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

Seventy-fifth Session
May 13, 2009

The Subcommittee of the Senate Committee on Legislative Operations and Elections was called to order by Chair Joyce Woodhouse at 4:37 p.m. on Wednesday, May 13, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Joyce Woodhouse, Chair
Senator Valerie Wiener
Senator John J. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41
Assemblyman Bernie Anderson, Assembly District No. 31

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Lorne J. Malkiewich, Director, Legislative Counsel Bureau
Kathy Steinle, Geographic Information Systems Specialist
Pepper Sturm, Committee Policy Analyst
Donald O. Williams, Research Director
Makita Schichtel, Committee Secretary

OTHERS PRESENT:

Dennis Mallory, Chief of Staff, Carson City Office, American Federation of State, County and Municipal Employees Local 4041
Brian W. Klopp, American Federation of State, County and Municipal Employees
Jim Richardson
Gail Tuzzolo, Nevada State AFL-CIO

Teresa J. Thienhaus, Director, Department of Personnel
Carole Vilardo, President, Nevada Taxpayers Association
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Samuel P. McMullen, Las Vegas Chamber of Commerce
Jennifer Cooper, American Federation of State, County and Municipal Employees
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Andrew Barbano, National Association for the Advancement of Colored People Reno-Sparks Branch 1112; CesarChavezNevada.com; NevadaLabor.com

CHAIR WOODHOUSE:
We will open the subcommittee on Assembly Bill (A.B.) 395.

ASSEMBLY BILL 395 (1st Reprint): Provides for workplace relations discussions and agreements for certain state employees. (BDR 23-1020)

ASSEMBLYMAN PAUL AIZLEY (Assembly District No. 41):
This bill, which is to become effective on July 1, provides procedures for the determination of workplace units, selection of exclusive representatives and negotiations between workplace units and the Executive Branch regarding hours, working conditions, grievances, discipline and discharge. It does not include salaries or benefits. Provisions are made for mediation, arbitration, judicial review and fair share agreements.

The Personnel Commission is charged with oversight of workplace relations and dispute resolution. The bill terminates current appointments to the Commission and changes the appointing authorities so that the Governor appoints three members, the Speaker of the Assembly appoints one member and the Senate Majority Leader appoints one member.

Assembly Bill 395 does not affect managerial, confidential or temporary employees; elected officials; officers and members of the Nevada National Guard; State Justices and judges; prison inmates; unclassified employees of the Nevada System of Higher Education; or employees of the Legislature.

The bill will provide fairness. With hundreds of unfilled positions and a proposed 4-percent pay cut, we are asking these workers to do more for less money. It

does not provide collective bargaining for wages and benefits but provides State employees the opportunity to negotiate an agreement about their working conditions. It is only fair that we provide them a voice in decisions that will affect their daily working conditions.

The bill will save money. When there are no well-defined grievance and appeal procedures, expensive litigation is often the result. Assembly Bill 395 will ensure grievances and appeals get a fair hearing. This will reduce and possibly eliminate such litigation, saving the State thousands of dollars. There are cases pending right now that could cost us hundreds of thousands of dollars.

My 40-year tenure at the University of Nevada, Las Vegas, taught me the benefits of working collaboratively with staff. The people who know best how to do a job are those who actually do the work. Please support this bill to provide fairness, save our State money and improve productivity.

Section 8 defines "exclusive representative." Section 10 says the fair share agreement is between an employer and an exclusive representative under which any of the employees in a workplace relations unit are required to pay a proportionate share of the costs of discussions of workplace relations. Section 13 defines a professional employee. Section 15 addresses terms and conditions of employment. Section 16 defines the workplace relations unit. The Commission is defined throughout the rest of the bill along with procedures for establishing units described in the bill.

SENATOR LEE:
On page 6 of the bill, lines 12 and 13 state, "The Commission may award reasonable costs, which may include attorney's fees, to the prevailing party." By what authority are they able to do this? Have they been assigned legal counsel by the Attorney General's Office?

DENNIS MALLORY (Chief of Staff, Carson City Office, American Federation of State, County and Municipal Employees Local 4041):
The Personnel Commission has an attorney assigned to them through the Attorney General's Office.

BRIAN W. KLOPP (American Federation of State, County and Municipal Employees):
On behalf of the American Federation of State, County and Municipal Employees' (AFSCME) 1.5 million members, I speak in support of A.B. 395. Many workers have creative ideas about how to improve the delivery of services and efficiency of their workplaces. Under many current management systems, however, employees' ideas are often ignored. This is not because management does not want to improve but because there is no forum for effective two-way communication.

Several agencies have predicted this bill would result in significant costs over the next two fiscal years. Contrary to the Attorney General's fiscal note, this bill does not create a need for additional staff. The fiscal notes are in contrast to the experience of other states that have recently enacted similar legislation but did not add new labor-relations staff. Under an executive order issued by Governor Bill Ritter, Colorado hired one new employee. The fiscal notes from the Department of Personnel indicate they would need a number of additional employees to staff a labor-relations unit. However, their employees already perform the type of work contemplated by this legislation. They have 20 personnel analysts who research and develop policies and regulations; prepare bill draft requests; coordinate legislative bill tracking; coordinate the adoption of regulations; serve as subject-matter experts; and respond to inquiries on various State and federal regulations. In addition, the Department employs seven personnel technicians who certify and maintain hiring lists; assist management with disciplinary issues by gathering information; process forms; and provide information to involved parties as outlined by statutes. This legislation requires parties to discuss workplace relations but does not create any additional costs related to litigation. There is nothing in the proposed legislation mandating the creation of any grievance or disciplinary procedure.

Assembly Bill 395 allows employees to freely share ideas about improving labor-management relations, which may reduce litigation. Legislation like this has proven to be an efficient way to facilitate problem-solving and foster long-term improvement. It would insulate State workers from politics, favoritism and arbitrariness and bring consistency to personnel matters. As a result, this bill benefits public employers, employees and taxpayers. Additional details may be found in my written testimony (Exhibit C).

JIM RICHARDSON:
While I was working as a pilot for the Nevada Department of Transportation (NDOT), I made the mistake of disclosing improper governmental activity and federal safety violations to the NDOT Director. I soon found myself terminated from State service for a first-time offense. After a three-day hearing, the Nevada State Personnel hearing officer ordered me reinstated to my former position, but the Department has refused to do so. Instead, they are trying to demote me 16 pay grades, which is an 80-percent cut in pay. Originally, they wanted me to move 120-pound bags of dirt around the lab at NDOT. I went from serving as a highly educated, trained professional pilot to working the chain gang. When that position did not work, NDOT tried to place me into another entry-level position for which I am not qualified and could not pass the written test.

I have been on a ten-month paid vacation during a budget crisis, courtesy of the Nevada taxpayers. Before that, I was on administrative leave with pay for two months; so in total, I have had a year's vacation, costing the taxpayers over $100,000. Now my agency is appealing their losing case to the district court and have indicated they will appeal to the Nevada Supreme Court as they did with another employee who was wrongfully terminated before me. My case could end up costing $500,000. The NDOT hired a third pilot just before the decision of my hearing officer was due. Now they have three pilots with only two approved positions.

The agency indicated at my hearing that they demoted my supervisor as a disciplinary action for his federal safety violations. However, this person took a voluntary demotion and was detained at the same rate of pay for the good of the State. Therefore, there was no discipline. Grievance procedures for State employees are a joke. If agencies do not have to obey the orders of the State Personnel hearing officers, why would an employee want a hearing? It makes a mockery of the system, which is why we need A.B. 395.

State employees are being asked to do more with less. We are being forced to take furloughs. We are not receiving a cost-of-living adjustment or longevity pay. Despite those facts, there are four State personnel about to ask for a raise at the upcoming Personnel Commission meeting.

State employees need protections from vindictive administrators who feel they can terminate at will. When they lose, administrators just keep appealing. What do they care? It costs them nothing, but it does cost the taxpayers. Maybe if

litigation and settlements came out of their administrative budget, they would care. If there was an effective collective-bargaining law, these abuses of taxpayers' money would not happen. It would allow the settlement of disputes at the lowest possible level. State employees would be happier and more productive. Please pass this bill.

GAIL TUZZOLO (Nevada State AFL-CIO):
We strongly support this bill.

TERESA J. THIENHAUS (Director, Department of Personnel):
You have heard testimony that this bill will carry no additional cost to the State, but additional staff would be required to initially clarify issues that arise during the establishment of the bargaining units. After that point, additional staff will be necessary to negotiate day-to-day agreements. This would include meetings with unions and all the behind-the-scenes work, research, consultation with the Attorney General's Office, coordination with personnel representatives and agencies, and language drafting. Our staff is engaged in agency work on an ongoing basis and cannot be reassigned to perform these new tasks without having serious impact on the agencies we serve. The Department's original fiscal note submitted on April 2 for $1.3 million was based upon the need to establish a new division in labor relations. State employees are evenly divided between the north and the south, so this bill would call for new staff in both areas. In researching other state Websites for personnel departments that already have collective bargaining, it has come to my attention the agreements could be complex. One single agreement may not cover an entire bargaining unit because employees of different agencies have divergent needs and may require a separate agreement or supplemental agreement. Some collective bargaining agreements I found in my research are over 100 pages long, comprise over 50 articles and cover all issues, from parking to grievance procedures. Negotiating agreements is time-consuming and people intensive. The Department understands the bargaining anticipated by this bill would include only terms and conditions of employment.

Chapter 284 of the *Nevada Administrative Code* encompasses a large number of topics such as reclassifications, classifications, appeals, attendance, performance evaluations, training, recruitment and more. Even though the bill does not include compensation, it could include compensatory time, callbacks, standby and more. The unions have at their disposal a large number of staff to handle negotiations. They have researchers, lawyers, drafting specialists,

training specialists, clerical staff and experienced personnel to handle maintenance aspects, business managers and grievance specialists. The State needs to be afforded the same resources. The Commission is an adjunct of the Department of Personnel. This would no longer be possible with this Personnel Commission handling these items under collective bargaining. They would have to be a separate entity with their own staff.

CHAIR WOODHOUSE:
This bill has passed through the Assembly Committee on Ways and Means since it has a fiscal note. Did you testify in that Committee as well?

MS. THIENHAUS:
Yes.

CAROLE VILARDO (President, Nevada Taxpayers Association):
We are opposed to this bill, which has major problems. A fair share agreement in the bill as section 23 defines "must not be for an amount exceeding the amount of dues uniformly required of members." If you add a provision that it cannot exceed union dues, it makes me think costs are going to get to that point. The employees who are not part of the workplace unit should receive information as to how their fair share agreement was calculated. I assume you would have the same process with grievances. An employee who was not a part of the agreement unit could ask for representation, and any fees would be charged to their employer. This needs clarification. Section 15 defines the terms of employment, conditions and direct appropriations. The Committee should know there are issues related to workplace relations agreements that could involve transfers, hours of work, placement, classification and job descriptions. These could potentially have an indirect appropriation. Section 28 says the employee organization is to provide a list of membership showing representation of 50 percent of all employees within the workplace relations unit, but there is no provision for verification of that list. Chapter 288 of *Nevada Revised Statutes* (NRS) addresses submitting a verified list. This is important because frequently you will get cards from people who had signed on six to eight months before or had transferred to another unit.

Binding arbitration is to include a procedure to resolve grievances. Not all grievances should be arbitrated. The NRS 288 states agreements can determine if they are final and binding or not. Arbitration should not be binding. Not all circumstances require binding arbitration. The issue in section 37 of comparable

communities is open-ended. What is a comparable community based on? Is it based on population or economy or budget? I testified in the Assembly and provided an amendment that would have changed the bill to a grievance procedure.

TRAY ABNEY (Director, Government Relations, Reno-Sparks Chamber of Commerce):
The Chamber's agenda for economic vitality, which is our public policy manual that guides my statements, documents our opposition to public employee collective bargaining. We have heard concerns that it could cost the State money if it becomes a step towards collective bargaining for wages. This bill does not contain a no-strike clause. Please oppose this bill.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce):
Although we need a grievance procedure, this is not it. This bill is more objectionable than collective bargaining because it turns a matter over to a binding arbitrator or a judge. We focus on the ability of government to manage itself. If that process is not working, that is what we need to fix. We do not need a last-best-offer basis to arbitrators. This is no way to run government. It is aggravated by the fact different workplace rules exist depending on different units with different agreements. Under section 42, those agreements would stay in place. Once an agreement is reached, it seems it would govern from that point forward, taking away the flexibility of management. Section 15, subsection 4 says terms and conditions of employment include those that do not cause an appropriation. It would be better to say you could not do something that caused an appropriation. We believe that fundamentally, the Legislature has the role of managing the State fiscal business. This bill goes against that premise.

CHAIR WOODHOUSE:
In an effort to save time, I will read the following AFSCME testifiers' names into the record who are here in support. They are Jennifer Cooper, Kevin Ranft, Andrew Barbano, Craig Porhola and Aldo Vennettilli.

JENNIFER COOPER (American Federation of State, County and Municipal Employees):
I am a 16-year State employee with NDOT with an exemplary employment record, having achieved above-standard ratings in each position I have held. Nearly three years ago, I witnessed blatant gender discrimination by a man

against two women. After the second incident, I decided to report his behavior. I followed State procedures in doing so. This reporting did nothing but bring me retaliation. The employee's egregious behavior was condoned by our male division chief and the equal employment opportunity officer. Within one week of the report, I was forced to work directly for the man I had reported against. This incident was investigated by the Sexual Harassment/Discrimination Unit of State Personnel. More than six women testified of his current and past behaviors, which resulted in my claims being substantiated. However, no discipline came to this person, and I was forced to remain working for him.

Two years have passed. The retaliation continues. This case will be presented to the federal court system, costing taxpayers money we do not have and likely resulting in a large settlement costing even more. I was the victim. This issue could have easily been solved at the lowest level. I am an AFSCME member and have acted in the capacity of shop steward at NDOT for two years and have observed several cases where conditions worsened for the employee once it was discovered they belonged to a union. The costliest case is the one just heard of—the wrongful termination of our pilot, Jim Richardson. There is no safe haven for union member employees at NDOT.

Defending the integrity of the State does not always equal harsh actions of tyrant management. Sometimes defending the integrity of an agency means to equally investigate management. This bill will provide a level-playing field. State administrators often believe they have all the money they need to defend poor decisions. As a taxpayer, I say they do not. They have been charged with being good stewards of taxpayers' dollars. The lifeline of State services relies on efforts of State employees, not of the administrators.

MS. TUZZOLO:
We want to address the argument about fair share. Fair share is not requiring any employee to join the union or to pay dues to the union. Here is a sample of what fair share is. Let us say I am a $50,000 a year State employee and neither belong to a union nor have experienced retaliation from being a whistle-blower. I can either go to a lawyer or to the union for representation. The union will tell me they will represent me, but since I am not a union member, I must pay a fee for representation. Union dues for State employees are about 1 percent a year. In this case, my dues would cost $500. Then you take out political money spent by the union by law, and you end up with about 80 percent of union dues

that I will now pay them to represent me by choice. The $480 will be much cheaper than the lawyer. This is fair share.

RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):
For the past 25 years, I have been collective bargaining under NRS 288. The opposition has said collective bargaining for State employees will cause problems. This is not true. The Director of Personnel spoke of the costs. As I testified in the Assembly Committee on Ways and Means, I think her figures are heavily inflated. The Personnel Department is already trained in labor relations. This is something they have and can provide. Within that $1.3 million figure you heard, she listed costs for mediation and arbitration. I read in the fiscal notes and found they predicted 20 arbitrations a year. My experience has shown about one arbitration a year, so the costs are limited.

The decision of *Cone v. Nevada Service Employees Union,* 116 Nev. 473, 998 P.2d 1178 (2000), in the Nevada Supreme Court determined when someone utilizes the services of a union to take on a case or grievance, that person must pay their fair share. To make that a part of the bill is a good thing.

Collective bargaining is a two-sided agreement. Once agreed upon, it only goes to the next phase if someone violates that agreement. Assembly Bill 395 provides the same types of standards of resolving issues as using a neutral third party. The last best offer is not a part of this bill. Under NRS 288, teachers, firemen and police are afforded that provision. This bill, however, only deals with working conditions. It is completely different.

ANDREW BARBANO (National Association for the Advancement of Colored People Reno-Sparks Branch 1112; CesarChavezNevada.com; NevadaLabor.com):
My written testimony (Exhibit D) shows support of the bill which allows State workers a small reward and will save the State money from court battles.

CHAIR WOODHOUSE:
We will close the hearing on A.B. 395 and open the hearing on A.B. 293.

ASSEMBLY BILL 293 (1st Reprint): Makes various changes concerning appointments by the Governor to certain offices within the Executive Branch of State Government. (BDR 18-761)

ASSEMBLYMAN BERNIE ANDERSON (Assembly District No. 31):
I have provided my written introduction of the bill (Exhibit E) as well as a handout titled Senate or Other Legislative Confirmation of Gubernatorial Appointments (Exhibit F). In the federal system, the Senate is required to advise and consent to many of the President's important appointments, including the U.S. Supreme Court Justices and the Cabinet. Our framers of the U.S. Constitution decided the power of the Executive Branch to appoint should be tempered by the legislative power to reject or ratify the appointment. This bill is unique in that most states have a process for this; we do not. This process does not usurp the executive's power to choose, but merely provides a pause which allows time to consider and review the choice and make sure it is a good one. Most states require confirmation of various gubernatorial appointees, and at least five states have bicameral confirmations. Nevada is one of only six states that do not require confirmation of gubernatorial appointees.

Bills proposing confirmation of appointees have been introduced in past sessions and almost every session in the 1990s. However, A.B. 293 is different in a significant way. Prior bills called for Senate confirmation. This bill, instead of limiting confirmation to one House, creates a seven-member committee with three members from each House appointed by the Legislative Commission. One of the three members from each House must be a member of a minority party. The seventh member will be the Chair of the Senate Committee on Legislative Operations and Elections, who would only vote in the case of a tie. The Legislative Committee on Appointments would be a balanced committee representing both parties and both Houses.

As in the other states, only certain appointments by the Governor would be affected, namely, the Departments of Business and Industry, Conservation and Natural Resources, Corrections and Taxation. Legislative confirmation would also be required for the Chair of the Nevada Gaming Commission and the appointments of members to the Public Utilities Commission of Nevada, the State Board of Parole Commissioners and the State Gaming Control Board.

The Governor would make an initial appointment that would be honored for 60 days. The Legislative Committee on Appointments would conduct its investigation and hold hearings on the appointee. The bill specifically prohibits the Committee from delving into the budget or current administration of the department or agency. The investigation and hearing would be limited to consideration of the appointee's professional qualifications and experience,

fitness for office and a criminal-background check. In the unlikely situation that an appointee or witness fails to cooperate with the Committee, the bill grants the Committee the power to go to court to compel testimony and produce evidence. These hearings would give the public an important opportunity to learn about the people being appointed to critical State positions and ensure the people being appointed are honest about their educational and professional backgrounds and have no criminal records. If the Legislative Committee on Appointments fails to reject the appointment, the position is confirmed. If the Committee rejects the appointment, the position becomes vacant and that person may not be appointed to any other office for one year.

This bill is not a violation of the separation of powers. Long ago, Nevada case law established the appointment authority is not exclusive to the Executive Branch. Article 15, section 10 of the Nevada Constitution specifically states that, except for appointments provided for in the Constitution, persons "shall be chosen or appointed as may be prescribed by law." Since this bill only affects appointment to departments, boards and commissions created by the Legislature, it is within our power to prescribe the process for those appointments. Finally, the bill does not interfere with the Governor's power to choose whomever he wants. It merely gives the Legislature an opportunity to either reject or ratify his choice. This is an important distinction.

The intent is to avoid appointments of old cronies over those persons qualified to run critical State agencies. Governors from both parties have succumbed to poor choices that could have been avoided if an independent body like the Legislative Committee on Appointments had a chance to vet the appointee and to reject those who lacked the minimum qualification or were otherwise unfit for the position. Here are some examples of lawsuits which this bill would prevent.

• Lieutenant Governors who make appointments when the Governor is out of State—Oddie in 1914; Sawyer in 1965; Miller in 1997

• Governors who make invalid appointments at the end of their terms—Pittman in 1951; Guinn in 2006

• Governors who overlook statutory requirements for an appointment—Russell in 1951; Miller in 1995; Bryan in 1989

• Governors who appoint someone who cannot handle the directorship of a department—Miller in 1995, Taxation

• Governors who appoint a person as a department head despite the lack of a required college degree—Guinn in 2002, Cultural Affairs

This list goes on. This bill is not about second-guessing the Governor or politicizing the appointment process. As in the federal government, the majority of appointments will sail through, but extremists will not. This bill is about letting the public see the people chosen for these critical positions and providing meaningful input on the front end. It is about ensuring Governors, regardless of party, make reasoned choices and select persons who are qualified. This bill affects only a small number of the hundreds of appointments a Governor makes during a term.

Please support this bill, which will bring transparency to the selection of persons who are entrusted with running multimillion-dollar departments within State government or making and enforcing policies on boards that affect some of our most important industries and public safety. If a Governor makes a thoughtful choice, his appointment will be confirmed. But if he picks an unqualified buddy for a crucial position, this bill will prevent the inevitable disaster that occurs when incompetent people are put in charge.

Will the Governor veto this bill? Of course he will. It is a question of Executive and Legislative Branch differences.

SENATOR WIENER:
I appreciate the historical perspective on this issue. Another bill, Senate Bill (S.B.) 330, deals with the Department of Education and reform. One provision was the ratification of an appointment through the Senate. Due to the budget, it might be one person making that decision. I question why the Superintendent of Public Instruction at the Department of Education was not included?

SENATE BILL 330: Enacts the Initiative for a World-Class Education in Nevada. (BDR 34-171)

ASSEMBLYMAN ANDERSON:
The Department of Education has been held up for critical examination over several sessions. This bill was modeled after one from Senator Dean A. Rhoads,

and the list of appointees is the same as the one he had created.

SENATOR WIENER:
Would you consider, due to the major influence that person has over policies governing our children, including the Department of Education Superintendent on your list of appointees? In the Senate Committee on Health and Education, we have carefully considered the idea of putting that position on the list. Although the position is not currently appointed in that fashion, we have looked at this option in the future. This is not a reflection of the current superintendent but establishing a policy going forward.

ASSEMBLYMAN ANDERSON:
Although I have no problem broadening the list, it may be the best tactic to get a limited list on the bill before the Governor first. Later, we can add to the list. With the possibility of him vetoing the bill, time is our enemy.

This bill is not a reflection of current administration. As a past teacher of American government, this issue has always bothered me. Why do both Houses not get involved in the public examination of appointees? I have researched the Constitutional Convention of 1787 and noted a trade-off. The Senate was given this opportunity to review appointments while the House of Representatives was charged to originate money questions. However, we do not have that luxury.

SENATOR LEE:
This bill does not contemplate this Governor because of the future effective date. If we needed a new member of the Public Utilities Commission, the Governor could make an appointment right away, correct?

ASSEMBLYMAN ANDERSON:
Yes. It is critical these positions are filled as soon as the Governor can do so. We have a 60-day window to vet out the appointees. If the Legislature decides not to investigate, the appointment stands. This was amended into the bill from the Assembly. We want to ensure a smooth flow. If the Assembly and the Senate disagree on an appointee, the Chair of the Senate Committee on Legislative Operations and Elections breaks the tie vote.

CHAIR WOODHOUSE:
We will close the hearing on A.B. 293 and open the hearing on S.B. 370.

SENATE BILL 370: Makes various changes relating to the legislative process. (BDR 17-1030)

BRENDA ERDOES (Legislative Counsel):
This bill was requested by the Secretary of the Senate and the Chief Clerk of the Assembly. The NRS 218.272 to NRS 218.2758 address an issue from the past interim regarding fiscal notes. This section is meant to clarify an ambiguity. Those provisions say the presiding officer of either House can ask for a fiscal note. This is important for the Senate since the Lieutenant Governor is serving as the presiding officer, so he is designated as the majority leader and could ask for fiscal notes.

Section 2 was repealed, but it was later noted that half of the section should remain. The mock-up bill (Exhibit G) shows how we edited the bill to include what should remain.

The stricken text addresses obsolete reprinting procedures of handwriting the amendment on the bill. I support striking that language. There are provisions in NRS 218 which are archaic. Each session we try to clean those up. These revisions normally go into the rules of the two Houses.

Lastly, the bill repeals NRS 218.320. It is no longer necessary and has been ironically made obsolete by this mock-up amendment. This type of document is now used frequently in the Assembly to serve as the reprint so they can vote the bill through. By taking the section out, it leaves the choice to the two Houses if they want to wait for a reprint before passing a bill to the next stage. We print each reprint and then post the history of the bill on the Internet. It is not reprinted before the vote is taken on that reprint.

SENATOR WIENER:
I recall you worked with the Research Division several sessions ago to delete antiquated statutes, Ms. Erdoes. Is this antiquated language from this Session? I have made a commitment to respond to constituent concerns that all we do is pass more laws but never delete any. It is my goal to get rid of antiquated bills each session. Ms. Erdoes has agreed to work with the Legislative Counsel Bureau Research and Legal Divisions to scour for any antiquated language.

CHAIR WOODHOUSE:
We will close the hearing on S.B. 370 and open the hearing on A.B. 535.

ASSEMBLY BILL 535 (1st Reprint): Makes various changes relating to the Legislature and the Legislative Counsel Bureau. (BDR 17-957)

LORNE J. MALKIEWICH (Director, Legislative Counsel Bureau):
This bill is a generic bill to address several miscellaneous, minor matters at once rather than in separate bills. Any changes are severable and can be expanded or deleted without affecting the remainder of the bill. Section 1 provides any study submitted to the Legislature can be submitted electronically. We want to move in this direction to be more efficient and save our trees. We no longer need copious amounts of copies.

Sections 2 and 3 make an exception to current law which prohibits former Legislators from using their official stationery and business cards. Now they can use these supplies if it identifies them as a former or retired Legislator.

Sections 4, 5, 7, 8, 12, 13 and 14 make the same changes to statutory committees when a Legislator is either not a candidate for reelection or is defeated. These sections all have the same change that Legislators continue to serve until after the general election or until the convening of the next regular or special session.

Sections 9.5 and 10 take a different approach for dealing with the Legislative Commission and the Interim Finance Committee (IFC). These are the same provisions found in A.B. 232, which you passed unanimously yesterday. The IFC membership changes when the election is over, with new members of the Assembly Ways and Means Committee and new members of Senate Finance becoming members of the IFC. For the Commission, membership ends the day after the election when the alternates take over. It was in the rule before; this is now being written into statute.

ASSEMBLY BILL 232: Revises provisions governing the Legislative Commission and the Interim Finance Committee. (BDR 17-810)

Sections 5 and 6 concern the Legislative Committee on Public Lands, which has always had far more than the required number of Legislators interested in serving on it. We made a note to expand the membership to four members per House. Because of the interest in that Committee, we have been appointing alternates over the past few sessions. This specifies alternates are authorized and can be appointed by the Legislative Commission. A minor issue also

provides that when an alternate is serving, if possible, they belong to the same House and party. If a Senate Democrat cannot make the meeting, then another Senate Democrat should stand in.

Section 11 changes the description of the Administrative Division and its duties and reestablishes alphabetical order in the section. It adds some duties and takes away those no longer needed.

SENATOR LEE:
As a member of the Legislature, I can only attend one trip a year on legislative business, correct?

MR. MALKIEWICH:
That was the rule until we closed the budget and put no money for out-of-state travel for the coming biennium. In the past, you could attend up to three trips, two with regular funding and one with minimal funding. We had proposed cutting that to one regularly funded trip before we found there was no funding for travel.

SENATOR LEE:
If a Legislator lost their election, would this bill preclude them from taking a trip for legislative business? We should stop that occurrence.

MR. MALKIEWICH:
I do not believe a person can serve in any event after the election. Their term ends the day after the election. The reason they continue to serve on the statutory committees is because the statutes gives them that authority.

SENATOR LEE:
If a Legislator who had not been reelected was on the Public Lands Committee, and the Committee was traveling to Elko, could they serve in that capacity and go on the trip?

MR. MALKIEWICH:
In that case, they could go on the trip, serve as a Legislator and be reimbursed. Statutes say for limited purposes, until the Legislature meets in regular or special session, they can continue to serve.

The mock-up amendment (Exhibit H) is the result of litigation we had in the interim. We used to tell our new attorneys we had little litigation, but that has changed recently. Our experience over the past interim has led us to propose an amendment concerning the Legislative Counsel getting involved in legal cases. In the new section 11.2 of the amendment, the first clause broadens the interests we can protect. It used to just say legislative committees, but we want to include the Chief Clerk, the Legislative Counsel Bureau and others. It also broadens the type of proceedings in which we can be involved. We can be involved in other jurisdictions, not just this State or even the United States. The top of page 2 of Exhibit H states that if we get involved in such a case, we will not pay any filing or attorney fees. This is not a fiscal issue. Subsections 2, 3 and 4 on page 2 relate to the issue of an intervention. In a case where two parties outside the Legislature are in court and one party is claiming a statute is unconstitutional, we have been given authority to intervene and defend the constitutionality of that statute.

Subsection 3 came from Kevin Powers. He spent this interim arguing the claim we are not allowed to intervene. This bill says we can do so. Subsection 4 restricts our intervention. We are not an indispensable party to the case. We do not have to be involved in private litigation. It is a matter of choice for the Legislature when a statute is being challenged and the Legislative Counsel agrees for us to get involved. Kevin Powers has asked this go into effect on passage and approval in case we get sued between the end of Session and July 1. We might want to add a sunset clause on prefiling of agency bills. This provision has worked well to get bills introduced earlier.

CHAIR WOODHOUSE:
We will close the hearing on A.B. 535 and open the hearing on Assembly Concurrent Resolution (A.C.R.) 19.

ASSEMBLY CONCURRENT RESOLUTION 19: Directs the Legislative Commission to conduct an interim study of the requirements for reapportionment and redistricting. (BDR R-1281)

MR. MALKIEWICH:
When I testified on this resolution in the Assembly, I was concerned about the consequence of term limits. With 12-year term limits, almost no one will go through reapportionment twice. We will have almost no experience in the Assembly during reapportionment, with a maximum of four Assembly members

who will go through this a second time. This standing Committee has more members than the Assembly who have gone through reapportionment. Senators Lee, Cegavske, Hardy, Wiener and Raggio have gone through the process. About ten Senate members who are not term limited could return. The Senate is in better shape in their experience of reapportionment than the Assembly. As you recall, during the interim between 1999 and 2001, we had an interim study on this topic to prepare for reapportionment. We have worked on it for years and believe you will want to repeat the study for the 2011 Session.

DONALD O. WILLIAMS (Research Director):
I am here to provide background information on previous studies, two of which were staff studies and two of which were Legislative Commission interim studies. Both the 1991 and the 2001 Session studies shared common elements and are almost identical to A.C.R. 19. The common scope, structure and staffing are detailed in my written testimony (Exhibit I). In 1999, the Legislature adopted S.C.R. No. 1 of the 70th Session, which directed the Legislative Counsel Bureau to study and make recommendations to the 2001 Legislature concerning the requirements for reapportionment and redistricting in Nevada in conjunction with the 2000 Census.

A study committee was active in promoting and monitoring of the 2000 Census. They also reviewed legal and technical issues, directed staff activities related to selection of hardware and software to be used, and sponsored the *Redistricting News*. I have provided three issues for the record (Exhibit J, Exhibit K and Exhibit L). That study recommended that the 2001 Legislature adopt proposed rules for reapportionment and redistricting designed to promote the development of constitutionally acceptable redistricting plans that address equality of representation. It also recommended the use of the 2000 Census as the exclusive database for redistricting and that we follow Census geography to create district boundaries and comply with the federal Voting Rights Act of 1965. It designated the Standing Legislative Committees be responsible to create committee procedures and gain public participation in all aspects of reapportionment and redistricting. Those recommendations were adopted by the 2001 Legislature and incorporated into the Joint Standing Rules of the 71st Session.

This information, available on our Website as noted in Exhibit I, will be updated during the interim and the next Session. Michael Stewart, Supervising Principal

Research Analyst, will be the lead Research Division technical and policy staff on this project. He has prepared a list of key reapportionment and redistricting issues for consideration during the coming interim (Exhibit M).

MR. MALKIEWICH:
Redistricting between the 1981, 1991 and 2001 Sessions is substantially different due to technological improvements. Since so few Legislators are returning, I want to assure the Assembly we have been working with the Census Bureau and have been preparing for this event.

KATHY STEINLE (Geographic Information Systems Specialist):
I am here to speak on the U.S. Census Bureau's Phase 2 Voting District/Block Boundary Suggestion Project. This Project allows us to submit our precinct boundaries to the Census Bureau for inclusion in the 2010 Census tabulations. We will be receiving population totals in 2011 by precincts, in addition to county, city and smaller Census block totals. The information accompanying the precinct population totals will help us draw our district boundaries.

To complete the Phase 2 Project, the Census Bureau has supplied us with software that allows us to draw our county precinct boundaries. Precincts are no longer required to follow visible geographic features as they were prior to the 2000 Census. This, coupled with the improved spatial accuracy of the roads, has allowed us to submit much more accurate precinct boundaries.

The five members of the staff assigned to the project are Brian Davie, Bob Erickson, Patrick Guinan, Michael Stewart and me.

The Census Bureau sent us our data broken down by counties in late 2008. We were given five months to draw precinct boundaries and submit them to the Census Bureau.

We worked with all 17 counties to ensure we had accurate electronic and physical precinct maps and descriptions to work from. In a few of our rural counties, only minor changes were needed and the work went fairly quickly. Clark County is substantially completed, except for a few Census blocks we were unable to assign due to data problems. The Census Bureau is currently correcting those areas and will return the corrections to us for verification before we submit the final boundaries. We were able to complete and submit the remaining counties by the May 1 deadline.

The Census Bureau will send us verification materials this winter, and we will have until March 2010 to submit verification corrections.

CHAIR WOODHOUSE:
We will close the hearing on A.C.R. 19. The Senate Concurrent Resolution 26 will be heard at our next work session. This meeting will adjourn at 6:14 p.m.

SENATE CONCURRENT RESOLUTION 26: Provides for an interim study on employee misclassifications. (BDR R-1297)

RESPECTFULLY SUBMITTED:

Karen Johansen,
Committee Secretary

APPROVED BY:

Senator Joyce Woodhouse, Chair

DATE: