

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

**Seventy-Seventh Session
April 4, 2013**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Pat Spearman at 8:07 a.m. on Thursday, April 4, 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 Joseph P. Hardy, Senatorial District No. 12
Senator David R. Parks, Senatorial District No. 7
Senator Tick Segerblom, Senatorial District No. 3
Assemblywoman Lucy Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Policy Analyst
Melissa Mundy, Counsel
Mary Moak, Committee Secretary

OTHERS PRESENT:

Roger Tobler, Mayor, City of Boulder City
Yvonne Nevarez-Goodson, Counsel, Commission on Ethics
Lynn Chapman, Treasurer, Independent American Party
Janine Hansen, Nevada Families
Terry J. Care

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Nicole Lamboley, Chief Deputy, Office of the Secretary of State
Carol Howell

Chair Spearman:

I call this session of the Committee on Legislative Operations and Elections to order. I will open the hearing on Senate Bill (S.B.) 283.

SENATE BILL 283: Revises provisions relating to the Commission on Ethics.
(BDR 23-103)

Senator Joseph P. Hardy (Senatorial District No. 12):

Caren Cafferata-Jenkins, the Executive Director for the Commission on Ethics, is out of town. I will be presenting for her as well. I have provided you with a prepared statement for myself and Ms. Cafferata-Jenkins ([Exhibit C](#)).

Here is a hypothetical situation. Someone is in a deathly position and the dutiful son makes a decision to get the beloved father to the emergency room as soon as he can, knowing that he could get his father there faster than waiting for an emergency vehicle. The ethical son made the decision to get the beloved father to the emergency room faster than legally allowed and saved his life.

When we deal with ethical and legal issues, there may be a conflict between the two. Sometimes, the members of the Commission on Ethics are in a position to make a decision that may be statutorily correct but not what they want to do.

A campaign accusation is a sword without a shield. Even though the person accused is acting in good faith, that shield is ineffective without some way to counter it. Then there is the issue of the person who acts in good faith, unknowingly fails to report something and finds he or she has to file a self-incrimination ethics complaint.

Senate Bill 283 was drawn upon the verbiage of several states. I worked with Ms. Cafferata-Jenkins to refine and adapt to Nevada's circumstances. I will go through the intention of the bill, as presented by Ms. Cafferata-Jenkins, [Exhibit C](#).

Section 2 talks of the sword of accusation. This language comes from the state of Wisconsin. Ms. Cafferata-Jenkins feels this is not going to work. I would leave that in the hands of the Committee members as to what they would like

to do. Section 3 speaks to a technical violation. The Ethics Commission would have the opportunity to say this is a technical violation as opposed to a willful or unwillful violation. The technicalities are egregious things as much as other violations of the ethics statutes.

There is a standard for ethics violations. One standard is, what would a reasonable person do?

I had the opportunity to ask the question of the Ethics Commission. I pointed out it is not unusual for the Ethics Commission to have a split vote when two or three people do not agree with the majority. When you apply the reasonable person standard, if you are on the Ethics Commission, by definition you are "a reasonable person". My question to them was, if you are a reasonable person and you disagree with the majority, does that make you an unreasonable person?

If we look at finding someone guilty of something and have a hung jury, that means somebody was not convinced. I suggest a two-thirds majority concur in order to find someone in violation of an ethics complaint.

I have presented a letter from George M. Keele ([Exhibit D](#)), who found himself filing an ethics complaint against himself.

Senator Settlemeyer:

Referencing [Exhibit C](#), page 11, section 8, subsection 2, lines 16 to 18, would the motion still have to be seconded by someone also on the Commission and then voted on as the whole Commission or just the Commission putting it forward means it gets to go forward? How would that work?

Senator Hardy:

I would defer to counsel.

Melissa Mundy (Counsel):

I do not have the answer right now, just one moment.

Chair Spearman:

The intent of this bill is to not shield someone from prosecution for violation of an ethics bill. It is intended to remove the tool of challenging someone ethically during a political campaign.

Senator Hardy:

This is not intended to shield anybody from any ethics violation. This is intended to make sure the person who complains of an ethics violation has reality in his or her complaint. If he or she has reality in the complaint, then that is the appropriate thing to do.

This will tell people who want to "get somebody" in a way that will preclude them from being antagonists in appearance and prevent them from doing that type of thing. Hopefully, this bill will decrease the vexatious and frivolous claims. It is not necessarily the candidate who is running against somebody but may be the friend or the interested party who files the complaint. This will make the complainant say yes, I have reality on my side, and I will make a complaint. We want those people who have reality and truth on their side to make those complaints.

Roger Tobler (Mayor, City of Boulder City):

Last year, I went through the hearing process on an ethics violation. I am not here to speak to those specifics but to specifics of the bill. I would like to use examples from my process to illustrate why I am in support of this bill.

I had a number of complaints filed against me from a candidate who ran against me in my last race. Some of those complaints were thrown out in the beginning and others were put through the investigative process. Once it was decided to go to a hearing, we were contacted and I could bypass the hearing if I would be willing to enter into a settlement. I was asked to agree to willful violations and a \$2,500 settlement fee. I felt we could argue these violations. I learned through the process that you had better have a good attorney.

I found it interesting that in our next municipal election, we had two council members running and no one filed to run against them. I would love to think that our community believes we are doing such a wonderful job that no change is needed. In hearing from a number of people, one of the reasons why people do not want to run is they do not want to go through the things they see many of us go through. A lot accusations of ethics violations are in retaliation.

I felt there was a lack of due process in many aspects of the ethics events. Accusations made to the press before my hearing indicated credible evidence

against me in this case. When it finally got to a hearing, it was shown there was no credible evidence. All but one of the charges were thrown out. We settled on one, a willful violation.

And that refers to what Senator Hardy was talking about concerning the definition of willful; if you commit it, it was willful. It does not matter if you did not have the knowledge or the intent to do any harm. If you did it, it is willful; therefore, you will receive a willful violation.

There was a real struggle with the Commission on how to proceed with that. The members probably felt that their hands were tied because of the definition of willful violation.

I want to read the language written in the final settlement agreement where I received one willful violation over a matter of disclosure. This matter came up before this third-party request for an opinion. I took myself to the Commission on Ethics, asking whether to assert in a certain situation. During the hearing, I explained my nondisclosure because of the nature of this item. In fact in the history of Boulder City, no City Councilman has offered disclosure for this item because it was not an approval item. I had received attorney counsel on this and thought I was doing the right thing—especially going to the Commission beforehand and asking for this. In the first hearing for my request for opinion, the Commission ruled there was no conflict of interest and never told me to disclose.

I was asked to come back a second time over one specific statute in the *Nevada Revised Statutes* (NRS), but the Commission opened the whole thing up again. In that hearing, I was advised it would be a good idea to disclose. When the third-party request process finally went through, then the Commission stated it was a willful violation.

The confusion was not just on my part, but even the Commission realized because of the statute definition of willful, this violation would have to be given.

Let me read to you from the end of our settlement: “The failure to satisfy the requirements of Nevada Ethics in Government Law was willful under NRS 281A; Tobler acted intentionally and knowingly as these terms are defined.”

If you are a nonattorney like myself—someone who does not understand the legal things that go on with hearings and settlements, this next part gets very confusing. Senator Hardy's bill addresses this issue. There was no penalty issued, but we agreed upon one willful violation because of the definition. The next section reads:

In light of the totality of the circumstances and Mayor Tobler's good faith reliance upon counsel to guide his conduct, the Commission finds no evidence that Mayor Tobler acted in bad faith, with ill intent or had actual knowledge that his failure to disclose his interests violated any provisions of NRS 281A.

Those two sections contradict each other. This is one of the areas that would really clean up the laws regarding these ethics violations. I am grateful that the Commission was willing to allow this to be put in my settlement. I was dealt with fairly by the Commission even though I had issues with the process.

I would like to point out a number of things in this bill. In [Exhibit C](#), page 7, section 7, lines 1 to 3, it took 8 to 9 months to receive a report back from the first hearing which I requested. This report was relevant to the third-party issue discussed 9 months later. Timing issues are addressed in [S.B. 283](#).

[Exhibit C](#), page 6, section 4, lines 22 to 24 list all things I went through. I did try to correct the issue. Once I was told I should be disclosing, I did that at each meeting. Yet during this process, it kept being brought up that I had not disclosed for about a 2-year period of time. That was correct. But at the time I filed a request for an opinion, I had been disclosing from that point on. I had gone to legal counsel. All these should have been taken into account before the Commission came to me with a settlement of \$2,500. Even at the final hearing, most Commission members did not agree I should have some penalties.

I am in support of this bill. The definition of willful needs to be addressed. [Senate Bill 283](#) will clean up other aspects. The exposure and risk to public officials are very high under this willful definition; it has a chilling effect on many who would otherwise be willing to run for office. That was shown in Boulder City recently when nobody decided to run against the two incumbents.

Chair Spearman:

Does S.B. 283 also cover someone with an allegation—a complaint before the Ethics Commission—who has not heard back from the Commission? Hypothetical situation: Someone is running against you and the person wants to make a complaint to the Ethics Commission. Nothing is stopping the person from making that complaint. But if this bill were to become codified, it would mean that if it is within a month of the election, the Ethics Commission would not render a decision. However, the person who makes the complaint to the Ethics Commission then says, “Well, I have already filed a complaint with the Ethics Commission, and it is just not getting back to me.” Do you understand what I am saying?

Senator Hardy:

You have illustrated the point very well. I may be corrected by the Ethics counsel who is here. When you make a complaint, the process takes longer than a month. You have a 10-day period, you have a 30-day period to have a response, the investigation starts on Day 31. The investigator has 40 days after that to talk to the subject and others. You then have an executive report to the two-member panel. The randomly selected two-member panel has a recommendation to the whole Commission. The whole Commission has to publicly notice a meeting. You can see how this is months, instead of weeks or even days, before a hearing takes place.

Yvonne Nevarez-Goodson (Counsel, Commission on Ethics):

The concern for the Ethics Commission with [Exhibit C](#), page 5, section 2 is it forestalls the ability of the Commission to accept a request for an opinion that is filed with the 120-day time frame prior to an election. The Commission would not be able to initiate an investigation to determine if it had jurisdiction to consider the request or whether it was provided with sufficient evidence. The Commission would be prevented from acting for a period up to 9 months, if you consider the primaries start in June and the general election occurs in November.

That would be the only information the Commission would want to extend to the Committee in terms of interpreting whether section 2 of the bill is a problem in terms of the ability of a private member of the public to present a request for opinion.

Chair Spearman:

To continue my hypothetical: that being understood by those of us who are here, someone who may not be privy to this particular statute does that and then says I wanted to file a complaint against Senator Hardy, but the Ethics Commission would not even hear it. There is an implication of a cover-up. Is there something in the bill, as presented, that allows the person the allegations were made against—Senator Hardy—to then come back and find some legal remedy?

Senator Hardy:

There are two issues: is it vexatious and frivolous or is it real? In the real, there will always be some way to get the person who has done something wrong. That will not be taken away by this or any other bill before you.

The vexatious and the frivolous is the mean-spirited, ill-conceived weapon for which there is no shield. You have no defense against a complaint that comes. That is where I was trying to get through the Wisconsin language of what we would do. Obviously that language is flawed because of what Ms. Nevarez-Goodson is talking about, the freeze of even accepting a request.

If it is a real issue, the person really has a problem and the request for opinion is made a month or two before; you will not know that until after the election. The Ethics Commission cannot move that fast.

If it is vexatious, you would not know until after the election, when the complainant will have some adverse effect on the candidate. The person who made the complaint is probably not the person who is running against you, but a friend of a friend, who said that is what I heard so I am going to file the complaint. Most ethical issues are squishy. I have not seen anything to remedy the vexatious and not the reality or the vice versa. The bottom line is the conundrum you have so clearly voiced today.

Ms. Mundy:

In response to Senator Settelmeyer's question regarding [Exhibit C](#), page 11, section 8, subsection 2, the person about whom an opinion was requested would have to come before the Commission and request the Commission to entertain a motion. It is almost similar to a motion made in court. Basically, the

language upon a motion just means that either the Commission can make the decision on its own or the person about whom an opinion was requested could request the Commission to make that decision.

Senator Hardy:

[Exhibit D](#), section 4 speaks of requesting a settlement. The subject can neither afford to miss work nor afford an attorney and would rather pay the fine and go home.

Chair Spearman:

Given the allegation is proved to be frivolous with no basis in fact and the person is acquitted, is there a way to expunge the allegation so it is never brought up again—similar to what is done for juveniles?

Ms. Nevarez-Goodson:

The Commission's process works as follows: When a request for an opinion is initially filed with the Commission, the Commission is required to engage in a jurisdictional determination. We require an allegation against a public officer or employee regarding NRS 281A be submitted with a minimal level of evidence for us to initiate an investigation.

Through the entire process of the investigation, the complaint is deemed confidential. We neither confirm nor deny receipt of such a complaint up through and including the two-member panel that reviews staff's investigation and determines whether the evidence revealed at that stage is sufficient to require a public hearing. At the point in which our panel determines sufficient credible evidence to move forward to a hearing, the matter becomes public under NRS 281A. If a member of the public or the press were to call us and say, "We understand there has been a complaint filed against public officer X," we would acknowledge the complaint, and the materials within the Commission's possession would become public documents.

One of the provisions we will talk about in the work session for [S.B. 228](#) is whether some of those materials would remain confidential for public disclosure.

[SENATE BILL 228](#): Revises provisions relating to public servants. (BDR 23-445)

The only ability the Commission has once the matter has gone forward to a hearing is to hold a full evidentiary hearing or consider whether the facts

presented are ripe for settlement. The settlement is at the pleasure of the subject of the request for an opinion as well as the Commission.

If it is determined after a full evidentiary hearing or through review of the evidence by the full Commission, minus those two panel members, that there really is no evidence or the evidence turned out to be frivolous or meaningless, we would find no violation against the public officer.

There is no recourse or repercussion against the requester of the opinion and no expunging the materials or the fact that the complaint was filed because at that point, it is public. It would just be an affirmative finding by the Commission that there was no violation.

This bill seeks to provide some recourse to the subject where there has been a finding by the Commission of vexatious or frivolous complaints filed by members of the public.

Senator Hardy:

No matter whether or not you have been cleared, the headlines on the front page are what people remember.

Senator Cegavske:

If you ask the Ethics Commission for an opinion, is it correct that the opinion can be given to you and made public only if you choose to make it public? Is it up to the elected official to decide if he or she wants the request for opinion public and if not, the Commission would keep the request confidential?

Ms. Nevarez-Goodson:

Yes. When a request for an opinion is sought by a public officer or public employee, it is confidential through the entire process. The public officer or employee can waive that affirmatively or through conduct.

We have had situations where a public officer has mentioned to a fellow member of the public that he or she sought that opinion, or a member of the press got hold of it, and deemed it to be a waiver through the conduct. Yes, the public officer and public employee hold that confidentiality.

Lynn Chapman (Treasurer, Independent American Party):

We are in support of S.B. 283, especially section 8, [Exhibit C](#), on pages 11, 12 and 13.

I knew of a candidate running for public office and heard that the Ethics Commission went after this person. I remember his character was being torn apart, and I thought that was wrong.

It does give you pause to consider whether you really want to run for an office when your character and your family may be torn apart in the media.

I really am glad to see this bill come forward.

Janine Hansen (Nevada Families):

We support this bill and hope any issues can be worked out.

We have long had problems with the Ethics Commission. I believe that began when it began.

I grew up with George Keele, who has been referenced here, and I do not know of anybody who is a more ethical person in all the world. He is one of the finest people I have ever known. For him to find himself guilty of an ethics violation is telltale of his own character and how extreme some of these laws are.

The problem with the Ethics Commission and the whole concept is it violates the separation of powers in the first three Articles of the Nevada Constitution, in which there are three separate entities: legislative, executive and judicial. When amending the Constitution in 1996, administrative agencies like the Ethics Commission were given tremendous power. When you give those kinds of powers to an administrative agency, you have problems because you lose all your constitutional liberties. You are no longer innocent until proved guilty and no longer have the constitutional protections provided. These problems continuously arise because our basic constitutional protections are denied.

Years ago before the election, former Senator Maurice E. Washington was charged with 11 violations of ethics. After the election, all the charges were found to be erroneous. That is one of the reasons we like section 8, because those were certainly vexatious and frivolous charges against him.

Regarding some of these laws, former Senator Randolph J. Townsend said that the time will come when no one will be willing to run for office any more because the laws will become so onerous. We see that happening as the Mayor from Boulder City has stated.

We have serious concerns about the whole so-called ethics process, but we support anything that works to improve it.

We need to revisit those things and remember that our constitutional liberties are denied with administrative courts. We do not have an appeal to a jury which is guaranteed in the Constitution for all civil cases. Article 1, section 3 of the Nevada Constitution reads: "The right [of trial] by Jury shall be secured to all and remain inviolate forever." That right by civil trials has been removed because we now have administrative courts where none of those constitutional rights are protected.

We support S.B. 283 because it is moving in the right direction.

Chair Spearman:

I am not sure the Ethics Commission is actually a violation because it is in between. It is not with the Executive Branch nor is it beholden to the Legislative Branch. The Commission is just an independent branch. Please correct me if I am wrong.

Ms. Hansen:

That is the issue. You do not have those foundational constitutional liberties, which are protected by the separation of powers, when subject to the process of losing your right to trial by jury with an administrative agency like the Ethics Commission. With the Ethics Commission, you are guilty until proven innocent. You do not have the same type of guarantees for due process and other things that you would have with the right to a trial by jury.

Like Senator Hardy said, you are judged on the front page of the paper.

We support this legislation because it improves the situation where we find ourselves now.

Ms. Nevarez-Goodson:

I would provide the Ethics Commission is in fact an administrative body bound by the Nevada Administrative Procedure Act, and the public officers and employees adhere to constitutional due process rights under administrative law. The statutes in NRS 281A, as well as our own regulations, are intended to encourage the due process rights of the public officer and employee, much like we have in the court system. We have been litigating these issues throughout the years. Public officers and employees have asserted their rights to due process with the Ethics Commission. It has been upheld over and over again. The Commission is complying with due process rights for the public officers and employees who are subject to our laws.

Senator Cegavske:

Senator Hardy, when you were talking about the friend of a friend—an elected official, an attorney, had a client who filed a complaint against a fellow Legislator. The complaint was frivolous, but there were no repercussions to either one. The subject Legislator did not have the funds to sue for the false allegations; that was part of the problem.

The Ethics Commission does nothing to the other side for making the false allegations, and that is where I have a real problem. The requesters know that they can get away with it, and that is exactly what is happening. We also had some colleagues lose their elections because of the same type of thing. It does make or break. I urge support of this legislation.

Chair Spearman:

Mayor Tobler, if you submit portions of your testimony that alluded to specific incidents to our Las Vegas staff, it can be made a matter of record.

Ms. Nevarez-Goodson:

The Commission on Ethics would like to express its position on S.B. 283 as neutral.

The Commission is enforcing and implementing the Nevada Ethics in Government Law as the Legislature deems appropriate. In that spirit, we were pleased to work with Senator Hardy to accomplish some of the amendments he has identified in the bill and presented to the Committee today.

We have comments on some of the sections for your consideration in the spirit of providing factual information.

The Commission believes section 2 is an undue restriction on the ability of the member of the public to file a complaint with the Ethics Commission. We have approached and dealt with that section according to Senator Hardy's amendment.

Sections 3 and 4 reflect the Commission's current practice in the goals and factors set forth. As for section 4, subsection 1, the terms and stipulations in the amount of sanctions, the Commission does inherently attempt to consider the factors already outlined in the bill. If those provisions stay in the bill, the Commission would have no opposition.

Sections 5 and 6, which deal with the definitions for "intentionally" and "knowingly" regard willful violations. The change that occurred in 2009 to the "willful violation" definition did tie the Commission's hands by creating a strict liability standard for conduct that would violate the Ethics in Government Law. With these changes, the Commission feels the bill strikes the appropriate balance in the ability to consider whether there has been a bad faith element.

With the proposed amendment sought by Senator Hardy, we believe we have achieved that proper balance.

The Commission appreciates the ability to have worked with Senator Hardy to propose the amendment in section 8 to delete the ability to sanction a requester when no violation has been found but to have the ability to sanction a requester when the Commission has deemed the request to have been frivolous or vexatious.

Senator Hardy:

It has been my impression that this legislative body has collected wisdom toward resolving Senator Cegavske's concern, and I would be amendable to that, even without using the Wisconsin language. I recognize the amendment that exists has fatal flaws when you cannot even accept a problem. For that reason, the amendment makes sense. I appreciate having worked with the Ethics Commission Director to come up with rational approaches that have improved the bill.

Senator Settelmeyer:

My concern is lateness of the day. We are coming against our deadline next Friday, and there might not be time to workshop this. I am confident in the abilities of the parties to address any issues that may be problematic. I apologize for handing something to the Assembly that is not quite perfect. I would entertain the concept of an amend and do pass just to keep this worthwhile legislation going.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 283.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Spearman:

We will close the hearing on S.B. 283.

Senator Manendo:

We have opened the hearing on S.B. 458.

SENATE BILL 458: Enacts the Uniform Faithful Presidential Electors Act.
(BDR 24-704)

Senator Spearman:

I have prepared testimony ([Exhibit E](#)) to present Senate Bill 458.

Terry J. Care:

The stakes could not be higher.

The Presidential election of 2000 looked to be won by Al Gore. The state of Florida had litigation which went to the U.S. Supreme Court to be decided. In the end, former President George W. Bush won the election by five electoral votes but did not carry the popular vote. Is it not difficult to see there was room for mischief? Had you gotten three electors to vote for the other candidate, it could have gone the other way.

This is nothing new. It has affected the outcome of one election, with the candidate for Vice President. In 1836, Martin Van Buren, former Vice President, was elected President. The Democratic Party nominated Richard Mentor Johnson of Kentucky as Vice President but because of personal animosity, 23 electors from Virginia refused to support Johnson. They voted for Van Buren but not Johnson. Nobody received a majority for Vice President of the United States in the electoral college. Congress had to make the determination. Congress selected Johnson.

A Vice President or presidential candidate could die. Horace Greeley, who the Democrats nominated in 1872, died after the electors were chosen but before the electoral vote. Sixty-three electors pledged to vote for Mr. Greeley. Three voted for him anyway, and the others voted for one of the other four candidates. There was nothing to dictate what would happen in such a situation. In 1984, electors in Illinois voted for Geraldine Ferraro to be Vice President, but the state was carried by Ronald Reagan. In 2004, a Minnesota elector pledged to John Kerry for President and then voted for John Edwards. In most states, there is nothing to hold electors to vote for the candidate who won the popular vote in that state.

Two definitions in the Act are contained in sections 4 and 5 for the "nominee for presidential elector" and the "alternate."

Section 6 designates the State's electors. In our State, major political parties select the electors at their conventions, as do the minor political parties. Independent candidates name their electors upon filing for office or within 10 days thereafter with the Secretary of State.

Section 7 contains the pledge. The names of electors are submitted to the Office of the Secretary of State. They sign the pledge; the Office of the Secretary of State under federal law has to forward the information to the Archivist of the United States. If the pledge is not signed, then the position is declared vacant.

Section 9 covers the presiding officer, which would be the Secretary of State. The electors have gathered to cast their ballots. If a nominee for a presidential elector is not present to vote at the meeting, the position of presidential elector

is considered vacant, and the vacancy must be filled. The position is filled by the alternate. If the alternate is not present, then one is chosen by lot from the alternates attending the meeting.

Section 9, subsection 5 states if you become an elector because the position is declared vacant, you still have to sign the pledge. This is the key; you have to pledge to vote for the candidate of your party if that candidate prevails.

Section 10 explains the electoral voting itself. Subsection 2, paragraph (b), subparagraph (1) says if there is a no vote or a nonconforming vote, the Secretary of State will refuse to accept that ballot. You again go through the exercise of coming up with a replacement.

Section 11 explains notifying the Archivist of the United States of a replacement for the original elector chosen. If you are to be an elector, you have to pledge to vote for the candidate who wins the popular vote of your party. If you do not make that pledge, you will not be an elector. If you do make the pledge but do not vote that way, the position is created vacant and there is a mechanism to put somebody in place who will cast that vote consistently.

Even though the outcome of a race determined by this sort of mischief has never happened, except for the vice presidential candidate in 1836, you never know. We learned in 2000 just how close elections can be, and as Senator Spearman said, the stakes could not be higher.

Senator Settlemeyer:

This would not have changed any presidential selection in history, just the Vice President. Did you want to amend this to apply to primaries as well?

Mr. Care:

No.

Nicole Lamboley (Chief Deputy, Office of the Secretary of State):

I am representing Secretary of State Ross Miller. We are in support of this legislation.

Carol Howell:

I am in favor of S.B. 458 with background as to why. Had last year's election gone differently, we could have seen this as a problem for Nevada. Within the Republican delegation, there was some attempt to vote for an additional candidate.

This bill does not go as far as it should. Look at the election of delegates to become electors, which happens at the county conventions. Most citizens do not understand nor take part in this process. There needs to be clarity in the obligation of a person to become a delegate within the party framework to eventually become the electors who are voted at the State conventions.

I am disappointed in this Session. Senate Bill 212 would have started and cleaned up this process so it would not be a major issue because the affidavits, the swearing in and the requirements for the delegates to vote accordingly could have started clear back at the primary stage.

SENATE BILL 212: Makes various changes relating to statewide primary elections. (BDR 24-36)

Senate Bill 458 is the icing, not the cake. I would like to see this bill amended to include the cake—the teaching of and understanding by the citizens of this State for the workings of the electoral college and the delegates who go to the county and State conventions. There is so little understanding of the whole process because of the caucuses for the election of the candidates.

I am in favor of this bill, but amend it to do the job. I do not think this does the whole job, it just puts a little decoration on it.

Mr. Care:

I am representing myself as a Uniform Law Commissioner. This is a pro bono project; there is not compensation.

Senator Spearman:

I appreciate Ms. Howell's concerns and comments regarding what happens with regard for the individual parties. I think the Office of the Secretary of State can bring clarity and maybe abate some of the fears.

Senator Settelmeyer:

The problem my constituent alluded to was whether the representation of the vote always reflects the people's choice, even in the primary phase. I also understand there are consequences of that.

If the Democratic delegation went back and actually voted for Hillary Clinton and then Barack Obama won, which he did, there could have been repercussions for the State. The State party decided it would go ahead and endorse Barack Obama rather than Hillary Clinton, who won the popular vote.

We had a similar situation which was far worse in our State within the Republican Party in the primary where Mitt Romney clearly won, but our delegation went back and voted for Ron Paul.

That situation will not be solved by this bill nor can it be. It gets into the whole argument of dealing with party politics from which the courts stay as far away as humanly possible for a subject of that nature. There is no reason to discuss that further. I would entertain a motion to do pass.

Senator Manendo:

We will close the hearing on S.B. 458.

SENATOR SETTELMEYER MOVED TO DO PASS S.B. 458.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Spearman:

We will have a work session on Senate Bill 228.

Carol M. Stonefield (Policy Analyst):

Senate Bill 228 was heard in this Committee on March 19, presented by Senator Parks. I will touch on the proposed changes shown in the work session documents, ([Exhibit F](#)) and an explanation of the measure prepared by Caren Cafferata-Jenkins, Executive Director, Nevada Commission on Ethics ([Exhibit G](#)).

Senator David R. Parks (Senatorial District No. 7):

We are back in front of you with S.B. 228. We think we have a finalized document that meets with everyone's approval and support ([Exhibit H](#)). The concerns which the City of Reno had have been resolved.

Senator Settlemeyer:

There are three aspects of the bill. I support the boss-of-your-boss provision and the concept of contracting. The concept of placing a noncompete clause into people's contracts going forward concerns me. Without that section, I am in full support of the bill. But I cannot vote for the bill with that clause. Is it your intention to keep the cooling-off provisions in the bill?

Senator Parks:

Yes, that is correct.

Chair Spearman:

For the benefit for those who may not have been privy to your conversation with Senator Settlemeyer, can you explain the rationale for your decision?

Senator Parks:

The Ethics Commission could do a better job of answering the question.

Ms. Nevarez-Goodson:

I was not privy to the concerns Senator Settlemeyer shared with Senator Parks. If it is with respect to the addition of local government employees to the cooling-off period, the Commission added the provision as a policy matter.

The cooling-off provisions exist for state public officers. The Commission is intending to encompass the local public officers and employees within the legislation. I could represent on behalf of the Commission; if that singular issue may hold up the entire bill, we would sooner leave that to more policy discussions over the next couple of years rather than have it defeat the entire bill.

The Commission does not feel there is a policy reason why local officers and public employees should be treated differently than state officers and public employees with respect to the requirement of cooling-off provisions and the Nevada Ethics in Government Law in terms of revolving doors that apply to leaving public service and entering into the private sector.

Senator Settelmeyer:

Working for the State is different than working for a local municipality because of the size difference. In a small rural community, you have somebody who is a jack-of-all-trades.

Let us say he or she is working at the local health department, writing prescriptions and overseeing related duties. He or she gets laid off due to budget cuts or a fault of his or her own and is now prevented from working at the area drug supplier.

I have no doubt that there are the votes necessary to pass this bill as it is. I worry we are looking at the same reason that this bill went down last Session. I disagree with that aspect of the bill, but that aspect cannot be changed. Because of the smaller communities I represent, the general municipal employees are the jacks-of-all-trades. They do so much that to preclude them from employment may be problematic. I cannot support that aspect of the bill.

Ms. Nevarez-Goodson:

The Commission is appreciative of that point of view. The provisions of the cooling-off period set forth in NRS 281A.410 are intended to capture the public officers and employees who hold specific levels of employment as policy makers. We intend to encompass these regulators who then go to work in the regulated industry.

The Commission's balanced attempt to address your concerns includes a provision to provide relief from the strict application. The cooling-off provision does not apply to all public officers and employees in all circumstances. Appropriate exceptions to the general rule exist in rural settings where the provision would effectively prevent a certain public officer or employee from working anywhere within the entity.

Chair Spearman:

Can you give an example of a required cooling-off situation that puts this into context?

Ms. Nevarez-Goodson:

It started effectively with the State Gaming Control Board and the Public Utilities Commission of Nevada. The Legislature was concerned we had gaming

regulators and public utility regulators who had been working in the public sector for a period of time and utilizing the information, training and relationships to then go to work in the regulated industry.

The Legislature developed policy rationale that said that practice is too much of a revolving door. Let there be a year of separation in place so our public employees do not take the benefits of public office and then utilize them in the private sector.

We have high-level employees of various departments of government who also regulate various industries in the private sector. *Nevada Revised Statute* 281A.550, subsection 3 addresses certain higher-level policy-making public officers and employees who developed the formulation and regulations in NRS intended to regulate various industries by the State. We may have members of the Nevada Department of Transportation—high-level administrators or the department director—who may then want to go to work for an entity that contracted with the Department in the prior year.

The Commission's stand on that is wait a minute. The administrator, the high-level public officers and employees of that Department have so much involvement in drafting policy and developing the regulations that affect those industries that there is a suspicion of quid pro quo when that person goes to work for the very entity that contracted with the Department for those services. That is the intention behind the cooling-off provisions.

As a policy matter, the Commission is concerned about this caliber of public officers and public employees in the local government who likewise have that level of influence in terms of drafting policy and implementing investigations and inspections of the very entity that they could go to work for in the private sector.

The Commission's 1-year cooling-off period is an appropriate policy. In the right context, we might grant relief given no proof of quid pro quo, violation of ethics in government, use of public positions, relationships, etc. That is the intent of the provision.

Senator Settelmeyer:

Thank you for the explanation, but it does not alleviate the concern. When you are in a small rural area and have a situation where a guy in charge of the maintenance department leaves or is let go, now he cannot work at the local construction company. I am not in favor of that section and cannot support it.

Chair Spearman:

Senator Parks, would you entertain an amendment of clarifying language that speaks to the situations of extenuation and mitigation of which Ms. Nevarez-Goodson spoke?

Senator Parks:

I would have to confer with the Ethics Commission to see what impact that would have as far as the balance of the bill.

Chair Spearman:

I am not suggesting that you take it out.

There are times of extenuation of mitigation when the Ethics Commission can grant relief in a situation where someone who is head of the local city maintenance department gets laid off for budget cuts. There could be mitigating circumstances which would eliminate the quid pro quo suspicion.

Ms. Nevarez-Goodson:

These provisions exist in the mock-up of Senate Bill 228, [Exhibit H](#), pages 22 and 23.

What Senator Settelmeyer is suggesting also concerns the City of Reno as originally addressed with the Commission: are we really going to be preventing all local government employees and officers from seeking employment in the private sector if they leave the local government?

By the direct definition itself, [Exhibit H](#), page 23, section 40, subsection 5, we are not talking about a local maintenance worker for the city. First, the language specifically limits the application of the provisions to the service or period of employment during the immediately preceding year by a former public officer or employee whose "principal duties included the formulation of policy contained in

the regulations governing that business or industry.” Second, “during that immediately preceding year, the former public officer or employee directly performed activities, or controlled or influenced an audit, decision, investigation or other action.”

This language is intended to limit those types of public officers and employees to whom the cooling-off provisions are intending to capture. We are only talking about those who have direct policy influence over the regulations affecting the specific business or industry and those who have direct involvement in conducting an investigation, inspection or audit specific to that individual business or industry.

It may not alleviate all of Senator Settelmeyer’s concerns, but the existing language that applies to state public officers and employees is intended to limit the scope of those provisions.

Senator Manendo:

A state employee who lives in a small town could fall into the same category. Should we exempt them out? Now we have nothing. I beg to differ that the argument about where you live makes that much of a difference just because you may have less opportunity for employment. The conflict is still there; the opportunity to have a little cooling-off period would exist regardless of whether it is me in Clark County or somebody else in Douglas County. I understand the concern. Either throw it all out or include it all.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 228.

SENATOR ATKINSON SECONDED THE MOTION.

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

* * * * *

Chair Spearman:

We will hear Senate Joint Resolution (S.J.R.) 8 for a work session.

SENATE JOINT RESOLUTION 8: Proposes to amend the Nevada Constitution to revise provisions relating to the State Legislature. (BDR C-626)

Ms. Stonefield:

Senate Joint Resolution 8 was presented by Senator Tick Segerblom on March 19, and I have a work session document ([Exhibit I](#)).

Senator Cegavske:

I like the amendments you have added. I was looking for verbiage to state the 90-day session would be in Carson City and the 30-day session would be in Las Vegas. That way everybody would know specifically where they would be and for how long. I am glad you took the compensation out.

Assemblywoman Lucy Flores (Assembly District No. 28):

The last provision we were taking out was the advise and consent portion. We agree that they were two separate issues. We did not want it to affect the bill passage if it does go to the vote of the people.

Senator Settlemeyer:

I was of the opinion that the north should have the session when the weather was extremely cold, starting the session on January 1. Then you said you wanted to get out of Las Vegas when it was hot. I think the session should still start with a date in February.

Are you worried about the concept of the calendar days versus the legislative days and the possibility of extending the number of days?

Senator Tick Segerblom (Senatorial District No. 3):

The key here is a 120-day total session. I think we all can work together to decide what days count and what does not. The best idea was to take some time off; that is a helpful process. We know that session has to be over in 120 days or 45 days.

Senator Settlemeyer:

If you call it 120 calendar days, that is one thing. But by calling it legislative days, we may not know when session ends because you keep taking a pause and moving it out. That was my concern.

Senator Segerblom:

There is a maximum number of days. You are right; when we started, you would not know if it was to end on Day 90 or Day 120.

Senator Settlemeyer:

When it is extremely cold outside, I would prefer to be inside.

Senator Segerblom:

By that reference, if you are from southern Nevada you want to stay here until Day 120. We do not want to be here in February.

No matter what, the flip side is the 45 days, if it were in Las Vegas, are going to be a lot warmer than it would be here.

Senator Cegavske:

I did not see any dates on when you wanted to start the 90-day session. It would be in odd years and the 30-day session in even years. Is that correct?

Senator Segerblom:

They would both start the first of February.

Senator Cegavske:

Would you be amendable to making the session specific to Carson City for the 90 days and Las Vegas for the 30 days? The reason is consistency. Lobbyists and Legislators would know they are going to Las Vegas to live during the even-year session.

I said I could support something as long as I know there is an intent to remove the Interim Finance Committee and the Legislative Commission. We can still have our interim committees, which are important. The work goes on. If we have sessions every year, there is no reason to have the Legislative Commission or the Interim Finance Committee. That was one of the things I had heard interest in, but I did not hear anything other than that about the regulation part.

Senator Segerblom:

With respect to where the sessions would be held, I do not think it should be mandated in the Constitution. The location should be decided by the body.

Senator Cegavske:

But even to identify the two locations as Carson City or Las Vegas, would you not want to position the capital at the largest population base?

We need to have something stated to give us a sense of security so we know session will be in the locations designated.

I understand the reluctance, but I do not know where else you would have it. We have the building down in Las Vegas, you have the building here. There is no other place to accommodate a gang of 63.

Senator Segerblom:

I do not see it as an issue. As southern Nevadans, we do not want to hold it in Beatty, we are going to want to hold it in Las Vegas.

As far as mandates, the less you put in the Nevada Constitution, the better. If that is what your vote requires, then we will do anything for your vote.

Senator Manendo:

I think it should be in Las Vegas and say that it is in Las Vegas.

On the 90 out of 120 days once we start, if we meet on Saturday, that would count. We take Sunday off to go to church, so the Sunday would not count. Then we take a week off for whatever reason. A couple of reasons come to mind. One, our staff who are working 20 hours every day, 7 days a week for 120 days need to catch their breath. Second, they need time to catch up on bills and amendments, then we can process it so they can actually attend committee hearings.

Our legal staff members are here until 10 p.m. They are exhausted; it is ridiculous that we punish our staff to this level. That alone will get my vote. I would like to make that argument to my constituents to recognize what these people do. We have a number of them go down every session for illness. It is not right. They do such a great job, but we find mistakes every once in a while. We find more mistakes as the session goes on because they are tired. We are all tired. The public wants a better product in the long run.

Chair Spearman:

I agree. I heard you mention postage, so if this passes, does this mean I do not have to use my cell phone to call Washington, D.C., on behalf of a constituent? Any other place than here, I have to use my cell phone. Is that included?

Assemblywoman Flores:

Yes, the intent behind that is because we have the \$60 as mandated by the Nevada Constitution; back in the 1800s, \$60 was a lot of money. We are clarifying it to include just expenses. That way the body determines what things to cover, such as housing stipends or other expenses we incur as Legislators to be here during session. We would remove that from the Constitution. This same logic is why we removed the \$2,000 salary. Whereas \$2,000 might seem like a fair amount now, 50 years from now that will not be much. We need a mechanism by which we can keep up with the cost of doing legislative business and servicing our constituents in the State.

Chair Spearman:

Several of my constituents are really excited about S.J.R. 8 because they cannot get up here or over to the Grant Sawyer Building at odd times. Knowing a session would be in Las Vegas would allow them an opportunity to have more participation in the process.

I go back to one event we had a couple of weeks ago. We had people speaking for a bill in a ratio of 5 to 1; 35 for the bill and 7 signed in opposition. Several people in Las Vegas still could not follow the entire process because we lost the feed when somebody else in the building needed it.

This matter equalizes that process. People who live here or within a 30- to 40- to 50-mile radius can come here every day or 2 to 3 days a week. But the people who are in Las Vegas face a \$200 plane ticket.

Assemblywoman Flores:

I tend to be in agreement. We went back and forth about putting Las Vegas in the language of the bill. We are in agreement. If that is the Committee preference, we are willing to accept an amendment that defines the even-year sessions are to be held in Las Vegas and the odd-year sessions in the capital.

Chair Spearman:

I know changing the Constitution is a protracted and laborious endeavor. I am not advocating we codify a particular city, but I am saying if we get the sessions closer to our constituents down south, they could have more participation in the process.

As stated in a couple of emails, those constituents feel left out. As a voting constituent and someone who pays taxes, why can I not hear the whole proceeding? Why can I not know what is going on if I do not have a computer? Why can I not do that? Why did you have to cut it off? Then I had to explain why we did that. I am opting for some place that would be closer and equalize the process.

Senator Atkinson:

I do have that same question and concern. If we are to have videoconferencing and all that, would it not have to be someplace like Las Vegas at the Grant Sawyer State Office Building? If the sessions are held at another location, then we need a like facility that affords the same respect to the citizens of the north as we extend to those down south to attend, watch and participate.

Assemblywoman Flores:

Point taken, that is true.

Senator Cegavske:

In [Exhibit I](#), page 6, section 33 of Article 4 of the Nevada Constitution, I was excited about removing the \$2,000 salary from the bill until staff delineated that doing so leaves it open-ended. We can set our own salaries by regulation, and it would not have to go to the vote of the people. I did not get that from our conversation. We can set our own expenses and salary? I do agree with the expenses, but I am concerned with us setting our own salary. I just saw what the Clark County Commission went through.

Assemblywoman Flores:

We currently set our own salaries. But we set our salary for the 60 days as opposed to the 120-day session we work.

Senator Cegavske:

We set the per diem.

Assemblywoman Flores:

The per diem is set by federal standards and the given rate. We do not have anything to do with that other than to say it is set by the federal rate. The salary has been determined by statute for a very long time. We have not changed that. We can only change the first 60 days. If we wanted to increase our salary, for example, to \$50,000 a year, we can do that. We would get the \$50,000 in the first 60 days. If we wanted to change the \$140 per diem rate, we could do that for the 120 actual amount of days we work as opposed to being paid only half of the days we currently work.

Senator Cegavske:

I stand corrected. Talking with staff, it looked like it was doing the opposite of what we were talking about.

Senator Manendo:

If we get paid \$140 a day for 60 days, it would be the same as getting paid \$70 a day for 120 days.

SENATOR ATKINSON MOVED TO AMEND AND DO PASS AS AMENDED
S.J.R. 8.

SENATOR MANENDO SECONDED THE MOTION.

Chair Spearman:

Is it your intent to be in Las Vegas?

Assemblywoman Flores:

If the majority of the body intends it to be so, yes.

THE MOTION CARRIED. (SENATOR SETTELMAYER VOTED NO.)

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Chair Spearman:

I declare the business for this session of the Senate Committee on Legislative Operations and Elections is over at 10:11 a.m.

RESPECTFULLY SUBMITTED:

Mary Moak,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 283	C	13	Senator Joseph P. Hardy	Proposed Changes and Comments
S.B. 283	D	4	Senator Joseph P. Hardy	Letter From George M. Keele
S.B. 458	E	6	Senator Pat Spearman	Prepared Statement
S.B. 228	F	2	Carol M. Stonefield	Work Session Document
S.B. 228	G	2	Nevada Commission on Ethics	Explanation of Measure
S.B. 228	H	47	Nevada Commission on Ethics	Proposed Mock-up Amendment
S.J.R. 8	I	12	Carol M. Stonefield	Work Session Documents

