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April 19, 2002

Governor Kenny C. Guinn
 Chairman
 State Board of Examiners
 c/o Department of Administration
 209 E. Musser St., Room 200
 Carson City, NV 89701-4298

Dear Governor Guinn:

I am writing to you to express my extreme disappointment regarding the disgraceful events which transpired in July of 2001, when the Department of Public Safety requested, and the State Board of Examiners approved, the designation of 22 positions as having a "critical labor shortage," the result of which was that the persons holding those positions were authorized to simultaneously receive their salaries as well as continuing to receive retirement benefits. These events were well documented in newspaper articles published last summer. *See, e.g., Geoff Dorman, Double dippers waste no time, Nevada Appeal, July 21, 2001; Sean Whaley, REQUEST APPROVED: DMV director to draw pay, pension, Las Vegas Review-Journal, July 11, 2001.*

It is my firm belief that the actions taken by the Department of Public Safety and the State Board of Examiners violated at least the spirit (if not the letter) of the law as expressed in the provisions of NRS 286.523. As I will explain in detail below, these actions violated the spirit of the law for two separate reasons: (1) there was no documented discussion of the factors required to be considered in the determination of a position as having a "critical labor shortage"; and (2) some of the positions declared to suffer from a "critical labor shortage" were positions that were too new for a logical conclusion to have been drawn that such a shortage existed.

As you are aware, subsection 1 of NRS 286.523 provides in relevant part that the ordinary prohibition against a retired public employee continuing to receive retirement benefits if he accepts employment with a public employer does not apply if such an employee "fills a position for which there is a critical labor shortage." As set forth in paragraph (a) of subsection 3 of NRS 286.523, the default agency which designates positions in state government as suffering from critical labor shortages is the State Board of Examiners. Subsection 4 of NRS 286.523 additionally sets forth that, in determining whether a position is a position for which there is a critical labor shortage, the designating authority (in this case, the State Board of Examiners) must consider the following factors:

- (a) The history of the rate of turnover for the position;
- (b) The number of openings for the position and the number of qualified candidates for those openings;

- (c) The length of time the position has been vacant; and
- (d) The success of recruiting persons in other states to fill the position.

I proceed now to explain in detail why I believe that the actions taken by the Department of Public Safety and the State Board of Examiners violated the spirit of NRS 286.523.

I. LACK OF DOCUMENTED DISCUSSION/DELIBERATION

As set forth in the minutes of the meeting of the State Board of Examiners for July 10, 2001, the Department of Public Safety requested, and the Board approved, authority for the Department to hire 22 retirees who would be allowed to continue receiving retirement benefits pursuant to NRS 286.523, because the 22 positions in question were determined to suffer from critical labor shortages. This action appears in item "12.B." of the minutes for the July 10, 2001, meeting.

Although the preceding item in the minutes for that meeting (item "12.A.") contains a lengthy discussion regarding the propriety of the State Board of Examiners adopting a policy to clarify what constitutes a position for which there is a critical labor shortage, neither item "12.A" nor item "12.B." reflects a decision-making process in which the Board actually evaluated the 22 positions with respect to the factors set forth in subsection 4 of NRS 286.523. As noted previously, subsection 4 of NRS 286.523 requires a designating authority to "give consideration to" the factors enumerated in that subsection in determining whether a position is a position for which there is a critical labor shortage.

Because the minutes of the July 10, 2001, meeting contain no evidence of a position-by-position discussion of the factors required to be considered pursuant to subsection 4 of NRS 286.523, the impression given to a person reading those minutes is that the State Board of Examiners summarily approved the 22 positions without adhering to the requirements of NRS 286.523. Although it is possible that the Board did, in fact, consider the factors set forth in subsection 4 of NRS 286.523 with respect to each of the 22 positions, the fact that the relevant minutes do not reflect any such consideration of those factors leads to the conclusion that the Board did not adhere to the spirit of the provisions of NRS 286.523.

II. THE "NEWNESS" OF CERTAIN APPROVED POSITIONS

As explained previously, subsection 4 of NRS 286.523 requires a designating authority to consider four separate factors in determining whether a position is a position for which there is a critical labor shortage. These factors are: (1) the history of the rate of turnover for the position; (2) the number of openings for the position and the number of qualified candidates for those openings; (3) the length of time the position has been vacant; and (4) the success of recruiting persons in other states to fill the position. The general nature of these factors implies strongly that the determination of a position as having a critical labor shortage is to be based on a finding that the position in question is, or historically has been, difficult to fill (i.e., vacant for a long time, insufficient

applicants, etc.). Notably, fattening the wallets of one's political cronies is not listed as an acceptable factor in making such a determination.

In contrast to the apparent purpose for the factors described in subsection 4 of NRS 286.523, at least some of the positions approved for the Department of Public Safety on July 10, 2001, would seem to not be able to satisfy a determination based on any of those factors. For example, three of the 22 positions approved on July 10, 2001, were for the positions of "Director, Public Safety," "Deputy Director - Public Safety" and "Administrative Services Officer III." See Minutes of the meeting of the Board of Examiners, at 22 (July 10, 2001). Unlike other approved positions such as "Highway Patrol Troopers," whose duties would presumably be largely unchanged under an agency with a different name, the executive-level positions within the Department of Public Safety did not, strictly speaking, exist before the creation of that new agency.

As of July 10, 2001, the Department of Public Safety had only been in existence for nine days, having been separated from the Department of Motor Vehicles and Public Safety by a legislative measure which became effective on July 1, 2001. See Senate Bill No. 481, Chapter 520, Statutes of Nevada 2001, at p. 2532, 2644. Because of the short window of time between the creation of the Department of Public Safety and the State Board of Examiners' approval of the three positions described above, it is inconceivable that the Board could have (while considering the factors required to be considered pursuant to subsection 4 of NRS 286.523) determined that such positions suffered from a "critical labor shortage." It would be difficult, if not impossible, to honestly assess such factors as "the number of qualified candidates" and the "success of recruiting persons in other states" for a position that had existed officially for slightly longer than one week. This observation leads me again to conclude that neither the Department of Public Safety (in requesting approval for the positions) nor the State Board of Examiners (in approving those positions) adhered to the spirit of the requirements of NRS 286.523.

I have written this letter in the hope that, by casting light on this seemingly blatant abuse of public power, the residents of the State of Nevada may be protected from future abuses. When state agencies fail to confine their actions to the spirit of the law, the image of the state itself is inevitably besmirched. In this particular instance, countless numbers of state residents now feel that a law which was enacted to address bona fide labor shortages has been hijacked for the purpose of allowing high-level administrators to "feather their nests" at the expense of taxpayers. Please know also that I will be working with members of the Nevada Legislature to change NRS 286.523 and any other relevant provisions of law to ensure that a travesty such as occurred on July 10, 2001, does not occur again.

Very Truly Yours,



Paul B. McGrath



OFFICE OF THE GOVERNOR

KENNY C. GUINN
Governor

May 16, 2002

Mr. Paul McGrath
4718 Ponderosa Drive
Carson City, Nevada 89701

Dear Mr. McGrath:

On behalf of Governor Guinn, I am writing in response to your letter regarding the State Board of Examiners and its determination that several state positions are suffering from a critical labor shortage.

Upon receipt of your letter, this office spoke with the Attorney General's Office and has been informed that the allegations set forth in your letter are without merit. Therefore, while this office certainly respects your right to voice your opinions on this matter, we respectfully disagree with those opinions.

Thank you for taking the time to express your thoughts to this office.

Sincerely,

A handwritten signature in cursive script that reads "Brian O. Catlett".

Brian O. Catlett
Director of Constituent Services

3-28-03 D
PAGE 4 of 20

4718 Ponderosa Drive
Carson City NV 89701
(775) 882-4686

February 5, 2002

The Honorable Mark E. Amodel
402 N. Division Street
Carson City NV 89702

Dear Senator Amodel:

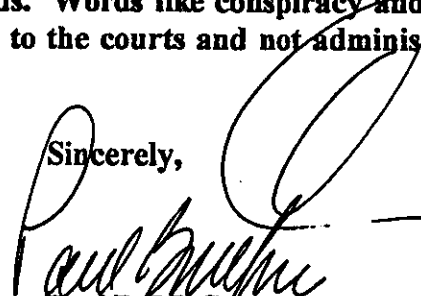
Recently, a proposal was sent to the Public Employees Retirement System to address retired state employees for a review of AB 555. The law was passed by the 2001 Nevada Legislature and signed into law by the Governor. The Board of Examiners lack of adherence to the statute when they approved "critical shortage" positions for DMV&PS Director, Deputy Director and who knows who else is my concern and the statutes have been violated.

At the time of this writing, PERS has received a number of requests from retired state and other employees who qualify and comply with the provisions of the statutes and granted approval by their appointing authorities. My position on this matter as a retired "public employee" is that the Board of Examiners approved this additional compensation to "political appointees" and not to benefit one department or another who have a critical labor shortage. The Board has therefore establish precedent for future appointing authorities to violate the provisions of the law. In my review of the statute, the Board could not have reviewed any submitted proposal from Kirkland and his crew that would qualify them to receive additional compensation from PERS.

This "double dipping" issue has almost gone from public review because of more important events that a effecting our state. Therefore, this request is directed to you for a review of the Legislative intent of the statutes by the Nevada legislature in order for me to properly pursue other avenues to correct this unjust awarding of public funds from PERS to persons who do not qualify.

If you agree with my assessment of this matter, your assistance in pursuing a remedy that could correct this lack of Executive Branch supervision in allowing unqualified recipients to collect tax dollars to further their own personal needs. Words like conspiracy and fraud somehow come to mind that would bring this matter to the courts and not administrative review by the alleged violators the law.

Sincerely,


Paul B. McGrath

3-28-03 D
PAGE 5420

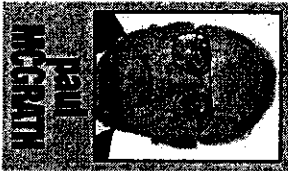
OPINION

FRIDAY, OCTOBER 5, 2001

Beware the double-dipper tax eaters

With the serious events of Sept. 11 dominating the news, local and state issues have been sent to the back pages or not reported at all. In most instances this is good news for local politicians and bureaucrats who are under review for the way in which they are running government.

As a retired government employee and enrolled in the Public Employees' Retirement System in Nevada, a concern for the way in which the Double Dippers in the Nevada Public Safety Department earned their additional salaries should have retired public employees in Nevada up in arms. The precedent-setting decision of the governor and Board of Examiners, coupled by the rubber stamping of that decision without review or justification makes one wonder if our retirement system in the future can stand the fiscal impact. Our retirement system operates from member contributions and proper investments, and with the world and stock



market situations, these investments may be in jeopardy. Kirkland and company must have known before the vote by the Board of Examiners their duties and responsibilities would be diminished when DMV separated from Public Safety and taken the necessary action to review their request(s) before the vote. The evaluation from the board of the existing justifications should have been challenged by them and not acted upon. Critical employees in Public Safety cannot be a director, a deputy director or assistants, and if it is defined as such in the statutes recently passed, would have to be justified by the legislative intent which was not designed for other

than school administrators and employees. It appears that Mr. Kirkland has a serious problem in following not only the rules as established by the State Administrative Manual, the Rules of Personnel and other state issued directives in doing his job as the governor's appointee, but making decisions that are beneficial to him personally and not in the interest of the state.

Mr. Kirkland may be a "political god" in Washoe County, but Nevada has 16 other counties who may not be so impressed. The Board of Examiners' quick approval of additional compensation for Kirkland and crew didn't set well with local elected county officials who were denied compensation increases from the last session of the legislature. The governor should stop, step back, look and listen to the distant drums that are beating louder each day about his public safety administrator and his cronies. The governor should do what is right in

evaluating requests from Double Dippers and revisit their prior approval of this additional windfall of his appointees. A question that should also be asked is if retirement benefits will be extended to the director and other positions approved after the five-year vesting should another term of office be granted by the voters. If so, then we can refer to them as something different than "double dipper," maybe "double dipper tax eaters."

The Retired Public Employee Association chapter(s) in Nevada may want to consider addressing this issue at scheduled state meetings.

Paul McGrath is retired for the Carson City Sheriff's Department and a 17-year veteran of the NHP who left as a captain.

Editor's Note: Barry Smith is on vacation. His column will return next week.

Column

Double-dip issue on Board of Examiners agenda

BY GEOFF DORNAN
Appeal Capitol Bureau

A controversial law that permits veteran state employees to retire, then return to work collecting both salary and pension, is again on the Board of Examiners agenda for next week.

This time, the governor has asked George Pyne, head of the Public Employees Retirement System, to report on the impact of Assembly Bill 555. The law asks he report back to lawmakers on the impact of the legislation. The meeting is scheduled for Sept. 11 at 10 a.m.

The Board of Examiners consisting of Gov. Kenny Guinn, Attorney Gen-

eral Frankie Sue Del Papa and Secretary of State Dean Heller voted in July to approve the pension-salary double dip for Public Safety employees including Director Richard Kirkland, Deputy Dave Kieckbusch and Administrative Services Officer Jan Capaldi.

That drew protests from a variety of people including Assembly Government Affairs Chairman Doug Bache, D-Las Vegas, who said the legislation was intended to bring retired employees back to fill critical shortages such as math and special education teachers, nurses and parole and probation officers. He said it was never intended to allow

high administrative officials to double dip both salary and pension.

At the board's next meeting, the controversy prompted Guinn to postpone consideration of three more applications for the "critical shortage" designation, saying he wanted more information about how the law should be used and its potential impact.

"The governor feels we need to take a very close look at this situation and the procedures in place," said Guinn spokesman Jack Finn.

He said Pyne's presentation to the board would help provide information to help resolve some of the issues raised.

38 state employees

sign up for 'double dip'

BY GEOFF DORNAN
Appeal Capitol Bureau

There are now 38 public employees around the state using the so-called "double dip" which allows them to collect retirement while still working and making a salary.

According to the list presented lawmakers by Public Employees Retirement System Director George Pyne, nearly all of them are in education.

That was the stated purpose of Assembly Bill 555 when it was approved by the 2001 Legislature — to encourage veteran teachers in hard-to-fill specialties to stay on the job even though eligible for retirement.

The program drew some objections from lawmakers when it was used to allow Public Safety Director Richard Kirkland and his chief deputy Dave Kieckbusch to get both salary and retirement.

Assemblyman Doug Bache, D-Las Vegas, whose committee processed the legislation, said at the time the legislation was intended to keep special education, math and other teachers from retiring early, not to pad the paychecks of state executives.

According to figures Pyne presented the legislative Retirement

and Benefits Committee Wednesday, all those in the program except the four state public safety employees are in education. In fact, 23 of the 38 are with Clark County in positions ranging from music, math and science teachers to special education teachers, psychologists and speech therapists.

Carson City has used the legislation to keep two principals and a capital development officer on staff in addition to two teachers and a bus driver.

Only one local government, Henderson, has used the legislation to keep a tech support specialist on at its library.

One position each in the Eureka, Lander, Lyon and Nye county school districts was filled using AB 555.

The only four non-education posts are those at the state: Kirkland and Kieckbusch, a parole board member and the highway patrol's southern Nevada traffic pilot.

Pyne said his staff will report to the 2005 Legislature on what affect, if any, the legislation is having on the retirement system.

Lawmaker seeks bill to stop chiefs' double dip

BY GEOFF DORNAN
Appeal Capitol Bureau

A Las Vegas lawmaker is seeking legislation to prevent state administrators from collecting both retirement benefits and their government salary at the same time.

Assemblyman Doug Bache, D-Las Vegas, has requested legislation for the 2003 Legislature.

Bache objected to the Board of Examiners' decision allowing Public Safety Director Dick Kirkland and two of his top administrators to begin collecting both their retirement and their salary. The decision allowed Kirkland to add more than \$70,000 in retirement benefits to his annual salary of \$103,301.

"I am extremely disappointed that the state executive branch has chosen to abuse the law on two occasions by requesting that high-paid administrators be allowed to collect their public retirement benefits while receiving substantial salaries," said Bache.

Please see **DIP, BACK PAGE**

Closing the barn door

We were pleased to learn the Board of Examiners has had some second thoughts about handing out "double dipping" pensions to state employees, even though a few highly paid officials escaped before the barn door could be closed.

We fully expect more positions to be declared as having a "critical shortage," thus allowing the employees to retire, be rehired to the same job, and begin collecting both pay and pension.

But at least the Board of Examiners — comprising the governor, secretary of state and attorney general — needs to follow the process set out in law.

Let's review Assembly Bill 555 requirements:

"In determining whether a position is a position for which there is a critical labor shortage, the designating authority shall give consideration to:

- a) The history of the rate of turnover for the position;
- b) The number of openings for the position and the number of qualified candidates for those openings;
- c) The length of time the position has been vacant; and
- d) The success of recruiting persons in other states to fill the position."

The Board of Examiners did nothing of the sort in granting "critical shortages" in July for the position of Public Safety director and others, allowing a salary increase of as much as \$70,000.

If someone had reason to take the issue to court, we can see no reason the Board of Examiners' decision wouldn't be ruled illegal. (Of course, the remedy would simply be to go back and do it the right way.)

There are good reasons those provisions were included in the law — to prevent someone from abusing the privilege of collecting both salary and pension, and to prevent cronyism from prevailing in government.

Remember, the Board of Examiners is the designating authority only for state government. Local governments, school districts and the board of regents overseeing the university system also have the power to designate "critical shortages."

If the people at the top don't follow the rules, why would they?

Dip

Continued from Page A1

Assembly Bill 555 was drafted by a study committee as a way to get teachers in specialties where there is a severe shortage to return to the classroom. Many have said they would continue teaching except their retirement is as much as 90 percent of what they would make in salary, so working in another profession makes better sense.

Bache said the incentive was aimed at math, special education and other areas where Nevada schools are experiencing shortages and that Clark County is using it to get qualified, experienced teachers back in the classroom.

But the bill was modified from

employee. In July, he said, allowing Kirkland to use it was "very creative" but not what was intended.

Gov. Kenny Guinn pushed the issue through the Board of Examiners in July without discussing and specifically justifying the positions held by Kirkland, his deputy Dave Kieckbusch and Administrative Services Officer Jan Capaldi as qualifying for designation as "critical shortage" status.

So far, no other governmental or public entity in the state has approved the use of the "critical shortage" designation for an administrative post.

In addition to the three administrators, the July vote approved "critical shortage" status for a parole board position, capital police officers and parole and probation officers. There has

had trouble in the past attracting qualified candidates.

Three more positions were presented to the board last week: the POST rangemaster/armorer position which has been vacant a year and the chief deputies of the budget and the treasurer offices. Those decisions were put on hold by Guinn and the other members of the examiners board, Attorney General Frankie Sue Del Papa and Secretary of State Dean Heller. In this case, Guinn and Del Papa said they wanted to review the issue.

Heller said he wants any future designations to be accompanied by strong and specific reasons for the decision and that he believes any such designation should be limited to a specific amount of time.

Bache on Thursday urged the Board of Examiners not to

Freebie parade

Gov. Kenny Guinn made it clear last week that he intends to continue using a new law to hand senior executive-department bureaucrats their full salaries plus the "pensions" they would receive if they actually retired ... simultaneously.

Assembly Government Affairs Chairman Doug Bache, who was the key legislator in winning passage of the bill last session, has noted the bill was only supposed to be used to retain employees in truly hard-to-fill jobs, such as teaching positions in math and science. Lawmakers never intended the Board of Examiners to allow DMV Director Richard Kirkland to draw his \$70,000 "pension" while continuing to take home his \$103,000 salary ... and then extending this benefit to 21 of the chief's top assistants. The Board of Examiners — which includes the governor — should stop it, Mr. Bache said last month.

Gov. Guinn's response?

"Absolutely we will" continue to hand out the freebies — despite the fact the Legislative Counsel Bureau has warned there's no telling how quickly it might bankrupt state government — Gov. Guinn said. "I don't think Mr. Bache knows what he is talking about."

Guinn and Attorney General Frankie Sue del Papa did respond to public outcries against the ginning up of the paycheck machines in one way. Instead of approving such handout requests piecemeal and taking the heat each time, from now on huge piles of them will be processed at once, they said, dealing with the matter "in a more comprehensive way to try to avoid constant public criticism."

Gov. Guinn's stubbornness on this issue raises the question: Is his primary duty to grease the palms of executive branch bureaucrats or to consider the concerns of the citizens who foot the tax bill every time they struggle to buy clothes for the kids?

9-17-02
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PATTIE KAIKS

jodyl@newsreview.com

by Jody Lindke



Events

NEW FICTION: The New Fiction Society presents Seven Year Itch as part of...

FRM: The Valhalla Art & Music Festival presents Seven Year Itch as part of...

Volunte...

DAILY FREE PRESS

OPIN

Publisher: Dale Andressen, dandressen@skodaily.com
 Managing Editor: Andy Martin, amartin@skodaily.com

GUEST VIEWPOINT

DMV AND NHP

The Q word

By RON DICKENSON
 Guest Columnist

This newspaper reported the other day that a "new audit revealed millions in errors at Nevada DMV." Nowhere in the article was the DMV director mentioned. Dick Kirkland was hired by the Governor Kenny Guinn to solve the much publicized problems at the DMV. Since he was appointed he has shown he is a clever fellow by figuring out how to draw both retirement pay and a salary for himself and some of his buddies he has appointed to senior positions in the DMV or NHP.

The latest directive from Carson City involves performance objectives. Now I know this sounds like a \$10 word for quota, but the local troopers are forbidden to use the Q word. How this works is a trooper is given, say, an objective of, say, some 40 citations and four DUI's a month. If he fails to meet his monthly objective then next month's objective is raised. The trooper faced with meeting an unrealistic demand is then forced to abandon patrolling the highway and scout the congested

high density areas of Idaho Street and 12th Street. The end result is local citizens are overly targeted for traffic enforcement, by troopers who are forced to abandon patrolling the highway.

Now none of the captains, lieutenants or sergeants can be expected to stand up and declare this stupid or shortsighted, they have families to feed, too. I would like to point out the entire Reno traffic enforcement section is under investigation in an attempt to identify who started the vicious locker room rumor that Dick Kirkland might leave. The public would like to believe that the local Highway Patrol troopers are here to patrol the highway, help stranded motorists and issue citations based on their own best discretion, but unfortunately that is not the case. Perhaps the governor will take note that Dick Kirkland is not only not solving problems, but creating new ones and in the process making the governor look bad.

Ron Dickenson is a resident of Elko.

'Critical shortage' of critical thinking

Interestingly, it is three highly paid state administrators who are among the first to benefit from Nevada's new employee "critical shortage" law.

This law allows certain employees within the state retirement system to receive their retirement benefits while still working within the system.

In July, before the governor's signature of approval on Assembly Bill 555 was barely dry, the state Board of Examiners (comprised of Gov. Guinn, Attorney General Frankie Sue Del Papa and Secretary of State Dean Heller) gave their blessing to requests from Nevada's Public Safety Director Richard Kirkland and two of his top administrators to receive full retirement benefits in addition to their current salaries. In Kirkland's case, this adds \$70,000 to his \$103,000 annual salary.

The board apparently felt there is a critical shortage of such qualified administrators.

More in line with the intent of the law, the "critical shortage" status was also approved for a parole board position, capital police officers and parole and probation officers.

Originally intended to keep veteran teachers from leaving and bring teachers of subjects where there is a severe shortage (math, science, special education) out of retirement and back into the classroom, AB555 was then expanded to also address "critical labor shortages" in state and local government, the judicial branch and the state university system.

The Board of Examiners is responsible for designating positions within



state government qualifying as "critical labor shortages;" the Supreme Court will decide within the judicial branch; the Board of Regents within the state college system; Department of Education within the various school districts;

local supervisors/commissioners within local government; and the Retirement Board for shortages within the system.

I fully support the initial intent of the legislation. Many of our brightest and best educators retire early in order to receive their excellent state retirement benefits along with a full salary from the private sector.

Encouraging qualified older teachers to remain and retired teachers to return to the classroom helps alleviate critical shortages and brings invaluable experience and expertise back into our schools. Losing our best teachers to the private sector is a trend that must be curbed.

And I will guarantee you that none of these teachers will be making anything near a \$100,000 salary in addition to their retirement benefit.

In light of the public's negative response to their approval of Kirkland's, his chief deputy Dave Kieckbusch's and Administrative Service Officer Jan Capaldi's bonuses, the Board of Examiners have turned down additional requests from other governmental administra-

No teacher will be making anything near a \$100,000 salary in addition to their retirement benefit.

tors. It should remain a permanent moratorium.

These bonuses to individuals in such lofty appointive positions should never have been granted in the first place and none should be granted in the future. Not only does it smack of political favoritism, but allowing such highly paid individuals to "double-dip" from the public trough laughs in the face of the intent of the law.

This law was well intended, but, as evidenced by the Kirkland, Kieckbusch and Capaldi windfall, in its current form it leaves the door wide open to the potential for some interesting political and financial wizardry.

Before one more position is declared eligible for "critical shortage" benefits, this legislation must be thoroughly reviewed by our state legislators.

And such benefits to highly paid state administrators should be eliminated, retroactively.

Think about it.

Nancy Dallas spent 11 years in Lyon County government, four as county commissioner and seven as planning commissioner.

4718 Ponderosa Drive
Carson City NV 89701
(775) 882-4686

February 5, 2002

The Honorable Mark E. Amodel
402 N. Division Street
Carson City NV 89702

Dear Senator Amodel:

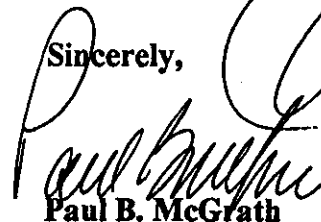
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At the time of this writing, PERS has received a number of requests from retired state and other employees who qualify and comply with the provisions of the statutes and granted approval by their appointing authorities. My position on this matter as a retired "public employee" is that the Board of Examiners approved this additional compensation to "political appointees" and not to benefit one department or another who have a critical labor shortage. The Board has therefore establish precedent for future appointing authorities to violate the provisions of the law. In my review of the statute, the Board could not have reviewed any submitted proposal from Kirkland and his crew that would qualify them to receive additional compensation from PERS.

This "double dipping" issue has almost gone from public review because of more important events that a effecting our state. Therefore, this request is directed to you for a review of the Legislative intent of the statutes by the Nevada legislature in order for me to properly pursue other avenues to correct this unjust awarding of public funds from PERS to persons who do not qualify.

If you agree with my assessment of this matter, your assistance in pursuing a remedy that could correct this lack of Executive Branch supervision in allowing unqualified recipients to collect tax dollars to further their own personal needs. Words like conspiracy and fraud somehow come to mind that would bring this matter to the courts and not administrative review by the alleged violators the law.

Sincerely,



Paul B. McGrath

LAS VEGAS REVIEW-JOURNAL

Thursday, January 17, 2002
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EDITORIAL: Repeal the piggy pensions

Two-year 'reviews' an approach that doesn't go nearly far enough

The Nevada Board of Examiners -- which is to say Secretary of State Dean Heller, Gov. Kenny Guinn and Attorney General Frankie Sue Del Papa -- has decided to periodically review the list of state job categories which it has certified as facing "critical shortage."

Assemblyman Doug Bache -- who introduced the bill allowing state workers in "critically short" job categories to draw their paychecks and their pensions at the same time -- says the idea was simply to give retiring high-school science and math teachers an incentive to stay on the job.

Instead, the obscure law drew quick attention when the first state categories certified as areas of "critical shortage" were the jobs of state Director of Motor Vehicles and Public Safety Richard Kirkland and a handful of his ex-police cronies and assistants.

Mr. Kirkland's responsibilities have since been reduced. But at last report he was still drawing a \$70,000 pension as well as his \$103,000 annual state salary, on the theory that it's impossible to find anyone else willing or able to maintain the DMV at its current high level of efficiency for a paltry \$103,000.

Since taking heat for declaring 22 highly-paid executive positions to be "critical" (Mr. Kirkland's post had never even been vacant), the board has declined to add any further state jobs to the gravy roster. And now Secretary of State Heller says affected jobs should be reviewed every two years to determine whether they're "still in a critical shortage status" warranting the double-dipping ... while Gov. Guinn added Tuesday that changes in the "critical shortage" scheme might be made during the 2003 Legislature.

There's the ticket.

With any luck, the next Legislature will indeed promptly take this ridiculous measure out behind the barn and shoot it. In the meantime, it boggles the mind that the secretary of state would propose reviewing whether these job categories are "still" critically short of applicants some years down the road, when there was never any credible evidence of a shortage of qualified applicants for these jobs in the first place.

Experienced astronauts may conceivably be in short supply, or officers experienced at maneuvering ballistic missile submarines under attack, or folks able to swim miles through dark and treacherous waters hauling explosive charges adequate to sink enemy warships.

But the so-called shortage of folks able to "teach high-school science and math" is really only an artifact of a pernicious protection racket that refuses to consider mathematicians and scientists without ed school certificates. And it's unclear even David Letterman could present with a straight face the assertion that an open call for managers willing to run the Nevada DMV for \$103,000 per year would fail to produce any acceptable candidates.

The best time to prove by some objective test that a skill category faces a "critical shortage" of applicants is before handing out the extra wads of cash ... not two years down the road.

This story is located at:

http://www.lvrj.com/lvrj_home/2002/Jan-17-Thu-2002/opinion/17888479.html

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DAILY FREE PRESS

OPII

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GUEST VIEWPOINT

DMV AND NHP

The Q word

By RON DICKENSON
Guest Columnist

This newspaper reported the other day that a "new audit revealed millions in errors at Nevada DMV." Nowhere in the article was the DMV director mentioned. Dick Kirkland was hired by the Governor Kenny Guinn to solve the much publicized problems at the DMV. Since he was appointed he has shown he is a clever fellow by figuring out how to draw both retirement pay and a salary for himself and some of his buddies he has appointed to senior positions in the DMV or NHP.

The latest directive from Carson City involves performance objectives. Now I know this sounds like a 810 word for quota, but the local troopers are forbidden to use the Q word. How this works is a trooper is given, say, an objective of, say, some 40 citations and four DUI's a month. If he fails to meet his monthly objective then next month's objective is raised. The trooper faced with meeting an unrealistic demand is then forced to abandon patrolling the highway and scout the congested

high density areas of Idaho Street and 12th Street. The end result is local citizens are overly targeted for traffic enforcement, by troopers who are forced to abandon patrolling the highway.

Now none of the captains, lieutenants or sergeants can be expected to stand up and declare this stupid or shortsighted, they have families to feed, too. I would like to point out the entire Reno traffic enforcement section is under investigation in an attempt to identify who started the vicious locker room rumor that Dick Kirkland might leave. The public would like to believe that the local Highway Patrol troopers are here to patrol the highway, help stranded motorists and issue citations based on their own best discretion, but unfortunately that is not the case. Perhaps the governor will take note that Dick Kirkland is not only not solving problems, but creating new ones and in the process making the governor look bad.

Ron Dickenson is a resident of Elko.

10-R.J. 9/16/01
DMV director takes double dip of bounty provided by new hiring rule

The rules are only for the little people. Anyone who has applied for a government job, or has reapplied for a new position once inside the system, knows that the process can be dreary and plodding. It's filled with paperwork, official interviews, examinations and the public posting of available jobs in accordance with the Nevada Administrative Code. The rules vary from job to job, and there are 1,200 employment descriptions at the state level, but those rules exist for a reason.

Although bosses sometimes wink at the process, promote favorites and pigeonhole others, the rules often are followed. Contrary to popular belief, state government technically is run by the people and does not operate as a series of private fiefdoms for the benefit of a few



John L. Smith
COMMENTARY

well-paid administrators and their hand-picked associates.

Stop laughing. I'm serious.

The rules are something to remember the next time the Board of Examiners embraces Department of Motor Vehicles and Public Safety Director Richard Kirkland's proposal to enlist his allies to serve alongside him, allowing them simultaneously to draw their state pensions and salaries. Kirkland is exploiting the weakness of Assembly Bill

SSS, which was signed into law earlier this year. Its sponsor, Assemblyman Doug Bache, D-Las Vegas, says it was to address the state's critical shortage of experienced schoolteachers. Bache nearly has severed his tongue attempting to remind state officials of that shortage. Kirkland, meanwhile, reminds his critics that the law is much broader than that.

Broad enough for him and nearly two dozen of his associates, it turns out.

The law is being used to fill vacancies — some of them, critics say, created by Kirkland. There are 22 positions in all. For his part, Kirkland has been approved by the Board of Examiners, which included Gov. Kenny Guinn, to draw his annual \$103,000 salary and \$70,000 state pension.

The vigor with which Kirkland has pursued juicy

double-dip duties for his allies makes me wonder whether the rules will apply to them.

Kirkland says his department is in full compliance, and that Guinn was well aware of his plan to use ABSSS to bring quality employees to areas of critical need. No problem, Kirkland says.

Not for him. Or apparently for Jan Capaldi, his assistant. A DMV veteran, Capaldi currently is under a curious "emergency hire"

classification for 60 days in order to qualify for the double dip. The state personnel office currently is sorting out her confusing status.

The emergency hire regulation is clear: It is to be used only to fill a position so essential that failure to do so would disrupt public business or endanger the citizenry. In this case, the rule is receiving the pretzel treatment.

One of Kirkland's critical double-dippers, Capaldi's new job title as assistant to the director might come with a catch. She might be forced to take an examination before being cleared to work when her 60-day window runs out, state Personnel Director Jeanne Greene says.

"There is a possibility, yes," Greene says. "What we will need to do is look at her actual job duties."

Critical though they may be, The Nevada Administrative Code is clear. Classified job openings must be posted publicly. For many positions, applicants must pass written or oral examinations.

Not that anyone has paused to consider it, but I wonder whether the state jobs to be filled by the double-dippers were so onerous that no reasonable amount of recruitment would result in drawing competent applicants. Then there's the question of bothering to interview prospective candidates for these critical positions.

Every job classified as critical must be filled after an interview, with an appointment coming only after the appropriate steps have been taken to ensure a level playing field.

But Kirkland already has made his decisions. He's bringing in employees whose experience is so great that they deserve not only to be paid a salary, but to collect their pensions as well.

Kirkland argues that his critics are wrong when they say he's employing a way around the rules.


rule

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REQUEST APPROVED: DMV director to draw pay, pension

Examiners allow 22 employees of agency to benefit from new law

By SEAN WHALEY
DONREY CAPITAL BUREAU

CARSON CITY -- Gov. Kenny Guinn on Tuesday approved a request by Department of Motor Vehicles Director Richard Kirkland to authorize up to 22 agency employees, including Kirkland himself, to collect retirement benefits while continuing to work for the state.

Using a new law designed to help state and local agencies fill positions in areas of critical staff shortages, the Board of Examiners found that the shortages exist for the director, 10 Highway Patrol troopers, one member of the Parole Board, three Capitol Police officers, five Parole and Probation officers, and two other positions.

Approval by Guinn and the other board members means that Kirkland, who is earning \$103,000 a year as director of the Department of Motor Vehicles and Public Safety, will now also be able to collect \$70,000 a year in retirement benefits gained in a 38-year police career, including tenure as Washoe County sheriff and Reno police chief.

Kirkland was not allowed under earlier law to collect his retirement while working as a state employee. He said he would quit if he could not collect his pension.

Kirkland said he will now stay on as director as long as Guinn serves as governor or until he is no longer needed. He also said he will seek to immediately collect his retirement benefits.



Department of Motor Vehicles Director Richard Kirkland waits Tuesday to testify before the state Board of Examiners. Photo by Associated Press



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"Absolutely, I'm going to take advantage of it," he said.

No board members questioned why Kirkland included his own position in the request. But previously he said that there have been problems recruiting people for his job.

Kirkland said that while he was the focus of reports on his request to use the new law, it is the other positions, particularly in the Highway Patrol and Parole and Probation divisions, where the need to fill positions is critical.

The new law will help, but won't by itself solve the turnover problem, he said.

Parole and Probation has had a turnover rate of more than 100 percent in the past four years, Kirkland said.

The Board of Examiners, which also includes Attorney General Frankie Sue Del Papa and Secretary of State Dean Heller, found that the jobs identified by Kirkland met the requirements of the new law.

"I think we're trying to look at this in a holistic form and not for any one individual," Guinn said.

For most state agencies, the requests to allow employees to use the new law will come to the Board of Examiners for approval. For teachers, however, the state Board of Education will be the authority for approval.

Del Papa said the policy for determining which job classifications justify the pension benefit should be reviewed in the fall after a few months of operation to see how it is working and if any changes need to be made.

Jeanne Greene, director of the Department of Personnel, developed the policy to make the determination. The policy looks at the areas of turnover, recruitment, length of vacancy and whether special qualifications are required for a job class.

Kirkland was allowed to collect his retirement from the Reno Police Department when he was elected as Washoe County sheriff. But until the state law was changed, he could not do the same as director of the state agency.

Guinn said the new law is a good idea. Retired state employees who are elected to statewide public office already could collect their pensions, and so could employees who

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retired in another state and came to work for Nevada, he said.

A number of critical employment areas, from nursing to engineering, could benefit from this new law, he said.

Kirkland said the board's decision means only that he is authorized to fill the positions with people who would otherwise retire. Many employees don't want to keep working, and Kirkland said he will have to persuade employees to stay with the agency and collect retirement benefits.

No other state agencies have asked the Board of Examiners for permission to rehire state retirees to fill critical positions.

The new law will sunset on June 30, 2005, unless it is extended by the Legislature. This will allow time for the Public Employees Retirement System to review the financial implications of the law on the retirement system.

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