

SENATE JUDICIARY COMMITTEE

334

MINUTES OF MEETING HELD

2nd DAY OF APRIL, 1973

The meeting was called to order at 8:00 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
Senator Bryan
Senator Dodge
Senator Hecht
Senator Swobe
Senator Wilson

Mr. Richard Edwards, Counsel for the Highway Department
Mr. Grant Bastian, State Highway Engineer
Mr. George Bennett, State Board of Pharmacy
Mr. Mike Melner, Director, Commerce Department

S.B. 147 - Enlarges class of persons who may be sentenced to concurrent terms of imprisonment.

Senator Foley pointed out that this bill is in conflict with the death penalty bill (S.B. 545) since the second reprint of the bill as passed by the Assembly deleted NRS 212.200 which provided that if the punishment for a second felony conviction be death, the sentence would be executed without reference to the unexpired term of imprisonment. Therefore, if a person serving a sentence committed a capital offense and the death penalty was returned, the sentence for the latter offense would be consecutive to the former offense and the death penalty could not be executed until the former sentence was served.

The committee agreed to resolve the conflict by amending the bill on line 14 to include the language of 212.200: "but if the punishment is of death, the sentence shall be executed without reference to the unexpired term of prior imprisonment."

S.B. 562 - Restores sovereign immunity from liability for damages resulting from highway design and certain highway conditions.

Mr. Richard Edwards testified that when the Legislature decided to encourage judgments by waiving immunity, they did not provide any fund to satisfy these judgments so they are not satisfied until appropriated out of the general fund. Mr. Edwards cited several cases where the courts ruled against the Highway Department without regard to contributory negligence on the part of farmers who neglected

to keep fences maintained or where fences were cut or left open and cattle wandered on the highways. Judges have also ruled that highway design and maintenance is not a discretionary function of the Highway Department.

There was much discussion on the policy question of whether the State or the individual motorist or rancher should bear the burden for any injuries incurred because of defective design of a highway, which gets into the question of product liability and warranty; or because cattle and other livestock wandered onto a limited access freeway where the motorist feels protected against this happening because of the fences. Mr. Bastian remarked that there are 123 openings in the fencing between Carson City and Reno which call for cattle guards, and roads which were designed many years ago and do not meet present design criteria.

Senator Dodge explained that the present waiver of sovereign immunity up to \$25,000 was a calculated decision by the Legislature in view of the fact that supreme court decisions were ruling against unconditional sovereign immunity. It was not so much a decision of public policy, but a pragmatic decision. The limited waiver of the sovereign immunity doctrine has been held up in the courts. Senator Bryan remarked further that the bill runs counter to the trend in every state in the Union and the philosophy in every court of public record. Basically the courts are hostile to the doctrine of sovereign immunity.

Mr. Bastian and Mr. Edwards remarked that the Highway Department did not want to see the individual motorist bear the burden in these circumstances, instead they asked that a vehicle be provided whereby they could settle cases without going to judgment in every case. They can not settle through the Board of Examiners since they only have a \$1,000 limit.

Senator Close remarked, and the committee agreed, that the Highway Department should not be liable on public highway right of ways where there is contractual agreement for the rancher to maintain the fences. Mr. Bastian remarked that those fences which were put up several years ago were not covered by contracts.

S.B. 563 - Imposes restrictions on maintenance of stock of controlled substances in extended care facilities.

Mr. Bennett testified that the Board of Pharmacy is in support of this bill, which was lifted out of Chapter 453 in S.B. 343 and added to Chapter 639 by this bill dealing with dangerous drugs. Mr. Bennett requested an amendment which would correct the reference to pharmacies in these facilities in Line 5 since none of these type facilities operate pharmacies. The inclusion of the words "and dangerous drugs" should follow every reference to controlled

substances. If the dangerous drug act (S.B. 341) passes the Assembly, this wording will be included in the bill.

Senator Bryan moved to amend and "DO PASS." Motion seconded by Senator Foley. Motion carried.

S.B. 283 - Provides for creation of
industrial development
corporations.

The Commerce Committee recommended amending Page 5 Line 15 from "each member of the corporation shall make loans" to "each member of the corporation may make loans."

Mike Melner testified that this bill would provide enabling legislation allowing the creation of small business development corporations. These corporations would be non-profit organizations owned by banks which would invest in small businesses. Their investment would be matched federally by the Small Business Administration's 501 Funds.

To create such a corporation, 6 banks would have to agree and put up the initial money for investment. The stockholders of the corporation would be the participating banks.

The committee asked Mr. Melner several questions about the operation of the corporation. For instance, Paragraph 8 states that 25 or more people are required to initiate such a corporation. Would they be considered the officers or directors of the corporation? The bill mentions members and stockholders. Who are the members and who are the stockholders? Does each member bank underwrite the loan to the extent they are involved and do they guarantee performance? The federal money is loaned on a soft-credit basis; that is, the borrower must be refused by at least one bank or other financial institution to qualify. Would the S.B.A. assume the risk on the federal money? What is the required ratio of local participation?

Mr. Melner will contact the S.B.A. and report back with those answers.


Wallie Warren remarked that the Nevada Bankers' Association was in support of this bill.

Senator Hecht moved to amend and "DO PASS" subject to the answers received by the Small Business Administration. Motion seconded by Senator Foley. Motion carried.

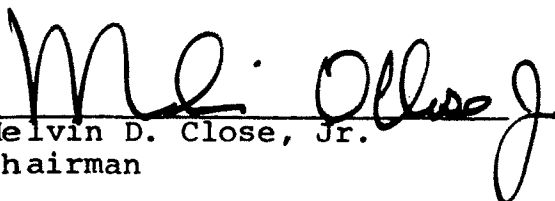
The minutes of the meetings of March 6th, 7th, 8th, 9th, 12th, 16th, 19th, 20th, 21st, 22nd, 23rd, 26th, 29th, and 30th were approved.

The meeting was adjourned at 10:00 a.m.

Respectfully submitted,


Eileen Wynkoop
Secretary

APPROVED:


Melvin D. Close, Jr.
Chairman