

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

**Seventy-Fourth Session
February 8, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:48 p.m., on Thursday, February 8, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, 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:

Mrs. Ellen Koivisto, Chair
Mr. Harry Mortenson, Vice Chair
Mr. Chad Christensen
Mr. Ty Cobb
Mr. Marcus Conklin
Mrs. Heidi Gansert
Mr. Ed Goedhart
Mr. Ruben Kihuen
Mrs. Marilyn Kirkpatrick
Mr. Harvey Munford
Mr. James Ohrenschall
Mr. Tick Segerblom
Mr. James Settelmeyer

STAFF MEMBERS PRESENT:

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



OTHERS PRESENT:

Richard Siegel, President, ACLU (American Civil Liberties Union) of Nevada
L. Patrick Hearn, Executive Director, State of Nevada Commission on Ethics
Adriana Fralick, General Counsel, State of Nevada Commission on Ethics
Janine Hansen, State President, Nevada Eagle Forum

Chair Koivisto:

[Roll called.] We had a late meeting Tuesday evening, so Dr. Siegel agreed to return this evening to make a short statement.

Richard Siegel, President, ACLU (American Civil Liberties Union) of Nevada:

The ACLU has made elections one of its top three priorities for the last five years. This Committee has three constituencies besides the people who elected you. One is the election officials, who want elections to be orderly, their jobs easier, and elections run inexpensively.

The other two constituencies are the candidates and the parties. They have very important interests in terms of how the election process runs. The ACLU sees things from neither of those two perspectives. It sees them from the point of view of the voters. We concentrate on maximizing access to elections for voters and people who are working as citizen activists on behalf of voters.

Over the last two or three sessions, the ACLU's and this Committee's emphases have been extremely close. We are not entirely in agreement with this Committee on only one issue, which is that we do not want to see the percentage of signatures needed on petitions for initiatives and referendums raised.

An issue we agreed on with this Committee was support of the full provisional ballot. A person receives a provisional ballot when he or she appears at the polling place and that person's name is not listed at that particular polling place. In 44 states you get to vote for everything; in Nevada and 5 other states, you may only vote for President, Vice President, U.S. Senator, and Congressional Representatives. You cannot vote for initiatives or any state or local officials. This Committee supported the full provisional ballot two years ago; however there was no reconciliation with the Senate, so it did not happen.

A second issue was voter ID (identification). Two years ago, this Committee resisted efforts at more formal requirements for voter ID, meaning people have

to have birth certificates and other formal types of identification. A certain percentage of the people are not going to be able to get those formal types of identification, particularly the old, the poor, and minorities. Voter ID means that large numbers of minorities do not register to vote.

We like early voting. I do not think it is an issue, and I agree with everything said at the last meeting. Early voting is here to stay. What is not here to stay is the latest possible registration. I am also a political scientist and a professor at UNR (University of Nevada, Reno). What is most powerful in influencing the percentage of people voting is how late the registration can be. There are a number of states that allow people to register on the actual voting day, or perhaps a week ahead at early voting, or something similar. Nothing is more powerful than that.

We have raised the percentage of registered voters who are voting, but if you look at Nevada in terms of eligible voters, we have always been one of the lowest states in terms of eligible voters who actually vote. The problem is having people register and actually vote. It does not always help to have registration campaigns because it does not necessarily mean that people are actually going to vote. Not having registration requirements at all, which is being experimented with, really works.

There were proposals to make it harder to organize registration campaigns. There was a federal court decision that said there should not be criminal penalties for organizations that do not return registration forms. A lot of registration work is done by mom and pop organizations; it is not all done by highly paid professionals. It could be the PTA (Parent Teacher Association) or the League of Women Voters who may not be able to keep everything orderly. We do not want to penalize them because things do not work like clockwork.

The registrar really wants to control the 100-foot polling area. He does not like the people who come in to see that voter suppression schemes do not work. They are there to see that people are not being challenged illegitimately. They want to be able to intervene, personally and legally, if necessary, if those sorts of things happen.

Election challenges have been discussed. You heard Mr. Hansen talk about challenging 4,000 people, but that was quickly dismissed. Although our law is a little vague in this area, the way it has been primarily interpreted is that you have to have specific information about individuals if you are going to challenge them. The challenge law is intended to be used by someone who knows that an individual does not live in that neighborhood, or one who knows that a name

being used is not that individual's name. The previous Secretary of State and the ACLU agreed the law should mean individuals should live in the same precinct to have that kind of knowledge. What we are trying to do is keep the game as wide open as possible.

The final area I want to mention is the 13-county rule. The ACLU was one of the organizations that killed the 13-county rule in Nevada. It meant that a very small number of people in rural counties had a lot more power than the same number of people in Clark County or in Washoe County. It is legally dead. I think we can do something workable with congressional districts, but Assembly districts would be a nightmare. Remember, all we are doing is collecting signatures for the first stage of a process, but everyone gets to vote in the second stage. As Janine Hansen said, the big money groups can meet any criteria you set. What we need to be concerned about are people from, for instance, the Progressive Leadership Alliance who are working for minimum wage, or Janine Hansen collecting signatures on taxes and other issues. They have a right to this process. I do not think we have to increase the percentages; I do not think we have to make it more difficult by going to Assembly districts. So, remember the voters and take care of the administrators.

Assemblyman Segerblom:

Now that the county rule has been thrown out, what is the rule?

Richard Siegel:

It is 10 percent statewide, and you could get the 10 percent in one county.

Assemblyman Segerblom:

Is there a need to change that?

Richard Siegel:

Not from our perspective. The process of making the change has started, and this House will have a chance to pass it a second time. It is do-able to go with the congressional districts because they are so large. I do not think using congressional districts will be a tremendous barrier to someone trying to collect signatures. They will be able to get all their signatures in Clark and Washoe Counties. I do not understand why a certain number of rural districts have to have a percentage of their voters involved in order to give the entire people of the State the chance to vote "yes" or "no."

Assemblyman Settelmeyer:

You mentioned only a person in that precinct should have the ability to protest whether or not a voter is valid. Does that mean if I see someone in Reno named

Roger Rabbit voting, I do not have a right to challenge because I do not live in that precinct?

Richard Siegel:

That is the intent of the law as it stands. Within that context, I am not going to disagree with you on principle. The point of the existing law is that the person challenging should have personal knowledge. I do not think the fact someone's name is Roger Rabbit makes that person challengeable.

Assemblyman Conklin:

As you mentioned, an Assembly joint resolution, which is a constitutional amendment, has already been voted on once and will be voted on again this Session. You said you believed that all the signatures needed for a referendum or initiative could be collected in the two largest counties in the State. That really will be what happens, but we will be following a court ruling if we pass the resolution. The point I want to make is that the folks in rural Nevada, being much smaller in number, have a right to be protected in this State to some extent. Broadening the districts can have that advantage. The mere fact that one has to go to Elko, for instance, and get even a small number of signatures indicates that you have at least consulted with some of the people in Elko.

Once the measure goes to the ballot box, the fact of the matter is, if Clark County wants it, Clark County can have it because almost three-fourths of the population is in Clark County. That may not be something that is acceptable to the rest of the State. It is a delicate issue, and we are trying to do the right thing in this Committee and find the right balance.

Richard Siegel:

I absolutely agree with you. We started off with the idea that five counties, with an average population of 1,000 each, could block a process for 2.5 million people. That was a no-brainer under the equal protection laws of the *United States Constitution*. The congressional solution is more or less a straight-down-the-middle compromise. We do not have to do that; we do not have to have an initiative referendum process, but it is 100 years old in this State, and we chose to have it.

Assemblyman Settlemeyer:

What if someone wants to levy a tax such that every county with fewer than one million people would be taxed an extra five percent, and the money collected would be spent on the county that has over one million people?

Richard Siegel:

It would violate the *Nevada Constitution* and Nevada statute. We absolutely have that protection in every conceivable way. The equal treatment protections are painful for some of the large counties, sometimes.

Assemblyman Munford:

What position does the ACLU take on restoring civil rights and voting rights to ex-felons? I introduced a bill last session dealing with that topic, but it died in the Senate.

Richard Siegel:

Nothing in our election law discriminates against large classes of people as much as the ex-felon laws, especially when you consider that they vary in every state. Nevada had a lifetime exclusion from voting, unless you went through an extraordinarily onerous process of getting your civil rights restored. About three sessions ago, Nevada passed a law that probably took care of more than half the problem. Senator Washington amended that law to largely exclude sexual and violent criminals. That exclusion stands apart from the law, although there was a distinction made between those before a certain date and those after a certain date. By and large, sexual and violent criminals do not get their rights restored under this process. That is something that needs to be considered. Another consideration is whether the process is working administratively. Because it took a year or two to get it moving, I am not prepared to say to what degree that law is working. We should have a fact-finding hearing to find out how well it is working in time for this Committee to suggest a bill.

Assemblyman Munford:

It denies so many people the right to vote.

Richard Siegel:

It still denies a large number of people the right to vote, but probably more than half the people who could have been denied the right to vote did get the right to vote as a result of the bill passed in this Committee several years ago.

Assemblyman Munford:

We will probably revisit that later.

Assemblyman Kihuen:

Does the ACLU support registration up until the day of election?

Richard Siegel:

Yes.

Assemblyman Kihuen:

What are some of the reasons you support it, and some of the advantages?

Richard Siegel:

The main reason is that a substantial number of people in the electorate only decide to vote as a result of the campaign reaching a certain level of noise—generally in the last three or four weeks. I do not know the exact number of days now between the close of registration and the election, but we improved that, too, with the support of this Committee.

There are states allowing registration on election day and, generally, those are the states that have the highest percentage of eligible voters who actually vote. The gap in Nevada of eligible voters is probably greater than just about any other state. Do not believe the statistics saying 80 or 90 percent voted. In Nevada, 50 to 55 percent vote in presidential elections and 40 percent of eligible voters vote in mid-term elections.

Assemblyman Kihuen:

I worked on about ten different elections and am a big proponent of letting people register up until election day. Personal friends of mine would have voted that same day had they been able to register.

Assemblyman Cobb:

Have you investigated problems connected with being able to register to vote up to the last minute, including fraud? Certainly, you understand there could be problems with people walking in and claiming they were someone else just because they looked those people up on the voter rolls and knew they had not voted. Information was released during early voting to let people know who had, or had not, voted. You understand the problem that exists with ensuring the ethicalness of the vote.

Richard Siegel:

The identification that would be required would be the same as that required under the existing processes at the motor vehicle office or at registration. As I recall, Secretary of State Heller supported this idea. It has been successfully done. The election officials were willing to go very close to the end. From their point of view, it is all about getting things ready and having an orderly election. No one has said that the states that have election day registration have had more fraud than the states that did not have it.

The idea of people fraudulently voting is a nonissue in Nevada. I cannot recall one media report in Nevada about someone fraudulently voting or voting twice. Our problem is getting them to vote once.

Assemblyman Munford:

When I was teaching U.S. Government in high school, registering up to the day of an election would include a lot of students who turn 18 near election day. It would really create interest and get them involved if they could vote. The 17-year-olds say, "I can't vote; I'm only 17." If they were going to turn 18 by election day and they were eligible to vote, that would be good.

Assemblyman Ohrenschall:

Do you think current Nevada election law contributes to the low participation rate and self-disenfranchisement? Most of us here were elected with 25 or 30 percent of eligible voters, maybe not registered voters, voting. Does current Nevada election law act as a bar to people to participate? Do you think if we let people register up till the day, loosened the requirements...?

Richard Siegel:

I have certainly endorsed election day registration, but as far as more generally, as the election officials said, we have a wonderful system. The truth is we have as good a system as probably three-quarters of the states in terms of allowing people to register to vote. It is not the heart of our problem. Our problems are more socio-economic and cultural, I think, than they are technical. We also have a larger percentage of noncitizens in this state than most states. That does not affect the percentage of eligible voters, but it affects the percentage of total residents that vote.

Assemblyman Ohrenschall:

Do you know where we place among the states in terms of participation in voting?

Richard Siegel:

I have seen us down in the bottom three. Larry Lomax indicated we have made some progress, but State Senator Dina Titus told me Nevada is last in female voting, as a percentage of eligible voters.

Assemblyman Ohrenschall:

When you say bottom three, you mean 47th?

Richard Siegel:

I mean 48th to 50th.

L. Patrick Hearn, Executive Director, State of Nevada Commission on Ethics:

My presentation materials are being distributed to you ([Exhibit C](#)). The Nevada Commission on Ethics was created by the Legislature in 1975 in the aftermath of Watergate. There were several states at that time that were either having such laws voted in by the people or enacted by the legislatures. They were generally referred to as Sunshine Laws, the connotation being to do the work of the people in the light, in the open—not operate government or do the people's work in the dark or behind their backs.

The Commission is comprised of eight members with a unique dual-appointing authority. Four members are appointed by the Legislative Commission and four members are appointed by the Governor. Each appointing authority must appoint one attorney and one former public officer. The length of service of a Commissioner is four years, and they may be reappointed to a second four-year term. There cannot be more than four members belonging to either of the two major political parties, nor can there be four members from a county whose population is greater than 400,000.

The Commission interprets and provides guidance on *Nevada Revised Statutes* 281.411 to 281.581, which collectively are known as the Ethics in Government Law. The Commission adjudicates ethics complaints. There is a statement about campaign practices complaints on the first page ([Exhibit C](#)). That is a typo. That provision was ruled unconstitutional.

The Commission also provides advisory opinions on past, present, or future conduct by public officers and employees; provides training to public officers and employees on ethics law; and accepts financial disclosure statements of certain public officers.

The Commission has jurisdiction over public officers and public employees. A public officer may be either elected or appointed; must be one who exercises public power, trust, or duty; and must be one who exercises administrative discretion and/or formulates policy, expends public money, and enforces laws and rules of the State, a county, or a city.

Public officers do not include: judges or officers of the court system; those serving in an advisory capacity; certain general improvement district members; county health officers; or federal officers or employees.

A public employee is defined as one who performs public duties for compensation at State, county, or city level, and one whose actions are directed or controlled by a public officer.

The Commission issues advisory opinions upon the request of a public officer about that public officer or employee's past, present, or future conduct. It also investigates or adjudicates complaints filed against public officers and employees by other persons alleging violations of the Ethics in Government Law.

Conflicts of interest are an integral part of ethics law, not just in Nevada but everywhere. Conflict of interest is a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. Nevada ethics law also addresses the appearance of impropriety, which is conduct that would create in reasonable minds a perception that a person's ability to carry out responsibilities with integrity, impartiality, and competence is impaired.

Pecuniary interests give rise to conflicts of interest and/or appearances of impropriety. A pecuniary interest is, of course, a monetary interest; however, campaign contributions are not considered pecuniary interests, and do not require public disclosure if they are reported timely and as required under the statute.

When conflicts of interest arise, consideration must be given to disclosure, abstention, and voting. Voting is permissible if the value that the person would accrue as a result is no greater than the value that accrues to anyone else. In government ethics law, this is typically referred to as a class exception, meaning that if the action taken financially impacts all members of a profession or some other group or class to no greater or lesser degree, then a conflict of interest may not exist. In Nevada, it is required that the interest be disclosed, but then participation may take place. The Commission, through the adoption of numerous advisory opinions, advises that, when in doubt, disclose the interest and go ahead and vote.

Disclosure is mandatory for any interest that is created by a gift or loan, a pecuniary interest, or a commitment in a private capacity to the interests of others. The disclosure must be public and made at the time the measure or issue is being considered or acted upon. Law prohibits advocating or voting for the passage or failure of, but otherwise allows active participation in a matter if independent judgment would be affected by a gift or loan, a pecuniary interest, a commitment in a private capacity to the interests of others, or a commitment to a person who is a member of the household, is related by blood, adoption, or marriage within the third degree of consanguinity, employs the person or a household member, or with whom the person has substantial or continuing business or other similar relationships.

Here is an overview of our agency's bill draft request ([Exhibit D](#)). These are what I consider to be clarification or housekeeping measures relating to the language of the law. One example would be that the law currently refers to the term "statutory ethical standards" in referring to the body of law itself. There is nothing identified or subtitled "statutory ethical standards", nor is there anything defined as "statutory ethical standards." We are recommending that it be changed to refer to this chapter or the Ethics in Government Law. Of all the items contained in the BDR (Bill Draft Request), we believe there are none that would result in any kind of financial impact.

The next exhibit ([Exhibit E](#)) is the proposed language for the BDR.

The following exhibit ([Exhibit F](#)) is a copy of a presentation to the Senate Judiciary Committee this week. Two years ago, the Judiciary Committee had concerns about issues relating to the Commission, particularly issues they felt were related to due process. The Judiciary Committee then forwarded the bill for possible consideration and legislative action. The Ethics Commission, in response to those concerns, adopted revisions to its administrative regulations to resolve the concerns submitted by the Senate Judiciary Committee.

The final exhibit ([Exhibit G](#)) is excerpts from news stories from around the country that have appeared in the past 30 days. I am sure most of you are aware that government ethics is a keystone issue in many state legislatures this year.

The first story is from Wisconsin and talks about a reorganization of its ethics functions and the creation of a new agency. The next one from *The Cincinnati Enquirer* reports that the new Governor of Ohio, on his first day in office, signed an executive order relating to restrictions on gifts.

Most of these resulted from very recent issues that arose in these respective jurisdictions. In Wisconsin, for example, it was the result of what had been referred to as scandals on the part of legislative leaders in that they used staff for campaign purposes. In Ohio last year, it came to light that former Governor Taft had failed to report many gifts as required under Ohio law.

The third news item comes from Oregon and relates to ethics legislation there. They convened their legislature on the second Monday in January, and that Thursday the very first bill introduced in the Senate concerned comprehensive ethics reforms. This came on the heels of nine legislators being charged by their ethics commission with failing to report gifts and trips as required under that state's law.

The next item is about rules adopted by the Oregon House, also relating to gifts. Finally, back to Wisconsin, there is a story about problems a district attorney identified with their bill, but subsequent to this article that bill actually was introduced in a special session convened last month. Just last week it was signed into law, so they moved very quickly on that issue in Wisconsin.

The next one talks about merging various ethics agencies in the State of New York. This is in large part due to problems that surfaced relating to that state's former elected State Comptroller who was found to have routinely used state staff to drive his wife around. Yesterday's Pennsylvania paper reports the indictment of a longtime state senator there.

These news stories all appear to be reactionary; new laws, new agencies have surfaced as a result of deeds and incidents that had already occurred. I suggest that proactive legislation may be more effective than reactive legislation; however, I am not saying that I believe, nor in my 16 years experience doing this work have I ever seen, that you can effectively legislate ethical behavior. I think we can pass ethics laws as guidelines and standards of expected conduct, but we cannot make them do it.

Chair Koivisto:

I agree with what you are saying. It is hard to believe that we can be in the position we are in and not know what ethical behavior is.

Assemblyman Mortenson:

I am going to read one of your criteria for voting or abstaining. It says, "Voting is permissible if the value which the person would accrue as a result is no greater than the value which accrues to anyone else." That puzzles me. For example, let us say a county commissioner somewhere is a 50-percent business partner in a firm that is going to receive a huge benefit from something the whole commission might pass. He has a partner who will accrue the same benefits as he will, so he is eligible to vote for it under this wording. It does not seem right.

Patrick Hearn:

My comments here are paraphrased, but, indeed, the law does not intend for that to be able to happen.

Assemblyman Mortenson:

I understand that, and I think it would be terrible, but the way it is phrased sounds like it.

Patrick Hearn:

I understand and will certainly rephrase it in the future.

Assemblyman Mortenson:

If a teacher in the Legislature votes for an increase in teachers' salaries, they are voting a benefit to themselves. Now it is not just one other person but a bunch of other people. Can you defend that?

Patrick Hearn:

I will defer to Ms. Fralick.

Adriana Fralick, General Counsel, State of Nevada Commission on Ethics:

There is actually an opinion on our website with regard to that specific scenario. In that scenario the teacher benefits the same as that group of teachers. According to the statute, they would still have to disclose their interest, but because the benefit accrued to the teacher, the increase in pay is not any more than it would be for the rest of the teachers, and the teacher would be allowed to vote in that regard. That is how the Commission has ruled in the past with regard to that scenario.

Assemblyman Mortenson:

Then it should say in this passage that "voting is permissible after disclosure."

Adriana Fralick:

If you read the statute in its entirety, it does say that.

Assemblyman Mortenson:

I think teachers should be able to vote an increase in their salaries if they disclose.

Assemblyman Segerblom:

I had a case with the Ethics Commission: there was a hearing, the Commission voted, and a report was written by the staff that then became the decision. There was never to my knowledge any time when the written report went back to the Commission for their review, or for them to vote that in fact that had been their decision. I thought their decision was much different from what I heard at the Commission hearing. Do you have a process where before a decision is written it goes back and the Commission formally adopts it?

Adriana Fralick:

The counsel does write the opinion; however, the entire Commission reviews the opinion before it is signed by the Chair. That is the process now and has been the process for the past two years.

Assemblyman Segerblom:

So there is no formal adoption at a public hearing?

Adriana Fralick:

Not at a public hearing, no, but they do review the opinion, and they review the transcripts if there is an area they are uncertain about. The Chair does not sign the opinion until it has been reviewed by all the Commissioners.

Assemblyman Segerblom:

Is there some formal process that shows whether they have agreed with...?

Adriana Fralick:

No, not a formal process other than just mailing, emailing, or by personal delivery.

Assemblywoman Kirkpatrick:

In the past I served on appointed boards and tried to take an ethics class. The Ethics Commission was unavailable to help, so I eventually took a class through the community college. Where are such classes listed? As an Ethics Commission, do you offer classes and are they easily available? When I tried to find a class, I was told classes would be given in three months and that I would have to fly to Reno, which is not easy for someone who lives in Clark County. What do you offer to help appointed or elected people get this information or some type of training?

Patrick Hearn:

We do not have regularly scheduled training you can avail yourself of. I am one of five staff members and essentially perform most of the training. Ms. Fralick has been able to help on occasion, and we have another staff member who did a class out of our Las Vegas office last week. We are trying to expand our ability to do that. When we appeared before your counterpart committee in the Senate this afternoon, I was dismayed to be told that training in ethics law is not part of freshman orientation—at least not presented by our agency. The Senate Committee wanted to know why we did not participate in that. The answer is that we have not been invited, but I can assure you that if we ever are, we would be more than happy to come.

The training issue is on our front burner right now. In the last two weeks, we have had a lot of discussion within the agency about training. Some of the things we are exploring includes the production of videotapes or DVDs that we could send out to locales for viewing. We are also looking into producing pamphlets that address frequently asked questions on certain subjects to get that kind of information disseminated. I was contacted last week by a training officer with the State who asked what our interest would be in doing training online. That would be great. We are aware of the need for a greater level of training; we have a Commission meeting next Wednesday, and it is an item on the agenda.

Assemblywoman Kirkpatrick:

Would that include appointed boards? People do not sign up to be on advisory boards for reasons like this. You cannot teach ethics, but there were some helpful things I learned from the class, such as insinuating over a cup of coffee what you were doing, or that the open meeting laws are different for different boards. The public stops participating because so many things are unclear.

Patrick Hearn:

As an example, two weeks from today I am going to Elko. I was asked to go there by the city's personnel director. I suggested to him, because of the distance and time it would require me to be away from my office, that he invite neighboring cities, counties, school districts, general improvement districts, et cetera. He did, and we are putting on three different sessions. As of about a month ago, he already had 75 people signed up. That is a real worthwhile endeavor for us, and I am looking forward to going.

Chair Koivisto:

One of the ethics measures we will hear includes mandatory ethics training for newly elected and appointed people.

Assemblyman Ohrenschall:

Let us say a city councilman is facing an ethical dilemma, and he turns to the city attorney and asks for an opinion. The city attorney issues an opinion. Is that good enough? Do they need to turn to the Ethics Commission? If the Ethics Commission disagrees with what the city attorney advised, and I think this would apply to elected officials and all sorts of bodies that rely on legal counsel, can the elected official rely on the legal counsel for that body? Do they need to go to the Ethics Commission?

Patrick Hearn:

I would absolutely advise that the individual seek an opinion from the Ethics Commission since the Commission is charged with enforcing the statute. Advice of counsel is a very limited defense.

Assemblyman Ohrenschall:

Do any other states have a procedure about frivolous complaints and sanctioning people who file frivolous complaints? Many people like to file frivolous complaints against elected officials just to be gadflies.

Patrick Hearn:

I am not aware of any.

Assemblyman Segerblom:

Is there a provision that we cannot accept more than \$200 per year?

Patrick Hearn:

Yes. It is \$200 a year.

Assemblyman Segerblom:

If I stayed at a friend's house in Hawaii, does it cover that?

Patrick Hearn:

When you say a "friend", it would depend on what else that relationship involved. Is the friend a lobbyist or does the friend have some interest in the outcome of legislation that may be before you? Someone who has been your friend for 40 years and has no particular interest in your legislative activity....

Assemblyman Segerblom:

But that particular section does not say that, does it?

Patrick Hearn:

It does not.

Chair Koivisto:

We will review our Committee Brief before we go to public comment. An item in one of our bills is mandatory ethics training for appointed and elected officials.

Patrick Guinan, Committee Policy Analyst, Legislative Counsel Bureau:

The Committee Brief is being distributed now ([Exhibit H](#)). You have already listened to presentations from the Secretary of State, the clerks, and the Ethics

Commission, so I think you have a pretty good sense of what is coming before you.

The Committee jurisdiction is the following: The Committee oversees Title 17 of the NRS (*Nevada Revised Statutes*), which is the State Legislative Department. It oversees one portion of one chapter of Title 23, Chapter 281, which contains the Ethics in Government Law, and the entire bulk of Title 24, which is the elections title.

The Committee also considers all proposed amendments to the *Nevada Constitution*, and the Committee typically hears measures pertaining to ethics in government. The Committee also has jurisdiction over matters relating to legislative personnel, and the Committee is charged with recommending by resolution the appointment of all attachés and employees of the Assembly.

During the 2005 Session, the Committee processed 30 Assembly and 14 Senate bills. Of those 44 measures, 18 were ultimately passed by both Houses and signed into law. Some of the topics those bills addressed were: allowing the Commission on Ethics to employ outside legal counsel under certain circumstances; amending what constitutes the "willful violation" of Nevada's Ethics in Government Law; amending residence requirements for appointed public officials; requesting a legislator's name be published with his or her bill draft requests (BDR) on the BDR list; moving the date of the primary elections in the State; providing remedies for any person who is wrongly denied the ability to gather signatures on a petition in a public building; and there are more.

In addition to those bills, the Committee also reviewed 19 resolutions, 17 from the Assembly and 2 from the Senate. Eleven of those passed both Houses of the Legislature and were filed with the Secretary of State. Assembly Joint Resolution (A.J.R.) No. 5 of the 73rd Legislative Session became A.J.R. No. 1 of the 22nd Special Session and will be returned this time.

Other topics included requiring 10 percent of the registered voters who voted in the previous General Election in each congressional district to sign an initiative petition in order for it to be filed with the Secretary of State, and allowing the Legislature to call itself into a special session. In italics I have listed the final resolution of those issues.

Some topics addressed were: providing for the public election of certain members of the Board of Regents, gubernatorial appointment of others, and specifying board member terms of service; providing that Legislators be paid a

salary for each day of regular and special legislative sessions; and that Legislators receive a reasonable allowance for postage, newspapers, telecommunications, and stationery.

I want to run through the 120-day calendar. The table on page 4 ([Exhibit H](#)) summarizes important deadlines. For the purposes of this Committee, the first deadline we pay close attention to is April 13, the deadline for Committee passage from the House of origin.

I have a contact list of key elected officials in Nevada also for your use, the clerks, the Secretary of State, the registrars, as well as members of the Nevada Commission on Ethics and their staffs.

The staff of the Research Division is available to provide the Committee and its members with assistance on any issue related to matters before the Committee. In addition, the Research Division provides individual members of the Legislature with information and assistance, on a confidential basis, on any topic. If you have a topic you need researched, let me know and I will make certain it gets to the right person and that you get the answer as quickly as possible. I have also included a list of bill draft requests that may come to the Committee when or if they turn into bills.

Assemblyman Cobb:

In the list of BDRs before the Committee, I noticed some that were introduced by legislators who are no longer in the Legislature. The list does not say those BDRs were picked up by other individuals. Is this a completely up-to-date list?

Patrick Guinan:

The list is up-to-date as of today. The reason those are included on the list is that we do not know yet whether other legislators have chosen to pick them up or not. Some BDRs were requested by legislators who are no longer here and have been picked up, and that is noted on the list. They will remain on the list until the deadline.

Assemblyman Cobb:

Is that the February 12th deadline?

Kim Guinasso, Legal Counsel, Legislative Counsel Bureau:

The deadline is the 12th for picking those up as well.

Chair Koivisto:

If someone picks up a bill that was requested by someone else, does that count against their bill allotment?

Kim Guinasso:

No, it does not count against the number of bills an individual legislator may request.

Assemblyman Settlemeyer:

Four or five days ago I requested one of the bills a previous legislator had requested, so this list is not completely up-to-date.

Kim Guinasso:

If I may clarify, the BDR list is prepared each week, so there is a seven-day lag. We do not publish the BDR list every day.

Patrick Guinan:

It is up-to-date for what we have access to.

Assemblyman Mortenson:

Do the existing bills of a legislator who has lost the election officially disappear if no one picks them up? Are they still official bills in existence?

Kim Guinasso:

There is a difference between bills and BDRs. BDRs are the draft of a bill that we prepare, and they remain a bill draft request. They do not become a bill until they are introduced. We get BDRs from former legislators up until the time their successor is elected. We take those BDRs, prepare them, put them into our system, and they do have a life until someone picks them up or until the deadlines previously mentioned.

Assemblyman Mortenson:

If there is no one to deliver that BDR to, who would then turn it into the Front Desk, it dies?

Kim Guinasso:

That is correct. When it is picked up by another legislator, that legislator's name goes on it.

Chair Koivisto:

Janine Hansen seems to be the only person who wants to testify under Public Comment.

Janine Hansen, State President, Nevada Eagle Forum:

I have had concerns for many years about the Ethics Commission. One is that there is essentially no accountability or oversight of the Ethics Commission. In government we believe in checks and balances. For the Ethics Commission, we really find no one to provide oversight, but ultimately, the Legislature. Internally, no one has oversight of the Ethics Commission.

This parallels the problem with administrative courts, because in administrative courts you lose your constitutional right to a trial by jury. In Nevada's *Constitution*, we have a right to trial by jury in all criminal and civil cases, but if you are in an administrative court, you do not have that right.

One remedy is to provide the option to appeal by a trial by jury if, after a decision of the Ethics Commission, the people are very dissatisfied. Just the understanding that an appeal and jury trial was possible would help provide checks and balances within the Ethics Commission and restore the right to trial by jury, which is lost in these administrative procedures.

Earlier someone mentioned the issue of frivolous complaints. Several years ago eleven complaints were filed before the election against one legislator. After the election when they were dealt with by the Ethics Commission, they were all dismissed. This can be a powerful tool the Ethics Commission has in terms of abusing the law and harming innocent people, so I think it is very important we are careful how this is used.

One of the issues that came up during this last campaign for many of our Independent American candidates was the financial disclosure forms. Many of them did not know how to fill those forms out or did not have complete comprehension of what they really mean. There is no help or advice on completing those forms. We tried to provide that within the Party, but you have to sign those forms under penalty of perjury, and this inspires fear because there are civil penalties and other problems attached.

State Senator Bernice Mathews mentioned when she was in an appointed position, and even now as an elected official, that she had concerns about trying to fill these out and feel knowledgeable enough to really know what they are, so I am pleased to hear about training. However, that does not include anything for candidates, so this inspires fear. When people are fearful, you have suppression of candidates and of people willing to run for office or willing to be appointed to office. Not only are candidates concerned about how to fill out the forms, but they are also concerned about the tremendous amount of disclosure. One woman told me her brother told her "No way are you going to run for

office" after she had served in an appointed position because "you are a part of a family corporation, and everything about our family would be out there."

So there is suppression of people who would participate in the process and who could add a lot because of some of these extreme measures in the financial disclosure area and from the fear. Fear is a huge issue because there is no easy place to get an answer about how to complete the forms, yet they must sign under penalty of perjury. In ten Assembly races, there was only one person running. That may be very good for the particular party that happens to be without opposition, but is it good for the whole process? Is it good for the people? Is it good for that candidate if there is no debate about the issues and no accountability? I never vote for unopposed candidates unless I am completely and totally sure. Unopposed candidates do not create interest in the election process, and there is a disconnect that occurs, but I think this is happening because people are fearful to become involved. Ethics laws, as was stated earlier by the new Commissioner, do not make honest candidates, but they can provide us with benchmarks.

One other issue has to do with voter ID (identification). With the HAVA (Help America Vote Act) legislation, a new era of voter ID has been imposed upon us by the federal government. I have brought you an article ([Exhibit I](#)) about Real ID, which was also passed by the federal government and is now being imposed on the states. We know both Montana and Maine have passed measures opposing this, and a dozen others are in the process. In Missouri, Representative James Guest has formed a coalition of lawmakers from 34 states to have resolutions introduced that oppose or protest Real ID.

The Carter-Baker Commission on Federal Election Reform of 2005 ([Exhibit I](#)) mentions on the third line that "The Help America Vote Act of 2002 made an historic contribution, but one law is not enough." It is obvious from the testimony over the last few days in this Committee that we are going to have more federal law mandated to the states on elections. That concerns me because I think Nevada ought to determine its own election laws. We are perfectly capable, you are perfectly capable, of doing what Nevada wants.

On page 2, ([Exhibit I](#)) you will notice "To enhance ballot integrity, states should require voters to present a Real ID card." This is apparently going to be part of the imposition of the mandated voter reform from the federal government, which concerns me. I oppose the Real ID. I am concerned about it for many reasons, including identity theft, the idea of a national ID, and even, for some people, religious reasons.

I just bring this to your attention, letting you know we have concerns about this and at some point it may be coming your way. We hope you will protect our individual privacy and our rights.

Chair Koivisto:

As an aside, the first time I voted in Minnesota, I registered at the poll the day I voted. Minnesota has one of the highest voter turnouts in the nation.

Assemblyman Segerblom:

I wonder if the Committee might be interested in a Committee bill on election day registration?

Chair Koivisto:

Comments from the Committee?

ASSEMBLYMAN OHRENSCHALL MOVED FOR A BILL DRAFT
REQUEST THAT PEOPLE BE ABLE TO REGISTER TO VOTE UP TO
AND INCLUDING ELECTION DAY.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

Assemblyman Goedhart:

What is the time limit now? Is it 15 days prior to the election? [Several unidentified voices said, "Thirty days."]

Chair Koivisto:

I am thinking this is something we probably need to look at. We heard testimony from Dr. Siegel that more people are going to turn out if they register closer to the election, so maybe it is something we need to look at, something we need to discuss.

Assemblyman Christensen:

If we do hear this, I am sure it promises to be a very vigorous exchange of ideas. It will certainly be interesting. Are we going to take a vote on this today?

Assemblywoman Gansert:

Could we have the motion repeated so I know specifically what it is?

Assemblyman Ohrenschall:

Inspired by my colleague from District Nine, my motion is that the Committee on Elections, Procedures, and Ethics propose a bill draft request allowing people to register to vote up until and including election day.

Assemblywoman Gansert:

I am not sure I am opposed to listening to the bill because maybe that is what we should do.

Chair Koivisto:

Is that your understanding and your second is still...?

Assemblyman Kihuen:

Yes.

Chair Koivisto:

Any further discussion?

THE MOTION CARRIED. (ASSEMBLYMEN CHRISTENSEN, COBB, GANSERT, GOEDHART, AND SETTELMAYER VOTED NO. ASSEMBLYMAN CONKLIN WAS ABSENT FOR THE VOTE.)

Assemblyman Goedhart:

For discussion purposes, do we have information as to what other states are doing, so we can examine what the proposal would be like in comparison to other states?

Chair Koivisto:

We can get that information for you.

The motion passes. We will request a bill draft. I am sure there will be healthy debate when we hear the bill.

Assemblyman Mortenson:

This bill draft we are talking about makes me reflect back to what Mr. Siegel said: that the people in the elections department want to make things comfortable for themselves, so we will probably get a lot of opposition from that. I believe we do have an excellent elections department in the south and in the north, too. We must remember that what is important is what the people want, and not what the administrators and the bureaucrats want.

Chair Koivisto:

Is there anyone else who wants to testify or add anything to the discussion?
[No response.] We are adjourned [at 5:19 p.m.]

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

EXHIBITS

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

Date: February 8, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	L. Patrick Hearn, Ex. Dir., Nevada Commission on Ethics	Explanation of the Commission
	D	L. Patrick Hearn	Overview of the Commission's BDR
	E	L. Patrick Hearn	Proposed language of the Commission's BDR
	F	L. Patrick Hearn	Presentation by the NV Commission on Ethics to the Senate Judiciary Committee
	G	L. Patrick Hearn	Excerpts from news stories from around the country
	H	Patrick Guinan, Committee Policy Analyst, Legislative Counsel Bureau	Committee Brief
	I	Janine Hansen, State President, Nevada Eagle Forum	News releases concerning the Carter-Baker Commission on Federal Election Reform and Real ID