

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON GOVERNMENT AFFAIRS

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 22, 1981

The Senate Committee on Government Affairs was called to order by Vice Chairman Jean Ford, at 2:03 p.m., Wednesday, April 22, 1981, in Room 243 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator James Gibson, Chairman
Senator Jean Ford, Vice Chairman
Senator Keith Ashworth
Senator Eugene Echols
Senator Virgil Getto
Senator James Kosinski
Senator Sue Wagner

GUEST LEGISLATORS:

Assemblyman Steve Coulter
Assemblyman Joe Dini
Assemblyman Robert Barengo
Assemblyman Paul Prengaman

STAFF MEMBER PRESENT:

Sheba L. Frost, Acting Secretary

Since a majority of the public present wished to speak on Assembly Bill No. 278 (last item on the agenda), Vice Chairman Ford opened the hearing with this bill.

ASSEMBLY BILL NO. 278 -- Removed 95-percent limit upon salaries of certain public officers and employees.

Mr. Bill Lynch, Washoe County Employees Association, said there were approximately 25 Washoe County employees

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in attendance who were appearing to express their support of A.B. No. 278. The Association represents approximately 900 non-uniform, supervisory and non-supervisory employees in contract negotiations with Washoe County. Mr. Lynch said that the Association is particularly interested in the passage of Section 4 of the bill, but would prefer that Section 6 be deleted. Section 6 would require that on July 1, 1983, the current provisions of chapter 245 of the Nevada Revised Statutes on this issue would go back into effect. Mr. Lynch said the Association could possibly negotiate for salaries which would be beyond the 95 percent compaction requirement in 1983.

Mr. Ron Fox, also representing the Washoe County Employees Association, pointed out that A.B. No. 278 only applies to county employees working for elected officials. Employees currently working for appointed officials have not been impacted by the current provisions of chapter 245 of the NRS, even though the employees may be performing the same job. This is the reason why A.B. No. 278 was requested. Mr. Fox said the longest contract which has been negotiated with the county has been for two years.

Mr. I. Howard Reynolds, Washoe County Personnel Director, submitted a written testimony in support of A.B. No. 278. (See Exhibit C.) The testimony illustrated the "demoralizing and discriminatory" impact of the current law on Washoe County officers and employees.

Mr. John Hawkins, Nevada State School Boards Association, said the association he represents had also requested a bill similar to A.B. No. 278 and do support this proposed legislation.

Mr. Chuck Neely, Clark County School District, and Mr. Dick Wright, Washoe County School District, spoke next in support of A.B. No. 278. The gentlemen commented that the school districts' superintendents and cabinet officials are impacted by the current 95 percent compaction law.

Vice Chairman Ford asked the audience to indicate by a show of hands how many individuals support A.B. No. 278 but do not wish to testify. The chairman asked that the record reflect that numerous hands were raised.

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Also, many of the speakers and members of the audience supported deleting Section 6 of A.B. No. 278 in order that the mandate of the bill would continue beyond July 1, 1983.

ASSEMBLY JOINT RESOLUTION NO. 2 -- "Proposes to amend Nevada constitution to require open and public legislative committee meetings and abolish executive sessions of senate."

Assemblyman Steve Coulter, sponsor of A.J.R. No. 2, said he proposed the resolution because he felt all segments of government should be subject to the open meeting law. The legislature is currently constitutionally exempt from this mandate; however, both houses have imposed this ruling upon themselves by legislative rule. Only the state senate is still exempt for "executive sessions."

Vice Chairman Ford commented in the past there has been diversity among the legislators on the subject of the open meeting law, and she questioned if Assemblyman Coulter would be adverse to deleting line 5 of the resolution which would still allow the state senate to hold closed "executive sessions" by choice. The assemblyman replied he would prefer that the resolution remain intact; however, in order for it to be accepted as a constitutional mandate he would agree this deletion may be necessary for passage support.

Ms. Esther Nicholson, representing the League of Women Voters, spoke in support of A.J.R. No. 2. Ms. Nicholson said that although each house of the legislature has adopted open meeting rules each session, only a constitutional amendment will guarantee the right.

Senator Echols commented that, in his opinion, there may be times when it is necessary for the legislature to conduct closed personnel hearings in order to protect the integrity of the individual(s) involved.

Mr. Patrick O'Driscoll, representing Sigma Delta Chi (Society of Professional Journalists), asked the committee to endorse A.J.R. No. 2. Mr. O'Driscoll stated, "As working

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journalists and as the public's unofficial observers and reporters of their government's actions; we doubt if any reason remains, indeed if any reason ever existed, for the closed meeting exemption for the Senate."

Mr. Gerald Prindiville, representing Common Cause and the American Association of Retired Persons and the Nevada Retired Teachers Association, asked the committee to support A.J.R. No. 2. Mr. Prindiville related a statement by Nevada's Attorney General which stated, "Every public body in Nevada has both a legal and moral responsibility to faithfully observe the Nevada Open Meeting Law, and to take reasonable steps to insure public access to its deliberations and actions."

Ms. Barbara Henry, managing editor of the Nevada State Journal, spoke in support of A.J.R. No. 2. Ms. Henry said that the "loophole" in the law allowing the senate to conduct executive sessions fosters distrust in government. Ms. Henry said the public has the right to attend any meetings where public issues are being discussed by the people who were elected to represent the public.

Mr. Arthur H. Cruickshank, Common Cause, spoke in support of A.J.R. No. 2. Mr. Cruickshank said the example of the legislature should be synonymous with the laws it requires of other governmental entities.

ASSEMBLY BILL NO. 101 -- "Requires public bodies to receive public comment at meetings."

Ms. Esther Nicholson, representing the League of Women Voters, spoke in support of A.B. No. 101. She stated that the League had supported the original printing of A.B. No. 101 (the bill being heard this date is the first reprint), a subsection of which originally stated: "Before a public body makes a decision on any matter over which it has supervision, control, jurisdiction or advisory power, the presiding officer of the body shall request comments from any member of the general public who are attending the meeting." Ms. Nicholson said the League questioned why this subsection was deleted, and felt it would still be beneficial to the proposed measure.

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Senator Wagner questioned if it was necessary in Section 1, ss. 1 of the bill, to state: "...the presiding officer shall allow any person to make any pertinent statement on any matter listed on the agenda at its appropriate time...." The senator felt that this would limit individuals from speaking on an issue simply because they were not in attendance at the exact time the issue was scheduled on the agenda. Senator Wagner said the original bill did not have this restrictive language.

Senator Keith Ashworth asked why in subsection 3, the bill limited a public body to the adoption of "Robert's Rules of Order, Newly Revised", when many public bodies use Mason's Manual.

Assemblyman Paul Prengaman, sponsor of the original A.B. No. 101, asked if he could delay his testimony on this measure until later during the meeting as he was involved in another meeting with the Assembly Committee on Commerce. Vice Chairman Ford consented to this request.

Mr. Dick Wright, Washoe County School District, concurred with Senator Wagner's concern about line 6 of subsection 1, on the "appropriate time." And, in regard to Senator Keith Ashworth's question about the type of rules required, Mr. Wright said the district had suggested an amendment which stated, beginning on line 11: "Each public body shall adopt and publish rules for the conduct of all of its meetings to ensure orderly conduct." Then, the remainder of subsection 3 specifically referencing "Robert's Rules" would be deleted.

Senator Kosinski commented to Mr. Wright that he had an opinion from the legislature's legal counsel which indicates that the school district's meetings considering the naming of schools are illegally closed meetings. Mr. Wright said the "official act" did not take place in a closed meeting. Senator Kosinski said the "deliberation" took place in a closed meeting.

Mr. Gerald Prindiville, Common Cause, spoke in support of A.B. No. 101 because he said that public input is more conducive to more intelligent decisions and better balance in the public meeting process.

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Ms. Phyllis Otten, representing the Nevada state health division, expressed concern over line 6 of the bill which states: "...including any matter continued from a previous meeting." Ms. Otten spoke in regard to Board of Health meetings and said does this language mean that after a public hearing has been held, can individuals still speak on the issue during a future meeting when only administrative action is planned. The committee concurred with Ms. Otten that the intent of the language should be clarified in order that it is understood that "any matter" can be continued if the public hearing is to be continued at a future date. Vice Chairman Ford said the "closing" of the testimony is not addressed in this subsection.

Mr. Chuck Neely, Clark County School District, said that the district feels that A.B. No. 101 should either receive "no further consideration", or lines 5-6 stating: "...at its appropriate time, including any matter continued from a previous meeting," should be deleted. Mr. Neely concurred with Mr. Wright's earlier suggestion on the adoption of rules. Mr. Neely described the process used by the district to conduct its meetings. Vice Chairman Ford asked how the presiding officer handles requests by individuals to testify on matters which have been heard earlier during the meeting. Mr. Neely said the current rule requires that any person requesting to testify must fill out a card stating which items on the agenda they wish to address. The card must be submitted by 5:00 p.m. the day of the meeting, and the card submittal may be done by telephone. Mr. Neely said if the individual is not present at the time the agenda item is being heard, the card is held and the individual is allowed to address the matter when he does arrive.

Senator Wagner asked if an individual can speak at the district meetings if they have not submitted a card. Mr. Neely said this decision is a discretion of the district board, and the majority of the time the individual is allowed to speak.

Senator Keith Ashworth stated that the board does need to have the latitude to establish rules which limit or regulate testimony or the meeting can become disorderly or unreasonably lengthy.

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Mr. Dick Wright said that the process described by Mr. Neely is not used in Washoe County. Anyone who is in attendance at a Washoe County School District Board meeting may testify on the agenda items.

Mr. G.P. Etcheverry, Nevada League of Cities, supports the Open Meeting Law, but does not understand the necessity of A.B. No. 101. Mr. Etcheverry concurred with earlier witnesses that specific types of rules should not be mandated, (lines 12-13).

Mr. Joe Cathcart, City of North Las Vegas, also agreed that although parliamentary rules of procedure are necessary, specific types of rules should not be mandated, but should be the option of that public body.

Mr. Don Klasic, representing the office of the Attorney General, made comments on A.B. No. 101 in behalf of William Isaeff of the Attorney General's office. Mr. Isaeff commented on lines 8-10 that reference should be made to the number of persons desiring to speak. In regard to lines 11-14, Mr. Isaeff asked if specifying the use of "Robert's Rules of Order" is necessary. And, concerning lines 18-19, Mr. Isaeff stated: "Many agencies schedule hearings on contested cases along with regular business. The reference to "no other business" is too restrictive. The public comment exception should apply only to that part of the meeting concerned with the contested case, and comment be allowed on the rest of the agenda." Mr. Isaeff suggests that line 18 read: "(b) The hearing of a contested case."

Mr. Bob Sullivan, representing the Carson River Basin Council of Governments, said that the counties he represents follow their stated meeting agendas in a precise order. Mr. Sullivan felt it would result in confusion if individuals were allowed to speak on issues out of order of the published agenda.

ASSEMBLY BILL NO. 146 -- "Provides for legislative veto of administrative regulations."

Mr. John E. Kenney, Jr., representing the Southern Nevada Homebuilders Association, distributed a handout which illustrated his problem with the legislation, and his proposed solutions. (See Exhibit D.) Mr. Kenney said the

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precedent for his suggestion was the 1979 Legislative Commission's Interim Subcommittee on the Review of Federal Regulations. Mr. Kenney said to Chairman Gibson that he was suggesting this amendment in lieu of the current legislative commission procedure.

Mr. Larry D. Struve, chief deputy Attorney General, submitted written testimony on A.B. No. 146. (See Exhibit E.) The exhibit cites case law which suggests that the decision of whether or not to promulgate rules and regulations under a statute empowering an executive agency to do this, is a function of the executive department of government. And, no member of another branch of government may perform an executive department function per the express language of Article 3, Section 1 of the Nevada Constitution.

Mr. Don Klasic of the Attorney General's office, commented that the current law places the legislative commission in an advisory role. Assembly Bill No. 146, however, would give the legislative commission the authority to suspend any regulations until the legislature is in session. This is an infringement upon the function of the executive branch of government. Mr. Klasic said this legislation might also infringe upon the power of the judiciary branch because it is this branch that reviews regulations to determine if they are in conformance with the law.

Mr. Klasic responded to Senator Ford that there had been a similar measure enacted in the state of Wisconsin. However, after the state's Attorney General determined it to be unconstitutional, Mr. Klasic believed this statute had been repealed.

Mr. Klasic cites the federal Supreme Court case of Buckley v. Valeo, *supra*, (see Exhibit E, page three) as an analogy to this state's issue of separation of powers as outlined in Article 3, Section 1 of the Nevada Constitution.

Ms. Peggy Twedt, representing the League of Women Voters, stated the League opposed the passage of A.B. No. 146. Ms. Twedt said the League concurs with the Attorney General's office that this proposal might be unconstitutional.

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Ms. Twedt questioned how the agency would function if early after the legislative session recesses, the legislative commission rejects their regulations and it would be another two years before the agency could present their appeal to the legislature. Chairman Gibson said it appeared to him that the agency could resubmit regulations to the legislative commission for further review, (referencing Section 3, lines 43-48 of A.B. No. 146).

Ms. Phyllis Otten, of the Nevada state health division, stated to Senator Ford that the legal counsel, Mr. Frank Daykin, of the legislative counsel bureau, considers a "set" of regulations a "single" regulation. Ms. Otten said she also felt that the agency can submit a revised regulation. However, on line 1 of page 3 of A.B. No. 146 it states: "...the commission may postpone the filing of the regulation until a specified date during the next regular session of the legislature." So, it is possible that the entire set of regulations, defined as the regulation, could be delayed until the following legislative session.

Assemblyman Joe Dini, primary sponsor of A.B. No. 146, said that he introduced this legislation because some of the members of the legislature felt with the adoption of NRS 233B, lawmaking was given over to the state agencies. Assemblyman Dini felt the legislature should have a "veto" power over regulations. Assemblyman Dini also commented that the language of lines 1-2 on page 3 of A.B. No. 146 was not intended to prohibit revisions. The assemblyman stated to Senator Kosinski that he would not object to amending the language of lines 45-46 on page 2 of A.B. No. 146 in order that the revisions of the regulations would be presented before a regular session of the legislative commission rather than as stated in the bill: "Upon receipt of the revised regulation, the director shall circulate it among the members of the commission." Assemblyman Dini said he has not requested an opinion from the legal counsel, Mr. Frank Daykin, on the constitutionality of this measure.

Mr. A.L. McNitt, speaking as an individual, commented that as a state administrator it is often difficult to interpret legislative intent when creating regulations. And, these regulations often also have to conform to federal requirements as well.

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ASSEMBLY BILL NO. 371 -- "Requires repeal or modification of administrative regulation if corresponding federal requirement is relaxed or repealed."

Assemblyman Robert Barengo, primary sponsor of A.B. No. 371, stated that the current federal administration intends to repeal many of the required regulations imposed upon the states, and it should be mandated that these regulations are also legally removed from the state laws as well.

Senator Wagner questioned the effectiveness of the language utilized in lines 4-5 of the bill requiring that the state agency "...shall promptly modify or repeal that regulation if the federal requirement is relaxed or removed." The senator also questioned what would occur if the state agency still wished to maintain the regulation even though the federal government had removed its mandate. Assemblyman Barengo said the state agencies have the authority to promulgate regulations, and this can be done with or without the imposition of a federal requirement. Senator Ford suggested that the language be revised to require that the regulation be "evaluated" prior to being modified or repealed.

Senator Kosinski commented that in some instances it may be difficult to determine whether the state regulation was originally promulgated in order to comply with a federal requirement.

ASSEMBLY BILL NO. 101 (See previous discussion in these minutes, pages 4-7.)

Assemblyman Paul Prengaman had requested earlier to be allowed to address this bill when he had completed his work in an Assembly Committee meeting at this same time.

Assemblyman Prengaman said that he introduced this legislation because there is not a specific mandate in chapter 241 of the NRS which guarantees that people will be allowed to speak at public meetings. The assemblyman related an example of meetings in his district where a subject was continued until the following meeting of the body, new information was introduced, but the public was not allowed to address the new information and were told that the public hearing had only been the initial hearing.

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Assemblyman Prengaman said that it was the Washoe County School District who had suggested that "Robert's Rules of Order" be adopted.

The assemblyman remarked to Senator Wagner that the language "appropriate time" had been included in line 6 not to preclude people from speaking, but rather to insure that the chairman of the meeting does not attempt to discuss an agenda time prior to the appointed time and then not allow public input when the actual agenda time arrives. Senator Wagner still felt this language would be more restrictive than useful.

Senator Wagner asked if this bill implies that the public would be allowed to speak during "work sessions" even though this will still be considered an open meeting. The other committee members concurred that this might present a problem as local governments are required to post an agenda even if the meeting is a work session.

ASSEMBLY BILL NO. 189 -- "Establishes municipal bond bank in office of state treasurer."

Mr. Stan Colton, State Treasurer, explained that this second reprint presents two major changes. The first amendment occurs on page 4, line 14, wherein the aggregate principal amount was increased from \$100,000,000 to \$200,000,000. The second amendment is in Section 16, subsection 3, lines 19-20, the language was added: "No state securities may be issued to refund any municipal securities issued before the effective date of this act."

Senator Gibson asked if in light of the recent Supreme Court ruling on pavilions, is there any effect on this legislation in regard to the state's bond capacity. Mr. Colton said this bill would not be affected because it is under the authority of the portion of the constitution which exempts areas for the preservation and conservation of natural resources. Mr. Henry Chanin said this is clarified in Section 10, page 3 of A.B. No. 189.

Senator Ford asked what part of the bill addresses how a local political subdivision becomes involved in this process. Mr. Chanin said that Section 18, page 4, of A.B. No. 189 outlines this authority.

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SENATE JOINT RESOLUTION NO. 33 -- "Proposes constitutional amendment to exclude certain obligations from limitation on state indebtedness."

Mr. Colton said that the words "for any purpose related to natural resources" should be deleted from lines 7-8 of page 2. This also applies to the title of S.J.R. No. 33 wherein it states in indented form: "... for purposes related to natural resources."

Mr. Colton said this resolution would further allow the state to assist local governments by purchasing local municipal general obligation bonds in areas other than natural resources. This would not encumber the state's one percent bonding authority, because it would allow the state to be exempt in these areas when the state's bonding power has been used to purchase the local general obligation bonds.

ASSEMBLY BILL NO. 201 -- "Adds health and care facilities and their supplemental facilities to projects which may be financed by economic development bonds of local government."

Chairman Gibson said that a joint hearing has already been held on A.B. No. 201, and this second hearing is only to review the first reprint.

Mr. Fred Hillerby, Nevada Hospital Association, said that both Assemblyman John Marvel, sponsor of A.B. No. 201, and Mr. Russell McDonald have asked him to represent them on this measure.

Mr. Hillerby said that the amendments are: (1) Section 3 provides a more succinct definition of a "supplemental facility"; and (2) in regard to the amount of interest rate, the word "annual" was deleted, (reference line 10, page 3 of A.B. No. 201). Mr. Hillerby said the intent of the bill is to attempt to reduce the cost of borrowing funds for expansion of capital facilities.

Assemblyman Dini said it was felt to be more purposeful to limit the definition of a "supplemental facility" to "...any other structure or facility directly related to the operation of a health and care facility", rather than place a "laundry list" of types of facilities in the statutes.

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Senator Ford questioned Section 14, subsection 5, page 6, lines 32-39 of A.B. No. 201. Mr. Hillerby said that this subsection exempts health care facilities from the mandates of NRS 268.512 and 268.568 regarding location of a facility offering substantial competition. However, the applicant to construct the health care facility will still have to file a letter of intent with the local health agency and the state department of human resources in order to receive approval for construction. Then an application is filed both with the state and local agency, hearings are held, and recommendations are made by the local interests. The state will base its recommendations on the records of the local hearings. Without this procedure an operating license cannot be obtained, nor will the local government approve bonding.

SENATE BILL NO. 488 -- "Removes limits on rates of interest for government borrowing."

Chairman Gibson said that the amendments for this bill have been prepared as requested by the committee.

Senator Keith Ashworth moved that Senate Bill No. 488 be reported out of committee, be reprinted and then re-referred to the committee.

Senator Getto seconded the motion.

The motion carried. (Senator Wagner was absent for the vote.)

Chairman Gibson clarified that this action would allow the committee to thoroughly review the amendments without taking specific action on the bill at this time.

BILL DRAFT REQUEST 24-1487 -- (referenced as the "Election Bill") (S.B. 597)

Chairman Gibson said if there were no objections, this BDR would be introduced by the committee. No objections were made.

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SENATE BILL NO. 454 -- "Transfers responsibility for preparing ballot questions and explanations for initiated and referred measures."

Senator Ford distributed copies to the committee members of Amendment No. 569 to S.B. No. 454. (See Exhibit F.) Primarily this will amend Section 1, page 1, by inserting chapter 218 of the NRS. Senator Ford commented that she did not understand the necessity of subsection 7 (see page 2 of Amendment No. 569).

In reference to subsection 5 of the amendment, Senator Kosinski asked what will occur if the presiding body does not concur with the explanation. Senator Ford said that the two houses will not be voting on these issues. Chairman Gibson concurred with Senator Kosinski that the two houses (Senate and Assembly) should have the final approval of the conference committee report. The chairman said the majority of the conference committee should not be able to overrule the majority of the legislature. Senator Keith Ashworth said that any objection to the conference committee's decisions does not need to be reviewed by both houses, but only by the house wherein the bill originated. Senator Keith Ashworth said a review does not have to be made on the entire bill or resolution, but only on that portion that is objectionable.

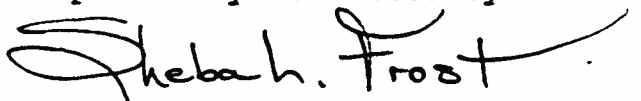
The committee discussed how this process could be implemented. Chairman Gibson said the explanation should be separated from the bill and have the development of the language on the ballot the same under the first committee of reference, subject to the approval of the house.


Senator Ford said she would have the changes for subsections 5 and 7 redrafted.

There being no further business, the meeting adjourned at 6:15 p.m.

Respectfully submitted by:

APPROVED BY:


Sheba L. Frost, Acting Secretary


Senator James I. Gibson, Chairman

DATE: May 11, 1981

SENATE AGENDA

REVISED 4/9/81

COMMITTEE MEETINGS

Committee on Government Affairs, Room 243.

Day Wednesday, Date April 22, Time 2:00 p.m..

A. J. R. No. 2--Proposes to amend Nevada constitution to require open and public legislative committee meetings and abolish executive sessions of senate.

A. B. No. 101--Requires public bodies to receive public comment at meetings.

A. B. No. 146--Provides for legislative veto of administrative regulations.

A. B. No. 371--Requires repeal or modification of administrative regulation if corresponding federal requirement is relaxed or repealed.

A. B. No. 189--Establishes municipal bond bank in office of state treasurer.

S. J. R. No. 33--Proposes constitutional amendment to exclude certain obligations from limitations on state indebtedness.

A. B. No. 201--Adds health and care facilities and their supplemental facilities to projects which may be financed by economic development bonds of local government.

A. B. No. 278--Removes 95-percent limit upon salaries of certain public officers and employees.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON GOVERNMENT AFFAIRS

EXHIBIT B

DATE: April 22, 1981

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PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Bill Lynch	Washoe Co. Employees Assoc.	
Don Fox	" " "	
Don Fox	" " "	
ERDIE MENDILL	✓ — —	
Karen Hampton		
103- MCGERR	Washoe County Employees Assoc.	
Jack Ford	✓ ✓ ✓ —	
Bob Brown	✓ ✓ ✓ ✓	
Alan Johnson	— ✓ ✓ —	—
Barbara Quinn	✓ ✓ ✓ ✓	
John C. Smith	✓ — ✓ —	
John P. Smith	✓ — ✓ —	
Gene Washburn	" "	
J. Warren Fisher	" "	
FRANK CRUCKENBANK	Division of USE	
PAUL GALLES	HOSPITAL FINANCIAL MGMT ASSOC. Reno	
— ADAMS	J.A.S. — EMP. ASSOC.	
Gene P. ...	Gen. Comm. ...	
CHUCK WHELAN	...	
...	Washoe Co. ...	
Paulis Otten	Health Division	
...	PARTY ...	
...	Washoe State ...	

WASHOE COUNTY

"To Protect and To Serve"



PERSONNEL DEPARTMENT
I. Howard Reynolds, Director

1205 MILL STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520
PHONE (702) 785-4141

TESTIMONY BY I. HOWARD REYNOLDS,
PERSONNEL DIRECTOR, WASHOE COUNTY

EXHIBIT C

In Support of AB 278.

Washoe County is strongly in support of the passage of AB 278. NRS 281.123 and NRS 245.047 currently have a demoralizing and discriminatory impact upon the salaries paid to Washoe County officers and employees. The following is a short example of the effect which the existing legislation has upon County employees:

Chapter 288 of the Nevada Revised Statutes enables local government employees to bargain collectively over a variety of subjects, one of which is salaries. Washoe County has bargained with several employee organizations and as a result has entered into collective bargaining Agreements. In one of the Agreements, the County and an Employee Organization have mutually agreed that the two job classifications of Senior Appraiser and Chief Right-of-Way Agent should be paid at the same rate which is \$20,926 to \$28,793 per year. However, because the Senior Appraiser works for an elective County department head and the Chief Right-of-Way Agent does not, the following is what is actually being paid as a result of NRS 245.047:

	<u>Top of Range</u>
Chief Right-of-Way Agent	\$28,793
Senior Appraiser	<u>\$24,035</u>
Difference	\$ 4,758 (20%)

Washoe County believes that this is grossly unfair and urges the passage of AB 278 to eliminate this discriminatory practice.

25 MAR 81

EXHIBIT D

PROBLEM - REGULATIONS APPROVED BETWEEN SESSIONS WHICH HAVE FULL FORCE & EFFECT OF LAW.

PROPOSED SOLUTION - AMEND AB 146

- (A) SET UP 6 MEMBER COMMISSION IN EXECUTIVE BRANCH
- (B) FUNDED & STAFFED WITH FINANCE & WAYS & MEANS APPROVAL
- (C) APPOINTMENTS ^{SELECTED &} CONFIRMED BY SENATE & ASSEMBLY

DUTIES - ^{MAY} READ & APPROVE ^{@ MONTHLY MEETINGS} ~~REVIEW~~ OR DISAPPROVE ^{ALL CHANGES, ETC IN REGULATIONS}

POWER - TAKE TESTIMONY UNDER OATH.

AB 653 - 1977 SESSION - VETOED

AB 653 - 1979 SESSION VETO OVERRIDE

"LEGISLATIVE COMMITTEE FOR THE REVIEW OF FEDERAL REGULATIONS."

(FEDERAL REGULATIONS REVIEW 81-23)

PRECEDENT



EXHIBIT E

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

CAPITOL COMPLEX
CARSON CITY 89710
(702) 885-4170

RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

April 8, 1981

The Honorable James Gibson
Chairman, Senate Committee on
Government Affairs
Legislative Building
Carson City, NV 89710

Re: AB 146

Dear Mr. Gibson:

This office has previously testified in the Assembly against AB 146 as involving, in our view, a violation of Article 3, §1 of the Nevada Constitution. We wish to repeat our views on this bill to your committee. This bill is scheduled to be heard before your committee on April 22, 1981.

As you are no doubt aware, the present law in Chapter 233B of NRS pertaining to the promulgation of administrative rules and regulations provides that such regulations must be sent to the Legislative Commission for review. The law also provides that if the Legislative Commission finds such rules and regulations objectionable it may relay its objections to the executive agency promulgating the rules and regulations for its comment or change. However, if the executive agency declines to change the rules in line with the Legislative Commission's objection, the law provides that the Executive Director of the Legislative Commission must still file the proposed rules and regulations with the Secretary of State, at which time the regulations become effective. Later, of course, the rule or regulation that has been objected to is laid before the Legislature at its next session and the Legislature may take such action as it "may deem to be proper." Presumably, this means amending and clarifying the underlying law so as to effectively require the agency to later promulgate rules and regulations in line with the Legislature's intention as expressed in the later legislation.

The Honorable James Gibson
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However, AB 146 would amend this current law so as to provide that (1) if the Legislative Commission objects to a regulation the agency may revise it, but (2) if the Legislative Commission objects to the revised regulation, the Commission may postpone the filing of the regulation until the next regular session of the Legislature. At that time, the Legislature may, by concurrent resolution, declare that the regulation shall not become effective and the Executive Director of the Legislative Commission shall notify the executive agency that the regulation will not be filed and must not be in force. Only if the Legislature does not act by a particular date shall the Executive Director file the regulation and thereby put it into effect.

Unlike the present law in which an agency of the Legislature merely acts as a review and advisory body, with the executive agency continuing to have the authority to promulgate the regulation, AB 146 would enable a legislative agency, i.e., the Legislative Commission, to suspend a proposed rule promulgated by an executive agency and would also authorize the Legislature itself, at a later time, to actually veto the rule which is being proposed by the executive agency.

In the view of this office, AB 146, if enacted into law, would be in violation of Article 3, Section 1 of the Nevada Constitution, which provides as follows:

"The powers of the Government of the State of Nevada shall be divided into three separate departments, --the Legislative, --the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted."

It should be noted that when the present law permitting the Legislative Commission to merely review proposed regulations was enacted in 1977, the original bill would have permitted the Commission to veto proposed regulations. At that time, then-Chief Deputy Attorney General James H. Thompson appeared before the Legislature to advise it that the proposed law would be unconstitutional as in violation of the separation of powers provision of Article 3, Section 1 of the Nevada Constitution. Because of his testimony, the proposed bill was redrafted into its present provisions and enacted in that form.

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Except for the fact that AB 146 would now leave the actual vetoing of the proposed regulation in the hands of the Legislature itself, but nevertheless allowing the Legislative Commission to suspend the operation of a proposed regulation, this proposed law has the same constitutional objections as the original proposal of the Legislature in 1977 to allow the Legislative Commission to veto proposed executive agency regulations. In the opinion of this office, AB 146 would violate the separation of powers provision of Article 3, Section 1 of the Nevada Constitution by allowing the Legislature to perform both executive and judicial functions.

Although the promulgation of rules and regulations by executive agencies partakes of a legislative nature, rule and regulation making is performed generally by independent regulatory agencies or by some department in the executive branch of government. It has been held that such a rule-making function represents the performance of a governmental duty exercised pursuant to a public law and, consequently, is an administrative function which can only be performed by persons in the executive branch of government. Cf. Buckley v. Valeo, 424 U.S. 1, 140-141 (1976). In other words, when the Legislature permits an executive agency to "flesh out" the terms of a law by rule or regulation making, the executive agency is performing an executive function. Rule or regulation making is an attribute of the administration and enforcement of a statute, which is a duty performed by the executive branch of government. Cf. Buckley v. Valeo, *supra*, at 141. In this regard, then, rule or regulation making by an executive agency is not performed in aid of legislative authority to legislate. Cf. Buckley v. Valeo, *supra*, at 141. Therefore, while the Legislature may legislate the enacting law permitting an executive agency to promulgate regulations, the Legislature, under the doctrine of separation of powers, does not have the authority to interfere with the executive function of an executive agency to actually promulgate rules and regulations to implement the legislation. To permit the Legislature to do so would be a violation of Article 3, Section 1 of the Nevada Constitution by permitting the legislative branch of government to exercise a function of the executive branch of government.

In addition, by giving the Legislature the authority to judge the validity and effectiveness of a proposed regulation and permitting the Legislature the authority to abrogate a proposed regulation by declaring it shall not become effective, it would appear that the Legislature is


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also infringing upon the judicial branch of government. It is the function of the judicial branch, under Article 6, Section 1 of the Nevada Constitution to adjudicate. This includes the power to interpret administrative regulations as to whether such regulations are in conformity with the law. By permitting the Legislature to make such interpretations and to invalidate the proposed executive agency regulations, AB 146 would appear to clearly infringe upon the judicial function of state government.

For the above reasons, therefore, this office is of the view that AB 146 should not be enacted in its present form as its enactment, in the opinion of this office, would be contrary to the clear provisions of Article 3, Section 1 of the Nevada Constitution. As was stated by the Nevada Supreme Court when it interpreted Article 3, Section 1 in Galloway v. Truesdell, 83 Nev. 13, 18, 22, 422 P.2d 237 (1967), "The division of powers is probably the most important single principle of government declaring and guaranteeing the liberties of the people" and the departments of government should be constantly alert to prevent prohibited encroachments on the powers of each branch of government as even the slightest encroachment may be destructive to our government.

Sincerely,

RICHARD H. BRYAN
Attorney General

By 
Donald Klastic
Deputy Attorney General

DK/sb

cc: The Honorable Keith Ashworth
The Honorable Eugene Echols
The Honorable James Kosinski
The Honorable Jean Ford
The Honorable Sue Wagner
The Honorable Virgil Getto

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ASSEMBLY ACTION	SENATE ACTION	Senate	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to	Senate
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. 454	Joint
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		Resolution No.
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>	BDR 24-1284	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by	Committee on Government Affairs
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>		

Amendment N^o 569



Amend section 1, page 1, line 1, by deleting "293" and inserting: "218".

Amend section 1, page 1, by deleting lines 3 through 18, and inserting:

"1. As used in this section, "first committee of reference" means the committee to which a bill or joint resolution was first referred in the house of the legislature into which it was introduced.

2. Upon request from the first committee of reference, the legal and research divisions of the legislative counsel bureau shall prepare, for any proposed constitutional amendment or statewide measure which, if approved by the legislature, would be submitted to a vote of the people:

(a) A condensation of the proposal into a question to be placed on the ballot; and

(b) An explanation of the proposal, including arguments for and against it.

3. The condensation and explanation must be of reasonable length and written in easily understood language. The first committee of reference may revise the draft of the condensation and explanation.

4. Before reporting the bill or joint resolution, the first committee of reference shall approve the condensation and explanation. The condensation and explanation must then be printed and a copy attached to the bill or joint resolution. Copies must be

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LCB File
Journal ✓
Engrossment
Bill

Drafted by JW:snc Date 4-17-81

made available in the same manner as copies of bills and resolutions are made available.

5. If, at any time during the course of the bill or joint resolution through the legislature, the first committee of reference determines, on its own motion or at the request of a committee of the senate or assembly, a conference committee or the presiding officer of the senate or assembly, that changes in the condensation and explanation are necessary to reflect amendments to the bill or joint resolution, the first committee of reference may approve such changes. The condensation and explanation must be reprinted with revisions in the same manner as bills and resolutions are reprinted with amendments.

6. After the bill or joint resolution has been approved by both houses of the legislature, the first committee of reference shall review the condensation and explanation and approve such changes as it deems necessary. The final, approved version must be delivered to the secretary of state. If the legislature adjourns before the first committee of reference is able to perform the function: set forth in this subsection with respect to one or more bills or joint resolutions, the legislative commission shall perform those functions with respect to those bills and resolutions.

7. If a joint resolution proposing a constitutional amendment is before the legislature for its second approval, the condensation and explanation are not subject to change."

Amend section 1, page 1, line 19, by deleting "5." and inserting "8."

Amend sec. 2, page 2, by deleting line 21, and inserting:

"[3.] 5. The condensations and explanations for constitutional amendments and statewide measures proposed by initiative or referendum [shall] must be prepared by the.

Amend sec. 2, page 2, line 22, by deleting "general and" and inserting:

"general . [and".

Amend sec. 2, page 2, by deleting line 23 and inserting:
"legislative counsel,] They must be in easily understood language
and of reasonable length,".

Amend sec. 2, page 2, line 24, by deleting "shall" and inserting:
"[shall] must".

Amend sec. 2, page 2, line 26, by deleting "5." and inserting
"6.".

Amend sec. 2, page 2, line 29, by deleting "6." and inserting
"7.".

Amend sec. 3, page 2, by deleting line 37 and inserting:
"tions prepared pursuant to NRS 293.250 [.] and section 1 of this
act.".

Amend the title of the bill to read:

"AN ACT relating to elections; transferring to the legislative
branch of government the responsibility for preparing the
ballot questions and explanations for bills and resolu-
tions proposing constitutional amendments and statewide
measures; and providing other matters properly relating
thereto.".