

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

**Seventy-Fourth Session
February 26, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 10:02 a.m., on Monday, February 26, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Kelvin Atkinson
Assemblyman Bob Beers
Assemblyman David Bobzien
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Pete Goicoechea
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblywoman Bonnie Parnell
Assemblyman James Settlemeyer
Assemblyman Lynn D. Stewart
Assemblywoman RoseMary Womack

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Scott McKenna, Committee Counsel
Cheryl Williams, Committee Secretary



OTHERS PRESENT:

Leo Drozdoff, Administrator, Division of Environmental Protection

[Vice Chair Pierce chaired the meeting due to Chair Kirkpatrick's hoarse voice.]

[Roll call. There was a quorum.]

Vice Chair Pierce:

Today at the Legislature is Scout Day and we have Boy Scouts visiting from the Nevada Area Council.

I would like to begin our work session on two bills: A.B. 6 and A.B. 94. Our Committee Policy Analyst Amber Joiner will take us through the work session document ([Exhibit C](#)).

Amber Joiner:

The first bill in your work session document is Assembly Bill 6.

Assembly Bill 6: Authorizes a board of county commissioners to enter into a contract to provide the residents of the county with discounts on prescription drugs. (BDR 20-530)

Amber Joiner:

There was one amendment proposed. It would allow the counties to enter into more than one contract for the purpose of providing prescription drug discount programs. This was proposed by John Slaughter, Director of Management Services for Washoe County. The suggested language is attached. There was no testimony in opposition to this measure, and there was no testimony in opposition to the proposed amendment.

Vice Chair Pierce:

Is there any discussion about this bill? Mr. Goicoechea.

Assemblyman Goicoechea:

As I look at the bill, it only enables legislation for counties to enter into the program. I know some have looked at it through NACO [National Association of Counties], and it does seem to offer cost savings. I am going to support the measure.

Assemblywoman Kirkpatrick:

Is there any other discussion on the bill? Ms. Pierce needs to make a disclosure.

Vice Chair Pierce:

Testifying in support of this bill, I was a representative from the Nevada Alliance of Retired Americans and am on the board. It is a non-profit organization, 501(C)(3). The passage of this bill will not affect me in any way differently than it affects anyone else, and so I am going to vote on this bill.

I will entertain a motion on this bill.

ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 6.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Vice Chair Pierce:

Dr. Hardy, would you like to make the floor statement?

We will now go to A.B. 94.

[Assembly Bill 94](#): Revises provisions relating to administrative procedure.
(BDR 18-219)

Amber Joiner:

There was one amendment proposed. To make the provisions of Assembly Bill 94 retroactive to the effective date of Senate Bill No. 428 of the 73rd Legislative Session, which is October 1, 2005. This amendment was proposed by John L. Marshall, Attorney at Law, Reno, Nevada ([Exhibit C](#)).

Vice Chair Pierce:

Is there any discussion on this Bill? Mr. Goicoechea.

Assemblyman Goicoechea:

I still have some concerns and issues with the bill. When we had testimony in the Committee hearing, it was a case of mixing apples and oranges. Life insurance is one thing, public comment on how one acts when becoming involved in public comment is another issue. I do not have a problem with the licensure issue; I am concerned with making the amendment retroactive

because a couple of court cases are pending. What do we do there? We were functioning under the law for the last two years, now all of a sudden we are going to change the law and roll it back two years. I do not know if we can realistically do that in all fairness. I realize that we can do it, but is it fair to those litigants?

Vice Chair Pierce:

Is there any other discussion? Mrs. Kirkpatrick.

Assemblywoman Kirkpatrick:

The intent was to go back and look at those cases that were in litigation at the time. I believe that there is only one case that was actually affected by this. One of them is currently in litigation, and one of them has been through the litigation process. If we could ask Leo [Drozdoff] to come up, he could confirm this for us. One of the other options is to have the legislative intent be that they go back and revisit the case; however, it is always better to have it written as opposed to ...

Vice Chair Pierce:

Mr. Drozdoff, please come forward.

Leo Drozdoff, Administrator, Division of Environmental Protection:

There were two cases that fell into this issue with Senate Bill No. 428 of the 73rd Legislative Session. They were Big Springs and the Beverly Hills Dairy. The Big Springs case has proceeded through the courts and has been dismissed, so there is just the one case that is outstanding, and that is the Beverly Hills Dairy. We would have no objections whatsoever to bringing the Beverly Hills Dairy case back to the Commission, if that would be easier, than to try to do something retroactively.

Assemblyman Goicoechea:

Because that was the law for those two years, did we exclude some parties that would have liked to participate? If so, how do we go back and undo that? It is very difficult when we talk about applying a law retroactively; there is no way to fix it. It has been on the books for a couple of years; it is clearly there. It seems that we would be a lot better served to move ahead with it.

One more question. We are talking about licensing, but this also extends to permitting, and that is where we get into the gray areas. We talk about granting denial or renewal of a license, but technically we are moving far beyond that, especially through the Division of Environmental Protection (NDEP). Whether we talk about the permitting of air sheds, and it gets out there, this is where I have heartburn: how involved can we be in the process? If we are

talking about licensure, it is one thing, but when are talking about full permitting I continue to have a problem with it.

I am sure that once we reverse this law, you will get considerable public comment in your department.

Leo Drozdoff:

What this bill does is change it back to the way it has been for three decades. In terms of how NDEP operated over the past two years, we have worked with it. I think that is the preferable alternative. We made some points the last time that say that sometimes folks come in that we do not feel are actually a part of the solution, nor are they looking for a solution. They are really trying to obviate the problem. If the changes were made back to the way it was last time, then we could use the next two years to see if there is a process that can be put into place to deal with those bad apples.

Assemblyman Goicoechea:

Can we move this process through the Nevada Administrative Code (NAC) and the regulatory process; could we in fact put some safeguards in place?

Leo Drozdoff:

What we can do is come back with legislation; I do not think that we can put regulations in place that are tighter than the statute. We certainly do not want this bill to get bogged down. There is a real need to make sure that our delegated programs stay delegated, and that the universe of affected facilities is just one. It makes sense to make these changes; as we can through either formal or informal legislative mechanisms. With NDEP going out and beating the path, putting together workshops, and coming back with some recommendations for next session, it may make sense to do it in a two step process.

Assemblyman Bobzien:

Thank you for clarifying some of the issues and keeping us on track with our thinking. Your point about continually monitoring how this process is used and potentiality abused is well taken, and I for one would welcome additional information in the future as to how that is going if we need to revisit it.

This gets back to the fundamental right of a citizen, of the public, to petition its government. With that said, I think that this was a case in which there is fallibility on the part of the Legislature, and in this particular incident we should go back to the way it was. I am in favor of the amendment and making this retroactive.

Assemblyman Settlemeyer:

How many people were granted licenses in that time frame? Does that then allow litigation against some individual if all of a sudden someone comes forward? In the past, no one was allowed to argue on the validity of a license or allowed to be involved in that process. Now someone could go back and bring a lawsuit based on the fact that an individual should never have received a license to begin with. How many lawsuits are we potentially opening up?

Leo Drozdoff:

That is a good question and one that I would probably need to work on with our Attorney General, but the question with regard to how many licenses, I am certain that is in the hundreds, if not more.

Assemblyman Settlemeyer:

So potentially hundreds of lawsuits could be opened up.

Leo Drozdoff:

Again, I do not know the ramifications of making this bill retroactive. I would need to work with our attorneys. If that is the case, this would not be a preferable option for us. We are talking about one facility and there has to be some way to be accommodating without the unintended consequences that you discussed.

Assemblyman Settlemeyer:

I am still very concerned about the concept of businesses using this unfairly against other businesses.

Assemblyman Christensen:

I too share the concerns of my colleagues from Eureka and Douglas County with respect to going retroactive. What is that going to open up? We do not run your division. If it gets ugly, your division could be dealing with it over the next two years. Of course, we would readdress it in two years. Was your division a proponent of going retroactive or was it another organization?

Leo Drozdoff:

No, our agency was not the proponent; I believe that was John Marshall, who was representing people who are appealing our permit on the Beverly Hills Dairy. My preference would be to not go retroactive, yet find some mechanism to deal with this one situation. There has to be some way to do that. If the concern about going retroactive is going to call into question the hundreds of permits that we have issued that would be a huge concern for us.

Assemblyman Christensen:

I agree with your intent. If there is one organization, and that organization [Beverly Hills Dairy] fell between the cracks, then this change would allow things to go smoothly through the process and allow things to move forward. If that is everyone's intent, then I would support it as well. I am just curious as to how we can move forward on this and address the different concerns and questions from the Committee.

Assemblyman Claborn:

If we remove the amendment, do you have a sunset date or a time when this would take effect?

Leo Drozdoff:

As I testified the last time and will reiterate here, we have run this through the Governor's Office, and they are supportive of the change, not necessarily the amendment, but the change. It can be done either upon passage or when the new year begins, which would be July 1, 2007.

Assemblyman Claborn:

But do you have one in your mind today, such as the effective date?

Chair Kirkpatrick:

We could meet in the middle and make it effective upon passage. I believe that your word is good, and that you will revisit a few of the cases that you talked about before, and we would not have to go back and look at the 500 licenses that were put in place. I am willing to move that we make it effective upon passage without any amendment, so the amendment would be null and void if that will satisfy the Committee.

Assemblyman Bobzien:

Just to clarify that there was some discussion about legislative intent regarding retroactivity, and that Mr. Drozdoff suggested that it would be sufficient to deal with the one outstanding situation, would that be a possibility as well?

Vice Chair Pierce:

Mrs. Kirkpatrick would you restate your motion, please?

Assemblywoman Kirkpatrick:

My motion would be to Amend and Do Pass Assembly Bill 94 with the effective date upon passage and with the legislative intent that you go back and look at the one case you specified.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 94.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

Assemblyman Goicoechea:

I want to clarify what I seconded. Rolling back to legislative intent, I do not see how we can take even established legislative intent on a case that is clearly heading for district court. The Big Springs Mine is already being litigated no matter what we intend or do not intend, is that not correct Leo [Drozdoff]? It is moving in that process?

Leo Drozdoff:

The Big Springs case is done. It went to court and was dismissed, and it was not appealed to the Supreme Court. My understanding is that one is done; we are really talking about the one facility that John Marshall discussed.

Assemblyman Goicoechea:

What is the status of that?

Leo Drozdoff:

That one has not gone to court yet.

Assemblyman Goicoechea:

So it is still in the hearing process.

Leo Drozdoff:

Yes.

Assemblyman Goicoechea:

So they would clearly have the ability to delay this process until the bill became effective? Will you hold another round of permit hearings or licensure on that particular application?

Leo Drozdoff:

Again, I am very comfortable with doing that. When we were talking about legislative intent, and there may be a permit holder who does not share my view here, that is why we were asking if there was some sort of ability to affirmatively deal with this one facility either through some statement of legislative intent or the like. I would be willing to go back out to public notice on the permit.

Assemblyman Goicoechea:

Since I seconded the motion, I clearly would like to establish that the legislative intent of what we are bringing forward is that this legislation will be reversed upon passage, and that we are going to look at this over the next interim to see if we erred or stumbled. I would be apprehensive of establishing any kind of legislative intent that said we are going to go back and revisit any of the others. My intent is to let us move forward from the date the bill is passed and try not to cast any shadows either on Big Springs Mine or Beverly Hills Dairy. If you say you can go back and look at that one, then technically you are saying that you can go back and look at any one of the 100 licenses that have been granted. My intent is that we move away from that.

Vice Chair Pierce:

Mrs. Kirkpatrick, are you comfortable with Assemblyman Goicoechea's statement of the intent of the motion?

Assemblywoman Kirkpatrick:

Yes.

Assemblyman Bobzien:

I would like a clarification. Mr. Drozdoff, as I understand it, this would apply only to contested cases. We need to keep in mind that there is just the one contested case that we have been discussing, and there is the notion that there may be an untold number of cases that would be impacted by retroactivity. There are two different issues here; I realize that we are putting you on the spot here without your having the benefit of counsel to check with. My understanding is that the retroactivity discussion is really about the one contested case.

Leo Drozdoff:

I do not know what the ramifications would be if other people said, "Well, the only reason we did not contest it was because of this business." I just do not know. But to your direct question, the answer is yes, the only sort of remaining contested case that has not either found its way through the courts or has not been initiated is the one that we have been talking about.

Assemblyman Settelmeyer:

So we are indicating the current motion in front of us will not jeopardize legitimacy or validity of any of the permits that have been licensed over the last two years except for those that are in a contested court case. Is that correct? If we need to, then I want to make an amendment to the motion to say that is our intent, so that it is clearly there.

Vice Chair Pierce:

Mrs. Kirkpatrick has indicated yes, the intent that you stated is correct, so that is the motion that we are discussing right now, your understanding of the motion is correct.

Any other discussion? Assemblyman Stewart.

Assemblyman Stewart:

Could we have it restated then to make it clear that the cases will just involve those that are being contested?

Assemblywoman Kirkpatrick:

As I am trying to save my voice, I am going to let Mr. Settlemeyer say it.

Assemblyman Settlemeyer:

What we are putting forward is to reverse the law on its effective date of passage. That it will ensure that it does not jeopardize the legitimacy or validity of any license that was granted over the last two years or until said time that this bill is passed. They will not be allowed to be jeopardized. The legislative intent will go only toward the cases that are currently pending in the courts.

Vice Chair Pierce:

Mrs. Kirkpatrick and Mr. Goicoechea, are you satisfied that is the intent and that this matches the motion and the second that you made?

Assemblyman Goicoechea:

Yes, but I would prefer that we did not have even the one case in there. But I will concede that.

Vice Chair Pierce:

Is there any other discussion? We have a motion and a second.

THE MOTION PASSED UNANIMOUSLY.

Is there any public comment? Are there any comments from the members before we adjourn? That concludes our meeting for today, and we will not meet tomorrow [Tuesday, February 27, 2007], our next meeting will be Wednesday, February 28, 2007, at 8:00 a.m.

Meeting adjourned [at 10:32 a.m.]

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: February 26, 2007

Time of Meeting: 10:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Amber Joiner	Work Session Document