

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

**Seventy-Seventh Session
May 16, 2013**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Pat Spearman at 8:12 a.m. on Thursday, May 16, 2013, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Mark A. Manendo, Vice Chair
Senator Kelvin Atkinson
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senatorial District No. 19
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Policy Analyst
Melissa Mundy, Counsel
Kaci Kerfeld, Committee Secretary

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Kevin Benson, Deputy Attorney General, Office of the Attorney General
Scott F. Gilles, Deputy for Elections, Office of the Secretary of State

Chair Spearman:

I will now open the hearing on Assembly Bill (A.B.) 35.

ASSEMBLY BILL 35 (1st Reprint): 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 (SOS) on A.B. 35 concerning Nevada's campaign finance laws codified in *Nevada Revised Statutes* (NRS) chapter 294A. The office of the Attorney General (AG) has brought A.B. 35 for your consideration because we represent the Secretary of State in the enforcement of Nevada's campaign finance laws. We believe the requirements of these laws should be clear for both candidates and the public. We have submitted a statement in support of A.B. 35 ([Exhibit C](#)).

Kevin Benson (Deputy Attorney General, Office of the Attorney General):

I am the Deputy Attorney General assigned to represent the SOS. In that capacity, I bring civil enforcement actions regarding campaign finance in NRS 294A. Assembly Bill 35 is designed to address four basic areas, some of which repeatedly arise. The first is to provide a method for a candidate to shut down his or her campaign if a candidate loses the primary, withdraws, has health issues or if the campaign ends early for another reason. Numerous reports must be filed throughout the campaign year, the last one being due on January 15 of the year after the election. People whose campaign ends early may forget about the reports and are then on the hook for not filing them. Section 27 creates a new voluntary process that candidates can use if they choose to file all of their outstanding reports at the same time. They basically make a statement saying they are finished, closing their campaign and not collecting any more money. That satisfies all of the outstanding reporting requirements. We are cutting down on enforcement actions for people who forget about the deadline. That will help the candidates and the Secretary of State's Office in terms of allocation of resources and making an easier and simpler method for people to comply with the law, especially when their campaigns end early.

The second major area this bill covers is disclosure in special elections, which have minimal disclosure requirements. In some cases, particularly in recall elections, the campaign contributions and expenses reports are not filed until 30 days after the election is over. This bill requires that if a special election is held on the same schedule as a general election, then the same reporting requirements and schedule for reporting apply. Any reports due prior to the call of the special election would not be required.

The enforcement provisions comprise the third area of focus found in NRS 294A.420 which states that the AG, on behalf of the Secretary of State, can bring appropriate proceedings to court to enforce the chapter. This clarifies that the appropriate proceedings include any remedies available under NRS 294A and any other remedies permitted by law. That includes civil or criminal penalties or injunctive relief. The issues we address are the civil penalties provided in NRS 294A, generally \$5,000 per violation, wherein a large outside group would be happy to write a \$5,000 check and never actually comply with the law. By clarifying that injunctive relief is available—not only if a judgment is entered in favor of the Secretary of State, not only are civil penalties available—but a court order requiring compliance with the law is also available.

This bill also makes changes to the independent expenditure statutes to clarify requirements. Statute talks about persons who make independent expenditures “on behalf of” a candidate. Assembly Bill 35 changes the language “on behalf of” to “for or against” so it is clear in the law that we are talking about not only positive ads but also negative attack ads, and that reporting is required in both instances. This also deals with independent expenditures, clarifying that an expenditure coordinated with a campaign is not considered independent. As the name implies, independent is an expenditure made not in concert with a candidate’s campaign. Proposed Amendment 8817 to the bill ([Exhibit D](#)) which deletes section 4.5 is an attempt to define the word “coordination.” That was added in the Assembly to address concerns. That language may be broader than intended and have unintended consequences from that which we originally considered. The best thing we could come up with was to delete the section.

Senator Cegavske:

I have asked people who supported the amendment why they wanted that section deleted, and I did not find anyone who was in support of deleting that language. Why is section 4.5 being deleted when the bill unanimously came out of the Assembly?

Mr. Kandt:

The bill as originally prefiled did not provide a definition of “coordinate.” That is not something we considered when crafting the original bill. There was desire in the Assembly to craft a definition. We attempted that based in part upon federal law and other State laws that have a definition and in analyzing the uniqueness of Nevada election laws. There was discussion of specific

hypotheticals of what would clearly be "coordinate." As a result of that and in the effort of compromise, a definition was created and added on the Senate side. It is up to this Committee to decide whether you feel that definition is appropriate. My office is neutral on whether the definition should be included. Since the original bill did not contain a definition, we are comfortable if the bill is passed without the definition. We can still enforce the laws in a fair and consistent manner.

Senator Cegavske:

Are you saying the amendment does not hurt the bill, but rather enhances it? I support what you are doing. My concern is with taking something out that was put in and brought over to us. I did not see a problem with it when we talked about it or with talking to the Legislators in the Assembly.

Mr. Kandt:

Are you asking if taking out section 4.5 hurts the bill?

Senator Cegavske:

No, having the bill as it is currently written, I would have to assume the answer is yes. It came over from the Assembly with a unanimous vote and the amendment. Everyone was supportive and thought that the SOS and the AG were supportive.

Mr. Kandt:

If that definition remains, our Office, working with the SOS, believes we can attempt to enforce election law in a fair and consistent manner to the extent that you as the policy makers have concern that the definition may have unintended consequences or be overbroad. We defer to your judgment on that.

Chair Spearman:

An unintended consequence is that the candidates would not be able to talk to parties and caucuses. There is no intention to subjugate whatever happened on the Assembly side. We are simply taking a second look to see if we can comport with the intent while minimizing any unintended consequences.

Senator Settlemeyer:

I am also concerned about making changes after it came from the Assembly; however, sometimes all the issues are not seen in the first House. Can you

point me to the specific issue in section 4.5 that we can correct in order to improve this bill?

Assemblyman James Ohrenschall (Assembly District No. 12):

When we heard this bill in the Assembly, we saw merit in what was to be done for constituents, candidates and voters. Section 4.5 was an attempt to address some of the concerns brought up by members of the Assembly. We are hanging ornaments on this Christmas tree. The analogy is that section 4.5 was the star. We thought we had it on and that it was perfect. We checked with our attorneys who specialize in election law and were told that we had a good Christmas tree with all of the ornaments hung and the star at the top. However, when the bill got to the Senate, some of the same experts in election law said there may be unintended consequences. They may end up being caught and cause more problems, causing this to end up in litigation and the star to come down and shatter. I would not want to see that happen to the bill. If it means removing that, I am supportive. The full Assembly will have a chance to weigh in on this if the Committee decides to process this and omit section 4.5.

Senator Settlemeyer:

Point me to the specific problem in the language added in section 4.5. Section 4.5 is 47 lines of text. If this was added in order to get compromise and pass out of the Assembly, I assume it has merit. If there is a problem, I am willing to correct the problem. Which lines are the problem in section 4.5?

Assemblyman Ohrenschall:

Chair Spearman summed it up well in terms of the conversations that happen with one's own party and caucuses that were not intended to be covered.

Senator Settlemeyer:

There has to be one issue which I am willing to look at and delete. I am hesitant about including a definition. It leaves it so vague that if you do sue, a decent attorney will say it is vague and lacking definition in law. You have a definition—if it is wrong, how do we tweak it? Which part of section 4.5 is incorrect?

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

I wish I could point you to a specific line and tell you what needs to be deleted or carved out. The problem with the definition is the definition as a whole and how it relates to candidates in their relationships with the parties. I do not know

of any sufficient definition which does not create unintended consequences. From the Secretary of State's perspective, just using the term "coordination" and applying the Webster's Dictionary definition is sufficient for how we intend to enforce these provisions and how the AG's Office will prosecute. The Attorney General's Office can speak to whether the term coordination existing by itself is sufficient from a legal standard. From a practical enforcement standard, the term is sufficient.

Mr. Kandt:

Proposed subsection 2 specifies that an uncoordinated expenditure may not be an issue. The concern may be with proposed subsection 1, about the definition of "coordinate" and whether it is overbroad. When originally crafting the bill, we felt we would be able to enforce the provisions of NRS 294A in a fair and consistent manner without a definition. Ultimately, you as Legislators make that decision.

Senator Settlemeyer:

Are you saying subsections 2 and 3 may not be problematic, that the real issue is subsection 1?

Mr. Kandt:

Yes.

Mr. Benson:

What Mr. Kandt and Mr. Gilles indicated is correct. I spent quite a bit of time looking at this definition and different language that may work. When carving out what is not coordination, subsections 2 and 3 were added for questions that arose from the Assembly. I am not sure those are problematic. It may be subsection 1. Unfortunately, I do not have any better language for the Committee today.

Senator Cegavske:

I like this bill. Senator Settlemeyer's recommendation was to delete subsection 1 and retain subsections 2 and 3 of the proposed amendment. If that is acceptable, you would get our support. There is not supposed to be any coordination with the candidate and the caucus if it is doing something for the candidate that is a third party. Is that what you are talking about? If a caucus has third-party expenditures, it should not be coordinating with a member of the caucus who is a candidate. Is that correct?

Mr. Kandt:

Nothing in our bill proposed to prohibit a coordination of expenditures. It is the question of how expenditures are reported—whether they are independent expenditures which would be reported by the third party, or whether they are expenditures that would be in-kind contributions to that candidate's campaign. Nothing in our bill is intended to prohibit coordination. It is a question of ensuring that it is appropriately reported.

Senator Cegavske:

If the only thing that is problematic is subsection 1, then take out subsection 1 and leave subsections 2 and 3.

Chair Spearman:

The question is with the definition I gave. Unintended consequences could occur. Some of the language in this section could be construed to say that there could not be any linkage or coordination between a party candidate and a party and the caucus. In looking for language to make sure it explicitly did not include those two entities, it became obvious to us that there was no way to fix this.

Assemblyman Ohrenschall:

As Mr. Kandt said, we must defer to your Committee. I hope the Committee will defer to those who have expertise in election law. My only concern is that this not get tied up in litigation and prevent the bill from accomplishing the positive goal. You would need to talk to Mr. Benson or Committee Counsel to determine whether deleting subsection 1 and allowing the rest to stand would work. I do not want this to be the star that comes crashing down off of the Christmas tree.

Mr. Gilles:

The Secretary of State's Office has worked diligently with the Attorney General's Office on this bill, and we support it.

Chair Spearman:

I will now close the hearing on A.B. 35 and open the work session on A.B. 48.

ASSEMBLY BILL 48 (1st Reprint): Makes various changes relating to elections.
(BDR 24-383)

Carol M. Stonefield (Policy Analyst):

Assembly Bill 48 was heard in this Committee on May 9. It was presented by Scott Gilles from the Secretary of State's Office and Kevin Benson from the Attorney General's Office. I have provided a work session document ([Exhibit E](#)).

SENATOR MANENDO MOVED TO DO PASS A.B. 48.

SENATOR ATKINSON SECONDED THE MOTION.

Senator Settlemeyer:

I am concerned about how the changes we made will affect the Independent American Party in its opposition. Those issues have not been addressed, so I will not be supporting the bill.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND SETTELMAYER VOTED NO.)

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Chair Spearman:

I will now open the work session on A.B. 227.

ASSEMBLY BILL 227 (1st Reprint): Creates the Nevada Land Management Task Force to conduct a study addressing the transfer of certain public lands in this State. (BDR S-594)

Ms. Stonefield:

Assembly Bill 227 was heard in this Committee on May 7. It was presented by Assemblyman John Ellison and Senator Goicoechea. I have provided a work session document ([Exhibit F](#)).

Senator Settlemeyer:

I spoke with Tom Collins this morning, and he felt that the fiscal note from Clark County had gone away. Is that correct?

Assemblyman Ohrenschall:

I cannot speak to the fiscal note.

Senator Pete Goicoechea (Senatorial District No. 19):

Clark County is neutral on the bill. The County understands that it will incur the cost if there is a fiscal note.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 227.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Spearman:

I will now open the work session on A.B. 440.

ASSEMBLY BILL 440 (1st Reprint): Revises provisions relating to voter registration. (BDR 24-987)

Ms. Stonefield:

Assembly Bill 440 was heard in this Committee on May 9. It was presented by Secretary of State Ross Miller. I have provided a work session document along with an amendment proposed by the Washoe County Registrar of Voters ([Exhibit G](#)). It adds a new section to this bill to permit a registered voter to receive a sample ballot electronically, rather than by regular mail.

Senator Atkinson:

Can we delay the vote on this?

Chair Spearman:

I need to see the AG and the SOS because our legal counsel has pointed out inconsistencies with Proposed Amendment 8817 to A.B. 35. We will recess until the call of the Chair.

Senator Cegavske had earlier asked why we needed to do this. One of the unintended consequences would be a conversation between a candidate and his or her party for informational purposes. Senator Settelmeyer had said he could

get on board if we removed subsection 1 from section 4.5. We can compromise with subsection 2, paragraph (b). The message that passage would convey could still be construed as eliminating opportunities for candidates to talk. It could be something as innocent as a television show or interview and needing to get information to ensure that whatever you say is true and correct. We are going to eliminate subsection 1 and subsection 2, paragraph (b) to remove room for misinterpretation, then we should be able to get there.

Mr. Kandt:

It is the Committee's prerogative to amend this bill as you see fit. We are talking about section 4.5, subsection 2, which establishes instances that do not constitute a coordinated expenditure. Subsection 3 provides definitions. In response to the concern that a candidate was communicating with a party representative to receive information in advance of a candidate forum or making an appearance on a TV show ... That is not something our office has ever viewed as constituting an in-kind expense that would require reporting.

Chair Spearman:

That is why we are looking at it from the standpoint of unintended consequences. Eliminating those two subsections would satisfy Senator Settelmeyer's concerns. It also means that you cannot construe getting that type of information as some type of monetary in-kind gift.

Mr. Kandt:

Even if section 4.5, subsection 2, paragraph (b) were enacted into law, it would not change the AG's determination that a candidate receiving information from a party representative in preparation for a candidate forum, debate or TV appearance would in any way be an in-kind contribution.

Senator Settelmeyer:

My concern was with section 4.5. The actual problem was in subsection 1. I never asked to address subsection 2, paragraph (b) that says an expenditure is not considered to be coordinated and it gives an exemption to make sure that people understand that if it is by a person making an inquiry regarding a position of a candidate ... I do not see the problem with leaving subsection 2, paragraph (b) to provide more clarity; I would prefer to leave it in, eliminate some vagueness and provide direction to individuals and groups in understanding what is allowed.

Mr. Kandt:

Our goal here is clarity. Subsection 2, paragraph (b) was meant to address the instance where a candidate and his or her information, background and positions are provided for an independent voter guide, or where the candidate appears as part of a candidate forum hosted or put on by an independent third party. That would not be considered within the definition of coordinate. That is the intent behind subsection 2, paragraph (b).

Chair Spearman:

We intend to avoid an unintended consequence. In the amendment, I would still strike section 4.5, subsection 1 and subsection 2, paragraph (b).

Senator Settlemeyer:

What is the reasoning for striking subsection 2, paragraph (b)?

Chair Spearman:

Subsection 2, paragraph (b) says it does not include any information regarding plans, projects and activities. In many ways, it appears that could be a gray area. Who determines the plans and projects? We can get to the intent of the bill if we retain subsections 2 and 3, striking all of subsection 1 and subsection 2, paragraph (b).

Mr. Kandt:

Subsection 2, paragraph (b) was put into the bill to clarify that when a candidate provides his or her information and platform to the newspaper, for example, that would not fall within the definition of a coordinated expenditure which would have to be reported as an in-kind contribution. Newspapers run candidate inserts in which they include pictures, information and campaign positions of all of the candidates. In the instance where a candidate appears at a forum open to all candidates afforded the opportunity to speak to attendees to state their positions and promote their campaigns, such a forum would not be a coordinated expenditure that would require in-kind reporting. That was the purpose behind subsection 2, paragraph (b).

Senator Settlemeyer:

I get requests during elections to provide the platform to be put on a Website. This adds clarity that it is not an issue or problem and that clarity is important. I am supportive of deleting subsection 1, but subsection 2, paragraph (b) was added for a valid reason. I will vote against this if we remove something valid.

Senator Cegavske:

After speaking to the different parties involved, I would support amending subsection 1 out and leaving subsections 2 and 3 in.

Chair Spearman:

We will delete subsection 1 of section 4.5.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 35.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Spearman:

I will now open the work session on A.B. 440.

SENATOR ATKINSON MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 440.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND SETTELMAYER
VOTED NO.)

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Chair Spearman:

This meeting is adjourned at 11:02 a.m.

RESPECTFULLY SUBMITTED:

Kaci Kerfeld,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
A.B. 35	C	3	Brett Kandt	Statement in Support
A.B. 35	D	46	Kevin Benson	Proposed Amendment
A.B. 48	E	1	Carol M. Stonefield	Work Session Document
A.B. 227	F	1	Carol M. Stonefield	Work Session Document
A.B. 440	G	1	Carol M. Stonefield	Work Session Document