

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

**Seventy-sixth Session
May 10, 2011**

The Senate Committee on Legislative Operations and Elections was called to order by Chair David R. Parks at 5:11 p.m. on Tuesday, May 10, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Senator Steven A. Horsford (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblyman Randy Kirner, Assembly District No. 26

STAFF MEMBERS PRESENT:

Carol Stonefield, Policy Analyst
Eileen O'Grady, Counsel
Michael Geissinger, Committee Secretary

OTHERS PRESENT:

James R. Wells, Executive Officer, Public Employees' Benefits Program
James T. Richardson, J.D., Ph.D., Nevada Faculty Alliance
Brett J. Barratt, Insurance Commissioner, Division of Insurance, Department of
Business and Industry

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Greg Smith, Administrator, Division of Purchasing, Department of Administration

Leslie Johnstone

Teresa J. Thienhaus, Director, Department of Personnel

Amy Davey, Personnel Analyst III, Department of Personnel

Ron Bratsch, American Federation of State, County and Municipal Employees Local 4041

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association

Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada

CHAIR PARKS:

We will open the hearing on Assembly Bill (A.B.) 365.

ASSEMBLY BILL 365 (1st Reprint): Makes various changes relating to the Public Employees' Benefits Program. (BDR 23-604)

ASSEMBLYMAN RANDY KIRNER (Assembly District No. 26):

Assembly Bill 365 was drafted from my 11 years of experience serving on the Board of the Public Employees Benefits Program (PEBP). Section 1 changes the purchasing structure within the \$1 billion program, allowing the Board to participate in the selection of vendors in a two-step purchasing process. Section 5 authorizes the Board to contract the services of a benefits attorney. The specialized legal area encompassing benefits often requires representation from experts. We did hire an outside attorney in some cases over the last two-year period and saved the State of Nevada \$20 to \$30 million. Section 6 involves technical adjustments to the Insurance Commissioner. We were the only self-funded plan in the State that required the Commissioner to review rates. The Insurance Commissioner is important to the program for advice regarding vendors. Section 7 revises the provisions allowing groups of 300 to leave the program now. They must petition the program and, when leaving, must take active employees and retired employees within the group. Section 8 allows the Executive Officer to observe vendor selection by subcommittees within the program.

CHAIR PARKS:

You mentioned the number 300 as the basis for a group to leave the system. Where did that particular number come from?

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ASSEMBLYMAN KIRNER:

That is current law within the *Nevada Revised Statutes* (NRS).

SENATOR DENIS:

Does the minimum 300 number include the retirees? Or is that the active employees only?

ASSEMBLYMAN KIRNER:

Assembly Bill 365 will clarify the language to include the active and retired employees from a particular group in the 300 minimum.

SENATOR CEGAVSKE:

When looking at the fiscal note, section 5 says the Board "may" engage the services of an attorney. Would that be the Attorney General (AG)?

ASSEMBLYMAN KIRNER:

The fiscal note has been removed. The original language stated the Board "shall" hire an attorney. We do not want to hire an attorney unless needed, so the language was changed to "may."

SENATOR CEGAVSKE:

If an attorney is hired, where would the funds come from?

ASSEMBLYMAN KIRNER:

The source of funding comes from the State and employee premium reserves.

JAMES R. WELLS (Executive Officer, Public Employees' Benefits Program):

We put a fiscal note on this bill when it was first issued because of the word "shall" in section 5. When the word "may" replaced "shall," the fiscal note was removed. The funds to hire an outside benefits attorney would come from our normal operational funds.

JAMES T. RICHARDSON, J.D., PH.D. (Nevada Faculty Alliance):

The changes in A.B. 365 will make the PEBP Board function more efficiently. I urge support for passage of the bill.

BRETT J. BARRATT (Insurance Commissioner, Division of Insurance, Department of Business and Industry):

I support changes made in section 6 of A.B. 365. The changes will help ensure any third party administrator (TPA) utilized by PEBP is properly licensed and fiscally responsible. I support the language removing my obligation of reviewing the PEBP contracts with a TPA. The Director of the Department of Business and Industry, Terry Johnson, could not be here today, but asked that I pass along his full support for A.B. 365.

GREG SMITH (Administrator, Division of Purchasing, Department of Administration):

The bill meets all of our rules, regulations and guidelines. We support A.B. 365.

LESLIE JOHNSTONE:

I worked with Assemblyman Kirner on the Board of PEBP for eight years. The bill clarifies the area of procurement for PEBP to recognize the Board's role in selecting vendors. This is a key area of responsibility for the Board when dealing with tens of millions of dollars allocated for outside vendor services.

CHAIR PARKS:

We will close the hearing on A.B. 365 and open the hearing on A.B. 179.

[ASSEMBLY BILL 179 \(1st Reprint\)](#): Revises provisions relating to disciplinary action against a public employee. (BDR 23-841)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):

I submit written testimony ([Exhibit C](#)), which summarizes my reasons for bringing forward A.B. 179 and provides details of the bill.

SENATOR SETTELMAYER:

Under this bill, what happens if an employee is clearly stealing from the State? Will the AG need to be consulted in every case? The AG may require as much as 60 days to gather evidence or information on a case.

ASSEMBLYMAN ANDERSON:

The language in the bill says to consult with the AG. It does not require permission.

SENATOR CEGAVSKE:

In section 2, line 28, the bill language says, the appointing authority must consult with the AG. That is not permissive language. In section 1.5, line 14, the language says "shall provide," which again is strong language, removing any permissiveness.

ASSEMBLYMAN ANDERSON:

The intent is to consult with the AG. A consultation would be needed before moving on a major employment action. The intent of section 1.5 is for mandatory written guidelines to be given to each employee for the agency to which they have been hired. This will remove any confusion or excuses from the employee or the agency.

SENATOR CEGAVSKE:

Can you give me an example of why this bill would be needed? Are there guidelines within the State regarding termination practices now?

ASSEMBLYMAN ANDERSON:

I defer both of those questions to the Department of Personnel.

EILEEN O'GRADY (Counsel):

There are provisions in NRS which prescribe procedures for dismissal.

CHAIR PARKS:

Are the terms "guidebook" and "guidelines" interchangeable with an employee handbook or employee manual?

ASSEMBLYMAN ANDERSON:

The idea is for an agency to provide the employee with a set of expectations in whatever form is best suited to the particular agency.

CHAIR PARKS:

Is there any situation where an agency might use outside counsel from another State agency's legal counsel instead of the AG?

ASSEMBLYMAN ANDERSON:

I do not know. The use of the AG in section 2 is a "ready best" practice. The bill codifies this standard of practice.

CHAIR PARKS:

If an investigation of a disciplinary issue with an employee is to be completed within 90 days, what will happen if the issue goes to mediation? It may take more than 90 days if an employee appeals. Are there provisions for this scenario?

ASSEMBLYMAN ANDERSON:

Mediation would happen after an investigation has concluded within the 90 days.

SENATOR SETTELMAYER:

Mr. Chair, there are certain boards, commissions and agencies which are obligated to use the AG at all times, but all other agencies have the ability to hire outside counsel.

Assemblyman Anderson, would you object to wording in the bill which gives the ability to dismiss an employee after the consultation, but without agreement from the AG?

ASSEMBLYMAN ANDERSON:

I would need to consult with the Department of Personnel and the American Federation of State, County and Municipal Employees (AFSCME) union prior to adding new language to the bill.

TERESA J. THIENHAUS (Director, Department of Personnel):

The Department of Personnel worked closely with representatives from AFSCME and other employee associations to develop the language in A.B. 179. We discussed elements contained in the original bill and agreed some requirements should be in statute, while other procedural elements would be more appropriately addressed through regulation. We are working with the interested parties to adopt regulations to address improvements to disciplinary procedures. The Department of Personnel supports A.B. 179. With this bill and our proposed revisions to the Nevada Administrative Code (NAC), the disciplinary process for State employees will become more fair.

SENATOR SETTELMAYER:

Would you object to changing the bill to allow dismissal of an employee after the consultation with the AG, but without an agreement from the AG?

MS. THIENHAUS:

The bill contains language which is currently in the State Administrative Manual. The AG's Office has been making recommendations to agencies for years, and the agencies can then choose to follow those recommendations or not.

SENATOR SETTELMAYER:

I know of situations where the AG's Office has stated it would not be willing to defend an agency in court if the recommendation was not followed.

MS. THIENHAUS:

I am not aware of those situations. The idea behind the consultation with the AG goes back to the due process rights given to State employees. Prior to an employee being dismissed, the AG consultation is to ensure all legal procedures have been performed.

CHAIR PARKS:

Is there an employee handbook or manual?

MS. THIENHAUS:

There is an employee handbook, but we are not referring to that here. We are referring to prohibitions and penalties here. Under NAC 284, each appointing authority may adopt specific prohibitions and penalties which apply to the types of duties and situations of that agency.

AMY DAVEY (Personnel Analyst III, Department of Personnel):

Agencies are expected to submit their prohibitions and penalties to the Department of Personnel for review and consistency. We work with the agencies to ensure policies are being instituted with the same levels of discipline. The Personnel Commission must approve the prohibitions and penalties before they go into effect. The employees are then required to sign a copy of the policies upon receipt.

SENATOR CEGAVSKE:

Would this bill make your office do something different than the procedures in place now? What does the AG charge for the consult?

MS. THIENHAUS:

The State Administrative Manual requires all appointing authorities to go through the AG for review of the "specificity of charges" document prior to

dismissal, demotion or suspension of an employee. Assembly Bill 179 essentially requires nothing different, but the bill will put the language in statute.

SENATOR CEGAVSKE:

Does the bill have any effect on the right-to-work law?

MS. THIENHAUS:

The State right-to-work law means you do not have to be affiliated with a union. State employees by statute do not have collective bargaining rights; however, they do have the right to representation by their employee associations. This bill will not affect those rights. The bill will expand the rights of an employee during the investigation process by limiting the investigation time to 90 days.

RON BRATSCH (American Federation of State, County and Municipal Employees Local 4041):

We support A.B. 179 regarding the change to the investigative period. The 90-day completion of an investigation period and the limited extensions will expedite future cases that created problems in the past.

SENATOR CEGAVSKE:

You said this bill will expedite cases; to me, it seems to be slowing things down.

MR. BRATSCH:

We have had officers on administrative leave for over a year, waiting for completion of investigations. The 90-day investigative period will avoid these types of situations.

CHAIR PARKS:

Were these officers not working, but still on the payroll?

MR. BRATSCH:

In some cases when employees are put on administrative leave, they do receive pay while waiting for the process to finish.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):

I was asked to appear today on behalf of Director Chris Perry of the Department of Public Safety. He spoke of some concern within section 3, subsection 2 regarding the time issues, but supports A.B. 179 because the 90 days with the extensions available will be sufficient.

RONALD DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):

This bill is long overdue. When we represent an employee, we are looking at whether or not the "just cause" standards have been met. The first standard is notification. Section 3 of A.B. 179 provides for written notice to the employee. Section 2, subsection 1, paragraph (a) provides for immediate suspension or termination by the appointing authority. Section 2, subsection 2 requires a consultation with the AG, which could help the employer determine the appropriate course of action. The Department of Personnel has been doing consults with the AG for a long time to avoid procedural problems.

There has been input from different agencies and associations to ensure the quality of A.B. 179. Section 3, subsection 2, provides the 90-day investigation period, a 60-day extension, and more time could be granted by the Governor if needed. This bill codifies the procedures to avoid lengthy investigations of a year or more. This is an excellent bill which is supported by many agencies and we urge your support for passage.

SENATOR CEGAVSKE:

Why do we need this bill if the procedures are in regulations and in use?

MR. DREHER:

Each agency within the State has its own personnel department within the agency. Each has its own set of procedural rules or standard operation procedures. If this bill passes, it will create uniformity throughout the State. In statute, there can be no unilateral changes that could affect the Department of Personnel's ability to provide standard regulations and practices.

SENATOR CEGAVSKE:

I have not heard the AG's Office or any other agency say it uniformly changes regulations. Are you sure this happens?

MR. DREHER:

Each agency has its handbook covering its own set of rules. This bill provides a uniform standard and requires the agencies to provide a copy of the State's discipline and procedural rules to each employee. This will ensure employees are aware of policy, prohibited acts, possible violations and penalties from the Department of Personnel.

SENATOR CEGAVSKE:

What about section 2?

MR. DREHER:

The right to have a legal opinion before invoking disciplinary action provides good advice to the agency regarding procedural protocol.

SENATOR CEGAVSKE:

How many cases per year are we talking about? One, six, ten?

MR. DREHER:

I have been involved with several from the classified law enforcement standpoint. Last year, I assisted two cases with the Department of Public Safety. I have had ongoing cases, which took several years.

MS. THIENHAUS:

I do not want to be accused of misrepresentation. For the record, I am not currently with the AG's Office. I was employed by the AG's Office prior to becoming Director of the Department of Personnel.

In 2010, there were a total of 113 specificities of charges against State employees. Of those, 70 were terminations, 33 were suspensions and 10 were demotions. The State has approximately 16,000 classified employees. Last year, there were 113 appeals of disciplinary actions.

SENATOR SETTELMAYER:

How many of the 113 cases would have been affected by A.B. 179?

MS. THIENHAUS:

All of them.

SENATOR SETTELMAYER:

They all took longer than the 90 days plus extensions?

MS. THIENHAUS:

I do not know of how long each investigation took. We are not required to keep that information.

SENATOR SETTELMAYER:

Will your department be required to keep that information to comply with this bill?

MS. THIENHAUS:

My department will know an investigation is being extended beyond 90 days when the request is forwarded to me from that particular agency. With the agencies that fall under the centralized pilot project, we will know right away.

ASSEMBLYMAN ANDERSON:

This bill has both management and employee representatives testifying in support. The rules and regulations policies referred to early is a policy document from the Department of Administration. Assembly Bill 179 will put those provisions into the personnel code and allow jurisdiction with the Personnel Commission and Department of Personnel to administer policies in NRS 284 with certainty.

CHAIR PARKS:

I will close the hearing on A.B. 179 and open the hearing on A.B. 76.

[ASSEMBLY BILL 76 \(1st Reprint\)](#): Revises provisions concerning reinstatement of insurance under the Public Employees' Benefits Program. (BDR 23-497)

MR. WELLS:

Sections 1 and 3 of A.B. 76 eliminate the current statutory provision for a retired employee who has declined health insurance under PEBP to reinstate the currently available health benefits. The provision allowing reinstatement occurs every even numbered year and allows the retiree to decline and reinstate insurance as many times as they choose. Assembly Bill 76 replaces the biennial reinstatement provision with a one-time only reinstatement. This opportunity to reinstate health insurance will occur during the regular annual PEBP open enrollment period. A retired employee will only be eligible for one period after

October 1 or on retirement date, whichever occurs later, where the employee did not have PEBP health insurance coverage. The bill allows a former retired employee who may have obtained health insurance coverage through another employer or another source one opportunity to reinstate health insurance coverage as a retiree.

DR. RICHARDSON:

I am here representing the Nevada Faculty Alliance (NFA) and the benefits coalition. We support Assembly Bill 76, which clarifies and smoothes the functioning of PEBP.

CHAIR PARKS:

The hearing on A.B. 76 is closed. We will open the hearing on A.B. 80.

ASSEMBLY BILL 80 (1st Reprint): Makes various changes relating to the Public Employees' Benefits Program. (BDR 23-496)

MR. WELLS:

Assembly Bill 80 covers various provisions to the operational aspects of the PEBP. Sections 3, 8 and 14 consolidate the reporting requirements contained in NRS 287.043 and NRS 287.04366 into a single section. This recognizes the Executive Officer, not the PEBP Board, is responsible for compiling and submitting reports on behalf of the Board. The intent of this new section is not to change any of the currently required information under NRS 287.043 or NRS 287.04366. It does provide that reports by the Executive Officer will be submitted to the PEBP Board.

Sections 4, 4.5 and 12 of the bill eliminate preexisting condition exclusions for reinstated retirees in order to comply with federal laws. If the plan is considered a "grandfathered" plan, there is an exception allowed under the provisions of the Patient Protection and Affordable Care Act, or federal health care reform. While PEBP's plans will not be considered grandfathered, including any participating local governments on PEBP's plan, there will likely be other local government plans that are grandfathered. Section 4 allows for the exclusion of preexisting conditions for those plans that are grandfathered until 2014 when all exceptions to exclude coverage of preexisting conditions will not exist. Section 4.5 removes the preexisting condition language at such time as federal health care reform ceases to allow grandfathered health plans to exclude preexisting medical conditions.

Sections 5 and 13 of the bill provide that a domestic partner of a police officer or firefighter killed in the line of duty is eligible to participate in a group insurance plan provided to that police officer or firefighter. While the government agency which employs a police officer or firefighter killed in the line of duty is required to subsidize the health insurance for a spouse or children, A.B. 80 allows, but does not require, the government agency that employed the police officer or firefighter to subsidize the domestic partner's health insurance if the domestic partner elects to continue coverage.

Section 6 of the bill eliminates duplicate language from NRS 287.023 that is included in NRS 287.046. Senate Bill (S.B.) No. 544 of the 74th Session closed the program to all local governments not currently participating in the PEBP. The removal of this language does not allow nonparticipating government retirees to join PEBP.

Section 9 revises language in NRS 287.044 to conform to the agencies' actual practice. As currently written, employees would be responsible for 100 percent of the cost of all dependents. For many years, the PEBP Board has allocated the State subsidy to cover portions of both the primary participant and any dependents covered by the participant. This change will clarify that the Board allocates the monthly agency contribution between participants and dependents.

Section 10 revises language added to NRS 287.046 by S.B. No. 427 of the 75th Session. It clarifies the subsidy eligibility for a person initially hired after January 1, 2010. There will be no subsidy provided for retirees initially hired after January 1, 2010, who do not continuously participate in the program after retirement or do not have at least 15 years of service, which may include local government employer years of service. The exception to this provision is for a disability retiree who must have at least five years of service. This amendment clarifies that employees hired after January 1, 2010, will not be eligible to reinstate insurance coverage if they decline coverage after they retire. This is different from the provision you just heard in A.B. 76 that allows a one-time reinstatement during the annual PEBP open enrollment period. The removal of the word "state" from section 10, subsection 6, paragraph (b) on NRS 287.046 revises language to conform to actual agency practice. The PEBP prorates years of service on cumulative years of service and does not prorate years of service earned with individual employers. Employers pay a percentage of the subsidy based on the years and months of service for that employer to the total years and months of service for all employers.

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Section 11 clarifies that subrogation, or the liability of someone other than the plan to pay for medical costs incurred, is applicable to all members of the plan, including retirees and dependents and not just employees.

DR. RICHARDSON:

On behalf of NFA and the benefits coalition, we support this bill.

CHAIR PARKS:

The hearing on A.B. 80 is closed. We are adjourned at 6:30 p.m.

RESPECTFULLY SUBMITTED:

Michael Geissinger,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 179	C	Assemblyman Elliot T. Anderson	Written testimony