

**MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

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

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara K. Cegavske at 1:30 p.m. on Thursday, February 8, 2007, in Room 2144 of the Legislative Building, Carson City, 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 Warren B. Hardy II
Senator Bob Beers
Senator Bernice Mathews
Senator Valerie Wiener
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator William J. Raggio, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

L. Patrick Hearn, Executive Director, Commission on Ethics
Adriana G. Fralick, General Counsel, Commission on Ethics
Janine Hansen, Nevada Eagle Forum

CHAIR CEGAVSKE:

We have a presentation today along with bill introductions. We will start with a presentation by Patrick Hearn, the executive director of the Commission on Ethics.

L. PATRICK HEARN (Executive Director, Commission on Ethics):

I will give a brief ethics 101 orientation and review our bill draft request. The Commission on Ethics was created in 1975 about the time many states, due to Watergate, were creating similar agencies. The intent was to keep government in the light; do the people's work in the open and not behind their back.

Nevada enacted legislation in 1975 that took effect in 1977. The Commission on Ethics is comprised of eight people from two appointing authorities: the Legislative Commission appoints four and the Governor appoints four. There must be one attorney on the Ethics Commission from each appointing authority. The term of service is four years; they may be reappointed one time and serve eight years. There can be no more than four members from either of the two major political parties and no more than four residing in a county with a population greater than 400,000. The Commission on Ethics interprets and provides guidance on *Nevada Revised Statutes* (NRS) 281.411 through 281.581 which, collectively, is called the Nevada Ethics in Government Law. The Commission adjudicates ethics complaints and provides public officers and employees advisory opinions on past, present or future conduct. We provide training on ethics laws and accept financial disclosure statements filed by certain public officers.

The Commission's jurisdiction is limited to public officers and employees. Public officers may be elected or appointed and must exercise public power, trust or duty; exercise administrative discretion in formulation of policy; extend public money; and enforce laws and rules of the state, county or city. Public officers do not include judges or officers of the court system; those serving in an advisory capacity; certain general improvement district members or county health officers; nor federal officers or employees. A public employee under the Commission's jurisdiction performs public duties for compensation at state, county or city levels as directed or controlled by a public officer. The Commission receives requests for opinions of two sorts: advisory opinions and opinions called third-party requests or ethics complaints.

Conflict of interest arises when talking about government ethics. Conflict of interest is a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. Appearance of impropriety is another issue. Such conduct creates a perception in reasonable minds that a person's ability to carry out responsibilities with integrity, partiality and competence is impaired.

L. PATRICK HEARN:

Pecuniary interests are a factor in conflicts of interests as well. A pecuniary interest is a monetary interest. Campaign contributions are not pecuniary interests and do not require disclosure if reported timely as required under statute. Depending on the nature of the conflict of interest, it requires disclosure and may either allow voting or require abstention.

Voting is permissible if the value accrued as a result is no greater than the value which accrues to anyone else. This is referred to in government ethics as a class exception rule. You might take an action that impacts you as a member of a certain profession or as a resident of a certain segment of the population, but if it impacts others who are part of that same group to a greater or lesser degree, then it is deemed no conflict of interest exists. Under Nevada law, that disclosure is required.

Through the issuance of advisory opinions, the Commission has adopted the principle of when in doubt, disclose the interest and vote. The reason for the Commission's position is the concept that elected officers are elected to do a job, vote and participate in the body of which they are a member. Disclosure is mandatory for interest created by: a gift, loan, pecuniary interest or commitment in a private capacity to the interest of others. The disclosure must be public at the time the measure is considered.

The Commission prohibits advocating or voting for passage or failure of—but otherwise allows active participation in—a matter if independent judgment may be affected by: a gift or loan, pecuniary interest, commitment in a private capacity to the interest of others, commitment to a person who is a member of the household, related by blood, adoption or marriage within the third degree of consanguinity, employs the person or household member; or with whom the person has substantial or continuing business relationships or other similar relationships.

Next is a quick review of our agency's bill draft request for this session. On page 4 ([Exhibit C](#), original is on file in the Research Library) in section 1, the Intent and Justification Chart lists various statutes this first request addresses. The entire Ethics in Government Law contains references to the Commission enforcing "this chapter," meaning NRS 281. The Commission's jurisdiction includes NRS 281.411 through 581 and not the entire chapter 281. We request

change to refer to either Ethics in Government Law or provisions of NRS 281.411 through 581.

Section 2 changes all instances within the Ethics in Government Law of the term "statutory ethical standards" to the same reference requested in section 1. There is a continual referral to statutory ethical standards, but they are not defined.

Section 3 is a request by the Public Utilities Commission of Nevada (PUCN) for clarification regarding the PUCN cooling-off period. Proposed two years ago, this places the burden on the former commissioner to take a year off from the position and not work for an entity regulated by the Commission. This burden is placed on the PUCN.

The next section 3 similarly modifies NRS 281.236, subsection 3. There is a cooling-off period for public officers and employees with regulatory or other official relationship with a private entity. They cannot represent, lobby, appear before or under the employ by these entities for a period of up to one year after leaving public employment. The burden is placed on the entity to not hire the former public officer or employee.

The next section 3 modifies NRS 281.236, subsection 4, by providing authority for the Ethics Commission to issue an opinion to grant relief from the strict application of this cooling-off period. It was not clear the Commission could also issue an opinion that did not grant such relief.

The final section 3 for NRS 281.236 recommends a new section to ensure the Commission authority to enforce opinions rendered under this statute in the same manner under NRS 281.511. The purpose is to enforce opinions rendered if they are violated by the requesting public officer.

Section 4 on page 5 amends NRS 281.464, subsection 1, which is the reporting relationship of the Commission counsel to the executive director. Proposed two years ago, this housekeeping amendment clarifies that while the executive director is appointed by the Commission, as is the Commission counsel, the executive director oversees daily assignments, operations and supervision.

Section 5 amends NRS 281.465 by adding a three-year statute of limitations for ethics violations. Presently, there is no statute. This is necessary because when

cases become too old, minds fade, records become unclear or no longer available and it is hard to exercise due process. I do not know where the three-year number came from and I am not sure it is right, but it is in the ballpark.

Section 7 amends NRS 281.511, subsections 3 and 4. The statute requires investigations to be completed within 45 days. The 45-day time frame is waived by the public officer or employee in every instance. This is for the Commission to meet its burden under the 45 days; it requires the public officer or employee to respond to the Commission within 10 days after notification of a complaint. This is not a reasonable amount of time for someone to retain legal counsel if they choose to do so, get the counsel up to speed, obtain records necessary to submit with their response and so forth. The Commission requests the 45-day period be extended to 60 days.

The Commission has authority to render opinions regarding the entire Ethics in Government Law. Section 8 helps clarify the scope of the Commission's authority for current and future members, as well as public officers and employees.

Section 9 on page 6 amends NRS 281.551, subsection 3. Existing language does not prohibit a public officer, employee or former public officer or employee from realizing a financial benefit, only another person. The law should reflect that public officers and employees, both past and present, not benefit financially from serving in office.

Section 9, which relates to section 1 on the chart, amends NRS 281.551, subsections 5, 6 and 7 to reference the entire body of Ethics in Government Law and clarify the Commission's authority.

Section 10 amends NRS 281.552 to clarify public officers who are not required to file a financial disclosure statement file the acknowledgment of statutory ethical standards with the Commission within 30 days of appointment. This should be changed along with other changes requested in the Ethics in Government Law. Public officers are required to file an acknowledgement of receiving their statutory ethical standards; however, not all public officers are required to file a financial disclosure. The statute requires the acknowledgment be filed with the first financial disclosure statement after election or appointment to office, but is silent regarding the deadline for the form should

the public officer not file. The justification is to provide additional clarification regarding the process and when to file the acknowledgement of statutory ethical standards.

Section 11 amends NRS 281.553 to remove the criminal penalty for violating the prohibition against receiving honorarium and make it subject to the same penalties as other ethical violations. It may not be necessary because the amendments are to NRS 281.551, subsections 7 and 8. An ethics violation of NRS 281.553 would potentially be subject to referral for criminal prosecution.

These proposals would not bear any financial impact.

SENATOR HARDY:

Section 9 deals with financial benefits in NRS 285.551, what is defined as a financial benefit?

MR. HEARN:

We are talking about financial gain in addition to salary, benefits or something available to the person only because they held or currently hold the position - office.

SENATOR HARDY:

We have former Attorney Generals who go to work for law firms and practice in the area they were experts in when they were in the Attorney General's Office. Would this prohibit them from that?

MR. HEARN:

No it would not. Once they leave office, they are no longer public officers.

SENATOR HARDY:

But it says or former public officers.

MR. HEARN:

That is within one year of leaving office.

SENATOR HARDY:

It applies to the cooling-off period. We are not hearing this bill today; I am wanting to get my arms around which direction you are headed.

ADRIANA G. FRALICK (General Counsel, Commission on Ethics):

Former public officer means the violation occurred while they were a public officer; they became a former public officer when the complaint was filed. The violation was for acts during their term.

SENATOR HARDY:

It looks like people cannot benefit from the experience they gained while in the position.

MS. FRALICK:

It does have that appearance.

SENATOR HARDY:

It caught my attention when we were going through the statute.

MR. HEARN:

Pages 7 through 14 ([Exhibit C](#)) contain proposed language for these amendments.

Page 15 ([Exhibit C](#)) is a presentation the chair of the Commission and I made to the Senate Judiciary Committee that addressed issues the Senate Judiciary Committee had last session. They forwarded proposed amendments to this Committee for consideration. This handout shows we took each issue the Senate Judiciary Committee identified and adopted administrative regulations to eliminate those issues and prevent them from happening again. Page 19 ([Exhibit C](#)) is the letter to you from Senator Mark E. Amodei with proposed amendments.

Pages 22 through 25 ([Exhibit C](#)) contain language of the administrative regulations the Commission adopted.

Ethics in government is a national keystone issue this year with state legislatures. Pages 28 through 33 ([Exhibit C](#)) are recent news items I wanted to share. The first is out of Wisconsin where they intend to create a new ethics panel. It will be interesting to see how it works because they will spend whatever necessary to conduct investigations. Proposed in special session and signed into law last week, they moved quickly. The Wisconsin action resulted from scandals involving members of the legislative leadership who used legislative staff and employees for campaign-related purposes.

CHAIR CEGAVSKE:

Mr. Hearn, was that tone in your voice a suggestion that you be given unlimited funds?

MR. HEARN:

Chair, no it was not.

CHAIR CEGAVSKE:

Thank you, we are glad about that.

MR. HEARN:

The next news article is from Ohio. On his first day, the new governor signed an executive order relating to gift limitations and bans on gifts. Last year, former Governor Bob Taft got into some problem over accepting gifts and not reporting them.

The third article from Oregon indicates the first bill introduced in the Oregon State Senate was a massive ethics reform measure. Seven legislators received gifts, such as trips to Hawaii, and failed to report them as required on their financial disclosure statements. This resulted in putting limitations in place.

Ethics reform is all over the map. New York is seeking to combine three of its ethics commissions into a single commission as a reaction to an elected state comptroller using state employees to chauffeur his wife. An article from yesterday, on page 34 of the handout ([Exhibit C](#)), talks about a Pennsylvania state senator indicted as well.

As I indicated to you, Chair, you cannot legislate government ethics. You can enact legislation that serves as benchmarks and a standard of expected conduct, but you cannot legislate how someone behaves. It is more beneficial to create ethics laws proactively than reactively as most of these states have done.

CHAIR CEGAVSKE:

Thank you Mr. Hearn, I agree. Everyone comes here with good intentions; there are some who are misguided at times. The numbers are small, but that is the only thing the media and populace hear. It puts a brand on everybody. When one falls, they like to kick the rest of you.

SENATOR MATHEWS:

Who watches the Ethics Commission? Who oversees you?

MR. HEARN:

Basically, you.

SENATOR MATHEWS:

But if you hammer the heck out of me, nobody pays attention to what I say about you.

CHAIR CEGAVSKE:

That issue came up for discussion last session.

SENATOR BEERS:

The answer is the Federal Bureau of Investigation and the newspapers. They were not uncovered and revealed by the ethics commission; they were uncovered and revealed by those two groups.

SENATOR HORSFORD:

Can you expound on training on ethics laws? I never received an invitation to participate. How is it done, who is invited and how is it conducted? I participated in one by The Council of State Governments (CSG), which is a bipartisan organization that held a seminar on ethics. It was useful from a standpoint of comparing what is compliance with the law versus doing what is right when other people are not looking—which is the higher standard our constituents in the public put us under. Can you talk more about the training you provide?

MR. HEARN:

I am sorry to hear you never had training on Nevada ethics law. I assumed when new members come into this Legislature, part of the orientation would include training on Nevada ethics law.

SENATOR HORSFORD:

It says here the Nevada Commission on Ethics provides training. I received training through the Legislative Counsel Bureau (LCB) and legislative organizations, but I never received anything other than the mailing you provide on how to fill out the form.

CHAIR CEGAVSKE:

He is referring to the front page of your handout. The fourth bullet says provides training on ethics law. Who receives your training?

MR. HEARN:

We provide training to public officers and employees, both elected and not, upon request. With a small staff, we do not have the resources.

CHAIR CEGAVSKE:

Is that something you could do Mr. Hearn? You could come on the day we have training for newly elected Legislators. We have days where the LCB comes and gives training. Ethics information is given when new Legislators come aboard. In ten years here I have not had any updates, only what I learn in the committees or see in the paper. Ms. Erdoes, is that something we could incorporate?

BRENDA J. ERDOES (Legislative Counsel):

Absolutely, Madam Chair. The Legal Division puts on a brief ethics 101-kind-of-thing for new Legislators, but we do not provide ongoing training. The Ethics Commission would be welcome. When we give our ethics presentation, half of it is saying, "But you got to remember, the Ethics Commission is the one who actually interprets these laws. It does not matter how we interpret it ... because they are enforcing it." I am happy to pass that on to the director and see what we can do if that is agreeable to Mr. Hearn.

MR. HEARN:

Madam Chair, I assure you unequivocally that if we are invited, we will come.

CHAIR CEGAVSKE:

We can talk to the county commissioners; you might branch out to that area.

SENATOR MATHEWS:

Before I was an elected official, I was an appointed official and those people do not get training either. They do not even get training on how to fill out the form which can be ambiguous.

CHAIR CEGAVSKE:

Those were some of the issues we talked about with Mr. Hearn before we came into Committee. There has been talk about financial disclosure forms; do they tell everything you want? What do you want them to tell? I filled mine out; it

tells everybody about my family, where I have been, what I have and what I owe. What we talked about is if the form is what everyone wants. Is the form sufficient or do we need something else? How much information do you want about elected public officials? What is important and what is not? That is debated every time I look in the newspapers.

SENATOR MATHEWS:

I was not asking that you increase the form information to tell more about yourself. People who are appointed to office and people who are nonelected officials fill out the same ethics form two or three times while in office. I recently filled one out again since I am appointed and elected. My daughter also filled one out. You cannot even duplicate it; you have to fill out two separate forms for each office. My daughter is appointed as well, but no one told her how to do it so she looks at mine and says, "Well that is what you do." I do not know if mine is right. Nobody is teaching these people.

SENATOR BEERS:

I thought we consolidated all the forms.

SENATOR MATHEWS:

We did not, you have to do one for each office.

MS. ERDOES:

You went backwards in the last session. You used to file for your candidacy when you filed your ethics disclosure and it could count for that year. What happened when you went to the annual form was they got overlaid. We made sure everybody understood you have to file a form for the candidacy of your election campaign and then file a separate form on January 15 every year.

CHAIR CEGAVSKE:

When we plow through all the things we want to do, we can add that to the list. This was discussed and I was told the forms had to be separate.

MR. HEARN:

A recent discussion within our agency has been to expand our training materials and their availability. We are looking into producing a videotape or DVD to send out to entities, such as cities in the eastern part of the state and so forth. At a conference of ethics administrators I attended in December pre-produced training materials were acknowledged as helpful albeit not as helpful as

one-on-one sessions for questions and feedback. A training officer with the state is joining us to explore the possibility of producing a training segment for our Website. It is an agenda item on our Commission meeting next week.

SENATOR HORSFORD:

I compare it to the Nevada Taxpayers Association. They conduct seminars on tax policy and structure in Nevada. If you pay to attend, it is a daylong seminar. You learn everything you want to know from Carole Vilaro, President, Nevada Taxpayers Association, and her team on local, state and federal taxes. Your Commission could take a leadership role in all aspects—appointed, local, state—to help people have a dialogue. The training with CSG was two or three hours and people came from different viewpoints, but that discussion allowed an understanding. That is what we need as elected officials. Rules change, laws change and we may not know until after the notice. I encourage the Commission to organize such activities as they would be well received by appointed and elected officials if cost-effective.

CHAIR CEGAVSKE:

We are now going to public comment.

JANINE HANSEN (Nevada Eagle Forum):

Senator Mathews's remarks brought to mind some concerns about the Ethics Commission. It sounds like we have a new era with new people in charge, and I am looking forward to change. Accountability or oversight of the Ethics Commission is important, and the Legislature has moved to more oversight and accountability.

All branches of government need checks and balances. In a situation with the Ethics Commission, it is important so people's rights are not violated. A few years ago, a senator was charged with 11 violations of ethics laws before election. Reviewed after the election, he was found to have not violated any laws. The ethics laws can be abused by those who seek to abuse them.

What goes on in the Ethics Commission is important. It is similar to administrative courts, and we have to be careful. We had a discussion the other day in Senate Judiciary on due process. As citizens of Nevada, we are denied the right to trial by jury in administrative courts and the Ethics Commission. One way to check this is to give people the right to go through a trial de novo with a jury. I doubt many people would pursue it because it is time, money and effort.

There can be a check on this Ethics Commission procedure so they are more careful. The procedure can be reviewed and appealed. This is one way of forgiving a person charged with ethical abuse. I am in favor of ethics; the Ethics Commission needs to have a high standard.

It is difficult to fill out financial disclosure forms, yet, people are asked to sign under penalty of perjury. They should not sign if they do not know what the form means. They are jeopardizing themselves and the system. You cannot expect people to sign under penalty of perjury when they are clueless about how to do these things. There might be ways to have better explanations or more training. These financial disclosure forms create and inspire fear. People are afraid they are going to make a mistake and end up having charges brought against them when they did not know what they were doing. This suppresses people who would be interested in running for office. We had ten races in the Assembly where only one person was running. It is important for the public to have choices. Whenever two or three people run for office, there is discussion about the issues and more interest by the public. Why are people not interested? If only one person is running, who cares? They are going to win no matter what. This also suppresses accountability among candidates because they are not on the line with someone running against them. Candidate suppression inspired by financial disclosures is more apparent. People do not want invasion of their privacy.

I spoke to a republican last election who was on a commission and interested in running for office. Her brother told her no, we are not going to have our family business exposed to the world in financial disclosures. People in our party did not run because they were not willing to expose themselves to financial disclosure forms. Ethics laws, as stated earlier by our new ethics commissioner, do not make honest public servants or candidates. They may help guide and direct us about the fine line, but someone is either honest or they are not. They do not resolve many issues we have.

We talked the other day about the Help America Vote Act of 2002 (HAVA), and someone mentioned more laws about that. I brought an article ([Exhibit D](#)) on the Commission on Federal Election Reform. In 2002 we had HAVA, and we know how that impacted Nevada. The statement highlighted states that this is historic, but one law is not enough. This concerns me because we should take care of our elections in the State of Nevada. You have the clerks, you have the Secretary of State and you have people who are concerned about our laws. We

are going to have a situation where federal mandates completely override state election law. We do not want to be the same as everybody else, we want to respond to our own concerns.

The second page of that article ([Exhibit D](#)) talks about enhancing ballot integrity by states requiring voters to present a Real ID card. About a dozen states have active legislation against Real ID; Maine and Montana have already passed theirs. You may see this other article ([Exhibit E](#)) from the *Las Vegas Review-Journal* titled, "Revolt against Real ID Spreads." "Missouri state Rep. James Guest, a Republican, formed a coalition of lawmakers from 34 states to file bills that oppose or protest Real ID." He states, "This is almost a frontal assault on the freedoms of America when they require us to carry a national ID to monitor where we are." This is apparently part of the thrust of the Commission on Federal Election Reform for identification. They changed the laws in the State of Nevada on what we required. Real ID poses a threat to identity theft, privacy concerns and religious concerns; it may also be part of the new program for passports. Hopefully, we can stand up as a sovereign state and make our own decisions.

CHAIR CEGAVSKE:

We have three BDRs, BDR 15-770, BDR C-688 and BDR 24-739, to introduce.

BILL DRAFT REQUEST 15-770: Revises the provisions relating to misconduct in the signing or filing of petitions. (Later introduced as [Senate Bill 78](#).)

BILL DRAFT REQUEST C-688: Proposes to amend the Nevada Constitution to remove requirements concerning affidavits that must be affixed to referendum petitions and initiative petitions. (Later introduced as [Senate Joint Resolution 1](#).)

BILL DRAFT REQUEST 24-739: Requires the use of the permanent paper record produced by a mechanical voting system for the recount of ballots cast at an election. (Later introduced as [Senate Bill 79](#).)

SENATOR HARDY MOVED TO INTRODUCE BDR 15-770, BDR C-688 AND BDR 24-739.

SENATOR MATHEWS SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR RAGGIO WAS ABSENT FOR THE
VOTE.)

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CHAIR CEGAVSKE:
This meeting is adjourned at 2:23 p.m.

RESPECTFULLY SUBMITTED:

Josh Martinmaas,
Committee Secretary

APPROVED BY:

Senator Barbara K. Cegavske, Chair

DATE: _____