

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

**Seventy-Third Session
May 3, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:51 p.m., on Tuesday, May 3, 2005. 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. Harry Mortenson, Co-Chairman
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. Scott Sibley (excused)

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial
District No. 11
Senator Randolph J. Townsend, Washoe County Senatorial
District No. 4

STAFF MEMBERS PRESENT:

Michelle Van Geel, Committee Policy Analyst
Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
Lucille Lusk, Chairman, Nevada Concerned Citizens
Janine Hansen, President, Nevada Eagle Forum
Ben Graham, Legislative Advocate, representing Nevada District Attorneys Association
Stacy Jennings, Executive Director, Nevada Commission on Ethics
Kristin Erickson, Legislative Advocate, representing Nevada District Attorneys Association
Craig Walton, Emeritus Professor of Ethics and Public Policies, University of Nevada, Las Vegas, Nevada

Co-Chairwoman Koivisto:

[Called meeting to order.] We will start today with Senator Schneider's bill S.B. 125.

Senate Bill 125 (1st Reprint): Revises period of residency required to qualify as candidate for public office. (BDR 24-153)

Senator Michael A. Schneider, Clark County Senatorial District No. 11:

I bring to you today a bill that we had talked about before the Session started. I put in my version of the bill to keep people from "district shopping," and jumping around to find a race, whether it is Assembly, Senate, City Council, or the County Commission, whatever the open seat happened to be that they could maybe slide into. It happened in my district. A couple of people slid in with less than 30 days. Thirty days is such a short period of time, it is really hard to prove. In my case, I took the first one to the primary and had him bounced instead of the guy in the general, because I just thought it would be easier. I had originally brought forth a year. I thought we should make people really vested in a district they are running in. That way they know their neighbors.

[Senator Schneider, continued.] Most states are up there a year, but in the Senate we knocked it down to six months. People are a little hesitant of change in the Senate. I understand that you had a bill here that started at six months and went to three, so I guess we are all a little hesitant to change. You have to live in your district for six months before you file for office. I would prefer a year, but six months is okay. At least they have had to make a commitment to be there and perhaps they know their next door neighbor in six months. I think that is what this is about. I told the identical committee in the Senate that if we don't make them vested in their district somehow, then I would be all in favor of having 63 open seats. Let the top 63 vote getters move forward, we are not going to have some sort of requirement to be vested in your district and know your neighbors and the interests of that district.

Co-Chairwoman Koivisto:

One of our Committee members always says, "How can you represent a district if you can't find your way home there after dark?"

Senator Schneider:

I have been in my district for 32 years now.

Assemblyman Conklin:

As I look at issues such as this, I happen to agree. I think a person should live in their district as long as they possibly can before running for office. At the same time, every person has a right to run for office, just like every person has a right to vote. If you are eligible to vote in a district, you should be eligible to run in a district. I think those are equal. However, having said that, I also think it is up to the voters to decide how long a person in my district should have lived there. Just like you said, you are bouncing your opponent and I am certain that you made a campaign issue out of how long someone lives in your district. Why? Because you have lived in your district for a long time, and it is important. I am just curious why you have chosen to require this instead of allowing the voters to choose the appropriate requirement for someone, especially in light of the fact that everyone who moves into your district, you conveniently bounce back out.

Senator Schneider:

First of all, I didn't raise the issue of residency with my general election opponent because he had a lot of other stuff I could talk about. That one wasn't that big of a deal when you looked at the other stuff. If by the state law it says you represent a district, I think you have to be vested in that district. If you want to do away with that and just have 63 at large seats, then I would be willing to do that too. I think since the State law says that we have districts,

and the founders of this State broke it down into districts, they wanted certain groups of people represented. I don't feel that Senator Townsend could represent the people in my district because he is a northern Nevada person. I know that I couldn't represent the people in his district because I don't know their issues. I think that it really comes down to that. He wouldn't know what the issues are in my district. Even this morning in Committee, I told him that we were doing the minimum wage bill. I said that the minimum wage passed in my district 76-24. He looked at me and said that he wouldn't have thought that in my district it would have passed that big. I have a fairly conservative district. That is just an example.

[Senator Schneider, continued.] We don't know each other's districts. We get in and work our district. If you go in and work your district and do a good job for your people, they are happy with you, and maybe it is incumbency protection, but you don't get people running against you. When people are out just shopping for a district, and they can't decide if they are going to run for city council, State Assembly, or the State Senate, they are just looking to run because they have this dream about getting into politics and they don't care who they represent or at what level. This makes people make a commitment. I know my constituents feel the same way. I am sure that yours do too.

Assemblywoman McClain:

I just want to thank you for bringing this, and thank you for getting it through the Senate. Maybe we will get something done this time.

Senator Schneider:

A "yes" vote guarantees something gets done.

Assemblyman Seale:

It is much easier if you run statewide. You don't have to worry about the district. I think this makes a lot of sense. I don't know what the right number is, whether it is one year or six months. Clearly, 30 days is too short. I am shocked that people are shopping for a district to run in. Something needs to be done and this is certainly the right direction.

Co-Chairwoman Koivisto:

We will close the hearing on S.B. 125 and open the hearing on S.B. 224.

Senate Bill 224 (1st Reprint): Revises provisions relating to elections.
(BDR 24-698)

Senator Randolph J. Townsend, Washoe County Senatorial District No. 4:

With me today is Renee Parker from the Secretary of State's Office. The bill in front of you is fairly simple. It has to do with the initiative and referendum process with which we are all becoming more familiar than we would like. As one who participated in the initiative process in 1980, I am fairly familiar with this. There are three components of this bill. I understand after having spoken with Mr. Conklin as well as Ms. Parker that there are some potential amendments that the Committee should entertain. I am very anxious to make any bill that I am associated with better. I would certainly bow to the wisdom of the parties in this room.

This particular bill has to do with finding out who supports particular initiatives and referendums, or who is advocating for their defeat, so that the public will know. Once the Secretary of State gets their information they put it on their website. The public has a right to find out who it is and what they are doing, whether they come from out of state or locally. It also focuses on the issue of a single subject for each one of these initiatives or referendums. In the last election, there were a number of things on the ballot that embraced multiple issues. You are all sophisticated, and there are many sophisticated people in our districts, but when that phone book comes, better known as the sample ballot, and you start going through it and read the explanations, you get phone calls. I do and they say, "Senator, could you explain to me what question X is?" What am I supposed to do?

No one likes to provide a personal view when a constituent calls regarding voting on something. You want to give them the benefit of your experience and show them both sides of an issue. That is very difficult, particularly when you look at many of the folks that might be seniors and things don't come as quickly to them. You can't spend two days in the booth trying to get through your ballot. That is the purpose of this bill.

I want to commend those of you here from Clark County that have worked with your county to get as many early polling places open as possible. We are in a slight struggle in the north. People I have known a long time are very happy with what you have done in southern Nevada. We want to make sure that we follow something that seems to be working in southern Nevada, and that is getting as many early polling places as possible so that people can participate.

Assemblywoman McClain:

I don't think it is in there, but one of the measures we passed included excluding the same ballot question from the next election if it lost by a certain

percentage so that we didn't recycle the same business every two years. Is that something that you discussed on the Senate side?

Senator Townsend:

We did not, but I would certainly think that is an important component. You make an excellent point. I was kind of hoping that the people testifying today that have done so before my Committee would say something different after 25 years of hearing the same issue. I don't think what you are talking about is unreasonable. It makes a great deal of logic. You will probably have other people come in here and say that is obstructing people's freedom of speech, and we understand that too. We did not take that issue up.

Assemblywoman Gansert:

In looking at page 2, it talks about the nonprofit corporation filing with the Secretary of State. Is this nonprofit from any state, or is this a nonprofit that is incorporated in the State of Nevada?

Senator Townsend:

As a nonexpert in statutory construction, I would hope that it would mean nonprofits for all jurisdictions including foreign jurisdictions. I leave that up to my able counsel here.

Assemblywoman Gansert:

If you were incorporated in the State of Nevada you still file this, because you have that in your office, but this is just relative to political contributions, petitions, and so forth. Is that correct? If you are incorporated in the State of Nevada the Secretary of State already has that information. You have to file it every year.

Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada:

Yes, the nonprofits do file the annual list of officers in the Commercial Recordings Division. We do get that information through that process, but not with respect to the elections and contributions in the election cycle. In response to your other question, it may need to be amended if you want to cover everybody because they are referred to in Title 7 as "foreign nonprofit corporations." You may need to say whether foreign or domestic.

Assemblyman Denis:

Where do the nonprofits fit in with the other organizations that are doing political things?

Senator Townsend:

We had to overcome the process of thinking of a nonprofit like it was the Boys and Girls club. That is not what this addresses, nor is that what it was intended to address. It is when someone puts a particular entity together that is a nonprofit for the purpose of advocating the passage or defeat of an initiative or a referendum. That is also a nonprofit, not a charitable nonprofit, but this is a nonprofit as it is defined legally.

Assemblyman Denis:

As opposed to a 501(c)(3)?

Senator Townsend:

Yes.

Assemblyman Seale:

I read this in Section 1, "A nonprofit organization shall, before it engages in any of the following activities in this State, submit the names, addresses, and telephone numbers of its officers to the Secretary of State: Soliciting or receiving contributions from any other person, group, or entity."

It doesn't define here as excluding a 501(c)(3), and I have a 501(c)(3) that I am the chairman of, and I do indeed solicit funds. It provides educational opportunities to certain people. I want to be comfortable that it doesn't scope that group in. Where does that get excluded?

Renee Parker:

In Title 7, you file as a nonprofit corporation if you are doing business in this State. This is trying to capture a nonprofit corporation. If all they do is advocate the passage or defeat of ballot questions, they would not fall under Title 7 necessarily, because they may not be otherwise doing business in the State, like a 501(c)(3) is doing. The 501(c)(3)'s are already captured under Title 7. This is trying to capture those entities whose sole purpose is to get money to advocate the passage or defeat of ballot questions and did not do any other business in the State. Since they do not fall under Title 7, there is no disclosure on those types of nonprofit corporations.

Assemblyman Seale:

Would those be 527 [IRS Publication 527]?

Renee Parker:

It could be broader than that.

Assemblyman Seale:

So, you could not capture them using the definition of a 527?

Assemblyman Conklin:

Your 501(c)(3) would not be captured under this, because on page 2, lines 10 and 11, the sole purpose has to be to affect the outcome of any primary, general, special election, or question on the ballot initiatives. So, if you are doing training and teaching, you would not be captured under this.

Assemblyman Seale:

I understand that and I see that, but it says, "...in any of the following activities:"

Assemblyman Conklin:

No, there is an arrow down at the bottom on line 10, which means all of the above must be for the purpose of doing 10 and 11.

Assemblywoman Gansert:

I had a bill with similar provisions. One was concerning single subject and we used some language that staff might be able to remember. Something about function related and germane to try to be specific. When I talked to Legal about it, it was very difficult to make things single subject without some form of constitutional amendment, but there was language that could make it more accurate. Are you willing to entertain an amendment?

Senator Townsend:

This bill is here as a process bill. I have no pride of authorship, and no ego involved in this other than what I think you have tried to do on many of your bills, and that is get the public to understand how the process is being affected. If you are interested in making the bill clearer, I would encourage you to do so.

Assemblyman Seale:

I pose this question to the staff: Should this bill pass, and should the Assembly bill that is similar to this pass, what is the process for reconciling these things?

Senator Townsend:

Whichever bill passes first will follow with a conflict notice that comes attached to the second bill. Believe me, if the Assembly bill is further along in the process, whatever works best for the two committees is fine by me, as long as we deal with the issue.

Assemblyman Denis:

Section 4, line 10, says, "Every person who advocates or group of persons." My concern there is that every person who advocates formally or informally would have to submit their names, address, and telephone numbers. If you were just a volunteer to do a petition, would that mean that each one of those volunteers have to because they are out advocating for that?

Senator Townsend:

I believe that was the catchall that mandates everyone to disclose. Whether I was up for election or not, and I were to go out and advocate for a specific passage or defeat, then I would have to put my name and notify people that I am advocating for or against a particular measure. That includes everybody. That is put there because you want people to understand who you are and what you are doing. If you want to narrow it to groups, I understand that. In our world, where we use the term "every person," it probably narrows it to entities in some form. It would be an actual person. We drew it specifically that broadly.

Assemblyman Denis:

Would there be something that an individual would have to do or file with the Secretary of State before they could go out and advocate for a bill?

Senator Townsend:

If you are going to do a, b, or c, you are going to have to file with the Secretary of State. If you are going to circulate an initiative, or a referendum for signatures, if you are going to solicit or receive contributions, or you are going to make an expenditure, you would have to do that.

Assemblyman Denis:

I don't know what kind of fiscal note this would need. I would think there would be something for the Secretary of State's Office, if we are going to have thousands of people filling out forms and someone keeping track and monitoring it.

Renee Parker:

We did not include a fiscal note on this because it is limited by a, b, and c. This is the same language that is used in NRS 294A [*Nevada Revised Statutes*] currently for ballot advocacy groups. It is really just intending to capture those that are circulating the petition advocating beyond publicly saying that they are in support of some question. We don't anticipate a slew of additional reports. If we do get them we scan them in and put them up on the website. We don't necessarily have audit authority. So, we wouldn't anticipate a fiscal note.

Assemblyman Denis:

If you have a group of 100 volunteers that are going door to door, each one of those volunteers would have to fill something out. Correct?

Renee Parker:

In that instance, if they are doing it on behalf of an organized group then they can file as a group of persons. Not each individual person would have to file.

Assemblyman Holcomb:

So you need to have the name of each person who circulates, in effect, because you said every person circulating a petition. It could be one person, perhaps the organizer, filing, but every person that is involved in circulating the petition, be it 100 or more, would have to provide you with their name. That is the way it reads.

Renee Parker:

The way that it has been interpreted with respect to ballot advocacy groups is that "group of persons" was put in there so that the organizers of the group would file the information on behalf of that organization. That is the way that provision has been interpreted. The reason for "person" is because the definition in NRS 294A in ballot advocacy groups refers to "person." That definition includes business or social organization, a single natural person, governmental entities, or local entities. It would capture a natural person if they were to single handedly do it on their own. If they are doing it as part of another group then that group would file.

Assemblyman Holcomb:

Yes, but you want everyone who is circulating the petitions name. You say every person who advocates, and anyone circulating a petition would be advocating.

Renee Parker:

The intent is that if they are part of a group, similar to a PAC [political action committee] filing or a ballot advocacy group where it is the organizers of the group that file. The intent was not to get to every one of those names of all the volunteers that they sent out to advocate on their behalf. It was just to get the organizers of the group. One of the amendments that we were offering was to expand on that and specify the additional information that they needed to file; for example, the purpose for the person or group of persons, and specifically the group.

Assemblyman Conklin:

It sounds like we could go on and on about this. Ms. Parker, Section 4, subsection 1, is language that was pulled from other statutes, correct? It reads "every person who advocates, or group of persons." Correct? And the standard interpretation of that in every other statute is if you are part of group of persons, the group files, and not every individual person. If a person is acting alone, then that person would file. [Ms. Parker answered in the affirmative.]

Co-Chairwoman Koivisto:

I knew what you meant too.

Renee Parker:

As Senator Townsend indicated, we have a few friendly amendments to address some of these issues that were brought forth. We fully support this bill and commend Senator Townsend for bringing it forward and trying to help us address some of the issues that came up during the last election cycle. They appear to be getting worse with respect to the initiative process, because of issues that were not previously addressed in the statutes, the length of the ballot, and being caught in court having to throw out hundreds of thousands of dollars worth of ballots at the last minute. This is an effort not to hamper that process, but to make it more transparent, more accountable, and to address some of the issues that we have seen to avoid some of those last minute challenges. We could work together to come up with the specific language.

The first amendment would be to specify the form that they file, the statement of organization if they are engaging in these activities. There is also a form that requires, for instance, the name of the person or the name of the group of persons, the purpose for which it was formed, the names and addresses of their offices, and any other groups that they are affiliated with. These are similar requirements to those for PACs, registrations, and ballot advocacy groups that currently exist in the statutes.

The other amendment would be to provide for agents for service of process if necessary to provide for amendments to the statement of organization if there are any changes to addresses. Also, we want to provide for contributions and expense disclosure. We have put in some reporting periods because the initiative and referendum statutes say that you can't go with the same reporting periods that we have for candidates. With the process for initiatives and referendums you have three different start dates. Constitutional amendments could file the copy in August of 2003 for this last election cycle and circulate up through May or June. Referendums could be filed in September and circulate up through May or June. For statutory initiatives it starts in January and goes

through November. Our intent would be to come up with some filing dates for some of the financial disclosures.

[Renee Parker, continued.] The third thing would be to provide for some public hearings on these. We received many calls last election cycle specifically related to some of the ballot questions that had more than one subject, dealt with a couple of different issues, and were confusing. One of our ideas was to have our office inform the Legislative Commission upon qualification of a ballot question. Then the Commission would hold public hearings, take expert testimony, allow the public to testify, and have research staff input. That would aid us in the process of drafting the condensation and the explanation. We could obviously attend those public hearings and get some input for those questions so they will be readable when we draft them in the future.

Co-Chairwoman Koivisto:

I like the idea of one subject. There might be something that you would be willing to sign a petition for, but if there is something on there that you don't like then you don't want to sign it.

Bill Uffelman, President and CEO, Nevada Bankers Association:

I support the concept of the bill; I just have some concerns about the implementation. As a former general counsel to a 501(c)(3) corporation, you are specifically prohibited by federal law from engaging in political activities as a (c)(3). They are not talking about you; they are talking about a 501(c)(6) and other not-for-profit corporations. As an incorporated, not-for-profit corporation in the State of Nevada, I have to file with the Secretary of State annually. They provide a check box that inquires if you do any of the things that are in this chapter that they are adding.

The reason there is a resident agent is so that someone is designated with respect to the PAC with their contact information. The folks who serve on my PAC committee and Board of Directors are CEOs of banks and institutions. I have no problem with my telephone number being listed. I am concerned if it is truly necessary for the telephone numbers of the members of the association be displayed on the Internet. We have spent a lot of time this morning talking about private information. Here is one more place where we are posting some useful information. Is it their business address, or is it their residential address that they have to list? Do they pick? Those are the kinds of issues that run through my mind as the present CEO of an association.

Co-Chairwoman Koivisto:

I would think that those may be the technical issues that have to be worked out and clarified. It might be as simple as listing the officers or the members of the boards of trustees and putting only your phone number.

Bill Uffelman:

Yes, those are the technical things, but the devil is always in the details. You know where to find us; we have both a P.O. box and a street address. We are out there and more than willing to participate in the process.

Lucille Lusk, Chairman, Nevada Concerned Citizens:

We are also in support of the concept of this bill with some concern about some of the same details that have already been mentioned. In Section 4, subsection 1, that problem appears readily resolvable by deleting the words "who advocates" in the first line, and saying "every person or groups of persons organized formally or informally to advocate." You get it into the area of an organization rather than an individual. Where it says, "submit their names," is where you would want them to submit the names of their officers, similar to what you have with the PAC. You might want to require at least the phone number of resident agent rather than every one.

In Section 5, with regard to one subject and the title, you have dealt with that in two bills previously. Those bills have worked out the details much better than this bill has so far. That is A.B. 185 dealing with the single subject and A.B. 497 dealing with the title. Both of those bills deal with the details of how the description and title can be made available to the public and can be challenged within a specified time within certain courts. We are very much in support of A.B. 185 and A.B. 497 and we encourage you to incorporate in this bill those aspects.

Janine Hansen, President, Nevada Eagle Forum:

I have concerns about the way this is written. We publish a voter guide every year. In that voter guide we go over most of the questions on the ballot statewide and locally. We publish that as a part of our 30-page paper. Do we fall under this? Do we need to file for each one of those individual ballot questions that we have either advocated yes or no on? It doesn't exclude us here. If the newspaper came out in favor of a particular ballot issue, they would not have to file any of these forms. I am wondering about organizations who give information to their membership and others about individual ballot questions. We have done that for many years. Where do they fall under this law? Are they required to file? I don't know how you would determine the expenditures considering there are so many things involved in something like

that. I don't know the answers to these questions. I am wondering if this is overly broad or unclear as to whether or not that would be involved. Perhaps we need a statement on the legislative record saying that would not be included, or some other resolution. That would be a nightmare if we had to file some kind of statement for each individual ballot question because we put a recommendation in our voter guide, either yea, or nay on those. To determine how much on each one would be impossible, because it is part of a whole package of a nonpartisan voter guide that has not endorsed any individual candidate. I don't know what the answer to that is.

[Janine Hansen, continued.] With regard to Section 5 and its one subject provision, this was dealt with better in some of the other bills previously processed by this Committee, particularly the fact that this does not resolve the question of who decides if the subject is clearly indicated. If they decide it is not expressed in the title, who declares it to be void? It is unclear as to how this is to be enforced, or by whom. I have a question as to how that will be resolved, because it doesn't tell us how it is declared void. What happens to the people? Can they correct it? Can they change their ballot question before it goes out to get signatures? How do you resolve this? I have done petitions and I would not know how to respond to this. I don't think it is a bad idea to have some way to do this, but I do not think this provides the means.

What does "one subject" mean? If it is interpreted the way that the Legislature does, then that is the basis upon which you make a decision. I have some questions about it that were not resolved by the testimony that I have heard.

Assemblyman Conklin:

It would be my interpretation that if you are a political party, you are not captured under this, especially if you are dealing with your membership. You are not dealing with the entire public; you are dealing with people that have organized with you, within your organization.

Janine Hansen:

We are not doing it as a political party.

Assemblyman Conklin:

Or any other organization. If it is within your organization, you would not be covered by this statute, because you have organized yourselves around a common idea already. You are not convincing anyone that your common idea is right, because you have already organized them under your common umbrella. It is when you step outside of that common umbrella to have an impact that this is trying to capture. We are really talking about transparency or disclosure so

that the public has an idea of who supports certain issues so that they can then identify with issues.

Janine Hansen:

I think that you have made it clearer that we would have to file. We don't just go to our membership; we printed 50,000 voter guides. They were distributed to whoever wanted them. We mailed 15,000 or more depending on the year. We have individual county chairmen who distribute those to people that want them. That doesn't resolve my concern. Would someone decide that we fall under Section 4, because we have made an expenditure. We would have to report on 9 or 10 different ballot issues.

One of the things that we have done is to claim the right of free speech and free press. We have proceeded under that banner. I suspect there might be other organizations that go beyond their own membership that are advocating particular positions on ballot issues. More than one might fall under this, especially if someone wanted to use up a lot of their time and money to try to defend themselves.

Assemblyman Conklin:

Could this be resolved on the form? There was a spot for: "List any and all ballot initiatives in which you are participating"? Then you could put it all on one form.

Janine Hansen:

Possibly, but then how do you judge the money? You have 1 page on that and 32 pages on this. If the Secretary of State cannot audit us, then we could just make up numbers. Could we not? I don't know the answer.

Co-Chairwoman Koivisto:

We will close the hearing on S.B. 224 and open the hearing on S.B. 430.

Senate Bill 430 (1st Reprint): Eliminates authority of Commission on Ethics to seek removal of public officer. (BDR 23-918)

Ben Graham, Legislative Advocate, Clark County District Attorney's Office, and Nevada District Attorneys Association:

Every time this bill came out I went to check the BDR to see if this was a bill that we had submitted, because it was just amazing how it kept popping up in a form that was not recognized. This bill deals with a provision that calls for the

removal of a person from office. It was being constructed during the special session. There are a lot of ways to remove people from office in the State of Nevada. There is impeachment under our Constitution with some pretty good procedural due process, standards, and hearings. There is removal from office under NRS 283.300, which deals with the grand jury proceeding. If there is willful or corrupt misconduct there is a recall procedure under section 300. Impeachment is provided for under a statutory scheme if you are habitually intoxicated or under controlled substances while you are in your job under NRS 283.450.

[Ben Graham, continued.] We are going through this Session and it looks like there will be method by removal from office for some form of ethics malfunction. We, the District Attorneys Association simply sought to repeal. That is it. On the last page of the original bill, it states "...text of repealed section." That is all we ask to do, repeal NRS 283.440. The reason we ask you to consider repealing this section is in light of all the other ways to remove people from office. The way that this statute is written, anybody for any reason that is upset at any public officer except the judge, can file a written complaint. It doesn't say what the complaint has to contain or be about. If you are collecting fees that you are not supposed to be or refuse to perform official duties then you are going to find yourself in court in less than 10 days defending yourself against who knows what. It could be as short as 5 days. Within 20 days the court rules and you could be out of office. There is no procedural due process, substantive due process, or standards for complaints. It has been used 30 or 40 times over the last 25 years, primarily with sheriffs and district attorneys.

Our thought was, under impeachment, under the grand jury proceedings, under the recall, 283.450, and the ethics provisions, there are all these ways of removing people from office and this is a throw back to 1887. It just flies in the face of what we think are the traditional concepts of justice. That is why we brought this bill. Lots of things have happened to it along the way, and we aren't sure how that happened. We would just like to repeal this section. If there is some appetite for that then there will need to be an amendment for an ethics provision.

I spoke with the Chair of the Senate Committee this weekend and they thought they repealed this section.

Co-Chairwoman Koivisto:

To amend it we would need to amend back in Section 14. It would be a different section, but it would just say NRS 283.440 is hereby repealed.

Ben Graham:

That is all we are trying to do. It isn't that there are not lots of ways with some procedural due process and guidelines to remove someone from office; it is just that anybody could decide to complain tomorrow morning and in 5 days you would be in court.

Assemblyman Seale:

Are you in support of this or not?

Ben Graham:

That is why I am frustrated. All of the other stuff has nothing to do with anything that we have been involved in, only Section 14.

Assemblyman Seale:

You don't know how it got in there.

Stacy Jennings, Executive Director, Nevada Commission on Ethics:

When Ben [Graham] was on his quest to do something that I think is a good thing, he didn't realize that statute was cross-referenced in the ethics statutes in the first reprint version of bill that is being deleted. That particular statute under 281.551, subsection 5 (a), on page 2 of your first reprint, lines 32 through 38, is the section that caused Controller Augustine's referral for impeachment. The following paragraphs contain it in lines 39 to 42 on page 2 and lines 1 through 4 on page 3. Those apply to people who are not legislators or constitutional officers. Those are the provisions that say if anyone else that is elected to office, or city counsel, et cetera, is found guilty of one willful ethics violation, we may refer them for removal under this statute. At 3 willful violations, we must refer that person for removal. To my knowledge, the Ethics Commission has never actually done that.

I think what happened in the context of drafting this bill is that the bill drafters caught that reference. Since they were going to repeal 283.440, they took the process therein to place in the ethics statutes so that we would still have the ability to refer people for removal from office for an ethics violation and not the other things that were in 283.440. However, that new section caused a lot of concern in the Senate. There were many lobbyists that got up and said that they could not support the bill with Sections 1 and 2 in it. It was all news to our office at the time. I just got up and pointed out that our statute does reference 283.440 for removal from office. If you are going to delete that, then you need to tell us what you want us to do; you can't just leave us hanging there in statute.

[Stacy Jennings, continued.] Senator Beers said that there were all these other ways for people to be removed. They can be removed by vote, recall, impeachment, and all these other things. He asked if we really had to have that statute. I guess we don't. To my surprise, they went to work session when I was not there and they took everything out of it except that part of statute. I think that is how we got here today. We were all surprised.

Kristin Erickson, Legislative Advocate, representing Nevada District Attorneys Association:

Several suggestions were made at the Senate hearing with regard to the cross referencing of NRS 283.440. It was suggested that you could repeal that section in its entirety, which apparently they did. Or, you could simply remove 283.440 and replace it with the grand jury statutes 283.330 through 283.430, or perhaps replace the repeal statute with impeachment. There are different methods of addressing that cross reference problem. In speaking with Noel Waters, he indicated to me that he has been the subject of a 440 violation on two occasions—once because he filed charges against someone and the second time because he did not file charges against someone. You can see what the impact of 283.400 can have on an elected official with incredibly discretionary powers such as the district attorney or a police officer.

Assemblyman Conklin:

In Section 1, subsection 5 of the reprint, I understand the cross reference here, but I am not sure that I am willing to remove that whole section. It does provide certain usefulness outside of 283.440. Do we really have to delete that section, or do we just have to delete the cross reference and then delete 283.440. This would be a two section bill—Section 1, deleting paragraph (c) or at least the reference in paragraph (c), and in Section 2, deleting 283.440. Then we would be done with the bill.

Stacy Jennings:

The impeachment provision in paragraph (a) that is being stricken was added in 1991. The other two provisions which cross reference that statute were added in 1999. I suppose you could fix the bill by just saying "a willful violation committed by a public officer removable from office by a court" and not reference that statute. There might need to be some legal research that has to be done, but I am sure there are other provisions. They talked about grand juries, and some of the testimony indicated that some counties may not have grand juries available frequently. You could strike out the other statute and take the cross reference out. You must provide us with something to do if you are

not willing to take that out. I think it does weaken the ethics laws by striking that whole provision in statute.

Assemblyman Conklin:

I am just trying to throw out some ideas to get us on some common ground. If we delete 283.440, delete paragraphs (b) and (c), and leave only (a), is that keeping the intent, without weakening it?

Stacy Jennings:

Subsections (b) and (c) apply to city and county elected officials. Subsection (a) for impeachment is only applicable to constitutional officers and legislators. They are the only ones under the state Constitution that can be impeached. That is why Section 5 (a) says removable from office by impeachment. If you delete 5 (b) and (c), you are removing our ability to refer a city councilman, a county commissioner, or any kind of city or county elected public officer for removal.

Assemblyman Conklin:

Do you have a suggestion for fixing this?

Ben Graham:

We would like to do what we had intended and that is to repeal this, yet service the need of the Ethics Commission so that they can continue to do what you want them to do. I have been assured that if we can get this done the Senate will concur when it comes back over to their committee.

Assemblywoman McClain:

We are looking at language written in 1909 and revised in 1949. Maybe instead of repealing this we should fix this so that it fits the twenty-first century and our other laws.

Ben Graham:

I initially started to work on it from that approach. By fixing it, we turn it into either removal by accusation, recall, or the impeachment provision which already exist. I had thought about some fix-it language, but in talking with the LCB [Legislative Counsel Bureau] at the time, if we put in some procedural safeguards then it would look like NRS 283.300.

Stacy Jennings:

We would be happy to try and do some research to see if there is something else in statute that we could reference without having to do all of this.

Co-Chairwoman Koivisto:

This will definitely have to go to work session.

Craig Walton, Emeritus Professor of Ethics and Public Policies, University of Nevada, Las Vegas, Nevada:

We were opposed to the first reprint because it would take away from the Ethics Commission one of its most powerful tools and leave it with very little, namely wait for the next election or go through a felony trial. Those are severe weapons and very distant. I think the fix that could be done would be to put in the original Section 14. If you look at the first reprint on page 2, line 40, delete the words "removable from office pursuant to NRS 283.440." If you took out that little clause then it would just say, "...a willful violation of this chapter has been committed by a public officer, the Commission may file a proceeding in the appropriate court." If you did the same deletion on page 3, at line 2, take away the words "...removable from office pursuant to NRS 283.440" leaving the rest of the language alone. That would be the best fix to repair the problems and enable the Ethics Commission to continue with its work.

Chairwoman Koivisto:

I am glad to hear your suggestion. That was what Mr. Conklin was proposing as well. I think we are all thinking along the same lines, therefore, we should be able to fix this in work session.

We have been asked to approve an Assembly resolution in support of older Americans month. We are looking for Committee approval to address this resolution.

ASSEMBLYWOMAN McCLAIN MOVED TO APPROVE THE RESOLUTION.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

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

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Chairwoman Koivisto:

We are adjourned [at 5:07 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Ellen Koivisto, Co-Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: May 3, 2005

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda