

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

**Seventy-third Session
February 22, 2005**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:01 p.m. on Tuesday, February 22, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file 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 Bernice Mathews
Senator Valerie Wiener

COMMITTEE MEMBERS ABSENT:

Senator Dina Titus (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dean Rhoads, Northern Nevada Senatorial District

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ray Bacon, Nevada Manufacturers Association
Dr. Jill T. Derby, Vice Chair, Board of Regents, University and Community
College System of Nevada

Senate Committee on Legislative Operations and Elections
February 22, 2005
Page 2

Daniel J. Klaich, Vice Chancellor of Legal Affairs, System Administration Office,
University and Community College System of Nevada
Ken Lange, Executive Director, Nevada State Education Association
Anne K. Loring, Washoe County School District
James T. Richardson, Nevada Faculty Alliance
David K. Schumann, Independent American Party; Nevada Committee for Full
Statehood
Janine Hansen, Nevada Eagle Forum
Lynn P. Chapman, Nevada Eagle Forum
John L. Wagner, Burke Consortium of Carson City; Nevada Republican
Assembly
Larry Lomax, Registrar of Voters, Elections, Clark County
Lucille Lusk, Chair, Nevada Concerned Citizens
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Richard Daly, Laborers' International Union of North America Local 169
Samuel P. McMullen, Las Vegas Chamber of Commerce; Retail Association of
Nevada

CHAIR CEGAVSKE:

We are going to open the hearing on Senate Bill (S.B.) 69. We have Senator Hardy here to give us a brief introduction.

SENATE BILL 69: Creates Committee to Advance Higher Education in Nevada.
(BDR S-182)

SENATOR HARDY:

Assembly Bill No. 203 of the 72nd Session established the Interim Committee to Evaluate Higher Education Programs in the State of Nevada and it also appropriated the money for the process. I was the Chair of the committee. The committee's goals were to evaluate the need for existing and potential higher education programs, to identify areas of high priority where needs were not being met and to determine the feasibility of reallocating resources. That was important because we wanted to stay away from the issue of the funding formula. We tried to keep the focus on reallocating within institutions. We determined whether the General Fund appropriations and the student fee revenues were being efficiently distributed. We hired a consortium of consultants led by the National Center for Higher Education Management Systems (NCHEMS).

The principal findings of the consultants, which the committee ultimately endorsed, was that Nevada's higher education institutions were, in fact, operating efficiently at an institutional level compared to their national peers. However, the system as a whole is a relatively high-cost proposition. The consultants noted that, with the exception of the Community College of Southern Nevada (CCSN) and the University and Community College System of Nevada, revenues and expenditures compare favorably with similar institutions nationally. According to the NCHEMS consultants, more than half of the full-time-equivalent undergraduate enrollments are in the two universities. Only five states have a higher proportion enrolled in their research universities.

The consultant opined, and the committee agreed, that managing enrollment patterns will have a greater impact than attempts to squeeze greater efficiency out of institutions which are operating quite efficiently now. This is the primary reason for wanting to continue the committee and the study. It was really a primary finding that we needed our higher education institutions to define their missions and then stick to those missions. If we are going to have a first class research university system in this State, then the schools need to be able to focus on the things which are traditionally focused on by research institutions. In order to do that, we would have to move responsibilities elsewhere. The committee found, and this is the primary thing I will be pushing, the need for a State college system to accommodate our baccalaureate degree requirements.

The study found there are only five other states in the country who have more full-time-equivalent undergraduates enrolled in their universities. We are not efficiently and effectively providing baccalaureate degrees. That speaks to the need for a state college system to handle the bulk of that growth. I am not suggesting we need to appropriate millions of dollars to create a state college system overnight. I am suggesting we need to prioritize. As the need for growth and additional classroom space arises, the growth and enrollment should incur at the state college level.

With regard to financing concerns, the committee recommended development of a strategic-level financing plan for the higher education system that addresses multiple issues. It included devising a strategy for accommodating growth, creating a performance funding pool, establishing minimum funding levels to fulfill institutional missions and evaluating shares of institutional budgets which would be borne by the State and the student, in other words, a tuition policy. I came away with a very strong feeling that our tuitions are not high enough in

this State. That is an area we need to revisit. Creating statewide, need-based financial aid programs is something desperately missing in this State. We also examined the capital budgeting process.

Consistent with our charge in A.B. No. 203 of the 72nd Session, the consultants found additional graduates are needed in the teaching and health-care professions. One of the functions of the committee was to affirm that, and we did. The consultant pointed out that in the matter of teacher education, the issue is more of creating student interest rather than expanding production capacity. The consultant reported steps have been taken to expand nursing capacity, but additional capacity is needed to produce more graduates in the areas of medical lab technicians, pharmacy technicians, radiological technicians, respiratory therapy and dental hygiene.

The committee did not identify specific internal reallocation recommendations. However, the committee concurred with the consultant that, with the exception of CCSN, there is room for internal reallocation within the institutions, assuming continuation of the formula-driven funding mechanism now in place. The committee recommended the system should develop reallocation recommendations for further consideration. Many of these recommendations will require a significant amount of time, certainly a lot more time than we had during the interim and certainly more time than we are going to have in the next 108 days. I recommend that we continue the committee, and we recommended the committee's name to be the Committee to Advance Higher Education in Nevada.

I want to point out I am not married to any of the language. I am open to having discussions about who should serve on the committee. What I am concerned about is that as a State Legislature, we develop the priorities and the missions for each of these institutions. Then we should have a mechanism in place to make sure they are adhered to and to make sure everyone is focusing on the missions. I was very concerned that so much of our remediation was done at the university level in this State because we do not have a state college system. I was very concerned, as chair of this committee, to realize we were not offering or providing the vocational opportunities we should be offering because so much is being done in other areas at the community college level. All of this focuses down to the absence of a state college system. I would like to see us, in this State, take the focus off of the Nevada State College in Henderson, with the mission of providing teachers and nurses, and start talking about a state

college system as a statewide system for purposes of providing baccalaureate degrees. Then, the university system could focus on its obligations as a research institution and the community colleges could focus on their obligation with regard to vocational training. It is our recommendation that we continue the committee. I think the committee will expire in 2007, but I would like to see it continue beyond that, as well. Perhaps it can become a permanent committee.

I would like to speak to the issue of the Board of Regents. This committee met when the Board of Regents were taking some significant heat for various reasons. There was a lot of pressure on the committee to, for lack of a better phrase, throw them under the bus. Most of us on the committee felt the Board of Regents is an extremely important part of State government. They have specific constitutional standing and we felt it was more important that we do what we can as a Legislature and as a legislative body to strengthen their responsibilities. For that reason, you will see very few recommendations to this legislative body from our committee, but significant recommendations to the Board of Regents for implementation of some of the things we came up with.

SENATOR MATHEWS:

I just hope you are not married to the community colleges becoming a vocational entity. That may be one of their missions, but you have got to know there are a lot of things a community college does that would not interfere with your mission for a state college system. As we grow, we are going to need all three entities. We do not want to box any group into one mission. Part of the mission of the community college would be vocational education. We need to have that progression through either the second two years of a state college or at a university. We need to make sure we keep that as a viable option.

SENATOR HARDY:

Thank you for pointing that out. My comments with regard to that were really an overgeneralization in terms of mission. I am not married to any specific mission. I am just saying we need to decide what those missions are and make sure we stick to those missions. We found there is significant need in some areas of the State for four year programs to be offered at the community college because they are the only institutions available. We wanted to point out there should be a very specific process for deciding when, and the circumstances under which, four-year programs will be offered at the community colleges. It was an overgeneralization to say that universities are

research schools, state colleges are baccalaureate schools, and community colleges are vocational. That is a very broad generalization that is not workable in the real world because there will have to be deviations from that. We just need to make sure we define the missions of these institutions and make sure we, for lack of a better word, hold their feet to the fire.

SENATOR MATHEWS:

When I look at the constituents I represent, the community college is the first opportunity for a lot of them to access higher education. Whether we get a state college system and a research university, I do not want them branded with just a vocational school. You can have a vocational track at the high school level if you want. I want to make sure, as long as my vote is being heard, that we keep the community college viable in terms of having the tracks that they could go vocational if they would like, but they could also do a progression.

SENATOR HARDY:

I agree with that, we just need to make sure they stay within their missions. You are talking to someone who began his career at a community college.

SENATOR WIENER:

You mentioned some of the recommendations because a lot of the force of your activity and the product of your committee work was making recommendations to the Board of Regents. Would you share some of those? Do you have in mind maybe two or three highlights of what it is you would like to accomplish with the continuation of the work you have already completed? Could you give us some ideas about what you want to do with the committee as you move forward?

SENATOR HARDY:

One of the things the committee talked about to the Board of Regents was the financing to develop a strategic-level financing plan for higher education to look at the tuition issue and coming back with recommendations with what the schools' individual missions ought to be. Those are policy decisions that I believe rightfully belong to the Board of Regents. We want to empower the Regents to do that. We also have a stewardship at the State level to monitor that in order to understand what is going on. The mission of this Committee is to make sure the questions we have asked through the evaluating committee are being answered and that we have some stewardship, as well. It is not something we can just hand off to the Board of Regents and say we are not

interested, because we have a responsibility in there as well. The continuation of the committee, in lieu of a whole bunch of bill draft requests and policies for this Legislature to adopt, was in recognition of that responsibility. This is a shared responsibility, but the Board of Regents has a very legitimate part, as do we. This is a mechanism to allow us to continue that kind of cooperative effort.

SENATOR WIENER:

It is not as though the committee did not accomplish a specific something. The committee would continue to make sure what you are recommending moves forward. It is a process rather than two independent studies.

SENATOR HARDY:

This is such a big issue to get your arms around that our findings were really kind of big picture, philosophical findings. University programs should focus on research. What does that mean? We need a state college system to provide the baccalaureate degrees and to provide remediation. How does that go forward? We could certainly have a committee to make those recommendations and do it as a matter of policy and pose it upon the Board of Regents, but we felt it was more important that as a constitutional body, they have the ability to do that. This committee is simply a way to provide the legislative body with a way to participate in those decisions going forward.

SENATOR BEERS:

How do we get the change implemented? How do we get the universities to become grant funded on research projects and implement admission standards?

SENATOR HARDY:

Those are questions which illustrate the point and the struggles as to why we found this committee should go forward and why we think there needs to be some legislative participation in this, in coordination with the Board of Regents. We, as a collective group, set those priorities and then go about the business of making it happen. Getting a state college system is a 20 to 30 year process in this State because we do not have the money do a \$200 million appropriation to get it started. How do we go about doing that? How do we get the grants? A lot of that is required of the Board of Regents constitutionally. I think it is important we either change the Nevada Constitution or we empower the Board of Regents to be able to do it without giving up our responsibility.

SENATOR BEERS:

Did your committee look at the possibility of taking one of the community colleges in Clark County and turning it into a state college? Simultaneously, we could shift some of the university-level vocational programs off and implement admission standards.

SENATOR HARDY:

That did not come up as a discussion in committee. It did occur to me, that kind of radical recommendation is going to take the cooperation of a lot of different groups who have stewardship over higher education in this State—the kind of cooperation we are trying to inspire through this concept. I do not know if that is an answer; it might be. This is the mechanism to find out. That kind of out-of-the box thinking is what we are talking about needing here. Instead of saying to the community college system, do a four-year program, we need to say that fits, as a general rule, under the auspices of the state college system. Let us find out how many are needed and how we can make those kinds of things happen.

SENATOR RAGGIO:

The Board of Regents of the University and Community College System of Nevada is created by the State Constitution. Even though we are responsible for the ultimate funding, I do not think the Legislature should be micromanaging the University and Community College System. We have approached that in degrees at times, I am sure to the consternation of the Board of Regents and probably others as well. We have observed that pretty much, and we have not tried to overrule the determinations by the Board of Regents. The issue of how the Board of Regents should be appointed is another issue. One which likely, if we pass that resolution, will be up to the voters, but that is a non-related issue to our discussion here.

The other problem is the continuation of interim committees. I know it is a problem for the Legislature and the employees to staff these growing number of interim study committees. Having said that, this is a desirable time to continue this committee, at least during this forthcoming interim. I will reserve judgment for one member of this Committee, right now, on the composition or the creation of the continuing committee. I think it has merit. The one thing I would like to see up front is this should not be the vehicle for revisiting the formula funding for the University and Community College System. I look at the responsibilities, and one thing about term limits is you lose some historical

reference. We are now facing a situation where, in just a short time, members of this Legislature will be largely replaced due to term limits. We do not term-limit the staff, lobbyists, or the media. We have gone through several cycles of formula funding for higher education in our State. The reason I am saying this is I have noticed, over the past weeks and months, a concern expressed that somehow there is a problem with the formula funding. All I want to say is those of us who have served in this process for any length of time have taken a great deal of time, given attention and studied the present formula funding for the university system. When that issue arises, it should be done in that manner, but not by this Committee, and I do not think it is your intention. I would just like to make the point, this is not the method for looking into that issue.

SENATOR HARDY:

The issues you raise are issues we were mindful of. It was not our intent, nor is it our intent, to micromanage the University System. I do not even think it would be a correct characterization of the intent of the committee to say we want to macro-manage the System. It would be a correct characterization on the intent of the committee to say that because we do have the funding obligation, we do, as a Legislature, have some stewardship in this regard. I wish I could express to you the individual pressures I felt to, for lack of a better phrase, "throw the Board of Regents under a bus." We resisted that at all costs. Those who witnessed the committee can testify to that. It is fair to say the committee felt because of that financial stewardship, we needed some input into the decision-making process. There was a recognition it relies with those the Nevada Constitution has placed it with.

With regard to the funding formula, we were aware of it and resisted the effort to look into that issue. Those who were there would testify anybody who brought that up probably got one word into the sentence before I cut them off. I stated it was not the venue for that discussion. I think the reason I felt so strongly about it was because allowing that discussion to occur would be counter-productive at best and could possibly defeat the purpose of what we were trying to accomplish. I did not want this to become a financial discussion. I said, and I took some heat for it, financing and funding were not our problem. Our problem was to make sure the programs being delivered were the programs that needed to be delivered to meet the needs of this State. We were vigilant about maintaining that mission. Should I have anything to do with this committee going forward, you have my commitment to that vigilance.

SENATOR BEERS:

How do you create an effective, meaningful middle tier, implement admissions standards, shift funding to research and grants, move more vocationally oriented, four-year degrees out of the university level and into the state college level without changing, fundamentally, how we approach funding?

SENATOR HARDY:

We do it very carefully. The answer to that question is you probably do not, but the purpose of this committee is to make recommendations as to what ought to be done. You cannot have a discussion without ultimately considering those things, but in order to really get your arms around the problem, you have to have those discussions independently.

CHAIR CEGAUSKE:

One of the concerns I had, Senator Raggio brought it up, is the micromanagement issue. The other concern is, I felt we left off one of the components in the committee. Whenever we are looking at trying to make changes in higher education, one of the areas I feel we lacked the most is our involvement in kindergarten through 12th grade (K-12). It seems to be segregated and we do not have a way to transition from one to the other. We are not looking all the time at the needs of K-12 in the sense that I think we should. How do we incorporate K-12 into this, so when we are looking at some of the areas you want to get into, we are looking at how we take students from high school into the college system?

SENATOR HARDY:

I am mindful of that. I was doing the best I could as chairman to make sure we focused on our charge under A.B. No. 203 of the 72nd Session, which was to look at higher education. One of the things we all learned was you cannot have a meaningful discussion about higher education offerings without, simultaneously, having a discussion about K-12 offerings. For that reason, I am not personally speaking, but as one Senator and one member of that committee, as being opposed to incorporating that, somehow, into this study going forward.

CHAIR CEGAUSKE:

Nationally, I know everybody in education realizes we are looking at what we call "P-16," which is education beginning in preschool and continuing through

four years of college, and I think if we are going to have that here in our State, we need to keep referring to that instead of having us do offshoots.

SENATOR HARDY:

You have no argument from me.

RAY BACON (Nevada Manufacturers Association):

I cannot disagree with any of the comments Senator Hardy made. I attended most of the interim committee meetings or watched them on video. If anything, he probably understates the magnitude of the consultants' recommendations. This legislative body has a huge responsibility in terms of what I would call public value. You fund the University System, and as such, you probably had a huge responsibility to make sure the public is truly getting the value out of the university system and our complete education system. Anyone who has spent any time with the NCHEMS consultants comes away with the recognition we have a tremendous amount of work to do. A lot of that is just a matter of refocusing.

I understand Senator Raggio's comments about having an increasing number of interim studies and committees. If you take a look at what has happened to other states as they have restricted their legislative time frames, such as Utah's legislature, which meets 45 days every year. We restricted the Legislative Session to 120 days, so we are probably going to wind up with more things that happen during interim studies. I do not know how that is going to work; the 120-day cycle is relatively new. I am not sure a reduction in, or even maintaining, the number of interim studies is going to serve the State well in the long term.

We wind up with a spectrum, and the interim committee, as it is structured, tends to focus on the higher education system. The NCHEMS consultants had some fairly substantial comments on our K-12 system. They also focused a lot on the needs of our customers. Everybody in this room is aware, this State does not provide enough of anything coming out of our higher education system to meet our growing economy. We do not provide enough teachers, nurses, engineers, scientists or mathematicians. We have to manage our higher education resource as if it is a scarce resource. That means we have to get focused, in many cases, to the point where we do one thing exceedingly well in one location, but we do not offer everything in all locations to all people. We have had a tendency to do that.

If you take a look at the NCHEMS reports, you get down to the number of degrees that come out of the University of Nevada, Reno (UNR), and the University of Nevada, Las Vegas (UNLV). Routinely, some of the degree programs graduate less than ten graduates per year out of UNR and less than ten graduates per year out of UNLV. Math, science, physics and biochemistry are some of the things which really have an impact on our future and global economy. We probably ought to say, for example: UNR, you have the physics program; UNLV, you have the biochemistry program. We have to get much better at doing those programs at each location. Those are things which are clearly in the realm of the Board of Regents to do. Big issues were laid out in that report, where we can make substantial improvements. The changes will not be easy. The Board of Regents is going to have to tell some professors, if they want to be physics professors, they are going to move. The program, major or graduate program will have to be moved.

The implications of what was in the report were monumental. The comments which came out of one of the NCHEMS consultants was that if you take a look at our education system as a whole, we are in as much trouble as, or more trouble, than any state in the country. That, to me, was pretty eye-opening. Part of it was the issue of where we were putting our resources. Do I believe this study needs to continue? Absolutely. Should it become a permanent committee? I hope not, but we have a long way to go because of the magnitude of the problem and where we are right now. Is this going to change financing and funding in the long term? Probably, but we are not even close enough, at this stage of the game, to know how it is going to change.

MR. BACON:

I think the overall message I would give you is some of the things which are needed have been done in other states. If you take a look the University of Arizona and Arizona State College, they had the same problem with a whole bunch of degree programs which were low-output degree programs. They grabbed the two university presidents, sat them in a room, and told them to figure out what college is taking what degrees, because half of them are going away in both places. They got through that battle several years ago. We may have to get through those battles, as well. The problem is not significantly different in our community colleges. In Northern Nevada, Truckee Meadows Community College (TMCC) and Western Nevada Community College are close

together and we have some duplications of programs there. Probably, some of those programs could go away.

Take time to read through the report. You will find it is not necessarily encouraging. It delves into everything. One of the comments which came out was about the Millennium Scholarship Program. We have already had issues with the Millennium Scholarship Program and how we are going to fund it in the future. The Millennium Scholarship is not needs-based today. Money comes in from the lower class of folks, the poorer people who tend to be the smokers, and is transferred towards the people who are more affluent. That is not exactly the kind of program we ought to be having, unless we go through and modify it to make some level of need a part of the Millennium Scholarship Program.

CHAIR CEGAVSKE:

We will direct staff to obtain copies of that report for this Committee.

DR. JILL T. DERBY (Vice Chair, Board of Regents, University and Community College System of Nevada):

We in higher education have been grateful for the partnership that A.B. No. 203 of the 72nd Session represented and that the proposed committee would represent as well. The conversation has taken place in the context of the recognition of the close linkage between higher education and the economic development and future of this State. It was in sight of that, that we looked at in the last study, A.B. No. 203 of the 72nd Session. We did the analysis and hired the consultants to give us a sense of where we are with the existing programs and what new programs we need to create, all inside of the question of the economic future, the economic development of Nevada and the partnership there is. We felt the work of the committee addressing A.B. No. 203 of the 72nd Session was very important in terms of laying the ground, giving us an analysis, looking at what is needed, identifying where we are and where we need to go.

It seems to us the next phase of this is really the implementation of the recommendations put forward by the committee. Essentially, it calls for the creation of certain plans. It really calls for strategic planning around program needs which will meet the economic needs of the State. It calls for the strategic financing plan, which clearly needs to be a partnership between the University and Community College Systems and the State. We look forward to this work going forward. We think it is vital in terms of following up on what came out of

A.B. No. 203 of the 72nd Session in order to really provide for the needs of the State and the partnership that is there between the Legislature, the Governor's Office, higher education, and certainly, other civic leaders of the State.

SENATOR WIENER:

On the recommendations from the legislative committee, were there timelines to give us a sense of when you might consider implementing the language or the suggestions of the plan? It would be good to have a reference point as to how this might impact the continuation of a study.

DR. DERBY:

There was the sense that what was needed was for the committee to follow in order to lay out the strategic plans and the implementation of them. There were certain directives given to the System, which we have been at work at in terms of identifying data and putting together information we could come back with. In terms of the timeline, I would have to say, it really has to do with the approval of S.B. 69 by this Committee and the legislative body for the conversation to continue on how to implement any plans.

SENATOR WIENER:

If we do not go forward, do you not go forward?

DR. DERBY:

It is important to say the results which came out of A.B. No. 203 of the 72nd Session have been enormously helpful for us in the System, in terms of what we were able to see. It was a very fine discovery process and analysis of where we are and what is needed. We, in higher education, have looked at that closely and are looking at how we can go forward with that information, which has been very helpful. We have a master plan which has already been developed. We are certainly looking at it in light of what has come out of the findings of the committee. It was a valuable committee for what we found out and what the analysis provided, but it did call for certain strategic planning, such as the plan for the strategic financing of what is needed in the future to provide for the economic needs of the State. That, to me, seems to be Phase Two of what is needed, not to take away from the enormous value of the first effort and how we have applied them in the system.

SENATOR WIENER:

If for some reason S.B. 69 does not pass, would you have the initiative to go forward anyway to develop those plans? This strategic plan you have developed appears to be, based on your testimony, a vital part of the process. Are you hinging it on the next interim study committee or, if for whatever reason it does not occur, would you go forward with that anyway because it is the right thing to do for the State of Nevada?

DR. DERBY:

We certainly have, and will continue, to use the results in a positive way in our planning and inside of our master planning process. At the same time, we see the importance of a partnership which is involved. One of the things it calls for is the development of a public agenda for higher education, which implies the partnership of the leadership of the State. We think that is an important part to go forward with.

SENATOR HARDY:

The consequence of not continuing this study does not prove fatal to the recommendations to the committee, but I think what it does do is take the Legislature out of the equation, as far as partnership. That is really the reason for the interim study. We should continue our participation in the process.

DANIEL J. KLAICH (Vice Chancellor of Legal Affairs, System Administration Office, University and Community College System of Nevada):

I would say the answer to your question is, absolutely, yes, Senator Wiener. We will be pursuing as many of these recommendations as we possibly can as quickly as we possibly can. The question from Senator Beers and the testimony of Mr. Bacon emphasized the magnitude and scope of the recommendations the committee brought forward. Certainly they implied very fundamental changes, not only in higher education in the State of Nevada, but in the relationship of higher education to the entire P-16 continuum. It is for that reason Dr. Derby emphasized the partnership with the Legislature. As we work on implementing those recommendations, which we will, we will be coming back to this body with the implications. Many of these implications will be financial. If we were working together, we feel we would have a head start on those presentations to the future sessions of this Legislature.

KEN LANGE (Executive Director, Nevada State Education Association):

We noticed, as did Chair Cegavske, there is something missing in this bill. It is the linkage between K-12 or P-16 and our ability to shape, for example, the discussion around the items listed in paragraph (a) of subsection 3 of section 3 of S.B. 69 in addressing the role of higher education in assisting the public schools in graduating a higher proportion of people and preparing them for college. There is some natural linkage here that we think merits discussion and representation from the K-12 community. We believe this is an important discussion and the Legislature serves as the primary link between higher education and K-12, in terms of creating a discussion. I would like to offer today that the Nevada State Education Association is fully prepared and would be very interested and appreciative of the opportunity.

SENATOR RAGGIO:

Could you submit to the Chair some additional language which might fit in this purview?

MR. LANGE:

We would be happy to do that.

ANNE K. LORING (Washoe County School District):

We are also interested in paragraphs (a) and (b) of subsection 3 of section 3 of S.B. 69. Those are the charges to the committee that relate specifically to what you have just started addressing, which are P-16 issues, increasing the graduation rate and improving the preparation of high school graduates for the college or university. For the past ten years in Washoe County, we have had a collaboration called the Education Collaborative of Washoe County. It is made up of members of our business community, the Washoe County School District, UNR, and TMCC. We have been looking at issues relating to the transition from high school to college. We have, for the last eight years, collected data, particularly on Washoe County School District graduates as they have gone on to UNR and TMCC. The last three years we have really been focusing on the issue of the preparation of our high school students to enter the colleges and universities.

In the last year, we had to decide what to do with all the data we had collected. The folks at the UNR math department received a grant to develop an online placement test for students entering the university to judge their preparation in mathematics. However, they did not have enough lab space to administer this

to all the freshmen. The Washoe County School District had an interest in having their kids take this placement test early so they could change their class-taking patterns to address the issue earlier rather than later. We have collaborated and are going to be administering this test this fall, online at our high school sites, not just to entering freshman, but to kids who are maybe sophomores or juniors.

Another example is a curriculum that the Washoe County School Board passed very recently called the Gateway Curriculum. It was passed specifically because we were concerned with the number of our students who needed to take remedial math. We could not, as a school board, have done that without the collaboration of the business community, UNR and TMCC. The lesson we have learned from this is that to address these issues of the transition of our high school students as they go on to higher education and into the workforce, we really need to be at the table together. We would like to urge inclusion of K-12, somehow, in your committee process. We strongly appreciate Senator Hardy's openness to looking at the committee structure, and we concur with Senator Cegavske's concern that we not segregate the groups involved.

SENATOR RAGGIO:

Could you work with Mr. Lange and see if you can find some language to accommodate that, but does not get us away from the real focus, which is higher education?

MS. LORING:

We would be glad to do that.

JAMES T. RICHARDSON (Nevada Faculty Alliance):

I was privileged to serve on the committee that produced this report. There are a lot of good things in it, as Senator Hardy has stated. This committee ranged rather broadly and tried to consider many different aspects of higher education, such as whether it was meeting the State's needs. I asked the committee, on a couple of occasions, to focus on one key issue I did not think was being addressed adequately. I was happy that Senator Hardy, who did an excellent job of chairing this committee, allowed this conversation to take place.

My concern had to do with space problems we have on the campuses throughout the System. We have a need for classrooms and offices in one of the fastest-growing higher education systems in the country. We also have a

very severe space crunch in terms of research space at UNLV, the Desert Research Institute and UNR. We have internal studies which clearly demonstrate that we are in remarkable deficit situations in terms of the space we can allocate to research. I would suggest to you, there is a direct link between the research space available in this State and the economic development that was a major thrust of the committee created by A.B. No. 203 of the 72nd Session. Paragraph (a) of subsection 1 of section 3 of S.B. 69 says "...Continue to examine and evaluate the need in this State for existing and potential higher education programs to ensure: (a) Economic progress and development within the State of Nevada." I thought that was a major thrust of the committee, in terms of its charges, and we needed to discuss this linkage.

We have a situation in all three of the research-oriented entities that is very problematic. We have the fire marshal at UNR telling us not to apply for more grants in some areas because we have equipment in the halls they are telling us to get rid of. They are telling us, until you have space for more people and more equipment, you need to stop getting more research grants. Senator Beers has raised this issue. There is no place in the country where you have seen massive economic development in the new economy where there is not a university in the middle of it. We are strangled for research and classroom space. For that reason, I talked a little about what I call the 16-cent problem; it used to be the 15-cent problem. We have a very severe bottleneck in this State in terms of our ability to service bonds to build buildings, not only for higher education, but for other needs in the State. You are limited to 16 cents of the property taxes you can use to service those bonds. We are not limited in terms of the 2 percent of the assessed evaluation. In fact, I think the lid is off that, given the other problem you have for this Session, which is the increase in property tax valuations around the State. We do have this terrible bottleneck, and what to do about it is not an easy problem to solve. It will not be a problem the Board of Regents can solve by itself. I do not see how the Board of Regents can solve it at all, except to ask the Legislature to solve it.

SENATOR RAGGIO:

Is what you are suggesting included within the language here?

MR. RICHARDSON:

Yes. This is included in paragraphs (g) and (h) of subsection 5 of section 3. One of the charges under developing strategic level financing in paragraph (g) says, "The integration of budgetary items related to capital improvements with the

overall plan to finance Nevada's public system of higher education." Under paragraph (h), it says the plan should include:

An examination of proposals to allow Nevada's institutions of higher education to finance the construction and replacement of campus facilities in innovative ways and to establish budgetary levels, exclusive of additional general fund appropriations, that will allow those institutions to renew and renovate campus facilities on an ongoing basis.

SENATOR RAGGIO:

The reason I asked the question is if the language accommodates what you are indicating, we do not need to debate the issue today. You can discuss an amendment to what is included here. We will note your concern on space for classrooms and research.

MR. RICHARDSON:

I would like to point out to each of the Committee members, some material handed out to the committee created by A.B. No. 203 of the 72nd Session about some innovative approaches in Arizona ([Exhibit C](#)). The voters actually approved a 0.6-percent increase in the sales tax to fund education at all levels. That has led to the development of over a billion dollars' worth of building plans for the university system. For the University of Connecticut, the state legislature developed a plan to allocate a billion dollars' worth of assets over ten years ([Exhibit D](#), original is on file at the Research Library). They have actually renewed it again. It began in 1995, and it has been extremely successful. I wanted to make you aware that other states are doing some very creative things, and they are not just depending on general funds which is a limitation in the language of the bill.

SENATOR RAGGIO:

We will now open the hearing on Senate Bill 70.

SENATE BILL 70: Clarifies authority of Legislative Committee on Public Lands to review and comment on certain matters relating to public lands. (BDR 17-427)

SENATOR DEAN RHOADS (Northern Nevada Senatorial District):

Senate Bill 70 only affects the Legislative Committee on Public Lands. That committee was started in 1983. In the past 22 years, the committee has gone around the State and has contacted about every single industry and interest group out there and reacted to the federal government's management of the real estate and water problems. Our legal division decided we needed to strengthen the *Nevada Revised Statutes* to point out the authority and direction we should be going. It adds a new section, it reviews and comments on any other matter relating to the preservation, conservation, use, management or disposal of public lands deemed appropriate by the chairman of the Legislative Committee on Public Lands or by a majority of the members in the committee. This does not require any revenue, and it does not give us any more authority than we already have.

SENATOR RAGGIO:

At this time, I would like to open the hearing on S.J.R. 3.

SENATE JOINT RESOLUTION 3: Proposes to amend Nevada Constitution to revise provisions relating to signature requirements for initiative petitions. (BDR C-708)

SENATOR RHOADS:

I am passing out four handouts. The first one is the original Idaho case ([Exhibit E](#)). The second handout is the appeal to the Idaho case ([Exhibit F](#)). The Nevada case is pending. I understand the U.S. Court of Appeals for the Ninth Circuit made the decision that Idaho was right ([Exhibit G](#)), and we could not collect signatures like we used to, but that is being challenged. Nevada is one of 24 states which offers initiatives and referendums. Prior to August of 2004, Nevada was one of 10 states to have a geographic-distribution signature requirement for statewide initiative and referendum petitions, whereby signatures had to be gathered in 75 percent of Nevada's counties. That equals 13 out of the 17 counties. There are still eight states out there that do it just like Idaho and Nevada used to do it. The fourth handout is from the National Conference of State Legislatures ([Exhibit H](#)).

It has long been believed that this requirement served to protect the interests of rural Nevada by requiring that at least some signatures be gathered in rural counties. In a recent challenge to this provision, a federal judge agreed with plaintiffs who argued requiring the collection of signatures in different areas of

the State gave added weight or influence to voter signatures in rural areas and diminished the relative weight of voter signatures in urban centers. In making his ruling, Judge James C. Mahan relied heavily on an earlier Ninth Circuit Court of Appeals ruling declaring unconstitutional a similar signatures requirement in Idaho.

In the Idaho case, the judge noted Idaho's geographical signature requirement, which required petition sponsors to include in the petition signatures of at least 6 percent of the qualified electors from each of Idaho's 22 counties. The judge ruling in the Idaho case stated this requirement gives rural voters preferential treatment in the statewide petition process.

The ruling in the Nevada case was essentially based on the same premise set forth in the Idaho case. Senate Joint Resolution 3 proposes to amend the *Constitution of the State of Nevada* to remove the 13-of-17-counties signature-requirement language and replace it with the requirement that an initiative petition must be signed by a number of registered voters from each Assembly District equal to four percent of the population of the district. The resolution requires the populations of the Assembly Districts be determined by the last preceding national census. The 2000 census shows that each Assembly District contains an average of 47,578 people. Therefore, under this proposed amendment, petition circulators would be required to gather approximately 1,900 signatures in each Assembly District.

This resolution clearly addresses the concerns raised in the Idaho and Nevada cases by providing the petition-signature requirement based on Assembly Districts, which are required to be apportioned based on population. The Ninth Circuit Court of Appeals in the Idaho case suggested that setting a geographic signature distribution based on legislative districts would, in fact, be constitutional. Idaho could achieve the same end to a geographic distribution requirement that does not violate equal protection, for example, by basing any such requirement on existing state legislative districts.

This proposed amendment gives at least some voice to the rural communities in Nevada, which is my ultimate goal, and satisfies the constitutional concerns raised in the Idaho and Nevada cases. I understand there are some logistical concerns with this proposal, such as circulating petitions in Clark County, which contains 29 Assembly seats, signature verification concerns and multicounty Assembly Districts. I would like to work with the Clark County registrar of

voters, other county election officers and the Secretary of State's Office to set forth procedures and policies in Nevada law and administering regulations that address the logistical concerns raised by S.J.R. 3.

It is important to note that S.J.R. 3 is not an effort to eliminate Nevada's initiative and referendum or discredit the merits of the process. This measure simply recognizes that since the 13-of-the-17 requirement has been deemed unconstitutional, Nevada needs to retain some sort of constitutionally sound geographic distribution signature requirements that include all voters on an equal basis, while not cutting out the voice of rural Nevada residents.

Further, I would like to leave you with an example of what can happen if there is no signature distribution requirement. About eight years ago in Montana, voters circulated a petition in the most urban areas of the state. These petitions called for the elimination of a common form of chemical leaching used by the hard rock mining industry. After securing virtually all the signatures in Montana's urban centers without regard to the rural areas most affected by mining, the petition qualified for the ballot. Despite a valiant effort by the mining industry to address the concerns set forth in petition, the voters approved the proposal and mining is virtually nonexistent in Montana. If Nevada fails to adopt this proposed amendment, or at least maintain some form of geographical distribution for initiative petition signatures, I fear many of the vital industries critical to rural Nevada's survival will be jeopardized.

SENATOR RAGGIO:

Let me ask the Legislative Counsel a question. Does the proposed requirement of a minimum of 4 percent in each Assembly District meet the constitutional objection that was otherwise involved?

BRENDA J. ERDOES (Legislative Counsel):

We believe it follows the requirements of the case. Whether it would be upheld is very difficult to say, but we do believe that it does comply with the holdings in both the Ninth Circuit Courts and the Idaho case.

SENATOR RAGGIO:

I will now open the floor for public comment. I do not know the order in which people would like to speak on this.

DAVID K. SCHUMANN (Independent American Party; Nevada Committee for Full Statehood):

The judges order that we change the system. The suggested change will make it much more difficult to collect signatures. Volunteers will have a very hard time establishing where all these boundary lines are. The switch is from 10 percent of the registered voters to 4 percent of the population. Four percent of the population includes children in school and people who are not registered and who do not care to vote. If we are going to do it by 4 percent of the total population, then we should be able to go out and gather signatures from ten-year-old children. We need to stick to something more related to the people who vote. You could comply with this case if you simply said, "x percent of the total population throughout the state or x percent of Congressional Districts," which are also apportioned by decennial census. Nevada's Congressional Districts are more easily determined because there are only three. There are so many Assembly Districts, it is hard to tell where the district boundaries are on a map, particularly in Clark County and Washoe County. You should make a signature requirement that is comparable to the requirement we used to have, which was for the total number of signatures, of course, adjusting for larger population.

Switching from the registered voters to the total population increases the burden on the signature gatherers. I would like to see you do it for the State as a whole, understanding that will give added weight to Las Vegas, but that is what the judge said. That is just the way it has to be. If you pass the requirements as outlined in S.J.R. 3, then special interest groups who come into the State with millions of dollars will be the only groups who can afford to gather petition signatures. They can afford to explain where the boundaries for Assembly Districts are in Clark County and Washoe County. Those of us who are volunteers do not have that kind of money.

SENATOR HARDY:

I understand all of the arguments about the difficulty in gathering signatures, but should not the objective be to make sure no one is disenfranchised? I have Bunkerville, Nevada, in my district. It is a very small town in Clark County. I also have Overton, Logandale and Boulder City in my district. Even the county requirement has the effect of disenfranchising them from being able to have input. A good way to do it is by Assembly District. I do not have any concerns about whether we require that to be a percentage of registered voters.

I understand the wisdom in those comments. How do we make sure my registered voters in Bunkerville have some say in this process?

MR. SCHUMANN:

It is a free market and those of us who are getting petitions do our best to go out to Bunkerville and other small towns like it. I went out to Tonopah and Dyer, which is in Fish Lake Valley.

SENATOR HARDY:

I understand, but there is no guarantee every signature gatherer will do that. You are doing that out of the goodness of your heart and because you have a philosophical belief, as I do, that everybody ought to have an opportunity to have input. If there is no requirement for that, there is no guarantee it is going to occur.

MR. SCHUMANN:

The goodness of my heart does not enter the question. I do it because I want to get more signatures. I am greedy to get more signatures, so I go to those towns because the people in those smaller towns are more likely to agree with my position. We go where the voters are.

SENATOR HARDY:

I just hate to leave that to chance. The reality is democracy is not easy; it is difficult. Our overriding consideration is to make sure all voters have an equal opportunity to have input into the process.

MR. SCHUMANN:

Well, I hope you solicit the opinions of other volunteer organizations. We would not bypass the little towns. We go there because people who vote live there, and we can get their signatures.

SENATOR HARDY:

I understand that you would not bypass people, but it is our obligation to make sure things are written in the statute so nobody can. It is not our job to make it easy. It is our job to guarantee everybody has an equal opportunity to participate.

Senate Committee on Legislative Operations and Elections
February 22, 2005
Page 25

MR. SCHUMANN:

Did you get complaints from those little towns about signature gatherers not coming to them?

SENATOR HARDY:

No, I did not, but I think you are missing my point.

SENATOR RAGGIO:

I am going to ask legal counsel to look into the constitutionality and the feasibility of "percentage of registered voters," or if these would be population or whether or not the same would be true if it were by Congressional District.

JANINE HANSEN (Nevada Eagle Forum):

I gave the secretary a copy of my testimony ([Exhibit I](#)). I served in 2004 as the Northern Nevada Director for Nevadans for Sound Government, the Axe the Tax Petition Campaign and the initiative petition campaign to prohibit government employees from serving simultaneously in elected office. I was responsible for 16 of the 17 counties, excluding Clark County. I was also the petition campaign chairman for 16 of 17 counties for the Protection of Marriage initiative.

I have personally gathered many thousands of signatures on petitions, not only in Nevada, but also in other states. I served as the coordinator of the Constitution Party's national ballot access petition campaign in 1995, 1996, 2004 and 2005, training and supervising petitioners in nearly every state of the union. In addition, I have gathered signatures and have conducted workshops on how to petition in nearly every county in Nevada. Very few people have actually gathered signatures on petitions. Therefore, most people are totally unaware of the enormous difficulties faced by petitioners involved in exercising their First Amendment rights. Under the best of circumstances, petitioning is difficult, never mind the additional problems associated with controversial issues.

You may be aware that my son and I were arrested while petitioning on May 6, 2004. Lynn Chapman was there and witnessed the event and captured it on film. I have enclosed for you a photo of the arrest ([Exhibit J](#)). We were intimidated, interrogated, handcuffed and thrown in the back of a paddy wagon. We were treated like other common criminals at the Washoe County jail and finally released seven hours later, at 1 a.m., in a dark parking lot with other unknown characters. I was very glad that my 25-year-old son was there with me and had some money, so we could call home at the 7-Eleven Food Store.

Later, Judge Kenneth Cory in Clark County said they had violated our First Amendment rights, our Nevada constitutional rights and the Nevada statutes regarding petitioning. The deputy Reno City attorney later asked that the charges be dismissed with prejudice, which they were. I was also nearly arrested four times while petitioning in 2000. Lynn Chapman was with me on several of those occasions, which was one of the reasons the protections for petitioners were added by this Legislature to the law in 2003.

I have spent my whole life working to secure the right to petition. When the policeman asked why I would not leave the Reno Citifare bus depot, after telling him I had called and informed them that I was coming and that I was following the law, I said the issue had a history. He asked me if I had a problem with the Reno Transportation Commission and I said no. I told him it had to do with the right to petition.

If I could be intimidated, knowing the law, having helped to get the new petition law passed in the Legislature, what would have happened to my volunteers and those I hired? They would simply be intimidated and have no opportunity to collect signatures. I often joke that we have the right to petition except on public or private property. Unfortunately, this is not a joke. When people are trying to gather signatures, they are under constant threat of arrest.

What does this have to do with S.J.R. 3? The right to petition is a sacred right. It is guaranteed in the First Amendment to the *Constitution of the United States* and in the Nevada Constitution. Section 10 of Article 1 states, "The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives and to petition the Legislature for redress of Grievances." In addition, all of Article 19 is concerned with providing the procedures guaranteeing the right to petition.

I do not believe that the purpose of S.J.R. 3 is to put an end to the right to petition, but that is the practical effect. Senate Joint Resolution 3, for all intents and purposes, would make it impossible for the people to exercise the right to petition. The requirement, in line 12 of subsection 2 of section 2 of S.J.R. 3, which requires signatures to be gathered from each of the 42 Assembly Districts, is a logistical nightmare. I suppose if millions of dollars were available, it might be possible. This requirement takes the right of petition from the average citizens of Nevada and provides it only to the fat cats.

MS. HANSEN:

How many people do you know, aside from those in this building, who actually know what their Assembly District is? I would suspect practically none. If all the signatures from one Assembly District were required to be on petitions with only people from that Assembly District, how in the world would anyone be able to gather signatures except by going door-to-door? Going door-to-door is the least effective, most time-consuming, most personally dangerous and a very costly way to gather signatures. I am an experienced signature gatherer. If I am at a busy location, I can gather about 30 signatures per hour. The most I ever got going door-to-door was 10 signatures per hour. Most volunteers may be able, at a good location, to get 10 to 15 signatures per hour. What do you think they would get going door-to-door?

In addition, how are you able to judge how many signatures you have collected from each Assembly District? In order to determine which Assembly District signers lived in, the campaign would need sophisticated software and lots of people on computers checking the signers' Assembly Districts, causing the costs to skyrocket.

In [Exhibit J](#), I gave you a copy of a sample initiative petition. If you look on the back of it, it requires a signed, notarized affidavit from the circulator of the petition and from the document signer. Currently, the document signer has to be a resident of the county in which the signature is collected. I do not know how this would work out in the future, but I looked at some of these Assembly Districts. If we tried to do this in Pete Goicoechea's Assembly District, which is District 35, that includes seven different counties. That would mean we would need eight additional places on this petition in order to get signatures from possibly eight different counties for document signers. We would have to get eight signatures notarized. That process is one of the most difficult parts of the campaign. In Clark County, we would have to carry 29 different petitions and maps for the 29 different Assembly Districts in order to be able to get signatures there, and ask each person to look on the map and figure out where his or her Assembly District was. This would take far more time than just getting a signature on a petition. It would greatly decrease the opportunity for people to participate in the process and make it so complicated and difficult that only the most well-funded organizations could ever participate.

In addition, I know the requirements in the Nevada Constitution that required signatures gathered in 13 of 17 counties have been struck down in the federal

courts. So, how should you respond? I checked this morning with the Secretary of State's office in Idaho, and you will find in a copy of what I got off their Web site in [Exhibit J](#). Their law was similar to ours. I asked how they responded. They told me they simply lined out the provision for gathering signatures in their 22 counties. Now, in Idaho, they can gather signatures anywhere in the state. This was the intent of the federal court, to make gathering signatures easier, not more difficult or impossible.

I did not realize that our own Nevada Constitution does not have a distribution requirement for referendum petitions, only for initiatives. So, this change for no statewide requirement on an initiative is not a great change. It would be the same as it would for a referendum petition now.

You as legislators have the choice. You can move forward with this legislation, which will be known as the bill to kill initiative petitioning rights in Nevada, or you can be more reasonable and provide a solution requiring them to gather them in the three Congressional Districts. You cannot use State Senate Districts because two of those are multiple districts and it has nearly the same difficulties. That is something average people could do. Or, you can leave the law as the court left it, just like Idaho did, allowing petitioning in any or all of Nevada's counties, essentially anywhere, statewide.

MS. HANSEN:

I know that there are concerns that the rural counties and even Washoe County will be left out of the process. Frankly, being in charge of those 16 counties, I would not be too sorry if it was not as difficult to gather signatures. I went with Lynn Chapman to every county in the State. As volunteers, we spent days in Dyer, Tonopah, Goldfield and Silver Peak trying to get signatures. It took far more time than was possible in terms of going and getting signatures somewhere else in those small counties.

Frankly, I am much more concerned that the right to petition for Nevada citizens be maintained and realistically possible than I am about a distribution requirement. It is not possible with this bill. Some will say they can do it all in Clark County. Yes, that is true, but everyone in the State will have the opportunity to vote on the issue when it gets on the ballot. Many organizations will be involved in opposing or supporting it.

The second historic change in S.J.R. 3 is line 15 of subsection 2 of section 2. It changes the requirement of 10 percent of those who voted in the last election to a 4-percent population requirement. First of all, if you want a population requirement, then allow everyone, whether registered to vote or not, to sign the petition. Some states do that. They only require qualified electors. Secondly, this requirement once again tips the scales against the people and against petitioning.

When we did our referendum and initiative in 2004, we based the number of signatures required on the 2002 election. In 2002, the total votes cast statewide were 513,370. Ten percent of that number is 51,337. This is the number of good signatures we needed to qualify. The 2000 census was 1,998,257. Four percent of that number is 79,930. We would have needed an additional 28,593 good signatures, statewide, under the 4 percent requirement. That, coupled with the impossibility of trying to collect signatures in every Assembly District, would have made the task nearly impossible. As it was, we fell short, according to the Secretary of State, by about 2,000 signatures.

Of course, in order to ensure you have enough good signatures, a campaign must figure it needs an additional one-third above the required numbers to be sure they have enough good signatures. But, if the Assembly District requirement were added, a petition campaign would need more signatures, perhaps doubling the requirement because of the logistical difficulty of getting people from the correct Assembly District to sign a petition.

I encourage you to recognize that S.J.R. 3 is an affront to the people of Nevada and their God-given, constitutionally protected right to petition. Please let it die, or there will be an uproar from the people when they understand what this bill will do to their petition rights. Few people, including lawmakers, understand the petitioning issue because most have never participated in organizing a petition campaign, especially one without big bucks and depending on volunteer citizens. I am sure you have a greater understanding of these issues and that you will protect the rights of Nevada's citizens to petition their government.

[Exhibit J](#) contains a few items such as a picture of my arrest, a copy of the Idaho Secretary of State's Web site on this issue, a February 19, 2005 editorial from the *Las Vegas Review Journal* opposing S.J.R. 3, a copy of an initiative petition, a copy of petition-gathering instructions, which would have to be greatly increased if you were going to try to help volunteers and people who are

Senate Committee on Legislative Operations and Elections
February 22, 2005
Page 30

paid the minimum to try to gather signatures and a March 13, 2001, *Las Vegas Review Journal* editorial article which helped us get the law changed to protect the rights of petitioners.

I hope you will not take this grand step backwards and destroy the right to petition in the State of Nevada. I am sorry that, because of the federal courts, the rights of the rural counties have been abused, but do not take away the rights from all the rest of us to petition by passing this nightmare legislation.

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

I, too, am a volunteer signature gatherer. It is very difficult and intimidating. After we get the signatures on a petition, we have to go back and get things notarized and we have to get a lot of different people to sign. It gets very confusing.

Janine Hansen and I went around the State to help people learn how to collect signatures. What was most confusing was what they had to do after they got the signatures, and the whole process of getting signatures notarized. If we have to add more signatures and more notarizing, it would be a total nightmare.

It is very entertaining to go out there and get signatures because sometimes you talk to people, and they do not know if they are registered to vote or not, or they do not know if they voted in the last general election. Sometimes, they do not know what county they live in. I cannot even imagine trying to figure out what Assembly District someone would live in.

How many clipboards would we have to carry around if we were going door-to-door? It would be impossible. What happens when we cross county lines in the same district? What if we are in the wrong place and we get someone to sign the wrong clipboard? Do we have to go back and get them to sign again? There are a lot of things I find wrong with this bill, and I am very concerned about it. Please, fix S.J.R. 3 or kill it.

JOHN L. WAGNER (Burke Consortium of Carson City; Nevada Republican Assembly):

In answer to Senator Hardy's concerns, one of the ways these small towns can get involved is through the Internet. Most everybody has a way to get a petition signed, basically, by going to the Internet, downloading it, signing it and sending it in. I do not see any problem with some of these smaller communities. We

have 42 different petitions we will probably need, now. We have three districts which overlap in this county alone. The county clerks' jobs are going to be much more difficult because they will have to sort through all of the different petition papers.

A 10-percent statewide requirement is a simple enough method, and every county clerk would verify the signatures the same way it is done now. I know I collected signatures at the Department of Motor Vehicles in Carson City. I had people from every conceivable county come in. It would be impossible to find out what Assembly District these people are in. I was also threatened with arrest in Douglas County, and this was after we had a court order which stated people could not arrest us on public property. We do have a problem collecting signatures. I think we should make it as easy as possible, not more difficult, to collect them.

SENATOR WIENER:

When you said 10-percent statewide, did you mean as a state unit, wherever gathered?

MR. WAGNER:

Yes, that would be the simple way to do it. Ten percent period. It is the easiest way, although the Congressional District would not be a bad way.

SENATOR WIENER:

Would that be 10 percent of population or 10 percent of voters?

MR. WAGNER:

Ten percent of the people who voted. It would make it about 88,000 next time, which would be more actually than the 4-percent total. It makes it more difficult, but it kind of conforms with the law the way it is now, but minus the counties.

LARRY LOMAX (Registrar of Voters, Elections, Clark County):

I am not taking a position one way or the other, but I would like to point out some challenges this bill will present. It has been adequately pointed out, there are 29 Assembly Districts in Clark County, so if that was the way they went, I fully agree with Ms. Hansen in the sense that an individual attempting to collect petitions from 29 Assembly Districts standing in front of a busy location is not going to be able to discern what Assembly District the individual actually

resides in. A solution, perhaps, is to let them all sign the same petition and then we sort it out with some software, since we are in the process of developing a statewide voter registration election management system, which is what we are going to use to process these petitions. That is not necessarily impossible if it were done in that way.

However, there is another problem in that the law allows us, when we process a petition, to actually go through and randomly pick and validate 5 percent of the signatures. We use that percentage to statistically assess the rest of the petition to decide whether it passes or fails. Breaking it down by Assembly District, if we allowed them to put all of our signatures on one petition, that would require us to do a 100-percent validation to sort through and pick up all these different districts, which in essence is a 20-fold increase in workload. I am not complaining about the workload, but it does lead to another issue, and that is the timing in which these petitions are due. That is driven by the Constitution.

The date the petitioners can begin collecting signatures and the date by which they have to turn in their petitions are both established in the Constitution. My recommendation would be, if we are going to change the Constitution to change the manner by which people gather signatures for petitions, that we simultaneously change the due dates of these petitions. This may depend on other legislation this year; perhaps, if the date of the primary is changed, that would have an impact on this. There are times, especially in the odd-numbered years, where election departments are much less busy, so maybe, simultaneously, if this bill is to go forward in some manner, we also change the dates on which these petitions are due, which would make it easy for us. It would allow more time to process them and it would allow more time for any litigation which always seems to follow a petition in this day and age. Also, please consider the time we are allowed right now to process a petition. In the law, it makes no difference if 1 petition is turned in to us or 20 petitions are turned in to us in the same day. We have the same 20 days to process those petitions. Some accommodation for that should probably be incorporated.

One final comment is basing it on percentage of population within a district, as opposed to a percentage of registered voters, does lead to some disparities. In Clark County, even though it has only been a few years since redistricting was completed, in Assembly District 11 which have about 9,000 registered voters. In Assembly District 22, we have almost 70,000 registered voters. Each

requirement would be about 1,900 signatures in each of those Assembly Districts, because you would be basing it on the census population. This amounts to getting 1 out of every 5 registered voters' signatures in Assembly District 11, which is over 20 percent of the district's voters. In Assembly District 22, you only need signatures from about 3 percent of the voters. It might be wiser to look at a percentage of registered voters rather than census population.

If this is to go forward, it would be of great value to work with the clerks and those of us who have to process these things. There are some administrative requirements which would have to be incorporated.

SENATOR BEERS:

Mr. Lomax, it sounds as if this bill would have a fiscal impact. Will you be submitting a fiscal note?

MR. LOMAX:

We estimated it would increase our costs about \$20,000 per petition processed. We based that on the best we could on the number of man-hours required. It would still depend somewhat on what administrative solution we came up with. If I have to go from a 5-percent validation to a 100-percent validation, that will definitely increase the man-hours and the number of people we have to hire.

LUCILLE LUSK (Nevada Concerned Citizens):

This issue is very important to us. The logistical nightmare and complexity of the issue have already been covered, and I will not repeat those things. I will point out there is a significant disconnect by requiring that the petition be signed by a number of registered voters equal to population. It would be virtually impossible to gather that percentage of signatures in every single Assembly District realizing that, based on the way this was written, the petition would fail if the gatherers failed to reach even one of those areas. It would become nearly an impossible task.

Nevada Concerned Citizens does sympathize with the rural counties in this matter. We do think it is very unwise to disregard a vital element of the State in this process. If we can find a way to bring that back together, we should. We would like to work with others to see if we can find a solution to this problem.

and find a way that we can legally and constitutionally bring them back into the process, while still upholding and strengthening the initiative process.

RENEE PARKER (Chief Deputy Secretary of State, Office of the Secretary of State):

The Nevada case is on appeal with the Ninth Circuit Court. We lost in the district court. Our brief was submitted January 21, and there is still some reply briefing going on. We were hoping for some sort of a ruling prior to the next election because, even if you pass this bill, the status quo right now is Judge Mahan's decision where the rural counties are essentially shut out of this process. Like Ms. Hansen said, once you get to the ballot, they have a voice. Judge Mahan's decision has eliminated any of the counties' voices other than Clark County's in this initiative petition process.

Our office has grave concerns. We do agree with much of what Ms. Lusk said about ensuring that even if this is not the right process, that there is a process that does add that voice back in. Even if you pass this, we are hoping that the Ninth Circuit Court will overrule Judge Mahan. Our case was different from the Idaho case. Idaho's was a statute; it was 6 percent of half of the counties. Ours is 10 percent of 75 percent of the counties. Ours was a constitutional statute. There was no determination in the district court case of whether our Constitution even passed a strict scrutiny test. Judge Mahan basically walked in and said, "The Idaho case is precedent and that is where we stand."

I have heard some of the comments about using Congressional Districts. My only concern is every one of the three Congressional Districts overlaps Clark County right now. Congressional District 2 has 100,000 voters in Clark County. If you are going to use Congressional Districts, you still have a situation where all you have to do is go down to the local Wal-Marts in Clark County and gather your signatures. Our office is in favor of the initiative petition process. The problem, as Senator Hardy said, is everybody should have an equal voice in this process. Right now, everybody does not have an equal voice. Clark County controls the process.

For your information, the Constitution was amended. We did have it as 10 percent, statewide, for initiatives and referendums. In 1958, the Constitution was amended to require for initiative petitions more signatures from a diversified area of the State, rather than allow initiative petitions to be of a localized nature. The people of the State did amend the Constitution to put in the

13-county rule because of the concern of the local nature and the concern of shutting out the rural counties.

With respect to the issues concerning the census, maybe Senator Rhoads was trying to go along with Judge Mahan, who said since reapportionment occurs every 10 years, you could use the population in the legislative districts and perhaps that might pass constitutional muster. That may be where that came from. We do have some concerns about going with the census figures. My main concern with our office is we are going to get five years past a decennial census, and we are going to be in court even though you have adopted this. Someone is going to say the census is no longer an adequate representation, especially with us being the fastest-growing State and Clark County being the fastest-growing county in the nation.

Those are some of our concerns. We are certainly willing to help work out any other solution. Our office is in favor of a solution like this, and we commend Senator Rhoads for bringing something forward. Right now, we are pretty much stuck with Clark County being able to control the entire initiative process. Senator Rhoads gave an example of that. The example we talk about in our office is that what if they propose some legislation to say that all the revenues from all the other counties went straight into the Clark County coffers. I am sure they could get 86,000 signatures in Clark County to go along with that.

SENATOR HARDY:

I understand the very legitimate points which were brought up. Why would we not go out to the small towns and get signatures because those guys agree with me? What if it is something the small towns do not agree with? There is a reason to avoid them. I want to emphasize, we have to be careful we do not set up a scheme or a mechanism in law to allow people to ignore people. It absolutely will happen because if it is an area that geologically or demographically does not agree with the initiative petition, why would the petition proponents go there and give them a voice in the argument? They just would not. I know I am making a comment more than a question, but I wanted to clarify my earlier comments.

RICHARD DALY (Laborers' International Union of North American Local 169):

I do not think this bill will solve any of the problems. It will probably just make things worse. The kind of population problems mentioned by Mr. Lomax have happened in Sparks. I am on the Sparks Charter Committee and we had to

change the charter last Session to "one man, one vote." It used to be the ward was divided up by registered voters, but some judge, somewhere, said you cannot do that. Now, it is divided up by the population, but each ward does not have the same number of registered voters. You pointed out how that could be a problem because then someone could come back and say his or her vote is not weighted as much as another person's in the county. It dumbfounds me that a judge has come up with a rule, and the Legislature has to come up and make the changes.

If something gets onto the ballot, it is majority rule. So, we have that set of rules on what we do. It is winner take all on every general election, or statewide issue. That is the way it is. Why is that not good enough? If we have a problem with the rural counties being underrepresented by the judge's decision, how can the wisdom of the electoral college, that we all recognize, stand? The electoral college gives Nevada more power than it gives California. I do not know what the answer is, but I do not believe that S.J.R. 3 is the answer. I oppose it.

MR. WAGNER:

I wish to relate what happened in the San Francisco Bay Area many years ago with Bay Area Rapid Transit (BART). At the time, the three counties involved, Alameda, San Francisco and Contra Costa, agreed to a vote to determine whether they wanted BART. The agreement was that all three of the counties had to pass it in order to get BART. Alameda County and San Francisco County passed it, but Contra Costa County rejected it because the voters did not want it. The other two counties went to court and the court said that because of the overall vote, Alameda County and San Francisco County could have BART. I thought I would relate that the courts can overrule anything that can happen.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce; Retail Association of Nevada):

Something like this is a great start. We are definitely in favor of something which creates a test throughout the State, not just in one county or just one number for the State. The geographic distribution of this is something we think is very important and very necessary. Our thought process was that a percentage that needed to be achieved in one of the geographical areas, however you pick them, is fine. The number of registered voters seems to be a number that is more current, but we understand there may be an issue with respect to potential legalities when population is based on an estimated ten-year

basis. We would be happy to help to make sure that something like this is as appropriate as possible given the concerns which were raised.

While this is to cure that problem, we want to raise another issue for the record. You have, in section 6 of Article 19 of the Constitution, a provision which says you cannot create a program through an initiative which would need to be funded, unless it states in the actual language of the initiative where the funds will come from. We are finding that some initiatives to amend the Constitution create programs or expenditures without knowing it. In effect, it has created something of a blank check which must be written at the next Legislative Session. It seemed to us that it had some sanity in it for statutory initiatives, and maybe, to the extent that made sense, whether it is combined with this, or separate, or something else. This is an idea we would like to at least throw out on the table as having some merit. Frankly, we have seen two or three instances just in the last five or six years where that provision could have come into play and certainly did with respect to one statutory initiative, as the Supreme Court ruled. I would just like to make sure you are thinking about that as well. I have nothing else to say, I just wanted to get on the record our support for a geographically distributed requirement that there be signatures from throughout the State.

CHAIR CEGAVSKE:

I would like to bring to everyone's attention, you have Amendment No. 4 to Senate Bill 17. It makes two changes. We had an open discussion before; this is Senator Wiener's bill. The first change is to require the subcommittee to meet as soon as practical after any agency has required an expended view of a regulation. This change is directed in response to testimony we heard during the bill. The second change is to remove the requirement that the Legislature ratify the Legislative Commission's objection to an administrative regulation. This procedure caused some confusion among the agencies which sometimes results in less than serious negotiations with the Legislative Commission.

SENATOR WIENER:

I have reviewed this with Legislative Counsel, Ms. Erdoes, and I am satisfied this will address the concerns we had from the many witnesses who appeared before the Committee.

Senate Committee on Legislative Operations and Elections
February 22, 2005
Page 38

CHAIR CEGAVSKE:

We do have a couple of bill draft requests left in this committee. Senator Beers has a suggestion for one.

SENATOR BEERS:

I would like to introduce a Committee bill draft request to create a nonpartisan commission to handle reapportionment of the Legislature and all other apportioned political seats.

SENATOR BEERS MOVED TO HAVE A BILL DRAFT REQUEST PREPARED TO CREATE A NONPARTISAN COMMISSION TO HANDLE REAPPORTIONMENT OF THE LEGISLATURE AND ALL OTHER APPORTIONED POLITICAL SEATS.

SENATOR RAGGIO SECONDED THE MOTION.

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

CHAIR CEGAVSKE:

What is the pleasure of the Committee on Senate Bill 70?

SENATOR RAGGIO MOVED TO DO PASS S.B. 70.

SENATOR HARDY SECONDED THE MOTION.

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

SENATOR BEERS:

I would like to throw another concept out for a Committee bill. It would be to add a "no vote" choice to ballot options. I got a couple of calls from people who did not want to vote in a ballot race because perhaps you may not be familiar with the people running. However, they were led through a series of menu choices on the new voting machines which basically made you affirm that you

really wanted to shirk your civic responsibility before you could actually not vote in any of those ballot races.

SENATOR HARDY:

That would not be a "none of the above" selection?

SENATOR BEERS:

No, it would just be a no vote.

CHAIR CEGAUSKE:

We do have "none of the above," right now, on some of the ballot races. The new machines do give you the option for not voting for anyone, but they do try to draw you back to the blank ballot race and make sure you meant to leave it blank.

SENATOR RAGGIO:

Give me an example, I do not follow.

SENATOR BEERS:

Most of the Legislators never saw that message because we pay very close attention to the ballot issues and candidates. We are not very likely to not vote down the ballot. This would allow for someone who is not familiar with the candidates in a particular race to choose the "no vote" option, instead of leaving the ballot blank because in legislative or judicial races "none of the above" is not a choice.

SENATOR BEERS MOVED TO HAVE A BILL DRAFT REQUEST PREPARED TO ADD A "NO VOTE" CHOICE TO ELECTION BALLOTS.

SENATOR HARDY SECONDED THE MOTION.

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

Senate Committee on Legislative Operations and Elections
February 22, 2005
Page 40

CHAIR CEGAVSKE:

There being no further business, I will adjourn this meeting at 4:13 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: _____