

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

**Seventy-fifth Session
March 16, 2009**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:36 p.m. on Monday, March 16, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 John J. Lee, Chair
Senator Terry Care, Vice Chair
Senator Steven A. Horsford
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Shirley A. Breeden (Excused)

GUEST LEGISLATORS PRESENT:

Senator Bernice Mathews, Washoe County Senatorial District No. 1

STAFF MEMBERS PRESENT:

Michael Stewart, Committee Policy Analyst
Olivia Lodato, Committee Secretary

OTHERS PRESENT:

John P. Sande, III, Reno-Sparks Convention and Visitors Authority
Lisa A. Gianoli, Washoe County
Robert F. Joiner, Government Affairs Manager, City of Sparks

Lora E. Myles, Carson and Rural Elder Law Program, Nevada Rural Counties
Retired and Senior Volunteer Program
Michael Foley, Deputy District Attorney, Clark County
John J. Cahill, Public Administrator, Clark County
Kathleen Buchanan, Public Guardian, Clark County
Alan H. Glover, Clerk/Recorder, Carson City
Carol Probasco, Supervising Guardian Case Manager, Deputy Public Guardian,
Office of the Washoe County Public Guardian
Sally Crawford Ramm, Elder Rights Attorney, Aging Services Division,
Department of Health and Human Services

Chair Lee opened the meeting with a discussion of Senate Bill (S.B.) 190. He said the sponsor of the bill was discussing a 2005 version of the bill which contained some drafting errors.

[SENATE BILL 190](#): Revises provisions regarding the acquisition and disposal of real property by fair and recreation boards in certain larger counties. (BDR 20-648)

John P. Sande, III, Reno-Sparks Convention and Visitors Authority, supported S.B. 190. He said the bill came into effect when problems occurred with the Convention Authority being moved south of Reno. He said a prohibitive bill that only applied to Washoe County was enacted. The bill said the Reno-Sparks Convention and Visitors Authority (RSCVA) cannot sell, lease or exchange land without the approval of Washoe County. Mr. Sande said S.B. 190 made good sense. He said there were some issues concerning loans to improve facilities. He proposed a change in a bill introduced as S.B. No. 302 of the 73rd Session ([Exhibit C](#)). The original bill repealed Nevada Revised Statute (NRS) 244A.627 which required county approval.

Senator Care asked Mr. Sande about the ability to continue to sell or lease property, but not acquire or purchase property.

Mr. Sande said the bill, if passed as written, required any leasing or selling of property by the RSCVA in Sparks to be approved by the county.

Senator Care asked why the Convention Authority would want to convey property, but not acquire property.

Mr. Sande replied it was a drafting issue. There was no discussion in 2005 as to why the terms acquire or dispose of were placed in the bill. He said sell was probably the same as dispose.

Senator Care said the words dispose of were also stricken from the bill.

Senator Raggio disclosed Mr. Sande was a member of his law firm and he would abstain from voting on S.B. 190.

Chair Lee said the bill came as a committee bill from the previous Session. He asked if there was other dialogue or problems from the earlier bill.

Mr. Sande said he talked with members on the other side about their concerns. The primary concern was Wildcreek Golf Course. He said in 2005 there were rumors Wildcreek Golf Course would be exchanged for D'Andrea Golf Club and be owned and operated by the City of Sparks. He said the suggestion was that RSCVA would be eliminated and the developer who purchased Wildcreek Golf Course would build homes around the course. Mr. Sande said the RSCVA had no interest in such a transaction. He reported the Sparks representatives informed them they had no problems with the bill.

Lisa Gianoli, Washoe County, said the County was neutral on S.B. 190. She said Washoe County wanted to continue to have input into the instances where Washoe County had government obligation-backed debt on the facilities.

Robert F. Joiner, Government Affairs Manager, City of Sparks, said the City of Sparks was neutral on S.B. 190 after the language change removing the specificity off the City of Sparks. He said his organization supported the Board and the activities of the RSCVA.

Chair Lee closed the hearing on S.B. 190. He said the language from S.B. No. 302 from the 73rd Session would be incorporated in S.B. 190. He opened the hearing on S.B. 194.

SENATE BILL 194: Revises provisions governing the appointment and duties of public administrators and guardians. (BDR 20-181)

Senator Bernice Mathews, Washoe County Senatorial District No. 1, said S.B. 194 was a guardian bill making certain public officials, particularly the

district attorney of Humboldt County, the ex officio public administrator. She said Humboldt County was small and it was difficult to have a public administrator separate from the district attorney's office. She said the bill made sure Humboldt County was doing what the other counties in the State were already doing. Senator Mathews said S.B. 194 was a good bill.

Lora E. Myles, Carson and Rural Elder Law Program, Nevada Rural Counties Retired and Senior Volunteer Program, said she was a nonprofit legal services attorney working with public guardians and administrators in the rural counties. She said S.B. 194 amended an earlier bill. Ms. Myles said *Nevada Revised Statutes* (NRS) Chapter 253 was amended last session. Provisions of the bill relating to public administrators allowed for the appointment of public administrators in counties where the office was vacant. She said at least three counties had vacant public administrator offices. Provisions in the bill allowed county commissioners to fill the office by appointment. The bill provided for the application of the provisions of the statutes to all public administrators regardless of the size of the counties. The provision did away with the county population portion of the bill. She said S.B. 194 allowed public administrators to investigate estates without having to hire or be a private investigator. She said the same provision was enacted last session for the public guardians. She said it was unrealistic to expect a public administrator to have a private investigator's license. Ms. Myles said there was one amendment proposed to the provisions in S.B. 194 regarding the public administrator ([Exhibit D](#)). She said there were issues with public administrators who were now under indictment for embezzlement and other problems with estates. She said the amendment in [Exhibit D](#) limited the access to assets when the decedents had specifically named beneficiaries. She said the public administrator cannot cause to be probated any property held in joint tenancy or which had a named beneficiary on the property, [Exhibit D](#).

Ms. Myles said the provisions of the bill relating to public guardians established a record retention policy for the public guardian's office. She said it established a State-wide record retention policy. She referred to "Arguments for passage of section 11" ([Exhibit E](#)). She said the public guardian needed a pay source for the ward. She referred to a case in Pershing County where the ward was incompetent and an illegal alien. She said there was no funding available to pay for his care. The individual was in a nursing home and the home was writing off \$6,500 in cost per month to care for the person. She said the nursing home was suing the county to try to get money for the individual's care. If the public

guardian cannot find a payment source, it made it difficult. The federal government will not deport the individual because he was incompetent, [Exhibit E](#). Ms. Myles said public guardians needed to be able to establish a care plan for the ward. She mentioned cases involving individuals who were violent with severe behavioral issues. There was no facility in Nevada with long-term placement for a psychotic, violent individual. She said placement out of state was the only option. She said placement in facilities out of state was being restricted to individuals who were residents of that state, [Exhibit E](#). She said requiring the counties to take custody of the individual but not be able to guarantee the safety of others was a liability the counties cannot assume.

Chair Lee asked Senator Mathews about areas having a difficult time with the guardianship issue. He wondered if there were something the Legislature could do this Session to help solve the problem.

Ms. Myles said there were public guardians in every county. The public administrator's issue was solved with [S.B. 194](#). She said if there was not a public administrator in the county, the county commissioners appointed someone to fill that position.

Chair Lee asked if the bill needed wording that was not subject to interpretation. He asked what happened if somebody decided to run for the position.

Ms. Myles said it was an elected position; however, the provisions specifically stated somebody may be appointed a public administrator for the remainder of an unexpired term.

Senator Mathews said the county commission continued to appoint someone in the position as long as someone did not choose to run.

Ms. Myles said the problem would not come back to the Legislature; it would be the responsibility of the county commissioners to deal with the problem.

Senator McGinness had a constituent in Lyon County who had problems with a public administrator that included criminal activity.

Ms. Myles said she was aware of the problems with the public administrator in Lyon County. She said all the provisions of the public administrator's statute were applicable to all counties.

Senator McGinness asked if S.B. 194 solved the problems such as occurred in Lyon County. He said it was suggested additional bonding be required if the estate exceeded the bonding capability of the public administrator.

Ms. Myles said the bond was set by the judge in each probate case under other NRS provisions.

Senator McGinness asked if the judge had the authority to increase the bond, and Ms. Myles replied he was correct.

Michael Foley, Clark County District Attorney, said he was neutral on most of the items in the amendments. He said in section 2, subsection 2 of the proposed amendment, [Exhibit D](#), adding language about the public administrator entering property of the decedent was problematic. He said there were many reasons why the public administrator had to enter the property to secure or protect property. He said there were no provisions for personal property in NRS 111.109. He suggested deleting the first paragraph in section 2, subsection 2 of the proposed amendment. The language prohibited a public administrator from entering the premises of a decedent if a deed was recorded and there was no way to know if a deed was recorded for some time.

Chair Lee asked if the amendment said section 2, but should actually say section 3.

Ms. Myles said he was correct. It was a typo and should say section 3.

Mr. Foley was in agreement with the amendment except for the language in section 3 which dealt with subsection 2 of the proposed amendment.

Chair Lee asked Ms. Myles to comment on the amendment.

Ms. Myles said she was in agreement if they wanted to drop the paragraph in the amendment beginning at "except as otherwise provided" to section 3 of the bill. She said one of the concerns that occurred in the Lyon County situation was multiple complaints about the public administrator entering property he should not have entered and removing assets. She said if the problem was covered by section 5, she was comfortable with it.

Senator McGinness asked if the problems with the public administrator in Lyon County were a simple matter of theft.

Ms. Myles said it was a combination of things. There were several properties that he informed family members had to go through probate when beneficiaries were designated on the properties. He took custody of bank accounts with listed beneficiaries. He also entered properties with beneficiaries or joint tenants and removed assets.

Senator McGinness asked if there were enough laws in place to take care of what the public administrator did. He said some of the things were illegal.

Ms. Myles said yes, and added that greed played a large part in the Lyon County problem.

John J. Cahill, Public Administrator, Clark County, said he had concerns under section 3 in the new subsection 2. It might cause difficulty or confusion at the scene for law enforcement and the public administrator. In an ideal situation, the property was deeded over to the family member, and everyone was in agreement. Mr. Cahill said the property inside the house, the personal property, was clearly part of the estate. The property needed to be secured. A decision about how to secure the property inside the residence if the public administrator was not allowed to enter the residence caused some concern. If there was some contest, the court decided the legitimacy of a deed on death document versus a previous deed on death that was on file or a will. He said a public administrator was able to secure the property until the courts decided which document would prevail.

Kathleen Buchanan, Public Guardian, Clark County, requested an addition of the word feasible under section 11, subsection 2, paragraph (d). She said the sentence would read..."A public guardian is able to establish a feasible case plan for the guardianship."

Chair Lee asked Ms. Buchanan if she submitted an amendment.

Ms. Myles replied the document entitled "Arguments for passage of section 11," [Exhibit E](#), were her notes stating why section 11 should be passed. She said it did not have any proposed amendments.

Chair Lee inquired if Ms. Buchanan's addition of feasible to section 11, subsection 2, paragraph (d) of S.B. 194 created any problems.

Ms. Myles replied the word feasible was open to interpretation. She said the decision would be up to the judge in the guardianship cases as to whether a plan was feasible or not. She said most judges required case plans.

Alan H. Glover, Clerk/Recorder, Carson City, said he was the ex officio public administrator for Carson City. He thanked Ms. Myles for her hard work on the bill. He said he discussed the amendment with Ms. Swenson, the public guardian in Carson City, and she was in favor of the bill. He said the State needed to do something about geriatric patients with psychiatric problems. He said they were unable to place them anymore. He said the bill helped make the administration of the offices of the public administrator and public guardian easier.

Chair Lee asked Mr. Glover about adding the word feasible to the amendment.

Mr. Glover replied the questions might be better addressed by someone in the Legal Division. He said he had no problem with the word.

Carol Probasco, Supervising Guardian Case Manager, Deputy Public Guardian, Office of the Washoe County Public Guardian, said she approved of the bill. She worked closely with Ms. Myles on the amendment.

Sally Crawford Ramm, Elder Rights Attorney, Aging Services Division, Department of Health and Human Services, said she was not against the bill as it was written, but it left some people without an advocate. She said their only advocate was the public guardian's office. She said people who were seriously troubled and old would be left without an advocate. She asked the Committee to think about the problem.

Chair Lee said there were several items in the bill requiring further discussion. He asked Senator Mathews to respond to Ms. Ramm's comments concerning advocates for the aging.

Senator Mathews said the Division for Aging Services did not supply advocates for the aged.

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Ms. Myles said the issue Ms. Ramm discussed was the fact some seniors would be left without advocacy. She said extremely troubled and violent individuals cannot be provided housing. The public guardian can still be guardian of the estate, but cannot be guardian of the person. It was too difficult and opened the county and the public guardian to too much liability without the availability of placement. She said it was a problematic issue. The individuals cycled through the system on an ongoing basis.

Chair Lee closed the hearing on S.B. 194. He asked if there was any further business. As there was none, he adjourned the meeting at 2:17 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____