

SENATE JUDICIARY COMMITTEE

MINUTES

Meeting called to order at 9:30 a. m. on March 24th by Senator Monroe, Chairman.

Committee members present: Senator Monroe, Chairman
 Senator Swobe
 Senator Hug
 Senator Young
 Senator Bunker
 Senator Christensen

Committee member absent: Senator Dodge

Legislative Counsel: Frank Daykin

Guests: Jim Guinan
 Howard Barrett, Budget Director, State
 of Nevada
 Dan Walsh, Deputy Attorney General

SB #460 - Gives tenants additional time under summary eviction notices.

Senator Swobe had discussed this with Senator White, the author, and reported to the committee that Senator White had decided he was not in favor of passing this.

Senator Swobe moved to "kill".
 Senator Bunker seconded.
 Motion carried.

Mr. Guinan was present to discuss SB 450 and AB 399.

SB 450 - Eliminates mechanics lien notices where contractors or suppliers deal directly with an owner of property.

Mr. Guinan stated if the supplier dealt directly with the owner he would not have to give the owner notice if he was going to file a lien. Under the lien law at the present time you have to give notice to the owner so he would be aware who was working on the job and could keep track of whether they had been paid or not. There is no need for filing a notice when the contractor is dealing directly with the owner.

Senator Monroe asked if this was in conflict with the present lien law.

Mr. Guinan advise it was not.

Senator Swobe moved "do pass".
 Senator Christensen seconded the motion.
 Motion carried.

AB 399 - Establishes guardianship procedures and designates duties of guardian.

Mr. Guinan advised there had been a hearing held in the Assembly Judiciary Committee on this and Judge Mann appeared and spoke in behalf of the bill.

Senator Young would like more time to study it before making a decision,

Mr. Daykin advised he did not draft this bill but he had examined it carefully and had one suggestion to make regarding it. He stated the grounds for changing the guardianship were enumerated but he felt there should be added that when the best interest of the ward was involved a change of guardianship should be allowed.

Chairman Monroe said the implication of the third paragraph was that as long as the guardian complies with the requirements set forth he must be retained even tho he might be incompatible or even live some distance away from the ward, which would not be in the best interest of the Ward. He also expressed his confidence in Judge Mann.

Mr. Guinan said this would be left up to the discretion of the court.

Mr. Guinan will contact Judge Mann and discuss Chairman Monroe's remarks with him.

SB 457 - Provides greater flexibility in handling zoning variances and special exceptions.

Mr. Daykin said this would "Legitimate Washoe County's zoning Act." They had used this procedure for some time and it had proved satisfactory.

Senator Young asked Mr. Daykin to define "Special exception." Mr. Daykin advised this was a term used in the east and it meant special use permit. In as much as this language was used through out the bill it was used again here. It did not add any further provision and was clarified by definition on page 2 lines 7 and 8.

He further said the Board of Adjustment now can hear and decide appeals, hear and decide requests for variances and to grant a variance.

Senator Swobe moved "do pass".
Senator Bunker seconded.
Motion carried.

Mr. Walsh and Mr. Barrett were present to discuss SB 119. Mr. Barrett advised since he was last in attendance at a committee meeting to discuss this bill, they had rewritten and wanted to have their proposal considered as a replacement for SB 119. This was for the protection of the State Employees but was a different attack to the

problems of SB 119.

The new proposal was read by Mr. Walsh of the Attorney General's office. (Copy of proposal attached).

Section 1 was modeled after the California and Wisconsin law. It provides protection for an employee or former employee acting in good faith and in the scope of his employment.

Section 2 provides the Attorney General may make the final determination to defend or refuse to defend the employee at a reasonable time prior to trial. It must be decided in time to give the employee to hire his own counsel if the Attorney General refuses to represent the employee. In most cases about 75% of the actions are settled before actual proceedings start. This would prevent additional costs to the employee and also to the State.

Section 3 was in accordance with the Federal Court Claims Act.

Section 4 provided the State would pay reasonable attorney fees of the employee whether his case was handled by the Attorney General or private counsel unless a jury found the employee was not acting in good faith and within the scope of his employment.

Section 5 would take care of cases now pending as the Silva Case. (Prisoner escaped from an honor camp and raped a young girl. The warden and other prison employees are named in a suit.)

Mr. Daykin asked if the intent was to give defense in areas of exposure of an employee and not to broaden the areas of exposure

Mr. Barrett stated this was their intent. He suggested to add to section 4 a provision that the employee be required to check with the Board before contacting an outside attorney and get the approval of the Board of that attorney and the fees to be charged.

Senator Young questioned Section 5 requiring the plaintiff to post a Bond. He asked if they would require the state to pay attorney fees to a successful claimant.

Mr. Walsh advised they were concerned with protecting the State employee.

Senator Young asked Mr. Walsh several questions regarding "acting in good faith" using hypothetical cases.

Mr. Walsh stated if the person was found not to be acting in good faith and in the scope of his employment the state would be relieved of responsibility.

A bill will be prepared in accordance with the presentation made and will be considered further at that time.

SB 362 - Revises eminent domain procedures.

Senator Swobe talked to the Reno City attorney regarding this and he was not concerned about the bill. There had not been a situation arise, to his knowledge, that this would effect.

Senator Swobe preferred to take out section 2 entirely (page 2, lines 2 thru 15 and put back in sub-section 4 on page 3 and 4.

Chairman Monroe felt sub-section 2 might protect a potentially bad situation.

Senator Swobe moved to eliminate the brackets on pages 3 and 4 and take out lines 2 thru 15 on page 4.

Senator Young seconded
Motion carried.

Chairman Monroe advised Mr. Katz and Mr. Armstrong would like to be heard on AB 70. In as much as Mr. Katz was not present at the previous hearing due to the bad weather he would be contacted and asked to be here at 9:00 a. m. Tuesday, March 25th. Mr. Armstrong will be contacted also.

Chairman Monroe read a letter from Carol T. Nevin, a former F.B.I. agent regarding SB 456 and AB 390.

SB 217 - Permits architects and professional engineers to join in formation of professional corporations.

Senator Swobe received a letter from Mr. McNamee regarding SB 217.

It was remarked that evidently the engineers were interested but no one from the architect professional had contacted the committee so they probably weren't concerned with this legislation. There was some discussion that passage of this might open requests for further joint corporations as a doctor and dentist working in a clinic.

Mr. Daykin advised the laws provide for a corporation could be formed for a clinic but not a corporation for a doctor and dentist. He will check out what other states permit on this.

There being no further business the meeting adjourned at 10:50 a.m.

Respectfully submitted,

Jeanne M. Smith
Jeanne M. Smith, Secretary.

APPROVED: _____

3/24/69
am

AN ACT relating to the defense of state employees and former state employees against claims or actions against them for injuries arising out of an act or omission occurring while state employees.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Upon request in writing of an employee or former employee of the state within 10 days after service of a complaint, the attorney general shall provide for the defense of any civil action including counter claims and cross claims brought against the employee or former employee in his official or individual capacity, or both, on account of an act or omission committed while employed by the state, if the attorney general determines that:

- (a) The act or omission of the employee or former employee was in good faith and in the scope of his employment; and
- (b) The defense of the action by the attorney general would not create a conflict of interest between the state and the employee or former employee.

Section 2. The attorney general may make his final determination to defend or refuse to defend the employee or former employee at a reasonable time prior to trial, and until such final determination is made

the attorney general may appear in the action and move and plead on behalf of any such employee or former employee. Any such determination by the attorney general must be made within a reasonable time before trial in order to enable the employee or former employee to procure counsel of his own choosing and prepare a defense.

Section 3. Judgment against the state in an action authorized by NRS 41.031 to 41.039 shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

Section 4. Regardless of the results of the action, where the attorney general does not provide a defense of the action against the employee or former employee, the state shall pay reasonable attorney fees, expenses and costs incurred in defending the action, unless it is found by the court or jury that the defendant employee did not act in good faith and within the scope of his employment. Charges for attorney fees and costs shall be paid from the reserve for statutory contingency fund pursuant to NRS 353.264, upon submission to and approval by the State Board of Examiners.

Section 5. Whenever a plaintiff files an action against a state employee or former employee for damages on account of an act or omission committed while employed by the state, the plaintiff shall also file an undertaking in a sum fixed by the court, but in no case

less than \$500.00, conditioned upon payment by plaintiff of costs, expenses and attorney fees incurred or paid by the state and the employee as a result of the action, if the plaintiff fails to prosecute the action or fails to recover judgment.