

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

**Seventy-Fourth Session
March 20, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:49 p.m., on Tuesday, March 20, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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:

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



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Matt Griffin, Deputy for Elections, Office of the Secretary of State

Chair Mortenson:

[Roll taken. The Chair reminded Committee Members and the audience about Committee rules and etiquette.] We will start the meeting with Assembly Joint Resolution 1.

Assembly Joint Resolution 1: Proposes to amend the Nevada Constitution to provide for forfeiture of public office for three or more violations of ethical duties. (BDR C-171)

Patrick Guinan, Committee Policy Analyst:

The Members will note that you have a work session binder in front of you containing information on the three measures we will be looking at today. The first one is Assembly Joint Resolution 1 which the Committee heard on February 22 for the first time. [Patrick Guinan read an explanation of the bill and possible changes the Committee discussed from prepared text ([Exhibit C](#)).] This is a constitutional amendment. In order for it to take effect, it has to be passed in identical form by the Legislature in both 2007 and 2009. Then it would have to be approved by the voters at the 2010 General Election.

Chair Mortenson:

Because it has to pass in identical form, we really need to hone this bill and make certain it is right the first time.

The bill uses two terms that imply the same thing: willfully and knowingly. I would like to know what the Committee thinks about removing the term "knowingly" and leaving the term "willfully."

Assemblyman Conklin:

Mrs. Gansert made the suggestion, and I do believe willfully covers knowingly, but in this case it may not. Those are two separate standards. One, did you act knowingly; and, two, did you know it was a violation? I am not opposed to

the change. Could legal staff explain why "knowingly" was in the bill? This Committee, in every session I have been a member, has tackled the definition of "willful" over and over again. It is clearly defined in statute, so why did a drafter stick the word "knowingly" in the bill and then separate it with an "or" from willfully?

Patrick Guinan:

I am not a drafter or lawyer, so I am not able to say with any certainty why the drafter would have inserted knowingly or willfully together in the same passage. When Mrs. Gansert asked the question in the initial hearing on this bill, Caren Jenkins of the Ethics Commission stated that it was her opinion, and she is a lawyer, that "knowingly" is subsumed within the definition of "willfully," so she did not believe including the term did anything to expand the power or meaning of the phrase.

Assemblywoman Gansert:

When you use the term "or," you have to meet one or the other. She said that one term was within the other, but I do not think that is correct. It looks as though you have to meet one or the other standard, not necessarily both, and that was my issue with it.

Chair Mortenson:

I am having trouble distinguishing between the two.

Assemblyman Segerblom:

Legally, there is definitely a difference between knowingly and willfully, but as has been pointed out, willfully is a higher standard. Normally, it would be "knowingly and willfully," but if you use the word "or," willfully does not mean anything because anything "willfully" would be "knowingly" by definition.

Assemblyman Cobb:

I want to speak on behalf of the proposed amendment by my colleague from District 25, and I also agree with my colleague from the south who just laid out the accurate standard. "Willfully" is a higher standard than "knowingly," and because we could be dealing with serious ramifications such as ejecting someone from a legislative or other elected body, we should probably have as high a standard as possible.

Assemblyman Conklin:

I prefer we use the word "willfully." This is a stiff penalty. I would be fine if the language read, "Indicates the public officer behaved willfully in a manner ..." and we deleted "knowingly or."

Assemblywoman Koivisto:

I agree with that.

Chair Mortenson:

Is there any discussion of Mr. Goedhart's suggestion of "holding elected office" versus "holding the same office"?

Assemblyman Goedhart:

I did not know if a person received a clean slate every time they ran for a new office. The way it was originally structured, it seemed if a person had two violations that person could then run for a different office and start over with a clean slate. Was that the intent?

Chair Mortenson:

It would certainly change the meaning or intent if we took your suggestion of "elected office."

Assemblywoman Koivisto:

I find that I agree with Mr. Goedhart's take on that. It makes it a stiffer standard, but I think that is really what we are aiming for.

Assemblyman Conklin:

Let us assume I am a State Senator, I serve three terms and have two ethics violations during that time. I retire from the State Senate, but several years later, I am elected Lieutenant Governor. In my first term I forget to file my financial disclosures on time, or I file an incorrect financial disclosure, both of which could potentially be violations. We are trying to get at the repeat offender, and one of the ways that would be defined would be while one was serving the term in that particular office, as opposed to someone who makes a mistake. I am not suggesting we should not use that language, I am just being a devil's advocate here.

Assemblyman Settlemeyer:

Are we getting rid of institutional knowledge? What if someone spends 20 years on the local school board and suddenly decides to become a legislator. That person could be punished if they had two or three minor infractions and now we have eliminated a knowledgeable person. We are not ranking the violations and that could be problematic.

Assemblywoman Kirkpatrick:

After passage of this measure, we would then set regulations in place. I am all for the higher standard, because we have a job to do and the public expects us

to be much better at paying attention. When it comes to violations such as financial disclosure, or an ethics class that you did not take, I should think there would be a separate list of regulations that, possibly, the Secretary of State would put into place. At that time a determination could be made as to severity.

Assemblyman Conklin:

On page 6, line 28, it says, "The Legislature shall enact such laws and procedures as it determines to be necessary to facilitate the operation of this Section." As with all constitutional amendments, we are placing a shell, and through future trailer legislation, refining it. That is where we may take care of Mr. Settelmeyer's concerns about minor infractions versus major infractions. At what point do we really put our foot down and say that a person who is going to offend repeatedly, particularly while holding the same office, does not meet the standard of public office that those of us in this room believe each one of us does?

Assemblywoman Koivisto:

If you look at the top of page 7 it reads, "'Violation of an ethical duty' means an act or omission committed by a public officer, which act or omission: (1) Is of a serious nature, including, without limitation, acts or omissions that constitute felonies in this State" It would have to be a serious omission or violation in order to be considered. It would not be just a minor violation like filing your report late, or making a mistake on your report so you have to file an amended one. It would be something that constituted a felony, the way I read it.

Chair Mortenson:

Is it the will of the Committee to use "elected office," which would be a little more rigid, and three strikes and you are out; or should it stay the way it is and you can have three strikes in several different offices?

Assemblyman Cobb:

I agree with Mr. Conklin on this, that we limit it to a single office that an individual holds.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS
ASSEMBLY JOINT RESOLUTION 1. THE AMENDMENT WOULD
DELETE THE WORDS "KNOWINGLY OR" IN SECTION 5,
SUBSECTION 7 (B)(2)

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblywoman Gansert:

I still have concerns about a check on the system. We are basically turning over the authority to the Ethics Commission as the sole entity to make these types of judgments. If you look at the top of page 7, (b) at the top, "'violation of an ethical duty'," which means "an act or omission committed by a public officer ... is a serious nature, including ... acts or omissions that constitute felonies" That part I do not mind, but the word "serious" is somewhat ambiguous.

Chair Mortenson:

Do you have a solution?

Assemblywoman Gansert:

I am not sure I am going to be able to support this. It may not be detailed enough, and I am concerned about the different levels of violations because those are not defined in this bill at all. We are talking about a constitutional amendment.

Chair Mortenson:

Tonja Brown had a suggestion that the Legislature have the authority to oversee the actions of the Commission on Ethics, although I do not see how we could do that since we are in session such a short time, and only in alternate years. Any discussion on that?

Assemblyman Conklin:

That may be a violation of separation of powers. The Ethics Commission is a creation of the Executive Branch. It is within our domain to send this bill to the people. If the people like it, we can come back in the next session and fill it in.

Chair Mortenson:

I agree. In my personal opinion that is not a viable suggestion.

Assemblywoman Gansert:

What I can do is vote yes, reserving the right to vote no on the Floor after I have looked further at this.

Chair Mortenson:

That is understood. If there is no further discussion, we will take a vote.

Assemblyman Cobb:

In reading the digest and trying to match it with the text of the bill, the current law states that a member of the House may be expelled by a two-thirds majority vote. How does this language mesh with a violation of a very serious nature?

Are we, as a Body, going to convene and have something like an impeachment hearing? Does it go to the Commission on Ethics only, and if the Ethics Commission decides there were three violations, would those violations then have to be categorized from least serious to most serious? Would it be automatic that the individual would be expelled from the Legislature upon appeal, as described in the bill?

Assemblywoman Koivisto:

The point of this bill is to avoid having to go through the expense of calling a special session to hold an impeachment hearing in the case where it has been found that a person committed the three ethical violations.

Assemblyman Cobb:

With those ethical violations, would the Commission on Ethics be instructed to always rank them in terms of seriousness? According to the language of this bill, how would anyone determine whether someone had had three strikes and was out?

Assemblywoman Koivisto:

That is the part that would be dealt with in a trailer bill after the constitutional amendment was passed twice by the Legislature, and then voted on by the people. If it was approved by the people, the trailer bill would be passed laying out how it would operate.

Assemblyman Cobb:

So there is no intent by the bill drafters as to how that is supposed to happen right now? Okay.

Assemblyman Conklin:

For additional clarification, this in no way strips the Legislature of its ability to impeach a member for a single violation that is deemed to be so egregious that an impeachment is necessary. This just says that if someone is a repeat offender there comes a point in time when it will become obvious.

I also agree with Mrs. Koivisto's answer to Mr. Cobb's question that what is considered "serious" will have to be dealt with by this Body, in order to breathe life into the bill, once it passes.

Assemblyman Segerblom:

I would hope when it does get to the final stage and this Body adopts procedures that, after two strikes, the person could be put on notice.

Chair Mortenson:

I am sure that is a viable suggestion.

Assemblyman Goedhart:

Looking at page 7, line 6, because there is an "and" in that line, it would say that a violation would have to constitute both conditions of number (1) on line 4 and number (2) on line 7. Is that correct?

Patrick Guinan:

I believe the word "and" indicates that both items (1) and (2) would have to be met.

Assemblyman Goedhart:

Item (1) says "Is of a serious nature, including, without limitation, acts ... that constitute felonies" Does that mean you would have to have an act that was both a felony and indicated the public official behaved willfully?

Patrick Guinan:

The language saying "serious nature, including, without limitation, acts or omissions that constitute felonies" means that whatever the Legislature chooses to define as an act of a serious nature may or may not include felonies.

Chair Mortenson:

Would Mr. Guinan repeat the motion that has been made so we can vote upon it?

Patrick Guinan:

Mr. Conklin made the motion to amend Section 5, subsection 7(b)(2) to remove the words "knowingly or" in the bill, and to pass it. Mr. Segerblom seconded the motion.

THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMEN
CHRISTENSEN, COBB, AND GANSERT RESERVED THE RIGHT TO
CHANGE THEIR VOTES ON THE FLOOR.)

Chair Mortenson:

We will close the hearing on A.J.R. 1 and I will turn the gavel over to Assemblywoman Koivisto.

Chair Koivisto:

First, we will take Assembly Bill 79. We heard this on February 22. Patrick will recap what we did and how we may amend it.

Assembly Bill 79: Prohibits a public officer or employee from using governmental time, property, equipment or other facility for activities relating to political campaigns or the preparation of certain disclosures or reports. (BDR 23-172)

Patrick Guinan, Committee Policy Analyst:

[Gave an explanation of the bill and proposed amendments from prepared text ([Exhibit D](#)).] There are only two amendments we have pending for A.B. 79. There was no testimony in the Committee in opposition to A.B. 79.

Chair Koivisto:

Kim Guinasso is here and distributing a mock-up of the bill ([Exhibit E](#)).

Kim Guinasso, Committee Counsel:

With respect to public officers or employees using a certain limited amount of governmental time for the preparation of their financial disclosure reports, if you will look on page 2, subsection 7 of the mock-up, at lines 32-39, this would allow for limited use of governmental time, property, et cetera, for non-elected public officers. It is written in the negative, but it would allow for non-elected public officers to use a certain amount of governmental time, et cetera, for the preparation of their financial disclosure statements. The thought behind this is that the only reason they must prepare financial disclosure statements is because they have been appointed to an office that is named in statute and triggers that requirement. It would then be permissible for those people to use a limited amount of governmental time, et cetera, to prepare their financial disclosure statements; but in no case would it be permissible to use it for any political campaign or the preparation of a report required pursuant to Chapter 294A of NRS (*Nevada Revised Statutes*), which is campaign reporting. In addition, it would not be permissible for an elected public officer to use governmental time, and so forth, to prepare their financial disclosure form.

The concern raised about page 3 was that the provisions of those sections are difficult to follow. The idea was to change it to read as indicated here, which would make it more reader-friendly. It would just say that the proscription against using governmental time, property, et cetera, does not prohibit a limited use of state property if: the use does not interfere with the performance of public duties; the cost or value related to the use is nominal; the use does not create the appearance of impropriety; and, the use does not include any activity relating to a campaign, preparation of statement of financial disclosure, or preparation of campaign reports.

Assemblywoman Kirkpatrick:

You are saying, for example, that a city manager could fill out his financial disclosure, but the city manager could not copy a financial disclosure for a city council person?

Kim Guinasso:

Roughly speaking, yes.

Assemblyman Mortenson:

I understand the intent, but when I read the language in Section 1, subsection 7 (a) and (b), it seems to me that an elected official who has an appointed staff member could say, "Prepare my financial disclosure," and if it is part of that person's duties to make it easier on the elected official, she could then fill out disclosure forms for that official.

Kim Guinasso:

Are you looking at lines 35-38 on page 2?

Assemblyman Mortenson:

I take back my comments.

Assemblyman Settlemeyer:

Here is a scenario I know has happened. You have to fill out your financial disclosure, you put it in the mail and receive the return receipt. You arrive up here to serve and all of a sudden the Secretary of State calls and says your financial disclosure forms were not received. You are heading to a meeting to testify on your bill, so instead of finding a Kinko's, or going to an Internet café to have it faxed or sent, you print another copy in your office on the state computer and ask your attaché to run it over. Have you just committed a felony?

Kim Guinasso:

The paragraph does not prohibit limited use of state property if certain conditions are met, and one of those conditions is "the use does not include any activity relating to the preparation of a statement of financial disclosure." I think you could read this new language to prohibit that scenario you just described.

Assemblywoman Gansert:

I was thinking that he was not preparing it, just sending it, so when I look at that, I look at you actually inputting the data, and so forth.

Kim Guinasso:

"Preparation," right. But it reads, "any activity relating to a political campaign, the preparation of a statement of financial disclosure or the preparation of a report." I think it would probably go to the Secretary of State to interpret, since the Secretary of State is the officer charged with enforcing all provisions of Title 24 of NRS. I believe it is unlikely that the Secretary of State would become concerned about that; however, I could not answer for sure one way or the other that it would not be within someone's interpretation of what constitutes "preparation."

Assemblyman Conklin:

I am willing to move with the mock-up amended version. I think we have made it as clean as it can be, but I do not want to make that motion if you are not ready to accept it.

Chair Koivisto:

As I read this, the line before says "the use is necessary as a result of emergency circumstances" and I think what Mr. Settelmeyer described would be classified as "emergency circumstances."

Assemblyman Conklin:

That is the way I read it. It is a bizarre set of circumstances, and I cannot imagine that it would happen, which means it probably would happen at least once. I think "emergency circumstances" would apply because if you did not turn it in on time you would be in violation.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 79 WITH THE MOCK-UP PROVIDED BY
COMMITTEE COUNSEL KIM GUINASSO.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Koivisto:

Let us go to Assembly Bill 80. Because it was complicated, could you skim through what we did on the bill (page 2 of [Exhibit D](#))?

Assembly Bill 80: Requires limited-liability companies that engage in certain political activities to register with the Secretary of State. (BDR 24-170)

Patrick Guinan, Committee Policy Analyst:

To skim through the bill, I will discuss the amendments ([Exhibit F](#)). Under item 1, there was discussion among the Committee Members as to why the measure applies only to LLCs (Limited Liability Companies). Concern was voiced by several members that perhaps the measure should be amended to cover a broader group of entities. As requested by the Committee, the Secretary of State has provided information concerning what types of business entities are currently required to register with the Commercial Recordings Division of the Secretary of State's Office, and what information is required of them in those registrations ([Exhibit G](#)). Based on the information provided by the Secretary of State, the Committee may wish to amend the bill to apply to any nongovernmental legal entity, except a natural person, that is not already covered by existing reporting requirements. That is what I believe was the thrust of the conversation.

Under item 2, further discussion also suggested that a threshold might be added, specifying the percentage of ownership in an LLC, at which one would be required to register with the Secretary of State. The Committee may remember that Senator Titus noted that she has a similar bill that requires disclosure by those owning 1 percent or more of an LLC.

Item 3 is two proposed amendments submitted by Dr. Craig Walton, President of the Nevada Center for Public Ethics:

- Item A is to amend the bill at page 3, line 10, by inserting "post in a timely manner and" so that the line would now read, "The Secretary of State shall post in a timely manner and include, on the portion of his Internet website"
- Item B is similar and would amend page 19, line 1, to insert "in a timely manner" after "make available" so that the line would now read, "prepare and make available in a timely manner for public inspection, a compilation of"

The reason Dr. Walton requested these amendments was to ensure that the public has timely, convenient access to the required information. That was the thrust of his testimony and a copy of his submittal is included ([Exhibit H](#)).

Those are the general areas of discussion for the amendment that the Committee looked over. Please turn your attention to the last sentence of the first suggested amendment, "the Committee may wish to amend the bill to apply to any nongovernmental legal entity, except a natural person, which is not covered by existing reporting requirements." I have listed that as number 1 because that was the item the Committee spent the bulk of its time discussing.

Chair Koivisto:

Mr. Conklin, you had a suggestion for item 1?

Assemblyman Conklin:

I am not sold on "any nongovernmental legal entity, except a natural person" Mr. Settelmeyer raised a question about all the other entities and I wonder if we could use some simple language that says, "any business entity whose ownership is not public record." If the ownership is public record, a person could look up that information. I do not see any reason to add an additional obligation. The practice we are trying to get at here is someone giving beyond the legal limit because they have hidden their identity through another organization. This could be fixed very simply by making it apply to "any business entity whose ownership is not public record."

Assemblyman Settelmeyer:

I think there are many other organizations whose membership is not public, and those should be transparent as well. We should make this law as broad as possible and it should apply to all entities. If we go at this one piece at a time, it will create a situation where people will find a loophole to dodge disclosure. I agree with the concept and move to add "nongovernmental legal entity, except a natural person, which is not covered by existing reporting requirements."

Assemblyman Segerblom:

I am asking for a clarification. What is meant by "not covered by existing reporting requirements"?

Patrick Guinan:

The Secretary of State's Office sent a letter to Committee Members ([Exhibit G](#)) that details which entities are required to register.

Assemblyman Segerblom:

Corporations report based on the name of the entity.

Patrick Guinan:

I think you are right about that. The point was to look at what the Secretary of State already requires. If you look at page 2 of the Secretary of State's submittal ([Exhibit G](#)), at the top of the page there is a listing of what has to be included in a registration and for some companies it is:

- Indication of management by manager(s) or members
- Name and address of manager or managing member
- Name and address and signature of the organizer of the limited liability company.

Those are all elements that are part of the registration for the Recordings Division.

Assemblyman Segerblom:

If you are thinking that covers what we are trying to do...

Assemblyman Conklin:

The concern here is for the public to have knowledge about where the money is coming from. That is the only concern. Why would we want to publish the membership list of the obstetricians of northern Nevada? We do not want to do that. We know where the money is coming from. It is coming from the obstetricians of northern Nevada.

When, however, you see on a report "ABC, LLC" you have absolutely no clue. It would be different if it was "Mail Boxes, Etc., LLC." I have an idea what your interests might be. The idea is to create disclosure where there currently is none. That is why I think the language provided under part 1 is a little bit too broad. With some folks, it is very evident who is giving the money, and a membership list is not necessary. We do not even ask for a membership list from a business entity. What we are really concerned with is ownership or some knowledge about what interest is being represented when that money is given.

Assemblyman Segerblom:

My concern is that the LLCs do list members, but that does not mean there is an ownership interest. My concern is that we want to know who owns the LLC as opposed to who the manager is.

Chair Koivisto:

That is correct. We want to know who the owners are and that is currently not reported in financial reporting. We want to know what interest is being represented by ABC, LLC. Are they interested in airlines, landing patterns, gas stations, or what? We think people have the right to know what those LLCs will be trying to influence.

Assemblyman Segerblom:

I believe we want to know if the same person owns, for instance three LLCs, so that person, instead of giving \$10,000, is really giving \$30,000. That was the intent of the bill.

Chair Koivisto:

That is exactly right. The perception is that someone who gives \$30,000, or \$50,000, or \$100,000 would have a whole lot more influence than someone who gives \$2,500. In politics, perception is everything.

Assemblyman Christensen:

I had some concerns when Senator Titus was here mentioning "Blue Sky, LLC" and that it had dumped \$100,000 into any given race. I understand the intent but I wonder, as I read through this, about listing the names of those who are the owners, because we are trying to get around people skirting the system to get money into campaigns. I am looking at Section 3, subsection 2 (f), the requirement to provide a list of specific campaign activities in which the LLC intends to take part, and then at (g), "Any other information deemed necessary by the Secretary of State." I am concerned that we are going too far on this. We are pretty much stopping short of having them list how many hours they have spent and having them submit a phone log for what conversations they have had with legislators or potential candidates. To have to list where they intend to take part, I think some of that may be obvious, but I am also concerned that we are overstepping privacy rights on points (f) and (g). I am surprised that language is even in the bill.

Assemblyman Goedhart:

The bill stipulates that before soliciting or receiving contributions, or making contributions, that LLCs have to list activities in which they intend to take part; but a lot of times one does not know how political events might unfold or who is going to make it through a primary election. As a result, the decision about supporting a particular candidate might not be made until an occurrence along the campaign trail. This language seems to be casting such a large net. There could be unintended consequences such as being locked out of participation and the ability to exercise one's First Amendment right to support a candidate of one's choice. We had a warning about this by a couple of people at our first meeting. While the intent is good, the way this bill has been written does seem to be problematic.

Chair Koivisto:

You are right. We did discuss not including telephone numbers. We do not put telephone numbers on our reports for any other contributors, so I think it would not be acceptable to ask for telephone numbers from LLCs. Also, we do not ask other contributors what legislation they are interested in, so I am not certain that is necessary for this bill. When I read the bill, some of these things are going too far, you are absolutely right.

The important thing we are trying to get at with this legislation is who some of these LLCs are, and what we are looking for is help with the right language.

Assemblyman Munford:

I agree with you. All we are trying to do is find out who the people are behind some of these contributions, and what company, background, or area they are from. That shows you what legislation they are pushing, promoting, and want passed. The public might think we, the elected officials, are showing them special favors because of their contributions.

Chair Koivisto:

The point is, the public already thinks we are showing special favors.

Assemblyman Ohrenschall:

If A.B. 80 were passed as is, would we be holding LLCs to a different standard, or bringing them up to the same level as committees for political action? It seems as though the LLCs this bill targets are basically covert committees for political action.

Patrick Guinan:

I would point to the submittal from the Secretary of State's Office. On the second page it reads that the registration requirements for PACs (Political Action Committees) include the name of the committee; the purpose for which it was organized; the names, addresses, and telephone numbers of its officers; if the PAC is affiliated with any other organizations, the name, address, and telephone numbers of each organization; and the name, address, and telephone number of the PAC's resident agent.

Kim Guinasso:

As you pointed out, Madam Chair, on lines 19 and 20, page 2 of the bill, the form must require the names, addresses, and telephone numbers of its members. I believe only the telephone numbers of political action committees' officers are required.

Patrick Guinan:

That is correct; just the officers' telephone numbers are required.

Assemblyman Ohrenschall:

Whatever we do should be uniform for the LLCs and the PACs. We should hold them to the same standards; that would be my suggestion to the Committee.

Assemblyman Settelmeyer:

I agree with the previous speakers about the concept of dropping the telephone numbers from requirement 2 of Section 3, and of revising Section 3, subsections 2(f) and 2(g). As indicated before, LLCs can be used to skirt the idea of donating a limited amount of money under our campaign laws. Organizations can do the same thing. If you have three corporations with the same five principal members and they are using this to have three different corporations donate the maximum amount of money, then they have used it to circumvent the campaign law and that is what we are going after. To me this applies to organizations as well. We should have them list their members, so we know that they represent the exact same people.

Assemblyman Mortenson:

It depends on whether the members are giving money or whether the organization is giving it. An organization can give a donation in that one name. If the same people own a second organization with a different name, as the law exists right now, they can legally contribute the maximum a second time, a third time, a fourth and fifth time. Members can only give the maximum once.

Assemblyman Segerblom:

There is a limit on how much anyone can give to a PAC, whereas I can form an LLC, give it \$1 million and put somebody in as the managing agent so my name never shows up. That LLC can give \$10,000 to any person it wants and the same thing with a corporation. I thought the intent of the bill was to try to identify how people are using these LLCs and corporations to, basically, launder money that goes beyond the limit of what a PAC or individual can do.

Chair Koivisto:

Yes, the bill is trying to create some transparency and open up election reporting. If we let some sunshine in, people will know where the money is coming from that supports certain ideas or certain candidates. Currently, we do not have that information. I do not know about you, but my constituents do not like it. They want to know where the money is coming from and who is supporting certain things.

Assemblywoman Gansert:

What do we do with corporations created outside the jurisdiction of Nevada, such as a Delaware corporation or LLC?

Assemblyman Segerblom:

Under our bill, if that LLC or corporation made a contribution in Nevada, they would have to file with the Secretary of State indicating its ownership.

Kim Guinasso:

Are you speaking of what currently happens?

Assemblywoman Gansert:

No, I was asking whether the rules apply if you are from out of state. As I look at this, most of the information is what the Secretary of State already has, so would you have to create a disclosure form for all these out-of-state entities?

Kim Guinasso:

The way I would read this is that any limited liability company must register with the Secretary of State before it engages in any of these activities. I do not know that it matters where the limited liability company, for purposes of its business incorporation, was formed. Once they engage in political activity in this State as set forth in lines 9 through 15, on page 2 of the bill, they would be required to file the forms set forth in subsection 2 with the Secretary of State.

Assemblywoman Gansert:

Did we ever talk about LLCs that are just created for business purposes and that contribute \$500 to a campaign? The intention really is not to screen money, so how would we differentiate those? I would think some owners of LLCs may not recognize we have this law in place, because they are not in the business of giving political contributions.

Chair Koivisto:

The purpose of this bill is to get information from LLCs that operate and contribute under several different names, thereby skirting the contribution laws. If someone contributed \$500, why did they contribute as an LLC instead of as an individual?

Assemblywoman Gansert:

I do not know, but people give us funds from corporations and LLCs. I would not like someone to get trapped in this because, unknowingly, they contributed to a campaign and used their LLC's checking account versus a personal account checking account. I am not really certain how one would know whether an LLC was set up to pass money through to campaigns, or whether someone wrote a check out of the wrong account. I am not sure we can fix this.

Assemblyman Goedhart:

One of the differences between a private individual, an LLC, a 501(c)(3) nonprofit organization, or another group giving money is that it is quite possible the tax implications could be different. If an organization was giving it to

further their business, it might be a tax deductible expense. I am not sure if you give a campaign contribution as a private individual if that is tax deductible.

Chair Koivisto:

Is a political contribution tax deductible? [Several unidentified voices replied, "No."]

Kim Guinasso:

The second amendment recommended by Dr. Walton, which would insert the phrase "in a timely manner" on page 19, line 1, of A.B. 80, would not be called for in that particular section because the beginning of that sentence starts out, "The Secretary of State shall, within 30 days after receipt of the reports required by ... prepare and make available for public inspection a compilation of" If we were to say, "The Secretary of State shall, within 30 days after" it receives these reports, "prepare and make available in a timely manner," you have already said they have to do it within 30 days. You might want to reconsider that one change.

Assemblyman Mortenson:

If John Smith here in Nevada went to New Jersey, formed an LLC and put \$1 million into that LLC's treasury and started contributing to people in Nevada running for election, there is no way we can get to him, can we? We have no "teeth" in another state. It seems as though he could contribute all he wanted without a problem. Of course, it is up to the recipient to report it properly, but I am not sure, if it comes from out of state, that he will bother.

Kim Guinasso:

That is a question of enforcement and the question is whether the Secretary of State would have the ability of enforcing this law, which would apply to such a situation. It would depend on the level of ties that the person engaging in the activity had to the State in terms of what opportunity the Secretary of State might have for enforcing the matter. The statute as it is written would apply because they are engaging in activity that is set forth in the section. Again, enforcement is always a difficult matter, but the provisions of the statute would apply.

Chair Koivisto:

The candidate receiving the contributions would have some reporting responsibility, as well.

Do we have a clear idea of how we want to amend this bill?

Assemblywoman Gansert:

Did you amend this to say "any organization" that contributes, not just LLCs?

Chair Koivisto:

We have not done anything on that part. It was suggested that we say "any business entity whose ownership is not public record."

Assemblywoman Gansert:

Do political action committees file and disclose where they contribute money? They do it in reverse. We are asking for an LLC, or other organization, to file their intention to contribute, versus filing a list of who they contributed to.

Chair Koivisto:

We are asking LLCs to do pretty close to the same things PACs have to do. They register the name of the committee, the purpose for which it was organized, and the names, addresses, and telephone numbers of its officers. If it is affiliated with any other organizations, they register the name, address, and telephone number of each organization, and the name, address, and telephone number of the PAC's resident agent.

Assemblywoman Gansert:

Now, we will require any nonpublic organization with the intent of contributing...

Chair Koivisto:

Right, we would include nonpublic organizations.

Assemblywoman Gansert:

Are there any minimums with PACs? Their sole purpose is to contribute, so there are no minimums before they have to report.

Chair Koivisto:

I think that is correct.

Assemblyman Segerblom:

As I interpret the proposed language, it would not include LLCs or corporations because they currently do report to the Secretary of State.

Chair Koivisto:

Right, the suggestion is to add any business entity whose ownership is not public record.

Assemblyman Segerblom:

Then we are saying that corporations and LLCs would fall under this new law.

Chair Koivisto:

Yes.

Assemblyman Segerblom:

I am satisfied with that and I would move for approval.

Assemblywoman Gansert:

If we do it that way, then we are actually creating the paperwork for corporations, too. There are two ways to look at contributions—the front end, where people contribute, and the other end, those who receive. We report what we receive and now we are requiring something extra of entities that want to contribute to us, correct? The sunshine is probably already on those, because they are on our reports.

Assemblyman Conklin:

Even if we accept the language "any business entity whose ownership is not public record," a corporation is public record. This is really designed to get at those people who hide behind a mysterious wall. They have a very legitimate business purpose to do so, but if they want to enter the political arena, for purposes of disclosure and sunshine so that the public has knowledge of what is going on, they would be subject to this statute.

Chair Koivisto:

We talked about adding a threshold, the percentage of ownership in an LLC.

Assemblyman Conklin:

I think an LLC can only have so many members to begin with. The standard LLC is not littered with a hundred members, which I believe is its maximum. Also, if we are dealing with LLCs, or LPs (limited partnerships), your ownership may not be split like 50 percent or 28 percent or 22 percent. In an LLC, there is no recorded monetary split in terms of ownership; that is all private agreement. It is a bit fuzzy, and there are so many business entities it is hard to know how you would split up a percentage of ownership.

[Matt Griffin, in the audience, was asked to come to the witness table and provide clarification.]

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

I am in the Elections Division and, as far as election requirements go, LLCs are not currently under the same requirements as PACs. Limited liability companies use "back end" reporting, whereas a PAC has to register with the Secretary of State's Office before they can donate or incur any expenses. That is not the case with an LLC.

As far as LLCs go, I am not going to speculate on whether requirements can be skirted, but I can say that, using fictitious LLCs such as "Moonlight I, II, III," someone could donate to a campaign or campaigns within the statutory limits given to each LLC. The membership of those LLCs is not disclosed to our office, we only know the name and location of the organization.

Assemblyman Mortenson:

You know the name and location of the organization only if they organized in this State, right? If they organized in another state and made contributions into our State, you would not know anything about them, right?

Matt Griffin:

Not necessarily, because there would still be a duty incumbent upon the official seeking election to file the amount of that contribution on their report. I know there was discussion about enforceability, but the information we collect is not ample enough for us to determine whether it is a Delaware corporation, or a Florida corporation, or who their resident agent is and where they are from.

Assemblyman Conklin:

If this were to pass, we would be requiring any business, whether in Delaware, New York, or wherever, whose ownership is not public record, and is going to make a contribution in this State, to file with you, correct?

Matt Griffin:

That is a correct statement. It would make the burden incumbent upon the contributor to disclose prior to engaging in political activity, as opposed to the candidate disclosing on the back end.

Assemblyman Segerblom:

Could Mr. Guinan give us the language we would use to identify which entities would be covered by this bill?

Patrick Guinan:

At this point, the language would be, "any business entity whose ownership is not public record," and it would substitute for the language currently in Section 3.

Assemblyman Segerblom:

That entity would have to report what?

Patrick Guinan:

That entity would be required to report everything that is listed in Section 3, subsection 2, before it was allowed to do any of the following activities: soliciting or receiving contributions from a person, group, or entity; making contributions to candidates or other persons; or making expenditures designed to affect the outcome of any primary election, city election, general election, et cetera.

In subsection 2, the form would require, instead of "the name of the limited-liability company," the name of "the business entity whose ownership is not public record," and then it would continue with "the purpose for which it was organized" and so on.

Assemblyman Segerblom:

Would it require identification of who owned it?

Patrick Guinan:

That was not part of the motion made so far.

Assemblyman Segerblom:

Right now, as proposed, the bill does not require the entity to disclose who owns it.

Patrick Guinan:

What we have gotten to so far is including, "any business entity whose ownership is not public record." If the intent would be to have the ownership disclosed, that would be something that would need to be part of the list under Section 3, subsection 2. We have the names, addresses, and telephone numbers of the members, but we do not have ownership listed.

Assemblyman Segerblom:

I would move to add ownership as a criterion.

Chair Koivisto:

I will accept a motion to Amend and Do Pass, amending the bill to include ownership, taking out telephone numbers, and concerning Dr. Walton's amendment on page 19, line 1, to remove "in a timely manner" as was suggested by Ms. Guinasso.

Kim Guinasso:

There were two suggestions for placing the phrase "in a timely manner." The first was on page 3, and would go in the new Section 3, subsection 3, and would say at line 10, "The Secretary of State shall post in a timely manner and include, on the portion of his Internet website that is devoted to information concerning elections and campaigns, the information required pursuant to subsection 2." There is not a timeline for that posting.

Chair Koivisto:

Correct, and the one on page 19, line 1, was the one I would take out. I will accept a motion.

Assemblyman Conklin:

Could we improve this by saying, "a business entity whose actual business or ownership is not public knowledge"? That way we get at the case where the ownership is not public knowledge, but we are pretty certain we know who they are. For instance, if it says "Kentucky Fried Chicken" and the address is Kentucky Fried Chicken's, we are pretty certain it is Kentucky Fried Chicken. Maybe I am overthinking this and it would be best if we use "any business entity whose ownership is not public record" as a standard.

Chair Koivisto:

Let us not make it any more complicated.

**ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 80 WITH THE FOLLOWING CHANGES:**

- APPLY TO ANY BUSINESS ENTITY WHOSE OWNERSHIP IS NOT PUBLIC RECORD;
- ADD OWNERSHIP AS ONE OF THE REQUIREMENTS IN REPORTING;
- ACCEPT DR. WALTON'S PROPOSED AMENDMENTS WITH THE EXCEPTION OF "IN A TIMELY MANNER" AS SUBMITTED IN WORK DOCUMENT 3(B); AND,
- REMOVE THE REQUIREMENT FOR TELEPHONE NUMBERS FOR THE MEMBERS OR OWNERS BUT NOT FOR RESIDENT AGENTS.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Cobb:

Would Mr. Guinan read the exact language we are considering for amendment number 1?

Patrick Guinan:

The first portion of the amendment will use language to stipulate "any business entity whose ownership is not public record."

Chair Koivisto:

If it would make the Committee more comfortable, we can have the amended bill brought back to the Committee before we report it to the Floor.

Assemblyman Cobb:

The only thing we changed from what is written in front of me is that it now says business entities whose ownership we do not know?

Patrick Guinan:

The motion Mr. Conklin made for the entire amendment has four parts to it:

Part A would be to amend the language concerning LLCs to read, "any business entity whose ownership is not public record."

Part B would include, as part of the list of requirements, the name and address of the owner or owners of that business entity.

Part C would accept Dr. Walton's first proposed amendment that would affect page 3, line 10, and require "posting in a timely manner" this information by the Secretary of State.

Part D would amend the bill to remove the requirement of providing telephone numbers for the owners of the business entity. That requirement is currently in the bill at Section 3, subsection 2(c).

Assemblyman Cobb:

So amendment 2 on page 2 ([Exhibit F](#)) in front of us was not considered?

Chair Koivisto:

You are asking about the threshold?

Assemblyman Cobb:

Yes.

Chair Koivisto:

No, it was not.

Assemblyman Cobb:

So amendment 1 ([Exhibit F](#)) was not considered?

Chair Koivisto:

It was changed to read, "any business entity whose ownership is not public record."

Assemblyman Cobb:

What about nonbusiness entities donating money?

Chair Koivisto:

They are already reporting.

Assemblyman Cobb:

Do labor unions report?

Chair Koivisto:

Absolutely.

Assemblyman Cobb:

Is a labor union a nonprofit?

Chair Koivisto:

They contribute by way of PACs, and PACs are legally bound by very strict regulations before they can contribute.

Assemblyman Cobb:

So labor unions are not allowed to donate directly like businesses are without going through PACs?

Chair Koivisto:

A local union forms a PAC in order to contribute.

Assemblyman Cobb:

For instance, Green Sky, LLC, right now can give money, but a labor union would be held to a higher standard and must form a political action committee?

Chair Koivisto:

They do form political action committees. That has been my experience.

Assemblyman Segerblom:

Within the State of Nevada, a labor union could, if their rules permitted it, make a direct contribution, but the labor union itself is a registered entity under the rules of the National Labor Relations Act or our Chapter 288 of NRS (*Nevada Revised Statutes*). The ownership, or at least the management of that union, is known, and the membership would be defined by the collective bargaining agreement. You would know where the money came from.

Assemblyman Cobb:

You would know where the money came from by checking through the federal government?

Assemblyman Segerblom:

The president or secretary-treasurer of the union is publicly filed, either with the State or with the federal government. All the management information is required by state and federal law.

Assemblyman Cobb:

In this bill, we have just limited it to ownership, not to the whole membership as we were talking about before, which could be quite onerous.

Chair Koivisto:

That is correct.

Assemblyman Cobb:

Okay, thank you.

Chair Koivisto:

We have a motion from Mr. Conklin, seconded by Mr. Segerblom. Is there any further discussion? [No response]

THE MOTION PASSED UNANIMOUSLY.

Is there anything else to come before the Committee? [No response] We are adjourned [at 5:36 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair
Constitutional Amendments

DATE: _____

Assemblywoman Ellen Koivisto, Chair
Elections, Procedures, and Ethics

DATE: _____

EXHIBITS

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

Date: March 20, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AJR 1	C	Patrick Guinan, Committee Policy Analyst	Explanation
AB 79 and AB 80	D	Patrick Guinan	Explanation
AB 79	E	Kim Guinasso, Committee Counsel	Proposed amendment/mockup of the bill
AB 80	F	Patrick Guinan	Proposed amendments
AB 80	G	Ross Miller, Secretary of State	Letter of explanation concerning filing requirements for LLCs
AB 80	H	Craig Walton, President, Nevada Center for Public Ethics	Proposed amendments