MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND EDUCATION

Seventy-fourth Session
March 12, 2007

The Senate Committee on Human Resources and Education was called to order by Chair Maurice E. Washington at 1:43 p.m. on Monday, March 12, 2007, in Room 2135 of the Legislative Building, Carson City, 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 Maurice E. Washington, Chair
Senator Barbara K. Cegavske, Vice Chair
Senator Dennis Nolan
Senator Joseph J. Heck
Senator Valerie Wiener
Senator Steven A. Horsford
Senator Joyce Woodhouse

GUEST LEGISLATORS PRESENT:

Senator Bob Coffin, Clark County Senatorial District No. 10
Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Joe McCoy, Committee Policy Analyst
Sara Partida, Committee Counsel
Kristin C. Roberts, Senior Principal Deputy Legislative Counsel
Patricia Vardakis, Committee Secretary

OTHERS PRESENT:

Gloria P. Dopf, Deputy Superintendent for Instructional, Research and Evaluation Services, Department of Education
Craig Kadlub, Clark County School District
Stephen M. Rowland, Ph.D., Professor of Geology, University of Nevada, Las Vegas

Helen Mortenson
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services

CHAIR WASHINGTON:
We will open the hearing on Senate Bill (S.B.) 115.

SENATE BILL 115: Revises provisions governing the rights of parents of pupils with disabilities. (BDR 34-737)

SENATOR BOB COFFIN (Clark County Senatorial District No. 10):
Senate Bill 115 generated from a problem concerning a special needs child. This child had a number of disabilities. They were of such a nature that communication was difficult. There is a feeling among school counselors that this is not an unusual occurrence.

When a child is 18 years of age and has behavioral and physiological challenges, they are on their own while they are in school. Up to that point, their parents have been closely involved in the process of their education. The parents are colleagues with the school district in the most important matters that affect the welfare of their children. Parents of challenged children usually are responsible and involved with their children.

According to current law, the parents are no longer part of the process in guiding their children when the student has reached the age of majority. The parents can no longer participate unless they are invited to do so by the student. When a challenged student becomes 18 years of age, they have a new empowerment and they may not have the capacity to decide what is in their best interest. This generally occurs in the student's senior year of high school when the student needs parents for making lifetime decisions.

Students with full capacity and rational behavior accept and welcome the cooperation of their parents. In the case of challenged students, the need for guidance is even greater, and it is unfair to the challenged student to suddenly have control of their future.

There is some difference of opinion about whether the school districts want this change. I urge the Committee to pass S.B. 115 and address this problem.

CHAIR WASHINGTON:
It would be helpful to know the origin of the bill and its genesis. This information would assist the Committee and the Legislators to overturn the regulation that has been adopted by the State Board of Education, which transfers the rights of a parent to the pupil with disabilities at 18 years of age. If the court does not appoint a guardian, then the rights transfer to the student. Am I correct?

KRISTIN C. ROBERTS (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):
Correct. Senate Bill 115 attempts to reverse the existing State law regulation of the *Nevada Administrative Code* 388.195 which provides that "the rights of the pupil be transferred to the pupil when the pupil attains the age of 18 years."

CHAIR WASHINGTON:
I understand this regulation was adopted years ago, to ensure that a challenged pupil 18 years of age obtain their rights.

GLORIA P. DOPF (Deputy Superintendent for Instructional, Research and Evaluation Services, Department of Education):
This code was adopted in 1988 as part of a revision that was global in nature. We had input from steering committee members and the public. The constituents representing the advocacy center had given the language that is presently in code. This language provides that for special education purposes, 18 years of age should be the age of majority, as it is in other areas of disability law. The age of majority, as adopted by individual states, confers this right to the youngster who has reached the age of majority and has the right to make his own decisions. The federal law states the parent would continue to receive notices of the district's intent and is invited to participate but not be the decision maker. The parent can retain their right if they adjudicate the youngster incompetent. Senate Bill 115 would change the code and set a different standard. The rights of the parents would remain until the youngster exited the program or graduated with a standard diploma, if they were disabled and participating in special education. This is a broad spectrum of youngsters with all ranges of disabilities.

CHAIR WASHINGTON:
Is the broad range based on the current language in section 2 of S.B. 115?

MS. ROBERTS:
Yes. Section 2 of S.B. 115 defines pupils with disabilities.

CHAIR WASHINGTON:
Could we narrowly define the bill for those individuals having a physical or mental disability and who are not competent to make their own decisions to be under the guidance and auspices of their parents or guardian?

SENATOR COFFIN:
At the time the legislation was enacted, the issue addressed by S.B. 115 was not foreseen. The school counselors say this problem happens frequently. I am amenable to changes in S.B. 115 and would like to review any suggested language.

SENATOR NOLAN:
Was the definition in section 2 of S.B. 115 a federal definition that the State adopted?

MS. DOPF:
The definition on page 3, lines 5 through 9 of S.B. 115 is a restatement of federal language with the exception of the age. The age infusion was consistent with our State law. The federal law allows states to identify particular disability areas and the criteria attached to them. This is a general definition of an individual with disability in special education. There is more specificity as to what significant deviation means and what education deviation means. There are more definitions attached both in federal and State law.

SENATOR NOLAN:
I am familiar with the laws concerning implied consent dealing with physical incapacitation or mental incapacity for the administration of health care. I would agree with mentally or emotionally disabled children who are not able to make decisions on their own, but when the disability is physical, I do not see where that would apply.

SENATOR COFFIN:
There is no middle ground at the present time. The only option for a parent to get control of the decision-making process for their child is through the courts. The court would need to adjudicate the child's incompetence and find the child not capable of making competent decisions based on certain criteria.

CRAIG KADLUB (Clark County School District):
The Clark County School District wants to do the right thing for the students and not have a cumbersome process. Our concerns have been raised in the course of your discussion. Our concern is, the bill is written in broad terms and would capture those students who do not have a cognitive disability and are capable of making their own decisions. Senate Bill 115 would discriminate against students with disabilities and create a presumption that all students with disabilities are incompetent to represent themselves when they reach the age of majority. The presumption does not apply to their nondisabled peers and constitutes a denial of equal protection. It contradicts the intent of the Individuals with Disabilities Education Act (IDEA) because it does not support the independence of students with disabilities who are cognitively and emotionally able to make educational decisions. The purpose of the IDEA is to promote independent living and economic self-sufficiency for students with disabilities. The continued involvement of parents in educational decisions, once a disabled student reaches the age of majority, does not support the self-sufficiency and independent-living purposes of IDEA. With those concerns stated and the willingness of Senator Coffin and the district, we can find a middle ground on this issue.

CHAIR WASHINGTON:
There is a grey area between the students who are cognizant and those who are not; as well as the students who have been under the protection of their parents and have reached the age of majority. The language in the law is broad. It is assumed that once the child with a disability reaches the age of majority they obtain those rights, but they may not be emotionally or physically able to assume those responsibilities.

I have asked Ms. Dopf to speak to the State Board of Education regarding the regulations in the *Nevada Administrative Code* to see whether there is an appetite to readdress this provision and narrowly define the language.

SENATOR HECK:
Is the federal law silent regarding age?

MS. ROBERTS:
The IDEA authorizes, but does not require, the State to transfer the rights to the pupil at the age of majority. The age of majority is 18 years of age in Nevada.

SENATOR HECK:
Would there be a conflict with the IDEA or would federal funding be jeopardized by changing the language and being more flexible?

MS. ROBERTS:
It is our interpretation that the IDEA authorizes, but does not require, the transfer of rights.

CHAIR WASHINGTON:
We will close the hearing on S.B. 115 and open the hearing on S.B. 135.

SENATE BILL 135: Creates the Office of State Paleontologist within the Department of Cultural Affairs. (BDR 33-210)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
Senate Bill 135 was requested by the interim committee for Protection of Natural Treasures. It is important for us to make the people of Nevada aware of the natural treasures, to distinguish them and discover a way to save them for future generations. It was brought to our attention during the hearings that the State of Nevada does not have a program to protect our important natural treasure, which are fossils. Our State fossil is recognized and protected, but often they disappear into private or research collections located in other states. We are losing a valuable scientific and educational resource. Through testimony, we have discovered that we are not coordinating paleontological research activity and we are not inventorying the State's paleontological resources. The best mechanism to correct these problems would be to have a State Paleontologist. This person would be responsible for managing our fossils, studying the collections, preserving the fossils, taking inventory of fossils and saving them for future generations.

Fossils allow paleontologists to assemble historical narratives of physical and biological events of the different regions of our State of the past half-billion years. Our history emerges as richly textured and unimaginably vast. The fossils provide a tangible record of this history. They excite the imagination of people, especially children. They also promote tourism. As Legislators, we need to fulfill our responsibility as stewards of public lands and protectors of our natural treasures and therefore, look after these fossils that tell the story of our history.

Senate Bill 135 would create the Office of the State Paleontologist. The office would be within the Department of Cultural Affairs. The bill outlines some of the duties of the State Paleontologist. Paleontological discoveries are made every day and shape how we think of the world and there should be protection of these fossils.

CHAIR WASHINGTON:
How many full-time positions are being requested in the bill?

SENATOR TITUS:
There is to be one full-time position.

STEPHEN M. ROWLAND, Ph.D. (Professor of Geology, University of Nevada, Las Vegas):
I will show the Committee a PowerPoint presentation to make a case for "Why Nevada Needs an Office of State Paleontologist" (Exhibit C). Also, I have given the Committee letters in support of S.B. 135 (Exhibit D).

On page 5, Exhibit C, there is a picture of a team of researchers from Montana State University who uncovered fossils in the Valley of Fire State Park. They were found within Nevada State parkland; therefore, they were required to have State permits and reposit the fossils in the State. There are also related news articles depicted from the November 2006 issue of the *Las Vegas Review- Journal.* If the Valley of Fire fossils had been found on federal land, they would have been protected by federal law, but probably would have disappeared to another state. The federal agencies who manage most of the open land in Nevada where fossils are found have no interest in keeping the fossils in Nevada or notifying anyone of the finds. It is important to keep these resources in Nevada for our citizens. A State Paleontologist would help in this type of situation.

The paleontologist's duties are outlined in number 3, on page 5 and continued on page 6, Exhibit C.

When this PowerPoint was prepared, I had not received the fiscal notes on the position of State Paleontologist. There are ways of funding this position for the next biennium. As proposed in S.B. 135, the State Paleontologist would be a Nevada System of Higher Education (NSHE) faculty member whose academic salary would be mostly or completely paid by the NSHE. There is a provision in

the proposed legislation that the NSHE would provide office space and supplies for this position. Cultural Affairs could fund a graduate student to do the day-to-day activities at a low cost. The cost of creating an Office of the State Paleontologist would be $45,000 a year.

HELEN MORTENSON:
Most of the archeological and paleontological sites lie within federal land. Most of the archeological and paleontological specimens and reports lie in other states and institutions. They need to be brought back to our State and studied in the area and context of where they were initially found. We, the public, feel the best way to execute this is by establishing an Office of the State Paleontologist to create a database and to protect and learn from our nonrenewable resources. The State of Nevada would have control of the economic and educational opportunities of these treasures.

SENATOR HECK:
How would a State Paleontologist stop fossils from being taken out of state?

DR. ROWLAND:
There could be an exchange of information between the Nevada State Paleontologist and managers of federal lands. We could not prevent the taking of fossils from Nevada, but we would be aware of the circumstances. We could work with our partners in the federal agencies to try to keep the fossils in Nevada and minimize the exodus of our State treasures. It would be important to have museum space in Nevada to store these fossils then there would be no reason not to keep them in the State.

CHAIR WASHINGTON:
The Chair will entertain a motion on S.B. 135.

SENATOR WIENER MOVED TO DO PASS S.B. 135.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND HECK VOTED NO.)

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CHAIR WASHINGTON:
We will open the hearing on S.B. 142.

SENATE BILL 142: Revises provisions governing certain forms used by hospitals in this State. (BDR 40-602)

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
Senate Bill 142 is a housekeeping bill. It changes language in chapters 449 and 686 of the *Nevada Revised Statutes*, which refer to an old billing form used by hospitals and will become extinct on May 23, 2007. The bill will remove the reference to a specific claim form so that revisions to the statute are not required each time claim forms change. It provides that such forms be prescribed by the director of the Department of Health and Human Services subject to the approval of the majority of hospitals licensed in the State.

SENATOR WIENER:
What would happen if S.B. 142 is not approved?

MR. DUARTE:
There would be a conflict with what is required on the national level. Federal law requires we transition to a new form called the Universal Billing Form HCFA-1450 (UB-04). We would move ahead without complying.

SENATOR HECK:
Will the form used always be a federal form? Should there be language in the bill to qualify it as a federal form?

MR. DUARTE:
We do not have any specific language that it would follow federal guidelines or the Health Insurance Portability and Accountability Act (HIPAA) requirements for forms and electronic transactions. We could look at adding that language to give a specific reference to what would be used.

SENATOR HECK:
I want the language to be narrowly defined to prevent future directors from using their discretion to change the forms.

CHAIR WASHINGTON:
The language could be narrowed to include HIPAA or federal forms. The Chair will entertain a motion on S.B. 142.

> SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 142 AS AMENDED BY ADDING LANGUAGE SPECIFYING FEDERAL OR HIPPA FORMS.
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> SENATOR NOLAN SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WASHINGTON:
There being no further issues before us today, I will adjourn the meeting of the Senate Committee on Human Resources and Education at 2:33 p.m.

RESPECTFULLY SUBMITTED:

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Patricia Vardakis,
Committee Secretary

APPROVED BY:

_____
Senator Maurice E. Washington, Chair

DATE:_____