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

Seventy-Fourth Session
May 17, 2007

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:51 p.m., on Thursday, May 17, 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: 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 Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Randolph Townsend, Washoe Senatorial District No. 4

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Nicole Lamboley, Chief Deputy, Office of the Secretary of State

Chair Koivisto:
[Roll taken] We are having a work session today, so Mr. Guinan is going to lead us through our work session document.

Senate Bill 425 (1st Reprint): Makes various changes relating to campaign practices. (BDR 24-905)

Patrick Guinan, Committee Policy Analyst:
We will begin with Senate Bill (S.B.) 425 (1st Reprint). [Mr. Guinan read an explanation of the bill from his work session document (Exhibit C).] The Secretary of State has proposed an amendment to S.B. 425 (R1) that is in the form of a mock-up (Exhibit D). There is a representative from the Secretary of State's Office here today if the Committee has any questions.

Chair Koivisto:
The Committee may remember that we also processed a bill concerning legal defense funds. Senate Bill 425 (1st Reprint) would work with our bill, so if our bill does not pass out of the Senate, the provisions in this bill will take care of it.

Nicole Lamboley, Chief Deputy, Office of the Secretary of State:
This is an amended version of the bill introduced by the Secretary of State in this House. The amendment that is before you today would include that a legal defense fund could be established by any candidate or elected public official. The language in the original bill limited it to a Governor, Governor-Elect, Member of the Legislature, Lieutenant Governor, and Lieutenant Governor-Elect.

The other provision in this amendment would require that any candidate or elected official, who sought to establish a legal defense fund, would provide notice to the Secretary of State that he or she was going to set up a legal

defense fund. The reporting requirements would be in concert with the current statutory requirements for filing of campaign expense reports.

The amendment also allows for the Secretary of State to design and provide the forms that such a fund would be disclosed on.

Assemblyman Conklin:
Lines 37 and 38 on page 2 of the mock-up read, "'political purpose' includes, without limitation, the establishment of, or the addition of money to, a legal defense fund." That language would mean we could have a legal defense fund. You are asking that such a legal defense fund be governed by *Nevada Revised Statutes* (NRS) 294A, which are the campaign practices statutes; and that the Secretary of State is to create a form specifically designed for a legal defense fund that is similar to the campaign contributions and expenses forms. Do we now have two campaign funds raising money and can that money be commingled?

Nicole Lamboley:
No, it says on page 2, Section 2.5 that the Secretary of State "shall design a single form to be used for all reports of campaign contributions and expenses or expenditures and of contributions received by and expenditures made from a legal defense fund." They would be on a single form and the intent would be that the funds could not be commingled. They are two separate accounting requirements reported on the same day on a single form, but they are separate and distinct.

As an example, if you did not establish a legal defense fund when you submitted your campaign report forms, under the legal defense fund section you would put an "NA," not applicable. We would be able to verify that information because to establish a legal defense fund, you are required to submit notice to the Secretary of State prior to establishing and collecting funds for it. They are separate accounts.

Assemblyman Conklin:
They are separate accounts. Does that mean they have separate campaign contribution limits? I am running for office and I can receive a maximum of $10,000 for my campaign per company, entity, donor, or whatever the case may be, and that is the combined total—$5,000 per election, primary and general. Can I set up a legal defense fund under this statute and now collect $20,000—$10,000 for my campaign fund and $10,000 for my legal defense fund?

Nicole Lamboley:
It would be subject to the $10,000 limit, so yes.

Assemblyman Conklin:
Could I take $10,000 from my legal defense fund, write myself a $10,000 check, and roll it into my campaign account?

Nicole Lamboley:
Under our view of it, no, you could not do that. You cannot commingle funds. The legal defense fund, as it says in Section 1.5, is used to "defray attorney's fees or other legal costs incurred by a candidate" if the individual "becomes subject to any civil, criminal, or administrative claim or proceeding." Right there, the definition states that you can only collect and expend the money toward a legal claim. You could not use it to buy billboards, for instance.

Assemblyman Conklin:
I spoke with Senator Cegavske about Assembly Bill 605 (1st Reprint), which the Assembly passed and sent to her committee. We agreed to roll the concepts that were agreeable to the parties involved into this bill, that way there would not be two bills being processed in conflict with each other.

You must disclose within 5 days that you have opened a legal defense fund, but you only have to report it using the campaign finance reporting process. Was there a reason the reporting is not monthly or quarterly?

Nicole Lamboley:
Initially we had recommended that, and would still support more financial disclosure of a legal defense fund, but that is a policy decision for this Body to determine. In this form, the reporting requirements would be consistent with the current statutory requirements for contribution and expenditure reports, but we would welcome any amendment to require more disclosure.

Assemblywoman Gansert:
Mr. Conklin asked about moving money from a legal defense fund to a campaign fund, but could money be moved from a campaign fund to a legal defense fund?

Nicole Lamboley:
I believe that is not prohibited. Under the statute, there are limitations on where campaign funds can be disposed of. That might be something the Committee might want to consider.

Assemblywoman Gansert:
I do not read it as being prohibited in this bill, nor do I see the $10,000 limit.

Nicole Lamboley:
Because this bill falls under NRS Chapter 294A, and it is defined as a political purpose, I believe it falls under the $10,000 rule. That might be something that needs to be clarified, and we would welcome that.

Kim Guinasso, Committee Counsel:
As drafted now, that issue is clear. Even though it says, "'political purpose' includes, without limitation, the establishment of ... a legal defense fund" that only pertains to Section 2, which is the blackout period during the legislative session. That would mean you could not collect contributions to your legal defense fund during the blackout period, if you are one of the public officers subject to that section.

The way this is currently drafted, I do not believe there would be any limitation on what amount could be contributed to a legal defense fund. If it is the Committee's pleasure, we would do well to clarify that.

Assemblywoman Gansert:
As I read the bill, the Secretary of State is going to develop one form with a dual purpose, so perhaps a box saying "legal defense fund" would be checked. Is that what the intent was or are there two separate forms?

Nicole Lamboley:
The statute requires use of a single form to report all contributions and expenditures. We have to come back to the legislature before the form can be approved, but we would design one form. The form might include a box that would be checked if there was a legal defense fund. Checking that box would require that certain attached pages be completed.

Chair Koivisto:
You also said that a person could not collect for a legal defense fund during the blackout period, is that correct?

Nicole Lamboley:
Yes, a legal defense fund is subject to that same restriction.

Assemblyman Segerblom:
I support the concept and idea, but I would like to see it amended to include the fact that the campaign contribution limits that apply to campaigns would also apply to legal defense funds.

Assemblyman Conklin:
We need to be clear that the contribution requirements are the same and that the legal defense fund is not open-ended. The same limits to a legal defense fund would apply as those to a campaign fund under Chapter 294A.

Chair Koivisto:
Is that a motion?

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 425 (1st REPRINT) WITH THE MOCK-UP, WHICH IS PROPOSED AMENDMENT 4114. IN ADDITION, THE CAMPAIGN CONTRIBUTION LIMITS IN NRS CHAPTER 294A WOULD ALSO APPLY TO LEGAL DEFENSE FUNDS.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The next bill we will hear is Senate Bill 490.

Senate Bill 490: Revises provisions governing the prefiling, reprinting and transmittal of bills and resolutions. (BDR 17-789)

Patrick Guinan, Committee Policy Analyst:
[Mr. Guinan read an explanation of the bill from his work session document (Exhibit E).] This is the Legislative Counsel Bureau's bill. Proposed amendment 4106 (Exhibit F) is from Assemblyman Conklin at the request of the Chief Clerk of the Assembly. The only change that amendment makes is in Section 5 and removes the phrase "upon adjournment or immediately if so directed by the respective House." That language concerns transmitting bills that have been passed. We will also hear from Senator Townsend and Lorne Malkiewich concerning the amendment they would like to propose to the bill.

Assemblyman Conklin:
It is impossible to "immediately" transmit the bill, because in many cases the bill is not in the possession of the Chief Clerk. Amendment 4106 would clean up

the language to make it reflective of the actual process. Everyone in both Houses has agreed to it.

Lorne Malkiewich, Director:
When this bill was heard in your Committee, I asked that it be held because I knew we were still working on some ideas. You have in front of you four documents: a copy of the 120-day calendar (Exhibit G); a mock-up of a proposed amendment (Exhibit H); a chart showing some changes and proposed increases to add either 140 bills or 240 bills (Exhibit I); and another chart in gray showing bills that would be eliminated in the mock-up (Exhibit J). We would be eliminating 240 bills; however, the question becomes whether 140 or 240 bills would be added back.

Senator Randolph Townsend, Washoe Senatorial District No. 4:
My purpose in appearing here today is to help us manage the process better, not only for the public, but also for our staff who work so hard to help us with the responsibilities of our offices.

I would direct your attention to the long handout with the gray areas in it (Exhibit J). I would like to help our staff in the Legal Division be more effective during the 120 days required to get our work done. That means having bills better defined and available sooner to both Houses. Also, our efforts should be focused on bills that have some legislative support for purposes of introduction. The highlighted portion of this handout would be the bills left to individual legislators, and those in the gray areas are the bills being removed. The persons or entities losing bills would have to go to a committee chair, a legislator, or to Leadership in order to get their bills introduced. Many times these entities, as well-intended as they are, present bills that do not have support in either House; therefore, the public's money, staff time, and our time is wasted. It is important for all of us to have greater control over what goes on in this Body.

The second handout (Exhibit I) contains two proposals for the Committee's consideration. One proposal involves eliminating 100 of the 240 bills, and distributing the remaining 140 bills equally among individual legislators and committee chairs in both Houses. In the second proposal, all 240 bills would be redistributed among individual legislators, committee chairs, and Leadership. Time frames for introduction of bills are laid out, as well as authorized entities, and also, the number of measures allowed per entity is noted on both proposals.

If we left the number of bills the same, those entities that previously could submit bill draft requests (BDRs) would have to come to you as a legislator, or to you as a chair, and ask you to have their bills drafted. That means we, as

legislators, could ask them to defend their positions and would enable us to have some kind of legislative control over this massive process we know as bill drafting. Page 1 of the document shows what the process would be if you chose to cut the number of bills down by 100. Staff now is working 20-hour days for 6 months in order to accommodate all these bill draft requests.

I brought the legislative calendar (Exhibit G) to better explain. The Committee to Consult with the Director, which is a subgroup of the Legislative Commission, would be looking at two separate things—on this year's calendar they would be looking at February 12, the eighth day of the session, when legislators' bill draft requests have to be submitted; and at March 19, the forty-third day, when committee bill drafts have to be submitted. We propose moving those two deadlines up so that legislators' bill draft requests would have to be in sooner, probably by opening day. We also propose moving committee introductions forward, too.

In addition, any entity not already on the list must fill out a form in order to have a bill draft request presented to the Legislative Counsel Bureau's (LCB's) Legal Division. That form is very definitive: name, address, contact person, purpose of the bill, and fiscal note. The details must be there for our staff to be able to attempt to draft the bill. We need to have more self-control and, more importantly, be more responsive to our own staff. We would ask the Committee to Consult to consider using that same form for all legislators, which would narrow the opportunity for mistakes or having to make guesses. As good as LCB Legal staff are, they cannot read our minds. All of you have done the best you can to accommodate various constituencies, associations, and groups. You submit a bill for them, give Legal some general ideas, and leave information about a contact person. Many contact people disappear for months, and that is very unfortunate.

If you spend any time with our bill drafting process you will understand that it is an extremely arduous process. Our staff does not make many mistakes. I want to make certain they have the opportunity to do the best job they can for us. I offer this as a friendly amendment to try and get better control of our process. Some of us will be term-limited out, and as a result, we are getting ready to hand the reins to a great many new folks in both Houses. Many of us feel an obligation to do the best we can to help our staff help the new legislators. We want to make certain you have all the value of the Legislative Counsel Bureau because they are the best in the country, without question. We owe them the opportunity to be the best they can be, but if we do not give them the best input, they cannot do that. If you choose to process the amendment, you will be choosing between 140 bill drafts or 240 bill drafts. Either way, those

entities that lost bill drafts will have to come to you as individual legislators, or to the chair, or to Leadership to get their bills drafted. At that point, the responsibility of being a legislator increases, because you would now have to determine the value of having the proposal drafted.

Assemblyman Conklin:
I am in support of this amendment. In the proposal where you are adding back 140 drafts, you have asked to have bill draft requests submitted by December 15 instead of September 1. Would that put an additional burden on staff? Is that an unintended consequence?

Lorne Malkiewich:
Let me direct your attention to page 2 of the mock-up (Exhibit H). Section 2 on that page lays out the number of bills Assembly Members and Senators can request. It already has a bifurcated timeline; half the bills must come in by September 1 and half must come in by December 15. That is an attempt to get more bills in early so the Legal Division can start working earlier. If you look at the change in language, the five bill draft requests Assembly Members get between September 1 and December 15 is increasing in number to six. Since there are half as many Senators, their 10 bill drafts increase to 12. That is already in the law, all we are doing is adding one more to the second time period.

Assemblyman Conklin:
On this chart, all the bills we are deleting came to you on December 1 and we are moving them to December 15. I just want assurance that the change will not place an undue burden on staff.

Lorne Malkiewich:
With that bifurcation, new legislators do not get that additional bill draft. For incumbent Senators and Assembly Members, you could move that one extra bill draft by deleting the number "five" and changing it to a "six." That would move about 80 of those bills back to September 1 and is a very simple change.

Assemblyman Conklin:
Do you think that is a wise change?

Senator Townsend:
I brought this measure forward for deliberation and I think that recommendation is solid and would endorse it if you want to process this bill.

Assemblyman Conklin:
It would be my desire to shrink the number of BDRs because it is cumbersome. I like the idea that elected officials would have greater control over the bills that come before this Body. Are you open to various combinations of this? Your second proposal takes away 240 bills, but then adds them back in so it is even. The first proposal actually reduces the total bill drafts available by 100.

Senator Townsend:
Yes.

Assemblyman Conklin:
We like that one better.

Lorne Malkiewich:
The mock-up is the 140-bill proposal.

Senator Townsend:
The reason I presented the two options was because your House has more difficulty managing the process because you have more people and less time. I wanted to offer both options so that you would have an opportunity to decide what would work best for you. I endorse the smaller version. It is important to gain control of our process.

Assemblyman Settelmeyer:
Would any increase in bill numbers for the incumbents have to be submitted by the September 1 date? Would you want to flip the Senators' as well so that any increase in bill draft request numbers would be at the earlier date?

Chair Koivisto:
Are you talking about page 2 of the bill?

Assemblyman Settelmeyer:
I am speaking about page 1 of the highlighted document (Exhibit I) where it indicates that incumbent State Senators would have 12 BDRs to submit by the later date. I assume Mr. Conklin would also want to bump them up so that the increased number would have to be submitted by the earlier date, just as it is with the Assembly.

Assemblyman Conklin:
I am talking about everyone.

Assemblyman Settelmeyer:
Are any of the amendments in conflict?

Senator Townsend:
The mock-up you have in front of you is based on the original Senate bill, so it would match. Your Committee would have to determine the number of bills and the dates they would be submitted by.

Lorne Malkiewich:
I have not seen Mr. Conklin's amendment, but it sounds as though there would not be any conflict. This mock-up does not address any existing provisions of the bill and his amendment amended one of the existing provisions.

Assemblywoman Kirkpatrick:
As a newly elected Assemblyman, six BDRs are a lot of bills, and then they get two more. Do we need to give newly elected Assemblymen the additional bills? There are too many bills now and we do not have the time to address them.

In this bill is there any way to address a legislator who chooses not to run for reelection but still has until election day to add his bills?

Lorne Malkiewich:
In general, freshmen legislators find that the bills they are allowed are plenty. They are serving from November 1 through the end of session but incumbent legislators serve from the end of the preceding session until the end of the next session and have a lot more time to request bills be drafted. The specific numbers and decisions are a policy matter for your Committee to make.

On your other point, we could say that someone who is not running for reelection cannot request any measures. Right now, the rule is that a person is allowed to request up to their quota, up until the election. We do not draft those bills unless a legislator who is coming back picks them up. It would not be difficult to draft language that would say that if a legislator is not running for reelection, no requests for bills could be made after that date.

Senator Townsend:
In crafting this amendment, I did not want to assume anything regarding your House. If you feel newly elected individuals do not need that extra bill draft, that would not bother me. Perhaps those of you who have previously served could use the extra bill, or you could just eliminate it. You should make that decision depending upon how it would work best for your House.

Assemblyman Settelmeyer:
Deletion of some bills from certain entities and counties may cause freshmen legislators to be pursued and they may need that extra bill, so I would like to leave the 140-bill proposal the same.

Senator Townsend:
I recommend that the bills submitted by anyone who did not run or who was not reelected go to the bottom of the bill drafting list. If a legislator chose to pick any of those bills up, he would do so using his bill drafts. It is very important that the people who actually serve be the ones responsible for the bills.

Assemblyman Segerblom:
How did we get to this point? How long have we been giving bill drafts to the agencies, counties, and other entities?

Lorne Malkiewich:
In my first session as Legislative Counsel in 1989, there were 3,000 bill draft requests. We used to have unlimited bill draft requests. When we first put a limit on them, some people were very upset. Legislative sessions back then went from the third Monday in January until July, and that is what led to the 120-day session. The session was getting too big and running too long. Eventually, bill draft request numbers were all placed in statute in Chapter 218 of the NRS. You can see all the limits and you can see what we are repealing.

With the 120-day session, we definitely want to cut the number of bill drafts and we also want to move the bill drafts back. The last major change was in 1997, when the 120-day session resolution was passed. We spent the next interim getting bill draft limitations in effect—not just numbers, but also the time frames. That was when we first started having them submitted by September and December; because there was no way we could get all the bills introduced by day 50 of the session if we did not start getting them requested in September.

It has been an evolution from no limits at all, to a very strict time line and a limit on the number of bills. Legislators who are used to the old system and being able to request a lot of bills and introducing them partway through session are another problem.

Senator Townsend:
All the bills being removed are split up; 50 percent come to the Assembly and 50 percent come to the Senate. Committee chairs come in during the first

week and there is a stack of BDRs on your desk. You wade through them but have no idea where they came from or what their purpose is, and that is always troublesome. This new procedure would differ from the current one where these groups have their requests drafted and dropped on various legislators' desks. If entities such as counties and school districts have to meet with the Senators and Assemblymen who represent them, and we meet their requests with blank stares, they might want to rethink their bill draft requests. We want these entities to make their cases to us.

Chair Koivisto:
Are there any questions? [No response] All right, I will bring this bill back to the Committee. Because this bill is legislative operations, it is exempt and does not have to be passed by the deadline, so we will deal with it next week. I am closing the hearing on S.B. 490.

Mr. Guinan, back to you.

Senate Bill 548 (1st Reprint): Revises various provisions relating to public offices. (BDR 23-1434)

Patrick Guinan, Committee Policy Analyst:
[Mr. Guinan read an explanation of Senate Bill 548 (1st Reprint) from his work session document (Exhibit K).] Mr. Conklin has proposed an amendment to S.B. 548 (R1) (Exhibit L). The bill is not changed until you get to the final page of the mock-up. In Section 3, subsection 2, there is a new provision added that reads:

> A statement which:
> (a) Is published by a candidate within 60 days before a general election, general city election or special election or 30 days before a primary election or primary city election; and,
> (b) Contains the name of the candidate, shall be deemed to comply with the provisions of this section.

Assemblyman Conklin:
This portion of the bill is complex. The intent is to rein in independent expenditures and expenditures that, in many cases, are harmful to the reputation of candidates. The amendment does not seek to address the opposition; it seeks to address only those things that happen in favor of the candidate. As an example, if I send out a piece of literature that says, "Vote for Marcus Conklin. He is a swell guy," this amendment says I do not have to disclose that I sent it out. It is obvious I sent it. The only time a person has to disclose that they sent out "Vote for Marcus Conklin," is if the person is not

me. This amendment clarifies that the process does not have to be taken to absurdity. Those things I publish on my own behalf, making the case for myself, do not require disclosure, but everything else does require disclosure.

Chair Koivisto:
Now, when you send out a mail piece, does it have to say on the piece, "Paid for By Committee to Elect So and So"? Under this legislation, would that be the result?

Assemblyman Conklin:
If we passed this bill without the amendment, you would, within the time frame, have to put that on everything; not only on your mail piece, but in your phone conversations, your television ads, and your ad in the paper. When it is obvious that it is for the candidate and you are controlling the message, it should not be necessary to say, "Paid for by me."

Within election law, there are subtle nuances regarding who pays for campaign advertising or who controls the message. If Budweiser, Incorporated, takes out an ad saying, "Tick is a swell guy," and sends Tick an in-kind for that ad, then Tick controlled the message and no disclosure is required. If Budweiser, Incorporated, takes out an ad that says, "Marcus Conklin is a doofus and should not run for office," and in-kinds it to Tick, then that ad needs to say, "Paid for by Tick." If there has been no in-kind, the ad must say "Paid for by Budweiser, Incorporated." It is not actually who paid the money; who the money is attributed to is who is deemed to have control of the message.

Assemblyman Christensen:
If Budweiser is sending out messages about what a great guy Tick is, that has to be disclosed by Budweiser. Is that what you are saying? Let us say the "Trees for Children Foundation" is supporting Tick, and paid for a message saying he is a great guy. Tick is running against you and that same Foundation sends out a message saying that Marcus is a doofus. Are you saying the Foundation would have to put that the ad was paid for by Tick because it is an in-kind contribution? Is that how you are framing this?

Assemblyman Conklin:
That is my interpretation of this bill. There are other absurdities in here, but I am only trying to fix one. It is important that we put something on the books, because in today's world of personal destruction politics, someone needs to be held accountable for the message.

My amendment to the proposed legislation states that if I, the candidate, have a message about myself, I do not have to disclose that I paid for it. If I have a message that expressly advocates for or against you, and we are running against each other, then I must disclose that the ad is paid for by me.

Assemblyman Christensen:
I am going back to the example of a third party. Tick probably does not serve on the board of the Trees Foundation, nor does he have any fiscal, management, or operational control over that board. I do not want to put all of us in this awkward spot. It is a group I do not control, but that group may like me more than the person running against me. I have no control over what they say about my opponent, so I do not want to have to list that I paid for that. What if the advertising is very egregious? That is just not my style.

Assemblyman Conklin:
The in-kind portion is my interpretation. Theoretically, if an in-kind is made, you have control over the message. If someone writes something, publishes it, and sends you a letter giving you an in-kind donation, that is not an in-kind. You can send it back to them. An in-kind is something I have control over. An in-kind assumes I have control over the message, or at least the expenditure for it, to some extent.

Kim Guinasso, Committee Counsel:
There are two types of in-kind: There is the coordinated one with the knowledge of the candidate; and there is the independent one entirely outside the knowledge of the candidate. If there is an entity that really likes candidate A, but does not want to, in concert with candidate A, provide in-kind expenditures for the campaign; then, rather than going to the campaign and saying, "I would really like to buy some billboards for candidate A," the entity decides it is going to, independently and without the knowledge of the candidate, go out and erect billboards saying, "I love candidate A. Vote for candidate A." That would be an independent expenditure. If you start trying to regulate anything like that, you get into significant First Amendment issues.

Assemblyman Conklin:
Section 3 of this bill gets at those expenditures if the party paying for them has to disclose under NRS 294A.210.

Kim Guinasso:
Note the "express advocacy" language on lines 7 and 8 on page 4 of the mock-up (Exhibit L) which says that it has to "expressly advocate the election or defeat ...;" and closely tracks federal language and the language in most of

case law concerning this issue. It must "expressly advocate" the election or defeat of a clearly identified candidate.

Assemblyman Segerblom:
To answer Mr. Christensen, we are confusing independent expenditure with in-kind expenditure. The sponsor's name would not have to be on the campaign paraphernalia when an in-kind expenditure is done in coordination with the candidate. The sponsor would have to identify that he had paid for the ad if it were done outside the campaign by an independent party.

Chair Koivisto:
The independent person would have to disclose that he had paid for it.

Assemblyman Segerblom:
Right.

Assemblywoman Kirkpatrick:
If you look at Section 3, subsection 1(c), on line 9, the language talks about receiving compensation from a candidate. I will give you an example. When I ran for office last time, there was a flyer distributed in opposition to my opponent paid for by a group I had no knowledge of. I called the Legal Division and asked whether I had to claim it. From my understanding of what Mr. Conklin has been saying, I would have had to claim it, although I had no part of that flyer.

Kim Guinasso:
Yes, Mrs. Kirkpatrick, if you look at the way this is set up, it requires that the person "publishing the statement receives compensation from ...." In the example you gave, was there some entity that was publishing things that were complementary toward you?

Assemblywoman Kirkpatrick:
They were negative toward my opponent.

Kim Guinasso:
They were negative toward your opponent, but you did not provide compensation to the person, so there is nothing to disclose. If the person providing compensation to the entity publishing the negative statements about your opponent is required to report pursuant to NRS 294A.210, then the statement would be required to contain the fact that the person was receiving compensation from that entity.

Assemblyman Conklin:
If I am not a candidate, not an elected official, and not covered under Chapter 294A, there is no law that can require me to report that I sponsored that message. That is protected. You have to put your name on the message if you are required to report under Chapter 294A, so if you are a political action committee (PAC), a political party, a political organization, or if you have an obligation to report under the campaign practices statutes, you must disclose on that printed material, or on whatever type of material it is, that you paid for it. The only person not required to make that disclosure, because it is assumed, is the candidate who makes a positive statement about himself.

Assemblyman Goedhart:
We have a campaign with candidate A and candidate B. Candidate B has received $10,000 from a group that has a lot of members around the State. It is not a political organization, per se, but it is a good-sized entity. That entity has already hit the $10,000 cap. They see that candidate A is doing better than candidate B, so a week before the election they drop some "hit pieces" against candidate A to boost their candidate in the polls. It is very easy for candidate B to say he had no knowledge of what was being disseminated and defeat the purpose of the $10,000 cap. I have seen that occur in at least one race. There has been a lot of discussion about PACs and umbrella corporations, but there still seem to be many ways to get around the laws.

Kim Guinasso:
That is a fair assessment. We run up against the body of case law governing independent expenditures and the fact that those are protected First Amendment rights. As long as it is not done in conjunction with a candidate, or with the knowledge of the candidate, then it is not a contribution; and anyone who wants to say whatever he likes is able to do that.

Assemblyman Conklin:
Currently, when an independent expenditure is done by a PAC or political party, they do not have to disclose anything. Under this legislation, if one of those entities wants to make an independent expenditure, even without your knowledge, at least the person the "hit piece" is directed against will have knowledge of who is doing it. Your constituency will also have knowledge and be able to decide if the message is from a credible source.

Chair Koivisto:
Are there further questions from the Committee? [No response]

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 548 (1st REPRINT) WITH THE MOCK-UP, PROPOSED AMENDMENT 4082.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

Is there any discussion?

Assemblyman Conklin:
The reason this proposal was brought forward is that there are provisions in statute that are unconstitutional. This new language complies with the statute and, as part of this motion; we might want to clean up the old language that is unconstitutional.

Kim Guinasso:
Please notice; at the top of the first page of this proposed amendment are red letters saying "Note: This document shows proposed amendments in conceptual form. The language and its placement in the official amendment may differ." This would be such a case. It would be my recommendation that, in addition to what is set forth in the mock-up, we repeal NRS 294A.320, the old section involving published material concerning campaigns and identifying persons paying for the publication, et cetera. Those provisions were ruled unconstitutional by the Ninth Circuit Court in *ACLU v. Heller* [378 F.3d 979 (9th Cir. Nev. 2004)]. What is set forth in the mock-up would be a replacement for that provision. It deals with the same subject matter, so it would be appropriate to go ahead and repeal NRS 294A.320. We do not always repeal sections that have been ruled unconstitutional, but it would be beneficial to the public when they are reading the statutes so that they can understand what the state of the law is.

ASSEMBLYMAN SEGERBLOM AMENDED HIS MOTION TO INCLUDE REPEAL OF *NEVADA REVISED STATUTES* 294A.320.

ASSEMBLYWOMAN GANSERT SECONDED THE AMENDED MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will close the Elections, Procedures, and Ethics part of this Committee meeting and turn the gavel over to Assemblyman Mortenson to deal with the Constitutional Amendments part of this meeting.

Chair Mortenson:
We are going to have a five-minute recess [at 5:10 p.m.].

[The Committee returned from its recess [at 5:18 p.m.]

Chair Koivisto:
We passed Senate Bill 87 (1st Reprint) out of this Committee that allowed the Legislative Auditor to audit public agencies, or agencies that received public dollars. We amended that bill to say "state" money instead of "public" money at the request of Carole Vilardo, President of the Nevada Taxpayers Association. The Senate is not concurring with our amendment and Ms. Vilardo has informed me that restricting audits to "state" money could be problematic. We are given the choice to recede or not recede from our amendment. I think we will recede from our amendment, but I wanted the Committee to know why we are doing it when we talk about it on the Floor.

Chair Mortenson:
We will start by hearing Senate Joint Resolution 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)

Patrick Guinan, Committee Policy Analyst:
Senate Joint Resolution 4 was heard initially by this Committee on May 3. It is sponsored by Senators Raggio, Townsend, and others. Testimony on S.J.R. 4 included members of the Board of Regents who testified both in support and in opposition to the measure. No amendments have been suggested.

Chair Mortenson:
Is there any discussion?

Assemblyman Munford:
If this bill passes, you stated that the Governor would be the only one to appoint members to the Board of Regents. It would be more fair and equitable if the Governor were to appoint a committee to choose the Board of Regents.

Assemblyman Kihuen:
Because I am an employee of the Nevada System of Higher Education, I will abstain on this vote.

Assemblywoman Gansert:
Because terms for the regents are six years, and Governors are limited to eight-year terms, different Governors would be appointing different regent positions.

Assemblyman Munford:
I am in support of the appointment process, but I would like to see some diversity among the Board members so everyone would have a voice and some representation. I do not want cronyism or partisan politics; I want a more democratic process in appointing the Board members.

Kim Guinasso:
This resolution is proposing that the Legislature would provide by law for the organization of the Board. That would include the number of members of the Board, the qualifications, terms of office, and the appointment of the members of the Board by the Governor. It would be our office's opinion that, if this were to pass and become part of the *Constitution*, it would be within the purview of the Legislature to, if it desired, direct the Governor to appoint a committee to recommend members to the Board of Regents. This proposal to amend the Nevada *Constitution* is very broad and the details could subsequently be determined by the Legislature.

Chair Mortenson:
I asked for an opinion from Brenda Erdoes [Legislative Counsel] who states:

> It is the opinion of this office that the Legislature may determine the process of appointment by the Governor. It is further the opinion of this office that the process of appointment could be determined by the Legislature, and could include establishing a statutory Board of Regents Selection Committee.

There is a judicial panel that selects viable candidates when judges are appointed. The Legislature can do the same thing. We can set it up so that we select a committee that would pick viable candidates and give the Governor a choice among three candidates.

> ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS SENATE JOINT RESOLUTION 4.
>
> ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

Chair Mortenson:
Is there any discussion?

Assemblyman Christensen:
I want to be on the record as being unable to support this resolution. I support the electorate being able to choose their leaders. During various campaigns, I have met all the Regents and campaigned with several during 2002. What if an individual who could be a phenomenal regent and bring real value to that organization was not "tight" with the Governor or with the body making the appointments? I would hate to take someone out of the running who could really bring some value to the Board of Regents, so I will not be able to support this.

Assemblywoman Koivisto:
We had one, long-time Regent testify that it was time we came into the Twenty-First Century and started appointing our regents. We also received an email from another Regent who supports appointing regents. Then we had Regents sit at the witness table and harangue us and treat us with total disrespect. For that reason, I am going to support this bill.

Assemblyman Ohrenschall:
I concur with the comments of my colleague from Assembly District 13. We might not like individual regents, there might be dissension, but I am not sure that is a reason to take voters out of the mix. I realize it was mentioned that Nevada was one of only a few states that has a Board of Regents that is sort of a separate branch of the government, but I believe that was something that was always unique to Nevada. We can elect so many different branches of our government, so I will be opposing this constitutional amendment.

Assemblyman Goedhart:
I want to concur with the opinions of several of my colleagues from Clark County on this issue. I, too, am in support of having the electorate vote for their individual regents. I have a lot of faith in the voters.

Assemblyman Segerblom:
In support of my motion, I believe the testimony was that we are the only state left that elects its Board of Regents. The districts are way too large to effectively campaign and I agree it is time to come into the Twenty-First Century.

Assemblyman Settelmeyer:
I am going to vote "yes," but want to reserve the right to change my vote on the Floor.

Chair Mortenson:
All right, let us take a roll call vote.

> THE MOTION PASSED. (ASSEMBLYMEN CHRISTENSEN, GOEDHART, AND OHRENSCHALL VOTED NO. ASSEMBLYMAN KIHUEN ABSTAINED. ASSEMBLYMAN SETTELMEYER RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR OF THE ASSEMBLY. ASSEMBLYWOMAN KIRKPATRICK WAS ABSENT FOR THE VOTE.)

The motion has passed. I will bring the bill back to the Committee and open the hearing on Senate Joint Resolution 3 (1st Reprint).

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)

Patrick Guinan Committee Policy Analyst:
[Mr. Guinan read an explanation of the bill from his work session document (Exhibit M).] There are two proposed amendments, one from Chair Mortenson and one from Mr. Conklin.

Chair Mortenson:
Amendment 4091 that I have proposed (Exhibit N) continues the provisions concerning initiative petitions currently being used by the Secretary of State. When the constitutional provisions governing signature gathering for initiative petitions was declared unlawful, the Secretary of State began using only the criteria of 10 percent of the voters, and the signatures could be collected anywhere within the State.

One reason I would like to move this amendment is because the American Civil Liberties Union (ACLU) has declared that it believes the method of gathering signatures from counties to be illegal. Language on the face of S.J.R. 3 (R1) reads:

> ... the United States Constitution because it applies the same formula to counties of varying population. Such application results

> in the signatures of voters from small, rural counties carrying more weight than the signatures of voters from larger counties.

In effect, one county minority has veto power which violates the *Nevada Constitution*. One small county of 1,200 people can, if they desire, veto the other 3 million people in the State. That is why the ACLU says this is unconstitutional.

We have a very complex situation. There is Mr. Conklin's S.B. 549 (R2) which requires that the voting be according to counties, which the ACLU has declared is unconstitutional; however, the Legislative Counsel Bureau has declared it to be legal. We also have A.J.R. No. 1 of the 22nd Special Session, which was a panic bill to try and right our *Constitution*. That bill, essentially, requires that votes be counted using congressional districts. Finally, we have S.J.R. 3 (R1) which does much the same as the practices currently being used by the Secretary of State.

Is there anyone who wants to testify one way or the other?

Assemblyman Goedhart:
Legal staff mentioned the opinion of the ACLU that S.J.R. 3 (R1) as proposed without the amendments would be unconstitutional. What is the opinion of our in-house Legislative Counsel Bureau (LCB) staff?

Kim Guinasso, Committee Counsel:
We do not agree that the provisions of S.J.R. 3 (R1) in its current form, or as proposed to be amended by any of the various concepts, are unconstitutional. The body of case law, specifically the two cases from the Ninth Circuit Court involving Nevada and Idaho, and all the other cases we found concerning this topic, focused on the fact that the percentage of signatures required from various counties was a fixed percentage. Because counties are not of equal population, signatures collected in the counties, which basically equal votes, were given unequal weight. That violated the concept of one man, one vote.

Senate Joint Resolution 3 (1st Reprint) in its current form requires that signatures be gathered from all the various counties in the State, but only in the same proportion as their populations bear to the total population of the State, provides a mathematical formula by which each signature is given equal weight. The mock-up proposed by Mr. Conklin eliminates that language and says that the total number of registered voters equal to at least 10 percent of the voters who voted in the last preceding election in the State would be required. The mock-up proposed by Mr. Mortenson requires that as well, but further requires

that the Legislature could not provide that the number could not be gathered with reference to location at all. Conceivably, all signatures could be gathered at one spot in the State. Either of these proposed amendments, in our opinion, would pass constitutional muster. We do not agree with what has been said to be the opinion of the ACLU that the current version of S.J.R. 3 (R1) is blatantly unconstitutional.

Assemblyman Goedhart:
This debate should be held on the merits of how we decide the votes should be cast or divided among state participants, rather than on constitutionality.

Chair Mortenson:
I agree with you, Mr. Goedhart. Let us look at this from a policy standpoint rather than the standpoint of constitutionality. During the next two years, the ACLU and LCB can battle it out. The ACLU did sue us and forced us to change the *Constitution*.

Assemblyman Conklin:
I support proposed amendment 4096 (Exhibit O), the one I brought forward. When the *Constitution of the State of Nevada* was developed, its authors sought to embody in it the principles of the *U.S. Constitution* and the philosophy of the Founding Fathers of our nation. That philosophy was that we would rule by majority, with due respect to the fact that some people in the minority will disagree. They too have rights. Proposed amendment 4091 seeks to allow a small minority of people in the State to put on the ballot any question they want without consultation with anyone else in the rest of the State. The sole reason this amendment is being brought forward is to seek to nullify a bill this Committee has already passed unanimously.

Amendment 4096 deletes language in the *Constitution* that has already been deemed unconstitutional and allows this Body, in future meetings, to determine what the process should be by which signatures for ballot initiatives should be gathered. If that process is deemed to be unconstitutional, it can be addressed in a subsequent legislative session. We do not have to wait six years; we can do it now.

The reasons for having these amendments are clear. One seeks to violate the rights of the many because we are afraid that the few will have the power to veto. If the few have the power to veto, the issue has not been vetted well enough to convince a plurality of people in this State that it is good enough for everyone. That is an important issue in determining which of these amendments we choose to move forward with.

Assemblyman Goedhart:
Your amendment 4096 references and retains the 10-percent language but deletes the 4-percent-of-the-total-population provision. What was your rationale for that?

Assemblyman Conklin:
The rationale?

Assemblyman Goedhart:
Senate Joint Resolution 3 (1st Reprint), as originally drafted, required at least 10 percent of the voters, or at least 4 percent of the total population, whichever is less. It appears that your amendment has deleted the 4-percent choice.

Assemblyman Conklin:
Amendment 4096 is a compromise amendment with members from the other House.

Kim Guinasso:
The 4 percent figure was a holdover from another resolution that was brought forward last session. The concept was that the signatures would be gathered from all the Assembly districts. This particular bill draft request came in very late this session, and we inadvertently preserved some of the provisions from 2005. The 4 percent figure was determined because it was believed that a static number based on the census would be the same from 10-year period to 10-year period. The downside of the 4 percent number is that, while 4 percent was roughly equal to 10 percent of those who voted in the last presidential election, it was significantly more than the number who voted in the last non-presidential election. The fluctuation of numbers seemed problematic, so we took that part out.

Assemblyman Goedhart:
Has amendment 4096 been approved by the original sponsor of S.J.R. 3 (R1)?

Assemblyman Conklin:
When this bill originally came up, Senator Rhoads, the bill's sponsor, was supposed to be here to testify. I offered this mock-up and testified with his representative at the time, so this has been cleared with him.

Chair Mortenson:
Senator Cegavske, Brenda Erdoes, and I had a meeting yesterday and when I left, we were all in concert. I believe there was no misunderstanding.

Assemblywoman Gansert:
Senator Cegavske told me the language she had agreed to was on page 2, Section 2, subsection 2, and included the words "total number of registered voters equal to at least 10 percent." She said she had agreed to that language and to the mock-up that is proposed amendment 4096.

Chair Mortenson:
Everyone agrees to the 10 percent language, it is the method of signature collection that is at dispute.

Assemblywoman Gansert:
Senator Cegavske told me she did not agree with the rest of mock-up amendment 4091.

Chair Mortenson:
As a consequence, if we pass amendment 4091 it will go to a conference committee. I would like to mention one analogous issue. Mr. Conklin is talking about applying the concept nationally. If we had a presidential election and all the states voted and elected a president but Rhode Island decided they were going to veto it; that would lead to chaos. Right now, a county with 1,200 people in it could veto what 3 million people want. That is disproportionate in power, as the ACLU says.

Assemblyman Settelmeyer:
If you introduced a bill that took away 50 percent of the money of people who owned over $10 million, since the vast majority of us do not own $10 million, we would vote for that bill. The majority would be trumping the minority.

Chair Mortenson:
That is true in any election. The country is a democracy, and, generally speaking, the majority rules. If there are situations where the majority is trying to trample the rights of the minority, we have courts that can step in and help the minority.

Assemblyman Conklin:
I am willing to make a motion.

Chair Mortenson:
I am not sure I want to do that yet.

Assemblyman Goedhart:
Say that 30 percent of the population of 1,000 in Esmeralda County voted in the last election. That would be 300 people. The way amendment 4096 reads, you would only need 30 signatures for an initiative process to meet its signature gathering burden from that county. If you were a signature gatherer and you could not get 30 people out of 1,000 to sign an initiative, maybe that initiative is flawed.

Chair Mortenson:
But if the people in another county have voted 10,000 to 1 against this, is it right that they should be able to veto?

Assemblyman Goedhart:
What we are talking about here is getting signatures on a petition, not about the actual voting process.

Assemblywoman Koivisto:
Even though I live in Clark County and am well aware that Clark County is the economic engine of the State, I have a real problem with the idea that a signature gatherer can stand in front of a Wal-Mart on Nellis Boulevard and get enough signatures to roll over the rest of the State. That gives me real heartburn.

Chair Mortenson:
Actually, that same signature gatherer could probably get the required number in Reno.

Assemblyman Conklin:
If you are a city or county and you want a provision that only applies to you, you put something on your own ballot that applies just to you. That is a legitimate process. If we support amendment 4091 to S.J.R. 3 (R1), which of you is willing to look at your constituency and say, "You do not have to be consulted to put something on the ballot in this State"? I am not willing to bargain away the rights of my constituents to be consulted in any legislation, whether by this Body or by ballot initiative. That is what amendment 4091 seeks to do and I cannot support it.

Chair Mortenson:
I do not understand exactly what you mean about not being able to put something on the ballot.

Assemblyman Conklin:
If amendment 4091 passes, the *Constitution* will then read that not any representative portion of this population has to be consulted in order to put an initiative on a ballot. Anyone can put anything on an initiative petition that they can convince any small pocket of people to go for. I want ballot initiatives to represent people from all walks of life. The only opportunity to convince people is during the signature gathering process, and I do not understand why you seek to take that away.

Chair Mortenson:
Show me the part in my proposed amendment that says I am taking anything away from the people. A small county will not have the right to veto what 3 million people have chosen to try to accomplish.

Assemblyman Conklin:
Yes, but 13 small counties can gather enough signatures without consulting with that large county. I cannot support this.

Assemblywoman Gansert:
I am going to have to oppose the amendment you have proposed. I would like to make a motion to amend and do pass the other proposed amendment.

Chair Mortenson:
Mrs. Gansert, I will take your motion. I can see I am losing here.

> ASSEMBLYWOMAN GANSERT MOVED TO AMEND AND DO PASS SENATE JOINT RESOLUTION 3 (1st REPRINT) WITH MOCK-UP AMENDMENT 4096.
>
> ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

Is there any further discussion? [No response]

> THE MOTION PASSED. (ASSEMBLYMAN MORTENSON VOTED NO. ASSEMBLYWOMAN KIRKPATRICK WAS ABSENT FOR THE VOTE.)

If there is no further business to come before the Committee, we will recess to the call of the Chair [at 6:10 p.m.].

[This meeting was adjourned when a Floor Meeting of this Committee was convened behind the Bar of the Assembly at 12:45 p.m. on Monday, May 21, 2007.]

RESPECTFULLY SUBMITTED:

_____
Terry Horgan
Committee Secretary

APPROVED BY:

_____
Assemblywoman Ellen Koivisto, Chair

DATE: _____

_____
Assemblyman Harry Mortenson, Chair

DATE: _____

EXHIBITS

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

Date: May 17, 2007 **Time of Meeting: 3:45 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
SB 425 (R1)	C	Patrick Guinan, Committee Policy Analyst	Explanation of the bill
SB 425 (R1)	D	Patrick Guinan	Proposed amendment
SB 490	E	Patrick Guinan	Explanation of the bill
SB 490	F	Patrick Guinan	Proposed amendment 4106
SB 490	G	Lorne Malkiewich, Director	120-day calendar
SB 490	H	Lorne Malkiewich	Proposed amendment
SB 490	I	Lorne Malkiewich	Chart showing changes to bill draft request numbers and time frames
SB 490	J	Lorne Malkiewich	Chart showing bills eliminated in the mock-up
SB 548 (R1)	K	Patrick Guinan	Explanation of the bill
SB 548 (R1)	L	Patrick Guinan	Proposed amendment
SJR 3 (R1)	M	Patrick Guinan	Explanation of the bill
SJR 3 (R1)	N	Assemblyman Mortenson	Proposed amendment
SJR 3 (R1)	O	Assemblyman Conklin	Proposed amendment