

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND
CONSTITUTIONAL AMENDMENTS**

**Seventy-Third Session
February 8, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:49 p.m., on Tuesday, February 8, 2005. Co-Chairwoman Ellen Koivisto presided in Room 3142 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mrs. Ellen Koivisto, Co-Chairwoman
Mr. Marcus Conklin, Co-Vice Chairman
Mr. Bob McCleary, Co-Vice Chairman
Mrs. Sharron Angle
Mr. Mo Denis
Mrs. Heidi S. Gansert
Mr. Brooks Holcomb
Ms. Kathy McClain
Mr. Harvey J. Munford
Mr. Bob Seale

COMMITTEE MEMBERS ABSENT:

Ms. Chris Giunchigliani (excused)
Mr. Harry Mortenson, Co-Chairman (excused)
Mr. Scott Sibley (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, and White Pine Counties, and portions of Churchill, Humboldt, Lander, and Washoe Counties

STAFF MEMBERS PRESENT:

Don Williams, Research Director, Legislative Counsel Bureau

Michelle Van Geel, Committee Policy Analyst
Jasmine Shackley, Committee Manager
Pat Blackburn, Committee Manager, Assembly Ways and Means Committee
Sheila Sease, Personal Attaché to Co-Chairman Harry Mortenson
Celeste Gunther, Committee Attaché
Kasey Sheldon, Committee Assistant

OTHERS PRESENT:

Stacy Jennings, Executive Director, Nevada Commission on Ethics
James Settelmeyer, Chairman, Carson Valley Conservation District and
Chairman, Nevada State Conservation Commission

Co-Chairwoman Koivisto:

[Meeting called to order. Roll called.] I'm looking forward to working with Assemblyman Harry Mortenson as Co-Chair of this Committee. He will be presiding over this Committee when we hear measures proposing to amend the *Nevada Constitution*. Constitutional Amendments was broken out of this Committee back in 1991. This session it's been put back together. So when we hear constitutional amendment issues, Mr. Mortenson will chair the Committee. [Introduced Committee members and staff. Emphasized need for courtesy and importance of public testimony.]

Let's do our Standing Committee Rules ([Exhibit B](#)).

ASSEMBLYMAN SEALE MADE A MOTION TO APPROVE THE COMMITTEE STANDING RULES.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION PASSED. (Ms. Giunchigliani, Mr. Mortenson, and Mr. Sibley were not present for the vote.)

Co-Chairwoman Koivisto:

Now we'll go to Michelle for our Committee Brief ([Exhibit C](#)).

Michelle Van Geel, Policy Analyst, Legislative Counsel Bureau:

[Introduced herself.] During times when the Committee hears measures concerning legislative affairs, we will be joined by Don Williams, our Research

Director, and/or Pepper Sturm, our Chief Deputy Research Director, to oversee some of the legislative issues.

[Michelle Van Geel, continued.] In front of you, in the folder, is your Committee Brief ([Exhibit C](#)). I'm going to briefly go through it so we can get to the rest of the agenda. The first page and a half of the document describes the jurisdiction of the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments. Measures heard in this Committee pertain to Title 17, the State Legislative Department; Title 24, Elections; portions of *Nevada Revised Statutes* [NRS] Chapter 281, which is Ethics in Government; and constitutional amendments. The Committee will also choose the topics of the interim studies that the Legislature will conduct between sessions.

During the 2003 Session, the Assembly Committee on Elections, Procedures, and Ethics was referred 44 bills, 29 of which were enacted into law; and 19 resolutions, 14 of which were adopted. Topics of these measures ranged from assisting elderly and disabled persons during elections, changing reporting of campaign contributions and expenditures, and creating committees to prepare arguments for and against statewide ballot questions.

The Assembly Committee on Constitutional Amendments examined one bill and 13 resolutions last session. Three of the resolutions were processed, but the bill was not.

I'm sure you all have seen numerous copies of the 120-day calendar floating around the building. There's one up in all of the committee rooms. I'm going to briefly go through some of the major deadlines. It's on page 5 of your Committee Brief ([Exhibit C](#)):

- February 14 - Legislators submit their individual bill draft requests [BDRs]
- February 28 - Committees of the Legislature submit their BDRs
- March 21 - Legislators introduce their BDRs
- March 29 - Committees introduce their BDRs
- April 15 - Committee passage of bills from the first House
- April 26 - Passage of bills from the first House
- May 20 - Committee passage of bills from the second House
- May 27 - Passage of bills from the second House
- June 1 - Committee passage of exempt bills
- June 4 - Conference committees submit their reports to Drafting
- June 6 - End of session

[Michelle Van Geel, continued.] For the Committee, the resolutions that we hear for any interim studies are not subject to these deadlines, these are just for bills and joint resolutions.

Pages 5 through 8 of the Committee Brief ([Exhibit C](#)) contain general information on voter registration and turnout in recent elections. For example, 831,563 people voted at the 2004 general election, which was 77.4 percent of all registered voters. As you can tell, that was quite an increase over the last few election cycles, just with the interest in the last election. Additionally, there's a brief discussion of the initiative petitions that were circulated before the last general election cycle in 2004.

On pages 8 and 9 of the Committee Brief ([Exhibit C](#)), you'll find a brief description of some of the major issues that are likely to be discussed this Session in this Committee. Additionally, behind your Committee Brief, there's a document that is a list of the potential measures that could come to this committee ([Exhibit D](#)). I compiled this list using information from the public bill draft request list. The highlighted measures on the list indicate a constitutional amendment. At the end of the Committee Brief ([Exhibit C](#)) is a list of elections and ethics officials including representatives of the Secretary of State's Office, county clerks and registrars, and members of the Commission on Ethics.

Co-Chairwoman Koivisto:

Questions from the Committee? [There were none.] Do we have any Committee bill drafts today? [There were none.]

Stacy Jennings, Executive Director, Nevada Commission on Ethics:

[Introduced herself.] Nevada Commission on Ethics Overview ([Exhibit E](#)). The Commission on Ethics is charged under statute with doing, essentially, five things:

- We interpret and provide guidance on your Ethics in Government Law, which is found in NRS 281.411 to 281.581.
- We investigate and adjudicate ethics complaints and campaign practices complaints.
- We provide advisory opinions on the past, present, or future conduct of public officers and public employees.
- We provide training to public officers and employees on ethics laws.
- We accept financial disclosure statements of appointed public officers who earn more than \$6,000 per year. Elected officers and candidates for public office file those with the Secretary of State's Office.

[Stacy Jennings, continued.] The Commission on Ethics is an eight-member commission. Four of our members are appointed by the Legislative Commission, and four of them are appointed by the Governor. If you look at an organizational chart of the State of Nevada, you'll see the commission floats in between the Legislative and Executive Branches. Our eight members are appointed half by the Legislature, half by the Governor. Of the four that each body appoints, at least two must be former public officers, and at least one must be an attorney. Additionally, not more than four of our members can be from the same political party and not more than four can be from the same county. It was designed to have a balance between the urban and rural areas of the state, and also between the political parties. We're not supposed to be a political body, so when people serve on our commission they have to agree to three things:

- They can't hold any other public office.
- They can't be actively involved in the work of any political party or any political campaign.
- They can't lobby the Legislature for anyone other than the commission or themselves.

Those requirements are binding on the staff as well. Prior to 2003, we were a General Fund agency. The 2003 Legislature, in our budget hearing, asked me where are all of my cases were coming from. So I went back and looked at that. For calendar years 2001 and 2002, 65 percent of our cases had come from city and county government. So they passed a bill which is now codified as NRS 281.4647. That bill requires us to do an analysis every two years of where our cases have come from and to have a cost share with the State General Fund. For this upcoming biennium, again, 65 percent of our cases have come from city and county government. So 65 percent of the budget will be funded by assessments on city and county governments with more than 10,000 in population. The remaining 35 percent of our budget comes from the State General Fund.

Presently the commission has four staff positions, the Executive Director, our Counsel, and my assistant. The Interim Finance Committee, in September funded a legal research assistant position for a new Las Vegas office. That position has been hired; the person will start the February 28. We're going to be looking for a permanent location for our office; it's in temporary quarters right now. It's not published on our website because we don't have anyone there full time at this point. The other three members of the staff are in Carson City.

The Executive Budget recommends a full-time investigator who will join our staff in October, also to be stationed in Las Vegas. Of the 65 percent of my

work that's coming from cities and counties, roughly two-thirds comes from Clark County, the cities within Clark County, or members of the State Executive Branch who live and work in Clark County. So we have an awful lot of work out of Clark County.

[Stacy Jennings, continued.] Why do we have an Ethics Commission? Ethics commissions were formed across the country in the mid-1970s, in the wake of the Watergate scandal. In Nevada, the Commission on Ethics was formed by the Legislature in 1975; it was the first Ethics in Government Law. It had provisions regarding financial disclosure statements. Three members in the State Executive Branch took exception to that: the director of the State Department of Taxation, a member of the Taxation Commission, and a member of the Board of Finance. They challenged the law in court. It went to the Nevada Supreme Court in 1976. The Nevada Supreme Court found in favor of these public officers, who said it is an invasion of privacy to have to disclose financial information. They said, further, they didn't think the Legislature would have passed the law without these financial disclosure provisions. Since the law wasn't severable at that time they struck down the whole Ethics in Government Law, and it went back to the Legislature in 1977. They passed another law, which has survived since 1977.

Initially, our jurisdiction only covered the Executive Branch. In the mid-1980s, the Legislature added itself to the jurisdiction of the Ethics Commission. They put legislative intent for public officers and employees in NRS 281.421, that says, "A public office is a public trust and shall be held for the sole benefit of the people. Public officers and employees must commit themselves to avoid conflicts between their private interests and those of the general public whom they serve." That's especially important when you look at all of the public servants that we have who are part-time: legislators, county commissions, city councils. They all have to have an additional job to support themselves, and that does create, sometimes, a conflict between your own private interests and your public duties. That's why we are here.

Our jurisdiction is in NRS 281.4365. Public officers, are defined as "people who are elected or appointed to positions which are established by the *Constitution of Nevada*, a statute of the State, or an ordinance of any of its counties or incorporated cities, and which exercises a public power, trust, or duty." Statute tells us that means you are doing three things: you're exercising policy, spending public money, and enforcing the laws or rules of the State. This is an important thing I want you to consider.

[Stacy Jennings, continued.] There's going to be a lot of people that come to talk to you about Financial Disclosure Statements this session. Whomever you want to file those, the commission doesn't have a position on that. However, in our bill draft, we are proposing that you create a separate definition of a "public officer," for the purposes of enforcing the ethics laws regarding complaints. That is because there is a large group of people out there that I think we should have the ability to investigate, but we don't. Most planning commissions, for instance, are not spending public money; therefore, they're not public officers. That was an issue last session and there was a special section added into our statutes that says planning commissioners in counties with populations over 400,000 have to follow the disclosure and abstention requirements.

Our proposal would take that section back out, and have a definition of "public officer," for the purposes of our commission, investigations, and the ability to issue advisory opinions, that would put an "or" where that big "and" is. There are also a lot of state boards and commissions making important decisions, but they're not spending State money. Anyone that was strictly advisory would [continue to] be different, but people that are making serious decisions about planning, zoning, and other issues like that, they're the kinds of people that we get a lot of calls about, and we can't do anything because they're not within our jurisdiction at this point.

Who is not a public officer, right now? Anybody that is a judge, or officer of the court system has the Commission on Judicial Discipline. Anybody that is serving strictly in an advisory capacity; general improvement district members, if they're not spending money; the Clark County Health Officer; and, of course, any federal officers or employees. That's not mentioned in statute, but obviously as federal employees and officers they're not in our jurisdiction. We also have jurisdiction over public employees, which are people that are working for the State, city, or county, or the Legislature, and whose actions are directed and controlled by a public officer. So again, we're looking at the Legislative Branch of government; the State Executive Branch of government and its constitutional officers. Anybody that's working as a public employee for the State, city, or county; or serving on a city or county board or commission that would meet those definitions.

The first thing that we do, which I think is a great tool, is we can give people advisory opinions. When they know there's a conflict that's going to come up between their public life and their private life, they can come to us. We can give them advice. It's confidential under statute, unless they choose to have an open public hearing, so they can come and get advice to stay out of trouble. It is

binding on their conduct but it's a great tool for public officers and employees to head off trouble before it comes along.

[Stacy Jennings, continued.] The second thing we do is investigate complaints about the conduct of public officers. This is the majority of our work. This process was substantially changed in 1999. When we get a complaint and we accept jurisdiction over it, we send the complaint out to the public officer. Under regulation, they have ten days from when they get it to respond. In 2003, this body graciously gave us the ability to have the public officer waive that time frame, so they can take more time than that. This body also gave me 45 days, from the time the complaint comes in, to get an investigation done. I think that is a great extension of time. I think it's very doable if we have more staff. The problem that I've come up with in relation to the 45 days is that my caseload went from 66 cases in calendar years 2001 and 2002, up 142 percent, and I'm the only person available to do the investigations. So right now I'm not meeting those time frames, but I think it's an important due process thing for people to have those in statute.

After we do our investigation, we take the cases to a two-member panel of our commission for a "just and sufficient cause" hearing. I recommend whether I think there's a violation of statute or not. At that point, that two-member panel can unanimously dismiss a complaint. This happens approximately 90 percent of the time. If they disagree about whether there's a violation or not, or if they unanimously agree [that there is], then they forward it to the full commission for a hearing.

The process is confidential under law from when we get the complaint until that panel meets. Once the matter is either dismissed or moved forward, everything we have becomes an open public record. The hearing before the commission is an open public hearing.

If the commission finds a willful violation, the first willful violation is up to a \$5,000 civil penalty. The second is up to a \$10,000 civil penalty, and the third is up to \$25,000 civil penalty. For constitutional officers and legislators, if we find you have willfully violated one Ethics in Government statute, we are required to refer you for impeachment. This is probably not a big surprise to any of you at this point. For all other elected public officers, at one willful violation we may refer them to a district court for removal from office. At three, we must. Additionally, if we find evidence of criminal activities, we're supposed to refer that for prosecution by the appropriate person. That's basically what we have in statutes for penalties. Any opinion we issue, whether it's an advisory opinion or an ethics complaint, is subject to judicial review. We do have people

challenge the opinions we issue, and those work their way through the court system.

[Stacy Jennings, continued.] The third type of complaint we have is a campaign practices complaint. This statute was put in, I believe, in 1999. It says that, as a candidate for office, you're not supposed to maliciously publish any false statement or fact about someone, or someone is not supposed to do it about you. They're not supposed to do it maliciously, with the intent to impede the success of your campaign. The problem that comes in is that to find a violation under this law, the person [candidate] has to prove that it impeded the success of the campaign. This is very hard to do unless we go out and poll every voter about why they voted the way they did. It is not very easy to enforce. The statute is currently pending a constitutional challenge in the Clark County District Court. The ACLU [American Civil Liberties Union] and the Nevada Press Association have challenged the constitutionality of this statute. It's very early in its stages. In 2003, the Assembly voted to unanimously repeal this statute and the Senate didn't do anything with the bill. So I'm sure someone may propose that concept again.

We have fairly limited cites for complaints to find violations of statutes. NRS 281.236 is the cooling-off period of one year after you leave the Executive Branch of government. NRS 281.481 has the main provisions of the Ethics in Government Law, which has your Code of Ethical Conduct. NRS 281.501 has the disclosure and abstention provisions that guide public officers. NRS 281.505 deals with contracts and prohibited contracts that you can't enter into as a public officer. NRS 281.553 has prohibitions against taking an honorarium for your public office. NRS 281.554 was added by the 2003 Legislature. It deals with prohibitions against causing government funds to be expended to support or oppose a ballot measure or a candidate. NRS 294A.345 and 294A.346 is elections law. That's the campaign practices statute that we have jurisdiction to enforce.

Where are we going as a commission? These are the official measures that we have put in with our budget. We are currently on track, halfway through fiscal year 2005, to have 90 complaints or requests for opinions submitted to our office. We're actively investigating roughly 50 percent of those. Usually, at least 80 to 90 percent are dismissed at a panel level. What does that mean? It means that once the whole case was investigated, it appeared to be without merit. I think that's important. People have a right to file a complaint, but the process is working when we can get to the bottom of those and only move forward with the ones that have merit to them. "Investigations completed in

45 days", is not happening this year. I'm hoping we can get back on track with that once we hire a full-time investigator.

[Stacy Jennings, continued.] Generally 20 to 25 percent of our opinions are advisory in nature, where people come and ask for our advice. Not a lot of our opinions are getting challenged under judicial review. We hold a lot of training programs for public officers and I get very high approval ratings on those. Currently, if you look at our budget which for this fiscal year is \$419,000, 70 percent is tied up in salaries. The other big item is court reporting. That's where most of our money goes.

I'm going to talk to you about a couple of things that you may hear me say during Session. "Conflict of interest," statute talks about it a lot, but it's not defined. This is where you have a private or personal interest sufficient to appear to influence your objective exercise of your duties. Whenever you have a conflict of interest, statute tells you that you need to disclose it, because if you do not, it could create the "appearance of impropriety." This is another big ethics term that we talk about. That is conduct that would create, in reasonable minds, the perception that you can't carry out your duties impartially and with integrity.

Also, statute talks a lot about "pecuniary interests." That would be a monetary interest or an interest that can be valued in money. In addition to things you might think about, like business ownerships and stock ownership, you also have to think about other things like employment relationships of your spouse or members of your household. Those are things that statute will reach that you may not always think about.

What is not a "pecuniary interest"? A campaign contribution is not. The Legislature put that in [statute] in 1999. They said, as long as you're reporting your campaign contributions timely, as required on your Contribution and Expenditure Reports, then those are not required to be disclosed [as pecuniary interests]. I know you've probably all been advised of this, but I'm just going to remind you, since I'm here: your provisions on voting, abstaining, and disclosing on issues are in NRS 281.501. Generally, if the value that's going to accrue to you as a result of that vote is not greater than the value that's going to accrue to anyone else, you can vote. When in doubt, we always advise you to disclose, but participate. You're here for a reason. You're representing people, and if you're constantly abstaining from issues, then they're not getting their fair share out of you as a public servant.

[Stacy Jennings, continued.] Statute tells you that disclosure is always mandatory for any interest that you have that's created by a gift or a loan, a pecuniary interest, or someone to whom you have a commitment in a private capacity. Disclosure has to be made in public and at the time the measure is considered. However, there is a special provision in NRS 281.501, subsection 6. It says that you, as legislators, may file with the Director of the Legislative Counsel Bureau a written statement of disclosures for the session, and once you do that, it is publicly available; so you don't have to repeatedly disclose the things that you know you have to disclose. If something else comes up that you know you haven't filed, you might want to consider disclosing that at the time of the vote.

Also, NRS 281.501, subsection 2 tells you that if you have an interest that's created by: a gift or a loan, a pecuniary interest, or a commitment in a private capacity to others—even if you have to abstain—you're not precluded from participating in a meeting, as long as you're not actively advocating one way or the other, and just providing some kind of factual information and testimony. The commission issued a very good opinion talking about the difference between advocating and otherwise participating. It's Opinion Number 97-07, and it's on our website. If you have any questions I'd highly recommend you look that up.

Additionally, if you have any questions on disclosure, we have a very good opinion, number 99-56, our Woodbury Opinion. That was issued to then-Clark County Commissioner Bruce Woodbury. It has a very good discussion; it's what the commission always refers people to when they have questions: How much do I have to disclose? What type of information should I disclose?

People you have a commitment in a private capacity to are found in NRS 281.501, subsection 8. Anyone who is a member of your household. It doesn't say they have to be related to you, as long as they're a member of your household. Anyone that is related to you by blood, adoption, or marriage, in the third degree of consanguinity, anyone that employs you, or anyone in your household, anyone with whom you have substantial and continuing business relationships, or other similar relationships. Clark County is going to come forward, I believe, in their ethics proposal to get some more specific stuff in this particular section of statute.

Assemblyman Conklin:

Many of us are involved in nonprofit organizations. We serve on boards or in other capacities. Where does that fall with respect to private capacity commitments?

Stacy Jennings:

I think what you have to do is look at the issue before you, and what your involvement is. It's never bad to disclose that involvement. I did a presentation last night to the Carson City boards and commissioners, and some of those people had questions about nonprofits that they were involved with. My advice to them was, "It doesn't hurt you to disclose." If there was some huge issue, like you were the chairman of that board and they were trying to get [public] money, that might be a conflict you would want to abstain from, but I don't think it would hurt you to disclose that.

In relation to that, as well, the "third degree of consanguinity," what does that mean? This chart (slide 2 of page 7 of [Exhibit E](#)) will tell you what that means. As a public officer, you are the yellow box on the top of the first column. Any box numbered one, two, or three is someone that is related to you within the third degree. Again this is not just blood, as the chart says, but adoption or marriage as well. Anyone between you and your great-grandchildren; moving up the chart, you, your parents, brothers, sisters, nieces, and nephews; you, your grandparents, aunts, and uncles; and you and your great-grandparents. Those are the people that statute specifically tells you that you have a commitment of private capacity to. It doesn't mean that some of those other people couldn't get you in trouble, but those are the ones you need to specifically think of.

This is what is recommended in The Executive Budget for us (third slide on page 7 of [Exhibit E](#)). Still 70 percent of our budget is going to be tied up in human resources. Our budget is going up by about \$200,000. The main reason for that is permanent funding for our Las Vegas office, and our legal research assistant that the Interim Finance Committee gave us in September. The second reason is the new investigator position. Those are the two main things that are making the budget go up. If you look towards 2007, it's really annualizing funding. It's not going to increase, just a few thousand dollars from 2006 to 2007. Again, 65 percent of that will be paid by local government and 35 percent by the State General Fund.

What's coming up in Session? I haven't seen our bill draft yet. I can tell you what we put in. We have about ten small things. Most of them, I would think, would not be terribly controversial. The first thing we have is a clarification the Public Utilities Commission asked us to include in our bill, regarding the cooling-off period. I will make sure when this bill comes forward that Chairman Don Soderberg [of the Nevada Public Utilities Commission] is here to discuss that with you, because that was his idea.

[Stacy Jennings, continued.] The second thing, which I would consider to be the most major thing we're asking for, is the issue I just discussed: the definition of a "public officer," and having a different definition for complaints versus who files a financial disclosure. We'll be happy to tell you how many people have filed in years past, how many people file now, and where they file. We've been jointly administering that program with the Secretary of State's Office. The commission doesn't really have a position on whomever you want to file.

We want to delete a section that says we review Financial Disclosure Statements, because I don't believe that there's a reason for it. We don't have the ability to find anyone in violation for the information that they put on that statement, and we certainly don't have the staff to be reviewing them. So we were recommending that be taken out of statute. We were asking that we have the ability to hire outside legal counsel if we don't have counsel or our counsel has a conflict.

We are asking for a statute of limitations on ethics violations. Currently our statutes say that if you're in public office, it doesn't say for how long, we can take action. If you resign while we have a complaint, it doesn't matter. Further, even if you leave public office, within one year of the reasonable discovery of a violation, we can still go back. In fact we have a gentleman going up for a hearing next month, that the complaint was filed three days short of one year after he left public office. He has to come before the commission for that. We're proposing a three-year statute of limitations on ethics violations. I think that's consistent with most other violations of law.

There's a form called Disclosure of Agency Representation. If you're a public officer and you represent yourself before Executive Branch agencies, you're supposed to file the form with us. Currently, it's due January 10. We wanted to move it to the same day as Financial Disclosure Statements, and make that January 15. We were proposing, as I had mentioned, deleting NRS 281.501, subsection 3, that says planning commissions are required to abide by abstention and disclosure requirements, because our definition of "public officer" would include those people.

When we amended financial disclosure requirements in 2003, now certain people no longer have to file them, but we forgot that they should be filing an acknowledgement of the statutory ethical standards, because they're still subject to the Ethics in Government Law. So we were going to put in a 60-day filing deadline. Once you are appointed to public office, you need to file that form with us within 60 days. The violations of the honorarium statute also have

a criminal penalty associated with them. We're a civil agency, so it was only a gross misdemeanor. We were proposing to remove that from statute.

[Stacy Jennings, continued.] It was my understanding last session, when we changed the Financial Disclosure Statement filing requirements, that you wanted all elected public officers to file and all candidates for office, and you were exempting all appointed public officers who earned less than \$6,000 a year. How it ended up was that candidates who would earn more than \$6,000 for public office have to file and candidates who would earn less don't, but once they get elected they all have to file. We propose, and I believe the Secretary of State is as well, that we remove that \$6,000, so that all candidates and all elected public officers have to file that form. That would be consistent. But if you don't like that idea, we don't have any heartburn over taking it out and letting other people duke out who has to file Financial Disclosure Statements.

The Attorney General has a bill draft in on some of his ethics provisions. I'm not sure where they're coming down on that yet. I don't believe it's done yet. There are two BDRs listed as by this Committee, I don't know what those are either.

The Clark County proposal has four main components out of the ethics group their county commission appointed. The first would be to lower the gift threshold. Currently, if you accept gifts over \$200, they have to be reported on financial disclosures. They are recommending that go down to \$50, statewide. Secondly, as I mentioned previously, they're going to make some recommendations to change the definition of "people you have a commitment in a private capacity to." Third, they're talking about changing how a "willful violation" is defined. I think that's been in the newspapers a lot. Fourth, they're going to have their own county ethics code and they're asking for language in statute that would say that if any local government chooses to have their own ethics code, they can ask us to enforce that. We have told them, if you pass that, we're happy to enforce their ethics code. It shouldn't be a financial burden on us if we get the staff that's recommended in The Executive Budget.

Senator Titus has a proposal that will define "political activity" for the purposes of state employees. I don't know exactly how she's doing that, but that's something that she put forth after the impeachment proceedings. Senator Horsford is going to have a BDR that says it's illegal for employees to complete Campaign Contribution and Expenditure Reports on State time. I think that's another issue you all heard about in the impeachment proceedings. Speaker Perkins has a pretty big proposal, I understand, with a lot of exciting things in it. I haven't seen it yet, but he is looking at making some changes on both our side and Attorney General Sandoval's side as well. As these bills come

up, the only bill that we really have a position on is our bill as a commission. But I will be here to let you know how it would impact our process, or how it would change things from the way they are now.

[Stacy Jennings, continued.] Lastly, this is our contact information (page 9 of [Exhibit E](#)). The Carson City office is not moving on the 28th; we're moving on the 17th and 18th, so our mailing address will be Suite 10. We just changed our website address to <www.ethics.nv.gov> last week. That is our temporary quarters in Las Vegas. We are getting funded for rent in The Executive Budget on July 1.

We just hired my paralegal. She is going to be looking for permanent office space for us. This address is not on our website because, unless I'm in Las Vegas, which obviously I'm not today, there is no one there in that office, and won't be until the beginning of April. That employee is going to come up to Carson City for a month before we turn her loose in Las Vegas. Right now we have an unadvertised location and phone number, and that goes right to voicemail. We'll give you an update when we finally find our public quarters, and we will post that information on our website when it becomes official. I gave you a couple of attachments. One is our complaint process, a little diagram on that (page 10 of [Exhibit E](#)). The second explains our bill draft request (page 11 of [Exhibit E](#)).

Assemblyman Munford:

How many commission members are there?

Stacy Jennings:

There are eight members on our commission.

Assemblyman Munford:

They're all appointed?

Stacy Jennings:

Four are appointed by the Legislature, and four by the Governor.

Assemblyman Munford:

They all receive a salary, is that correct?

Stacy Jennings:

They don't receive a salary. They receive \$80 each day we meet, which is usually once a month.

Assemblyman Munford:

You are the only salaried members of the commission?

Stacy Jennings:

None of the commission members are. The commission has four salaried members on its staff: the one that we just hired, myself, our counsel, and my assistant. We're the only salaried people. The commissioners just get \$80 when they meet; much, I believe, like you people do.

Assemblyman Munford:

So if there are local complaints down in Las Vegas, the same commission will also oversee those complaints in the northern part of Nevada? Or is there a separate commission?

Stacy Jennings:

If we have a big hearing in a certain area, like in Las Vegas, we try to have that meeting in Las Vegas, if it's someone that's a Las Vegas public officer. We often videoconference meetings. We're meeting tomorrow and videoconferencing between Reno and Henderson. I love to use these facilities; we do a lot when you're not in session. We videoconference our meetings almost every month between Carson City and the Grant Sawyer Building. When that's not available we use the Contractors' Board, which is in Reno and Henderson. Sometimes we have to move to other places, because we don't have our own meeting facilities. Usually our meetings are videoconferenced to both parts of the state. Four of my members reside in Las Vegas, two in Reno, one in Carson City, and one in Minden. So they travel to those locations.

Assemblyman McCleary:

Stacy, I have a couple questions about financial disclosure. One thing you said that caught my attention was that a public officer must make \$6,000 a year or more.

Stacy Jennings:

An appointed public officer.

Assemblyman McCleary:

Now all elected officials, regardless of how much they make are required—
[Stacy Jennings nodded in the affirmative.]

Assemblyman McCleary:

I misunderstood. I was going to say, we don't make \$6,000 a year. Also, since you don't want to review the statements, what do we do these for? I'm not

really sure. Could you just explain how this came about and why we do this? Is it just for public information?

Stacy Jennings:

It's the public's right to know, open government, kind of like your Campaign Contribution and Expenditure Reports. It's that the public has a right to know what commitments you have that might affect your decision making. It's been my experience that the only forms the public wants to see are legislators' or constitutional officers', or occasionally a city council or county commission members'. Most of the appointed public officers, people never ask to see theirs. It's mostly elected public officers.

Assemblyman McCleary:

If there's a problem, or someone challenges it, we have no official way to address it, correct?

Stacy Jennings:

Correct.

Assemblyman McCleary:

And that's why you're going to bring legislation to stop reviewing it?

Stacy Jennings:

I think it's redundant to have a review in there. [Assemblyman McCleary expressed reservations.]

This is something probably you'll hear from Secretary of State Dean Heller on. They don't have what they call "audit authority" on Campaign Contribution and Expenditure Reports, and they had asked for that last session. Our position is that the way the statutes are, we don't have audit authority. We did have a recent Nevada Supreme Court decision where the forms weren't filled out at all. The Nevada Supreme Court came down and said you do have to fill the form out, and we do have the ability to make sure that you at least made an effort to fill the form out. Can we do anything about what you put on the form? My position is no, we don't, unless you [legislators] want to give it to us, and then I guess we could do that.

Assemblyman Denis:

On that same topic of financial disclosure, I've been filling that thing [Financial Disclosure Statement] out for years and it doesn't change every year. Every year it stays exactly the same. Have we ever looked at, if it doesn't change, not having to fill it out [again]?

Stacy Jennings:

I've been there for years. I don't believe that's ever been proposed. I know that the requirements of what you put on the form have been the same in statute for a long time; that hasn't changed. If you wanted to do that, you could do that, but I don't think anyone's ever proposed that.

Assemblyman Denis:

What about filing it electronically?

Stacy Jennings:

The problem is that we don't have the expertise on our staff to know how to do it. I know that the Secretary of State's Office has gotten that program up and running for Campaign Contribution and Expenditure Reports, and I could certainly ask their office if we might be able to do that with the financial disclosures as well. They have a lot more computer equipment and servers, because of that program, than we do. At least for our ability to electronically accept the forms there would be some IT [Information Technology] issues we would have to address.

Co-Chairwoman Koivisto:

Stacy, several years ago, when we had to file our Financial Disclosure forms—I think it was the one that was due shortly after the election, or maybe it was one that came later in the year—if there was no change, we could simply write on a piece of paper, specific language that said, this is the same as whatever form I filed, on whatever date.

Stacy Jennings:

What you're referring to is that, prior to 2003, the forms were due March 31, and you were all filing for election in May. The statute, prior to 2003, said that if you have filed a statement within the last 90 days, and nothing has changed, you don't have to refile. So if you had made your annual filing, and you were running for office again, you didn't have to file.

In 2003, when they changed everything, that language got taken out. I think we had two bills, one was ours and one was the Secretary of State's. The one they ended up codifying, for the most part, was the Secretary of State's, and that language ended up disappearing. That's also when the date moved from March 31 to January 15, so even if it was still there, you wouldn't be within the 90-day window for a May filing date. You could certainly put that back in. The nice thing about having Secretary of State Dean Heller's office accept those forms is that they're up on the Internet. We don't really have the ability at this point to put those up on the Internet. For all elected officers and candidates,

Dean's office does get them up on the Internet with the contribution and expenditure reports. That all changed in 2003.

Co-Chairwoman Koivisto:

Thank you. Any other questions? [There were none.] Is there anything else to come before the Committee?

James Settelmeyer, Chairman, Carson Valley Conservation District and Chairman, Nevada State Conservation Commission:

I wanted to talk to some of the issues that Ms. Jennings brought up previously, discussing the ideas of financial disclosures and how they apply to elected officials. I understand everything that she indicated, and I understand the sentiment that if you are going to be directing funds, then you need to fill out the Financial Disclosure Statement. In that same respect, anyone who walks in this room and gives testimony has the ability to affect how funds are distributed. So do we require everyone who walks in the room to fill out a financial disclosure? A couple of years ago, the Governor set up the Carson Valley Fair Board. So they have to fill out Financial Disclosures? The Swimming Pool District has to fill out Financial Disclosures. Yes, they can direct money, but only towards certain things, to the good of the community.

In my respect, for conservation districts, we have certain districts that have just been notified that they have to fill them out. The Secretary of State said, "You can quit, but you still have to file because you're still liable for the year." So these people are facing a \$2,000 penalty if they don't have it in within 45 days, for doing nothing more than contributing towards the benefit of the natural resources of their communities, as they have done for decades. John Indiano in the Carson Valley Conservation District passed away, God rest his soul. He was in it for 47 years. When you have people like that, who are giving their time and energy, away from their families, that's pretty hard to do, as you all know. But then to add a straw on their back that says, "By the way, you're now a criminal, or you're civilly liable for \$2,000," tends to give them that little extra push to say, "I'm not interested anymore." Then the people who may be interested in doing it may not be the people you really want there. They have different interests. I'm sure that no one ever lies on any of these forms.

Now I do fill these forms out through Nevada State Conservation Commission. I receive compensation of \$80 per day for a meeting that I go to. I have absolutely no problem it filling out, because I get a check from the government coffers. I sometimes agree that Nevada needs to do something about its ethics laws, and maybe grow a little bit stronger teeth, and be a little bit more of a pit

bull in situations that clearly require it. But I have become a little worried that we might go a little over the top on certain issues.

[James Settlemeyer, continued.] Maybe a suggestion, what if you required it of anyone who is elected at a general or primary election? There are a lot of things, such as fair boards and sanitation districts, things of that nature, that are elected at meetings. It was just a concept that I wanted to put forth. Again, you'll probably hear from me later testifying to the same effect.

Co-Chairwoman Koivisto:

Thank you, Mr. Settlemeyer. I think it's something we need to look into, because there are volunteers who have to fill out forms. I heard about it earlier today, too. It is something we need to look into. So thank you for coming and talking to us about it.

For the Committee's information we have a guest, Assemblyman Goicoechea. Is there anything else to come before the Committee? [There was nothing.] We're adjourned [at 4:58 p.m.].

RESPECTFULLY SUBMITTED:

Celeste Gunther
Committee Attaché

APPROVED BY:

Assemblywoman Ellen Koivisto, Co-Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Elections, Procedures, Ethics, and Constitutional Amendments</u>			
Date: <u>February 8, 2005</u>		Time of Meeting: <u>3:45 p.m.</u>	
Bill	Exhibit	Witness / Agency	Description
***	A	*****	Agenda
***	B	*****	Committee Standing Rules
***	C	Michelle Van Geel, Committee Policy Analyst, Legislative Counsel Bureau	Committee Brief
***	D	Michelle Van Geel, Committee Policy Analyst, Legislative Counsel Bureau	BDR Information: concerning elections, procedures, ethics, and constitutional amendments
***	E	Stacy Jennings, Nevada Commission on Ethics	Presentation of Nevada Commission on Ethics