

**MINUTES OF THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-third Session  
February 15, 2005**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 1:59 p.m. on Tuesday, February 15, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Barbara Cegavske, Chair  
Senator William J. Raggio, Vice Chair  
Senator Warren B. Hardy II  
Senator Bob Beers  
Senator Dina Titus  
Senator Bernice Mathews  
Senator Valerie Wiener

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Michael Stewart, Committee Policy Analyst  
Elisabeth Williams, Committee Secretary

**OTHERS PRESENT:**

Carole Vilardo, President, Nevada Taxpayers Association  
Paul D. McKenzie, Operating Engineers Local Union No. 3  
Lucille Lusk, Chair, Nevada Concerned Citizens  
Paul J. Enos, Manager of Government Affairs, Retail Association of Nevada  
Janine Hansen, Independent American Party; State President, Nevada Eagle Forum  
David K. Schumann, Independent American Party  
Leo Drozdoff, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources  
Lynn P. Chapman, State Vice President, Nevada Eagle Forum  
Andrew List, Executive Director, Nevada Association of Counties  
R. Ben Graham, Nevada District Attorney's Association

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Stacy M. Jennings, Executive Director, Commission on Ethics

CHAIR CEGAVSKE:

I have three bill introductions. The first one is Bill Draft Request (BDR) 23-86.

**BILL DRAFT REQUEST 23-86**: Removes requirement for approval of salaries of executive staff of Public Employees' Benefits Program by Interim Retirement and Benefits Committee. (Later introduced as [Senate Bill 71](#).)

SENATOR RAGGIO:

This was the bill requested by the Interim Retirement and Benefits Committee. It involves the need to have their proposals reviewed and is very worthwhile.

SENATOR RAGGIO MOVED TO INTRODUCE BDR 23-86.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS BEERS AND TITUS WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

Bill Draft Request 17-427 is from the Legislative Committee on Public Lands.

**BILL DRAFT REQUEST 17-427**: Clarifies authority of Legislative Committee on Public Lands to review and comment on certain matters relating to public lands. (Later introduced as [Senate Bill 70](#).)

SENATOR RAGGIO MOVED TO INTRODUCE BDR 17-427.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS BEERS AND TITUS WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

Our last bill is BDR S-182, from Senator Hardy's committee.

**BILL DRAFT REQUEST S-182**: Creates Committee to Advance Higher Education in Nevada. (Later introduced as [Senate Bill 69](#).)

SENATOR HARDY:

This is a recommendation of our interim study on higher education. The Committee felt it was important to have some mechanism for continuing to monitor the progress of the programs offered by the university system. I want to emphasize this does not have to do with funding. It is not the intent, and we can put it in the BDR if necessary.

SENATOR HARDY MOVED TO INTRODUCE BDR S-182.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS BEERS AND TITUS WERE ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

We open the hearing on Senate Bill (S.B) 17. It is Senator Wiener's bill.

**SENATE BILL 17**: Revises provisions governing review of administrative regulations by Legislative Commission. (BDR 18-647)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

I appear before you today seeking your support for S.B. 17. It is a bill which will close a loophole in the process through which the Legislature reviews administrative regulations adopted by most of the Executive Branch agencies. This review is conducted each interim by the Legislative Commission. It determines whether the regulations conform to the statutory authority pursuant to which they were adopted and whether the regulations carry out the intent of the Legislature in granting that authority.

Many of you may remember, the people of our State approved an amendment to the separation of powers clause of the *Constitution of the State of Nevada* on the 1996 general election ballot. That vote provided for legislative veto power over Executive Branch administrative regulations. It is this power we are seeking to protect in S.B. 17.

In section 1 of the bill, you will see the period for receiving regulations before a meeting shortened from ten days to three days. It also removes the 35-day rule, which sometimes can be contentious. The 35-day rule, which resulted in the loophole we are addressing with this bill, simply provides that a regulation received within 35 days of a Legislative Commission meeting must be reviewed by the Legislative Commission. Otherwise, the regulation is not reviewed before it becomes effective unless the Legislative Commission refers it to an appointed committee to review regulations or a joint committee for another reason.

The past practice has been for regulations to be referred to a committee other than the Legislative Commission only in those cases where someone has complained about the regulation before its adoption. This occurs regularly because the impact of many of these regulations is not felt by those affected until after the adoption and effectivity of the regulations.

If you look at the statistics provided in the packet in your folders ([Exhibit C](#)), you will find letters of support for this bill as well as information provided by the Legislative Counsel Bureau (LCB). It is startling to see some of the trends. In some years, as few as 22 percent of the regulations ultimately adopted were actually reviewed by our Legislative Commission. In other years, up to 74 percent of the regulations were reviewed. This bill would require the appointment of a dedicated subcommittee to review regulations. We have had a regulation subcommittee in practice, but S.B. 17 would require it. This subcommittee would function as a stopgap for any regulations which needed to be reviewed before the next regularly scheduled Legislative Commission meeting.

If the bill is adopted, the 35-day rule would be gone. Regulations would be held until the next meeting of the Legislative Commission, unless the adopting agency requested an expedited review. In that case, the regulation would be reviewed by the subcommittee addressed in this bill. Based on past practices,

the LCB does not anticipate this type of request will happen very frequently. Therefore, according to our own legislative counsel, Brenda Erdoes, there should not be a fiscal impact.

This bill does not affect the ability of an agency to adopt temporary or emergency regulations. This bill only affects the process of adopting permanent regulations. After I prefiled the bill, I received a request for a friendly amendment, and it is in the packet, [Exhibit C](#). The proposed amendment amends section 2 of the bill. This amendment would change the current process whereby a resolution or other appropriate measure is required to ratify the Legislative Commission's objection to a regulation. We have to take an affirmative step. The statute is currently written to provide that if the Legislature does not ratify our Legislative Commission's objection to a regulation by the end of the first session which follows that objection, the objection is nullified and the regulation is filed and becomes effective.

The proposed amendment makes the objection of the Legislative Commission or subcommittee final. This change will make the situation more certain for agencies and the Legislative Commission. Both sides will be inspired to seriously negotiate towards regulation which conforms to statutory authority and carries out the intent of the Legislature in granting that authority. It is for these reasons I seek your support for this piece of legislation.

SENATOR HARDY:

Senator Wiener, I appreciate you bringing S.B. 17 forward to try to clarify this. I was chairman of the interim Committee to Review Regulations. The most complicated thing I have dealt with is trying to figure out how we get stuff, what we are supposed to with it and what happens if we do not. There are opportunities for things to slip through the cracks unviewed or unvisited.

SENATOR WIENER:

When you look at the statistics, some years, more often than not, it appears there have been a lot of those regulations which, by intent or circumstance, we have not reviewed. When we look back to our legislative duty, which is clearly defined for us, we need to take every position and stand possible to follow through with our responsibility. This piece of legislation would allow us to do what we are mandated to do.

SENATOR RAGGIO:

I am not clear on the change which results with the proposed amendment. This is pertaining to *Nevada Revised Statute* (NRS) 233B.0675, subsection 3. What happens now, and what will happen under this amendment if the agency refuses to revise the regulation when there has been an objection by the Commission?

BRENDA J. ERDOES (Legislative Counsel):

What currently happens is the regulation is suspended. The filing is suspended so it does not become effective. If the Legislature does not pass a concurrent resolution or other appropriate vehicle essentially ratifying the Commission's objection to the regulation, then the day after the end of session, sine die, the statute requires the Legislative Counsel to file the regulation. Then, it becomes effective.

What this would do is stop the process after the Legislative Commission objects to it. There would not be a ratification required. Just to make sure this is clear, the Constitution does not require the further ratification by the Legislature. It says the agency or the Commission can have the veto power.

SENATOR RAGGIO:

This is in conformity with the amendment to the Nevada Constitution and it would be final. In other words, if there is an objection and it is not revised accordingly, then the Legislative Commission must suspend the filing. Is this correct?

Ms. ERDOES:

Yes, it would be final.

SENATOR CEGAVSKE:

Now, I will open the meeting for public comment.

SENATOR HARDY:

While we are talking about regulations, in 1999, the Legislature put into effect a requirement that there be a small business statement. I would like to, at some point, have the Committee revisit this issue to find out what methodology is being used to make these determinations. I have seen some determinations which have said there is no impact on small business, but it is not possible there

is no impact on business. How are local governments determining what impacts small business and what does not? Some things I have seen had to result from some bureaucrat somewhere checking a box that it did not impact small business.

CHAIR CEGAVSKE:

We will revisit the issue. I have several people who would like to speak on S.B. 17.

CAROLE VILARDO (President, Nevada Taxpayers Association):

Like Senator Hardy, I congratulate Senator Wiener. I do not know if I can add much to what she said. She was very eloquent in determining the need. I can tell you the association's position since former Senator James Kosinski first started improving this process and putting it to the ballot, which we actively supported. This is just another step which takes an important part of statute and makes it even better. I give you my wholehearted support. I urge you to pass this bill. We have followed NRS 233B through its life.

CHAIR CEGAVSKE:

What are your feelings on Senator Hardy's comments?

Ms. VILARDO:

I would love to assist him. There are two different worlds when you view the impact of regulations on business. On local governments, it is all business; only to the state is it small business. We have so many definitions of what is a small business. We need to have some better parameters. He is absolutely right. It is in the eye of the beholder, and, if I am the government, I do not understand business well enough to determine when there is an impact. Many of them look at it and say well, this is not going to be much for us, but it helps us do our job. They do not realize it has now put an additional burden of compliance on us in the business community. I would be more than happy to work with anybody on making some changes to NRS 233B because they are needed.

SENATOR WIENER:

Just for clarification, you support S.B. 17 as amended?

Ms. VILARDO:

I absolutely support it, as amended.

PAUL D. MCKENZIE (Operating Engineers Local Union No. 3):

I am here today on behalf of the Operating Engineers and their members. We wholeheartedly support the bill as amended. We think it is going to clear up a loophole which lets the Executive Branch do legislation. We are very appreciative of the bill.

LUCILLE LUSK (Chair, Nevada Concerned Citizens):

I am speaking in support of the bill as amended. Everyone who has ever spent time with you here at the Legislature has some idea what the Legislature intends on a piece of legislation that, at some time or another, has run afoul of the regulatory process and does not fully reflect the legislative intent. We appreciate your coming forward with this to ensure more of those get into the legislative review process to have a better chance of accuracy in reflecting the legislative intent.

PAUL J. ENOS (Manager of Government Affairs, Retail Association of Nevada):

We would like to express our full support for this bill. We thank Senator Wiener for this legislation. We believe S.B. 17 is good public policy which will allow the Legislature to ensure the regulations carry out the legislative intent. We support it as amended. We would be more than willing to work with Senator Hardy on taking a look at the fiscal impact statement on small businesses and local governments.

JANINE HANSEN (Independent American Party):

I am speaking today on this particular bill for the Independent American Party. Senator Wiener, we certainly support it. One of the greatest problems the citizens of Nevada have is citizens versus the bureaucracy. There is little accountability and accessibility there. Oftentimes, citizens have no recourse when regulations may not be in sync with legislation. They do not have a right to trial by jury. It has been taken away by the Legislature in this process for when you are opposing a particular bureaucracy; it should be returned. They often do not have due process in order to resolve those problems in legislative hearings. Oftentimes, the regulatory hearings are not legislative. For instance, Occupational Safety and Health Administration (OSHA), and other administrations, have a kangaroo court. The people serving as the judicial body for OSHA have been trained by OSHA, so the people who go before them have



little opportunity for true due process and no way to really appeal it. This is a tragedy. The basic right to trial by jury has been denied our citizens, who might hold these bureaucrats accountable.

This is a good step in allowing them to be held accountable. Bureaucrats often violate not only the state law in the way they apply things, but they also violate their own regulations. My brother, Joel Hansen, has been involved in many cases with different bureaucracies in the State of Nevada, OSHA, the U.S. Environmental Protection Agency (EPA), the State Department of Taxation and others. Almost without exception, he finds bureaucrats not only violate the state law in application, but they violate their own regulations. There is little recourse available for the public, except spending a lot of money going to court. It is often beyond their means to find justice in those circumstances.

Another example of this was last year, when you were running for office, you may have received a form from Secretary of State Dean Heller. It said although the law had not required it, he wanted you to fill it out anyway. It was particular information about campaigns. He was trying to enforce his own view of what the law should be without the law even being there. We have had considerable opportunities to have controversies with the Commission on Ethics and Dean Heller over some of these issues. Right now, some of our Independent American Party candidates who raised no money whatsoever are facing fines of \$15,000 to over \$60,000 apiece because although they filed the forms, they did not file the way the State wanted them done. The Secretary of State's Office and the Ethics Commission were never given the authority by the Legislature to audit these particular filings.

My son, who was a candidate, has been in negotiations with the Attorney General's Office over this for some time. He is a young man, only 26 years old. He has two babies and is trying to start a business. He is frightened because he thinks he may have this huge fine placed upon him and not be able to get his contractor's license. This has a chilling effect on those who want to participate in a government which does not even follow what is intended by the Legislature. The Legislature specifically stated last Session they did not have the power to audit, but these issues came earlier.

This is something which needs to be looked at, especially for those candidates who want to run and have not raised money. Now, because of a technicality,

they are facing these changes. We find bureaucrats and elected officials, like the Secretary of State's Office, want to go beyond the legislative intent. This is not something which is unusual. We are thankful you have come forward to help hold these bureaucrats and others in the bureaucracy accountable. It will be one more step to protect our individual citizens. I would encourage you to review this issue of never allowing people who come before bureaucracies to have any real recourse to the courts. If they could go to a jury, then those bureaucrats would be held accountable, and I can assure you, they do not want to do that. There would not be a lot of court cases until they are back in line where they should be.

DAVID K. SCHUMANN (Independent American Party):

What I just heard prompted a comment. I am in favor of S.B. 17 and hope this moves over to the federal level. The Federal Land Policy and Management Act says certain things that Congress wrote, fully understanding the states are sovereign within their borders. The Bureau of Land Management and the U.S. Forest Service write and administer their Code of Federal Regulations. Congress does not write the Code of Federal Regulations, these bureaucracies do. It is 180 degrees from what the law actually says. What you are doing here can be revolutionary.

LEO DROZDOFF (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

I would describe my opposition as gentle opposition. Our fundamental concern with S.B. 17 is that it may lengthen the process for adopting administrative regulations and potentially delay implementation of regulatory changes which are, in fact, time critical.

The current process for adopting environmental regulations includes mandatory workshops, drafting and review of proposed regulations by the Legal Division of the LCB and a public hearing before the State Environmental Commission. The Commission is an 11-member body composed of designated public officials and 5 members appointed by the Governor. One of these members must have experience with mining reclamation, and another must have experience as an engineering or building contractor. In our experience, this process does provide ample opportunity for those affected by proposed regulations to review them before adoption. It also provides for two levels of review by parties outside the

Division, including both the LCB Legal Division and the State Environmental Commission. Typically, this process takes four to six months.

As you know, current law provides for review of regulations by the Legislative Commission, if the regulations are received within 35 days of a regular meeting. Otherwise, the regulations become effective without review. From our standpoint, this provision actually provides a degree of time certainty in the process. We are concerned that replacing the current procedure with a mandatory review of regulations by the Commission or subcommittee would remove the time certainty.

Many of the changes are in the interest of the people we regulate. For example, some regulatory changes reflect reforms or updates which streamline permitting or reporting processes. In short, these are regulations which the regulating community wants. In addition, we are required to adopt various federal regulatory changes in order to maintain delegated programs and authority to implement various federal programs delegated to the State. If we fail to adopt needed regulations in time-certain ways, we may risk losing delegated authority or leave gaps where certain laws are left to the federal government to enforce. This is typically not in the interest of our regulated communities.

We agree the regulatory programs we adopt must be consistent with legislative intent. I am not aware of any systemic problem with our regulated community. We work quite hard to build consensus before any regulations are adopted. I am not privy to the amendment, and I would be glad to take a look at it. We wanted to make this Committee aware of our concerns about timeliness and impacts to federally delegated programs.

CHAIR CEGAVSKE:

We will make sure you get an amendment. Senator Wiener, could I assign you to meet with this administration to work out their concerns?

SENATOR WIENER:

I could address some of the concerns now and also defer to counsel. Some concerns might come down from the federal government. They may not be anticipated or there is a short time span. I would ask Legislative Counsel, if this does not affect something which is expedited and might be construed as an emergency. What we are doing with this amendment would certainly still

address the needs where something may be imposed. They might not have been prepared for it or an agency might not have known what was coming. With all the laws we are amending and all the changes we have made, are there provisions for addressing that?

MS. ERDOES:

Yes, Senator Wiener, this actually helps in some ways. The changes in this bill do not affect either temporary regulations or emergency regulations, in which you have to go and get a signature from the Governor and file immediately. It is not changed at all because this requires the Legislative Commission to appoint that subcommittee and have them ready and standing by. It actually makes the Legislative Commission more able to respond quickly. If the agency has an emergency, then it will go automatically instead of going to the Commission. If there is not a meeting in time, then the agency can, under this, let the Legislative Counsel know. In that case, it is scheduled for the subcommittee to review regulations so it would happen quickly.

SENATOR WIENER:

We would move it from the tenth day to the third day, as well, to be even timelier. I do appreciate you coming forward. I refer the Committee to the handout prepared by our own Legislative Counsel Bureau, to show we do have some across-the-board concerns about this [Exhibit C](#). If you look at 2004, in the third column after the year, the percentage not reviewed by the Legislative Commission is 78 percent. This means 22 percent of the regulations went into effect based on review by the Commission, which we are statutorily or constitutionally required to do, and 78 percent slid by us. Even though it is all over the map, the year before it was 26 percent. This should be an exception, not what looks like a rule. That is an extraordinary number of regulations which slip by without legislative review. It concerns me.

SENATOR RAGGIO:

First of all, I want to commend the Legislative Counsel. This is a good example of a bill that shows the value of having the now-required Legislative Counsel's Digest on bills. I appreciate we are going to be seeing it on all the bills. Your point was not overlooked, and I understood it. You indicated there might be a case where you have to act in a timely fashion to adopt a regulation. Otherwise, we might be subject to something more stringent under federal regulation or something of that kind. I want to make sure that was understood. Will the

emergency language on page 3 in S.B. 17 accommodate that? You are aware you may give notice of this in an emergency situation. I would think that would cover the kind of situation you are talking about. Then, the Legislative Counsel can refer the regulation to the subcommittee which is going to be required under this bill. Does that address your concerns, or is it timelier than this?

MR. DROZDOFF:

Perhaps, it is here in the amendment. I did not know there was a time certain on the meeting of the subcommittee. Right now it is 35 days or it goes. I fully agree the regulations need to be looked at. The question is, how quickly will they be looked at?

CHAIR CEGAVSKE:

Maybe we can have Counsel clarify that.

MS. ERDOES:

In reading back on this, I would have to say because we said it was an emergency, it would automatically happen. If it would make the agencies feel better, we could certainly put in that the meetings should be held as soon as practical, because it is definitely our intent. With the three-day notice, we basically schedule as soon as we could get everyone together. We would be happy to add it. I do not want to speak for Senator Wiener, but it is something I could easily add.

CHAIR CEGAVSKE:

Senator Wiener is indicating, with a nod of the head, she agrees. Does that help?

MR. DROZDOFF:

Definitely.

CHAIR CEGAVSKE:

I will close the hearing on S.B. 17. What is the pleasure of the committee?

SENATOR MATHEWS MOVED TO AMEND AND DO PASS S.B. 17.

SENATOR WIENER SECONDED THE MOTION.

SENATOR RAGGIO:

I wanted to clarify the proposed amendment will be additionally modified to accommodate "as practicable."

CHAIR CEGAVSKE:

Yes, we will have the language "as practicable." We will be able to review this on the floor of the Senate. Everybody on the Committee will be able to make sure the wording is exactly what we wanted.

THE MOTION CARRIED. (SENATOR TITUS WAS ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:

We will open the hearing on Senate Joint Resolution 11 of the 72nd Session. Senator Raggio will give us some background information on this.

**SENATE JOINT RESOLUTION 11 OF THE 72ND SESSION:** Proposes to amend Nevada Constitution to provide for payment of compensation to members of Legislature for each day of service during regular and special sessions and to provide for payment of reasonable allowances to such members for postage, express charges, newspapers, telecommunications and stationery. (BDR C-1353)

SENATOR RAGGIO:

Senate Joint Resolution 11 of the 72nd Session is the joint resolution which passed the last Session of the Legislature. If it passes this Session, it would appear on the ballot to amend the Nevada Constitution. I am one of those who is reluctant to amend the Constitution unless there is some necessity. This should have been addressed some time ago and has not been done for different reasons. Session after session, we have been talking about legislative compensation, and we have had a lot of different people come forward, from in and outside the Legislature, to suggest there needs to be a change. We are still dealing with provisions on legislative pay in our Constitution from 1864, when Nevada became a state. What S.J.R. 11 of the 72nd Session does is quite obvious. We need to recognize something that has probably been in every other

state in the union. A member of the Legislature who is elected would get paid for each day of service during either the regular session or a special session. It would also delete the limitation of 20 days for special sessions.

At the time when Nevada became a state in 1864, I doubt anyone ever envisioned the affairs of the State would become so complex we would ever meet for more than 60 days. Well, as you know, we meet, and have met for decades now, for longer periods of time. I do not know how many people we had in 1864, but obviously it was a lot less than we have now. Now we are 2 million-plus people in the State of Nevada. We still have the "luxury" of having a Legislature which meets biennially. We are one of seven states which still meet biennially. We still have the luxury of a part-time Legislature, where people from all walks of life can seek election and service in an extremely important aspect of government. We are one of the three parts of government. We ought to recognize those who serve in the Legislature perform a valuable service and should not be penalized in a pecuniary way.

For lots of reasons, we have been reluctant to address this issue over a long period of time. I asked the Research Division of the LCB to provide information, and I appreciate them doing so on short order. In 1865, the First Session of the Legislature, those who were elected received the munificent sum of \$8 per day for not longer than 60 days. I do not know any year at the time when the Legislature ever exceeded 60 days. It was a long time ago, when we did not have a lot of bills, we did not have a lot of lobbyists, and we did not have a lot of media out there telling us what we should be doing. Twenty years later, for whatever reason, they decreased the pay to \$7 per day. It went up a little bit in 1915 to \$10 a day. I was looking at the time when I first entered the Legislature, and it was \$60 per day. It was in 1971 when they raised the pay. Today, the Legislators receive \$130-per-day pay. It was set for the last time in 1985.

SENATOR RAGGIO:

We used to look at this frequently and try to raise the pay, but still recognize whatever we raised it to was for a maximum period of 60 days. Originally, the reason was a legislature, and particularly one which was a part-time legislature, should not stay in session longer than necessary merely to receive pay. I do not know of many people in this 63-member body who desire to extend a legislative session merely because they might get another \$130 per day. To be quite frank,

most of the Legislators here give up remuneration from their outside interests in order to serve. Many give up all income from private endeavor or even their public positions. Without getting into that argument, the reasons, if they were valid at any time, have not existed for a long period of time.

We ought to encourage people to come to the Legislature to serve, recognizing that, obviously, there are some benefits. There are some personal reasons people seek these offices. They vary as much as the individuals who stand for the election process. We need to encourage people to run for these positions. It is hard enough today, whether it is the Legislature or the Executive Branch or whatever, to get good people to become candidates. There are a lot of reasons people give why they do not want to serve. The pay is not the only one, but is certainly a consideration. When we know we are going to serve here at least 120 days and only get paid for 60 days, although we get a per diem which does not go too far, there really is some disincentive for people to come forward as candidates. This is simply recognition that the language which now exists in this Constitution is archaic. It is certainly out of date and needs to be addressed.

The resolution, if it is adopted this Session, would go on the ballot. The public would have an opportunity to vote. I firmly believe once the public understands what we are talking about here, there is not going to be an overall reluctance to support this. The resolution would change the Constitution to allow a Legislator to receive a salary compensation for each day of service during either regular or special session. It would also allow the Legislator to receive reasonable allowances, which would be determined by the Legislature, for expenses incurred. If you look at the bill, it is for postage, express charges, newspapers, telecommunications and stationary. Each Legislator serving in any session cannot permit all of those items to exceed the sum of \$60. Although, the Speaker of the Assembly and the Lieutenant Governor are allowed an additional \$2 per day during the time of their actual attendance.

The reasons for this are obvious. In the last Session, this resolution passed overwhelmingly. In the Senate, it was 18 in favor and 3 against. In the Assembly, it was 32 in favor and 10 against. Some of that reluctance has been because some people who vote for anything like this feel they are going to be chastised since they are voting to raise their pay. This has been the reason since 1985; we have been unwilling at any time to even address a raise in



compensation. It is an outfall from the inappropriate request made at that time for a large pension increase. I happened to be one of those who voted against it, so I am free to speak about it. It was unfortunate, but it should not be constantly raised as a reason why somebody feels if they suggest any increase in the pay of Legislators, somehow, they are going to get beaten at the polls. There are more important reasons to support this and one is to recognize the worth of people who serve in these positions. This is not some munificent sum. It is reasonable, and I suggest we pass S.J.R. 11 of the 72nd Session and let the people of the State vote on this issue. If it is explained in this manner, the public will support the resolution. The public wants people who have a real interest in what they are doing and who are fairly compensated to serve in all of these positions.

CHAIR CEGAVSKE:

Thank you, Senator Raggio. I appreciate you speaking for our benefit. Also, I thank Michael Stewart, who put together a presentation for Committee members which indicated several things which occurred last Session ([Exhibit D](#)). There are minutes from the last hearing and also how the Senate and the Assembly voted on S.J.R. 11 of the 72nd Session. Are there any other comments from Committee members?

SENATOR HARDY:

I applaud the Senate Committee on Finance and Senator Raggio for bringing this forward. I am a strong supporter of the citizens' form of legislature we have. It is worth protecting at all costs. I get discouraged every interim when I talk to people who are otherwise interested in running for the Legislature, but really cannot do it. In 1991, as a 25-year-old college senior, I ran for the Legislature, but was so broke then, I told Senator Bob Beers I ran for reelection because I needed the money. I recognized, at that point, I could probably only serve a couple of terms at the most, and then I had to get on with a career of some kind. Every session, I talk to people who are somewhat established in their careers and say they would love to run for the Legislature, but cannot take the hit financially.

I would much rather deal with it this way, where we have an opportunity to go to the public and explain the situation. Nobody expects to get rich out of this

process. In the spirit of protecting the citizens' Legislature, we have to do something or we are going to have a philosopher-king legislature, because they will be the only ones who can afford to serve.

CHAIR CEGAVSKE:

This was a piece of legislation I, too, supported because, in talking to the citizens of the State of Nevada, north and south, the comments were we should be paid for the days we serve. There was no one I found who was opposed to it. The overwhelming thought is of being paid. Overcompensation was never in any of our arenas; this was just pay for the days you were here. It is a good piece of legislation that will go before the vote of the people. The education part will be to let them understand it is just for the days you serve.

I will open the meeting for public comment.

MR. SCHUMANN:

I favor this bill. My only catch with it is the being paid for days served. I testified in the last Session it should be a flat \$20,000 because it is a third of the year. The Legislators are worth at least \$60,000 per year. This "paid for days served" is as if you were digging ditches or something. When you are here and digging your ditches, I will pay you; and if you are sick and going to the hospital or something, I will not pay you. Now you have done it; it will go through as paid per day. I agree with everything Senator Raggio said about wishing to attract good folks. They are hesitant to do this if they cannot make a living. I also agree with Senator Hardy's point that if some 25-year-old recent graduate wanted to run for this, \$20,000 would keep the individual from taking the first job and going and doing this. You are doing the right thing.

SENATOR RAGGIO:

Thank you, Mr. Schumann. The other problem is we cannot change a word of this, or then, we are back to square one. We would have to start all over again.

CHAIR CEGAVSKE:

Next, we have Lucille Lusk. In your packet, we have a very nice letter you had presented to us last time in the hearings ([Exhibit D](#)). It is on page 9.

Ms. LUSK:

I am here in support of S.J.R. 11 of the 72nd Session. We do understand it must remain word perfect, as it was passed last time, in order to avoid having

to start over. We support the provisions based on the days you serve, that is the thing the people will most readily understand when it goes before them. People are generally fair-minded, and they like to compensate people for the days they work. It seems clear the original intent for passing the 60-day limit was a backhanded way of trying to limit the length of a session. Clearly, we all know history. We know it did not work, but we now have a 120-day limit. I believe the people will be quite comfortable in being able to budget for the amount it is going to cost. It is important to recognize it has been a long time that many of you, and others before you, have served with only partial compensation. To me, it is evident there are a great many who serve willingly for service and not as a matter of money. Even though that is the case, it still creates a hardship on many people. We want to have a citizen legislature. We want to have people be able to serve who are from every kind of economic and personal background. We support you in this effort.

SENATOR RAGGIO:

I neglected to mention the fiscal note. If you had the additional 60 days at the current rate of \$130 per day, it is simple math. It would add \$491,000 to the cost of a session. There is also something like \$63,000 additional, because you are talking about an estimate of about \$1,000 per member for postage, stationary and all of that. That is the expected fiscal impact on the current rate of \$130 per day.

LYNN P. CHAPMAN (State Vice President, Nevada Eagle Forum):

I have been speaking to a lot of people over the past couple of years about this. Everyone I have spoken to is in agreement, you do the work, you need to be compensated. The wording you want to add makes a lot more sense and is easier to read.

JANINE HANSEN (State President, Nevada Eagle Forum):

We did support this last Session. We feel it is important to maintain diversity in a citizen legislature, so people from all walks of life can participate. You know from my activities last Session on "Axe the Tax," I am very concerned about fiscal responsibility in the Legislature. However, we feel people do need to be paid for the time they are here. It will allow people, who otherwise would not be able to participate in the legislative process, to be able to serve. We put out a voter guide every year; we put out 50,000 statewide last year. One of the

things we do in the guide is publish a recommendation on the individual ballot questions. We will endorse this resolution in our voter guide next time and help promote the passage of it, with the understanding it is necessary in order to maintain a citizen legislature.

ANDREW LIST (Executive Director, Nevada Association of Counties):

As you may recall, this last Session, the counties had a bill working in conjunction with the Nevada District Attorney's Association and the Nevada Sheriffs' and Chiefs' Association to raise the salaries of our county elected officials. That is always something which is tough to do. I express my thanks to you folks for doing the right thing and getting the bill through for us.

Our policy reason for supporting S.J.R. 11 of the 72nd Session is the same as you mentioned earlier, which is to retain good people in the Legislature and keep the ordinary citizens paid so public service does not mean poverty. We absolutely support this bill and think the public will as well. Let me give you a reason. The bill you passed last Session allowed our county commissioners to vote their own raises. Every single county has done it without any backlash whatsoever. The public understands this, and they understand we need to compensate you for the work you are doing.

I would take it a step further and suggest you look into insurance benefits for State Legislators. Right now, you can buy into the State system, but that should be a part of the compensation package which should be looked at. Additionally, I would suggest funding for a salary commission, which already exists in statute, the citizen-appointed committee which looks at these salaries. The committee should be funded and look at this for the next interim.

CHAIR CEGAVSKE:

Senator Raggio indicated if we made any amendments to this, we would have to start all over again. That is our concern. Are you thinking of something for the future?

MR. LIST:

The salary commission can be done through statute by a small appropriation. I do not know if the insurance can be done with or without a constitutional

amendment, but is certainly something that should be looked into. Last Session, there were a couple of doctors in the Assembly who actually treated the children of their fellow Assemblymen, because some of them did not have insurance. That is something which should not happen.

SENATOR RAGGIO:

First of all, I do not want to add any more weight to the horse. This bill has nothing to do with raising the salaries of Legislators. It has nothing to do with the collateral issue of whether or not the Legislators' health premiums should be paid. This only extends, if approved by the voters, to the Legislator getting paid, whatever the rate, every day for the whole session. Those are other issues we can address without a constitutional amendment. The Legislature should have raised legislative pay from \$130 per day, which it last did in 1985, but everybody has been afraid to do it. I do not want to put anything else in this resolution. I want to make it clear, we are not doing that here.

MR. LIST:

Senator Raggio, I apologize for confusing the issue. I understand what this bill does and the Nevada Association of Counties supports it.

SENATOR RAGGIO:

I do not want to confuse the public. That is probably another thing we could look at.

R. BEN GRAHAM (Nevada District Attorney's Association):

I live in a home of six registered voters who, if this passes through the Senate and Assembly in this form, will be voting in favor of it. I am here on behalf of myself, as Ben Graham, but I know if the other 17 county district attorneys were here, they would also be supporting this measure.

CHAIR CEGAVSKE:

We will close the hearing on S.J.R. 11 of the 72nd Session. I did ask staff when this law would take effect. Certification of the 2006 vote by the Supreme Court would be by the end of November 2006, so this would be for the Legislative Session of 2007.

SENATOR MATHEWS MOVED TO DO PASS S.J.R. 11 OF THE 72ND SESSION.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS TITUS AND WIENER VOTED NO.)

\* \* \* \* \*

CHAIR CEGAUSKE:

We are going to have a presentation regarding ethics in government by Stacy Jennings, the executive director of the Nevada Commission on Ethics.

STACY M. JENNINGS (Executive Director, Commission on Ethics):

The Commission on Ethics has five main functions under State law. We interpret and provide guidance on ethics and government law. We adjudicate ethics complaints and campaign practices complaints. We provide advisory opinions to public officers on their past, present or future conduct. We provide training on ethics laws. Finally, we accept financial disclosure statements of certain public officers, those appointed public officers who make more than \$6,000 per year from that office.

This is a work chart of the Commission ([Exhibit E](#), original is on file at the [Research Library](#)). The Commission is a legislative executive commission, which means if you look at the organization chart of the Nevada State Government, it floats between the Executive and Legislative Branches. Our Commission has eight members, of which four are appointed by the Legislative Commission, and four are appointed by the Governor to four-year terms. Of the four members you appoint as a Legislature, statute requires at least two be former public officers, and at least one be an attorney. There is one change since I have prepared my presentation. Merle Berman has resigned from the Commission because she is running for Secretary of State. We now have a vacancy which needs to be filled by the Legislative Commission.

Our commissioners, while they serve, are prohibited from doing three things. They are not allowed to hold any other political office. They are not allowed to be actively involved in the work of any political party or any political campaign. They are not allowed to lobby the Legislature on behalf of anyone other than the Commission or themselves.

SENATOR RAGGIO:

This question has not been raised. Should there be term limits for those people serving on the Ethics Commission? I am not criticizing anyone on the Commission, but some have served quite a long time. We have term limits now on everything else, including Legislators. Should there be term limits? Has anyone thought about that to make sure we get some different viewpoints?

MS. JENNINGS:

It is my understanding the philosophy of the Governor's Office on this has been they do not want someone serving more than two terms on any board or commission. Three of my members are in their second term and were just reappointed in the last year. In the three years I have been there, seven or eight people have been in the other five seats on my Commission. This is because they wanted another political office. We do have three members who have been there longer than four years. Of the other members, the longest serving was Merle Berman, who had been on for about two years when she resigned.

CHAIR CEGAUSKE:

There is going to be a bill which will be debated, Senator Raggio, on whether or not there should be a limited number of attorneys. I am looking at this right now; you have five attorneys out of the members which are there, [Exhibit E](#). It has been brought to my attention several times as something we should look at.

MS. JENNINGS:

When I started, seven of my bosses were attorneys.

The Commission has a staff of four people; three of us are in Carson City. We have just hired our legal research assistant, funded by the Interim Finance Committee in September. That person is starting February 28. Once she is on board and has had appropriate training, we will open our Las Vegas office to the public.

The Commission, prior to 2003, was funded by the State General Fund. The 2003 Legislature asked where our caseload was coming from. Sixty-five percent of the caseload was from city and county government. The other 35 percent came from State Executive Branch government and the Legislative Branch. It

was put into statute that our budget has a cost share with local government which is reassessed every two years. Cities and counties with more than 10,000 in population get a portion of our budget prorated back to them as an assessment for services.

The Legislature, in establishing the Commission on Ethics, gives you legislative intent in NRS 281.421. It says a public office is a public trust and shall be held for the sole benefit of the people. Public officers or employees must commit themselves to avoid conflicts between their private interests and those of the public whom they serve. That is a very important concept when we have, as you were just talking about, a lot of citizen legislators, citizen county commissioners and citizen city council people who have private interests as well as their duties to public service.

The Commission has jurisdiction over public officers, who in statute are defined as those who are elected or appointed to a position established by the *Constitution of the State of Nevada*, a statute of the State or an ordinance of any of its counties or cities, and who exercise a public power, trust or duty. This means they are doing three things: making policy, enforcing laws of the State, and expending public funds. The statute says "and" because all three of those functions have to be met.

Statute tells you there are some people who are not considered public officers. They are any judges or officers of the court system who are governed by the Commission on Judicial Discipline, anybody who is serving on a board or commission which is purely advisory, certain general improvement district members and the county health officer of Clark County. Obviously, statute does not say it, but federal officers and employees are not covered by the Commission, because they would not be created by anything which would be in the Constitution or State law.

Public employees are people who are performing public duties for the State, city or county and whose actions are directed or controlled by a public officer. The reason those two functions are segregated is, in our statutes, everything applies equally except the provisions of financial disclosure statements. If you are a



public employee, you do not have to file those. If you are appointed to office and make more than \$6,000, you do. If you are elected to office, you have to file that form.

Again, as far as our advisory opinions and complaints, we issue advisory opinions to public officers. It is a very effective tool. People can come in and tell us what they think may conflict between their public and private duties, and we can give them guidance. The process is confidential unless they expressly waive that. It is a good tool for people to be proactive about issues which concern them between their public and private capacities.

The second thing we do is investigate ethics complaints about public officers. The public officers are given all the information we have on hand and have an opportunity to respond. We do an investigation and then it goes to a two-member panel of our Commission for a just and sufficient cause hearing. The panel is always made up of people from different political parties. The panel can then dismiss the complaint outright unless if they do not agree or they both agree, then that panel moves the issue forward to the full Commission. Statute says the process is confidential from the time the complaint comes in the door until the panel proceeding. Then, all of our records become open and can be inspected by the public. If someone goes to a hearing of the Commission and is found to be in violation of State law, the Commission can impose up to a \$5,000 civil penalty for the first willful violation, up to \$10,000 for the second willful violation and up to \$25,000 for the third willful violation. If we find evidence of criminal conduct, we are required to refer the case to the appropriate person for prosecution, whether it would be a district attorney or the Attorney General. If we find one willful violation for persons who are in the Legislature or in constitutional office, statute requires us to report those findings to the people responsible for commencing impeachment proceedings, which we learned with the Assembly. If it is someone who is elected to office who is not a Legislator or a constitutional officer, at one willful violation we may choose to refer those people to a court for removal. At three willful violations, statute tells us we must refer them to a district court for removal from office.

CHAIR CEGAVSKE:

I have been approached about the wording "the willful." It is going to be talked about in this Committee this Session.

SENATOR WIENER:

Do you have a sense of how many people would be coming forward, based on something they believe might be questionable?

MS. JENNINGS:

Typically, they are about 20 percent of all of our requests. I have some statistics two slides ahead.

The third thing we do is consider campaign practices complaints, which are similar to ethics complaints, except they do not have an investigation stage because they are done in a condensed time frame within ten days during an election cycle. The person who files the complaint has to provide all of the evidence they want to have considered.

SENATOR RAGGIO:

During this last campaign cycle, did you get any campaign practices complaints?

MS. JENNINGS:

No, we did not. The cycle before that we had three.

SENATOR RAGGIO:

I am astounded that during this last campaign cycle, which was, to my memory, the nastiest of both federal and local campaigns I have ever seen, it was not utilized in some way.

MS. JENNINGS:

No one filed a complaint with us over that. It may be due, in part, to the publicity the law got. We have been sued by the Nevada Press Association and the American Civil Liberties Union and the case is over the constitutionality.

SENATOR RAGGIO:

The original suggestion was everybody is tried as a criminal for these kinds of things and that did not solve the problem. We were looking for some venue to get an early determination of these kinds of issues and have them addressed. I do not want to reopen all of this. I am interested that, as bad as this last election cycle was, somebody did not come in and file a complaint.

SENATOR TITUS:

What has happened to that lawsuit?

MS. JENNINGS:

The Attorney General's Office has taken over the litigation in the lawsuit, since it is defending the constitutionality of the statute. I can check and get back to you, but I am not sure where they are.

SENATOR TITUS:

There was one ruling which found it unconstitutional. Did it get appealed?

MS. JENNINGS:

I will check into it for you.

SENATOR WIENER:

On the ten-day clock, what starts the ten days? That is a short window.

MS. JENNINGS:

The NRS 294A.345 says a person has to file a request for opinion with us not later than ten days after the false statement of fact is published. Then, our section tells you, when we get the request in, we have two days to contact the person whom the complaint is against and get a response. Basically, I do it the minute it comes through the door, because they only have two days to get it back to me. Then, the full hearing has to be within 15 days. The window is less than a month.

SENATOR WIENER:

Published is the operative word here. Is that determined by when the material was actually released? Published could mean being broadcast, too, but is that meaning when it was created?

MS. JENNINGS:

The statute says published means the act of printing, posting, broadcasting, mailing, speaking or otherwise disseminating. If it was some kind of a mailer, the day someone received it would be when the clock would start.

SENATOR WIENER:

Are you saying the time would not start when it was sent from the printer to a mail house? That could eat up your ten days right there.

MS. JENNINGS:

Exactly. This is our whole jurisdictional ability, [Exhibit E](#). *Nevada Revised Statutes* 281.236 is the cooling-off period when you leave the Executive Branch of government; NRS 281.481 is your code of ethical conduct; NRS 281.501 is your disclosure and abstention statutes; NRS 281.505 has some more specific language regarding contracts public officers cannot participate in; NRS 281.553 is a prohibition on honorariums; NRS 281.554 is Senator Titus's bill from last Session on not causing public funds to be expended in support of a candidate or a ballot measure; NRS 294A.345 and NRS 294A.346 are the campaign practices laws. This is the extent of our jurisdiction. If you are looking at changing anything to make it an ethics violation, it would go into one of those areas.

Those are some workload statistics in [Exhibit E](#), we have, which were submitted with our budget. We have seen an increase in the requests for opinions filed. About 50 percent of the complaints we get, we end up investigating. Of those 50 percent, roughly 80 percent are dismissed at panel. That means, in my view, your panel process is working. Through the investigative process, we find out the allegations are either not substantiated or without merit, therefore they need to be dismissed. It is an indication we are doing a good job. I am struggling with completing my investigations within 45 days, which is a time frame you gave me last Session. It is realistic with the investigator position we have requested in our budget. It is not doable with just me, which is why we are behind in our investigations. I think 45 days is a good due process result for someone to get an answer.

Roughly 25 to 45 percent of all the opinions we get in our advisory are for a public officer, [Exhibit E](#). We currently have two cases under judicial review, which is an indication of the quality of our work. We hold a lot of educational programs, going out and meeting with public officers and employees around the State to disseminate information about ethics laws. One of the most important things we can do as a Commission is to help people understand the laws, so they stay out of trouble. Seventy percent of our current operating budget is tied up in personnel. Our current budget for this fiscal year is \$419,000.

There are a couple of terms the statute uses in regard to ethics laws that are not defined. I have come up with some definitions for you to think about when people come and talk about ethics legislation. A conflict of interest is something which is talked about in the disclosure statutes. My definition of it is a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. When I talked to people about this, I always say it is the appearance, sometimes. Maybe it will not necessarily compromise your judgment, but the people need to know the position you are in, and you need to adequately explain it.

MS. JENNINGS:

The appearance of impropriety is also not defined. That is any conduct you would participate in which could create a perception that your ability to do your job could be impaired because of the conflict you have. It is why the Legislature has passed the disclosure statutes.

They also talk about pecuniary interests in the statute, which is not defined. I always tell people it is a monetary interest or an interest which can be valued in money, but not necessarily business ownership of stock or that type of thing. Your employment relationship is a pecuniary interest. The employment relationship of your spouse is a pecuniary interest for you because it helps support your household. Those are some issues people need to think about. The Legislature did clarify, in 1999, that campaign contributions are not pecuniary interests. As long as you are properly reporting those on your campaign contribution and expenditure reports, then you do not have to disclose those contributions.

The Legislature also has a provision in as it relates to voting, abstaining and disclosing. In general, you can vote as long as you are not going to get something accruing to you which would benefit you any more than someone else. We always advise people if they are in doubt, to fully disclose, but to participate. If you are continually disclosing on issues, then you are not really representing the people. Our Commission has taken the view to fully disclose, and unless you have to abstain, we encourage you to participate.

Your statutes tell you you always have to disclose any interest created by a gift or a loan, a pecuniary interest or a commitment in the private capacity to the

interest of others. You have to do that in public at the time it is considered. However, as Legislators, you do have the ability under NRS 281.5016 to file a statement with LCB Director Lorne Malkiewicz declaring things you would have to disclose often when you are not in Session. You can do so in writing, and you do not have to continually disclose those issues.

The statute also tells you if you have one of those three things. If you accept a gift or a loan, you have a pecuniary interest or you have a commitment in a private capacity, you can still actively participate in the matter, but you cannot advocate one way or another. The Commission issued a good opinion, Opinion No. 97-07, that draws a line for you between what is advocating versus what is actively participating. It is important because even when a public officer cannot vote, that officer has the opportunity to participate like a member of the public.

Subsection 8 of NRS 281.501 tells you who these people you have a commitment to are: anyone who lives in your household; related to you by blood, adoption or marriage within the third degree of consanguinity; anyone who employs you or someone in your household; anyone with whom you have a substantial or continuing business relationship; or other similar relationships. This is vague and we have never been asked to interpret it. The Clark County ethics proposal would expand on what similar relationships might be.

Here is the table of consanguinity, [Exhibit E](#). Someone related to you by blood, adoption or marriage is anyone who, on this table, is in a box numbered one, two or three.

SENATOR RAGGIO:

I cannot understand what the degree of consanguinity chart says. I cannot read mine. What are all those boxes? Those are all family relationships?

MS. JENNINGS:

Yes, those are all family relationships.

SENATOR RAGGIO:

I understand, as a lawyer, third degree of consanguinity. I assume it would also apply to an affinity relationship as well.

Ms. JENNINGS:

Right, anyone related to you by marriage, adoption or blood.

SENATOR RAGGIO:

This is a chart to help. You are saying anybody on the chart is within the third degree of consanguinity?

Ms. JENNINGS:

No. These are the people, statutes specifically state, you need to be worried about. Not that the other ones are not going to get you in trouble. I would be happy to provide each of you with a full-sized color chart.

SENATOR BEERS:

Is this chart on the Internet?

Ms. JENNINGS:

It is not, but I will put it up on our Web site.

The last couple of slides in my presentation are a pie chart of the executive budget recommendation and a breakdown of the costs. This budget includes annualized funding for our Las Vegas office and the legal research assistant funded by the Interim Finance Committee. It also includes the establishment of a full-time investigator who would be located in our Las Vegas office. That is most of what is responsible for the 43-percent increase in our budget. Due to the complaint caseload we had over the last 2 years, 65 percent of the costs would be assessed to local government and 35 percent would be paid to the State General Fund. In the second year, it is roughly the same amount when they backed out some onetime costs and annualized the investigator position.

This is a quick list of bills included on the BDR list. The Commission's bill is making mostly technical changes. I will talk to you more about those when I come before you. There are two substantive things which will be in our bill. The first one is we would like to create a different definition of public officer for the purposes of investigations versus filing financial disclosure statements. There are a number of people who, because of the definition of a public power, trust or duty, do not fit the definition of a public officer because they are often

not responsible for the expenditure of public funds. They are still making some serious policy decisions and recommendations. A big example is city and county planning commissions. We get a lot of inquiries for investigations about these people, but most of them do not meet the definition of public officer. Our proposal takes the existing definition of public officer. If a person is making policy, spending public money and enforcing laws or rules of the State, then that person would be considered a public officer for the purposes of both advisory opinions and investigations.

The second thing we are looking at doing is creating a statute of limitations on ethics complaints. If you have been in public office for 20 years, there is nothing to prevent someone from saying you did something 20 years ago. If they can marshal evidence, they could file a complaint against you. We are recommending, for the purposes of investigating the ethics complaints, you put in a three-year statute of limitations.

There is going to be a lot of healthy discussion between Senator Titus's bill, Senator Horsford's bill and Assemblyman Perkins's bill. A lot of people have different ideas. We will be here to let you know how it would change the existing process. Ultimately, however you want to change things, we will enforce whatever you want us to enforce.

That concludes my formal prepared remarks. Attachments provided to you, [Exhibit E](#), are a flowchart of our complaint process and a summary of our BDRs as we submitted them to the Legislature. They are in the process of finishing those up, so you may be seeing them soon.

CHAIR CEGAVSKE:

One question which came up was about a lot of local elected officials who were supposed to file for the financial disclosure. They changed the law to provide that those receiving less than \$6,000 did not need to file. There has been some confusion about it. Can you talk about that?

MS. JENNINGS:

The 2003 Legislature made some changes as to who does and who does not have to file a financial disclosure statement. The policy decision, at the time,



was that elected public officers should all file it. It was supposed to be that all candidates for public office file, but somehow, in the bill drafting or the conference committee, they said only candidates who would make more than \$6,000. To the best of my recollection, that was not what they had intended.

As far as appointed public officers, it was my testimony that we had a lot of people serving on State boards and commissions. They were making \$80 per day, meeting four times a year. They filed the form late and all of a sudden, they owed thousands of dollars in fines. Actually, it was Assemblyman Beers, at the time, who asked me how many of these people make more than \$3,000 or \$6,000, because we want to make sure we have to file as Legislators. I looked at my list and told him he could probably exclude a couple of thousand people from the filing requirements. He was very supportive of the idea.

As a result of only taking appointed public officers who make more than \$6,000 per year, we get 300 of those financial disclosure statements in our office. It has significantly cut down on the number of appointed people who have to file. Some people may have been inadvertently caught in that. If you want to again change who has to file, we have lifted up the definition of public officer and moved it over for you into the financial disclosure realm.

The other thing the bill did in 2003 was place responsibility on candidates and elected public officers to file those forms with the Secretary of State's Office instead of ours. I appreciate everything Mr. Heller's office has done. We have a wonderful partnership going on filing and reporting. They are doing a great job at enforcing the penalties portion for everyone who files late.

CHAIR CEGAVSKE:

Senator Hardy brought up an issue which seemed to have some support. I would ask the Committee if it would support the introduction of a BDR which would address the impact of administrative regulations. It would affect NRS 233B.0608 and NRS 233B.0609 and any other referring statutes.

SENATOR HARDY:

We could draft a bill which would require that, in conjunction with submitting the small business impact statement, a written comment about the methodology used to arrive at the final statement be submitted. As far as I know, the local

governments and the State are legitimate in these regulations and there are not any problems. I have just seen some statements which have raised questions. All I want is a discussion, and a BDR is probably the most effective way to do it.

SENATOR HARDY MOVED TO HAVE A BILL DRAFT REQUEST PREPARED TO REQUIRE A WRITTEN COMMENT ACCOMPANY A SMALL BUSINESS IMPACT STATEMENT TO EXPLAIN THE METHODOLOGY BEHIND THE STATEMENT.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO WAS ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:  
I open the floor for public comments.

Ms. HANSEN:  
I have had concerns about some portions of the ethics law since it was originally passed. I have repeatedly testified here in the Senate and in the Assembly about these issues.

CHAIR CEGAVSKE:  
Are you referring to the Ethics Commission as a whole?

Ms. HANSEN:  
No. I have concerns about specific things they have jurisdiction over and the law which governs them. First of all, one of my greatest concerns is about the whole way the Ethics Commission is structured. As I mentioned earlier, it denies the right to trial by jury. The Nevada Constitution, Article 1, section 3, says, "The right of 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 in the manner to be prescribed by law...." In other words, we have the right to trial by jury in the

Nevada Constitution for civil cases, but it has been denied by the Legislature in the case of bureaucratic issues. I am concerned about it because there really is no accountability with regard to administrating these things.

We had several candidates in the Independent American Party. There was some confusion; there were 25 candidates 2 years ago who filed the forms for the campaign in a certain way. Part of the filing has since moved to the Secretary of State's Office. An Ethics Commission meeting occurred in which there was a 4-3 decision as to what should happen. The Party then appealed it to the district court. The district court made a decision in our favor, then it was overturned by the Nevada Supreme Court. I have serious concerns about the way this process is being run. This Session, we heard we will take out the protection for individual people who want to run for office; their violation must be willful, and we are going to impose criminal penalties on them. If that is the case, then they can take the Fifth Amendment and refuse to participate in filing any of the forms.

Another concern with the Ethics Commission is the area covering campaign practices. This has been abused by people who want to hurt a particular candidate, who may be perfectly honest, by repeatedly filing ethics complaints against them. This violates the right to free speech. The Nevada Constitution says, in Article 1, section 9, "Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right...." It also says, "...and no law shall be passed to restrain or abridge the liberty of speech or of the press." You cannot imagine this Legislature would pass any law like the Ethics Commission review to censor what the press is doing, but we have allowed our right to freedom of speech to be censored as candidates participating in the process. The very best way to ensure the truth comes out is to have free speech, not restrained, censored or determined whether it is ethical by the Ethics Commission. I continue to believe this is a violation of our U.S. Constitution First Amendment and Ninth Amendment rights by the Nevada Constitution.

Many times these decisions are not appealed or opposed because people do not have the money or the time. For us to have to go to district court, we had to hire a lawyer. I was not one of the people who was being reviewed, but many

of our people were involved, so I was present. We had to have 25 people show up at the hearings. Then, it went to the Nevada Supreme Court, and we had to pay a lawyer to take us there. It would not stop this if there was a right to trial by jury. There would be more accountability if we had the right to appeal. The Assembly, in the 72nd Session or the 71st Session, passed legislation which included that a person under these campaign practices could have a trial de novo, a new trial, in order to clear his name. This is not right that people do not have free speech and people do not have a right to trial by jury to clear their names in these cases. I appeal to you to do this.

During this last campaign, I was involved in the Axe the Tax campaign. One person who was interested in opposing the tax increase was a liquor distributor at Lake Tahoe. He lost a lot of his business because the casinos found out he was opposed to their proposal. This has a tremendous, chilling effect on the campaigns, especially on a third party. You are probably not familiar with the federal and the Supreme Court cases which show that third parties, in particular, are hurt by this because if they have to tell who all their campaign donors are, they are subject to persecution and harassment.

In this case, we had to get a lawyer, and we went to the State and said we are not going to file for Axe the Tax. We will file how many contributions we have had, but we are not going to file who those are from, because those people are then subject to losing their jobs, their businesses, etcetera. This has a chilling effect on individual citizens without a lot of money, just ordinary people like us. We did not have a lot of money to participate in the campaigns. I appeal to you to consider the time-honored idea that free speech is the best remedy for free speech. It is something we ought to take a look at here and go back to our constitutional roots, instead of having bureaucrats censoring and monitoring speech, allowing those who might want to use it against honest people to abuse the system. This is something we need to continue to be reminded of. It is a serious blight on our State that we allow this censorship of free speech. It is a passionate issue with me, and I have repeatedly stated it needs to be reviewed. The Assembly thought it was worthy to provide for a trial by jury in these cases. I hope you will take that under consideration.

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CHAIR CEGAVSKE:

Thank you Ms. Hansen, we will add the notes for your testimony to the record ([Exhibit F](#)). Thank you, Committee and staff, for your work today on formulating the BDRs. As we have no further business, I will call us adjourned at 3:56 p.m.

RESPECTFULLY SUBMITTED:

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Elisabeth Williams,  
Committee Secretary

APPROVED BY:

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Senator Barbara Cegavske, Chair

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