

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

**Seventy-fourth Session
April 13, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:01 p.m. on Friday, April 13, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John J. Lee

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Gary L. Ghiggeri, Senate Fiscal Analyst
Candice Nye, Assistant to Committee Manager
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

OTHERS PRESENT:

Nancy K. Ford, Administrator, Division of Welfare and Supportive Services,
Department of Health and Human Services
Ivan R. Ashleman, Chair, State Public Works Board
R. Ben Graham, Nevada District Attorneys Association

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CHAIR HARDY:

The Committee Policy Analyst handed out the work session document ([Exhibit C](#), original is on file in the Research Library). We will look at Senate Bill (S.B.) 123.

SENATE BILL 123: Makes various changes to provisions relating to public records. (BDR 19-462)

SENATOR CARE:

The mock-up on pages 3 through 7 in [Exhibit C](#) is a product of two subcommittee meetings. Section 2 has not changed. Section 3 gives more comfortable language to a private entity that has entered into a contract with a governmental entity. It specifically states we are not seeking their "financial or other proprietary records." It would only include those documents generated in the course of fulfilling the governmental function. Section 4 was changed in the subcommittee to the fifth business day after the person who has legal custody or control gets the request as opposed to the second. The clock would not start ticking until the appropriate person has the request in hand. Section 4, lines 34 through 36, intends that if you have not heard from the entity you have made the request from, you can inquire about your request. This reminds the entity it is under a duty to respond or at risk of the requestor deciding they are not being treated fairly and may seek legal redress. Section 4, subsection 1, paragraph (d), subparagraph (2) has "statute or other legal authority." The original draft just had legal authority to give comfort to people who thought the statute might be too narrow.

Page 5 of [Exhibit C](#) has multiple deletions. After talking with Legal Counsel, we have come to the conclusion lines 15 through 17 on page 5 are not necessary. If the requestor filed suit, the requestor would say this is what they have decided. I would be agreeable to strike these lines.

CHAIR HARDY:

Section 4, subsection 2 would be entirely stricken.

SENATOR CARE:

That is correct. Section 4, subsection 3 is a result of a discussion about whether the requests should be oral or written. If the requestor has a relationship with the governmental entity, the reporter can get on the phone and request the document. However, if you are the governmental entity and not

clear of the request, you can request a written request. This language allows the request to be oral or written.

The new language in section 5 clarifies "legal custody or control," so we narrow it down to the supervisor. In the original draft, there was a rebuttable presumption that after the document is confidential for ten years, it becomes public. The subcommittee extended that to 30 years. The Nevada Resort Association pointed out the application for a gaming license is a lengthy, detailed document that could include family and financial information. They would like to be exempt. I am not agreeable to that, but I am agreeable to changing it to 40 years or 10 years after death, whichever is later in the case of an applicant. That is quite an extension of time. Section 9 is deleted by amendment. There is nothing in the bill about liability or the privilege of confidentiality being waived for failing to respond timely.

SENATOR RAGGIO:

The State Gaming Control Board goes into personal information unlike any place else in government; 30 or 40 years is not an adequate length of time before the personal information goes public because these people have families. If that information were released, it could be damaging. The Gaming Control Board should be exempt.

SENATOR CARE:

I wrestled with that. When I originally testified, I gave the example of Howard Hughes. I cannot imagine why that information is still confidential after 40 years. People have a right to know. It is a privilege license, and they avail themselves to the government to get that license. As an accommodation to the Resort Association, I added the ten years.

SENATOR RAGGIO:

I have been in on some Gaming Control Board investigations. I am not concerned about Howard Hughes; I am concerned about clients who have had to get into extremely personal information. Whether it is 40 years or not, this information affects the family. I do not see why it is something the public has to know. There is no due process or protection when you apply for a gaming license.

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SENATOR CARE:

It is a rebuttable presumption the documents need to be public. If a family member wanted to make the case for the document to remain confidential, they would be free to do that.

SENATOR RAGGIO:

That sounds good, but it entails going to court. I would not support the bill unless you exempt the Gaming Control Board.

SENATOR BEERS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 123.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HARDY:

We will move to S.B. 325.

SENATE BILL 325: Makes various changes concerning the English language.
(BDR 19-760)

SENATOR BEERS:

There is a mock-up amendment ([Exhibit D](#)). It incorporated extensive language about legislative intent to improve the lives of immigrants by urging them to master English. There are two additional changes.

CHAIR HARDY:

Does your amendment take into account amendments offered by Nancy K. Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services?

SENATOR BEERS:

It does not. On page 2 of [Exhibit D](#), lines 20 and 21 are deleted. This would allow official publications of the state to be printed in languages other than English. The other change is the deletion of section 3, which required tracking the expenses of providing government services in languages other than English.

CHAIR HARDY:

Let us look at other amendments proposed. The first two amendments on page 8 of [Exhibit C](#) are resolved by the amendment proposed by Senator Beers. The third amendment on page 9 of [Exhibit C](#) suggests we provide "an amendment designed to ensure that State agencies can adhere to federal requirements concerning limited English proficiency" and suggests "adding a new subparagraph (g) to Section 1, subsection 3 of the bill to provide an exception for federal laws requiring non-English services or documents from State agencies."

SENATOR BEERS:

That is handled. I have submitted research ([Exhibit E](#)) that disagrees there is a requirement in the 1964 Civil Rights Act equating language and national origin. The courts have consistently rejected that language equals national origin.

NANCY K. FORD (Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services):

My position is not that you cannot adopt English as the official language of Nevada. My position is that Title 6 of the Civil Rights Act requires us to provide translation services in order for us to receive federal funding. Senator Beers addressed my concern regarding written translation by his amendment. However, I have concerns about section 2 which makes it an unlawful employment practice to employ, hire or compensate any person based on "inability to converse in a language other than English." Under the Civil Rights Act, if a certain percentage of the population we serve speaks another language, we are required to provide translation services. I hire bilingual staff to help. If more than 10 percent of their time is spent translating, we pay them plus 5 percent of their salary. That is a cost-effective way of providing translation services rather than hiring it out.

SENATOR BEERS:

Page 3, line 11 of [Exhibit D](#) excepts cases based "upon a bona fide occupational qualification," as that. We could make it legislative intent.

MS. FORD:

I would appreciate that. To me, that line means in order to be a translator, you have to know another language. I hire family service specialists who do casework the majority of the time and translate as a side responsibility. It is not an occupational qualification for them to have to speak Spanish.

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SENATOR BEERS:

A federal law requires you be able to communicate in Spanish.

Ms. FORD:

The federal law requires me to provide translation services. It does not tell me the manner in which I am to do it.

CHAIR HARDY:

I do not think the nationality matters. Can Committee Counsel render an opinion?

EILEEN O'GRADY (Committee Counsel):

It might need to be clarified. It is not a qualification of the person's job to speak another language. It is something they do in addition for pay. The bill says it is based on a qualification of their job.

CHAIR HARDY:

We will take that as a conceptual amendment.

SENATOR CARE:

I have a problem with the litany of race, creed, color et cetera. Some of these terms are constitutionally protected classes and some are statutorily protected classes. I have never seen the phrase "inability to converse in a language other than English" elevated to that level. There may be a vagueness issue here. What if the person speaks English with a heavy accent where it is difficult to understand the person? There are degrees of proficiency.

SENATOR BEERS:

Would you be supportive of the measure if we eliminated that section?

SENATOR CARE:

I would.

SENATOR LEE:

I would like to put the recitals into this bill to show what we were considering. It is our hope for them to learn this language and enjoy the freedoms and opportunities. I have submitted a mock-up of S.B. 325 ([Exhibit F](#)). I would make a motion to put the language in [Exhibit F](#) into [Exhibit D](#) and remove "inability to converse in a language other than English."

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SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 325.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HARDY:
We will move to S.B. 387.

SENATE BILL 387: Revises various provisions governing public works and the State Public Works Board. (BDR 28-904)

SENATOR RAGGIO:
The Assembly is also looking at restructuring the State Public Works Board. This comes after long discussion during other sessions and the interim. A proposed amendment on pages 21 through 28 in [Exhibit C](#) is acceptable, but there are minor revisions.

IVAN R. ASHLEMAN (Chair, State Public Works Board):
We changed section 1. It does no harm, but it is an orphan. We did not adopt other changes in earlier discussions that would have required this definition. There is no statutory language to tie it to so it is no longer needed.

CHAIR HARDY:
Section 2 is where we changed who makes up the Board and how the appointments are made.

MR. ASHLEMAN:
The operative change in section 4 is under subsection 3 where it states, "The Chairman of the Board may waive part or all the requirements in this section for any specific meeting of the Board." The chairman would be able to waive the per diem and travel expenses. The Board was in danger of running out of Board meeting money when things needed approval to get contracts moving. The members were amenable to having that waived, but statutorily, we could not.

CHAIR HARDY:

My concern is the chairman could use that in a punitive way. Can we put language in to clarify such as "if necessitated by budgetary restraints"?

MR. ASHLEMAN:

That would be fine. Section 6 created a deputy manager for compliance and code enforcement and separated the chain of command over that person so they were independent of the manager. That was done to ensure no conflicts of interest. That was followed through with putting control over other deputy managers who work directly for the manager under the Board. If you do not have confidence in your general manager, you should replace the manager but not tinker with his direct subordinates.

SENATOR RAGGIO:

The concern we had was to ensure a division between the manager and code compliance so there was no conflict.

MR. ASHLEMAN:

Section 6, subsection 9, paragraph (g), subparagraph (1) makes changes in the prior approval of Interim Finance Committee. This is parallel to another change in section 9, subsection 6 that states "shall obtain prior approval from the Interim Finance Committee (IFC) ... if the change increases or decreases the cost of the project by 15 percent." It was better to tie that to cost than to square footage. I had suggested \$500,000. Gary L. Ghiggeri, Senate Fiscal Analyst, is more comfortable with \$200,000, which is fine. We added the language "not to exceed total approved project funds" so there is no possibility of tampering with this by removing an item and bringing it in later for supplementation.

The Board has suggested we give final authority to approve architecture to the manager; section 6, subsection 9, paragraph (h) reflects that. The reasoning is that it should save six to eight weeks in the letting of contracts and would be a significant monetary savings. Because of the increased complexity of most of our projects, the likelihood of the Board making any significant correction is slim. If we did, we would incur huge costs. It is more practical to leave that to staff.

There is new language in section 9, subsection 3 of S.B. 387. Theoretically, we have a right to negotiate with the lowest bidder if the bid is less than the

appropriation. The current language says "does not exceed"; it should say "exceed" to make it useful. We also changed it so we can bid with all responsible bidders under the appropriation. If we can negotiate with the guy who did it in the first place, there is no negotiation. The reason you want "exceed" is that when we do these, you find your low bidder high in an alternative part of the bid. This allows us to fix that situation so we do not take an otherwise good bid and overpay on an area where a mistake has obviously been made.

The change in section 9, subsection 8, paragraph (d) states "in any amount where additional project funds were authorized" In these inflationary times, it makes more sense to stick with the original contract rather than rebid for new work added by the Legislature to a given contract.

CHAIR HARDY:

That would only be in the course of construction.

MR. ASHLEMAN:

In a new section 11, the IFC designates six members to approve a Board matter that requires IFC approval. Just like our Board, the IFC always meets in a timely way to respond to changes. Delay can cause money and safety problems.

CHAIR HARDY:

Those members would be authorized to make any required approvals.

SENATOR RAGGIO:

Is that feasible? Should it be mandatory or permissive?

GARY L. GHIGGERI (Senate Fiscal Analyst):

I suggest you change the "shall" to "may."

SENATOR RAGGIO:

We should make it permissive because there are circumstances where we might not want to leave that decision to a subcommittee.

CHAIR HARDY:

By designating the members, you could provide for reporting back to the full committee.

MR. ASHLEMAN:

The duo "shalls" were intended to make this a permissive manner. It can be worded better. The final change is in section 15. The Legislative Counsel Bureau is not going to send for me as an emergency draftsman. I did not coordinate the sections properly.

SENATOR BEERS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 387.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HARDY:

We will move to S.B. 500.

SENATE BILL 500: Authorizes contracts between legal services organizations and local governmental agencies for the provision of insurance. (BDR 23-1367)

SENATOR TOWNSEND MOVED TO DO PASS S.B. 500.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HARDY:

We will move to S.B. 516.

SENATE BILL 516: Revises provisions governing the compensation of certain elected county officers. (BDR 20-225)

CHAIR HARDY:

Most Committee members felt we should keep the ability to set the salaries with the Legislature. If we keep that responsibility, we need to be fair and

equitable. I would like to set up a tradition where these things come to us regularly so we are not looking back and giving raises eight years after the fact. They are perceived as huge raises when, in fact, we did not give any kind of an increase for eight years. My proposal would be we amend the bill to provide for a cost-of-living adjustment set forth by the Social Security Administration. Then we can come back next Legislative Session and consider it again.

SENATOR BEERS:

If that is the route we take, it might be appropriate to push that through a 2007 estimate so we advance them up to the midpoint of the next biennium.

MICHAEL J. STEWART (Committee Policy Analyst);

I pulled the cost-of-living adjustments (COLA) from the Social Security Administration and did a calculation to include 2004, 2005 and 2006. If the Committee's intention is to base it on COLA, we can draft it to a specific formula.

CHAIR HARDY:

We are looking at the COLA on page 34 of [Exhibit C](#). Senator Beers suggests an increase in the next year based on the 2007 COLA.

SENATOR RAGGIO:

Having served in a county position, we were always in a position of catch up to adequately compensate county officials. More and more today, these are not just terms. If they do a good job, these positions become the careers of these people. They are performing critical positions, and they have been underpaid to a great degree. In larger counties, most elected officials are getting paid less than a portion of their staff.

CHAIR HARDY:

I hope to set a precedent to come back and set these every session and not wait eight years. I do not want an automatic increase. When we do the math, the request they ask for is close to the COLA amount under Senator Beers' proposal.

SENATOR RAGGIO:

Let us look at Clark County. These were bases on recognizing the loss of COLA over a period of time. What is the formula you are suggesting compared to what is in the bill?

CHAIR HARDY:

In S.B. 516, the district attorney is asking for a raise of \$181,994. Amendment No. 2 on page 32 of [Exhibit C](#) would be a little more than \$170,000. It would increase next year under Senator Beers' amendment because it will account for 2007. I spoke with proponents of the bill, and they appreciate our attempt to do this every session. In cases where we find ourselves woefully low in one area, we should have the ability, as the Legislature, to change those independently.

SENATOR TITUS:

It is not fair looking at raises based on COLA when our own state employees get less than that because we say government has to be lean and mean. Why should local government not be lean and mean? You should amend the statute and let local government set their own salaries because they know how much money they have and can afford to pay. Is there longevity pay on top of these salaries?

R. BEN GRAHAM (Nevada District Attorneys Association):

We have taken these issues into consideration. What we are seeking is significantly less than what all counties have given their classified people. Longevity kicks in after five years based upon people gaining experience and knowledge by staying in office.

SENATOR TITUS:

How does that work? How much do you get?

MR. GRAHAM:

After the fifth year, it starts at 2 percent and builds up a 10-year period to 20 percent. That applies to commissioners through public administrators.

SENATOR TITUS:

Some officials in rural counties who have been there a long time have longevity pay. To look at this chart without that added is not accurate.

MR. GRAHAM:

Only one or two rural counties are covered under longevity because of the turnover. The starting pays are what folks look at in deciding whether they will run for reelection.

SENATOR TITUS:

In that fifth year, does it go back and calculate for that period of time or does it start at 2 percent?

MR. GRAHAM:

I am not certain, but it may kick in that fifth year.

CHAIR HARDY:

We will provide a chart that indicates their current salaries with longevity pay.

SENATOR TITUS:

That would be helpful to compare it to what state employees get. We ought to look at a constitutional amendment to let local governments do this because they know how to do it best.

SENATOR BEERS:

This group of people has gone with a flat salary for a period of time during which others have gotten raises. We are simply raising them up to an equivalent level. For the last six years, they have not received the increases others have. The longevity pay rules are consistently applied to elected officials and their employees who are not elected. For purposes of comparing the two, longevity pay is not a factor.

SENATOR TITUS:

Mr. Graham said only a few people would be part of the longevity pay in rural Nevada because of the turnover. You cannot make the argument they have been in a static salary for six years if they have not been there. If they have been there, the salary has not been static because it has been six years, and they have longevity pay.

SENATOR LEE:

Maybe we should remove the 2-percent longevity pay and let the COLA keep everybody equal. The status salaries are the practical working numbers.

SENATOR RAGGIO:

These are elected officials on a flat salary. They get longevity pay as an incentive because you want to keep these people in the job. Any attorney can earn a lot more than these numbers. The state employees have steps. These officials do not have steps.

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CHAIR HARDY:

Another amendment from Storey County takes them from a Class 5 to a Class 4 and provides these raises.

SENATOR LEE:

I make a motion to amend and do pass S.B. 516 with the stated salary base in [Exhibit C](#), remove the 2-percent longevity pay, put in Senator Beers' ideas about a COLA increase for 2007 and bring Storey County up to the next level of counties.

SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 516.

SENATOR BEERS SECONDED THE MOTION.

SENATOR RAGGIO:

I do not support that because the longevity pay was put in here to get and keep good people in these positions. We do that for judges and should do it for elected officials.

SENATOR LEE:

I amend my motion to remove the longevity pay.

SENATOR BEERS:

I withdraw the second on S.B. 516. This is a negotiation and the opening bid we are approving.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS BEERS, CARE AND TITUS VOTED NO.)

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CHAIR HARDY:

We will move to S.B. 363.

SENATE BILL 363: Promotes the rezoning of certain parcels of real property within Clark County and the City of Las Vegas to allow high density residential development. (BDR 22-997)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):

I have a conceptual amendment to have Clark County prepare a study on how the changes would affect the County, transportation and housing. The finding would be reported next session. Once you put the higher-density and mixed-use housing in this area, you will be able to have shuttle buses. Part of the study should be about mass transportation. We want to eliminate as many cars as possible. An article in Southwest Airlines *Spirit* magazine shows if you eliminate a car from your household, you will save \$8,600 per year. That is a huge savings, especially for our workforce. There was an article in the *Las Vegas Review-Journal* about how the carbon dioxide levels in Clark County have grown to the highest in the nation. Senate Bill 363 takes a large area, attempts to rezone it and move in our workforce.

CHAIR HARDY:

Would Clark County and the City of Las Vegas conduct it or just Clark County?

SENATOR SCHNEIDER:

It would be Clark County.

CHAIR HARDY:

I share your concern that we need to move in this direction. I wonder if we need a bill or if a letter of request from this Committee would be sufficient to report back to this Committee. Your bill has gotten their attention. We do need to be concerned about this, but I would be happy to draft a letter indicating we heard this bill, there was great sympathy for the concept and we would like a study and explanation on what the County is doing.

SENATOR SCHNEIDER:

Warehousing congested along Interstate 15 and the railroad tracks was proper in previous years, but we need to move it. A letter is fine.

SENATOR TOWNSEND:

A letter is fine.

SENATOR TITUS:

I like a lot of these concepts. If we do not get it all worked out in a bill, we can send the letter of request.

SENATOR SCHNEIDER:

I would like to sit with the Chair to go over ideas that should be in the letter.

CHAIR HARDY:

My intention would be to draft the letter with your assistance. Let us move to S.B. 369.

SENATE BILL 369: Revises provisions concerning the recording of declarations of homestead. (BDR 20-58)

CHAIR HARDY:

There was significant debate about the fiscal impact and whether it was an unfunded mandate during the hearing.

SENATOR TOWNSEND:

Senator Raggio had a deep concern about an unfunded mandate. I tried to find some flexibility that would allow the County Recorder to make a determination on who they might waive. The amendment is shown on page 18 of [Exhibit C](#). Section 2, subsection 4 will change the "shall" to "may charge" and have it not exceed \$25. That gives flexibility. They are not mandated to charge a fee if they conform it.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 369.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR CARE:

Senate Bill 13 is my First Amendment bill and has been an interesting experience. Many entities that have objected to the bill have a message that they believe in the First Amendment; they just do not want you to exercise your

rights under the First Amendment. The bill is not going further. The bill began with the arrest of two street ministers walking down the Las Vegas Strip with a sign that said "Trust Jesus." It is unfathomable to me that in this day and age, an ordinance in Clark County allows someone to be arrested for carrying a sign pertaining to a deity, political candidate, gas prices or war. I am confident the federal courts will strike those ordinances down. I was hoping to save the taxpayers money. I am looking for that vehicle so if a germane bill comes to the floor, I will not hesitate to push S.B. 13 forward.

CHAIR HARDY:

I regret we are not able to process that bill. I cannot be Chair of a Committee that, in some way, elevates commercial speech to protected speech. We have to have ability to control pornography and other things distributed. I could not reach a comfort level. Some of us feel strongly about First Amendment rights but understand certain things need to be controlled.

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SENATOR CARE:

You created a subcommittee to follow up on S.B. 13 and I thank you.

CHAIR HARDY:

We are adjourned at 2:21 p.m.

RESPECTFULLY SUBMITTED:

Erin Miller,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____