

Minutes of the Nevada State Legislature

Senate Committee on.....Government Affairs.....

Date:.....Feb. 28, 1979.....

Page:.....One.....

Present:

Chairman Gibson
Vice Chairman Keith Ashworth
Senator Dodge
Senator Echols
Senator Ford
Senator Kosinski
Senator Raggio

Also Present:

See Attached Guest Register

Chairman Gibson opened the fifteenth meeting of the Government Affairs Committee at 2:00 p.m. The first order of business is a report from Mr. Russ McDonald on the sections discussed during the meeting of February 23rd and 26th on SB-72.

SB-72 Defines population and changes population basis for exercise of certain powers.

Russ McDonald, Washoe County legal counsel, informed the committee that he had met with the County Commissioners and they had the following recommendations:

- 1) Recommended affirmative action on Section 6, page 15 (re. houses of prostitution) concurred with amending the population to 250,000.
- 2) Section 26, recommended in subsection 8 that the figure remain at 200,000.
- 3) Section 28, recommended that the figure remain at 200,000.
- 4) Section 39, recommended that the figure remain at 200,000.
- 5) Section 43, recommended the original language remain with respect to the \$7,000. The section could otherwise be removed from the bill.
- 6) Section 124 regarding the water meter question. The County Commissioners stated that they would go along with the recommendations of Sierra Pacific Power and leave the figure at 200,000.

Bruno Menicucci, mayor of city of Reno, testified to the committee that the city disagrees with the County Commissioners regarding the amending language in Section 28 and Section 39. The city of Reno wants the figure changed to 250,000.

Minutes of the Nevada State Legislature

Senate Committee on Government Affairs

Date: Feb. 28, 1979

Page: TWO

Henry Etchemendy, City Manager for the City of Reno, testified to the committee the interest that both Reno and Sparks had in Sections 28 and 39. He concurred with testimony given by Mr. Menicucci.

AJR-1 Proposes to amend Nevada Constitution to require open and public legislative committee meetings and abolish executive sessions of senate.

SJR-7 Proposes to amend Nevada constitution to require legislative committee meetings to be open and public and abolish executive sessions of senate.

Mr. Steve Coulter, Assembly District 27, one of the sponsors of AJR-1 testified to the committee on this bill. He stated that through the research department it was found that the Senate met only once in 114 years in executive session. Mr. Coulter stated that AJR-1 and SJR-7 accomplish the same results in abolishing the executive sessions in the Senate.

Senator Dodge stated that this bill does not address itself to the sub-committees. It would be possible to have a closed meeting in a sub-committee with the bill as presently written.

Chairman Gibson asked Mr. Coulter if the bill allows any exceptions. Mr. Coulter responded by stating that there are no exceptions in either of the bills before the committee.

Senator Ford noted that AJR-8 allows the committees to make a decision about the closing of a meeting. Senator Ford asked Mr. Coulter if he could support the exception allowed in AJR-8 as a compromise to AJR-1 or SJR-7. Mr. Coulter responded by stating that he could if the provisions for closing a meeting were clearly spelled out.

Senator Kosinski felt that the broad approach would be better than the restrictive one. If the language provision in AJR-8 were amended into either AJR-1 or SJR-7 then the decision could be left up to the public.

Senator Ford, representing Senate District 3, formally testified to the committee on SJR-7 as one of the sponsors. Senator Ford stated that she would like to have the language in AJR-8 regarding rules and procedures amended into SJR-7. She further stated that the subject correctly belongs under chapter 18 not 15. Chapter 241 doesn't reflect the laws covering open meetings. Without the power to take action, a closed meeting law is quite feasible. Senator Ford concurred with testimony given by Mr. Coulter.

Minutes of the Nevada State Legislature

Senate Committee on Government Affairs

Date: Feb. 28, 1979

Page: Three

Senator Echols agreed with the testimony given by Mr. Coulter and Senator Ford but felt that there were occasions when a closed door meeting was essential. Felt that the bill should give the Senate some language for such instances.

Senator Raggio also concurred with earlier testimony and agreed that there have been times when a closed door meeting was essential. The Senator gave an example of someone testifying in the gaming area who might not testify in an open meeting.

Senator Ford feels that the Senate has been concerned about this issue for the past ten years and suggests that a compromise be made. The Assembly should be able to have an exemption on the open meeting law issue if the Senate has one. The Senator concluded her testimony by stating that Article 4 of the constitution should be looked into.

Esther Nicholson, representing the League of Women Voters, testified in favor of both AJR-1 and SJR-7. Mrs. Nicholson concurred with testimony given by Mr. Coulter and Senator Ford.

Joe Jackson, representing the Nevada State Press Association, testified in favor of both bills but preferred AJR-1 because it has already passed the Assembly. Mr. Jackson stated that in his long service with the legislature he has been aware of only two closed door sessions and feels that in both cases the public would have been better served by knowing what was actually going on. (See Attachment #1 for complete testimony read to committee)

Dorothy Kosich, Sigma Delta Chi, Society of Professional Journalists and past president of Sigma Delta Chi, testified to the committee in favor of SJR-7. (See Attachment #2 for complete written testimony) Ms. Kosich concluded her testimony by reiterating those she represented would not favor any exceptions in the open meeting laws. Ms. Kosich noted that since AJR-1 has already passed the Assembly she would support the committee passing it over SJR-7.

Frank Delaplane, Managing Editor of the Nevada State Journal and Reno Evening Gazette and member of the Sigma Delta Chi Society of Journalists, testified in favor of both SJR-7 and AJR-1. Mr. Delaplane stated that he could not see a situation arising that would warrant a closed door meeting. He concurred with testimony given by Mr. Jackson and Ms. Kosich.

Senator Dodge stated that in previous situations where the press has protected their source of information it was felt that they would protect their source so as not to endanger them. In the legislature there are circumstances that arise where it is important to have a closed door meeting for similar reasons.

Minutes of the Nevada State Legislature

Senate Committee on Government Affairs

Date: Feb. 28, 1979

Page: Four

Senator Dodge gave an example of such a situation and further asked Mr. Delaplane if he could understand and sanction a closed door meeting under such circumstances. Mr. Delaplane responded by stating that he stood firmly on his conviction that there is no reason for closed door meetings at the legislature. It may be in the best interest of the public to have such a meeting open so that everyone will know what is going on.

Chairman Gibson stated that no action would be taken on AJR-1 or SJR-7 at this time. Due to time constraints further discussion would be held until another committee meeting could be scheduled.

SB-238 Limits amounts of free goods and services which may be provided public officers and employees under certain circumstances.

Senator Hernstadt, sponsor, testified to the committee that the purpose of this bill is to set some standards for the future. The bill limits the amount that any public official can receive from any one place of business to \$100. It further defines a person who owns such a business a "corporation". Senator Hernstadt went over subsection 2 of Section 1 and noted that the bill excludes social gatherings as well. The bill further makes it a misdemeanor for violation.

Bob Gagnier, Executive Director of the State of Nevada Employees Association, testified to the committee on the rules and regulations currently being used by state employees. (See Attachment #3) Mr. Gagnier feels that the bill has merit but needs to be clarified in some areas. Mr. Gagnier concluded by stating that he would like to be included in the work session so that the bill will work smoothly with the state policies. He pointed out that in Section 1, subsection 3 if the employee is gone more than 24 hours that section is inoperative. The average state employee does not get "comped". Many employees split the cost of a hotel room that is beyond their allotted funds but with the passage of this bill that would not be possible.

Arthur Cruickshank, representing Common Cause, testified in favor of SB-238. Mr. Cruickshank stated that when an individual is given a favor he is obliged to repay the kindness in some way. It would be much better for the state official not to be under such obligations when the decisions made may affect the entire state.

Due to time constraints this bill will also be placed on the agenda for further discussion by the committee.

Minutes of the Nevada State Legislature

Senate Committee on.....Government Affairs.....

Date:.....Feb. 28, 1979.....

Page:.....Five.....

SB-255 Substantially increases legislative control over state financial administration.

Senator Kosinski, one of the sponsors, stated that this bill increases legislative controls and noted that Mr. Bill Bible from the fiscal analysts office was present to give detailed testimony to the committee.

Assemblyman Doug Webb testified that many people are concerned about the growth in Nevada and the legislature needs to have better controls on the financial end of the state's spending. Mr. Webb concluded by urging passage of SB-255

Assemblyman Mann, District 2, concurred with Mr. Webb's testimony and stated that as a member of the Assembly Ways and Means committee he has seen many areas where abuses have occurred in the state. This bill will enable the legislature to have more control and return the balance of powers.

Assemblyman Barengo, District 29, also a member of the Assembly Ways and Means committee testified in favor of SB-255 and concurred with Mr. Mann's testimony. Mr. Barengo stated that this same bill was drafted in Pennsylvania and Governor Milton Shapp took it to the Supreme Court to have it declared unconstitutional. In Shapp vs. Sloan the Supreme Court of Pennsylvania ruled that it was constitutional. Governor Shapp then took it to the U.S. Supreme Court where the Solicitor General refused to hear the case, thus making the Pennsylvania's ruling stand.

Senator Ford stated that returning power to the legislature means returning power to the eighteen members of the Finance and Ways and Means committees. The Senator wanted to examine how other states handle the situation.

Assemblyman Mann feels that we should be able to more input from other legislature but since we are part time legislature we need to get the power in the proper committees.

Assemblyman Barengo felt that we should develop the budget and in the beginning days of the legislature have the two money committees review and get input from the other legislators.

Senator Kosinski stated that the time constraints have a great deal to do with the amount of input from people in the development of the budget. If in the beginning of the session the substantive committees had some input into the long term goals and objectives it would help get the needed information to make decisions.

Minutes of the Nevada State Legislature
Senate Committee on Government Affairs
Date: Feb. 28, 1979
Page: Six

Chairman Gibson noted that the State's surplus is related to the fact that the budget is handled in the committee system.

Assemblyman Mann agreed that the committee system works well and if they are able to get input in the beginning of the session it would reduce the concerns of the people.

Bill Bible, Fiscal Analyst, testified to the committee on the analysis prepared for Assemblyman Mello. (See Attachment #4) Mr. Bible indicated that the bill had four main control features and proceeded to go over the attachment for the committee.

Chairman Gibson informed those present as well as the committee members that Mr. Bible would be present when this bill is scheduled for another hearing.

Senator Dodge suggested that the controls and requirements be made tighter for the Budget Director. The Senator stated that the Budget Director is supposed to be the "watchdog" for the executive branch.

Howard Barrett, Budget Director, testified on the difficulties and restrictions that would be imposed upon their office if SB-255 is passed in its present form. Mr. Barrett stated that he had been before the interim Finance committee before for advice and was told they could not give advice, only money. He agreed that with the larger grants the interim Finance committee should be consulted but does not think the committee should have advice and review powers for everyday business.

Mr. Barrett stated that money from the federal government comes in several times a year and does not think that the legislature would want to meet each time the money comes in to approve of its disposition. He felt that the bill needs better definition of what grants are and which ones the legislature would like to get involved in.

Chairman Gibson noted at this point in the discussion that what they wanted was to set up procedures so the legislature would know what is going on and what the future budget could reveal.

Howard Barrett stated that he did not object to the new grant program. The schedule for approving the grants gives the Budget division some problems in the bill. The time element would cost the state due to the time frame in which the legislature must review the account. Mr. Barrett noted that there are 400 budget accounts and an average of five revisions in each one. There would be a total of 2,000 revisions for the legislature to review.

Minutes of the Nevada State Legislature

Senate Committee on.....Government Affairs.....

Date:.....Feb. 28, 1979.....

Page:.....Seven.....

Mr. Barrett went over other areas that the Budget Division would have difficulties with if the bill is passed in its present form. He concluded by stating he would be available for advice or recommendations in order to make the bill more workable for his office.

Senator Kosinski took this opportunity to praise Mr. Barrett for his work as Budget Director and indicated that this bill was not directed at Mr. Barrett or to reflect upon Mr. Barrett's performance as Budget Director. Senator Kosinski stated that due to public awareness and Proposition 6 the legislature is taking positive steps to cut down on unnecessary spending of tax dollars.

Jim Wittenberg, Chief in Personnel, Division of Administration, testified on the problems that his office will encounter if SB-255 is passed in its present form. Concurred with portions of Mr. Barrett's testimony. Mr. Wittenberg pointed out that the bill needs more clear definitions and the parameters need to be spelled out. He indicated that class series doesn't define well enough and stated that they would be able to help in writing clear definitions.

Mr. Wittenberg gave the committee an example of the types of breakdowns they are currently using. Within the state service as a whole there are twelve broad occupation breakdowns. There are approximately fifty-seven sub groups within the twelve broad occupation groups. Example: Agriculture and Conservation is a broad occupation group. In that group would be all the classes relating to Agriculture as well as Conservation - Fish and Game and the parks. Mr. Wittenberg stated that there would be 100 to 150 classifications annually that would be subject to review by the Interim Finance committee. Mr. Wittenberg concluded by stating that basically there is a question of administrative discretion and clear definition of the parameters.

Senator Ford asked Mr. Wittenberg to refer to Section 59, Subsection 1 and 8 become effective upon passage and approval. This might be difficult to comply with. The Senator asked Mr. Wittenberg if he felt that they would be able to comply if the bill is effective upon passage and approval. Mr. Wittenberg responded that it would be difficult especially if they had to work within the budget now being reviewed.

Senator Kosinski stated that it was their intent to have broad classifications and not to disturb the present classification system.

Chairman Gibson stated that since we are a biennial legislature we need to look at this area of government very carefully so that our system will grow with needs of the state.

Minutes of the Nevada State Legislature
Senate Committee on Government Affairs
Date: Feb. 28, 1979
Page: Eight

Ralph Disibio, Director, Department of Human Resources, testified to the committee on SB-255 and wanted to address two specific problems that have occurred in their department. At this point in time Mr. Disibio wished that he had Interim Finance approval and would support portions of the bill. Mr. Disibio went on to state that there needs to be more input on the fiscal impact. They were concerned about the time limit and the \$10,000. A grant with "no strings" attached, no fiscal impact for the future, a termination grant by the federal government, would indeed be questioned and should be looked into. This bill handles everything from the large, all encompassing grants, down to the day to day business of state agencies. Mr. Disibio concluded his testimony by stating that they feel that it would bring business to a halt if the bill were enacted in its present form without amendments.

Chairman Gibson stated that the impression the committee would like to leave with those present is that they are quite serious. The committee will give ample attention to those concerns expressed today and would appreciate the agencies being available for input. The intent is to improve the governmental process in Nevada, particularly with respect to the financial commitment for responsible fiscal control. This problem is not just in Nevada but is a problem that each state faces. The future will bring some drastic changes to the way states spend their tax dollars and Nevada needs to develop better programs and enforce tighter controls over its money.

Bob Gagnier, Executive Director, S.N.E.A., testified to the committee that he worked with Senator Kosinski on this bill and would address only the portion that would affect S.N.E.A. The First Aid section was discussed with Mr. Bible and also note that Section 59, sub-sections 1 and 8 should be reviewed. Mr. Gagnier stated that they were concerned about Section 1, page 1 regarding the compensation plan. This should be revised and done quickly. Concluding comments were that credibility in classifications be restored.

Chairman Gibson concluded testimony on SB-255 by stating that a sub-committee would be appointed and he would be on the committee. The agencies and committee will work together to clear up the problems that have been noted in today's hearing.

Chairman Gibson asked the committee to consider the following as committee introduced measures:

BDR-960^{*} - a study to help determine where juvenile services belong. Requested by Clark County.

BDR-22-1187^{**} - An act relating to planning and zoning with reference to parks and playgrounds. Requested by Clark County

Minutes of the Nevada State Legislature
Senate Committee on Government Affairs
Date: Feb. 28, 1979
Page: Nine

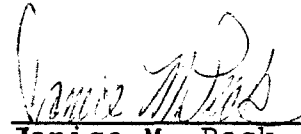
BDR-23-1190* - An act increasing travel allowance
for county employees. Requested by Clark
County.

The committee had no objection to having previously stated
measures introduced.

Prior to adjournment Chairman Gibson stated that the meeting
scheduled for Monday, March 5, 1979 would be cancelled due to
a conflict with a T.R.P.A. meeting. The sub-committee studying
SB-120 would meet at that time. The bills scheduled to be heard
on March 5th were re-scheduled to be heard on March 7, 1979.

With no further business the meeting was adjourned at 5:35 p.m.

Respectfully submitted

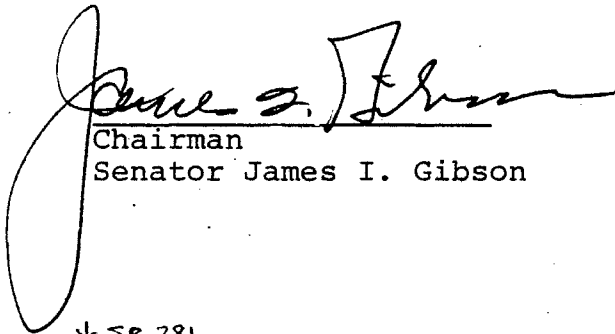


Janice M. Peck
Committee Secretary



Lois Smith

Approved:



Chairman
Senator James I. Gibson

* SB 281



Nevada State Press Association

February 28, 1979

Joe Jackson, -
2375 South Arlington Ave.
Reno, Nevada 89509

Statement of the Nevada State Press Association
before the Senate Government Affairs Committee
relative to Assembly Joint Resolution 1 and
Senate Joint Resolution 7.

The resolutions are identical in wording and are both strongly endorsed by the Nevada State Press Association. We favor A.J.R. 1 only because it has already received the unanimous approval of the Assembly. Endorsement by the Senate would bring the matter up for consideration by both houses in 1981 and, hopefully, the proposition could come before the voters in the 1982 general election.

Both measures would do exactly what our association advocates - bring the Legislature within the framework of the Open Meeting Law as revised during the 1977 session. We also firmly support the concept of openness applies to committees of both branches, settling that thorny question.

Our association contends that the Legislature should indeed be covered by the Open Meeting Law. The Legislature is the only governing body in the state which not only operates on the public's money but determines how much money needs to be collected, from whom and in what manner, and how the money must be spent. Every bit of legislation enacted by this body affects the lives of every Nevada citizen, and most of her many visitors, in one way or another. The fate of nearly every bit of legislation is determined within the committees in each of the houses, and only by being permitted to attend committee meetings can the public determine how a decision was reached on a particular measure. Certainly, the public has an inherent right to attend these hearings.

The claim is frequently advanced that United State Congress and its committees meet behind closed doors in some instances, so why shouldn't the Nevada Legislature do likewise..Such meetings aren't really all that frequent in Congress and the trend in Washington is toward more and more openness, except where national security is concerned. Besides, two wrongs don't make a right. Let's make certain that Nevada's government is an open one!

The clause in the Nevada Constitution permitting executive sessions of the Senate was copied from California's Constitution. In those days over 100 years ago the California Senate was required to approve or reject certain gubernatorial appointments. This is no longer the case and such procedure was never followed in Nevada, yet the clause has remained. This proposal to strike out the clause is long overdue.

A resolution similar to A.J.R. 1 was passed unanimously by the Assembly in 1977 but didn't get out of the Government Affairs Committee in the Senate. It was reported some senators felt there should be an escape hatch if it was felt that secrecy was absolutely necessary. NSPA contends that such a way out the back door would be extremely detrimental to the whole concept of open meetings and hopes that A.J.R. 1, which seals the hatch, will receive approval. We have no qualms about the public approving the provision if it ever gets on the ballot.

We do not contend that meeting behind closed doors is an everyday practice of the Legislature. On the whole, business has been out in

the open. I've never heard of a case in which the Senate has sat in executive session. I know personally of one occasion in which a Senate committee chairman closed a hearing and kicked me out of the room. Testimony concerned alleged skimming and cheating by gamblers. The Gaming Control Board hadn't asked for a closed hearing. The testimony didn't really amount to much. The senator was wrong in closing the doors. He said he did so to protect Nevada's reputation. But rumors of cheating and skimming were already widely circulated, and some of the testimony might have refuted much of the misinformation being spread around. And the people had a right to know if they were being skinned by cheating gamblers.

If freedom is to be maintained, public meetings of all kinds must remain open to the public at all times, and this applies to the Legislature which would still be able to hold personnel sessions under terms of the Open Meeting Law.

Exclusion of the Legislature from terms of the Open Meeting Law was felt necessary because of the constitutional provision, but the exclusion has brought many complaints from cities, counties and from other sources from time to time. And rightly so. The exclusion violates the time honored principle of equal justice for all. As Voltaire said: "As our social system could not subsist with the sense of justice and injustice, the Lord has given us the power to acquire that sense." We submit that it is within your power to grant Nevada voters the right to express themselves on this all-important question.

-JRJ-

Nevada State Journal

RENO EVENING GAZETTE

Pulitzer Prize Winning Gannett Newspapers

February 28, 1979

To: Senate Government Affairs Committee

Re: Statement of Reno Evening Gazette, Nevada State Journal and Society of Professional Journalists, Sigma Delta Chi relative to Senate Joint Resolution 7.

Because positions coincide on the above resolution, the committee can consider this statement to be the position of the Gazette and Journal and Sigma Delta Chi, which represents some 100 working journalists and media related persons in the print and broadcast media in Northern Nevada.

Senate Joint Resolution 7 has our strong endorsement, as did Assembly Joint Resolution 1, which is identical, and has already passed in the Assembly.

It certainly comes as no surprise to this committee that all press organizations within this state, speaking on behalf of the public, support the concept that meetings of all governing and public bodies, including the Legislature, should be open to the public.

I can't remember of any public official campaigning on a platform that they shouldn't.

This openness provides for a free flow of information that is essential in a democratic society if it is to survive. The public must have this information and openness if it is to make intelligent decisions. It is our position that there is no in-between measure.

And if there is one governing body that should be completely open to the public, it is the Nevada Legislature. It sets the example for all other governing bodies in the state. Also, its actions affect the lives of every citizen in this state.

At present, there is an inconsistency in this state regarding open meetings. That inconsistency exists in the Legislature, in the Senate in particular. Nevada has one of the strongest open meeting laws in the nation as a result of our Legislature. The general feeling of the public and most governing bodies in this state is that the law is a good one and has worked well. Yet the Nevada Legislature chooses to exclude itself from this law.

The public can only ask why? Legislators should ask themselves the same question and also ask -- "How does it look to every other governing body in the state and to the public itself?" The Nevada League of Cities is already on record asking the Legislature to extend the open meeting law to itself.

In effect, we have the father of governing bodies (the Legislature) telling its sons (the other governing bodies) to do something it doesn't have to do itself.

Does this mean we are suggesting the Legislature constantly violates the open meeting concept? No. Such violations are rare. But, there should be none at all. This maintains a free flow of information and public trust.

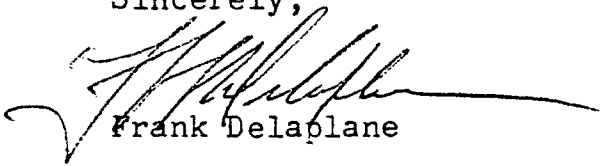
It is for the above reasons that Gazette and Journal and Sigma Delta Chi support Senate Joint Resolution 7.

We ask this committee to report this resolution favorably to the floor. Better still, why not report Assembly Joint Resolution 1 favorably to the floor. It has already cleared the Assembly and

Page 3

would save time.

Sincerely,



Frank Delaplane

Managing Editor

Reno Evening Gazette/Nevada State Journal

President of Sigma Delta Chi

RULE XI

PROHIBITIONS AND PENALTIES
(Refer to NRS 284.410)A. Incompatible Activities

1. Employees shall not engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with their duties as State officers and employees, or with the duties, functions or responsibilities of their appointing authorities or agencies by which they are employed.
2. Each appointing authority shall determine and describe in writing, subject to the approval of the Commission, those specific activities which, for employees under his jurisdiction, will be considered inconsistent, incompatible or in conflict with their duties as employees, and shall provide a copy to each such employee. In making this determination, the appointing authority shall give consideration to any employment, activity, or enterprise which involves:
 - a. No public officer or employee may seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity that would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
 - b. No public officer or employee may use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity with which he or a member of his household is associated, or any other person.
 - c. No public officer or employee may accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
 - d. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he may not use the information to further the economic interests of himself or any other person or business entity.
 - e. No public officer or employee may suppress any governmental report or other document because it might tend to affect unfavorably his private financial interest.

B. Full-Time Service Required

Each employee shall, during his hours of duty as an employee and subject to such other laws, rules or regulations as pertain thereto, devote his full time, attention and efforts to State employment.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627
DONALD R. MELLO, *Assemblyman, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-56-
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

ARTHUR J. PALMER, *Director*
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

February 26, 1979

MEMORANDUM

TO: Assemblyman Don Mello

FROM: William Bible, Fiscal Analyst

SUBJECT: S.B. 255--Substantially increases legislative control
over state financial administration.

Don, as you requested, the following is my analysis of S.B. 255 which was introduced in the Senate on February 21st by Senator Kosinski and the other 19 Senators. The bill provides for much greater legislative control over both state financial administration and the administrative reassignment of positions from one function to another. For the purpose of controlling position assignment changes, the receipt of federal funds, and the revision of work programs, the Interim Finance Committee is made the approving authority with the requested action receiving automatic approval 45 days after submittal to Interim Finance unless Interim Finance acts to deny the request. Also, since the Interim Finance currently exists only when the Legislature is not in session, Section 18 of the Act provides that the Interim Finance Committee may exercise the control functions provided for in S.B. 255 at all times, including during the Legislative Session. The Act provides four basic control features as outlined below:

1. Section 1 requires that the Personnel Director prepare and maintain a classification plan which categorizes all positions in the state's classified and unclassified service into broad occupational categories. By this it is meant that the Personnel Director would establish 15 or 20 occupational category descriptions, such as, clerical or custodial, and assign all the various positions in state service to one of these broad occupational job categories. For instance, all clerical positions--Administrative Aid I, Administrative Aid II, Supervisory Administrative Aid, Management Assistants I, II, III, and IV--would probably be assigned to an occupational category designated as clerical. Section 8 of the Act would amend the State Budget Act to require that the Executive Budget detail the numbers of positions assigned to each occupational category for each agency

for which money is budgeted. Section 6 of the Act then provides that no state agency may change a position for which money has been appropriated or authorized from one broad occupational category to another broad occupational category without the approval of the Interim Finance Committee. As mentioned above, unless the proposed change is denied by the Interim Finance Committee within 45 days after it is submitted, it is approved.

This mechanism for controlling the assignment of positions is not intended to stop the reclassification of positions within the broad occupational category. The career ladder concept, which is considered important to state service, would be maintained. By this, it is meant that a position may still be administratively reclassified from Administrative Aid I to Administrative Aid II, to Supervisory Administrative Aid, or to one of the levels of Management Assistants. What S.B. 255 would do is to control the conversion of positions from one occupational category to another occupational category without legislative concurrence. Probably the best example of questionable position conversions are those which occurred at the Nevada Mental Health Institute between legislative sessions. As you are aware, 12 positions at the Institute were converted in 1978 as part of a reorganization after the appointment of a new Institute Director. By their own figures, these conversions have an annual cost of \$99,614, and during the current biennium have the effect of lowering Institute reversions to the state's General Fund and during the upcoming biennium have the effect of requiring additional General Fund appropriations of at least \$100,000 each year. Examples of conversions which were made are those of a Maintenance Engineer, Grade 37, to Psychiatric Social Worker II, Grade 35; Pharmacy Assistant I, Grade 25, to Psychologist IV, Grade 39; Activity Therapy Director, Grade 36, to Clinical Director II, Grade 43; three Psychiatric Nurse positions, Grade 31, to Psychologist IV, Grade 39, Trainer/Educator, Grade 39, and Psychologist V, Grade 41; and three Mental Health Technician III's, Grade 25, to Psychiatric Social Worker II, Grade 35, and two Psychologist IV positions, Grade 39. Perhaps the position conversion which most upset the Ways and Means Committee was that of Upholsterer/Seamstress, Grade 22, to Psychologist IV, Grade 39. The 1977 budget, as recommended by the Governor, provided for the elimination of three Upholsterer/Seamstress positions at the Nevada Mental Health Institute. After considerable testimony, the 1977 Legislature reestablished two of these positions with the idea in mind, at least in the Ways and Means Committee, that if an alternative method of performing the work could

be found, the positions should be deleted and the funds reverted to the state's General Fund. Now, the Institute only has one Upholsterer/Seamstress position with the other position having been converted to a high level professional psychological position, at a considerably increased cost to the state. Another example of classification changes which have taken place is in the Sierra Developmental Center budget where existing Mental Health Technician positions were converted to a number of other types of positions, in one instance to a Research Analyst position, and now the agency is again requesting Mental Health Technician positions in order to meet Title XIX licensing regulations. The position control features of S.B. 255 would prevent these sort of position conversions from taking place without legislative approval, but the control provisions are not so restrictive as to eliminate classification changes which take place as part of the career ladder concept of state employment.

2. Section 2 of S.B. 255 amends 284.147 to provide that agencies may only fill those unclassified positions provided for by law if the Legislature has specified by law a salary for the position. The statutes currently provide for a number of unclassified positions, yet the Legislature does not set a salary for every one of these positions pursuant to NRS 284.182. For instance, NRS 284.140, in defining the state's unclassified service, allows each elective officer or head of each department, agency, or institution, one Deputy and one Chief Assistant to be in the unclassified service. If a salary has not been set by the Legislature for these positions, NRS 284.147 as currently written allows a salary to be administratively fixed for these positions as long as sufficient funds are available to pay for the position. An example of this is the administrative creation or change of a number of unclassified positions in the Department of Commerce after the 1977 Legislative Session. For instance, in the Director's Office a Chief Assistant's position was changed from classified status to unclassified status based upon the provisions of 284.140; a \$25,000 per year Credit Commissioner was established pursuant to the provisions of the Credit Union Act (NRS 678); and an unclassified Chief Assistant was added to the Housing Division pursuant to NRS 284.140. Additionally, a position designated as the Administrator of the Mobile Home Program was changed from classified to unclassified status by administrative action. The Executive Branch apparently felt that such a change was permitted by NRS 284.140; however, Legislative Counsel has issued an opinion that sufficient statutory authority does not exist for such a classification change. To clean these various authorities up, Section 2 of S.B. 255 would allow

for unclassified positions only where the Legislature has specified by law the salary for the position; thus making the level of patronage available to the Executive Branch a legislative, and not an executive decision.

3. In what is probably the heart of S.B. 255, Sections 4, 5, 9 through 17, and 19 through 58 of the bill provide for substantially increased federal oversight over the receipt and expenditure of federal funds. Currently, agencies are allowed by the Legislature to receive and expend non-state funds in two ways: (1) through individual statutes in the agency's enabling legislation that permit the agency to accept and expend gifts, federal grants, or private donations; or (2) through inclusion of an agency in the Authorized Expenditure Act. The individual statutory provisions scattered throughout NRS are essentially open-ended and allow agencies to accept and expend, generally without restriction, gifts, grants, or donations. Similarly, the Authorization Act is open-ended in that it allows state agencies detailed in the Act to increase, with approval of the Governor, any spending authorization which has been established by the Legislature. S.B. 255, in Sections 12 through 17 and 19 through 58, would repeal the various statutory authorizations for agencies to accept and expend federal funds. Section 4 of S.B. 255 would then allow any agency in State Government to accept gifts not exceeding \$2,500 each in value or governmental grants not exceeding \$10,000 each in value upon the approval of the Governor or, if delegated, the Chief of the Budget Division. Acceptance of gifts or grants in excess of these limits would require Interim Finance Committee review and approval, with the provision that if the proposed acceptance of the gift or grant is not denied within 45 days after submittal to the Interim Finance Committee it is approved. Subsection 4 of Section 4 excludes the University of Nevada System from this review, and the Board of Regents would continue to be the approving body for outside moneys which flow into the University System. Section 5 of S.B. 255 would require that any augmentation of the Authorized Expenditure Act must be approved by the Interim Finance Committee under the review procedures of an amended NRS 353.220 (work program revision section of the State Budget Act).

A computer extract run which was compiled by the Legislative Fiscal Division shows that the 1977 Legislature provided a total 1977-78 federal fund authorization for the Executive and Judicial Branches of government of \$138.9 million. After the year was closed, the run shows that the Executive Branch actually received \$179.7 million, or an increase of \$40.8

million (29.4%). Also in 1977 the Legislature approved a 1978-79 federal funds authorization of \$143 million, yet the Executive Budget presented to the 1979 Legislature shows that the various Executive and Judicial agencies have work programmed \$188 million of anticipated federal receipts, or an increase of \$45 million (31.5%). Some of these increases are attributable to federal aid increases in the Highway Department, increased federal program participation such as in Vocational Rehabilitation, or increased receipts of federal revenues such as mineral land leasing revenues and revenue sharing receipts in the state's Distributive School Fund. Other increases, however, have been generated by increased federal grants, and in a number of instances these federal grants potentially have a substantial future impact on the expenditure of state funds. For instance, in 1977 the Legislature appropriated \$584,820 for 1977-78 and \$623,265 in 1978-79 for the support of the Rural Clinics Program. At the same time, the 1977 Legislature authorized the Rural Clinics Program to receive and expend non-state funds totaling \$148,056 in 1977-78 and \$149,056 in 1978-79. Combining the two figures shows that the Legislature approved a total budget for Rural Clinics of \$732,876 in 1977-78 and \$772,321 in 1978-79, with a staff of 33. In December 1977, the administration accepted a federal operations grant, offered under the provisions of the Community Mental Health Center Act, which substantially increased the Rural Clinics Program in terms of services offered and state responsibility. The federal grant required that Rural Clinics increase their services from three basic services to twelve services, increased the number of employees to 94 full-time equivalent staff positions, and provided funding for this increased program on a declining basis. During the first year of the grant, the Federal Government participated 80% in the costs of the expanded Rural Clinics Program, with the state contributing the remaining 20%. During the second year of the grant, the Federal Government funds 65% of the expanded program, while the state contributes 35%. In following years, the Federal Government funds 50%, 35%, 30%, 25%, and 25% of the expanded program. As the federal participation decreases, state participation automatically increases, with the state having no option of reducing services offered unless acceptance of the federal grant is no longer desired. By fiscal year 1985-86, the Federal Government will have completely withdrawn from financial participation in the expanded program and the entire program, amounting to as much as \$4.6 million after adjustments for inflation, becomes a state responsibility. The Legislative Commission's interim study on the Administration of Mental Hygiene and Mental Retardation Programs in Nevada clearly detailed this

administrative commitment of state funds and questioned whether the program level mandated for Rural Clinics by the Federal Government under the terms of the federal grant was justified.

Other examples of administrative acceptance of federal grants have been heard almost daily in the Ways and Means Committee; such as, the Health Division's acceptance of a \$2 million 5-year grant for Improved Pregnancy Outcomes, when the State Health Officer indicated that there was not a critical need for the program; or the administration's acceptance of a \$58,000 annual federal grant to establish a new agency-- State Occupational Information Coordinating Committee--to assist state vocational and CETA agencies in data gathering. S.B. 255 would provide legislative oversight, through the Interim Finance Committee, of this federal grant process and would make the acceptance of federal programs and the commitment of future state funds a legislative, and not an executive decision.

Also, Section 10 of S.B. 255 would amend NRS 353.245 to require that all agencies that are applying for grants from the Federal Government must file a copy of their request not only with the Budget Division as is currently required but also with the Fiscal Analysis Division of the Legislative Counsel Bureau. This is not a control feature but simply a provision to provide advance notice to the Legislature of future federal grants.

4. Section 9 of S.B. 255 would require that approval be gained, subject to the 45-day automatic approval unless there is disapproval feature, through the Interim Finance Committee for all changes in agency spending plans. Currently, agencies are able to revise their work programs--that is, transfer funds from various budget categories; such as, salaries, out-of-state travel, in-state travel, operating, and equipment to any other category--with the approval of the Governor or, if delegated, the Budget Director. Section 9 would require that approval for these transfers must also be gained from the Interim Finance Committee. An example of such a revision which was questioned by the Ways and Means Committee is a July 1978 work program revision which reestablished a professional position in the Department of Education's CETA budget. This position was expressly eliminated by the 1977 Legislature during its review of the budgets of the Department of Education, yet the administration reestablished the position at the end of 1977-78 through administrative action. In testimony before the Ways and Means Committee, the President of the State Board of Education indicated

Assemblyman Don Mello
February 26, 1979
Page 7

that this position was reestablished not at the Department's urging, but at the urging of the Governor's Office. S.B. 255 would require that such revisions be subject to the review of the Interim Finance Committee prior to their approval. Also, as previously mentioned, Section 5 of S.B. 255 requires that agency augmentations, or increases, be subject to these revised approval features.

I realize that this memorandum is quite lengthy; however, I felt that it was best to provide both a comprehensive explanation of the control provisions of S.B. 255 and a detailing of the type of budgetary activity which would become subject to legislative oversight through passage and approval of S.B. 255.

WAB:ym

