

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

**Seventy-Fifth Session
May 12, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:54 p.m. on Tuesday, May 12, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara Buckley, Clark County Assembly District No. 8

STAFF MEMBERS PRESENT:

Kevin C. Powers, Senior Principal Deputy Legislative Counsel
Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Chuck Alvey, President and CEO, Economic Development Authority of Western Nevada, Reno, Nevada
Dale S. Rogers, Foundation Professor, Logistics and SCM Director, Center for Logistics Management, College of Business Administration, University of Nevada, Reno
Michael E. Skaggs, Carson City, Nevada, Executive Director, Division of Economic Development, Commission on Economic Development
Somer Hollingsworth, President and CEO, Nevada Development Authority, Las Vegas, Nevada
Paul Enos, CEO, Nevada Motor Transport Association, Reno, Nevada
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada
Ray Bacon, representing the Nevada Manufacturers Association, Carson City, Nevada
Bryan S. Wachter, Deputy Director, Retail Association of Nevada, Carson City, Nevada
Krys T. Bart, President and CEO, Reno-Tahoe Airport Authority, Reno, Nevada
Sue Silver, Member, Board of Directors, Coalition for Public Access, Smith, Nevada
Janine Hansen, Elko, Nevada, representing Nevada Committee for Full Statehood, Carson City, Nevada; President, Nevada Eagle Forum, Elko, Nevada
Patricia D. Cafferata, Esq., Executive Director, Commission on Ethics, Carson City, Nevada
George M. Keele, Esq., Minden, Nevada, Vice Chair, Commission on Ethics, Carson City, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State

David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada

Chair Koivisto:

[Roll was taken. Committee rules and protocol were explained.] We will start with Assembly Concurrent Resolution 30.

Assembly Concurrent Resolution 30: Directs the Legislative Commission to conduct an interim study on the development and promotion of logistics and distribution centers in this State. (BDR R-1305)

Assemblywoman Barbara Buckley, Clark County Assembly District No. 8:

I am pleased to be the sponsor of A.C.R. 30. This session, as we get distracted by minor things, I have tried to keep two major things in mind for us as a state. The first is jobs. What can we do to act as a catalyst, or to stimulate the creation of jobs? The other, of course, is the budget and weathering our financial storm and coming out stronger than ever as we prepare for the future.

What we can do in order to attract industry is the subject of A.C.R. 30. How can we get integrated, multimodal freight and logistics companies to move to Nevada? The PowerPoint you are watching puts forth some facts ([Exhibit C](#)). The United States transportation system carried over 15 billion tons of freight valued at over \$9 trillion in 1998. By 2020, the U.S. transportation system is expected to handle cargo valued at nearly \$30 trillion. The nation's highway system and our enormous truck fleet moved 71 percent of the total tonnage and 80 percent of the total value of U.S. shipments in 1998. Air freight moved less than 1 percent of the total tonnage, but carried 12 percent of the total shipments.

United States domestic freight volumes will grow by more than 65 percent, increasing from 13.5 to 22.5 billion tons in the period from 1998 to 2020. Domestic air cargo tonnage is projected to nearly triple over this period, while trucks are expected to move over 75 percent more tons in 2020, capturing an even larger percentage of the total tonnage.

Here is the situation with regard to our container ports. The Los Angeles and Long Beach Harbors are fourth and sixth in the nation in terms of freight tonnage entering the U.S. through ports. Oakland is thirty-first. Nevada, by virtue of our location, is ideally located to act as a logistics hub for the Mountain West.

We do not lack rail service. Rail lines connect Reno-Tahoe and Las Vegas with the Mountain West region; however, rail freight is moving from California through Nevada to points east. Now, most rail freight for the western U.S. goes from Los Angeles through Arizona to New Mexico; from Seattle to Idaho, Montana, and North Dakota; or from the east coast and Midwest to a Salt Lake City or Kansas City hub.

The largest areas of projected growth are through Phoenix for the Southwest and through Kansas City for the Northwest. Despite our pivotal geographic position, Nevada is not mentioned. Air transport is a vital and growing segment of many international logistics networks, essential to managing and controlling the flow of goods, energy, information, and other resources from the source of production to the marketplace.

No Nevada airport ranks in the top 125 U.S. freight gateways. Los Angeles is ranked 7th; San Francisco is 12th; Phoenix is 113th; Portland is 123rd. Nevada does not lack for interstate highways to connect the west coast to America's heartlands, yet historically, most truck freight traffic bypasses Nevada and instead flows westward from Chicago, Kansas City, St. Louis, and Columbus. Current projections do not improve this situation. Salt Lake City is projected to remain the hub for the east-to-northwest distribution of goods while Phoenix is expected to dominate the Southwest.

We are failing to bring these businesses and jobs to Nevada. We have a more favorable tax structure than surrounding states; we have a more favorable regulatory climate than surrounding states; and we certainly have greater access to elected officials. What will it take to make northern and southern Nevada major transportation hubs and logistics centers for the Southwest and the mountain-area states?

Logistics gets the right things to the right places at the right times—it is the management of the flow of goods, of information, and other resources between the point of origin and the ultimate consumer. It is the science of the planning, support, and design of procurement/purchasing, inventory, warehousing, distribution, transportation, customer support, and financial and human resources. It goes beyond freight containers and warehouses. It requires rails, roads, water, power, and the establishment of public-private partnerships. It brings not only warehousing and truck depots, but also foreign-trade-zone manufacturing and assembly operations, and corporate offices that house financial and human resource managers. These are stable, good-paying jobs for Nevadans. It also will jump-start our construction industry with new

commercial and residential development, and certainly, our construction industry needs some help right now.

The bottom line is that we can do this. We have the potential by virtue of our state's attributes and our location. So A.C.R. 30 requests the establishment of an interim committee to examine and resolve the various issues relating to transforming our state into a major logistics hub. At the same time, it allows us to address our state's transportation and power transmission issues. The University of Nevada, Reno and the University of Nevada, Las Vegas have already established supply-chain management and logistics management curricula, and can provide expert consulting services and train the logistics managers and workers of tomorrow. Development of these centers, coupled with our ideal location for renewable energy generation, will also promote green industry development in this state.

We are poised for growth and must seize our opportunities. Planning and coordination are keys to our success. Promotion of the State of Nevada as a logistics and distribution center for the Mountain West and Southwest is an attainable goal that will diversify our economy and help secure the future of our state. Right now, over 60 percent of our budget comes from sales and gaming taxes. If we want to have a more stable footing, we have to diversify our economy. For that reason, I would urge your consideration of A.C.R. 30.

I do have a technical amendment ([Exhibit D](#)) that has been provided to you. It changes the reference in the original bill from "Ivanpah Valley Airport" to the "Clark County Regional Airport System," and it specifies that there will be public advisory panels to assist the committee.

Assemblyman Hambrick:

In our work session this afternoon are several other proposed studies. How would you suggest we determine which three to approve?

Assemblywoman Buckley:

I was speaking to the Chair a few days ago about that because this session we have a number of studies worthy of consideration. What your Chair suggested was to combine this study with the one looking into mass transportation, and I am certainly amenable to that.

In general, you look at what the most pressing issues facing the state are and what the thorniest issue you have been unable to resolve is. Usually, you rank them based on those concerns and you evaluate them. When in doubt, always listen to the Chair.

Assemblyman Segerblom:

Does this count as one of the three we will adopt?

Assemblywoman Buckley:

Yes.

Chair Koivisto:

Are there other questions from the Committee? [There was no response.] We have a number of people who have signed up in support of this resolution.

Chuck Alvey, President/CEO, Economic Development Authority of Western Nevada, Reno, Nevada:

The Economic Development Authority of Western Nevada (EDAWN) was launched 27 years ago around diversifying the economy, and particularly in the logistics and warehousing areas. We did a study that was completed in 2006 of target industries we should be focusing on ([Exhibit E](#)). Amazingly, the number one industry was clean or renewable energy. The least popular was logistics because people's concept was that it involved warehousing and distribution. We have pointed out that logistics is really the brainpower behind warehousing and distribution. So one of the industries we want to target is advanced logistics because that is the backbone of everything else we do. Microsoft is a logistics or supply-chain management operation here—it is the brainpower. These companies are critical to all the other goods and services we produce, and we focus on primary companies—those that bring in new money by exporting goods and services.

Dale S. Rogers, Foundation Professor, Logistics and SCM Director, Center for Logistics Management, College of Business Administration, University of Nevada, Reno:

If you look at the history of the logistics program in the University of Nevada, it is one attempt to diversify the economy. People from the business community told us in 1988 that logistics was the number three industry in the state and that a program was needed to teach people about it.

As Chuck said, it is not just about transportation, freight management, and warehousing. A number of people have moved into the community because there is a university program teaching students how to manage the whole supply chain. It is a fairly flexible industry because it is a support industry. As long as products are being managed—moved, stored, manufactured—there are jobs in the logistics sector. It makes a lot of sense because in many economic downturns, the logistics industry can be flexible. It is not usually countercyclical, but it is an industry sector that can provide relief in times of

economic downturn, so I strongly support the idea of developing a study and support this resolution.

Michael E. Skaggs, Carson City, Nevada, Executive Director, Division of Economic Development, Commission on Economic Development:

I am here to support the formation of this interim committee to study logistics opportunities and how much more the industry can develop. The logistics industry is a fairly large presence in the state at this time. It is one opportunity we have to create the jobs we need. Unfortunately, right now we have 146,000 people out of work in this state, so we are looking at opportunities that are somewhat advanced in their planning as opposed to an idea just getting started.

The logistics industry, as you can tell, is established in higher education and in the transportation communities. I think this interim effort will further propel what is already underway, and we have a good support base to help it succeed. The best part is that it is a true public-private partnership. It is government working with the private sector to create jobs in this state, and we support it.

Somer Hollingsworth, President and CEO, Nevada Development Authority, Las Vegas, Nevada:

We also are in favor of this resolution. Logistics encompasses a tremendous amount of business and a tremendous amount of capital investment and really creates some great jobs.

We have a foreign trade zone, and the Nevada Development Authority is the grantee. We picked it up in 1983, so Foreign Trade Zone #89 belongs to us. We probably have between 800 and 1,000 acres, although not all of them are active. For us, the excitement is being able to get into the global economy through logistics.

The Ports of Long Beach and Los Angeles are nearly "maxed out." To be able to seal those containers, put them on trucks or trains, bring them here or to any place in Nevada, and process them through customs creates a huge amount of capital and cash flow for companies. It speeds up the process of getting the containers off the ships and through customs by anywhere from a week to two weeks. We are in the process now of expanding our foreign trade zone. Another group has 365 acres with rail lines running through the middle. If that becomes a foreign trade zone—and the process is in Washington, D.C., right now—we could add those acres to the process. This group, members of the private sector, is interested in setting up agreements with Long Beach and Los Angeles and bringing containers here by truck or train.

We also have had some great talks with the Union Pacific Railroad and, obviously, they would support this endeavor. So you have the Nevada Development Authority's full cooperation with this. We support it completely. We think it is going to be a great project, and we are very excited about it.

Paul Enos, CEO, Nevada Motor Transport Association, Reno, Nevada:

We are here today to support A.C.R. 30. I have been looking back at the Great Depression and how Nevada came out of it. One of the concepts back then was "One Sound State." The idea was to get millionaires and capital to come to the State of Nevada. The state got rid of its inheritance tax and got rid of its corporate income tax in an effort to attract people like Max Fleischmann, E. L. Cord, and Norman Biltz.

We know that would not happen today. We are not going to be able to attract people by saying that we are going to get rid of taxes. Maybe we could update the "One Sound State" approach and look at what could be done to attract businesses and what kinds of new businesses could be brought to Nevada. How can we develop what we currently have here? That is what I think is great about this bill; it has the same kind of vision we had in the 1930s that ended up getting us out of the Great Depression and helping Nevada thrive for the next several decades.

We should look at this bill as being something that can help promote the kind of investment that will bring in jobs and help diversify our economy. These are the kinds of jobs that will help make the transition from gaming, which has been the economic engine of this state for so long, into warehousing and into logistics. Some of it is complicated, but some of it should be fairly seamless, especially things like "pull and pack" and light manufacturing. If we can work with the government, and if we can ensure that we have proper regulations in place, we could really do something great.

Thirteen miles east of Reno is the Tahoe-Reno Industrial Center. Once it is built out, it will be the largest industrial park in the world. If you have a chance, please go see it. It is an amazing place. They built power plants; they built their own water treatment facility; they even have their own phone company using all fiber optics. That is a vision; that is private-sector vision creating something great here in Nevada. Through this bill, we can study those kinds of things, we can attract those kinds of businesses, and we can do something that can make Nevada thrive for the next two, or three, or ten decades. So we support this bill and appreciate your consideration.

Assemblyman Mortenson:

You mentioned the biggest industrial park in the world.

Paul Enos:

It is the Tahoe-Reno Industrial Park, known as "TRIP." It has distribution centers as well as other businesses.

Assemblyman Mortenson:

Geographically, where is it located?

Paul Enos:

It is 13 miles east of Sparks on Interstate 80. It stretches from Interstate 80 on the north all the way to Highway 50 on the south. If you look at it on a map, it is larger in area than Reno and Sparks combined. We have the ability to do the same thing in southern Nevada. I come from Elko, and I always thought that Wells would be the perfect place for a logistics center. It is at the intersection of U.S. Route 93 and Interstate 80—that north-south, east-west connector.

I think Nevada is a prime location for this kind of business when you look at the regulations being passed in California. Arizona has now attracted a steamship line headquarters. If Arizona can attract a steamship line, Nevada certainly can attract logistics and distribution companies.

Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada:

We are in strong support of this bill and thank Ms. Buckley for bringing it forward. A few weeks ago I attended an event in Reno. Several California legislators came to Reno and invited companies that had moved from California to Nevada to talk about why they moved from California. You heard Ms. Buckley mention Nevada's favorable tax and regulatory structures, and those are the two things those businesses mentioned. They also mentioned our workers' compensation costs.

This state is perfectly situated next door to the seventh-largest economy in the world. The Tahoe-Reno Industrial Park is just over the state line from that economy. California will always be a large state with a lot of people in it. We hope to entice more of their businesses to Nevada, but there will still be a lot of people remaining in California to serve. If we are a transportation hub and everything from California has to come through Nevada, I think that is a positive, so we support this bill.

Ray Bacon, representing the Nevada Manufacturers Association, Carson City, Nevada:

I would like to talk about the supply chain. The supply chain is more complex than what we generally think of. It starts with agriculture and mining. In most cases it goes through a manufacturing process; in some cases it will go through a distribution center. It will go to a wholesale operation; it will go to a retail operation. Depending upon the product, some of those operations are skipped and some are not. Some of them go through all the steps. Pharmaceuticals may start with an agricultural product, but they may also have a mineral base. If that is the case, there will be a manufacturing process so the minerals can be added to the pharmaceutical. Those typically go through distribution and wholesale and retail operations.

Transportation is involved in every one of those operations. It is difficult to get into that seventh-largest market in the world without going through Nevada. You can get in through Arizona and Oregon, but other than that, products must go through one end of Nevada or the other. That puts Nevada in the rare situation of being strategically located to really take advantage of our inland location. From Reno there can be overnight truck service to Portland to Los Angeles to Salt Lake City and pretty much every place in that loop. Southern Nevada can serve businesses as far north as San Francisco and everything in Arizona.

This is an opportunity for us to take advantage of our strategic location and really move forward. There have been 11 or 12 energy bills this session. We have tended to think of solar energy as consisting of large facilities on the ground. There is no reason those large facilities cannot be on the roofs of warehouses, so you could combine a logistics center with an energy center which would take us in a totally new direction. There are opportunities here. The reason to do a study is to put all the pieces on the table, figure out what makes the most sense, and then put a real package together.

It is really easy to look good when you live next door to stupid, and California periodically does some things that are stupid. Hopefully, we will not follow that path, but that is the reality of the situation. They have done some things that make them business-unfriendly, which was why those California legislators were here a few weeks ago. By having forethought and doing this planning, we can really get our act together and look even better than we already do.

Bryan S. Wachter, Deputy Director, Retail Association of Nevada, Carson City, Nevada:

I was lucky enough to be at the meeting Mr. Abney and Mr. Bacon spoke about with the California legislators. It was pointed out at that meeting that it was cheaper to ship something from southern California to Reno than it was to ship inside southern California. That seems amazing to me, and it is because of the business atmosphere in Nevada. If we do not take advantage of something like that, if we do not grow that exponentially, then we are going to lose out. We urge the support of this resolution.

Krys T. Barr, President and CEO, Reno-Tahoe Airport Authority, Reno, Nevada:

We are in support of this resolution and this study. The Reno-Tahoe Airport Authority is located further west than is Los Angeles. Consequently, when we are marketing in China, we can easily tell an airline carrying freight between Reno and China that they can save time and money because we are closer by 300 nautical miles. We have recently used this argument in our attempt to get nonstop cargo freighters from mainland China. Today, there is enough inbound and outbound cargo out of northern Nevada to support twice-weekly service to mainland China. This was a goal we have had at the Airport Authority. That goal can be supported not only by what is there now, but what we can see would come from an effort like this to expand and bring together all the parties that make cargo and logistics move.

The Reno-Tahoe Airport has customs facilities, and the majority of things cleared through customs are actually trucked inbound from Los Angeles. We also have a foreign trade zone. We have land available to build facilities that would support logistics and cargo. We are multimodal because of our access to both rail at Stead as well as to the interstate highways. All those bring an opportunity to expand cargo handling to northern Nevada. I have heard some people ask why it is so important when the focus in the state is still on tourism. When airplanes land at the Reno-Tahoe Airport, or in Las Vegas, they pay a landing fee. Cargo carriers pay the same landing fee on a weight-basis that passenger carriers do. Because cargo aircraft are heavier, they pay a larger landing fee which reduces the cost to the passenger carriers. So in addition to the potential to diversify the economy and create jobs, it also provides a built-in incentive for tourism by reducing the cost to the passenger carriers within the State of Nevada at all of our commercial airports. There is a tremendous benefit to exploring and expanding this opportunity.

A question was asked concerning why this study was different from other studies. I think it is time we looked at diversification. All of us have seen a decrease in tourism—the mainstay of the state for so long. It is critical that we

move forward in another direction, and I believe that this direction, as seen at our airport, is the right direction. In addition, we do not have to create new resources to expand on this opportunity. We have the resources, we have the land, we have the intermodal connections, and we have the power. We have everything that is necessary to expand this opportunity.

Before the economic downturn, the cargo in and out of Reno that was driven by existing efforts was actually growing at three times the national average. Today, even though our cargo rate has decreased, we have decreased significantly less than the national average which is attributable to the kind of economic diversification that already exists. If we think about that and think about the future opportunities for diversification, I believe with the airport as a partner in this effort, we can grow more jobs and create a bigger and better future for all of Nevada.

Chair Koivisto:

Is there anyone else who wishes to testify in support of A.C.R. 30? Is there anyone opposed or neutral on A.C.R. 30? [There was no response.] We will close the hearing on A.C.R. 30 and bring it back to the Committee. During today's work session, we will decide which of the studies to process.

We have Senate Concurrent Resolution 6 on our agenda. Is anyone here to talk about S.C.R. 6?

Senate Concurrent Resolution 6: Urges counties to map and document certain county roads to preserve rights-of-way over public lands in Nevada. (BDR R-467)

Sue Silver, Member, Board of Directors, Coalition for Public Access, Smith, Nevada:

[Ms. Silver provided her testimony in a letter to the Committee ([Exhibit F](#)).] Senate Concurrent Resolution 6 came about because of information provided last summer to the Legislative Committee on Public Lands. This issue arose as a result of proposed lands bills and wilderness area proposals in Lyon, Mineral, and Esmeralda Counties last year. The Coalition for Public Access was established because of those proposals for the wilderness areas, and as a result, we began to look at other public land issues.

In Mineral County, we decided to document the areas being proposed as wilderness areas to see what was on the land—how many roads, features, springs, hunting areas, et cetera, there were. That led to a bigger program in Mineral County where we decided to document all the roads in the County

because we determined that not only the Forest Service but also the Bureau of Land Management (BLM) has the ability to close roads that have long been used—historically from the 1850s, 1860s, and after. These are roads for which the residents of the state have acquired what are called "prescriptive easement rights." Under federal law, it is referred to as Revised Statute (R.S.) 2477.

Right now, Mineral County is completing the history and dating of its roads. Counties need to do that in order to assert a right of claim for those rights-of-way. As a result of not having that information, any claim of right-of-way that would be required to go before the courts would take the county far too long to defend if the BLM or the Forest Service were to attempt to close or end an R.S. 2477 right-of-way across the public lands.

We feel strongly that the counties need to do this because it is necessary to have that documentation to prove the right. These roads were never surveyed by civil engineers. They were roads that were laid out by the settlers and the pioneers of the state. They were roads of necessity. They were roads to mining, to wood cutting; they allowed people to travel from community to community. They are part of Nevada's birthright as a state. These roads helped open up the West as the government encouraged people to come west. Without some of these roads, the residents of Nevada will lose the ability to continue mining, prospecting, hunting, and developing alternative energy.

In Mineral County, what alarmed me the most was the number of water sources in the areas proposed for wilderness. The springs, creeks, and other water sources are yet to be developed because development is too costly at this time. Eventually, these sources will need to be tapped. Currently they are in outlying areas, but if access is closed, their development will not be possible. This resolution only urges counties to document their roads so that if someday they need to defend those rights, they will have that ability.

Chair Koivisto:

Who would map the roads?

Sue Silver:

Probably the individual counties. In Mineral County, volunteers using global positioning system (GPS) units mapped the roads. They photographed every feature and every man-made feature. They also used hand overlay of historic maps and routed them by section, township, and range. We have identified about 1,000 roads that date before the Federal Land Policy and Management Act of 1976 which is the "drop-dead" date for claiming those rights. The whole

point of our exercise was to identify which roads the County will claim as part of its County road system.

Assemblyman Horne:

You said volunteers were doing this. Are any of them professional surveyors or topographers?

Sue Silver:

No, they are not. The data from the GPS coordinates is being turned over to our geographic information system (GIS) technician who has been working closely with the group overlaying the routes and the roads. The concern we had was that there were so many and that so many went nowhere. We needed to know that so we could determine which roads we needed to defend.

Assemblyman Horne:

You were speaking of being able to defend your right. If there is a legal dispute, particularly concerning roads going across federal lands, one of your weaknesses would be that the people who laid out the maps were not professionals. I am not saying your method is incorrect or flawed. I am just saying you might want to find some professionals who would be willing to donate their time to do this.

Sue Silver:

The County may well do that; however, the baseline for all our road dating starts with the government land office maps, the Government Land Office (GLO) plats that date to the 1860s, 1870s, and 1880s.

Assemblyman Segerblom:

What is the process? The county identifies the roads, and then do you go to the BLM and say you think these are county roads, and then does the BLM adjudicate them? How does that work?

Sue Silver:

The *Nevada Revised Statutes* provide for each county to document its roads and to claim them as their county road system. Mineral County is right now in the process of doing that. Once we get the map made, we will make a declaration through the board of county highway commissioners that this will be our County road system, and all the commissioners will agree to accept it. That map will be sent to various entities including Nevada's Department of Transportation (NDOT), the Forest Service, the BLM, and any other federal agency such as the military—there is a military base in Mineral County—so

everyone knows Mineral County is claiming those roads. The NRS provides for county secondary roads and county primary roads.

Assemblyman Mortenson:

I do not know how cooperative the BLM would be, but they have wonderful facilities for doing exactly what you want to do. I have taken part in a situation where you grab an instrument, put it in the car, and then drive along certain roads. You bring the instrument back to the BLM, and they put the information into a computer. It creates a big map of the area, shows you the exact route of the road, and is very accurate—plus or minus very small errors. It would save a lot of surveying time.

Chair Koivisto:

Are there any other questions from the Committee? [There was no response.] I see that we have some people signed up in support of this.

Janine Hansen, Elko, Nevada, representing Nevada Committee for Full Statehood, Carson City, Nevada; President, Nevada Eagle Forum, Elko, Nevada:

We supported this in the Senate. We have been very interested in protecting the R.S. 2477 roads. You are receiving a copy of what they are doing in Utah to protect their R.S. 2477 roads ([Exhibit G](#)). Assemblyman Horne mentioned professionals being involved in this, and in Utah they do have a program to identify those roads. It would ultimately be very helpful in Nevada if we did something similar to that, but this is a very good first step.

Several years ago, when I was hunting with my husband in northern Washoe County, we came across one road after another that had been blocked off by the BLM. My husband had been hunting in that area for many years, and many of our traditional roads that have been in use for many, many years are being blocked off. I think this is a critical issue, and the counties should be encouraged to pursue this. It would probably be a good idea for the state to look beyond this in the next session and coordinate an effort such as the State of Utah's. So we fully support this legislation.

Chair Koivisto:

This just urges the counties to map and document these roads.

Assemblywoman Smith:

I have a concern. In the second-to-the-last "Resolved," the language requests the Nevada Department of Transportation to post potential resources on their website. That might create a fiscal note that we would not have the

opportunity to explore. Are we asking something that the Department does not have the resources to do? What would that entail? How much would it cost them to do this?

Chair Koivisto:

Would that be a recommendation to rerefer this to Ways and Means?

ASSEMBLYWOMAN SMITH MOVED TO REREFER SENATE CONCURRENT RESOLUTION 6 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

This resolution is requesting NDOT to perform a service, so that needs to be looked at. Is there any more discussion? [There was no response.]

THE MOTION PASSED. (ASSEMBLYWOMAN GANSERT WAS ABSENT FOR THE VOTE.)

We are going to our work session now, and Patrick Guinan will lead us through it.

Patrick Guinan, Committee Policy Analyst:

You all have your work session binders in front of you. The first bill we will look at today is Senate Bill 160.

Senate Bill 160: Makes various changes to comport with the constitutional doctrines of separation of powers and legislative privilege and immunity. (BDR 3-1164)

Patrick Guinan, Committee Policy Analyst:

[Mr. Guinan read an explanation of the bill from prepared text ([Exhibit H](#)).]

Kevin C. Powers, Senior Principal Deputy Legislative Counsel:

As Mr. Guinan mentioned, Mr. Conklin has an amendment to section 9.5 of the mock-up ([Exhibit I](#)). This proposed amendment would clarify that Nevada has a public policy that favors public officers' voting on matters, provided the public officer has sufficiently disclosed any acceptances of gifts or loans, any pecuniary interest, or any commitment he has in a private capacity to the interest of others. This provision also is a statement of legislative intent that because abstention by a public officer disrupts the normal course of representative government, it is intended to require abstention only in clear

cases where the independence of judgment of a reasonable person in the officer's situation would be materially affected by that gift, loan, interest, or commitment.

Assemblyman Conklin:

I offer this up for discussion. If the Committee decides it is the direction to go, so be it. In the current statute, it is very easy to err on the side of abstaining out of fear, especially when something is unclear. However, every abstention means that a certain number of people go unrepresented in a policy choice when, in fact, the public has the opportunity, through clear disclosure, to determine whether a person is acting in his own best interest or in the best interests of all those affected.

If you follow local government votes in the southern part of the state, it is easy to find situations in which people abstain, thereby reducing the number of people necessary to make a vote pass. It is also easy for people to conspire and create a situation in which someone who is in support or against something is no longer eligible to vote. That opportunity exists, and what we do not want to do is make the law so inflexible that we allow easy outs in situations in which people really need to vote, and where the public needs to be represented.

I do not know if this is necessarily the right way to deal with it. I offer this amendment as a way to address the balance of representative government.

Chair Koivisto:

Are there questions or comments from the Committee on Mr. Conklin's proposed amendment? [There was no response.]

Kevin Powers:

All right, I will move on to the next proposed amendment ([Exhibit J](#)). This is a combination of two different proposed amendments. The first part is proposed by Mr. Conklin and is designated as Mr. Conklin's Amendment 2. The latter part is from Mrs. Gansert and is designated as Mrs. Gansert's Amendment 2A. In the mock-up that was presented to the Committee on April 30 dealing with subsections 1, 2, and 3, the Commission on Ethics proposed having each public officer file an acknowledgment form each year on January 15 when he files all his other documents, such as financial disclosure forms. That acknowledgment form says that he has read, understood, and will follow the statutory ethical standards. Mr. Conklin's proposed amendment would change that.

In subsection 1, it would designate that the acknowledgment form will acknowledge that the public officer has received, read, and understands the

statutory ethical standards. In addition, it will also acknowledge that the public officer has a responsibility to inform himself of any amendments to the statutory ethical standards as soon as reasonably practicable after each session of the Legislature.

The second change proposed by Mr. Conklin's amendment is to have the public officer file the acknowledgment form once at the beginning of each term instead of annually as requested by the Commission in the mock-up.

Chair Koivisto:

Are there questions or comments from the Committee? [There was no response.]

Assemblyman Conklin:

I think this amendment is fairly straightforward. The original bill wants the public officer to file an acknowledgment form every year, and I certainly understand the Ethics Commission's position. They do not want someone to file the form and have the law change, and then, that person would not know what the changes entailed.

Currently, you file the acknowledgment form when you first file for office, as I did nearly eight years ago, but you are not obligated to update or keep abreast of any changes. If you then have a violation, you can just say that you did not know. There is nothing that makes you responsible, so I understand that issue, but this just adds to all the paperwork we fill out every year. I think we want to close that loophole but at the same time make it practical and easy to deal with. This language would say that public officers file their acknowledgment forms at the beginning of every term for which they are elected. You get a new copy of the statutory ethical standards, and it is your responsibility as an elected official to stay up-to-date with it. If the law changes, you need to keep track of that.

Assemblyman Horne:

I am concerned with subsection 1(b). While I believe we have a responsibility to stay informed of amendments, in our capacities as legislators, we have the luxury to pick up the phone, call the Legal Division, and get an interpretation. I do not know if all public officers have that luxury. They may learn that there has been a change in an ethical standard or law, but they may not have the opportunity to get an opinion. Or maybe they do. I am curious about that. We are speaking of public officers from the Governor, to the Board of Education, and all those who are appointed. They may know there has been a change but not know what that change means. It is a high standard.

Kevin Powers:

Mr. Horne's concerns may be addressed in part by the second part of the proposed amendment from Mrs. Gansert in No. 2A. Subsection 4 in her amendment would require the Commission to provide each public officer with a notice describing the requirements of this particular section. The notice must also include the address of the Internet website of the Commission where the public officer may view and print a copy of the statutory ethical standards. Notice that it also provides to those public officers a mailing address if they want to send in a written request to the Commission and ask for the Commission to send them a written copy of the statutory ethical standards. The Commission would be required to provide each public officer with this notice in conjunction with the same timetable for filing acknowledgment forms once at the beginning of each term of office.

Subsection 5 provides that after each session of the Legislature, if there have been any changes to the statutory ethical standards, the Commission would be required to provide public officers with a notice describing those amendments and then, once again, provide the Internet address of both the Commission and the Legislature where the officer can view and print copies of those amendments, or a mailing address where the officer can request a written copy of the legislation changing the statutory ethical standards.

Chair Koivisto:

Mr. Horne, does that help you? [Assemblyman Horne nodded, "Yes."]

**Patricia D. Cafferata, Esq., Executive Director, Commission on Ethics,
Carson City, Nevada:**

My concern is that we do not have the names of the public officers. There are about 1,300 appointed and elected people. If we are required to notify them, that becomes a problem. We do not have their names, addresses, or other contact information.

Right now, by law, we send financial-disclosure-statement notices to all the county clerks and registrars of voters. There is no provision for us to notify anyone about the ethics acknowledgments. The forms are on our website, but there would be a cost to us that we have not calculated, and that is my concern. If there were some kind of notice provision so the clerks or the appointing authorities had to hand them out, that would be different. Again, however, we do not have the names of all those entities.

Chair Koivisto:

So to deal with that, we would have to add language saying you would get the information to the county clerks who would then get it to the candidates.

Patricia Cafferata:

By law, the county clerks now tell us about those people who are required to file financial disclosure statements. However, I think you are going to take that function away from us and give it to the Secretary of State in another bill you passed, so we would no longer be in that loop. We would need a law directing the clerks to tell us who these people are because we would not know. We also do not know who the Governor, or any other body, appoints.

Chair Koivisto:

Maybe Amendment No. 2A is not workable the way it is written.

Patricia Cafferata:

Assemblyman Conklin's amendment is all right. We do not object to doing it; we just need a mechanism to get those names and some money to implement it.

Chair Koivisto:

If someone is serving in a public office, he should take responsibility for acquainting himself, on the Internet, with the ethical standards he is supposed to live up to.

Patricia Cafferata:

All those forms, including the disclosure forms, are available on our website. We could contact all the clerks. That would capture all the elected people and some of the appointed people, but that still does not get anyone from the Executive Branch. The Governor does send us a list, but if we are no longer receiving financial disclosure statements, we would not get any of those names.

Assemblyman Settlemeyer:

Whoever appoints someone should have the duty to give their appointee that information. Some appointees may not have access to the Internet.

Patricia Cafferata:

Right now, when the Governor makes appointments, he does hand the forms out, but other bodies make appointments, too, and that is where we miss them. We want these acknowledgment forms.

Chair Koivisto:

Maybe Mr. Settelmeyer's suggestion is the easiest: Make certain the appointer provides the information to the appointee.

Assemblyman Settelmeyer:

You could say that the appointer must notify the appointee. If they do not, they are responsible for the fine.

Assemblyman Conklin:

I shared my Amendment No. 2 with Mrs. Gansert, and she offered her additions as a way to close that loophole. Because of the fact that you have to sign an acknowledgment that says, "I have received ...," the question becomes from whom have I received it? I do not sign this form unless the person who asked me to sign it has given me what I am claiming I have received. It may not be expressly clear, but I think it is implied that when I am elected, the person who gives me this form should also be giving me a copy of that which I received and will be reviewing.

Patricia Cafferata:

In our instance, when someone requests the acknowledgment form, we send copies of the law to that individual with the form. They then send the form back. That does not apply in all situations, just if you contact the Commission on Ethics.

Kevin Powers:

Taking all that conversation into account, I think there may be middle ground in requiring the Commission, in the acknowledgment form, to provide notice of the website and notice that there is an address to which you can request a written copy of the statutory ethical standards. Before you sign the acknowledgment form, you would have before you the website address and the ability to request a copy. So if you want to read it before you sign the acknowledgment form, you will have a way to acquire that information.

Patricia Cafferata:

You can indicate on our acknowledgment forms whether you read it from the Internet or received the actual law.

Chair Koivisto:

For Mr. Settelmeyer's concerns about people who do not have access to the Internet, there has to be a mailing address or telephone number so people can get information that way as well.

Patricia Cafferata:

They have to mail them in now. Our computer system does not permit electronic filing, so they must be mailed in on our forms.

Assemblyman Mortenson:

If they have this form they are signing that says they have read ..., can that form be attached to a copy of the ethics law?

Patricia Cafferata:

It is when we send it out.

Assemblyman Mortenson:

Yes, but apparently you do not send it to everyone.

Patricia Cafferata:

We only send them on request.

Assemblyman Mortenson:

Well, whoever provides the form that says, "I have read ... and understand ...," should be responsible for providing a copy of the ethics law.

Patricia Cafferata:

I agree, but we do not have a way to know who all these people are.

Assemblyman Mortenson:

We need to somehow assure that that happens.

Assemblyman Segerblom:

I agree with Mr. Mortenson, but I would like to ask a question about Mr. Conklin's first amendment.

Patricia Cafferata:

I just got it today, but it looks okay.

Assemblyman Segerblom:

In your mind, does that change the way you would view these? It seems as though it restates things.

Patricia Cafferata:

I think it makes it firmer. The Ethics Commission has not taken a stand on this, but it looks perfectly fine to me. I like the idea that there is a time-certain and

that you have to file, which is not really in the law right now. That was the whole point of the Commission's change. We wanted an annual filing.

Assemblyman Segerblom:

I am talking about the amendment that states one must give appropriate weight and proper deference to the public policy of the state.

Patricia Cafferata:

This amendment language has not been shown to the Ethics Commission, so I cannot take a stand. I will tell you that the Ethics Commission's seminal case on the Woodbury matter says that you are elected to vote. That is your primary duty, but there are times when you should not vote. This language would make it more firm that you have to vote.

Kevin Powers:

As a follow-up, to a certain extent this language was drafted based on the Woodbury opinion from the Commission. We did use some of the language from that opinion. It was just to firm-up the public policy that was in the Woodbury opinion. The underlying policy in the Woodbury opinion is "more disclosure and less frequent abstentions," and I think that is what the public policy here is all about—more disclosure and less frequent abstentions.

Chair Koivisto:

Are there any further questions or comments on the three amendments we have been discussing? [There was no response.]

Kevin Powers:

Next are two proposed amendments from the Ethics Commission ([Exhibit K](#)). The first one clarifies existing language and makes certain the language shown in subsection 4 tracks the language from subsection 3 which is the abstention standard.

The more significant amendment is Ethics Commission Amendment No. 2. This amendment changes the definition of willful violation. The goal of this amendment is to make the definition of willful violation consistent throughout the ethics law, and to use terms that have a well-defined meaning in case law. In this case, we are defining a willful violation as a violation where the public officer or public employee acted intentionally and knowingly, or was in a situation where the Chapter imposed a duty to act, and the public officer or employee intentionally and knowingly failed to act in the manner required by the Chapter. Further, there are Chapter-wide definitions of "intentionally" and "knowingly," and those definitions are based on well-established case law. In

particular, "knowingly" is also based on two existing definitions of "knowingly" in *Nevada Revised Statutes* (NRS) 193.017 and 624.024. The idea is to conform the definition of "willful" violation to well-established case law and definitions of "intentionally" and "knowingly." Because this was proposed by the Ethics Commission, you may want members of the Commission to elaborate further.

Chair Koivisto:

For those of you who were members of this Committee last session, you probably remember we talked a lot about "willfully" and "knowingly." I think it is important that there be a concise, good definition in the statute concerning "willful," et cetera.

Patricia Cafferata:

With me today is George Keele. He is Vice Chair of the Commission and has worked very diligently on this. I will defer to George. He is a legislative appointee and has been a member of the Commission on Ethics for almost six years.

George M. Keele, Minden, Nevada, Vice Chair, Commission on Ethics, Carson City, Nevada:

I would like to thank Mr. Powers for his willingness to work with us in implementing these changes to which he has testified today. During the time I have served on the Commission on Ethics, there has been a struggle on the part of many of the commissioners to find a "willful" violation when confronted with what is seemingly an inadvertent or accidental omission. The standard has been "knew or should have known."

You have been talking about acknowledgment forms for the past few minutes. Let us assume someone has just been appointed and acknowledged that he has read and understands the ethics law. If he was found not to have filed a document he was supposed to have filed by a particular date, there has been tension among the members of the Commission concerning whether that was, in fact, a "willful violation." When you compare the penalty found in our general statute for committing three willful violations with the penalty for three willful violations in, for example, the failure of candidates for public office to timely file their financial disclosure forms, you can see that there is an incredible divergence. For the one, the penalty is \$5,000 for the first offense; \$10,000 for the second offense; and \$25,000 for the third offense for a total of \$40,000. For a willful violation of the requirement to file financial disclosure forms for candidates for public office, there is an incremental program. If you are 20 days late you pay \$50; if you are between 20 days and 30 days late you

must pay \$100. If you are between 30 and 45 days late, you pay a fine of \$250. The final penalty is \$2,000, and as used in this section, "willfully" means deliberately, intentionally, and knowingly. So no one is ever going to be found guilty of a willful violation unless you can say the reason he was 45, 50, or 80 days late is different from the obvious, which is as a legislator who had a busy session, "We had a heavy session in the Legislature. We were occupied with things that were much more important than getting our financial declarations filed."

The Commission on Ethics saw the dichotomy between the two definitions: one for "willful" that means "intentional, deliberate, and knowing;" and the other one that said, "knew or should have known." Plus, the two penalties were quite divergent, so we asked Mr. Powers and his agency to help us. They have done a beautiful job. We are very grateful for what they have submitted to you and strongly endorse it.

I will conclude with two examples regarding the testimony previously received regarding educating oneself about the statutory ethical standards and the code of ethical standards. We will use the example of a legislator who happens to be a rancher in a remote location confronted with this prohibition: "A public officer or employee shall not seek other employment or contracts through the use of his official position." What if that rancher has the opportunity to apply for a job and the application asks what he does for a living? He replies that he is a state legislator. Has he used his official position to seek employment? That is a dilemma because you created the standard. What is the best thing for that rancher out in Lincoln County to do? Is it to come to the Ethics Commission and get a private opinion, or a public opinion, that tells him whether he can use that information on his job application? What is that rancher likely to do? He is likely to send his résumé in with the information on it that he is a legislator. That may be an inappropriate use of his position or it may not, depending upon whether he leads with that information or whether he buries it in his résumé as yet another part of his work experience. We have issued an opinion on that point, and I believe there is an abstract on that subject. That is simply an example of why we believe there ought to be a very clear, concise, and simple statement, backed by case law.

Assemblyman Mortenson:

I am retired; I really have no other work than that of being a state legislator. If I am completing a form and it asks for my employment, I will write down "state legislator." If that gives me some advantage, might I be prosecuted for writing down that information?

George Keele:

No. We would not consider completing an employment application on which you acknowledge what your present employment is as using your position. In a different context, in the same circumstance, if you said, "By virtue of my x-years' experience as a member of the Nevada Assembly and having received kudos, et cetera," you may very well be on the edge. You would need to be cautious and careful. When in doubt, come to the Commission.

The standard the Legislature set is a wonderful standard. At any moment, if anyone has any questions about whether he is doing something that is unethical, he may request a confidential opinion from the Commission on Ethics.

Assemblyman Conklin:

I think the standard is very clear, and to me this "muddies" it up; but I know there is a legal standard that is expounded with the law cases, so I am not opposed to this. However, looking at the Ethics Commission's No. 2 Amendment concerning NRS 281A.170—what is the difference between Nos. 1 and 2? If you acted intentionally and knowingly and you did something against this Chapter, whether you were supposed to act and did not, or whether you were not supposed to act but did; it is a violation. It seems to me that Amendment Nos. 1 and 2 are exactly the same.

Kevin Powers:

We consider this to be a very cautious and explicit drafting. Subsection 1 speaks of the term "act," and "act" can be interpreted as a volitional act, an actual act. Subsection 2 speaks of a failure to act. In order to ensure that we were covering both the act and the failure to act, we have subsections 1 and 2.

Assemblyman Segerblom:

After you testified originally on this bill, some witnesses from southern Nevada said it was outrageous because your case is still pending in the Supreme Court. They asked why we were working on this law when we had not heard from the Supreme Court yet. For the record, you do not believe that is a problem, right?

Kevin Powers:

That is correct. There is no guarantee that the Supreme Court will be able to issue its decision before the end of the session. We believe this legislation, both the original S.B. 160, the mock-up, and all these additional amendments, are important changes to the law that the Legislature should consider this session, whether or not the Supreme Court issues its decision by the end of this session.

George Keele:

In response to Mr. Segerblom's question, I think that it is also appropriate for you to know that Mr. Powers is our respected adversary in that proceeding. He has taken us to the Supreme Court, and we had a good fight. We still have an honorable difference of opinion with respect to how that matter ought to turn out in the Supreme Court.

Assemblyman Conklin:

That brings up an interesting issue. From the hearing on this bill, there were some people who testified that the Legislative Counsel Bureau (LCB) was proposing S.B. 160. That is not the case. Senate Bill 160 was brought by legislators. The Legislative Counsel Bureau does research at our request because we have an interest in doing something. This is our bill. This is the Senate's bill, and we are going to act on it and its merits. People will provide testimony as to why it is good or bad, but it is ours; and this Body has to determine if we are a separate branch of government or if another branch of government should have the right to hold jurisdiction over us. This is my opinion, but that is the decision we have to make. I happen to believe that this Body should stand on its own merits. We should have the obligation to judge ourselves and our actions and not be beholden to another branch, otherwise the whole doctrine of separation of powers goes away.

Patrick Guinan:

In support of Mr. Conklin's statement, this bill was sponsored by the Senate Committee on Judiciary. The mock-up was presented to us by Mr. Powers from the Legal Division because Mr. Powers was the drafter of the mock-up at the request of the Senate Judiciary Committee.

Chair Koivisto:

Thank you, Patrick, for that clarification. Addressing the need for this legislation and going forward with this in place, the ethics standards and the way they are applied will be crystal clear for the Legislature. That is the point of this bill: not only to clarify the ethics standards, but also to clarify the separation of powers, as Mr. Conklin stated.

Are there further comments or questions from the Committee? We have had this bill long enough, and I think it is time to move it. Our decision today has to be the amendments. What do we want to do with the amendments? Patrick, will you go through the amendments for us, please?

Patrick Guinan:

The Committee's consideration today has to be, first, whether to adopt the mock-up No. 4617 to S.B. 160 that was presented by Mr. Powers on April 30. Additionally, we have Mr. Conklin's Amendment No. 1 ([Exhibit I](#)) which concerns abstentions and clarifies that abstentions are a less desirable option.

Then we have Mr. Conklin's Amendment No. 2 ([Exhibit J](#)) which amends section 14. There is no conflict between Mr. Conklin's No. 2 and Mrs. Gansert's No. 2A as far as I can tell. If Mrs. Gansert's amendment is accepted, there will be one minor change to Mr. Conklin's, but otherwise I do not believe there are any conflicts.

Kevin Powers:

That is correct. They can be done independently or together.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 160 AS AMENDED IN MOCK-UP NO. 4617. IN ADDITION, BOTH OF MR. CONKLIN'S AMENDMENTS, PART OF MRS. GANSERT'S AMENDMENT, AND BOTH AMENDMENTS PROPOSED BY THE COMMISSION ON ETHICS WOULD BE INCLUDED.

Patrick Guinan:

Kevin, is that something you are comfortable with? That would be a further amendment to Mrs. Gansert's Amendment No. 2A.

Kevin Powers:

We would not consider Mrs. Gansert's Amendment No. 2A. As a substitute for No. 2A, we would develop language for Mr. Conklin's Amendment No. 2 specifying that any county clerk or other officer who distributes the acknowledgment form will ensure that a copy of the statutory ethical standards are included with the acknowledgment form.

Patrick Guinan:

Mr. Segerblom's motion was to Amend and Do Pass the bill as amended in the original mock-up to include Mr. Conklin's Amendments Nos. 1 and 2, and an additional amendment clarifying that the statutory ethical standards have to be distributed along with the acknowledgment form, and then to include the Ethics Commissions' Amendments Nos. 1 and 2.

Chair Koivisto:

Is there a second to the motion?

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

Is there any discussion? [There was no response.]

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Assemblyman Conklin:

Madam Chair, may I see a copy of the amendment before it is reported to the floor?

Chair Koivisto:

Certainly, you can, and you can make the floor statement.

Patrick Guinan:

The next bill on the work session agenda is Senate Bill 162 (2nd Reprint).

Senate Bill 162 (2nd Reprint): Revises the date of the primary election and provisions governing voter registration by mail. (BDR 24-1001)

Patrick Guinan, Committee Policy Analyst:

[Mr. Guinan read an explanation of the bill from prepared text and presented a mock-up to the bill that is Proposed Amendment No. 4856 ([Exhibit L](#)).] The proposed amendment sets the filing dates for all candidates other than judges for the first two weeks in March, and restores the language originally stricken in section 13 of the bill which created the potential for three-person general elections to occur in some instances.

I would further clarify that in the mock-up you have to the bill, section 13 is stricken entirely by amendment. It needs to be clear to everyone that nothing is being stricken from the statute. That section is being stricken from the original bill and will leave the law as it is because that section is no longer necessary based on what else is in the mock-up. I believe that the Secretary of State's Office and the Legal Division of the Legislative Counsel Bureau (LCB) would like to go on record that they are comfortable with the mock-up as proposed.

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

That is a correct recitation by Mr. Guinan. This amendment was proffered by our office when this bill was being heard in the Senate because of some legal

concerns. In discussion of those concerns with LCB Counsel, we recognized that there is case law that reads most harshly against the interests of the State of Nevada and could be grounds, at the very least, for a civil lawsuit against the State of Nevada. For the record I will cite the cases we reviewed, the seminal case being the *Anderson v. Celebrezze* decision which is located at 460 U.S. 780 (1983). Additional case law provided included another U.S. Supreme Court case, *Burdick v. Takushi* 504 U.S. 428 (1992), plus federal cases *Nader v. Brewer* 531 F. 3d, 1028 (9th Cir. 2008); and *Libertarian Party of Washington v. Munro* 31 F.3d 759 (9th Cir. 1994). In reviewing those four cases as they relate specifically to the law in Nevada, our Office is comfortable that the amendment proposed by Mr. Conklin would not jeopardize the state to any lawsuit or any significant damages rising out of that lawsuit.

I know Mr. Powers is going to speak with respect to some of the specifics of background and LCB's comfort with it, but I would like to take this opportunity to express the state's interest in this legislation and what we see as being necessary to an accessible election in 2010. This legislation and the repeal of the sections amended by Mr. Conklin would allow primary elections to be conducted in the manner they have been in recent elections. If, in a primary election, two major-party candidates are running and a minor-party candidate files, those major-party candidates go to a runoff in the primary election and proceed to the general election. That is the way it has been, and under this bill with the amendments, that is the way it will continue to be. All candidates are on notice of that, both in the larger jurisdictions and in the rural jurisdictions.

The state is interested in promoting larger turnouts in primary elections. There have been numerous studies that a June primary election increases turnout and encourages people to participate in the electoral process. Along those same lines, polling places are available for a June primary, particularly in the second week of June when school is out and the county clerks and local registrars of voters can use local educational facilities. Also, poll workers are more available. With students out on summer break, teachers, parents, faculty, and staff would be available to work at the polling locations. That is a group that is customarily very qualified to work at the polling locations. In light of those considerations and the amendment as it sits before the Committee, I think the state's interests are best served by adopting this amendment, and the Secretary of State's Office supports it.

Assemblyman Conklin:

There is a phantom piece in this amendment, and no one knows where it came from.

Matt Griffin:

Are you speaking of the Monday-Tuesday issue?

Assemblyman Conklin:

It is the Monday-Tuesday issue. For as long as I can remember, we have filed for office during a two-week period beginning on Monday and ending on Friday. So I was going to further amend the mock-up to leave the filing period the way it has been—from the first Monday in March to the second Friday in March so that the two-week time frame remains the same.

Matt Griffin:

Our Office would have no objection to that nor would Mr. Lomax in Clark County. He reserves a room on the weekend prior to that Monday to facilitate the Monday filing. Under a Tuesday filing start date, Mr. Lomax would need that room for an extra day which would obviously cause some inconvenience. So we support a Monday-through-Friday filing period. Either way the Committee goes, we support the legislation.

Chair Koivisto:

Are there questions from the Committee? [There was no response.]

Kevin C. Powers, Senior Principal Deputy Legislative Counsel:

As Mr. Griffin mentioned, we have been discussing this issue with his Office. The issue is that the state cannot severely burden minor parties with so many obstacles to qualifying for the ballot that it would violate their rights under the First and Fourteenth Amendments. One of the burdens a state must be concerned about when developing election statutes is requiring minor parties to qualify for the ballot too far in advance of the election. That was an issue with the original bill. After looking at the case law Mr. Griffin mentioned, we reviewed that, considered all the issues, and came to the conclusion that we believe this legislation is constitutionally defensible, including the requirement for the minor parties to qualify for the ballot in March as set forth in this mock-up.

Assemblyman Conklin:

I have spoken privately with at least one minor-party representative who indicated she preferred the amendment as is. I want it on the record that they were not excluded from the discussion, and that this method was preferable to the way the bill had been drafted and sent to us.

Janine Hansen, Elko, Nevada, representing Nevada Committee for Full Statehood, Carson City, Nevada; President, Nevada Eagle Forum, Elko, Nevada:

Yes, I discussed this with Assemblyman Conklin and we are in agreement with his amendments. We were not in support of the bill that came out of the Senate.

Chair Koivisto:

Are there any questions or comments from the Committee?

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS SENATE BILL 162 (2ND REPRINT) AS AMENDED. THE AMENDMENT WOULD BE PROPOSED MOCK-UP AMENDMENT NO. 4856 WITH AN ADDITIONAL AMENDMENT TO LEAVE THE ORIGINAL FILING DATES AS THEY WERE BEGINNING ON THE FIRST MONDAY IN MARCH AND ENDING ON THE SECOND FRIDAY IN MARCH—A TWO-WEEK PERIOD.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

Is there any discussion?

Assemblyman Settlemeyer:

I am still going to vote no on the bill because Washoe County opposed it for monetary reasons. Moving the primary election to 2010 would put those expenses in a different budget cycle for Washoe County. Also, my constituents have always indicated an extreme dislike of anything that would extend the election cycle.

Assemblywoman Smith:

I stated before that I have concerns about the primary season being so long. I worry that my constituents are not going to like the idea of a longer campaign season. However, I understand we need to do something to increase voter turnout. We cannot move the primary later because of the legal challenges to ballot questions. Based on that and all the testimony we heard in support, I will support the motion.

Assemblyman Horne:

I will be voting no. I do not like the change in the primary date, and I am not convinced that there will be an increased voter turnout. I think Nevada makes it enormously easy to vote, and I do not think this change will accomplish an increase in voter turnout, so I will be a "no."

Assemblyman Ohrenschall:

I also have mixed feelings about the bill and specifically about extending the campaign cycle another couple of months. I am not sure how the voters are going to feel about that. I am going to vote "yes" in Committee, but reserve the right to possibly change my vote on the floor.

Chair Koivisto:

Is there further discussion or comment? [There was no response.] I want to point out that moving the dates earlier helps the county clerks do their jobs and would help get the ballots where they need to be in a timely way. That is why I support the bill.

THE MOTION PASSED. (ASSEMBLYMEN HORNE AND SETTELMAYER VOTED NO. ASSEMBLYWOMAN GANSERT WAS ABSENT FOR THE VOTE. ASSEMBLYMAN OHRENSCHALL RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR OF THE ASSEMBLY.)

Patrick Guinan:

We are on Senate Bill 263 (1st Reprint) now.

[Senate Bill 263 \(1st Reprint\)](#): Amends the Charters of the Cities of Carlin and Wells to revise provisions governing municipal elections. (BDR S-1003)

Patrick Guinan, Committee Policy Analyst:

A letter from Senator Rhoads is now being distributed ([Exhibit M](#)). [Mr. Guinan read his statement about the bill from prepared text and provided mock-up Amendment No. 4736 provided by Assemblyman Segerblom ([Exhibit N](#)).] I will defer to Mr. Segerblom to explain his proposed amendment.

Because we just received it, I want to enter Senator Rhoads' letter into the record.

Thank you for your assistance in processing SB 263, a bill amending the Charters of Wells and Carlin to change the Candidate Filing Date for City Elections.

During the 2007 Legislative Session, the Cities of Wells and Carlin requested election date changes to coincide with the fall County, State and Federal cycle. This request was made because both small cities were unable to fund the required updated election equipment, to improve voter turnout, and to utilize resources. The

change resulted in cost savings and in keeping consistent election procedures for citizens by not going from one voting system to another, electronic voting for County, State and Federal elections and then back to paper ballots for City elections.

During the fall 2008 election cycle, a logistic issue arose. The Candidate Filing Date became an issue as City filers were to sign up 60 to 70 days prior to the General Election. This is actually *after* the date the County Clerk needed to send out Sample Ballots and do ballot preparation for the General Election. The cities desired to accommodate her by moving our filing date up slightly and predicating it on the Primary Election (90 to 100 days prior to the General Election, a change for Wells citizens of only 30 days.) Using these dates, the cities know who is running for office at the very same time the results of the Primary are announced. The County Clerk can proceed at that time to place all names (City, County, State and Federal) on the ballot of the General Election and mail Sample Ballots. This was the original intent of SB 263.

However, an amendment to the bill presents a challenge to the Cities of Wells and Carlin. Regrettably the last re-write of the bill has City candidates signing up in May, some 180 days prior to the General Election, a period three times as long as the established City Candidate Filing Date. These are third class cities and, therefore, they do not have a Primary Election. Accordingly, it is not necessary that our candidates sign up that soon. Nor is it necessary to extend the date for such a period to reach all voters as we have a small population. This extended period will also likely result in an increase in monetary expenditures for candidates.

I respectfully request that you consider the bill in its original form, predicating the Candidate Filing Date on the Primary Election. This change will meet the needs of the County Clerk without extending the election process for a very lengthy period. Thank you for your consideration.

Sincerely,

Dean A. Rhoads, Senator
Rural Nevada Senatorial District

Madam Chair, that concludes the letter. I do not believe this proposed amendment would necessarily conflict with Mr. Segerblom's proposed amendment, but we do have David Fraser who would like to comment on Senator Rhoads' request.

David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:

In the absence of any bill, the candidate filing date in Carlin and Wells would be in September. The original bill had requested that that filing date be moved to August in order to accommodate sample ballots. In the other House, there was an amendment that moved that date to May. On further discussion, the Elko County Clerk indicated to Matt Griffin that she would be willing to move that back to the originally proposed date of August. In discussion with Mr. Griffin, he thought it had been amended out in the Senate and was surprised to still see it when the bill reached the Assembly.

I have spoken with the two City Clerks, with Senator Rhoads, and with Mr. Griffin. It would be the League's hope that the Committee would do as Senator Rhoads requested, and that is to reinstate the original language in the bill which would move that candidate filing date to August.

Chair Koivisto:

Are there any questions from the Committee? Is the amendment clear? [There was no response.] Mr. Segerblom, do you want to tell us what your amendment does?

Assemblyman Segerblom:

As you recall, A.B. 256, which this Committee voted out, had two parts. One was to change the primary date, and the other was to change city municipal elections to correspond to even-year General Elections. That bill died in the Assembly because certain people did not like the primary change and certain people did not like the municipal-election change.

This amendment brings back just the portion dealing with municipal elections, but has been modified to only deal with charter cities in Clark County. The charter cities are Boulder City, Henderson, North Las Vegas, and Las Vegas. This amendment would change the municipal elections in those four cities to even years and would eliminate the 2011 elections and have them be held in 2012. By testimony from the Registrar in Clark County, making that change would save approximately \$1 million per election cycle.

Chair Koivisto:

Thank you, Mr. Segerblom. Anytime we can save \$1 million, it is pretty hard not to. Are there questions or comments from the Committee?

Assemblyman Horne:

My vote will remain consistent.

Assemblyman Settelmeyer:

Would you take a motion of Amend and Do Pass using only Senator Rhoads' amendment?

Chair Koivisto:

First, I will take a motion on the entire bill the way it is amended.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED SENATE BILL 263 (1ST REPRINT).

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

Is there any discussion on that motion? That is with both amendments; the entire bill with mock-up No. 4736.

THE MOTION FAILED. (ASSEMBLYMEN CONKLIN, HAMBRICK, HORNE, MUNFORD, AND SETTELMAYER VOTED NO. ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

That motion failed. Mr. Settelmeyer, what was your motion?

ASSEMBLYMAN SETTELMAYER MOVED TO AMEND AND DO PASS SENATE BILL 263 (1ST REPRINT) AS AMENDED WITH ONLY SENATOR RHOADS' AMENDMENT.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Is there any discussion on that motion? [There was no response.]

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Let us vote on the interim studies. Patrick will do a quick run through.

Patrick Guinan, Committee Policy Analyst:

We have four interim studies proposed that the Committee needs to consider. You will remember that the long-standing agreement between the two Houses was that each House approves three. The first is Assembly Bill 294 which was sponsored by Mrs. Kirkpatrick. It provides for an interim study of group homes. Next is Assembly Concurrent Resolution 2 which provides for an interim study of the governance of the public education system in Nevada for K-12 and was sponsored by Ms. Parnell. We have Assembly Concurrent Resolution 18 sponsored by Assemblyman Atkinson which provides for an interim study of mass transportation in the State of Nevada, and we have Assembly Concurrent Resolution 30 which we heard today. It is an interim study of logistics and distribution within the state and was sponsored by Assemblywoman Buckley. One option Ms. Buckley mentioned was to amend relevant portions of the mass transportation study into the logistics and distribution study, which is one of many options the Committee can consider.

Chair Koivisto:

Let us start with Assembly Bill 294.

Assembly Bill 294: Directs the Legislative Commission to conduct an interim study concerning group homes. (BDR S-570)

Is there any discussion? Remember when Mrs. Kirkpatrick presented her bill on group homes?

ASSEMBLYMAN SETTELMAYER MOVED TO DO PASS
ASSEMBLY BILL 294.

ASSEMBLYMAN MUNFORD SECONDED THE MOTION.

Is there any discussion on that motion?

Assemblyman Conklin:

As a practical matter, we have four bills and only three spots. I am very supportive of this bill. Mrs. Kirkpatrick has worked on group homes every session she has been here. At every turn, she has met with an enormous amount of resistance, and I think the Legislature should be looking into this issue. I do not know if it makes practical sense to take individual votes on these or if we want to come to some agreement on which three we will accept and take one motion on the three we want. I have not talked to the Chair of the Transportation Committee about whether it is acceptable to him to roll his study bill into Ms. Buckley's A.C.R. 30. We could just make one motion to

accept all three—A.C.R. 30 amended with A.C.R. 18, and then accept A.C.R. 2 and A.B. 294.

Chair Koivisto:

I did speak with the Chair of Transportation. When Ms. Buckley was making her presentation, we heard her say that she believed the transportation part of Assembly Concurrent Resolution 18 could be rolled into A.C.R. 30. All right, I will take a motion on approving the three studies, one of the studies being to take the relevant parts of the transportation study, A.C.R. 18, and amend them into Assembly Concurrent Resolution 30.

Assembly Bill 294: Directs the Legislative Commission to conduct an interim study concerning group homes. (BDR S-570)

Assembly Concurrent Resolution 2: Directs the Legislative Commission to conduct an interim study concerning the governance and oversight of the system of public education. (BDR R-301)

Assembly Concurrent Resolution 30: Directs the Legislative Commission to conduct an interim study on the development and promotion of logistics and distribution centers in this State. (BDR R-1305)

Patrick Guinan, Committee Policy Analyst:

So, the motion is to approve Assembly Bill 294, group homes; Assembly Concurrent Resolution 2, education; and to amend Assembly Concurrent Resolution 30, which is logistics and distribution, to include relevant portions of Assembly Concurrent Resolution 18 dealing with transportation.

Chair Koivisto:

Mr. Settelmeyer, did you want to make the motion?

Assemblyman Settelmeyer:

No, let Mr. Conklin.

ASSEMBLYMAN CONKLIN MOVED TO DO PASS
ASSEMBLY BILL 294, TO ADOPT ASSEMBLY CONCURRENT
RESOLUTION 2, AND TO AMEND AND ADOPT
ASSEMBLY CONCURRENT RESOLUTION 30 WITH THE
AMENDMENT TO INCLUDE THE RELEVANT PORTIONS OF
ASSEMBLY CONCURRENT RESOLUTION 18.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Chair Koivisto:

Is there any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Patrick Guinan:

We have two more resolutions from Elections, Procedures, and Ethics. They are Senate Joint Resolution 2 (1st Reprint) and Senate Joint Resolution 4.

[Senate Joint Resolution 2 \(1st Reprint\)](#): Urges Congress to take certain actions concerning wilderness areas and wilderness study areas. (BDR R-604)

Patrick Guinan, Committee Policy Analyst:

We heard S.J.R. 2 (R1) on April 13. It urges the Nevada Congressional Delegation and Congress to comply fully with the Wilderness Act in determining whether to designate public lands as wilderness areas or wilderness study areas. The resolution also urges the establishment of a schedule for the timely release of wilderness study areas that do not meet the requirements for designation as wilderness areas. There were no amendments offered to the bill.

Chair Koivisto:

Is there a motion to pass this one?

ASSEMBLYMAN HORNE MOVED TO DO PASS
ASSEMBLY JOINT RESOLUTION 2 (1ST REPRINT).

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Let us go to Senate Joint Resolution 4.

[Senate Joint Resolution 4](#): Urges Congress to fund fully and protect the Medicare program. (BDR R-785)

Patrick Guinan, Committee Policy Analyst:

Senate Joint Resolution 4 is sponsored by the Senate Committee on Legislative Operations and Elections and was presented here by Senator Woodhouse. The resolution urges the United States Congress to address financing issues associated with the projected increase in the number of participants in the

federal Medicare program and the potential depletion of the Medicare Trust Fund. Congress is asked to fully fund Medicare and to protect the future of the program. There are no amendments offered to the resolution.

Chair Koivisto:

The Committee will remember that when Senator Woodhouse presented this bill she commented on how Thelma Clark worked so hard on this issue for so many years. I will take a motion.

ASSEMBLYMAN HORNE MOVED TO DO PASS
SENATE JOINT RESOLUTION 4.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

All right, I am going to give the gavel to Mr. Mortenson.

Chairman Mortenson:

We will open the hearing on Senate Joint Resolution 1 (1st Reprint).

[Senate Joint Resolution 1 \(1st Reprint\)](#): Proposes to amend the Nevada Constitution to replace the State Board of Pardons Commissioners with the Clemency Board and to require the Legislature to provide for the organization and duties of the Clemency Board. (BDR C-552)

Patrick Guinan, Committee Policy Analyst:

Senate Joint Resolution 1 (1st Reprint) proposes to amend the *Nevada Constitution* to replace the State Board of Pardons Commissioners with a Clemency Board and to require the Legislature to provide for the organization and duties of the Clemency Board. The measure was sponsored by Mr. Parks. It was presented here by Chief Justice Hardesty of the Supreme Court. The Clemency Board, as proposed, would consist of nine members. Three members would be appointed by the Governor, three would be appointed by the Chief Justice of the Supreme Court, and three would be appointed by the Attorney General. The Legislature is directed to provide for the duties of the Board and its members. If the measure passes the Legislature in identical form in 2009 and 2011, it will be presented to the voters for approval or disapproval at the 2012 General Election. There are no amendments.

Chairman Mortenson:

Is there any discussion?

ASSEMBLYMAN HORNE MOVED TO DO PASS
SENATE JOINT RESOLUTION 1 (1st REPRINT).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion on the motion? I see none.

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

We will move on to Senate Joint Resolution 2 of the 74th Session.

Senate Joint Resolution 2 of the 74th Session: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

Patrick Guinan, Committee Policy Analyst:

[Mr. Guinan read an explanation of the bill from prepared text ([Exhibit O](#)).]

Chairman Mortenson:

Remember, this resolution allows this proposal to go before the voters in 2010.

ASSEMBLYMAN CONKLIN MOVED TO DO PASS
SENATE JOINT RESOLUTION 2 OF THE 74th SESSION.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Hambrick:

If I recall, there was a court challenge a few years ago saying that the language on a ballot issue was different between the two elections. Can we be absolutely sure that the proofreaders have not made any errors?

Patrick Guinan:

This resolution was amended during its consideration by the Legislature last session, so the final resolution, as it was approved by the last Legislature is the same resolution you are seeing now. There is no difference between the one that was voted out then and the one being voted on now.

Chairman Mortenson:

Is there any further discussion? I see none.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL VOTED NO. ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Is there any further business to come before the Committee? I see none, so we are adjourned [at 6:20 p.m.].

Assembly Concurrent Resolution 18: Directs the Legislative Commission to conduct an interim study concerning mass transportation in this State. (BDR R-55)

[There was no action taken on this bill, but parts of it were to be amended into A.C.R. 30.]

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

Assemblyman Harry Mortenson, Chair

DATE: _____

EXHIBITS

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

Date: May 12, 2009

Time of Meeting: 3:54 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
ACR 30	C	Assemblywoman Buckley	PowerPoint
ACR 30	D	Assemblywoman Buckley	Proposed amendment
ACR 30	E	Chuck Alvey	"Target 2010" report
SCR 6	F	Sue Silver	Letter in support
SCR 6	G	Janine Hansen	Utah GIS Portal—rural roads mapping project homepage
SB 160	H	Patrick Guinan	Prepared text
SB 160	I	Patrick Guinan	Mr. Conklin's proposed Amendment No. 1
SB 160	J	Patrick Guinan	Mr. Conklin's proposed Amendment No. 2 & Mrs. Gansert's Amendment No. 2A
SB 160	K	Patrick Guinan	Amendments proposed by the Commission on Ethics
SB 162 (R2)	L	Patrick Guinan	Prepared text and mock-up Amendment No. 4856
SB 263 (R1)	M	Patrick Guinan	Letter proposing amendments from Senator Dean Rhoads

SB 263 (R1)	N	Patrick Guinan	Statement about the bill and Mock-up Amendment No. 4736
SJR 2*	O	Patrick Guinan	Explanation of the bill