

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

**Seventy-Fifth Session
April 22, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9 a.m. on Wednesday, April 22, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)) and the Attendance Roster ([Exhibit B](#)) 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/75th2009/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 K. Kirkpatrick, Chair
Assemblyman David P. Bobzien, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Cheryl Williams, Committee Secretary
Olivia Lloyd, Committee Assistant
Cyndie Carter, Committee Manager

OTHERS PRESENT:

Norma Santoyo, Chief Personnel Officer, Department of Public Safety
Shelley D. Blotter, Division Administrator, Employee and Management
Services, Department of Personnel
Teresa Thienhaus, Director, Department of Personnel

Chair Kirkpatrick:

[Roll taken.] A couple of things for the Committee. Today is Administrative Professionals Day, so please do not forget the administrative folks within your office. We have two short bills this morning. We are not meeting tomorrow, but we will be meeting on Friday. We are trying to figure out all the bills that are coming this way. We will open the hearing on Senate Bill 36.

Senate Bill 36: Revises provisions governing panels that conduct certain competitive examinations for positions in the classified service of the State. (BDR 23-318)

Norma Santoyo, Chief Personnel Officer, Department of Public Safety:

I am here today to speak on behalf of S.B. 36. This bill revises provisions of *Nevada Revised Statutes* (NRS) 284.210 that govern panels that conduct certain competitive examinations for positions within the classified state service.

I would like to give you a quick history of the reason we have put this forward from the Department of Public Safety's position. Yearly we hold promotional examinations for the positions of Major, Captain, Lieutenant, and Sergeant, and every year we struggle with our Lieutenant and Sergeant examination process because they are very lengthy. Currently we are recruiting and testing for Sergeant, and we have over 100 candidates. Right now the law requires that our board members for the oral examination be composed of no more than one-third from within the department.

This requires us to seek board members from outside of the department. So we work closely with the Las Vegas Metropolitan Police Department (Metro), Washoe County Sheriff's Office, and Reno Police Department employing panel members from them. Because this is a lengthy examination process, we are stripping other law enforcement agencies of key personnel for long periods of time.

This revision of the bill would allow more than one-third of our panel members to be employees from within the department. This bill simply would strike out subsection 5, paragraph (a), and that simple change would allow us to pull panel members from within the department long as the department has more than 1,000 employees and two or more diverse divisions within the department.

Chair Kirkpatrick:

Does anyone have any questions? I am still trying to figure out the wording in subsection 5, paragraph (a), "a member who is not such an employee is unable to serve on the panel because of illness or an emergency," has to do with the rest of it.

Norma Santoyo:

That is funny, because the only way we can pull all of the panel members from within the department is if one of the external panel members, say, a Lieutenant from Washoe County, calls in at the last minute and is sick. That is the only opportunity we will have to use another of our own employees. Striking that portion out allows us as, an agency with over 1,000 employees, to fill more panel positions with members of the department.

Chair Kirkpatrick:

How many agencies are there with over 1,000 employees?

Norma Santoyo:

I am not sure. I did speak with Health and Human Services and the Department of Corrections; those are the big departments. They do not utilize the oral board examination process as much as the Department of Public Safety does.

Assemblyman Settelmeyer:

I am going to ask you to speculate. Why do you think the original law dictated that they had to be from different departments?

Norma Santoyo:

We definitely see the value of having a person from outside of the department come in to evaluate members in the performance of the oral board. We want

the ability to still do that, but we are having problems due to the tough economic times and the lengthy examination. For example, our Sergeant oral board is scheduled for mid-May. It is going to take eight full work days with 16 candidates per day being reviewed, so we are having to pull a Lieutenant or above from Washoe County and the Reno Police Department. But, yes, the intent initially was to have somebody who does not have a lot of history with or knowledge of the employee so they are able to evaluate without bias.

Chair Kirkpatrick:

Does anyone have any other questions?

Assemblyman Stewart:

When I first read this bill I thought it was a dental bill. I am glad to see that it is not. Do most police departments do these examinations from within?

Norma Santoyo:

I just spoke to the human resources (HR) person in Metro. They currently try to seek an oral board member from within their department as well as one or two people from other law enforcement agencies. Historically that is what we have done and we hope to continue that practice; however, we struggle being up in the north and most of oral board exams being held up here. With smaller law enforcement agencies like Washoe County Sheriff's Office or Carson City Sheriff's Office, we are stripping them of a higher level staff member for long periods of time.

Chair Kirkpatrick:

I want to ask a couple questions because part of this law went into place in 1953. That tells me there was a reason why they did not want friends promoting friends, just for perception's sake. At the different times that the law has been changed, such as the early- and mid-1980s, we had economic situations similar to the one we currently have. What are the checks and balances that your agency will provide? Because I do not want to see people complain about the process, and then we have a lot of lawsuits. If you could elaborate.

Norman Santoyo:

I can definitely tell you that one change is the size of the department and how diverse it has become. The Department of Public Safety has over 1,300 employees with 13 varying divisions. The bill as written would require us to pull panel members from different divisions. We will continue to do what we are currently doing, and that is always have an HR representative present at every single oral board examination to ensure consistency and to ensure that the interview questions, the ratings, and so forth are done fairly and

consistently. So I think the change is more related to the size of the department; we are a very large and diverse department now.

Chair Kirkpatrick:

In 2003 we also made changes to this particular statute. Do you know how many employees you had then?

Norma Santoyo:

Sorry, I do not know how many. I would assume we were still over 1,000 employees at that time.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.] Did you have anyone else who you wanted to testify on this bill?

Norma Santoyo:

No, I do not.

Chair Kirkpatrick:

Is there anybody in Las Vegas who would like to testify in support of S.B. 36? [There was no reply.] Is there anybody who would like to testify in neutral? [There was no reply.] Is there anybody who is opposed and would like to testify? [There was no reply.] Is there anyone in Carson City who would like to testify on S.B. 36? [There was no reply.] With that I am closing the hearing on S.B. 36. I would like to look at it a little bit more. I will now open the hearing on Senate Bill 46.

Senate Bill 46: Authorizes an additional method for providing notification to state employees of certain personnel actions. (BDR 23-309)

Shelley D. Blotter, Division Administrator, Employee and Management Services, Department of Personnel:

The Director of Personnel is in Las Vegas and she is prepared to testify on S.B. 46.

Teresa Thienhaus, Director, Department of Personnel:

We are sponsoring S.B. 46. This is a bill that authorizes an additional method to provide notification of a termination, demotion, or suspension by the method of a third-party carrier.

Currently, S.B. 46 allows only two methods for notifying a person with specificity of charges that they are going to be terminated, demoted, or suspended. The two methods in the current statute are personal delivery or

certified mail return receipt requested. At the request of some of the agencies we are asking that an additional method be put into the bill. As you can see, the other two methods are still in there, and the additional method for a third-party carrier is now provided for, which adds some additional language about the actual delivery of the notice. The bill is not changing the current methods of delivery; it is only adding an additional method.

Just by way of background, so that you understand what happens when someone is going to be handed a specificity of charges, there are dates and time periods that have to be followed. The first thing is that within and less than seven days from the date that the person is served with a specificity, they have to have a pre-disciplinary hearing with the agency, or at least be offered one. It is important that the agency be able to deliver this specificity of charges to the person so that they are aware of the date, time, place, and the person who is going to be conducting the pre-disciplinary hearing seven working days down the road.

What has happened in the past is sometimes the employee who is going to be terminated or suspended is on administrative leave, or it is a person who has abandoned their job; that is why they are being terminated, and this person is not at work. Sometimes they are unavailable and unable to be reached, so personal service is not always available. To send out a notice by return receipt by the U.S. certified mail is a cumbersome process. In some cases, getting it through the state mail system and then delivered to the person has not provided the agency with the appropriate notice that the person has actually been served.

When I was with the Attorney General's Office before I took this job, I often ran into this situation where I was asked to advise a supervisor how to get delivery to an employee who was being terminated, sometimes under circumstances such as a violence-in-the-work-place- or job-abandonment type of issue. When there are only two methods for doing that, sometimes the only way to know if they actually are served is to make sure that the notice is delivered personally to the employee, but that can put a supervisor in a precarious position if the workplace-violence issue arose between the employee and the supervisor. It always made me very nervous to have to advise a supervisor to go to the person's house or ask them to come into the office to accept personal delivery of the Nevada Personnel Department (NPD) 41. I was always afraid it would lead to a further type of altercation that would be best avoided.

This other method of delivery actually provides a tracking system, because the U.S. mail does not track and other delivery methods do. So, you can have the notice sent to them with a tracking number; that way you know what date it

was delivered or what date it was undeliverable. Then you can go forward with the process.

I think that is all I have as far as why the bill is important and I will take any questions that you may have.

Chair Kirkpatrick:

Are there any questions?

Assemblyman Settlemeyer:

I was going over some of the testimony in the Senate. I understand the need for the bill because some individuals are not able to be located. But, I tend to agree with Senator Mathews that people have the right to be told to their face that they are being demoted, or that they are being let go.

Since we already have this ability, in what percentage of cases do you think you tell someone that they are dismissed or demoted by mail? I understand this will give you more avenues. You currently have this right; I was just curious if you knew that information.

Teresa Theinhaus:

I do not have an exact percentage. Like I say, when I was with the Attorney General's Office for nine years, I advised various state agencies on personnel matters as a Deputy Attorney General. I can tell you that it does not come up very often, but when it does come up and it presents a problem of personal safety, it is a serious issue. As you can see, this would not eliminate the personal delivery method or the mail delivery method. It would just provide an additional method. Through our working with the agencies we would certainly encourage them not to fall back on a third-party carrier delivery or certified mail delivery. I think the preferable method is always delivering it to the person. However, that is often not possible, as sometimes the supervisor is far away from the employee at the time that the notice needs to be delivered, and that kind of situation.

Assemblyman Settlemeyer:

As a follow-up, could you just guess whether it is 1 percent, 10 percent, 25 percent? Just give me a "guesstimate."

Teresa Thienhaus:

I would give a guesstimate that 95 percent of the time you can deliver it personally to the person. It is only those 5 percent of cases where it has to be delivered some other way.

Chair Kirkpatrick:

Ms. Blotter, do you want to follow up on that?

Shelley Blotter:

This is as a result of progressive discipline. It is not the first time that they have heard that they are having problems in the workplace and they are getting this notice. We do have a system that requires us to give an oral warning, a written warning, a written reprimand, and then we get into further forms of discipline, so this is long down the road after many attempts have been made to correct and work with the employee. Now we have gotten to the point where more significant discipline and/or termination needs to happen, so as Director Thienhaus mentioned, it is at that point that they may be on administrative leave or maybe they are calling in sick all the time because they do not want to face the music and get that termination notice. I hope that clarifies it.

Assemblywoman Spiegel:

As I read the language of the bill, I have a question about the phrase "third-party commercial carrier." I have a little telecommunication background and I know telephone companies are also called carriers. My question is whether a third-party commercial carrier could also be a telephone company or a cable company, which would then allow these notices to be sent by fax or email through this third-party commercial carrier.

Shelley Blotter:

That was the language that was drafted by the Legal Division. What we had in mind was something like United Parcel Service (UPS) or Federal Express, where an actual tracking record would occur. I am not certain how a fax machine would work in that situation.

Chair Kirkpatrick:

On a fax machine there is a record with a report that states when it was sent and received.

Assemblywoman Spiegel:

An email also has a record of when it was sent and when it was opened.

Assemblyman Settlemeyer:

If I could follow up, I think the problem with an email and a fax machine is that you do not necessarily know who received it. So if someone had to sign for it, you could at least try to say that your two-year-old child did not receive it.

Assemblywoman Spiegel:

Mr. Settelmeyer, I am not disagreeing with you that I do not think it is an appropriate method; I am questioning the language in the bill. I am wondering if they could tighten the language up a bit.

Assemblyman Settelmeyer:

Okay.

Chair Kirkpatrick:

Why should the state have to pay to notify someone that we are going to fire them, because it is going to cost to do this? If you cannot tell them face-to-face, and then they do not get it by a certified mail piece, if we have to go through all the trouble to fire them after we have been through all the other trouble, then we should make them pay for the process. Carriers in our state charge anywhere between \$60 to \$75 to do that. The Constable's Office could almost do it cheaper than this way. What I do not want to happen is for it to become the number one resource to get it done quicker than using the other method. I just think that it is unfair. Why do I have to pay to fire you?

Shelley Blotter:

We did a cost analysis of what it costs to send a certified mail as opposed to a Federal Express, and it is actually very close. It is \$6.92 for the U.S. Postal Service and around \$9 for Federal Express. I think it would be very difficult to collect this mailing amount from the terminating employee. If it is our last act, then I think we can at least pay for it. You know, "Thank you very much, we are terminating your employment, and here is the bill for that."

Chair Kirkpatrick:

It would come out of their last check. Say we have a state worker who lives in Laughlin, Nevada, which is far from Las Vegas. By UPS it would take a couple of days to deliver. Would they not use a car carrier to get the notice down there, or is it always going to be a third-party carrier through a mail-type system? I guess this goes back to Ms. Spiegel's question. Is that what you envision?

Shelley Blotter:

Right now we can either do hand delivery or the U.S. mail system. So in that situation they would have to use the U.S. mail system. Currently if the supervisor is located in Las Vegas, no one is going to drive out there on a regular basis and that would be our primary method if the person is no longer in the work environment. This would just allow us to send it Federal Express overnight. Again, sometimes there is an urgency to get it there quickly and

ensure that the person received it. Then we would be able to use a third-party carrier.

Chair Kirkpatrick:

So, your third-party commercial carrier is intended to be those situations, such as UPS, which travel through our mail system, correct?

Shelley Blotter:

I am not aware of how that interfaces with the U.S. Postal Service. We are thinking about UPS, Federal Express, DHL, or any of those other carriers.

Chair Kirkpatrick:

I just want to be sure what we are talking about. I know that we send food different ways. What I do not want it to be is a carrier who drives and we pay for the service throughout our state. Are there any other questions?

Teresa Theinhaus:

May I address that, please? You mentioned why should we have to notify people and go through all this trouble. The reason is, we have to notify a state employee before they are terminated, and we do not have a choice in that. The statute is absolutely clear—no one who works as a classified state employee can be terminated other than through this method. So there is no calling them on the phone, sending them an informal type of notice, or anything like that. It has to be on this form, and this form has to be delivered to them. That is their due process rights as a state employee. They have property rights in their job, so somehow this form has to be delivered to the employee. The state has to eat that cost if that is what happens because there is no choice in the matter as far as notification that someone is terminated. That is not a choice.

Chair Kirkpatrick:

I do not think that was what I said. What I said was, why are we not going through a different process in making this our last resort? If we have already tried to notify them in person, and then we send it by return receipt mail, in my opinion there should be a step this way so that the carrier is last resort. Sometimes you give an inch, people take two miles. I understand that they have to be notified. I am just saying that the process has to be a little bit different. I do not want to use taxpayer's dollars to use all of these methods to fire someone who already knew it was coming. I would rather go the cheapest way if we are trying to get rid of them.

Teresa Thienhaus:

That is what is done. As I said, we will work with the agencies to help them to understand that this is just an alternate method, just like the U.S. mail is an

alternate method. Personal delivery is how it is done 95 percent of the time because you have the person who is told, "You need to come into the office and speak with your supervisor," and when they come to the office they get the notice.

Chair Kirkpatrick:

Thank you, I think we got that the first time. I do appreciate that.

Is there anything else from the Committee? Is there anyone else in Las Vegas who would like to testify in support? [There was no response.] Is there anyone in Carson City who would like to testify in support? [There was no response.] Is there anyone who is neutral and would like to testify? [There was no response.] Is there anyone who is in opposition? [There was no response.] With that we will close the hearing on S.B. 46. Is there anything else from the public? [There was no response.]

Meeting adjourned [at 9:35 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 22, 2009

Time of Meeting: 9 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster