

GOVERNMENT AFFAIRS COMMITTEE

Minutes of Meeting - February 2, 1977

Present: Chairman Gibson
Senator Foote
Senator Faiss
Senator Gojack
Senator Hilbrecht
Senator Raggio
Senator Schofield

Also Present: See Attached List

Chairman Gibson opened the sixth meeting of the Government Affairs Committee at 2:00 P.M. with a quorum present at that time. The first matter of the meeting was the consideration of committee introduction of the following:

BDR 30-738 - Clarifies the required schedule of interest payment on interest schedules.

Motion for Committee Introduction by Senator Hilbrecht, seconded by Senator Schofield. Motion carried unanimously.

BDR 21-662 - An Act relating to the powers and duties of cities providing for standards for petitions and elections before annexation for cities and counties having a population of 200,000 or more providing other matters properly relating thereto.

Motion for Committee Introduction by Senator Hilbrecht, seconded by Senator Schofield. Motion Carried unanimously.

BDR-21-661 - An Act relating to unincorporated towns providing for certain powers of certain towns providing for matters preperly relating thereto.

Motion for Committee Introduction by Senator Hilbrecht, seconded by Senator Schofield. Motion carried unanimously.

AB-65

Changes gaming control board revolving fund to account and Eliminates requirement of fidelity bond for chairman. (BDR 41-329)

John Crossley, Chief Deputy Auditor, L.C.B., stated that this bill has to do with the Control Boards Revolving fund. It changes the funds where there is an account in the general fund. Mr. Crossley indicated that the Gaming Control Board is in favor of this bill.

Motion for "Do Pass" by Senator Hilbrecht, seconded by Senator Gojack. Motion carried unanimously.

Senate

AB-83

Changes fund administration in department of the military (BDR 36-324)

This bill is a result from an audit done on the military department. Mr. Crossley went over this bill and indicated that changes were primarily in lines 7 through 12, page 2. The adjutant general may use the money he receives from rental for use in any armory he chooses. This is basically the change made to NRS 412.108.

Motion of "Do Pass" by Senator Schofield, seconded by Senator Hilbrecht. Motion carried unanimously.

SB-62

Provides for codification and review of administrative regulations. (BDR 18-107)

Senator Dodge who initiated this bill spoke to the committee on the reasons for its inception. He feels that we need to make our regulations more easily read and a better source of information for the public.

Senator Dodge with the assistance of Mr. Frank Daykin from the Legislative Counsel Bureau went over the bill in detail for the committee in order to help them better understand its intent.

Mr. Jim Thompson, spokesman for Robert List of the Attorney Generals Office indicated that the Attorney Generals Office was against SB-62 for the following reasons. (See Attached written testimony for details)

Mr. Thompson felt that this gives too much power to the legislative counsel bureau and indicated that certain problems that come up should be handled in the courts.

The committee discussed Mr. Thompson's view and felt that judicial process may take quite a bit longer than handling the matter through the legislative commission upon notification by the counsel bureau.

Phyllis Otten, Technical Writer for the Health Division, felt that the bill was basically a good one but had some problems with certain parts.

Ms. Otten indicated that practically it would be difficult to comply with certain parts of the bill without considerable costs and duplications within the department.

Ms. Otten felt that the time limit for review might be shortened between the sessions as they might have one copy of the document for review and when they have a public hearing there would be a different one. She wondered if the agency could submit their proposal thirty days prior to advertising. This, of course, is only between the legislative session.

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Mr. Daykin assured Ms. Otten that any changes in the document would be technical and it was their attempt to only make those changes and would conform it with the Nevada Revised Statutes, leaving the intent alone.

Ms. Otten had a notation on page 2; what happens if the board changes the document at the public hearing. It could become a never ending chore to keep up with document changes.

She made reference to line 43 of page 2 concerning the budget. Ms. Otten requested that it might be better if this were postponed until the next biennium so that the costs would be included in their budget.

Mr. Daykin stated that if the legislature adopts this measure it will make the appropriate adjustments to reimburse the agencies involved for the extra expenses.

Mr. Bruck Arkell, State Planning Coordinator for the Governor's Office, felt that this was a good bill and the idea was much needed. He had fault with the legislative intent also. His suggestion was that the codification be started and possibly set up a legislative review system but that is all. We won't know the problems that must be handled until the codification process is well under way.

Mr. Daykin feels that Mr. Arkell made some good points but wanted to state that the key point in this bill is that we have substituted declaratory judgement action in the courts for review by the legislature for the legislative commission's determination. Mr. Daykin further stated that in the final analysis it is the courts determination as to whether something is consistent with legislative intent.

Mr. Jim Lien, Deputy Executive Director, Department of Taxation, indicated that the bill was a good measure and we need to codify the statutes. Mr. Lien also felt there were many problems with the bill and noted on Page 2, section 2 time frames could present a problem in their department. Many of their statutory adoptions and regulations are reliant on time frames. There could be many conflicts in this area alone. Also in Section 4 of paragraph 2; does this mean a protest given by any one person or does it mean strictly because of action taken on the recommendation of the Legislative Counsel Bureau.

Mr. Daykin addressed this problem and stated that this particular section has been the law for about 12 years and was merely rearranged for better use within the statute. The Legislative Counsel Bureau only recommends action to the Commission, it does not take action.

Senate

Mr. Daryl Cappuro, Managing Director of the Nevada Motor Transfer Association, spoke to the committee on problems he has with SB-62 regarding the definition of 'Contested Cases', page 3 of Section 8. Sometimes the definition an agency attaches as to what is substantive and what the people who are having to live under these regulations is considerable. We would hope that anything that can be done to provide for the oral hearing procedure and the opportunity to continue it is preserved within the bill

Mr. Bob Broadbent, representing County Commissioners, feels SB-62 is a good bill and indicated it was good to have an appeal procedure to go through before the next legislative session.

Chairman Gibson suggested that further study be done on SB-62 and the questions and problems posed by the people testifying be studied.

SB-63

Reconciles statutes concerning administrative procedure
(BDR 18-108)

Helen Stecker, recorder for the Secretary of States Office commented on SB-63 as she does the indexing and filing. Ms. Stecker felt that there were many obsolete records and files that this bill doesn't cover.

Mr. Daykin felt the bill did cover the obsolete records that Ms. Stecker referred to and helped her understand the intent of this bill.

Senator Raggio expressed concern about misrepresenting the legislative intent by the Legislative Commission or the Counsel Bureau.

Senator Hilbrecht found an inconsistency with reference to 645.760 and Mr. Daykin suggested one more repealer be added to the bill to take care of that problem.

Motion to "Amend and Do Pass" by Senator Hilbrecht, seconded by Senator Raggio. Motion carried unanimously.

Senator Hilbrecht brought the amendment to the committee on SB-38 regarding the radioactive waste disposal site responsibilities being transferred to the Human Resources department.

It amends section 1, page 1, deleting lines 4-6 and the following is inserted.

License fees in an amount sufficient to defray all costs of monitoring, securing or otherwise regulating the storage of radioactive materials and chemical wastes for the use of state-owned disposal areas payable by the person who contracts with the state for the use of such areas.

Mr. Trounday, Human Resources, was on hand to concur with the above amendment and wanted to reiterate that there was less than 1% of the radioactive materials that are buried in the State of Nevada that are generated here.

Motion to Amend and "Do Pass" by Senator Hilbrecht, seconded by Senator Gojack. Motion carried unanimously.

The records so note that Senators Raggio, Hilbrecht & Gojack are not in favor of this type of legislation but realize that since the disposal site is there and we are committed we need proper monitoring for the safety of the State.

Chairman Gibson informed the committee on the lengthy amendments that had been prepared by bond counsel and indicated the revised changes in SB-30. All had read the revised SB-30 and concurred with the amendments.

Mr. Jim Parrott wanted to let the committee know that they were in favor of the amendments and availed himself to the committee for further questions.

Senator Hilbrecht wanted Mr. Parrott to assure the committee that the figures were valid and reliable. Senator Hilbrecht felt that the action taken on SB-30 was being made in order to complete requirements set by the EPA and federal regulations.

Mr. Parrott stated that his rate study was almost complete and his own study closely paralleled this study, he felt his figures were accurate.

Mr. Broadbent, County Commissioners, felt that there was sufficient information to warrant the building of this plant and that we have the federal funds now available to us that we may not have in the future if we do not continue with this project. Senate

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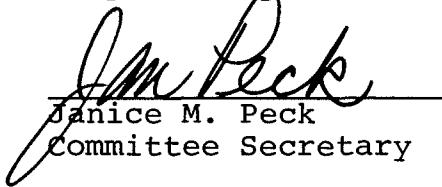
Guild Gray, Financial Advisor for Clark County, felt that in view of the need for getting this law passed we should also amend NRS 349.276 by adding another section. This will protect our borrowing.

Chairman Gibson suggested that the committee amend SB-30 and move it out of the committee.

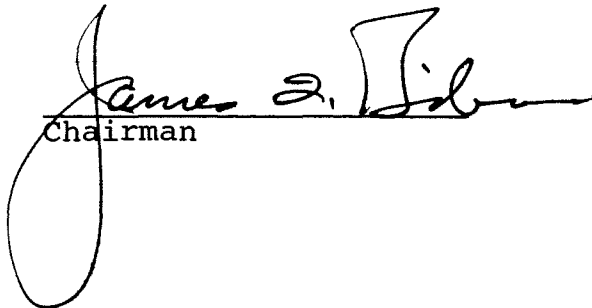
Motion of "Amend and Do Pass" by Senator Hilbrecht, seconded by Senator Faiss. Motion carried unanimously.

With no further business the meeting was adjourned at 4:30 p.m.

Respectfully submitted,


Janice M. Peck
Committee Secretary

Approved:


Chairman

GUEST REGISTER

GOVERNMENT AFFAIRS COMMITTEE

DATE: 2-2-77

THOSE WISHING TO TESTIFY SHOULD IDENTIFY THEMSELVES BEFORE GIVING TESTIMONY.....

NAME	DO YOU WISH TO TESTIFY	BILL NO.	REPRESENTING
Charles J. Davis	no	SB 63	JM V
W. F. ...	no	SB 63	Welfare
Franklin & Coakley	no	AB 86	Nev. Military Dept
EARL YAMASHITA	NO	SB 63	St. Welfare
Phyllis Otten	YES	SB 62	Health Division
Robert Petri	?	SB 62	Clark County School District
Tom Moore		SB 30	Clark County
JIM PARROTT	YES	SB-30	CLARK COUNTY
R. Guild Gray	yes	SB-30	Clark County
GARY OWEN	No		Governor's Office
Bruce Arkell	Yes	SB-62	STATE PLANNING
HOWARD BARRIT	is asked only	SB 62	Budget
ROBT HOLLAND	is asked	SB 63	COUNSEL TO ST. WELFARE

NRS 233B.030 is hereby amended to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Agency" means each public agency, bureau, board, commission, department, division, officer or employee of the executive department of the state government authorized by law to make regulations or to determine contested cases, any political subdivision of this state, any other special district, public corporation or quasi-public corporation of this state, and any agency, board or commission established by this state or any of its political subdivisions, except: (a) The governor. (b) Any penal or educational institution. (c) Any agency acting within its capacity as administrator of the military affairs of this state. (d) The state gaming control board. (e) The Nevada gaming commission. (f) The state board of parole commissioners. (g) The welfare division of the department of human resources.
2. "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing. Nothing contained in this section shall be construed to require a hearing where not otherwise required by law or regulations.
3. "License" means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law. "Licensing" means the agency procedure whereby the license is granted, denied, revoked, suspended, annulled, withdrawn or amended.
4. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in any contested case.
5. "Person" means any individual, partnership, corporation, association, political subdivision or public or private organization of any character other than an agency.

6. "Regulation" means each agency rule, standard, directive or statement of general applicability that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include:

- (a) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
- (b) Declaratory rulings issued pursuant to NRS 233B.120;
- (c) Intra-agency memoranda;
- (d) Agency decisions and findings in contested cases;
- (e) Regulations concerning the use of public roads or facilities which are indicated to the public by means of signs and signals, or
- (f) Any order for immediate action, including but not limited to quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the state board of agriculture, the state board of health, the state board of sheep commissioners or any other agency of this state in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control.

SUGGESTED AMENDMENT - JOHN MADOLE - SB-62

Amend NRS 233B.050 to read as follows:

233B.050 Regulations of practice, public inspection of regulations, orders, decisions and opinions; validity.

1. In addition to other regulation-making requirements imposed by law, each agency shall:

(a) Adopt regulations of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency. No regulation shall be adopted which restricts the rights of any individual to appear and present testimony at a public hearing.

(b) Make available for public inspection all regulations adopted or used by the agency in the discharge of its functions.

(c) Make available for public inspection all final orders, decisions and opinions, except those expressly made confidential or privileged by statute.

2. No agency regulation, rule, final order or decision shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required in this section, except that this provision shall not be applicable in favor of any person or party who has actual knowledge thereof.

EXAMPLE

Notice is hereby given that the State Environmental Commission will conduct a public hearing on February 14, 1977, beginning at 8:30 a.m., at the Nevada State Highway Department, 1263 South Stewart Street, Auditorium (Room 314), Carson City, Nevada. This public hearing is being held pursuant to Chapters 445 and 2339 of the Nevada Revised Statutes to receive testimony on:

RECEIVED
 JUN 19
 NEVADA CHAPTER A.6.C

1. Proposed new Article 15 and amendments to Articles 1, 3, and 13 of the Nevada Air Quality Regulations. Proposed action: establishing administrative procedures for case by case review of emission limitations that will allow maintenance of desired ambient air quality.
2. Proposed amendments to the Nevada Air Quality Regulations, Article 16.3.3(3) and 16.15.1(1):
 - 16.3.3... (3) On or after the date on which the performance test required by Article 2.6 is completed, no owner or operator subject to the provision of Article 16.3 shall cause to be discharged into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit 10% opacity or greater.
 - 16.15.1... (1) No person shall cause, suffer, allow, or permit the discharge of particulate matter into the atmosphere from any blast furnace, dross reverberatory furnace or sintering machine discharge end in excess of [59] 50 mg/dscm [0.026] 0.022 gr/dscf.
3. Proposed amendment to the Nevada Air Quality Regulations, Article 2, and Section 8 of the State Implementation Plan to add a provision to require certain stationary sources to operate continuous monitoring equipment.
4. Proposed amendments to Section 6 of the State Implementation Plan Emergency Episode Plan. This proposed amendment will change the procedures when an alert or warning can be called, due to measured ambient air quality concentrations for carbon monoxide and oxidants.
5. Proposed amendment to the Nevada Air Quality Regulations to more clearly define single chamber incinerator.
6. Proposed amendment to the Nevada Air Quality Regulations, Article 6.3, as it pertains to areas not permissible to burn in other than multiple chamber incinerators, and include the areas of Genoa, Johnson Lane, Gardnerville Ranchos, and Topaz Ranch Estates.
7. Proposed amendment to Article 2.2.5 of Nevada's Water Pollution Control Regulations. Proposed action establishes a discharge permit application fee of \$50.00, and requires the discharger to pay for publication of official notices.
8. Proposed new Article 4.1.3 to Nevada's Water Pollution Control Regulations. Proposed action establishes standards for chlorine residual and un-ionized ammonia applicable to all waters of the State.

ENVIRONMENTAL COMMISSION
 JUN 19 1977

The following rules shall govern all practices and procedures for the hearing:

1. All persons interested in appearing at the hearing to present testimony on the proposed regulations, and all persons wishing to submit a statement for the record, are requested to advise the Executive Secretary, Nevada Environmental Commission, 201 South Fall Street, Capitol Complex, Carson City, Nevada, 89710, as soon as possible, but no later than seven (7) days prior to the hearing date (February 7, 1977).
2. It is requested that three (3) copies of the proposed remarks be submitted to the above address seven (7) days in advance of the hearing date (February 7, 1977), or than ten (10) copies of the proposed remarks be delivered to the recorder at the meeting prior to presenting the remarks.
3. All persons presenting testimony at the hearing may be questioned by the Commission, its counsel and the public, at the discretion of the Commission.
4. The hearing will not be conducted according to the technical rules of evidence.
5. All parties to the hearing, their counsel and spectators, shall conduct themselves in a respectful and courteous manner.

A copy of all the proposed amendments is available for review at each of the following locations: Environmental Protection Services, Room 120, 201 South Fall Street, Carson City, Nevada; and Clark County District Health Department, Health Education Office, 625 Shadow Lane, Las Vegas, Nevada.

A copy of the proposed amendments may be obtained by writing to the Executive Secretary, Nevada Environmental Commission, Room 120, 201 South Fall Street, Capitol Complex, Carson City, Nevada, 89710, or telephoning 885-4670 (toll free number 800-922-0900, extension 4670).



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

February 2, 1977

The Honorable James I. Gibson
Chairman
Senate Committee on Government Affairs
Legislative Counsel Building
Carson City, Nevada 89710

RE: SENATE BILL 62

Dear Senator Gibson:

Senate Bill 62 would create a Nevada Administrative Code. Such a code appears to be a highly desirable tool for use by lawyers and laymen alike. However, the provisions of S.B. 62, in my opinion, would go far beyond mere establishing of an administrative code. It is my definite opinion that many provisions of Senate Bill 62 are violative of Art. 3, Section 1 of the Nevada Constitution which prohibits any of the three departments of state government from encroaching upon the functions of the other departments except as expressly provided in the Nevada Constitution. In support of this opinion, I note the following sections of the statute.

Section 3(2)- This section would empower the legislative counsel to reword any proposed regulations submitted by agencies of the executive department if in the opinion of the legislative counsel, not the opinion of the courts, such regulations violated the intent of the legislature.

Section 4(1)- This section would prohibit an agency of the executive department from adopting, amending or repealing any regulation upon which such agency is otherwise empowered to act for a period of longer than one hundred twenty days until the agency receives approval of the text of the regulation from the legislative counsel. This

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section clearly usurps the function of the executive branch in promulgating rules and regulations by substituting the legislative counsel for the head of the executive agency in determining what form regulations of the executive agency should take. In addition the section encroaches upon the power of the executive agencies to promulgate rules and regulations by requiring approval from legislative counsel on an item by item basis.

Section 6(2)(3)- These sections provide that once an agency has adopted a regulation any person directly affected or any legislator may request the legislative counsel bureau to prepare an opinion as to whether the regulation is inconsistent with the intention of the legislature or the agency has acted arbitrarily or unreasonably. If the legislative counsel should determine that the intention of the legislature has been violated or the agency has acted arbitrarily or unreasonably in adopting or enforcing the regulation and the legislative commission agrees with such finding the legislative commission is then empowered to prohibit an agency of the executive branch from attempting to enforce such regulation and to declare the regulation ineffective unless the agency obtains a declaratory judgment that the regulation is valid. This provision clearly encroaches on the function of the judicial branch of government. See Galloway v. Truesdell, 83 Nev. 13 (1967).

Section 6(4)- This section appears to grant the Legislative Commission the authority to seek sanctions against an agency of the executive branch from the entire legislature if the commission finds that the agency has acted arbitrarily or unreasonably in adopting or enforcing a regulation.

Section 21- Section 21 amends NRS 233B.100 to provide in sub-two of the amended statute that agencies when instituting actions for declaratory judgment to establish the validity of a regulation shall name the legislative commission as a party defendant if the commission has notified the

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agency that the regulation violates the intent of the legislature. The obvious result of this provision is that the Attorney General's Office will be advocating one legal position in an action at law while the legislative counsel bureau will be advocating the opposite position. It should also be noted that sub-three of section 21 provides that "plaintiff shall serve a copy of the complaint upon the Attorney General who is also entitled to be heard." It would appear from this provision that the legislature intends to grant to legislative counsel the functions presently performed by our office with respect to administrative regulations.

While SB 62 is certainly commendable insofar as it intends to establish a uniform source of obtaining agency regulations (i.e. a codification of agency regulations) it is my opinion that SB 62 would clearly be an attempt by the legislature to encroach upon both the executive and judicial functions.

I do not mean to say that the Legislature may not constitutionally react to administrative rule making. On the contrary, the authority of the Executive to promulgate regulations to achieve the objectives of legislation is delegated from the legislative branch with appropriate standards. Of necessity, the Executive in carrying out his constitutional duty that "the laws shall be faithfully executed" must form his own idea of what the law means or intends before he can proceed to execute it. If the Executive adopts a meaning contrary to that meaning which the Legislature intended, then the Legislature, and not a part of the Legislature or one of its employees, may refute the Executive's conclusion by enacting a new law clarifying the law's intent and operation, and not by rewriting regulations or construing them.

The Congress in recent years has provided in the law that regulations of certain executive departments will not be final unless so many days have passed after their

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submission to Congress, during which time Congress may register its disapproval by enacting a law to clarify the legislative intent. But it is important to note that Congress does this as a sitting body in session and not while at home entrusting its legislative powers to its employees.

Sincerely,

ROBERT LIST
Attorney General

SENATE

REVISED - 2-1-77 (● p.m.)

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS.....

Date.....2-2-77.....Time.....2 P.M.....Room.....243.....

Bills or Resolutions to be considered	Subject	Counsel requested*
SB-62	Provides for codification and review of administrative regulations (BDR-18-107)	
SB-63	Reconciles statutes concerning administrative procedure. (BDR-18-108)	
AB-65	Changes gaming control board revolving fund to account and eliminates requirement of fidelity bond for chairman. (BDR 41-329)	
AB-83	Changes fund administration in department of the military. (BDR 36-324)	
SB-30 (Revised)	Revises County Sewage and Waste Water Law (BDR 20-792)	