

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

**Seventy-third Session
April 7, 2005**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:05 p.m. on Thursday, April 7, 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 Steven Horsford, Clark County Senatorial District No. 4
Senator John J. Lee, Clark County Senatorial District No. 1
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblyman Harry Mortenson, Assembly District No. 42

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Janine Hansen, Nevada Eagle Forum
Lucille Lusk, Nevada Concerned Citizens
Raymond Bacon, Nevada Manufacturers Association
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Barbara Reed, Clerk/Treasurer, Douglas County

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John L. Wagner, Burke Consortium of Carson City
Alan Glover, Clerk/Recorder, Carson City
Richard L. Siegel, American Civil Liberties Union of Nevada
Dana Bilyeu, Executive Officer, Public Employees' Retirement Board, Public Employees Retirement System
Kristin L. Erickson, Washoe County District Attorney's Office
Noel S. Waters, District Attorney, Carson City
Nancy J. Howard, Nevada League of Cities and Municipalities
Robert L. Crowell, Las Vegas-Clark County Library District
Stacy M. Jennings, Executive Director, Commission on Ethics

CHAIR CEGAVSKE:

I wanted to start with the bills in work session. We have two bills from Senator Care which are Senate Bill (S.B.) 220 and S.B. 303. He has amendments to those bills which I wanted you all to review. We will look at the two amendments, but he is not here today, so we will hold off until next week. Mr. Stewart, will you please go over the amendments on those two bills?

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

SENATE BILL 303: Revises provisions governing persons appointed to National Conference of Commissioners on Uniform State Laws to represent State of Nevada. (BDR 17-1104)

MICHAEL STEWART (Committee Policy Analyst):

Committee, you have before you the Work Session Document, which includes information on five bills ([Exhibit C](#)). The first bill I will address is S.B. 220.

You will recall that this bill governs voting by public officers. It provides that a public officer would only be able to vote in an instance where more than 50 percent of the members of the public body on which the public officer serves, were also not benefited to a greater degree than other members of the group to which they belong. It eliminates the presumption of independence of judgment of a reasonable person.

The amendments provided are shown on the third page, [Exhibit C](#). The first would amend section 2, page 3, lines 1 through lines 10, to restore the existing language in *Nevada Revised Statute* (NRS) 281.501, subsection 1. Also

amended would be section 2, page 3, lines 13 and 14, to restore the existing language in NRS 281.501, subsection 2. That amendment was proposed by Senator Raggio and Chair Cegavske. That amendment has to do with whether a person can participate in the discussion if there is a conflict they have declared. There is a big "or" in the middle of the third page of [Exhibit C](#). Senator Care had requested that language be left in. The rest of the amendments restore a lot of existing language back into the bill. The last two amendments, numbers 6 and 7, address the quorum issue. On page 4 of S.B. 220, lines 31 through 36, it says that if for some reason someone abstains from voting, the quorum is reduced on the number of people who have abstained. Senator Care had requested that section, lines 31 through 38, be deleted so there was not that provision in the law. The remainder of the bill would stay the same. The effect of that would basically take out of the law the reduction in the quorum as a result of an abstention from voting.

That is a real quick summary of the amendments. It is restoring a big chunk of language back into NRS 281.501 and removing the quorum reduction based on an abstention from one of the members of the public body.

SENATOR RAGGIO:

I again restate what I have said before. I believe that the language on page 3 in section 2, lines 11 through 16, should be retained. That is the section where someone can participate as long as they are not advocating. I gave the reason for that. I still am not satisfied on page 4, lines 31 through 37. There could be a situation where it may be unworkable if three people out of five truly have a conflict. Then, nothing would be accomplished. There has to be some way to address that kind of a situation, but I will reserve final judgment until we have a chance to work on it.

CHAIR CEGAVSKE:

Committee, let us move on to S.B. 252.

SENATE BILL 252: Revises date for primary city election and general city election in cities in certain larger counties. (BDR 24-971)

MR. STEWART:

Committee members, you remember that S.B. 252 revises the date for primary city elections and general city elections in certain larger counties. That certain larger county would be Clark County. There was no formal amendment

proposed, however, there was some discussion during the hearing regarding the use of the term "shortened," which was in the earlier part of the bill addressing general-law cities. During the hearing, I noted that pursuant to article 15, section 11 of the Nevada Constitution, the Legislature cannot provide for a term of office longer than four years when it is not fixed by the Constitution. I have included that reference in [Exhibit C](#). I actually emphasized that part of it.

Following the hearing, I clarified with our Committee Counsel on a way to address this concern with the use of the term "shortened." One suggestion was to actually provide for a rotation of the current mayors, council members and municipal judges in general-law cities into the even-year election cycle. The language later on in the bill addresses changing to the even-numbered-year election cycles in the cities which operate under a city charter. In that language, there is a sort of rotation-type language which says a certain number of council members and the mayor would be assuming office November 2006. They would participate in that election and serve their four years. Then in November 2008, the rest of the commission would rotate in. There is also language to provide for that rotation into the general election cycle for municipal judges. We believe we can craft some similar language, according to my discussion with Brenda Erdoes, Legislative Counsel, to make it apply the same way for general-law cities. This may, we think, address the concern about the "shortened" language that is in the earlier part of the bill regarding general-law cities.

CHAIR CEGAVSKE:

If you remember, Committee, it was worded either shorten or extend. The judges were concerned their term could be shortened. That was what we were trying to address to clarify that concern.

SENATOR BEERS:

I was hoping Mr. Lomax would be here, today. We had 6,500 votes cast in Clark County in the election which concluded on Tuesday. I was wondering what the dollars of expense per voter was.

CHAIR CEGAVSKE:

He told us if we could change this, it would save \$1 million.

SENATOR BEERS:

It did not sound like we had amendments. Was that proposed as an amendment?

MR. STEWART:

I am not sure that it is necessarily an amendment, but it was an option to address the "shortened" language. If you wanted to indeed fix this so we can attempt, through drafting, to roll these offices in as they come up for election, you may wish to amend the bill to do that.

SENATOR BEERS:

That creates a gradual implementation?

MR. STEWART:

That is correct. My understanding is bill drafting would probably be able to gradually roll them in like they were doing in the city-charter section of this bill.

SENATOR BEERS:

Is there a problem with immediately implementing it?

MR. STEWART:

The problem you would run into with that is you would probably want to wait until the next election cycle to begin the process. That is probably why it starts with November 2006 and then completes the process in 2008.

SENATOR BEERS:

I would not want to change it for the general election, which is coming up in two months. I do not want to be too gradual about this.

MR. STEWART:

It would begin with the election of 2006.

SENATOR BEERS MOVED TO AMEND AND DO PASS S.B. 252.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR CEGAVSKE:

We will now discuss S.B. 303.

MR. STEWART:

You will recall that S.B. 303 revised provisions governing those appointed to the National Conference of Commissioners on Uniform State Laws. Senator Care brought this bill forward to provide for reimbursement, from the legislative fund, of expenses incurred by those commissioners who attend the national conference. It also directs the Legislative Commission to appoint two members to the faculty of the William S. Boyd School of Law of the University of Nevada, Las Vegas. Each of those members would serve for a period of four years. The school of law, under this bill, would be responsible for the reimbursement of those particular appointees.

No specific amendments were offered, however, I believe the Committee members expressed an interest in reviewing the fiscal note. It is on page 8 of [Exhibit C](#). You can see that it is a \$4,000-per-fiscal-year impact and an \$8,000 impact on the biennium. That is an estimate. It should be noted that the bill does say in order to receive that reimbursement, the commissioner will have to submit a letter of intent to participate in the conference.

SENATOR BEERS MOVED TO DO PASS S.B. 303.

SENATOR RAGGIO SECONDED THE MOTION.

SENATOR WIENER:

Senator Raggio seconded the motion, and he would know if we have to rerefer. Do we have to rerefer S.B. 303 to the Senate Committee on Finance? Can we pass the bill out of this Committee?

SENATOR RAGGIO:

It is an \$8,000 effect on the next biennium. This is likely one which we would not have to send to the Finance Committee, but we will have to consider it. The staff can point that out when we do the budget for the Legislative Counsel Bureau.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CEGAVSKE:

Now we will move to S.B. 311. This was Senator Nolan's bill.

SENATE BILL 311: Revises provisions relating to reimbursement for legislators for travel and other expenses during legislative session. (BDR 17-742)

MR. STEWART:

Committee members, you will remember S.B. 311 provides for a slight increase in the maximum supplemental allowance for Legislators during a regular session and a special session of the Legislature. It increases that allowance by \$200, from \$6,800 to \$7,000 during the regular session. During the special session, it increases the amount from \$1,000 to \$1,200. There are a couple of other provisions in the bill which discuss how this functions. It authorizes the Legislative Counsel Bureau (LCB) Director to allow a Legislator to exceed the maximum amount of the supplemental allowance, if the Director determines that an extraordinary circumstance would cause the Legislator to exceed that amount.

There were no amendments proposed, but the Committee members expressed an interest in reviewing the fiscal note. It is on page 10 of [Exhibit C](#).

SENATOR RAGGIO:

This bill is one which, in my opinion, will have to be rereferred to the Senate Finance Committee if we decide to pass this bill.

SENATOR BEERS MOVED TO DO PASS AND REREFER TO THE SENATE COMMITTEE ON FINANCE S.B. 311.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR MATHEWS VOTED NO.)

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CHAIR CEGAVSKE:

The last bill we have to hear in the work session is S.B. 329. It is Senator Beers' bill, and it provides for the option of voting "no preference" for the ballot questions.

SENATE BILL 329: Provides for option of voting "no preference" for ballot question or certain offices. (BDR 24-1328)

MR. STEWART:

As Senator Cegavske noted, this bill adds an option of "no preference" for ballot questions and other offices. This bill applies now to all races for candidates and ballot questions. An amendment was discussed by several Committee members to replace the term "none of these candidates" set forth in NRS 293.269 and make "no preference" apply for that as well. Under this amendment, the term "no preference" would appear on every primary and general election ballot for all candidates and ballot questions.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 329.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR CEGAUSKE:

I am going to open up the hearing on Assembly Joint Resolution (A.J.R.) 13 of the 72nd Session.

ASSEMBLY JOINT RESOLUTION 13 OF THE 72ND SESSION: Proposes to amend Nevada Constitution to revise provisions regarding special sessions of Legislature. (BDR C-313)

ASSEMBLYMAN HARRY MORTENSON (Assembly District No. 42):

Assembly Joint Resolution 13 of the 72nd Session is a constitutional amendment which is returning for the second time. It passed in the 72nd Session, when the Assembly voted 41 votes in favor and 1 vote against and the Senate voted 21 votes in favor and zero votes against. This session, the Assembly voted 42 votes in favor and zero against.

The preamble says, "Whereas, There are currently 34 State Legislatures that have the ability to call a special legislative session when deemed necessary; and Whereas, The Nevada Legislature is 1 of only 16 state legislative bodies in the Nation that may not call a special session" It turns out that in the two-year interim, four other states passed laws saying their legislatures could call special sessions. Now there are only 12 states where the legislature cannot call a special session.

The Constitution is grounded on the principle that there are three equal branches of government: the executive, the judicial and the legislative. It never made sense to me that the Legislature can only be called into session in emergencies by the Executive Branch. Apparently, most other states feel the same way. That was the genesis of this bill. The bill is fairly tightly regulated. It requires a two-thirds majority of both Houses and sending a signed petition to the Secretary of State in order to convene. It also requires that the subject matter of any special session be highly regulated and pertain only to what the petitions say it will, unless two-thirds of the convened members decide they need to consider something else. It is a fairly straightforward bill. I would invite any questions.

SENATOR WIENER:

In section 2A, subsection 3, could you give us an example of what you had in mind with that? I do not know what the circumstance would be for that.

ASSEMBLYMAN MORTENSON:

Someone asked me that one time. What happens when the Governor wants to call a special session and the Legislature wants to call a special session? In this case, the Legislative branch has the privilege. This, incidentally, does not in any way interfere with the Governor's prerogative of calling a special session. That was the thought of that subsection.

SENATOR WIENER:

I understand that in the language. Could you think of an example?

ASSEMBLYMAN MORTENSON:

Suppose we had some tragic incident which happened and there was an emergency. Then the Governor says a special session must be called and the Legislature says a special session must be called. Who should call a special session of the Legislature? I think it should be the Legislature because they are the Legislative branch. In this case, the Legislature will call the special session and the Legislature will then dictate the agenda of that special session instead of the Governor.

SENATOR WIENER:

The Legislature controlling the agenda would be the advantage.

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SENATOR BEERS:

I am reading Article 3 of the Constitution. Section 1 entitled "Three separate departments; separation of powers; legislative review of administrative regulations" says,

The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

Your preamble would indicate that I should find the word equal there, not separate. The bill says, "Whereas, The Nevada Constitution is grounded on the principle of three equal branches of State Government"

ASSEMBLYMAN MORTENSON:

I will amend my statement from equal to separate.

SENATOR BEERS:

You cannot amend it. It has already been passed by the last Legislature.

ASSEMBLYMAN MORTENSON:

I am not talking about the bill. I am talking about my statements. Let me look at the bill. I guess the legal counsel did not catch that. Are we not equal? I do not know that.

SENATOR BEERS:

It is tough to be equal when you meet four months every two years.

ASSEMBLYMAN MORTENSON:

That is a moot question.

JANINE HANSEN (Nevada Eagle Forum):

I would point out for Senator Beers that on the top of page 2 of A.J.R. 13 of the 72nd Session, it says "Whereas, The Nevada Legislature should be authorized to operate with a reasonable degree of independence from

the Executive and Judicial Branches as consistent with the separation of powers principle” That language is contained within the preamble.

We supported this bill last Session because it is so important. During the interim, before the last Session, Lynn Chapman and I spent 11 months working on the model for the Emergency Health Powers Act. We were very concerned it was mandated by the federal government. It would have, essentially, made a dictator out of the Governor. It would have allowed him to confiscate food, fuel, clothing and vehicles without the Legislature having anything to say about it. It is very important for the rights of the people and those concerned that they are represented. This is an important way of balancing that power—especially after that experience. We did have a good experience with that bill in the Legislature. We fixed it so it was a lot better than when it was introduced and better than what the law was originally.

I do support this because it gives the Legislature an equal voice. There are enough safeguards in it as well. We have some significant safeguards in terms of the agenda; two-thirds of both Houses have to support the calling of the special session. There are those issues. I really do think there may be times when the Legislature may need to call a session when the Governor is not willing to.

LUCILLE LUSK (Nevada Concerned Citizens):

We were here in support of this bill last Session. I will not belabor it much. We do think the Legislature should be in charge of the agenda for a special session. The Legislature needs to have that authority in order to be an equal branch. Incidentally, equal means equal in power, not necessarily equal in time. The Legislature has tremendous power, if it chooses to use it. Whatever you do during these four months can last for at least two years.

CHAIR CEGAVSKE:

We will now close the hearing on A.J.R. 13 of the 72nd Session. Committee, we need to look at S.B. 329. It has been brought to our attention that we had a section of it where there was some oversight. We need to go back and revisit it.

SENATOR RAGGIO MOVED TO RESCIND THE PREVIOUS ACTION
TAKEN ON S.B. 329.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. STEWART:

Renee Parker pointed out to me that there was an issue in S.B. 329 that required the "no preference" vote to not be recorded. The computer systems do not allow for that. The portions of the bill which address that are in section 2. It says that only votes cast for the named candidates may be counted and listed. They have suggested that we strike that. On the very last page, there is a requirement that the mechanical voting system indicate votes against all candidates. My understanding is that the systems report the vote for every vote. That is the one thing they requested we include as well.

CHAIR CEGAVSKE:

Is the sponsor of the bill okay with the recommendations?

SENATOR BEERS:

Yes.

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 329.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CEGAVSKE:

I will now open the hearing on S.B. 228.

SENATE BILL 228: Revises provisions relating to explanations and condensations of initiatives and referendums. (BDR 24-913)

SENATOR STEVEN HORSFORD (Clark County Senatorial District No. 4):

I have passed out an amendment ([Exhibit D](#)) to S.B. 228. It basically changes the bill as a whole. The amendment has been prepared by the LCB, so there is also a legislative digest on page 4 of [Exhibit D](#), which talks about the purpose of it. The reason I brought this bill forward is because during the course of the

election, I had many constituents call me as well as other candidates. They simply could not understand the ballot questions which were on their ballots, nor did they understand the explanations on those ballots.

I tried to work with the LCB to develop a bill which would address some of these concerns. As we were implementing it, this amendment came forward. The amendment deletes section 1 and also section 3 through section 10 of the bill. It also amends section 2 to make the Secretary of State consult with the Attorney General, as they are doing now, on the development of the arguments and rebuttals for and against a bill. We are also proposing the Secretary of State should work and consult with the Department of Education to ensure that the questions and the explanations are written in easily understood language. It also requires that those questions developed by the LCB are reviewed with the Department of Education, for the same reason.

By making these amendments, clearly the intent is to have the Secretary of State and the LCB work with the Department of Education, based upon their background and their ability to create questions and explanations the average voter can understand. They have been doing this successfully. I know Senator Wiener has championed several efforts on this, as well. There is an easy voter guide which has been established. That is currently in place and is being distributed, but the problem is it is not being distributed in a manner so that all voters get this guide or even have access to it. I would like to see how we can take what is developed, in consultation with the Department of Education, and incorporate that as best as possible into the development of these questions. Essentially, that is what the new bill does. It is rather simple, and is something the average voter in Nevada is asking for.

Several of these bills which came out now have to be revised based on the intent. These amendments will address the intent I initially had when I proposed the bill.

CHAIR CEGAVSKE:

In the new language, you have just added that they consult with the Department of Education.

SENATOR HORSFORD:

My understanding is that there are some questions the LCB develops and some the Secretary of State develops. We are just asking that both entities consult

with the Department of Education on the development of those questions and explanations in order that they be easily understood.

SENATOR BEERS:

How would you feel about, rather than replacing the Attorney General on amendments and statewide measures, adding the Department of Education to the Secretary of State and the Attorney General? I am not sure the Secretary of State has the legal background, except in areas they are supposed to be experts. There is a wide range of law that the Secretary of State does not deal with.

SENATOR HORSFORD:

Under the amendment, [Exhibit D](#), section 2, page 4, it is intended to have the referendum prepared by the Secretary of State upon consultation with the Attorney General. It does not change that. I understand that is what is currently taking place, but the statute needed to repeat it, based upon addition of the Department of Education.

SENATOR BEERS:

So you are adding the Department of Education?

SENATOR HORSFORD:

That is correct.

CHAIR CEGAVSKE:

We will close the hearing on S.B. 228 and open the hearing on S.B. 230. Afterwards, we will have the public testimony on both bills.

SENATE BILL 230: Revises provisions relating to provisional ballots.
(BDR 24-1252)

SENATOR HORSFORD:

Senate Bill 230 is a bill which requires the Secretary of State to establish procedures for the processing and counting of provisional ballots in the State of Nevada. The procedures adopted must ensure a candidate or a voter will have recourse after the count to demand and receive a recount or to contest an election. The procedures must also include standards by which a candidate, political party or voter may observe the processing and counting of provisional ballots with safeguards for preserving the security, confidentiality and integrity

of any personal information collected in the course of processing and counting the provisional ballots. This bill authorizes a provisional ballot to be counted even though it is cast at the wrong polling place, if it is otherwise allowed under existing law.

I would like to share some examples which occurred during the last election so the Committee can understand why this bill is necessary. First, there was a gentleman who was purged from the voter rolls in 2000. He was not allowed to cast a provisional ballot because the polling location the gentleman was at did not allow for provisional ballots. There was another example of a woman who received an absentee ballot, but did not mail it in. She decided to go to the polls and was forced to vote provisionally. She was never offered to sign an affidavit that she did not mail in her ballot, which is allowed by existing law. She should have been able to vote in the polls, but she was not.

There were numerous other incidents of people who thought they were registered, and were even able to produce the receipt from the bottom of the registration form, but they were not on the rolls the day of the election. They were allowed to vote provisionally, but it is unknown whether those votes were actually counted. There were also numerous, and I am talking hundreds of people, who were legally registered to vote, but went to the wrong polling location. They did not have the time to get to the other location, and were forced to cast a provisional ballot. Again, it was unclear whether or not those votes were counted. There is at least one instance of a voter who could not initially be found on the rolls and had to vote provisionally. After she cast her provisional ballot, the election official found her name on the rolls. She was allowed to cast a real ballot. It is unclear how many other people were on the rolls, but could not be found.

These are just some of the examples. These are real people, but I am not revealing their names out of respect for their individual circumstances. These are real people who were disenfranchised. It was simply because we do not have very clear guidelines on provisional ballots, should they be necessary to be counted. In my opinion, every vote deserves to be counted in Nevada. All of us as elected officials agree the election process needs to be fair and consistent, regardless of party or office. Currently, there is very little oversight and procedure related to provisional ballots. Each county does it in its own manner. While local registrars will continue to make decisions on who may or may not be eligible to vote, those decisions need to be based on State law and regulations

adopted by the Secretary of State. Senate Bill 230 looks to address the shortcomings which currently exist and continue to protect the rights of every voter in Nevada. That is the intent of S.B. 230.

CHAIR CEGAVSKE:

I will now open up the floor for public testimony on S.B. 228 and S.B. 230.

RAYMOND BACON (Nevada Manufacturers Association):

The changes which came with the amendment to S.B. 228, which I have not had a chance to read, remove our objections. I served on a couple of the committees during the last election to write the ballot questions. To me, they are nonpartisan issues, typically when you change the Constitution. Our primary objection was the fact it was specific in the original bill that it had to be from political parties, not from people who were looking for what was best for the State. That is now changed and corrected, so that removes our objection.

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

With respect to S.B. 228, we fully support Senator Horsford's bill as amended. We appreciate him trying to bring something forward. It is a similar concept to Senator Wiener's S.B. 227 to help the Secretary of State's office get additional help so the explanations and condensations are more understandable to the general public. Some of the attorneys writing them use legalese which does not always make sense to many of the voters, including me, sometimes. We appreciate S.B. 228 with the amendment. We think it will be a good effort to work with the Department of Education. They did a good job helping us with the easy voter guide, and we are hopeful this will help the voters understand the questions better.

With respect to S.B. 230, the only comment I will make is that currently, every voter who voted provisionally was entitled to find out whether his or her vote was counted. We had to set up, per the Help America Vote Act (HAVA), a free access system where every voter was provided a toll free number. When the person called the number, the person was given an identifying number. They had that number to call to find out whether their ballot was cast or not. The State spent \$60,000 of HAVA money to do that statewide. Those procedures are in place because they are required by HAVA. We are happy to adopt other procedures. The last election cycle was the first time we ever had provisional voting. We do recognize that we need to adopt procedures and work with the

clerks to discuss some of the problems which occurred and adopt some better procedures across the State as a whole.

BARBARA REED (Clerk/Treasurer, Douglas County):

My concerns and the statewide association's concerns have been removed with the amendments suggested on S.B. 228. On S.B. 230, every voter was issued a receipt when they did vote provisionally. It had the toll free number that was provided to the Secretary of State's office to call in and see if that vote was cast. They were given that information and were able to do that. My biggest concern with this is allowing the people to observe the process. We have a pretty lengthy process to research to see if a voter's ballot is going to be cast. We literally have to go through the voter registration applications which are current, the past ones and the roster books. It is a pretty lengthy process, and it involves not just the one location, but our storage records, archives and the current files. I honestly do not know how we would be able to accommodate that. Everybody is given the receipt, and they are able to find out if they can vote. We do know that it was the first time we had provisional voting. We do know we need to make some improvements with it, but we have been working with the Secretary of State's Office, and we think that can be accomplished.

CHAIR CEGAVSKE:

Would you work with Senator Horsford on any language or recommendations you suggest on S.B. 230?

Ms. REED:
Certainly.

Ms. LUSK:

With regard to S.B. 228, I am not sure I am clear as to what the amendments mean because I have not seen them. If they mean the citizen committees of pro and con argument writers in place for local governments remain in place and are not disturbed, and the only change is that the Department of Education works on the explanations and the condensations, then we are fine with that.

CHAIR CEGAVSKE:

That is what we had to have explained to us a couple of times too. That was my concern and it was clarified. The Department of Education would ensure the readability of whatever the Secretary of State's office wrote. The LCB and its

Legal Division also have to consult with the Department of Education. That is the only change that Senator Horsford has brought forward on S.B. 228.

Ms. LUSK:

We are fine with that. I did have to smile at Senator Beers' comments earlier that perhaps the Secretary of State did not have the legal background. What Senator Horsford may be trying to accomplish is getting away from the lawyer language instead of having it.

In regard to S.B. 230, we have no problem with the Secretary of State writing procedures. We need good, clear procedures; we need to avoid the confusion. Our concern is with authorizing provisional ballots to be counted even though they are cast at the wrong polling place. That seems to us to be a recipe for a lot of confusion. We would rather see the procedures written closely and make sure people are informed of how to reach their proper polling place. It was mentioned that literally hundreds of people were at the wrong polling place; you see where the confusion would come in. It also seems that where current law is not being followed, more law, probably, does not help. It is just as important to have the procedures be clear and require some personal responsibility for appearing at the correct polling place.

JOHN L. WAGNER (Burke Consortium of Carson City):

I am a little confused as to what the amendment was on S.B. 228.

CHAIR CEGAVSKE:

Everything in the bill, as you see it, goes back to normal. The only exception is that the Secretary of State shall consult with the Department of Education to ensure the condensation and the explanations are written in easily understood language. Then, when you go to section 2, subsection 3, you have the same language with the Legal, Research and Fiscal Analysis Divisions of the LCB shall consult with the Department of Education to ensure that the condensations and explanations are written in easily understood language. That is the only change he is now proposing.

MR. WAGNER:

I assume the salary of \$80 per day is also gone. I would hope so, because I do this for free and I have done others for free. I do not think you should be paid to advocate this.

CHAIR CEGAUSKE:

The fiscal note has been taken out.

MR. WAGNER:

I am not sure I want the Department of Education in there. I think it could be done by the Secretary of State and the Attorney General, but it is not a big objection. I generally support the bill as it is written. I am also okay with S.B. 230.

MS. HANSEN:

Our major concerns with S.B. 228 have been removed. We were very concerned about having the political parties write the ballot questions. There might be six people all on the same side. We were definitely concerned with that. This was Assemblyman Mortenson's concept, and it has worked very well. I do have one concern about the amendment to S.B. 228. When I served on the committee for writing the fluoride question, there was a lot of scientific information with the issue. We worked very hard, as the committee, to provide information in a limited amount of space to persuade people about one particular point of view. I am a little concerned if the Department of Education is going to be reviewing all this. The committees ought to be able to check that work to make sure their intent in writing those questions is not changed by the Department of Education. It certainly could be. The committees only have a certain number of words allowable. Although it is good to write it in an understandable language—most of the committees want to do that—I feel those who invested their time and energy on a particular point of view should review those things.

Maybe I am confused. Ms. Parker just told me it is not the arguments the Department of Education would change, it is just the language of the words. That is fine. I am sorry. That was a lot of words for nothing.

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):

I am a cosponsor on both of these bills. I was trying to get up to speed with the amendments. Conceptually, they both work and make the bills better. If you remember last Session, we did the provisional adoption. We were very worried about how that would be handled. We chose to only do what the federal law required, which was to just allow it to be for the federal races. We did not have that large of an impact, so Senator Horsford and I have collaborated on some

legislation to broaden the provisional ballot. It should work pretty well for making sure the people are not disenfranchised.

ALAN GLOVER (Clerk/Recorder, Carson City):

I am speaking on S.B. 230. This bill is only part of a puzzle because there are quite a few bills dealing in this area. From the clerks' point of view, we are looking to this body to make some decisions on which way you are going to go on provisional voting, whether it should be counted only in the precinct, or if other votes cast in different places should count.

I have given the Committee a handout which comes from a North Carolina court decision ([Exhibit E](#)). The first part of it really deals with North Carolina law, which is totally irrelevant. On the second page, there is a quote which deals with what our problems are on the local level. It speaks to how important the precincts are in managing an election. From our point of view, we prefer the precinct-based way of handling provisional voting. Specifically in the bill, and we are looking forward to working with Senator Horsford on this, on page 3, section 2, subsection 3, lines 30 through 32, it is our opinion and that of the Clark County Registrar of Voters that you could vote provisionally in any precinct in the State of Nevada. That is something we probably could not handle because we do not have those records to go back and check. That could be corrected technically. If this Committee decides to broaden provisional voting to something other than precincts, then the county would certainly make it technically possible for us to do.

CHAIR CEGAVSKE:

Would that add a fiscal note to this?

MR. GLOVER:

I do not think so.

SENATOR RAGGIO:

I did not know what your question was pointed to. I do not think it is a fiscal problem. What you are saying is the language is so broad that somebody who was absent from Clark County could cast a vote in a precinct in Elko. That would have to be counted under this language. Is that what you are saying?

MR. GLOVER:

The Senator is pointing out in S.B. 230, section 2, subsection 2, subparagraph (a), "The county and city clerk shall not: Include any provisional ballot in the unofficial results reported on election night; or Open any envelop containing a provisional ballot before 8 a.m. on the Wednesday following election day." I guess that is Senator Horsford's point, lines 30 to 36, "...regardless of whether a vote is cast ... if the county or city clerk determines that the person who cast the provisional ballot was registered to vote in the election, eligible to vote in the election and issued the appropriate ballot for the address at which he resides." That is our point. We could not give them the appropriate ballot for that address. If a Clark County resident came to Elko, we could not do that. Therefore, we do not have to do that for them.

MS. PARKER:

Some of the provisional ballot language has been confusing. Section 2, subsection 3, subparagraph (a), resolves a problem Mr. Glover was concerned about. I thought it did the same thing he thought, originally, but it specifically provides that the clerks cannot count the provisional ballot if they determine that the person who cast the ballot was issued the appropriate ballot for the address for which he resides. If you get the wrong ballot or are in the wrong congressional district, you are not going to get a provisional ballot for the address for which you reside. So, they do not have to count it.

For example, a person is in Washoe County. Congressional District 2 overlaps Washoe County and part of Clark County. The person may have the Congressional District 2 ballot in Clark County. Mr. Glover is saying that we will have the ballot with the right Congressional District. If you leave the provisional ballot to federal races, they will get the correct ballot in Clark County, and Larry Lomax, Registrar of Voters for Clark County, may have a problem verifying a Washoe County voter who happened to appear in Clark County. That is only going to happen in that one Congressional District. Most of the time, if it is the wrong address, they are not going to have to count the provisional ballot; they are going to give the voter the wrong ballot. Mr. Glover is not going to have a ballot for Congressional District 1, which is all of Clark County. Anybody who comes from Clark County is going to get a Congressional District 2 ballot, which is going to be the wrong ballot for their residence, so he is not going to have to count it anyway.

It does not pose the problem except potentially in that little bit of Congressional District 2. If you adopt this language, you may have that issue. You may want to specify it has to be in the correct county. I do not know how Senator Horsford feels about that, but it does not have the implications that Mr. Glover is worried about, especially if you expand it beyond the federal races for provisional ballots. Then, nobody who shows up in Clark County who votes in Washoe County is going to get the correct ballot, anyway.

MR. GLOVER:

I am a little more concerned now. I had to make some assumptions here. If this is under present law and you can only vote in a federal election, it is much easier if you extend that to all races. The point Ms. Parker was making is we do not count the vote, but which ballot do we give them? If a person is a resident of Clark County, but shows up in Elko and gets to vote a complete ballot, do I give them any ballot to vote? Should we tell the person they can vote, but it will not get counted? We do not know which ballot to give them. This is very confusing, and we are looking for some direction from you. We can work it out.

CHAIR CEGAVSKE:

Senator Horsford, there is a little more work to be done on this. Clearly, I am, as the Chair, a little confused. It is very complex, right now. Can you work on this and bring us something?

SENATOR RAGGIO:

I am interested in your response, but I am picking up on what Mr. Glover had to say. What happens if someone is truly entitled to vote in one Assembly District, but goes to the wrong voting place in another Assembly District and casts a ballot? Some people on that ballot the person is entitled to vote for. Some of the people on the ballot the person is not entitled to vote for. How do you handle that situation? I really am at a loss. I can really see all kinds of mischief coming out of that. If enough of that happens, the losing candidates in an Assembly race are going to say they were entitled to those votes. That is just one scenario, but there are other races, too.

CHAIR CEGAVSKE:

Everyone needs to look at page 4 of S.B. 230. It says, "A provisional ballot must not be counted if the county or city clerk determines that the person who cast the provisional ballot cast the wrong ballot for the address at which he resides." Does that take care of that issue Mr. Glover?

MR. GLOVER:

Counting the vote is one issue, but which ballot do we give them?

CHAIR CEGAVSKE:

What did we do the last time?

MR. GLOVER:

If you stay with present law and only allow people to vote for federal offices, it is really easy, because everybody, at least in the northern part of the State, gets to vote for the President, the U.S. Senate and the U.S. House of Representatives seats. In Clark County, they must make the distinction between the three House seats. If you extend it to everybody, it becomes much more complicated. Senate Bill 230 does not do that, the other bill will. Under present law, it works pretty well.

SENATOR HORSFORD:

I have not proposed anything other than what is in S.B. 230. I do not know the other bills which are being discussed. As those discussions continue, if that provision comes up, then yes, the Secretary of State will have to work out those provisions. I agree we need to make sure every vote is counted, but that is not what I have asked for in this bill. This is for the federal offices. We had people who could not vote for the President of the United States, but they had proof they had registered. There was no process for them to cast a provisional ballot, and in some cases, when they were given a provisional ballot, there was no guarantee that it was counted. That is what this bill seeks to address.

MR. GLOVER:

What we did was we created, at least in Carson City, a special precinct for these federal races, so they could be counted separately and could be identified. We did not have to go back and identify they were in precinct 101 at 210 North Carson Street or something like that. So, it made it easy to do. With touch-screen voting, every place had the code to put in for provisional ballots. We plugged that in and allowed those people to vote, and then we determined whether they were eligible. We had about 25 or 30 people vote provisionally. We counted five of those votes, four of which were because they brought in their identification. That fifth vote we truly should have had on the rolls, but we did not. I believe that is what Mr. Lomax did in Clark County. He created three

different precincts. Then, Mr. Lomax let the person vote provisionally for the Congressional District the person went into, which was determined by the person's address.

SENATOR RAGGIO:

This I understand. If we were able to do this under existing law, then why do we need S.B. 230? If your answer is that we need to specify it, why do we not just say that? The clerks should set up a special precinct. Why do we need this bill if we can already do what Mr. Glover is saying? It apparently worked.

MS. PARKER:

We did it that way because when we put the provisional ballot procedures in the law, because of HAVA, we did not know how it would be interpreted and what challenges we would get. All Senator Horsford's bill does is clarify the procedure the way we had interpreted the law last election. We got some challenges saying people went to the wrong polling place and we let them cast a provisional ballot. It was counted because the Secretary of State interpreted that as long as the person was in the right Congressional District, based on the way the law was written, it should be counted.

Senator Horsford's bill clarifies that it also means the right Congressional District, but the wrong polling place. We could be subject to a challenge on that. We interpreted the way the law reads now to say if a person was given the ballot for the address for which they reside, the clerk must count it as long as they received the ballot for the correct Congressional District. We did get people saying they were going to challenge that because if they went to the wrong polling place, the law does not specifically provide that it should have been allowed to be counted. I agree with you. I think it is there; we thought it was there. Senate Bill 230 would just clarify that if the person is in the wrong polling place, as long as the person gets the ballot for their address, it can be counted. That is not clear. It was something we went through; we got some assistance from the Attorney General's office, and we interpreted it that way.

That is why I came up here, originally. I wanted to show Mr. Glover that the "address at which the person resides" language was not changed or taken out. I knew he was talking about other proposals which are out there to change that, but this bill does not change the process. It enhances the ability to go along with the procedures we did adopt.

SENATOR RAGGIO:

How come I understand it until you explain it? I am not putting you down. This applies only, and should apply only, as the existing law does, to a candidate for federal office. It is not intended to go beyond that. The procedure that Mr. Glover identified, you are saying, is what S.B. 230 is intended to allow. I agree with the Senator's goal, I am just not clear on the necessity for all the language which is in this bill. Why is all the language of lines 32 to 42 on page 2 of the bill, and lines 1 through 4 on page 3 necessary?

SENATOR HORSFORD:

I have worked on polling day. Let me give the big picture. In one instance, a candidate or an organization called into a certain area of the community and told them their polling location was one place, but in reality, it was somewhere else. Therefore, a large number of people went to the wrong polling location rather than where they otherwise would have gone as directed by their county registrar. It caused great confusion. When the person went to the wrong polling location, the pollworkers said the person was not registered to vote at the location. There is, and the Secretary of State and several of the county registrars did have, a process in order for people to be counted. There was not a process for how the monitors at those polling locations were able to watch that procedure or how the provisional ballots would then be counted and whether or not, if the election was close enough, how that procedure would be counted.

This bill strengthens what the Secretary of State and the county registrars tried to do, but it was not uniformly directed by statute. Section 1, subsection 2, paragraph (o) clearly states, "The procedures for the processing and counting of a provisional ballot cast" Then, in subparagraph (1) and subparagraph (2), it prescribes what that means. Under section 2, subsection 3, the reason the language, "regardless of whether a voter cast a provisional ballot at the appropriate polling place ..." is important is because of the scenario I just gave you. People were misinformed and misled about where they needed to vote. That was on purpose because of the tight election we were under. By telling people the wrong place to vote, and with the time frames running out on Election Day, if the people did not show up at the right place, then they were disenfranchised with regard to their ability to vote. That is why that language is important.

SENATOR RAGGIO:

On page 3, with the reference to the language in section 2, subsection 2, how does that apply? Does it nullify the language on page 4? Is that still valid language? It cannot be counted if it is determined the person cast the wrong ballot for the address for which he resided. Is that still applicable?

SENATOR HORSFORD:

The way I read that is if a person gives misinformation as to where they legally reside and are eligible to vote.

SENATOR RAGGIO:

That is still the law. I am not trying to understand how they mesh. The people still have to cast their ballots at the address for which they reside, but if the person goes to the wrong polling place, the vote will still be considered a provisional vote if it meets the other tests.

SENATOR HORSFORD:

Correct.

RICHARD L. SIEGEL (American Civil Liberties Union of Nevada):

We were living through this process for about four months during and after the election. This was a daily issue for the American Civil Liberties Union of Nevada (ACLUN). We have three goals we would like to get into this bill or the other bill which is starting in the Assembly. I hope you can amend these goals into this bill.

The first is already in here, and that is the goal of uniform State policies through the Secretary of State's Office. We did not function with clear, uniform State policies. Frankly, we had rulings from the Clark County registrar of voters that we sought to get overruled by the Secretary of State's Office with some success. We were operating without even the clear idea of who had supremacy in terms of making rulings on provisional ballots. At one point, the Clark County registrar of voters did not want to give out provisional ballots to people who they felt should have been in their proper polling places. We got a ruling that they had to get the provisional ballots out. We want uniform policies, which S.B. 230 speaks to.

The other two points I am going to make, the bill does not presently speak to. I am requesting amendments which would address that. These are among the

highest priorities the ACLUN has at this Legislature, however we get it. The first of these is that in NRS 293.3081, line 3 has the word federal in it. We propose to amend it to strike the word federal, so that provisional ballots apply to all elections in Nevada.

SENATOR RAGGIO:
You have heard the problems with that.

MR. SIEGEL:
I know, and I will speak to that. Forty-four of the fifty states have adopted uniform state and local election and ballot questions, if they have them. We are disenfranchising most Nevadans from most elections with provisional ballots. We are talking about, as I understand it, 5,000 to 7,000 people. The "federal" is just so terribly important in striking it. We had stories at our first hearing; there were people who cared only about the medical malpractice issue. We had doctors and lawyers. They had to deal with provisional ballots. They came to vote and could not on the medical malpractice under a provisional ballot. They were not necessarily there primarily for the federal elections. The people who are represented in this building could not be voted on. We are talking about many thousands of people.

SENATOR RAGGIO:
Is it your suggestion that a statewide ballot issue should be made available? That would cover the constitutional amendments. Or is it your contention that it should apply regardless of whether an office or an issue on the ballot is local or statewide?

MR. SIEGEL:
I am going to say in my other amendment, the person should be in the right county. The language presently has reference to jurisdiction. The jurisdiction is the county. The people here are the county registrars. You have three choices, and this is an amendment I am proposing. We should go by county. There are three alternatives for counting provisional ballots, precinct, Congressional District and county. In Ohio, they go by precinct, and they counted very few provisional ballots. Those states which went with county counted the most provisional ballots. Those like Nevada, which somewhat arbitrarily decided it should be Congressional District, had a result somewhere in the middle. We want county.

The implication of this would be in Clark County. Some people literally just went to the wrong polling place. Under the Congressional-District rule, they could be at the next door polling place in Clark County at the wrong congressional district, and it does not count. In Washoe County, it counts anywhere because everybody in Washoe County is in the same Congressional District. To get the optimal result of enfranchising everybody in Clark County, who legitimately deserves to vote because they are the only people who are going to get through the hoops, it should be done on a county-wide basis.

SENATOR RAGGIO:

Are you suggesting that in Clark County, where there are three Congressional Districts, that if someone goes to the wrong polling place, they should be allowed to vote for a United States Representative even though they do not live in that candidate's district? That is what it sounds like.

MR. SIEGEL:

I spoke to Clark County Voter Registrar Larry Lomax, and I spoke to the Secretary of State's office on this. They have the hardware and software to allow them to differentiate the vote. This is what Mr. Lomax told me in direct conversation during the election process. For example, anybody in the wrong Congressional District during that election, Mr. Lomax had the capacity to count their vote for President, Vice President and U.S. Senator, but not for U.S. Congressmen, which they were not legitimately entitled to vote. We have the capacity to do that.

SENATOR RAGGIO:

That clears up my question. You are not suggesting that somebody who is in Mr. Porter's district who goes and votes in Ms. Berkley's district should have their vote count. They would count it for the President and other votes which cut across all districts.

MR. SIEGEL:

This assumes the hardware and the software are there. I was told during the election that it exists. Whether we count it at the county, Congressional District or precinct levels can determine whether 10 percent or 90 percent of the legitimate provisional ballots are counted. Those are the points I wanted to make.

VICE CHAIR RAGGIO:

Since there is no one else who wants to testify on S.B. 230, I will close the hearing on both S.B. 228 and S.B. 230. I will now open the hearing on S.B. 346.

SENATE BILL 346: Revises provisions relating to Legislators' Retirement System. (BDR 17-970)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

I brought a bill before you I would like to discuss and possibly interest you into changing a certain law we have. Senate Bill 346 does not remove the retirement plan in any way from anyone who wants to participate. It is just an opt-out provision we can have as Legislators. The bill basically says in section 1, subsection 1, "A Legislator may, within 30 days after he is first elected or appointed to office, elect not to participate as a member of the Legislators' Retirement System by submitting a written notice thereof to the Board and the Director of the Legislative Counsel Bureau." Section 2 also says the same thing, but it is your second opt-out provision.

Currently, we have entered an era of term limits. The maximum a person could have gone in the old system was 30 years. Now a Legislator can only serve 12 years as a State Assemblyman and 12 years as a State Senator. The maximum anyone will ever get is 24 years. To be involved in a retirement plan and to be able to access it, you have to have 10 years of service, be 65, or there is a disability option, and you are no longer a Legislator. For year one of service, a Legislator gets \$25 a month given to him or her. The maximum contribution a Legislator could have at their retirement would be \$750 monthly towards their retirement at that age. If a Legislator loses his or her election or elects not to run, they can notify the retirement plan and get a full refund of their 15 percent gross contribution that they made. They will only receive the 15 percent gross contribution, there is no interest accrued on this at all. Currently, there are 60 active Legislators in the plan, 51 retirees and 11 beneficiaries. Three Legislators opted out from the Legislative Retirement Plan due to already being involved in the Public Employees' Retirement System (PERS) system because they were school teachers.

Part of the reason I brought this bill forward is that since early on in my life, I have learned that I was responsible for my own retirement. There is something called the Rule of 72, and if you divide the interest rate into 72, it will tell you

how many years your money has before it will double. I brought you some handouts today to give you an idea, if you were a Legislator who wanted to be responsible for their own retirement. If a Legislator were to take their 15 percent gross contribution and put it on their check and put it into their own individual retirement account (IRA) or whatever pension plan they might want, they might be able to do better for themselves. The first handout I have is about the story life tells ([Exhibit F](#)). There are 100 young men at age 25. Statistically, at age 65, 36 have passed away, 4 are independent for life, 5 are still working at that age, 54 are dependent and 1 is rich. If you look at this and you say I just would really like to be in the top four or five, but you are going to be retired someday, this tells you that you can actually put yourself in a class of people by what you do.

SENATOR LEE:

This next handout is something I picked up years ago ([Exhibit G](#)). It shows a man, 18-25 years old, saying, "Me invest? Are you kidding? I am just getting my education. You cannot expect me to be able to invest now. I am young and I want to have a good time. After all, I will be in college for a year or so. If and when I get out of college, I will start investing." That is the mentality that a young person has. At age 25-30 the person says, "You don't expect me to invest now, do you? Remember I've only been working a few years. Things will be looking up soon and then I'll be able to invest. Right now I have to dress well in order to make a good impression. Wait till I am a little older. There is plenty of time." A person aged 35 to 45 says, "How can I invest now? Married, children to care for why, I never had so many expenses in my life. When the children are a little older, I can start thinking about investing." Someone aged 45-55 says, "I wish I could invest now, but I just can't do it. I have two children in college and it's taking every cent and more to keep them there, I've had to go into debt the last few years to meet the college bills. But that won't last forever, and then I can start investing." A person aged 55-65 says, "I know I should be investing now, but money is tight. It's not so easy for a man my age to better himself. About all I can do is hang on. Why didn't I start to invest twenty years ago? Well, maybe something will turn up." Finally, a man aged over 65 says, "Yes, it's too late now. We are living with our eldest son. It isn't so nice, but what else can we do? We have Social Security, but who can live on that? If only I had invested when I had the money. You can't invest after there is no income." My goal on that is to tell you life is marching on. What you do with your money will have an extreme benefit for you or it will show negligence on your part to learn financial skills earlier in life.

The third handout shows you that people can earn a fortune in their lifetime ([Exhibit H](#)). You can see here that if a person makes \$20,000 a year here is where they will be. I have a lot of wealthy friends who are two paychecks away from losing everything they have. It is not what you earn which counts, it is what you keep. The last handout I have is a time and consistency chart ([Exhibit I](#)). It just says that if a person starts now saving, the money could grow to be something. I also brought one final handout that Dana Bilyeu may use ([Exhibit J](#)).

The idea of just showing you these reports is that there are certain people who come to the State Legislature who are probably sophisticated enough to invest their own money and do something rather than leaving it in this program which gathers no interest over the years. We had a wonderful Assemblyman, Assemblyman Bob Price, who retired. I visited Mr. Price about his retirement. He said that his retirement after 30 years just pays for his health insurance every month. My goal is to say that if someone is really trying to set up a retirement plan, to take the money that they already set in this bank and put it somewhere where it might be able to work harder.

VICE CHAIR RAGGIO:

I was only going to comment that Senator Lee made a very good argument for President Bush's proposal for Social Security private accounts.

CHAIR CEGAVSKE:

In section 1, subsection 1, it says, "A Legislator may, within 30 days ..." Is that the only time that a Legislator could withdraw?

SENATOR LEE:

That is the first opt-out time. Ms. Dana Bilyeu will contact you and ask if the Legislator wants to do this or not. The second opportunity with this bill is that a Legislator can participate in this plan by sending a notice at any time. You in your years right now may say you like what I am talking about and may start doing your own retirement plan instead of utilizing this plan. They would not take any more money out of your paycheck and just put it in a check for you. Then you can just start your own IRA, if you want.

CHAIR CEGAVSKE:

Now?

SENATOR LEE:
Yes.

DANA BILYEU (Executive Officer, Public Employees' Retirement Board, Public Employees' Retirement System):

I have my prepared remarks and have given them to you ([Exhibit K](#)). The retirement board has not taken a position on S.B. 346; however, staff will be recommending a neutral position to the retirement board. Senate Bill 346 was sent to our actuary to review the fiscal impact to the Legislative Retirement System. The actuary has indicated that due to the level dollar payment which is made currently by the employer contributions to the plan, this particular bill will not have an effect on the payment of the unfunded accrued liability of the Legislative Retirement System.

In 1985, the Legislators' retirement law was amended to provide for employer contributions by the State of Nevada. That would be the amount that is actuarially equivalent to fund the plan over the amortization period established for that plan. Currently, that contribution pays part of the normal costs for the Legislators who are accruing service in the Legislative Retirement System. The other part is funded by the 15 percent that is deducted from the Legislators' pay, for those who are participating in the plan. Of course, the amortization payment I just mentioned is made in the lump-sum appropriation to the Legislators' retirement system during a Legislative Session. In fact, we have received that payment already for the coming biennium from the Legislative Counsel Bureau, based upon our actuary evaluation.

There already is one opt-out provision which is within NRS chapter 218. That is for public employee Legislators who are able to opt out of the Legislative Retirement System currently to remain in PERS. They do so at their own expense. They pay their own contributions to the retirement system to establish service credit in the regular Public Employees' Retirement System. The way S.B. 346 reads, it would just provide a second voluntary opt out for individuals who did not want to participate in the Legislative Retirement System. The actuary has indicated that if Legislators opt not to participate in the Legislative Retirement System and take their contributions out, that, in essence, extinguishes the liabilities associated with those Legislators. It does not have a net negative effect on the retirement system because we are extinguishing the liabilities associated with those Legislators as they remove themselves from this particular plan. In the most extreme case, if all Legislators opted not to

participate, the plan would basically be treated as a closed plan. The only thing which would remain to be funded is the unfunded liability of the program for those who have vested benefits in the program today. From an impact to the system standpoint, there is not a negative impact to the funding mechanisms in place for the Legislative Retirement System based upon the voluntary opt-out provision within S.B. 346.

SENATOR RAGGIO:

You posed the question I was going to ask. We are always concerned about unfunded liabilities which means what if, at any point, everyone had to be paid who had vested interests? That applies as well to the Legislative Retirement Fund. If we allowed this and everyone did opt out who could, other than those who are vested, you said there would be an unfunded portion. How would that be satisfied? You would not have anyone paying into the system at that point. How would that be funded?

MS. BILYEU:

The section of the Legislative Retirement Act that covers contributions to the plan is NRS 218.2387. It contains two sections, one is the 15-percent contribution that is paid by the Legislators themselves. The second section of that provision requires the State of Nevada, as an employer, to pay from the Legislative fund an amount, as the contribution of the State, which is actuarially determined to be sufficient to provide the system with enough money to pay all benefits for which the system would be liable. Currently, the unfunded accrued liability of the Legislative Retirement System is \$1,760,473. That is scheduled to be retired over a 20-year period from January 1, 2005. That dollar amount would be satisfied; the system would be fully funded.

SENATOR RAGGIO:

Suppose everyone out there opts out two years from now. Would the State have to come up with that money? Is there something in there which says the State has to fund that \$1 million that is unfunded?

MS. BILYEU:

No, the way that currently works is to have the amortization payments made to meet a schedule to pay that amount over 20 years of service.

SENATOR RAGGIO:

Who is going to pay it?

Ms. BILYEU:

The State does pay that currently.

SENATOR RAGGIO:

None of these people are in the system anymore, so the State would not be paying 15 percent of what?

Ms. BILYEU:

The Legislators would not be paying their portion, but the State would remain liable under NRS 218.2387 for the actuarial payments to the system. Those lump-sum payments would still be required, and that unfunded liability that is currently established would be paid through that second section.

SENATOR RAGGIO:

If 30 Legislators opted out starting tomorrow, they would not be paying in their 15 percent of their Legislative salary. Would the State still be paying 15 percent on all those 30 Legislators?

Ms. BILYEU:

The Legislators pay 15 percent for the days they receive Legislative pay. That 15 percent that is taken from your Legislative salary does not pay the full normal cost of the accrual of your benefits. If 30 Legislators opted out and we did not receive that 15 percent, that may have a net reduction of the cost associated with the State's payment because we are extinguishing the liabilities associated with them. That money is the second section of payment to the system. The bulk of the money that comes to fund the Legislative Retirement System is paid by lump sum from the Legislative Counsel Bureau to us. That 15 percent, if that no longer comes to the retirement system, you are also extinguishing the liabilities associated with that. The State, pursuant to subsection 2, still pays the actuarially determined required amount to fund the system, based on the unfunded liability that is currently there. If we do not receive 15 percent from the Legislators, the unfunded amounts are still going to be paid pursuant to that second section of the act.

SENATOR RAGGIO:

That is what I am saying. The Legislator would not be paying anything and would not be entitled to any benefits, but the State would still be paying essentially the same portion the State now pays.

MS. BILYEU:

It would be less the 15 percent from the Legislators, and that is for currently established, vested benefits in the program.

SENATOR RAGGIO:

I understand that, but there is some continuing liability. Otherwise, you are going to forever have an unfunded portion of this fund.

MS BILYEU:

That is correct.

SENATOR LEE:

The one thing which sticks out in my mind is that I understand where you are coming from. If memory serves me, we might contribute \$27,000, but by the time the LCB funds additional monies to us and we retire, it is a \$72,000 outlay. In essence, it is actually cheaper on the State to have less people retire through the system.

MS. BILYEU:

Because of the nature of the Legislative Retirement System, it is a flat dollar a month accrual of the benefits. The benefits are very clearly stated, \$25 a month per year of service. The Legislative contribution to that, 15 percent of your Legislative pay during those first 60 days you are in session, pays for a portion of that accrual, that \$25 a month for service. That is what we call the normal cost of the benefit. While you are in session, you are accruing a benefit. That 15 percent pays part of the normal cost. The rest of the normal cost is paid in part by that lump-sum payment that is paid by the State on behalf of the Legislative Retirement System each biennium. If 30 Legislators opt-out of the program, that subsidized portion of the normal accrual will no longer have to be paid by the State. Your reduction in lump sum will probably occur, depending of course, on the gains and losses of the program.

SENATOR RAGGIO:

Under S.B. 346, Legislators get their contributions back without interest. I also have a related question. Some years ago, the Legislature attempted to put in a very large increase in their pension. It amounted to a 300-percent increase. I am quick to say I voted against it. It was repealed. How many former Legislators are still receiving that pension with the 300-percent increase, today?

Ms. BILYEU:

There are two former Legislators who are receiving the increased amount pursuant to that particular change.

SENATOR RAGGIO:

I know there were more, but there are two now?

Ms. BILYEU:

Yes.

SENATOR BEERS:

Let me take a crack at this. I am 20 years from being able to take my \$50 a month that I will get for serving in this Legislative Session because I am 45.

Ms. BILYEU:

You would be fully eligible to receive a benefit with ten years of service at age 60.

SENATOR BEERS:

That is assuming I serve the next Session, which will be my fifth. I am 15 years away. In 15 years, I will be able to get \$50 a month for the rest of my life.

Ms. BILYEU:

Based on 10 years of service, you would receive \$250 per month.

SENATOR BEERS:

Just for this single Legislative Session, 2 years multiplied by 25 is 50.

Ms. BILYEU:

That is correct.

SENATOR BEERS:

Actuarially, I will live until I am 70. I am going to get 15 years of \$50 a month or about \$9,000. Minus the investment earnings they will make from my investment, that might be worth \$6,000 cash today. So, if I gave anybody \$6,000 cash, they would agree to pay me \$50 a month starting in 15 years for 15 years. I am going to contribute \$1,000, which is 15 percent of my \$7,000 Legislative pay. The Legislature is going to contribute \$5,000 this year in order to fund that future benefit for me. If I opt-out of the system, I will get to keep

my \$1,000 Legislative pay, but the State will no longer have to fund the \$5,000 additional it takes to fund that promised benefit for me down the road. That is how this law would save the State money.

SENATOR LEE:

In the time value of money, if you had invested that, it would have been far better towards your own personal retirement. I would hope that you would retire in dignity and utilize this money properly.

CHAIR CEGAUSKE:

Since there is no more public testimony, I will close the hearing on S.B. 346 and I will open the hearing on S.B. 430.

SENATE BILL 430: Revises provisions governing removal of public officer from office other than by impeachment or accusation. (BDR 23-918)

KRISTIN L. ERICKSON (Washoe County District Attorney's Office):

This was at the request of the Nevada District Attorney's Association. Hopefully, all of the Committee members received our proposed amendment, ([Exhibit L](#)), which basically strikes all the additional language which is, specifically, section 1 of this bill and any reference thereafter to section 1 of this bill. The sole and simple intent of this bill is to delete NRS 283.440.

NOEL S. WATERS (Carson City District Attorney):

The District Attorney's Association initially requested this legislation to either provide due-process remedies in the existing language for statutory removal of public officers or, failing that, to repeal the statute NRS 283.440 as written. Somehow, it emerged with some new language, particularly in section 1, that essentially repeals the removal statute, but creates a new one in chapter 281 where the Ethics Commission has the power to cause a complaint for removal to be entered into a district court. There are severe problems with the proposal now. The scope of the statute is any violation by a public officer of any provision of chapter 281. That is a fairly widespread provision. I think this can be alarming. The proof requirement stated in section 1 is if the court finds the charges in the complaint are sustained, it shall order removal of the officer. That sounds to me like merely a 51 percent of the evidence requirement which is pretty scanty evidence to remove an appointed or elected officer from office. The applicability is especially alarming because it applies, by its terms, to any

public officer, and that includes State officers, local officers, township officers and police officers or deputies. The existing statutory removal process is limited to local elected officials.

Finally, there are no exceptions in this language to govern things like inadvertence, some deficiencies or incompetence, not doing a good job or things like mistakenly relying up on the advice of counsel to make a decision. Essentially, the way it is written now, if you are wrong, you are wrong, and you are subject to removal. You can appeal, but your office is declared vacant and it is filled either by the Governor or by the board of county commissioners as applicable during that appellate period. That is also sort of odd because this applies to city officers. I am not sure how the board of county commissioners would supplant a new city treasurer who is removed from office. I am not sure that is proper.

We would essentially like to remove everything in this bill except for section 14, which says NRS 283.440 is hereby repealed. The one comment I was asked about these hearings today was, I believe, on page four of the bill. There is an existing provision in section 6, subsection 5, dealing with the Ethics Commission's present ability to refer a violation of their ethics rules to a court for possible removal under NRS 283.440. It says the Commission shall make such a reference if it finds there have been three or more willful violations. I would suggest that you could simply leave that language in there and refer to the language dealing with the removal of public officers by accusation and grand jury presentment which is still in the law under NRS 283.300 to 283.430. There are three ways to remove public officers: impeachment, statutory removal and impeachment by grand jury presentment. It still would preserve two of those methods in existing law.

SENATOR RAGGIO:

Mr. Waters, I was trying to follow you, but I guess I was reading [Exhibit L](#) at the same time. If I understand you, your association requested essentially what is in section 14. That is the section which repeals NRS 283.440, which is the procedure for the removal of officers. For whatever reason, the rest of this bill was added to this bill draft request?

MR. WATERS:

I am a bit befuddled. I am not sure how it got there, but the existing request did not mention the Ethics Commission, so I do not know how it got there.

SENATOR RAGGIO:

Let me get back to the purpose for repealing NRS 283.440, which is a long section of procedure to remove everyone except a judge from public office. Why should that be repealed? Is it because of other existing law?

MR. WATERS:

Yes. In terms of the existing statutory removal process, we have problems with it because, essentially, any single person can simply cause a complaint to be made to a district court. It has to be done in a verified complaint. There is a summary removal process that is in front of a judge. It must be conducted within 20 days. There is no right to trial by jury, and there is limited right to issue a process to cross-examine witnesses.

SENATOR RAGGIO:

Anyone can bring this complaint?

MR. WATERS:

Anyone with a grudge and access to a notary public can bring the charge. I have been a District Attorney since April Fool's Day of 1985. In that time, I have been subject to two such actions, and one was by a person who was mad at me because I did not file charges against someone. The other was by a person who was mad at me because I did. Both cases had to go to summary removal proceedings. Everything came to a screeching halt at my office, and we had to deal with it. I did not request this legislation initially, I might add. This was some time ago, but another officer in the State has had this occur. It is notably deficient in terms of due process and the standards of proof, if you are going to, essentially, overcome the will of the electorate.

SENATOR RAGGIO:

Essentially, there are three reasons under this statute that somebody can charge or complain. One, which is pretty catchall, is refused or neglected to perform official duties. That is the one that is probably causing people problems. Having been a district attorney myself, I can empathize. There are a lot of people, and a district attorney has wide discretion. If someone can file a complaint based on the fact that you did not charge somebody or that you should have charged somebody, you would be subject, everyday, to some kind of a complaint. A lot of people do have grudges. I can understand that. Now you are saying this is not necessary because there are other avenues in the existing law? What are those?

MR. WATERS:

There are other avenues in existing law. Notably, for statewide, elected or appointed officers, there are the constitutional provisions for impeachment. I know you are all familiar with that. It is under article 7, section 4 of the Nevada Constitution. Secondly, there still exists the removal process for accusation and presentment by a grand jury for malfeasance in office or any kind of willful corruptness in office. That, at least, has the charges filtered through, as they used to say, twelve persons, tried and true, which we can certainly live with. We do not have that advantage. There is no probable-cause requirement under the existing statute, and often there is none to be discerned when the person files a complaint.

SENATOR RAGGIO:

So, in this existing law, if it were utilized, someone could complain within 20 days, and then the court, in a summary proceeding, hears that complaint with no jury. If the court feels the charges are sustained, then it can decree that the party be deprived of his office? I frankly never knew this was here.

MR. WATERS:

Yes. It is alarming.

SENATOR RAGGIO:

Does this apply to Legislators?

MR. WATERS:

No, it does not apply to statewide officers.

SENATOR BEERS:

Has anyone ever successfully been removed from office under this statute?

MR. WATERS:

Yes, there has. The first one I am aware of was in 1918, where a county treasurer was removed from office for failure to account properly for the monies. There is another case involving the county assessor for not accurately assessing the evaluation of all the property within his district, as is required by statute. That was in 1940, *Buckingham v. District Court*. There are about seven case laws I can find that list all the removal actions which have taken place that have at least shown up in the appellate record. I would be happy to provide

them to you. I have had two actions filed, and both of those were dismissed at the district-court level as not being grounded. Those never got to a report status.

SENATOR BEERS:
So seven have been appealed?

MR. WATERS:
Yes.

SENATOR BEERS:
Do we have an account on the wins and losses or the removals and non-removals from that seven?

MR. WATERS:
The only one I am aware of is *Schumacher v. Furlong* in 1962. That was a local assessor. That was for not assessing the properties correctly. That is the only one I am aware of.

SENATOR BEERS:
They were removed from office? If this is removed from statute, what mechanism remains to remove an errant treasurer, assessor or district attorney from office?

MR. WATERS:
The most popular one I am aware of is through recall. That seems to work really well. There was just one last week in one of the rural counties. That is still good. There are still provisions for indictment for any kind of corruption or criminal misconduct in office. They are subject to that removal and criminal prosecution. For State appointed and elected officers, the constitutional provisions for impeachment still exist. Finally, we have the statutory provisions for grand jury accusation and presentment removal under NRS 283.300.

SENATOR BEERS:
I wonder if we could get Mr. Stewart, in his spare time, to track down the history of this section.

NANCY J. HOWARD (Nevada League of Cities and Municipalities):
As amended, we no longer have any problems with S.B. 430.

ROBERT L. CROWELL (Las Vegas-Clark County Library District):

As amended, we also no longer have any problem with this bill. Our concern was with the appointment of the successor because we have city-appointed trustees and county-appointed trustees. That is why we were here.

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

As amended, we still have one problem with the bill. It is only in relation to what Mr. Waters had mentioned, and it has to do with section 6, subsection 5. My understanding of how this statute was supposed to work, in context with the Commission, is that section 6, subsection 5, paragraph (a), which was added in 1991, is the section which says, "A willful violation of this chapter has been committed by a public officer removable from office by impeachment only, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding." There is no problem there.

The problem we have, as Mr. Waters had outlined, is in section 6, subsection 5, paragraph (b) and paragraph (c). It says, for a willful violation for someone who is removable by office pursuant to NRS 283.440, which I understood from Brenda Erdoes' interpretation to me before the impeachment proceedings is local city and county officers, at one willful violation. Section 6, subsection 5, paragraph (b) says we may refer them for removal and at three willful violations, section 6, subsection 5, paragraph (c) says we shall do that. If you take out 283.440, we just want to know what you want us to do. If you are happy with Mr. Waters' suggestion that you refer to that removal by grand jury and we just submit that information to the appropriate grand jury or to the Attorney General, that is fine. We just want to know what you want us to do if we find ourselves in that situation.

MR. WATERS:

The suggestion I had is to replace that reference to the repealed section with a reference to NRS 283.300 through 283.430. Those are the statutory provisions for removal of a local public officer by accusation and presentment by a grand jury. That would accomplish what is desired and what was in existing law to still have some sort of statutory removal process for misconduct or wrongdoing by local elected officer.

SENATOR RAGGIO:

Mr. Waters, I do not know what the practice is throughout the State. When I was district attorney, I instituted a procedure where we had a grand jury in session at all times. I do not know if that is still true, in Clark County it may be. It certainly is not true in all counties. I imagine it is still a rarity in some counties. How would you address that? What is the situation in Carson City?

MR. WATERS:

In Carson City, we have a grand jury, on average, about every ten years. I pointed out to my colleague that it might create a problem with those rural counties that do not. Some counties, by statute, have to have a grand jury at least every four years. Not all of them do. I do not have a solution for that, frankly, unless we really engraft another one on there.

SENATOR BEERS:

This might be an appropriate time to contemplate whether granting the Ethics Commission the ability to refer someone for impeachment or for removal from office is a good idea. If we were to delete section 6, subsection 5, that leaves the Ethics Commission with all of the finding authority, but essentially gives the act of removal from office the same degree of somber reflection as we are currently contemplating for the other officers, which is an indictment, recall election or some other action from the voters.

MR. WATERS:

I am not prepared to speak on behalf of the concerns of the Ethics Commission, but I certainly agree with Senator Beers.

MS. JENNINGS:

I do not think our Commission would have a problem with that at all. Section 6, subsection 5, paragraph (a), was added in 1991. Section 6, subsection 5, paragraph (b) and paragraph (c), were added in 1999 by the Legislature. In addition to the finding ability, if we found evidence of criminal activity, we are certainly required by statute to refer that to the district attorney or the Attorney General's Office. That solves your indictment problem. If you want to strike that provision, I do not believe we would have a problem with that.

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CHAIR CEGAVSKE:

Since there is no one else here to testify on S.B. 430, I will close the hearing on that bill. Seeing no further business, I will now adjourn the Senate Committee on Legislative Operations and Elections at 4:14 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: _____