

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

**Seventy-Seventh Session
February 12, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:03 p.m. on Tuesday, February 12, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Karen Pugh, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
K. Kevin Benson, Deputy Attorney General, Office of the Attorney General
Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State
Elisa P. Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates

Chair Ohrenschall:

[Roll was taken. Committee protocol and rules were explained.] This session we have a new rule in the Assembly organizing testimony into three categories. "Support" means you are in favor of the bill, or you have a friendly amendment that the bill's sponsor has approved. "Opposed" means that you are not in favor of the bill or have amendments that have not been approved by the bill's sponsor. "Neutral" means you do not have a position on the bill but want to make a few comments about the measure.

I am going to open the hearing on Assembly Bill 35.

Assembly Bill 35: Makes various changes to provisions governing elections.
(BDR 24-398)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

We have collaborated with the Secretary of State on Assembly Bill 35, which concerns Nevada's campaign finance laws, which are codified in Chapter 294A of *Nevada Revised Statutes* (NRS). The Office of the Attorney General has brought A.B. 35 for your consideration because we represent the Secretary of State in the enforcement of Nevada's campaign finance laws, and we believe that the requirements of those laws should be clear for both candidates and the public. Senior Deputy Attorney General Kevin Benson, who represents the Secretary of State, will provide you with a detailed, section-by-section review of this bill. [Submitted letter of support from Attorney General Catherine Cortez Masto ([Exhibit C](#)).]

K. Kevin Benson, Deputy Attorney General, Office of the Attorney General:

In broad terms, A.B. 35 is meant to address specific areas in our campaign finance laws without the technical errors that have occurred in the past by eliminating redundancy that exists in the present statutes.

Section 5 of A.B. 35 addresses disclosure requirements of campaign contributions and expenses in special elections. [Followed points as outlined on the Attorney General's letter ([Exhibit C](#)).]

Chair Ohrenschall:

By special election, you mean recall, as well as when there is a vacancy.

Kevin Benson:

Currently there is no definition in Nevada law of what a special election is, with the exception of special elections for recalls. It is specifically in that instance where there is no disclosure required until 30 days after the election has taken place. There has been some argument that a special election occurs anytime an office is up for election when it would not ordinarily be scheduled for election, even though an election may coincide with the regular biennial election calendar. For example, if you have a vacancy in a four-year term, but the filing for that office, along with the primary election and the general election, occurs during the regular election schedule, it has been argued that is a special election because it would not ordinarily be scheduled as an election on that calendar.

Chair Ohrenschall:

Are those who are arguing that it is a special election trying to claim that some of the reporting requirements do not cover candidates for that special election?

Kevin Benson:

That is correct. Assembly Bill 35 states that if there is a special election that coincides with the general elections calendar, then all of the same reporting is required in the same time periods as for a regular election. The only exceptions are reports that would have been due before the special election was called. That is the main change in section 5. Sections 11, 15, 18, and 19 make corresponding changes throughout the statutes as well.

An additional change is to ensure that in recall elections at least one report is filed seven days before the commencement of early voting for that election, so that there is some level of disclosure of the campaign contributions and expenses involved in the election before people go to the polls.

Chair Ohrenschall:

Have there been any examples of a recall election where the group advocating for the recall of the official did not file any disclosure reports?

Kevin Benson:

Under the status of the current law, they are not required to do so until 30 days after the recall election.

With regard to independent expenditures, section 15 of A.B. 35 makes essentially two clarifications. The first one is that independent expenditures are not coordinated with candidates or with people involved in the candidate's campaign. Independent expenditures are required to be reported under NRS 294A.140 and NRS 294A.210. The idea of an independent expenditure is that it is speech that is independent of the candidate; it is the speaker's own speech. Therefore, the clarification is that speech that is coordinated with the candidate, or with the candidate's campaign, is really speech of the candidate and not of the speaker independently and would not be considered an independent expenditure, but rather an in-kind contribution that is reported by the candidate.

Chair Ohrenschall:

Have there been any cases where an independent group has claimed to not be working with the candidate and the Attorney General's Office or Secretary of State's Office has tried to prove that is not correct?

Kevin Benson:

We have not actually litigated that issue yet. There have been a couple of instances where it appeared that it might be an issue, but they were not pursued through litigation.

Assemblyman Elliot Anderson:

I have my own definition of what "coordinating" and "coordinated with" means; however, I would like to hear your thoughts and definitions for those terms.

Kevin Benson:

The most obvious example of "coordination" would be a situation wherein I call my favorite candidate and say that I want to support his or her campaign and could he or she please send me some campaign flyers or a portable document format (pdf) file of a flyer. I then have that same flyer reproduced and redistributed at my expense. That is essentially taking the candidate's speech with the candidate's permission. Even though it may not have been solicited by the candidate or necessarily approved by the candidate, it is clearly coordinated

with the candidate, and that would not be considered an independent expenditure under this amendment.

Assemblyman Elliot Anderson:

Would it be correct to assume that communication would be an important factor within the definition of coordination?

Kevin Benson:

I believe that generally, yes, that would be the case. As an example, a campaign staffer leaves the campaign and the very next day runs an ostensibly independent ad. Something like that might raise some eyebrows, but absent those kinds of hypotheticals, I think generally there would need to be some sort of communication.

Assemblyman Hickey:

As I understand it, "coordination" is more than approving. Approving is direct, whereas coordination is indirect, more oblique. I think yours was a good example. If one word helps codify and make it clearer to people, I guess I will accept it, but I am not sure that people do not already know what it means.

Chair Ohrenschall:

Mr. Benson, I hate to throw hypotheticals at you, but I am going to do it anyway. Assuming your suggested language becomes law, let us say we have two candidates, Sheila Jones running against Mary Smith, and Ms. Jones is endorsed by a particular organization that has told all of its members how wonderful she is. One week before the election this organization sends out a flyer because they believe that the voters need to know how Ms. Jones feels about pollution, and Ms. Jones has no knowledge of that flyer. Notwithstanding the fact that the organization is wholeheartedly supporting her, would that be an expenditure that the organization would have to report? If the head of the organization had called up Sheila Jones and said, we are going to be dropping a flyer the week before the election to let everyone know what a big polluter Mary Smith is, would this later scenario make it an in-kind contribution for Sheila Jones? Is there room here where someone might end up violating the law because of a thin line between coordination versus not coordinating?

Kevin Benson:

I can respond to your first hypothetical where Sheila Jones had no knowledge that the flyer was about to come out. That incident would truly be an independent expenditure.

Chair Ohrenschall:

Notwithstanding the fact that the group is supporting her?

Kevin Benson:

Correct. Obviously, you can support someone, and that is generally why you run an independent expenditure. If there is no communication there and no other unusual facts, I think it would be considered an independent expenditure.

Chair Ohrenschall:

And in the later scenario where they inform her that they are going to be dropping a flyer, but she still has no control, would that be enough to trigger coordination under this suggested language?

Kevin Benson:

Probably not. Coordination, I think, would probably require more communication between the candidate and the organization as opposed to simply being informed of an upcoming mailing.

Assemblywoman Flores:

Is the term "coordination" actually defined anywhere within the statute? My concern is that everyone is using hypotheticals but there are no actual instances to make an assessment or to compare. Where, then, can we look for guidance if "coordination" is not defined somewhere? There is the potential for candidates to find themselves in situations where they did not realize they were violating the law because the Attorney General or the Secretary of State decided they wanted to define coordination in that specific way at that moment.

Kevin Benson:

Coordination is not currently defined in the bill, but I do not believe that we would be opposed to defining it now or perhaps in regulations later on.

Chair Ohrenschall:

Is the language regarding coordination found in any other state's statutes, and is there any case law in those jurisdictions? Or is it something that would be unique to Nevada should it pass?

Kevin Benson:

The term is found in most other states' campaign finance laws as well as the Federal Election Commission's regulations. The potential difficulty with defining it is that every case is very fact-specific. Getting a definition that has meaning and makes the statute functional and usable, yet at the same time is not so narrow as to be essentially inapplicable in all cases, is somewhat difficult.

Chair Ohrenschall:

But there is case law from other jurisdictions that we could look to with the language regarding coordination, correct?

Kevin Benson:

No other state that I am aware of has the exact verbiage that comes from NRS 294A.140 and NRS 294A.210.

Assemblyman Hickey:

Following on your earlier example of the redistribution of a campaign flyer, we now have the digital realm, and people may access a candidate's website at will. Have you thought about how any of this might apply to information, quotes, or images that might be secured by someone to make an independent expenditure?

Kevin Benson:

If someone was to go on a candidate's website and download a picture and then reproduce that image on a flyer, I do not believe that would be coordination.

In section 15, the second change with regard to independent expenditures is a clarification to the current statutes that provides that a person who is not under the direction or control of the candidate, and who makes an expenditure on behalf of the candidate, must file these reports.

This "on behalf of" language has caused some confusion because some people read that as meaning "as the agent of," but of course you cannot be not "under the direction or control of" and also be the agent. Other people read that as saying in support of a candidate, the implication being if you run a negative attack ad against somebody, there would be no reporting required.

Chair Ohrenschall:

Has there been an example where an advocacy group has run negative ads against a candidate and they have chosen not to report because they believe that the statute is not applicable to them?

Kevin Benson:

Yes, there have been several cases where this has been argued in litigation and, in fact, I am currently involved with such a case. I am not sure if they elected to not report because of the language in the statute or if that is a legal argument that was created after the fact. However, it has been argued in litigation and has yet to be ruled on by the courts. Assembly Bill 35 intends to clarify this by replacing the language "on behalf of" with simply "for or against."

Chair Ohrenschall:

For the Committee members, I believe Mr. Benson is referring to section 15, line 44 at the bottom of page 10 through line 3 at the top of page 11. Is that correct?

Kevin Benson:

That is correct. We have a proposed amendment ([Exhibit D](#)) that would simply change the language from "on behalf of" to "for or against" and change "the candidate" to "a candidate." We believe those revisions make the language clearer and the statute shorter and easier to read. This basically achieves our intent of clarifying that reporting is required for negative ads as well as positive ads. Are there any further questions on the independent expenditure section?

Chair Ohrenschall:

These are independent expenditures solely applying to a candidate and not to a ballot question or to a recall election. Do these apply to advocacy for the election of a candidate, recall of a candidate, and a ballot question, or is a ballot question under a separate section of the bill?

Kevin Benson:

The ballot questions are covered by a separate section of existing law, which I believe already contains the language "for or against." This would also apply in a recall election because it does concern candidates in these two statutes.

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

Just one point of clarification on this "for or against" language. The way the statute is currently written, our agency would look to advocacy for or against as we interpret and enforce the statute. This is just an effort to clarify our position and how the statute should be enforced.

Kevin Benson:

The third main section that A.B. 35 addresses is mostly in section 27, and this has to do with closing down a campaign. As you all know, numerous contribution and expenditure (C&E) reports are required throughout the election year, with some due after the primaries and some due after the general election. One of the biggest issues or problems that I see is with candidates who lose the primary election, withdraw their candidacy, or stop campaigning for whatever reason and simply forget about filing the remaining reports. If you fail to file those reports, there is a civil penalty of up to \$5,000 per report not filed.

Chair Ohrenschall:

Is that assessed daily?

Kevin Benson:

The maximum penalty is up to \$5,000 and is assessed in increments beginning at \$25, escalating up to \$50, and then reaching \$100 per day, depending on how late the report is. We are trying to create a method for a candidate who loses the primary, withdraws his or her candidacy, stops campaigning, or is removed from the ballot by court order, to close down the campaign, satisfy all the reporting requirements, and be finished.

Chair Ohrenschall:

Mr. Benson, section 27 would be applicable to closing down the campaign regardless of whether the candidate raised no funds or raised \$20,000, correct?

Kevin Benson:

That is correct. Under the Secretary of State's regulations, if you lose the primary or formally withdraw your candidacy, you can file all of your remaining reports, and you have effectively ended your campaign and do not have any reporting requirements remaining. This change adds to that people who do not formally withdraw, because the deadline has passed, but have stopped campaigning, lose the primary, or are removed from the ballot by court order. Much of this is already in the statute, but we are trying to capture all of these different circumstances so that a process is available to all of those different types of candidates.

Assemblywoman Kirkpatrick:

Are you trying to get the people who do not actually campaign or those who just start a campaign account to be able to close down sooner? Why could they not do that now?

Kevin Benson:

The current law is limited only to those who lose the primary or who formally withdraw. For example, last election we had a candidate who had to move out of state because her spouse took a position outside of the state, but the time to formally withdraw had already passed. That process arguably was not available to file all those reports to close out her campaign. We want to make an explicit method for people to do precisely that, because unfortunately it seems many people have other things going on in their lives and they simply forget. We are trying to make it an easy, simple process where it is well-defined what they need to do in order to finish out their campaign and meet all their obligations.

Assemblywoman Kirkpatrick:

Nothing precludes them from doing that now, but you are trying to put it into statute so that it is printed and they have that option, correct? I do not understand the reason we need it in statute.

Kevin Benson:

You are correct, some people do file all their reports at one time; however, it is difficult to tell whether they are doing that intentionally or not. This bill would add language that they have to file a written statement with the Secretary of State affirmatively stating that they are closing down their campaign and that they will not accept any more contributions or expenses after that point. It makes it clear to everyone that they are finished and that they are doing this in order to meet any outstanding obligations.

Assemblywoman Kirkpatrick:

Just to be clear, if you were filing your last report, you must put on file with the Secretary of State's Office that you are officially withdrawing. What I do not want to do is complicate the statute any more than it is. If we just need to put in one line or a disclosure, I think that is the better way to go.

Kevin Benson:

I appreciate that and I agree, part of the purpose of our bill is to make these statutes clearer and easier to read. If the Committee believes it is necessary to clean up that language further yet, I think that we would be amenable to that.

Assemblyman Hickey:

Does this bill deal in any way with the problem that has been noted of late, that of allowing candidates to extend the life of campaign accounts?

Kevin Benson:

No, it does not impact that issue at all. This is designed for candidates who are trying to shut down their campaign. It does not affect that issue and is not intended to reach that issue.

Chair Ohrenschall:

Suppose section 27 passes into law and you have a candidate who goes straight to the general election against an opponent but come September she decides that she has too much going on and just wants to shut down the campaign. She sends in the form indicating formal withdraw, but then in early October she receives a check for \$10,000 for her campaign and 30 people say they want to walk precincts nonstop for her. Does the candidate have any option of changing her mind? Can she contact the Secretary of State and reopen her campaign?

Kevin Benson:

On page 40, at the end of section 27 right before section 28 starts, subsection 3 says "This section does not exempt a person whose name appears on the ballot and who is elected to office from any reporting requirement of this

chapter." The intent of that provision basically relates to a situation where the candidate is elected and he or she has not shut down the campaign; all the reporting requirements kick right back in, and so they are not exempted. However, you pose a slightly different hypothetical, which perhaps is something that needs to be addressed as well.

Chair Ohrenschall:

My question relates to before the election, where the candidate reconsiders and suddenly life circumstances change, and she thinks she can put her energy back into the campaign. I hate to preclude someone who might want to keep campaigning.

Kevin Benson:

I think in that situation there is a possibility for candidates to file an amended contribution and expense report and perhaps a statement clarifying that they are in fact withdrawing their prior statement about shutting down their campaign, et cetera.

Chair Ohrenschall:

That is not here in the bill as written.

Kevin Benson:

No, it is addressed at most in subsection 3 at the end of section 27. As I said, the intent behind that is to address the situation where they are elected and therefore all the reporting requirements still apply.

The last major topic that A.B. 35 hits on is in section 37. This adds a provision to NRS 294A.420, which is the enforcement statute for that chapter. What it says is that the remedies and penalties provided currently in the chapter are not exclusive but are cumulative with any other remedies and penalties provided by law and in equity. Those statutes that it refers to are specifically the perjury statutes and NRS 293.330, which refers to filing false or forged documents with public agencies. The purpose of this is to make clear that the civil penalties are not the only available remedy, or the exclusive remedy, and that if there is a criminal violation like perjury, those statutes apply as well and are also available as remedies pursuant to this statute.

Chair Ohrenschall:

Has there been any argument that those criminal statutes do not apply?

Kevin Benson:

Yes, there has been.

Chair Ohrenschall:

Can you give us some information about this?

Kevin Benson:

I believe it came up a couple of years ago when a candidate was prosecuted for personal use of campaign funds and failure to report them. There was some discussion back in 1997 that most of the penalties previously were misdemeanors throughout the statute, and most of them at that time were changed to civil penalties. There was some argument that included instances of perjury, so that everything but civil penalties were off the table. This is intended to clarify that is not the case and that criminal sanctions for perjury and like conduct are still available remedies.

Chair Ohrenschall:

Are there any questions from the Committee members regarding section 37? [There were none.] Mr. Benson, I know you have given us a brief overview on the bill; however, I would appreciate your going through it page by page to explain each section, if you do not mind.

Kevin Benson:

Of course, but there are a couple of housekeeping measures that I should mention first. For example, section 16 and section 20 provide that a group that advocates regarding a ballot question will still have to file its reports even if the ballot question is removed from the ballot by a court order.

Chair Ohrenschall:

Has this happened where ballot questions have been knocked off the ballot and the organization has stopped filing the reports?

Kevin Benson:

Yes. In the case in question, there was some uncertainty about whether the organization had to file or not, because the statute stipulated it applied to groups who advocate for a question on the ballot. Their argument was that the question was no longer on the ballot, and therefore the statute did not apply. I believe in that case the group filed its reports.

Chair Ohrenschall:

So, if the ballot question is thrown off the ballot and the organization stays in existence, does it have to continue filing the reports?

Kevin Benson:

My understanding is that their duty to file the report is triggered by their activity completed to date. Mr. Gilles, please correct me if I am wrong, but they will have to file an annual report, or is that also only on activity?

Scott Gilles:

They would have to file the annual report, and if they had expenditures and contributions through an election cycle related to that question, they would then have to file reports during those specific five periods as well.

Chair Ohrenschall:

That is only if they were advocating for a question on the ballot, or is it triggered by the dollar amount that they raised?

Scott Gilles:

There is a threshold for these types of groups. I believe it is \$1,000, but yes, they would have to report throughout that cycle. Our office has received calls from groups that advocate for a ballot question and are in the stage of collecting signatures or spending money to promote the question, et cetera. They will ask, "do we have to report those contributions and expenses since it is not making it on the ballot?" We have always enforced the statute and told them, yes, they must file. The question does not actually have to make it to the ballot for the reporting requirements to trigger.

Chair Ohrenschall:

However, as of now you have not had a ballot advocacy group go to court or try to claim that it does not have to report because the question was knocked off the ballot by a judge.

Scott Gilles:

Correct. To my knowledge, no one has challenged that in court and we have not had to enforce that on a group.

Chair Ohrenschall:

Are there any questions from the Committee members on section 16, ballot advocacy groups? [There were none.]

Kevin Benson:

Section 17 makes a change in regard to a public officer who resigns his or her office and is not a candidate for any other election. He or she will be required to dispose of any unspent contributions by the 15th day of the second month after the effective date of the resignation. That is something that does not appear to be clearly provided for in NRS 294A.160. Another point of

clarification that section 17 makes is that a candidate who withdraws or is removed from the ballot prior to the general election, and who has raised more than \$5,000 from a single contributor, must return to that contributor any funds in excess of the \$5,000.

Assemblywoman Flores:

Why in section 17 is it necessary to remove "campaign" in the definition for "contribution?" Do people receive contributions for anything other than a campaign?

Kevin Benson:

That is a change in terminology that we did not request specifically as part of our bill draft request. I believe it is intended as a use of statutorily defined terms throughout the chapter that makes the language consistent throughout.

Chair Ohrenschall:

Ms. Chlarson has a comment on the draft.

Heidi Chlarson, Committee Counsel:

Mr. Benson is correct. The Legal Division made that change in drafting this bill because the term "contribution" is a defined term and there seemed to be some inconsistency in the use. There were times when we just referred to a "contribution" in statute; however, NRS 294A.160 referred to "campaign contributions," so for clarity's sake we made that change for this bill.

Assemblyman Martin:

Using the example of the candidate not running for re-election, if there is money left in his or her account, and if he or she has a candidate loan on the books, would he or she still have to return the funds under these provisions or could he or she repay the loan?

Kevin Benson:

There is no current change with regard to that specifically. *Nevada Revised Statutes* 294A.160 looks at the disposition parts of that statute, which are intended for unspent contributions. I suppose it is possible to have unspent contributions and also have an outstanding loan. Presumably, those unspent contributions would be disposed of in paying down or paying off that loan. If the individual did use unspent contributions to pay down the loan or disposed of them in other ways, that would satisfy the requirements of the statute.

Chair Ohrenschall:

Has there been a real-world example where someone has tried to claim that subsection 4 of NRS 294A.160 does not apply to how they dispose of their unspent contributions because they were not covered? Is that what you are proposing here?

Kevin Benson:

There has not been litigation, and as Mr. Gilles noted, by the time it gets to my level it is usually in litigation, which means we have not been able to come to some kind of solution at that point. However, I believe there have been questions raised about when disposal would be required, particularly with regard to the deadline. This is to make clear that the deadline for such disposal is the 15th day of the second month after the effective date of resignation.

Section 10 is another housekeeping measure that addresses the contribution limit statute for city elections. Currently, the statute states that the contribution limit time period runs from 30 days after the general election for the office in question to 30 days before the next general election for that office, which effectively leaves a 60-day gap around the general election. My suspicion is that was probably an oversight. This amendment changes that language from 30 days before to 30 days after so that it is a continual period, the same as it is for non-city elections. Essentially the amendment closes that 60-day gap where arguably there is no contribution limit right around the general election.

That concludes my testimony with regard to A.B. 35, unless the Committee would prefer I go through the bill section by section.

Chair Ohrenschall:

I would appreciate your doing so. If you could start at section 1 on page 2 of the bill, Mr. Benson.

Kevin Benson:

Section 1. Existing law requires the Secretary of State to post on his website reports that are required to be filed. This existing law references specific statutes within Chapter 294A of NRS. This bill eliminates the reference to each one of those individual statutes and simply states "pursuant to this chapter."

Chair Ohrenschall:

Regarding the deletions and additions noted on page 3 in lines 5 through 11, are they expanding the net or just clarifying language? Are they adding anything that was not already included?

Kevin Benson:

I do not believe so, but I will defer to Mr. Gilles.

Scott Gilles:

No, it is not expanding the net. We are just trying to reduce some of the overbroad language in this chapter.

Kevin Benson:

Section 2 states that Chapter 294A of NRS is amended by adding the new provisions set forth in sections 3, 4, and 5. Section 3 defines a general election to include both a general biennial election as well as a city biennial election. You will notice the current statutes often refer to a candidate in a statewide, district, county, township, or city election. In the past there had been a distinction drawn between when and where reports are filed if you are in a city election versus all the other elections. That distinction no longer exists in statute, so those are obsolete provisions. By rolling city elections into the definition of general or primary election, we can eliminate the specific reference to city elections throughout the statutes and eliminate some of the redundancy.

Chair Ohrenschall:

Mr. Benson, these changes you are making will affect the cities in primary and general elections. I want to confirm that you will not have to go into the city charters to effect those changes. What we are doing here with Chapter 294A of NRS is sufficient regardless of whether the city holds its elections with the biennial general elections or in the odd years.

Kevin Benson:

That is correct. Currently the time for filing a report is calculated according to when the election is held—for example, 7 days before the primary or 12 days before the primary—so whenever the primary is does not matter. It is still the same time calculation.

Section 3 removes similar language regarding the primary elections and city primary elections.

Section 5 is the section we previously discussed which has to do with special elections. If the special election coincides with the regular election calendar, then all of the reporting requirements for a regular election apply on the same deadlines.

Section 6 includes the definitions added in sections 3, 4, and 5 to the bill to the definition in NRS 294A.002.

Section 7 deletes the reference to the city elections, as discussed earlier, from the definition of "expressly advocates" since city elections are now included in the respective definitions of general and primary elections.

Section 8 deletes reference to city elections again in the political action committee definition.

Section 9 amends the definition of "contribution" by changing the language from "on behalf of" to simply "for or against."

Section 10 again removes reference to city elections and closes the 60-day gap for the city elections under the contribution limit statute.

Section 11 removes a lot of unnecessary language, which I have already touched on. For instance, the language referring to a candidate in a state, district, or township election is obsolete because all the time frames are the same at this point. It also deletes the language in the current statutes regarding the two sections on filing a review report if the general election occurs before July 1 according to one schedule and if after July 1 according to what is actually now the same schedule. Those two provisions are duplicative, and the changes strike that distinction between when the general election is held, because it is still the same deadline at this point.

Section 12 removes references to city elections once again. It removes reference to NRS 294A.360 because this bill is repealing that section. That section stated that city candidates have to file all the same reports in the same manner as other candidates. Again, because we are rolling city elections into general and primary election definitions, that becomes obsolete.

Section 13 also removes references to that statute that is being repealed.

Section 14 removes reference to state, district, county, city, or township offices.

Section 15 similarly removes that obsolete language. It also changes the language "on behalf of" to "for or against" so that it clarifies that it applies to negative ads as well as positive ads. This change also requires reporting seven days before the start of early voting in special elections.

Chair Ohrenschall:

How does that change the requirement with regards to the seven days prior to early voting?

Kevin Benson:

I believe the change reflects those discussed in section 1 regarding the situation where reporting would only be required 30 days after the election is held.

Chair Ohrenschall:

Can you point me to the page and line number?

Kevin Benson:

Page 13, line 40.

Chair Ohrenschall:

Again, that is to clarify that a recall committee does have to file a report prior to the election.

Kevin Benson:

That is correct. So there is some disclosure prior to voting.

Section 16 again removes references to city elections and to when the general election is held. This is also the section that requires reports to be filed even if a question is removed from the ballot by court order.

Section 17 again removes references to city, county, district, and township elections.

Chair Ohrenschall:

In section 16, does it cover the advocacy group even if a section of the question is thrown out, or only if the whole question is thrown out? Or does it cover both instances?

Kevin Benson:

Essentially, the question, in its entirety, is determined by the court not to proceed to the ballot.

Section 17 again removes reference to obsolete language and amends NRS 294A.160 to require a candidate who is removed from the ballot by court order, withdraws, or otherwise is not elected to dispose of unspent contributions. This also requires candidates who withdraw, or who are removed from the ballot by court order prior to the general election, to return to a contributor any amounts over \$5,000 that they have raised from that contributor.

Chair Ohrenschall:

That would be if a single and sole contributor gave that candidate \$5,000 or more. Is that correct?

Kevin Benson:

Correct. The limit for contributions is mandated in the constitution at \$5,000 per election, which is interpreted as \$5,000 for the primary and \$5,000 for the general. If a candidate were to raise \$10,000 from a sole contributor before the primary and then lose that election, he or she must refund \$5,000 to that contributor. This extends that to somebody who withdraws his or her candidacy or is removed from the ballot before the general election.

Section 17 also adds a provision requiring a public officer who resigns his or her office, and is not a candidate for any other office, to dispose of contributions by the 15th of the second month after the effective date of the resignation.

Section 18 amends section NRS 294A.200 to again remove references to the city, county, district, and township elections. It requires reporting seven days before early voting starts in special elections. You will notice there are statutes that require reporting of contributions and there are mirror statutes that require reporting of expenses. That is why there is a fair amount of redundancy in this chapter and why you are seeing these same changes over and over again.

Section 19 removes references to city, county, district, and township elections and again requires reporting seven days before special elections. Additionally, there is the change in language from "on behalf of" to "for or against" for independent expenditures.

Section 20 again removes the obsolete language required for reporting seven days before the special election, and it requires reports be filed even if a ballot question is removed from the ballot by court order.

Section 21 makes changes to the uniform language for the primary and the general election.

Chair Ohrenschall:

On section 21, when would a nonprofit corporation file a report? Can you give me an example of how and when a nonprofit would be involved?

Kevin Benson:

Nonprofit corporations often engage in political activity. If it is a single nonprofit, it may not file as a political action committee. Instead, if it is engaging in political activity, it is required to register as a nonprofit. Our

statutes related to independent expenditures require political action committees and persons, as well as nonprofit corporations that make independent expenditures, to file those reports.

Chair Ohrenschall:

Right now, a nonprofit can make these independent expenditures, but it does not have to register as a political action committee?

Kevin Benson:

It needs to register either as a political action committee or as a nonprofit. I am not sure which is more popular, but there are two separate provisions that they can register under.

Chair Ohrenschall:

Nevertheless, either way they are going to have to disclose what they spent.

Kevin Benson:

That is correct. The registration and the disclosure requirements are actually two separate requirements. Even if they fail to register, they still have to disclose if they make expenditures.

Assemblyman Hickey:

I was not aware that nonprofits could make political contributions.

Chair Ohrenschall:

Nor was I, Mr. Hickey.

Kevin Benson:

This is something that you may be hearing about in another bill from the Attorney General's Office, which is that a nonprofit is not synonymous with a charity. A charity is an organization that is created solely for charitable purposes like education, protection, and public welfare. Those normally are 501(c)(3) organizations, where donations are potentially tax deductible. There is a plethora of nonprofits that are legitimate organizations and can have legitimate ends, but unlike charities, which are restricted by the Internal Revenue Service (IRS) code from engaging in political activity, other nonprofits may so engage. It cannot be their primary purpose, but you have probably heard of Crossroads Grassroots Policy Strategies or Americans for Prosperity. Some of these groups are 501(c)(4) social welfare organizations. Donations to them are not tax exempt, but they are nonprofits and they can engage in a certain amount of political activity.

Chair Ohrenschall:

Are there any other questions regarding nonprofits? [There were none.]

Kevin Benson:

Section 22 requires reporting of contributions for special elections for recall to be the same as on the regular election schedule if the special election coincides with the regular election.

Chair Ohrenschall:

The filing of the notice of intent to circulate the petition then triggers the filing requirement?

Kevin Benson:

Depending on when the special election was called. If it is called to coincide with the regular election schedule, then all of the reports normally required for that regular election schedule are required, excepting, of course, any that would have been due prior to the call of the special election.

Chair Ohrenschall:

What happens if the committee to recall the public officer files the notice of intent under NRS 294A.015, but then fails to secure enough signatures, and they cannot get the recall on the ballot? Do they still have to file?

Kevin Benson:

They have to file 30 days after the court determines that they have failed.

Chair Ohrenschall:

If A.B. 35 becomes law, would they have to file while they are conducting their activities?

Kevin Benson:

I do not believe they would have to.

Chair Ohrenschall:

Are we not leaving a window open where the public is never going to find out who was behind this recall effort just because it was not successful?

Kevin Benson:

I believe that they will still have to file a report after a court determines that they have failed to qualify.

Section 23 is similar and requires the reporting of expenditures and those contributions for special elections to recall.

Section 25 adds language regarding coordinating with candidates and changes the language "on behalf of" to "for or against." This is in NRS 294A.325, which has to do with expenditures by foreign nationals as well as contributions. Again, it is making that same change in a different part of the statute.

Section 26 makes the terms uniform with what is defined in the statute. That is adding "political" before the term "party."

Section 27 deals with the provisions related to closing down a campaign. As we have discussed, it allows a candidate who loses the primary, withdraws, is removed by court order, or just stops campaigning to file all the reports simultaneously along with a written statement that he or she will no longer accept contributions.

Sections 28 and 29 make technical changes to ensure the uniform use of terms throughout the chapter.

Section 30 amends NRS 294A.370, which requires disclosures on political advertisements, to change the language from "on behalf of" to "for or against."

Section 31 is similar to section 1 in that it changes the statute so that instead of calling out specific sections throughout the chapter, it simply refers to "this chapter." Similar change is made in section 32.

Section 33 relates to the affidavit regarding filing electronically and again changes the language to "this chapter" instead of referencing specific statutes. These are not intended to be substantive changes; they are intended to clean up the statutes. In case the numbering of those statutes should get changed at some point, the Legislative Counsel Bureau (LCB) usually does a great job of making sure those are all consistent, but this seems a little more straightforward.

Section 34 consists of the technical changes previously discussed.

Section 35 requires information be compiled by the Secretary of State and be posted on their website or made available for public inspection. This also changes the language "on behalf of" to "for or against."

Section 36 removes references to city elections. Section 37 clarifies that the remedies in NRS 294A.420 are cumulative with any other remedies allowed by law or equity.

Section 38 repeals NRS 294A.360, which was the statute stating that city candidates must file all their reports in the same manner as other candidates. That entire section becomes obsolete under the other changes proposed in A.B. 35.

Chair Ohrenschall:

Thank you, Mr. Benson. Are there any questions from the Committee members for Mr. Benson? [There were none.] Mr. Kandt, Mr. Gilles, is there anything else you would like to add?

Scott Gilles:

I want to put on the record that the Secretary of State's Office fully supports this bill. Much of this bill is the result of conversations between our office and the Attorney General's Office. One of the things the Attorney General's Office is attempting to do with this bill is to clean up some of the duplicative, overly burdensome language that is simply unnecessary in the chapter. Both of our agencies spend a significant amount of time and resources enforcing the campaign finance filing requirements. We believe the changes in this bill are practical, and logical, and should help not only our agencies administer the filings under Chapter 294A of NRS, but also individuals filing the contribution and expense reports.

The Secretary of State's Office receives countless calls from candidates, campaign staffers, and political action committee representatives, and in many cases their attorneys trying to sift through these statutes and figure out what the reporting requirements are. This bill should help with the confusion those persons express. I believe this bill creates an explicit mechanism for candidates who have lost the primary, or otherwise are ready to move on from the campaign, to close out their campaign account, to let us know that they are no longer campaigning, and to file their reports and be done with it all. We estimate that there were up to 30 individuals who lost their primaries and were not familiar with the reporting statutes because they were not perpetual candidates. They admitted signing a candidate acknowledgement form stating they are required to file every report, but once they lost the primary any further requirements slipped their mind. Unfortunately, we then have to deal with them in February and March and point out that they did not file three reports and probably have incurred up to \$5,000 in civil penalties by statute for each report. That is as much as \$15,000 for many people who may not be able to afford \$1,000 in penalties. Hopefully, this change will create an easier, more explicit mechanism for those campaigns to be shut down, and for those remaining reports to be filed, so the candidate can move on. The excuse of forgetting to file, or not being aware of the obligation to file these reports, does not make a candidate eligible for a full waiver. The regulations and the statutes clearly lay

out when a waiver is permissible. We do have the discretion to discount those penalties, but we cannot just zero everyone out because they forgot or they did not know they had to file that report. We are trying to avoid the drain on resources from our office and my staff which is already limited.

I will give you a quick preview on Assembly Bill 48, which this Committee will hear on Thursday, February 14. Assembly Bill 48 delves into many of the same areas in NRS 294A and I think in some cases makes almost the same changes. Again, our goal is to condense that statute and make it more manageable and easier to read.

In closing, I would like to state that the Secretary of State's Office supports the Attorney General's bill.

Chair Ohrenschall:

Do you feel that the Secretary of State needs more discretion in terms of assessing or discounting or forgiving those penalties? You brought up the example of the first-time candidate who filed for office and lost the primary, and he or she was not able to keep up with the campaign and walked away without realizing that these penalties were accruing. Is that something maybe we could look at in this bill, giving the Secretary of State more discretion to not impose these penalties?

Scott Gilles:

I believe that is a policy question for the Legislature. We try to treat everyone as uniformly as possible within the guidelines of the statutes and regulations that dictate our decisions.

Assemblyman Martin:

Has there been any consideration to adding certain reporting requirements, such as reporting cash on hand and having a beginning and ending balance? One of the concerns I have on all these reports is the accountability and the transparency. If that is beyond the scope of this discussion, I will accept that, but I would like to know if there are any bills forthcoming that deal with this issue, or if this bill may be the right place to add it.

Scott Gilles:

We have a bill, Senate Bill 49, which we are calling the Aurora Act. It does address some of the substantive policy issues of campaign finance, including an ending fund balance or cash on hand report. One of the provisions would require public officers and candidates, at their first reporting of the year, to report cash on hand total.

Assemblyman Martin:

I look forward to reading that bill and commenting on it.

Assemblywoman Flores:

In regard to our comments on the coordination issue that we brought up earlier, I believe that we should at least take a look at how "coordination" is defined either in federal law or in other states' statutes. I believe it is important that we at least try to have some guidance as to what that means.

Chair Ohrenschall:

Would you be able to do that, Mr. Benson, or should we ask the Legal Division to assist in that?

Kevin Benson:

Yes, we will take a look at that, and we would be happy to work with the Legal Division as well.

Chair Ohrenschall:

I believe it will allow the members of the Committee to feel greater comfort in terms of the definition for "coordination," because I am a little worried that someone might break the law because he or she thought the organization was reporting and the organization thought the candidate would report. I do like the increased transparency that I see throughout this bill, and I think that is something the public has been seeking.

Are there further questions for Mr. Kandt, Mr. Benson, and Mr. Gilles?
[There were none.] I will allow anyone else in favor of A.B. 35 to come forward and speak.

Elisa P. Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates:

I have just a few questions and clarifying comments. To answer an earlier question, Nevada Advocates for Planned Parenthood Affiliates is a 501(c)(4) political nonprofit that accepts donations which are not tax exempt. The bulk of our work is education and lobbying.

It would be very helpful to us if the Secretary of State's Office would provide the guidelines, reporting deadlines, and definitions for what a contribution is, and what an expense is, as quickly as possible. In the past, they have issued those just as the initiative petition deadlines have come along, rather than several months in advance.

I have not prepared an amendment or discussed this with the sponsors of the bill, but in terms of disposition of unspent funds, it would be nice if nonprofit entities that are 501(c)(4) organizations and are not tax exempt could also be recipients of those funds, since we fall into a category that is similar to the political parties, candidates, or nonprofit groups that can receive the money.

Finally, a \$5,000 fine seems excessive to me, especially if there is no malice or no intent to deceive anyone. Some latitude could be given to the Secretary of State regarding waivers for people who are honestly trying to do this properly but cannot quite get it right.

Chair Ohrenschall:

We encourage you to meet with Mr. Benson, Mr. Kandt, and Mr. Gilles to see if there is some common ground. Of course, if this bill does end up on our work session at a future date, you can propose an amendment. It is always better to talk to the sponsors if you can, but feel free to send any proposed amendment to the Committee, and I am sure we will be glad to consider it. You did bring up some important points about discretion, especially with the first-time candidates. In terms of the requirements for initiative petition, I am not sure if that is something that could be affected by this bill or if it might be in another piece of legislation.

Is there anyone else who would like to speak in favor of A.B. 35 here in Carson City? [There was no response.]

Is there anybody who is neutral on A.B. 35 that would like to speak? [There was no response.]

Is there anybody who is opposed to A.B. 35 that would like to testify? [There was no response.]

I will now close the hearing on A.B. 35.

As we do not have any committee bill draft requests (BDR) introductions today, I will open the meeting for public comment. Is there anyone who would like to speak from the public today? [There was no response.] I will close today's meeting of the Assembly Committee on Legislative Operations and Elections.

Meeting adjourned [at 5:29 p.m.].

[A proposed amendment to A.B. 35 from Janine Hansen ([Exhibit E](#)) was presented after the hearing, and Chair Ohrenschall asked that it be included as an exhibit for the meeting.]

RESPECTFULLY SUBMITTED:

Karen Pugh
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: February 12, 2013

Time of Meeting: 4:03 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Brett Kandt	Letter requesting support of <u>A.B. 35</u>
	D	Brett Kandt, Kevin Benson	Proposed amendments to <u>A.B. 35</u>
	E	Janine Hansen	Proposed amendment to <u>A.B. 35</u>