

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
February 20, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:34 p.m. on Monday, February 20, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Barbara K. Cegavske, Secretary of State
Scott W. Anderson, Chief Deputy, Office of the Secretary of State
Scott Scherer, Nevada Registered Agent Association
Brett Kandt, Chief Deputy Attorney General, Boards and Open Government
Division, Office of the Attorney General
Heather D. Procter, Senior Deputy Attorney General, Office of the Attorney
General
Jennifer Noble, Nevada District Attorneys Association

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CHAIR SEGERBLOM:

I will open the hearing on Senate Bill (S.B.) 41.

SENATE BILL 41: Revises various provisions relating to business entities.
(BDR 7-425)

BARBARA K. CEGAUSKE (Secretary of State):

Senate Bill 41 is the Secretary of State's cleanup bill for commercial recordings.

SCOTT W. ANDERSON (Chief Deputy, Office of the Secretary of State):

Senate Bill 41 cleans up several provisions of Title 7 of the *Nevada Revised Statutes* (NRS) pertaining to Nevada businesses and the processes within the Commercial Recordings Division of the Office of the Secretary of State. Section 1 of S.B. 41 removes the exemption for a business whose primary purpose is to create or produce motion pictures from the definition of business in NRS 76.020, subsection 2, paragraph (e). The proposed change will require these businesses to obtain business licenses.

The Office of the Secretary of State requires the number assigned by the Nevada Film Office, Division of Motion Pictures, Office of Economic Development, Office of the Governor for a business claiming the exemption. The Office of the Secretary of State is unable to verify that an entity is engaged in the production of motion pictures. The Nevada Film Office issues registration numbers only for tracking economic impact and not for determining whether an entity's primary purpose is the production of motion pictures. Many entities have claimed this exemption stating that their primary purpose was the production of motion pictures, but in reality, either production had not started or their primary purpose was not film production. The concern is that ineligible entities continue to contact the Nevada Film Office for registration numbers so that they can claim this exemption. Entities that create YouTube videos or place promotional videos on their Websites have also claimed this exemption.

CHAIR SEGERBLOM:

How much is this exemption worth?

MR. ANDERSON:

There are approximately 250 of this type of exempt entity. The State business license fee is \$500 for corporations and is \$200 for all other business entities.

The Governor's Office of Economic Development has requested this same deletion in Assembly Bill 6.

Section 2 of S.B. 41 restores language to NRS 77.443 relating to the examination of records required to be held by registered agents. During the 78th Session, the provisions were softened making it difficult to investigate alleged violations of NRS chapter 77 relating to registered agents. This posed particular difficulties with respect to Mossack Fonseca and the Panama Papers.

Section 3 of S.B. 41 deletes NRS 82A.110, subsection 1, paragraph (c) because churches and bona fide religious organizations are excluded from the definition of charitable organization in NRS 82A.025. The provision in NRS 82A.110 is unnecessary and redundant. These organizations are not required to file a charitable solicitation registration statement. The Office of the Secretary of State will continue to include in its instructions that churches and religious organizations are exempt from the provisions of NRS 82A. While not in S.B. 41, the provisions of NRS 82A.210, subsection 5, requiring certain disclosures by a charitable organization soliciting contributions, also do not apply to churches and religious organizations and should be deleted from the statute.

Section 4 of S.B. 41 fixes a contradictory filing fee for reinstatement of a corporation sole as prescribed by NRS 84.150, subsection 1, paragraph (b), by striking the \$25 fee and indicating that the statutory filing fee for a corporation sole is in NRS 84.110, subsection 2, paragraph (c).

CHAIR SEGERBLOM:

Have you seen the proposed amendment from the Nevada Registered Agent Association ([Exhibit C](#))?

MR. ANDERSON:

Yes. The Office of the Secretary of State has not had a chance to discuss the proposed amendment with the Registered Agent Association. Some changes to the proposed language may be necessary.

SENATOR FORD:

Why were motion picture entities exempted from the business license fee?

MR. ANDERSON:

The exemption was added when State business licensing was taken over by the Office of the Secretary of State in 2009. It has been somewhat problematic since its inception because, as with other exemptions, if there is no way to verify the validity of the entity's claim, the exemption tends to be taken advantage of.

SENATOR FORD:

I am not concerned about enforcement but the rationale for the exemption.

MR. ANDERSON:

It was an incentive to filmmakers to make productions in the State. The Nevada Film Office has indicated that is not occurring.

CHAIR SEGERBLOM:

A request for a reduction of the fee after the movie is made would make sense but not for YouTube.

MR. ANDERSON:

In the past, a number of corporate entities were formed to hold the name of a motion picture or an idea but not necessarily to bring any type of business into the State. There needs to be a nexus between the entity and a motion picture made in the State. The Nevada Film Office's focus is on projects, not on specific entities.

CHAIR SEGERBLOM:

Does section 2 of S. B. 41 address the Panama Papers issue?

MR. ANDERSON:

Yes. Section 2 of S.B. 41 gives the Secretary of State the opportunity to look at the records of the registered agent to ensure the registered agent is doing due diligence and following statutory requirements. The Secretary of State has no authority over the conduct of a business entity.

SCOTT SCHERER (Nevada Registered Agent Association):

The Nevada Registered Agent Association supports S.B. 41 and has proposed an amendment shown in [Exhibit C](#). Mr. Anderson has requested additional language, and the Association agrees in concept. The agreed-upon language will be put in writing and provided to the Committee.

CHAIR SEGERBLOM:

What is the purpose of the amendment?

MR. SCHERER:

The purpose of the amendment is cleanup. During the 78th Session, various statutes related to corporations and business entities were amended to allow records to be kept by a custodian of records. The registered agent was required to provide the name and address of the custodian of records to the Secretary of State upon request from others entitled to the information and the records. The language in NRS 86.246 and NRS 83.3355 was missed and needs to be changed in order to be consistent with the changes made during the 78th Session.

CHAIR SEGERBLOM:

I will close the hearing on S.B. 41 and open the hearing on S.B. 11.

SENATE BILL 11: Revises provisions governing the procedure for filing certain postconviction petitions for a writ of habeas corpus. (BDR 3-378)

BRETT KANDT (Chief Deputy Attorney General, Boards and Open Government Division, Office of the Attorney General):

Senate Bill 11 clarifies that an inmate in the custody of the Department of Corrections must exhaust all administrative remedies before filing a postconviction writ of habeas corpus challenging the computation of time served. This bill was considered in 2015 as S.B. 53 of the 78th Session. This Committee passed that bill with amendments proposed by Senator Ford unanimously. The Senate passed it unanimously. The Assembly Committee on Judiciary passed it unanimously. The Assembly amended S.B. No. 53 of the 78th Session on the Assembly Floor. The bill was sent to Conference Committee. The differences were resolved in the Conference Committee. The Senate adopted the Conference Report, but unfortunately, the Assembly was unable to act prior to *sine die*. Senate Bill 11 is in the form passed by the Senate. A letter of support from Attorney General Adam Paul Laxalt ([Exhibit D](#)) summarizes the changes contained in S.B. 11.

SENATOR ROBERSON:

Who proposed the Assembly amendment?

MR. KANDT:

Assemblyman James Ohrenschall, Assembly District No. 12, proposed an amendment on the Assembly Floor. The amendment addressed withdrawing a guilty plea. That amendment is not included in S.B. 11. Senate Bill 11 is in the form passed unanimously by the Senate. Assemblyman Ohrenschall is sponsoring a bill that addresses guilty plea withdrawal.

CHAIR SEGERBLOM:

Does S.B. 11 include Senator Ford's amendments?

MR. KANDT:

Yes. Senator Ford's amendments are in section 3 of the bill.

SENATOR FORD:

Why does S.B. 11 not include what was agreed to in Conference Committee?

MR. KANDT:

Assemblyman Ohrenschall has indicated he prefers to sponsor his bill separately.

SENATOR FORD:

Is there any assurance that if the Senate passes S.B. 11 there will be no Assembly amendments?

MR. KANDT:

No. That is a possibility with any bill.

CHAIR SEGERBLOM:

I will speak with Assemblyman Ohrenschall.

HEATHER D. PROCTER (Senior Deputy Attorney General, Office of the Attorney General):

Senate Bill 11 contains proposed changes to the statute that governs inmate challenges to the computation of time credits. The computation of inmate time credits is governed by a complex statutory scheme that allows inmates to accumulate credits for various reasons including time served, work performed at the prison, good behavior and the completion of educational or rehabilitative programs. In calculating accrued-time credits, the Department of Corrections must also take into account considerations such as whether the inmate has

been required to forfeit any credits due to a disciplinary action, whether the credits apply to an inmate's maximum or minimum sentences, whether the inmate is serving multiple sentences, and if so, whether the credits apply to each unexpired sentence. In short, the computation of time credits is a complicated process that sometimes results in disputes between an inmate and the Department.

When inmates challenge the Department's calculation of time credits, they must submit written grievances at the prison institutions where they are incarcerated. The inmate grievance system is designed to provide inmates with a formal process to address any concerns related to their confinement including time credit computation. The inmate grievance system further allows prison administrators an opportunity to correct any errors before the inmate resorts to more costly forms of dispute resolution such as civil litigation.

Nevada Revised Statutes 34.724, the statute that governs inmate challenges to the computation of time, does not specifically require an inmate to take advantage of the inmate grievance system before bringing a lawsuit in State district court. The Nevada Supreme Court has ruled that this omission means that inmates are not required to present computation challenges to prison administrators before filing a lawsuit. Senate Bill 11 seeks to remedy this problem by clarifying that inmates must first pursue to completion the administrative remedies available to them through the inmate grievance system before initiating the costly and resource-intensive process of the judicial system.

Section 1 of S.B. 11 revises NRS 34.724 to require an inmate to exhaust all administrative remedies before filing a postconviction petition for writ of habeas corpus challenging the computation of time served. Section 2 amends NRS 34.810 to require the court to dismiss such a petition if the inmate fails to exhaust all available administrative remedies. Section 3 requires the Department to adopt regulations to establish procedures for the expedited resolution of challenges to the computation of time when the inmate is within 180 days of his projected discharge date. Senate Bill 11 promotes judicial economy while preserving the constitutional rights of the inmates.

SENATOR FORD:

Is the court's dismissal without prejudice?

MS. PROCTER:
I assume it is without prejudice.

SENATOR FORD:
Can that be delineated in the bill?

MS. PROCTER:
Yes.

SENATOR FORD:
If prejudice is not mentioned in the statute, do the rules of statutory construction presume a dismissal is without prejudice?

MR. KANDT:
Legal counsel would need to provide advice on whether there is a statutory presumption. The Attorney General is willing to work with you on this issue.

CHAIR SEGERBLOM:
Counsel Nick Anthony will look at this issue and make sure that the dismissal is without prejudice. How often do inmates go to court without exhausting their administrative remedies?

MS. PROCTER:
Several hundred State habeas corpus petitions are filed each year challenging computation of time. More often than not, the challenge is to the application of work credits or merit credits that are not shown on their credit history reports. The reason could be that the credits have not been inputted yet or a belief that credits due are not shown. Generally, it is not a question of the ultimate discharge date but of credits earned.

CHAIR SEGERBLOM:
Do the inmates file lawsuits because there is no simple process to meet, confer and decide?

MS. PROCTER:
The inmate grievance system is the simple process. The system has three levels. Inmates who use the system communicate with various entities throughout the prison administration including the offender management division, which is the entity that ultimately applies the credits to the time

calculations. The Attorney General's Office requests that inmates use this system before involving the courts.

MR. KANDT:

The purpose of the inmate grievance system is to resolve grievances in a timely, quick, efficient manner without resorting to litigation. If inmates do not avail themselves of the process, the reason for having an inmate grievance system is undermined. During the 78th Session, the Attorney General's Office provided numbers for 2013 and 2014. There had been 174 cases of inmates filing challenges to their time credits. One hundred fifty-two of the cases, or 85 percent, had not exhausted the available administrative remedies. On average, it takes a deputy attorney general in the habeas unit about 15 hours to respond to the prematurely filed petition. That adds up to approximately 2,000 hours of attorney work during the biennium, which is a half-time position. This affects the resources in the Attorney General's Office. It does not take into account the court's time.

SENATOR ROBERSON:

How much does this cost the taxpayers on an annual basis? It sounds like quite a bit.

CHAIR SEGERBLOM:

I agree, but if an inmate can get out of prison sooner, the State saves money.

SENATOR CANNIZARO:

How long does the grievance process take?

MS. PROCTER:

The informal grievance level takes approximately 45 days. The inmate has five days to appeal. The first level provides the administration 45 days to respond. The inmate has five days to appeal. The second level, which is the final level, has a 60-day time period. Section 3 of S.B. 11 contains the amendment Senator Ford requested regarding expedited resolution processing when an inmate is within 180 days of discharge.

SENATOR CANNIZARRO:

If S.B. 11 passes, will there be an expedited grievance system for inmates to challenge time computation?

Ms. PROCTER:

An inmate will only have an expedited process if the challenge is made within 180 days of discharge. The existing system will be available to all other inmates.

JENNIFER NOBLE (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports S.B. 11. The Washoe County District Attorney's Appellate Division receives motions regarding inmate time computation. Often a response is ordered within 45 days. The Division contacts the prison for help understanding the calculation since the Division does not understand the issues as well as the prison. The requirement to exhaust administrative remedies may afford inmates a more timely resolution because it avoids the need for the Appellate Division to contact the prison in order to understand the calculation.

CHAIR SEGERBLOM:

Why would an inmate file a writ of habeas corpus in Washoe County?

Ms. NOBLE:

I do not know why, but inmates do file them.

CHAIR SEGERBLOM:

I will close the hearing on S.B. 11 and open the hearing on S.B. 61.

SENATE BILL 61: Revises provisions relating to writs of habeas corpus. (BDR 3-384)

Ms. PROCTER:

A person convicted of a crime and under a sentence of imprisonment may file a State habeas corpus petition. Pursuant to the law, upon final disposition of the petition, the district court clerk must serve a copy of the final order on the petitioner; the petitioner's counsel, if any; the respondent; the Attorney General; and the district attorney of the county in which the petitioner was convicted. If the petitioner appeals, the Court of Appeals issues a remittitur upon completion of its review. The remittitur is served upon the noticed parties. Senate Bill 61 seeks to amend NRS chapter 34 to require the clerk of the Court of Appeals to serve the remittitur on the same persons the district court serves a final order. Even if the petitioner was represented counsel, the petitioner would be served.

This amendment was introduced to address issues raised in recent decisions issued the by Court of Appeals for the Ninth Circuit in which the court found petitioner's counsel ineffective for failing to notify the petitioner when the Nevada Court of Appeals issued the final order or remittitur. Such notification is critical to the calculation of the statute of limitations in a federal habeas corpus proceeding. A letter of support from Attorney General Adam Paul Laxalt ([Exhibit E](#)) summarizes the changes contained in S.B. 61.

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CHAIR SEGERBLOM:

I will close the hearing on S.B. 61. The hearing is adjourned at 2:06 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 41	C	2	Scott Scherer/Nevada Registered Agent Association	Proposed Amendment
S.B. 11	D	2	Brett Kandt/Office of the Attorney General	Letter of Support
S.B. 61	E	2	Brett Kandt/Office of the Attorney General	Letter of Support