

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Sixth Session
April 7, 2011**

The Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 1:17 p.m. on Thursday, April 7, 2011, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Marcus Conklin
Assemblyman Richard (Skip) Daly
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Richard McArthur
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nancy Davis, Recording Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Janine Hansen, President, Nevada Eagle Forum
Scott Gilles, Deputy for Elections, Office of the Secretary of State
Larry Lomax, Registrar of Voters, Clark County
Nicole Lamboley, Chief Deputy, Office of the Secretary of State

Chair Segerblom:

[Roll was taken.] I want to thank Assemblywoman Flores for all her hard work on Assembly Bill 81 and Assembly Bill 82. Now, our Committee policy analyst will take us through the work session.

Patrick Guinan, Committee Policy Analyst:

Although the Committee has binders, and there are handouts of the work session document for the public. I want to point out that the work session document is also on the Nevada Electronic Legislative Information System (NELIS); however, it is 157 pages long, so working through it on NELIS is tricky.

For your information, there is a sheet of paper right behind the title sheet entitled "Summary of Changes to A.B. 81 and A.B. 82 proposed by the Secretary of State" ([Exhibit C](#)). The sections that have been deleted are in the black ink, sections with new language are in green ink, and sections or portions of sections that have been retained are in orange ink.

We will start with Assembly Bill 81.

[Assembly Bill 81](#): Revises various provisions relating to elections. (BDR 24-406)

Patrick Guinan, Committee Policy Analyst:

[Mr. Guinan read a summary of the bill and proposed amendments from the work session document ([Exhibit D](#)).]

Looking at the "Summary of Changes" sheet ([Exhibit E](#)), sections 4 and 31 dealt with civil penalties and stated that if you had a civil penalty against you that was unpaid, you were prohibited from running for office. Those sections have been deleted.

Chair Segerblom:

Ms. Hansen, is that okay with you?

Janine Hansen, President, Nevada Eagle Forum:

Great.

Patrick Guinan:

Next is section 16.1, subsection 3, which contained language about party recognition and minor party candidates' names being printed on a ballot. That has been deleted. Section 16, subsection 4, which is related, talked about striking a minor party candidate from a ballot under those same provisions.

Section 20 contained increases to filing fees for most offices. That section has been deleted, so the filing fees will remain the same.

Section 22 involved moving nonpartisan judicial offices higher on the ballot. That entire section has been deleted.

Chair Segerblom:

Scott, did you want to make a comment about that?

Scott Gilles, Deputy for Elections, Office of the Secretary of State:

I am speaking with respect to section 22 of A.B. 81 only. It was a provision that revised the ballot order so that Supreme Court Justices would be listed along with other offices such as Governor, Lieutenant Governor, Secretary of State, Controller, and a few others.

As the ballot exists right now, Supreme Court Justices, who are the highest members of the Judicial Branch, are listed on our ballot below statewide nonpartisan offices. As an example, Searchlight's Constable is listed higher on the ballot than are the Supreme Court Justices. We feel this should be changed as we feel the Supreme Court Justices are due more respect than that on our ballots. As such, we respectfully reintroduce our section 22 as an amendment back into the bill.

Assemblyman Hickey:

I thought we wanted to remove politics from judicial choices?

Chair Segerblom:

Is there a reason why you want the Justices listed above the State Senators and Assemblymen?

Scott Gilles:

No particular reason. We just felt it was appropriate for the Justices to be listed there. If you look at the statute now, the category at subsection 3 lists the Governor, Lieutenant Governor, Attorney General, Secretary of State, and the Controller.

Chair Segerblom:

State Senate and Assembly seats are partisan offices. After they are listed, the nonpartisan offices would start. Is that correct?

Scott Gilles:

Correct.

Chair Segerblom:

Does everyone understand that proposed amendment? [There was no response.] We are going to go through the bill now and then vote.

Assemblyman Conklin:

There is a time-honored split on the ballot, and partisan offices go first. If the Supreme Court wants those seats to be partisan, we should have that discussion, and they should go on the ballot with the constitutional officers. So long as it is a nonpartisan office, it needs to be with the nonpartisan offices.

If they are at the bottom of all the nonpartisan offices, and it is a statewide race, they should be moved to the top because it is a statewide race and that would be consistent with our balloting practice. Certainly, we could move them to the top of the nonpartisan offices, but I think you confuse the voters when you mix partisan races with nonpartisan races.

Chair Segerblom:

All right.

Patrick Guinan:

We are now at section 27 of the bill, which adds new language regarding calls for recounts on statewide offices and ballot questions. Originally, Larry Lomax, the Registrar of Voters in Clark County, requested an amendment in this section of the bill that can be found on the last page of the work session document. I spoke with Mr. Gilles about Mr. Lomax's proposed amendment, and I believe the new language in section 27 has resolved his concerns regarding

recounts. It might be useful for the Committee to hear from Mr. Lomax to make sure this new language in section 27 does meet his concerns. You might also want to hear the Secretary of State's Office explain why this language is the way it is.

Chair Segerblom:

Mr. Lomax, do you have section 27 in front of you?

Larry Lomax, Registrar of Voters, Clark County:

Yes, I do, and the Secretary of State's proposed amendment would be fine.

Chair Segerblom:

Mr. Gilles, could you explain what you have done?

Scott Gilles:

We felt there was some confusion in the statute as it currently read. Our initial change essentially provided the opportunity to request a recount just on the paper mail ballots. We wanted to clarify that, in the case of a recount, the person demanding the recount is going to select 5 percent of the total number of precincts, although, in some cases, that has to be no fewer than three precincts. The recount in those precincts would be done in the same manner by which they were originally tabulated. I do not know if that was entirely clear from the way the statute originally read. If the total combined discrepancy is greater than 1 percent, then the person who demanded the recount is entitled to a full recount. We wanted to clarify that procedure within the statute, and separate it to recounts in city and county races as opposed to multicounty and statewide races and statewide ballot questions. We think we have clarified the process for requesting a recount. We also believe we have clarified the standard for obtaining a full recount and how that process should work. We did discuss this with Mr. Lomax. As he indicated, he is okay with the changes.

Patrick Guinan:

Now we are at section 28 of A.B. 81. Section 28 proposed that employers would have to allow employees to take time off from work in order to participate in caucuses of a political party for nomination of candidates for President of the United States. That section has been deleted in its entirety.

I want to address section 36, subsection 5; there is new language defining the term "campaign expense" that can be found on pages 22 and 23 of the mock-up. Section 36.5 reads that "campaign expenses" means all expenses incurred by a candidate for a campaign, including, without limitation:

- Office expenses.
- Expenses related to volunteers.
- Expenses related to travel, advertising, paid staff, consultants, polling, special events, a legal defense fund.
- Contributions made to another candidate, a nonprofit corporation that is registered or required to be registered pursuant to *Nevada Revised Statutes* (NRS) 294A.225, a committee for political action that is registered or required to be registered pursuant to NRS 294A.230, or a committee for the recall of a public officer that is registered or required to be registered.
- Other expenditures as defined in NRS 294A.004.

Chair Segerblom:

So these would be the items we would have to identify on the reporting form sent to the Secretary of State.

Assemblywoman Kirkpatrick:

Currently on the campaign expenditure form, there is a place for candidates to place miscellaneous items. Is that defined in NRS 294A.004? There are occasions when an expense does not fit into any of the categories that were just named.

Scott Gilles:

There will be on the reports. Section 59 revises what needs to be on the report as a miscellaneous category, because NRS Chapter 294A does not list miscellaneous expenses. It lists examples of campaign expenses, so we would not list "miscellaneous" as an example of a campaign expense.

Assemblywoman Kirkpatrick:

What if you donate to the schools within your district or give silent auction items? Where do those fit? I do not believe campaigning is so much about advertising as it is about giving back to my district.

Scott Gilles:

For reporting purposes, those would fall under miscellaneous expenses, so when you report, that is how you would categorize them. We believe they would still fall within the catchall definition of campaign expenses; they are just not specifically listed under our list of examples. It is a "without limitation" list.

Chair Segerblom:

So, instead of including a specific expense, you would write "miscellaneous"?

Scott Gilles:

No, there will still be a miscellaneous expenses category on the report.

Chair Segerblom:

All right, so the items listed are not exclusive.

Scott Gilles:

No, this is just the definition of campaign expenses, whereas, in section 59, we list the categories to report.

Assemblyman Daly:

I have filled out these reports, and every time we made a contribution to a candidate, we always use "miscellaneous." Are you saying there is going to be an additional option on the new reporting form?

Scott Gilles:

You have pinpointed exactly why we have made this change. As the reports read previously, a contribution made would be listed as miscellaneous. We noticed that and decided to prescribe a category for those types of contributions to groups that are politically active. That is why we created this new report category and included that contributions language as the definition for campaign expenses.

Assemblyman Daly:

This does not change the "but for" definition regarding what campaign money can be used for. "But for" being elected to office, one would not have this expense. Can that argument still be made, and would that expense be categorized as miscellaneous?

Scott Gilles:

Correct. This does not change how you could use any of your expenses. It simply creates another category to accurately report that it is a contribution versus a miscellaneous expense.

I would like to direct the Committee to page 53, section 58 of A.B. 81. You will see that the section revises NRS 294A.365, which is the actual listing of the categories that will be reported. You can see that this new contributions language will be category (k), and miscellaneous will now be category (l).

Assemblyman Hickey:

Regarding section (j) on page 23—contributions to other candidates—are we going to describe who the candidate was, or do we report a lump sum under miscellaneous or under category (j)?

Scott Gilles:

If I understand your question, you are asking whether you have to specifically identify the candidate when you list a contribution to a candidate. I do not know that the language as it reads would require that; however, the candidate would be required to identify who he received the contribution from.

Chair Segerblom:

You would have to record who your check was written to.

Scott Gilles:

Correct.

Assemblywoman Smith:

I have a question, but not one related to this amendment. Concerning "in kind" expenses, the way the form is constructed, is that phrase defined? Does it have to be constructed that way by law, or can it be reworked to make it more understandable without having it changed in statute? It is a very confusing part of the reporting process.

Scott Gilles:

I am not exactly certain what concern you are expressing with respect to "in kind" contributions. We will be reworking our campaign and expense (C&E) reporting website if the mandated online filing of C&E reports passes, and we have some discretion to change the forms pursuant to statute. If we are restricted by statute from addressing the concern you have, then, yes, it would need to be changed by statute. That is something I am more than happy to speak with you about.

Assemblywoman Smith:

I will take a look at it. All you have to do is look at the forms that are filed and see that everyone does it differently to know it is confusing.

Nicole Lamboley, Chief Deputy, Office of the Secretary of State:

Nevada Revised Statutes 294A.373 actually defines the universal form for reporting of contributions and expenses. I would refer you to the sections that read that the information can be specifically required by statute, and must be obtained with "the advice and consent of the Legislative Commission before providing a copy of a form" So the form does require legislative approval, and we are required to only provide the information that is statutorily permitted.

Assemblywoman Smith:

I would like to talk with you about it. I do not have a problem with what is required to be permitted; I have a problem with the way the form is

constructed. As I said, everyone reads it a different way and reports it a different way, so I will work on that with you.

Patrick Guinan:

This conversation concerning the forms began the other day. The Secretary of State made the same comment, that he was willing to work to make the forms more workable, and a statement to that effect is part of the record in the work session document. Also part of the record is the discussion we had today.

Section 38 of the bill was deleted. It dealt with reporting on campaign spending by unaffiliated groups.

Chair Segerblom:

Does that remove the limit on political action committees (PAC)? Can they make unlimited expenditures?

Scott Gilles:

Mr. Chairman, can you clarify your question?

Chair Segerblom:

Regarding section 38 that was deleted, are the PACs now able to spend unlimited amounts?

Patrick Guinan:

That is addressed on page 24 of the mock-up.

Scott Gilles:

We are trying to determine why section 38 was in the bill in the first place. We believe it was language either included by amendment from last session or added by the Legislative Counsel Bureau. Is your question whether there is a limit on contributions to PACs?

Chair Segerblom:

That has been removed, right?

Scott Gilles:

It was never in the bill.

Chair Segerblom:

Right. Thank you.

Patrick Guinan:

Section 41 of the bill was deleted. It was on page 26. Section 42 was deleted. It contained deadlines for campaign contribution reporting that have been removed from the bill. I believe some of this language has been moved to the clerk's bill, and the same with section 43.

Sections 44 through 48 and section 57 retained language that was initially removed regarding reporting close to elections or changes to the number of days you have in which to file reports.

Section 54 contains new language stating that campaign contributions cannot be used to pay civil or criminal penalties. Section 58 contains new language that we talked about a few minutes ago. The language adds that expenses can include contributions to other candidates and nonprofits, and also reworks the list of expenses, including miscellaneous expenses.

Assemblywoman Smith:

Referring to Assemblywoman Kirkpatrick's question about donating to a school, that issue is covered in section 58 at item (k), because it refers not just to contributions to other candidates but also to nonprofits.

Scott Gilles:

I do not believe it would be covered under that section because it refers to a nonprofit corporation that is registered or required to be registered pursuant to NRS 294A.225. If you look at the requirements for registration, I believe it implies political activity.

Assemblywoman Smith:

Only that type of nonprofit. Okay, thank you.

Patrick Guinan:

The last section, 59, contains new language that expresses that PACs affiliated with one another are going to be treated as one PAC for reporting purposes, and that the Secretary of State will define the term "affiliated" for the purposes of reporting. And that is it for new language and deletions for A.B. 81.

Assemblyman Goicoechea:

When you talk about a group of PACs or affiliated PACs, if there were four or five different PACs, would that bring them under the limit of what they could contribute as a combination? So could you end up with five PACs being able to contribute only \$2,000 each?

Scott Gilles:

The intent of the language concerning affiliated PACs is to prevent groups of people from exceeding the \$10,000 contribution limit to a single candidate. As an example, you are PAC A and have \$20,000 to contribute to a candidate. What we want to prevent is PAC A setting up PAC B at the same address with the same officers, sending that candidate \$10,000, and having PAC B also contribute \$10,000 to that candidate. It is essentially an end-around the contribution limits and the prohibition on contributions in the name of another.

Assemblyman Goicoechea:

Suppose the Republican Caucus has three or four PACs. Technically they would be caucus PACs—one might be a rural Republican PAC, one might be a leadership PAC. If you took this interpretation literally and combined them, that would clearly limit the amount of money—\$10,000—that the Republican Caucus could give to a candidate. They are somewhat affiliated, and that is our caucus or yours.

Chair Segerblom:

I understand. It works both ways. The key would be that if each PAC raised money separately and kept separate books then, even if they had the same address, you could make contributions, but you could not raise one contribution to the one PAC and have that PAC give it to a separate PAC and then both PACs make \$10,000 contributions.

Assemblyman Goicoechea:

It is all in the interpretation.

Assemblyman Conklin:

What we are really talking about here is diluting for the purpose of circumventing a law. We are talking about someone raising \$500,000, sticking it into a PAC, and dividing it up among 50 PACs with each of the 50 PACs contributing \$10,000 to one person. We are talking about fixing that. I think the language fixes that problem, although we are not sure exactly what "affiliated" means. The Minority Leader's concern is whether it fixes that problem but unintentionally restricts other purposes.

Scott Gilles:

Our language is modeled after a federal code. They addressed the issue by defining "affiliated" by regulation, which is what we intend to do. This is going to come down to how affiliated is defined. To answer the Assemblyman's concern, if he is referring to a situation where a PAC collects \$10,000 donations from multiple sources and is simply intending to contribute that money to a candidate, essentially in a bundle, if that PAC discloses exactly

where each of those \$10,000 increments came from to the candidate, that would not be a violation of the contribution limits.

Assemblyman Conklin:

Could you explain that again?

Scott Gilles:

Let us say PAC A received \$10,000 from five different people. PAC A can take that \$50,000, make a one-time \$50,000 contribution to a candidate, and disclose exactly where that money came from. That does not violate the contributions made in the name of another as long as the true source, the contributor, to PAC A is disclosed.

Chair Segerblom:

PAC A cannot give \$50,000; it can contribute only \$10,000.

Assemblyman Grady:

Would PAC A have to file and disclose where its money came from? PAC B would have to disclose where its money came from.

Assemblyman Conklin:

Under the current law, I think PAC A discloses where it gets its money. Is that right? But PAC A is allowed to make only a \$10,000 contribution. It could make a big contribution to another PAC, but to a candidate, the maximum is \$10,000 per the entire election cycle, so that could be \$5,000 for the primary and \$5,000 for the general election. That is currently the case, but I do not think we should open a can of worms concerning tracing the source of that money because the contribution is tied to \$10,000 to a candidate. I do think there is an issue about diluting a pocket of money only to revert that money to a new source. I am not sure the language is right, and at the end of the day, the definition of affiliated is going to matter.

Assemblyman Ocegueda:

I wonder the same thing. I understand what we are trying to do, but I think Mr. Goicoechea's question is relevant. Let us say the Republican caucus has a PAC and its address is 123 Main Street. The address for Mr. Goicoechea's leadership PAC is also 123 Main Street, and Mr. Goicoechea's personal campaign fund is also listed at 123 Main Street. We are not trying to prevent that. Those three seem to be legitimate, but it seems as though this language may limit that.

Assemblyman Goicoechea:

That is exactly what I am talking about, and the same situation could occur to the Majority Leader. I could give a candidate \$10,000 and give another \$10,000 to another PAC. Technically, that second PAC can write a check to that candidate for \$10,000. That is what we are trying to avoid.

If my caucus or I personally am using one mailing address for four or five different PACs, and if two of those PACs contribute to one candidate, under this interpretation, I think I could be caught up in a violation.

Chair Segerblom:

As I understand it, what you do not want to do is have a PAC give \$10,000 to a candidate and then give another \$10,000 to another PAC that then directs the money back to that same candidate. The PAC effectively then contributes \$20,000. As I read this, we need regulations that would have to come to the Legislative Commission to be reviewed.

Scott Gilles:

Mr. Chairman, we intend to closely follow the federal regulations on this, which, in a very lengthy manner, describe what affiliated means. I do not think it will, nor is it intended to, prevent what Assemblyman Goicoechea is referring to. We are trying to eliminate one source being able to give more than \$10,000 to an individual candidate by setting up a separate PAC, shifting money to one side, and then sending it to the candidate.

Chair Segerblom:

You do not seem to have assuaged any of the concerns.

Assemblyman Daly:

I agree with the Majority Leader that it is going to depend on the meaning of affiliated. When you file as a PAC, do you complete any forms that ask whether there are any affiliated organizations? Is there something already in statute that would cover this so an investigation could be done? What is the standard going to be? There may be 20 or 30 entities listed at one address. What would tie things together so that they are affiliated? Once the ties are enumerated, people might select different addresses and agents, so I am not sure you are going to solve this very easily.

Nicole Lamboley:

As my colleague stated, the federal government has addressed the issue of affiliated PACs. It is our intent to take their standard that has been defined for federal candidates and offices and adopt it as the state standard for the definition of affiliate. It has already been worked through, and that process

seems to be understood by people who engage in political action on a national level. That would be the same standard that we could adopt here.

Assemblyman Daly:

As I understand the federal rule, they look at a labor organization as one entity, so for federal candidates, the limit is \$10,000 and it does not matter that there are 400 different local unions and district councils across the country—the limit is \$10,000 for that whole group. If you are going to try to do that at the state level, I think you are going to create a lot of problems. I am a member of a separate local, but then there is a local in Las Vegas, and that is the same with several other unions. If you lump them together as the federal government does, you are going to get resistance.

Assemblyman Goicoechea:

I am sorry, Nicole, but the federal track record is not that great, so that really does not give me much assurance.

Assemblyman Hardy:

Could you go back to section 49, subsection 5, on page 47, and explain it to me?

Scott Gilles:

The reason for that is pretty simple. In the past, we have experienced groups coming into the state, not registering, and making an independent expenditure. In the group's opinion, it made one independent expenditure composed of purchasing 200 commercial spots. The argument that has been brought to us is, "Okay, we did not register; we violated the statute; we had one independent expenditure; we purchased one group of commercials." The argument they make is that it was one activity and they will gladly pay the \$5,000 fine and move on. That commercial ran 200 times, yet they are getting off way too easily. The intent of this legislation is to allow us to fine them multiple times for those multiple activities.

Assemblyman Hardy:

So it is an open fine for each activity?

Scott Gilles:

The fine is dealt with in NRS 294A.420, and it is up to \$5,000 per fine. These groups come to Nevada and violate this rule. They run 300 or so commercial spots and say, "Here is our \$5,000. Thanks for letting us do business." We want to prevent that.

Assemblyman Goicoechea:

On the other hand, what if you unintentionally violated this provision and ran 300 regular ads. The fine would be \$150,000. I have a real problem with being hit that hard for a first offense, so I am concerned about it. Maybe a PAC would run 300 to 400 radio ads in Winnemucca. Those ads could be aired before you caught on to them and they realized they were in error.

Scott Gilles:

I understand your concern. The fine would be "up to \$5,000." The way this process works, if the violation occurs, we are going to hand it to our Deputy Attorney General, who would bring it to a court action. The court will ultimately make a determination. If it is a *de minimus* violation, as you are describing, chances are the court is not going to hammer someone \$5,000 for every activity. We also intend to be reasonable in our enforcement of this provision.

Assemblywoman Kirkpatrick:

This is really to prevent out-of-state people from coming into our state, creating havoc, and then leaving. Is that correct? I would think in-state people would know the process, or it should be very clear. It is the out-of-state folks who tend to come to Nevada, not follow any of the rules, leave, and then just write a check. At the end of the day, they did not really lose anything. They probably figured the fine into the cost of doing business.

Scott Gilles:

It will address out-of-state activity as well as some in-state PACs that do not register.

Assemblyman Stewart:

Would you be agreeable to changing the fine from \$5,000 to \$50,000, so it would be significant enough to hold them accountable without leaving it open ended?

Scott Gilles:

Are you asking about a cap on penalties for violation of this specific provision?

Assemblyman Stewart:

It is \$5,000 per incident, so there could be a total fine against the entity of \$50,000 or \$60,000. That would be a significant penalty, but it would not be open ended, not an unlimited amount.

Chair Segerblom:

A cap, I guess.

Scott Gilles:

Putting any type of cap or hard number on the fine may dissuade some groups but might not affect groups with large pocketbooks. If someone is entering Nevada, spending \$2 million to \$2.5 million running ads, or whatever it might be, in violation, maybe to them the \$50,000 cap would be the cost of doing business. This allows us the flexibility to hold groups accountable. If those groups engage in multiple activities, they will be held responsible for those multiple activities.

Nicole Lamboley:

Some of these groups do not want to disclose who their contributors are so people cannot find out who is funding their organizations. Failure to register and file the contribution and expense forms pursuant to our statutes, we feel, should be a significant penalty. That would be the purpose for this.

Assemblyman Grady:

We have been discussing in-state and out-of-state PACs. Where in this bill is the individual addressed? If your reports reveal violations, how do we go after an individual candidate?

Scott Gilles:

Are you talking about individual expenditures?

Assemblyman Grady:

Correct.

Scott Gilles:

In this bill, they would still be required to report those. If they do not, they would have violated our statutes. We would be able to use NRS 294A.420 to go after them, enforce the provisions, and fine them.

Assemblyman Grady:

So it is under NRS 294A.420. I just wanted to be sure it was covered somewhere in the statutes.

Scott Gilles:

Right, that is covered. Another bill being heard today, which is sponsored by Assemblyman Daly, would actually give us additional investigative ability to go after those types of violations.

Chair Segerblom:

Given this issue, we are going to hold this bill, not vote on it, and let all of us put our heads together to make certain this is what we want to do. We will

plan to come back for a vote next week, and, hopefully, resolve a couple of these issues. Let us move to Assembly Bill 82.

Assembly Bill 82: Makes various changes relating to elections. (BDR 24-407)

Patrick Guinan, Committee Policy Analyst:

[Mr. Guinan reviewed the bill using the work session document ([Exhibit F](#)).] I need to mention a couple of amendments. The first is the mock-up put together by our Legal Division in consultation with the Chair, Members of the Committee, and the Secretary of State's Office. There are two additional amendments submitted by Janine Hansen, who represents the Nevada Eagle Forum and Nevada Families. The first would provide for a private cause of action against a perpetrator of certain acts related to election activity. At the end of the mock-up, Ms. Hansen's language is included in the work session document. The second amendment proposed by Ms. Hansen is that an alternative religious oath be added to any campaign-related reporting forms that now contain an oath upon penalty of perjury. Ms. Hansen's proposed amendment is a "So help me God, or other deity" affirmation in place of "upon penalty of perjury."

Beginning with the mock-up, sections 1 through 4 dealt with voter registration drives, their requirements for registration, plus a few other things. Those sections have been deleted in their entirety.

Section 6, which enlarged the maximum number of voters in an election precinct from 1,500 to 3,000, has been deleted in its entirety. That would leave election precincts containing a maximum of 1,500 voters.

Sections 18 and 37 of the bill dealing with candidate reporting information, as well as certain other reporting information, being required to appear on the clerks' websites, have been deleted.

Section 24 also dealt with voter registration drives and applications to register to vote submitted by a voter registration drive. In conjunction with sections 1 through 4, if I understand correctly, that section has been deleted.

Moving to section 33 of the bill, there is some language that has been retained that was originally deleted.

Assemblyman Conklin:

I have a question regarding section 31, on page 25 of the mock-up, regarding "Any person who, during an election, removes or destroys any of the supplies or equipment" I do not have any problem with the changes, but I question

whether it is possible for this to happen accidentally. This would be criminal behavior, and in other criminal statutes we use the word "knowingly" or "willingly." I am asking if we have the right standard here in this particular provision.

Scott Gilles, Deputy for Elections, Office of the Secretary of State:

We do not have the knowingly standard specifically in the bill. If someone did commit this action, he would be brought before a court. If it was an accident and the individual did not have sufficient *mens rea* to have committed the crime, the court is going to make a decision as to whether that individual is guilty.

If the Committee would like to look at new language containing the knowingly provision, we would be amenable to that. I do believe it is enforceable as it now reads.

Assemblyman Conklin:

I do not know if it is necessary to amend it, but I was curious because in most other statutes there is some qualifier, but I am not a lawyer. I do not care one way or the other, but I was curious.

Assemblyman Goicoechea:

I am also concerned. Is making it an E felony pretty harsh?

Assemblyman Horne:

It sounded as though the individual would be able to explain if it was an accident. As a defendant, you do not have to explain that it was an accident. The prosecution is supposed to be able to prove that the crime was committed. I agree with Mr. Conklin that you might want to tighten that up a little bit and that they need to come forward and state that it was an accident.

Assemblyman Conklin:

Would the addition of the word "intentional" help? What if it said, "Any person who, during an election, intentionally removes or destroys"? Would that be acceptable? Does that solve it?

Chair Segerblom:

That is fine, but I think we could also leave it to the Legal Division to clarify that it is an intentional act.

Assemblyman Conklin:

That is no reason to hold this up.

Chair Segerblom:

It sounds as though the Secretary of State is fine with it.

Assemblywoman Flores:

Either way, they have to prove intent. If we add the word "intentional," it is not as though we are adding an additional element the courts have to prove. I think it would be fine to add "intentional."

Assemblyman Conklin:

If you say the word is not necessary, I am fine with the way it is. I just want it to be right.

Assemblywoman Flores:

I do not think it is necessary, but if we add it, we are not encumbering the courts in any way. They still have to prove intent. They have the burden of proving that the crime actually occurred, so I do not think it adds an additional burden. If we leave it out, it is fine. If we add it, it is fine.

Assemblyman Horne:

Not necessarily, because you can make it a statutory crime, and the fact that you did the act made it a crime. You do not always have to prove intent.

Chair Segerblom:

I would like to point out that right now, under the law, this is being changed from a misdemeanor to a felony, and it does not require that it be "intentional."

Assemblywoman Kirkpatrick:

I am not an attorney, so I would like to use a real-life example. What if someone tears down an opponent's campaign signs? He would have intentionally committed that act. However, on the flip side, what if people putting up my signs inadvertently knock down someone else's signs. Could someone say I intentionally ruined those signs?

Scott Gilles:

This provision, as it originally reads, applies only to voting places and the defacing of cards or instructions for voting machines.

Chair Segerblom:

All right, we are going to stick with what we have.

Patrick Guinan:

We are now at sections 38 to 40, which were deleted from the bill. They relate to the electronic filing of forms and the ability to opt out of that requirement

based on an inability to do so. Those sections have been moved to a different bill.

Section 43 retains the 30-day contribution and commitment-to-contribute language that was changed in the original bill.

Sections 44 through 47, as well as sections 52, 53, 64, 67, 70, and 74 through 83—the electronic filing of C&E and financial disclosure forms—have been moved to a different bill.

Sections 49 and 55, concerning electronic filing by PACs, have also been moved, and the same for sections 57 and 58 relating to committees for recall. That is all I have, Mr. Chairman.

Chair Segerblom:

Does anyone have any questions or comments? Mr. Lomax, do you have any comments?

Larry Lomax, Registrar of Voters, Clark County:

No, I have no comment.

Assemblyman Goicoechea:

As I look at sections 31 and 32, what is the difference between a "mechanical voting device" and equipment placed in a voting booth? One results in a category E felony and the other results in a category B felony. I know what the intent is, but I do not see any clarification between the two.

Scott Gilles:

Section 32 deals with someone who tampers or interferes with the machines with the additional intent of influencing the outcome of the election. We want these statutes to draw a distinction between someone who might reach around a machine to turn it off to play a prank versus someone trying to bug or rig the machines to influence the outcome of the vote. In the latter example, that person should be punished much more severely. That is why we have attributed the category B felony to someone who is attempting to influence the outcome of an election.

Assemblyman Goicoechea:

But a category E felony is pretty severe for someone simply unplugging a machine. As I look at section 31, whether you tamper with your own vote or someone else's, even though it might only be one vote, you are clearly doing something that would change the outcome of the election. When I look at section 32, this is someone trying to hack the computer program and change

thousands of votes. But when you look at the language in the bill, it says a "mechanical voting device," which is technically a voting machine. If the ballot of the person who voted before you is still up on the machine and his card is still in the machine, you could change his ballot, remove his card, put your own card in, and vote. Is that a category B felony?

Assemblyman Conklin:

These provisions have been discussed multiple times over the last six years. I understand where my colleague is coming from, but looking at it this way may help you. In section 31, you are talking about someone who, intentionally or not, is affecting the ability of others to vote. Someone could slow the process down by unplugging the machine, so the poll might have to stay open a little longer to allow everyone to vote, but the outcome was not changed.

In the other provision, you are talking about someone intentionally intending to alter the outcome of an election. The standard is clearly different, and the penalty should be more severe.

Assemblyman Goicoechea:

I do not disagree with the severity of the penalty in section 32; I am challenging the notion of the penalty in section 31 being a felony.

Assemblyman Horne:

I agree with Mr. Goicoechea. As articulated by Mr. Conklin, in section 31 whether you intended to or not, you did the act, it is a felony. That is problematic because of the burden being convicted of a felony would saddle someone with—whether it is a category A or category E felony. A felony conviction sticks with a person for a very long time and affects every aspect of that individual's life. It was stated that it could be something as simple as playing a prank by unplugging a machine. No intent is needed in this bill. The deed only has to be done, which is problematic; so I agree with Mr. Goicoechea.

Chair Segerblom:

Does anyone have an objection to changing the penalty in section 31 back to a misdemeanor?

Assemblyman Ohrenschall:

While we are at it, I would feel more comfortable adding language concerning "intentionally," "willfully," or "knowingly." That way, if someone plays a prank, that individual is not subject to criminal prosecution. There must be a determination that the individual wanted to interfere with the election.

Chair Segerblom:

I think you are talking about a different provision.

Assemblyman Ohrenschall:

I am speaking about section 31.

Chair Segerblom:

Even if one played a prank, it is still pretty serious. But it would have to have been done intentionally. Are there any other questions about the bill?

Assemblyman Conklin:

On page 32 of the mock-up, language is being added. I believe that language was accidentally left out of the original bill and is being put back in. It serves a clear purpose, and I want to be certain that the language being added is the exact language that is currently in statute. This is on page 32 in section 43.

Scott Gilles:

That is correct. The language in paragraphs (a) and (b) setting forth those time periods is the original language that was in statute. It is not clear to us why that language was removed by the bill drafters, but we put it back in. It defines the cycle period for those contributions.

Chair Segerblom:

If no one else has any comments, I would entertain a motion.

ASSEMBLYWOMAN FLORES MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 82 WITH THE MOCK-UP. IN ADDITION, THE
LANGUAGE IN SECTION 31 ON PAGE 25 AT LINE 45 WOULD
LEAVE THE PENALTY A GROSS MISDEMEANOR AS IN THE
ORIGINAL STATUTE.

What about the amendments suggested by Ms. Hansen?

Scott Gilles:

With respect to Ms. Hansen's requested change regarding the oath "under God," it would apply to sections formally addressed in A.B. 82 but that are now addressed more specifically in the clerk's bill.

It is a policy decision for the Committee to change that sworn statement. If it is the Committee's decision to adopt that language, we request that the language be clarified and an amendment be added. If you simply change it to "under penalty of perjury" or "under an oath of God," you potentially create a scenario where the perjury penalties no longer apply, and that is for discussion with our

Deputy Attorneys General. So if the decision is to add the "oath under God" language, we request additional language at the end of that stating that "a candidate who signs a report under an oath to God is subject to the same penalties as if the person had signed the report under penalty of perjury."

Assemblywoman Flores:

I believe the motion was to pass the Secretary of State's amendment that we just reviewed with Mr. Guinan, with the additional amendment of keeping the gross misdemeanor language in section 31 on page 25. That is the motion currently being discussed.

Chair Segerblom:

All right, that is Ms. Flores' amendment. Is there a second?

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblyman Stewart:

Is there a fiscal note on the amended bill?

Scott Gilles:

There is no fiscal note on A.B. 82.

Assemblyman Stewart:

I believe I can support this bill, but I reserve the right to change my vote on the floor if I have questions after reading the bill.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Goicoechea:

I would like to make the same reservation. After I actually read the bill, I might change my vote, but I will notify the Chair if I do.

Assemblywoman Flores:

We might make that same reservation for all of us.

Chair Segerblom:

We are going to skip Assembly Bill 337 for now as there seems to be a slight error in the bill.

We will move to Assembly Bill 452.

[Assembly Bill 452](#): Revises provisions relating to elections. (BDR 24-1136)

Patrick Guinan, Committee Policy Analyst:

Assembly Bill 452 is the last bill in the work session document and is a Committee bill. [Mr. Guinan reviewed the bill by reading from his work session document ([Exhibit G](#)).]

Chair Segerblom:

Are there any comments about A.B. 452?

Assemblyman Horne:

I still have objections to sections 22 and 27. I believe it unfairly impedes someone from his or her normal job duties. As I stated during the original hearing on this bill, if I am an attorney working for a law firm, you are telling me I can perform all the functions of my job as an attorney except that one, and I disagree. I should not be precluded from doing that one job. One of the functions of an attorney is to advocate for his client, wherever that advocacy may take him—the court of law, before a regulatory board, before a city council, or before a legislative body. He is entitled to do that. I am sure there are other professions that do this type of work. It is a part of their job, and this would preclude them from doing that, so I object to those two sections of the bill.

Assemblyman Daly:

Me, too. I agree with my colleague.

Chair Segerblom:

Are there any other comments or questions?

Assemblywoman Flores:

Mr. Horne, you said section 22, but what are the page numbers and the lines involved?

Assemblyman Horne:

In section 22 on page 34 is a provision stating that:

[A] former public officer shall not receive compensation or other consideration to: (a) Appear in person in the building in which the governing body holds meetings; and (b) Communicate directly with a member of the governing body on behalf of someone other than himself or herself to influence legislative action, for a period of 2 years after the end of his or her term of office or appointment.

We are a citizen legislature. Arguably, I could have a client today who asks me to appear before a regulatory board on his behalf. According to section 22,

I would be prevented from doing that. I do not want to speak for Mr. Daly, but one of his duties includes that very thing. Now you are telling him he cannot do a certain portion of his job.

Assemblywoman Flores:

If that is currently a job duty in your regular life, then perhaps there should be some sort of exemption if this would hinder your current job. If you do not object to the cooling-off period, how could we craft this legislation so that those who perform those duties as part of their livelihoods can still do so?

Assemblyman Horne:

It is a slippery slope anytime you tell someone that he or she cannot perform the duties of a certain profession because that individual had done something else. Now you are saying that an individual cannot do X if that individual served for a period of time in a particular body. There are lobbyists in this building representing Clark County, the City of Las Vegas, the City of Henderson, Washoe County, et cetera. They represent taxpayers. Now you would be telling them that someone who may have served in this body, who knows the process, the legislators, and how to get legislation passed to benefit those taxpayers, cannot bring that expertise to bear on behalf of the taxpayers. I was pointing out one scenario. I am sure there are many others, so I object to sections 22 and 27.

Assemblywoman Kirkpatrick:

I would like clarification from the Secretary of State's Office. Currently when you file your annual report, you cannot do it online. Would online reporting include the annual reports? I find it hard to use the Excel spreadsheet for part of the year, but not all year round.

Scott Gilles, Deputy for Elections, Office of the Secretary of State:

The proposed legislation, and the system we ultimately intend to establish, will allow you to file your contribution and expense reports, annual reports, and financial disclosure statements online. In fact, you will have to file all of them online unless you provide us with an affidavit.

Assemblywoman Kirkpatrick:

I am okay with that because when I can file online, I file earlier.

Assemblyman Ohrenschall:

I concur with the Chairman of the Judiciary Committee about section 22. We so often hear how difficult it is to get people to run for office, and that there are so many obstacles, whether it is being away from your family or giving up time

from your career. I see section 22 as being one more obstacle in front of people who might want to serve. I do not think it is good policy.

Assemblyman Goicoechea:

I want to clarify the filing deadlines. There is a deadline 21 days before and then 4 or 5 days before the primary. Is that correct? I also want to know where I file the affidavit.

Scott Gilles:

In your case, the affidavit would be filed with our Office. Deadlines for an election cycle are four days before early voting starts and four days before the actual election. Those deadlines are for both the primary and general elections.

Assemblyman Goicoechea:

How can you file four days before early voting starts and then four days before the election?

Scott Gilles:

For the 2012 election cycle, the first report will be due Tuesday, May 22, which is four days before early voting for the primary election begins. The second report will be due on Friday, June 8. The third report will be due Tuesday, October 16, and the final report will be due on November 2. One additional report will now be required.

Assemblyman Ocegüera:

Referring to the cooling-off period in section 22, I do not think people are doing anything wrong. I think it is a matter of perception and what many other states are doing as regards to federal law. I think we need to be accountable to the public, and this provision allows the public to have some confidence that there is nothing going on.

Assemblyman Stewart:

Are the two reports due so close together cumulative? Does the second report contain the first report plus additional information or just what took place between those two due dates?

Scott Gilles:

There will be no duplicative reporting. Each report has a specific and finite reporting period. They do not overlap.

Chair Segerblom:

We are trying to let voters know what money came in, and from whom, before early voting starts. Voters should know as much as they can before the end of voting.

Assemblyman Goicoechea:

We report only what we banked so, technically, through that time frame, if you did not want to deposit it, you would have nothing to declare.

Scott Gilles:

That is correct. It needs to be reported at the time it is matriculated.

Assemblywoman Smith:

I would like to address my amendment ([Exhibit G](#)). If you look at the way the amendment is written, it says "to require contributions and expenses under \$100 to be reported in aggregate." In the work session document, it just said "contributions." We did this on our reports for years, but on the last election cycle it was removed from the form because apparently it had never been in statute. For the public, I think we should be reporting just the total expenses and contributions under \$100 as we used to. I would like to see that put back on the form.

Chair Segerblom:

All right, seeing no further comments, is there a motion?

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 452 WITH THE AMENDMENT BEING THE ONE
JUST DESCRIBED BY ASSEMBLYWOMAN SMITH.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DALY, GOICOECHEA,
GRADY, HARDY, HORNE, MCARTHUR, AND OHRENSCHALL
VOTED NO.)

Assemblyman Hickey:

Did Ms. Hansen also have an amendment?

Chair Segerblom:

That was not part of the motion.

Now we will go to the final bill, Assembly Bill 337.

Assembly Bill 337: Revises provisions governing campaign practices.
(BDR 24-721)

Patrick Guinan, Committee Policy Analyst:

A new mock-up of A.B. 337 has just been handed to you ([Exhibit H](#)). [Mr. Guinan read an explanation of the bill from his work session document ([Exhibit I](#)).] The City of Sparks' suggestion for a limitation on the length of time during which a complaint could be filed has been added to page 3 of the mock-up at line 9 on the second page. The new language reads that "The provisions of this subject regarding subpoenas shall only apply to complaints submitted pursuant to subsection 2 within 180 days of the preceding general election." I believe that clarifies the new mock-up we received today and covers all the amendments.

Chair Segerblom:

Mr. Daly, is that accurate?

Assemblyman Daly:

Yes, it is, but I want to point out that the 180-day limitation is only for a complaint to then have subpoena power. You could still make a complaint anytime, but the Secretary of State's Office may not have subpoena power in its investigation.

Also, on page 3, line 5, the language mentions "from the subject of the complaint." Say I am a political action committee (PAC) or person who is the subject of a complaint, but I also made a contribution to someone else. Records cannot be subpoenaed from the other individual, only from the subject of the complaint. We are trying to keep this narrow so as to avoid mischief and abuse, but we also want the Secretary of State's Office to have a clear path to getting the information it needs to make sure the laws are enforced.

Chair Segerblom:

Are there any questions or comments about A.B. 337? [There was no response.] I will entertain a motion.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 337.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I forgot to assign the bills. The first bill, A.B. 82, will go to Vice Chair Flores. The last one, A.B. 337, goes to Mr. Daly, and A.B. 452 goes to Mr. Conklin.

That closes the work session. Are there any comments from the floor? [There was no response.] Seeing none, we are adjourned [at 2:48 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Recording Secretary

RESPECTFULLY SUBMITTED:

Terry Horgan
Transcribing Secretary

APPROVED BY:

Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: April 7, 2011

Time of Meeting: 1:17 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 81 and A.B. 82	C	Patrick Guinan	"Summary of Changes to <u>A.B. 81</u> and <u>A.B. 82</u> proposed by the Secretary of State"
A.B. 81	D	Patrick Guinan	Work Session Document
A.B. 81	E	Patrick Guinan	Summary of Changes
A.B. 82	F	Patrick Guinan	Work Session Document
A.B. 452	G	Patrick Guinan	Work Session Document
A.B. 337	H	Patrick Guinan	Mock-up of the Bill
A.B. 337	I	Patrick Guinan	Work Session Document