

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

**Seventy-Seventh Session
April 25, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:02 p.m. on Thursday, April 25, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblyman Tyrone Thompson

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn K. Kirkpatrick (excused)

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Clark County Senatorial District No. 5
Senator Debbie Smith, Washoe County Senatorial District No. 13
Senator Greg Brower, Washoe County Senatorial District No. 15



STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Kevin Powers, Committee Counsel
Karen Pugh, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Geri Kodey, Private Citizen, Las Vegas, Nevada
Wayne Kodey, Private Citizen, Las Vegas, Nevada
Bryan Wachter, representing Retail Association of Nevada
John Griffin, representing Amazon.com and Zappos.com
Carole Vilardo, President, Nevada Taxpayers Association
Dagny Stapleton, representing Nevada Association of Counties
Mike Cathcart, Business Operations Manager, City of Henderson
Cadence Matijevich, Assistant City Manager, Office of the City Manager,
City of Reno
Lisa Foster, representing Nevada League of Cities and Municipalities
Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary
of State
Liane Lee, representing the City of Las Vegas
Paul Moradkhan, Director, Government Affairs, Las Vegas Metro Chamber
of Commerce

Chair Ohrenschall:

[Roll was taken.] We are privileged to have a new member of our Committee, Assemblyman Thompson, representing Clark County Assembly District No. 17. Mr. Thompson, we are looking forward to working with you. I believe our Committee deals with interesting issues pertaining to people's fundamental rights. We will begin our hearing with Senate Joint Resolution 5 (1st Reprint), presented by Senator Woodhouse.

Senate Joint Resolution 5 (1st Reprint): Urges Congress to pass the Marketplace Fairness Act. (BDR R-697)

Senator Joyce Woodhouse, Clark County Senatorial District No. 5:

Today I am presenting Senate Joint Resolution 5 (1st Reprint), which urges Congress to pass the Marketplace Fairness Act. This act was considered, but not passed, by the 112th Congress in 2011. It proposes to grant states the authority to require out-of-state retailers to collect and remit sales taxes on purchases shipped into the state. [Read from prepared text ([Exhibit C](#)).]

A copy of the February 28, 2013, testimony from Neal Osten of the National Conference of State Legislatures (NCSL), which was provided to the Senate Committee on Legislative Operations and Elections, has been uploaded to the Nevada Electronic Legislative Information System (NELIS) ([Exhibit D](#)).

They have been very busy this week in Washington, D.C., as this issue is before the Senate right now. In a memo I received from Ryan McGinness in the Nevada delegation's office in Washington, he said, "This bill is being discussed on the Senate floor today. Thirty-five amendments have been offered. None has been considered yet, but that will start tomorrow morning. Twenty are germane, the rest are not. Anything adopted will not drastically change the bill, and Senator Reid says that they will not go home until they vote on this. When it passes the Senate it goes to the House Judiciary Committee, and it is described as having an uphill battle there."

I received another email this afternoon that the negotiations have begun and there will be a vote taken on Monday, May 6. We are right in line to make an impact on this issue. I would like to tell you that Senator Reid is a strong supporter of the act and the cosponsors in the House are Congressman Amodei and Congressman Horsford.

Chair Ohrenschall:

Senator Woodhouse, thank you. Obviously, S.J.R. 5 (R1) is very timely. Are there any questions for Senator Woodhouse? [There were none.] Are there any persons in support of S.J.R. 5 (R1) who would like to testify?

Geri Kodey, Private Citizen, Las Vegas, Nevada:

My husband, Wayne Kodey, and I were the owners of Casey's Camera in Las Vegas until January of this year. Casey's Camera is a retail camera store that has been in Las Vegas for over 30 years, and we were the proud owners for over 18 of those years.

Casey's Camera sold cameras ranging from low-end amateur models to top-of-the-line professional cameras selling for well over \$5,000. Our store did very well up until the last few years, when we noticed the impact of online sales. A \$1,000 camera subject to the 8.1 percent sales tax in Clark County gave an online retailer an \$81 advantage over us. Frankly, we had a difficult time competing. We found that our customers would come in to look at the cameras, speak with the sales associates, and then the question would come up: Can you compete with online sales? In January of this year, we decided to sell our store. We found it just too difficult to compete.

Wayne Kodey, Private Citizen, Las Vegas, Nevada:

As my wife so aptly put it, that 8.1 percent advantage was something that we could not overcome. On Internet sales, we could compete with them on the price of the product. For instance, Nikon and Sony gave us the same price as any other retailer on the Internet. So the playing field was quite level there. Amazon had the same price for a Nikon D5000 as we did. We would show the camera to the customer, we would educate them, and then the hard question came: Can you match Internet pricing? On the camera, certainly. And then the customer would always ask, Do I have to pay sales tax? Of course you have to. That was the deal breaker that I could not overcome.

That led to my asking Senator Woodhouse for help and, ultimately, our decision to sell the store, because the 8 percent margin on cameras was not enough to cover sales tax and profit. I used to joke that we operated on grocery store margins rather than Neiman Marcus margins. I would urge you to urge your Washington counterparts to support the Marketplace Fairness Act.

Chair Ohrenschall:

Mr. and Mrs. Kodey, thank you for sharing what happened to you and I am sorry to hear about the loss of your store. It is distressing to hear that you had the disadvantage of your customers having to pay the sales tax and your online competitors did not operate under that same burden. Are there any questions? [There were none.] Is there anyone else in support of S.J.R. 5 (R1) who would like to testify?

Bryan Wachter, representing Retail Association of Nevada:

We would like to thank Senator Woodhouse for bringing this bill forward as well as the countless legislators who have been working with us for the last decade to try to get this issue resolved.

I like Christmas. It is my favorite holiday of the year, and I can tell the state budget likes Christmas as well. Thirty percent of the state revenue on sales tax is derived on products that are typically bought in the month of December. The portion of online sales related to holiday shopping has been growing in the last five years to almost 25 percent. That is a huge erosion of the state's sales tax base that, if not solved, will have devastating effects not only on the state budget, with its 2 percent portion of sales tax, but on local governments as well. The National Retail Federation released a report that the growth rate in brick-and-mortar sales last year was about 2.8 percent and the growth rate in online purchases was closer to 15 percent. There is no question that this is a constantly growing sector of the economy.

I think we need to clarify that this tax is not new. I have provided both the public and the Committee members with the Consumer Use Tax Return form ([Exhibit E](#)) utilized by the state to collect this tax. When you go online and purchase something from a retailer that does not collect sales tax, you are required by law to go online to the Nevada Department of Taxation, find this form, fill it out, and send in your check for the amount of sales tax. Online retailers are allowed to let you self-report this tax as opposed to their brick-and-mortar counterparts, which are required to collect it on your behalf and submit it to the Tax Department. The only change this act makes is a change in the collection mechanism. Online retailers would also be required to charge this tax and collect it as opposed to allowing the consumer to self-report. It does not tax the Internet.

Technology has changed how retailers and consumers do business. In today's digital universe, a business located anywhere in the world can do business in Nevada. They can mimic most ways of conducting business, except they do not locate physically in this state. They do not pay property tax or the hundreds of other taxes that we require our local businesses who choose to be here physically, to pay. Our brick-and-mortar stores have made the decision to invest not just in Nevada's consumers but in Nevada as a whole. They sponsor Little League teams, Girl Scout troops, schools, parks, and hundreds of other neighborly activities that make us a community. For making this investment in their community, the state gives them the privilege of paying sales tax. In Clark County that amounts to an 8.1 percent increase on products.

I would like to respond to the criticism that you often hear on the Marketplace Fairness Act. Some say it is a slippery slope that leads to further government intervention in the Internet. Again, we would reiterate that it does not create any new authority on taxation; it just provides that those things that are currently taxed must be taxed fairly. Other critics have suggested that this will be too complicated for businesses. There is software that is available and states generally will provide it to businesses. States have many different places they can get it; the Streamlined Sales Tax Agreement is looking at providing it to states free of charge. That is not for certain yet, but they are looking at it. We are not going to require a small business to know or be able to calculate the tax rate for the entire country. A computer program will do the calculating for them. At the Retail Association of Nevada, we represent 1,500 businesses. Ninety percent of them are small, mom-and-pop owners. They are at their stores first thing in the morning and they are there late at night trying to figure out their taxes.

One of the more commonly misunderstood parts of this is that it is said online retailers have to charge shipping, so therefore they have that extra cost that outweighs any advantage they have by not paying tax. As a business owner, you have made a choice of locating physically within in your city and state, or you have chosen to be online. That was a business choice you made.

Currently, the government mandates that a certain class of retailers collect the sales and use tax and mandates that certain other retailers do not collect the tax. It is a government-imposed disadvantage. Retailers should compete with one another; if our brick-and-mortar stores cannot compete with online-only stores, they should go out of business. But we should not have our hands tied behind our back because we are forced to collect, on behalf of the government the tax that online-only stores are not required to collect.

Chair Ohrenschall:

Mr. Wachter, do you find that many of your members are in the same situation as the Kodeys found themselves? Are most small businesses complaining to you about this problem of not being able to compete when their customers have to make that tax payment and online customers do not?

Bryan Wachter:

Absolutely. We often hear that retailers are becoming showrooms. A retailer puts a lot of time and effort into training his employees to be knowledgeable about the products that you purchase. So you have customers going to a retail store and spending an hour or two talking to the sales associate, trying to figure out what is the right product for them. Then they leave and make the purchase online. It is not just the fact that we are losing the businesses; it is also that we are making investments in our employees that there is no return on.

Assemblyman Hickey:

I believe that the state administration recently negotiated with Amazon for the collection of sales tax. I would like to hear what your opinion is about their making that arrangement.

Bryan Wachter:

Sitting next to me is the representative from Amazon. I think it might be better for him to answer that question.

John Griffin, representing Amazon.com and Zappos.com:

Amazon has fulfillment centers in Fernley and North Las Vegas, and their subsidiary, Zappos, is headquartered in Las Vegas. They also have other affiliates located in Nevada. At the Governor's request, Amazon negotiated an agreement with the Governor to begin voluntarily collecting sales tax starting in

January 2014. Zappos already collects sales tax on all Nevada-based transactions. So the agreement with Amazon takes effect for voluntary collection of all Nevada-based sales starting in January 2014, or upon the adoption of the Marketplace Fairness Act if it occurs prior to January 2014.

Assemblyman Hickey:

Could you give us a window into the thinking behind Amazon's decision to do this? A big company like Amazon steps forward and recognizes the new marketplace and believes it is fair to do this. Does that take away some of the arguments from other companies that would prefer this does not happen?

John Griffin:

In response to the question, I can only give you my opinion. I do not know that I have complete authorization to say this on behalf of Amazon. Amazon's presence in Nevada is large and growing. Recognizing the commitment to Nevada, Amazon decided to stop fighting the imposition of this tax. Amazon has consistently held that the federal solution is the way to go rather than a state-by-state solution. Agreeing with the Governor to voluntarily collect this tax was more out of respect for the relationship between Amazon, Zappos, and the state. Amazon is side by side with other retail groups before Congress and has been working diligently to try to get the Marketplace Fairness Act passed, as it would apply to not only Amazon in the 43 states that have a version of sales tax, but also to our competitors, like Overstock.com and other Internet retailers. Absent the passage of the Marketplace Fairness Act, starting in January 2014, brick-and-mortar retailers, Amazon, and Zappos will be the only ones collecting sales tax. It is our opinion that passage of the act now puts us on the same level playing field not only with the brick-and-mortar stores but with our other Internet competitors.

Chair Ohrenschall:

Are there any questions?

Assemblyman Thompson:

You mentioned that there was an urgency to this resolution. Could you give us a time frame so if we were to pass the resolution we do not miss the opportunity?

Bryan Wachter:

I think this is the furthest and fastest that we have had action in Congress on this issue. My information says that the U.S. Senate will be voting on this issue this evening. It is very important that the House understand where this body is on this issue and that the House is able to recognize that there is broad-based support. As Senator Woodhouse pointed out, Congressman Amodei is a

cosponsor on the bill as well as Congressman Horsford; it is bipartisan. The President came out yesterday and said that he would like to see the Marketplace Fairness Act on his desk. We would urge you to pass this out of Committee and the Assembly within the next week to two weeks.

Assemblyman Martin:

I am excited to be talking about tax. I do not know too many people who self-report use tax, but what could happen is that shipments come into our borders, bills of lading are checked, people's addresses checked, and then bills are sent for the use tax. I am wondering if that even occurs under the current structure. If it does occur, we are going to be saving a tremendous amount of compliance cost. If you could, please confirm the Internet access is not being subject to sales tax and my understanding of the use tax.

Bryan Wachter:

You are entirely right. This only applies to purchases on consumer products that are subject to tax on the Internet. We are not taxing your ability to get online, we are not taxing your Internet service provider, we are not taxing anything that is not already taxable under law. To your second question, I am not aware that the state tax department is auditing or checking or providing any sort of mechanism on use tax. We too would find it cumbersome in order for them to do so. I am sure we go under the assumption that everyone is doing this, because they would be in violation of the law if they were not, but if the state decided to audit, this certainly would be a considerable amount of money.

Assemblyman Oscarson:

I have heard many comments from people in rural areas that they are at an unfair disadvantage because people are purchasing things on the Internet and bypassing their local stores. I think that this will be a real support to the small rural retailers that are having a significantly hard time.

Bryan Wachter:

Not only do I think this is going to help retailers in the rural areas, but I think it is also going to help your rural counties capture a portion of the sales tax income that they should be receiving.

John Griffin:

Amazon is in full support of all the efforts of the Governor and the Legislature. We believe this is a fair policy. The only other thing I would add, for information purposes, is that as far as we are aware, estimates place the additional funds the state could see at anywhere between \$100 million and \$230 million a year. What Amazon and the retail industry is fighting in Washington, D.C., right now is that the bill in its original form started out

exempting businesses doing less than \$500,000 in annual sales. The current version of the bill is at \$1 million. They call it the small business exemption. There are amendments being proposed as we speak to raise that to \$2 million or as much as \$5 million. The higher that exemption goes, the less money that means for state and local governments and schools. I am sure almost everyone on this Committee has received an email from eBay, which is opposing this legislation. They are urging people to call their representatives in Congress to support the opposition of this act because eBay's position is that the \$1 million exemption is too small.

Chair Ohrenschall:

Is there anyone else in support of S.J.R. 5 (R1) who would like to testify?

Carole Vilardo, President, Nevada Taxpayers Association:

We had a bill in 1989 called the Main Street Fairness Act. At that time we had no Internet. It was strictly for phone and catalog sales. In my prior life, I was a retailer. So it was very near and dear to my heart at that time and it has continued to be near and dear to my heart. Prior to a U.S. Supreme Court decision, *National Bellas Hess v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389 (1967), retailers, no matter where they were located, had to collect sales tax and remit it to a state. In 1992, the U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), said unless you have a physical presence, a nexus within the state, you are not liable for collecting the sales tax to be remitted to that state. In a footnote to the case, the Court said that Congress has the ability to change that to an economic nexus from a physical nexus in recognition of the way business is being done.

Chair Ohrenschall:

Are there any questions for Ms. Vilardo?

Assemblyman Hickey:

You are someone who frequently talks about tax policy being fair and broad. Would you comment on the argument before Congress that smaller businesses ought to be exempt?

Carole Vilardo:

The fewer the exemptions you have, the lower the rate of your tax. I am extremely concerned when I hear that we have moved higher than the \$500,000 shipped into a state. Now, that is a lot of money if that is still being held for every state. I do mean each state instead of states in the aggregate. I would not want to see it higher; I would think it could actually be lower.

Chair Ohrenschall:

Are there any other questions for Ms. Vilardo? [There were none.]

Senator Debbie Smith, Washoe County Senatorial District No. 13:

I do not believe in the years I have served in the Legislature that I have ever testified on any bill other than my own, but I see this as very important.

In my spare time, I am the Vice President of the National Conference of State Legislatures (NCSL). For a very long time, NCSL has had a position in support of the Marketplace Fairness Act and has been one of the driving forces in moving this forward. In fact, we were in Washington, D.C., in December with NCSL lobbying the Nevada delegation, and one of our delegation members, who was not very supportive at the time, said, "I think the Internet is the last bastion of freedom, so I do not think it should have any kind of tax." I will never forget the bill's sponsor when he talked to us before we went to Congress saying, "This is not a new tax. It is a due tax." The whole notion of the Internet being a bastion of freedom that we should protect from such things is not really the truth. This is a tax that is owed and needs to be collected. We had the vast majority of our states there lobbying their delegations; it is an important measure across the country and we help each other collectively when we advocate for it through measures like this. I would hope that you pass the legislation and we get this resolution headed to Congress quickly, and that we as individuals speak with our own delegation members and encourage them. Even if they are supportive of the idea, they need to be encouraging their leadership to move this along, especially in the House. This is an important issue for us and for the country.

Chair Ohrenschall:

I think history has proven that when the Legislature acts on resolutions like this, our delegation does listen. Are there any questions for Senator Smith? [There were none.] Is there anyone else in support of S.J.R. 5 (R1) who would like to testify?

Dagny Stapleton, representing Nevada Association of Counties:

We support the enactment of legislation that would create an equitable nationwide system for the collection of sales and use taxes on remote sales. Sales tax is one of the most important sources of revenue for county governments in Nevada, and currently the counties are not receiving the sales tax revenue they should be from Internet sales transactions.

Chair Ohrenschall:

Are there any questions for Ms. Stapleton? [There were none.]

Lisa Foster, representing Nevada League of Cities and Municipalities:

In conjunction with what Ms. Stapleton said, sales tax is an important part of the revenues local governments receive, and we are missing out on a big piece of that. This is a priority for the National League of Cities. In fact, when a group of local elected officials was back in Washington, D.C., recently, we met with all the members of our delegation and talked to them about this particular issue. We believe this nationwide system is truly equitable for everyone. We appreciate your consideration of this resolution and encourage your support.

Chair Ohrenschall:

Are there any questions for Ms. Foster? [There were none.]

Cadence Matijevich, Assistant City Manager, Office of the City Manager, City of Reno:

The Reno City Council is in support of this resolution, has written letters to our Congressional delegation expressing that same support, and would urge this Committee's passage of the resolution.

Chair Ohrenschall:

Are there any questions for Ms. Matijevich? [There were none.]

Mike Cathcart, Business Operations Manager, City of Henderson:

We want to thank Senator Woodhouse for bringing this important joint resolution, and we want to be on record in support of S.J.R. 5 (R1).

Chair Ohrenschall:

Are there any questions for Mr. Cathcart? [There were none.]

Liane Lee, representing the City of Las Vegas:

The City of Las Vegas supports this bill and has been actively working on this issue with our Nevada delegation, the National League of Cities, and the U.S. Conference of Mayors.

Paul Moradkhan, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Metro Chamber supports S.J.R. 5 (R1) and believes it is an important part of public policy that would help level the playing field for Nevada's businesses. The passage of this act creates a level of fairness by addressing some of the disadvantages that we believe our businesses are currently facing on the

national scene. Our colleagues in the Reno/Sparks Chamber of Commerce asked that we express their support of this resolution as they could not be here today.

Chair Ohrenschall:

Mr. Moradkhan, do you know of any your members who have been adversely affected by the current state of things?

Paul Moradkhan:

Yes, we do hear concerns from our membership regarding this issue.

Chair Ohrenschall:

Are there any questions for Mr. Moradkhan? [There were none.] Is there anyone else in support of S.J.R. 5 (R1) who would like to speak? [There was no response.] Is there anyone in opposition who would like to be heard? [There was no response.] Is there anyone who is neutral on the measure who wants to be heard? [There was no response.] Senator Woodhouse, are there any closing remarks you would like to make?

Senator Woodhouse:

I appreciate the time you have given to S.J.R. 5 (R1) and urge your support. As you heard from the testimony today, the Senate and House are taking action on this issue in Washington, D.C., and we sincerely hope that the Assembly will take swift action so we can get the letters out to the Nevada delegation.

Chair Ohrenschall:

I will now close the hearing on Senate Joint Resolution 5 (1st Reprint) and open the hearing on Senate Bill 393.

Senate Bill 393: Revises provisions governing the procedure for filling certain vacancies in a nomination. (BDR 24-535)

Senator Debbie Smith, Washoe County Senatorial District No. 13:

Senate Bill 393 revises provisions governing the procedure for filling a vacancy in a major political party nomination. Existing procedures for filling a vacancy that occurs after the primary election, and before the fourth Friday in June of an election year, apply only if the vacancy occurs because the nominee dies or is adjudicated mentally incompetent. If the vacancy occurs for any other reason, the nominee's name must remain on the ballot for the general election. If such a nominee is subsequently elected, a vacancy in office will exist, which will be filled pursuant to law.

This bill addresses a situation we had in the last election cycle whereby a candidate moved and it appeared that there was some ambiguity in the law as to how it should be handled. There was a past statute regarding serving as an elected official and there is the actual election statute that referred to this same language of being replaced if the person dies or is mentally incompetent. Senate Bill 393 clarifies what would happen if a candidate, post-primary, leaves for any reason other than dying or being declared mentally incompetent. The candidate's name will remain on the ballot if elected, then a vacancy shall exist. It appeared that it would be an odd situation to allow a candidate to be replaced after a primary because you could set up a scenario where a nefarious plot could be hatched. I am in no way insinuating that has ever happened. I am saying this bill clarifies the law that once past the primary, the candidate needs to die or be mentally incompetent to be replaced. It is very basic and a clarification between the two statutes.

Chair Ohrenschall:

Are there any questions for Senator Smith on S.B. 393? [There were none.] Is there anyone else who would like to speak in support of S.B. 393?

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

The Office of the Secretary of State does support S.B. 393. It removes some of the lack of clarity that we had to deal with in the situation that Senator Smith described. At that time, we had to make a determination as to whether or not the nomination had been vacated because the woman in question allegedly moved out of state. We had to call landlords, brothers, and the Washoe County party to determine whether or not she actually did move out of state, thus creating the vacancy, thus creating the right to nominate. This would take that out of play, making it very easy to determine whether someone had died or had been declared mentally incompetent.

Chair Ohrenschall:

Thank you. We dealt with some of these issues in Assembly Bill 48. Do you see any conflict between A.B. 48 and S.B. 393?

Scott Gilles:

No, I see no conflicts.

Chair Ohrenschall:

Not seeing anyone else who wishes to testify on the bill, are there any other questions for Senator Smith or Mr. Gilles? [There were none.] Senator Smith, do you have any final remarks you would like to make?

Senator Smith:

I thank the Deputy Secretary for supporting the bill.

Chair Ohrenschall:

I will now close the hearing on Senate Bill 393, and we will move on to Senate Bill 405.

Senate Bill 405: Revises provisions relating to the submission of reports to the Director of the Legislative Counsel Bureau and certain other persons. (BDR 17-541)

Senator Debbie Smith, Washoe County Senatorial District No. 13:

One of the things I know about from sitting through Interim Finance Committee meetings is that we require several reports in statute. I think there are many that are redundant. Many times, information can be found online and no full report is necessary. In our ongoing effort, Assemblywoman Kirkpatrick and I, worked diligently with our staff; the Legal, Fiscal, and Research Divisions; and the Director of the Legislative Counsel Bureau (LCB) to comb through all of the reports that are now required. We came up with a list of current reports that could be immediately eliminated. More importantly, we put in the bill a process to follow so that we do not get bogged down with this again. The process simply requires the Director of LCB to go through the reports in the interim and make recommendations to the Legislative Commission for any reports that the Director believes are redundant or obsolete and could be eliminated. The Legislative Commission would then make recommendations to the next legislative session. As we go forward and start using more technology to access data and information, some reports would fall off the reporting list.

Chair Ohrenschall:

Our colleague Assemblywoman Benitez-Thompson presented A.B. 350, which we passed out of our house. It seems to me that it complements S.B. 405, as she also is looking to limit some of the reports that she feels are redundant. I wondered how you feel the two bills compare.

Senator Smith:

I have not gone through that bill yet since we just received it. I will look at it and see how these bills partner together to make sure there are no conflicts.

Chair Ohrenschall:

Are there any questions for Senator Smith?

Assemblyman Elliot Anderson:

Can you comment briefly about the new language on page 19, section 22, subsection 6, regarding a person with a physical disability?

Senator Smith:

I do not have an answer on that at this time.

Chair Ohrenschall:

Are there any other questions for Senator Smith? [There were none.] Are there any other persons who wish to testify in support of S.B. 405?

Cadence Matijevich, Assistant City Manager, Office of the City Manager, City of Reno:

The City of Reno is in support of S.B. 405. When bills come forward that require local governments to do additional reporting, we oftentimes have concerns about the impact on our staff and what that workload will mean. The provisions in section 1 of this bill give us great comfort that when reporting requirements are put into place, they will only be there as long as they are necessary and we will not have lengthy burdens placed on us for reports that may not be necessary.

Chair Ohrenschall:

Do you have any idea how many reports the City of Reno has to compile and submit?

Cadence Matijevich:

I can give you a ballpark number of about a dozen, currently. I would be more than happy to follow up and get you a firm number if you would like.

Chair Ohrenschall:

Thank you. Do you think, of that dozen, that many are being reviewed or used for positive purposes, or do you think they are just sitting there gathering dust?

Cadence Matijevich:

I think there are a number of them that have served their purpose and are no longer useful. To the extent possible that those reports may be eliminated in the future, we are very receptive to having those man hours freed up.

Chair Ohrenschall:

Are there any questions for Ms. Matijevich of the City of Reno? [There were none.] Is there anyone else who would like to speak in favor of S.B. 405? [There was no response.] Senator Smith, our counsel may have an answer to Assemblyman Anderson's question.

Kevin Powers, Committee Counsel:

That section the amendment is in, *Nevada Revised Statutes* (NRS) 422.396, is part of a group of three sections. Two of those sections are being repealed, which means that you do not need definitions for multiple sections, so the definition is being moved into this one section. This is purely a statutory drafting matter.

Chair Ohrenschall:

Thank you for the clarification, Mr. Powers. I will now turn to opposition. Is there anyone opposed to S.B. 405? [There was no response.] Is there anyone who is neutral on the measure who would like to be heard? [There was no response.] Senator Smith, is there anything you would like to say in closing?

Senator Smith:

I appreciate the opportunity to present. I think this is the type of thing that we should be doing in government, reexamining these things on an ongoing basis.

Chair Ohrenschall:

I will now close the hearing on Senate Bill 405 and will open the hearing on Senate Joint Resolution 12. Senator Brower and Assemblyman Munford will be presenting.

Senate Joint Resolution 12: Urges the President of the United States to grant a posthumous pardon to John Arthur "Jack" Johnson. (BDR R-440)

Senator Greg Brower, Washoe County Senatorial District No. 15:

It is a privilege to be here with Assemblyman Munford to present S.J.R. 12. I had frankly hoped to introduce this resolution last session, which would have been the first legislative session following the 100th anniversary of the Fight of the Century that we are going to hear about. Unfortunately, I could not generate any interest, so this session I went to Mr. Munford early on and, of course, he was more than happy to team up with me. The point of this resolution is to call upon the President of the United States to pardon Jack Johnson. The Congress, currently lead by a bipartisan, bicameral group of supporters, including Senators Reid and McCain, is considering a similar resolution.

Some might be wondering who is Jack Johnson and what is his connection to Nevada. We will watch a brief video clip from a documentary on Mr. Johnson and then continue with testimony.

[Video clip from DVD provided by Assemblyman Munford was presented to the Committee ([Exhibit F](#)).]

In the long and glorious history of our country, our government has done many great things. But we have as a government also made some mistakes along the way, including some for which we are still paying the price. While we should not dwell on those mistakes any more than is necessary to learn from them, when we can right a past wrong, in my opinion, we should do so. The prosecution of Jack Johnson is one such wrong that can and should be righted. More than 100 years after that historic prizefight, and decades after his death, the only way this wrong can be righted is with a presidential pardon. And that is exactly what S.J.R. 12 calls for.

Jack Johnson was a very controversial figure in his day. As a professional boxer he challenged the barriers and taboos of his time, flaunting his success and his defiance of bigotry. He was known to say, "I act in my relations with people of other races as if prejudice did not exist." In 1908, Johnson defeated Canadian Tommy Burns in a fight for the heavyweight championship in Australia, making him the first black heavyweight champion of the world. In the wake of Johnson's groundbreaking victory, some began to publicly question the then prevailing myth of white physical and mental superiority. Within months the search was on to find the great white hope. Enter Jim Jeffries, the former world champion. A reluctant Jeffries, bowing to public pressure, came out of retirement to challenge Johnson for the title, making possible what became known as the Fight of the Century.

The fight took place on July 4, 1910, in Reno. Even though Reno's population at the time was only about 17,000, more than 30,000 people converged on the town for the fight. By many reports, Johnson could have ended the fight early but wanted to give the crowd a good show. By the 15th round Johnson knocked Jeffries to the canvas, and when Jeffries failed to get up, the fight was called.

The impact of Johnson's win was immediate and far-reaching. African Americans celebrating the victory were physically attacked in cities and towns across the country. It was in the wake of this reaction that the federal government began its investigation of Johnson's relationships with white women. Eventually, the U.S. attorney in Chicago convinced a grand jury to indict Johnson for violations of the Mann Act, a brand-new federal law intended to combat "white slavery," or what we might call sex trafficking today. However, in the Johnson case it is now clear that this new statute was used to target Johnson's lifestyle. After Johnson's conviction the prosecutor admitted that it was Johnson's misfortune to be the foremost example of evil in permitting the intermarriage of whites and blacks. Johnson's trial marked the first time that the Mann Act was used to invade the personal privacy of two

consenting adults and criminalize their consensual sexual behavior, a purpose found nowhere in the legislative history of the act.

You may ask why a pardon? The pardon petition submitted by a committee on Johnson's behalf put it this way: "Justice requires that a pardon be granted to Jack Johnson—not because Johnson, long since deceased, will derive personal benefit from such a pardon, but because the American people will. The public interest and public welfare is the applicable standard, and a pardon of Jack Johnson meets that standard for at least five reasons." I will paraphrase the five reasons offered in the application.

First, just as Johnson was prosecuted because he was a symbol, he should now be pardoned because it would be symbolic to do so. Second, a pardon is necessary to expunge from the annals of American criminal justice a racially motivated abuse of the federal government's prosecutorial power. Third, a pardon is warranted because of Johnson's historical significance, and his connection to Nevada suggests that the Nevada Legislature be the first to call for the same. Fourth, a pardon will demonstrate that America can make amends for the mistakes of the past. And finally, Johnson's conviction has essentially denied him his place in history alongside the likes of Joe Lewis, Jackie Robinson, and Muhammad Ali. A pardon would remedy this injustice.

In closing, Mr. Chairman, granting a pardon for Jack Johnson is simply the right thing to do. We respectfully submit that President Obama should do just that and suggest that our Legislature should be the first to encourage him to do so. Again, I could not imagine a better cosponsor for this resolution than Assemblyman Munford, with whom I go back some 30-plus years, and I will now turn it over to him to make some remarks.

Chair Ohrenschall:

It is wonderful to see you at the table together, especially in light of the fact that you were once Assemblyman Munford's student at Bonanza High School in Las Vegas.

Assemblyman Munford:

I cannot find adequate words to say how impressed I am with the Senator and what he has been able to accomplish. To take on this issue, I think, speaks highly for his character and the depth of his feelings and sensitivity to making right a wrong.

Many people sometimes refuse to accept history or understand it or respect it. This had a real impact on the history of this country. The short clip that we just watched said an awful lot about what America was like in 1910.

Senator Brower said that Jack Johnson falls into the same classification as some of the great prizefighters that we have had in the past, especially African-American prizefighters. If you trace Muhammad Ali's past, when he was involved in fighting, he did similar things. He defied and challenged the nation. First of all he changed his name from Cassius Clay to Muhammad Ali. He challenged the nation because he refused to accept being drafted into the military. It was almost like Jack Johnson did. He believed in standing up for his beliefs and what he felt was right, fair, and just. Muhammad Ali is still with us, and we are blessed for that. When you think of Jack Johnson, you can think of Muhammad Ali.

Jack Johnson he did some very positive things. The bill as written does a very good job of explaining it to you. America has made some strong transitions. We have turned the corner to some degree. We still have a lot of problems that have to be corrected, but by seeing this film you saw what it was like at one time. I just hope that we do not repeat the same mistakes. I think America today can be proud of some of the advancements we have made, but we must remember that we paid a price. Many of the things that we have, in terms of relationships between people of different groups and cultures and backgrounds, people had to sacrifice for us to get. Jack Johnson had a role. So did Muhammad Ali, Martin Luther King Jr., Malcolm X and others.

I do not know what our next step is. We want Nevada to play a role in helping to make this pardon happen. President Obama, I believe, might be more willing and sensitive to the issue. It has been brought before other presidents and they just passed it on. We are going to make a greater effort, a stronger push, and maybe Nevada can be the state that is going to make right a wrong that has been sitting there for many years.

Chair Ohrenschall:

Are there any questions for the teacher and his student?

Assemblyman Elliot Anderson:

Thank you for your presentation. I think it is a worthwhile cause.

Senator Brower:

I want to thank the Committee for hearing this resolution. We feel confident that this actually has a chance. The President previously indicated that the Department of Justice has advised him that they do not normally grant posthumous pardons. However, I would like to think that if ever there was a president and an attorney general who might decide to do things differently, it would be President Obama and Attorney General Holder. There is a very strong

bipartisan effort in Congress right now, and I think it makes sense for our Legislature to be part of that encouragement.

Chair Ohrenschall:

Are other state resolutions like this one working their way through to encourage the President? Do you know of any prior posthumous pardons by a president?

Senator Brower:

No, I am not aware of any posthumous pardons. I believe it has been Department of Justice policy not to grant posthumous pardons, although as we know, many pardons are granted by each president. It is not a rule, it is not a law, it is just practice. I am not aware of similar resolutions pending in other states. I know that Texas, which is Jack Johnson's home state, passed a resolution a few years ago declaring Jack Johnson Day. I think we would be the first to actually encourage the President to grant a pardon.

I am particularly sensitive to this issue as a former U.S. attorney. I know that throughout our history, unfortunately, there have been wrongful, racially motivated prosecutions. We all understand that the idea of going back and trying to reverse all of those actions is an impossibility. It seems to me, when we are able to identify a high-profile example and we can do something about, albeit a posthumous pardon, we ought to take the opportunity to do it. That is what is motivating my interest in this issue.

Chair Ohrenschall:

I think it makes us all sick to our stomach to see how criminalized and abused Jack Johnson was.

Assemblyman Munford:

There is a list of names, notable people, on the committee to petition to pardon Jack Johnson. Individuals like Samuel L. Jackson, Sugar Ray Leonard, even U.S. Senator John McCain. The list has been uploaded to NELIS ([Exhibit G](#)).

Chair Ohrenschall:

Thank you. Are there any other questions or comments from the Committee? [There were none.] As I see no one in the audience, I will assume we do not have any persons in support, opposition, or neutral to this measure who wish to speak. [There was no response.] I will now close the hearing on S.J.R. 12 and will open the meeting for public comment. [There was no response.] I will now close today's meeting of the Assembly Committee on Legislative Operations and Elections. Meeting adjourned [at 5:27 p.m.].

RESPECTFULLY SUBMITTED:

Karen Pugh
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: April 25, 2013

Time of Meeting: 4:02 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.J.R. 5 (R1)	C	Senator Joyce Woodhouse	Introductory Statement
S.J.R. 5 (R1)	D	Senator Joyce Woodhouse	February 28, 2013 Testimony of Neal Osten, National Conference of State Legislatures
S.J.R. 5 (R1)	E	Bryan Wachter	Nevada Department of Taxation Consumer Use Tax Return
S.J.R. 12	F	Assemblyman Harvey Munford	Video clip, Jack Johnson
S.J.R. 12	G	Assemblyman Harvey Munford	Excerpt from Petition for Pardon from the Committee to Pardon Jack Johnson