

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session
April 18, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 2:02 p.m. on Monday, April 18, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Carrillo, Assembly District No. 18
Assemblyman John C. Ellison, Assembly District No. 33
Assemblyman Jason M. Frierson, Assembly District No. 8
Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General

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Wes Henderson, Deputy Director, Nevada Association of Counties
Bjorn Selinder, Churchill County; Elko County; Eureka County
Keith Lee, State Contractors' Board
Russell M. Rowe, Esq., American Council of Engineering Companies of Nevada
Danny Thompson, Nevada State AFL-CIO
Randy Soltero, Sheet Metal Workers Union, Local 88
James Smack, Stillwater Firearms Association
Ron Dreher
Dan Wulz, Esq., Staff Attorney, Legal Aid Center of Southern Nevada, Inc.

CHAIR SCHNEIDER:

We will open the hearing on Assembly Bill (A.B.) 62.

ASSEMBLY BILL 62 (1st Reprint): Revises provisions relating to the Office of the Attorney General. (BDR 18-202)

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

A little over a year ago, the Budget Division, Department of Administration, created a new budgeting process which is commonly called the "Priorities of Government" (POG). We also received a letter from legislative staff seeking detailed explanations of our budget. As the POG requirement began moving along, the Office of the Attorney General (OAG) started to review its statutory duties to determine its budgeting sources and its priorities. We worked hard on our budget and our priorities. While the resources allocated to our office in the *Executive Budget* process are not sufficient, we fully understand there is a long line of agencies in this category. Like them, we are making do the best we can.

In the course of the POG process, we discovered several duties performed by the OAG for other entities for which we are not compensated. We have an obligation to bring this to your attention and also to bring some possible solutions for your consideration.

We have worked out everyone's concerns with respect to A.B. 62 because it passed in the Assembly by a vote of 42 to 0.

Nevada Revised Statute (NRS) 622.200 requires the OAG to provide training to any new member of a regulatory board. Section 3 of A.B. 62 authorizes the OAG to charge a regulatory body for this service. Existing law requires the

Board of Homeopathic Medical Examiners, the State Board of Oriental Medicine and the Board of Psychological Examiners to transmit complaints to the OAG concerning certain persons regulated by those boards and requires the OAG to investigate these complaints. Sections 4-8 of A.B. 62 authorize each of these boards to retain the OAG to investigate such complaints and authorize the OAG to charge for all services related to an investigation. No other boards in this State are so directly subsidized by the General Fund. We would like to be able to charge for these services, should it be necessary to do so.

Section 9 repeals the requirement that the OAG receive the annual report from the Board of Dispensing Opticians (BDO). We appreciate that requirement because we are familiar with, and represent the BDO. However, if we need that information we can get it from the BDO's Website.

NRS 228.130, subsection 3, is set forth in section 1 of A.B. 62. This language means the OAG may decline any requests from a district attorney to take a case pursuant to this section. However, I cannot recall a situation where the OAG has declined to assist a district attorney with a case. The only reason this would occur is if we did not have sufficient staff. We are getting to that point now with our budget. Therefore, section 1, subsection 4 of A.B. 62 gives the OAG the ability to receive assistance for the most serious cases from the counties should the need arise. Wes Henderson, Nevada Association of Counties, will present a proposed amendment ([Exhibit C](#)) to clarify this procedure from the counties' perspective. We support this proposed amendment.

SENATOR SETTELMAYER:

Can a board refuse to have the OAG represent them?

MR. MUNRO:

This would be for investigative services.

WES HENDERSON (Deputy Director, Nevada Association of Counties):

We support A.B. 62. We have submitted a proposed amendment to A.B. 62, [Exhibit C](#), which would allow the OAG to ask a county for assistance in paying the cost of the prosecution of a category A or B felony. The terms and compensation for the payment assistance would be negotiated between the district attorney of the county and the OAG.

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BJORN SELINDER (Churchill County; Elko County; Eureka County):
We support this bill and the proposed amendment.

Chair Schneider:
We will close the hearing on A.B. 62.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS
AMENDED A.B. 62.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the hearing on A.B. 203.

[ASSEMBLY BILL 203 \(1st Reprint\)](#): Revises provisions governing the unlawful
use of a contractor's license. (BDR 54-660)

KEITH LEE (State Contractors' Board):
I am presenting A.B. 203 on behalf of Assemblyman Richard Carrillo and the
other cosponsors. It is a relatively simple piece of legislation which fills some
gaps we have had in the past. This bill will allow the State Contractors' Board
to issue an administrative citation to contractors who act outside of their license
classifications.

RUSSELL M. ROWE, ESQ. (American Council of Engineering Companies of Nevada):
We have submitted a proposed amendment to A.B. 203 ([Exhibit D](#)) which will
clarify the definition of contractor in NRS 338. We are deleting superfluous
language.

Under NRS 338.010, subsection 3, paragraph (a) contractor means "A person
who is licensed pursuant to the provisions of chapter 624 of NRS or performs
such work that a person is not required to be licensed pursuant to chapter
624 of NRS." This means everyone is a contractor. You are either licensed
under NRS 624 or you are not licensed under NRS 624, which covers
everybody.

This language was part of a large clean-up bill in the 72nd Session which did not come out as intended. We have worked with the State Contractors' Board and the State Board of Professional Engineers and Land Surveyors on this proposed language and everyone is okay with our proposed changes.

This is important for the engineers and architects. There was a recent district court decision which held engineers to be contractors because of the vague language in NRS 338.010. This has broad ramifications for architects and engineers. It takes them out of their professional liability insurance because they are insured to be professional engineers, not contractors. There are other civil and criminal liabilities if they operate as contractors without licenses.

More importantly, NRS already specifies in other chapters that architects and engineers are not contractors. This bill will clarify the intent of NRS and clean up the definition of contractor.

DANNY THOMPSON (Nevada State AFL-CIO):

We support the bill and the proposed amendment. Today, with so many out of work, there are a lot of people trying to find ways to work around these rules. The State Contractors' Board needs all the tools they can get to ensure contractors are working within the scope of what they were licensed to do. We see this as another "tool in their toolbox."

RANDY SOLTERO (Sheet Metal Workers Union, Local 88):

We support A.B. 203 and the proposed amendment. We view this as a consumer protection bill.

ASSEMBLYMAN RICHARD CARRILLO (Assembly District No. 18):

This is a good bill. We are making an effort to protect consumers.

CHAIR SCHNEIDER:

We will close the hearing on A.B. 203.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 203.

SENATOR BREEDEN SECONDED THE MOTION.

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SENATOR COPENING:

"I just want to disclose that I work for a subsidiary of Pulte Homes, a Del Webb Management Company, but my voting on this bill should not impact them any differently than it would anybody else in the construction industry."

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR SCHNEIDER:

We will open the hearing on A.B. 217.

ASSEMBLY BILL 217: Repeals provisions governing the interstate sale of certain firearms. (BDR 52-596)

ASSEMBLYMAN JOHN C. ELLISON (Assembly District No. 33):

Assembly Bill 217 relates to the sale of long guns. It is possible to go to a gun show and purchase a long gun without a background check. You can go to Idaho, Utah, Arizona or any other contiguous state and purchase a long gun. This bill will allow Nevada to align with other states. The only one that does not is California. The federal Gun Control Act was enacted in 1968.

ASSEMBLYMAN IRA HANSEN (Assembly District No. 32):

This bill cleans up existing law for Nevada. We are still following the federal Gun Control Act of 1968. The federal Firearms Owners Protection Act of 1986 allows the sales of guns between contiguous states. Under Nevada law, it is still illegal for someone in Oregon, Idaho, Utah, Arizona or any of our border states to purchase a firearm in Nevada. This bill will bring Nevada up to date with the current federal law.

JAMES SMACK (Stillwater Firearms Association):

We support A.B. 217. It passed with a vote of 42 to 0 in the Assembly. There is a small economic benefit associated with this bill because people from out of state who purchase long guns from Nevada firearms dealers would be required to pay sales tax on the purchases.

CHAIR SCHNEIDER:

We will close the hearing on A.B. 217.

SENATOR SETTELMAYER MOVED TO DO PASS A.B. 217.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will open the hearing on A.B. 156.

ASSEMBLY BILL 156 (1st Reprint): Revises provisions relating to process servers. (BDR 54-667)

ASSEMBLYMAN JASON M. FRIERSON (Assembly District No. 8):

Assembly Bill 156 represents an effort to provide the Nevada court system with the tools it needs to help evaluate affidavits used in the service of process. When a person is alleged to have provided insufficient service of process, a claim is made. The person or company that provided the service can be issued a citation. The citation can sometimes include an order of abatement which is a cease and desist order. This means the Private Investigator's Licensing Board is directing people to stop providing service of process until they correct a certain condition. Typically, it is because those people are operating a business without a license.

This bill proposes to prohibit a person or business from continuing to provide service of process while under an order of abatement or a cease and desist order. The bill also adds information to be used in the documents provided to the courts when service of process is completed. The additional information helps the court evaluate service and puts the court and all parties in a better position to deal with difficulties. For example, if someone claims not being properly served, this gives the court more information to evaluate whether or not it is a legitimate claim.

The bill provides that if an entity licensed to provide service of process does not comply with the requirements, the court may consider the service insufficient. If the person is unlicensed and is providing service of process, the court must consider such service insufficient if that person does not comply with the language in this bill.

This bill will not only provide the court with more tools to protect the community from faulty service of process, but also will encourage businesses that hire process servers to avoid the "bad actors." Ignoring the "bad actors" could result in service of process with no legal force. Any judgment that may have been issued could ultimately be voided by the court.

This bill was created as a result of some situations, particularly in Clark County, where people were not being properly served, and default judgments were issued on people who were never served.

I have circulated this bill to several process servers. The Private Investigator's Licensing Board, which oversees process servers, has also circulated it to its members. The language of the bill and the amendments from the Assembly were completed as a result of concerns expressed in the Assembly. For example, the original bill contained fees to be charged. This has been deleted. Also, language was added to give the court more information so if there were to be a problem, the court could deal with it.

SENATOR ROBERSON:

Is it correct that if you are not licensed, you cannot be a process server?

MR. FRIERSON:

No, it is not correct. If persons are not licensed, they can provide service of process, but not as a business. If you need to have someone served, you could find a disinterested person over the age of 18 who could provide the service. This person does not have to be licensed. This bill would not prevent this person from being able to provide service of process. It would simply require the persons who are not licensed to explain why they do not have a license. Typically, they would be over 18, not doing this as a business and have no interest in this action.

SENATOR ROBERSON:

This bill would make it clear that if a citation has been issued, a person would be prohibited from conducting process-serving activities.

RON DREHER:

I support A.B. 156. I have been serving process in my own business for a number of years. This bill will clarify what we are required to do as process servers. Nevada is unique because we have one of the most regulated industries

in the United States when it comes to private investigations and process service. Unfortunately, there are "bad apples" who give us a black mark. This bill corrects that by defining the information required. This will enable us to provide quality service.

DAN WULZ, ESQ. (Staff Attorney, Legal Aid Center of Southern Nevada, Inc.):
I support A.B. 156, and I have submitted written testimony ([Exhibit E](#)).

In the interest of full disclosure, I am class counsel for a certified class action case in Clark County against a process server and a payday lender who used that process server. In the course of the developments of that case, some issues were discovered in our statutes which require revision. Assembly Bill 156 addresses these issues.

At the Legal Aid Center of Southern Nevada and the self-help center at the Clark County Regional Justice Center in Las Vegas, we have people coming in on a weekly basis who have been served with garnishments of their wages or attachments of their bank accounts. They claim to know nothing about any lawsuits, and claim they were never served with any lawsuits. We typically assist these people with filing a motion to set aside a default judgment in which they can advise the court they were not served with process.

This bill requires a process server to put in writing the date and time of service, how the person was served and the name or the physical description of the person served. It will help everyone involved in this process. It will help the creditor's attorney evaluate the judgment debtor's claim that there was no service. Also, it will help a court's determination in a "he said, she said" situation.

The bill also addresses what happens in cases of unlicensed process servers who have been ordered to stop serving but go ahead and file affidavits of service.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 156.

SENATOR COPENING MOVED TO DO PASS A.B. 156.

SENATOR PARKS SECONDED THE MOTION.

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THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

Having no further business, the Senate Committee on Commerce, Labor and Energy is adjourned at 2:37 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 62	C	Wes Henderson	Proposed Amendment
A.B. 203	D	Russell M. Rowe, Esq.	Proposed Amendment
A.B. 156	E	Dan L. Wulz, Esq.	Prepared Testimony