

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

**Seventy-sixth Session
May 12, 2011**

The Senate Committee on Legislative Operations and Elections was called to order by Chair David R. Parks at 3:57 p.m. on Thursday, May 12, 2011, in Room 2144 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.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Steven A. Horsford
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Assembly District No. 9
Assemblyman Richard Daly, Assembly District No. 31

STAFF MEMBERS PRESENT:

Carol Stonefield, Policy Analyst
Eileen O'Grady, Counsel
Paul Townsend, Legislative Auditor, Audit Division
Michelle Ene, Committee Secretary

OTHERS PRESENT:

Lee Rowland, Counsel, Democracy Program, Brennan Center for Justice,
New York University School of Law
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of
Public Safety
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of
Nevada

Senate Committee on Legislative Operations and Elections
May 12, 2011
Page 2

Rex Reed, MPA, Ph.D., Administrator, Offender Management Division,
Department of Corrections
Steven Burt, MA, LADC, Executive Director, The Ridge House
Debra Hall
Barbara Robinson, Assistant Director, The Ridge House
John V. Cracchiolo, Executive Director, Nevada Catholic Conference
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's
Office
Lonnie Feemster, President, National Association for the Advancement of
Colored People, Reno-Sparks Branch 1112
Richard F. Boulware, First Vice President, National Association for the
Advancement of Colored People, Las Vegas Branch 1111
Larry Lomax, Registrar of Voters, Elections, Clark County
Bernie Anderson, Ex-Assemblyman
Michael Pescetta, Nevada Attorneys for Criminal Justice
Nancy Hart, Nevada Coalition Against the Death Penalty
James T. Richardson, J.D., Ph.D.
Kristin Erickson, Nevada District Attorneys Association
Shelly Capurro, Nevada Women's Lobby
Matt Griffin, The Capitol Company
Scott F. Gilles, Deputy for Elections, Office of the Secretary of State
Lynn Chapman, Nevada Families
Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson
Karen L. Storms, City of North Las Vegas
Liane Lee, City of Las Vegas
Mary Pierczynski, City of Boulder City
Chelsea Capurro, City of Elko
Robert A. Ostrovsky, City of Las Vegas
Constance J. Brooks, Senior Management Analyst, Office of the County
Manager, Clark County
Samuel McMullen, Las Vegas Chamber of Commerce

CHAIR PARKS:

I open the meeting with Assembly Bill (A.B.) 301.

ASSEMBLY BILL 301 (1st Reprint): Revises provisions governing the restoration
of civil rights for ex-felons. (BDR 16-687)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

This bill makes minor changes to the law which allows ex-felons to vote. The most important step that can be taken is to get ex-felons engaged back into the community, allow them to vote and provide encouragement so they feel a part of the process. This will help them to get back on their feet and move forward.

LEE ROWLAND (Counsel, Democracy Program, Brennan Center for Justice, New York University School of Law):

The Brennan Center for Justice ([Exhibit C](#)) is a nonpartisan public policy think tank at the New York University School of Law which focuses on the fundamental issues of democracy and justice. One of our key areas of focus is voting rights for all Americans, and we lead a national campaign to restore the rights of people who have paid their debt to society. We also make sure the laws involving the restoration of voting rights are simple and clear and provide notice whether people have the right to go into voting booths and cast their ballots.

Assembly Bill 301 will simplify and streamline Nevada's complex patchwork of laws dealing with the right to vote and restore the rights to certain offenders who have been lost in the patchwork and have a difficult time proving they are eligible to vote even though their rights are restored by statute.

Voting is a fundamental right and a civic duty. Unfortunately, disenfranchisement after a criminal conviction remains the largest barrier to the ballot box. Nationally, of five million people who are disenfranchised, four million of those people live and work in our communities but are still denied a voice at the polls. About 40,000 Nevadans are unable to cast a vote due to past criminal convictions. More than 50 percent are completely finished with parole, probation and any sentence and are living in the community; 33 percent of those disenfranchised people are African Americans. This is an issue that has some racial overtones. There has been recent recognition that harsh criminal disenfranchisement laws are simply not in keeping with the goals of public safety. Since 1997, 19 states have eased restrictions on the right to vote or simplified their restoration processes. This has been done with the help of Democratic and Republican governors, communities of faith and correctional officials. This is not a partisan issue; it is an issue of common sense and supporting appropriate reentry programs.

Assembly Bill 301 gives Nevada an opportunity to join those states that are simplifying and expanding access to the franchise. The bill automatically restores voting rights to individuals after their successful completion from parole or probation or the full completion of felony sentences with the Department of Corrections. It will support reentry opportunities and ease administrative burdens placed on county clerks. The bill will have no fiscal impact. The American Probation and Parole Association (APPA) has endorsed this bill. The APPA is an international group of correctional officials which, along with the Association of Paroling Authorities International, the National Black Police Association and the American Correctional Association, agree that restoring the right to vote after completion of a sentence builds community ties, reduces recidivism and ultimately protects public safety.

A critical element to reducing recidivism is integrating former offenders back into their communities. The former offenders who take the steps to find out if they have the right to register and vote are most likely the people who will not reoffend. Withholding the right to vote from people who have paid their debt does not further public safety. Voting serves as a powerful conduit for people to make the transition from the criminal justice system into our communities.

Assembly Bill 301 will help save government resources. The county clerks have been asked to navigate a difficult patchwork of laws; these are most difficult when applied to people from out of state. Right now, Nevada's laws do give people who have a prior conviction in another state the right to vote. People have to show a document that shows their right to vote has been restored. Many people cannot obtain this document. It is a procedural catch-22 with hoops that cannot be jumped through. No eligible voter should be prevented from casting a ballot simply because of burdensome requirements that cannot be met, even when public policy supports that right.

A survey that the American Civil Liberties Union of Nevada (ACLU) just completed shows widespread confusion among election officials in the State about how the right to vote is restored, who is eligible and who is not. Outcomes from the confusion are that eligible voters are chilled from casting a vote to which they are entitled, and unintentionally or intentionally, ineligible people are casting ballots. Assembly Bill 301 will help clear up that confusion by simplifying the law, and it will benefit people with prior criminal convictions who will not need to hire a lawyer to determine if they are committing felonies by

trying to vote. It will help the county clerks because it will be easier to determine if someone is entitled to sign the registration form.

This bill will also help correct racial discrimination that exists right now. Of the total disenfranchised population in the State, 12,600 people are African American, who make up 29 percent of the disenfranchised. As a whole, over 2 percent of Nevadans are disenfranchised. For the African-American population, it is over 12 percent, which is five times the State disenfranchisement rate. The racially disparate impact of the disenfranchisement laws is stark, and A.B. 301 can begin to reverse this racial injustice.

There is no fiscal impact for the counties and the State. A required notice already exists under the law, and the bill does not change it in any way.

This bill is not intended to be retroactive. There is no duty on Parole and Probation or the Department of Corrections to notify people if their rights have been restored by this law.

SENATOR CEGAVSKE:

Steven D. Grierson, Court Executive Officer of the Eighth Judicial District Court in Clark County, has presented a letter ([Exhibit D](#)) outlining a fiscal impact. Could someone go through each point in the letter and dispute the information?

MS. ROWLAND:

This is the first I have heard of that letter. That testimony was not given in the Assembly. The only formal fiscal note on this bill is from the Department of Public Safety, and it is being removed. I will look into the letter from the Court Executive Officer.

ASSEMBLYMAN SEGERBLOM:

It could be based on the bill before it was amended.

SENATOR CEGAVSKE:

Although I received the letter, I am not sure whether the other Committee Members received it.

MS. ROWLAND:

We reached out to people who indicated there would be a fiscal impact. All the impacts were related to a prior version of the bill that had mandatory

information-sharing between the clerks, the Department of Public Safety and Parole and Probation.

SENATOR CEGAVSKE:

If a person was sentenced to 20 years in prison but was released after serving 15 years, does the person have to wait the additional 5 years to have the rights reinstated?

MS. ROWLAND:

Someone in that situation would still be on parole or probation. This bill only restores rights at the successful completion of the sentence with an honorable discharge from Parole and Probation.

SENATOR CEGAVSKE:

If a person was sentenced to 20 years in prison but was released after serving 15 years and received only 2 years probation, would the person have rights restored prior to the end of the 20-year sentence?

MS. ROWLAND:

Once they are released back in the community and no longer under the auspices of Parole and Probation, the right to vote is restored.

SENATOR CEGAVSKE:

Is it appropriate to amend this bill to say upon the completion of the entire sentence, restoration of the rights would be granted?

MARK WOODS (Deputy Chief, Division of Parole and Probation, Department of Public Safety):

Ms. Rowland is addressing the person who is sentenced to prison and has earned enough credits to be released on parole to complete the sentence. When the person has completed the time on parole, the sentence is complete. However, there are individuals sentenced to prison who have earned good time credits and get out earlier. Their sentences have been completed based on time served and good time credits even though they did not spend the entire sentence in prison or under parole.

ASSEMBLYMAN SEGERBLOM:

When the sentence has been completed, the individual will receive an honorable or dishonorable discharge. This bill only applies to an honorable discharge.

SENATOR CEGAVSKE:

It does not make much sense that someone is allowed to have a dishonorable discharge from prison.

SENATOR SETTELMAYER:

What is the current process for someone to get back voting rights?

MS. ROWLAND:

The current procedures are similar to the procedures in the bill but more complicated for people who have different combinations of felony convictions on their records. Right now, it restores the right to vote automatically to most people, and they are provided with a notice. This places a burden on the county clerks to determine the detailed criminal history of people and whether they are eligible to vote. This bill simplifies the right to vote by extending it to any ex-felon who completes his or her debt and is honorably discharged from Parole and Probation or the sentence. It no longer looks at a prior criminal conviction. Once the individual is through the system, released into society and in the community, the individual gets the right to vote along with other rights. There is an application process for the other individuals whose rights have not been automatically restored.

SENATOR SETTELMAYER:

The ex-felon receives a notice to show that he or she has done everything correctly. This bill shifts the burden of proof to the county clerk, who has to prove the individual has not complied. Is that a simplified way to say what you just said?

MS. ROWLAND:

Under statute, the burden is on the county clerk to determine if someone is eligible. Assembly Bill 301 makes it simpler because once the person has completed an honorable sentence, he or she would be treated like other voters. The person would sign the registration form that he or she is eligible under penalty of perjury. There would be a criminal penalty if someone wrongfully registered under this system, but like everything in the election administration world, it would rest on the signed affidavit that the person registering is not laboring under a felony conviction and is eligible to vote.

It does not place the burden on the county clerk to prove someone is not eligible. If the person registering does so falsely, criminal penalties apply.

SENATOR SETTELMAYER:

Is there a fiscal note attached to this?

MR. WOODS:

This will do away with our fiscal note entirely. The fiscal note was dependent on retroactively notifying previously released offenders. Since that is not a requirement, the fiscal note goes away.

CHAIR PARKS:

Was the letter submitted before the amendment?

ASSEMBLYMAN SEGERBLOM:

Yes, it was submitted before the hearing and before A.B. 301 was amended.

CHAIR PARKS:

Before being elected to office, I helped with voter registration. A person inquired if he could register to vote. I asked him what would prohibit him from doing so. He stated he served time in a different state. I asked him if his voting rights were restored in that state. He said that he did not do anything to get them restored. I suggested he research the voting right restoration policy for that state. Did I direct him properly?

MS. ROWLAND:

Registering under those circumstances would be fraudulent as it would be felony behavior. The law does require that a person's rights must be restored in his or her home state. This bill would do away with that and treats out-of-state people the same as residents of the State. There are many states that do not take the right to vote away from people after they have completed their sentences. Those people would be technically eligible to vote in their state but because they do not get a formal order of restoration, they would not be eligible in Nevada. This is the catch-22 I spoke about.

SENATOR DENIS:

Is this retroactive?

MS. ROWLAND:

Anyone who has a past conviction and who has completed the sentence would be eligible to register so long as the individual is not in the system in any way.

SENATOR DENIS:

At what point do they receive notification they will be able to register?

MS. ROWLAND:

That notification at the completion of the sentence is the same as statute.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

This past year, we did a comprehensive survey ([Exhibit E](#)) by calling all the county clerks' offices and the Secretary of State's Office with respect to what a person with a prior conviction would have to go through to register to vote. No one knew the answer. When calling the election officials who are responsible for enforcing the law, it is problematic that no one knows the answer. It is not that the election officials are unaware; it is because it is so complex. It is not fair for the county clerks, primarily, because it is the State's responsibility to give them duties to carry out in a clear and transparent way. As Nevada laws exist, it just is not possible for them to do.

The *Voting with a Criminal Conviction in Nevada* report is a compilation of the survey answers. It is important to note not a single county clerk could answer all the questions and, in fact, they often gave incorrect answers when asked certain questions about registering to vote. There is also unclear information coming from the Secretary of State's Office and, as a result, we believe this comprehensive fix to the glaring problem would be appropriate.

Nationwide the status of felon reenfranchisement laws differs. In Oregon and Utah, citizens with felony convictions can vote upon release of prison and can vote while on parole or probation. Assembly Bill 301 only allows for voting rights to be restored after the successful completion of the sentence.

MS. ROWLAND:

I would like to submit Proposed Amendment 6844 ([Exhibit F](#)) to A.B. 301. The amendment clarifies the language that people who are convicted either in Nevada, another state or the federal government are treated the same. The amendment also changes language in section 16 of A.B. 301 and makes it clear that even though the effective date is July 1, there is no retroactive duty to notify any person who was convicted or restored before that date.

Senate Committee on Legislative Operations and Elections
May 12, 2011
Page 10

SENATOR CEGAVSKE:

Who is notified on page 18, section 16, line 29 of the amendment?

Ms. ROWLAND:

Statute and the law going forward require Parole and Probation and the Department of Corrections to issue a notice upon final discharge of an individual. The notice contains the information that the individual's right to vote, the right to serve on a jury and the right to hold office has been restored.

SENATOR CEGAVSKE:

Does the notice go to the individual who has been released?

Ms. ROWLAND:

Yes. The notice states the individual is discharged from supervision and what rights have been restored.

SENATOR CEGAVSKE:

When do they get that?

Ms. ROWLAND:

The notice is triggered when the individual is released.

SENATOR CEGAVSKE:

Is it handed to the individual?

Ms. ROWLAND:

I believe it is given to the individual by the Parole and Probation officer when released.

SENATOR CEGAVSKE:

The cost was in the mailing of the notice?

Ms. ROWLAND:

Yes.

SENATOR CEGAVSKE:

Is there still a cost for printing but not mailing?

MS. ROWLAND:

That is in the existing law.

REX REED, MPA, PH.D. (Administrator, Offender Management Division,
Department of Corrections):

When an inmate is released, he or she is handed several pieces of paper. One is the discharge certificate, which states whether it is honorable or dishonorable. The other information on how to get rights restored is given to the person by hand.

SENATOR CEGAVSKE:

Was that process done previously?

DR. REED:

Yes, it was done previously and still is being done.

SENATOR CEGAVSKE:

What is the cost for that?

DR. REED:

The cost is for printing the paper that is given to the individual.

SENATOR CEGAVSKE:

If the bill passes, the notice does not have to be given to the individual at release?

DR. REED:

The notice will still be given to the individual.

SENATOR CEGAVSKE:

Is providing the notice mandated?

MS. ROWLAND:

The notice will still be given to the individual. The amendment states the notice will not be given retroactively. Anyone who is released after the effective date of this bill will get the same notice that individuals get right now. For people whose rights are changed by this bill, if they are already out of the system, Parole and Probation does not have to notify them of this bill.

STEVEN BURT, MA, LADC (Executive Director, The Ridge House):

The beneficiaries of A.B. 301 have served their time, paid the price for their mistakes and should not have barriers to their American rights. As executive director of The Ridge House and a member of a statewide prisoner reentry coalition, I interact with former offenders who have been released. In fact, 90 percent of the staff at Ridge House are former offenders. When polled, former offenders who should be voting say they do not because they believe this is another right denied them for their crimes. Most believe it is not restorable. When educated they could become eligible to vote, often they find the complicated process prohibits them from moving forward. So much distrust of the system exists that any barrier immediately halts the process, and the former offender gives up. Most ex-felons feel alienated from the political processes. Formal mechanisms to restore their citizenship rights may encourage feelings of political advocacy and trust in governmental institutions.

While Nevada does not follow the example of Florida, that under most circumstances bans the right to vote for life for former offenders, the current complicated process has the same effect. There is a national recognition that procedures that exist to make it difficult to restore the right to vote are antithetical to the fundamental principles of our democracy. It does nothing to protect public safety or promote successful reentry.

Recidivism will be affected by A.B. 301. The relationship of political participation and subsequent criminal activity suggest that those who vote are less likely to commit new crimes. Therefore, legal changes easing the right to vote for former offenders may facilitate integration efforts. The right to vote is one of the defining elements of citizenship and democratic equality. Participation in democratic rituals such as elections affirms membership in the larger communities for individuals and groups. Because of all that voting represents in this society, voting can be viewed as a proxy for other kinds of civic engagement associated with avoidance of illegal activity.

As a result of A.B. 301, The Ridge House has incorporated the restoration of civil rights into its toolbox to reduce recidivism. The cost of recidivism in this State is too high. Recidivism in Oregon is 25 percent lower for those probationers and parolees who have voted. Too many prison intakes are for repeat visitors who, with the proper tools, should have been restored to productive citizenry in the first place. I urge you to consider moving A.B. 301 forward.

DEBRA HALL:

I am a recovering alcoholic and drug addict. I am a mother of four, grandmother of five, full-time student working toward a bachelor's degree in human services, a certified alcohol and drug counselor intern and ex-felon released from prison in 2004. I did not believe after my prison time that I could have my voting rights restored, let alone sit on a jury of a criminal case. I wanted to start over, build my life and not make any waves once I served my time in prison. I spent four years in prison, completed my parole without any issues and paid what I could. My life has changed tremendously since I was released from prison. The person I am today and my accomplishments does not reflect the person in my addiction and the choices I made. I am an ex-felon paying taxes, a citizen and contributing member of society. I am the voice of others who are less fortunate and do not have the opportunity to be heard.

There are individuals who think one vote will not make a difference. People struggle in life for many reasons and make bad choices, but individuals like me have completely turned their lives around and want to make a difference. My passion is to help individuals succeed in life, be contributing members of society, pay taxes, vote and for you to hear my testimony today.

I did not research my own rights and the process to have them restored until my mentor and career guidance counselor encouraged me to do so. I discovered my rights had been restored, which I never thought was possible. When an individual is convicted of a felony, a stigma sticks with the person. I am paying for my college, my daughter's education at the University of Nevada, Reno, and working toward buying my first home. I know there are thousands of ex-felons who feel the same way I do. I have paid my debt, completed my sentence, changed my life, pay taxes and could very well be the one vote needed. Because I did not pay all the restitution and given the category of the felony, I was given a dishonorable discharge, which I accepted at the time.

Getting the right information out there and passing this bill will make it easier for individuals with felony convictions to obtain voting rights.

BARBARA ROBINSON (Assistant Director, The Ridge House):

I am in support of this bill. I am very happy because today I registered to vote. The part that makes me sad is I could have registered to vote in 2001 when I completed my sentence, but I did not know that. It was not until this bill was presented that I even knew it would be a possibility for me to become a voter.

My current life does not reflect the person I was when convicted. For the last 12 years I have worked for substance and abuse rehabilitation reentry programs. I am a certified alcohol and drug counselor intern and I am also the Assistant Director for Ridge House. I attend college, and for the last seven years I have held a Nevada real estate license. They would let me sell real estate to people, but they would not let me vote. I belong to a church and am active in it. I volunteer for other nonprofit organizations and causes in the community. My life has changed.

In the past, I researched how to get my voting rights restored. I did not continue with the research because it was so cumbersome. In the last week, I called Parole and Probation to request a copy of my discharge papers, and I was told it would take three to five days. It was my understanding that I had to petition each judge that sentenced me and appear before them to get my rights restored.

What I remember most was standing before former District Judge Mills Lane, former Justice Deborah A. Agosti and Justice James W. Hardesty at different times and having them tell me I lost my voting rights. I wish I had known I could have voted for the President of the United States in the last three elections. I was not a career criminal. I made some very poor choices as a result of my drug addiction and alcoholism. I thought I paid the price. I thought doing time and completing probation would be enough. It has been 14 years since my last felony conviction, and I should not have to still pay for my past by not being allowed to vote. If I had not done the research in the last couple of days, I would have found out that my rights have already been restored. I still would not know if it was not for this bill. I ask that you pass this bill, as it will change many lives.

SENATOR CEGAVSKE:

I commend you and Ms. Hall for being here, what you are doing now and the people you are helping.

JOHN V. CRACCHIOLO (Executive Director, Nevada Catholic Conference):

The Nevada Catholic Conference is a member of the Religious Alliance of Nevada (RAIN), which is an interfaith group of five leading Christian denominations. We support the passage of A.B. 301. We believe once a person has served time, it is in the best interest of society and public safety to have the individual fully reenter our community as an involved and productive member,

which would include the ability to vote along with other civil rights. The alternative is disenfranchisement and continuation of a punitive action for the wrongs of the past. We believe in redemption and forgiveness in lieu of an endless punishment that might lead to reoffending.

The U.S. Conference of Catholic Bishops believes that an ex-offender is welcome back into society as a full participant to the extent feasible once the individual has served the sentence.

The RAIN advocate, Larry Struve, could not be here today but has submitted his testimony ([Exhibit G](#)). We urge the Committee to pass A.B. 301.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

I deal with redemption every day in my job. It is rewarding to hear stories like Ms. Hall's and Ms. Robinson's where they get through the bad spots and into programs. When they have the chance to do it and believe they can do it, they are far less likely to come back and be my clients again. We urge you to pass the bill.

LONNIE FEEMSTER (President, National Association for the Advancement of Colored People, Reno-Sparks Branch 1112):

I have helped to register thousands of voters in southern and northern Nevada. I came to a point where I gave up on ex-felons because I could register 50 people before I could get one ex-felon registered. It became frustrating as I did not know what to tell them. I had to carry the law around with me and I did not understand it. I would like to see the words simplified to "if you are not in jail, you can vote if qualified."

When I looked at demographics and called the State prison about graduation rates and race, I found that 10 percent of black males are not able to vote in Nevada. There is a claim that it is deserved punishment, but no one has stopped committing a crime because they were worried about the right to vote. There are valid arguments when 5,000 delegates to the National Association for the Advancement of Colored People's national convention in Detroit brought this question to the floor. The victim rights advocates have valid reasons for wanting restitutions and why people should not be given the right to vote.

A little-understood part of the Fourteenth Amendment allowed states, even though the states could not bar African Americans from voting, to bar an individual from voting if convicted of a crime, and this was done. It led to a large part of what drove the proliferation of voter disenfranchisement. I support this bill but wish it was rewritten to these eleven words, "if you are not in jail, you can vote if qualified."

RICHARD F. BOULWARE (First Vice President, National Association for the Advancement of Colored People, Las Vegas Branch 1111):

I have submitted my written testimony ([Exhibit H](#)) but wanted to say it is really important to ex-felons to be treated as people who have been restored to our communities. Many of my clients who have successfully transitioned are the ones who feel they have been fully integrated back into society. This bill goes a long way to addressing this and public safety.

LARRY LOMAX (Registrar of Voters, Elections, Clark County):

The amendment changed the bill to apply to felons with honorable discharges as opposed to dishonorable discharges. It should be clear that my office will no longer ask for any documentation, and we will have no way to monitor it. It will make it easier for the county clerks.

CHAIR PARKS:

We will have the Legal Division review the amendment.

MS. ROWLAND:

I was able to get a clear answer to Senator Cegavske's question about the Clark County fiscal note. The prior version of the bill in the Assembly included jury rights. The rights have since been amended out. The fiscal note from the District Court dealt with jury rights because it would have to deal with restoration of those rights. I spoke to the representative, and she will follow up with an e-mail to you.

With respect to Mr. Lomax's testimony concerning honorable and dishonorable discharge, it has been considered in the bill. What this does is make the status akin to any other voter registration challenge. When someone comes in to register, the county clerk has no idea what county the person lives in other than as attested to by the individual. However, a public record entitles people to challenge that voter. The list of honorable and dishonorable discharges would function the same way. The individuals are swearing under penalty of perjury

and felony penalties that they are eligible to vote. They are given a notice upon discharge and will know if they are eligible to vote. The county clerk has no special knowledge of that. Just like anyone who lies to a registrar is open to penalties of doing so, it is open to a challenge from anyone who has the public record. We urge you to pass the bill.

SENATOR HORSFORD:

If a person was challenged on the day of the election, would the person still be able to vote? Would it be counted as a provisional ballot?

MS. ROWLAND:

Yes, that is how the challenge statute works. It works the same for any basis of challenge. The person would cast the provisional vote. The clerk would then do the due diligence, and if the challenge is resolved in the voter's favor, the vote would count.

CHAIR PARKS:

Carl Wicklund, Executive Director, American Probation and Parole Association, submitted his testimony ([Exhibit I](#)) since he was unable to attend the hearing.

I close the hearing on A.B. 301 and open the hearing on A.B. 501.

[ASSEMBLY BILL 501 \(1st Reprint\)](#): Provides for a study of issues regarding the death penalty. (BDR S-1103)

ASSEMBLYMAN SEGERBLOM:

Assembly Bill 501 requests the Legislative Audit Division to conduct an audit on the death penalty in the State. We used components of a bill from the Seventy-fifth Legislative Session, which almost passed. We eliminated the moratorium because it is not possible to execute anyone. In Clark County, there are 80 pending death penalty cases and in Washoe County, there is one. Something is wrong with the system if there is that much discrepancy between counties.

BERNIE ANDERSON (Ex-Assemblyman):

I can best summarize the bill by first explaining what it is not. This bill is not a measure seeking to abolish the death penalty nor does it prevent any prosecuting agency from charging and seeking the death penalty. Assembly Bill 501 does not prevent any person from being sentenced to death

nor alter the sentence of any person subject to the death penalty. The bill does not constitute a pardon for any death row inmate nor affect the appeal, writ of habeas corpus or judicial relief sought by a death row inmate.

Assembly Bill 501 does propose that the Audit Division of the Legislative Counsel Bureau conduct a staff study of the fiscal cost of the death penalty in Nevada. The Audit Division would present that study prior to the next regular Session of the Legislature to the appropriate bodies.

In 2003, the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, which I chaired, made several suggestions regarding the death penalty in Nevada. One recommendation was to conduct a comprehensive study of the costs of murder cases and capital cases. This recommendation has yet to be followed, and a study needs to be completed. I ask that you approve allowing a study to be conducted by the Audit Division of the Legislative Counsel Bureau.

In recent years, many states have participated in such studies and the findings have generally shown the cost of the death penalty cases are significantly and alarmingly greater without an equally significant corresponding benefit of deterrence. The higher cost of a death penalty can be seen at every level of the proceeding, and our State and local governments bear these higher costs regardless of whether a capital case actually results in an execution. For example, everything needed in an ordinary trial is needed in a death penalty case only more so ([Exhibit J](#)).

By obtaining accurate information on the true costs of these proceedings, the determination of whether it makes good fiscal sense to continue operating a death penalty system can be made. The study proposed by this bill will give you this needed information.

I would like to highlight some recent legislation in other states. In 2009, New Mexico Governor Bill Richardson signed into law House Bill 285, which abolishes the death penalty. Representative Gail Chasey who introduced House Bill 285 advocated putting the money toward the enhancement of the law enforcement. In 2008, the Urban Institute in Maryland conducted a study which concluded that the expense of capital prosecuted cases since 1978 have cost taxpayers \$186 million. The study found the average cost for reaching a single death sentence is \$3 million. That is almost \$2 million more than the cost of a

nondeath penalty case. The Maryland Legislature did approve significant limitations on that state's death penalty law and continues to debate whether it should be abolished.

Today more than ever, it is imperative that we understand how our precious tax dollars are being spent and whether we are simply throwing money at a failed system.

While I remain committed to the abolishment of the death penalty, I urge your support for this measure.

MICHAEL PESSETTA (Nevada Attorneys for Criminal Justice):

I am not representing the Federal Public Defender's Office or its position on any matter. The statistics about the death penalty in Nevada since 1977 ([Exhibit K](#)) show what the death penalty has brought us since the death penalty statute was reenacted in 1977. The total number of defendants sentenced to death since 1977 has been 149. One person was executed involuntarily in that time.

It is interesting to note that 28 percent of the total number of inmates have been permanently removed from death row due to legal errors. The number of death sentences currently vacated and awaiting further proceeding is almost 7 percent. This means the error rate in proceedings to impose a death sentence is 35 percent of the total. If any State program claimed a 35 percent error rate in its functioning before the Legislature or the public, it would be reasonable and justifiable for the public and for this body to consider whether the system is working adequately. There should be a dialogue about the death penalty as constituted and a determination made if changes are needed. Determining the cost of the death penalty is neutral, and I ask the Committee to pass A.B. 501.

The attorneys who practice in the State have a tendency to assume everyone knows how the death penalty statute works. In Nevada, as in all states, an individual can receive a death sentence for a first degree murder conviction. When a homicide charge is filed by indictment or information, if the State wishes to pursue the death penalty or reserve the right to pursue the death penalty, it files a notice of intent to seek the death penalty, which triggers a number of things.

Under the rules of the Nevada Supreme Court, Supreme Court Rule 250 requires the appointment of two defense lawyers to represent the individual. This is not

true for noncapital homicide cases. Once the State has indicated an intent to seek the death penalty, those defense lawyers, one of whom has to be qualified to provide representation in capital cases, have to proceed with a number of measures that are not required in noncapital homicide cases. One of those measures is a multigenerational mitigation investigation which is prescribed by the Nevada Supreme Court performance standards for counsel in criminal cases. That duty arises at the time the representation begins and through the period before the case comes to trial, which might last one to two years. Whether it is individual appointed counsel or the public defender's office, that office has to incur costs for further investigation in the mitigation area, sometimes for mitigation specialists, frequently for experts in psychiatry, psychology and forensics.

For the 80 cases that are pending with notices of intent in Clark County, those tasks have to be conducted by defense counsel whether or not that case is negotiated for a lesser noncapital sentence or ultimately goes to trial. The State can base a notice of intent on any of the 15 statutory aggravating circumstances specified in *Nevada Revised Statute* (NRS) 200.033. The list has a sublist under the 15 statutory aggravating factors, which is the longest list of any state in the Country. It is more difficult to find a homicide case that does not come within the potentially death-eligible class. The decision whether to file a notice of intent is entirely within the discretion of the district attorney of the county, which the defense cannot affect. However, if the notice of intent is filed, all of these tasks must be performed by the defense counsel in preparation for trial whether the case is negotiated or not. If the case goes to trial, the jury that tries the case has to be death-qualified. That means voir dire is directed toward whether the prospective jurors can impose a death sentence, do not have conscientious scruples against doing so, can impose a sentence less than death and do not have a fixed belief that death is the only permissible punishment for the crime. That increases the time devoted to jury voir dire.

The trial phase of the guilt or innocence of the defendant usually takes the same amount of time but sometimes can be a bit longer. There has to be a separate penalty phase after a conviction is returned in which anything the defendant seeks to proffer as mitigation, that is, any reason for imposing a sentence less than death, has to be presented and litigated in front of that jury. That does not generally occur in noncapital homicide cases.

If a death sentence is imposed, there is a mandatory appeal to the Nevada Supreme Court. An appeal is not mandatory in noncapital cases. If the Nevada Supreme Court affirms the conviction and sentence, then there is a State habeas corpus proceeding under NRS 34. In that proceeding, a capital petitioner is entitled to representation by counsel, which a noncapital defender is not.

If after a hearing on the effective assistance of trial counsel the State trial court denies the petition of habeas corpus, there is an appeal to Nevada Supreme Court in which counsel is required again. If the Nevada Supreme Court affirms the denial of habeas corpus relief, then the case goes into federal court where again the right to counsel is mandated for a capital petitioner under the federal habeas corpus statute.

The Nevada Legislature has no control over the costs arising from the litigation in federal court, which is frequently quite extensive. Although the Nevada Legislature does have to fund the Attorney General's Office, which provides representation for the State during the federal proceedings, the citizens of Nevada who pay federal taxes have to pay taxes that fund the federal system for the capital petitioner. That may proceed through an appeal to the Ninth Circuit Court of Appeals and ultimately a petition for certiorari to the United States Supreme Court and sometimes multiple steps along that path.

What is remarkable is there is little information about what any of these stages actually cost the people of Nevada. For that reason it is very difficult to have a rational conversation about whether Nevada is getting its money's worth in term of the benefits of having a death penalty statute. No one contests that the death penalty proceedings do cost something more than noncapital homicide proceedings. However, no one knows exactly how much. Studies done in other states show the costs vary widely between the states. Texas vigorously enforces the death penalty and executions are conducted very quickly compared to the rest of the Country. *The Dallas Morning News* survey, which was done in 1993, found the costs of obtaining an execution was three times the cost of a noncapital case, including the incarceration of the person for life in prison. The most recent study conducted by North Carolina's Appalachian State University in 2011 estimated a capital prosecution cost an extra \$250,000 per case, and for a case that went all the way to execution, it was \$2 million more than an average prosecution per case.

There is no way to say what the costs for Nevada would be except the consensus that it would be more than a noncapital prosecution. For this reason, it is advisable and necessary to find out what it actually costs. I recommend this Committee vote in favor of A.B. 501.

SENATOR SETTELMAYER:

Would the study compare costs between Nevada and other states? Should the cost of deterring the death penalty be studied?

MR. PESCIETTA:

Yes, it should be studied. I do not know how it would be quantified. In the Seventy-fifth Legislative Session, Chris Owens from the Clark County District Attorney's Office stated that the death penalty was a negotiating tool to encourage people who are facing the death penalty to plead out to a sentence of life without the possibility of parole, and these should be counted in the cost benefit of a potential death sentence. Many of the people amongst the pending 80 cases in Clark County will end up pleading to a sentence less than death. Whether the sentence they plead to should be life without the possibility of parole or life with the possibility of parole or the 50 years provided by statute is unknown.

The four potential sentences for a particularly aggravated homicide—death, life without the possibility of parole, life with the possibility of parole and a fixed sentence of 50 years with parole eligibility—are worthy of consideration. When considering the use of the death sentence as a way to force a defendant to plead to life without the possibility of parole, we are normalizing the default sentence of life without the possibility of parole. That sets up a peculiar dynamic where we are forgetting the possibility that in some murder cases, a sentence of life with the possibility of parole or 50 years with the possibility of parole might be more appropriate. That could be part of the charge under this bill for consideration.

ASSEMBLYMAN ANDERSON:

When the original study was done, the economic element was not a part of the area we examined. That was the purpose of the recommendation so the Audit Division, which would be equipped to do a proper investigation, could make recommendations to the Legislature. The Legislature needs to make a determination if this is in Nevada's best economic fiscal responsibility to continue a system that is clearly flawed, broken and racially discriminatory.

SENATOR SETTELMAYER:

I agree with the concept of getting more information for the study. However, if all the information is not included as I am discussing, it is a flawed study.

NANCY HART (Nevada Coalition Against the Death Penalty):

We believe an in-depth study of the cost of Nevada's death penalty is fully warranted. If the Legislature is going to cut government to the bone, which it appears is happening because of the economic circumstances, and if the Legislature is going ensure all government programs are operating efficiently and effectively, then the cost of maintaining a death penalty system in Nevada must be assessed along with the other programs.

This is a public policy matter. This bill is not a referendum on the issue of whether we should have the death penalty, but Legislators are in the position of making policy decisions about this matter all the time. The Legislators need the information on how much it costs in order to carry out the public policy role. Taxpayers deserve to know how many of their hard-earned dollars are spent maintaining Nevada's death penalty and with what results.

Other states have taken and are taking similar action. Many of the current State efforts are based on the concerns about the cost of the death penalty. Just a month ago the newest study came out for North Carolina, and I have provided a summary of the report ([Exhibit L](#)). This is an example of all the studies coming forward as cost becomes more and more of a concern.

As you have heard from prior testimony, it is an extremely expensive penalty or program for a very small return. In the last 30 years, Nevada only had one individual involuntarily executed. It makes it an expensive penalty for the number of homicides in that time period. Essentially, the death penalty is a false promise because so few of them actually happen.

I cannot and certainly would not speak on behalf of all crime victims or as a murder victim family member, but I can say from my experience advocating for crime victims that more resources are needed to assist victims of violence and victims of crime who are recovering from the experience of violent crime. Some say that cost is no issue when it comes to public safety. Yet public safety is not necessarily served when we spend large amounts of money seeking the death penalty for a relative handful of violent criminals while failing to adequately fund programs that will help all survivors of violence heal.

An in-depth study is needed of the cost of Nevada's death penalty so it can be accurately evaluated whether public safety is best served by the continuation of this expensive program.

In 2002 and 2003, the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing considered issues of the death penalty. One of the issues considered was the cost, and a request was sent from the Subcommittee to the Nevada Supreme Court to obtain a grant to conduct a cost study. In the fall of 2008, the Advisory Commission on the Administration of Justice stated the study should happen. This is a bill to finally implement the recommendations that have been around for more than ten years.

Seventeen people have been proven innocent in the United States using DNA testing. The total number of exonerees in the Country is over 135. Two individuals in Nevada have not been exonerated based on DNA testing, but they have been found innocent after 18 years and 30 years respectively on death row. Even in our State after all those years, it is possible an individual can be exonerated for the crime for which they were going to be executed.

MR. CRACCHIOLO:

The RAIN Board is in support of A.B. 501. Larry Struve is unable to attend today's hearing and provided written testimony ([Exhibit M](#)) in support of this bill. The U.S. Conference of Catholic Bishops has a longstanding belief that the death penalty is morally wrong and applied unevenly in our society. When the State is dealing with substantial cuts to basic programs and services, a fiscal review is not only prudent but actually required. Whether you agree with or are against the death penalty, the Legislative Branch, the Governor and the people of the Nevada have a right to understand the cost of putting a person to death when compared to the life sentence as an alternative. We urge the passing of this bill.

JAMES T. RICHARDSON, J.D., Ph.D.:

I teach at the University of Nevada, Reno, in the sociology department. I teach a course in the sociology of law and direct a graduate degree program for trial judges that is offered at the National Judicial College and the National Council of Juvenile and Family Court Judges. In that program, I teach a course in social science evidence, serve on committees and interact with over 100 judges who are enrolled in the program. I have been an expert witness in some capital trials

in Nevada, offering evidence in the pretrial hearings of the Priscilla Ford trial and the Gerald Gallego murder trial in Lovelock and others.

I have a special interest in this bill, partly motivated by the immense interest of judge students, undergraduates, graduates and students in sociology and social psychology. They are fascinated by the idea of the capital punishment. The students prepare term papers on it and some judges do theses on it. One area of focus is on the cost of capital punishment. This is a policy matter, and at some point, the Legislature and the Governor may address the policy matter of whether retaining this form of punishment is something that needs to be done in Nevada. There is no adequate data for Nevada. A thorough study done by trusted people would seem to be in order. I urge you to pass this bill and get the study under way.

MR. JOHNSON:

I want to talk about the expense the Washoe County Public Defender's Office incurs while representing someone who is up against the death penalty. The Nevada Supreme Court requires that there are two attorneys assigned to these cases. It takes between 1,000 and 1,200 hours per attorney for each case. As soon as a death-eligible homicide case comes in, the assumption is the case is treated as a death penalty case. Even though it may not end up a death penalty case, more investigation and time goes into it. Many times, multiple experts are hired if there is not enough conclusive evidence up front. Mental health experts are hired every time.

There was a recent court decision regarding multigenerational background checks on an older case that stated it was inadequate for the investigation. The problem was the man's family lived in Tonga. Neither traveling to Tonga and performing checks on the family nor finding out significant history and violence done to the individual that may have had an impact on the jury was done. This is required by the standards and the court decisions. This is an example of the huge expenses we have that we do not know about up front and cannot quantify. This is why we urge this study.

An attorney loses about six months of time when involved on a capital case, and because there are two attorneys on these kinds of cases, one man-year of work is lost. That is a significant impact to the office. Noncapital homicide cases take about half that time and are more likely to negotiate. All the time mentioned so far is up to sentencing and does not include any appeal time.

All Washoe County death penalty cases were funded by taxpayer dollars. By contrast, 10 percent to 20 percent of noncapital cases involve private attorneys. Death penalty sentencing requires juries; noncapital cases do not necessarily require juries. This is not an antideath penalty decision. All sentencings and every penalty should be looked at in terms of the cost benefits. We agree with Senator Settelmeyer that the study should be comprehensive.

Some things are difficult to quantify, such as the deterrent factor. When the most accurate cost savings are balanced with the worth, then an appropriate decision can be reached. That decision might be not to abolish the death penalty, but it might be to look harder at why some counties have more death penalty cases than others. That is why the study is important. Effective defense representation also protects the community, and that is what it is about.

MS. GASCA:

The American Civil Liberties Union of Nevada is in full support of this bill, mostly from a governmental transparency perspective. In no other instances statewide can we find a case where it is impossible to tell what the State is spending and how. What you do not see with the death penalty is how this public policy decision is being effectuated in the State. That does not happen in other big pieces of policy. The State owes the study to our citizens, especially in dire economic times like now, to lay out where the money is being invested.

KRISTIN ERICKSON (Nevada District Attorneys Association):

We are neutral on this bill. We do not object to the study of the cost of the death penalty, and we very much appreciate that it would be the Legislative Counsel Bureau conducting the study.

SHELLY CAPURRO (Nevada Women's Lobby):

We feel this is a necessary study.

SENATOR HORSFORD:

Because so much of what happens in these cases occurs at the district attorney's level, will our Audit Division have all the discretion to get access to what they need to make a proper determination?

EILEEN O'GRADY (Counsel):

I would have to look at the specific statutory authority for the Legislative Auditor, but I believe all the current power the Auditor has in statute could be used in performing this audit.

CHAIR PARKS:

I close the hearing on A.B. 501 and open the hearing on A.B. 337.

[ASSEMBLY BILL 337 \(1st Reprint\)](#): Revises provisions governing campaign practices. (BDR 24-721)

ASSEMBLYMAN RICHARD DALY (Assembly District No. 31):

Assembly Bill 337 is intended to provide a mechanism for the Secretary of State's Office to enforce NRS 294A. The office has a responsibility to make sure campaign laws are followed. The Secretary of State's Office has a Website where notices can be filed. We do not want to give subpoena power to those types of notices but do want to send it to a higher level. There are times when individuals will send out mailings anonymously. That in itself is not illegal, but if it is determined that the literature is expressed advocacy, they have a reporting requirement under the statutes. If there is no name on the mailing, a determination cannot be made if the laws are being properly enforced. If the Secretary of State's Office sends a letter to whom it thinks might be the individual responsible for sending out the mailings, and if the individual ignores the letter, the Secretary of State's Office has no recourse other than giving it to the Attorney General. Without all the information to make a case, very little will happen as there is no real mechanism to enforce the law.

There is specific language in A.B. 337 ([Exhibit N](#)). A notice must be made in writing to the Secretary of State's Office. The notice must contain the full name and address of the person alleging the violation as well as a clear and concise statement of facts sufficient to establish that the alleged violation occurred. A statement by the person alleging the violation that the facts alleged in the notice are true to the best knowledge and belief of that person and any information in support of the alleged violation must be included.

The Secretary of State's Office will evaluate the notice to determine if there is sufficient, reasonable suspicion of a violation. An investigation will be launched and if needed, the Office can use the subpoena power to get the information or apply for a court order to obtain what is sought. If there is a case that needs

further litigation, the Secretary of State's Office would usually, not always, go to the Attorney General's Office for the prosecution.

We added a 180-day time limit for submitting a notice so no games could be played. An individual can file a notice at any time, but the subpoena power only pertains to the 180-day time frame.

MATT GRIFFIN (The Capitol Company):

I will provide a brief example as to why I am proposing an amendment to A.B. 337. There are instances where robocalls go out to thousands of people during the day and night, but there is no information about who is placing the calls. With that in mind, I propose adding language to section 1, subsection 5, line 16. That line reads "person alleged in the notice to have committed the violation" After the word "violation," this should be added: "or any person used in the production or dissemination of materials that are the subject of the notice under section 4." Under circumstances where the person responsible is unknown, what is known is that a firm was contracted to do the robocalls. The information can be subpoenaed.

SCOTT F. GILLES (Deputy for Elections, Office of the Secretary of State):

We support this bill. We worked with Assemblyman Daly on the language and are comfortable with it. Whether to extend this authority to our office is a Legislature policy decision, but it would give our office increased flexibility in obtaining documentation that we would not have otherwise.

Prior to submitting a notice to the Attorney General's Office for prosecution, it would give us another avenue to investigate the identity of the individual or group who has done an independent expenditure that should have been reported but was not reported. Occasionally, we receive complaints about groups that are not registered and are not identified by individuals who should have reported independent expenditures but have not. This bill would allow us to use the subpoena power to discover who the individuals or groups are if they are unwilling to provide the information voluntarily.

LYNN CHAPMAN (Nevada Families):

We are in favor that the accuser needs to provide his or her personal information and what allegedly happened. We are concerned about what remedy is available if an individual is innocent.

CHAIR PARKS:

I close the hearing on A.B. 337 and open the hearing on A.B. 132.

[ASSEMBLY BILL 132 \(1st Reprint\)](#): Revises provisions governing the dates for certain elections. (BDR 24-684)

ASSEMBLYMAN SEGERBLOM:

Assembly Bill 132 would allow municipalities, which currently have their election cycle in the off years, to allow their city councils to vote to make those election cycles in the even years. Sparks, Reno and Carson City have their municipal elections in their even years. Other cities, especially those in Clark County, do not. Voter turnout in those elections is dismal, and this bill would substantially increase the participation in municipal elections, plus it would be a major cost savings. The municipalities in Las Vegas offered an amendment as there is concern whether the terms would be shortened or extended during transition from the odd years to the even years. I fully support that amendment.

SENATOR SETTELMAYER:

Is this for all cities in the State?

ASSEMBLYMAN SEGERBLOM:

Yes, it is for all cities. Reno, Sparks and Carson City already do this, so they do not need to be included. Elko may testify they do not want to because they have a similar bill.

SENATOR SETTELMAYER:

If this bill passes into law, does it take the vote of the city councils?

ASSEMBLYMAN SEGERBLOM:

Yes.

JAVIER TRUJILLO (Intergovernmental Relations Specialist, City of Henderson):

The City of Henderson is proposing an amendment ([Exhibit O](#)) to this bill. Assembly Bill 132 proposes to open up the charter of the City of Henderson and several other cities that are listed in the Legislative Counsel's Digest. We have shared our concern with Assemblyman Segerblom and Eileen O'Grady, Counsel, that our elected officials want to see any change or the shortening of terms be prospective and would not occur during the existing term, and in the event the

city council adopted an ordinance to move the election from the odd year to the even year, the shortening of a term would happen in the succeeding term. This language makes it prospective. We have shared this with the other cities listed on the bill, and some have expressed a desire to have that same language inserted into their city charters.

This bill opens up specific city charters and it would not be applied statewide. It would be applied specifically to these city charters.

ASSEMBLYMAN SEGERBLOM:

I am fine with that. The judges are concerned if they have a six-year term, this would turn it into a four-year term. The key is if an individual is elected to a six-year term, he or she should still have the six-year term.

CHAIR PARKS:

Would the individuals fulfill their existing term? Would the next term possibly be an abbreviated term?

ASSEMBLYMAN SEGERBLOM:

Yes to both questions.

MR. TRUJILLO:

This amendment is on behalf of the City of Henderson. Other cities will come up to the table to ask for the same amendment to be part of their city charters. I am not speaking for any other city. I understand the City of Elko would not want this language inserted into its city charter.

KAREN L. STORMS (City of North Las Vegas):

I am the City Clerk and the election administrator for the City of North Las Vegas. I am in support of the proposed amendment to A.B. 132 because it allows me to announce a future election with accurate information. I have an obligation to fully disclose to incumbents, candidates, prospective candidates and the public all information related to candidacy and prospective time in office. Advance notice of how long the term will be is part of that responsibility. I am in support of this bill and the change to the city's charter with the language contained in the proposed amendment.

LIANE LEE (City of Las Vegas):

We support A.B. 132 with the proposed amendment from the City of Henderson that would change our city charter to make this prospective. We want to thank Assemblyman Segerblom and the City of Henderson for working with us on this bill.

MARY PIERCZYNSKI (Boulder City):

Boulder City supports this bill and the language presented in the City of Henderson's amendment. Boulder would like this language in Boulder City's charter.

CHELSEA CAPURRO (City of Elko):

We are very supportive of the bill. We have had similar bills that do the same thing; however, although we support the City of Henderson, we want to keep ours as written in the first reprint. We have two city councilmen whose terms would be shortened by this. They actually voted for our bill, which does this in S.B. 134. We have an election coming up on June 7. The three seats of the mayor and two council member terms would be shortened. They are aware of this and supportive of it. At least they know ahead of time that if the bill passes, it could affect their terms.

[SENATE BILL 134](#): Amends the Charter of the City of Elko to change the timing of the general municipal election. (BDR S-543)

CHAIR PARKS:

I close the hearing on A.B. 132 and open the hearing on A.B. 433.

[ASSEMBLY BILL 433 \(1st Reprint\)](#): Expands prohibition on employers taking certain actions to prohibit, punish or prevent employees from engaging in politics or becoming candidates for public office with certain exceptions. (BDR 53-63)

ASSEMBLYMAN SEGERBLOM:

This bill prevents municipalities or local government entities from discharging or requiring an employee to take a leave without pay while running for office. This came up because a municipality in Clark County put one of its employees on leave without pay during the campaign period while running for State Assembly. If an employer wants to restrict what an employee does during working hours,

that is legitimate, but to say that a city or county employee has less rights after hours than people who do not work for a municipality is not right.

I would support an amendment or exception to this bill if it deals with a situation where an employee is in a confidential-type job that would require the job title or duties changed during the campaign. The bill states now that an employer cannot do anything to the employee. I would support the exception in that situation. A person should not be punished if seeking a political office. It is a First Amendment right, and we should encourage it.

SENATOR SETTELMAYER:

It will be interesting to see the amendment because we do have an issue on the bill in Government Affairs that we refer to as "pop-cap."

SENATOR DENIS:

This could impact me since I am a State employee, although we do not have those kinds of policies.

ASSEMBLYMAN SEGERBLOM:

I do not think it will impact you anymore than anyone else who works for State or the local governments.

ROBERT A. OSTROVSKY (City of Las Vegas):

We are the unnamed entity that placed an employee on unpaid leave. We now support this bill. We have discussed this matter with the sponsor of the bill, and he has agreed to work with us on some amendments. We have specific language, but we have not worked out the minor details. We will get it to the Committee as soon as possible.

Conceptually, the bill does not define "adverse employment action," and we would like it to address a couple of issues. First, we want to make it very clear to the employee running for office that the employee is prohibited to campaign on the time of the employer. Second, it would allow the reassignment of a public employee where there is a clear conflict of interest between the candidate and his job. Third, it should indicate that the entity or business affected by this is still entitled to take disciplinary action on a performance basis following its regular policies if there is a performance issue with the employee. Fourth, the term "candidate" needs to be defined.

We think the language can be worked out. The bill sponsor has been very helpful working with us. With the language worked out over the next day or two, there would be no question that the City would be happy to support this language and eliminate this situation. We did what we thought was appropriate given past history and thought it was reasonable at the time. Assemblyman Segerblom has convinced us it probably was not reasonable at the time, and we ought to take some other action in the future.

CONSTANCE J. BROOKS (Senior Management Analyst, Office of the County Manager, Clark County):

Clark County is neutral on this bill. However, we are in support of the conceptual amendment that was offered by Robert A. Ostrovsky on behalf of the City of Las Vegas. We have some concerns with the language "adverse action" and how that would work with our current policy relative with employees who would like to run for an office. If the language were to be clarified, it would suffice.

SAMUEL McMULLEN (Las Vegas Chamber of Commerce):

We as private employers would have an interest in this bill. This affects public employers as well as private employers. We are happy with the potential clarifications of what would be allowable employment actions and the retention of the normal things people would expect as employers that they would still have as tools.

Senate Committee on Legislative Operations and Elections
May 12, 2011
Page 34

CHAIR PARKS:

I close the hearing on A.B. 433 and adjourn the meeting at 6:20 p.m.

RESPECTFULLY SUBMITTED:

Debra Carmichael,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 301	C	Lee Rowland	Testimony
A.B. 301	D	Senator Barbara K. Cegavske	Steven D. Grierson letter
A.B. 301	E	Rebecca Gasca	<i>Voting with a Criminal Conviction in Nevada</i>
A.B. 301	F	Lee Rowland	Proposed Amendment 6844
A.B. 301	G	John V. Cracchiolo	Statement from Larry Struve
A.B. 301	H	Richard F. Boulware	Testimony
A.B. 301	I	Senator David R. Parks	Testimony from Carl Wicklund
A.B. 501	J	Bernie Anderson	Testimony
A.B. 501	K	Michael Pescetta	The Death Penalty in Nevada Since 1977
A.B. 501	L	Nancy Hart	A Summary of the Data and Scientific Studies
A.B. 501	M	John V. Cracchiolo	Statement from Larry Struve
A.B. 337	N	Assemblyman Richard Daly	Proposed Amendment
A.B. 132	O	Javier Trujillo	Proposed Amendment