

**MINUTES OF THE  
SENATE COMMITTEE ON EDUCATION**

**Eightieth Session  
March 18, 2019**

The Senate Committee on Education was called to order by Chair Moises Denis at 1:07 p.m. on Monday, March 18, 2019, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 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 Moises Denis, Chair  
Senator Joyce Woodhouse, Vice Chair  
Senator Marilyn Dondero Loop  
Senator Dallas Harris  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**GUEST LEGISLATORS PRESENT:**

Senator Pete Goicoechea, Senatorial District No. 19

**STAFF MEMBERS PRESENT:**

Jen Sturm, Policy Analyst  
Steven Jamieson, Committee Secretary

**OTHERS PRESENT:**

Richard Barrows, Legal Counsel, Elko County School District  
Chris Daly, Nevada State Education Association

CHAIR DENIS:

We will open the hearing on Senate Bill (S.B.) 253.

**SENATE BILL 253**: Revises provisions governing the suspension of licensed school employees. (BDR 34-582)

SENATOR PETE GOICOECHEA (Senatorial District No. 19):

I bring this bill forward on behalf of the Elko County School District (ECSD). The intent of the bill is to clarify some of the gray areas in the law dealing with situations when professional, licensed employees can be terminated and when they are suspended. The bill addresses what happens in the event that the employee is truly a "bad actor" and needs to be off of the premises, and how that is accomplished.

The bill we received from the Legal Division of the Legislative Counsel Bureau was not very clear, so we will be presenting an amendment which is really the bill as it should be.

RICHARD BARROWS (Legal Counsel, Elko County School District):

I have been the Legal Counsel for ECSD for about 31 years. I will present the amended version of the bill as proposed ([Exhibit C](#)). I have also submitted testimony in support of the bill ([Exhibit D](#)).

There are two main reasons for the bill. First, there was a recent situation in ECSD in which a licensed employee was arrested for a serious felony involving students. *Nevada Revised Statutes* (NRS) 391.760, which deals with suspensions, states that if a licensed employee is officially charged with a felony or a crime involving moral turpitude, the employee may be suspended. The statute also states that within five days the superintendent shall start dismissal proceedings. Unfortunately, the problem is that at that point, there is no ground for dismissal. A dismissal requires a conviction. The statute purports to require something that legally cannot be done.

In the process of creating a bill and considering an amendment to it, I discovered that the statute is confusing. The statutory authority to suspend a licensed employee was first put into NRS in 1967. In 1967, the statute consisted of about 3 or 4 lines, but it has since been amended 11 times. There has been an attempt to stuff every single situation dealing with suspension into that statute. It is a confusing statute and, in some cases, a conflicting statute.

The second purpose of the proposed amendment is to clean up the statute by separating it into three or four separate suspension situations. Each situation is quite different from the others.

The first situation is an emergency suspension. The second is a short-term suspension. The third is a long-term suspension for being officially charged with a felony or crime involving moral turpitude. The fourth situation is a suspension for statutory grounds not involving a criminal charge.

The amendment attempts to create these sections of the statute. Even though the bill is sponsored by ECSD, this is neither an unfair, "pro-school district" bill nor an "anti-licensed employee" bill. I hope that the contents of the bill would be embraced by licensed employees; it is a fair bill.

SENATOR GOICOECHEA:

I do not know the details of the case Mr. Barrows mentioned, but rural Nevada is a small place. A teacher could be suspended with pay for a year or more, depending on what happened, and the whole community would know what the person had done. This bill was driven by a bad situation that could happen elsewhere.

CHAIR DENIS:

Please present the amended form of the bill, as seen in [Exhibit C](#).

MR. BARROWS:

The first three sections of [Exhibit C](#) make clear that whatever amendments are made to the statute also apply to charter schools.

Section 4, [Exhibit C](#), clarifies the manner of giving notice to the licensed employee. That is a significant issue. Most, if not all, school employees have an electronic mail address. This statute allows notifications to be sent to that address.

Section 4.5, [Exhibit C](#), deals with emergency suspension situations.

Section 5 of the amendment deals with the original reason for the bill, the suspension of a licensed employee officially charged with a felony or crime involving moral turpitude. Section 5, subsection 1, paragraph (a) of [Exhibit C](#) requires written notice be given to the licensed employee, in accordance with

section 4. Section 5, subsection 1, paragraph (b) provides an opportunity for an informal hearing before the suspension can become effective.

The remainder of the amended section 5 generally deals with the issue of pay for the suspended employee. Generally, the suspension would be without pay, but if the employee posted a bond or other security acceptable to the superintendent, the employee could receive pay during the period in which the criminal case was pending. Depending on the result of the criminal case, if the employee is not convicted, the employee must be reinstated with all benefits and seniority. If the employee is convicted, then the employee must repay the pay that he or she received during the period of suspension. The purpose of the bond or other security is to ensure that the repayment occurs. The length of the criminal proceedings are beyond the control of the school district and can sometimes be for a lengthy period.

Section 6, [Exhibit C](#), explains short-term suspension, which is 10 school days or less. It also provides that short-term suspension can only be done for reasons set forth in NRS 391.750. The suspension can only happen with prior written notice and the opportunity for an informal hearing.

CHAIR DENIS:

The amendment changes the bill language from 10 days to 20. Is that what you want to do?

MR. BARROWS:

The statute is currently 20 days. For reasons I do not know, the bill drafter changed the 20 to 10.

CHAIR DENIS:

So, you want to go back to the original language?

MR. BARROWS:

Yes.

Section 7, [Exhibit C](#), amends the definitions. I had originally proposed that sections be added to define terms such as "long-term suspension," "school day" and "short-term suspension," but those definitions were not added to the original version of S.B. 253.

CHAIR DENIS:

Are you talking about the additional definitions on page six of the amendment?

MR. BARROWS:

Yes. Section 7, subsection 5 of the proposed amendment defines "long-term suspension" as "longer than 10 consecutive school days." Section 7, subsections 8 and 9 define "school day" and "short-term suspension."

All three of the proposed new definitions are not anything remarkable. They are consistent with the way business is done, but have not been in the statute.

CHAIR DENIS:

You have 10 consecutive days in the definition of long-term suspension. How does that relate to the 20 days you discussed earlier?

MR. BARROWS:

It is still consecutive school days, but the 20 is a limitation on the number of days of suspension.

CHAIR DENIS:

So, "not more than."

MR. BARROWS:

Section 8, [Exhibit C](#), contains amendments to conform some of the other existing statutes to the main proposed amendments dealing with suspension.

Section 11, [Exhibit C](#), deals with long-term suspensions not involving a criminal charge, for reasons set forth in NRS 391.750, which is the existing statute that specifies grounds for dismissal. Again, suspension can only be done with notice and at least the opportunity for an informal hearing.

There appear to be many amendments to section 11. In fact, many of the proposed deletions are the result of moving pieces to other sections, rather than removing them from the law entirely.

Section 12, [Exhibit C](#), determines the effect of collective bargaining agreements. Section 13, [Exhibit C](#), is the effective date.

SENATOR PICKARD:

Section 4.5 of the proposed amendment, [Exhibit C](#), does not define an emergency situation. What constitutes an emergency? Is the term defined elsewhere, to give a district or the superintendent some guidance?

MR. BARROWS:

I believe it is defined in case law, not statute. Within reason, an emergency is whatever the superintendent believes is a necessity relating to "the health or safety of the pupils or staff of the school district or the public," as expressed in section 4.5, [Exhibit C](#).

I suggest that the amended definition is the same, or perhaps better, than the existing language in NRS 391.760, in which the superintendent may suspend an employee without notice if "the superintendent is of the opinion that the immediate suspension of the employee is necessary in the best interests of the pupils in the district." The proposed section 4.5, [Exhibit C](#), is better because it defines an emergency as a situation related to the health or safety of the pupils, staff or the public.

SENATOR PICKARD:

One person's emergency is another person's convenience. In NRS 391.760 we are talking about the best interest of the children.

In section 5, subsection 8 of the proposed amendment, [Exhibit C](#), "A licensed employee who is convicted of any crime and who is sentenced to and serves any sentence of imprisonment forfeits all rights of employment" during that period between the arrest and the date of termination. Why do we need this section? Do people return post-conviction and ask to get their previous jobs or seniority back?

MR. BARROWS:

I am not aware of such a situation. The subsection you refer to is not of significance to me. The subsection is currently found in NRS 391.760, subsection 6, and was simply moved to the section of [S.B. 253](#) which deals with crimes. This move is seen in the deletion of section 11, subsection 6 of the original bill.

SENATOR PICKARD:

That is probably why it feels a little out of place there.

CHRIS DALY (Nevada State Education Association):

The Nevada State Education Association (NSEA) has due process concerns and is therefore in opposition to S.B. 253 as introduced. We do not have comments on the proposed amendments at this time.

SENATOR HANSEN:

In this situation, an employee has committed a sexual crime. According to the current law, the district cannot get rid of the employee until the employee is convicted. How is this currently handled? Surely NSEA does not want to associate with someone accused of a significant felony involving sexual relations with children. Why would you oppose that aspect of the bill? Is that why you are neutral until you read the proposed amendment?

MR. DALY:

As the union, we are legally obligated to a certain extent, to provide defense. However, at a certain point we all agree that there are some people who should not be in the classroom.

The issue of due process may arise when an accusation is unfounded. The teacher may be completely innocent, but after going through this process they may have lost their salary and benefits. The bill does include a provision to get the salary back, and they can post some sort of bond or security, but many will not be able to come up with that bond. They and their family lose benefits. We want to watch out for those situations, which are the flip side of a confirmed accusation. I do not think that we would disagree in the instance you presented.

SENATOR HANSEN:

If a teacher is accused of something serious like this, are they not arrested? Can they even go back to the classroom? How does that work? I would like to clarify that with our legal counsel. You have a presumption of innocence, but you also have the accusation that this individual has been involved in sexually inappropriate relations with students. How do you balance the need to protect the students while also protecting the Constitutional rights of the accused?

SENATOR DONDERO LOOP:

At least in the past, this was handled by self-reporting to the school district. It would be one thing if you did not report the situation. If you did report it, they might suspend you. In 2011, I had a bill about fingerprinting. An example was

Senate Committee on Education  
March 18, 2019  
Page 8

brought up where someone had committed a travesty, but they had come back into the classroom because they had not self-reported.

SENATOR GOICOECHEA:

We will work with the opponents of the bill to find some middle ground. We will submit the draft amendment to the Legal Division to have it formalized. I think this bill addresses some important issues; we just need to get the language right.

CHAIR DENIS:

I will close the hearing on S.B. 253. The meeting is adjourned at 1:33 p.m.

RESPECTFULLY SUBMITTED:

---

Steven Jamieson,  
Committee Secretary

APPROVED BY:

---

Senator Moises Denis, Chair

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



<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	2		Attendance Roster
S.B. 253	C	14	Richard Barrows / Elko County School District	Proposed Amendment
S.B. 253	D	1	Richard Barrows / Elko County School District	Written Testimony