

**MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eightieth Session  
March 6, 2019**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:07 p.m. on Wednesday, March 6, 2019, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 David R. Parks, Chair  
Senator Melanie Scheible, Vice Chair  
Senator Julia Ratti  
Senator Ben Kieckhefer  
Senator Pete Goicoechea

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Policy Analyst  
Heidi Chlarson, Committee Counsel  
Suzanne Efford, Committee Secretary

**OTHERS PRESENT:**

Michelle Morgando, Senior Appeals Officer, Hearings Division, Department of Administration  
Deonne Contine, Director, Department of Administration  
Kent Ervin, Ph.D., Nevada Faculty Alliance  
John Fudenberg, Clark County  
Cyrus Hojjaty

CHAIR PARKS:

We will open the hearing with Senate Bill (S.B.) 14.

**SENATE BILL 14:** Provides for the removal of certain gubernatorial appointees under certain circumstances. (BDR 18-186)

MICHELLE MORGANDO (Senior Appeals Officer, Hearings Division, Department of Administration):

The appeals officers who serve with the Department of Administration conduct hearings for contested workers' compensation matters and other interlocal agreements. We are appointed by the Governor for two-year terms and serve until a successor is appointed and qualified.

A question was raised regarding whether an appeals officer could be removed prior to the expiration of his or her two-year term. After researching the boards and commissions under the auspices of the Governor, I discovered that *Nevada Revised Statutes* (NRS) 616C.340 contains no provision allowing the removal of an appeals officer prior to the expiration of his or her term.

In my written testimony ([Exhibit C](#)), I detailed the different boards and commissions. There are 117 of them. The statutes contain language regarding member removal for 37 of those boards or commissions. Thirteen boards or commissions permit removal only after notice and hearing. One allows for removal after written notice and no hearing. For the remaining 23 that allow for removal, the statutes are silent about hearing or notice requirements.

Senate Bill 14 will permit the Governor to remove an appeals officer for specific circumstances prior to the expiration of the two-year term. Those circumstances are neglect of duty, incompetence, misconduct, or the suspension or revocation of the appeals officer's license to practice law in Nevada. A person must be licensed and in good standing to practice law in the State in order to qualify to serve as an appeals officer.

Egregious conduct, including neglect of duty, incompetence and misconduct, are common among the other member removal statutes. Neglect of duty includes not appearing for commission or board meetings four times in a row with no excuse, or not attending to the day-to-day activities of a board or commission member. Incompetence is the inability to perform the duties of the position as expected. Misconduct can cover a variety of situations; however, in this bill it applies to conduct that violates the position of trust that comes with these positions. In fact, the application to be an appeals officer is called an application for a position of trust.

The intent of this bill is to clarify discrepancies and to permit the Governor to remove an appeals officer before the expiration of his or her term due to egregious conduct.

CHAIR PARKS:

The bill refers to a 45-day written notice period. Are there circumstances that might require the removal of an individual sooner than 45 days? Are you aware of any such situations?

Ms. MORGANDO:

Are you asking about a specific type of conduct that would warrant removal without a notice period? The bill permits removal without notice if warranted by the circumstances.

CHAIR PARKS:

I was not thinking of the specific types of misconduct or incompetence but just simply a need to remove someone sooner than 45 days.

Ms. MORGANDO:

The bill specifically provides that the Governor shall provide the appeals officer 45 days written notice of removal unless circumstances warrant removal without notice.

SENATOR GOICOECHEA:

You are requesting that all 117 boards and commissions to which the Governor appoints members will have equity. They would all be treated the same. A member could be terminated or removed with cause of some kind.

DEONNE CONTINE (Director, Department of Administration):

Ms. Morgando is talking about the section of the bill which applies to appeals officers. Appeals officers are appointed by the Governor; however, they are more like employees. This bill treats them in the same manner as an employee. A person is hired and can be fired if there is misconduct.

The portion of the bill I will speak to was the portion that Senator Goicoechea just mentioned. That is the provision that allows the Governor to remove board members for misconduct, incompetence or neglect. These are meant to encompass the most egregious activities.

If a board or commission member has not appeared for the last four meetings, there is no mechanism in statute to remove that person. In cases of sexual harassment, there is no way for the Governor to remove someone absent some authority outside of their term. This bill grants removal authority in some of these more serious cases or in normal cases in which something should be done about someone's conduct.

SENATOR GOICOECHEA:

Thirty-seven boards and commissions permit removal of a member. Some boards and commissions permit removal only after notice and hearing. Is this bill going to bring some parity to all 117 boards? Is this bill going to treat all boards and commissions in the same manner going forward if there is misconduct, incompetence or neglect? That is pretty broad. Most of these boards and commissions appointed by the Governor serve at the will of the Governor anyway. That is a given. I want to make sure that this is saying we are going to change everything and all 117 board and commission members will be treated the same.

MS. CONTINE:

That would be a Legislative Council Bureau, Legal Division question with respect to what would happen to those other provisions in NRS. I do not know if there is an "except as otherwise provided by law" provision in this bill.

MS. MORGANDO:

There is a provision in the bill regarding NRS 223.195 that permits the Governor to remove the appointee for neglect of duty, incompetence or misconduct unless a more specific statute applies. The intent of this bill is to put removal provisions in place for those boards and commissions that have none.

HEIDI CHLARSON (Committee Counsel):

Section 1, subsection 2 of the bill says "Except as otherwise provided by a specific statute, the Governor may remove any member of a board, commission or similar body appointed by the Governor for misconduct in office, incompetence or neglect of duty." The bill as written leaves the status quo of what is in existing statute for a board, commission or similar body. The bill as introduced is meant to address situations where statute is silent on removal. If the Committee wants this to apply to all boards, commissions or similar bodies, the bill would have to be amended.

There is some confusion about whether the proponent is requesting an amendment because we are not sure what the amendment you are proposing would entail.

MS. CONTINE:

We do not have an amendment. We just have the bill. The reference to an amendment meant amending the statute with this bill.

There may be some cases in which those provisions will remain for boards or commissions that conduct activities specific to that board or commission. The language of this bill would govern when there are no specific rules regarding removal of a member.

SENATOR GOICOECHEA:

I wanted to establish what the intent is and that is fine. We are not going to change anything. It is not going to be a one size fits all. The applicable statutes will still apply. This bill addresses appeals officers and maybe in some cases governmental appointees on which the statutes are silent.

SENATOR SCHEIBLE:

This is kind of odd or ironic because we are talking about appeals officers. Section 2, subsection 6 talks about the removal of appeals officers; however, section 2, subsection 7 talks about appeals officers being the final arbiters in what, I think, would normally be these kinds of cases. If an appeals officer is removed and wants to appeal that decision, what is the process?

MS. MORGANDO:

There is no appeals process in place. This would be similar to the Governor's decision not to reappoint an appeals officer at the expiration of his or her term. That does not require a reason. It is not an appealable determination because these are positions of trust and integrity.

The final arbiter means that our decisions are the final administrative decisions; anything beyond that goes into the district court, court of appeals and Supreme Court system. There are no appeal provisions for a determination to remove an appeals officer or to not renew his or her commission. Was I able to answer your question?

SENATOR SCHEIBLE:

Yes. However, I am concerned about section 2, subsection 6 which says the Governor may remove any appeals officer or special appeals officer for incompetence or neglect of duty. If the Governor removes an officer for "neglect of duty" and that officer wants to argue that he or she was not neglectful in their duty, there is no due process. It should say that the Governor can remove an appeals officer for any reason or these specified reasons, and here is the appeals process. Do you see what I am saying?

MS. MORGANDO:

Yes, I do. The intent of this, in the case of appeals officers, is that these are positions of trust for fairly short terms. It would be difficult to get people to leave a position in private practice, commit to these positions for what they think is a two-year term, only to find they can be removed for any reason or no reason at all at any time. We understand going in that there is a possibility at the end of our two-year commission that we may not be reappointed. It is our commitment to the Governor to work for the State for two years.

SENATOR SCHEIBLE:

I am concerned. I understand that you want to make this a viable career or employment option for people. Even though the statute might say they can be removed for incompetence or misconduct or neglect of duty when in practice they can really be removed for any reason whatsoever, should not our statutes accurately reflect the reality of the law?

MS. CONTINE:

I think the tension here is that, really, these are State employees. They are unclassified employees. I am an unclassified employee, and I could be fired for any reason. I am appointed by the Governor, but the Governor could fire me at any time.

The State requires that appeals officers be appointed by the Governor. Technically, the Governor is employing these people for two-year periods, then reappointing them every two years. We are trying to balance the fact that they are employees who work every day, need to be competent, have no misconduct and not do things that damage the State with the fact that they are appointed by the Governor. There is another level of analysis that goes into the Governor's removal of someone from a position. It is a strange dynamic because these are appointments, but they are full-time jobs. Appeals officers are supervised by

someone within the Hearings Division and reviewed in that context. This bill is an attempt to allow the removal of someone absent that full two years in their term.

CHAIR PARKS:

I was confused with the second page of your supporting documentation, [Exhibit C](#), where it makes reference to a proposed amendment. You are referring to the bill as presented and no additional revisions are being sought.

MS. MORGANDO:

That is correct. We do not seek an amendment to the bill as proposed.

KENT ERVIN, PH.D. (Nevada Faculty Alliance):

The Nevada Faculty Alliance works with and represents faculty interests at boards such as the Public Employees Benefits Program (PEBP) and the Public Employees Retirement System (PERS).

For full disclosure: "I am an appointed member of the Nevada Deferred Compensation Committee, but I am not representing them today and NDC has taken no position."

We agree with the concept that it should be possible to remove an appointed board member for good cause; however, we are opposed to section 1 of S.B. 14 in its current form.

The reasons for removal, misconduct in office, incompetence or neglect of duty are not further defined in the bill. If the Legal Division confirms that those are terms of art that have specific meanings, maybe that could be clarified. If the ability to understand that an issue is incompetence or not, would be a question.

Senate Bill 14 has no due process, hearing or opportunity for appeal. We are talking about largely volunteer boards. I am not really concerned about the appeals boards in section 2.

This broad language could allow a future governor to remove or replace board members on a pretext. Two of the three examples of statutes that allow removal of board members in the bill's digest require a hearing; however, this bill would not.

There are good policy reasons for boards and commissions to have some independence. The Legislature has set them up that way so the members are free to give good advice—sometimes representing certain constituencies and sometimes because they serve as fiduciaries for participants in programs such as PERS and PEBP.

Having fixed- and multiple-year terms that are staggered and stretch over more than one gubernatorial term advances those policy goals. We would not want all board members to serve at the will of the Executive Branch. That is not the intent of this bill. However, we want to ensure that a future governor, with not such good intent, could not use this as a pretext to remove one or two board members to change a vote on a certain issue, for example.

In most cases, a board member asked to resign by a governor probably would resign. I have seen that happen. But if passed, S.B. 14 should allow for the possibility that there might be misuse in the future. Therefore, we recommend either deleting section 1 and not making it apply to all other boards or amending it to include some sort of due process, notice about the cause, and a hearing or appeal. That appeal could perhaps be made to legislative leadership, the Legislative Commission or something like that.

CHAIR PARKS:

We will close the hearing on S.B. 14.

VICE CHAIR SCHEIBLE:

We will open the hearing on S.B. 127.

**SENATE BILL 127**: Increases the number of members on the board of county commissioners in certain counties. (BDR 20-855)

SENATOR DAVID PARKS (Senatorial District No. 7):

Senate Bill 127 provides for the increase in the members on the board of county commissioners in counties with a population in excess of 700,000. Only Clark County falls under the provisions of NRS 244.016 which S.B. 127 seeks to amend.

In 1977, Clark County had 5 county commissioners and its population was 389,965. That equated to slightly fewer than 78,000 constituents per county commissioner. In 1977, under S.B. No. 37 of the 59th Session, the Senate



Committee on Government Affairs increased the number of county commissioners from 5 to 7. The number of constituents per commissioner at that time dropped to 55,709. That number of 7 commissioners has remained unchanged for the last 42 years.

Today, Clark County has a population approaching 2.25 million with 321,429 constituents per commissioner. Over the last 42 years, the population in Clark County has increased nearly sixfold. By 2022, when S.B. 127 takes effect, Clark County will have an estimated population exceeding 2.4 million or 342,857 constituents per commissioner. By increasing the number of commissioners to 9 members, the average commissioner will represent 266,667 constituents following the election in 2022.

By comparison, the City of Las Vegas has a mayor and six council members. It has a population of approximately 650,000 which equates to roughly 108,000 constituents per council member.

You may be wondering why S.B. 127 does not become effective until 2022. The year 2022 is important because it is the first year for a general election following the decennial census. It is that time once every ten years when elected districts are redrawn and their constituency is equalized.

SENATOR KIECKHEFER:

Is there an average number of constituents that a local government representative should have? Do any organizations representing local governments across the Country or the Nevada Association of Counties indicate when constituent services improve or devolve based on the number of constituents each member represents? Maybe that has not been done. I have never seen it.

SENATOR PARKS:

No, there is not an average number. The smallest communities may have bodies with four or five members. The biggest communities, such as the City of New York, has somewhere in the range of 25 or more city council members. It varies all over.

It is important to look at the growth of the community and then on top of that the services provided. If unincorporated Clark County was an incorporated city, it would be the largest city in the State. It would far exceed the population of

the City of Las Vegas, which is approximately 625,000. Clark County performs not only county functions but also municipal functions mostly through its unincorporated towns. With a decennial census on the horizon, this is the time to consider increasing the number of county commissioners.

VICE CHAIR SCHEIBLE:

Are you able to provide us with any insight regarding the numbers on the fiscal note?

SENATOR PARKS:

There would be no fiscal cost until probably the year 2022 when there would be an election after redistricting. The fiscal amounts that show up for the future biennium would be nonexistent because there would be no person there. That would occur only after the election in 2022 because, obviously, there would be salaries for the commissioners, support staff and the possibility of some reconstruction work to accommodate two additional offices.

JOHN FUDENBERG (Clark County):

It is primarily what Senator Parks has indicated. It is the salaries for the two new commissioners, their associated staff, reconstruction and building offices, related computer equipment and so forth. That is how we arrived at the estimate of \$3.18 million.

VICE CHAIR SCHEIBLE:

Why are we spending \$3.18 million in fiscal years 2019-2020, dropping down to only \$600,000 in fiscal years 2020-2021, and then going over \$1 million in future biennia? Are those anticipated projects?

MR. FUDENBERG:

I am going to have to get clarification on the exact numbers. The initial cost is high for the construction, building offices and so forth. Then it will drop for salaries alone. That is my understanding; however, I can get that answer for you.

VICE CHAIR SCHEIBLE:

Obviously, this is a policy committee and not a money committee. That information would be helpful for this Committee and any future legislators who might be looking at this.

We will close the hearing on S.B. 127.

CHAIR PARKS:

That concludes the bills we have for consideration today. We will now move on to public comments.

CYRUS HOJJATY:

I believe that there should be more representation because right now in Clark County we have, I don't know how many, seven commissioners. You divide 2.2 million by 7 that's probably about 300,000 people for every commissioner. That is kind of out of touch considering that it's very out of touch relative to municipalities like Henderson and so forth where that number is sharply lower. I believe that this will give more power to every individual to voice their concern whether it's land use, public safety, roads, you name it. Because I think this is very, very important.

Now, part of the thing that I want to improve in the County is the aesthetics, beauty and building standards when things get built in Clark County. I've noticed that when new shopping centers get built, for an example, we see all these ugly plastic signs get put in and it increases the chance of a neighborhood decaying versus you don't really see that in Henderson. So, maybe we could impose stricter standards. So that's why I support this bill. As far as I know, I could change my mind.

Now, another topic I want to talk about which is quite off topic. I understand that it's public comment but I think it's very important. The *New York Times* just came out that 76,000 or so got apprehended at the border. This to me is a national emergency. You guys should be talking to the Attorney General and asking him why is he suing the Administration for this national emergency. Seventy-six thousand people, that is a lot, and we don't know where these people are headed to. They could be in our communities. We don't know who they are. They tell us that they are just trying to flee violence and poverty and crime. But we don't know these people. They could be gang members. They could bring diseases. What kind of skills are they going to provide? How is this

going to impact our community if they don't speak English? These things are very, very important.

And when we have a lot of problems here at home, I just think to myself is, why can't the politicians respect American citizens first, like myself, rather than catering to foreigners. And to me, well if you guys really don't care, well then this is taxation without representation. Because when I see politicians like Jackie Rosen cater more to noncitizens, that's not representation. I am paying taxes for her salary and all of your salaries. You're there to represent me, not to represent outsiders who, according to you guys, as it seems, don't really provide a net benefit to our State.

You need to talk to the American people and how massive immigration is a net benefit to our State. Because I have seen some documents from Michael Bloomberg and they're not looking good. Michael Bloomberg is a supporter of this process, by the way. So why don't we have a discussion about 76,000 people because it's impacting our schools, our traffic, language barriers, employment, people who get jobs have to learn a different language, people who steal social security numbers, as a former California State senator has admitted this. We need to have a discussion about this. And which is to say relating to the bill, if we are going to flood more immigrants, well that's going to increase population and that means that there is less representation per capita.

And of course districts can be manipulated because, of course, districts, from what I believe, they are based on eligible voters. Are they or are they based on population? I don't know, because if we keep flooding people, well, there is going to be a disconnect. So do you see how massive immigration relates to this bill that we have right now. Talk to the American people. Address their concerns. U.S. citizens should be represented well.

Thank you so much. Appreciate it.

Senate Committee on Government Affairs  
March 6, 2019  
Page 13

CHAIR PARKS:

That concludes our agenda for today. Having no further business to come before the Senate Committee on Government Affairs, we are adjourned at 1:48 p.m.

RESPECTFULLY SUBMITTED:

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Suzanne Efford,  
Committee Secretary

APPROVED BY:

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Senator David R. Parks, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 14	C	2	Michelle Morgando / Department of Administration	Written Testimony