MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-third Session
March 15, 2005

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2 p.m. on Tuesday, March 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 Bernice Mathews
Senator Valerie Wiener

COMMITTEE MEMBERS ABSENT:

Senator Dina Titus (Excused)

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial District No. 11
Senator Steven Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Janine Hansen, Independent American Party
Lynn P. Chapman, State Vice President, Nevada Eagle Forum
John L. Wagner, Nevada Republican Assembly
Laura Mijanovich, American Civil Liberties Union of Nevada

Stacy M. Jennings, Executive Director, Commission on Ethics

CHAIR CEGAVSKE:
We are going to be hearing Senate Bill (S.B.) 125 and S.B. 162. Senator Schneider, the sponsor for S.B. 125, is here. We will now open up the hearing on S.B. 125.

SENATE BILL 125: Increases period of residency required to qualify as candidate for public office. (BDR 24-153)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
People in the Nevada Assembly are anxiously awaiting this bill. Senate Bill 125 has to do with an investment in a district. When you file for office, you see people out district shopping in order to run for an office. They are looking at the last minute and hopping into a district. It has gotten so bad, especially in Clark County, I feel the 30-day residency requirement does an injustice to the people of the district because people are fudging the 30 days. Thirty days is too hard to prove.

Last year after they closed the filing, there were three or four lawsuits in court. Every single person who jumped in was thrown out of the race by the courts. The district shopping is happening more and more every year. I had two occurrences in my district, and that is why I am bringing this bill to you. It cost me $30,000 to have one person thrown out of my primary. Then, I got another one, so I could have done the same thing in the general election. The first week of May, this person was actually interviewing with the mayor of Las Vegas for an appointment to a city council seat. That, right there, would have gotten him thrown out because he did not live in the district.

I have talked to several of our fellow Senators and they all agree there needs to be some investment in the district before you run. That is how I came up with the 1-year requirement in S.B. 125. Some people are saying it should be somewhere between 30 days and a year. A lot of people have said it should be a year because that is a real investment in the district.

SENATOR MATHEWS:
Is there a reason for the requirement to be a year instead of the six months we require someone to be a resident before they can do all sorts of things?

CHAIR CEGAVSKE:
We do not require six months.

SENATOR MATHEWS:
I know it is 30 days now, but is it not 6 months to live here if you vote or something? I thought it was.

SENATOR SCHNEIDER:
Both of our parties do this district shopping. We find a candidate and we move him or her around. Senate Bill 125 would protect us from ourselves. Both parties are guilty.

CHAIR CEGAVSKE:
One of the things Senator Beers brought up was the fact that the year requirement in S.B. 125 Senator Schneider is talking about would actually be a year and a half because the filing date is in May. Were you aware of that?

SENATOR BEERS:
The way S.B. 125 is written is from the filing date, which is in May. Basically, before the end of this Legislative Session, you would have to be settled in the Legislative District you plan to run in for 18 months.

CHAIR CEGAVSKE:
Did you know the bill would make it a year and a half?

SENATOR SCHNEIDER:
Would it be that long from when it is passed?

CHAIR CEGAVSKE:
No, it would be that long from the filing date.

SENATOR SCHNEIDER:
I would encourage the Committee to amend the time element so it is just 12 months from the date of filing.

CHAIR CEGAVSKE:
No, right now you have it from the filing date.

SENATOR BEERS:
The filing is in May. Twelve months prior to filing, my opponent has to be living in my Senate District by the time this Session is over, assuming I am up for reelection in two years.

SENATOR SCHNEIDER:
That sounds good. I think living in the district you plan to run in for 12 months before you file for office is a good idea.

SENATOR BEERS:
That would make it roughly 18 months before the election.

SENATOR SCHNEIDER:
A person has to be vested in a district and know the people before he or she moves in and decides to file for office and represent them.

CHAIR CEGAVSKE:
Unfortunately, not all the residents have lived in that district for as long.

SENATOR SCHNEIDER:
I understand, and from my knowledge, this is such a fast-growing state, the people who move here tend to live here four, five and six years before they even vote, because they want to get to know what is going on so they will not vote improperly. I have talked to many people who feel that way.

CHAIR CEGAVSKE:
I do not disagree with you. A district should have someone representing it who knows the district and the area. You still have problems with those who come from the north to the south to run. That has been a concern, also.

SENATOR RAGGIO:
The time requirement used to be six months. Then, for some reason, it was amended down to the present law of 30 days before filing. Somewhere, in the back of my mind, there was some reason we did that. There was a federal opinion which came down. It has not always been 30 days, is that correct?

MICHAEL STEWART (Committee Policy Analyst):
I would have to look to see if, on that particular statute, we have had a 30-day requirement before. You might be thinking of what makes a person a qualified

elector. A qualified elector, in the Nevada State Constitution, is a person who has been a resident of the State for 6 months and of the district 30 days. That is probably what Senator Mathews was referring to.

SENATOR SCHNEIDER:
Assemblywoman Peggy Pierce said she wonders if there could be exceptions to this bill, in case someone is drawn out of his or her district when the districts are reapportioned. The exception would allow the Legislator to move back into the district they were in. I do not know how you would address that, but I told her I would bring that up.

Ms. Pierce was concerned because she said she would not have lived in her district because of the reapportionment. With reapportionment, she was drawn out and had to move across the street.

CHAIR CEGAVSKE:
That was part of the reason why we have some strange district lines today. We tried to keep the Legislators in their districts. I was one of those affected. They took a little part of where I lived and put it into Assembly District No. 5. You are right; it does make it difficult to do the lines. Are you going to have any suggested amendments to this?

SENATOR SCHNEIDER:
I will work on one to clarify this.

CHAIR CEGAVSKE:
I will now open up the floor for public testimony for S.B. 125.

JANINE HANSEN (Independent American Party):
I was looking at the Nevada State Constitution, and in Article 15, section 3, it states, “No person shall be eligible to any office who is not a qualified elector under this constitution.” Mr. Stewart just read that the Nevada Constitution requires a person to reside in the State for six months, and in the district or county thirty days next preceding any election. I am wondering if you would need a constitutional amendment to change this, because it provides in the Nevada Constitution that you live in the district or county for 30 days as a qualified elector. I do not know if that applies to running for office or not.

If you are going to make the requirement of residency a year before filing, as Senator Beers said, that turns into 18 months. If you are looking at changing the primary to May and the filing to January, then a person would have to live in a district almost two years in advance of the election. Maybe this is an incumbent protection bill; I know those have some favorability. This bill creates a problem for young, growing parties like the Independent American Party. In the 2004 election year, we doubled our size, and we are now the third largest party in the State. We have just over 33,000 registered voters. For us, it is always a real effort to try to get people to run. We have a lot of young people in our party aged 18-30, more, percentage-wise, than any other party, who are running as candidates. In that period of their life they tend to be moving. They may, like me, have lived in the State of Nevada their whole lives, but may have moved into another area of the State because they got married, went to school or got a new job. Since they are moving around, they could be prohibited from participating. If we change this, people would have to be in their district up to two years before they would be allowed to run.

If I went down to a district in Las Vegas, I may be able to represent those people without having lived there for two years, if I went door-to-door and found out what their concerns are. Some people may have lived there for 20 years and may not have a clue what the people in their districts want. Requiring a person to live in his or her district for one year does not guarantee better representation of the district. What S.B. 125 does is violate the intent of the Constitution. I believe there was a case which said the requirement could only be 30 days, so you may not even be allowed to pass the bill.

CHAIR CEGAVSKE:
Would your preference be to leave the law the way it is?

MS. HANSEN:
I can understand this issue of 30 days, which makes it so close. I do not have a problem with 30 days. If you wanted to move it by a couple of months, that would be acceptable. One year is too much. Six months, if you are doing it from the filing date, is too long because that means a person would have to be in the district for, effectively, one year. This makes it difficult to get more candidates to run because it adds more restrictions. We already have lots of restrictions.

CHAIR CEGAVSKE:
In a majority of the other states, the residency is one year.

MS. HANSEN:
Is that before the election or before the filing? That is a significant difference, especially if we move the primary.

CHAIR CEGAVSKE:
The source did not specify. It just showed the qualifications. The majority of the states require 1 year's residency, but there are a couple that require 30 days. Three states require 6 months; 1 state requires 3 months; and 1 state requires 60 days. In the majority of the states, it is one year for office in the Senate and the House.

MS. HANSEN:
If you are going to go with a one-year requirement, it should be one year from the election and not a year from the filing. If it is one year from the filing, that makes it a year and a half.

CHAIR CEGAVSKE:
Are we talking about the primary election or the general election?

MS. HANSEN:
One year from the general election. Even if you moved the primary and the filing date, that would give you some months of cushion to ferret out some of these people who are really not residing in the district. It might give you a better opportunity to do that. The State of Nevada is the fastest-growing state in the nation. We have to realize some of those people want to participate in our State. This rule, which makes the residency requirement of more than a year and a half to two years to be able to run for office, has a significant impact on the interest of people becoming involved in their own communities. I plead for something more reasonable than a year, a year and a half or two years.

CHAIR CEGAVSKE:
Are you going to give some suggestions to Senator Schneider?

MS. HANSEN:
I support the 30 days, but I could support 3 months; that is reasonable. Going farther out than that would depend upon whether you are going to tie it to the filing or the election. You would have to tie it to filing, would you not? It would have to be tied to filing because that is when they file. Three months out from filing is not unreasonable.

LYNN P. CHAPMAN (State Vice President, Nevada Eagle Forum):
I am not in favor of S.B. 125. My Assembly person had someone run against them. The person actually moved into the district to run specifically against this Assembly person; she almost won. It gave the voters a choice of someone else to vote for. I was thrilled to have her run. I was encouraged by the fact she had moved there and wanted to run. She went door-to-door and introduced herself to everyone who lived in that district. She talked to everyone about the issues and what was important to them. She did live there probably six months before the election. If somebody does move in and a voter knows they have not lived there long, the voter does not have to vote for them.

JOHN L. WAGNER (Nevada Republican Assembly):
The Nevada Republican Assembly is interested in politics and getting people elected to office. I do not have a problem with a one-year requirement in the State. It took six months to have my house built, but I was not in the State at the time. It was possible I could have lived here and been in District 38—I live in District 40 now—while waiting 6 months for the house to be built with the intention of moving over to District 40. By the time I moved over there, there was a filing date. Well, I really was not a resident at the time. Six months would be a nice round number. I also would prefer to see the primary earlier, and that might change the date.

CHAIR CEGAVSKE:
You believe the requirement should be a year's residence in the State.

MR. WAGNER:
Yes, that way we do not get people called carpetbaggers coming in and settling down, looking for some place they can win. Then possibly, if they do not win, they go to another state. It does happen. Before I got here, there was a governor's race in the Republican primary where someone was accused of doing exactly that, and accusations were made. One year in the State means a person is probably a serious resident.

CHAIR CEGAVSKE:
What about the district?

MR. WAGNER:
If you move the primary out, I would say three to four months' residency in the district should be required. If you leave the primary the way it is, I would say six

months, because that still puts it almost a year before you would actually take office.

LAURA MIJANOVICH (American Civil Liberties Union of Nevada):
I am here to urge you to oppose this bill. I should remind you that not too long ago you had a hearing on an ethics bill. The consensus was there is a problem getting candidates to actually run for office in Nevada. Also, we all know Nevada has a transient population. People move continuously from district to district. This all adds up to an issue which makes us confirm that this bill is actually misconstruing the purpose of residency requirements.

Residency requirements are only set to establish that the person actually lives in a district or a particular location. They are not supposed to, under the guise of protecting the voter, actually protect the incumbent. This is giving voters less range and opportunity by restricting their choices. This test is of reasonableness. There is a plethora of case law and the American Civil Liberties Union (ACLU) has been involved in some of them. The case law holds a high standard when it comes to these statutes. There is a reasonable standard. If it is not strict scrutiny, it is, at least, near strict scrutiny. That means those statutes are going to be overturned if the reasonable test is not met. Definitely, I can assure you that 1 year will end up being 18 months. It is totally unreasonable, particularly for Nevada.

CHAIR CEGAVSKE:
You do not want the time frame changed at all? You want to leave it the way it is? You would not be for three months or six months?

MS. MIJANOVICH:
At the ACLU, we think 18 months is absurd. One year is unreasonable. Even six months is unreasonable for Nevada. Three months would be the limit.

CHAIR CEGAVSKE:
You would go with three months. Have you talked to the sponsor of the bill, Senator Schneider, about this?

MS. MIJANOVICH:
No. In closing, I would say it really is not the business of government to decide for the voters who candidates will be. Let the voters decide. If someone has been here a short time, but is knowledgeable of the area or has lived there

before and come back, it is up to the voters, not the Legislature, to decide. The requirement would be unreasonable. I would urge you to oppose this bill.

MR. STEWART:
Nevada Revised Statute (NRS) 218.010 sets the qualifications for Senators and Assembly people. It states, "No person is eligible to the office of state Senator or Assemblyman who: 1. Is not a qualified elector and who has not been an actual, as opposed to constructive, citizen resident of this State for 1 year next preceding his election. 2. At the time of election has not attained the age of 21 years." The qualification in NRS 218 sets forth the "1 year next preceding," which means one year prior to the election. We have the constitutional reference Senator Raggio mentioned. Then, there is this provision we are talking about in NRS chapter 293, which is part of Senator Schneider's bill.

CHAIR CEGAVSKE:
We will close the hearing on S.B. 125 and we will open the hearing on S.B. 162.

SENATE BILL 162: Prohibits public officer or employee from using governmental time, property, equipment or other facility for activities relating to political campaigns and preparation of certain reports. (BDR 23-912)

SENATOR STEVEN HORSFORD (Clark County Senatorial District No. 4):
Senate Bill 162 is a common-sense bill which attempts to address a loophole in our existing law concerning public officials and State employees using State resources for political purposes. By passing S.B. 162, we will send the message that we value our State employees and the work they perform to benefit the taxpayers of our State and not any political candidate. By passing this legislation, we also underscore that the appropriations this Legislature makes in the budget are to fund positions for the express purposes of delivering services or resources to the constituents of our State, not to subsidize political campaigns for public officers.

By passing this bill, we send the message our government is here for the good of the people we serve and not for our own interests. During the recent impeachment proceedings against the State Controller, there was a legal opinion brought forth which interpreted current State law as permitting public officers to use State employees for political purposes. Do we really think it is right for

taxpayers to subsidize the political activities of any candidate? I do not and neither do the people we represent.

There is clearly an ambiguity in existing law, and S.B. 162 further clarifies what most people see as reasonable: State employees should not be used to perform any political activity while on State time. I have heard from several State employees who agree with the intent of this bill, but are unable to come forward out of fear of retribution or retaliation by their employer. That is simply not right. Should State employees feel intimidated or pressured to complete financial disclosure forms or campaign finance reports in order to keep their taxpayer-funded positions? I do not think they should and neither do the people we represent.

Senate Bill 162 prohibits a public officer or employee from using any government time, property or equipment for activities related to a political campaign. It also includes prohibiting the preparation of a financial disclosure statement or the preparation of campaign finance reports. By passing S.B. 162, the Legislature will close this loophole and will ensure State employees are utilized in the manner for which they were hired: to provide resources and services to the State of Nevada and its citizens, not to conduct political activity. This is a common-sense bill; just because something is legal, it does not necessarily make it right. Senate Bill 162 will make this issue both legal and right. As you can see, the measure has bipartisan support in both the Assembly and the Senate.

CHAIR CEGAVSKE:
Had you heard from any of the workers you said you had talked to about this issue prior to the impeachment hearing?

SENATOR HORSFORD:
No, I had not heard from people prior to the hearing. I had heard from local government employees who had felt the same pressure to perform political activity. They were doing it on their own time, but they felt pressure to do it to keep their jobs. That is something, unfortunately, I do not think we can legislate. I was not able to include that provision in this bill. There were several people who came forward, both during the impeachment proceedings and following, who simply felt they were being intimidated and pressured for whatever reason. They are hired to perform a function for the State, not to perform political activity.

CHAIR CEGAVSKE:
Was there anybody in a different office, other than the one we had the impeachment hearing on, who stated they had concerns? You are shaking your head yes. People who are currently employed are feeling pressured, as we speak, into doing political campaigning?

SENATOR HORSFORD:
Yes, people have come forward who are State employees who do not work for the Controller's Office. This bill is not intended to address the Controller, because that decision has been made.

CHAIR CEGAVSKE:
But S.B. 162 is a result of those hearings?

SENATOR HORSFORD:
Yes. There is also some concern, based upon the opinion that was put out, that what happened in the Controller's Office is permissive, and it should be allowed. The law clearly stated, and even the legal opinion took special note and care to say, it should be for very limited circumstances under emergency situations. That is what the law had intended; the provisions of the campaign-reporting forms and the campaign-financial disclosure forms were something the opinion tried to argue was in the State's interest, in some regard. For those of us who do those forms on our own, if you just take a little time and take care of your own business, you do not have to ask a State employee to do it.

SENATOR RAGGIO:
I certainly understand the thrust of the bill and the reasons for it. Obviously, it is an outgrowth of what we went through with the recent impeachment proceedings. One issue S.B. 162 deals with is an opinion our Legislative Counsel gave us. A person holding a public office is required, during that person's term, to prepare and file a statement of financial disclosure. Of course, this would absolutely prohibit that.

I understand the purpose of the bill and support that concept. What troubles me is the breadth of this proposal. If we want to say financial disclosure statements must be done on our own time, that is understandable. I am always concerned about overkill because of something which has occurred in the past. I have stated here before, I am mindful of the requirements and the limitations we impose on people either seeking or holding public office. It is not easy to get

good people to run for office. A lot of them do not want to because of a lot of these kinds of requirements. We understand that, and we have tried to be responsible over the years in creating these kinds of limitations. We want to have a perception that people are not taking advantage of either their candidacies or the positions they hold.

We thought the existing law, NRS 281.481, made it very clear. The section of S.B. 162 I am looking at, section 1, subsection 8, pertains only to the Legislature; subsection 1 is for public officers otherwise. I want to look at the section on the Legislature because it is the same throughout the bill. Other than the financial disclosure restriction, the existing language says, "A member of the Legislature shall not: (a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself ... ." It recognizes the obvious, that it should not prohibit "A limited use of state property and resources," for example, a telephone or a copier, "for personal purposes if: (I) The use does not interfere with the performance of his public duties; (II) The cost or value related to the use is nominal; and, (III) The use does not create the appearance of impropriety."

That was carefully worded language. We did not want everybody in the Legislature or, if you go back to subsection 1, other public officers to have to look over their shoulders every time they answered a phone or wrote a letter. We did not want them to feel they were walking into a political minefield and they were going to be chastised or censored. I am saying this as a predicate on which these discussions ought to take place. Now, we are adding in that section, "activity relating to a political campaign." The definition of a political campaign, "means any activity designed to affect the outcome of any primary, general or special election or question on the ballot." I want to make sure whatever we do here does not just sound good and does not create a minefield that people who serve in the future have to be concerned about. Is it okay to write a note to accept an invitation to a political event while they are sitting in their offices? I could give you a hundred other examples. This language, an "activity relating to a political campaign," troubles me. Why do we have to go that broad?

SENATOR HORSFORD:
I am one of those newly elected Legislators. It took some convincing to finally put my name on a ballot and run for office. It is a huge sacrifice for those

people who choose to serve. I do not think we give enough credit to people who make that decision and that sacrifice.

This bill simply does two things. First, it clarifies what a lot of people could very well implement through common sense. It makes it known to State employees they are not to be used for political purposes. Secondly, it does get at your question, Mr. Raggio, which constitutes what is political activity. When I started in the process, I worked for former Governor Bob Miller. I worked on his reelection campaign in 1994, and he was an incumbent Governor at the time. He performed his work in his role as Governor and took great care to separate any functions related to the campaign. For example, any correspondence that related in any way to the campaign was put through the campaign office. That, in my opinion, was an appropriate way to handle it.

Clearly, we have some recent examples of ways that were not so appropriate. Helping people, by giving them better guidelines, actually encourages those people, like me, who want to do the right things. When it is not clear in the law, one may very well approach the line or cross the line without knowing it. This bill helps to provide some clarity and address it in a better way.

SENATOR RAGGIO:
You worked for a Governor, would it be appropriate for a Governor to host a partisan event at the Governor's Mansion? Would that activity relate to political campaigning if the Governor was running for reelection?

SENATOR HORSFORD:
When you refer to partisan event, is it political activity? Are you fundraising?

SENATOR RAGGIO:
Yes.

SENATOR HORSFORD:
No, it is not appropriate to have a fundraiser at the Governor's Mansion.

SENATOR RAGGIO:
Can you have anything that, under this definition, "'activity relating to a political campaign' means any activity designed to affect the outcome of any primary, general or special election or question on the ballot." Can the Governor have the Republican Central Committee from Carson City meet there at the Governor's

Mansion? Can a Democrat Governor have the Democratic Central Committee meet there? What about the Republican Women from Pahrump or the Democratic Women from North Las Vegas? Let us be understanding, let us not overdo it.

SENATOR HORSFORD:
There are some procedures, both in the Governor's Mansion and in the Capitol Building, regarding use of State buildings for those types of functions. I do not think an incumbent Governor should prohibit a partisan group, which is not from the same party, from participating in events at the Governor's Mansion or in the Capitol Building. If everyone has an even and fair ability to utilize the services and the resources which are provided at the taxpayers' expense, that is not giving anyone any unfair advantage.

SENATOR RAGGIO:
Is that what this says? We ought to be careful what we put into the law.

SENATOR HORSFORD:
We can all pick bills and identify language used in bills that, if not used for the Legislative intent, may have another outcome. Senate Bill 162 is a good step in the right direction to provide clarity to elected officials, public officers, candidates and State employees. If we need to clarify the definition or if we need to work through regulation we have now on what is permissive and what is not, that is where we should spend our time. The taxpayers are questioning whether this is appropriate for State employees. We have tremendous examples of State employees who struggle to perform the functions of their jobs, yet are required or requested to do political activity. I know, Senator Raggio, as the Chair of the Senate Committee on Finance, you work hard to make sure every allocation in the budget is spent appropriately. I do not think the taxpayers would see political activity as an appropriate use.

CHAIR CEGAVSKE:
Did you mean to have the information in paragraph (a) of subsection 8 for the members of the Legislature also under subsection 7 for the public employees? Did you mean to have it in both subsections?

SENATOR HORSFORD:
Yes, it was my intent to have that language in there for both subsections. We do not have staff, so it would be harder for us.

CHAIR CEGAVSKE:
We do have State staff.

SENATOR HORSFORD:
We have staff for the 120 days of the Legislative Session.

CHAIR CEGAVSKE:
I wanted to know if you are applying this to the State staff we have during the Session.

SENATOR HORSFORD:
Yes, I am applying this bill to the State staff we have in the Session. I do not think it is appropriate for us to use State staff to file our own personal campaign finance reports or financial disclosure forms.

CHAIR CEGAVSKE:
I will just be the devil's advocate. There are Legislators who are running for their next election, for example, those in the Assembly who run for office every two years. They are continuously in contact with their constituents, as are all of us on a regular basis. With that in mind, are the Legislators violating anything by using the State staff provided to the Legislators to contact their constituents? Staff does this on a regular basis through e-mails, phone calls and mail. We use Constituent Services to provide our responses to our constituents whether we are in Session or not.

SENATOR HORSFORD:
I do not think there is any example I can identify where I would use my staff or the Legislative Counsel Bureau staff to alter the outcome of an election. When we have constituent requests and answers to questions, staff answers those questions. If some position is taken, that is something we take as elected officials, and we should never put our employees in the position one way or another. That is why the Legislative Counsel Bureau is nonpartisan.

CHAIR CEGAVSKE:
What I am trying to say is, we have staff we utilize on a regular basis, and we have to respond to our constituents. We are, on a regular basis, talking to or responding to our constituents. Do you see any problems with that at all? Is there any situation you think would happen in the Legislature? I am just curious as to why you put that language in under subsection 8. Is there something

going on, or has something happened that would provoke you to include it there?

SENATOR HORSFORD:
There are no specific incidents, other than we have recent examples of State employees being used for inappropriate reasons.

CHAIR CEGAVSKE:
That was outside of the Legislature.

SENATOR HORSFORD:
It does not matter whether it was inside or outside the Legislature; we are all elected officials. Taxpayers and voters view us the same. We are here to serve them. Legislators can decipher for themselves what is political and what is Legislative, and can then act accordingly. If Legislators have questions, they can ask the Legal Division and the staff we have. They can answer the questions to avoid conflicts and crossing the line. Answering questions for constituents related to Legislative policy, in my opinion, is not political activity.

SENATOR BEERS:
That highlights the difficulty of this issue. The definition of political activity is a subjective thing. I can see a Governor or a State Controller who might have gotten elected to a second term, but cannot run again. Is that report now political activity, or is that report now a public integrity disclosure issue that citizens demand of their constitutional officer? There is an awful lot of gray area to be captured in 25 words.

SENATOR HORSFORD:
The bill does distinguish, specifically, the difference between financial disclosure and campaign finance forms from political activity. What occurred, and the reason we need clarity in this bill, is a violation with State employees submitting campaign finance disclosure forms and other material to the Secretary of State's Office. That is an ambiguity in our law; I do not think any one of us expects State employees to perform those duties. That is clear. The second section is dealing with the definition of political activity. If there are suggestions on how to better clarify what we mean by political activity, that is part of the process we go through here at the Legislature. What I am specifically targeting, initially, are the campaign finance forms and the financial disclosure forms.

An amendment is being brought forward by the Ethics Commission, and I have met with Stacy Jennings (Exhibit C). We reviewed the amendment, and we are in agreement with the amendment.

STACY M. JENNINGS (Executive Director, Commission on Ethics):
I did meet with Senator Horsford a couple of weeks ago to discuss S.B. 162. Clearly, in the case which was before us last fall, the Ethics Commission felt that performing the function of filling out campaign contribution and expenditure forms was a political activity. That is why the Commission found violations of State law regarding that. My testimony before this body, at that time, indicated the Commission saw that as an activity which would benefit the personal interests of the public officer because it was an advantage the public officer had by virtue of being in office. Anyone else who was running in that race and had to fill out a similar form would not have the taxpayer-paid staff to fill out those forms for them. That would be my explanation of how I believe this ties into the activities of the Commission last fall.

Additionally, when I testified on that bill, Senator Horsford had discussed with me a provision in our penalties statute under NRS 281.551. He had asked about subsection 3 of that statute. He wanted to know why we had not quantified the gain received by Ms. Augustine who was assessed a penalty for that action. My answer, after reading the statute at the time, was that their activities in violation of the NRS chapter resulted in the realization by another person of a financial benefit. I suggested to him, and he agreed, we should put language in the bill which says the benefit could also be realized by that public officer or employee, not just another person. That would give us the ability, if someone violated ethics laws and benefited personally, to not just assess a civil penalty for that conduct, but also to recoup the costs. All of our fines go into the General Fund, so the money would go back to the taxpayers.

SENATOR RAGGIO:
I am not sure if you are prepared to answer at this time. I do not know if it is anything the Commission has taken a position on, but the Commission ought to look at the question I raised about this broad definition of "activity relating to a political campaign." You heard my comments. We are not going to pass this bill today, but the Commission should be more mindful than any of us about the difficulties someone can get into without really realizing it. We all understand the thrust of S.B. 162. It is hard to come up with these kinds of definitions because we do not want to do something and have people fall into unintended

situations. Maybe you have already looked at this and already have an opinion. If you do, that is fine.

MS. JENNINGS:
I have not. I can go back and get some input from the members of the Commission. The more specific you get, the more it would help the Commission in interpreting those statutes. There is also the danger that the more specific you are, people think if you do not specifically mention it, then it is allowed.

SENATOR RAGGIO:
I am using the Legislature as an example because that is where we are, but this can apply to anyone in public office. When Legislators are in a campaign, all those weeks and months before the election, it is hard to distinguish when you respond to someone about an issue because an issue can be an issue in the Legislature and, at the same time, be an issue in the campaign or something a candidate or the media directs towards you. Legislators are required to respond to these. I have been here a long time, and I am going to tell you it is hard to decide whether you use your Legislative letterhead or whether you use your campaign letterhead. I do not think anyone ought to be in that position, and that is why I am nervous about this definition. The Ethics Commission has had a lot of occasions to run on those situations. Ninety-nine percent of the time, if a violation has occurred, based on our existing law, it is usually not an intentional thing. It is hard to decide when you are writing a letter or calling someone on the phone about something that is both a Legislative issue and a campaign issue.

MS. JENNINGS:
The letterhead issue has come before the Ethics Commission at least three times in the last five years. It is a big issue, and one of the reasons my bosses believe we need a definition of willfulness in the statute.

SENATOR RAGGIO:
We even pay for those letterheads ourselves, but it is still an issue.

SENATOR BEERS:
Is the proposed amendment the italicized writing?

MS. JENNINGS:
Yes, the new language would be on the second and third lines, which are italicized on Exhibit C, "the public officer or employee or former public officer or employee." That would be the only addition.

SENATOR BEERS:
What does that do? Are they all subcategories of another person?

MS. JENNINGS:
I do not believe so, because NRS 281.551, subsection 3 says, "a violation by a provision of this chapter by a public officer or employee or former public officer or employee has resulted in the realization by another person ... ." It does not address the concept of whether they personally benefit from that.

SENATOR BEERS:
What financial benefit in the Augustine case was realized by Kathy Augustine?

MS. JENNINGS:
In my opinion, in working on the investigation, a number of staff hours were used while those people were on the State clock.

SENATOR BEERS:
It did not benefit her. If it happened, it benefited the committee to elect.

MS. JENNINGS:
However, the committee to elect was formed by Kathy Augustine and for Kathy Augustine's reelection. Kathy Augustine's personal interest in being a public officer put her in the business of having a campaign. You and I disagreed on this during the impeachment trial, too. I believe we had this discussion on the record.

SENATOR BEERS:
Was it the staff time?

MS. JENNINGS:
It was mostly staff time. There seemed to be, as you may remember, a minimal use of actual things. There did not appear to be any postage involved, but there might have been a few copies made or fax machine use. Most of what was used of the State equipment was computer-related. Assessing a cost on that

would have been difficult. If we had invoked something like that, my assessment of the cost would have been related to the actual time of the staff used, which has a dollar value.

SENATOR BEERS:
Why not amend this to explicitly say that? It would not be of any financial benefit to me if I were running for State Controller because I do not use my money to run for Controller. People contribute money because they want to see me be Controller, and I use their money. I understand your intent, and I would think the amendment would say something like, "Realization by a duly formed election campaign committee."

MS. JENNINGS:
It is two things for me. Number one: It is not clearly addressed if there was a direct financial benefit to you, Senator Beers, for an activity. I do not think, the way the statutes are written, we could actually assess you the costs if we knew that you, Senator Beers, had purchased a car in your Legislative office budget instead of hiring someone, and that you, Senator Beers, were driving that car. We could quantify the costs of the car you purchased with taxpayer money, but I do not know if we could actually do anything about it as far as recouping those costs from you under this statute. The second side of that is the whole campaign issue. I am not an attorney, but you get where I am going.

SENATOR BEERS:
The law is vague, and that was the crux of the Augustine case. The law does not say political campaigning is a personal benefit. There was an interpretation, and that is certainly part of what Senator Horsford's bill is seeking to do. He wants to specifically state that political campaigning is personal in nature.

SENATOR MATHEWS:
There are some things Ms. Jennings should not be answering because there is going to be an appeal to the fine from the Augustine case. We should neither try the Controller again in this venue nor ask you questions about that. I know she said there was going to be an appeal to reduce the fines. You are not really in a position to start talking about this case all over again.

MS. JENNINGS:
Ms. Augustine has officially asked the Ethics Commission to reconsider its stipulation. However, none of that is bound by the confidentiality we have under

statute because it is already a legally enforceable administrative decision because the appeal period transpired. I do not have any input as to what she presents to my bosses or what they say to her. I appreciate you trying to keep me out of trouble.

SENATOR MATHEWS:
I have had enough of the Controller's case. I do not want to hear it again. What I want to hear is what we are going to do in the future. I want to know what happens to me, and this bill is beginning to address that. I appreciate all of us and our opinions about where we are going with it. We do need to have something. Just from experience, we cannot go into another situation of that type and not have guidelines. This bill is a beginning, and the discussion of the pros and cons from all of us is healthy.

MS. JENNINGS:
Having a record of your discussions and your input is helpful. Whatever you decide to do with that definition, I would appreciate as much guidance as you can give me as a State employee in my job. Sometimes, it is a tough call and people do not agree with the call you make.

MS. HANSEN:
I appreciate this process; it is beneficial to discuss these issues and I certainly appreciate the intent of this Legislation. I came in here last week and talked about definitions which had unintended consequences. After listening to this discussion, I have changed my mind about supporting S.B. 162. I appreciate what Senator Raggio said in regard to this definition of political activity. If someone was unhappy with you in a particular office and they wanted to find a reason to bring a charge against you, based on this definition, it would be easy to do. That concerns me. We are tied up by these rules to such an extent that things which should be easy to do are not. I have serious concerns.

I was going to come up and testify in favor of this bill, but I have stepped back. While the intent is good, this definition is fraught with problems. We all know we do not want people using public resources to aid their campaigns, but if you are in office and you are an incumbent, it is hard, as Senator Raggio said, to decide what stationary you use to write a letter. There are some inherent problems in trying to determine where you draw the line. Sometimes, that line has to be drawn by a person who has integrity. If a person does not have

integrity, it is going to be drawn in the wrong place. It is impossible to legislate every single iota.

As you pursue this with the intent in mind we do not want public resources used in individual campaigns, I would encourage you to be careful on how we craft the law. We do not want to have more honest people, as has happened with the Ethics Commission and under the campaign finance laws, penalized to no public good. It does not help them. I recently talked to one Senator who had charges from the Ethics Commission brought upon him eight or ten times, and they were all proven to be wrong. Those charges damaged the Senator because when you are charged, there is a big story in the newspaper; but when the story is relieved, it is miniscule and on a page in the back of the paper.

I always have concerns about penalties through this Ethics Commission if we are adding more things. People who come before the Ethics Commission have no right to trial by jury. Under the Nevada Constitution, even in civil actions there is a guaranteed right to trial by jury. There is no right to trial by jury in anything with the Ethics Commission. Until there is, there will not be justice available if there is a problem with the Ethics Commission because, through that administrative procedure, people's true due process, guaranteed by the right to trial by jury, is denied.

MS. CHAPMAN:
Because of wise counsel from Senator Raggio, I am now concerned about this bill. I was not concerned before, but after listening to what Senator Raggio and Senator Beers had to say, I am a bit concerned about this now.

CHAIR CEGAVSKE:
I will now close the hearing on S.B. 162. Being that we have no further business, I adjourn this meeting at 3:10 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: