

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

**Eighty-first Session
February 3, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:02 a.m. on Wednesday, February 3, 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
Terri Miller, Committee Manager
Shelby Parkes, Legislative Assistant
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Victoria Carreon, Administrator, Division of Industrial Relations, Department of Business and Industry
Barbara Richardson, Commissioner of Insurance, Department of Business and Industry
Shannon Chambers, Labor Commissioner, Department of Business and Industry

CHAIR SPEARMAN:

I would like to take a moment to go over some basic housekeeping items. The Senate Committee on Commerce and Labor is scheduled to meet at 8:00 a.m. on Mondays, Wednesdays and Fridays. We will begin each meeting on time.

For at least the first weeks of the Legislative Session, the Legislative Building will be closed to the public, and all committee meetings will be held virtually. These meetings can be viewed through our streaming service or the Legislature's YouTube channel, both of which can be accessed on the Legislature's public website. This virtual meeting format is important to keep everyone safe during the Covid-19 pandemic.

Members of the public may provide comment in different ways, all of which are listed on the agenda. You can provide public comment by registering to participate online on the Nevada Electronic Legislative Information System (NELIS) on the Legislative website, emailing comments to SenCL@sen.state.nv.us or faxing comments to (775) 684-6500. In addition, you may submit your opinion on a bill or resolution by using the opinions application located on the Legislature's website.

In some ways, this situation provides more opportunities for public participation. Those of you who have participated in previous sessions know that in a normal Legislative Session, if you want to be part of a committee meeting, you have to either go to the Grant Sawyer Building in Las Vegas or fly or drive to Carson City. This format provides more opportunities for people to participate without the need to buy a plane ticket.

Any exhibits for the Committee must be submitted in electronic format no later than 8:00 a.m. the day before the meeting to our Committee Manager or our Committee Policy Analyst. Committee contact information may be found on the Committee page in NELIS.

Any person proposing an amendment to a bill being heard by the Committee must first talk to the sponsor of the bill and let them know you intend to submit an amendment. Let me be clear: I will not entertain any amendment if the sponsor of the bill is not aware of that amendment. Proposed amendments must be submitted in writing 24 hours prior to the meeting. Please include the bill number, a statement of intent and your contact information.

When testifying, please remember to turn on your microphone and clearly state your name and the entity you represent at the beginning of your testimony. Speak clearly and project your voice to ensure those watching remotely can hear your testimony. I said this at every committee meeting last Session. If you do not project your voice or make sure you are close enough to the microphone,

those who are hearing impaired or who do not have the best equipment will not be able to hear you. Please respect their time commitment and speak clearly. Please remember to turn the microphone off when you finish speaking.

As a reminder to all those who testify, pursuant to *Nevada Revised Statutes* (NRS) 218E.085, it is unlawful for a person to knowingly misrepresent facts when testifying before a legislative committee. A person who knowingly does so is guilty of a misdemeanor.

Committee members, during these virtual meetings, when an agenda item calls for a vote, our Committee Secretary will be using roll call to do so. When the committee secretary calls your name, please answer with "Yes" or "No" so there is no confusion.

Finally, please turn off electronic devices such as cell phones or put them on silent mode during the meeting.

Our first order of business is adoption of the Committee Rules ([Exhibit B](#)). These rules are similar to those approved in previous sessions except for the reference to virtual meetings. These rules serve to complement the Senate Standing Rules and the Joint Standing Rules that we adopted on Monday in the full Senate.

I would like to note that Rules 10 and 11 state that all witnesses are presumed to be under oath when testifying before the Committee, and that it is unlawful to misrepresent facts before the Committee. In addition, both the Chair and members may request any testifier to submit documentation supporting their testimony.

SENATOR SCHEIBLE MOVED TO ADOPT THE COMMITTEE RULES AS SUBMITTED.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CESAR MELGAREJO (Policy Analyst):

I will now present the Committee Policy Brief ([Exhibit C](#)). This document provides background information on the work of the Committee. It includes an overview of the Committee during the Eightieth Legislative Session and some information about issues that may come before the Committee this Session. Based on what we can see of the prefiled bills, you can see that we have a large number of bills regulating occupations and professions, a number of bills regulating general business, employment, financial and trade practices. We also have a number of bills regulating labor, minimum wage and unemployment benefits, health and other forms of insurance.

Topics heard in this Committee will include banking, financial institutions, insurance, industrial relations, labor, manufactured housing, and occupational and professional licensing, among other issues. The Committee Brief also includes summaries and links to reports, publications and audits relating to commerce and labor, and contact information is located on page 4 of [Exhibit C](#).

I am available to assist the Committee and its members on any issues related to matters before the Committee. In addition, the Research Division is available to provide information and assistance on a confidential basis to individual members of the Legislature on any topic.

CHAIR SPEARMAN:

I will open the hearing on Senate Bill (S.B.) 55.

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

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

This bill transfers responsibility for registration of employee leasing companies from the Division of Industrial Relations (DIR) to the Division of Insurance (DI). Employee leasing companies provide payroll and human resources (HR) services to small businesses. They are commonly known as professional employer organizations. The way this leasing works is that the employee leasing company places all or some of the employees of the client company on its payroll. Some common employee leasing companies in Nevada are Automatic Data Processing (ADP) and Paychex.

For example, a small business that it is contracting with ADP will place all the employees of the client company on ADP's payroll, after which ADP has a joint employment relationship with those employees. Those employees are then leased back to the client company. It is important to note that the employees being leased are those who work for the client company, not the ADP employees who perform the HR and payroll functions. Worker's compensation can be provided by either the employee leasing company or the client company.

Who is the employer in these cases? It is a joint relationship. The employee leasing company has the administrative functions of doing payroll and other HR functions, whereas the client company manages the employees on a day-to-day basis.

Under current law, the DIR is responsible for registering employee leasing companies. There is a fee of \$500 annually. Currently, there are 203 employee leasing companies, so the revenue is about \$100,000 per year. In the last fiscal year, the fee generated \$114,000 in revenue.

The only regulation of these employee leasing companies covered by the DIR is to ensure there is proper workers' compensation coverage. If a company is not complying with the registration requirements, we refer the case to the Office of the Attorney General.

Why is this bill needed? Review of these applications requires review of financial statements. Currently, the DIR does not have expertise in reviewing financial statements. We do a simple calculation of working capital. In contrast, the DI has staff with expertise in this area because they review financial statements for other types of entities. The proposal is to transfer the responsibility of registration to the DI.

I will give you a brief summary of the bill. Section 1 deletes DIR's authority to register employee leasing companies.

Section 2 transfers responsibility for issuing the certificates from the DIR to the DI.

Sections 3 through 5 of the bill transfer responsibility for applications and renewals from the DIR to the DI.

Sections 6 through 8 transfer responsibility for regulations from the DIR to the DI and carry over any existing regulations to the DI. I will point out that there are no regulations currently, so this part of the bill is merely a formality.

Section 9 of the bill makes it effective upon passage and approval. However, we recommend that the effective date be changed to October 1, 2021, to facilitate the transition.

I would also like to point out that the DIR will remain responsible for regulating workers' compensation coverage and ensuring it is adequate.

We have been discussing a possible friendly amendment that would look at placing this function in the Labor Commission rather than the DI.

BARBARA RICHARDSON (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):

The DI was originally asked to help the DIR because of our expertise and also because we have an online registration system that lets these companies get registered faster. We have expertise in the financial oversight of these types of small businesses, and we currently provide this type of service for self-insured groups, self-insured employer groups, third-party administrators, and any other group that has a workers' compensation component. For these reasons, the switch seemed a good fit that would smooth the issues of oversight, get these folks into the market and relieve the DIR of the burden of having to create a whole new system when we already have one in place.

SHANNON CHAMBERS (Labor Commissioner, Nevada Labor Commission):

Under NRS 611, the Labor Commissioner already licenses private employment agencies. For that reason, Assemblywoman Maggie Carlton asked if the Labor Commissioner should assume oversight of employee leasing companies because they are very similar to a private employment agency.

The friendly amendment has not yet been drafted.

The Labor Commissioner has authority over all labor laws in the State of Nevada and over private employment in Nevada. For that reason, it makes sense that the Labor Commissioner would regulate employee leasing companies, which provide payroll services, HR services and wage services. We would still rely on the DI to review the financial records, but there could be a joint application for

the employee leasing agency. That agency could also apply for a private employment agency license at the same time, since essentially they are both charging a fee to provide employees to companies. We think this approach makes a lot more sense.

Again, the amendment is not before you yet, but we wanted to make sure the Committee knew about it. Ms. Carreon, Ms. Richardson and I have talked to industry about moving responsibility for employee leasing agencies to the Labor Commissioner. So far, there has been no opposition. Many people think the move makes a lot of sense. It would create a one-stop shop for both types of companies and have the Labor Commissioner in charge of both of them.

SENATOR HARDY:

Who is actually in charge? Is the Commissioner of Insurance in charge of one part of the process and the Labor Commissioner in charge of another part? If so, do these businesses need two licenses? I am confused as to how this makes it easier on the company. Do they need two licenses? Are there two entities overseeing these companies?

MS. CHAMBERS:

There would only be one registration, and it would be through the Labor Commissioner. The Commissioner of Insurance would simply review the financial documents we collect as part of the application process. We would work with the Commissioner of Insurance to get that review done, but it would only be one registration, one application, through the Labor Commissioner.

SENATOR HARDY:

Would there be a new fee of any kind? Would it just be transferring the same amount of money to the Labor Commissioner?

MS. CHAMBERS:

It would transfer the fee to the Labor Commissioner.

SENATOR PICKARD:

I want to make sure we are not adding a new license. We have used the term "licensing" a lot in this discussion, but my understanding is we are not talking about adding a license; we are just leaving it at the registration level. Is that correct?

Ms. CHAMBERS:

Yes. It is a registration, not a license. I apologize for using that term. It functions very similar to a license, but it is a registration.

SENATOR PICKARD:

I agree with the transition to the Labor Commissioner; that makes a lot of sense in my mind. Are you required to review financial records of the businesses you currently regulate? Is there still a need to use two different, independent agencies to do the review? How does that work?

Ms. CHAMBERS:

Yes, we do review certain financial records of private employment agencies. What makes this different is the workers' compensation and insurance components of these leasing agencies. The Labor Commissioner does not have expertise in those areas. That is why we want that function to be performed by the Commissioner of Insurance.

SENATOR PICKARD:

When I am looking at processes generally, I try to remove the points at which failures can occur. When you have some employees under certain supervision working with employees under different supervision, you have a point of potential disconnect.

What happens to the people in DIR who are currently doing this work? Do they transfer to the Labor Commission or lose their jobs? Are we growing or shrinking in numbers? What does the employment situation look like? If we are transferring employees, would it make sense to transfer someone with the expertise so you can do that inhouse and be a true one-stop shop, instead of a one-stop plus?

Ms. CARREON:

This function is currently handled by less than half of a full-time equivalent (FTE) position. In fact, we use about 0.4 FTE to review these registrations in the DIR. This work is done by the enforcement unit of our workers' compensation section. Those employees are typically doing enforcement of workers' compensation coverage. There would be no transfer of our employees because we need them to continue with their existing duties.

MS. CHAMBERS:

I completely agree. There is no proposal for new positions or to transfer any employees.

SENATOR PICKARD:

What about the expertise question?

MS. CHAMBERS:

The Commissioner of Insurance and I literally have offices right next to each other. We work very well together; we will do nothing to complicate the process and will make it as streamlined as possible. As the Labor Commissioner, I cannot take over expertise that belongs with the DI, but I can assure you that we will make this process flow very smoothly.

SENATOR NEAL:

I have a question regarding section 5 of S.B. 55. Since the fiscal or financial statements will be with the DI, who is going to be adopting the regulations?

MS. CHAMBERS:

The Labor Commissioner cannot adopt any regulations that govern workers' compensation insurance or any other level of insurance. If we transfer responsibility to the Labor Commissioner, that person would have the authority to adopt regulations governing employee leasing agencies. We already have regulations for private employment licenses, so the Labor Commissioner would have the authority over employee leasing agencies when it came to every aspect of their registration except insurance.

SENATOR NEAL:

I am confused. I thought the point of moving responsibility for these agencies to the DI was because expertise was lacking at the DIR. It seems like the main issue that needs to be rectified is preparation of the financial statements. Why not keep all of it and just bring in consultants to handle the financial aspect?

MS. CHAMBERS:

That is a fair point. We are at the initial discussion point of this bill and these issues, and we can certainly work on it and try to come up with a resolution. A lot of people do not understand the difference between an employee leasing company and a private employment agency. The thought was to merge those two types of companies together under the Labor Commissioner. It just seemed

to make sense because of issues with potential labor laws that the Labor Commissioner has authority over.

SENATOR NEAL:

I will save my further concerns until I see the amendment. I hope it will address section 5 of the bill, since you do not have the authority to do the regulations, and that is clearly part of the process if something changes. The amendment needs to make sure this crossover and co-relationship is adjusted in the language.

MS. CHAMBERS:

We will make sure we address your concerns.

SENATOR SETTELMAYER:

I look forward to seeing the amendment with the hope that it will clear up some of the confusion.

CHAIR SPEARMAN:

I too look forward to seeing the amendment. I had some of the same concerns voiced by Senator Neal. Hopefully, the questions she asked will be addressed in that amendment. Let us know how quickly we can get that so the Committee members can study it so we might be able to get this bill to work session as soon as practicable.

I note that we have no call-in public comment on this bill.

SENATOR SETTELMAYER:

How does someone register to comment? What does that entail?

CHAIR SPEARMAN:

There will be links on our agendas posted on NELIS, which can be found on the public Legislative Counsel Bureau website. Those who want to testify or offer public comment can register there, at which time they will receive links and/or telephone numbers to make them part of our meetings. If Committee members would like, I can set up a class with our Broadcast and Production Services to see how this will operate.

Senate Committee on Commerce and Labor
February 3, 2021
Page 11

CHAIR SPEARMAN:

I will close the hearing on S.B. 55. Is there any general public comment?
Hearing none, I will adjourn this meeting at 8:53 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

| EXHIBIT SUMMARY | | | | |
|-----------------|----------------|----------------|---------------------------------|-----------------|
| Bill | Exhibit Letter | Begins on Page | Witness / Entity | Description |
| | A | 1 | | Agenda |
| | B | 1 | Cesar Melgarejo, Policy Analyst | Committee Rules |
| | C | 1 | Cesar Melgarejo, Policy Analyst | Committee Brief |