of the Office of the Consumer Health Assistance, move it to the Office ... for Injured Employee [Assistance] and take part of the existing funding structure that is already part of the existing Executive Budget. ... In theory, there is

no additional revenue necessary to fund this because it is being obtained from an existing revenue source. I believe legislative counsel concluded therefore that it would not have the fiscal impact under the statute that would require a fiscal note. ... However, we certainly are open to reevaluating that as well. ... I believe the Fiscal Analysis Division reviews all the bills to reevaluate whether our initial determination is consistent with the Executive Budget.

SENATOR SCHNEIDER:

We have a letter from the OCHA ([Exhibit D](#)). I would like to send this bill to the Senate Committee on Finance with no recommendation to look at the fiscal note. This would also allow time for the amendment next week.

SENATOR CARLTON:

What will the amendment do?

SENATOR SCHNEIDER:

The amendment brings in qualified people to help with the injured workers. The current problem is that the people are not qualified to assist injured workers.

SENATOR CARLTON:

It would not actually create an office of ombudsman? Would it support the office that already exists and provide more qualified people and resources?

SENATOR SCHNEIDER:

Yes.

SENATOR CARLTON:

I would like to see more people in the OCHA have the resources and experience to assist the injured worker with the maze they have to go through to obtain benefits.

SENATOR SCHNEIDER:

That is the reason for the bill and the amendment.

PATRICK T. SANDERSON (Laborers Local No. 872):

There are people in the OCHA who are very qualified to do this work. In northern Nevada, there was a person who did a terrific job assisting people with workers' compensation, but that office is no longer here. Currently, we use the Las Vegas OCHA. Redentor Villanueva is capable in his duties. We currently have people who are capable in the OCHA; it is just that there are budgetary issues that have caused them to focus on other tasks. People do not understand that staff is there to assist the injured worker. We would like every C-3 Form, C-4 Form and mandatory Division of Industrial Relations' safety poster to include the phone number for the OCHA. This would help people realize there is a resource available to them. As of right now, they either go to an attorney or go without workers' compensation benefits. We are not trying to change the system but, trying to get the information out so people understand there is a resource available to them. The initial intent of the bill was good, but it has become misunderstood. The qualified people are in place; a new office is not necessary.

SENATOR CARLTON:

Is getting information out to the injured worker on the OCHA part of your recommendation?

MR. SANDERSON:

Yes.

VALERIE M. ROSALIN R.N. (Director, Office for Consumer Health Assistance, Office of the Governor):

My position statement is [Exhibit D](#) referenced earlier by Senator Schneider. To date, we have saved injured workers \$2 million.

REDECTOR VILLANUEVA (Quality Assurance Specialist, Office for Consumer Health Assistance, Office of the Governor):

I would like to recite a specific case where saving money for an injured worker was accomplished, as referred to by Ms. Rosalin. It was a permanent-disability case with a law-enforcement person who did not understand the ramifications of the heart-lung provisions of the *Nevada Revised Statutes* (NRS) 617.455 and 617.457. Under those statutes, law-enforcement personnel and firemen are able to obtain benefits on permanent and total disability. In this specific case, the injured worker was from the Division of Parole and Probation, Department of Public Safety. I assisted him in obtaining his permanent and total disability

benefits, which between the medical and the monetary was a \$1.5 million lifetime benefit. We also assisted him in getting his Public Employees' Retirement System retirement disability.

This is the information we want to give out about the services we provide to injured workers statewide. In approximately 99 percent of the cases for referrals Mr. Sanderson has sent to this office, we have assisted the injured worker in winning their case. In the majority of those cases, the issue was claim denial.

CHAIR TOWNSEND:

I applaud you for what you are doing and the performance of your office. I believe Senator Schneider is attempting to allow a higher profile for your office and provide more assistance to those who obviously need it before they get to the level of litigation. This is not a reflection on your office. It is an indication that we, as a body, have not highlighted enough what you are doing. Maybe, this will give your office a higher profile and more resources.

ROBERT A. OSTROVSKY (Nevada Resort Association):

I understand that Senator Schneider is attempting to strengthen the OCHA. He wishes to provide the tools the office might not otherwise have to provide the injured workers a good place for information or a referral to the appropriate state agency. The intent of this bill is not to hinder the OCHA but to assist in any way to make it a better place for injured workers to obtain information.

SENATOR SCHNEIDER:

I appreciate the work of Mr. Villanueva. We are only attempting to provide additional resources to that office.

CHAIR TOWNSEND:

It is my recommendation that we pass the bill as it is, because we cannot change the exemption by merely adding an appropriation to it.

SENATOR SCHNEIDER MOVED TO DO PASS S.B. 126.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED (SENATOR TIFFANY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

I have provided you with information which is a result of a conversation that I had with Senator Nolan ([Exhibit E](#)). With the growth in southern Nevada, the Real Estate Division (RED), Department of Business and Industry, has not been able to keep pace. I would ask that you review this for upcoming meetings next week.

I want to make it extremely clear this information was requested from the RED. It was a result of the conversation I had with Senator Nolan and we approached the RED to provide us information to assist them for the future, especially in southern Nevada.

SENATOR SCHNEIDER:

I would like to discuss S.B. 231. We passed it last Session and it died on the Senate floor. I have proposed changes ([Exhibit F](#)) from the State Board of Pharmacy. We would gut the bill as a whole and insert the proposed language in [Exhibit F](#). Senator Heck also has a paragraph he would like to add about disclosure.

SENATE BILL 231: Revises provisions governing authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs. (BDR 40-783)

CHAIR TOWNSEND:

Could you tell us what is in it?

SENATOR SCHNEIDER:

It would be a pilot program. Physicians could work within their scope for the therapies. This is for experimental drugs and medicine and limited to one location in the State. It is hoped this would help us attract medical facilities

to the State. I spoke with Las Vegas Mayor Oscar Goodman about this and he is interested in this as economic development to bring better hospitals and better doctors.

SENATOR HECK:

It would be important to add a disclosure that these therapies may not be covered by medical insurance.

SENATOR CARLTON:

I have concerns with regard to section 2 of [Exhibit F](#). I cannot support something that does not have a safety net to ensure that a practitioner cannot freely practice without any discipline.

CHAIR TOWNSEND:

Perhaps it is not written correctly. I think the intent is that the right to discipline still applies in a practitioner's private practice within their normal scope of practice. That language is just for using these therapies; then, the licensing board would be prohibited from using disciplinary measures.

SENATOR CARLTON:

By not allowing discipline, there is no component for protection of the patient.

KEITH LEE (Board of Medical Examiners):

I have not had an opportunity to study this amendment. The Board of Medical Examiners (BME) had objections to Senator Schneider's initial bill. Our concern was the repealing of some of the sections in the NRS regarding pain management and those types of things. In 1999, we went through a fairly extensive process in which we adopted pain-management regulations to govern the dispensing of pain medications. Our main concerns from a regulatory aspect are from the standpoint of being able to discipline physicians. Our concern would be, even if there are some protections and safeguards built in, if there is an abuse of the protections and safeguards by the physicians or facility, we should still be able to discipline them.

On the other hand, and I have discussed this with Senator Schneider, there may be an area, limited and controlled, where this experimental program might go forward and be in the best interest of the medical community in this State.

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SENATOR SCHNEIDER:

Could we add language that they may not discipline "unless such therapy constitutes gross medical negligence?"

MR. LEE:

It seems to me, at least from a disciplinary standpoint, that we should not change the standards or burden of proof that is necessary. If there is a complaint, perceived abuse or something that arises with regard to conduct of a physician at a trial pain clinic, then we should be able to move forward and begin the investigatory process on that complaint.

SENATOR SCHNEIDER:

In the NRS 630.161, subsection 3, it indicates that the BME must adopt a regulation for gross medical negligence. The language already exists in the NRS.

CHAIR TOWNSEND:

I think the idea of this bill is intriguing. There are other board bills coming from the Assembly. We should have dialogue on this next week in subcommittee so other interested parties can attend and participate.

SENATOR SCHNEIDER:

I would like the opportunity to present and discuss S.B. 142 when the other board bills start coming from the Assembly.

SENATE BILL 142: Provides for appointment of additional member to State Board of Pharmacy. (BDR 54-623)

CHAIR TOWNSEND:

I would recommend that Committee members interested in that bill go to the offices of the State Board of Pharmacy to observe what they do. Whether you agree with what the board is doing or not, they are doing some impressive things.

SENATOR SCHNEIDER:

I will do that with Senator Carlton.

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SENATOR CARLTON:

"I received an e-mail as a reminder on S.B. 51. That was Senator Titus' bill. ... I know she had met with you earlier this morning and she was ... speaking with Mr. Young."

SENATE BILL 51: Establishes pilot project to provide solar hot water heating systems for certain low-income households. (BDR 58-788)

CHAIR TOWNSEND:

Senator Titus did approach me. We discussed this, which is the area of solar hot-water heaters. I had assured her that I support, and I was asking the Committee to support, the inclusion in S.B. 123. ... I do not know whether it made S.B. 123.

SENATOR CARLTON:

I think we did not get [solar hot-water heating systems] in there. ... One of us was under the understanding that it did make it and another one was under the understanding that it did not make it. ... I was hoping that it had made it. ... Since she is on [Senate Committee on] Finance and it got rereferred to Finance, it sort of ends up in front of her again anyway, to make her own case in front of Finance.

CHAIR TOWNSEND:

"I do not think we did it in subcommittee."

SENATOR HARDY:

... The only thing we did that might be problematic is ... indicate that ... you could not purchase appliances with weatherization funds. ... We may need some clarification but it does not apply to solar water heaters.

CHAIR TOWNSEND:

"When they take that up ... then we will go over and clear that up to make sure that she understands that a solar hot-water heater is not considered an appliance by our exemption standards in that bill."

SENATOR CARLTON:

"Then my question would be, in my understanding of the bill, that the project that she was trying to get initiated, if it is not included, they may not begin that project. ... Do I misunderstand ..."?

CHAIR TOWNSEND:

Her bill specifically allocates a million and a half dollars out of the UEC for that project. What we did in the rewriting of S.B. 123 was actually to cut the tax by 25 percent, split it fifty-fifty, weatherization to Welfare. ... Then give flexibility inside of that. ... We did exclude appliances because we felt, even though toasters would not matter, we would much prefer to have the money going to people with real need. Whether they were in a mobile home, whether they needed cash assistance or We were going to actually replace the windows in somebody's stick-built [home].

SENATOR CARLTON:

I remember that. ... I just wanted to make sure because, yesterday at the end of the meeting, there was some confusion. I was asked if it was put in and I thought it had not. Another member of the Committee had asked and they thought it had been. ... I just wanted to get it on the record where it actually is and where we are going.

CHAIR TOWNSEND:

Your point is well taken. I would, were I the administrator of the division, ... be comfortable in interpreting that solar hot-water heater is not an appliance. ... In fact, it is part of weatherization and ... conservation and that ... would be included. ... For most people who do not know, if you have problems with an electric bill, ... your two largest components of your electric bill are your hot-water heater and your refrigerator, the largest by a lot. They are like 50 percent of your electric bill. ... You can either get a better one of each one of those, or in the case of what Senator Titus proposed, which is a solar hot-water heater, which really takes no energy. That is the way you deal with it. That is the way we have dealt with things ... here. We get to the heart of the matter. Those are the two key components. There is only one way

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to deal with a refrigerator, you have to get a new upgraded one. ...
A toaster does not do it.

SENATOR CARLTON:

... I understand Mr. Chairman. I just wanted to clarify because I did not want to give the wrong information to my minority leader and I promised her that I would investigate. I know she had spoken to you this morning about it so I just wanted to make sure we understood which direction we were going.

CHAIR TOWNSEND:

We would be glad to go in front of the Senate Committee on Finance and explain it.

There being no further business before the Senate Committee on Commerce and Labor this morning, we will adjourn at 10:20 a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____