

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

**Seventy-fifth Session
February 24, 2009**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Joyce Woodhouse at 1:40 p.m. on Tuesday, February 24, 2009, 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 Joyce Woodhouse, Chair
Senator Bernice Mathews, Vice Chair
Senator Valerie Wiener
Senator John J. Lee
Senator William J. Raggio
Senator Barbara K. Cegavske
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27

STAFF MEMBERS PRESENT:

Jane Bailey, Audit Supervisor
Brenda Erdoes, Legislative Counsel
Pepper Sturm, Committee Policy Analyst
Paul V. Townsend, Legislative Auditor
Makita Schichtel, Committee Secretary

OTHERS PRESENT:

Scott Shick, Chief Juvenile Probation Officer, Douglas County; Nevada
Association of Juvenile Justice Administrators
Ernie Adler, former Senator, Rite of Passage
Kevin Schiller, Director, Washoe County Social Services

Senate Committee on Legislative Operations and Elections
February 24, 2009
Page 2

Patricia Cafferata, Executive Director, Commission on Ethics
Michael Pagni, Truckee Meadows Water Authority
Josh Griffin, Nevada System of Higher Education
Janine Hansen, Nevada Eagle Forum

CHAIR WOODHOUSE:

We will open the hearing on Assembly Bill (A.B.) 103.

ASSEMBLY BILL 103: Provides for the audit, inspection, review and survey of certain facilities for children. (BDR 17-102)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

Last Session we passed A.B. No. 629 of the 74th Session, which mandated a performance audit of our child welfare agencies in response to notification from the Department of Justice of the Civil Rights of Institutionalized Persons Act (CRIPA). This Act resulted in a federal civil rights investigation of our facilities. Their findings were disturbing. They reported several infractions with the most serious charge being excessive force against the youth. The CRIPA report found some of the Elko Nevada Youth Training Center staff guilty of punching, kicking, shoving and other aggressive acts. Investigators of the Department of Justice reported the primary trigger for using force was the youth disobeying orders rather than presenting immediate harm to themselves or others. These youth were also subjected to verbal abuse on issues such as race, family, appearance, intelligence and perceived sexual preference. It was clear certain staff used verbal abuse to provoke the youth into physical confrontation as a pretext for the use of force. As a result of the CRIPA report, several of us went to visit these facilities and returned with the goal of more oversight of both State and private facilities where courts place children. We then asked our audit division to do a performance audit to fix the reported problems. Since the CRIPA report, things have improved. We have added several mental health counselors and support staff. We have improved training and let some staff members go. The report findings were resolved without federal intervention. This bill will permanently place this investigative function within the legislative auditor's purview, so we will never be hit with such a surprise report again.

PAUL V. TOWNSEND (Legislative Auditor):

As employees of the Legislative Counsel Bureau, Ms. Bailey and I neither support nor oppose this legislation but are here to discuss what occurred pursuant to A.B. No. 629 of the 74th Session. A copy of our audit report has

been distributed ([Exhibit C](#), original is on file in the Research Library), which covers 13 facilities and 10 unannounced site visits. This is an ongoing project and will continue through the fiscal year. Another report will be issued in the fall.

JANE BAILEY (Audit Supervisor):

During those ten unannounced visits, we did not note anything that would cause us to question the health, safety, welfare or protection of the rights of children in the facilities. We did note, however, that some facilities allow newly hired employees to have direct contact with youth prior to receiving the results of State and federal background checks. It can take up to four months to get those results. We discussed this with several agencies and found a way facilities can get background results within a week at no additional cost by having new employees fingerprinted at an agency using a scanner and then electronically submitting the fingerprints to the Records Bureau. Other observations can be found in [Exhibit C](#).

SCOTT SHICK (Chief Juvenile Probation Officer, Douglas County; Nevada Association of Juvenile Justice Administrators):

We stand in strong support of A.B. 103. We recognize the necessity for a regulatory audit process for facilities providing care for youth and children. We embrace the process which allows an objective, knowledgeable person to recommend corrective action and improve services to the children in our care, as noted in my written testimony ([Exhibit D](#)).

ERNIE ADLER (former Senator, Rite of Passage):

My client, Rite of Passage, was one of the agencies audited. They are in support of this bill. They have campuses in several states, but Nevada was the only State not auditing their campuses. It is important Nevada begin the process as well, especially since this is the host campus. The audit has been beneficial. Administrators are happy with the audit and would support expanding it to include more categories.

KEVIN SCHILLER (Director, Washoe County Social Services):

We work in child welfare and deal with victimized children. We support any bills which would benefit the needs of these children and improve the system. I was able to witness this past audit and applaud the process. It was a commendable audit.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 103.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR HARDY WAS ABSENT FOR THE VOTE).

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CHAIR WOODHOUSE:

We will close the hearing on A.B. 103 and move to Senate Bill (S.B.) 104.

SENATE BILL 104: Makes various changes relating to ethics in government.
(BDR 23-418)

PATRICIA CAFFERATA (Executive Director, Commission on Ethics):

This is a housekeeping bill with a few substantial changes. It brings the cooling-off period before hiring certain former public officers and employees into the Ethics Commission's jurisdiction. Currently, an employer may not employ certain people within the one-year period. We have no jurisdiction over employers, so we cannot enforce the cooling-off period unless a public officer asks us for an advisory opinion. This bill brings the matter into our jurisdiction. Senate Bill 104 clarifies the definition of a business entity. The commissioners, many of whom have changed since the drafting of this bill, asked to strike the language change in section 6 and leave it as written. We have changed the work experience required of the Executive Director. The Commission does not feel the director needs to have a law enforcement background.

SENATOR MATHEWS:

In reading section 8, subsection 2, a person would need administration, investigations and law experience. We might want to put the word "or" instead of "and" to meet your intent.

MS. CAFFERATA:

True, you may want to make that language change. Section 9 provides a statute of limitations to bring an ethics charge against a public employee. Section 10 allows us to adopt regulations other than procedural regulations. Section 14 gives a person an opportunity to waive the 45-day time frame for an advisory opinion. It also changes the time period from 30 to 60 days to hold a hearing and issue an opinion.

SENATOR CEGAVSKE:

An additional month seems a long time to wait for a hearing.

MS. CAFFERATA:

The additional month can give us and the charged party time to prepare. If someone wishes not to waive the deadlines, we will meet their needs.

SENATOR LEE:

In section 3, subsection 1, paragraph (a), by saying a former member of the Public Utilities Commission "shall not be employed," you could unfairly stop someone from working in their field of expertise, especially if they never testify on behalf of a public utility. Perhaps we should leave paragraph (a) out of the bill.

MS. CAFFERATA:

The Ethics Commission gives a person the chance to come before the Commission to plead for an exemption. We review what is in the best interest and whether they would be sharing trade secrets. Current language changes the onus from the employer to the employee by imposing the requirement of the cooling-off period on them.

SENATOR LEE:

I do not agree with either wording.

MICHAEL PAGNI (Truckee Meadows Water Authority):

We are neutral on the bill with one area of concern. We request the word "significant" in the sentence "significant pecuniary interest" in Nevada Revised Statutes (NRS) 281A.400 and 281A.430 be left as is. By taking the word out, it creates an inconsistency with NRS 281A.420. It would prohibit a public officer or employee from participating in a matter if he has any pecuniary interest. The word "significant" is a threshold word which distinguishes the difference. It is a historic word and should remain.

JOSH GRIFFIN (Nevada System of Higher Education):

We have an amendment ([Exhibit E](#)) that deals with section 3, subsection 5, paragraph (c). We feel the word "affect" in negotiating or awarding a contract is too broad and would limit a Regent from gaining employment in the private sector. We want to change it to "voted, approved or otherwise participated," so the statute is much more specific.

SENATOR RAGGIO:

I tend to agree with the amendment. The language as proposed is too broad.

MS. CAFFERATA:

I will have to query the Commissioners and report back.

SENATOR CEGAVSKE:

I am not sure I understand the amendment. To me, the problem is more within the individual's action.

MR. GRIFFIN:

We thought the word "affect" could be interpreted too broadly. A Regent, for example, could be said to have influence on a contract just by serving on the Board of Regents, even if he had no involvement with that contract.

SENATOR RAGGIO:

I agree, just holding a position might be construed as influencing a contract.

SENATOR LEE:

When a public officer votes on a Board of Regent's consent agenda, which is voted on as a whole and has many issues contained within, that vote could preclude them from taking employment from any entity on the consent agenda.

MR. GRIFFIN:

This is our concern.

SENATOR WIENER:

I agree. A person by title alone, who might never say a word about or get involved in any manner with a contract, could be construed as having affect or influence by doing nothing but serving under their title.

JANINE HANSEN (Nevada Eagle Forum):

The Ethics Commission is fraught with problems. Your careful consideration of the language is important. We know political careers can be destroyed by Ethics Commission rulings. Because the Commission is an administrative court, people's rights are abrogated. In the Nevada Constitution, Article 1, section 3, the right to trial by jury is guaranteed to all citizens for criminal and civil cases. But when one comes before an administrative court like the Ethics Commission, they have no rights and essentially are guilty until proven innocent. A bill was

passed by the Assembly which provided a remedy by allowing people to appeal an Ethics Commission decision to a trial. It did not pass the Senate. If it was passed, the Commission would know their decisions were open to scrutiny of a jury trial and the public. They would be far more interested in making sure they afforded every right and opportunity to the person on trial. Please protect the citizens of our State. These administrative courts, not out of ill intent but by their nature, cannot protect our rights unless there exists an honest appeal process to a trial.

CHAIR WOODHOUSE:

The meeting is adjourned at 2:51 p.m.

RESPECTFULLY SUBMITTED:

Makita Schichtel,
Committee Secretary

APPROVED BY:

Senator Joyce Woodhouse, Chair

DATE: _____