

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

**Seventy-sixth Session  
April 5, 2011**

The Senate Committee on Legislative Operations and Elections was called to order by Vice Chair Moises Denis at 3:43 p.m. on Tuesday, April 5, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator 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:**

Senator John J. Lee, Clark County Senatorial District No. 1  
Senator Dean A. Rhoads, Rural Nevada Senatorial District  
Assemblywoman Debbie Smith, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Carol Stonefield, Policy Analyst  
Eileen O'Grady, Counsel  
Michael Geissinger, Committee Secretary

**OTHERS PRESENT:**

Teresa Thienhaus, Director, Department of Personnel  
Carole Vilardo, President, Nevada Taxpayers Association  
Andrew Clinger, Director, Budget Division, Department of Administration  
Vishnu Subramaniam, Chief of Staff, American Federation of State, County and  
Municipal Employees, Local 4041  
David K. Morrow, Administrator, Division of State Parks, State Department of  
Conservation and Natural Resources  
Kyle Davis, Nevada Conservation League and Education Fund

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Jim DeGraffenreid, Chair, Special Committee on Legislation, Nevada Republican Party  
Matthew M. Griffin, The Pew Center on the States  
Jesse A. Wadhams, The Pew Center on the States  
Scott F. Gilles, Deputy for Elections, Office of the Secretary of State  
Alan Glover, Former Senator, Clerk/Recorder, Carson City  
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services  
Stacy Woodbury, Chief, Administration Division, State Gaming Control Board  
Caren Jenkins, Executive Director, Commission on Ethics  
George Keele, Commissioner, Commission on Ethics  
Douglas R. Thornley, Assistant City Attorney, City Attorney's Office, City of Sparks  
Cadence Matijevich, Legislative Relations Program Manager, Office of the City Manager, City of Reno  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Janine Hansen, Nevada Eagle Forum

SENATOR DENIS:

We will open the hearing on Senate Bill (S.B.) 286.

[SENATE BILL 286](#): Authorizes awards to certain state employees who suggest ways to improve the operation of State Government. (BDR 31-980)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

In 28 years of legislative service, I have observed state and governmental agencies having no incentive to save money. I have heard state employees say, "I have \$32,000 surplus in my budget, and I have to spend it this fiscal year." If they do not spend their surplus, they know the budget committee will reduce their budgets in the next session. I will now read from a written document ([Exhibit C](#)), which explains why we need S.B. 286.

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

Senator Rhoads and I worked together to develop this program. I have provided a copy of conceptual amendments ([Exhibit D](#)) to this bill. In drafting this bill, we looked at prior bills put forth by Senator Rhoads and other states.

I will finish the reading of [Exhibit C](#). It will explain how a suggestion form will be developed by the Legislative Counsel Bureau (LCB) and how the Interim Finance Committee (IFC) will receive savings reports. The savings will be realized before awards will be paid. We expect this bill to stand alone; it has to save money for the bill to work. This bill will reward hardworking employees of our State and create incentives for money-saving ideas. The employees working everyday are the ones who know where savings can best be realized.

SENATOR CEGAVSKE:

We have heard from education staff who spend down excess funds on supplies or other items to avoid giving back the excess. If school districts were to avoid this type of spending, would there be incentives for this type of savings?

ASSEMBLYWOMAN SMITH:

That concept falls under the classification of a normal part of the job. We should not reward people for doing something they should be doing anyway. The rainy day funds in kindergarten through Grade 12 and higher education return money back to the teachers for later use.

SENATOR RHOADS:

Just because \$32,000 was given back to the General Fund does not mean an award would be paid.

SENATOR CEGAVSKE:

Are there any consequences if an idea is not applied?

ASSEMBLYWOMAN SMITH:

The savings has to be realized for one full year before a reward can be collected. There must be proof of savings.

SENATOR DENIS:

Does the proposal go through the employee's supervisor?

ASSEMBLYWOMAN SMITH:

Yes.

SENATOR DENIS:

What if a supervisor does not implement the idea? Is there any recourse?

SENATOR RHOADS:

There is nothing in the bill for that scenario, but perhaps people from administration will comment on the matter when they testify.

ASSEMBLYWOMAN SMITH:

We are trying to keep the bill from being too onerous so people will want to participate. The reporting agency will also realize part of the reward, so there is an incentive for the chief or designee to embrace ideas.

SENATOR SETTELMAYER:

In the conceptual amendments handout, [Exhibit D](#), No. 3 says an eligible employee cannot submit more than two suggestions per year. Could we amend to say, "not more than two pending suggestions?" We should not limit an employee who continually develops good cost-saving ideas.

ASSEMBLYWOMAN SMITH:

We are open to suggestions.

SENATOR SETTELMAYER:

We have all seen agencies spending money rather than returning it to the General Fund. Could we implement an award for individuals who whistle blow this practice?

SENATOR RHOADS:

I would have to think about that change.

ASSEMBLYWOMAN SMITH:

There may be another place for that type of legislation. We are attempting to pass this measure as a positive for employees and agencies.

SENATOR CEGAVSKE:

I applaud this bill for the teamwork approach it promotes.

TERESA THIENHAUS (Director, Department of Personnel):

We are in support of the bill with the amendments discussed with leadership staff. Senate Bill 286 would increase incentives for employees by paying a percentage of the cost savings, which would increase dollar amounts over what is currently available. It will allow an award to be split among employees of a group, which we currently cannot do. We have the Program for Merit Awards

under chapter 285 of *Nevada Revised Statutes* (NRS) for employee incentives. If this bill passes, we discussed with staff about keeping our Merit Award Board in place to administer this program. The secretary of the Merit Award Board would receive suggestions, as we currently do, and begin the process with the reporting agency. This would be different from what S.B. 286 provides. We would involve IFC only if the award amount is over \$5,000 and the cost savings to the State is above \$50,000.

SENATOR DENIS:

Could reports be sent to IFC for smaller awards? It would be good for IFC to see any savings being realized.

MS. THIENHAUS:

We could submit a report to IFC. We have 20 years of history through the Merit Award Board with regard to savings and awards paid out.

SENATOR DENIS:

Would the employee go directly to the Merit Award Board, bypassing their supervisor? Is the incentive for the agency still in place with your program?

MS. THIENHAUS:

We like the incentives S.B. 286 provides to promote employee cost-saving ideas. Our only change would be that suggestions are submitted through the Merit Award Board for processing.

SENATOR DENIS:

Would this increase workload?

MS. THIENHAUS:

When the dollar amount of possible awards is published, we do anticipate more employees coming forward with ideas.

SENATOR DENIS:

Will that impact the budget?

MS. THIENHAUS:

No. We have a secretary who handles the Merit Awards Program now, and she would be able to absorb the new workload.

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CAROLE VILARDO (President, Nevada Taxpayers Association):

I am pleased to support S.B. 286. This bill takes the best elements from all measures put forth in the past. The employees know where the savings are, as shown by the Cashman Good Government Awards the Nevada Taxpayers Association sponsors.

ANDREW CLINGER (Director, Budget Division, Department of Administration):

The administration supports this bill. It provides incentives necessary to create efficiencies in government.

VISHNU SUBRAMANIAM (Chief of Staff, American Federation of State, County and Municipal Employees, Local 4041):

We support this bill. It will give personal incentive for employees to find cost savings within their departments. Employees will be more attentive to how services are delivered and the associated costs. The bill will create a formal system for bringing forth cost-saving ideas. With IFC having discretion of the percentage and no minimums, this bill is good for the State, the employees and the taxpaying public.

SENATOR DENIS:

We will close the hearing on S.B. 286.

CHAIR PARKS:

We will open the hearing on Senate Joint Resolution (S.J.R.) 13.

**SENATE JOINT RESOLUTION 13**: Proposes to amend the Nevada Constitution to establish the Trust Fund for State Parks. (BDR C-918)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

I will read a written statement ([Exhibit E](#)) which explains how S.J.R. 13 proposes to impose an added registration fee on vehicle registration. I am trying to keep our State parks afloat in tough economic times. The goal of S.J.R. 13 is to remove operational funds from the State's General Fund and make our parks self-sustainable.

SENATOR DENIS:

[Exhibit E](#) says the fee would be up to \$5 per year. When reading the exhibit, you interjected the figure of \$3. Will the fee be \$5 or \$3?

CHAIR PARKS:

The language in the bill currently reads not to exceed \$5. Will there be regulations adopted by the Department of Conservation and Natural Resources?

DAVID K. MORROW (Administrator, Division of State Parks, State Department of Conservation and Natural Resources):

The Division of State Parks is neutral on this bill. The fee is proposed to be \$3 on top of current vehicle registrations.

CHAIR PARKS:

We could amend this bill to say a registration fee of \$3 per noncommercial vehicle. To understand the mechanics, we pass legislation to be put in statute, and departments then adopt regulations for the implementation of a fee. If the bill says not to exceed \$5, at some point a regulation needs to state the cost.

SENATOR LEE:

The \$3 fee covers needs of today. In the future, we may need a \$5 fee to cover expenses.

MR. MORROW:

There is another bill, S.B. 326, in the Legislature that would affect current governmental registration. If S.J.R. 13 is approved by this Legislative Session, it would need to come back next session and if approved, would require a vote of the public. Senate Joint Resolution 13 will be a long-range solution.

**SENATE BILL 326**: Revises provisions relating to parks and recreation areas in this State. (BDR 20-393)

SENATOR LEE:

The other bill, S.B. 326, requires the Department of Motor Vehicles to transfer a portion of proceeds from the Governmental Services Tax on registration of noncommercial vehicles. Senate Bill 326 will be supplanted by S.J.R. 13 if it is the will of the people.

KYLE DAVIS (Nevada Conservation League and Education Fund):

We are in support of S.J.R. 13. There are 17 conservation groups throughout Nevada which make up the Conservation Priorities for a Sustainable Nevada organization. The issue of providing sustainable funding for State parks is one of the four priorities of the statewide organization. We testified last week in

support of S.B. 326 before the Government Affairs Committee. The program S.J.R. 13 follows has proven to be successful in other states. There are State parks currently charging \$8 for day use by residents. The \$3 fee per year will make our State parks accessible and affordable to our residents. The State Parks are a treasure to the people of Nevada, and we would like to see them self-sustainable. The State has made considerable investments in our State parks and that needs to be protected. We will still be realizing revenue from our out-of-state tourists who make up a third of all visitors. This bill will benefit citizens throughout the State and give financial aid to our rural economies.

JIM DEGRAFFENREID (Chair, Special Committee on Legislation, Nevada Republican Party):

We are opposed to the change to Article 9 of the Nevada Constitution, the addition of section 6, subsection 4 in S.J.R. 13. If additional funding is needed for State parks, it should be financed by increased user fees. It is not appropriate to force all drivers to pay. Having an increase put into the Nevada Constitution is concerning. We oppose exceptions being added to Article 9, section 5 dictating allowable uses of license and registration fees.

SENATOR HORSFORD:

The language written in section 6, subsection 4 says, "The Legislature may provide by law for the imposition... ." The fee will not be a requirement in the Constitution. It will be a requirement to establish the trust fund in the Constitution, but permissive by law whether or not to charge a fee. Is that correct?

MR. DEGRAFFENREID:

If passed as written, the taxpayers will probably have to pay the fee. If the Legislature imposes the fee, it will not be optional for taxpayers.

SENATOR HORSFORD:

The fee will not be put into the Nevada Constitution. The bill is establishing a trust fund and permitting the Legislature to provide by law for the imposition of the registration fee not to exceed \$5.

SENATOR CEGAVSKE:

I would like clarification of section 5, lines 24 through 27.



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SENATOR LEE:

I will defer to legal counsel.

EILEEN O'GRADY (COUNSEL):

Article 9, section 5 in the Nevada Constitution requires any registration fees collected by the Department of Motor Vehicles be used for construction, maintenance and repairs of highways. There had to be an exception added for proceeds to be used for parks.

CHAIR PARKS:

We will close the hearing on S.J.R. 13 and open the hearing on S.B. 390.

SENATE BILL 390: Revises provisions relating to the statewide voter registration list. (BDR 24-1117)

MATT GRIFFIN (The Pew Center on the States):

I am here on behalf of The Pew Center on the States. I would like to give an overview and the purpose of the bill.

JESSE A. WADHAMS (The Pew Center on the States):

I am here representing The Pew Center on the States. I am available for any questions.

MR. GRIFFIN:

Senate Bill 390 seeks to modernize our election system. The Pew Center on the States has conducted a project on voter registration, using all levels of participation from many states. Pew is good at gathering information and getting input from people to mold projects to serve the needs of those most affected. With data from the Pew Center's voter project, S.B. 390 seeks to implement changes of how voters are identified and registered. Senate Bill 390 will allow the Office of the Secretary of State to work in conjunction with other state agencies to verify information of registered voters. Senate Bill 390 will allow information to be shared with other states that are participating in the Pew Voter Registration Modernization Project. Nevada will be able to verify voters between California, Arizona, Utah or any other participating state, the same way counties within Nevada are able to do now. The information will be in a shared database for all participating states. If there are discrepancies within the information, a clerk can send a mail notice to verify residency. Pew brought many consultants into the project with privacy being a driving factor in

formulating S.B. 390. In order to participate, Nevada will need to make the changes reflected in S.B. 390.

SENATOR SETTELMAYER:

If a freedom of information request was made to the Secretary of State's Office asking for all individuals with matching birthdates and social security numbers, would the Office have to give those names?

MR. GRIFFIN:

This bill would not change that scenario. The information would be supplied, but without determination of residency. If S.B. 390 is in place, nonconfidential information in the database would be accessible.

SENATOR SETTELMAYER:

Would an individual have the ability to get information through the Nevada Secretary of State's Office for someone in another state?

MR. GRIFFIN:

You would get from the Nevada Secretary of State only what Nevada knows. You will not be able to access another state's database.

SENATOR CEGAVSKE:

How many states are participating in the Pew Project?

MR. GRIFFIN:

All the Western states except New Mexico participate. The individual states can decide if they want to participate.

SENATOR CEGAVSKE:

Is the concept new? What will it cost our State to participate in the program?

MR. GRIFFIN:

It will depend on when the State enters the program. The participation fee can be paid with Help America Vote Act (HAVA) funds. There is not a fiscal note attached to this bill. I would project the enrollment fee to be \$100,000 for the first year and \$75,000 in subsequent years, which pays the governing body and maintenance of the database. The governing body would be comprised of the secretary of state's office for each participating state.

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SENATOR CEGAVSKE:  
Would the governing body get paid?

MR. GRIFFIN:  
No, but as more states participate, the fees will lessen.

SENATOR CEGAVSKE:  
What is the balance of Nevada's HAVA funds?

SCOTT F. GILLES (Deputy for Elections, Office of the Secretary of State):  
We have approximately \$6.5 million in HAVA funds which can be used to fund this project. We support this bill. We have worked with Pew, Mr. Griffin and Mr. Wadhams on the language in S.B. 390. The bill will allow us to collect data necessary for Nevada to participate in the Voter Registration Modernization Project.

ALAN GLOVER (Former Senator, Clerk/Recorder, Carson City):  
The Clerk's Office supports this legislation. It would be helpful to have database information from other states. The method of calling other states for information is not always productive. We have had states refuse our inquiries. This bill will modernize voter registration.

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):  
We have concerns with section 1, subsections 6 through 8 of S.B. 390 ([Exhibit F](#)). These subsections require State agencies to provide the Secretary of State with information they maintain on individuals. Federal laws prohibit us from sharing certain information with the Secretary of State. Under the Health Insurance Portability and Accountability Act, we can only share information with an organization or entity involved with the management of individual health care services. There are other outstanding federal laws which protect Medicaid, such as Temporary Assistance for Needy Families. The Deputy Attorney General for our agency has pointed to the word "notwithstanding" in section 1, subsection 6 as meaning "regardless." Upon passage, this could mean, regardless of outstanding laws, that we will have to provide information. The use of "notwithstanding" is problematic and conflicts with federal law and confidentiality regulations. My Department is working on our fiscal note for S.B. 390 with regard to providing information to the Secretary of State.

CHAIR PARKS:

Have you had conversations regarding the bill with either Mr. Gilles or Mr. Griffin?

MR. DUARTE:

I did not realize this bill was drafted, so I have not had any conversations yet.

CHAIR PARKS:

How is Utah coping with these issues, under basically the same legislation?

STACEY WOODBURY (Chief, Administration Division, State Gaming Control Board):  
I am here to express concerns on S.B. 390 with regard to confidentiality of information on our gaming license applications. This bill will require us to provide all information in our possession deemed necessary by the Secretary of State. The intent of the bill is for information regarding voter registration, but we have information in our possession that if released to the Secretary of State would make our licensees uncomfortable. We would be concerned future office holders may ask for more confidential information. In our duties of regulating the gaming industry, we are required to maintain confidentiality under statute. This bill may create a conflict. I was told by the Secretary of State's Office it has regulation adoption authority in its chapter, allowing the Office to limit inquiries under regulation. We feel policy is better with the law more defined, rather than the adoption authority regulation.

CHAIR PARKS:

We will close the hearing on S.B. 390 and open the hearing on S.B. 391.

**SENATE BILL 391**: Revises provisions relating to ethics in government.  
(BDR 23-1116)

CAREN JENKINS (Executive Director, Commission on Ethics):

Senate Bill 391 was drafted by LCB and provided to the Ethics Committee moments before Committee introduction. We did not have an opportunity to meet with the drafter or an opportunity to provide feedback on the bill. We have provided a written copy ([Exhibit G](#)) of our proposed amendments.

In section 2, there is a new defined term, "agency," which was in the Ethics in Government Law as a part of another measure. We have defined agency to mean any Executive Department of the State government or any county, city or

other political subdivision. This will become important when talking about conflicts of interests in contracting. Section 3 removes the definition of "a commitment in a private capacity to the interest of others." This term was in NRS 281A.420; however, because we are applying the term to defined sections, it became a defined term. Section 3, subsection 6 says, "with whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment or relationship described in subsections 1 to 5, inclusive." The Nevada Supreme Court has found this statement to be unconstitutionally overbroad. Currently pending before the U.S. Supreme Court is an appeal of that finding. As a statute that was found unconstitutional, it cannot be applied. Removing this language, at this time, would serve no purpose with a pending U.S. Supreme Court case. The only substantive change to that definition is the addition of registered domestic partnership to the types of relationships that create those commitments in a private capacity to the interests of others. Section 4, "pecuniary interest" means any interests that can be valued in money. Section 5, "personal interest" means any potential or actual private benefit or detriment to a person affected by a matter. We are asking these terms be defined here. Personal interest was applied by the Commission and inferred to be among the interests that can constitute a conflict. We have had matters before us involving a severe hatred between people or things other than a financial interest which have created conflict. Personal interest needed to be confined and incorporated into our conflict statutes.

Section 6 is placing, into its own section, the reporting requirement when a person who is a public officer represents or counsels a person before an agency of government for compensation. The requirement is currently in statute as part of another statute. All of the reporting and filing requirements with the Commissioner are asked to be codified near each other to be clearer. In addition, to subsection 2 we would add "transmitted by facsimile machine or other electronic means." We have developed a means to fill out our forms on our Website. That is not a permissible filing method as of now. Section 7 would allow the Ethics Commission to apply for and accept grant funds that have been approved by the Commission itself. This will supplement the efforts of the body with regard to outreach in education.

New in chapter 281A of NRS is the redirection of financial disclosure statements (FDS) to the Secretary of State's Office. The redirection is before this Legislature in a number of different measures separate from the

Commission on Ethics. The filing of an FDS needs to be removed from the Commission on Ethics statutes, NRS 281A. The other measures about moving the FDS filings to the Secretary of State leave them there. The Commission on Ethics jurisdiction is limited to NRS 281A. The Commission has no authority over the filing of an FDS, so it should be removed from our statute. In new sections to NRS 281A, we have included a provision for the four-day work week and the actuality of a deadline date for annual disclosure filing deadlines if a holiday or weekend is involved. The statute should allow moving the deadline to the next business day. We have added registered domestic partnership to all relations within the third degree of consanguinity for disclosure and other things. We define household to include persons within the third degree of consanguinity to persons who are related by blood, adoption, marriage or registered domestic partnership.

Section 11 clarifies the Ethics Commission's determination of a "public officer." The public officer definition that exists in NRS 281A.160 does not include persons whose positions were meant to be public officers. People who manage public entities and have the authority and administrative discretion to spend public money should be clearly defined in statute. We contend that a public officer be defined as any person elected or appointed to hold a position or appointed or employed to perform the duties of a position, with or without compensation, which is established, created or authorized to be established or created by law. The Commission has public inquiries regarding the accountability of hospital officials and school superintendents. The Commission determined, based on statute, these types of individuals did not fall within the definition of public officer.

GEORGE KEELE (Commissioner, Commission on Ethics):

The Commission relied on a Nevada Supreme Court case in 2001 which upheld what Ms. Jenkins just testified to.

MS. JENKINS:

Section 12 covers the way the Commission is constituted. Currently, four members are appointed by the Governor and four by the Legislative Commission, and two must be former public officers. We have added "or former public employees" to both the Governor's and Legislative Commission segments. In section 12, subsection 4, we added a dependent clause saying, "subject to the provisions of NRS 281.057." A policy decision needs to be determined by this body regarding this statute. The Ethics Commission has no

preference, but it should not be left to the discretion of the Governor to apply a statute. Section 13 removes the review of statements of financial disclosure from the duties of the executive director. Financial disclosures will be moved to the Secretary of State's Office. It also provides if the Executive Director is prohibited from acting due to a conflict, the chair will appoint someone else for the job.

In section 14, we removed the time line for NRS 281A.440 because it says, "as set forth in regulation," and it is set forth in regulation. Section 15 has an amendment to the local government cost share arrangement that funds the Ethics Commission. This revision is intended to allow the Commission to retain already received funds and to adjust local government shares at the next semiannual billing cycle. There will be no reversions to the cities or counties. Section 16 is a cleanup of regulations which removes the Ethics Commission's authority over forms for submission of an FDS. Section 17 is an important change for the Ethics Commission. When the Ethics Commission issues a subpoena, the cost of issuance will be paid by the issuing party, whether issued by the Commission or the subject.

Section 18, subsection 2, restricts the use of a public officer's position in government to secure a personal interest or pecuniary interest to be significant. This will allow the Commission to determine if a person is using his or her position in government to secure or grant an unwarranted privilege, preference, exemption or advantage. Section 18, subsection 9 removes the word "use" from statute in regard to a public officer's influence of a subordinate. Subsection 10 says you cannot use your position in government to seek other employment. We have made the change allowing employees to state or affirm they hold positions as public officers. Section 19 allows public officers or employees to accept additional compensation to represent or counsel a private person before any agency or legislative body, including the agency or legislative body in which they served, after leaving the agency or legislative body for one year. This will clarify the "cooling-off period." The lined out wording in subsections 2, 3, 4 and 5 of section 19 have not been repealed, but have been moved to another section.

Section 20 is the abstention and disclosure section of the bill. Subsection 1, paragraph (b) adds "personal interest" to those interests which must be disclosed—which trigger the abstention requirement—by the public officer before voting. We would like to remove the descriptive repetition of the

abstention analysis and clearly define the term "clear case" or remove it. Subsection 8 is the definition of commitment in a private capacity which is proposed to be in its own definition section.

Section 21 relates to NRS 281A.430 on prohibition of a public officer or employee contracting with government under certain circumstances. There are provisions in NRS 281 which create criminal penalties for such contracts. The drafters of this bill separated the exceptions into two types of contracts, with one being an open competitive bid contract and the other being for services not usually put out for open public bids, such as professional services contracts. There were ambiguities whether professional service and supply contracts could be entered with spouses or corporations in which an interest is held by public employees or officers. The changes made to NRS 281A.430 will help clarify the narrow circumstances of these type contracts. We have provided for the scenario of an individual having an existing contract with the government or agency and then becoming a public officer or employee that they may fulfill the contract. There are safeguards to make sure a person with whom a public officer or employee has a commitment in a private capacity is not awarded a closed, noncompetitively bid contract. The new text in subsection 5 allows the Ethics Commission to grant relief to a public officer or employee from strict applications of this section if not contrary to public policy.

Section 22 requires the Executive Director's report to the investigatory panel to be in writing. The amendments remove language within S.B. 391 deemed repetitive and unnecessary. In subsection 6 of section 22, the drafters placed a notion of the Chair of the Ethics Commission appointing a person to fulfill the duties if the Director is conflicted out. We moved it to the duty of the Executive Director. Subsection 9 is being removed because we do not have the authority to keep matters confidential by the requestor. There is wording in the bill which could lead someone into believing they could reveal conduct of an alleged conflict.

Section 23 allows the Secretary of State to approve the FDS form if a local ethics commission wants to create its own FDS form. Section 24 imposes a requirement for counties, cities, local governments, Legislature and Executive Departments to inform public officers and State public employees of the need to file a public acknowledgement of statutory ethical standards within 30 days of taking an oath of office. The section requires that within six months of taking an oath of office, the public officer or public employee of the State must



complete a course on the Ethics in Government Law. There would be no fiscal impact for State employee training according to the Personnel Department. The trainings take place throughout the State for public officers with face-to-face training instead of intranet instruction.

MR. KEELE:

Ms. Jenkins was astonished by the number of people throughout the State who were unaware of the standards established by NRS 281A. The surfeit of activity we experienced in complaints against various public officers and employees was nonintuitive. These complaints had nothing to do with ethics, but had to do with fulfilling filing requirements, etc. This prompted Ms. Jenkins to tour our State, giving lectures at numerous venues, communicating these standards to all State employees and officers.

MS. JENKINS:

The material being provided within the 30-day period was often wrong, outdated information. The Commission, with these amendments, will provide the proper updated material on our Website to be printed for a new individual's information packet. Section 24 will also include transmittal by facsimile machine or other electronic means.

*Nevada Revised Statute* 281A.520, subsection 2, revises the wording of the expense or expenditure by a governmental entity incurred for support of a ballot question or candidate to include opposition for considered expense or expenditure. The remaining items in this section are using the defined term, "an agency," instead of board, commission or similar body of the State. Subsection 6 covers the relief by the Commission of an officer or employee or a former officer or employee from the strict application of the contract and provisions. This is done through a confidential advisory request for opinion. The remaining lined out sections deal with financial disclosure statements which are not being repealed but removed from NRS 281A to be placed elsewhere by LCB. Sections 33 and 34 were placed in the bill by LCB for reasons unknown; however, the effective dates listed under "New Section" are relevant. The entire bill would be effective upon passage and approval.

Section 24 which covered the six-month training of new individuals would not be effective until January 1, 2012, so implementation of training programs can take place. The repealed section referring to contracts being allowed or not

allowed to be entered by public officers and employees should be moved to another section if possible.

CHAIR PARKS:

I am concerned about the time restraints to review all the amendments within the bill.

MR. GILLES:

We will review the amendments within S.B. 391. We specifically supported changing sections 281A.600 to 281A.660 regarding our role in collecting and enforcing an FDS. The Secretary of State's Office wants to oversee and be the sole source for filing and policing those documents. We have put those provisions into Assembly Bill (A.B.) 452, which encompasses campaign and expense reports and FDS only. We would be the sole source for filing these reports. There may need to be some reconciliation between S.B. 391 and A.B. 452 if they both pass. The amendments brought forward today will take some review by our office before supporting the entire bill and amendments. We have concern if an FDS were entirely handed off to us. We may not want the control over the content of the FDS reports. We want the ability to create forms that would coincide with what is required in the statute. We would like mandated online filing of those forms, and we want to collect those forms.

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

DOUGLAS R. THORNLEY (Assistant City Attorney, City Attorney's Office, City of Sparks):

The written statement ([Exhibit H](#)) submitted to the Committee reaches more extensive objections to S.B. 391 as submitted. I will focus my remarks on a continuing difficulty within the Ethics in Government Law. The use of subjective modifiers such as "substantial" or "significant" make the boundaries of this law nearly impossible to discern and difficult to enforce in an evenhanded fashion. It becomes unconstitutionally vague. The uses of these adjectives create questions of degree which cannot be resolved by a person of ordinary intelligence. A statutory guide is needed to corral behavior or relationships; those subject to this flaw are left to guess whether a particular relationship requires recusal, disclosure or need to be put on record.

The City of Sparks agrees the ethical performance of government is a paramount concern. The Commission on Ethics performs a valuable role

enforcing the Ethics in Government Law. The Ethics Commission needs tools which allow it to inform everybody who is subject to the law as to what the law actually is. Ms. Jenkins suggested the term "significant" was important in resolving matters on a case-by-case basis, which is the intent of this bill. Unfortunately, the term "significant" is a hallmark of an unconstitutional law and impermissible under the U.S. Constitution. Whether or not a particular relationship is a disqualifying conflict of interest is a basic policy matter that cannot be delegated for resolution on an ad hoc basis. I will refer the Committee to [Exhibit H](#), pages 33 through 69 for the changes the City of Sparks proposes to this bill.

SENATOR CEGAVSKE:

Have you spoken to the Ethics Commission regarding these proposed changes?

MR. THORNLEY:

I have not worked with the Ethics Commission on S.B. 391.

SENATOR CEGAVSKE:

Do you know of the bill from the hearing?

MR. THORNLEY:

The bill was recently given to me. The objections the City of Sparks is raising have been raised with the Commission on Ethics since 2007. Executive Director Jenkins made a point earlier regarding the U.S. Supreme Court's upcoming decision of the catchall provision in the definition of "commitment in a private capacity in the interest of others." It may invalidate the finding of the Nevada Supreme Court. There is a technical distinction between the finding by the Nevada Supreme Court and what has been explained today. The overbreadth doctrine is a creature of First Amendment jurisprudence. It has nothing to do with the due process concerns that underlie vagueness. Just because something may not be unconstitutionally overbroad under the First Amendment does not mean it is not unconstitutionally vague by failing to put individuals on notice as to the boundaries of the law. I direct you to language from the Nevada Supreme Court included in [Exhibit H](#), page 2, which states the existing catchall provision fails to "provide sufficient limitations and explanation concerning when recusal is required." That is vagueness analysis, not overbreadth. If the decision of the Nevada Supreme Court on the matter of *Carrigan v. Nevada Comm'n on Ethics*, 126 Nev. Adv. Op. 28, 236 P.3d 616 (2010), cert. granted,

*Nev Comm'n on Ethics v. Carrigan*, 131 S. Ct. 857 (2011) is overturned, it does not necessarily save this statute.

SENATOR CEGAVSKE:

Ex-Senator William J. Raggio would always ask the question, "Do we need an Ethics Commission in the State of Nevada?"

MR. THORNLEY:

The Ethics Commission does provide an invaluable function enforcing the Ethics in Government Law. The difficulty here does not lie with the Commission on Ethics but more with tools provided by the Legislature that are insufficient under the Constitution.

SENATOR CEGAVSKE:

There are guidelines but also areas wherein the Legislature did not give guidance to the Ethics Commission, which causes confusion with some of its decisions.

MR. THORNLEY:

Under S.B. 391, a "significant" personal interest would be a disqualifying conflict of interest. What is a significant personal interest to me might not be a significant personal interest to someone else. The law needs to be applied in a uniform fashion, which this language does not allow. A better approach would be for the Legislature to consider testimony and evidence from the Commission on Ethics that describes at what point a personal relationship does become a conflict of interest. Local officials, employees and attorneys have been confused by the lack of specific regulations regarding personal interests. An advisory opinion is an option by the Ethics Commission but not always a practical solution. It is not a workable alternative to only clean up the language in statute.

CADENCE MATIJEVICH (Legislative Relations Program Manager, Office of the City Manager, City of Reno):

The City of Reno is neutral on S.B. 391. The concerns we had were addressed in the amendment.

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

I am here today to hear different sides presented on S.B. 391. I will be the conduit of information provided here today and hope to respond with feedback to the Committee.

JANINE HANSEN (Nevada Eagle Forum):

Our concern has been with standards not clearly identified and interpreted by individuals in different ways. I have no evidence to prove the Ethics Commission has improved ethics in government, but we all want ethics in government. The language, not easily interpreted, does cause concern.

CHAIR PARKS:

Is it conceivable for a meeting with the parties involved to resolve some of the differences?

MS. JENKINS:

The terms within the bill which are not black or white is why we have an Ethics Commission. These eight people are placed in a position of authority to determine whether something is significant or substantial or reasonable. These terms are important. The Nevada Supreme Court in *Carrigan v. Nevada Commission on Ethics* did not reach a finding on the due process/vagueness argument, having stopped when justices found a First Amendment issue. I have not seen [Exhibit H](#) provided by the City of Sparks, but I look forward to working with everyone involved. The questions about "other similar relationships in a private capacity" and domestic partnerships will linger. The Ethics Commission would like these issues defined. We will see what comes of the U.S. Supreme Court's decision regarding other similar relationships.

MR. KEELE:

Numerous amici briefs filed by friends of the court have indicated, throughout the United States, that tens of thousands of laws contain these nefarious words Mr. Thornley described as subjective modifiers. The American Civil Liberties Union must be grateful for the subjective modifiers entrenched in the hearts and minds of the constitutional founders. We depend upon these kinds of words and the people who interpret and enforce the statutes. Statutory ethical standards handed down by the Nevada Legislature have evolved and morphed over a period of time. Under the statute, which gives the Ethics Commission

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authorization, we will convene on short notice to hear a particular matter and render our opinion.

CHAIR PARKS:

I would like to pass S.B. 391 out to the Assembly. I want all interested parties and LCB legal counsel to work toward resolutions on the issues within the bill and have it brought back for a vote during a work session.

MS. JENKINS:

Do you know when a work session is planned for this Committee?

CHAIR PARKS:

A work session is planned for next week. We are adjourned at 6:09 p.m.

RESPECTFULLY SUBMITTED:

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Michael Geissinger,  
Committee Secretary

APPROVED BY:

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Senator David R. Parks, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 286	C	Senator Dean A. Rhoads Assemblywoman Debbie Smith	SB 286: Reward Good Ideas, Save Taxpayer Dollars
S.B. 286	D	Senator Dean A. Rhoads Assemblywoman Debbie Smith	Conceptual Amendment for S.B. 286
S.J.R. 13	E	Senator John J. Lee	Written testimony
S.B. 390	F	Charles Duarte	Written testimony
S.B. 391	G	Caren Jenkins	Proposed Amendment by Ethics Commission - S.B. 391
S.B. 391	H	Douglas R. Thornley	City of Sparks opposition letter