

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

**Seventy-Third Session  
April 5, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:05 p.m., on Tuesday, April 5, 2005. Co-Chairwoman Ellen Koivisto presided in Room 3142 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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  
Ms. Chris Giunchigliani  
Mr. Brooks Holcomb  
Ms. Kathy McClain  
Mr. Harvey J. Munford  
Mr. Bob Seale  
Mr. Scott Sibley

**COMMITTEE MEMBERS ABSENT:**

Mr. Harry Mortenson, Co-Chairman (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Valerie Weber, Assembly District No. 5, Clark County  
(part)  
Assemblyman John Ocegüera, Assembly District No. 16, Clark County  
(part)

**STAFF MEMBERS PRESENT:**

Michelle Van Geel, Committee Policy Analyst  
Celeste Gunther, Committee Attaché

**OTHERS PRESENT:**

Buffy Martin, Director, Government Relations for Nevada, American Cancer Society  
Richard Whitley, Deputy Administrator, State Health Division, Nevada Department of Human Resources  
J. David Fraser, Executive Director, Nevada League of Cities and Municipalities  
Michael J. Franzoia, Mayor, City of Elko, Nevada  
Mike Alastuey, Assistant County Manager, Office of the County Manager, Clark County, Nevada  
Stacy Jennings, Executive Director, Nevada Commission on Ethics  
Janine Hansen, President, Nevada Eagle Forum  
Donald L. Soderberg, Chairman, Nevada Public Utilities Commission (PUC)  
James Spinello, Assistant Director, Administrative Services, Clark County, Nevada  
Bill Flangas, Private Citizen, Las Vegas, Nevada  
Craig Walton, President, Nevada Center for Public Ethics; and, Member, 1999 and 2003 Clark County Ethics Task Force  
Cheri Edelman, Legislative Lobbying Team, City of Las Vegas, Nevada  
Christopher Hansen, State Chairman, Independent American Party  
Kent Lauer, Executive Director, Nevada Press Association, Inc.

**Co-Chairwoman Koivisto:**

[Meeting called to order. Roll called.] We will start with Assemblywoman Weber's bill Assembly Bill 212.

**Assembly Bill 212:** Creates Task Force for Elimination of Cervical Cancer.  
(BDR S-1172)

**Assemblywoman Valerie Weber, Assembly District No. 5, Clark County (part):**

My handouts are coming ([Exhibit B](#)). I am also speaking as the State Director, for Women in Government. I am bringing to you A.B. 212, which is a Task Force on Cervical Cancer.

Cervical cancer is one of the only preventable women's cancers. We now know that a common virus, the human papilloma virus or HPV, is the causative agent and, with regular and accurate screening, no woman should die of this disease. However, a new national report shows that Nevada has a long way to go to ensure that no women die unnecessarily.

[Assemblywoman Weber, continued.] Women In Government (WIG) is a Washington, D.C. based, nonprofit, bipartisan organization, representing 1,600-plus elected women in state government. It issued a comprehensive report in January 2005 entitled "A Call to Action: the state of cervical cancer prevention in America." As a result of WIG creating awareness in its national Campaign to Eliminate Cervical Cancer in January 2004, legislative activity is now realized in 36 states, including Nevada.

In this 50 state review, the report reveals that too many women in Nevada remain unscreened or under-screened. However, our State-funded screening programs do offer the new FDA [Food and Drug Administration, U.S. Department of Agriculture] approved technology in HPV testing, which can better identify women needing early intervention. Such advances in preventive technology gives us the tools we need to eliminate this major malignancy and we must use them.

According to the American Cancer Society, more than 10,500 women will be diagnosed with cervical cancer this year, and approximately 3,900 women will die. A vaccine is being developed and will further improve our ability to protect against cervical cancer. However, it's still several years away and there's work to be done now.

In the study Nevada received a "fair" rating by scoring 5 out of 16 points, or 31 percent, in eight categories, which you can read in your handout (page 5 of [Exhibit B](#)). There are several pages in the back of statistical data. We have both higher morbidity, or incidence of disease; and mortality, death from disease, than the national average. In fact, Nevada's incidence rate of cervical cancer is 12.4 cases per 100,000 and is the second highest in the nation, only behind the District of Columbia at 14.3 per 100,000.

I wish to thank all the women legislators of both Houses who embraced this legislation on behalf of the women of our state. We're committed to reduce the number of women who die each year of this highly preventable disease.

[Assemblywoman Weber, continued.] This bill creates a typical task force. There are several of the sections that I would like to highlight for you, including Sections 2, 4, and 8.

- Section 2: Deals with the 16 members of the Committee and their appointment by the Senate Majority Leader, Speaker of the Assembly, the Governor, and two ex-officio members.
- Section 4: Includes the charges of the Committee. They will review, evaluate, create awareness, examine current law, and create a statewide, comprehensive plan for the prevention of cervical cancer.
- In Section 8: There's a report that's due to the Governor by the beginning of the next Legislative Session, the Seventy-Fourth Session, and a copy will be transmitted back to the Legislature.

I urge my colleagues on this Committee to pass this bill, and for all of us to renew our efforts to prevent cervical cancer so that no more families in Nevada lose a mother, daughter, or sister to this preventable disease. With action, cervical cancer can be the first cancer we eliminate.

**Buffy Martin, Director, Government Relations for Nevada, American Cancer Society:**

We support this task force and we are committed to serve in any way necessary so we can assemble a great effort to eliminate cervical cancer.

**Richard Whitley, Deputy Administrator, State Health Division, Nevada Department of Human Resources:**

[Submitted prepared testimony [Exhibit C](#).] The Health Division has a role on the task force as proposed. Since 1996 we have received the Center for Disease Control's (CDC) breast and cervical cancer screening and early detection grant. We would welcome the opportunity to utilize this task force, the priorities that will be established, and the review of data to connect with our existing program for better screening and early detecting of cervical cancer.

**Co-Chairwoman Koivisto:**

There is no fiscal note on this bill. However, the study or task force would have to be staffed. Those are generally staffed by Legislative Counsel Bureau staff so there should be a fiscal note, at least for that.

**Assemblywoman Weber:**

I will check with staff to find out what that fiscal note may be.

**Assemblyman Seale:**

There is also going to be a per diem for the members of the board, and they normally receive a stipend—which I believe is \$80 a day. That should be considered as well.

**Co-Chairwoman Koivisto:**

It is not part of the three allowed interim studies and has to be voted on before the deadline.

**Assemblywoman Angle:**

Will this have to be re-referred to Ways and Means or can we vote it out of our Committee today?

**Co-Chairwoman Koivisto:**

We can vote it out and re-refer it to Ways and Means.

**Assemblywoman Weber:**

I would like to check with the Department of Health again. When I originally spoke with Mr. Alex Haartz, he suggested that, within the text of the bill, it talks about one of the Committee members being an employee of the Health Division, which is on the bottom of page 2, line 36 of the bill. They have graciously offered that seat to another entity. They would like it to go to a member of the Governor's Youth Council, and I will confirm this. I applaud the idea of bringing the youth into this, but we need time find out if they want to do that, since Mr. Richard Whitley was not prepared to present that today.

I appreciate that offer. We can bring you the fiscal as well as the amendment proposal back if you chose to do so, Madame Chair.

**Co-Chairwoman Koivisto:**

We don't need the fiscal note, that will have to go to Ways and Means.

**Assemblywoman Angle:**

In that case, can we allow them to amend it in Ways and Means as well, and just go ahead and pass this bill today?

**Assemblyman Conklin:**

Ms. Weber, it was my understanding from your comments that you wanted us to hold this until you had a chance to check with the Governor's Youth Council to make sure that was still acceptable them. Is that correct?

**Assemblywoman Weber:**

I'd love for it to be passed out, but I'd like to check to make sure that it is the Division's desire to give up that seat.

**Richard Whitley:**

In the proposed legislation, we have two seats for the Health Division and can, in the one seat, have representation. The intent was to have youth represented; the Governor's Youth Council has addressed similar issues and it would be appropriate for them to participate. It would be fine to make the amendment now if this Body agrees.

**Assemblywoman Weber:**

As a friendly amendment, that would be fine.

**Co-Chairwoman Koivisto:**

I'm trying find where in the bill the other person from the Health Division is, it's the administrator or the designee.

**Assemblywoman Weber:**

On page 2, line 11, the ex-officio member is the Administrator of the Health Division.

**Co-Chairwoman Koivisto:**

[Closed the hearing on A.B. 212.]

ASSEMBLYWOMAN ANGLE MOVED TO AMEND BY CHANGING THE LANGUAGE ON PAGE 2, LINE 36, AND RE-REFER AS AMENDED TO THE COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

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

**Co-Chairwoman Koivisto:**

[Opened the hearing on A.B. 443.] This is from the Nevada League of Cities and Municipalities.

**Assembly Bill 443:** Amends certain city charters to revise timing of municipal elections. (BDR S-512)

**J. David Fraser, Executive Director, Nevada League of Cities and Municipalities:**

We have a proposed amendment ([Exhibit D](#)). I want to simply state what the bill's purpose is, and what it accomplishes. The mayors are here to answer any questions that you might have that are specific to their jurisdictions.

This bill changes the election dates of three charter cities in Elko County: Carlin, Elko, and Wells, to coincide with the November general election and coincide with the county's election. By having the elections at the same time as the county, they will save money and represent a savings to the taxpayers.

There are essentially two ways suggested by LCB [Legislative Counsel Bureau] as constitutional that get us from point A to point B. Point A being the June elections and point B being the November elections, coinciding with the county election. I have discussed this with Scott Wasserman [Deputy Legislative Counsel] on several occasions since he drafted the bill.

When we first submitted the bill, it was with the suggested language as it is in front of you. LCB initially developed alternate language, which is reflected in the amendment ([Exhibit D](#)). Because of the timing of the various city council meetings, which take place twice a month, we were not able to get a reaction back on the differences in those two options by the drafting deadline. Subsequently we were able to have discussions with our various city councils and found that the alternate method would work for two of the three cities. This amendment would substitute the alternate method for the cities of Carlin and Wells. The method that is in the bill, as introduced, is the one we want to keep for Elko.

Under the original method, none of the presently seated officeholders would have the terms of their offices altered, and there would be a June election this year. One of the reasons for keeping Elko on this method is that they're already in their candidate filing period, which ends this Friday, and there are already more candidates who have filed than there are seats. So under election law, there has to be an election. Then they would have elections in June of 2007 and 2009. Each of those elections would be for shortened terms—a three-and-a-half-year term rather than four-year term for those elected in 2007 and 2009. That is so those offices for Elko would be available to be elected with the county elections in 2010 and beyond.

The method that we want to use for Wells and Carlin gets us from point A to point B quicker. It is possible because there are currently no candidates filed in those communities. If no candidates file, under election law, no election will be held. That is likely the event we will be looking at, at the end of the filing

period. This cancels the June election, which is likely to be cancelled anyway, and schedules the next elections to be for offices which were last elected in 2001, in the November election of 2006. Those elected in 2003 would be subject to election again in the November election of 2008. At that point, they would be in synchronization with the county elections. In LCB's opinion either method works.

[J. David Fraser, continued.] In the amendment on pages 3 and 4, Sections 5 and 6 ([Exhibit D](#)), indicates that the newly elected officers would take their seats on the first Monday in December. It's typical for that to be in January rather than December. This amendment would change that to be the first Monday in January.

In Section 6, since two officers cannot be seated simultaneously, we propose to add to Section 6, subsection 2, "No such appointment extends beyond the first Monday in January after the next municipal election at which the election of the office must be filled." In section 5, it says that the person must vacate the seat on that first Monday in January. We are proposing to add to subsection 2, "or at such time as the oath of office is administered to the newly elected officer." So there wouldn't be the danger that there would be a 24-hour overlap of those two people occupying the same seat.

**Assemblyman Conklin:**

I am concerned about the amended language. By passing the amended language are we extending the terms of current councilmen, in order to get us on schedule faster?

**David Fraser:**

Yes. When we submitted the bill draft request, we submitted it with shortened terms because we thought there might be a constitutional problem with lengthening those terms. However, LCB came back with the language you see in our amendment. I met with the Legal Division and asked about this. I was assured there wasn't a constitutional problem. I would defer to them to fully explain that. However, the answer, as I understand it, was that the *Nevada Constitution* indicates that the Legislature "shall not create offices in which they extend terms, et cetera." They felt that since you are not creating these offices, it would pass constitutional muster.



**Assemblyman Conklin:**

I'm concerned about the constitutionality and the voters who expect to vote on these offices in a timely manner. Have you done any polling, have the voters spoken on this issue, and you are bringing it to us? Or is this strictly an administrative decision by the city governments to create efficiency and save money? I don't want to leave the voters behind and do something that they haven't had a chance to speak on.

**David Fraser:**

The language for the expedited process wasn't suggested by the League of Cities or any of the cities involved. That suggested language was developed by LCB's Legal Division.

There is evidence that that the voters are okay with this. We are well into the candidate filing period; no candidates have filed. In the absence of candidates filing, under election law, the election would not be held. Either those candidates would retain their seats at this time, or some appointments can be made. In all likelihood, those officers would retain their seats.

In Elko, candidates have come forward and filed for office. In that case, there are those seeking the office and we want to make sure that the election is held. In these other communities, there are presently no candidates. So I would interpret that as indicating that there is not sufficient interest in replacing those officeholders.

**Assemblyman Conklin:**

What is the filing deadline? If the filing deadline is tomorrow, then we can hold this bill until after tomorrow and it becomes a moot point.

**Michael J. Franzoia, Mayor, City of Elko, Nevada:**

The City of Elko's filing deadline is Friday, April 8. Beside gaining efficiencies and saving the taxpayers' money, we are trying to eliminate apathy for municipal elections where we hardly have candidates vying for a city seat, let alone the public coming out to vote. Historically, cities only have candidates on the ballot and nothing else. It's frustrating for a politician to run for office and not have challengers or the public aware of what you are trying to do for their betterment.

By combining the elections with the county, state, and in some years with the national elections, we are hoping for more citizen involvement.

**Assemblyman Conklin:**

On the filing date, is that the same for the other two cities?

**David Fraser:**

That is correct. The filing deadline is this Friday for all of these elections. I don't think we have any problem with you holding action until the filing deadline is past.

**Assemblywoman McClain:**

Instead of doing it differently for the two cities versus Elko, could we make the effective date of changing the charter for Elko the next cycle?

**David Fraser:**

At any point in time that you make this change, because you are moving an election 6 months, from June to November, you have to cut that in one direction or the other no matter what.

**Assemblywoman McClain:**

Rather than having two different systems, make it the same system with different elections. You just stagger it off a year.

**David Fraser:**

So, rather than cancel this June's election for Elko, since there are already candidates, you would be canceling Elko's June election two years from now, and with this advance notice there would be no filing period?

**Assemblywoman McClain:**

Yes, that's about right. On page 6, subsection 2, line 4 of your amendment, are you adding a councilman to Elko?

**Mike Franzio:**

Currently, there are 4 councilmen and a mayor. This upcoming election is for 2 council seats. Then next election will be for 2 council seats and the mayor's seat. The mayor's seat is an at-large seat. This means that as many candidates there are run, and the top vote getter wins. On the council seats, you can have multiple candidates for two available seats. There is no run-off; the top two vote getters win.

It should be, in the upcoming cycle in 2007, for 2 councilmen and a mayor. In 2009, it would be 2 councilmen only.

**Assemblywoman McClain:**

You might want to look at that because it says 3.

**David Fraser:**

There may need to be some language cleanup there.

**Assemblywoman McClain:**

Also, on page 3, in Section 5, subsection 1 of the amendment, where you are replacing "shall" with "must"; that's fine. But one of these is taking out "shall" and putting in "may." "No person may be permitted to handle, inspect, or interfere...."

**David Fraser:**

Let me answer that in a more general way. In my most recent discussion with Mr. Scott Wasserman [LCB Legal Division], he indicated that, if the Committee is receptive to doing the two methods, they had the language available and it would be no trouble for him to put it in.

Our proposed amendment is for the benefit of the Committee, not necessarily any guidance toward LCB. They have already written it once. I am not sure what their purpose is in that instance was.

**Assemblywoman McClain:**

It could just be a typo. I just wanted to point those things out.

**Assemblyman McCleary:**

Is there currently a standard by which all municipal elections in the state of Nevada are held?

**David Fraser:**

Are you asking if there is one time at which they are all held?

**Assemblyman McCleary:**

Is there a current standard for all municipal elections in the state or are they all different?

**David Fraser:**

There are some that are in June and some that are in November.

**Co-Chairwoman Koivisto:**

That depends on the city's charter. I don't have anybody else signed in for A.B. 443. We will probably bring this back to our work session. [Closed the

hearing on A.B. 443. Opened the hearing on A.B. 450.] Mr. Conklin, please explain what we are, or are not, doing with this bill.

**Assembly Bill 450:** Revises provision relating to reporting of campaign contributions and expenditures. (BDR 24-1335)

**Assemblyman Conklin:**

The A.B. 450 amendment did not come back the way I had asked for it. Since we are late in the Session I'd like to pull that bill. I'm having an amendment drafted to another bill that we will consider next week; that gets at the heart of my issue. I will bring it forth at such time when the Committee omnibus bill on election reform A.B. 455 comes in, if that is acceptable.

**Co-Chairwoman Koivisto:**

[Closed the hearing on A.B. 450. Opened the hearing on A.B. 530.] This bill is on behalf of Clark County.

**Assembly Bill 530:** Makes various changes regarding ethics in government. (BDR 23-325)

**Mike Alastuey, Legislative Advocate, representing Clark County, Nevada:**

If it is possible, could another bill be taken? I need to summon Mr. Musgrove and check on the teleconferencing with southern Nevada.

**Co-Chairwoman Koivisto:**

[Closed the hearing on A.B. 530. Opened the hearing on A.B. 538.]

**Assembly Bill 538:** Makes various changes relating to ethics in government. (BDR 23-272)

**Stacy Jennings, Executive Director, Nevada Commission on Ethics:**

Assembly Bill 538 is a proposal for some technical changes and a couple of policy changes to the statutes that I have talked to you about previously. You should all have a handout ([Exhibit E](#)). The first page gives you the essence of the bill. The next two pages go through the bill section by section and provide an explanation of the changes.

[Stacy Jennings, continued.] I will focus on the major change in the bill. It makes a change in the definition of public officer. This bill proposes to take the existing definition and make it applicable for everyone who files a financial disclosure statement. We won't be changing the requirements of who would file. The Commission then proposes taking the existing definition of public officer applicable for the rest of our chapter, which would be investigations and advisor opinions.

We were proposing to take the definition of a public power trust or duty, which means, to be a public officer you have to be—the current statute says—elected or appointed to office that is established by the *Constitution* of the State, statute of the State, or an ordinance of its cities or counties, and you have to be exercising a public power trust or duty. The statute tells you that's doing three things: formulating public policy, expending public money, and enforcing the laws or rules of the State, city, or county.

We were proposing to change the criteria to "and," so that you have to be doing all three of those things to, "or." However, after some discussion with David Fraser of the Nevada League of Cities, he pointed out that may unwittingly bring some people, which we may not have thought of, into the statute. So, before you work on this bill, I would like a chance to talk David about how we might fix that, so we aren't getting 90,000 more complaints a year but still would be able to investigate the complaints that we are getting.

The bill also puts a three-year statute of limitations on investigation complaints; currently there isn't one. There is a general provision in *Nevada Revised Statutes* (NRS) Chapter 11 that says, "Three years is applicable to any statute that doesn't expressly say otherwise." But we'd like to put the three years into our statute.

We are proposing to take the honorarium statute, which has a misdemeanor violation attached to it and make it an ethics violation; and remove that criminal penalty since we are a civil agency and not a criminal agency. We were tinkering with financial disclosure statements but you took care of that in A.B. 64. So we may take that section out, about the candidates for public office, but leave the other changes. Those changes clarify that if you are appointed to office and not required to file a financial disclosure statement, you still have to file the acknowledgement of receiving the statutory Ethical Standards within 30 days. The statute doesn't currently address that.

One final change that's not technical. It is a clarification of the cooling-off period for former commissioners of the Public Utilities Commission (PUC). We

included that in our bill at the request of Chairman Don Soderberg [PUC] and he is here to talk about that.

[Stacy Jennings, continued.] We provided an amendment ([Exhibit F](#)) that proposes deleting Section 7 of the bill because this is something you've put into A.B. 64 for us. Again, I'd like to tinker with the definition of public officer proposed for investigations and advisory opinions, and take things out of the financial disclosure statement section which you've already included in A.B. 64.

**Assemblywoman McClain:**

I heard that yesterday there were 10 ethics bills in Senate Government Affairs.

**Stacy Jennings:**

Yes, they discussed the Open Meeting Law.

**Janine Hansen, President, Nevada Eagle Forum:**

A couple of sessions ago, the Assembly Elections Committee placed an amendment on one of the Ethics Commission bills to provide for trial by jury. In the *Nevada Constitution*, in Article 1, Section 3, it says, "The right to trial by jury shall be secured to all and remain inviolate forever, but a jury trial may be waived by the parties in all civil cases." Even in civil cases, under Nevada law, we have a right to trial by jury. But when we go before an administrative hearing, like the Ethics Commission or other administrative body, our right to trial by jury is lost.

As we have seen, the "speech police" portion of the ethics law has been struck down in the courts. It is very important that we protect people's individual rights to trial by jury in these administrative proceedings, that they can have the right to appeal, and have a new trial. I don't think there would be very many people that would do that, but it would help to ensure that their rights were not violated in the administrative process.

In the 1999 or 2001 Session, the Assembly passed an amendment to provide for the right to trial by jury for those in the Ethics Commission and the Senate stopped it. That would be a great safeguard—especially with such serious matters as the Ethics Commission deals with—of the rights of those who come before an administrative hearing where their rights to trial by jury are denied.

**J. David Fraser, Executive Director, Nevada League of Cities and Municipalities:**

Local government is mandated to pay more than 60 percent of the budget of the Ethics Commission and we have a vested interest in this. But funding is a debate for another time.

Our primary concern today is on page 3, Section 4 of the bill, where it defines a public officer. The Ethics Commission has jurisdiction for investigating public officers. In the present statute, there are three criteria that must be met for someone to be defined as a public officer and, therefore, subject to the jurisdiction of the Ethics Commission. These are listed as (a), (b), and (c) at the top of page 4. They: (a) formulate public policy; (b) expend public money; and (c) enforce the laws or rules of the State, city, or county. Under the present statute they must be determined to do all three of those things, to be defined as a public officer.

This bill substitutes "or" for "and." That means they only need to meet one of those criteria to be deemed a public officer under the statute. Our concern with that is that this will cast a wide net that will include more people than they intend.

Specifically, even though presumably exempt, it would bring in advisory boards that might be determined to meet one of those three criteria. Management level employees and department heads might be determined to be expending public money through their discretionary spending authority. Even though they may have limited discretionary spending, you may catch the whole management staff of an organization.

If all it takes is that they meet (c), enforce the laws and rules of the State, city, or county, you will catch every beat cop in this statute. While there should be accountability for all those people; there are other methods for keeping them accountable. This casts the nets fairly wide.

Referring back to my statement that local governments are mandated to pay a great portion of the budget for the Ethics Commission, they are in the process of increasing their staff and opening an office in southern Nevada. If we cast a net this wide, the caseload will balloon. That will bring greater staff demands and greater budgetary needs for that Commission. The League wholeheartedly endorses government ethics and promotes ethical behavior at all levels. However, we think this change might be too broad and unnecessarily increase the caseload of the Commission.

**Assemblywoman McClain:**

The intent of that statute, by saying appointed, means those appointed in the interim to an elected position. I don't think it's intended to go out to county managers appointed by a board. If we change the "and" to "or," it could be clarified under Section 1 by saying something like "Appointed to an elected position in the interim."

**David Fraser:**

My suggestion would be to stick with the "and." It may not be the intention. I see that when you get to the "or," you only have to meet one of these criteria. You can see where that might be too broad.

**Co-Chairwoman Koivisto:**

What we will do this bill is have the folks that have these issues work with Stacy Jennings and she has some amendments. You could work with her and make sure that staff gets those. We can then proceed with the bill.

**Donald J. Soderberg, Chairman, Nevada Public Utilities Commission (PUC):**

I am here to answer questions on the section that deals with the PUC. It is clarifying language. Over the 20 years we've had a cooling-off period. Between statutes that were not clear and changes in the definitions, we couldn't figure out who this applied to, and for how long. Ms. [Stacy] Jennings and her people have been very helpful in guiding us through this and getting to the point we could have language that clarified what a person is supposed to do and not supposed to do. We support the language that's there.

**Assemblyman Denis:**

Currently, the cooling-off period is a year but the language is unclear? Is that the reason for the change?

**Don Soderberg:**

The year was not unclear, it was when it applied. When this was drafted, the PUC only regulated a power company in the north and a power company in the south, no water companies in the south, and a water company in the north. It was very clear what a utility was so you didn't have to have a definition. Now, we have a variety of people that may come before us that have an interest but may not be completely regulated. It needed to be clear. We had gotten to the point we could not tell potential employees, or even potential new commissioners, when this would apply to them and when it wouldn't.

We wanted to get back to the intent of the language when it was drafted. There was a problem with the old PSC [Public Service Commission] in the early 1980s



with commissioners resigning and taking jobs immediately with a Nevada utility. We wanted to avoid that, but not have it be unclear how this would apply if you got a job offer from someplace out of state.

**Christopher Hansen, State Chairman, Independent American Party:**

I want to reiterate what Janine Hansen has said. We support jury trials for this kind of hearings. I have watched abuses by the commissioners. We should have individuals who do not have a vested interest in these actions. We should have an independent body, such as a jury, hear these cases.

I am also opposed to the changing of the word "and" to "or." David Fraser of the Nevada League of Cities and Municipalities is correct. It will widen the net and increase the authority and power of the Ethics Commission. That should be reduced, not increased. If this is changed, the budget for the Ethics Commission will have to be increased to keep up with the complaints on this unconstitutional law.

**Co-Chairwoman Koivisto:**

We will bring A.B. 538 back to the Committee after the parties work out the appropriate language. [Closed the hearing on A.B. 538. Re-opened the hearing on A.B. 530.]

**Assembly Bill 530: Makes various changes regarding ethics in government.  
(BDR 23-325)**

**James Spinello, Assistant Director, Administrative Services, Clark County, Nevada:**

Assembly Bill 530 is a result of a process that the county went through two years ago reconstituting the Ethics Task Force, originally formed in 1999. We brought most of those members back to look at issues of interest at that time.

The committee's recommendations to the Commission, which were accepted for the most part, resulted in the amendatory resolution described in the "Report of the 2003 Ethics Task Force" ([Exhibit G](#)) and the amendatory resolution by the Clark County Board of Commissioners ([Exhibit H](#)). The report of the Ethics Task Force covers the key principles members thought were paramount in formulating any ethics policy. These overrode the technicalities of any ordinance or law that might be written.

[James Spinello, continued.] The section on page 8 ([Exhibit G](#)), gives specific recommendations by the Task Force to the Board of County Commissioners. In some cases, these were significantly more strict than current State law requires. On page 10, the eleventh recommendation asks that sections of the *Nevada Revised Statutes* (NRS) for Ethics in Government provisions be amended to reflect certain changes. Those recommendations are in A.B. 530.

Assembly Bill 530 clarifies aspects of the Ethics in Government Law. Section 1, is tied to changes in section 5, and is aimed at the “willfulness” of the ethical actor engaged in an activity. This attempts to make clear that saying, “I wasn’t aware of the law or policy,” isn’t enough. Persons elected to these positions of responsibility ought to know. The standard for “willful,” in this regard, should be more stringent.

Section 2 is one that the task force came up with after looking at the failure of local commissions on ethics. They found them to be wanting in their affect. It was thought the best thing to do was to allow the Nevada Commission on Ethics the authority to apply local standards or policies to those local officials who have enacted them for themselves. You then have a neutral board that will be able to hear these matters, deal with these matters, and apply sanctions they have authority under law to do, including fines, to locally adopted ethics policies.

To clarify this, if you look under Section 2, subsection 3, it says they may impose civil penalties. But, if the Commission investigates the violation of a local policy, they can’t also apply the other State policies. It has to be one or the other.

Section 3 relates to gifts. The task force debated this controversial issue. Current law allows acceptance of gifts and reporting of those over a certain amount. Many members of the task force wanted to adopt a “no gift” policy. The task force decided to recommend a policy that would allow gifts up to \$50 and no more, unless they were clearly gifts from family members, close friends, et cetera.

Section 4, on page 6, adds clarification and guidance on the issue of “apparent conflict” and how someone should act, whether or not they should abstain. The rule is to err on the side of caution, and to abstain if you can’t clearly make the determination, not only in your own mind, that you would have independence of judgment but also in the mind of a third party, a reasonable person looking at this. This speaks to the issue of public trust and public perception of the actions of elected officials. Later, in Section 4, on page 7, it adds, without limitation,

additional descriptions of situations or relationships that can affect this kind of circumstance.

[James Spinello, continued.] Section 5, which ties to Section 1 on the issue of "willful," removes more of that particular definitional issue. It also removes one of the exceptions which would be if you were relying, in the good faith, upon the advice of legal counsel. The task force consensus was that people elected to positions of responsibility shouldn't shop for a legal opinion that suits them. Since one of their duties is to pass laws or ordinances, they should have the ability to understand this on their own. They shouldn't be able to say that they are not responsible because they acted on the advice of a lawyer. The responsibility should be on the political actor. Section 6 ties to the gift policy. It changes those reporting requirements to reflect the new \$50 limit.

In terms of the county, most of the recommendations were adopted in county policy, including a more stringent abstention rule. Now, for the County Commission, abstention it is almost automatic, unless they can state to the public why, despite an apparent conflict, they can still act in a matter. More importantly, under county policy, abstention means they are no longer part of the process; they must leave the room, they cannot participate in the debate, answer questions, or even offer counsel.

**Assemblyman Conklin:**

A bill presented last week questioned the voting public's ability to choose candidates. When I look at Section 4, subsection 7, pages 6 and 7, I have serious concerns. If someone abstains from voting, who represents the people that they are supposed represent, in that dialogue? Isn't it the public that decides if a person should abstain, or not, from voting, when they go to the ballot box to choose their candidate? If you are telling them they can't vote on issues, and the voters already understand what backgrounds they come from, then who is to represent that voting public on those particular issues that may be very important to that specific commission district?

**Jim Spinello:**

The task force deliberated on that point and there is a statement in the report. One of the principles is that, in a democracy, you should not arbitrarily remove the ability of an elected official to vote on a matter. However, on the issues of conflict of interest, it is something the public is keenly aware of. Voters should be aware if an elected official continues to have conflicts of interest, which would remove them from being able to vote on a measure. That is a factor the voters need to consider the next time that person is up for election.

**Assemblyman Conklin:**

Are you suggesting that the public would prefer not to be represented on particular issues, or is it your opinion that the public would prefer to be represented and, at the next election, have the opportunity to remove that person?

**Jim Spinello:**

The public wants to know that the actions and votes of the people they elect are done in the public interest and not to serve a private interest.

**Assemblyman Conklin:**

I agree with you. That is why we have disclosure. Legislators can receive legal counsel from both the LCB and the Ethics Commission that is binding on our actions with respect to ethics laws. For example, if I have a question about my ability to vote on something or take a certain action, I can always go to legal counsel, explain the situation, and ask for advice. That advice, although not completely binding, it gives me coverage, as long as I follow the advice as it's given.

It sounds like in Section 4 you are trying to take away that advice. Or are you only trying to take away that protection if it is from a private attorney? I'd hate to take away the ability of any elected official to call the Ethics Commission and ask for advice on an issue, or allow them to give advice and have that opinion binding for the future. Is that the intent, or are you speaking to private counsel?

**Jim Spinello:**

The issue isn't to inhibit any elected official's ability to seek and obtain advice from anyone they may choose. But ultimately, the responsibility must be that of the person elected to hold that responsibility—not to a staff member, employee, or someone else. It is ultimately their responsibility to follow the ethical standards.

**Assemblywoman Gansert:**

On page 6, line 43, the word "and." It says you must make a disclosure "and" then you must abstain. If that was the word "or", it might be better. I understand Mr. Conklin's viewpoint that, if you made a disclosure and then also abstain, the voters lose their representation.

**Jim Spinello:**

If you continue onto page 7, it does say "Abstain from voting on and refrain from advocating passage or failure of or otherwise participating if the independence of judgment of a reasonable person in his situation would be

materially affected by the commitment." It requires the abstention unless, through their own deliberation on the issue, they can establish that independence of judgment exists. If you do the deliberation and decide that any reasonable person in this situation would have their independence of judgment affected by this, then that is a conflict of interest and you should abstain.

**Bill Flangas, Private Citizen, Las Vegas, Nevada:**

[Read from prepared statement [Exhibit I](#).] When I was born, in Ely, there were 91,000 people in the entire state of Nevada. Now, there are 91,000 people within 5 miles of my house. There was no ethics commission and no need for it. But, obviously, there is now.

I have been a member of the Nevada Commission on Ethics since 1999. However, the following views and recommendations are my own and reflect my personal observations and experiences, and are not to be construed as approved or formulated by the Ethics Commission, or any other individual ethics commissioner.

In 1999, the Legislature revised existing law and provided for a full-time executive director and legal staff, creation of two-member panels to make "just and sufficient cause" determinations, and other procedural changes such as the evaluation of frivolous charges.

These changes raised public expectations that the code of ethical standards would be better implemented and that public officers would be held more accountable to the principle that "A public office is a public trust and shall be held for the sole benefit of the people." Expectations were raised that public officers would be held more accountable to avoid conflicts between their private interests and those of the general public whom they serve.

In the time that I have served on the Commission, I have reached two major conclusions. I am greatly impressed by how well the Commission prior to the 1999 revisions performed, in spite of inadequate resources, including under-funding and understaffing.

The post-1999 Commission has generally done well, considering the limitations and circumstances of the current law. But there is a strong public perception that little has changed, and the public's hunger for accountability remains unfulfilled. We have had significant experience in implementing the current law and it's now

time to consider further revisions to gain and improve public respect, and dispel the perception of a "toothless" commission. We can and must do better.

[Bill Flangas, continued.] My recommendations are, in regard to NRS 281.551, to expunge the term "willful." A violation is a violation. Timid interpretations of this term can result in significant, subjective, and contentious conclusions that provide an escape from accountability. A better solution is to follow the World War II Navy regulation, "a rule must be clear; it must be understood; and it must be obeyed."

Consider deleting NRS 281.462, subsection 4, to permit the two members of a panel to participate and vote on matters brought forth to a full Commission hearing. At the very least, consider participating, if not voting.

A third recommendation, though not an Ethics Commission responsibility, is legislation to consider public, competitive bidding for leasing and renting all publicly owned facilities, such as airport concessions, et cetera. This would help curb the temptation for deliberate and inadvertent cronyism. The responsible authority would then define the scope, establish qualifications, and monetary standards as appropriate for posting, evaluating, and awarding public bids.

There is nothing complicated about ethics. It is merely a matter of personal conscience with duty and obligation to exercise moral self-discipline in the spirit of a public service as a public trust.

The commission must focus on the purpose and intent of the law despite intangible vagaries. Seldom, if ever, is it possible to write a perfect law to cover all possible contingencies. Therefore, intent becomes paramount. Where the intent and spirit of the law are clear, good judgment is required to interpret its use in particular cases rather than treating the law as a rule book; either obviously forbidding or allowing something.

When an action is not clearly allowed or forbidden, one must always err on the side of caution, and respect for the ethics of integrity and independence of judgment. The Ethics Commission must always endeavor to be legal, fair, prompt, and firm. Its words

and actions are not only upholding the law, but setting standards by applying the law to cases.

[Bill Flangas, continued.] Situations arise where a public official may gain a legal opinion from counsel. It is prudent and advisable to request legal guidance. However, having done that, the public official is not relieved of their responsibility. The obligation and duty for evaluating the forthcoming action—that may be marginally legal, but overwhelmingly unethical—rests on the public official. There is no substitute for honest, timely, and voluntary disclosure. This is no different than hiring a professional tax expert to prepare your return. The taxpayer still remains accountable.

The actions of a few, greedy, freewheeling, corrupt, and unethical public officers brings shame and disgrace to the political process and unfairly stigmatizes the vast majority of sincere, honest, hardworking, and dedicated public officers who conscientiously serve the public trust. Uprooting unethical public officials is indeed a significant and supreme public trust.

I am aware of strong public sentiment against those unethical public officers who escape through adroit, skillful, and legal gymnastics and bring scorn, disrespect, and shame to the political process. There is public support for the Commission's success in dealing with these situations. If public officials would ask themselves, "Would this delightful opportunity have come to me if I were not occupying this position?" Honestly answering this question would reduce the need for Commission involvement.

The current law requires a commission of eight members. The Legislative Commission appoints four, at least two of whom are former public officers and one an attorney. The Governor appoints four, at least two of whom are former public officers, and one must be an attorney. Perhaps the time has come to reduce these mandatory requirements and permit wider, diverse appointments.

The success of the Commission is measured by its respect earned from the public, which, in turn, serves as the real deterrent for unethical behavior. It's not the degree of punishment, but rather, the certainty of it that will get an errant public official's attention.

**Co-Chairwoman Koivisto:**

We have your statement ([Exhibit I](#)) and we have several other people that want to testify. Since we have your statement, and it will be part of the record, I am going to ask you to let your written statement stand. [Mr. Flangas answered in the affirmative.]

**Assemblyman Seale:**

Are you in support or opposition of this legislation?

**Bill Flangas:**

I am in support.

**Craig Walton, President, Nevada Center for Public Ethics and Member, 1999 and 2003 Clark County Ethics Task Force:**

[Read a portion of prepared statement, [Exhibit J](#).] We are creating the Nevada Center for Public Ethics. Dean Morgan, who was the Chair of our task force couldn't come today, but we have been talking.

Since Mr. Spinello summarized all of A.B. 530, I'm going to focus on two areas. The first is Section 6, on the conflict of interest provisions of NRS 281.501. The heart of the "conflict of interest" idea is to mark off "commitments in a private capacity to the interest of others," which can reasonably be seen to stand on the wrong side of the border, as being in conflict with your oath of office and your duty on other side of the border, to the public's interest.

Even though NRS 281.501 addresses this issue, both generally and specifically, the criminal law attorneys for public officials appearing before the Ethics Commission always argue that nothing in these examples in the law, bribery, nepotism, family or business wrongful enrichment, took place in the present case; therefore, there is no violation or conflict of interest.

**Co-Chairwoman Koivisto:**

Are you in support of this legislation as it is present?

**Craig Walton:**

I am in support of A.B. 530. [Submitted further remarks, [Exhibit J](#).]



**Cheri Edelman, Legislative Lobbying Team, City of Las Vegas, Nevada:**

We are generally in support of A.B. 530, but we have some technical issues we would like to clarify ([Exhibit K](#)). I tried to work with the county prior to this. They felt it would be better if I brought it to this Committee, since it was done by a citizen's task force.

Page 1, Section 1, line 5, our request would be that we add back in the words, "violated this chapter." The ethic violations are clearly spelled out in chapter 281. We would like to be held to those standards as opposed to a "minor infraction" which may not be spelled out.

The second request is, on page 4, Section 3, paragraph 11, about the limitation on the "gifts in aggregate." It doesn't say what the time-frame is on that aggregate. Is it over a lifetime? Is over a year? We would like that clarified.

On page 10, Section 6, subsection 1, paragraph (F), subparagraph 4, it uses the word "public entity." We would suggest using the word "nonprofit fund-raising events." We don't want to be confused with local governments.

**Janine Hansen, President, Nevada Eagle Forum:**

We are opposed to changing the definition of "willful." Ethics Commission Chairman George Keele said, "This would pave the way for frivolous complaints and leave the law too vague to pass judicial muster. We will have more complaints against public officials than we ever had since the beginning of civilization." He goes on to say, "It will be anybody's guess what constitutes the appearance of impropriety. Well meaning officials would be too easily charged with violations." We are definitely concerned about that issue.

On page 8, line 30. It deletes, "An action taken by a public officer or employee or former public officer or employee relating to...is not willful of a provision of those sections if the public officer or employee relied in good faith upon the advice of the legal counsel retained by the public body." What is a person suppose to rely on if they can't rely on that? Then it says that they can't even rely on the manual by the Ethics Commission. So what are they doing if they can't provide sound legal advice?

This puts public people in a terrible situation, trying to seek good advice, trying to do what's right, and, yet, they can't even rely on these things. If they make a choice, it might be considered, according to the definition of "willful", that it was still willful. This is an awful bill, it puts all of our public people in terrible jeopardy. People's reputations can be ruined by false charges. One Senator had eleven false charges filed against him in the Ethics Commission. They were on

the front page of the newspaper when they were filed and on the back page when they didn't go through.

[Janine Hansen, continued.] The Ethics Commission needs its own ethics commission to look on them and see what they are doing. Where is their accountability? I don't think they've helped one politician to be more honest. It has not improved the circumstance. This points up another reason why we need a jury trial.

**Christopher Hansen, State Chairman, Independent American Party:**

Judge Bill Flangas stated that when you go to the IRS [Internal Revenue Service, Department of the Treasury] and sign a Form 1040 and relied upon counsel from an accountant, it is going to be your fault if the form is wrong. That is incorrect. It is called the "reliance defense" and the word "willful" is also in the code in several places.

He also said that the Ethics Commission should be legal, fair, prompt, and firm. I have here a "Notice In Lieu of Statement of Financial Disclosure." It was filed by my son, Nicholas Hansen. It asked every question that is on the financial disclosure statement. In a vote of 3 to 4, they couldn't figure out if he had filed a proper form along with many other members of our party or not. They went to the First Judicial District Court, Judge Maddox, in Carson City. Judge Maddox ruled that the Ethics Commission did not have the kind of authority they were asking for. That made it 4 to 4 for my son.

The Nevada Supreme Court ruled on it and said that the Ethics Commission had powers that the Legislature had never given them nor written in the statutes, including audit powers. That was changed by the Legislature in the 2003 Session by legislative intent. The Ethics Commission and the Secretary of State did not have such authority. We have disagreements all the way along.

In *Connolly v. General Construction Company* [269 U.S. 385 (1926)], the U.S. Supreme Court said, "A statute which either forbids or requires the doing of an act, in terms so vague that men of common intelligence must necessarily guess at its meaning in deference to its application, violates the first essence of the due process law."

No one can agree on this law. It is a complete and total catastrophe. If you take out the word "willful" and change it to this weaker exception that is being proposed, it destroys the meaning of the word.

[Christopher Hansen, continued.] Another problem is that this has been turned into a civil penalty. According to the courts, a civil penalty is supposed to be remedial and not punitive. But everyone keeps referring to this as a fine, as if we are going to punish those people. A civil fine isn't supposed to punish someone. If it does, according to the court, it becomes a quasi-criminal offense.

The reason that this has been shifted to a civil penalty is to strip Nevadans, elected officials, and others of their rights that are found when it is a criminal rather than a civil case. To try and enforce this, it has to go to a jury trial. But that is down the road, after you go through all the pains and penalties the Ethics Commission puts you under.

The Ethics Commission fined my sons, wife, and me \$6,000 each, even though we filed the forms. Mr. Flangas talked about the Internal Revenue Service. On that form, it talks about your "amount of income". I haven't filed a return in 27 years. I have letters from the IRS that say I'm not required to file. To maintain that status, I have to be cautious on what I put on other forms, et cetera. If I cross the line and become a taxpayer, I was informed that I had to fill out this form and had to sign it. If I sign it, telling how much income I have, I could actually become liable for the income tax.

The definition for the word "income," according to the federal courts, is capital gains, which is corporate profits. That is not the definition used in this, and if I sign that form, I could then be criminally prosecuted. The problem then becomes, if I plead the Fifth [Amendment] on the form—which is possible since I would be caught between a rock and a hard place. I asked Secretary of State Heller about the form and he couldn't answer the questions either way. But I was fined and the Secretary of State wants to take this to court.

The fine was originally levied in 2002. There is a two-year statute of limitation on this law. Since the Ethics Commission couldn't decide what the law was, and whether they had authority, I went to court on a law that has now been declared unconstitutional by another court. They went to the Nevada Supreme Court, but the two-year statute of limitation had passed.

**Co-Chairwoman Koivisto:**

We are going to close the hearing on A.B. 530 and open the hearing on A.B. 546.

**Assembly Bill 546: Repeals certain provisions relating to Commission on Ethics and increases civil penalty for failing to file certain campaign contribution or expenditure reports. (BDR 23-899)**

**Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County, (part):**

This amendment to A.B. 546 is intended to do three things ([Exhibit L](#)). One is to eliminate what we fondly refer to as the “truth squad”. For 6 years, the Assembly has passed to the Senate a bill to remove the language that allowed the Ethics Commission to determine what is negative versus what is false. The court case has already been handed out to you (pages 4-6, [Exhibit E](#)). Both Senate Beers and I are listed as plaintiffs.

We strongly believed that negative campaigning is horrific but it borders on the edge of impeding free speech when we try to have an independent group, that are not elected, trying to decide what is negative versus what is false. In the case of Mr. Beers, they found that it was not false but they didn’t like it. He was fined and subsequently the case came forward. The district court ruled recently, which will help in the other House if we chose to move this legislation.

The second component was to eliminate “willful.” In drafting the bill, they missed most of the “willfuls” in Section 6. You have heard A.B. 530; the intent in this bill was to do something similar. I suggest we separate the two issues if you wish to move forward with A.B. 530. We then take out those sections in A.B. 546 and focus on the “truth squad” language.

The third component was clarifying whether money that came as a campaign contribution, directly or indirectly, was language that was missing in our statute. Those are the three main pieces of this legislation.

**Assemblyman Conklin:**

On the indirect and direct language, what we are trying to get at is “soft money?” The monies that may be paid indirectly?

**Assemblywoman Giunchigliani:**

It’s those monies that are paid to another party and somehow it comes to candidates. It was not clear. We were looking at cleaning up some of the language. I felt it was proper to insert “indirectly.” Whether money came to candidates directly or indirectly, they still have to report it.

**Assemblyman Conklin:**

Can you give me an example of indirect money? It had to come from somebody.

**Assemblywoman Giunchigliani:**

Someone could give it to a second party, which is not allowed. That party then provides you with the contribution or service. In other states' statutes, they tend to use both terms. Another bill [[A.B. 500](#)], that you'll consider next week, deals with the tightening up of "loans." We never properly defined what a loan was. I've just been going through the statute trying to deal with the language.

**Co-Chairwoman Koivisto:**

Do you mean like loans people make to their own campaigns?

**Assemblywoman Giunchigliani:**

My intent in [A.B. 500](#) was to define what a loan is. We had some instances where individuals had family members who both ran for office and loaned each other money which they were not supposedly allowed to do. So we wanted to tighten that up.

**Assemblyman Seale:**

I am assuming that the aim of this bill is primarily that of disclosure more than anything else.

**Assemblywoman Giunchigliani:**

Just that piece, yes. The rest is to repeal what is in statute, which is what the district court said; to take out to what we have referred to as the "truth squad." The Ethics Commission would not be making a determination on what information is negative in a campaign.

**Co-Chairwoman Koivisto:**

Wasn't that just dealt with by the Nevada Supreme Court?

**Assemblywoman Giunchigliani:**

Correct, and you have a copy of the case (pages 4-6 of [Exhibit E](#).) This will give us a little more traction when we go to the Senate to discuss that issue.

**Janine Hansen, President, Nevada Eagle Forum:**

When this issue first came up, I testified that it was an unconstitutional breach of freedom of speech. You call them the "truth squad" and I have long called them the "speech police." I am thankful that it has been overturned in the courts and I fully support that portion of the bill.

[Janine Hansen, continued.] I have a couple of concerns with this bill. On page 11, the issue of "directly or indirectly," I understand the concerns but I think it could be misconstrued. For example, I publish a voter guide. We didn't endorse anybody but perhaps it could be construed to help somebody indirectly. There is a problem in how you define that; and if it is undefined, then it might be a problem too.

The other concern is the \$10,000 increase on violations. I have a list of people who have been fined since 2003, which I requested and was supplied to me by Renee Parker from the Secretary of State's Office. There are people here who have been fined from \$5,000 to \$15,000. None of these people spent \$100 in their campaign. They are now placed in the position of defending themselves against the government. There are some significant problems in this law that has not been resolved.

Part of that issue was resolved in 2003 when the Legislature changed the law that those who don't spend more than \$100 in their campaign don't have to report. But this is still a concern for people who were candidates in 2001. We have a concern over reporting those things that were over \$100 and those things that are under. That has not been resolved. These people are still being prosecuted. I don't know what purpose that serves. To increase that to \$10,000 causes me concern.

**Stacy Jennings, Executive Director, Nevada Commission on Ethics:**

I wanted to clarify two things. The district court opinion from Judge George enjoins the Commission from enforcing the law. So if you don't do anything, it's essentially moot. Secondly, the Commission will not be appealing that decision. That's the position we've taken. However, we're requesting that the Legislature do something about it. [Submitted proposed amendments [Exhibit M.](#)]

**Kent Lauer, Executive Director, Nevada Press Association, Inc.:**

We are one of the plaintiffs in that lawsuit. We support the repeal of this law. It's important to explain what our concern was over this. The problem is that this law can apply to any person who makes a political comment, not just the candidate or candidate's campaign manager. It can be any person whether it is a newspaper editorial writer or somebody who makes a political speech; so obviously it had some First Amendment problems.

We feel that you should remove it from the books. Even though the court has struck down this law, it is good to take it off the books.

**Co-Chairwoman Koivisto:**

[Closed hearing on A.B. 546. Opened the hearing on A.B. 136.] We have an amendment ([Exhibit N](#)) on A.B. 136, Mr. McCleary's bill. This is a bill that we heard and wanted to see the amendment before we voted out the bill. The amendment removes provisions that would require the Secretary of State to provide to, or reimburse, each county and city for computer programs, paper, cards, or other material for absentee ballots, and paper used to print the permanent paper record for manual audits.

It also deletes a portion of existing law that requires the full text of a constitutional amendment or measure and its condensation, explanation, arguments, rebuttals, and fiscal note to be published in a newspaper. In lieu of publishing such information in a newspaper, the amendment would require the Secretary of State to post this information on his Internet website.

**Assembly Bill 136: Requires Secretary of State to provide to or reimburse counties and cities for computer programs and certain supplies required for conducting elections. (BDR 24-418)**

**Assemblywoman Giunchigliani:**

This amendment came back okay. I don't think it is necessary to say that nothing will prohibit the local government from including this type of information on their websites, if they so chose. We could add that if people wanted it, for clarity. We can say, "On or before the first Monday in October, local governments may post on their Internet website a copy of the full text." It would parallel the other language but not be mandatory. That way, the text is someplace, as well as on the Secretary of State's website.

**Assemblyman Conklin:**

On the published sample ballot, the arguments will be in there, correct?

**Assemblywoman Giunchigliani:**

Correct.

ASSEMBLYMAN SEALE MOVED TO RESCIND ADOPTION OF  
AMENDMENT NO. 135 TO ASSEMBLY BILL 136.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Angle, Mrs. Gansert, and Mr. Holcomb were not present for the vote.)

\* \* \* \* \*

ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 136 USING LANGUAGE IN AMENDMENT NO. 135 AND ADDITIONAL LANGUAGE TO INCLUDE LOCAL GOVERNMENTS.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

**Assemblyman Conklin:**

Basically, the Secretary of State is required to post on his website, and also allowing municipal governments to post it on theirs. Is that correct?

THE MOTION CARRIED WITH ASSEMBLYMAN SIBLEY VOTING NO. (Mrs. Angle, Mrs. Gansert, and Mr. Holcomb were not present for the vote.)



**Co-Chairwoman Koivisto:**

The bills we heard today will be in our work session on April 14. If you have amendments or changes to those bills, please get them to staff before that date. We are adjourned [at 5:14 p.m.]. [[Exhibit O](#) was submitted, but not discussed.]

RESPECTFULLY SUBMITTED:

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Sarah Gibson  
Transcribing Attaché

APPROVED BY:

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Assemblywoman Ellen Koivisto, Co-Chairwoman

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Committee Name: <u>Elections, Procedures, Ethics, and Constitutional Amendments</u></b>			
<b>Date: <u>April 5, 2005</u></b>		<b>Time of Meeting: <u>5:03 p.m.</u></b>	
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
***	<b>A</b>	*****	Agenda
<u>A.B.</u> <u>212</u>	<b>B</b>	Assemblywoman Valerie Weber	Background handout
<u>A.B.</u> <u>212</u>	<b>C</b>	Richard Whitley, Nevada Division of Health	Statement
<u>A.B.</u> <u>443</u>	<b>D</b>	David Fraser, Nevada League of Cities and Municipalities	Proposed amendment
<u>A.B.</u> <u>538</u>	<b>E</b>	Stacy Jennings, Nevada Commission on Ethics	Information Packet
<u>A.B.</u> <u>538</u>	<b>F</b>	Stacy Jennings, Nevada Commission on Ethics	Proposed amendment
<u>A.B.</u> <u>530</u>	<b>G</b>	James Spinello, Clark County, Nevada	Report of the 2003 Ethics Task Force Study
<u>A.B.</u> <u>530</u>	<b>H</b>	James Spinello, Clark County, Nevada	Resolution of Clark County Board of Commissioners
<u>A.B.</u> <u>530</u>	<b>I</b>	Bill Flangas, Private Citizen, Las Vegas	Testimony and information on Nevada Commission on Ethics
<u>A.B.</u> <u>530</u>	<b>J</b>	Craig Walton, Nevada Center for Public Ethics	Statement
<u>A.B.</u> <u>530</u>	<b>K</b>	Cheri Edelman, City of Las Vegas	Proposed amendments
<u>A.B.</u> <u>546</u>	<b>L</b>	Assemblywoman Giunchigliani	Proposed amendments
<u>A.B.</u> <u>546</u>	<b>M</b>	Stacy Jennings, Nevada Commission on Ethics	Proposed amendments
<u>A.B.</u> <u>136</u>	<b>N</b>	Committee	Proposed amendment No. 135
<u>A.B.</u> <u>212</u>	<b>O</b>	Pat Elzy, Planned Parenthood Mar Monte	Letter of support