

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session  
February 14, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:36 p.m. on Monday, February 14, 2011, in Room 4100 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](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, 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/76th2011/committees/](http://www.leg.state.nv.us/76th2011/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Kelvin Atkinson, Chair  
Assemblywoman Irene Bustamante Adams  
Assemblyman Richard (Skip) Daly  
Assemblyman John Ellison  
Assemblyman Ed A. Goedhart  
Assemblyman Tom Grady  
Assemblyman Crescent Hardy  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Kelly Kite  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Maggie Carlton (excused)  
Assemblyman Marcus Conklin, Vice Chair (excused)  
Assemblyman John Ocegueda (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Committee Policy Analyst  
Brenda Erdoes, Committee Counsel  
Andrew Diss, Committee Manager  
Patricia Blackburn, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Severin Carlson, Chair, Certified Court Reporters' Board of Nevada  
Debbie Uehara, Executive Secretary, Certified Court Reporters' Board of Nevada  
Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada  
Karen West, Dean, School of Dental Medicine, University of Nevada, Las Vegas  
Bryan Gresh, representing University of Southern Nevada  
Jaleh Pourhamidi, Program Director, Advanced Education in Orthodontics and Dentofacial Orthopedics, College of Dental Medicine, University of Southern Nevada  
Robert Talley, D.D.S., Executive Director, Nevada Dental Association  
Neena Laxalt, representing Nevada Dental Hygienists Association  
Francis Curd, President, Faculty Council, School of Dental Medicine, University of Nevada, Las Vegas  
Rick Thriot, Co-Associate Dean of Clinical Services, School of Dental Medicine, University of Nevada, Las Vegas  
Keith Munro, Assistant Attorney General, Office of the Attorney General  
Neil Rombardo, District Attorney, Carson City  
Mark Jackson, District Attorney, Douglas County  
Wes Henderson, Deputy Director, Nevada Association of Counties

**Chair Atkinson:**

[The roll was taken, and there was a quorum.] We will open the hearing on Assembly Bill 25.

**Assembly Bill 25:** Revises provisions governing certified court reporters.  
(BDR 54-505)

**Severin Carlson, Chair, Certified Court Reporters' Board of Nevada:**

The Certified Court Reporters' Board of Nevada requested this bill. We have just a couple of changes. We are looking to provide for the expansion of the definition of "voice writing." Traditionally, we look at court reporting as someone operating a steno machine and taking down what words are being said in the courtroom or in a deposition. We are looking to expand the voice writing definition to include stenomasking, which is speaking into a mask, verbatim, what is being spoken in the proceeding. We are also looking to include language that allows potential court reporters to do online course work, simply because, with budget cuts, Nevada's community colleges have been having a tough time offering court reporting programs. This allows a broader base level to be achieved before candidates sit for an exam in Nevada.

We are also seeking to increase the cap on the fine that the Court Reporters' Board can levy against an individual reporter or a reporting firm from \$5,000 to \$10,000. The basis for that change is mainly to discourage any behavior that is in violation of the statutes, and it falls more in line with other boards and commissions here in Nevada.

Finally, under what is titled *Nevada Revised Statutes* (NRS) 656.280, we are also asking that the Board be provided statutory authority so that on its own it can conduct investigations and discipline current and former reporters. Right now, we are under a system where the Board has to receive a signed complaint and then the Board can conduct the investigations. We are looking for that statutory change so that if the Board, with its own independent knowledge, learns of an alleged violation, it can move forward with an investigation and discipline if appropriate.

We also have our Executive Secretary, Debbie Uehara, in Las Vegas to answer any questions.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

Can you explain to me why you want an increase from \$5,000 to \$10,000? Has there been a history of problems, and if there has been, are they in larger cities, rural, or other areas?

**Severin Carlson:**

I have been on the Board for about three years, and in that time we have not issued any fines. Our Executive Secretary, Debbie Uehara, who is in Las Vegas,

might have more information on the history of the Board fining reporters or firms. I do not have that information.

**Chair Atkinson:**

We will now go to Las Vegas to get testimony from there.

**Debbie Uehara, Executive Secretary, Certified Court Reporters' Board of Nevada:**

I have been serving with the Board for almost six years and based on the past history, we have never implemented any fines. After a review of our statutes and our regulations, it was recommended by legal counsel to raise the fine so it corresponds to the standards of the other boards and commissions.

**Chair Atkinson:**

I am still concerned. If you have been on the Board for six years and there have been no fines issued, why are we doing it?

**Severin Carlson:**

Part of where we are with the Board, and I cannot discuss open investigations, but looking at what we have in terms of open investigations, there are certain issues popping up in Nevada regarding the term "contracting," where reporting firms are essentially being selected by insurance companies for law firms to use, which is against Nevada law. There are things bubbling to the surface where we believe a higher fine may discourage those out-of-state firms from coming to Nevada and engaging in those practices.

**Chair Atkinson:**

So, there may be potential fines coming, and we are trying to raise the limit beforehand so that we can fine them \$10,000 as opposed to \$5,000.

**Severin Carlson:**

Or somewhere in that range of \$5,000 to \$10,000.

**Chair Atkinson:**

There is no range. This bill specifically asks to go from \$5,000 to \$10,000. Are you saying that there is some room in there to fine \$6,000 or \$7,000? It seems simple to me that it is going from \$5,000 to \$10,000.

**Severin Carlson:**

I understand. It is a \$10,000 cap, so it would be at the discretion of the Court Reporters' Board to levy a fine up to whatever maximum the Legislature may set.

**Chair Atkinson:**

But, if you are asking for it to go to \$10,000, it seems to me that the ones that are coming up. . .

**Severin Carlson:**

We want the change because we believe that there may be more egregious cases pending right now, cases where we would want to have the ability to have a fine in excess of \$5,000.

**Chair Atkinson:**

[Reminded audience to sign in.] Are there questions from the Committee?

**Assemblyman Segerblom:**

Have you had complaints about these out-of-state firms? I have had experiences where their charges seemed higher than normal, and they charge for delivery charges and copying charges and electronic charges that I have never seen before.

**Severin Carlson:**

We regularly receive varying complaints, ranging from what is being charged to not receiving the transcript. We receive a broad list of complaints not only from attorneys but from members of the public.

**Assemblyman Segerblom:**

What are the rules? Do they have to have local court reporters?

**Severin Carlson:**

Under Nevada law, to be a court reporter in Nevada, you have to be licensed. If you are a firm and conducting the business of arranging court reporting in Nevada, that firm needs to be licensed. I believe there are times when licensed reporters may receive work from an out-of-state firm. It may or may not be a referral, but that reporter would be sending money to that out-of-state firm. Without a complaint, I am speculating on that.

**Assemblyman Hardy:**

In NRS 656.170, section 3 of the bill, I see that you are reducing the accuracy of your recording document from 97.5 percent down to 95 percent. Having been involved in a number of depositions in the past, I wonder if there is any concern with that change? It gives me some concern.

**Severin Carlson:**

We have asked for this change in an attempt to make Nevada friendlier for potential court reporters to sit for the exam. That is part of what ties into the

educational program as well. I do not believe we are hitting the 20 percent pass rate on the Nevada exam at this point. Out of 25 people sitting for the exam, and it is a two-part exam, we are not hitting 20 percent for completing both parts with a pass. I think this may help a little bit, but I understand your concerns, being an attorney myself and there being a potential for errors in the transcript. But, at the same time, if we bring that percentage down from 97.5 to 95 percent, in conjunction with the online learning programs that are proliferating around the country, and the Board can maintain the exam's technical standard as well as the multiple choice legal terminology skills, hopefully, we will have better court reporters coming to Nevada and passing the exam.

**Assemblyman Daly:**

Can you explain some of the reasons you need distance-based education? I am not a big fan of it. But, you state that in-state facilities are having a hard time keeping up. I also have the same concerns as Mr. Hardy over the accuracy. I think we should keep that standard up rather than lower it.

**Severin Carlson:**

I am somewhat familiar with Truckee Meadows Community College, and they did offer a court reporting program, which has since been discontinued. Las Vegas College, which is now Everest College, had a court reporting program, but I believe they are discontinuing it. For the most part, when you take a look at the schools where our examinees come from, they are from out of state. Essentially, Nevada no longer has a full-time program to provide the qualifiers to sit for the exam. That is the reasoning behind establishing the distance-learning, so that people who are in Nevada do not have the hardship of having to travel to another state to get those basic educational requirements prior to sitting for the exam.

As for reducing the accuracy level from 97.5 percent to 95 percent, the Board believes that this is not going to make a huge difference. We are not going to suddenly come from 20 percent passage to 50 percent passage, but we have seen where people are close on the legal and terminology part of the exam, but they do not pass, even though they have a passing score on the technical part of the exam.

**Assemblyman Daly:**

So, they can take the distance-based courses, but they still have to take it with an accredited vendor that is recognized by the state, and they would still have to test in Nevada.

**Severin Carlson:**

That is correct. They will have to prove that they have passed that distance-based course, which, as described within the statute, will include English grammar, legal terms, and the transcription.

**Assemblyman Daly:**

And they take the test here?

**Severin Carlson:**

Correct.

**Chair Atkinson:**

Are there any further questions from the Committee?

**Assemblywoman Bustamante Adams:**

I do not have a question, but a comment. I do appreciate that you are extending your boundaries for distance education, and I do support that, but I have the concerns, like my colleagues, about the 95 percent level of accuracy.

**Chair Atkinson:**

Are there any further questions from the Committee? I see none. Is there any further testimony in favor of this bill? I see none. Is there anyone wishing to testify in opposition? I see none. Is there anyone wishing to testify in the neutral? I see none.

I still have some concerns about this bill. Maybe we can talk about that before we bring this back in work session. We will close the hearing on Assembly Bill 25.

We will open the hearing on Assembly Bill 55.

**Assembly Bill 55:** Makes various changes relating to dentistry. (BDR 54-498)

**Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada:**

I have provided a brief statement ([Exhibit C](#)) on Assembly Bill 55. I will hit the high points and answer any questions you may have.

Assembly Bill 55, in large part, amends *Nevada Revised Statutes* (NRS) 631.271, which is the licensing statute for a limited license to practice dentistry or dental hygiene. Currently that statute is written only to issue a limited license to interns, residents, and instructors of the Nevada System of Higher Education. We have other dental programs at other schools, and in recognition of that we are looking for the change allowing the Board to issue

limited licenses under the same conditions to those other schools that are accredited by the American Dental Association's Commission on Dental Accreditation as well as other regional education crediting bodies recognized by the U.S. Department of Education.

This bill also contains a change allowing a permit to be issued in conjunction with that limited license to those qualifying individuals who would be interested in engaging in private practice outside the facilities, recognizing that the dental schools, in particular, do not offer a faculty practice at this time.

The other part of this bill does not address the statute on limited licensure, but it addresses, while possibly raising some eyebrows, an increase in the exam fees for the dental and dental hygiene exams. As some of you may know, the Board of Dental Examiners of Nevada has been administering a clinical dental examination since 1905. More recently, we have administered an exam for dental hygiene. The Board has not increased the dental hygiene exam fees since 1984. We did increase the fees for the dentistry exam in 2005, when we started administering the American Board of Dental Examiners Constructed and Approved Exam in Dentistry, and we are hoping to administer their hygiene exam as well.

The American Board of Dental Examiners (ADEX) is nationally recognized. They construct the exam. They have given us the fee structure associated with those clinical exams, and the Board would intend to charge the same fees that the other testing agencies are charging for the same exam. The way the bill is written we would not have to continue to come back to the Legislature about raising exam fees. The language would allow, in the statute, for us to make those increases in regulation. We would like to, and intend to, follow along with the same language in our regulations as soon as this bill would be adopted and signed by the Governor.

I would be happy to answer any questions you may have.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Horne:**

Who would audit whether or not your exam fee was the cost of administering that exam? If you say it costs \$100 to administer the exam and it really only costs \$50, who knows that you are charging twice as much? Do we just leave it open for you to put in?



**Kathleen Kelly:**

The cost would correspond to what the American Board of Dental Examiners is charging. They have done a cost analysis based on the North East Regional Board of Dental Examiners' administration of the exam, and we can conduct the same review. It would include paying examiners, travel costs, and supply costs. A portion of the dental exam is given on a "typodont," which is a model of the oral cavity. We pay for the typodonts and refurbish them after they are used. The students do not have to buy the typodonts. That is part of the exam fee. The students perform two types of procedures on the typodonts. They perform a prosthodontic procedure and an endodontic procedure. There are other costs associated with the exam. Since we work our examiners 12 hours, we do feed them. There are also some minor costs associated with refreshments. I would be glad to give the members a full breakdown. But, that is our agreement with the American Board of Dental Examiners. We also give a portion of the fees collected back to the American Board of Dental Examiners. They get 0.4 percent, that is, four-tenths of 1 percent, of the fees that we collect for the continuing construction of the exam and what is called psychometric analysis of the exam. The Nevada Board has not conducted, ever, psychometric analysis on our clinical exam in dentistry. The other clinical exams administered throughout the United States are subject to a psychometric review, including the American Board of Dental Examiners' exam.

So, that fee goes back to them, and any changes to the exam are made yearly. Usually, the majority of the exam changes are a result of the survey that is done on what types of dental procedures are being performed in the first five years of practice.

**Assemblyman Horne:**

I am not disputing whether or not there are costs administering the exam. My question is if it is the American Board of Dental Examiners that sets what it costs to take the exam, why not put that amount in? Every time you give an exam, it may be a different amount. There should be some idea what it costs to take the exam. To take the bar exam there is an amount that is due, and it does not really change from year to year, or from exam to exam. The cost to administer this exam could possibly change from exam to exam.

**Kathleen Kelly:**

The language in section 2 is "Fee for administering a clinical examination." In this case, I am explaining the ADEX exam, because that is the clinical exam that we administer. When we administered our own exam, the fee was different, but then we also did not conduct a thorough review and cost comparison between the expenses of our administration of our exam and the fees we were charging. It was simply part of the responsibilities of the Board, and it was just

never done. Once the fee was established, there was not an auditing review to see the correlation. The only exam we now administer is the ADEX.

**Chair Atkinson:**

I do not mean to be redundant, but I do not believe you are answering the question. If you look at page 4, other things are set, but this one, lines 34 through 36 on page 4, says, "Fee for administering a clinical examination . . . Actual cost of the examination." Why is this amount not set? Does this open it up for the fee to just continue to change?

**Kathleen Kelly:**

This language change was not submitted by the Board. The language the Board submitted was in relation to the application fee for an initial license to practice dentistry, because we administer the exam under . . .

**Chair Atkinson:**

You say the language did not come from the Board. Where did it come from?

**Kathleen Kelly:**

It came through the previous administration. It was a housekeeping measure we submitted to them. They made the change, and we agreed that it would be fine. We were talking about a clinical exam fee. It also happens to be an initial fee for licensure for those who are taking the exam and applying for licensure in the State of Nevada, and they felt it would be more easily understood to be broken out as a clinical exam fee. We were asking to increase the limit. That was acceptable to the Board. If your Committee feels differently, and if it is not clearly understood, we can put it back into line 26 and ask for an increase in that particular fee associated with an initial application for licensure. I would like to clarify, however, that we would be raising the fee in our regulations only when it relates to our clinical examinations.

**Chair Atkinson:**

It is obvious that we are not comfortable with that idea. You agreed to the language, so obviously it is your language. Whether the prior administration or you put the language in, you did agree to it, so it is your language. What were you talking about regarding line 26?

**Kathleen Kelly:**

That is, page 4, line 26, "Application fee for an initial license to practice dentistry." That typically has been where our examination fee is, because the exam is associated with obtaining a license in the State of Nevada when a person takes the clinical exam. We felt that we should break it out more specifically.

**Chair Atkinson:**

So, you are saying you would feel comfortable taking lines 34 through 36 out? I am lost now.

**Kathleen Kelly:**

What I was suggesting was, line 34 is a new line, and the amount we charge for the examination was included in an initial license application fee, which is currently at \$1,500; that is the fee limit. We had asked for the increase there. It was felt that since it was strictly a clinical examination, we should break it out and make the fee separate, and rather than having to continually come back to ask for increases when the exam fee was increased by the American Board of Dental Examiners, the statute would have the language on lines 34 through 36. We agreed that it could be separated. But, if it creates some concern or confusion, then perhaps it should go back to line 26 and raise the \$1,500 up to the amount we would need in order to charge for the clinical exam that we administer.

**Chair Atkinson:**

I understand that you did not want to raise the \$1,500 to, say, \$2,000; you wanted it to stand on its own. The problem we are having is it looks like a restaurant serving crab legs and charging "market price." That is what we are having an issue with. I am not opposed to it staying there, but it should have a number. That is all we are saying. It could be \$500, or \$700, or whatever.

**Kathleen Kelly:**

I understand. If it gives any comfort, if you look at that statute, it does indicate that the Board shall, by regulation, establish the fees. We put in regulations on what the actual fee will be. We just cannot go above the limit that the Legislature has set in statute. Currently the exam fee is, I believe, \$1,975 to take the dental, and it is \$975 to take the hygiene. We would be putting those fees in our regulations if we could not adopt the same language. Currently, the fee that the Board is charging is set in regulation, and it is set below what the limit is in statute. The statute limit, right now, is too low.

**Chair Atkinson:**

Are there any other questions?

**Assemblyman Ellison:**

What kind of feedback have you had from the dentists? I know that in some types of businesses and counties, we need to have an impact statement. Have you had any feedback from the people out in the street that are actually doing the work? Please tell us.

**Kathleen Kelly:**

These people would be applicants. Right now, we administer the ADEX exam at the University of Nevada, Las Vegas (UNLV) School of Dental Medicine. The benefit to the school's students who are obtaining licensure in Nevada is that it is a one-time fee. They pay the exam fee to us; there is not an additional license application fee. I can imagine that any fee increase might be of concern to them.

For the last four years the dental students have been paying the fee by paying the Board for the clinical amount up to the limit of \$1,500. They also pay a fee to another testing agency that administers the computerized portion. That is how we have met the ADEX exam fee. I have not actually heard any feedback from them.

Now, on the hygiene side, certainly, there may be some concerns about paying a higher fee, but again, the fee that we would be charging for ADEX is actually less than what the students would be paying if they were paying what is called the Western Regional Exam fee. Depending upon the school where the exam is administered, they charge the hygiene students anywhere from \$900 to \$1,200. The exam fee that we would be charging would be \$975. That is the fee amount for ADEX. Whether they are paying Nevada or another testing agency, they are going to be paying an exam fee. These fees are just about the same. The difference they will look at is how many more states they can get licensed in. They will then choose which exam to take, whether it is the ADEX exam administered by Nevada or another exam depending on where they want to practice or in how many states they want to get a license.

**Chair Atkinson:**

Are there any other questions? I see none. Is there anyone else in the audience, here or in Las Vegas, who would like to testify in favor of A.B. 55?

**Karen West, Dean, School of Dental Medicine, University of Nevada, Las Vegas:**

I would like to speak in favor of this bill. This bill will enhance the school's ability to recruit and retain faculty and residents through outside private practice opportunities and will allow us to be competitive with private practice salaries. It will also enable the school to expand our coverage for outreach activities without having to have affiliation agreements with each service site. The service sites can take many months to obtain, and if our faculty is able to have licenses and permits such as this, it will allow us to be more efficient in providing our outreach services.

**Chair Atkinson:**

Are there any questions from the Committee? I see none.

**Bryan Gresh, representing the University of Southern Nevada:**

To my right is Dr. Jaleh Pourhamidi. She is the program director in the dental department. Our reason for being here is specific to page 2, subsection 2 of section 1, of the bill. Dr. Pourhamidi would like to state our support of this very important part of A.B. 55.

**Jaleh Pourhamidi, Program Director, Advanced Education in Orthodontics and Dentofacial Orthopedics, College of Dental Medicine, University of Southern Nevada:**

I support this bill simply because we feel that we have been at a disadvantage in recruiting residents and faculty at the University of Southern Nevada. We are a private institution and, as such, we have to make sure all of our residents get a full license to practice dentistry, whereas the residents enrolled at schools of the Nevada System of Higher Education get a limited license. This puts us at a disadvantage because we are accredited, and all of our residents take the same exams and have the same standards as the other universities. In these tough economic times it is really difficult for us to force our residents to go through and pay several thousands of dollars to obtain a full license to practice dentistry when all of the faculty already have licenses and the school is accredited to provide the services that they do. A limited license costs significantly less. The schools of the Nevada System of Higher Education are allowed to do that.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Bustamante Adams:**

So, this would allow you to compete against the other institutions of higher education?

**Jaleh Pourhamidi:**

That is correct. The law currently states that only those residents enrolled in the Nevada System of Higher Education can get a limited license. By default that excludes all the private institution residents, which would pertain to us.

**Assemblywoman Bustamante Adams:**

My other question is in other states is there such a thing as a limited license?

**Jaleh Pourhamidi:**

In many of the states, yes. As long as you are enrolled in an accredited school, you are allowed to get a limited license. One of the main reasons for that is

that many of these residents are only with us for about three years, which is the length of the program, and then they go back to their home state, where they have a license to practice dentistry. We are really creating for them, an additional burden of paying several thousands of dollars for these licenses.

**Chair Atkinson:**

Are there any further questions from the Committee? I see none.

**Robert Talley, D.D.S., Executive Director, Nevada Dental Association:**

I represent about 70 percent of the dentists in Nevada. We want to show our support for the intent of this bill. It will help the schools to hire the best faculty possible for our dental students. It will allow them to put these people into community clinics for our access programs, which benefits the citizens of the State of Nevada.

**Chair Atkinson:**

Are there any further questions from the Committee? I see none.

**Neena Laxalt, representing Nevada Dental Hygienists Association:**

I want to make it clear that we were part of the process in watching the regulations and going through the workshops and all of the discussions. My client has not vocalized any concerns about this bill.

**Francis Curd, President, Faculty Council, School of Dental Medicine, University of Nevada, Las Vegas:**

I am the president of the faculty council at the School of Dental Medicine. I am speaking in favor of this bill. This bill will be very helpful in allowing us to recruit new faculty members to come to the school, and also it will be very helpful with community outreach. Through the community outreach programs our faculty members will be able to do more things than they can now. That will benefit the community immensely.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Are you the last testifier, or do others want to testify in favor?

**Rick Thiriot, Co-Associate Dean of Clinical Services, School of Dental Medicine, University of Nevada, Las Vegas:**

I am a past president of the Nevada Dental Association and a past member of the Board of Dental Examiners of Nevada. I am very strongly in favor of this bill. I think this bill will help us in many ways because of budget constraints and an inability to hire people at fair salaries. I think this will increase our outreach program tremendously.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor? I see none. Is there any opposition? I see none. We will close the hearing on A.B. 55.

We will open the hearing on Assembly Bill 62.

**Assembly Bill 62:** Revises provisions relating to the Office of the Attorney General. (BDR 18-202)

**Keith Munro, Assistant Attorney General, Office of the Attorney General:**

The framers of the *Nevada Constitution* established the position of the Attorney General in that document. The *Constitution*, other than requiring the Attorney General to sit on the Board of State Prison Commissioners, states that all of the position's duties will be created by the Legislature. A little over a year ago the Department of Administration's Budget Division created a new budgeting process which is commonly called the Priorities of Government. We also received a letter from legislative staff seeking more detailed explanations on our budget. We paid attention to these requests to match our duties against our costs. We worked hard on our budget and our priorities. While the resources allocated to our office in the Executive Branch budgeting process are not sufficient, we totally understand there is a long line of agencies in that category. Like them, we are making do the best we can.

In our review process we discovered several duties performed by the Attorney General's Office that are provided for other entities for which our office is not compensated. These are duties that the Legislature has given to the Office of the Attorney General to perform. We think we have an obligation to bring this to your attention and bring a possible solution to you for your consideration. Therefore, the Office is here today with Assembly Bill 62. We have a companion bill, Assembly Bill 63, that will be heard at a later date. The Office is seeking some latitude—the latitude to charge for services that the Legislature has directed us to perform, the latitude to be compensated for these services should it be necessary to do so. We do not know how the legislative budget process will turn out, of course; no one knows. We also do not know what the interim will bring us. Recent special sessions show us that circumstances can change. Here are the solutions we are presenting in sections 3 through 8.

Currently *Nevada Revised Statutes* (NRS) 622.200 requires the Attorney General to provide training to a new member of a regulatory body. Section 3 of A.B. 62 authorizes the Attorney General to charge a regulatory body for this service. Existing law also allows the Board of Homeopathic Medical Examiners, the State Board of Oriental Medicine, and the Board of Psychological Examiners

to transmit to the Attorney General complaints concerning certain persons regulated by those boards. It requires the Attorney General to investigate these complaints. Sections 4 through 8 of A.B. 62 authorize each of these respective boards to use the Attorney General. We are seeking authorization to charge for these services should we find it necessary to do so. No other boards in the state are so directly subsidized by the General Fund. We would like to be able to charge for these services, should it be necessary.

Section 9 of this bill is simple. It is a repeal of a requirement that the Attorney General's Office receive the annual report from the dispensing opticians. While we appreciate that requirement, we represent that Board, we know that Board, and we can go to the website and get that information should it be necessary to do so. That statute should be cleaned up.

I would like to turn, lastly, to sections 1 and 2. These are requirements where our office provides a good service to local government officials. These are requested changes we would prefer not to be here today with. They are services where we would charge a fee only where it was truly necessary. Nevertheless, NRS 228.130 authorized the Attorney General to prosecute a criminal case upon the request of the District Attorney, but limits the reimbursement, arguably, for providing such assistance to travelling expenses only. Section 1 of A.B. 62 would authorize the Attorney General to charge the actual expense incurred to provide this service.

Currently, NRS 228.150 requires the Attorney General to issue a written opinion upon the request of a district attorney or city attorney. Section 2 of A.B. 62 authorizes the Attorney General to charge the district attorney or city attorney for the actual expenses incurred to provide this service.

I was talking before this meeting with our friend, Douglas County District Attorney Mark Jackson, who is here to oppose this portion of our bill. I believe Mark is the president of the Nevada District Attorneys Association. We take his presence here today as a compliment. The district attorneys are our partners. We work with them and value our relationship with them. We understand our office provides services that are of value to them. We have to watch our budget.

**Chair Atkinson:**

Thank you for your testimony. I have a few questions. Most of them pertain to the timing. Why now? I assume these services have been provided for quite some time without any fees.



**Keith Munro:**

The answer to that is very simple. You have asked us to cut, and cut, and cut.

**Chair Atkinson:**

I have not asked you to do anything.

**Keith Munro:**

Well, when I say you, I mean the legislative body. We have done that and met every cut. We have to be good stewards, and we have to watch our budget. We are not asking, if you look at this bill closely, for wording that states they "shall" pay us; we are saying they "may" pay us. As we look to the next interim, if it becomes necessary to protect our budget so that we can continue to provide the broad range of services that this body asks us to do, we would like to have the ability to do that.

**Chair Atkinson:**

That brings up another one of my points, concerning "may" or "shall." What mechanism is going to be in place to move it from "may" to "shall"? If we give you arbitrary language that says "may" does it mean you, on your own, move to "shall" or do you have to come back here?

**Keith Munro:**

It is written to give the Attorney General discretion. If you can think of a better mechanism we are willing to listen, but that is within our control that we can manage our budget. Within the last few years you had two special session where you cut us twice. I think we have cut our budget more than any other constitutional officer.

**Chair Atkinson:**

I am still concerned about the "may" and the "shall." I still would like to know when you are able to do it, what kind of notice will be provided, what is the timing, et cetera.

**Keith Munro:**

If we wanted to, we could have put in "shall." We tried to make it as loose as possible by using "may." If there is a suggestion through the amendment process or the opposition that notice be given, we are amenable to that.

**Assemblyman Horne:**

How long have you been doing these duties? What part of those duties are constitutional duties to the Office of the Attorney General? What part is truly statutory? Since the *Constitution* says that the legislative body shall outline your duties, it seems as if those would be constitutional in nature. I do not

know what kind of precedence we will set if different agencies start asking to be compensated for duties that they are constitutionally bound to perform. As you pointed out, there are a whole slew of agencies that have been cut. Will all of them start asking for compensation for duties that they are supposed to do?

**Keith Munro:**

I crafted my testimony the way I did because I believe these duties to be statutory duties. I do not put that at a lower level than constitutional duties. I think these are good services that we are providing for district attorneys and city attorneys. But, when this body is asking us to justify our costs, justify our expenses, we have to take that seriously. We have looked to see whether or not this is compensated, and it is not. We have an obligation to this body to say these are things we are not being compensated for, that we cannot justify these costs. We are trying to follow the rules that you have set for us. We are willing to keep doing these, but at some point, should the budget get tighter, we want to have the ability to be paid. If you want some notification requirement, that would be fine with us. I think most people who testify on this bill realize this is not something that we want to do, but we feel like we have to. We have to be honest to this body about what we are doing. As is clear from my testimony, what we do comes directly from what you tell us to do.

**Assemblyman Horne:**

To charge the county district attorney for prosecuting a crime that he cannot prosecute for whatever reason—it seems as if that is your duty anyway. I have discomfort with the idea that you would charge the district attorney for something that you are supposed to do. I think that is different than writing legal opinions. You have that all together. I think there are inherent duties of the Attorney General that should be dispatched; you are not supposed to ask to be able to charge compensation to dispatch those duties. That is my concern. I do not think doing prosecutions because the local government cannot do it falls into that area where you should be able to be compensated.

**Assemblyman Grady:**

Following up on Mr. Horne's question on the last bill that we looked at, when we put in here that they can charge a reasonable fee, that bothers me. In another portion of the bill you say you can charge an hourly fee. Maybe we ought to look at a fee-based Attorney General's Office and no General Funds. I think we should tighten up "a reasonable fee."

**Assemblyman Goedhart:**

I just have a comment. Obviously, as your agency has suffered multiple budget reductions, I think it is also incumbent upon the agency to allocate its limited resources to productive uses. We have had cases where the Attorney General's

Office was prosecuting a seizure against a water rights rule at the district court level and still found it necessary to go to the Supreme Court level and once again get overruled on property rights seizures. I would encourage your office to carefully allocate your limited resources to those uses that actually serve the public and taxpayers at large.

**Assemblyman Kite:**

It has been asked, but not defined, what a reasonable fee is, or what the hourly rate would be. I sympathize with the cuts that all agencies have had to take, but I would like to point out that those cuts have extended far beyond state government to local governments. You may not have the money to do the job that you should be doing, but local government does not have the money to subsidize those either.

**Assemblyman Ellison:**

I have a problem with this. Not only was your budget cut, but every county across the state has suffered. Some counties are close to not making their payroll. My concern is if there are cases and they are going to be billed and the counties cannot afford to pay, will these cases not be heard? I feel it is your office's obligation to do this to begin with.

**Keith Munro:**

With respect to Mr. Grady and Mr. Kite and a reasonable fee, our fees are set by the Legislature on our cost allocation rate. If it would give you more comfort to have it say the cost allocation fee instead of reasonable fee, that is acceptable to us.

As to Mr. Horne's concern, as to prosecutions being a core function, we agree, and as dollars have driven our office and all agencies, those are things that we are looking at. I understand your point of view and I find it legitimate.

As to Mr. Ellison's point, I agree, we want these cases to be prosecuted but, for the same reason, we have to have a staff able to do it. If we do not have a staff that is provided by this body, or a mechanism to provide a staff, we will not be able to do these cases. I realize you are saying we do not have the money and they do not have the money; that is the time we are living in. But we are also driven by the budgeting process whereby they are requiring us to identify how we are going to pay for these things. We have to come to this body and this is how we are proposing to do it. If this is not passed, we will still work to try to do these cases. We want to make sure that people who violate the law are brought to justice. We have to listen to policy bodies like this one, but we also have to deal with the budgetary committees and explain to them what we are doing as well. We are trying to balance things.

**Assemblyman Ohrenschall:**

I always considered the taking over of a prosecution from a district attorney and the writing of an opinion for a local government or municipality, core functions of the Attorney General. Do you consider them core functions?

**Keith Munro:**

We are funded on a cost allocation basis. We are funded by state agencies. They pay us for a certain number of deputies, and we are trying to identify the things that we are asked to do but not funded for. If you decide that these are core functions and still want us to do them, we will. But, when we start dealing with the Assembly Ways and Means and Senate Finance Committees and they are asking us how we pay for these things, we are not going to be able to.

Are they core functions? You bet they are. They are functions that we proudly take on, and I think there is going to be opposition to this bill today because the service that we provide for the city attorneys and district attorneys and the county commissions is a good one. We will do our best to continue providing that service at a very high level. But, without adequate funding to fund the staff, we cannot promise that we can keep doing things at the level we have been.

**Assemblyman Segerblom:**

Does this involve prosecutions or writing opinion?

**Keith Munro:**

Both. There are two separate provisions—one for prosecution and one for opinions.

**Assemblyman Segerblom:**

Do you say, if you pay us we will prosecute? Or do you say, we are going to prosecute and you have to pay?

**Keith Munro:**

What we are saying with our bill is that we will continue the status quo and prosecute these cases if you have a conflict and for some reason you cannot prosecute them. Should we become strapped for money we are going to look for a contract with you, a memorandum of understanding, where we can be compensated for our costs of doing our prosecution.

**Assemblyman Segerblom:**

So, this bill just authorizes you to engage in those discussions to talk about a contract for compensation.

**Keith Munro:**

Yes, and as Mr. Atkinson said, if our budget becomes strapped and we have to give notice, we are willing to do that.

**Assemblyman Daly:**

I agree with Mr. Horne that writing opinions is different than prosecution. I am concerned about the language where it says the three boards "may" instead of "shall." Later in the bill it says that if they pass it on to you, then you may charge them. With those things in conjunction, how do they know if they will be charged or not? If they retain you, can they obtain outside counsel? Is there a conflict with that? I know there was an issue in the City of Sparks, not too long ago, where there was some wrangling over whether the city council could retain outside counsel when they had a city attorney. There was a big issue over that.

**Keith Munro:**

I think the thrust of your question is as to legal advice, and those provisions as to those three boards do not involve legal counsel; they involve investigative services for those boards. The reason we came with those provisions is that those boards are funded by the fees that this Legislature authorizes, and no other boards are subsidized by the General Fund like these three are.

We are willing to say "may" and we will continue to do the work for them, but we want to have the ability to charge the fee-based boards for those services.

**Assemblyman Daly:**

Are they allowed now to retain outside counsel?

**Keith Munro:**

These provisions do not relate to legal counsel; they relate to investigative services, and now they do have the ability to get outside investigative services to provide those investigative services for those three boards. Those three provisions do not relate to legal counsel.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 62?

**Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada:**

In this bill, regarding the section related to NRS Chapter 622 and charging the regulatory boards for the training that the Attorney General's Office offers, our board has no objection. We are somewhat neutral and have no objection to that particular section.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor? I see none. Is there anyone wishing to testify in opposition?

**Neil Rombardo, District Attorney, Carson City:**

I am here with my colleague Mark Jackson, Douglas County District Attorney, who is also the president of the Nevada District Attorneys Association. Briefly, I am speaking on behalf of the rural counties for the most part. I feel for the Attorney General's Office and the position that they are stuck in. Obviously, we are all stuck in a difficult position. My office has taken a 10 percent cut. I am down one position. I do not know about Mark's situation, but I do know that is the case throughout the state. I have the utmost respect for the Attorney General and for Mr. Munro. They are stuck in a bad spot.

That being said, I do feel that sections 1 and 2 are core provisions, and District Attorney Jackson will discuss that. I will discuss some of the issues that I have with this bill. I have had the good fortune of serving not only as a deputy attorney general who drafted dozens of legal opinions, but I also am one of three elected district attorneys who have sat in both roles. Mr. Munro is correct; the constitutional provisions as they relate to the Attorney General are few. Most of the Office's responsibilities are found in state law. Two of those responsibilities are prosecuting cases and giving opinions. Although we in Carson City do not necessarily rely on the Attorney General a lot, because we have colleagues like Mr. Jackson and Mr. Auer in Lyon County, the rural counties do and they need this service. Oftentimes they are one-man operations. So, if they cannot do it, there is no other deputy district attorney or nearby county that can do it. To charge that county, which probably has had huge budget cuts itself, for prosecution just does not seem right. It calls into question justice.

The other thing that I am concerned about with regard to opinions is the chilling effect. Oftentimes small offices that have only one district attorney are stuck with huge legal issues that they may not be able to research themselves. So now they are faced with the quandary of, do I ask the Attorney General and pay for it, or do I take the chance and research it myself and do the best I can do?

To place those offices in that position seems unfair when you have a law office of 100-plus lawyers that the state taxpayers pay for.

With regard to opinions, the Attorney General's Office provides expertise in areas such as open meeting law that some offices lack. Right now, the Attorney General's Office enforces the open meeting law. Our office tries to make sure our clients comply. If I were to call and ask for an opinion, the Attorney General's Office would then be able to charge me for an opinion with regard to the open meeting law, so if I choose not to call, and it turns out that my advice is wrong, then they can prosecute me on the other end. I question that. It puts us in a quandary.

Election law is another area where they have expertise and a lot of local jurisdictions do not. As you all know, election laws may be difficult to deal with and oftentimes deal with politics.

That leads into my third point: at times we need political cover as district attorneys. We often must deal with other elected officials. Recently, an elected official stepped down in Carson City. I explained to him the resignation process and how that was to proceed by law. He disagreed and insisted that I get an Attorney General opinion. Instead of standing my ground and arguing with him, I said fine, I will get an Attorney General opinion. Lucky enough for me, I was right, because they agreed with me. But that is not the moral of the story. The moral of the story is that I needed somebody to back up my situation.

That brings me to my next point. It is not in your current packet, but NRS 228.120 specifically states that the Attorney General is the supervisory authority over the district attorney's offices in all duties, civil and criminal. Yet with these provisions, if we want to ask for an opinion or we need their assistance in prosecution, we would have to pay for it. I think those are inconsistencies in the law or they would create inconsistencies.

Finally, I would mention again that the taxpayer dollars that pay for the Attorney General's Office are the same taxpayer dollars that pay for my position, Mr. Jackson's position, and the counties. I think the citizens of this state expect the Attorney General's Office, as well as our offices, to do these core jobs. With that, I will turn it over to Mr. Jackson.

**Chair Atkinson:**

Are there any questions from the Committee? I see none.

**Mark Jackson, District Attorney, Douglas County:**

While I am the president of the Nevada District Attorneys Association, I think it is important that the record reflect that the Association did not take action specifically related to this bill. However, I can tell you that I have heard from some other elected district attorneys across the state who have contacted me since Friday to let me know that they join in our opposition. Specifically, they include Dick Gammick, the Washoe County District Attorney, and Bob Auer, the Lyon County District Attorney, and I have also received word that Nye County's District Attorney's Office joins us in this opposition.

**Chair Atkinson:**

Did they send anything?

**Mark Jackson:**

Nothing in writing. There is a representative from the Washoe County District Attorney's Office here, and I have received an email from their representative.

**Chair Atkinson:**

If this was that important to them, they should have sent something to us.

**Mark Jackson:**

I would like to thank all of the Committee members because I think you have identified the core issues here. I know that Mr. Horne talked about the inherent duties. There has been some discussion about fairness and whether these changes would be appropriate. I would like to bring these together as part of these historical acts or actions.

It would not be appropriate or reasonable, for example, for the Governor to charge an hourly fee to those people whom he governs. It would not be appropriate or fair for the judges at any level—the appellate court level, or general jurisdiction courts, or courts of limited jurisdiction—to charge an hourly fee over those whom they judge. It would not be appropriate or fair for you, collectively, as a legislative body and representatives of the people, to charge an hourly fee every time you engage in a legislative act. It would not be appropriate for the Secretary of State, as the chief election officer, to charge an hourly rate associated with people exercising their right to vote. It would not be appropriate or fair for the Attorney General, as the chief law enforcement officer in the state, to charge an hourly fee for exercising that office's core functions, its historical functions, in enforcing the laws of this great state.

To require that, especially in cases where the district attorneys have a conflict of interest, is something that members of this Committee already have taken very seriously. I appreciate that.



I would offer that there are provisions under NRS 228.130 which is in section 1 of your material, that create inefficiencies currently in how district attorneys' offices and boards of county commissioners have to deal with in the event of a conflict. Specifically, on line 5 of page 2 of the bill, under section 1, it states that ". . . before making a request upon the Attorney General for such assistance the district attorney must first present his or her reasons for making the request to the board of commissioners of his or her county and have the board adopt a resolution joining in the request to the Attorney General." I would submit that it is language that is not needed. It is the district attorney's office that makes the decision that there is a conflict. We would have to go through the process of agendizing this request and taking it before the board of county commissioners, who probably would not understand the conflict, and as a result the request could go unsubmitted. What it does is slows down justice and slows down prosecutions. If you are going to consider any amendments to this statute, I think you should look to striking that particular language.

**Chair Atkinson:**

Have you submitted an amendment to strike that language out?

**Mark Jackson:**

I have not submitted an amendment.

**Chair Atkinson:**

If you are serious about that, you should get the amendment to us immediately. Not that we will do it, but you are asking for it.

**Mark Jackson:**

That concludes my testimony.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Daly:**

Regarding your proposed amendment, do you think that would prohibit citizens from going to the county commissioners and saying, we do not need the district attorney; we want the county commission to ask for that opinion?

**Mark Jackson:**

The current language does not allow the person to bring it up before the board of county commissioners. This would require the district attorney, within that county, to draft a proposed resolution, properly agendize it, take it before the board, describe what the conflict appears to be, get the board to pass the resolution, and submit it to the Attorney General's Office in the hopes that it will then accept the prosecution. In the meantime we have a crime that has been committed that is not being prosecuted.

**Assemblyman Ohrenschall:**

When the district attorneys have to hire outside special prosecutors, do they have to pay them at the going market rate in that community?

**Mark Jackson:**

As Mr. Rombardo informed you, in the tri-county area, which would be the Douglas-Carson-Lyon area, we typically take our conflict cases to our brethren district attorneys in one of those other two counties. I know there are similar arrangements in other counties. There is much more difficulty, actually, in the larger jurisdictions such as Clark and Washoe, which obviously face a lot more conflicts, and a lot more of their cases are going to be submitted to the Attorney General's Office. But I can tell you that in the Douglas-Carson-Lyon area we do not pay each other for performing as a special prosecutor within the other jurisdictions.

**Assemblyman Ohrenschall:**

In recent memory you have not had to have a special prosecutor where you needed to pay an outside attorney?

**Mark Jackson:**

That is correct.

**Assemblyman Ohrenschall:**

Do you ever have to seek a written opinion from an outside attorney, such as an expert in ethics, that you had to pay for?

**Mark Jackson:**

We do seek outside opinions, but not related to areas involving government law, open meeting law, and those types of opinions that we typically request from the Attorney General's Office. The types of outside opinions we request are very difficult areas, such as redevelopment law, development agreements, owner participation agreements, and similar topics that the Attorney General would have no involvement with.

**Assemblyman Kite:**

Concerning the request going through the county commission and that they would decide whether it would be sent to the Attorney General, as I recall, county commissioners have no control over how you do your office, other than controlling your budget. I do not see where going for a county commissioner's approval would be efficient. It could take up to a month before they could get back to you on whether you could take this to the Attorney General. Am I wrong about the executive and judicial portion of this separation of government?

**Mark Jackson:**

It would cause a process that we would have to go through that does not mean anything except for some government red tape.

**Assemblyman Ellison:**

Elko County recently had a similar case as far as needing to assist the District Attorney when he wanted to get outside counsel. What we did was budget that and approved it through our budgetary process. We did not go by resolution.

**Chair Atkinson:**

Are there any questions from the Committee? I have one quick question on this proposed amendment, just so I am clear on it. By amending that out, what are you proposing to do? It does not seem to have anything to do with what the Attorney General is asking for.

**Mark Jackson:**

That comment is not related to their requesting fees. It is something that has been discussed amongst district attorneys for a long time. It is one of those fears, that any time you bring a bill forward with proposed amendments, you are never sure what will come out on the other end. We thought we would just leave the whole thing alone. But now that this particular chapter is being brought forward to this Committee, it was just a suggestion. The proposed amendment would simply offer language along the lines that you could make the request directly to the Attorney General's Office.

**Chair Atkinson:**

Okay. You could have asked for that a long time ago.

**Keith Munro:**

I like the amendment, and I think it is an excellent suggestion.

**Chair Atkinson:**

Are you agreeing with them so they will agree with your fees?

**Keith Munro:**

I would be happy to make that horse trade. No, I think it is something that affects district attorneys; it does not affect our office. It appears to be antiquated language and red tape, and it could be cleaned up. If Mr. Jackson would like to submit an amendment, I think he could work with our office and it would be a good one.

**Chair Atkinson:**

Get back to us before we bring it to work session. Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition to A.B. 62? Is there anyone wishing to testify in the neutral?

**Wes Henderson, Deputy Director, Nevada Association of Counties:**

We are neutral on this bill, but we do have some concerns. I do not think it is surprising that this is just one of a series of bills and measures in the Governor's budget where costs for state services are being shifted to the counties. We would hate to see, as a result of this bill, that a county would make a decision on whether to prosecute or seek an opinion from the Attorney General based on their budget.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Anyone else wishing to testify in the neutral? Mr. Munro, would you like to come up before we close the hearing?

**Keith Munro:**

I would be happy to answer any questions. Most of the cases that we get from the district attorneys would not be something within our jurisdiction. Because it would not be within our primary jurisdiction, it would not be something that we would be funded for out of the money committees of this body. There could be unanticipated costs. As Mr. Rombardo pointed out, most of the district attorneys in his area do not come to our office. When they do come to our office, it is unexpected, and when budget times are so tough and those unexpected cases come to us, we may not have the staffing to handle those things. Staffing has become so razor thin that we need to find a way to pay for those costs.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. We have some concerns with this bill. I would like Mr. Horne to work with everyone to see if

we can come up with something amenable for this bill and get back to this Committee. We will close the hearing on A.B. 62.

Is there any public comment? I see none.

This meeting is adjourned. [Meeting was adjourned at 3:13 p.m.]

RESPECTFULLY SUBMITTED:

---

Patricia Blackburn  
Committee Secretary

APPROVED BY:

---

Assemblyman Kelvin Atkinson, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** February 14, 2011

**Time of Meeting:** 1:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 55	C	Kathleen Kelly	Statement of Explanation concerning A.B. 55

....