

MEMBERS PRESENT: Chairman Dini
Vice-Chairman Schofield
Mr. Craddock
Mr. DuBois
Mr. Jeffrey
Mr. May
Mr. Nicholas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger

GUESTS PRESENT: Mr. William Engel, Military Department
Mr. Chuck King, Central Telephone
Mr. Will Deiss, Nevada Constables
Mr. Paul Powell, Nevada Constables
Mr. John H. Carr, Health Division
Mr. G. P. Etcheverry, New League of Cities
Mr. Chuck Neely, Clark County School District

Vice Chairman Schofield called the meeting to order at 8:05 A.M.

Mr. Schofield indicated that the first bill to be considered by the committee would be AB 113, which adds deputy constables to list of peace officers.

The first person to testify was Mr. Will Deiss, Vice President of the Nevada Constables and the past Constable for the City of Las Vegas. AB 113 addressed itself to adding deputy constables to the list of peace officer's status under the law. Presently the law is silent. The elected constable is spelled out as being a peace officer but yet his deputies are not. In the bill, line 5 spells out a sheriff and their deputies; on line 10, the inspector or field agents of motor vehicle division of the Department of Motor Vehicles. On line 13, members and all inspectors employed by the public service commission, line 23, the State Fire Marshall's, his assistant's and deputies, etc. Those people are covered in classifications in categories under the existing law and, therefore, protected. To cite a point, on line 3 just before the 1975 legislative session, the bailiff of the Supreme Court was a peace officer under the statutes but the bailiffs of District Justice Courts and Municipal Courts weren't in the law, and at that time, I had the pleasure of bringing those categories before both committees on both sides of the house and it passed out favorably and in the majority. What was so ironic about those classifications at that particular time in 1973, we merged police with the sheriff's department in the City of Las Vegas and created a Metropolitan Police Department. At that particular time, the Las Vegas Municipal Bailiffs were not a part of the merge and stayed behind to man the courts. In 1974, they carried out something like 12,000 subpoenas and arrested over 6,000 people and weren't spelled out in the statutes. You have these oversights

within categories. In addressing the constables you must remember that the constable is an elected person in the county in the township where he resides. A lot of the cow counties and smaller areas have one elected constable who serves at the discretion of the justice court and he then is working in a dual role where at times he is serving civil process but he is acting as a bailiff where he could be moving prisoners to and from the jail or even booking someone predicated on a judge's decision after he heard a case. In the area of Reno or Washoe county and Las Vegas where a great share of the work is done, the elected constable is more or less an administrator. He works a desk, he assigns the work to a deputy constable who does the work. A lot of times they run into compounded situations. They are serving civil process that eventually turns into a criminal process. During the last fiscal year in Las Vegas, the fourteen field deputies served in excess 4,500 evictions and served an additional 15,000 subpoenas, summonses, hearings for small claims, they seized about 150 cars and a like amount of cash registers. They generated revenue in excess of one-half million dollars. I think it is a risky situation, the liability, if the deputy constable actually carries out arrest if he wasn't a peace officer under the statutes. Those are some of the things we face. There is no fiscal impact on the bill, they are private contractors that work for the constable and not the entity. The only thing the entity is required to carry on them is NIC insurance. They buy their own insurance for their vehicles, and buy their own gasoline. They don't come under early retirement nor do they come under any type of retirement. They pay their own social security and their own income taxes. I respectfully ask this committee to include deputy constables as peace officers under the statutes and give them the protection that they really need.

Mr. Mello: Are these Deputy Constables normally well trained individuals?

Mr. Deiss: When I was constable in our jurisdiction most of them had a police background. They were required to go over to the range once every month, while the Metro Police go over there every other month. They were also required to go three times a year to college related courses at the University of Nevada, Las Vegas. Under my command, they did about 45 hours of class room work for three college credits. I don't know what they do in the other counties.

Mr. Schofield: What type of impact would it have as listing them as peace officers? Would it conflict at all with the early retirement in any way?

Mr. Deiss: None, the difference there is police and peace, this would just spell out the right for powers of arrest where most of our police in early retirement are under the realm of city or county government with a contribution either split 50-50 or the entities picking up the full retirement. They don't take off vacation, they are a private contractor.

Mr. Mello: At the present time do the deputies carry side arms?

Mr. Deiss: Ours had the option of carrying them or not. Most of them carried them because they were ex-police officers, if not, they were trained and qualified with a weapon before they went out on the street because of the liability.

Mr. Nicholas: What is the average turnover of these contracted employees?

Mr. Deiss: While I was the constable I had fourteen field deputies, I terminated two out of fourteen. Out of the office crew I had four girls of which none were ever terminated. I think the turnover was minute. The turnover in most counties, you are going to only run into this in Las Vegas, Henderson and North Las Vegas, the rest of the constables are elected people and they serve their term.

Mr. Redelsperger: What are the benefits going to be in performing the duties of a peace officer now? What are the legal implications and what will the benefits be if they are now classified as peace officers?

Mr. Deiss: They are doing the civil end of it by adding them to this law and spelling out that they are constables under the statutes, the deputy constable is a peace officer. We were worried because of our liability, do these people have the power to carry out an arrest when they only delve in the city matters.

Mr. Redelsperger: Have you ever had any suits? Has anyone ever sued one of your deputies?

Mr. Deiss: Not our staff. We are concerned about the liability.

Mr. DuBois: Are these people uniformed?

Mr. Deiss: Mine weren't. The present constable in the Las Vegas Township, none of the fourteen were in uniform. In North Las Vegas they have uniforms. In Henderson they have uniforms, in Boulder City they don't have uniforms. It varies depending on the locations and the policies established by local government because if they did have uniforms it would be up to the private contractor, because the entity wouldn't buy them, because there is a cost factor.

Mr. DuBois: Do they have badges for identification?

Mr. Deiss: They have badges and I.D. All our people are required to carry an I.D. card on their collar plus the badge so that when they are doing the evictions or a lot of times we had situations like a hostage type situation where the individual was not going to move out of that building and he had to be forcibly removed where we called the police. When the police came on the scene they knew who you were by your cars and your identification.

Mr. Mello: You indicated earlier in your testimony that the constables in the Clark County are Administrators.

Mr. Deiss: That is correct. John Hart, up here in Reno serves in a dual role. At times he might be in the office and sometimes he might be in the field. Then you get people sick or hurt and he might not go in the field for two or three days but then he might be in there for a week straight.

Mr. Mello: What type of salary is paid to these deputy constables?

Mr. Deiss: It is predicated on the rate of service. In order words when we collect the paper from a moving party by statute, say the average paper was \$8.00, he gets that \$8.00. In Clark county it was divided 50-50 to make up the difference. What they did down there was to put the constable on a permanent salary instead of him getting a portion of the paper he was on a straight salary and all the fees then were divided between the county and the rest went to the deputies, to maintain the office, rent, printing and etc.

Mr. Mello: It is my understanding that most deputies, because the pay is so low, are usually retired people.

Mr. Deiss: Retired, part-time.

Mr. Paul Powell, representing Nevada Constables testified next. I think I can answer Mr. Mello's question about the deputies being well trained. I have here a newspaper clipping from Las Vegas showing four of my deputies out of the five who graduated from the North Las Vegas Reserve Police Academy. They all had more than passing scores, on the proficiency with their weapons, they outshot the North Las Vegas Police Department. I had one master and four experts out of five men. They received intensive training in arrest, search and seizure, narcotics, the things a policeman would get, they got. We find ourselves in the same situation as Will did, that we have some part timers, we have two or three that are full time and to answer your questions, we have myself and two other men that have seven years service in that one department. As for their training, we too have a college seminar program. We have in-house training. We are in the process of formulating our own college training seminars. I have one instance where other departments considered us deputies, they needed help.

Mr. DuBois: Does Metro Police have similar requirements?

Mr. Deiss: They have their own police academy. They have their own training system. We get the college credit through the university.

Mr. DuBois: In an emergency situation, are these people ever brought in to assist the police department.

Mr. Powell: Definitely. One recent incident was myself and seven of my men protected against looters at the back end of the Hilton.

Mr. Deiss: Our entire staff was at the MGM fire.

This concludes the testimony on AB 113.

Mr. Schofield indicated that the next bill to be considered by the committee would be AB 161.

The first testifier for AB 161 was William Engel, the Adjutant General for the state of Nevada. I am here to testify on the provisions of AB 161. As being responsible for and acting as a spokesman for the Nevada National Guard and in this case, the other reserve components, for the Armed Forces, I feel that Paragraph I of AB 161 is needed to support the reserve and National Guard recruiting and retention programs. I am very much in favor of it. However, Paragraph 2, as the proposed legislation now stands, would basically do away with any advantage Paragraph I might provide in addition to creating a major impact on our ability to recruit and retain guardsman. I can't really address the numbers involved on the Army Reserve or Naval Reserve or Marine Reserve Programs. I am not that familiar with how many are involved, but I do have the numbers as far as the Guard is concerned. I think this would have a significant effect on our ability to maintain strength and our ability to mobilize either for state or federal mission. Currently, we have approximately 260 people in the Nevada National Guard, both Air and Army, that are employees either part or full time of the state, city or county governments. That amounts to approximately 19% of our strength. However, as far as the impact is concerned in Government itself there are approximately 19,000 state, county and city employees. Since we only account for 260 out of that 19,000, it is somewhat over one tenth of 1 percent. We don't feel that the current support that the state, county and city provide members of the Guard through permitting them to go on military leave and still receive their guard pay is sufficient. It is a substantial financial impact.

Mr. Schofield: There is an amendment to delete lines 13 thru 17.

Mr. Engel: I would certainly support that. Currently, our strength status in the state and I am sure the reserves are in the same position could stand considerable improvement, although we are gradually working toward achievement of authorized strength, and anything that can be provided in the way of encouragement on the part of Government certainly is a plus for us. We are also going to local employers and asking them to support people who work for them who belong to the guard, we feel any example set by the state or local governments would impact on our ability to get local employers to allow their people to belong to the guard.

Mr. Dini: Basically, it takes it out of Chapter 284 and puts it all under Chapter 281. It takes it out of two chapters and puts it into one.

Mr. Engel: Basically, that's all that Paragraph I does because currently the law does provide that people who work for Government be provided military leave.

Mr. Mello: What effect does it have by striking lines 13 thru 17?

Mr. Engel: This would eliminate that provision that is currently built into the proposed legislation where the member of the guard would only receive that amount of his salary as a state, county or city employee that exceeds what he gets from the National Guard or reserve. If an individual, an average enlisted man in the National Guard, receives about \$36.00 a day, during his 10 days of annual training, and this is basically what would be affected by Paragraph 2, he would receive \$360.00. That amount of money would then be deducted from his salary as an employee of one of the governmental entities. We feel that one of the advantages that the current law provides as an incentive for membership in the Guard is the fact that the money he does receive during annual training is in addition to his salary.

The next person to testify was Assemblyman Robinson, who requested the bill. NRS 284.370 which is in the Line 18 that is repealed, is the one that allows state classified employees who are reservists of all of the different branches of the service and the National Guard to take up the 15 days leave with pay and the 15 days does not count against their annual leave. 412.078 covers public employees, counties and cities and agencies but there is a blank spot in it and it only allowed them to be in the National Guard with the same benefits that were over here on state employees. The bill as I received it did exactly the opposite of what we were trying to do. Rather than go and have a new bill done, we put it in and at the same time requested an amendment which strikes out those lines and should strike out the repealers in 818 with Section I or the first paragraph

Mr. Neely: The intent of the personnel division was to cover those people who are required to go for two weeks at that time. I think the point that we are trying to make is that they must serve the part that they are ordered, but then not give them this release time to be released from work for an additional time.

This concludes the testimony on AB 161.

Mr. Schofield stated that the committee would now discuss AB 113.

Mr. Mello: When you look at this bill you will see so many people now classified as peace officers and as soon as you do that you should all be aware that sooner or later they will be up here trying to get under the early retirement. With the deputies, it is a little more difficult because they are under contracting services. but they can change that. I am not opposed to the bill, I just want you to be aware of that.

Mr. Prengaman: I am still not convinced in my own mind when I listen to their testimony of the necessity for it. As I listened to Mr. Deiss it seemed like, and I don't know much about constables and deputies, but the first thing they are doing is a background check, credit check, before they will go out. Most of these people are carrying guns already. Isn't that a situation where you are almost looking for a confrontation. It has gone beyond the civil process that they are carrying out. We are passing the law predicated on something that might happen, they might get themselves in trouble one day with liability risks. True training is another way to get at that.

Mr. Nicholas: I think that it may be a short cut to the peace officer status depending on the policies of the people who are doing the hiring. Since there are apparently a number of part time employees involved here, I don't think that they have to have the guarantees of training that we expect out of our normal police officers. I have some reservations from that direction, in addition to the directions that you have, Mr. Mello. I really question with 25 incidents whether or not making them all peace officers might not compound the number of incidents. I think that the reserve that they normally have to use now maybe a pretty good thing. If it were 2,500 out of 20,000, I would think differently of it.

Mr. Redelsperger: I think we should get a legal opinion if they are liable to arrest someone under their present status.

Mr. Craddock: Another question here is the citizen arrest status. I think we all have the authority to arrest people.

Mr. DuBois: The only negative I can see is the possibility that these peace officers would attempt to get early retirement. I can see a lot of advantages in a sense of augmenting the peace force in an emergency situation and giving these people the proper credentials.

from lines 1 down thru 12 should cover all the people that were interested in both the other two statutes. We subscribe to the idea that we want to encourage public employees to belong to the guard and reserve and we knowingly allow them to get a double pay, their reservist pay and their state, city, county or school district pay. I think it should be fair and across the board for all public employees. What we were trying to do in the bill was to provide city, county and teachers the same privilege the National Guardsmen have under 412.078. During the last session of the Legislature a bill by Senator Neal was to repeal that revision. I think that is how this one subsection 2 might have slipped into this bill. I personally believe that we should encourage the reservists. I overheard the previous witness saying that the fiscal impact is not that great. A small percent of one percent of our public employees would be involved in it. I would hope that the committee would amend and do pass the bill.

Speaking next was Mr. G. P. Etcheverry, Executive Director of the Nevada League of Cities. He is here in support of AB 161. There was a meeting held in the League Office and those present were members of the City of Sparks, City of Reno, people from North Las Vegas, Las Vegas was not represented, Douglas county was, and others and there was no objection to AB 161.

Mr. Chuck Neely, representing the Clark County School District, was the next speaker. In regards to AB 161, we are in favor of the bill, however, we would ask that there would be an insertion in Line 9 to remove "under orders" and possibly insert "when involuntarily ordered."

Mr. Nicholas: That further change has basically been approved by our other witnesses. I would like on this particular single point to have the comments of Mr. Engel, if that would be possible.

Mr. Engel: I have no objection to the amendment as proposed just now.

Mr. Jeffrey: Do all the reserves order their people to serve two weeks active duty a year?

Mr. Engel: They do. Anything they volunteer for would have to be in addition too rather than in replacement or lieu of. It would not exceed the fifteen days as intended. If the wording is a problem, I would certainly not want to see the law changed as far as providing for military leave. Our people have the same ability in the guard although normally they go as a unit. Those people whose work program might conflict are provided with enough flexibility normally to permit them to go when their work would permit. I think it is the same on both the Guard and Reserve programs.

Mr. Frank Daykin was summoned for Legal Counsel.

Next was discussion on AB 161.

Mr. Schofield: On AB 161 the amendment that we talked about would delete Lines 13 thru 17 and the second amendment would be Line 9.

Mr. Dini moved for an Amend & Do Pass on AB 161 with the amendment of Mr. Robinson.

Mr. Redelsperger seconded.

Mr. Nicholas stated that we are not talking about the second amendment now, are we.

Mr. Schofield stated that it would amend Section 1, Page 1, Line 3, and then Section 1, Page 1, by deleting Lines 13 through 17.

Motion carried.

Mr. Schofield: We have Mr. Daykin here to give us a legal opinion on AB 113.

Mr. Daykin: The questions that Mr. Mello put to me. One, whether they were authorized to carry side arms. There isn't any specific authority of law but there is no specific provision of law which restrains anybody from carrying a side arm as long as it is not concealed. Therefore, I don't see a problem there. The benefit they would gain from being peace officers is that a peace officer can make arrests under certain circumstances more broadly than a private citizen may. Of course, a peace officer may be sued in tort for things he does that are wrong but there are limitations upon that right of suit. For example, he is immune if he acts with due care executing a statute of regulations whether or not it is subsequently held to be invalid, and he is immune for an act based on the exercise or performance or failure to exercise or perform a discretionary function or duty.

Mr. Craddock: What is the difference between the power of a peace officer and a citizen's arrest?

Mr. Daykin: A private person may arrest another for a public offense committed or attempted in his presence when the person arrested has committed a felony though not in his presence and when a felony has been committed and he has reasonable ground for believing the person arrested committed it. The officer can go somewhat farther, he can arrest for all of those reasons and on a charge made on a reasonable cause of the commission of a felony or gross misdemeanor by the party arrested. For instance, if you are the peace officer and let us say John runs up to you and says that I have committed a gross misdemeanor, you can arrest me although there hasn't been a formal

warrant. When a warrant has, in fact, been issued and he believes that the person he is arresting is the culprit, and finally added at the last session when a peace officer has probable cause to believe that the person to be arrested has committed a battery on his spouse and he looks at his spouse and she looks back. Which you and I as private citizens on any of those three could not do.

Mr. Mello: Are the deputies then presently considered as private citizens.

Mr. Daykin: Actually, Section 169.125 merely says that a peace officer includes and it doesn't purport to limit to these things but because the list is so long, it is now 26 items and it may get longer. There is a tendency to think well if they said all those they can't mean anybody else and so we wind up with the question we said sheriffs of counties and so forth and their deputies then when we only say constables the question arises.

Mr. Mello: The deputy constable is under contracting services by the constable himself.

Mr. Daykin: The constable hires him.

Mr. Mello: If he is under contract, so if there was a law suit involved would they be suing the constable or would they be suing the county?

Mr. Daykin: The real test there I think would be this. If it is a contract of employment you are employed under contract by the Southern Pacific Transportation, if you are negligent they could sue you and they could sue the Southern Pacific as your employer. On the other hand, if you were engaged as a truly independent contractor in building three miles of road bed for the Southern Pacific so that the Southern Pacific didn't direct you as to what to do and only held you responsible for three miles of road bed suitably balustered and so forth. Only you could be sued for your negligence and not the Southern Pacific. I find it hard to believe that a constable really has independent contractors running around as his deputies. I think in spite of the word contract that they are his employees, that he tells them not merely what he wants accomplished but what to do and how to do it. In that case, they would be suing the constable and then, of course, they usually try to bring suit against the township, or the county or state, because they think it has a deeper pocket.

Mr. Redelsperger: Can you also sue the deputy?

Mr. Daykin: Yes, you can always sue the fellow who does the wrong, but the reason you usually go after the boss or employer is you think the fellow who does the wrong may be judgement proof.

Mr. May: In going thru the statutes, constables are charged with many miscellaneous duties.

Mr. Craddock: In the real effect of this thing then if we give the deputy peace officers status the one that is avoiding the problem is actually the constable.

Mr. Daykin: Yes, I think so but the deputy is to a degree also because the deputy too once you make him a peace officer may be exercising his discretion if let us say he is removing diseased poultry and his judgment of what is diseased and the shop owners do not agree.

Mr. Mello: Under contractual services such as the deputy and constable, could he in his contract have deducted from his compensation a contribution to PERS.

Mr. Daykin: If it is a truly independent contract, no, if it is merely a contract of employment, you are the constable you hire me to work as your deputy for \$5.00 for every hour I actually spend on the job not fixing how many hours because you don't know. Then I think I could be treated as a part time employee and have contributions deducted and so on. They would not, however, acquire status for early retirement. Solely by virtue of this bill. That would arise only if Chapter 286 were amended.

Mr. Nicholas moved for a DO PASS on AB 131. Mr. DuBois seconded the motion. For the record Mr. Prengaman voted no. The motion carried.

Mr. Dini stated that he had some additional business. The State Treasurer has some bills being drafted he wants introduced. He wanted a committee approval to pick up Bill Drafting requests numbers 859*, 860**, 861+, 862**, 863^, 864^^ and 865 as requested by the State Treasurer.

It was so moved and seconded. Motion carried.

City of Sparks has a community redevelopment law and these three bills amend the present law. These bills do not have numbers on them.

It was so moved and seconded. Motion carried.

Mr. Dini stated that there was another bill that he was personally interested in that he wasn't satisfied with the Deferred Compensation Committee that was established in the last session for the state employee. The way they dished out the deferred comp. I would like to have a bill repealing that commission. I would like to have a

- * AB 393
- ** AB 389
- + AB 401
- + AB 394
- ^ AB 399
- ^^ AB 415

hearing in front of our committee. It is important for us to find out how they determine the basis they use to issue the contract for deferred compensation.

It was moved and seconded to order a bill* dealing with the deferred compensation of state employees. Motion carried.

Mr. Mello moved that the chairman be allowed at his discretion after the 40th day to bring back a bill to the committee. It was seconded by Mr. Schofield. Motion carried.

There being no further business to come before the meeting, the meeting adjourned at 9:40 A.M.

Respectfully submitted,

Robbie Alldis
Assembly Attache

*AB 469

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

614

GUEST LIST

Date Feb. 26, 1981

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<u>PLEASE PRINT YOUR NAME</u>	<u>PLEASE PRINT REPRESENTING:</u>		<u>I WISH TO SPEAK</u>		
			<u>FOR</u>	<u>AGAINST</u>	<u>BILL NO.</u>
William Engel	Military Dept	on			AB 151
CHUCK KING	CEN TEL				
Willie D. Ciss	Nevada Contractors Assn	on			AB 113
Paul C. Powell	" "	on			AB 113
John H. Carr (John H.)	Health Division	on			AB 161

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