

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fourth Session  
May 3, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:55 p.m., on Thursday, May 3, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen Koivisto, Chair  
Assemblyman Harry Mortenson, Chair  
Assemblyman Chad Christensen  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Heidi S. Gansert  
Assemblyman Ed Goedhart  
Assemblyman Ruben Kihuen  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Harvey J. Munford  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom  
Assemblyman James Settlemeyer

**GUEST LEGISLATORS PRESENT:**

Senator William Raggio, Washoe County Senatorial District No. 3



**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Kim Guinasso, Committee Counsel  
Sheila Sease, Committee Manager  
Terry Horgan, Committee Secretary  
Trisha Moore, Committee Assistant

**OTHERS PRESENT:**

Dorothy Gallagher, Member, Board of Regents, Nevada System of Higher Education  
Jack Schofield, Member, Board of Regents, Nevada System of Higher Education  
Ron Knecht, Member, Board of Regents, Nevada System of Higher Education  
James Dean Leavitt, Member, Board of Regents, Nevada System of Higher Education  
Howard Rosenberg, Member, Board of Regents, Nevada System of Higher Education  
Lynn Chapman, State Vice President, Nevada Eagle Forum  
Pat Sanderson, Private Citizen, Carson City, Nevada  
Be-Be Adams, representing State Senator Dean Rhoads

**Chair Mortenson:**

[Roll was called. The Chair reminded Committee members and the public about Committee rules and etiquette.] We will open this hearing with Senate Joint Resolution (S.J.R.) 4.

**Senate Joint Resolution 4:** Proposes to amend the Nevada Constitution to require the Legislature to provide for the organization and duties of the Board of Regents and the appointment of its members by the Governor. (BDR C-1087)

**Senator William Raggio, Washoe County Senatorial District No. 3:**

I want to preface my remarks by indicating that this is not an issue I am personally directing against any of the present regents on the Board or even past members of the Board. The resolution is not punitive in any way; this is a long-held philosophical belief that I and many others have. The best governance of the system of higher education in this State would be pursuant to the contents of this resolution. For those who believe this takes away the rights of voters, as with any proposed amendment to the state *Constitution*, it requires

passage by two sessions of this Legislature as well as ultimately a vote of the public as to whether they approve or want to include this as a constitutional amendment. [The Senator read his explanation of the measure from prepared text ([Exhibit C](#)).] I have provided you with a history of the Board of Regents since statehood and a list of joint resolutions that have been considered by the Legislature since a consultant's report was issued in 1957 ([Exhibit D](#)). I would be happy to have anyone in the Assembly or Senate who wishes to be a co-sponsor, add his or her name to this amendment if it is processed. Nevada is the only State in the nation where the governance of a higher education system is directly elected by the voters ([Exhibit E](#)).

**Assemblyman Segerblom:**

I support what you are trying to do but, for clarification, if the Legislature is in charge of the appointment process, could we say a certain number of Democrats and a certain number of Republicans would be appointed? Could there be criteria as far as the appointee being a member of the Legislature and that kind of thing?

**Senator Raggio:**

Under this amendment to the *Constitution*, the Legislature would have the ability to determine the qualifications in any way it saw fit. Would they do that? I would hope not; I would hope that no one in the Legislature would suggest that only members of one party could be appointed.

**Assemblyman Segerblom:**

Could you say that half of the appointees, or every other appointee, would be a member of one party? I would dislike all the appointees being members of one party.

**Senator Raggio:**

They could do that. Given that capability, the Legislature would probably suggest qualifications—perhaps a background in education, finance, or governance. Higher education has come a long way since 1864 when Nevada did not even have a university. Today, we have a very complex system of higher education and it is an area where qualifications would be very important. If I were in the Legislature and had the opportunity, I would like to recommend qualifications for those who would seek appointment to these positions that would include some of those things.

**Assemblyman Munford:**

There are 13 members now; would that number change?

**Senator Raggio:**

No.

**Assemblyman Munford:**

If you go to an appointment process, demographically would this Board of Regents still reflect the population? Right now, and for many, many years, the number of regents has risen based on the population. Everyone should get a voice. If the number of regents drops to nine, would the minority community still have a voice? Could something be said so everyone is represented? That is important to me.

**Senator Raggio:**

The present Board numbers 13. The proposal before the voters last year reduced the membership to nine. Under this proposal, if the amendment to the *Constitution* was approved, the Legislature would have the flexibility to determine the number. I think it becomes cumbersome with 13 members, but I do not want to dictate to a future Legislature that would have the final decision and the opportunity to change the number from time to time.

As to makeup, diversity, and geographical representation, the Legislature would have an opportunity to decide those issues. The Legislature represents all those areas in the State you are talking about so I think there would be as much, if not more, assurance that those kinds of diversities and qualifications would be promulgated by the Legislature. You represent an area of Clark County. Clark County is probably going to have 80 percent of the votes in this Legislature after the next census, and the Legislature has the opportunity to make sure the qualifications that are required cover those kinds of things. Any Governor who has the responsibility as a result of this enactment would take all those matters into consideration in making the appointments.

**Assemblywoman Kirkpatrick:**

I voted for the Constitutional amendment in the last election, but many of my constituents called me asking what the Board of Regents does and who they should vote for. This process will alleviate that. Unless one has children in the system or it directly affects a person, the Board of Regents is not something of which people are aware.

The ballot measure from the last election had one regent from each congressional district. That was important because then people felt as though they had some type of representation. Many people will be more comfortable with the whole Board being appointed and I am comfortable representing my constituents in this matter. I wholeheartedly support this.

**Assemblywoman Koivisto:**

Was any thought given to appointments being made by entities other than the Governor, such as the Senate and the Speaker of the Assembly?

**Senator Raggio:**

I am a great believer of not putting a lot of verbiage into the *Constitution*. We should set the policy and provide the authority to implement that policy.

**Assemblyman Conklin:**

I am in full support of this resolution. This idea is just good policy and I would put my name on it as well.

**Senator Raggio:**

I want to emphasize again that we have some excellent regents. This resolution is not directed at any regent or regents but is the result of a long-held belief on my part that we should follow the rest of the country in providing a better system for the governance of the higher education system. Probably many of the existing regents would be appointed under this process because they have experience and would meet the qualifications that the Legislature would think adequate.

**Chair Mortenson:**

Is there anyone else who wishes to testify in the affirmative on this bill?

**Dorothy Gallagher, Member, Board of Regents, Nevada System of Higher Education:**

I support appointed regents. I was very opposed to last year's ballot measure, because I felt it would give you a Board that was divided before they ever took the first vote. If you want an elected Board, you should have an elected Board. If you want an appointed Board, that is what you should have, but I strongly would oppose putting the two together. You would create a problem right there.

I understand the history the Senator gave you. I was a regent during a lot of that history. When this State is redistricted after the 2010 Census, there will be a big problem getting proper representation across the State. I am a Nevadan and I have always been a regent for the entire State, but I believe if we stay with the current number of 13 Board members, because of the one-man, one-vote we will not be able to have proper statewide representation.

The best way to appoint the Board members would be by a commission. The Board seats should not be a political payoff. The Governor, when he is the only one who appoints, has tremendous pressures. A commission of five people, one appointed by the Assembly, one by the Senate, and three by the Governor, that would interview people and make a recommendation to the Governor, would help eliminate political payoffs from the process.

I would hope that, after this is over and it goes to a vote of the people and if it does win, the Legislature in its wisdom would be very careful about the way they implement this. While you can change it, it will last for a long time and a great many mistakes can be made if it is not properly done. I do have the confidence that the people in the Legislature, who are all Nevadans, would want to do the very best they could for higher education, because we all know that is our future.

**Chair Mortenson:**

Are there any questions for Mrs. Gallagher? Is there anyone else who wishes to testify in favor of this bill? [No response] There are some regents who wish to speak in opposition.

**Jack Schofield, Member, Board of Regents, Nevada System of Higher Education:**

I have lived in Nevada for 70 years. I have been a member of the Board of Regents for four years. We have an outstanding Board of Regents. The people who serve on the Board are very dedicated. During the past four years I have attended a number of meetings of regents throughout the United States, and at each seminar I ask about their board and whether they are elected or appointed. I ask those who are appointed if they have any issues or problems, and not one has said that they did not have a problem.

We are faced with a Legislature that wants to remove the vote of the people and have the Governor appoint the Board of Regents. You are always going to have conflicts when you have independent-thinking people unless they are appointed by a Governor who has some control politically over those people. We have a Board that is diverse with some of the finest, most talented people I

have met. To take away the vote of the people is unconscionable. A "no" vote on this bill will be a vote for democracy; a "yes" vote on this bill indicates you want an autocracy. I urge you to think before you vote. Do you really want to change the *Constitution of the State of Nevada*? The Board of Regents has great goals, great agendas, great vision, and we should move forward by maintaining and retaining the vote of the people.

**Ron Knecht, Member, Board of Regents, Nevada System of Higher Education:**

I am a Regent representing District 9. I have a five-point prepared statement to distribute to the Committee ([Exhibit F](#)). Assemblyman Munford asked about the size of the Board of Regents. With 13 members, we can have 5-member committees, which are much more effective than the 3-member committees we would have with a smaller Board. The optimal functioning and structure of the Board should continue to be 13 members, no matter what.

Elections, as you know, keep people in public life close to the voters and their concerns. That would be lost with appointed regents. Boards of higher education are elected in other states they are just not statewide boards, like the Nevada System of Higher Education. For instance, there are local community college boards, but what is unique about Nevada is that we have a statewide board of higher education that has full responsibility on a system-wide basis. That is an improvement over what other states do, but the fact is, many higher education boards, even if for only one sub-sector or one community college, are elected.

**James Dean Leavitt, Member, Board of Regents, Nevada System of Higher Education:**

Thank you for running for office. There will never be anything you do that will produce a greater reward than your public service. This is the most important bill you will vote on this session. It is the only bill that asks you to take away the right of the people to vote. Freedom of speech is linked to the right of voting. This Board will survive as an appointed Board, but listen to the merits of Senator Raggio's remarks and weigh them against what we offer.

No coordination? We have the only coordinated, statewide board in the country. Thirteen of us are governing eight colleges, universities, and research institutions. We should be so proud of our governance structure. It is unique, singular, and the best structure that exists in our nation. Perfect? No. Shortcomings? Yes.

The last vote on this issue was approximately 50.5 percent to 49.5 percent. That bill read, "Shall the *Constitution of the State of Nevada* be amended to provide for the election of certain members." To the careless reader, that sentence suggested that we do not currently elect regents, but we already elect all 13 of our Regents.

Senator Raggio talked about the luxury of the few. Higher education was the luxury of the few in 1864 and yet, being the luxury of the few, we allowed all the people to decide through the vote. It is now the luxury of the many.

When we talk about qualifications of the regents, we have as members:

- Brett Whipple, attorney and CPA (certified public accountant);
- Jack Schofield, PhD (doctor of philosophy);
- Mark Alden, CPA;
- Stavros Anthony, PhD and a police captain;
- Cedric Crear, BS (bachelor of science);
- Thalia Dondero, Honorary PhD;
- Dorothy Gallagher, BA (bachelor of arts);
- Jason Geddes, PhD;
- Ron Knecht, Masters, and JD (juris doctorate);
- James Dean Leavitt, attorney and adjunct professor;
- Howard Rosenberg, Masters degree and full professor;
- Steve Sisolak, MBA (master of business administration);
- Michael Wixom, attorney.

Compare the qualifications of this Board with any higher education board in the country, but do not make your decision based on this Board, or the last Board, or any of the Boards. Senator Raggio asked, "What is in the best interests of the State of Nevada?" What happens to self-governance, to self-determination, when we do not allow the people to make the most important decisions? Elected officials are who represent them. You will never see me suggest a bill for the appointment of this Body. I do not think this Body will recommend it either. I do not think you will ever see me recommend the appointment of our Governor. Why? Because we believe we have the ability, the common sense, and the willingness to go to the polls to choose our own representatives. The system is working remarkably well.

Senator Raggio talked about forcing cooperation. You do not force cooperation; you earn it by respect. We cannot legislate morality by punishing it. We do not force cooperation among the four branches of government by ensuring that they communicate. We do not just communicate through the formal budget process, we are mandated to. We have interim committees. We



have an interim health committee; an Interim Finance Committee. If you have any suggestions for us to be in closer contact, we welcome those suggestions and look forward to working more closely with you.

Senator Lattin from Fallon nearly 100 years ago said and concluded after an exhaustive study, "There was not a single person in Nevada that was qualified to be president of the University of Nevada." I do not think that was true then and it is not true now.

Who do we disenfranchise when we give up the right to vote? We disenfranchise the people of the State of Nevada.

I want to briefly turn to the exhibit I provided entitled, *The University of Nevada* ([Exhibit G](#)). On page 17 (page 4, [Exhibit G](#)), Dr. James Hulse is talking about the 1864 Constitutional Convention and says,

Despite the convention's limited ideas about the instructional role of a university, it did an excellent piece of work in one area. It erected effective legal safeguards designed to protect the university from dangerous forms of political interference.

Not that the Legislature is dangerous, but we have separate co-equal branches of government. Reading down further, Dr. Hulse states,

Nevada's founding fathers considered the possibility of placing all authority for educational policy under the ultimate control of the legislature. John A. Collins, a miner from the Comstock who served as chairman of the convention's committee on education, wanted to give the legislature the authority to set tuition and to establish the curriculum. He and others who had similar views acquiesced, however, to a majority who desired to assign such matters to a board of regents.

The legislature shall provide for the establishment of a State University, which shall be under the control of the Board of Regents, whose powers and duties shall be prescribed by the legislature.

That is our current constitutional provision. The distinction between powers and duties is not always perfectly clear. University officers have occasionally quarreled with legislators over the extent of their authority. In a few cases, governors or courts or legislatures have been able to affect regent policies in

significant ways, as the following pages relate, but the regents possess strong constitutional authority to carry out their mission, and it has often been a blessing for the university. Dean Frank Newman of the University of California at Berkeley School of Law, after an intensive study of the Nevada situation in 1963 said, "The people of Nevada can be proud that their University's name appears on the list of constitutionally independent universities.... Nevada is fortunate that its Supreme Court effectively has blocked interferences that proceed in disregard of the nature of a university."

We do not trifle with the *Constitution*. If it is emergent, if it is dire, if it is a political crisis, then we start to talk about it, but we do not change it. Tell me the crisis, tell me the compelling case, and show me the persuasive authority.

You are doing an outstanding job, and in the last few weeks you have all come together, as you do every session. You come together in a spirit of bi-partisanship. We do that at each meeting of the Board when we meet six times a year for two days.

Please, do not let this go to the people again. It is disruptive to the functioning of the higher education system. When Senator Raggio talks about his frustration; please understand my frustration. This has gone through bill after bill. Only one time did it even exist in a form that was palatable to the people but the wording of it was misleading, and led to a very close vote.

**Howard Rosenberg, Member, Board of Regents, Nevada System of Higher Education:**

[Mr. Rosenberg read his testimony in opposition to S.J.R. 4 from prepared text ([Exhibit H](#)).]

**Ron Knecht:**

Thank you for this opportunity. I want to emphasize that the four of us speaking today have two things in common: We are speaking on behalf of a majority vote of the Board of Regents, as well as ourselves; and we are truly a bipartisan group. Two of us are Democrats and two of us are Republicans and we are all good friends, good colleagues, and we work well together.

**Chair Mortenson:**

Are there any questions for these gentlemen?

**Assemblyman Ohrenschall:**

Dr. Schofield, when you ran for the Assembly, did you run as a Democrat or as a Republican?

**Jack Schofield:**

I ran as a Democrat.

**Assemblyman Ohrenschall:**

When you ran for University Regent, did you run as a Democrat or as a Republican?

**Jack Schofield:**

It was a nonpartisan position.

**Assemblyman Ohrenschall:**

As a member of the Assembly, did you organize as a Democrat or as a Republican?

**Jack Schofield:**

As a Democrat.

**Assemblyman Ohrenschall:**

As a member of the Board of Regents, do you organize as a Democrat or not?

**Jack Schofield:**

I do not understand that last question.

**Assemblyman Ohrenschall:**

Do you feel there is partisanship in the Board of Regents the way there was when you were a member of the Assembly and the State Senate, or do you feel that partisanship does not enter into the work of the Board of Regents?

**Jack Schofield:**

In the four years I have been on the Board, I have not sensed any kind of partisanship in our deliberations or our decisions in any way.

**Assemblyman Ohrenschall:**

That is what interested me. Many times, when a new Governor is elected, sometimes the Democrats get thrown out and sometimes the Republicans get thrown out. Since the Board of Regents is not appointed by a partisan, I wondered if you thought there was not that level of partisanship in terms of the governance.

**James Dean Leavitt:**

In the 1950s, the Legislature made the position of regent nonpartisan. That was one of the wisest, most sanguine things the Legislature has done.

**Assemblyman Munford:**

What position does the Chancellor take on S.J.R. 4?

**Ron Knecht:**

On his own, as an individual and not as an official of the System, the Chancellor has taken a position of advocacy in favor of S.J.R. 4.

**Assemblyman Munford:**

As a member of the Board of Regents, how are you compensated?

**Ron Knecht:**

We get \$80 per meeting day, plus reasonable and normal economical expenses. Some of us do not take the \$80 pay per day for various reasons. Just today I requested the form to make it permanent that I will not be accepting that \$80 per day pay.

**James Dean Leavitt:**

Prior to Senator John Lee's bill two years ago, there was no pay of any kind for the Board. Senator Lee indicated that \$80 per meeting was appropriate and would put the Regents on a par with the Nevada Gaming Commission.

**Assemblyman Munford:**

How many times a year do you meet?

**James Dean Leavitt:**

We meet 30 or 40 times a year.

**Assemblyman Munford:**

Do you meet regionally, all over the State?

**James Dean Leavitt:**

Yes, we meet all over the State.

**Assemblywoman Koivisto:**

Do you still have access to a "host fund?"

**Ron Knecht:**

We have access to a host fund but I am not familiar with that fund because I am only reimbursed for normal, reasonable economic expenses such as hotel charges, air fare, mileage, parking, and those types of expenses.

**Howard Rosenberg:**

Each member of the Board of Regents has a \$2,500 host account. The Chair of the Board has a \$5,000 host account. Those accounts are in addition to per diem for the meeting days, and our travel is paid. When Senator Lee's plan to pay each Regent \$80 per meeting passed, several of us said "no" to the host funds. When we ran for office, people understood we were not being compensated. Most of us do not use the host account unless it is absolutely essential.

**James Dean Leavitt:**

There was a time when the Chairman of our Board received a host account of \$5,000. That has now been reduced to \$2,500, which is the same for each member of the Board of Regents. I just wanted to correct that information. If that money is not used, it does not carry over. You use it or lose it.

**Assemblyman Ohrenschall:**

If S.J.R. 4 becomes part of the *Nevada Constitution*, would the Chancellor still be independent, would he be appointed by the Executive, or do you know?

**Ron Knecht:**

Senator Raggio was clear that S.J.R. 4 does not go into that level of detail. That would remain up to the Legislature to decide whether to change it. If the Legislature made no change, I assume the Board would continue to appoint the Chancellor, as it does now.

**Howard Rosenberg:**

The Chancellor is not independent now. He works for the Board of Regents.

**Lynn Chapman, State Vice President, Nevada Eagle Forum:**

People need to be close to their local government. Assemblywoman Kirkpatrick mentioned that people called her asking who the regents are and what they do. In answering those questions, she has educated the public as to who the regents are and what they do. If people are appointed rather than elected, most people will not care who the regents are or what they do.

The list of regents is quite impressive. We, as voters, have done a good job and should be congratulated for that. Why take that away from us?

**Pat Sanderson, Private Citizen, Carson City, Nevada:**

I have lived in Nevada all my life and never missed voting in an election. When I did not know who the Board of Regents was, I asked. There is a dumbing down of the voters here by our leaders. The people of the State of Nevada, the ones who bother to vote, take the time to check things out and vote for the people they think will do the best job. I always have, I always will, and I have taught people to do the same and helped them check things out.

We have a great Board of Regents. Mrs. Gallagher has been a regent for many years. Do not think we are ignorant or need help from a Governor. Our voting rights are being taken away time after time. The people of the State of Nevada are smart enough to figure this out and vote for the people they think should be elected to our Board of Regents. Do you really think it would be better to have an appointed Board? One time you win, the next time you lose. Let us keep it so the voters of the State of Nevada get to elect the Board of Regents and please, do not think we are stupid.

**Chair Mortenson:**

Does anyone else wish to speak on this matter? [No response] We will close the hearing on S.J.R. 4 and open the hearing on Senate Joint Resolution 3 (1st Reprint).

[The Committee took a five-minute break.]

**Senate Joint Resolution 3 (1st Reprint): Proposes to amend the Nevada Constitution to revise provisions relating to signature requirements for initiative petitions. (BDR C-260)**

**Be-Be Adams, representing State Senator Dean Rhoads:**

[Ms. Adams read Senator Rhoads' remarks from prepared text ([Exhibit I](#)).]

**Chair Mortenson:**

When our constitutional provisions for the initiative petition were declared unconstitutional, the Assembly, during the last Special Session, put through an emergency bill. That bill changed the method of obtaining signatures using the three congressional districts. Use of congressional districts has been approved by courts in other localities as being constitutional. That resolution needs only to pass the Senate to go to a vote of the people.

This resolution has a different distribution for signature collection. It would collect signatures in each county. This resolution must pass two legislative sessions and then it would go to a vote of the people.

**Assemblyman Conklin:**

This bill does not speak to going to the counties at all. This bill only speaks to the number of signatures that need to be collected. Senate Joint Resolution 3 (1st Reprint) is superior in many respects to the measure passed out of the 22nd Special Session. I am proposing to streamline S.J.R. 3 (R1) so it is easily understood. You should all have mock-up number 3899 to S.J.R. 3 (R1) ([Exhibit J](#)).

Senate Joint Resolution 3 (R1) seeks to strike out of the *Constitution* the provisions of 13 of 17 counties and amend into the *Constitution* a qualifier. The number of signatures needed to qualify an initiative petition is either 10 percent of the vote total from the last election, or 4 percent of the population, whichever is lower. It has no provision telling you how to collect the signatures such as which county or senate district the signatures must be collected in. The provisions concerning how signatures are collected are left to the NRS (*Nevada Revised Statutes*) and that is what Senate Bill 549 (1st Reprint) does.

The Legislature is an ever-evolving place of law. If we put the details in statute and some of the details are declared unconstitutional, we can change it in two years or less. If those details are placed in the *Constitution*, it takes six years to fix and a whole lot of money.

The proposed amendment in front of you ([Exhibit J](#)) seeks to remedy three issues of unconstitutionality this Committee has dealt with this session—all three of which are in separate bills. In the mock-up, you will see that Section 1 deals with deleting the six-month residency requirement to vote in an election. Section 2 deletes the unconstitutional provisions in the ballot initiative; and Section 3 deals with the affidavit. All three provisions have been found to be unconstitutional in one court or another. We are consolidating all three issues into one bill so there will be only one ballot measure. If we pass this amendment, we also must pass the trailer bill, S.B. 549 (R1). They are separate but S.B. 549 (R1) eliminates any void in the statutes.

**Assemblywoman Koivisto:**

This is a framework for the initiative petition process. You say the details of the process will be in the NRS, is that correct?

**Assemblyman Conklin:**

If you accept my amendment, it will consolidate all the cleanup provisions for the *Constitution* into one so the public has just one bill with three provisions. One of those provisions is cleanup of the language concerning ballot initiatives. When that language is cleaned-up, you should have some provision in S.B. 549 (R1) to dictate how that process will go forward because we will not be in session at that time. In S.B. 549 (R1), the number of signatures will remain the same; however, there is a different proposal for collecting them.

**Chair Mortenson:**

In this instance we are setting up a bill that says we can have initiative petitions, but we are not defining how signatures are going to be collected. This scares me a little bit because initiative petitions are the most basic right of the people to petition their government. If the collection method is put into statute instead of into the *Constitution*, then we are in a dangerous position. It can be changed every session and, perhaps, made more difficult; it could also be made easier. It is not a stable situation in my opinion. When we hear this next bill, we will learn exactly what your proposed method of signature collection is going to be.

If there are no further questions for Ms. Adams or Mr. Conklin we will close the hearing on S.J.R. 3 (R1) and turn the gavel over to Assemblywoman Koivisto.

**Chair Koivisto:**

We are going to hear Senate Bill 549 (1st Reprint).

**Senate Bill 549 (1st Reprint): Makes various changes to provisions governing certain petitions. (BDR 24-1382)**

**Be-Be Adams, representing State Senator Dean Rhoads:**

This is the rationale for S.B. 549 (1st Reprint). In changing to a signature distribution requirement in the *Nevada Constitution*, the Senator believes we need a companion bill to place in statute those requirements so petition signers in each county will not have to wait for five years before they can be assured that their signatures will be weighed equally.

He believes that shifting to this signature distribution requirement as quickly as possible—by the 2008 election cycle—will best serve the interests of all Nevadans. Therefore, S.B. 549 (R1) provides a statutory framework for these signature requirements until S.J.R. 3 (R1) goes into effect in November 2010.



**Assemblyman Conklin:**

Before I go through the mock-up, I would request Legislative Counsel Bureau staff give us a non-partisan, legal interpretation of what is in the bill as it currently stands.

**Chair Koivisto:**

Absolutely; Kim, will you please proceed?

**Kim Guinasso, Committee Counsel:**

The current version of S.B. 549 (R1) sets up a two-tiered formula, although several calculations need to be made. It takes a raw number that is applied on a statewide basis, but it requires the choice of two different numbers; either 4 percent of the total population of the State as determined at the last decennial census, or 10 percent of the voters who voted in the last statewide general election. Look at those two numbers and determine which is the lesser of the two, and then you apply that number to determine how many signatures must be gathered from each county. You do that by determining how much of the population of the State resides in each particular county. For example, if you have 90 percent of the population of the State residing in Clark County, then 90 percent of the signatures must be gathered from Clark County but that is 90 percent of the raw number. If 10 percent of the voters who voted in the last election is 100,000; and 4 percent of the total population is 120,000; you would take the lower number, 100,000. Because 90 percent of the population lives in Clark County, 90,000 signatures must be gathered from Clark County. Signatures from all the counties in the State would be required to be gathered, but only in proportion to the population of the State that resides in that county.

Two cases came out of the Ninth Circuit Court, one from Idaho and one from Nevada. In both cases, the Court considered schemes for initiative petitions getting onto the ballot that were based on fixed percentages of counties. That resulted in an unequal weight being applied to signatures. For example, in Idaho the statute in question required 6 percent of the voters in each county but from half of the counties in the state. Idaho has 44 counties, and as the Court noted, most of the population resides in 6 of them. Requiring a flat percentage from half of the counties resulted in signatures of unequal weight being required. A signature from a rural county was worth more than a signature from an urban county. The Court struck that down as violating the Equal Protection Clause of the federal *Constitution*. This Court then considered the provision in our *Constitution* that required 10 percent of the voters who voted in the last election in each of 13 of our 17 counties. Again, the Court struck that provision down because it would result in signatures holding unequal weight and

violating the concept of one-man, one-vote, which is what we concern ourselves with in matters of apportionment. All of these concepts were riding on the fact that a fixed percentage was required of counties of uneven populations.

The concept here is to get rid of that unequal weight. The way to accomplish that is by tying it to the population. In Section 1, subsection 3, there is a definition of population percentage for the county and it refers to the figure obtained by dividing the population of the county, as determined by the last decennial census, by the total population of the State, again, determined by the last decennial census. Mathematically, this gives each signature throughout the State equal weight in being gathered from each of the counties in the State, because it is weighted by population and it is not fixed. The percentage of the total number of signatures required to be gathered from one county will be significantly different than those required to be gathered from another county.

This bill still uses 4 percent of the total population or 10 percent of the voters who voted in the last general election. Mr. Conklin's amendment ([Exhibit K](#)) gets rid of the 4 percent figure pursuant to our office's recommendation. The Court, while it did overturn the 13-counties rule as it named the provision in our *Constitution*, did not overturn the 10 percent rule so we still have in our *Constitution* the requirement that the signatures be at least equal to 10 percent of the number of voters who voted in the last general election, so that figure is preserved in the mock-up to the first reprint. The 4 percent figure is deleted. You will see that in Section 1 of the mock-up.

The rest of the changes that were made by the mock-up delete Sections 2 through 5, because the changes we made were made necessary because of the 4 percent portion. The only other changes are made in Section 8, again because of deleting the 4 percent portion of the formula. That is an explanation of the mock-up and the first reprint together.

**Chair Koivisto:**

Are there any questions from the Committee?

**Assemblyman Mortenson:**

I want to speak about this method of signature collection as stated in S.B. 549 (R1). I want to use the example of 100,000 population and we will go with the provision in the bill that says signatures must be collected equal to 10 percent of the people who voted in that county.

**Kim Guinasso:**

It is not equal to 10 percent of the people who voted in that county; it is the number of voters proportionate to the population of the county, but your point is correct. For example, let us say 1 percent of the population voted in a particular county. I believe it would result in requiring 200 signatures being gathered in that county.

**Assemblyman Conklin:**

There are two issues at stake and sometimes the percentages will become convoluted. The total number of signatures required is 10 percent of the voters voting in the last election. Assemblyman Mortenson is concerned with how or from where the signatures are collected. According to this bill, you must collect signatures from a proportionate number of the population from each county, and each county would be different. For example, if 90 percent of the population comes from Clark County, 90 percent of the signatures, whatever that signature requirement is, must come from Clark County. Is that the issue you are talking about?

**Assemblyman Mortenson:**

Correct. With 3 million people in the State, if we have a county with 3,000 people in it, 0.1 percent of the signatures must come from that county.

Or, in another example, let us say 100,000 people voted, so 1,000 signatures, or 1 percent has to come out of that county, correct?

**Assemblyman Conklin:**

Your mathematical proportions are not correct, but I understand your logic. A small percentage must come from that county.

**Assemblyman Mortenson:**

That is correct. The reason I say I have trouble with the policy of this bill is that if 1 percent of the signatures come from that county but 99 percent of the State votes in favor of a particular referendum, one county with only 1 percent of the vote required, can, if the signatures cannot be collected in that county, totally scuttle a referendum. Therefore 1 percent of the people could frustrate the will of 99 percent of the people. That is a policy that makes me feel badly.

**Assemblyman Conklin:**

The Founding Fathers, when they constructed the *Constitution of the United States*, considered the will of the minority. They put provisions in the *Constitution* to protect the minority against the tyranny of the majority. We have people who sit on this Committee that represent places as far removed as

Minden, Pahrump, and Amargosa and they have votes here. In order for us to get things passed we as a majority, or we as legislators from Clark County regardless of party, are in the majority. We do not run over those who are in the minority though, we are forced to compromise. That is the way the framers saw it.

The art of the petition came in the late 1800s and early 1900s. It was not designed to circumvent the art of compromise; it was designed to give the public an opportunity to come straight to their government by petitioning their government. Allowing one-person one-vote from all walks of life in this State does not circumvent or frustrate the will of the majority, it simply requires that all parties come together to compromise on what they believe is in the best interests of this State.

**Assemblyman Mortenson:**

You are partially right. In this country, we do not want mob rule where the majority runs over the minority, but a democracy is based upon the will of the majority generally ruling. If 99 percent of the State wants an initiative petition and 1 percent can cut it out, then we do not have majority rule any more.

**Chair Koivisto:**

We have a representative democracy and our State is not run by initiative petition.

**Assemblyman Segerblom:**

I understand where Mr. Mortenson is coming from but the flip side is that if Clark County missed it by one vote, then that one missed vote in Clark County would also prevent the initiative being approved. The reality is that one voter, no matter where he is, can make the difference. If it is in Eureka County, Esmeralda County, Elko County, or Clark County, it does not matter. I like to see distribution around the State.

**Assemblyman Munford:**

Do 13 of the counties have to agree? Does that play into this?

**Assemblyman Conklin:**

The 13 of 17 counties rule was struck down as unconstitutional because it left out 4 counties and was not a percentage of the population of the entire State. Based on the principle of one-person one-vote, some people were left out with that formula. Based on the principle of one-person one-vote, this bill says you will consult with all the counties.

**Assemblyman Munford:**

So this gets all the counties involved?

**Assemblyman Conklin:**

This gets all the counties involved. Everyone should be included. Everyone has a right to be heard. Every county has a right to be consulted when talking about changing the *Constitution* of this State or any law under which all counties will have to operate. That is what this bill and my amendment, which is just a cleanup amendment, seeks to do.

**Assemblyman Munford:**

It gives everyone a voice.

**Chair Koivisto:**

We are making this more complicated than it is. The number of signatures required from each county is weighted by the population of that county in proportion to the rest of the State.

**Assemblyman Conklin:**

There are two numbers here. There is the number of signatures needed to qualify an initiative petition for the ballot. Where the signatures are collected is the other number.

**Chair Koivisto:**

And where the signatures are collected is a different calculation.

**Assemblyman Conklin:**

You have to collect them proportionately in each county.

**Assemblyman Ohrenschall:**

I have a question for our Legal Counsel. Let us assume S.B. 549 (R1) passes into statute and A.J.R. No. 1 of the 22nd Special Session is approved by the voters and amended into the *Constitution*. Senate Joint Resolution 3 (R1), after passing the next Legislative session, will also amend the *Constitution*. What would happen until S.J.R. 3 (R1) gets amended into the *Constitution*? Would S.B. 549 (R1) still be a valid statute and not in contradiction to A.J.R. No. 1 of the 22nd Special Session? What would happen if S.J.R. 3 (R1) and A.J.R. No. 1 of the 22nd Special Session were both amended into the *Constitution*?

**Kim Guinasso:**

The congressional amendment to the Constitution, A.J.R. No. 1 of the 22nd Special Session, would need to pass the next general election in 2008. It would not apply to initiative petition efforts until the Legislature met in 2009, in which case, the Legislature would definitely need to come in and amend if S.B. 549 (R1) passed because it would not be in agreement with the provisions of A.J.R. No. 1 of the 22nd Special Session. If A.J.R. No. 1 of the 22nd Special Session passed the general election in 2008, S.J.R. 3 (R1) would still come before the Legislature in 2009. If it passed the Legislature in 2009, it would go to the voters in 2010. If the voters passed it in 2010, assuming it was amended according to Mr. Conklin's mock-up, which is open, the Legislature would be able to decide whether to keep the congressional-district model or it could look at some different model. If A.J.R. No. 1 of the 22nd Special Session passed in its original form, we would be back to what we have just been discussing with respect to S.B. 549 (R1).

**Chair Koivisto:**

At the present time we are operating in a vacuum. Our constitutional provision for circulating petitions and gathering signatures has been struck down, so there is nothing in our *Constitution* at the present time telling us how to do this. We can pass S.B. 549 (R1) so we have a framework under which to operate until the *Constitution* is amended and gives us the mechanics of gathering signatures for initiative petitions.

**Assemblyman Mortenson:**

We had initiative petitions after the constitutionality of the signature gathering was declared void. How was the Secretary of State able to carry out his duties once that was struck down?

**Kim Guinasso:**

The Secretary of State's Office simply determined the number of people who voted in the last election, took 10 percent of that number and that was the raw requirement for signatures. There was no further requirement in terms of residency for those people signing the petition.

**Chair Koivisto:**

Are there any questions from Committee members? If anyone in the audience wants to speak on this bill, please do so.

**Lynn Chapman, State Vice President, Nevada Eagle Forum:**

We are in support of this bill. We like the 17-county idea because that is how we have collected signatures in the past and it works well. We would like clarification about language on page 4 at lines 40 and 41 that states, "At least one registered voter who resides in each county must sign the petition." What we used to have to do was have a signature of a person who resided in each different county on every single petition. We would like to know if it is on every single petition again, because that was thrown out in court. Does that mean with all the documents and petitions in that one county? Is that the petition or does it have to be every single petition?

**Kim Guinasso:**

It occurred to us that populations in certain counties could become so sparse that the numbers would work out to require only a fraction of a signature. After looking at case law, it is our recommendation that the provision be removed. In the mock-up, that particular provision is eliminated.

If the Committee does not go ahead with this mock-up and chooses to go ahead with S.B. 549 (R1), it would be our office's recommendation that that particular provision be removed.

**Lynn Chapman:**

Thank you.

**Chair Koivisto:**

I am not sure where that is.

**Kim Guinasso:**

It is removed in the proposed amendment. If you will look on page 4 of the mock-up, it is on lines 9 and 10 and is proposed to be deleted.

**Chair Koivisto:**

I am going to take a motion on S.B. 549 (R1).

ASSEMBLYWOMAN GANSERT MOVED TO AMEND AND DO PASS  
SENATE BILL 549 (1st REPRINT) AS PRESENTED IN PROPOSED  
AMENDMENT 3842.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

I have a motion and a second. Is there any discussion? [No response]

THE MOTION PASSED UNANIMOUSLY.

There being nothing else to come before the Committee, we are adjourned [at 6:13 p.m.].

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblyman Harry Mortenson, Chair

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

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Assemblywoman Ellen Koivisto, Chair

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



## EXHIBITS

**Committee Name:** Committee on Elections, Procedures, Ethics, and Constitutional Amendments

**Date:** May 3, 2007

**Time of Meeting:** 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
SJR 4	C	Senator William Raggio, District No. 3	Prepared text
SJR 4	D	Senator Raggio	History of the Nevada Board of Regents
SJR 4	E	Senator Raggio	"Postsecondary Education Governance or Coordination Structures"
SJR 4	F	Ron Knecht, Member, Board of Regents	Prepared text in opposition
SJR 4	G	James Dean Leavitt, Member, Board of Regents	Excerpt from <i>The University of Nevada</i>
SJR 4	H	Howard Rosenberg, Member, Board of Regents	Prepared text in opposition
SJR 3 (R1)	I	Be-Be Adams, representing State Senator Dean Rhoads	Prepared text in explanation of the bill
SJR 3 (R1)	J	Assemblyman Marcus Conklin	Mock-up of proposed amendment 3899
SB 549 (R1)	K	Assemblyman Marcus Conklin	Mock-up of proposed amendment 3842