

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

**Eighty-first Session  
February 17, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 9:00 a.m. on Wednesday, February 17, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Dina Neal, Vice Chair  
Senator Melanie Scheible  
Senator Roberta Lange  
Senator Joseph P. Hardy  
Senator James A. Settlemeyer  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Wil Keane, Counsel  
Kim Cadra-Nixon, Committee Secretary

**OTHERS PRESENT:**

Shannon M. Chambers, Labor Commissioner, Department of Business and Industry  
Victoria Carreon, Administrator, Division of Industrial Relations, Department of Business and Industry

**CHAIR SPEARMAN:**

We will open the work session with Senate Bill (S.B.) 55. Mr. Melgarejo will review the bill with us.

**SENATE BILL 55:** Revises provisions governing the licensing and regulation of employee leasing companies. (BDR 53-317)

CESAR MELGAREJO (Policy Analyst):

This bill is sponsored by the Senate Committee on Commerce and Labor on behalf of the Division of Industrial Relations of the Department of Business and Industry. This bill was heard on February 3.

This bill transfers the duties of issuing a certificate of registration and regulation of employee leasing companies from the administrator of the Division of Industrial Relations (DIR) to the commissioner of the Division of Insurance. Both of these divisions are from the Department of Business and Industry.

The amendments and explanations proposed by Shannon M. Chambers, Labor Commissioner, from the Department of Business and Industry are attached to this work session document ([Exhibit B](#)).

The points of the amendment are as follows.

Amend the bill to transfer the duties of supervising employee leasing companies from the administrator of DIR to the Office of the Labor Commissioner.

Amend the bill to change the term "employee leasing company" to "professional employer organization."

Amend the bill to change the term "certificate of registration" to "license."

Expand the definition of client company and professional employer organization to allow professional employer organizations to manage the labor compliance services of the client company without hiring and leasing back the client company's employees.

Authorize the labor commissioner to impose an administrative penalty of \$5,000 for each violation.

Change the effective date to July 1.

Our Committee Counsel will provide information on additional amendments not included in the work session document.

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CHAIR SPEARMAN:

If additional staffing is required, a two-thirds vote of this bill is required. Mr. Keane, please address this issue.

WIL KEANE (Counsel):

The proposed amendment may appear more complicated than it is.

*Nevada Revised Statutes* (NRS) 616B.685, 616B.688, 616B.691 and 616B.697 concerning employee leasing companies will be moved to NRS 611.

This amendment transfers the licensing and oversight of employee leasing companies to be renamed "private employer organization/private employer organizations" to the Labor Commissioner.

The entity responsible will move from the DIR to the Labor Commissioner. This is a substantive change.

We changed the name "employee leasing company" to "professional employer organization". We also changed the name "certificate of registration" to "license". These name changes are nonsubstantive.

A more substantive change is found on the proposed amendment, page 2. The definition of "professional employer organization" is expanded. I discussed this change with the Legislative Counsel Bureau (LCB) and the Labor Commissioner. It is my understanding the Labor Commissioner is updating this definition because, in practice and in modern times, these companies do not lease the employees back.

From a legal point of view, it appears we are expanding the definition of professional employer organizations. Because of this expanded scope, there may be entities currently not required to be registered that will need to be licensed. I prefer the Labor Commissioner comment on this in a real-world situation.

It is my understanding no companies are in this category. The LCB advises this bill will require a two-thirds vote because it appears some people, previously not required to be registered, will need to be licensed.

Being licensed includes the cost of application and an annual \$500 fee.

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The other changes facilitate the movement from NRS 616B to a new section in NRS 611.

CHAIR SPEARMAN:  
Will the Labor Commissioner comment on these issues?

SHANNON M. CHAMBERS (Labor Commissioner, Department of Business and Industry):

This is a friendly amendment. I have consulted with industry professionals including, The National Association of Professional Employer Organizations, Nevada Contractors Association, Associated General Contractors of America, and city chambers.

The term "professional employer organization" has been used by the industry for over 20 years. The Nevada Legislature has been aware of this terminology since 2009. This amendment brings the statutes and the language up to current standards.

Professional organizations have not been leasing employees for over 20 years. These professional organizations provide payroll, human resources, consultations and labor compliance services.

The Labor Commissioner intends to capture companies during a renewal period. It is not the intent of the Labor Commissioner to create a new fee nor a new process to get a license.

The process will ensure companies are under the proper industry terminology, and upon renewal, the companies' license will reflect "professional employer organizations."

SENATOR HARDY:  
Is this change budget neutral?

Ms. CHAMBERS:  
Yes, the change is budget neutral. The license fees and renewals are transferred from the DIR to the Department of Business and Industry (B&I). There are no new fees.

SENATOR HARDY:

To confirm, the amendment is budget neutral. Does the amendment shift the fees from the DIR to the B&I?

MS. CHAMBERS:

It is my understanding the fees would go to B&I and the change is budget neutral.

SENATOR SETTELMAYER:

My first question concerns changing the name from "certificate of registration" to "license." Since a certificate is different than a license, what is the reason for the change? What are the implications for this change in terminology?

MS. CHAMBERS:

The term "license" is most commonly used in other states for these organizations. The National Association of Professional Employer Organizations is supportive of this term. All current due process rights would still be in place. I spoke with many organizations who felt this change more accurately reflects the industry and mirrors terminology in other states.

SENATOR SETTELMAYER:

My second question concerns the authorization to impose an administrative penalty of \$5,000 for each violation. Is the fee for a violation a flat fee of \$5,000, or does it represent a staggered concept for minor violations?

Is this fee schedule a transfer from the other department or a new fee schedule?

MS. CHAMBERS:

This is a new fee schedule for professional employer organizations. The fee schedule is based on a sliding scale. The Labor Commissioner has the discretion to apply the sliding fee schedule.

This is consistent with the current authority of the Labor Commissioner. Under statute, the fee is up to \$5,000 and would include the right to appeal. It would not be an automatic fee of \$5,000.

In my opinion, as the Labor Commissioner, this is a better way to regulate this industry. The existing language requires filing a lawsuit with potential damages. The current language also has larger penalties.

This fee schedule under the Labor Commissioner is more consistent with penalties in current statute.

SENATOR SETTELMAYER:

To confirm, the Labor Commissioner has the authority to impose a \$5,000 fine in the sections being transferred from DIR to B&I. How many times has the Labor Commissioner applied a fine of this level?

MS. CHAMBERS:

We have imposed fines of \$5,000 when the actions of an employer are intentional. The Labor Commissioner is granted this authority under NRS 608.195. This level of fine is not automatic.

SENATOR SETTELMAYER:

I understand the bill; I am apprehensive about the violation because this is the first time we have been informed of fines with penalties of \$5,000.

I would like to speak with professional employer organizations and hear their thoughts. I want to ensure we are transferring these duties to the correct entity. The entity responsible for this duty has changed since we first heard this legislation.

This bill originally transferred supervising duties from the Administrator of the Division of Industrial Relations to the Commissioner of Insurance. This amendment changes the supervising entity to the Office of the Labor Commissioner, Department of Business and Industry.

MR. KEANE:

Regarding administrative penalties, I agree with the Labor Commissioner. The fine of \$5,000 is in line with existing penalties under the jurisdiction of the Labor Commissioner. In particular, NRS 611 already regulates private employment agencies and has the same fine schedule up to \$5,000.

The DIR has a rather robust investigation and fine structure concerning employee leasing companies. This is outlined in current statute, NRS 616B.

The fines are now set forth in NRS 616D.120. The fine structure for workmans' compensation is more complicated.

Under current statute, an employee leasing company would have a minimum fine of \$1,500 for an initial intentional violation and \$15,000 for second and subsequent intentional violations.

Employee leasing companies would be issued a cease and desist letter for unintentional violations and fines of \$375 to \$3,000.

The structure, at this time, is more complicated. The amendment would facilitate the move to the Labor Commissioner and the fines would change. The maximum penalty under the new reporting structure would be \$5,000.

CHAIR SPEARMAN:

Did Mr. Keane address your concerns?

SENATOR SETTELMAYER:

Yes, Mr. Keane provided information about my concerns; however, this is the first time I have seen this penalty in this amendment. I would like to discuss this with the entities the Labor Commissioner mentioned. I am apprehensive about this concept because it is new.

SENATOR PICKARD:

Will the Department of Labor perform financial reviews, or will this be performed by a third party?

MS. CHAMBERS:

After the first hearing on this bill, I met with the Commissioner of Insurance, the Administrator of the Division of Industrial Relations, and the National Association of Professional Employer Organizations to understand the review process.

I am comfortable the Labor Commissioner can perform the review. Our office already performs this type of review for private employment agencies. A third party will not be performing the reviews.

SENATOR PICKARD:

Senator Spearman, as part of the Sunset Subcommittee of the Legislative Commission, has tried to reduce unnecessary licensing requirements and ease barriers to entry for businesses.

I have reviewed NRS 611 and 616B. Organizations are only required to register: they do not have to meet any requirement, testing, or prequalification for registration. There is no statutory scheme for licensure. Even though other states may call it a license, Nevada does not.

Nevada's statutes make a distinction between registration and licensure. There is nothing in the current regulations or the statutes that prepare us to handle licensure.

The amendment does not address grandfathering or any time current registrations would survive the legislation's effective date. I am concerned this legislation would suddenly place entities out of compliance and not licensed. It is important to consider these concerns and promulgate the regulations.

Mr. Keane, you stated this was a nonsubstantive change. Would you not agree, changing from registration to a license is indeed a substantive change?

MR. KEANE:

Senator Pickard, there is no substantive change; it is simply a name change. There is no substantive difference between "this license" and "this certificate of registration." It is purely a name change; all of the requirements are exactly the same.

SENATOR PICKARD:

Am I correct in understanding we will use the term "license" in a new way in our statutory scheme? I am concerned ambiguities will arise, which will open the door to licensing even though the requirements are not changing.

Mr. Keane, can you point to another regulatory body using the term "licensure" for what is, in this case, called "registration?"

CHAIR SPEARMAN:

Mr. Keane has stated there is no substantive change in this amendment. The LCB is the last auditor when we have questions. As we do with any bill in statute, we consult with the LCB to have legislative intent clarified.

I hear what you are saying Senator Pickard; however, Mr. Keane has already stated there is no difference in the terms. I do not want to continue this discussion on semantics.



SENATOR PICKARD:

Madam Chair: I appreciate this. I just want to make sure we have a clear record.

CHAIR SPEARMAN:

Senator Pickard, we have a clear record. Mr. Keane has testified there is no substantive change and has answered both your question and Senator Settelmeyer's question. If you have additional questions regarding semantics, please contact Mr. Keane directly.

The LCB is the final arbiter for any questions we have regarding statutes, bill draft requests or bills.

SENATOR HARDY:

We are making a nonsubstantive change and changing supervision from one entity to another. We are also putting in a new fine schedule which differs from the existing schedule.

What were the fines under the Division of Insurance and is it less than \$5,000? Will this change create more fines? If the fines in the past were more than \$5,000, we have not increased fines.

CHAIR SPEARMAN:

I would like for Mr. Keane to step in and answer any remaining questions. I want to ensure the remaining questions have not been asked previously.

You may go to the Labor Commissioner or LCB for additional information. I am satisfied Mr. Keane has answered the question regarding the fine of \$5,000. Senators, if you are still unsure when we vote, you are allowed to change your mind after the vote by stating this phrase "I reserve the right to change my vote on the Floor."

VICTORIA CARREON (Administrator, Division of Industrial Relations, Department of Business and Industry):

Since we currently hold this function, I wish to clarify we have not imposed any fines on any employee leasing companies. If we do have an issue, we refer the situation to the Office of the Attorney General.

MR. KEANE:

Although the language concerning fines appears as new language, the penalties that apply to an employee leasing company are set forth in a different section. Enforcement, investigation, and fines are handled in NRS 616B. Although the fines are not listed with other employee leasing companies' statutes, the fines still apply.

The DIR has a slightly more complicated fine structure. The intentional fines range from \$1,500 to \$15,000 per violation. The unintentional fines range from a notice with no fine to \$375 to \$3,000.

In place of the existing scheme, the Labor Commissioner has put in a \$5,000 penalty which does not differentiate between intentional and unintentional violations. The \$5,000 fine is a cap, and I believe the Labor Commissioner will take into account if the violation is intentional or unintentional.

Anyone can appeal fines to the courts under both the current scheme of the DIR and the proposed scheme of the Labor Commissioner.

Most of the professional licensing registrations are under Title 54 of NRS. Sometimes requirements are listed as registrations and sometimes as licenses.

For each registration or license, the requirements are simply the requirements set forth in statute for that license or registration. Ultimately, it does not matter if it is called a registration or a license.

Generally, when it is more difficult to obtain the license, we refer to it as a license. When it is simpler to get, it is called a registration. This relates to the public's perception of these terms. This is not legally necessary. This change is nonsubstantive because we are not changing the requirements for obtaining the registration or the license.

As far as the transition, LCB is putting in a transfer provision, which states upon the effective date of this bill, the existing registrations will be considered licenses until the renewal period. During the renewal period, registrations will be referred to as licenses.

From the point of view of registrants and licensees, this will be seamless. There will simply be a different word on the companies' certificate.

SENATOR NEAL:

When situations were referred to the Attorney General, were fines issued?

Ms. CARREON:

I do not know if fines were issued through the Attorney General's office; the DIR has not issued any fines to employee leasing companies.

SENATOR NEAL:

Will you need more expertise to take on the professional employer organization's broad language as we switch this process?

Ms. CHAMBERS:

The professional employer organization sits squarely within the expertise and regulatory authority of the Labor Commissioner. This terminology and these entities have been around for over 20 years. The Nevada Legislature and the different industry organizations and associations have been trying to figure out where the licensing and regulations best belong.

It is my opinion, and also the opinion of professional associations, this duty belongs with the Labor Commissioner. We have the expertise to oversee this process.

SENATOR HARDY:

I have a few unresolved questions regarding fines.

CHAIR SPEARMAN:

Our legal counsel has clarified the issues, and I do not wish to keep asking the same question, five different ways.

If you are uncomfortable with any issues in the bill, you may always change your vote on the Floor.

Is there a motion regarding S.B. 55?

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 55.

SENATOR LANGE SECONDED THE MOTION.

SENATOR SETTELMAYER:

I am still checking with individuals at this time. I will be voting no, with a reservation to change my vote to yes on the Floor.

I disagree with the concept that the LCB has the final input because they are not the final word. The Supreme Court of Nevada has the final word, not because they are right, but because they have the final word.

CHAIR SPEARMAN:

I appreciate the review Senator Settelmeyer; however, when we prepare to vote and pass statutes, the LCB is the arbiter. If statutes do not pass muster in the other courts, before the Supreme Court, then so be it.

Senator Settelmeyer, last Session, one of the boards did not agree with LCB's legal interpretation of S.B. No. 355 of the 79th Session. It was decided the Committee will refer to the opinion of the LCB, rather than advice from legal services outside of the LCB. The LCB is the final arbiter regarding bills.

The LCB understands legislative intent. When we are preparing to vote on a bill, they are the ones who have taken our concepts in Bill Draft Requests and written these concepts into bills.

When bill questions are asked and answered by the LCB, their decision is final. If someone wishes to take legislation to the Supreme Court, that is for a later time. I understand Supreme Court rulings; however, the Supreme Court is not involved in this hearing.

THE MOTION PASSED. (SENATORS PICKARD AND SETTELMAYER VOTED NO.)

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CHAIR SPEARMAN:  
We adjourn the hearing at 9:46 a.m.

RESPECTFULLY SUBMITTED:

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Kim Cadra-Nixon,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

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

| EXHIBIT SUMMARY |                |                |                  |                       |
|-----------------|----------------|----------------|------------------|-----------------------|
| Bill            | Exhibit Letter | Begins on Page | Witness / Entity | Description           |
|                 | A              | 1              |                  | Agenda                |
| S.B. 55         | B              | 2              | Cesar Melgarejo  | Work Session Document |