

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

**Eighty-first Session
May 30, 2021**

The Senate Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 5:22 p.m. on Sunday, May 30, 2021, Online and in Room 2149 of the Legislative Building, Carson City, Nevada. [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 James Ohrenschall, Chair
Senator Roberta Lange, Vice Chair
Senator Heidi Seevers Gansert
Senator Carrie A. Buck

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman P.K. O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Bryan Fernley, Counsel
Kevin Powers, General Counsel
Diane Rea, Committee Secretary

OTHERS PRESENT:

Steven Grammas, President, Las Vegas Metro Police Protective Association
Troyce Krumme, Vice Chairman, Las Vegas Police Managers and Supervisors Association
Kim Wallin, Chair, Commission on Ethics
Tracy Chase, Counsel, Commission on Ethics
David Dazlich, Vegas Chamber

CHAIR OHRENSCHALL:

We will open the hearing on Assembly Bill (A.B.) 315.

ASSEMBLY BILL 315 (1st Reprint): Revises provisions relating to certain public employees. (BDR 23-647)

ASSEMBLYMAN P.K. O'NEILL (Assembly District No. 40):

Assembly Bill 315 relates to mental health incidents for support for our first responders. This legislation seeks to require employing agencies to provide mental health posttraumatic stress disorder (PTSD) and suicidal prevention information to their employees and provide a maximum of two hours with a mental health expert upon retirement to learn or deal with the symptoms of mental health incidences such as alcohol, suicide and PTSD.

Law enforcement and firefighters have for years been competing for the No. 1 spot in suicide across the Country.

STEVEN GRAMMAS (President, Las Vegas Police Protective Association):

I am a police officer with the Las Vegas Metropolitan Police Department. I represent approximately 3,500 commissioned law enforcement officers in southern Nevada. We appreciate Assemblyman O'Neill bringing this bill forward. It is a problem with what officers experience throughout their careers. Typically, officers take the stance, "I am too tough to talk about my feelings." When they leave, they are more prone to have that discussion to make sure they are mentally prepared to deal with retirement. As they lose their friendships, camaraderie and the fast pace of the job, it will affect them. The hope is these officers take the two hours, get themselves mentally ready for retirement, live a long and healthy life, and receive Public Employees' Retirement System benefits for as long as they can.

TROYCE KRUMME (Vice Chairman, Las Vegas Metro Police Managers and Supervisors Association):

After 20 years in law enforcement, I have seen and read too many stories about first-responding professionals having trouble dealing with some of the feelings that come about in this profession and deciding to take their own lives. This is an important moment in time that we are bringing mental health forward.

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ASSEMBLYMAN O'NEILL:

We had an amendment that includes correctional officers since they experience similar incidents in their careers. This is for a person who serves 20 to 25 years before retiring. It is not mandatory. It is offered for them to participate.

CHAIR OHRENSCHALL:

We will close the hearing on A.B. 315. Members, if there is an appetite to move this bill, I would accept a motion.

SENATOR LANGE MOVED TO DO PASS A.B. 315.

SENATOR BUCK SECONDED THE MOTION.

SENATOR LANGE:

It is important that we do this for people who give service and do great things for our communities.

THE MOTION CARRIED. (SENATOR SEEVERS GANSERT WAS EXCUSED FOR THE VOTE.)

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CHAIR OHRENSCHALL:

We will open the hearing on Assembly Bill (A.B.) 65.

ASSEMBLY BILL 65 (1st Reprint): Revises provisions relating to ethics in government. (BDR 23-257)

ASSEMBLYMAN P.K. O'NEILL (Assembly District No. 40):

I served four years on the Commission on Ethics. During that time and prior to, I was involved with incidences involving Legislators on alleged ethics violations. There was an amendment to A.B. 65 in the Assembly separating the Legislature from the authority of the Ethics Commission. The separation of powers among the Legislative Branch, Judicial Branch and Executive Branch would make it easier to deal with happenings. Four members of the Commission are appointed by the Legislature, and four are appointed by the Governor. When a Legislator involved in an incident came before the Commission, there was always an argument. Some of them had friendships with the Legislators and had to recuse themselves, and others had to recuse themselves. The Legislature has an ethics

commission. The amendment is needed to create the separation. The Legislature can handle its own affairs.

KIM WALLIN (Chair, Commission on Ethics):

With citizens having less trust in government, we need to place a greater emphasis on ethics to help restore that trust. Assembly Bill 65 will help to do that by improving the protection of whistleblowers. The 2020 Global Business Ethics Survey from the Ethics & Compliance Initiative found the highest percentage for reporting misconduct but saw an increase in retaliation, which has tripled since 2013, doubled since 2017 and continues to get worse. We are seeing a 20-year high for employees being pressured to bend the rules and commit wrongdoing.

Assembly Bill 65 will also streamline some processes, allowing the Commission to operate more efficiently and providing additional due process for the individuals with complaints filed against them.

TRACY CHASE (Counsel, Commission on Ethics):

Assembly Bill 65 addresses procedural issues the Commission has faced in the past few years. The bill clarifies three areas of the Nevada Ethics in Government Law associated with ethics complaints, advisory opinions, ethical standards of conduct and administrative matters as detailed in the Quick Reference Guide ([Exhibit B](#)) and the two summaries ([Exhibit C](#) and [Exhibit D](#)). The bill clarifies and enhances procedures for transparency and whistleblower protections for requestors of ethics complaints.

One change from Amendment No. 777 to the bill is in section 8, subsection 4, which exempts public officers and employees who provide representation to subjects of ethics complaints from the witness cooperation measure set forth in the bill.

Another change deletes section 22 to remove the requirement that the executive director be an attorney. That will not harm the Commission because it can have that preference in hiring a member.

CHAIR OHRENSCHALL:

I am looking at page 53, section 46 in terms of the documents that will be kept confidential if the Commission decided to keep the identity of the requester confidential. How would that be a change from current law?

MS. CHASE:

Advisory opinions are already maintained as confidential unless the subject of the advisory waives confidentiality. That section relates as to whether we can provide information to other agencies that would maintain the confidentiality.

KEVIN POWERS (General Counsel):

The Legislative Counsel Bureau (LCB) Legal Division is a nonpartisan legal agency. We do not support or oppose any policy viewpoint or piece of legislation. Instead, we provide the Legislature and its members objective legal analysis and advice on issues of law, including the legal effects of proposed legislation. In addition, the statute governing the LCB allows the officers of LCB, including General Counsel, to make a recommendation to the Legislature when the piece of legislation affects the operations of LCB. In this case, Amendment No. 777 adopted by the Assembly dealing with the Nevada Legislative Ethics Law (NLEL) has an impact on LCB, so I am authorized under law to answer questions regarding such impacts.

Amendment No. 777 included all the components Ms. Chase mentioned, in particular the two amendments requested by the Ethics Commission included in those sections Ms. Chase addressed.

Sections 55 through 112 were added by Amendment No. 777 in the Assembly. That is my focus: to provide an objective legal analysis and overview of the legal effects of that part of the bill as it stands now.

Section 56 establishes this will now be the NLEL and will be in Title 17 which governs the Legislative Branch of government.

Under Article 4, section 6 of the Nevada Constitution, each House has exclusive and plenary constitutional powers to adopt the rules of its proceedings, discipline its members and, with the concurrence of two-thirds of its members, expel a Legislator from its appropriate House.

Because of that constitutional power and the fact that it is exclusive, certain areas of ethics are within the exclusive jurisdiction of each House. Those are core legislative functions. Ethics provisions dealing with voting, disclosure of conflicts of interest and abstention are examples of the exclusive core legislative functions within each House and cannot be delegated to a body like the Commission on Ethics (CoE) in the Executive Branch of government.

There are nine core legislative functions where the Houses and the CoE share concurrent jurisdiction over those ethical matters. In those cases, if there is an ethical violation, a Legislator or a Legislator's office employee could be subject to discipline by the House of the Legislature and by the CoE. Noncore legislative functions subject to ethics law are the probation discipline by the House of the Legislature and by the CoE.

Some examples of noncorrelated legislative functions subject to the ethics laws are the prohibition on a Legislator using governmental time, property, equipment or services for a personal purpose. There are prohibitions on Legislators and other employees entering into contracts with State and local government, and the prohibition on Legislators and other employees receiving an honorarium which is a fee for a speech or appearance. Those noncorrelated legislative functions have a concurrent jurisdiction with the Houses and the Ethics Commission.

Sections 55 through 112 of the legislation will enact the NLEL and make all ethical provisions subject to the jurisdiction of the Houses. Assembly Bill 65 creates a Senate Commission on Ethics, an Assembly Commission on Ethics and a Joint Commission on Ethics so Legislators and all legislative officers and employees, with regard to ethical matters, will be subject to the exclusive jurisdiction of the Legislative Branch of government, not to the jurisdiction of the Ethics Commission, which will remain over employees and officers of the Executive Branch of government and local political subdivisions.

The goal is to ensure that the existing ethical standards in *Nevada Revised Statutes* (NRS) 281A continue to apply to the Legislative Branch of government. That means a lot of new language in sections 55 through 112; however, a good portion of that copies existing provisions from NRS 281A and moves them into the new chapter in Title 17 governing the State Legislative Department. It looks like a lot of new language, but the same statutory ethical standards apply to Legislators, and LCB provides Legislators with training throughout the year and at the beginning of each Legislative Session.

I will review sections 57 through 112 of the bill. The overall goal of the NLEL is to ensure the highest standards of ethical behavior are practiced in the Legislature.

It will be up to the Senate Commission, Assembly Commission and Joint Commission to determine what weight to give LCB legal advice when they provide advice to a particular Legislator.

SENATOR BUCK:

What if the complaint is against the Speaker of the Assembly, the Senate Majority Leader or both?

MR. POWERS:

The Speaker and Majority Leader are members of the Legislature and subject to the same disciplinary power as any other member of the Legislature. If a complaint is filed against the Majority Leader or the Speaker, it would be submitted to the LCB to review the matter with the Chair of the appropriate commission. If the individual under review is the Chair of that commission, he or she would be disqualified from participating in the matter, and LCB would consult with the vice chair. If it is determined the commission has jurisdiction in the matter and an investigation is warranted, then the investigation against the Speaker or Majority Leader would go forward and that Legislator could not participate in the investigation. If the respective commission determines that an adjudicatory hearing is necessary, then that hearing would occur. If the Legislator is found to have committed a violation, he or she would be subject to punishment by the respective commission and by the respective House. No member of the Legislature is excluded from punishment by his or her own House or, under this bill, by a Senate or Assembly Commission.

SENATOR BUCK:

If you control the majority, the people in that Body will decide whether it is ethical?

MR. POWERS:

Article 4, section 6 of the Nevada Constitution gives each House exclusive powers to discipline and expel its members. That provision of the Nevada Constitution is modeled on the federal U.S. Constitution which contains a similar provision. Members of Congress are each subject to discipline by their own House. Each House has standing ethics committees that review ethical complaints against members and determine whether to investigate those complaints, and if they do, whether to punish those legislators for unethical behavior. Each House of the federal Legislature has punished its members regularly when they have engaged in unethical behavior. Those members are

also subject to ordinary criminal process if their ethical violation rose to criminal violations.

The process set forth in sections 55 through 112 is not unusual. It is what the framers of the Nevada Constitution contemplated by giving each House exclusive power over the discipline of its members. Each House should conduct its proceedings to ensure they are ethical, and each member is invested with the power to determine individually whether another member's conduct violates ethical standards.

CHAIR OHRENSCHALL:

Existing ethics statutes show someone who is a government employee or member of a board can request an opinion from counsel. If the Ethics Commission disagrees with that attorney's opinion, the individual is allowed to show the Ethics Commission he or she did seek advice of counsel. Is there a parallel in the new language which would apply to Legislators, or would Legislators need to request an opinion from the House Commission, Joint Commission or Legislative Counsel? Would they be protected?

MR. POWERS:

A provision in the ethics law provides a safe harbor. If before the act occurs, the public officer or employee gets legal counsel by the public employer he or she works for and that advice is consistent with the opinions of the commission, then if found to have committed a violation, that determination wherein the public officer or employee sought an opinion and followed advice will reduce the violation from a willful violation to a nonwillful violation. A proposal in this legislation would change that slightly for the Ethics Commission.

There is no similar provision included in sections 55 through 112, which is the Legislative Ethics Law. The reason is under that statute, members of LCB can seek the advice of LCB legal, and that advice can be provided. It will be up to the Senate Commission, Assembly Commission and Joint Commission to determine what weight to give LCB legal advice when providing that advice to the Legislator.

DAVID DAZLICH (Vegas Chamber):

The Vegas Chamber believes this bill promotes transparency and accountability.

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CHAIR OHRENSCHALL:
We will close the hearing on A.B. 65.

SENATOR LANGE MOVED TO DO PASS A.B. 65.

SENATOR BUCK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SEEVERS GANSERT WAS EXCUSED
FOR THE VOTE.)

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CHAIR OHRENSCHALL:
Seeing no further business, we are adjourned at 6:13 p.m.

RESPECTFULLY SUBMITTED:

Diane Rea,
Committee Secretary

APPROVED BY:

Senator James Ohrenschall, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 65	B	1	Tracy Chase / Commission on Ethics	Quick Reference Guide
A.B. 65	C	1	Tracy Chase / Commission on Ethics	Summary 1
A.B. 65	D	1	Tracy Chase / Commission on Ethics	Summary 2