MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-fourth Session
May 3, 2007

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara K. Cegavske at 2:11 p.m. on Thursday, May 3, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Barbara K. Cegavske, Chair
Senator William J. Raggio, Vice Chair
Senator Warren B. Hardy II
Senator Bob Beers
Senator Bernice Mathews
Senator Valerie Wiener
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7
Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Ed Goedhart, Assembly District No. 36
Assemblywoman Ellen M. Koivisto, Assembly District No. 14

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Michelle L. Van Geel, Committee Policy Analyst
Josh Martinmaas, Committee Secretary

OTHERS PRESENT:

Craig Walton, Ph.D., Nevada Center for Public Ethics
Janine Hansen, Independent American Party
Tonya Brown

Diana M. Glomb-Rogan, League of Women Voters of Nevada
Patty Pruett
Julie Tousa, Nevada Center for Public Ethics
Lynn Chapman, Nevada Eagle Forum
L. Patrick Hearn, Executive Director, Commission on Ethics
Matt Griffin, Deputy for Elections, Office of the Secretary of State

CHAIR CEGAVSKE:
We will open the hearing on Assembly Bill (A.B.) 79.

ASSEMBLY BILL 79 (1st Reprint): 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)

ASSEMBLYWOMAN ELLEN M. KOIVISTO (Assembly District No. 14):
Assembly Bill 79 aims to restore the public's trust in elected officials by clarifying and strengthening ethics and campaign laws. A matter of common sense, many people are amazed this is not already explicitly expressed in law. This bill would leave no doubt an elected official at any level of government cannot ask his or her staff to prepare a campaign report or do other political activity during the workday, nor can office equipment or office space be used for such activity. This bill is not about prohibiting candidate debate at a school or library, or allowing a political club to hold a reception at the Governor's Mansion. These events would not be covered because they are a public meeting, open to the general public and equally available to everyone. Public involvement is a critical part of our system and should be encouraged. This is about making sure an elected official or employee of an elected official does not do political work on government time. Those activities need to be regulated to home or campaign offices and hours after work.

SENATOR BEERS:
If this is not already in law, how did we convict Kathy Augustine?

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
It was in law, but we still had an enormous debate about what the law meant. Sometimes we have to go back into statute and make our intent and stautue very clear. I agree with you this is covered, but the fact we had so much debate means it needs to be more clear.

CHAIR CEGAVSKE:
Looking at the word "political campaign," I wonder if the word "campaigning" would be better. That came to mind when we were looking at this. Look at the people who get elected; everybody would say, "I do not want to violate anything. I want to make sure that I am within the law and that I follow the law to the letter." When we look at some of the requirements, there is always that gray matter as to does it mean this or that. We need something in black and white. When I look at "political campaign" and then "campaigning," you do not want them campaigning; is that a better use of a word? When you use "political campaign," where does that stop and start? E-mails? The state provides us with an e-mail within the Legislative Counsel Bureau (LCB). We cannot stop people from e-mailing us. For example, I have gotten e-mails from three or four people who are upset about tipping at Wynn Las Vegas. The comments have been, "If you do not vote for this, I am not voting for you." How do you define where we step over the line? Can these issues be misconstrued? "If you do not vote the way I want next time, I am voting against you."

ASSEMBLYWOMAN KOIVISTO:
That is part of any campaign while we are in session. That is not part of a political campaign. Every session I have been here, there has been some issue people get excited about and send us a lot of e-mail. I do not look at that as any kind of political campaign; that is part of our job.

CHAIR CEGAVSKE:
But it is trying to influence the outcome of a political campaign.

ASSEMBLYWOMAN KOIVISTO:
They are not trying to influence a political campaign. They are trying to influence the outcome of a vote of something before the body.

SENATOR RAGGIO:
I am very much in favor of your intent. My concern on these so-called ethics proposals is in our zeal to recognize and deal with the problems we might go a little far afield and not realize the unintended consequences. In this particular area, let us talk about a constitutional officer. The filing period has begun. Someone in public office—city councilman, county commissioner, anybody—is in their office when the phone rings and it is somebody who mentioned something about their campaign or issues in the campaign. If we pass this, does that person just have to say, "I cannot talk to you" and hang up? "Call me later

or I will call you." I do not want to create a minefield for unintended consequences of that kind. Say we pass this bill, I am the State Treasurer and somebody calls me on the phone and says, "I want to participate in your campaign or maybe contribute to your campaign. Where do you stand on this issue and if so, how can I participate in the campaign?" Would this require the officer to say, "I cannot talk to you"? It is a government telephone.

BRENDA J. ERDOES (Legislative Counsel):
With the caveat the Commission on Ethics construes such matters, I suggest this activity relates to a political campaign. If you are politically strategizing on your campaign, spending your state time as State Treasurer using the phone in the office, that activity relates to a political campaign.

SENATOR RAGGIO:
I am concerned about that; it is a little too broad. It suggests that you have to say, "Hey, I cannot talk to you, good-bye." I am not making light of this, I do not want to create unintended consequences that do not deal with reality. I created the first ethics commission to give public officials an opportunity to go get an opinion as to whether there were violations or potential conflicts. I am interested in preserving that, but on the other hand, it is hard enough to get people to even campaign or submit themselves anymore. I want to deal with reality.

ASSEMBLYWOMAN KOIVISTO:
I appreciate that. I have difficulty understanding why we have to make laws to tell people to be ethical. To answer your question for the situation you spoke of, when we are elected and serving, we should be smart enough to say, "I cannot discuss this now, I will call you later. Give me your number." That seems logical to me.

ASSEMBLYMAN CONKLIN:
I have respect for what you have done concerning ethics laws in this state, and your comments are sincere. I recognize the validity of what you are saying. I am trying to rationalize the comments between Ms. Erdoes, yourself and the Chair on page 4, section 11 of A.B. 79 on line 17 where it says "affect the outcome." We are attempting to get at a person who uses state resources to give them an advantage in an election. A phone call might be an incidental conversation, "Hey, I need to get this to print, can you approve?" versus using that phone to make calls to constituents for no other reason than, "Will you vote for me in the

primary, in the general election?" Drafting these is difficult because there are a lot of possibilities.

SENATOR RAGGIO:
I agree with you, but the Legislative Counsel does not. Ms. Erdoes said merely accepting the call and answering the question would put you in jeopardy. I am trying to draw some reason. You have drawn the reason, and it is a reasonable interpretation, but we either need to put something in here or make a record of that because we do not want people falling into that situation wittingly or unwittingly and then somebody with a real grudge says, "Hey, you took a call and you talked to them about ... ." I am trying to preserve that discussion and make sense out of what we are trying to do. I do not want everybody to be afraid to take a phone call or act at their peril on something like that.

CHAIR CEGAVSKE:
I agree with Senator Raggio's comments in the beginning. The intent is what all of us absolutely want; we just have to make sure there are not unintended consequences. Unfortunately, once we pass something and then we live it, we all know what that has done to us.

One concern I want on the record is whether a Legislator asking the LCB for help filing their financial disclosure form constitutes use of government time? Staff gets calls on their campaign contributions. I want to make sure we are not doing anything that would have unseen ramifications.

MS. ERDOES:
Legal Counsel staff still answers questions relating to the requirements and legalities of the form and advises you as your legal counsel. The line would come into play during preparation. This is very specific; it says "relating to the preparation of a financial statement, financial disclosure." We would draw that line at giving advice but not help with the actually preparation of the statement.

SENATOR HORSFORD:
This bill has similar language to a bill I brought forward last session; I appreciate the concerns of the Chair and Senator Raggio that this might open us up too broad. The intent is around the issue of using public office for campaigning, which we know occurred at one point. The provision is still out there but nothing on the books clearly prohibits this type of activity. We need not get bogged down in how it could be used in the broad sense when the narrow

sense of the campaigning issue—public facilities, resources and employees to campaign—seems very clear to me. I hope we can get to that language. Maybe the Chair's suggestion that we start with a focus on the language to say "activity relating to campaigning" would get more to the intent. This loophole is still out there and it needs to be closed.

CHAIR CEGAVSKE:
Will the verbiage change from using "political campaign" to "campaigning" be helpful? Assemblywoman Koivisto and Assemblyman Conklin, if that gets to your purpose, would you be amenable to that?

MS. ERDOES:
Putting the word "campaigning" in probably changes the connotation of the word to somebody reading this. When you look at the definition, I assume it also changes the definition, so "activity relating to political campaigning" would still mean an activity. I do not know if you are looking at any changes in terms of using state resources to influence an outcome of an election, but the term "campaigning" means something a little bit different than just "campaign."

CHAIR CEGAVSKE:
I was looking at not putting "political campaign" but just "campaigning" because that is the issue, there was campaigning. I do not know whether we need the word political. I was curious if that would help the definition. Otherwise, you have to define what "political" means.

SENATOR BEERS:
I will color myself out here on the end of the plank. When we make $7,800 a year, we cannot separate any of this. First of all, I would not have to do campaign forms if I did not hold office; they are absolutely a function of me holding office, not a personal activity of mine at all. If I had a choice, I would not do them because they are not fun. It is absolutely related to my job. Secondly, in this building, there are at least once-a-week meetings of all the Republican members of the Assembly, the Democrat members of the Assembly, the Republican members of the Senate and the Democrat members of the Senate. In those meetings, things are discussed like what is going to happen in the next election cycle. Those are related to political campaigns. You cannot separate it from any aspect of what we do here, it is just a fact of the matter. Our citizens are not concerned with that. Our citizens are concerned with

county commissioners who take money from strip bar owners and live in half-million dollar houses. This bill does not get us there.

CHAIR CEGAVSKE:
We have a handout from the League of Women Voters of Nevada (Exhibit C) and Craig Walton (Exhibit D) for A.B. 79.

SENATOR HORSFORD:
I want clarification from Senator Beers. When you say filing these forms is a requirement, forms are required of individuals who run for office regardless of whether they are elected to office. They do not use public resources to fill out those forms, it is a condition of being a candidate for office. There needs to be a distinction. Can you clarify what you mean by these forms are only required because we are elected?

SENATOR BEERS:
I am midterm, how is filling out my annual form not a function of my elected position?

SENATOR HORSFORD:
Individuals who are appointed also have to fill out those annual disclosure forms, and they do not use public resources to do it. That is one form, once a year, that all of us do on our own or with the assistance of a certified public account or a lawyer in the private capacity if it is that complicated. Contribution and expense forms should be done by a campaign or a campaign committee, not by staff who work for a public official. This law seeks to partly address that loophole.

SENATOR BEERS:
Perhaps this highlights why we have debate; there is disagreement on the nature of these forms and whether they are a function of holding office. Like I said, this provides technicalities for us to get on our fellows. The public does not care, the public is concerned about county commissioners who take cash, drive expensive cars and live in houses well beyond their means.

SENATOR HORSFORD:
The public, in addition to being concerned about the lifestyles of the rich and famous, are also interested in public disclosures of elected officials and the conflicts of interest that may exist. These forms would not be required by law if

there was not a reason. I agree in part with you, but that is not the only thing the public is concerned about—nor should there be a public record relating to our public disclosure on employment, assets and holdings of which the public has a right to know.

On several of these ethics bills, we always say why we cannot implement it; I wish we could frame how we can. Some of these things are just for basic compliance. I agree with Assemblywoman Koivisto; if people do not know how to hold strong convictions on what is right or wrong, then, maybe, people should not elect them. We are trying to set a standard compliance for everyone to follow because we are public officials.

SENATOR RAGGIO:
The problem here is we are making a record. We need to be clear on what we address. I certainly support the concept that government time, facilities and so forth should not be used other than for appropriate purposes. Assemblywoman Koivisto said we should all know what is ethical, but the problem is everybody's definition of ethical is not the same. If so, we would not need a Commission on Ethics and there would not be issues or doubts about these things. In reference to Senator Horsford, as to that kind of a clarification, obviously—and I want to indicate I was one of the voters to convict the late State Controller for misuse of government property—the law on the books was adequate to cover that kind of a situation. I want a clear record as to what is not an intended consequence of anything we process here. That is why I asked Ms. Erdoes if it could be construed that way. I agree with Assemblyman Conklin, I do not want it construed in an unreasonable way. There could be a reasonable distinction between the forms required by someone who holds an office by virtue of that position and the kind of forms needed for campaign purposes.

CHAIR CEGAVSKE:
If we made the change and you are willing to keep "political," it would not make a difference keeping it or letting it go, but we could keep it if you are amenable and use "campaigning" instead of "campaign."

ASSEMBLYWOMAN KOIVISTO:
In reading the bill, section 1, subsection 7 all the way down to line 11 of page 3 deals with what we are discussing.

SENATOR RAGGIO:
Except it includes a statement of financial disclosure and I do not know if all of those are required by the campaign or by virtue of the person holding office.

MS. ERDOES:
The financial disclosure form is required, on January 15 for every officeholder, elected and appointed, and those who are actively campaigning.

ASSEMBLYMAN CONKLIN:
Personally, I prefer you retain the word "political," and whether it is "campaign" or "campaigning" makes no difference. Because we are a citizen Legislature, we all do other things as well. Senator Beers may be a member of the American Cancer Association and they are having a campaign for cancer awareness; if you left out the word political, by the very nature—

CHAIR CEGAVSKE:
Staff indicated it would not make a difference. It was more adding the "ing."

ASSEMBLYMAN CONKLIN:
To a point Senator Beers made about the use of a caucus room—or the Governor's Mansion—these facilities are public and no one can be denied a right to use them whether or not you are an officeholder. Those resources are not ours; we use them, but they are public and anyone could also use them.

CHAIR CEGAVSKE:
He was referring to whether are you campaigning for something. According to this, it is government time, property and equipment. That is what is being reviewed. The Governor's Mansion is government property. Would that include equipment and facilities there if you are in the Mansion having a political campaign? That is what everyone is trying to understand.

ASSEMBLYMAN CONKLIN:
I do not read that to include this unless you are using it for your own political purposes.

CHAIR CEGAVSKE:
What if there is something you are supporting?

ASSEMBLYMAN CONKLIN:
Then the question becomes is it a fair statement to say that if I am Governor or Senator, I can use state resources not available to any other citizen or person in a campaign? Is that a fair use of a government resource? My answer to that would be no.

CHAIR CEGAVSKE:
Say we are using the Governor's Mansion for a function for someone's election—either party—and there is a presidential committee, is that considered? I hate to put you on the line for this but is this bill already in *Nevada Revised Statutes* (NRS) to a degree?

MS. ERDOES:
I would answer that by attempting to explain how this works. Currently, both subsections 7 and 8 provide a limited exception, subsection 7 for state officers and employees and subsection 8 for Legislators; this is for use of government time. The provision that says limited use of state property for personal purposes if "the use does not interfere with the performance of his public duties, the cost or value related to the use is nominal, the use does not create the appearance of impropriety" is what currently applies. This bill takes two exceptions—"the use does not include any activity relating to a political campaign" or "the preparation of a statement of financial disclosure"—out of the provision which says you can use a minimal amount or limited use of state property if these things apply. Even if it was only of minimal use but for campaigning and all these things apply—there was no appearance of impropriety, and the use does not interfere with performance of your duties—you still could not do it under this bill. That is the change the bill makes; you cannot do these things at all with state property. Under current law, you can do them to a degree, which is the provision that has always been there. If you are a state Senator who picks up the phone and it is your mom, you do not have to hang up on her.

SENATOR BEERS:
I keep coming up with anecdotal situations that clearly violate the law and yet seem ethical to me. When former Governor Kenny C. Guinn ran commercials of the crickets chirping outside his lit window at the State Capitol in the dark, he was working hard on government business, and it was turned into a campaign commercial. That would violate this law. That is not an ethics violation decreasing citizen faith in government. If Jim Gibson, not a member of the Legislature, films a television commercial at a state park for his gubernatorial

campaign, he is using state property and violating this statute. That is not what our citizens are upset about when they say we have problems with ethics in government. All these anecdotal episodes are real life and I think they qualify. I understand what you are trying to get to but describing it is difficult.

ASSEMBLYWOMAN KOIVISTO:
I sent out a postcard to constituents this Session to find out what was important to them. Invariably, ethics was right up there. I am sure it is not because anybody appears to be doing anything wrong, but it is what they read in the paper; perception is everything.

SENATOR BEERS:
I suggest the biggest cynicism generator in A.B. 79 is on page 2, line 36 starting with the word "other" through the first comma on line 37, which is where we exempt members of the Legislature from this law.

SENATOR HARDY:
I appreciate Assemblywoman Koivisto and Assemblyman Conklin bringing this forward; it is a good faith effort to address a concern to the public. Senator Beers' comments make a lot of sense. The public is outraged about some things that occurred, and that is what we should be addressing. Most of us voted for conviction in the case that brought this bill forward, and a number of county commissioners can testify to the fact that the law is not completely broken. I understand the need for clarification, but we need to make sure we are fixing the right things.

CHAIR CEGAVSKE:
I ask Ms. Erdoes again if what Senator Beers references on page 2, lines 36 and 37, when it says "other then a member of the Legislature," exempts us from—

MS. ERDOES:
It applies to the same thing. The only difference between sections 7 and 8 is the language in subsection 8, paragraph (b): "Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity." Otherwise A.B. 79 does not treat subsections 7 and 8 any differently.

CHAIR CEGAVSKE:
Then it is on page 3, subsection 8.

SENATOR BEERS:
My point was not that this bill treated Legislators any differently from non-Legislators; my point was that the law treats Legislators differently than non-Legislators.

CHAIR CEGAVSKE:
That is true. I want to make sure what you are stating in these two sections, where one says you are not and the other says you are.

CRAIG WALTON, PH.D. (Nevada Center for Public Ethics):
In response to Senator Beers' question, the original lines in subsection 7—what appeared in Assembly Amendment No. 91 to A.B. 79 as lines 22 through 25, which are stricken out—those that Dominic Gentile interpreted as providing a defense. It was because of the apparent ambiguity there that caused A.B. 79. Putting a clearer version down a few lines below is meant to close the perceived loophole.

The recommended language is active voice language not referring to my getting a phone call. If I get a phone call, somebody else made the phone call and my duty is to say, "Please call me at my campaign office or I will call you back on a cell phone later." A lot of answers can be given rather than using state time, money and staffing to deal with a campaign question. That occurs every so often. Using the word "campaigning" throws attention on the active voice that I started the thing.

SENATOR BEERS:
You made my point when you said the proper response for the elected official would be, "Gee, call me back at my campaign office." Not one single constitutional officer of the State of Nevada has a campaign office open today.

DR. WALTON:
Is there no way to carry the call to a later time other than during office hours?

SENATOR BEERS:
I further submit not one single constitutional officer of the State of Nevada has office hours. They all work 24 hours a day, 7 days a week. That is the nature of the job.

DR. WALTON:
In university life, we have office hours, but we do not have restrictions on our phones. Usually, we list them and get called at all times. The point is to draw the distinction between campaigning and doing constitutional and legislative duties; apparently, the majority of our Senators and Assembly members successfully draw that distinction. People who work in the legislative, state, city and county buildings are not grumbling and mumbling about a lot of campaigning. It has happened in some offices but is not seen as a widespread problem so this distinction is drawn even if we do not have language.

About campaigning, Assemblyman Conklin made the obvious comment that campaigning could refer to the United Way and some other things if you do not qualify it. "Political campaigning" would be better.

JANINE HANSEN (Independent American Party):
I would like to draw your attention to the last page of A.B. 79, subsection 11, starting on line 16: "As used in this section, 'activity relating to a political campaign' means activity designed to affect the outcome of any primary, general or special election." That is the problem Senator Beers identified. If you are a Republican or a Democrat, many activities you are involved in during the Legislature are designed to effect the outcome of the election. The whole purpose of promoting your individual political agendas is because you care about their success. It is not necessarily political, it may be a deeply held belief, and that is why you are a Democrat or a Republican. It is impossible to separate what you do here on a day-to-day basis from the activity that does not affect the outcome of an election. You are putting yourselves in a minefield to pass that kind of a definition. All these ethics laws you have passed year after year have not improved the quality of our elected officials. You are either honest or not. As Assemblywoman Koivisto said earlier, she does not understand why that is the case. The only parties interested in these are the media and your opponents. The discussion here today proves these things are confusing, hard to understand and we do not have a clear idea of what they mean. You could remove portions of this bill. Page 3, lines 5, 38 and 39 refer to political activity which is indefinable and impossible to prevent during the Legislature; just keep in the fact you cannot use the time to prepare a report or file a financial statement. Though easy to define, I am not necessarily in favor of that, but the minefield the broad definition of "political campaigning" creates will harm this body.

People increasingly refuse to participate because they are fed up with all the rules and things with which they have to comply. Republicans and others told me this last year they simply were not willing to participate because it was far too much hassle when they had to fill out all these things. I encourage you to take pride that all this corruption has not taken place in this body and realize you may have difficulty determining that your activities here and everything you do are related and designed to affect the outcome of a campaign.

TONJA BROWN:
I am here as a voter. We all understand an 8-to-5 job. Why not limit it to 8 a.m. to 5 p.m., Monday through Friday, anything after 5 p.m. This way, the voters would know the time they are doing their job for state and county business. For those who are in office and need to get campaigning accomplished, why not just say, take off the day, take off an hour or use your lunch hour. Then you can go to those agencies that are 8 a.m. to 5 p.m. and take your time there.

CHAIR CEGAVSKE:
We will close the hearing on A.B. 79 and open the hearing on Assembly Joint Resolution (A.J.R.) 1.

ASSEMBLY JOINT RESOLUTION 1 (1st Reprint): Proposes to amend the Nevada Constitution to provide for forfeiture of public office for three or more violations of ethical duties. (BDR C-171)

ASSEMBLYWOMAN KOIVISTO:
Assembly Joint Resolution 1 is another measure we are putting forward in an effort to restore public confidence in their elected officials. This confidence has eroded over the past few years. This proposal is not about the past, it is about looking to the future and our efforts to ensure that we hold all elected officials to the highest standards. Assembly Joint Resolution 1 proposes to amend the Nevada Constitution to provide for the removal from office of any elected official who has committed three or more violations of his or her ethical duties while holding the same office as determined by the Commission on Judicial Discipline for judges, and the Commission on Ethics for all other elected officials. Currently, such violations by the Governor and other state and judicial officers, except justices of the peace, are subject to impeachment and removal from office. Existing law also allows for expulsion of a member of the Legislature by a two-thirds vote of the House in which that Legislator serves. This constitutional amendment would supersede that provision as well. This is a

straightforward proposal based on a simple premise: an individual who has been found to have willfully violated ethics laws on three occasions by the Commission on Ethics or Commission on Judicial Discipline should not serve in office, and we should not need a lengthy and expensive impeachment process to reach that conclusion.

SENATOR RAGGIO:
What changes were made from the original version into the first reprint?

CHAIR CEGAVSKE:
The amendment removed the words "knowingly or" from language proposed for Article 7 of the Nevada Constitution in section 5, subsection 7 paragraph (b), subparagraph (2) of the resolution defining a violation of an ethical duty. The committee agreed that the inclusion of "knowingly or" in front of the word "willfully" in this section did nothing to strength the definition and the removing of these would create a clearer definition.

SENATOR RAGGIO:
Let me ask to the intent of three or more violations. Let us say a public officer is convicted of some ethics provision and in that one hearing before the Ethics Commission, the member did that three times and faces three counts. Would that constitute three violations under this provision for an automatic removal from office?

ASSEMBLYWOMAN KOIVISTO:
It could be construed as one violation or as three.

SENATOR RAGGIO:
Let us say the person used the office to send out postcards for their campaign during office hours using some facility for copy services. That person sends out 100 postcards; that constitutes a violation, but they could say sending out 3 postcards is 3 counts. I do not want to say a person should hold office for clearly violating ethics provisions by that number. I would like clarification. My personal reaction is that example should not be three violations. I want to make a record of what we are talking about and what your intention is on this.

ASSEMBLYWOMAN KOIVISTO:
The intent of the committee is it would be one violation. We also discussed if someone sending out e-mails from a whole e-mail list would incur violation for

everyone on the e-mail list. One of the other comments in the committee was if you get six lawyers, you get six opinions. My thought was it is one violation.

CHAIR CEGAVSKE:
One violation for all the e-mails because that was the one act?

ASSEMBLYWOMAN KOIVISTO:
Exactly, it was one act.

CHAIR CEGAVSKE:
When I first looked at this, I was wondering why it would not be one. If you have a heinous ethics complaint violation against you, I would hope you could be thrown out for just one violation. I was curious about the thinking behind having three violations. Is there a period of time?

ASSEMBLYWOMAN KOIVISTO:
While holding the same office.

CHAIR CEGAVSKE:
In four years as a Senator and two years as an Assemblyperson, you would have three. I would hate to give them that many opportunities for ethics violations. I understand what you are trying to do with the three strikes and that they would all happen at once.

ASSEMBLYWOMAN KOIVISTO:
No, and this would not preclude impeachment for one egregious violation; that would still exist.

SENATOR RAGGIO:
I want to make clear why I asked the question. Page 5, line 9 says "if a public officer commits three or more violations of his ethical duties while holding the same office, whether or not the violations are committed at the same time."

DIANA M. GLOMB-ROGAN (League of Women Voters of Nevada):
We are in support of A.J.R. 1 and have presented testimony (Exhibit E).

PATTY PRUETT:
I am in favor of A.J.R. 1. I am under a protective order by a law enforcement officer who is the half brother of a friend of ours. I have witnesses this officer does things to his family. The protective order was given without evidence and extended for another year by a different judge. I have still never spoken to this officer in my life. Also, the sexual assault of his own niece was covered up for the last two years. I have never been arrested and, yet, I have a protective order by a law enforcement officer.

MS. BROWN:
I am in favor of A.J.R. 1. About five years ago, Carson City impaneled a grand jury. We got 5,400 registered voters who signed a grand jury petition to go in and investigate our courts, judges and sheriff's office. The judges did not like neither what happened nor like the grand jury's findings so they had the records sealed. I have also been assaulted by a courthouse bailiff. With this assault, I could not file any complaints with the sheriff's department; it took me two attempts and they finally accepted it. These and other instances show unethical behavior. Everyone should be accountable for their actions and do their jobs. I strongly suggest this bill pass.

MS. HANSEN:
I am in favor of ethics; that is not why I have concerns about these bills. We should all reach to the highest standards of ethics in our own lives and public lives. I direct your attention to page 5, starting on line 9 it mentions if the officer commits three or more violations. There is a question about how that is defined. It goes on to say while holding the same office. Madam Chair, you mentioned that might be four years. That is not what it says. It says whether or not the violations are committed at the same time or during the same term. In other words, perhaps while holding the same office. Does that mean Senator Raggio would have to account for 36 years at the Legislature? He only has the opportunity for three violations, and someone with a two-year term would have three violations. Is it just during your current term or the entire time you have held that office?

As we go down page 5 to line 21, we see these decisions will be made by the Commission on Ethics. I have several problems with this. First, are you guilty until proven innocent? You have no real due process and no trial by jury. The Commission on Ethics, which has an administrative-type court, does not have a separation of powers and the same protections you would have if you went to

court in any other circumstances; you are denied those rights if you come before the Commission. That is significant in this case because your whole future is on the line under this bill.

Page 5, line 29 says they must be given a reasonable opportunity to appeal the determination to a court of competent jurisdiction. I have asked repeatedly that you consider allowing all decisions by the Commission on Ethics to be appealed to a trial de novo because when you appeal to a court of competent jurisdiction, only certain issues can go forward on appeal. You do not start over as you would in a trial de novo to consider all the facts; you do not have the same kind of protections you would with a trial de novo. This circumstance of going through the Commission on Ethics creates a situation where people lose their fundamental constitutional rights because it is determined by an unelected, unaccountable administrative court. These are serious flaws.

SENATOR RAGGIO:
I interpret section 5 to mean the public officer, during whatever period the person holds that same office, would be the criteria; not whether it is during the particular two-, four- or six-year term. It would be three violations during the time that person holds that same office.

MS. HANSEN:
That means 36 years for you Senator Raggio.

SENATOR RAGGIO:
If they were in their second or third term, it would be three violations during the time that person held the same office.

CHAIR CEGAVSKE:
When Assemblywomen Koivisto was up, she indicated it was the term, whether it is two years or four years.

MS. ERDOES:
We would read it as whether the violations are committed at the same time or during the same term. I would say it is for the length of term the public officer serves in that office. If Senator Raggio had one violation in the first term and one in the second, he would be done that third term.

CHAIR CEGAVSKE:
The other question Ms. Hansen brought up was an appeal to a trial de novo. Is that in any other language, any other statute for any other reason?

MS. HANSEN:
My concern in the purpose on page 5, lines 28 through 30, is giving the person the right to appeal the decision by the Commission on Ethics to a court of competent jurisdiction. To my understanding, that appeal is limited in certain ways whereas if given the right to a trial de novo, they would have a new trial and consider all the facts and issues. Those are two separate events; usually all the appeals from the Commission on Ethics in statute do not have the right to appeal to a trial de novo. My concern is since you are guilty until proven innocent, there is no due process. In an unelected commission, you should have the right to go to a new trial to consider all the facts. They would be better protected with a trial de novo.

MS. ERDOES:
Several issues are interwoven here. The trial de novo concept just means a new trial and you start over with the evidence. The issue there is more whether you test this constitutional provision or ask the court to stand in lieu of the Commission on Ethics. If I understand the way you are using trial de novo, you would like this provision to give the public officer the right to have the court actually stand for the Commission on Ethics. In other words, you would not be bound by the Commission on Ethics or even look at their determination. When you take any statutory or constitutional provision like this where an agency interprets it, the court is looking at whether they have stepped outside their bounds of reasonable interpretation. They are not judging whether they find the person has violations under the provision but whether the Commission on Ethics in the case has made a reasonable determination. That is the difference. The majority, if not all, of the provisions in NRS provide for where an agency is tasked with the duty of enforcing compliance, the appeal to the court is to see if the agency actually breached their ability to construe the statute.

Madam Chair, you asked whether it would be different than most things in NRS to have a trial de novo. Yes, it would. Is it possible? Certainly. You can do that under the Constitution if you so choose. Understand, that puts the court in the position where you would normally see the Commission on Ethics. They would decide if this had occurred without any look at what the Commission on Ethics was considering and how they came to that determination.

CHAIR CEGAVSKE:
We will close the hearing on A.J.R. 1 and open the hearing on A.B. 142.

ASSEMBLY BILL 142 (1st Reprint): Makes various changes concerning ethics in government. (BDR 23-169)

ASSEMBLYMAN CONKLIN:
Assembly Bill 142 increases the penalties for ethics violations, requires ethics training for newly elected and appointed officials and institutes new requirements for registered lobbyists.

First, the bill increases the penalty for willful violations of our ethics laws. The penalties for a first offense would increase from $5,000 to $10,000, the penalty for a second offense from $10,000 to $15,000 and for a third offense, $25,000 to $30,000. These are penalties for willful violations of the public's trust and they should be meaningful. While they are modest increases, they send an important message to the elected official who violated the law and to the public that we are serious about taking action against those who betray the public's trust.

Second, the bill requires training in Nevada ethics law be provided for all newly elected and appointed officials and for new lobbyists. One might ask, "Can you teach someone to be ethical?" The answer, of course, is not, but those new to the political process should be well versed in Nevada ethics laws contained in NRS 281, and those who violate any of these provisions should never be provided the opportunity to offer the excuse, "But I didn't know."

Finally, the bill institutes new reporting requirements for those who lobby the Executive Branch of government. We require those who lobby the Legislature to register prior to Legislative Session and file reports monthly on any money they spend on Legislators. These lobbyists do not file any reports when the Legislature is not in session. This bill would require them to file quarterly when the Legislature is not in session. The bill also extends the same requirements to those who lobby the Executive Branch that has absolutely no reporting requirements. Ethics and election reform is primarily a matter of sunshine, but we should make sure voters have as much information about their elected officials, candidates and the political process as possible. It is a matter of clear and easily understandable rules that everyone follows and meaningful

consequences for those who violate our ethics laws and abrogate their responsibility to those they serve. I urge your passage of A.B. 142.

SENATOR HORSFORD:
I understand the rationale for newly elected officials, but when the laws change, those who have served may not be up to speed on the new standards at a given time. Was there any discussion in the Assembly on that?

ASSEMBLYMAN CONKLIN:
To the best of my recollection, there was not. The discussion around this particular piece revolved around money and the cost of providing such training. As a result, lines 14 and 15 of page 2 show a substantive change from actually having the Commission teach the course to having them develop a course. That could be provided online via compact disc; we were pushing information on ethics training as opposed to creating a substantial fiscal note. We did not consider the case which you are talking about, but I would certainly entertain such a discussion.

SENATOR HORSFORD:
You stated no standards require disclosure reports for the Executive Branch?

ASSEMBLYMAN CONKLIN:
Correct.

SENATOR HORSFORD:
Are you aware of any states that do require it?

ASSEMBLYMAN CONKLIN:
I refer that question to Dr. Walton. He has a few things to say about this bill and is more knowledgeable about requirements in other states. We are last on how we provide ethics laws to our public officials.

CHAIR CEGAVSKE:
Does that include state agencies as well as the heads of agencies?

ASSEMBLYMAN CONKLIN:
The nexus of this bill was to cover those who are policy makers. We are here for 4 out of 24 months; the other 20 months, the nuts and bolts of what we pass—we pass the shell—is done in the Executive Branch. That Branch gets

lobbied and no one knows about it. The thought process here was anyone who has the ability to make such policy, director heads and high level, captures that lobbying activity. The guy who works the counter at the Department of Motor Vehicles would not be a subject of this bill.

CHAIR CEGAVSKE:
How about the state superintendent of education and the executive directors of agencies?

ASSEMBLYMAN CONKLIN:
Yes.

CHAIR CEGAVSKE:
This bill also goes outside the time we are in session where the monthly reporting—the lobbyist report on what we get, who they took to dinner, movie, show and whatever— would be a quarterly report.

ASSEMBLYMAN CONKLIN:
There was some discussion in our committee on this. Dr. Walton had presented an amendment to strike that provision. Someone else here did not like that provision and thought it onerous. One way or another, my comment to them was that for 4 months, I am a somebody and the other 20 months I am relatively obsolete in the political process. I am not tied to that one way or another, it was just a matter of cleaning up a standard for everyone.

SENATOR HORSFORD:
On that provision, we heard Senator Titus's bill on disclosure for local elected officials. That provision of the bill was not processed. I have a little heartburn over constantly increasing requirements on Legislators that none of the other public officials follow. I like the provisions this bill has around some of the other branches at the state level, but it seems we are still not getting to the local, public disclosure requirements. Did you have any discussion on that in the Assembly?

ASSEMBLYMAN CONKLIN:
Assembly Bill 335, which is coming to the Senate, is one of my few personal bills. It deals with several issues, the biggest is the one you are talking about; it requires all municipalities to create ordinances similar to those enacted by the Legislature to regulate and make public the lobbying activities that take place. It

furthermore seeks to restrict fund-raising activities of those branches. Another bill is coming that deals with that particular issue.

ASSEMBLY BILL 335 (First Reprint): Makes various changes related to public office. (BDR 24-1195)

CHAIR CEGAVSKE:
I thought county commissioners and city councils have to file disclosures.

ASSEMBLYMAN CONKLIN:
They have to file the same forms. There are two overriding issues at local government the Legislature does not have. Once we are elected, 30 days prior to 30 days after, we can raise no money. The other thing that happens is any time we are in session and lobbying activities take place, that lobbying activity is reported on a monthly basis. In city and county governments, neither of those two reporting or shielding mechanisms between money and votes take place.

CHAIR CEGAVSKE:
They do not have to report during that period?

ASSEMBLYMAN CONKLIN:
They do not have to report any lobbying activity. They only have to make an annual report about the money they collected. The difference being, while we are in office and making votes, we collect no money. In city and county government, it is legal for you to make a vote on a development today and walk right out the door and collect a check from somebody impacted by that vote.

CHAIR CEGAVSKE:
This will put them under the same guidelines. How often do they have to report? Like you said, they can get a gift or a contribution the day before and then vote on an issue. When would the people know they got that contribution?

ASSEMBLYMAN CONKLIN:
The bill I am discussing right now is A.B. 335. It is not in A.B. 142; A.B. 142 deals exclusively with the Executive Branch.

SENATOR RAGGIO:
The thrust of this bill is directed towards the lobbyists who lobby the Executive Branch and not the Legislature. Directing your attention to the definition of gift

in section 14, what applicability will that have with respect to a provision governing, say, the Legislature? We do not have a definition of gift other than the one that applies to lobbyists presently in the law. When we went through all of the stuff about the Rolling Stones, the race cars and everything, everybody had a great deal of concern because somebody had attended that event or another. At that time, I was told the only definition of gift in the law was in the lobbyist section. What would this do if we enacted this definition or something like it?

MS. ERDOES:
You are talking about the definition of gift in section 14. This whole set of sections 8 to 31 is the Nevada Executive Department Lobbying Disclosure Act. It parallels the Nevada Lobbying Disclosure Act and does nothing as to the financial disclosure form. It just adds another definition of gift like the one in NRS 218.

SENATOR RAGGIO:
Is there one to apply to the Legislature as well?

MS. ERDOES:
Not that I have seen.

ASSEMBLYMAN CONKLIN:
I want to clarify. The definition you have before you parallels the definition I have in A.B. 335, which is both in the lobbying statute and the financial disclosure portion of the ethics statute. There will be one definition with some changes from the current definition that only appears in the NRS 218.900 lobbying statute you refer to, Senator Raggio.

SENATOR RAGGIO:
I am in a law firm where a number of partners happen to be lobbyists. We exchange gifts at Christmastime. Are you going to pass a law with a definition of gift that precludes us doing something like that? It is not just my law firm; there are a lot of business relationships—people who are registered lobbyists, some are paid lobbyists and some not. Think about that because it can be an issue.

ASSEMBLYMAN CONKLIN:
What I tried to do with this definition was make a compromise. I recognize the nature of our political system gives us a life to live 20 months out of 24. The only thing I sought to do is clarify two things: that entertainment, as you mentioned, is a gift, so the word entertainment was struck from this definition.

SENATOR RAGGIO:
I was not talking about entertainment. I am strictly talking about partners in a law firm, longtime friends who happen to be lobbyists, where we exchange gifts.

JULIE TOUSA (Nevada Center for Public Ethics):
Responding to the question from Senator Horsford about other states, I looked particularly at California about lobbying the executive branch. In doing research, The Center for Public Intergrity did a survey on all the states and their lobbying regulations. Nevada was very low and pretty much considered as having no regulations. California was detailed and had good things in place to regulate lobbyists and prevent problems with campaigning that might come about—how much money they can donate and those types of issues.

DR. WALTON:
California statutes regarding lobbyists include those who are members of the executive branch and lobby other departments or divisions of the executive branch or come over to the legislature and lobby. Assembly Bill 142 as amended would be the first time Nevada does this kind of thing.

Our second paragraph addresses those who do the lobbying because of considerable discussion in the Assembly committee from both parties about who you want to cover in the Executive Branch. We put in this language about those who are assigned the duty of policy making and directly affecting policy formation. The Executive Branch in Nevada covers several thousand people, maybe 16,000; we do not have all those people in mind, just the ones who are directly in policy-making positions.

CHAIR CEGAVSKE:
In one of our recent hearings, we had a bill up that affected a situation with employees under one of the agencies. Those employees took it upon themselves to use state e-mail and lobby the parents of their clients. They were heavily lobbying against some legislation, but it was the fact they used the state e-mail,

a list of client names, addresses, phone numbers and e-mails. Would this fall under those guides in your opinion?

DR. WALTON:
If what they did was in accord with their job description and work assignments, then it would. If it was not, they did this on their own initiative and their position in the agency or department did not include anything like that, it is a discipline question.

Here are a couple highlights from the testimony we sent up in Exhibit D. In section 3.3 of A.B. 142, an unintentional omission earlier in the law made accepting gifts a problem. In NRS 281.481, seeking or accepting these gifts was forbidden, but when we got the conflict of interest section, NRS 281.501, the seeking fell off the table and only the acceptance was left. The change in section 3.3 of the bill makes conflict of interest consistent at NRS 281.501 with NRS 281.481.

Down at section 5, the timeliness is an important aspect of this. When we put in the lobbyists filing monthly reports while the Legislature is in session, and then quarterly when out of session, it makes it much more likely for the public to find out what is going on and make judgments accordingly.

It was noted earlier by Assemblyman Conklin about the fees in section 6. Executive Director L. Patrick Hearn of the Ethics Commission gave an estimate as to courses needed to implement this, and our understanding is this is a manageable assignment.

Section 14 is a vital change from Assemblyman Joe Hardy in the committee. They had brought forward this distinction that gifts should be sequestered as gifts and reported as such. But Assembly and Senate members who might go to a seminar or workshop—which makes it possible for them to acquire knowledge about a field in which they legislate and make policy—may report that as a gift and erroneously appear to be schmoozing or campaigning. Some activities of Legislators are professionally related to their duties. Section 14 makes that change, and that is one of the most constructive changes in any of the legislation we have seen.

Finally, many of the Legislators say when they go door-to-door, they do not find people bringing up ethics issues. I have a poll that came out in the

Reno Gazette-Journal (Exhibit F) and was published in Las Vegas that is significant. It took a statistically significant sample of Nevadans and showed 62 percent favor changing our laws to require more-frequent campaign contribution reports.

CHAIR CEGAVSKE:
You mentioned the section you discussed with Assemblyman Hardy about us going to these national conferences to find out what other states are doing. The majority of elected officials who go to those actually participate. There are those who go and do not participate and that is wrong. We go to find out information and bring back ideas for legislation; it does help us and in the long run, it is very beneficial. I do not see any exemption. Under this law, if we go, we have to sometimes pay our own way under our campaign, although the state pays for so many trips as allowed by statute; we even receive a salary for some. Would this be a conflict for us? Would we have to report that as a gift every time we go? Meals provided at the conferences are included in the expense they charge us to go so we would have to now disclose all of that? Is that what you are saying under this bill?

DR. WALTON:
You do not understand this provision. What Assemblyman Hardy had in mind, and what this language is meant to convey, is that you do not report those as gifts because they are not gifts, they are office-related as professional development and purpose expenses. Implicitedly, you need another category in your reporting to say I spent $500 on a seminar or something of that sort. Are you only allowed two meetings per two-year period?

CHAIR CEGAVSKE:
Yes, the state pays for it. You get paid to go to one meeting.

MS. ERDOES:
You can mix it up under that limit.

SENATOR WIENER:
I am reviewing what Dr. Walton said. The example he used in his memo (Exhibit G) to us is the mining conference many of us have attended. He said many of us are not well-informed about that particular industry because we come from the urban centers and that conference is the one opportunity for a major economic resource in our state to teach us more about the industry. He

refers to that type conference as not a gift because it is part of our office to learn about this, and that conference offers that education. That is his example of what should not be a gift, not so much our legislative conferences designated as such by national organizations.

CHAIR CEGAVSKE:
That is part of the debate. The national conferences are one issue, but the mining or chambers where they are providing sailboats and baskets in your room with sweets are the issues that have surfaced. Those who have been in office longer know those extravagant offerings are the things of which we hear about. But again, it is what we report and the lobbyist report for anything. That is what you know, so who is the watchdog?

LYNN CHAPMAN (Nevada Eagle Forum):
I am not happy with A.B. 142. Page 2, line 8 talks about lobbyists who have filed a registration; it does not say paid or unpaid. I am an unpaid lobbyist, but it says I will have to complete a course on ethics in government. On page 8, lines 14 through 19 talk about the fees for the course on ethics that I would be responsible to pay. I looked at 19 different states and found that out of the 19, 6 states gave no classes and 12 gave free classes. The only state that charged was Tennessee; they did not say how much they charged. Many of them had online classes you could take. All 19 states talked about classes for public officials and employees but said nothing about lobbyists. When I testified before the Assembly on A.B. 142, I suggested they supply a pamphlet or DVD. A $10 charge for a DVD is not overwhelming but making an unpaid lobbyist pay a lot of money to take these classes is not right.

There was also the issue about reporting after the Legislative Session. I am an unpaid lobbyist and do not know what I would put on this report. This is not something I should have to do. As an unpaid lobbyist, I am not out there lobbying and I do not get anything from anybody. If I see anybody it is, "Hi, how are you?" I am not going to talk about bills.

CHAIR CEGAVSKE:
Dr. Walton, you worked with Assemblyman Conklin on this bill, was it the intent to include all lobbyists? Was there any reference about nonpaid lobbyists that you remember? We have some citizen lobbyists and activists who do not get paid.

DR. WALTON:
Ms. Hansen and Ms. Chapman both testified. There was considerable anguish about whether reporting for this kind of lobbyists would stop citizen, grassroot groups from coming forward because they would have to do things that are just too uphill. The distinction was made between paid and unpaid. The response from almost everybody was the people who are paid to advocate the interest of an agency or group are covered by this legislation; that would leave out the unpaid people.

CHAIR CEGAVSKE:
I want every lobbyist to have ethics information, what they should or should not do. It is very important. Maybe we could work it out, however it is designed, for the unpaid lobbyists coming up and paying $15 for the badges. I would like to make sure if one group learns about ethics, everybody gets it and understands.

MS. CHAPMAN:
A lot of states had their classes online that were free.

CHAIR CEGAVSKE:
They did talk about that. We will hear from Mr. Hearn about whether that is something we can do.

MS. HANSEN:
When I saw the first version of A.B. 142, I nearly had heart failure. I am glad it is better than it was, but I still have concerns. The fiscal note on the front of the bill says the effect on local government "increases or newly provides for term of imprisonment in county or city jail or detention facility."

MS. ERDOES:
That is in the statute; we are required to put it on there anytime you increase a misdemeanor because that creates more time in a county or city jail. It is just a fiscal matter saying they are not going to do a fiscal note. It tells you there could be an increased cost to the counties for that reason.

MS. HANSEN:
On page 2, to follow up on what Ms. Chapman said about the unpaid lobbyist issue, if we are requiring more things from unpaid lobbyists, I find some volunteers will not come in just to get a badge. A lot of citizens will not participate in that process so how do we get them to complete a course? If they

had a brochure, they would probably be willing to read that. We need to make sure the bill is not very onerous, especially for unpaid lobbyists. We need more unpaid lobbyists around here representing average people. It is more difficult to have unpaid lobbyists comply with these things because they are coming out of work and all that.

On page 5, we have the increase in civil penalties. Whenever they impose these civil penalties through the Commission on Ethics, it is one more situation where you are guilty until proven innocent, have no due process and no right to a trial by jury. We had some difficulties with these with the Independent American Party. We went to court and the court decided in our favor with the Commission on Ethics. Two years later before we had our state convention, the former Secretary of State sent out a notice to all our candidates that they owed $2,000 in fines. We had a falloff in the numbers of our candidates; immediately after that, he sent a letter saying this had been resolved two years before in the courts. These fines can be used by a political office for political purposes as they were with us.

At the bottom of page 6, one of the things they are adding to the statutes for lobbyists is they must now be signed under penalty of perjury. I do not know what troubles we have had. Have a lot of lobbyists filled out false forms? Have a lot of liars been involved as lobbyists? I do not know that this is a huge problem. People fill out that form and sign their names. They are checking in to see if we have done all these things exactly right. I do not spend money so it will not bother me, but lobbyists who are not here may have a concern.

On page 7, Ms. Chapman brought up having to report. As a barely paid lobbyist who would have to report under this quarterly during the rest of the year, I talked to Assemblyman Conklin; he said he did not mind if this section, lines 3 through 6, was deleted along with this continued reporting. I do not see any purpose in that outside the Legislature. Would it get mixed up with whether you are making contributions? Could that be a problem?

On page 8, line 15 is the question of fees that Ms. Chapman brought up. For unpaid lobbyists especially, it is a deterrent to participate.

Page 9, section 9 is where the Nevada Executive Department Lobbying Disclosure Act begins. Have we had a lot of problems where we need a whole new set of regulations to regulate anybody going to the Executive Department?

Have any people been convicted in the courts or is the Federal Bureau of Investigation investigating because of some terrible scandal? Why are we doing this to impose more laws? It says underneath that we recognize this is so the people can petition their government for redress of grievances and express freely to members of the Executive Department. Then they put four, five or six pages of regulations on people. That is a farce. This just makes it harder to express your opinion.

MS. HANSEN:

I tried to understand what line 20 meant:

> "Executive Department" means the Executive Department of the State Government and includes a constitutional officer, an appointed member of a board or commission, an employee in the unclassified service of the State and an employee with authority to establish policy of effect executive action or with whom final authority rests.

Who in the public do you know that would understand what that means? Who specifically says you have to file if you lobby these people? How do you know? Maybe there should be a specific listing. If I do not know who those people are, how is someone else going to know? Who will tell us? Who can interpret it? For years, we asked the former Secretary of State to answer our questions. We could never get answers to those questions.

Page 10, line 6 talks about costs and expenses associated with attending an event. It exempts organizations pursuant to 501(c) of the Internal Revenue Code. Many churches are nonprofit organizations, but they are not 501(c) organizations. They do not have to be registered with the Internal Revenue Service and many are not.

On page 10, line 9, it talks about a lobbyist who, "appears in person in a state building or any other building in which the Executive Department conducts business or holds meetings." That could mean anybody who walks in the State Capitol or any other particular government building. Line 14 limits that to those who receive compensation for communication; this does not include nonpaid lobbyists. A question was asked on line 24 about employees of the government who were lobbying their clients. It excludes "employees or members of any

branch of State Government, or of any political subdivision of this State, who confine their lobbying activities to issues directly relating to the scope of their office or employment." That does not directly speak to what you were talking about, but they are excluded from this. Line 31 states, "'Person' includes a group of persons acting in concert, whether or not formally organized." How can a group that is not formally organized pay someone to communicate for them with the Executive Department?

This just goes on with a lot more things that parallel the lobbying statutes, but there are some problems. Once again, it talks about penalty of perjury and auditing these people. They will allow the Secretary of State to audit these reports. Page 14, line 19 says the Secretary of State shall, "make investigations on his own initiative with respect to the failure of any person to file a required statement or report." Earlier, page 13, line 17 states "if a written complaint has been filed with the Secretary of State by any person alleging an irregularity." Certainly, that would be open to people who do not agree with your positions. If any of these rules are implemented through the LCB, we know the LCB is nonpartisan. We know they are not politically motivated. If they are auditing you, you might feel secure in that. But in our experience with the former Secretary of State's Office, they can be extremely political. Some of these investigations could be motivated politically so we are far less comfortable with the Secretary of State initiating these audits and investigations than we are with the LCB. We have never heard of any problem with the LCB investigating anybody. Finally, on page 16, lines 36 and 37 says if we fail to comply with these, we will be guilty of a misdemeanor and that is the reason for the fiscal note on the front.

We have enough rules and regulations in our state that have not improved the functioning of government to a great degree or the honesty of anybody participating. My one closing statement refers to this bill. One Supreme Court Justice said, "It is not the responsibility of the government to keep the people from falling into error. It is the responsibility of the people to keep the government from falling into error." This bill aims at the government keeping the people from falling into error. It is really our responsibility to keep the government from falling into error, and that is why we are here.

CHAIR CEGAVSKE:
We will talk to staff and see if we can get some information on most of those points. One issue I have is what the fiscal cost will be to the Secretary of State's Office to implement all these new rules and regulations.

L. PATRICK HEARN (Executive Director, Commission on Ethics):
I am here to primarily speak to the training component of the bill. The Commission strongly supports enhancing the opportunity for public officers and employees to receive training about the Ethics in Government Law. I have heard some members allude today to concerns about public officers and employees coming across pitfalls. Educating and informing them about the laws is a positive step to help prevent that. I did a training series in Elko this February and in one of the sessions, a planning commissioner of 22 years told me he had never heard anything about the Ethics in Government Law or the Commission on Ethics. That is a tremendous failure on the part of all of us in not making that information available. This law applies to public officers and employees; the majority of those subject to the law in this state are the uncompensated, local-type officials. It is neither the salaried persons nor the high-profile elected officials. The Commission strongly supports enhancing training; we can do it with existing staff and few additional resources as the amended bill is written.

CHAIR CEGAVSKE:
Mr. Hearn, what do you think the cost would be to the lobbyists?

MR. HEARN:
We submitted our estimate a couple days ago at $25 per person, per training.

MATT GRIFFIN (Deputy of Elections, Office of the Secretary of State):
First of all, this is not a Secretary of State bill. I am here for two reasons: our Office's involvement with this bill as it proceeded through the Assembly, as well as to clear up misreadings on provisions of the bill.

CHAIR CEGAVSKE:
What is the cost, if any, you are mentioned in just about every section. Did you give him a fiscal note?

MR. GRIFFIN:
We did, but I do not have it with me. To the best of my recollection, it was almost a wash, about $10,000 in the negative. I could be off a bit, but it would cost $105,000 to implement, and then fees return $97,000.

CHAIR CEGAVSKE:
Are you looking at any of the violations to offset that money?

MR. GRIFFIN:
That is correct, as in the original draft of the legislation to what you have before you today. Originally, it was going into the General Fund. Then we requested that if we are required to do this, fees be paid to the Secretary of State's Office to offset the cost.

CHAIR CEGAVSKE:
We have allowed other agencies to assess the fees, and there has been an issue because of that perception; I think this was with the Taxicab Authority. You are charging fees, collecting them and that gets a little out of hand so that is going to be an issue.

MR. GRIFFIN:
I am aware of that, Madam Chair, and that is a decision for this Committee to make. As background, that was discussed in the Assembly committee hearing and the solution put forth to you today.

As far as the discussion with applicability to unpaid lobbyists, page 10, beginning with line 12, says "communicates directly with the Executive Department on behalf of someone other than himself to influence executive action, and who receives compensation for the communication." Case law throughout the country addresses people's First Amendment rights and the ability to petition the legislative branch of government. This language was added to the bill to exempt unpaid lobbyists, representing personal beliefs or opinions from associated groups, who do not receive compensation.

You mentioned our office "shall" investigate—I am not sure how the language was brought in; that type of language is somewhat unusual in the statutes. I am not aware of any language requiring us to make an investigation. Under NRS 294(A) we "may" investigate but requiring that—and I do not know if the fiscal note was included in this analysis—affects resources and investigators.

CHAIR CEGAVSKE:
I ask those questions because many sections refer to what you shall do. We need to make sure you are not going to come back and say, "I need two employees" or "I need staff for this." Looking at section 24 says, "shall require fees for registration or reinstatement of registration." There are a lot of fees in here.

ASSEMBLYMAN CONKLIN:
The fees were designed to cover the cost.

CHAIR CEGAVSKE:
That is for the ethics training. We are also talking about fines of which the Secretary of State has jurisdiction. You have fees beyond ethics training?

MR. GRIFFIN:
Yes, we require fees for registration of lobbyists. The bill is designed as parallel as possible to the legislative lobbyists.

CHAIR CEGAVSKE:
Do lobbyists have to register twice, once here and once with the Secretary of State?

MR. GRIFFIN:
Yes.

CHAIR CEGAVSKE:
What are your fees for them?

MR. GRIFFIN:
Our fees are exactly the same as the fees to lobby this branch of government, $90 or $100.

MS. ERDOES:
I think it is $100, but just to clarify, the lobbyists would only pay the Executive Branch fee if they go to the Executive Branch as well. They are two separate systems.

MR. GRIFFIN:
The intent for that is to offset the associated cost, both fees remain in existence.

Ms. Hansen asked about the confusion from the hearing in the Assembly on page 9, lines 23 through 25 where it states "an employee in the unclassified service." The bill was designed to catch those lobbyists who lobby employees of the Executive Branch who have the ability to influence policy or make policy on their own. That is the best way the language can be crafted to exclude someone who is an office runner working in a capacity that will not affect a decision. This language is an attempt to encapsulate and direct that. Whether the Committee reads it as such, I am just here to explain the background.

SENATOR MATHEWS:
You see this as having a fiscal note from you; we need to have a fiscal note attached because nothing here indicates that except fines.

CHIAR CEGAVSKE:
You are right. We need to make sure we get the fiscal note on this.

MS. ERDOES:
We will put that through to the Fiscal Analysis Division for the amendment.

MS. HANSEN:
We understand the executive portion of this bill covers paid lobbyists, but the first part of the bill does not delineate between paid and unpaid lobbyists, which covers the legislative lobbyists.

CHAIR CEGAVSKE:
There is still the provision that if somebody is lobbying for themselves, they do not have to pay or register to lobby. We want to make sure we still have that for the citizens.

SENATOR MATHEWS:
Could you tell me on A.B. 142 if any of the things we asked today were discussed in the Assembly? I am wondering about fees and fiscal notes?

ASSEMBLYMAN CONKLIN:
We discussed all of that on the side in a couple ways. We discussed some of it in committee. Assemblyman Goedhart, Mr. Griffin, another member and I met to try to amend the bill and work out some of the kinks. There are some concerns. If I had my way, there would be one fee and you could lobby all of state government. But we could not find the right mechanism in the time frame to make that happen. That is the reason we left it the way we did. It does mirror the statute with minor changes to accommodate for the Secretary of State instead of the LCB that regulates what goes on in our building. It is simply a parallel and not a perfect bill; there are only perfect intentions here.

SENATOR MATHEWS:
Money is obviously attached. I am wondering why it did not have a fiscal note attached. That is all I needed to know.

CHAIR CEGAVSKE:
We will close the hearing on A.B. 142 and open the hearing on A.B. 80.

ASSEMBLY BILL 80 (1st Reprint): Requires certain business entities that engage in certain political activities to register with the Secretary of State. (BDR 24-170)

ASSEMBLYMAN CONKLIN:
I will now introduce A.B. 80 with Senator Titus. We hear from the public all the time what they really want in campaign reform is more disclosure. Voters are smart, they can make decisions for themselves, but in order to do so, they want and deserve all the pertinent information about a candidate or ballot issue to make the right decision. A crucial part of that is who funds the candidate or ballot initiative. What A.B. 80 is all about is more disclosure. Businesses that participate and are not filed in any public record can raise political money and contribute to a campaign without anyone knowing who is involved or the purpose of that business. Assembly Bill 80 would require those entities that have no public disclosure to register with the Secretary of State and file the same contributions and expenditure reports required of candidates, political parties, political action committees (PAC) and nonprofit organizations. Senator Titus can provide dramatic examples of what this lack of disclosure can mean in some cases.

SENATOR RAGGIO:
We will hear anything necessary on the bill. The amendment provided from the original bill to the first reprint apparently replaced the term "limited liability company" from pertinent sections with the term "business entity," defined the term business entity to include any business trust, limited liability company (LLC), partnership or sole proprietorship and revised requirements that each of those entities must meet when registering with the Secretary of State. It also removed language from the original bill requiring those persons whose names would be included in the registration document to provide telephone numbers and so forth.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
Assembly Bill 80 is a bill requiring more disclosure by business entities. It is similar to S.B. 144 that was limited to LLCs. This bill expands it beyond LLCs and puts the burden on the business entity to report to the Secretary of State rather than on the candidate to provide all the information on the contribution and expense forms. We need this disclosure from LLCs for two reasons. One is you cannot get the information now. Regardless of what people say about it being on the Secretary of State's Website, it is not. You can find some LLCs listed, but not all of them are there; of those there, sometimes they only list a couple of officers. That does not tell you who the owners are and sometimes the officers listed are just other LLCs; that tells you little.

The second reason we need this is because people are using LLCs not for business proposes but to circumvent existing campaign contribution caps. This chart (Exhibit H) illustrates how this could work. One company at one address on the same day creates seven LLCs, each of which gives $10,000. The cap for a contribution is $10,000, so now they have given $70,000. It is obviously the same people and same address. One is Blue Sky A all the way through Blue Sky G. Another example (Exhibit I) from the campaign finance reports of the last campaign season shows 12 LLCs created on the same day with the same address all gave $10,000 dollars as well. This is how you can get around the cap. Obviously, these were not created for business reasons, they were created for campaign reasons.

CHAIR CEGAVSKE:
Does this bill disclose what you are showing us? You cannot stop it, but you want to know who is behind it.

SENATOR TITUS:
The only way you could stop this is by addressing the bundling question. That is a different question and a problem, but it is a First Amendment issue and we cannot get at it. At least the public would know of Blue Sky and Grey Sky.

CHAIR CEGAVSKE:
Senator Terry Care tried last session and was quite frustrated because that was one of the things he wanted to address. Assembly Bill 80 seems to encompass our concerns on the LLCs, and we have the PAC bill in the Assembly from our side. Hopefully, we will address these two entities and make sure the disclosure and information is made more public.

SENATOR TITUS:
I appreciate that. This is why we did not pursue the other bill; we thought we would do them all together. My bill originally said the candidate had to list all this information. This requires the LLCs to turn the information into the Secretary of State's Office; it is a better way to place the burden.

DR. WALTON:
Assemblyman Conklin asked me if I would present a summary of the contents of the bill. The preface to this is very important. In 1991, the Legislature opened up a whole new world by developing an attraction for LLCs. A quotation from the Secretary of State's Website was, "Why incorporate in Nevada? Minimal reporting and disclosure requirements. Stockholders are not public record." As a story titled "Nevada a Scam Haven" in the *Las Vegas Sun* on April 29 points out, we have been telling certain elements around the country and world that "your investors need know little about how their money is being used, or by whom. If you prefer to operate in the shadows, Nevada is the place." Nevada has become notorious at attempting to be the Delaware of the West. But in wanting to open up an area of attracting more and more businesses to Nevada, we licensed 40,000 LLCs in 2005. The problem in law enforcement with the U.S. Securities and Exchange Commission, Royal Canadian Mounted Police and other law enforcement entities is we are attracting the so-called "pump and dump" schemes among others. It was an unintended side effect of the development of our laws to emulate Delaware. We had no intention of attracting fraud and scam artists to our state, but it happened. In seeking people who crave secrecy, some of them have been contributing to Nevada political races. As pointed out by Senator Titus, if you have $750, you can have 10 LLCs; they are $75 apiece and you can give $10,000 with each. This corrupts our political

life by drawing very large, significant amounts of money for or against ballot measures and candidates of which we may never know. Because of that corrupting practice, we in the Nevada Center for Public Ethics drafted a precursor to A.B. 80 over a year ago and sent it to many of you. We have put it on our Website, held two town hall meetings and interviewed on Nevada Public Radio KNPR to discuss these issues. Since last fall, we have sought to cooperate on bill draft requests by taking part in hearings on S.B. 144 and this bill. In what follows, you can see that Republicans and Democrats have contributed to the amended A.B. 80. Flaws have been removed and new ideas have been added during deliberation and work sessions.

To summarize, the bill has three main features. First, listed business entities must register and give to the Secretary of State some information as to who they are, what they do and what money they spend for political purposes. That phrase "business entity" is a change because of objections raised in the Assembly committee that if you cover LLCs, what about all the other things like sole proprietorships, limited partnerships and so forth? The new draft lists the entities we are referring to in section 2.

Secondly, the Secretary of State will put this information on the Internet. Our laws are not consistent on this topic. We have been bringing it up, but this specific case states this information will go on the Internet where citizens can find it in a timely manner. Thirdly, the same penalties set for PACs and nonprofits would now apply under NRS 294(A) for these, no-longer-secret business entities.

To quickly conclude, the operative sections are 2 and 3; editing of sections 5, 6 and the others is done; and section 7 has about the same penalties in these cases as PACs or nonprofits.

CHAIR CEGAVSKE:
This is a pretty clean bill.

MS. HANSEN:
We have a change of position from our testimony in the Assembly. The state has the authority to regulate corporations. Corporations do not have the right to free speech, and they are not protected by a constitutional right to liberty. We encourage you to go ahead to regulate corporations and other entities and take those regulations off individual human beings who have constitutional rights to

participate by free speech in the process. We did, however, discontinue our PAC in order to protect our contributors from harassment, intimidation and reprisals. You need to be aware it can take place; we have recently filed some affidavits with the Attorney General in regard to that.

CHAIR CEGAVSKE:
You are in support of A.B. 80?

MS. HANSEN:
Yes, you do have the authority to regulate corporations. We object to the violations of free speech rights as you regulate human beings from participating. There is a real difference in those two things and the authority of the state.

CHAIR CEGAVSKE:
We will close the hearing on A.B. 80 and open the hearing on A.B. 143.

ASSEMBLY BILL 143 (1st Reprint): Revises provisions relating to the Commission on Ethics. (BDR 23-855)

ASSEMBLYMAN ED GOEDHART (Assembly District No. 36):
To give you a brief overview, A.B. 143 does not grant any more draconian powers to the Commission on Ethics, it does not put new fees in place, it does not have a jail term note on the front; all it does is basically make a couple changes on a couple dates involved in the process when a complaint is lodged and has to be reviewed. I have handed out a packet (Exhibit J). The first two pages are the complaint intake procedures, then there was investigation time lines covering 5 calendar years from a complaint lodged through the panel proceeding with percentages of those investigations taking longer then 45 days. There are a couple letters from constituents within District 36 who expressed a concern about the difficulty in getting ethics complaints they had lodged resolved in a timely basis. There are letters from the Pahrump Town Board chair and another member. We are responding to this; folks who have been in the government arena have expressed concerns.

In the past, if you were a private citizen making a complaint against a public official, the Commission on Ethics only had 45 days within which to do their initial research, conduct an investigation, convene the review board and see if it had just cause to take it before a hearing. The way the law works, if they did not get all that done within 45 days, the person being investigated had to give

permission in order for the investigation to continue. Several times within District 36 where an investigation took longer than 45 days, they would either wait until the pre-hearing to invoke the escape clause in the deadline statute or until 45 days passed to write a letter to the Commission on Ethics invoking the 45-day deadline. Statistics on page 3 of Exhibit J show in previous years 2004 and 2005, the percentage of investigations taking greater then 45 days at 100 percent. In 2006, it was 89 percent. Technically, 100 percent of the people investigated in 2004 and 2005 could have just invoked the 45-day clause. Assembly Bill 143 keeps the 45-day time line on an advisory opinion, but it extends the time in which they have to conduct their investigation and convene the review committee to 120 days. This allows them to conduct an investigation, go back and forth between the individual and get information correlated.

The last part of the bill still protects the privacy clause and confidentiality provision that the person who has launched a complaint can call up the Commission on Ethics and say, "Okay, where are you in the process now?" It gives more flexibility in the investigation phase and gives the individual who filed the complaint more information to track it through the system.

CHAIR CEGAVSKE:
You do know that S.B. 495 was before us. At that time, this Committee chose not to lengthen the days for either at that time. I do not know what will happen when we go to the work session.

ASSEMBLYMAN GOEDHART:
We have talked with Dr. Walton as well in regard to this bill, and he also had some input into the development of the final language and dates.

CHAIR CEGAVSKE:
Senate Bill 495 had a lot of things. It was compact; when you have too much in, you tend to push away those that take a while to deliberate and get in the things you can. That was one of the reasons this was not worked.

ASSEMBLYMAN GOEDHART:
We are keeping this bill simple.

SENATOR WIENER:
You are going for 45 days to 120 days. Is there something about 120 days?

ASSEMBLYMAN GOEDHART:
We originally asked it to take a bit longer, but people said, "We might be under the cloud of an investigation, let's not keep these folks hanging out on a limb too long." Through the cooperation of the Commission on Ethics, we looked at where they had been in previous years and how long it took them. We also talked to Mr. Hearn who thought 120 days would be adequate from dialogue between the Commission and the person being investigated to an initial conduct investigation and convening a review committee.

MR. HEARN:
Referring to the letter (Exhibit K) this is a suggestion in light of dialogue between you and Senator Mark E. Amodei two years ago regarding due process of the Commission's practices and procedures. One of those specific references was to reasonably notice public officers who are subject to the Commission on Ethics and its investigations. On page 4, line 39 of the Exhibit K letter proposes that the time for holding the hearing and rendering the opinion after the determination of a panel be extended from a maximum of 30 days to 60 days. The other one on page 6, line 28, would take the minimum time for holding a hearing after providing notice to the public officer or employee from 10 days to 30 days.

ASSEMBLYMAN GOEDHART:
The proposed amendment gives the individuals being investigated additional time so you could view it one way or another; it is friendly to the person being investigated.

DR. WALTON:
I have sent you my testimony (Exhibit L). In working with Assemblyman Goedhart and other committee members from the inception of A.B. 143, one of the items that provoked our interest was that people in Nevada who submit a complaint have been closed out in the recent reform. There was a provision that left the complainer out, and this will take care of that by allowing the person who sends in the complaint to hear and learn something about it. On Mr. Hearn's time line chart, 297 days was the average amount of time to deal with cases in 2005. This is partly a practical reform, but it also sets a target and goal because it means the investigator, executive director and panel members of the Commission have to put their operation in good shape. They do not want to fall behind on this, and they have told us they can handle this workload. For both the complainer and accused, this is more fair and timely.

CHAIR CEGAVSKE:
We will close the hearing on A.B. 143 and adjourn the meeting at 5:09 p.m.

RESPECTFULLY SUBMITTED:

Josh Martinmaas,
Committee Secretary

APPROVED BY:

Senator Barbara K. Cegavske, Chair

DATE: