

**MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-fourth Session
February 22, 2007**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara K. Cegavske at 1:35 p.m. on Thursday, February 22, 2007, in Room 2144 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 Barbara K. Cegavske, Chair
Senator Warren B. Hardy II
Senator Bob Beers
Senator Bernice Mathews
Senator Valerie Wiener
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator William J. Raggio, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Mark E. Amodei, Capital Senatorial District

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Michelle L. Van Geel, Committee Policy Analyst
Josh Martinmaas, Committee Secretary

OTHERS PRESENT:

Jeanne Greene, Director, Department of Personnel
Shelley D. Blotter, Chief Personnel Manager, Technical Services, Department of Personnel
Linda Law, Interim Manager, Financial Management and Post Review, Division of Internal Audits, Department of Administration

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Kimberlee Tarter, Deputy Administrator, Purchasing Division, Department of
Administration
Lynn Chapman, Nevada Eagle Forum
Janine Hansen, Nevada Eagle Forum
Carole A. Vilardo, President, Nevada Taxpayers Association

CHAIR CEGAVSKE:

We will start the Committee on Legislative Operations and Elections and come to order. We have two bills and some Committee introductions. We have Bill Draft Request (BDR) 24-4 on behalf of Larry Lomax.

BILL DRAFT REQUEST 24-4: Makes various changes to provisions governing elections. (Later introduced as [Senate Bill 149](#).)

SENATOR BEERS MOVED TO INTRODUCE BDR 24-4.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, RAGGIO AND WIENER WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

We have a bill introduction request from Senator Dean A. Rhoads that follows up Senate Joint Resolution (S.J.R.) 3.

SENATE JOINT RESOLUTION 3: Proposes to amend the Nevada Constitution to revise provisions relating to signature requirements for initiative petitions. (BDR C-260)

CHAIR CEGAVSKE:

Senator Rhoads requests this BDR apply to all Assembly districts so the rurals would have a voice. It does not change the numbers; it changes where you gather them.

SENATOR MATHEWS MOVED TO INITIATE A BILL DRAFT REQUEST AS A FOLLOW-UP TO S.J.R. 3.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS RAGGIO AND WIENER WERE
ABSENT FOR THE VOTE.)

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CHAIR CEGAUSKE:

We will open the hearing on Senate Bill (S.B.) 87.

SENATE BILL 87: Provides for audits by Legislative Auditor of entities which are not state agencies but which receive appropriations of public money. (BDR 17-91)

SENATOR MARK E. AMODEI (Capital Senatorial District):

The bill draft behind S.B. 87 originally came from former Assemblyman Lynn C. Hettrick. Last interim, Carson Tahoe Regional Medical Center conducted a mental health program—I do not know the exact name of the program. Several of us visited with the board of the hospital and talked about their plans for the session and legislative matters. About a week later, an article appeared in the local paper, which indicated they were discontinuing this mental health service and causing displacement of approximately 800 people who would have to find this service elsewhere in the community, as well as employee layoffs.

People began calling local officials and hospital board members, along with members of the Legislature. I made an inquiry of the Director of the Legislative Counsel Bureau, Lorne J. Malkiewich, if we had authority to look at the validity of that business decision—to audit. The answer came back "Not really directly," but in discussions with Assemblyman Hettrick, he said, "I have a bill draft that kind of deals with that."

My concern in this circumstance was an entity that received state money and needed a state license to operate, but we were unable to audit them. Not that we want to go out and conduct regular audits, but if the Legislative Commission thinks it is appropriate, this oversight tool should be available. In this specific story, I am not sure whether an audit, notification procedure or something along those lines would have been appropriate.

As I look at S.B. 87, if private and public monies are commingled, what do you do in that instance? And if it becomes a public audit, what is proprietary and all those things? This issue could cross into the jurisdiction of three or four different committees. My issue may be better before Senator Washington's committee or Senator Hardy's committee, but this Committee has jurisdiction over audits. While the bill would need work, you have to ask yourself these questions.

Nevada Revised Statute (NRS) 218.850, subsection 2 talks about regular special audits and investigations. Subsection 2 states:

The Legislative Commission shall direct the Legislative Auditor to make any special audit or investigation that in its judgment is proper and necessary to carry out the purpose of this chapter or to assist the Legislature in the proper discharge of its duties.

I am not the Legislative Counsel, but those sound like broad words and phrases. If motivated, we may go to the Legislative Commission and do much of what S.B. 87 indicates, but S.B. 87 puts it out there for everybody to see. If there are protections for privacy, protections to ensure open records and protections that this not happen routinely, I welcome discussions, along with anything else along those lines.

As a part-time citizen Legislature in session 120 days every 2 years, the Legislative Auditor performs a key oversight function. Those folks go around, full-time and year-round, seeing what we said and how we appropriated funds. This can be seen in the case of a Nevada Department of Transportation process audit a few years back.

When confronted with a circumstance where you want to go to your colleagues on the Legislative Commission and say, "If I can get a majority to agree this is important, we should devote some of those scarce resources our Legislative Auditor has and do something along these lines." Senate Bill 87 creates an entirely appropriate tool.

As presently drafted, nothing in S.B. 87 indicates an audit. It involves the legislative process, the democratic process and a hearing before the Legislative Commission before the power is exercised. You need a request, presentation, consideration and majority from each House to agree to something like this. This

should not threaten somebody who receives state money. If so, maybe we can match them against the list of folks who appear before the money committees and see if the enthusiasm for receiving state money equals not being audited.

CHAIR CEGAVSKE:

As someone who sits on Senate Finance, I was excited when you came to me with this subject matter.

SENATOR HARDY:

I would be red-faced to look at a constituent and say "We do not have the ability to do that with public dollars." When I first read the bill, it looked like a mandate since it says the Legislative Auditor shall conduct a special audit. But then I read the Legislative Auditor as directed by the Legislative Commission. We are not necessarily conducting audits across-the-board. We mean it to be discretionary; they shall do it as the Legislative Commission directs.

SENATOR AMODEI:

My intent is this be a discretionary act taken through the Legislative Commission by proper vote under the Commission rules and triggered only by request.

SENATOR HARDY:

The Auditor does it only when requested by the Legislative Commission. They cannot say, "We do not want to do it."

SENATOR MATHEWS:

Did they get any money from us? Do you know?

SENATOR AMODEI:

In the Carson Tahoe Regional Medical Center scenario, I do not know if they got money for that particular mental health program. They get Children's Health Insurance Program (CHIP) funds, and they have licenses from the state to operate. I do not know about additional money.

My other concern is they occupy the position of a community hospital. When a community hospital getting CHIP funds and providing a service decides to discontinue that service to the community with no notice, it has huge impacts. While we should not require people to operate at a loss, it is a concern in the

context of enjoying that quasi-municipal status. I am unaware of any jurisdiction to make them accountable. This is perfectly okay to do right now.

SENATOR MATHEWS:
Is that hospital not for profit?

SENATOR AMODEI:
They were the community hospital with nonprofit status. Following negotiations with Carson City, they are no longer a political subdivision of the state, but they are still nonprofit.

SENATOR MATHEWS:
Did the outpatient clinic receive money from the Division of Mental Health and Developmental Services?

SENATOR AMODEI:
If they did, it was under the auspices of Carson Tahoe Regional Medical Center because it was a function they provided. It is a legitimate question in terms of the facts and circumstances.

SENATOR MATHEWS:
Is Carson City considered rural? Only Washoe and Las Vegas proper did not have rural clinics available. If the Carson City area is responsible under rural clinics, it makes this bill easy to swallow.

SENATOR AMODEI:
The operation I described—that Carson Tahoe Regional Medical Center was providing—is not part of the rural clinic system.

CHAIR CEGAVSKE:
We close the hearing on S.B. 87 and have Senate Bill 124 next.

SENATE BILL 124: Revises provisions governing state personnel and independent contractors. (BDR 23-613)

JEANNE GREENE (Director, Department of Personnel):
We are here to present S.B. 124 for your consideration. Shelley D. Blotter will walk you through the specifics of the bill.

SHELLEY D. BLOTTER (Chief Personnel Manager, Technical Services, Department of Personnel):

Senate Bill 124 pertains to state employee restoration rights and administration of independent contractor statutes and regulations. Currently, NRS 284.300 allows a permanent employee who has been promoted but does not meet their probationary period be restored to their previous position. The amendment to NRS 284.300 provides an option to place that employee into a vacant position when the former position is filled by another employee. The new position must be in a same or comparable class as the former position.

To ensure the returning employee is not harmed, the new position must have the same salary, benefits and community location as the position of promotion. Additionally, the employee must meet minimum qualifications for the new position. An employee would not be placed into a position requiring specialized skills they did not have to perform the job.

This amendment preserves the returning employee's rights and is less disruptive to the Department and workforce. Currently, when an employee is restored to their former position wherein the position is filled by another employee, the most recent employee in the position—through no fault of their own—is removed from the position. This may affect several employees through the application of layoff regulations.

Sections 2 through 9 of S.B. 124 relate to transfer of authority to administer and adopt regulations governing independent contractors from the Personnel Commission to chief of the Purchasing Division. Other than in NRS 284.173 and 284.174, NRS 284 relates to employees of the State of Nevada in classified or unclassified service. Independent contractors performing services for the state are not employees of the state, as defined by the Fair Labor Standards Act. As such, the Personnel Commission does not establish regulations for selection, time and attendance or terms and conditions of their contract. This bill removes NRS 284.173 and 284.174, and appropriately places them in NRS 333, which is administered by the Purchasing Division.

CHAIR CEGAVSKE:

We are cleaning up this section, but the new section is in section 1.

MS. BLOTTER:

Yes. The change clarifies that the Personnel Commission and the Department of Personnel do not administer these statutes, and the appropriate authority rests with the Purchasing Division.

CHAIR CEGAVSKE:

I was told an amendment is coming that you approve.

SENATOR HARDY:

We are not creating a new set of rules; we are changing to a different statute so a different department can deal with it?

CHAIR CEGAVSKE:

Yes.

SENATOR HARDY:

The new language is being moved from another part of NRS.

CHAIR CEGAVSKE:

No, except section 1 on page 2 is new language.

SENATOR HARDY:

Are we creating a new circumstance to deal with people who do not meet probation or pass their probation?

MS. BLOTTER:

Yes that is correct. This provides more flexibility for a returning employee whose position has been filled; we would not have to bump the new employee out of that position if a vacancy exists.

SENATOR HARDY:

If the old position is filled, we can put them in the same classification. As I read the bill, if nothing is available, we have to create a job for this person in the same category.

CHAIR CEGAVSKE:

Did we not change "shall" to "must"? That is your reference.

MS. BLOTTER:

"Must" and "shall" have the same effect.

BRENDA J. ERDOES (Legislative Counsel):

The "shall" is a duty; the "must" is also a requirement, so essentially you do. This is the answer to Senator Hardy's question. From a practical point, is the state agency required to find a position?

SENATOR HARDY:

Are we creating the requirement or does the requirement exist elsewhere?

MS. BLOTTER:

A statutory requirement already exists to restore the employee to their former position. Senate Bill 124 says if that former position is now filled by another employee, they are put into a vacant position. If there is not a vacant position, they are still restored to their former position.

SENATOR HARDY:

Is a certain risk assumed by somebody who accepts a promotion? I am uncomfortable with the current statute that says we have to put you back in your old position if you accept a promotion and presumably cannot cut it. I do not feel any obligation to have a placeholder.

Nevada Revised Statute 284.300 says, "Any promotional appointee who fails to attain permanent status in the position to which he was promoted, or who is dismissed for cause other than misconduct or delinquency... ." Does misconduct or delinquency cover all things generally thought of for dismissal because they could not do the job? Is that broad enough? If they accept the promotion and become a tyrant, is that considered misconduct or delinquency, or would we have to restore that person to their prior position?

MS. BLOTTER:

We are not trying to grant an additional benefit; this gives options on how we can restore a person to their former position. We are not granting something new; we are trying to lessen impact on other employees who may have filled in behind. To address the second issue: If the person was caught stealing and that was why they were terminated from their position, then that termination would be for cause and they would not have the right to restoration.

SENATOR HARDY:

Okay, the term "for cause" is all encompassing. My concern is not with the bill. What you are trying to do in the context of current statute makes sense. My problem lies with the current statute.

SENATOR MATHEWS:

I wanted to make clear the term "independent contractor." I am looking in the act itself on the wording governing independent contractors. Is that someone on contract who is not necessarily a permanent staff person?

MS. BLOTTER:

They are not an employee of the state as classified or unclassified employees. They are on contract with terms and conditions, such as pay set out in the contract. They do not accrue sick or annual leave, and they are not participating in the retirement system.

SENATOR MATHEWS:

Why are we trying to protect that person? They chose to do that.

MS. BLOTTER:

All we request is relocation from NRS 284 into NRS 333, the purchasing statutes where those statutes are administered.

SENATOR MATHEWS:

Would that also apply to service people called into military duty? I know some service people who have come home and did not have a job.

MS. BLOTTER:

No. Those individuals are covered under the Uniformed Services Employment and Reemployment Rights Act. If they were in classified or unclassified service, their rights are protected under federal law, and we would have to return them to their position.

LINDA LAW (Interim Manager, Financial Management and Post Review, Division of Internal Audits, Department of Administration):

I come before your Committee today to discuss a potential change to S.B. 124 requested by the Department of Personnel ([Exhibit C](#)). As a result of audits performed by the Division, findings indicate various agencies—particularly those dealing with public health, safety, security and emergency management—often

carry out their statutory responsibilities and duties out of compliance to NRS 284.180, subsection 10, which clearly states all overtime must be approved in advance.

The nature of some state employee jobs requires occasional, unexpected overtime that either exceeds their regular shifts or occurs outside the normal workweek. To address this conflict, I ask the Committee to consider amending the provisions of NRS 284.180, subsection 10, that in part read, "All overtime must be approved in advance by the appointing authority or his designee." I suggest the following language:

Overtime must generally be approved in advance by the appointing authority or his or her designee. In unique or emergency situations, specifically those related to the protection of the public health, safety, or security or to emergency management, where prior approval may not always be possible, the employee must report the overtime to his or her supervisor as soon as possible and be required to explain why overtime without prior authorization was necessary.

Increasingly, tragic and challenging situations including child abductions, natural disasters, terrorist threats, wildland fires and heightened national security levels have to be responded to by employees of Nevada and other states. To compound that, Nevada's employees regularly deal with common events of no less emergency that occur with our 24-hours-a-day, 7-days-a-week lifestyle. All this results in a changed dynamic among some employees and their supervisors. This change, allowing our agencies to comply with statute while still restricting unnecessary overtime, is long overdue. My comments and proposed amendment language ([Exhibit C](#)) have been provided to the Director of the Department of Personnel and your staff.

CHAIR CEGAVSKE:

Can you provide background as to why you are proposing this amendment?

Ms. LAW:

When originally hired at Internal Audits, one thing I did was contact people within agencies we audited regarding findings. A consistent circumstance is the highway patrol officer who stops someone driving under the influence at the end of the shift and his direct supervisor may not be available at that moment.

Or you have a child in custody of the state through foster care or other means who goes missing on a Friday afternoon when a supervisor is not there. In those circumstances, our audit reports find they are in noncompliance with NRS 284.180. The approach by other states is to provide similar language in the Fair Labor Standards Act. The federal government has similar language in the United States (U.S.) Department of the Interior. I contacted people directly responsible for overseeing the audits in their agencies. When asked if they tried to address this edict through the Personnel Commission or a bill draft, their comment to me was, "I do not want my tail caught in that door."

In order to address this, I talked to William Chisel, Chief of the Division of Internal Audits, Department of Administration, and asked if I might call Jeanne Greene, Director of the Department of Personnel, and ask if she would accept a friendly amendment to this legislation.

SENATOR HARDY:

Your comments make complete sense. You need flexibility in those circumstances, but we need to keep our arms around this overtime matter. There have been articles in Las Vegas about overtime. When somebody gets as much in overtime as in salary, you have to ask the question. I am reluctant to soften our requirements on overtime, but I understand the circumstances you describe and why this needs to be addressed. We should take the time necessary to ensure we have our ducks in a row and do not set up a circumstance where overtime can be abused. We need to be extremely sensitive of that.

MS. LAW:

I agree with you. This language basically came out of statutes in Georgia where they dealt with this same thing. I wanted to find an amendment that deals with public health, welfare, safety and emergency management without the administrative-type positions within the state.

KIMBERLEE TARTER (Deputy Administrator, Purchasing Division, Department of Administration):

The Purchasing Division supports S.B. 124 and moving NRS 284.173 into NRS 333, which is the State Purchasing Act. The NRS 284.173 statute gives state agencies authority to contract for services of an independent contractor. We propose an amendment to NRS 284.173 in section 6 on the draft ([Exhibit D](#)). This section talks about dollar amounts that exist in NRS 284.173,

deals with levels of authority for approval with the State Board of Examiners and removes specific dollar amounts and replaces them with the authority of the State Board to establish policy. The areas we are looking at specifically regard the clerk of the State Board, his authority to approve contracts as delegated by the State Board and his allowance for agency heads to approve contracts.

The dollar limit for an agency head to approve a contract is \$1,995. For \$2,000 and above, the contract is submitted to the clerk of the State Board who may approve up to \$9,999. At \$10,000, the contract goes to the State Board to be seen in a public meeting. As supported by the Department of Administration, we would like to allow the State Board to set those limits within their policy where they propose to delegate authority to the clerk of the State Board.

CHAIR CEGAVSKE:

Have you presented this to the sponsors of the bill?

MS. TARTER:

We have spoken to the Department of Personnel and they agree with this change.

CHAIR CEGAVSKE:

Since this is the first time we have seen these amendments, we will not take any action today. We will go through these first, and I would also like to talk to somebody from the State Board of Examiners.

SENATOR HARDY:

When this bill comes back, it is my intent to offer an amendment that we remove the "must." I do not know why we have that requirement.

CHAIR CEGAVSKE:

You do not want "shall" or "must." You do not want either?

SENATOR HARDY:

The fact they can do it is obvious. We should not mandate it be done. If this is a quality employee they want to keep, they certainly have that option.

CHAIR CEGAVSKE:

That is your recommended amendment?

SENATOR HARDY:

I am willing to forego this if there is compelling reason why we need that kind of micromanagement for our managers and administrators. I cannot imagine this kind of requirement in the private sector.

CHAIR CEGAUSKE:

I will open the hearing again on S.B. 87.

LYNN CHAPMAN (Nevada Eagle Forum):

My remarks on S.B. 87 will be brief. There needs to be accountability to the taxpayers and families because families work hard for their money and we need to make sure it is spent correctly. If an auditor moves through the correct steps, this tool should be used.

JANINE HANSEN (Nevada Eagle Forum):

You have a responsibility to make sure taxpayers' money is used as appropriated in the budget committees. If you do not have the oversight this audit creates, you are not accountable. We have five branches of government; the fourth is the bureaucracy, and the fifth branch consists of quasi-public organizations that take government money. This last branch could be audited through the Audit Division.

This ensures appropriated money given to nonprofit organizations, that do not stand for reelection, is not misused, misappropriated or grafted other than as directed by the Legislature.

There is a whole culture of quasi-government organizations. The mission statement from the Children's Cabinet in Reno ([Exhibit E](#)) mentions creating a lasting public-private partnership. That is fine, but a public-private partnership should be accountable to the public. Accountability is critical in public-private partnerships.

On page 4 of the printout ([Exhibit F](#)), the Progressive Leadership Alliance of Nevada lists their member organizations. These organizations can be in the public sector advocating and doing what they want, but if they receive public money, they should not directly participate in the election process. We do not know if that is happening because there is no audit. Many of these organizations have different legislative philosophies and have received government money over the years. They stand in direct opposition to many

people's political philosophy. They have that right but should not advocate with tax money.

I support this, it is long overdue.

CAROLE A. VILARDO (President, Nevada Taxpayers Association):

I support this bill. Local governments are required to have annual fiscal audits. When you as a legislative body want to check a particular financial issue, there could be a provision the annual fiscal audit must confirm expenditure of those funds. This takes it out of your fiscal department and into the private firm under contract. They would have to do the audits submitted to the Department of Taxation.

My mind-set going through this was, "Thank God we are going to take care of those one shots that go out." Whether you refer to them as pork or they are needed projects, I am unaware—except for one or two instances—of a requirement when this money is appropriated to come back and ask, "Based on what the money was granted for, what happened to the money? Did you do it?"

By doing this, you could determine if what you are doing is making a difference. When you get future requests, you can question them differently or evaluate where the money will go next time. While you probably need to tweak sections of the bill, we support S.B. 87 and will do anything to help its passage.

CHAIR CEGAVSKE:

We have another bill introduction. This is a request for a resolution to urge Congress to pass the Resident Physician Shortage Reduction Act. We are going to do this in joint sponsorship with the Assembly. This is something U.S. Representative Jon C. Porter and U.S. Senator Harry Reid have requested nationally for us to have more physicians.

SENATOR BEERS MOVED TO REQUEST A RESOLUTION URGING CONGRESS TO PASS THE RESIDENT PHYSICIAN SHORTAGE REDUCTION ACT.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, HORSFORD AND RAGGIO WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

The next request is for a public-private partnership study by creating a BDR to determine the feasibility of privatizing provisions of governmental services.

SENATOR BEERS MOVED TO REQUEST A RESOLUTION TO DETERMINE THE FEASIBILITY OF PRIVATIZING PROVISIONS OF GOVERNMENTAL SERVICES.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, HORSFORD AND RAGGIO WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

The next resolution is for a tax shift study: the study of taxation in Nevada, revenue and tax structure in Nevada.

SENATOR BEERS MOVED TO REQUEST A RESOLUTION FOR THE STUDY OF TAXATION IN NEVADA.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, HORSFORD AND RAGGIO WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:
This meeting is adjourned at 2:32 p.m.

RESPECTFULLY SUBMITTED:

Josh Martinmaas,
Committee Secretary

APPROVED BY:

Senator Barbara K. Cegavske, Chair

DATE: _____