

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

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

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:01 a.m. on Monday, March 14, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Lorne J. Malkiewich, Director
Cynthia Carter, Committee Manager
Susan Scholley, Committee Policy Analyst
Jenny McMenomy, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Wes Henderson, Deputy Director, Nevada Association of Counties
Bjorn Selinder, representing Eureka County
John Wagner, State Chairman, Independent American Party

Chair Kirkpatrick:

We have some changes to the agenda. On Friday afternoon, the bill sponsor of Assembly Bill 228 asked for it to be heard at another time. There were some amendments regarding the bill.

Assembly Bill 228: Revises provisions governing contracts for public works.
(BDR 28-582)

[Assembly Bill 228 was not heard.]

We will now open up the hearing on Assembly Bill 45.

Assembly Bill 45: Revises provisions governing district attorneys. (BDR 20-251)

Wes Henderson, Deputy Director, Nevada Association of Counties:

Assembly Bill 45 was submitted on behalf of Esmeralda County. The intent of the bill is to outline the duties of district attorneys in certain smaller counties. We want to make sure that the district attorneys have a presence in the county and serve as counsel for the board of county commissioners. Mr. Selinder will go into more detail.

Bjorn Selinder, representing Eureka County:

I find myself in an odd situation. My client, Eureka County, is opposed to this bill. However, we have been working with Esmeralda County and the Legislative Counsel Bureau (LCB) to come up with a solution to what was perceived as a problem for my client, Eureka County. Esmeralda County, the requester of the bill, has a specific purpose as to why they are seeking this bill. They are looking for a way to give recourse for nonperformance for certain counties falling under

the 2,500-voter provision that is in statute. They would like to set minimum attendance standards for those counties that fall into that category. They would like the opportunity to state specifically in statute the duties of a district attorney with respect to the board of county commissioners. Currently, the wording is very general. It may be interpreted differently by some district attorneys. The new wording involves tasks that should be normal functions for legal counsel. It is modeled after the existing section describing district attorney duties with respect to the school board.

Chair Kirkpatrick:

Will you explain the amendment?

Bjorn Selinder:

We have been working with the LCB to come up with some conceptual amendments ([Exhibit C](#)). There seems to be a conflict between these smaller counties that they fall under the under-2,500-voter exemption. The next level of definition for these counties that would qualify is a population number. Right away, there is conflict. That calls for 700 people within a county to qualify for the provisions set forth in existing statute. That seems to go against the interest of my client. Their district attorney is a full-time individual. We are trying to provide a means whereby the smaller counties will be afforded an opportunity, through the adoption of an ordinance, to set certain minimum requirements and expectations for their district attorney.

This amendment would change the criteria relating to persons voting in the last congressional election. That would be moved into a population-cap standard. That 2,500-voter election criteria involves up to seven counties. It was not just the two that are mentioned in A.B. 45. Right away, there is a need to correct that to make the record reflect the number of counties that are affected. They would set the population line between large counties and small counties at 9,000 people. The existing statute would apply to those above. For those below, there would be a requirement for an ordinance to be adopted to establish those minimum standards. There also seems to be a problem with the number of minimum days that a district attorney would be required to be in attendance. That would be set by county ordinance. Beyond that, this bill would provide that the county commission must enact these ordinances prior to the filing of the deadline for the district attorney's office, which would be elections. That is in order to ensure that there is adequate public notice. In adopting an ordinance of this nature, the residents of a particular county that this might apply to would be given adequate notice of the proposed changes. The amendment also adds a provision that the district attorney's duties would include providing written legal opinions and not just verbal opinions for the requesting county.

Assemblyman Livermore:

On section 3, subsection 5, paragraph (b) it says, "52 days, excluding Saturdays, Sundays, and nonjudicial days." Is it your intention to have the district attorney in the county present one day a week? Could he come four days in one week and take the rest of the month off? If you are trying to do this, then it really needs to be for the benefit of the county.

Wes Henderson:

Esmeralda's intent in drafting this bill was to have the district attorney present in the county one day a week. You are correct.

Assemblyman Livermore:

I would suggest you amend the bill to include those words.

Assemblywoman Bustamante Adams:

Can you give me a background of why the bill is coming forth? Some of us were not here during the last session.

Wes Henderson:

Esmeralda County is a remote county. There have been instances where the district attorneys were not readily available for the county commission. This is an attempt by the county to enact, in statute or ordinance, defined duties for district attorneys. This is so that anyone running for that office knows what is expected of him and will be required to be in the county for a certain number of hours and days to provide legal assistance to the county commission.

Assemblywoman Pierce:

Originally in the bill, this was Eureka and Esmeralda Counties? Is that correct?

Wes Henderson:

Yes.

Assemblywoman Pierce:

In the amendment there are all of these other counties put in. What was the change there?

Bjorn Selinder:

Inadvertently, in drafting the first proposal, the bill only indicated that there were two counties affected when, in fact, there were seven counties under that criterion. The reason for the change is to reflect those counties that would be affected by the proposal.

Assemblywoman Pierce:

It seems like the amendment ([Exhibit C](#)) gets where you are trying to go in a better way. It seemed like with the 52 days of the year, a district attorney could just stay for a month and then disappear until the next year. Leaving it up to the county commissions seems like a good idea.

Assemblyman Goedhart:

Are we to understand that with the amendment, as you proposed it, your clients are fine with the amendment?

Bjorn Selinder:

My clients feel that it would be acceptable.

Assemblyman Ellison:

It looks like the district attorney was voted in for several counties, but he is not representing some of the smaller ones. Is that the problem here?

Bjorn Selinder:

Some of these counties do not have full-time district attorneys. They may not even live in that county. We are trying to provide a minimum legal standard, by ordinance, that would clearly set forth what the duties of that elected position are to be and how they are to represent the board of county commissioners in that county. It is not a situation where one district attorney would represent several counties.

Assemblyman Ellison:

So during the county commissioners' meetings, there is no legal representation there at all?

Bjorn Selinder:

It is my understanding that that may have happened in Esmeralda County.

Chair Kirkpatrick:

We could call Esmeralda County and speak to them about this issue. I do not know why they are not here. It is an odd situation that we are in. Mr. Selinder is helping us by presenting this bill for them.

Assemblyman Ellison:

I agree. I can see the concerns of this county and why this bill was brought forward. I will do a follow-up with Esmeralda County.

Chair Kirkpatrick:

If we are paying this district attorney and he is not showing up, then we need to figure out a way to get the taxpayers' money back out of Esmeralda County. Could you find out if that is happening as well?

Wes Henderson:

That is one of the concerns of Esmeralda County. If they do not have an ordinance setting the minimum performance standards, then they do not have a way of getting back any excess pay.

Chair Kirkpatrick:

I am going to try to reach out to Esmeralda County.

Bjorn Selinder:

I would like to extend the apologies of Commissioner Nancy Boland. She called me yesterday. It is a four-hour drive one-way. It is a small county and has limited resources.

Chair Kirkpatrick:

Is there anyone who would like to testify in support of A.B. 45? [There was no one.] Is there anyone who is neutral on A.B. 45? [There was no one.] Is there anyone in opposition to A.B. 45?

John Wagner, State Chairman, Independent American Party:

I spoke with the District Attorney on Thursday afternoon. I am not aware of any amendments. I have not seen any of those. The District Attorney from Esmeralda County is named Arthur Wehrmeister. I wanted him to send testimony to you directly. I asked for a copy as well. He got called away to Los Angeles for a family emergency and, therefore, he cannot testify. I would like to present some of his arguments on it. Prior to his coming to the office, there were two district attorneys who were gone for long periods of time. I sympathize with Esmeralda County. I would have started a recall, if it had been me. There is nothing worse for a politician than to have a recall. It puts a stigma on him. He will probably never run for office again or be elected. That would be justified. There is no excuse for not performing your duties.

I would like to read some of his thoughts on A.B. 45. [Referred to ([Exhibit D](#)).] The existing law governing district attorneys in Nevada is *Nevada Revised Statutes* (NRS) Chapter 252. *Nevada Revised Statutes* Chapter 252 sets out with specificity the duties and responsibilities of the district attorney, including when the office should be open, the amount of time the district attorney has to spend fulfilling his duties, what the district attorney's duties are, and the various penalties for violating NRS Chapter 252. There are penalties already in place.

The District Attorney does have a residence in Esmeralda County as well as one in Las Vegas. He has a part-time position. He is maintaining two residences. He is trying to do the job that he has been elected to do. He knows this legislation is not directed at him. I can understand the frustrations of Esmeralda County.

The second point is that under existing law, the district attorney can be punished for a misdemeanor if he fails to keep his office open for the statutory time and for a gross misdemeanor for malfeasance or neglect of duty. That is already in the law. We do not need to put additional penalties in statute. His third point is that A.B. 45 seeks to change the existing law by adding a notification requirement, an additional criminal penalty and a specifically enumerated list of duties for the district attorneys of the two smallest counties in Nevada, namely Esmeralda and Eureka Counties. The other 15 district attorneys in the state would not be affected by these changes. Why would only two counties be treated differently?

Another point that he makes is that some of the proposed new language of A.B. 45 is vague and ambiguous. For example, it seems to say that the district attorney only needs to work 52 days a year, and the district attorney can pick which 52 days he wants to work. An example would be a district attorney saying to his board of county commissioners, I will work the first 52 judicial days of the year and be off the rest of the year. If you take a look at this particular section, it is on page 5, the law says, "one day each week." That sounds more reasonable than 52 days whenever they decide they would like to do their job. I understand maybe they would like to work together. I do not know when the separate commissions meet. They probably do not meet every week. It looks to me like there are provisions in the law already for the district attorney and for the county commissioners to mutually agree. I do not feel that this law is going to do anything.

In the past, district attorneys have not lived up to their expectations. We understand the frustration of Esmeralda County. If you run for an office, then you are supposed to fulfill your duties. If I lived in Esmeralda County, I would be very upset. I would be looking for a recall. It is expensive and hard to do, but in a small county, you do not need that many votes. We oppose the bill for the reasons listed.

Chair Kirkpatrick:

In NRS 252.050, it speaks to the penalties for a district attorney, but it does not include counties that have less than 2,500 registered voters. That is the issue. It does only affect two counties, but everyone else has a provision. The

law does not currently allow for the ones that have less than 2,500 registered voters to have any penalties.

John Wagner:

I am not an expert on the law. I would like to see everyone get together on this and come up with a consensus. The District Attorney, if he is in town, could go to the Grant Sawyer Building and testify from there on his opinions. As the bill stands now, we are against it. Eureka County is also against it. We have one county and one county commissioner who are very upset. I do not blame them. There is a law in Carson City concerning sheriffs. They do not have to be here but five days a month. We had that same problem. We do not have that problem now.

Chair Kirkpatrick:

I think that Mr. Selinder had proposed some amendments so that Eureka County could be on board.

John Wagner:

I have the amendments that were proposed. I will make sure that Arthur Wehrmeister sees these.

Chair Kirkpatrick:

Would anyone else like to testify in opposition to A.B. 45? [There was no one.]

Bjorn Selinder:

It is my understanding that the statute is vague with regard to the district attorney's actual presence in such a county. In Esmeralda County, the office is staffed by a paralegal at this time. The district attorney is not present. As Mr. Wagner pointed out, recalls are expensive. Little counties would have a difficult time mounting something like that for financial reasons.

Chair Kirkpatrick:

We will close the hearing on A.B. 45. We will now open up the hearing on Assembly Bill 201.

Assembly Bill 201: Revises provisions pertaining to informational statements provided for the adoption of administrative regulations. (BDR 18-83)

Lorne J. Malkiewich, Director, Legislative Counsel Bureau:

I would like to remind the Committee that, as Legislative Counsel Bureau (LCB) staff, I am not here to urge or oppose the legislation. I cannot do so. I am here to explain this legislation.

This is a measure on behalf of the Legislative Commission. As Director, one of my duties is Secretary to the Legislative Commission. One of the duties of the Legislative Commission is to review all permanent proposed administrative regulations. The *Nevada Constitution* gives the Legislature the power to adopt laws, to delegate to a committee the authority to review regulations, and to stop them from taking effect. The purpose is to avoid state agencies from usurping legislative authority. Regulations adopted under the Administrative Procedures Act have the force of law. If an agency adopts a regulation that exceeds its authority, they are basically legislating. The Legislative Commission or a subcommittee reviews regulations. Therefore, they review all permanent regulations. During session, agencies are allowed to adopt temporary regulations. Permanent regulations must be approved by either the Legislative Commission or its committee to review regulations before they can take effect.

The Legislative Commission, as part of its duty of reviewing administrative regulations, several years ago adopted a requirement that agencies submit informational statements indicating how comment was solicited on a regulation, its affect on businesses, and various other items. The Legislative Commission or subcommittee would then have that information when reviewing the regulation. During this past interim, there were regulations before the Legislative Commission. One of the members of the Commission, then Senator Randolph Townsend, suggested that it would be helpful, when looking at regulations, to be able to contact people that had testified on the regulation at the hearing. The informational statement indicated that these various people testified in favor or against the regulation. There was, however, no way for the members of the Commission to contact them. He suggested that the Legislative Commission put in a bill draft to that effect at the next meeting of the Commission. They did so. That is what this bill is. If you look at the only substantive section of the bill, which is amending *Nevada Revised Statutes* (NRS) 233B.066, the new paragraph (c) provides that, on that informational statement, an agency is to indicate the name, profession or trade, home address and telephone number, business address and telephone number, and email address of each person identified as testifying or sending information to the Committee if the person has provided that information. If the agency does not have that information they cannot provide it. If it is provided to the agency, they are to include it in the informational statement.

Chair Kirkpatrick:

I serve on the Legislative Commission. It is sometimes confusing when you see the reports. We have come a long way with regulations since 2005 on how we get public comment and how it is reviewed. Would we have to change the form to include all of this information when people come to testify?

Lorne Malkiewich:

I am not sure what form agencies use for the informational statements. It would not require a substantial change. I am not sure if that is something that the LCB provides. If we developed that form, it would be appropriate for an agency to attach a list to the sign-up list from the hearings, if they had that.

Chair Kirkpatrick:

It is helpful. When you see 140 people opposed to something but you have no idea who the 140 people are, and they cannot be reached because they have given no contact information you have to hope for the best. Is there anyone who would like to testify in support of A.B. 201? [There was no one.] Is there anyone that is in opposition to A.B. 201? [There was no one.] Is there anyone who is neutral to A.B. 201? [There was no one.] I will close the hearing on A.B. 201. Is there any public comment? [There was none.]

Susan Scholley, Committee Policy Analyst:

I would like to clarify that when I was drafting the proposed conceptual amendment on Assembly Bill 45 ([Exhibit C](#)). I indicated that it was from Esmeralda County. It is actually from Eureka County. I wanted to make that clear.

Meeting adjourned [at 9:32 a.m.].

RESPECTFULLY SUBMITTED:

Jenny McMenomy
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 14, 2011

Time of Meeting: 9:01 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 45	C	Bjorn Selinder, representing Eureka County	Amendment
A.B. 45	D	John Wagner, State Chairman, Independent American Party	Talking Points