MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-third Session
April 5, 2005

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:06 p.m. on Tuesday, April 5, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7
Senator Randolph J. Townsend, Washoe County Senatorial District No. 4

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

William G. Flangas, Commission on Ethics
Janine Hansen, Nevada Eagle Forum
Lucille Lusk, Nevada Concerned Citizens
Christina Dugan, Las Vegas Chamber of Commerce
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Sabra Smith-Newby, City of Las Vegas
Carole Vilardo, President, Nevada Taxpayers Association

Raymond Bacon, Nevada Manufacturers Association
Lynn P. Chapman, Nevada Families Education
Samuel P. McMullen, Las Vegas Chamber of Commerce; Retail Association of Nevada
John L. Wagner, Burke Consortium of Carson City

CHAIR CEGAVSKE:
Before we have the bills heard today, we have a presentation from Mr. Flangas. He has two exhibits for us today. (Exhibit C) entitled "Nevada Ethics Commission Potential Legislative Considerations" is his testimony, and (Exhibit D) has a number of newspaper articles. Mr. Flangas has come up with some amendments he would like us to consider. We have a couple of possible vehicles in bills which will be coming through. If they are approved by this Committee, we will be able to put them through.

WILLIAM G. FLANGAS (Commission on Ethics):
I am a native Nevadan and a graduate mining engineer. The year I was born in Ely, there were 91,000 people in the entire State. Now, there are 91,000 people living 3 or 4 miles from my house. Times have changed. I was appointed to the Ethics Commission by Governor Guinn for the term beginning October 1, 1999, and was reappointed for a second term beginning October 1, 2003, to September 30, 2007. The following views are my own and reflect my personal observations and experience. They are not to be construed as approved or formulated by the Commission on Ethics or any other individual member of the Ethics Commission.

The 1999 Legislature revised the then-existing law and provided for a full-time executive director and legal staff, the creation of two-member panels to make "just and sufficient cause" determinations, and other procedural changes such as the evaluation of frivolous charges, etcetera. These changes raised public expectations that the Code of Ethical Standards would be better implemented and public officers held more accountable to the principle that a public office is a public trust held for the sole benefit of the people. Further, expectations were raised that public officers would be held more accountable to avoid conflicts between their private interests and those of the general public whom they serve.

In the time I have served on the Commission, I have reached two major conclusions. One, I am greatly impressed at how well the Commission, prior to

the 1999 revisions, performed in spite of inadequate resources, including both underfunding and understaffing. Second, the post-1999 Commission has generally done well considering the limitations and circumstances of the current law, but I detect a strong public perception that little has really changed and the public's hunger for accountability remains unfulfilled. We have had significant experience in implementing the current law, and it is now time to consider further revisions to gain improved public respect and dispel the negative perception of a "toothless" Commission. We can and must do better.

My personal recommendations refer to *Nevada Revised Statute* (NRS) 281.551. I recommend we expunge the term "willful." A violation is a violation. Timid interpretations of this term can result in significant subjective and contentious conclusions that provide escape from accountability. Harking back to the World War II Navy's admonitions—"A rule must be clear, it must be understood, and it must be obeyed."

The second recommendation I have is to consider deleting NRS 281.462, subsection 4 to permit the two members of a panel to participate and vote on matters brought forth to a full commission hearing. At the least, consider participating, if not voting.

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

I want to take a few moments to talk about my personal observations and conclusions. Then, I want to give you a little more detail on the other items I mentioned. First and foremost, there is nothing complicated about ethics. Ethics is a matter of personal conscience with the duty and obligation to exercise moral self-discipline in the spirit of public service as a public trust. The Commission must focus on the purpose and intent of the law, despite intangible vagaries. Seldom, if ever, is it possible to write a perfect law to cover all possible contingencies, and therefore, intent becomes paramount. Where the intent and spirit of the law are clear, good judgment is required to interpret its use in particular cases rather than treating the law as a rule book either

obviously forbidding something or, if not doing that, then, obviously allowing it. When an action is not clearly allowed or forbidden, one must always err on the side of caution and respect for the ethics or integrity and independence of judgment.

MR. FLANGAS:
The Ethics Commission must always endeavor to be legal, fair, prompt and firm. Its words and actions are not only upholding the law, but setting standards by applying the law to cases. Situations arise where a public official may get a legal opinion from counsel. It is prudent and advisable to request legal guidance. However, having done that, the public official is not relieved of his or her responsibility and, indeed, the obligation and duty for evaluating the forthcoming action that may be marginally legal, but overwhelmingly unethical. The burden rests on the public official. There is simply no substitute for honest, timely, voluntary disclosure. This is no different than hiring a professional tax expert to prepare your return—the taxpayer still remains accountable.

The actions of a few greedy, freewheeling, corrupt, unethical public officers bring shame and disgrace to the political process and unfairly stigmatize the vast majority of sincere, honest, hardworking and dedicated public officers who conscientiously serve the public trust. Uprooting unethical public officials is indeed a significant and supreme public trust. I am aware of strong public sentiment against those unethical public officers who escape through their adroit, skillful, legal gymnastics that bring scorn, disrespect and shame to the political process. There is strong sentiment cheering for the Commission's success in dealing with these situations. Much can be said that if public officials would only ask themselves—would this delightful opportunity have come to me if I were not occupying this position? Honestly answer this yes or no, and there would be little need for Commission involvement.

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

The success of the Commission is measured by its earned respect from the public, which then, in turn, serves as the real deterrent to unethical behavior. It

is not the degree of punishment, but rather the certainty of it that will get an errant public official's attention.

Those are the remarks I made in an open session of the Ethics Commission on January 12. In the following Commission meeting, I went into a little more detail. First, I will address "willful." We have had several years' experience with the law since its revision in 1999, and we have learned as we have gone along. Timid interpretations of this term result in subjective and contentious conclusions that provide escapes from accountability and feed the public perception of a weak Commission. We have made a good-faith effort to apply this provision judiciously, but it simply does not pass muster, and it should absolutely be expunged. Expunge this provision, and the Commission still has the flexibility of deciding the amount of the fines, depending on the circumstances and facts of the violation, but there will always be a fine for the violation even it if amounts to only a token $1. The message is clear.

In terms of panels, when a panel reaches a conclusion that a case should go forward to a full Commission hearing, it comes following an exhaustive examination of the facts, and consequently, the panel members are well informed on the details of the case. Participation by the panel members in the full Commission hearing brings an added dimension of detail and the opportunity for the other six members to question and benefit from their deliberations. At the least, participation should be allowed, even if the vote is denied.

In terms of the competitive bidding, the recent airport land scandals and the resurrection of the airport concessions scandals reinforce the recommendation to develop and implement a public bidding process. In summation, the current climate demands a stronger and more effective ethics law. There are two choices; we must muster up the courage to either mend it or scrap it. It is not simply a matter of being tough, but a matter of integrity. The abuse of the public trust has reached its limit, and lukewarm forgiveness is not an option. The current situation calls for solving the problems' root causes, not aggravating them via benign neglect. The success of the Commission is measured by its earned respect from the public, which then serves as the real deterrent to unethical behavior.

CHAIR CEGAVSKE:
What is the makeup of the Commission, right now? What are the numbers? You indicated you are supposed to have two of a certain group and two former Legislators or elected officials. Can you tell me what the makeup is?

MR. FLANGAS:
Right now, there is still a vacancy from the Legislative Commission. The current Commission has seven members. Tim Cashman and I are Commissioners.

CHAIR CEGAVSKE:
What about the backgrounds of the Commission?

MR. FLANGAS:
The other five members are attorneys.

CHAIR CEGAVSKE:
You have five attorneys. What category are you and Mr. Cashman in?

MR. FLANGAS:
I am a mining engineer. Mr. Cashman is a businessman.

CHAIR CEGAVSKE:
So, five attorneys, one businessman and what category do you fall in?

MR. FLANGAS:
I am a professional mining engineer.

CHAIR CEGAVSKE:
Right, but I wanted to know the category names. You said only two members have to be attorneys. Was that the only stipulation?

MR. FLANGAS:
I am a former public official. I was on the State Public Works Board for about 25 years. That probably puts me in the category of a former public officer.

CHAIR CEGAVSKE:
Now, we will hear Senator Care's two bills, Senate Bill (S.B.) 220 and S.B. 349. There are proposed amendments to S.B. 220 (Exhibit E) and S.B. 349 (Exhibit F). Each one of the bills presented to us today has a suggested

amendment. Stacy Jennings of the Commission on Ethics has provided some background information (Exhibit G) regarding S.B. 220.

SENATOR TERRY CARE (Clark County Senatorial District No. 7):
I have basically drafted the amendments myself, so they have not gone to the Legislative Counsel Bureau (LCB). They are meant to be conceptual, even though they are in writing. They are not works of art. I will talk about those momentarily.

I am going to begin with S.B. 220.

SENATE BILL 220: Revises provisions governing voting by public officers. (BDR 23-1179)

SENATOR CARE:
In the words of Mr. Flangas, the public hunger for accountability remains unfulfilled. I absolutely agree with that. That is the basis, not only for this bill, but for S.B. 140, a bill this Committee heard some time ago. Senate Bill 140 was about requiring more disclosure than what is currently required of public officials. It all ties together. Yesterday, it was the Open Meeting Law, and tomorrow, at least in my case, it will be eminent domain. The emphasis is on the procedure and the democratic process itself.

Let me begin with section 1 of S.B. 220, which must be looked at in conjunction with section 2. I am going to ask the Committee to amend much of the language in section 2. The other day we passed out the property tax bill. The way the law reads now, in theory, three-fourths of the State Legislature could have stood up and made a statement about owning a house and paying property taxes. It should have been official to me, but because the bill does not affect me any more than it does any other homeowner, I do not have to abstain. I will simply disclose and vote the bill out. Nobody disclosed. That tax bill benefited more than a majority of the members of this Legislature. There is nothing nefarious about it. That is just the makeup of the Legislature; that is the way it is going to be.

Let me give you another example. Suppose a bill exempts widget companies from having to pay the payroll tax. There are only two widget companies in the entire State. A particular Legislator owns one of the widget companies, but because the bill does not affect that Legislator any differently than other widget

companies, in theory, the Legislator could stand up and disclose that. The Legislator could then vote on the bill even though the bill would make the Legislator rich. There is something troubling about that, but under current law, that would be the case.

What I was attempting to do was find some language which would say if the bill benefits the Legislator in an obvious, material way, the Legislator should not be allowed to vote on it. For the life of me, I cannot come up with the language which would do that. Thus, in the amendment to S.B. 220, Exhibit E, I am required to delete the language in section 2 of S.B. 220 which talks about 50 percent of the body. I do not know where the 50-percent figure came from. I had several discussions with LCB on the subject. That is what I was given on the day I introduced the bill. That is certainly not a jab at LCB; they have been more than busy. At any rate, because I cannot come up with the language I wanted, subsection 1 of section 2 should just be deleted, so it can remain as it currently reads in the law.

I attempted to change the language a little in section 1 to talk about perception. Perception is what matters most of all. I would suggest the language in section 1 should stay there. It basically changes the current preamble to the existing law. The one thing I do not intend to seek to change is subsection 2 of section 2. Mr. Flangas just talked about this. It would simply say if the situation requires the member to abstain, the member should not be allowed to participate in the discussion of whatever the bill is. The member, in theory, could go into the caucus or behind closed doors of a city council or a county commission meeting, and say that while he or she is not allowed to vote on this bill, the other members better vote for it. If they do not, the member is going to make sure the other members do not get contributions from a certain group. It makes no sense, and it also goes to public perception. The purpose of subsection 2 of section 2 is to simply say if you cannot vote, you cannot even advocate or participate in the discussion. I can understand no likely reason the Legislators should be permitted to do that.

Because I am seeking an amendment which will delete the language in subsection 1 of section 2, I also ask that the language at the bottom of subsection 2 of section 2 be restored or reinstated. That is the presumptive language. There is now no reason to take it out. That would apply, as well, to the same language in subsection 3 of section 2. Now I need to bring back the language “or employee” in subsection 4 of section 2. In other words, up to this

point, all I am saying in this bill is that if you cannot vote, you should not be allowed to deliberate or take part in the discussions or the advocation of the bill.

Another amendment before you goes back to a bill Assemblyman David R. Parks and I had four years ago.

SENATOR RAGGIO:
Can I have clarification? I lost you, Senator Care. Going back to your proposed amendment, on section 2, you said you would leave alone the language now on lines 4 through 7.

SENATOR CARE:
I would delete that language.

SENATOR RAGGIO:
You are deleting that, so the statute would stay the same. Then on page 3, your emphasis was on the first part of subsection 2, which presently allows for someone to participate in consideration of a matter, but not vote. Is that what you are talking about?

SENATOR CARE:
That is correct.

SENATOR RAGGIO:
You are saying to leave that as proposed in the bill.

SENATOR CARE:
Yes.

SENATOR RAGGIO:
Then on page 3, lines 21 through 31, what is your suggestion on that?

SENATOR CARE:
That language should stay in.

SENATOR RAGGIO:
I do not see that on your amendment, Exhibit E.

SENATOR CARE:
What my secretary wrote was simply "restored." She was given the lines but not the entire language.

SENATOR RAGGIO:
That same presumption begins on line 43 of page 3 and goes down through line 8 on page 4. Would that language stay in?

SENATOR CARE:
Yes.

SENATOR RAGGIO:
I have been here a long time. That has been developed over and over, and it has been worked on and worked on. Until somebody shows me something which can really be a substitute, I agree with you. That can be tough to change.

SENATOR CARE:
On subsection 4 of section 2, where I have scratched out the language "or employee," that would stay in, as well. In other words, up to this point all I have really done is say that if the Legislators cannot vote, then they cannot advocate or participate in the discussions.

CHAIR CEGAVSKE:
So, the Legislator cannot participate in the discussions?

SENATOR CARE:
Right. For a little background, four years ago Assemblyman Parks and I had a bill. There was an attempt to build a casino in the Spring Valley area of Clark County. The county commission took a vote on whether they had to waive certain provisions of the neighborhood gaming bill. The law was going to require a three-quarter vote to do that. If you recall what happened, three county commissioners abstained. The measure passed with three votes in favor, one vote against it and four abstentions. They would tell you that was three-fourths of the vote, three out of four. Mr. Parks and I said four years ago, that it was not. It is three out of seven because you have three abstentions. The people are the ones who suffer because in the process, the elected representatives did not vote. We thought it was a travesty.

Based on that, we came up with a bill in the 2001 Session which said no political subdivision may take any action unless a majority of the elected members of that body vote in the affirmative. In other words, the county commission or the city council would be just like the Legislature. If a member abstains or is absent, it would be a no vote. Then, there would be a true majority vote of the members, which is how voters intended government to work.

It turned out a drafting error for that bill was discovered in the interim. In the 2003 Session, we revisited the issue. The sentiment overall among Legislators was there were still going to be conflicts and certain circumstances. That led to the language I have now deleted in section 3, subsection 2 on page 5 of S.B. 220. That has to be read in conjunction with subsection 5 on page 4 which says, if someone abstains or does not vote, that reduces the membership of that body by one for the purposes of that vote. That is contrary to what we do in the Legislature.

What I want to do—and the amendment that was passed out should have the language that, in a rudimentary way, makes reference to that—is delete from present law what is now subsection 5 on page 4. That means, if you do not vote, you do not reduce the membership of the elected body, other than the Legislature, which is already covered. Section 3 on page 5 is the language David Parks and I were attempting to have 4 years ago. It basically says that abstentions cannot count. A majority vote is required.

That, in essence, is the bill. It does two things. Number 1, if the person cannot vote or has to abstain, then he or she cannot advocate or participate. Number 2, for all elected bodies in this State which are not already covered, like the Legislature, a majority of the membership is required to vote in the affirmative before any action takes place. I know what the arguments are going to be because this Legislature has heard them in the last two Sessions. The No. 1 argument is that there are going to be conflicts. My suggestion to this Committee is that is just a cop-out. It is so easy to create a conflict, and in the long run, it is an affront to the democratic process. People run for office; they are elected; they are supposed to serve; they are supposed to vote. We are all, probably at one time or another, going to run into a situation where we have to think seriously about whether we are conflicted and have to abstain. Maybe, we will abstain. I would just suggest to you that in Nevada, it has gone on for far too long. You have to make a decision here. Are we going to say the policy of

having a majority vote is so important that it overrules any concern about what a conflict and an abstention might do? Is that the direction in which you want the State to go? That is the purpose behind this bill.

I did not recruit anybody to come and testify on the bill. We have had it before. What really did it for me, this time, was a couple of months ago in southern Nevada, the liquor license to a gentlemen's club called Treasures was reinstated by the Las Vegas City Council. The license had been revoked, at one point, and the club went on for a while without a license; they may have even closed during that period. I do not remember. On the vote to reissue the liquor license, the vote by the Las Vegas City Council was three votes in favor, two votes against by the two new city council members and two abstentions. They would say it was a majority because it was three out of five. I am saying that is not a majority. It is three out of seven. The idea that a measure as significant as the relicensing of a place which generated so much controversy could happen when there is not even a majority of the elected body voting for that action simply contributes to the unfulfilled public hunger Mr. Flangas so eloquently addressed when he read his statement into the record.

That is the purpose of the bill and the work behind it. Again, this Legislature has visited these issues before. I am here today to say we have to make it clear, once and for all, that a majority rule is required of the members and members cannot advocate if they cannot vote.

SENATOR RAGGIO:
I do not really have strong feelings about either of these proposals, but let me be the devil's advocate. A lot depends on Legislative history. We ought to discuss these changes. As you indicated on your last issue, there is a need for a true majority of affirmative votes on an issue. In the presentation last Session, a point was brought up about what should be done if there is a bill or measure which is absolutely necessary to be passed. Assuming there are five people on the committee or the commission, three people, actually, under the definitions, have conflicts. They should not participate or vote. It is possible; we discussed it in the last Session. What happens then? You are saying, if I understood you, they should just go ahead and vote and forget the conflict. Why? I do not follow how that would happen. How would you pass something if three people out of five had a true conflict on the issue? I do not think it would happen too often, but when we pass a law, we need to make sure we understand the potential consequences of what we pass.

SENATOR CARE:
They could not. That is the policy decision this Legislative body has to make. I understand that, and I am sympathetic to the argument. I am simply saying this is more important than the problem of conflicts. Let me point out, too, with regard to the question of the neighborhood casino out in Spring Valley several years ago, it turns out there was a mechanism under the neighborhood gaming bill from the 1997 Session in place. It said if it was approved, there was a way for a party of interest or the neighborhood to appeal. In fact, that is what happened in that case. Had that mechanism not been there, three people voting could have allowed a casino to locate in a neighborhood where, clearly, hundreds of people did not want that casino. That is the flip side of what happens when you allow the conflicts to stand. I understand the concern, but I think it is a policy issue. I have, obviously, made up my mind.

SENATOR RAGGIO:
I do not necessarily disagree, but we are told by one of the members of the Ethics Commission we should err on the side of caution and declare a conflict and not vote. For example, in the Legislature, every one of us has a potential conflict of one kind because we are not full-time Legislators. We are here from all walks of life. I know I am being repetitive because I say this 100 times, but every one of us comes from some other sector. In some bill, everyone here could declare a conflict. That is what we are told; we are told we should be cautious and never vote if there is any smell of a conflict. The other side of it is we are elected, and so, we should vote because we need a majority of the vote.

Let me get to the other issue because this is one we have grappled with for a long time in many Sessions. I am talking about the amendment to section 2, subsection 2. You want to take out the language which says, “Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon, or advocate the passage or failure of [any measure], but may otherwise participate in the consideration of a matter ... .” That is one we have struggled with. This language came about after hours of thoughtful process. There is another side to this.

Let us envision a situation, and this does not apply to just the Legislature, but applies in general. Let us say there are five people on a committee of this kind and I have a conflict. I am sitting and listening to a bill, and I hear the testimony and the comments. Because of my conflict, I have full knowledge of what the

issue is and what is going on. If you take the language out of section 2, subsection 2, I would have to sit mute and not even hand a note to the Senator next to me if something a testifier says is wrong. I could not give the facts. That is why that language is in there, so at least the Legislator could participate. It was for a real purpose that we put the language "a Legislator could not advocate" in the statute. It would be a problem to not allow somebody to participate. Those are words of art, "but not advocate."

Yesterday, in the Senate Committee on Government Affairs, we discussed the proposed definitions of "consider" and "deliberate." That is the problem you have here. I would hate to have something where somebody would have to sit mute, knowing something was wrong, because they have a conflict. I do see a problem with removing that language.

SENATOR CARE:
I recall my first Session up here in 1999; we had thorough discussions about the ethics bill. There were several hearings. I remember the discussion about the language. I appreciate the concern, but it seems to me, the existing language is subject to mischief. We are not talking about out in public view. Things can happen with a phone call or in a back room. Even if the members cannot vote, it would be possible, if they wanted to, to subvert the spirit of what is currently law. Again, I have to say I am aware of the pros and cons. It is a policy matter. I happen to think we would be better served if the language was amended to say the member cannot advocate.

SENATOR WIENER:
Just as a point of information, when we do our voting now, is not voting with the N-V denotation considered a no when we tally the votes? Do we have to have the affirmative number, and we use 21 votes as a standard?

MICHAEL STEWART (Committee Policy Analyst):
You are correct. If you need a majority vote, 11 votes are needed. If it is a 2/3-majority vote, 14 votes are needed.

SENATOR WIENER:
In the Committee, if only four of us were here, could three of us pass something out of Committee?

CHAIR CEGAVSKE:
That is a majority.

SENATOR WIENER:
However, three would be a majority of those present at that time in the Committee. It would not be a majority of the Committee.

MR. STEWART:
I will have to look at the rules, but I think it is a majority of the Committee. You would need four votes.

CHAIR CEGAVSKE:
We are going to close the hearing on S.B. 220. I will give the audience the chance to testify, but I want to let Senator Care testify on his next bill, S.B. 349. I will now open up the hearing on S.B. 349.

SENATE BILL 349: Restricts lobbying by certain persons. (BDR 17-1177)

SENATOR CARE:
A story is going around that this bill is about me seeking revenge against my former consultant, Mr. Sullivan. That is not true. I have been discussing this bill for months, since the spring, with the LCB. I will produce a letter to the Committee which will verify it. We all get the letters from the LCB in June or July which say they have the bill draft requests (BDRs) we have asked for.

Exhibit F is a proposed amendment to the bill. I want to begin with section 1. Basically, I was not here at the time, but it has long been a practice in this State going back to the days of Jim Joyce, who I never met, and who by all accounts was an honorable, charming man. Apparently, Mr. Joyce was involved in a lot of political campaigns. When he came up here, he lobbied many of the people he helped elect. I do not know the extent to which that practice goes on today. I am not keeping track of that sort of thing. I can tell you, I have seen it happen. I have learned, in one case, of somebody who was doing it now, and I was not even aware of it. It does not always imply some sort of evil or nefarious intent.

Senate Bill 349 simply says if a person is going to be a paid political consultant for a particular candidate for the Legislature, the consultant cannot come as a lobbyist. Let us be clear about this. When you have that kind of a relationship

with a consultant, this is somebody you listen to, you rely on his or her advice, and that person helps you raise money. If you are going to have somebody like that, then you win and come up to the Legislature, all I am saying is your consultant cannot come as a lobbyist. It would be too easy to take advantage of that relationship. Even if no consultant did that, as a lobbyist, the perception is still there. Again, half of this is perception. I want the Committee members to keep that in mind.

This does not deprive anybody of the right to hire a lobbyist. I have proposed an amendment, Exhibit F, which would delete subsection 3 from section 1. It was never my intent to say somebody cannot have a lobbyist. If you want to, you can hire a lobbyist, a lawyer, a public relations spokesman, a babysitter or anybody else you need or can afford. I did not mean to suggest nobody can hire a lobbyist. You certainly can. Everybody is entitled to an advocate. That is the intention of section 1, subsections 1 and 2. You also should have before you (Exhibit H), which is a copy of an Alaskan statute which has something similar to this, but is much more extensive.

The remaining, significant part of the bill is found in sections 4 and 5. Basically, it says in a county of more than 400,000 people, such as Clark County, and in fact, section 5 speaks to major cities in Clark County where, "a person who is related by blood, adoption or marriage within the third degree of consanguinity or affinity to a member ..." of the board of county commissioners or the city council, then that person "... shall not engage in lobbying ..." anybody on that board. It is in Clark County where I have encountered the problem and have read about the problem. I cannot speak for the rest of the State. Again, that is a perception problem, but it can also lead to the conflicts I just talked about in S.B. 220. Let me emphasize this, I am not suggesting a foul deed here.

I will give you an example. One reason one of the conflicts existed on the relicensing of Treasures Gentlemen's Club was the lobbyist was the mayor's son. Anybody would have known, immediately, that would create a conflict. I do not know who knew what when, and I do not care. All I am going to say is if you are going to retain someone to lobby on your behalf and you know or ought to know that person is related within the third degree of consanguinity, it would be smart not to hire that person. It would be smart to hire someone else, let the elected official vote and not have to worry about a conflict. That is the intent of the bill.

In sections 4 and 5, there is reference to a misdemeanor. We criminalize activity all the time here in the Legislative Session. I am not making light of it, we had a bill which was referred today from one committee to the Committee on Judiciary which addresses leaving young children unattended in a car. In the bill, whoever leaves the child in the car would be charged with a misdemeanor. When you attempt to usurp the democratic process, I do not know why that should not at least be a misdemeanor. The purpose of the misdemeanor language in sections 4 and 5 is simply as follows: if you attempt to create a conflict with the intent of knocking out one of those voting members from that city council or that county commission, you ought to be charged with a crime. If you do that knowingly, you ought to be charged with a crime. This is mischief, and it leads to multiple problems. It disturbs the concept of the perception we all want to have that the government is operating above and beyond board. That is, basically, the premise behind S.B. 349.

SENATOR RAGGIO:
Section 4 refers to a county with a population of over 400,000, so would it only apply to Clark County? Section 5 is a city with a population of over 100,000 in a county of more than 400,000. What is the meaning of subsection 1, subparagraph (b) in section 4 and in section 5? I understand subsection 1, subparagraph (a), that is the direct relationship "within the third degree of consanguinity or affinity ..." to a member of the governing body. What does section 4, subsection 1, subparagraph (b) and section 5, subsection 1, subparagraph (b) do in each of those cases? You are talking about a person who is employed. I am not sure, can you clarify that?

SENATOR CARE:
It is intended to mean if you have an ongoing business relationship.

SENATOR RAGGIO:
It says a person employed by that same entity, let us say City A, or "who has a substantial and continuing business relationship with a person who is related by blood, adoption or marriage within the third degree of consanguinity." I am not sure what that language means. Am I reading this incorrectly?

SENATOR CARE:
In many cases, many of us got these bills the same day they introduced them. I can tell you what I intend. It should not only include the relationship by marriage

or affinity, but the ongoing business relationship, as well. When there is an ongoing business relationship, there is no reason to go in and lobby that body.

SENATOR RAGGIO:
I understand the person who has that business relationship, but does it also apply to other people connected to that person? Is that what this is trying to say?

SENATOR CARE:
Are you referring to the language about blood, adoption, or marriage? As I said, it is inartfully written. If it has to be amended or refined, I am open to that.

SENATOR RAGGIO:
I do not mean for you to name names, but what kind of a situation occurred which brought something like that about? Was there somebody who was a city manager or employed in a department of the city?

SENATOR CARE:
That would be one example. The question might be where you draw the line, at the city manager and work your way down? What about the guy who drives the city vehicle? Obviously, I am going to have to work on that. I can tell you, there are some cases that just leap out.

SENATOR MATHEWS:
I was wondering what would happen if the elected official sought out the person who helped them in the campaign for advice, rather than the person coming to the elected official to lobby. Would we be bound by the same rules? What if something comes up in the Legislature, would this law prohibit me from talking to the person?

SENATOR CARE:
If I understand the situation, you are talking about having a former consultant here. If the bill were passed, the consultant would not be at the Legislature as a lobbyist.

SENATOR MATHEWS:
Could I call the person?

SENATOR CARE:
There is nothing in this bill which says you could not call that person to testify on something. We are talking about registering as a lobbyist at the Legislature.

CHAIR CEGAVSKE:
Is there a reason you put a population number in this bill? Why does this only apply to Clark County and not the rest of the State?

SENATOR CARE:
I live in Clark County, and that is where I became familiar with the problems. The language in S.B. 349 about cities would obviously mean Henderson, North Las Vegas and Las Vegas. I did not draft this bill to say Las Vegas; it includes all those cities. I have not read about any major problems with Henderson or North Las Vegas. It was the Treasures Gentlemen's Club vote which prompted me to bring this bill.

SENATOR BEERS:
I understand the intent, but it seems that it would be unconstitutional to deny any citizens the right to petition their government. I do not care how heinous or unpleasant they may be as individuals.

SENATOR CARE:
I would agree with that, actually, and that is why I said I am deleting the language which says a lobbyist cannot be hired. Anybody can come to the Legislature and testify. Anybody can come to the Legislature and try to make an appointment with us, lobbyist or otherwise. I am talking about registering as a lobbyist in the first instance. If you are not eligible to register as a lobbyist because you have been a consultant, there is nothing which would preclude you from hiring someone to advocate your position.

SENATOR BEERS:
You would be precluded from advocating a position. Before I got elected, I was a volunteer treasurer for my predecessor in the Assembly in the mid-1990s. Maybe volunteering gets me out of the issue. I would be unable to contact her to advocate a position.

SENATOR CARE:
That is not my intent at all. I am talking about the paid lobbyists. In the first instance, you cannot be a consultant and a paid lobbyist. In the second

instance, the paid lobbyist cannot go in front of the county commission or whichever city council we are talking about. That is your paid lobbyist, and that is the position I am talking about.

SENATOR BEERS:
Would it be okay if the person was an unpaid lobbyist?

SENATOR CARE:
You are probably going to hear some testimony on that because there are volunteer organizations and people who have volunteered on campaigns, as opposed to those who have been paid as consultants. I can make that distinction. I have to emphasize many of us received these bills. I have already gotten written up in one newspaper column about one of these bills. It was not what I intended, but someone got a hold of it and said I had introduced it. That is a factually accurate statement. I am not trying to take out volunteer organizations or volunteer campaign workers at all.

CHAIR CEGAVSKE:
If someone is a lobbyist during a session, but the person actually goes and volunteers on someone's campaign, that is different than being a paid consultant. In your mind, a paid consultant would be lobbying.

SENATOR CARE:
I do not know if that is going to happen during a Legislative session. You can come up with a million hypothetical situations, and all we have to do is come up with a policy which is codified.

CHAIR CEGAVSKE:
What I was referring to were the lobbyists up here who help with different people's campaigns. Are you saying a volunteer lobbyist who is not paid during a session is different than paying a political consultant who comes up and lobbies?

SENATOR CARE:
It would be different, but you might want to look at the Alaska statute, Exhibit H. If I am not mistaken, the Alaskan statute actually wants to say that would not be allowable.

SENATOR BEERS:
I was going to take this out of the hypothetical. I had a regular, paid lobbyist volunteer for my last campaign.

SENATOR CARE:
I am only talking about the paid consultants who work on the Legislative campaigns. They cannot come to Carson City and register as a lobbyist. If you have that relationship, either through marriage or because of the long-running business relationship, it is the same deal; you cannot make an appearance, as a lobbyist, before that elected board.

CHAIR CEGAVSKE:
I am going to temporarily close the hearing on S.B. 349 and open the hearing on S.B. 224.

SENATE BILL 224: Revises provisions relating to elections. (BDR 24-698)

SENATOR RANDOLPH J. TOWNSEND (Washoe County Senatorial District No. 4):
Two simple sections deal with the same issue of initiatives and referendums. Section 1, subsection 1 reads, "A nonprofit corporation shall, before it engages in any of the following activities in this State, submit the names and addresses of its officers to the Secretary of State." That is before they can solicit or receive contributions from any person, group or entity. Section 1 needs to be amended on line 8. I would take out "intending to make contributions." That is so nebulous. It should just say, "make contributions to candidates or other persons or make expenditures designed to affect the outcome of any primary, general or special election and question to the public." We have not done that in the past. Given the tremendous proclivity for states to start growing in the initiative and referendum process, the public has every right to know who is contributing to those efforts, whether they are in state or out of state.

The second section of S.B. 224 is simple. It came as a result of a number of initiatives and referendums which were on the ballot last Session. Under this bill, it talks about making sure there is only one subject in each initiative or referendum. It should clearly state what that subject is in the title. That did not occur during this last election, and it created a great deal of misunderstanding. Whether it was intended or not, the public should know what is in these referendums or initiatives. It should be clearly stated, and if it cannot be, it should be void. That is the essence of the bill.

SENATOR BEERS:
Do you mean the minimum wage question should have been titled the entry-level-jobs-reduction question?

SENATOR TOWNSEND:
It could be titled anything anyone wants it to be, as long as it is clear. As a sidebar, I will say that 25 years ago, I personally participated in the initiative process. I had a rather extensive financial commitment by myself and a wonderful personal commitment from a number of people in this State to help create the Office of Consumer Advocacy. I am familiar with what it takes to write one of these initiatives, fund the initiative and explain the initiative to the public when you are asking for signatures. I do not think anything has changed in those 25 years. It is not unreasonable to ask someone if they want to sign a petition, or if you are going to ask them to vote for something, that they be quite clear what it is. It should be a single subject. If the voters like it, they can vote for it, sign up for it or donate to it. They should not be embarrassed if they are going to donate to it. We report everything. This is fairly simple.

SENATOR BEERS:
On a more serious note, regarding the first portion of S.B. 224, is a nonprofit organization not already required to submit the names and addresses of its officers?

SENATOR TOWNSEND:
I thought so, but apparently there is some question relative to their involvement in affecting the outcome on line 11. That is why they put it in that manner. Many nonprofits are created for the purposes of providing charitable products or services, but this bill applies to nonprofits that try to affect the outcome of any election or question on the ballot. That is why they specifically put the language in line 3.

CHAIR CEGAVSKE:
There is an attachment (Exhibit I) about the National Conference of State Legislatures (NCSL) task force reporting on single-subject restrictions and requirements in other states.

SENATOR TOWNSEND:
The first 12 lines of S.B. 224 are not an attempt to get to activities of nonprofit corporations for the purposes of getting their names and addresses to the

Secretary of State. That is not the intent of this bill. The first intent of this bill is in lines 11 and 12. If a nonprofit is doing something which is "designed to affect the outcome of any primary, general or special election or question on the ballot," then it has to meet the standards set forth in this bill. That is the essence of this bill. If you are a nonprofit, right now, and you do not do these things, then it is fine. However, the second the nonprofit gets involved in any of the activities laid out in this bill, which affect a primary, general or special election or question on the ballot, the nonprofit has to meet these standards. That is all it says.

SENATOR BEERS:
What threw me was the Legislative Counsel's Digest on the front states existing law requires a nonprofit doing business in the State to file a list of its officers with the Secretary of State. I could see an argument which could be made by the nonprofits saying they are not doing business, they are merely soliciting and receiving contributions. It makes sense, now.

CHAIR CEGAVSKE:
Can I have staff go over the information from the NCSL task force, Exhibit I?

MR. STEWART:
A couple of years ago, a NCSL task force on initiative and referendum reform had quite an extensive report. One chapter out of the report dealt with single-subject issues. Just to note, as of 2001 or 2002, when this was presented, 12 out of the 24 states had some sort of single-subject requirement. That included Alaska, Arizona, California, Colorado, Florida, Missouri, Montana, Nebraska, Oklahoma, Oregon, Washington and Wyoming. There are tables which show some detail about what the restrictions are.

SENATOR TITUS:
Have those stood the test of the U.S. Constitution? Have some of those requirements been challenged? Have they withstood any First Amendment challenges?

MR. STEWART:
I would have to look and see. I am not aware of any. I could look at some of these references and see if there have been any constitutional challenges. I will get back to you on that.

CHAIR CEGAVSKE:
Our State belongs to the NCSL organization. It is a good source for us. I appreciate staff giving us that information. I will now open up public testimony on S.B. 224.

JANINE HANSEN (Nevada Eagle Forum):
When we look at the first section, it talks about nonprofit corporations. We publish, which I showed you the other day, our "Nevada Family Voters Guide" as a nonprofit because we do not endorse anyone. Our nonprofit organization is not based in Nevada. We fall under the national Internal Revenue Code Section 501(c)(3) tax-exempt corporation, the National Heritage Foundation. If we do anything which endorses anything, we have to do that under our political action committee, which falls under the laws of the State of Nevada. We do not endorse anyone, we simply ask questions. Under this, I am assuming we would need to register. According to this, if I read it right, the only thing we would have to do is register the names of our officers. We already do that for Nevada Eagle Forum. I am just trying to get that clarified. Someone would probably construe that this is meant to influence the election. Providing information on any subject would do that. Indeed, on particular issues on the ballot, we do make recommendations. That is my assumption even though that is not our primary function; we just do that once in a while. If I am correct on that, it is what I am assuming, then I do not know what that accomplishes. We always publish our name, address and everyone in here. We also have a Web site.

The second section is on embracing one subject. I do not think there is a huge problem with that, but I want a definition of what one subject means. I am a little concerned with what the Nevada Supreme Court did last time in *Guinn v. The Legislature of the State of Nevada*, 71 P.3d 1269 (Nev. 2003) and how these things can be construed and misconstrued. If we are going to make it one subject, I would like a definition from the Legislature. I do not want people to get caught in a trap of doing all the work only to have a court that does not like what the particular initiative or referendum says, and overturn it, claiming it is unconstitutional because it is not one subject. I could not ever support S.B. 224 unless we had a really clear definition of what one subject means. You have had a hard time finding out what that definition is in the Legislature. It is a little tricky, and it is something we have to be careful of.

Section 2, subsection 1 says, “The subject must be clearly indicated in the title.” How long is the title supposed to be? Do you have to cover all the subjects in the title? Who makes that determination? Does it give the court the authority to strike down the entire referendum or initiative, based on someone else’s interpretation that you have not put the whole subject in the title? I understand why you would want to do that because you want people to be informed. I want people to be informed, too. I do not want to go to a lot of work on a referendum or an initiative only to have it turned over because a judge opposes what we are trying to do.

The Constitution of Nevada says this power is reserved to the people. The power to petition is sacred to the people. It says that in Article 19, section 2, subsection 1, “... the people reserve to themselves the power to propose ...” by initiative and referendum. Section 5 also says, “The provisions of this article are self-executing.” That means they can be done without a lot of extraneous laws, regulations and rules. It also says, “the legislature may provide by law for procedures to facilitate the operation thereof.” It is facilitating it and making it better, not making it more difficult, that is constitutional.

We need a definition because there is some question about what must be clearly indicated in the title. Senator Beers’ remark about entitling the minimum wage referendum comes from a different point of view than from someone who supports the minimum wage. To Senator Beers, that is a perfectly honest title about what the minimum wage bill means. Someone who supports minimum wage would oppose that title. Senator Townsend said it could be anything anyone wants it to be. That is not true. It would have to be what the court decided. It is not what Senator Townsend, Senator Beers or the people who got the initiative wanted, but what the court decided. There has to be some clear definition in there. It is important to do that. Those are a couple of my concerns.

One thing we need to remember is the initiative and referendum process worked. A lot of the initiatives failed; they did not get the signatures, or they failed on the ballot. Really, the process mostly worked. We want a definition of one subject, and we want a definition of how the subject must be clearly indicated in the title. How is that going to work? We do not want to go to a lot of work and end up in the courts and have the work mean nothing.

LUCILLE LUSK (Nevada Concerned Citizens):
We share the concerns Ms. Hansen expressed, but there are a few additional items I would like to bring to your attention. It begins with a nonprofit organization shell. Is the implication here that every ballot-access group will now have to be incorporated? That is not the case under current law. The ballot-access group can form and function as a political action committee (PAC). A PAC need not be incorporated, either. Nevada Concerned Citizens is not incorporated. We are registered as a PAC with the State. We do file reports, but we are not a corporation. What is implied there? Is it implied that only those incorporated are required to meet these requirements, or is it implied that everyone must now incorporate?

What is the implication with regard to existing groups already registered and supporting or opposing ballot questions in a small way by including information in a newsletter or by making a small donation? Is a separate registration now required before speaking on that issue in any way, shape or form? There is a lot of confusion in S.B. 224. What would be required differently from an organization which already exists, than from what is now required?

I would like to, again, ask that definitions be clearly included in this. We are in agreement with the concept of an initiative or referendum being one subject, but that definition is absolutely required to be plain enough. Both the Legislature and the initiative processes should utilize the same definition. The definition should be understood and not misinterpreted by those who would choose to challenge it or the courts.

CHAIR CEGAVSKE:
When we listen to Senate Joint Resolution (S.J.R.) 8, I hope we might get some information from Ms. Vilardo and that she will answer some of these questions for us. She is probably one of the best tax experts and someone who has dealt with this. The biggest issue I have heard complaints about was that each of the petitions should be a single subject. You are right, what is the definition? We need to make sure we define that. A nonprofit corporation, is it new or existing language? We will have staff look at the separation and the registration. We will look at all of those before we conclude anything on this piece of legislation.

SENATOR RAGGIO:
Unfortunately, I am not sure there is a better definition than the wording we have. I would ask our staff on this, who already indicated he is going to look

through some other jurisdictions. You have to understand, section 17 of Article 4 of the Nevada Constitution says only this, “Each law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith, which subject shall be briefly expressed in the title.” That is what the Constitution says. There is no further definition in the Constitution. There are a number of cases in our State which talk about it. I am not sure you are going to get a better definition, other than what is already in our Constitution, to apply to laws enacted in the Legislature. It should apply the same way to laws enacted any other way. The answer is going to be we are not going to find a more specific definition of what single subject means or what should be expressed in the title. I will defer to the staff, and hopefully, they can tell us if there has been an attempt somewhere where this has been done. Unfortunately or fortunately, that is what is already in our Constitution.

CHAIR CEGAVSKE:
Is that interpretation of the Constitution what is going to be debated? When I hear one subject, I think it means one subject. Some of the information which came out in those petitions was definitely referencing more than one subject area. It might have been general, to the stretch, but there was more in those petitions than what was there. Is it the job of the Secretary of State? Whose job is it to say they have gone over and beyond one subject matter?

SENATOR RAGGIO:
Fortunately for this Committee, I am not the legal counsel. Although I would defer to the Research or Legal Divisions of the LCB, the answer is, this language is what is going to govern. Then, it is going to be up to the courts to decide whether it is compliant when it is presented properly to them. I do not think you can write a rule or a definition. I would be surprised if we can find a good one that will be more precise. The answer to your question is that issue was not taken up in the courts. It was not an issue as to whether or not it was comprised of more than one subject, in some cases.

CHAIR CEGAVSKE:
Maybe, it is worth us looking into that.

MR. STEWART:
I can take a look at the other states which have initiatives. I can find out if they have some sort of single-subject requirement and how they handled it, statutorily. I can bring that to the Committee. If the Committee gives the

direction and there is some model you want to use, you might lift something from another State.

MS. LUSK:
I appreciate Senator Raggio's insights. You will notice the statement in the Constitution says "which subjects shall be briefly expressed in the title." It does not say the title has to be all inclusive and that any part not included in the title is void, which this bill does. Senate Bill 224 would be much more restrictive and difficult than the Constitution.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):
We are here in support of the spirit and intention of S.B. 224, although we certainly recognize the comments previously made with respect to the requests for clarification. However, as a chamber, we not only file our own incorporation and issue papers with the Secretary of State, but we also have a PAC known as BizPAC. We file the names of the officers of that PAC on a yearly basis, even though we are not specifically required to do so. It is our belief that by doing this, we encourage people to have an open, honest dialogue about the election activities we are engaging in. We would suggest and encourage the Legislature and the Committee to take that spirit, move forward and allow or encourage other groups or organizations to be open and honest about the individuals who participate in their political activities.

SENATOR RAGGIO:
I have a question which should probably go to legal counsel or maybe it is apparent and I do not understand it. Senate Bill 224, section 1 speaks only about a nonprofit corporation before it engages in any of the following activities. Of course that includes soliciting or receiving contributions, making or intending to make contributions and making or intending to make expenditures in connection therewith.

I think what people are trying to get at are some of these great-sounding groups. They are always something like the "Committee for Good Government," the "Committee to Save the World" or the "Committee Against Anything Evil." They are not nonprofit organizations, they are names without any faces or identity. I am asking the question because I am wondering if there is any way to address that, or does that come under freedom of participation or freedom of speech? That is the real problem. These groups have high-sounding names and no one knows who they are. When I get those groups who contact me, I call

them back and try to figure out the name behind the group. Sometimes you get nothing. I am not being pejorative about any and all efforts, but there are certainly a number of them like that, and the public should really know who they are. They are awfully mysterious and invisible, for the most part.

CHAIR CEGAVSKE:
That is what prompted a lot of this. In Las Vegas, we have quite a few groups which have come forward, but none of them were willing to say who their officers were. I do not know if any action has been taken against any of them, but they did fail to file. There were other, numerous things which happened. I do not know if this bill is going to address that or not.

SENATOR BEERS:
I have a T-shirt which says "I survived the Committee for Political Truth." The Committee for Political Truth did form for the purpose of opposing my candidacy. They did duly file one officer's name with the Secretary of State's Office. Eventually, they did file their campaign finance reports, so the funding was transparent, as well. I cannot speak for any of the other groups, but at least that one did have a human name attached to it before it sent anything off.

RENEE PARKER (Chief Deputy Secretary of State, Office of the Secretary of State):
I want to shed some light on the nonprofit discussion. Nonprofit corporations registered and qualified to do business with the State are, on an annual basis, required to file a list of their officers with our office through our commercial recordings division. In the definition of a PAC, and this is what is getting confused, nonprofit corporations are excluded. Senator Raggio is correct. The genesis of this bill and what Senator Townsend was really trying to get at concerns the many situations this last election cycle when there were groups which were advocating passage or defeat of ballot questions. Ballot advocacy groups are not required to file with the Secretary of State to register. They are supposed to file the contribution and expense reports if they had expenses. The current language in the statute talks about a ballot question which was going to be on the ballot. Some groups argued their ballot question was defeated and by the time we got to the election, it was not qualified. They said they did not have to file anything. When other groups told them they needed to file as a PAC, they said they did not have to because they were a nonprofit, so they did not have to file.

That is where some of the confusion is. In our bill, we have been looking at some potential registration of ballot advocacy groups to try to get at some of these issues. Many of the PACs are nonprofits, and they file as a PAC anyway. They are required to file their officers if they are a PAC.

SENATOR BEERS:
Maybe, it has been too long, so no one knows the answer anymore. Why were nonprofit organizations exempted from that filing requirement for PACs and ballot advocacy groups?

MS. PARKER:
I do not know. We pulled up some legislative history, and we could not find an answer. The only thing I can think of is that Nevada nonprofits, or nonprofits qualified to do business as nonprofits, are already required to file an annual list of officers and directors through our commercial recordings division anyway. Maybe, someone thought everyone can make that connection. I do not know for sure.

SENATOR BEERS:
Would it not be easier to get to Senator Townsend's intent in this portion of the bill by striking nonprofits from the existing list of exemptions?

MS. PARKER:
You may get there that way, or it may just be that anyone who intends to engage in these activities must file with the Secretary of State. I do not know the best way to get there. That may help eliminate some of those issues where if you are a PAC, you come under the definition of a PAC. If you are a nonprofit, you are no longer excluded. I do not know what the opposition to that may be, but some of the people behind me may have some answers to that.

CHAIR CEGAVSKE:
Since there is no more testimony on S.B. 224, I will close the hearing on that bill. We will now reopen the hearings on S.B. 349 and S.B. 220.

SABRA SMITH-NEWBY (City of Las Vegas):
We are here in opposition to S.B. 220. We did have several concerns on this bill. Most of them were taken care of by the proposed amendments offered by Senator Care. The one concern we continue to have is the decrease in the quorum due to abstentions because of conflicts. We worked on this issue,

although this predates me, in the last Session. An agreement was struck that became a part of the *Nevada Revised Statutes*. This has worked well for us in recent history. Changing it would prevent some items from ever being passed or considered if there is no quorum. If there are too many conflicts on our city council, then some items which deserve to be heard and voted on, up or down, may never be heard. Some items which deserve to be voted up may never be because of conflicts. That is our main objection.

MS. HANSEN:
I had a couple of questions and concerns about S.B. 349. I am certainly concerned about conflicts of interest. I participated in an initiative in the last election to resolve the greatest conflict of interest I see at the Legislature. Nevertheless, I have a couple of concerns about this. I serve as the executive director for the Independent American Party. True, I am not getting paid to do that, but if the time ever came when I did get paid and I happened to be helping some of those candidates, would that preclude me from coming down to the Legislature and lobbying? There might be someone in the Republican or Democratic Party who is also helping some of the Assembly candidates or some other people who may not have their own full-time staffs. Would that cover those people? Would these citizen activists who are participating be precluded from coming down to the Legislature and participating in the process? I certainly think if they come down as a nonpaid lobbyist, that is different than being a paid lobbyist. A lot of people participate in campaigns, but they are also nonpaid lobbyists. I have a couple of concerns. If you proceed, you ought to make it so they cannot register as a paid lobbyist, but they certainly ought to be able to register as a nonpaid lobbyist, if this is restricting them at all.

I do not know if Senator Care is aware of this. When the registered lobbyists go to the informative meeting about what lobbyists can do before the Legislature starts, they cannot come to talk to any Legislator but their own. That would definitely restrict someone from not being able to even testify in Committee. They can represent themselves, but they cannot represent any organization or business unless they are represented as a lobbyist. Those restrictions are already in the law. I just wanted to bring those up for your consideration. Maybe, they would fall under this, but I am not sure.

CHAIR CEGAVSKE:
Since there is no more testimony on S.B. 220 or S.B. 349, I will close the hearings on both of those bills. I will now open the hearing on S.J.R. 8.

SENATE JOINT RESOLUTION 8: Proposes to amend Nevada Constitution to make various changes concerning initiatives and referenda. (BDR C-298)

CAROLE VILARDO (President, Nevada Taxpayers Association):
This resolution to amend the Constitution does three different things. Section 7 addresses the issue of initiative and referendum petitions that are declared unconstitutional. In S.J.R. 8, if a provision of the petition is found unconstitutional, the entire petition would be found unconstitutional and no provision would take effect. The reason for this change, which was suggested to me, is that sometimes a general severability clause is put in the petition. I am not an attorney, so I appreciate that Senator Wiener and Senator Raggio are here. When a severability clause is put in a petition, it says, if any of these provisions are found unconstitutional, the rest of the provisions stay. However, in the case of a petition or a referendum, it may not work if the rest of it stays.

The first, specific severability clause I have seen was in Assembly Bill (A.B.) 489, which was passed by this House. The severability clauses specifically said that if section 3 was found unconstitutional, section 4 remained in place with the rest of the bill and vice versa. If section 4 was found unconstitutional, section 3 remained in the bill. That is the first time I have noticed this in a bill. That is the reason for the suggested change to the Constitution dealing with that provision.

The next provision you have is at the bottom of page 2. This speaks to referenda. It is narrowly defined so it applies only to the sales tax. The sales tax was approved by voter referendum in 1956. In fact, interestingly enough, when it was approved, these provisions did not exist in the Constitution. These were added in 1962 by the voters. What has happened and the reason for the suggestion is if as a petition circulator, which I have been, I propose to create a new statute, the Legislature is given the authority to address, change, repeal or do anything with the new statute I have created by initiative petition for three years. For three years I cannot alter, amend or touch it. After three years, I can change it.

I will use sales tax as the example, again, because of some problematic issues which have come up. I took the language for the referendum as it exists in the Constitution, duplicating the language found in Article 19, section 2, subsection 3, and added it to referendums. Sales tax law, at this point, is 50 years old. Because of the referendum provision in statute, the only way we may

change anything that is not administrative is to go to the voters. That is fine, but if you are trying to change a definition, and this is an issue which has arisen because of the streamlined sales tax, somebody may perceive that changing the definition is expanding it. Yes, it absolutely may be, but it may be a requirement of streamlined sales tax. We would have to put it on the ballot. If the voters do not approve it, we would not be in compliance.

All the work the Legislature has done, preliminarily in the 2001 Session, in the 2003 Session and some additional cleanups for this 2005 Session which involved the streamlined sales tax is so we will be able to collect sales tax on Internet and catalogue sales. One of the requirements is the definitions have to match what the Committee agrees to. Right now, we are in pretty good shape. Most of our definitions were good. Some of our definitions were by regulation, and since that is not acceptable, they will have to go into statute. There are still definitions they are working on that may be different than what we have in statute. My hope was there would, at least, be some comfort level. The only part of statute impacted right now by this bill going forward—and the voters have to approve it—is the part which would give us the flexibility with the one referendum we have in statute which deals with taxes, the 1955 Sales and Use Tax Act, and enable us to make changes.

There has been concern, and I have spoken to some people about it. They are concerned the Legislature is going to exempt the special interest. I would submit to you that you have another resolution which will be heard which needed some changes from last year. It is coming back to you again in new form, which will ask the voters to approve some specific guidelines for the approval of sales-tax and property-tax exemptions. We are trying to safeguard the public. I am not looking to see these taxes increased, but it has become difficult and awkward, in some places, to explain to people why we need to make changes.

I want to explain some of the difficulties you have and the way the law currently reads in regard to sales tax. If I purchase an item and obtain a service at the same time I make the purchase, that is a taxable event. For example, I purchase a suit and I am charged for the skirt alteration at the same time. We will say the suit is $100 and the skirt alteration is $10. I will pay sales tax on $110. The statute is written pretty clearly on the way it is done. Using the same example, say I purchase the same suit for $100, but I do not have the right shoes, so I decide to come back to the store the next day; I only pay sales tax on the $100 suit. When I go back the next day to pay to get the skirt

altered, then I do not have to pay sales tax on that alteration. The alteration service was not performed in conjunction with the sale of the tangible goods. There should be some consistency and cleanup to that.

SENATOR TITUS:
I have always wondered why there is a sales tax when you rent a video. The person is not buying anything, the person is just renting something.

MS. VILARDO:
Technically, when you pay sales tax on a video rental, the person is paying a use tax. The law allows the person who is doing short-term rentals the option of either paying the sales tax on the video tape or taking it without paying the sales tax and the vendor charges the use tax on each individual transaction. That is why you pay tax on a rental. The retailer is not paying, he is paying you. There are some video outlets where they pay the sales tax on the item. If you have ever rented party goods from Ahern Rentals, Mr. Ahern pays the sales tax on everything. There is no use tax on whatever they charge.

The last change in S.J.R. 8 is on page 3, line 13. I have become particularly aware of what is going on in California with what we call ballot-box budgeting. Section 6 of Article 19 of the Constitution provides that if you are going to go by initiative petition to create a statute which is going to expend money, you have to create a tax. That allows you to evaluate if you are willing, and the expenditure is important enough for you, to support that tax. We found we did not have that provision in the constitutional amendment. All this section seeks to do is to put an equal provision within the constitutional amendments which might be circulated as initiative petitions.

Three issues in S.J.R. 8 are definitely policy questions that are going to take a long time. The reason I asked Senator Cegavske to go forward on the bill with these recommendations is because they are policy decisions whose time has come; that makes them right to, at least, put it to the voters and make the arguments as to why the Constitution should be changed. The Committee knows I do not take changing the Constitution lightly because that is a policy document. Hopefully, that is exactly what these do.

CHAIR CEGAVSKE:
I have a question on another bill. One of the subjects brought up on Senator Townsend's bill was the one-subject definition. We are looking at how to define that. I did not know if you had a comment on that. Then, there was talk about the nonprofit corporations, but we can get to those answers after some of the others testify.

RAYMOND BACON (Nevada Manufacturers Association):
We come to support S.J.R. 8. The severability clause is one of those things in other states which has been the subject of some level of mischief. That is starting to happen in this State. The sales tax issue and the confusion caused because of the referendum from 1955 has been legendary. Our association has been one of the associations working on the streamlined sales tax, which, we believe, has huge benefits to the State. Getting around the criteria to the point where we can get Nevada law fixed so that we can qualify this, which is clearly to the State's advantage, has been a difficult task. Cleaning up this provision, whether it is three years or whether you decide it ought to be longer than that, is not a huge issue. Simultaneously restricting that forever has become a major battleground, and these are difficult and complex issues for the voter to understand. Allowing the Legislature some ability to make corrections to change definitions that are 40 and 50 years old, so we can truly wind up with a better tax policy or a better policy, whatever that policy may be, seems to be a step in the right direction.

On the last issue, this body would not move forward without a fiscal note on something that is going to have a substantial fiscal impact on the State. We believe, pure and simple, the voter should be afforded the same right. If you are going to create something which is going to have a substantial fiscal impact on the State, the people need to be fully appraised of what that impact is going to be. That is just pure and simple. To mask a fiscal impact by making a constitutional change versus a referendum is playing games with the system, and it is bad political gamesmanship. We think that one is fairly straightforward and support Ms. Vilardo's position on this.

SENATOR RAGGIO:
Mr. Bacon, I will use you as a sounding board. I fully support the measure and would hope that we could somehow get it passed by the voters and amend this. We know the 2-cent portion of the sales tax is embedded in the law, and we cannot change one word of it. We have struggled to get around some of what I

would term archaic language, to try to do justice over the years. My question is, are we going to be able to pass this? Are we going to get the voters to understand? Please do not take this the wrong way because I certainly believe the voters can understand, but truly, as a practical matter, we have to put this on the ballot. We require the pros and the cons of this on the ballot. There is going to be the explanation that the language is over 50 years old and that it is necessary to change some of the language. We are not changing the rate, but we are changing the language because of something like the streamlined sales tax, which we would like to participate in. People are going to argue against this. They will say this is going to cause the Legislature to do mischief. I am just asking a factual question, can we really get this done? Are we going to get the kind of cooperation from the media and everyone else to really have them understand this is something very much in the public interest?

MR. BACON:
In my estimation, the two issues which will carry this forward are the severability issue, which is fairly easy for people to understand, and the second issue is funding. The more difficult issue for people to understand is the second change Ms. Vilardo spoke of. If the people support the other two issues, they will accept the harder issue to understand. We have a reasonable chance of passing because the other two are clear and make sense. It says do not pass something if you do not know what it costs. The severability clause is close to Senator Townsend's one issue; keep them combined together in the same chapter. Consequently, it is doable. It will not be an easy task because the middle issue in the bill will be complex. People will try to confuse that. It is clearly in the best interests of the State to clean up this situation. We have been fighting for 40 years now.

MS. LUSK:
I would like to start at the end of this proposal and discuss the last item first. Mr. Bacon mentioned that the people should have the right to see a fiscal note. That is not what this bill does. Senate Joint Resolution 8 requires that it impose a sufficient tax, or provide for raising the necessary revenues. It is not a fiscal note. We support a fiscal note, and we also support this particular provision. We should understand the difference.

CHAIR CEGAVSKE:
Do you support section 6?

MS. LUSK:
Yes. We support the amendment to section 6 and the rest of section 6. We do have concerns with the rest of the bill. I would like to respond to Senator Raggio's question. It is my opinion this will not be passable. It is far too complex and confusing. It would be better for the Legislature to place an item on the agenda specifically addressing the change in the sales tax. The Legislature can make your case to that specific change and explain that to the people. I am relatively experienced in reading and understanding these things, and I cannot make any sense out of this. I do not think the voters are stupid, either. The voters are smart people, but I cannot make any sense out of this, and I am a fairly smart person.

We do not feel the severability clause issue, section 7 on the first page, is straightforward. We feel it is an inappropriate restriction on the initiative process. The Legislature uses severability clauses all the time. There are legitimate reasons to use a severability clause. There may be some cases where mischief can be done with the severability clause, but you will have to explain those things when people attempt to undertake them in the arguments for and against the ballot question. We feel that is an inappropriate restriction. I am not sure the people will support the desire to change the language with regard to the sales tax. As soon as you tell them the reason you are changing it is to allow you to collect sales taxes on Internet sales, you may have a problem. Whether it is in this bill or in a separate bill, you would be better off to take them separately.

LYNN P. CHAPMAN (Nevada Families Education):
Actually, there were a couple of things we noticed. We were a little concerned about the sales tax. Unless you explain exactly what this is, whether you want to raise sales tax, people are going to have a problem. I agree with what Ms. Lusk said; I do not think people are going to be too happy with that unless you explain exactly what it is. It is confusing. We did have a problem with that.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce; Retail Association of Nevada):
There is a lot of spirit about solving these problems with initiatives and referendums. In that spirit, we want to support this. We have had many more conversations over the last few years about initiatives, what they mean and do not mean, how they are and are not processed and what that means, how they can be litigated and what the various effects and results can be. This at least

tries to raise the debate for you, and it also provides solutions for us so we can tie down some of the rules as they relate to these.

I want to make a couple of points on section 7. The first is if we are truly trying to live by a single subject, we should not have as much of an issue about severability. This clause would then have a major effect because, theoretically, it would have a single goal and a single purposeful set of sections and provisions which would drive toward that goal with all related provisions necessary to accomplish that goal. That should actually mean no one part necessarily stands in and of itself or without the other parts.

Secondly, we have had a long debate as we have processed some of these in the last few years. When people sign these things, it is an honored and important act, and it means something. I do not know if we can make a decision now for then, that any one provision had less dignity or more dignity than the other parts of it might have. In effect, they probably signed the thing as a whole and did not anticipate that a part of it would not exist when it was fully implemented. The only real logical result you can take from the signature on a petition carrying that through litigation is that it either stands or fails as a whole. That is the purpose of this provision. There is great logic to that because you may find that when you start parsing you cannot really decide which provision was more important to one individual than another, but they signed it as a whole, and they put it before the voters.

SENATOR BEERS:
I disagree. The earlier argument we had is if the provision is declared unconstitutional, then perhaps the rest of the question or initiative would not make sense. All this does is put it on the ballot. If it does not make sense after a piece is struck down, I think the citizens will vote it down. This does not enact it. This just puts into onto the ballot. It is just as reasonable to make the opposite suggestion, that someone signed the thing because he liked all parts of it, and if one part did not make it, he would still like the other parts. You cannot make that blanket decision up front. To err on the side of safety and the citizens having some control over our government, you would want to let the remaining piece go onto the ballot. If it truly does not make sense, the citizens will vote it down.

SENATOR TITUS:
If this were to pass, would this be three separate questions on the ballot for voter approval or would this be one question? I must be missing something; we have spent the whole day talking about one-subject rules, and we have three separate subjects in this bill.

MR. MCMULLEN:
I do not know if this is my question to answer. The major point, especially on amending the Constitution, is that each part ought to make sense to the voters. The Committee has a decision to make.

We are not always sure, exactly, the context in which the issue of severability arises. It could arise before a vote or after a vote. While you may presume, and I think it is a valid presumption, the voters can decide that without the part they either like it or do not like it, the situation could also arise after a vote, and there could be a constitutional challenge as to which part is effective with regard to the Constitution. Then, there is the argument as to whether they voted for it as a whole, or did they vote for it because they liked one part. I will just say we have had a lot of debate on it. We erred on the side of believing it was maybe smarter to set the rule one way or another. Whatever this Committee decides, it seems there was some sense to that.

I will jump to section 6; this is an important provision. Assuming these were all conjoined has some great sales value. I do not know that for sure, but it took many hours to figure out exactly why the initiative about education funding, which was on the ballot this time, did not pass. There was no campaign against it other than some arguments. It made the point to us that if you do not fully disclose where the money is coming from and where it is going to be raised, the voters react. I cannot tell you whether that was a major or a minor part of the result. What this is, to us, is a full-disclosure provision. The point made to me was that some of these initiatives, either from California or other places, are blank-check initiatives. They say what the purpose is, but they do not tell you what account it is coming out of and what the amount is. However, someone else has to fund that check. That was an interesting analogy.

Under the theory that voters need to know the full implications of what they are voting for and how it will affect them, it is extremely important, and it makes an extremely good case. Of course, it was one of the fundamental propositions relied upon in court in the Rogers case, *Rogers v. Heller*, 117 Nev. 18 P.3d

1034 (2001). That was one where they invalidated an initiative before it processed to the voters and shows the Nevada Supreme Court thinks it is important, as well.

JOHN L. WAGNER (Burke Consortium of Carson City):
I agree fully with what Senator Titus just said about this, considering three different issues, unless you want to put it under one heading called "Reform." I want to go through some of these points which were made, starting with Article 7 on the first page. If I read this correctly, amending the Constitution could be deemed contrary to the Constitution. That is kind of what it says there. To me, that whole thing should be stricken.

Line 15 on the second page says not less than 165 days. If anybody can take 120 days before the next general election and get the signatures on the ballot, particularly when they need about 80,000, more power to them. They may have to hire a whole bunch of circulators, but that helps the economy. There is nothing wrong with leaving it at 120 days. In section 4, I do not like the idea of the people voting for something, and then three years later, the Legislature turning it over. If I were the Prophet Job, I would have said the Legislature giveth, and the Legislature taketh away, and cursed be the name of the Legislature. Truthfully, I do not believe the people should be overridden in three years. Also, section 6 which is the other part of it makes two issues, right away. One of them is the issue itself, and one of them is the taxes. If you strike all of those, you do not have a bill. That is exactly what I advocate.

MS. VILARDO:
It is interesting because one of the remarks was shared with me. I totally agree, there is more than one subject in that constitutional amendment. I would like to explain why this is so. Senator Cegavske was the only Senator I found who had two bill draft requests left. The two bills I wanted to get through were S.B. 222, which made statutory changes, and S.J.R. 8. Yes, they are multiple subjects, however if the Committee, and I hope the Committee will, processes the bill, I suggest you amend the bill so each provision appears in the resolution as a separate question on the ballot. That is why I do not think I could ever define the one-subject rule. One subject could be that this was all in Article 19 of the Nevada Constitution. That is one of the most difficult things because it is in the eye of the beholder.

You asked me a question about S.B. 224 earlier. The Nevada Taxpayers Association is a nonprofit association. We are an IRC 501 (c)(4) nonprofit corporation. We were involved with the initiative process this year in advocating the defeat of a ballot question. Under the ballot-advisory-question section of law, we were required to file all of our expense reports. We filed before we had any expenses because we did not know if it was going to qualify. I called the Secretary of State's Office to find out if we were required to file. If the ballot question qualified, yes we would have had to file. It was just easier to file from the get-go. Then, I wrote a letter to the Secretary of State and asked since it never qualified for the ballot, did I still have to file the January report. The Secretary of State's Office did not get a response back to me, so we filed all the reports we needed to. It was not a big deal, but it is a point which needs to be clarified. The only nonprofits assumed to be nonprofits that do not have to file are IRC 527 political organizations. That is how they got captured paying the business tax. They were not nonprofit, but everyone else thought they were.

SENATOR BEERS:
I had a bill up this afternoon which sought to increase the fine for handicapped parking violations. Under the bill, a letter would be issued to people who have a disabled plate to verify they were in the vehicle. The intent is to try to crack down on people who buy the placards on the Internet or use someone else's placards to take up those disabled places even though they are able-bodied. That bill took modifications to five different NRS chapters. If we are going to define one subject as one chapter of NRS, we have just essentially removed the initiative process from our citizens.

CHAIR CEGAVSKE:
I am going to close the hearing on S.J.R. 8, and the only bill we have left today is Senator Hardy's bill, S.B. 428.

SENATE BILL 428: Prohibits admission of certain persons as parties to certain administrative proceedings. (BDR 18-987)

SENATOR HARDY:
That is not Senator Hardy's bill, it is a Committee introduction we introduced at the request of some individuals. There has been some confusion on this. It is my understanding there is a bill in the Assembly that handles this, and it would be used as a vehicle. Those who requested I introduce the bill asked that we

withdraw it from this Committee. I have subsequently learned from some of our Committee members that there might be a compelling reason to look at this here. Unfortunately, I have sent the sponsors home. We could hold this bill for a couple of days rather than withdraw it, so I can sort through that.

CHAIR CEGAVSKE:
Okay, then we have no action at this time on S.B. 428. Since there is nothing else to come before the Committee, I will now adjourn this meeting of the Senate Committee on Legislative Operations and Elections at 4:20 p.m.

RESPECTFULLY SUBMITTED:

_____
Elisabeth Williams,
Committee Secretary

APPROVED BY:

_____
Senator Barbara Cegavske, Chair

DATE: _____