

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

**Seventy-Eighth Session
February 5, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4 p.m. on Thursday, February 5, 2015, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Lynn D. Stewart, Chair
Assemblywoman Shelly M. Shelton, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Michele Fiore
Assemblyman John Moore
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Carol M. Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Patricia Hartman, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Barbara K. Cegavske, Secretary of State, Office of the Secretary of State
Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State
Scott W. Anderson, Chief Deputy, Office of the Secretary of State
Yvonne M. Nevarez-Goodson, Executive Director, Commission on Ethics
Mike Cathcart, Business Operations Manager, City of Henderson
Joyce Haldeman, representing Clark County School District

Chair Stewart:

[Roll was taken.] Our Vice Chair, Assemblywoman Shelton, will reiterate the rules and reminders of Committee protocol.

Assemblywoman Shelton:

Please silence your cell phones. For those testifying, please sign in on the sheets provided on the back table and give your business card to the committee secretary and copies of handouts to the committee manager. The Assembly Committee on Legislative Operations Elections meets on Tuesdays and Thursdays at 4 p.m.

Chair Stewart:

We begin this meeting with a presentation by Barbara K. Cegavske, Secretary of State, and her staff.

Barbara K. Cegavske, Secretary of State, Office of the Secretary of State:

I would like to introduce my staff: Scott Anderson, Chief Deputy; Scott Gilles, Deputy for Elections; Justus Wendland, who works with the Help America Vote Act (HAVA); and Alan Glover, our special liaison and consultant.

The Office of the Secretary of State is the third-ranking constitutional office in the state. [Presented PowerPoint on elections overview ([Exhibit C](#))]. There are 4 deputies and a current staff of 123 in the agency, 8 of whom are in the Elections Division. One staff member is involved with the federally funded Help

America Vote Act. Our main office is in the Capitol, and we have smaller offices in Reno and Las Vegas that house staff members from certain divisions. The exception is election and candidate filings in the Las Vegas office.

The duties of the Secretary of State are varied. Other divisions include commercial recordings, securities, state business licensing, notary, and domestic partnership registration. The Secretary of State's Office also serves as the state's official record keeper and assists on numerous boards, including the State Board of Examiners, the Governing Board of the Tahoe Regional Planning Agency, the Board of the Governor's Office of Economic Development, and the Board of State Prison Commissioners. I serve as Chair of the State Records Committee, which is officially known as the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

The public most commonly associates the Secretary of State's Office as the state's Chief Election Officer. Our ability to maintain the integrity of a transparent and accessible election system is what gives Nevadans a voice in their government. It provides all of us with an opportunity to serve. When Nevadans lose confidence in the election process, they lose confidence in the entire structure of our government.

Today, I want to present the many areas of elections which are handled by my Elections Division and also provide historical election data. At the conclusion, I will preview election-related legislation originating from the Secretary of State's Office.

I will begin with what is called the fourth branch of government, the initiative petition and referendum process. The number of signatures required for a successful petition is 10 percent of those who voted in the last general election. Petitions for the upcoming cycle will require only 55,233 total signatures statewide, including at least 13,809 from each petition district, which is the same as a congressional district. August 1, 2015, is the date to file the referendum petition. September 1, 2015, is the date to file the constitutional amendment initiative petition, and on January 1, 2016, filings commence for the statutory initiative petition. Referendum petitions, constitutional amendments, and initiative petitions must be filed with the county clerk no later than June 21, 2016, to appear on the November 2016 general election ballot. Initiative petitions proposing a statewide measure for a change to a state statute must be filed within a week following the November 2016 general election ballot. If deemed sufficient, the petitions will be submitted to the Legislature in February 2017.

The Secretary of State's office is responsible for ensuring the state remains in compliance with the provisions of the Help America Vote Act of 2002 (HAVA). Congress passed HAVA to address many of the irregularities which occurred in the 2000 presidential election. The Help America Vote Act was developed to reform the election process, implementing requirements on the statutes in an attempt to create uniformity throughout the country. In order to achieve the goals of HAVA, the federal government distributed funds or grant money to assist states in implementing and maintaining compliance with the HAVA provisions. The State of Nevada has received federal funds and has expended those funds for activities and programming such as voting machines and statewide voter registration. To date, Nevada has received approximately \$23 million in federal funds under HAVA, with the most recent payment occurring in fiscal year 2013. Of that total, approximately \$2 million remains. We are hopeful Congress will appropriate new funding so the state can continue to satisfy HAVA requirements. At this time, there does not appear to be any indication of any future payments. While most states have spent all of their HAVA funds, Nevada has been frugal, and we anticipate significant funding in the HAVA account to last through the biennium and the presidential election in 2016.

After the 2016 election, this body, the county clerks, and the voter registrars will need to pursue alternative funding mechanisms for future elections in this state. As a swing state, Nevada will gain attention as one of the most significant states in deciding who will become President in 2016. Nevada may have one of the most watched U. S. Senate races in the country, depending on the candidates. There also may be two significant statewide ballot questions on the 2016 ballot: the initiative to regulate and tax marijuana, and the firearm sales background check initiative. This will depend on whether the Legislature approves these measures during the session.

Due in part to the attention Nevada's election receives and its citizens' increased desire to participate, Nevada's registration totals continue to nearly match the record totals from the 2012 presidential election. Registration totals including additional statistical breakdowns can be found on the Secretary of State's elections website, which is updated monthly. Presently, 1.23 million voters are actively registered in Nevada. Nevada's rolls also include 189,149 registered voters with an inactive status. While registration totals are close to all-time highs, voter turnout in the November 2014 general election was a record low, with 45 percent, or 552,326, of Nevada's voters casting a ballot. Compare those numbers to the 2012 presidential election; it had the highest total turnout for a Nevada election at 1,016,665 voters, or nearly 81 percent. Presidential elections always have a high turnout, but the turnout in alternate years should not be so unequal.

One of my goals as Secretary of State is to increase voter engagement and participation. I believe this can be accomplished in various ways. I am a proponent of engaging our children through civics education so they can understand the importance of their right to vote.

To aid Nevadans in confirming their registration status, our website features a voter lookup tool named My Voter File. It allows voters to verify their registration and polling location, view their individual voter history, and learn how to be included on the "please do not call" list. The Secretary of State's Office utilizes My Voter File to comply with the federal Military and Overseas Voter Empowerment (MOVE) Act requirement to provide a free-access system to indicate if a military overseas voter's ballot request has been received by their county clerk. My Voter File also includes a link to the voter's individual precinct level and sample ballot. Return of military ballots by email continues to grow in popularity since it is the most convenient method for our overseas military personnel. Nevada law allows military and overseas voters to receive and return voter registration balloting materials electronically. In addition to the state and federal requirements, the ballots may be mailed or made available to those voters at least 45 days prior to the election.

Last session, this body passed Assembly Bill No. 175 of the 77th Session, which authorized military and overseas voters to use electronic and digital signatures on their registration and balloting materials. This legislation, coupled with a federal grant, allowed the Secretary of State's Office to build the Effective Absentee System for Elections (EASE). The EASE System is a first-in-the-nation online tool which allows military and overseas voters to register to vote, request a ballot, and then receive and mark their absentee ballot. The EASE tool allows an eligible voter to submit their absentee ballot to the county clerk without the assistance of a printer, scanner, fax, or the United States Postal Service. The survey comments provided by the users of EASE indicate the application is popular with the military and overseas voters. In my administration, I will continue to find ways to improve and simplify the voting process for our military and overseas voters. On behalf of the Secretary of State's Office, I want to thank Assemblyman Elliot T. Anderson for sponsoring and championing A.B. No. 175 of the 77th Session, which allowed the Secretary of State's office to move forward with the EASE project.

As you can see with the 2014 numbers, early voting continues to be the most popular voting option for Nevada voters. Over half of Nevada's voters are casting a ballot before election day in person, through early voting, or by absentee ballot. Clark County's Early Voting Program, with its mobile trailers and extensive hours and locations, is heralded as the model program in the country for voter accessibility. It allows Nevadans to avoid the long waits and

lines that are reported in other states. Beginning with the 2008 election cycle, the Elections Division and our Information Technology Division implemented a new election night reporting website. The functionality of the election night reporting site, <SilverStateElection.com>, compares with any other state and most national election night reporting sites. On election night, there were over 81,000 hits on <SilverStateElection.com>. There were 265,000 page views and the average user spent approximately 15 minutes viewing this site. These numbers are actively on the site from the 2012 general election.

Online voter registration in Nevada has been available for over two years. Nevada was the ninth state to implement online registration, which is located at <RegisterToVote.com>. The system requires the new registrant to obtain a Department of Motor Vehicles (DMV)-issued driver's license or identification card in order to complete a new online registration or update. The system allows residents to register for the first time in Nevada, in a new county, or update their existing registration information. This registration includes address or party affiliation without visiting a government office or registering through a third party. The system matches the voter's identification with personal information in the DMV to verify the applicant's identity and his signature on file. The result is less paperwork for the counties and it produces accurate voter registration records.

For the 2014 election cycle, the period for online voter registration was extended by ten days and resulted in 3,300 new registrations and 2,500 updates. That is a significant amount of paperwork our county clerks would have to process right before an election. That is the busiest time of year for them. Various political parties are using online voter registration since its inception in Clark County on September 1, 2010, through the close of registration for the 2014 general election. The totals track party registration percentages, with one exception. Nonpartisans use online voter registration at a higher rate than members of political parties. There is a spike in usage at the close of registration. On the last day of registration, 1,351 new registrants used the system and 1,177 voters updated their addresses by the cutoff date.

To reinforce the confidence of Nevada voters, the Secretary of State's Office created Nevada's multijurisdictional Election Integrity Task Force. The task force is composed of representatives from the Secretary of State's Office, the Attorney General's Office, and agencies ranging from the Federal Bureau of Investigation (FBI) and the United States Attorney's Office to local law enforcement. Federal officials have cited the task force as a model for other states. This model is taught as a best practice in the public corruption divisions of the FBI and the Department of Justice. Nevada receives attention from

around the country in terms of how the state's elections are administered efficiently and effectively without voter fraud.

Aurora is the online tool developed by the Secretary of State's Office in response to the 2011 legislative mandate that all campaign contributions, expenditures, expense reports, and financial disclosure statements be reported electronically. The legal changes in Aurora are the most significant steps in the state's history toward improving transparency in our elections and providing the public with information about candidates' funding, their opposition, and ballot initiatives. In addition, a searchable database was designed and built for the public to review contribution and expense reports.

Assembly Bill 23, a cleanup bill, was prefiled last September and makes important changes to the Secretary of State's Office. There is work in progress on finalizing amendments for the bill which we expect will be received favorably. The current version of the bill clarifies that the Secretary of State's Office interpretative authority extends to all areas of the election, including campaign finance recalls and military votes. Assembly Bill 23 will revise the time periods in which the \$10,000 campaign contribution limit applies so that election cycles cover full calendar years, instead of having start and end dates that are 30 days before a legislative session. The last change relates to recall petitions and offers a solution to a statute ruled unconstitutional. It states if a person signs a recall petition, they must have voted in the election of the public officer who is the subject of the recall.

The county clerks' cleanup bill on slide 21 ([Exhibit C](#)) changes Title 24 of the *Nevada Revised Statutes* and will clean up antiquated language relating to polling-place processes for clerks and provide flexibility. The Secretary of State's Office is finalizing language with the Legislative Counsel Bureau (LCB) and the county clerks. One of the proposed provisions is to enable, but not mandate, the use of electronic poll books by the county clerks and registrars. We know that Carson City is doing it, and we want to enable it and not mandate it at this point because of the cost of the poll books. Another modification is to revise the requirement for the county clerk to publish statewide ballot questions in the newspaper. The state reimbursed the counties over \$356,000 last year for the publication of the education initiative because of its length. The cleanup bill also would allow the clerks to establish a process to permit registered voters to opt-in to receive sample ballots electronically.

In the third bill, we are attempting to address some of the issues that arose in the last two election cycles relating to candidate residency eligibility. The policy object of this bill is to create harsher penalties to deter candidates from filing declarations containing false statements. The legislation will increase the

criminal penalty for a candidate who knowingly and willingly submits a declaration containing a false statement to a category C felony and revises the statutory language on the candidate declaration form. The legislation will require candidates ruled ineligible at a civil legal proceeding to pay the attorney fees and costs of the prevailing party whether the state, county or the candidate's opponent who brought the civil claims. The bill language is not finalized and is being processed with the aid of the Legislative Counsel Bureau (LCB).

I want to set the record straight that the Secretary of State's Office does not have a bill submitted for the support of voter identification. I was asked in the campaign if I supported it and the answer is yes, I do support voter identification. There are two or three types of bills which have been submitted and we look forward to working with everybody on these.

I am aware there are bill draft requests (BDRs) in the works and we will be reviewing each of them. I believe instituting the voter identification requirement is a safeguard to maintaining security. It is a step that will ensure voter confidence in the state, and I believe that voter identification requirement at the polls is common sense considering the rise in identity theft in this country. As a state senator, I received phone calls from constituents who experienced identity theft on a regular basis. I plan to be proactive in this process and work with all parties to ensure the integrity of Nevada's elections while ensuring that no eligible voters are disenfranchised.

Assemblyman Thompson:

In reference to <SilverStateElection.com>, on election night, there was confusion with the election results. It is one of the goals of the Secretary of State's Office to make this website process seamless?

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

The results shown on <SilverStateElection.com> are posted as soon as they are received from the county clerk's office. As far as any delay from the time the numbers are posted on the website, depending on the county, we may receive various sets of results throughout the night. Clark County gets approximately seven to ten sets of election results because they are tabulating numerous voting machine cartridges. In the smaller counties they may process it all and have it sent to us by 8:30 or 9 p.m. We appreciate the constructive feedback concerning the confusion on the layout of the results. There is nothing we can do to have the totals appear any sooner.

One issue came up that we may revisit. Some voters looking at the website would see a congressional district race and raise questions regarding the county

totals. We employed a checkmark within a particular county result which indicated one person had won that county when actually the entire district totals were favoring another candidate. A couple of people called and it was confusing to them, so that is something we will revisit.

As far as the timing of the results, we receive the statewide results as soon as the counties post them. By Nevada law, the counties should not be posting multicounty results before they send them to us.

Assemblyman Thompson:

My second question is about registering to vote at the DMV. Can you please set us straight on this issue? I understand there is a place on the driver license application that asks whether you want to register to vote. Some of my constituents believe that by checking the box, they are automatically registered to vote, but in reality when they go to the polls, they are not registered to vote. Has that issue been corrected?

Barbara Cegavske:

I will let Mr. Gilles go into further detail, but it is an issue. We have heard about it. We are working with DMV, because we know that people do not realize they need to fill out the whole form.

Scott F. Gilles:

It is a great question. It is a very interesting issue on which we have spent a lot of time working with DMV and the county clerks. Right now the process is a paper process. For example, someone goes into the Carson City DMV. They are registered in Douglas County and want to update their registration to Carson City. They check the form, and the information is passed on to the Carson City Clerk. At that point, because it is still a paper process, they still need to collect all the other information to get that person's registration information from Douglas County into their rolls. Right now, it requires a follow-up on paper with that individual, typically by mail or phone. If the voter does not receive the message or does not follow up on the message received in the mail, they may not get registered in Carson City. We have been working with DMV toward a goal. I believe the Secretary of State's Office intends to automate this process so we have the information transferred digitally and electronically within 24 hours after someone changes their address at DMV. The information will be sent to the state and then to the county, and those rolls will be updated. It will be a fantastic achievement when it happens. The rolls will be significantly cleaner, and addresses will be updated instantly.

Assemblyman Ohrenschall:

Regarding the 2014 general election, slide 7 of your presentation ([Exhibit C](#)) indicates there are 1.2 million active voters registered in Nevada and the turnout was 45 percent, or 552,000 voters. How many citizens are not registered on the voting rolls? Is that data available and what can be done to increase voter participation?

Barbara Cegavske:

I want to ensure civics is instituted in Nevada schools. The website <icivics.org> is a fantastic tool, and it is something I am pushing to institute into the public education arena. The website <icivics.org> originated from former Supreme Court Justice Sandra Day O'Connor. She was bewildered at the lack of knowledge of those who came before the Supreme Court. She became involved with the Education Commission of States (ECS), of which I was a member. She assembled a free program consisting of 17 interactive programs that teaches about the Bill of Rights and the U.S. Constitution. Not only do we use it for fourth grade students and up, but we also use it for people who want to become citizens. One of my top priorities is to ensure the school districts and counties are introduced to <icivics.org>.

Assemblyman Elliot T. Anderson:

I appreciate the feedback on Assembly Bill No. 175 of the 77th Session. It is great to see what we can do when we work together to remove obstacles to exercising what is a fundamental right. When I see those turnout numbers, I shake my head. It is sad when people have the right to vote and do not utilize that right.

What is the status on the Universal Commercial Code (UCC) filing system and the commercial recordings section? Have you had any feedback from businesses engaging in related types of transactions?

Scott W. Anderson, Chief Deputy, Office of the Secretary of State:

The process itself is doing fine. The system is struggling a bit. We have appeared before the budget committees this week and are working to institute a technology investment request (TIRE) regarding our Electronic Secretary of State (e-SoS) System. It is functioning and we are providing good service to our customers. However, there are outages and system problems requiring us to replace the e-SoS system over the next few years. At the end of the month, when extreme volumes come through the online services, we have experienced delays. There is work being performed on the UCC filing system. We hope members of the Legislature will support and make it easier for businesses to move forward. SilverFlume is Nevada's business portal and is one of our online systems. We are expanding by introducing new partner agencies. We request

your support as we move on to the money committees to improve the systems maintaining the \$140 million revenue stream.

Chair Stewart:

Are there any other questions? [There were none.] Next we have a presentation from Yvonne M. Nevarez-Goodson, Executive Director of the Commission on Ethics.

Yvonne M. Nevarez-Goodson, Executive Director, Commission on Ethics:

We appreciate the opportunity to present an overview ([Exhibit D](#)) of the Commission on Ethics and its work under the Ethics in Government Law, which is all part of *Nevada Revised Statutes* (NRS) Chapter 281A. It is my intention to skim through the slide presentation as I have previously met with members of this Committee. I want to discuss the makeup of the Commission, its general jurisdiction, and its primary functions.

The Nevada Commission on Ethics is an eight-member public, appointed body. It is half appointed by the Legislative Commission and half appointed by the Governor. It serves primarily as a quasi-judicial body. Our jurisdiction extends over the state's public employees and public officers, including local government. Our primary mission is to preserve and protect public integrity. This is accomplished through our enforcement interpretation of (NRS) Chapter 281A and its application to the conduct of Nevada's public employees and public officers. The scope of our authority includes addressing conflicts of interest and improper uses of government positions for private benefit.

We are limited in our jurisdiction to matters that do not affect core legislative functions and are otherwise protected by legislative privilege and immunity.

Looking at page 4 ([Exhibit D](#)), the jurisdiction of the Commission extends to two years from the alleged conduct or its reasonable discovery. If your tenure as a public officer expired, and the alleged conduct is determined to be in violation and occurred during your tenure as a public office, the Commission continues to have jurisdiction over you.

One of the functions of the Commission is to address requests for advisory opinions provided by individual public employees or public officers. Those advisory opinions govern the advice someone might seek regarding a conflict of interest they perceive in their circumstances made applicable to them through NRS Chapter 281A. An advisory opinion under the Ethics in Government law is called a first party request for advisory opinion. This means a person has the ability to ask the Commission for advice regarding past, present, or future

conduct as it relates to NRS Chapter 281A. The Commission's mission regarding first party request for advisory opinion is to assist in avoiding a conflict of interest or determine validity of questions when they arise.

Page 6 ([Exhibit D](#)) explains third-party requests for opinion, which are known as public complaints. This is a process whereby a member of the public files a complaint with the Ethics Commission alleging there is a concern about a violation of the Ethics in Government Law by a public employee or public officer. The statute provides a certain amount of due process to the subject who has allegations levied against him or her. We provide the appropriate notice for the opportunity to respond to the allegations. The Commission will then conduct an investigation, and if it is determined that the issue should move forward to the full Commission, the subject will be provided an opportunity to cross-examine witnesses and to challenge the appropriateness of the evidence that might be used against that person.

When the Commission receives a complaint from the public, we initiate a jurisdictional analysis of the complaint. First, the staff determines if the issue involves a public officer or public employee. Second, the staff determines if the allegations are related to the provisions of NRS Chapter 281A. We receive many requests for opinion and complaints involving the Open Meeting Law or violations of public records issues. Those issues do not fall within the jurisdiction of the Ethics Commission. Third, we require a minimum level of credible evidence be submitted with any complaint filed with our office before we will agree to accept jurisdiction and initiate an investigation.

Without these three issues, the matter is dismissed at the staff level, and both the requester and the subject of the complaint have an opportunity to appeal the staff determinations to the full Commission.

If the jurisdictional phase does move forward, the Commission staff will initiate an investigation of the matter. All of the collected evidence, including any responses the subject has to those allegations, will be presented along with a recommendation to an investigatory panel. The investigatory panel consists of two Commission members. Their responsibility is to determine whether the evidence presented is sufficient to warrant a full-blown hearing and tendering of an opinion by the full Commission.

Chair Stewart:

Most of the allegations are solved by these committees rather than going before the full-blown Commission. Is that correct?

Yvonne Nevarez-Goodson:

It is not a traditional panel in the sense the evidence will be fully examined and resolved at that time. It is more of a preliminary threshold determination. If the panel determines there is not sufficient evidence to warrant a hearing by the Commission, the matter is dismissed. If they believe the evidence does warrant a full hearing, they will forward the matter to the full Commission for review.

Chair Stewart:

Are full hearings rare?

Yvonne Nevarez-Goodson:

Since 2013, we have not held a hearing on the Commission level. Most matters have otherwise been dismissed by the panel or negotiated to a settled agreement with Commission staff as a final determination. With the addition of the associate counsel position, we have been able to negotiate every case.

Page 7 ([Exhibit D](#)) also explains the confidentiality of our process. Everything the Commission does until the investigatory panel renders a decision remains confidential. The Commission is statutorily required to maintain the confidentiality of the request for an opinion. We receive media attention when complaints are being filed against public employees and public officers and the Commission finds itself in a position to either confirm or deny the receipt of request for an opinion. The reason is that we never received the request or we are in the process of investigating and do not want to acknowledge the receipt. [Ms. Nevarez-Goodson continued reading from presentation ([Exhibit D](#)).]

The Committee is probably familiar with the financial disclosure statement on page 9. It is a form the Commission formerly accepted from the public officers throughout the state, but it proved to be an overwhelming process for the limited staff of the Commission. We were able to defer this requirement to the Secretary of State's Office.

There are ten areas in NRS Chapter 281A governing prohibited conduct, as noted on pages 10 and 11. The most common statutes involve accepting gifts, services, or economic opportunities which would tend to improperly influence one's decisions as a public officer or public employee. Another area would be improper use of the legislative position to secure unwarranted benefits. This may involve participating as agents of government in the negotiation of contracts in which they may have a pecuniary interest, or accepting salary or other compensation from a private source for something they may be required to do in their public capacity. The next two provisions, which arise less frequently, may be described as insider trading. Public employees and public

officers are not permitted to use or suppress information they have available to them by virtue of their position to benefit them in their private capacity.

As referred to on page 11 ([Exhibit D](#)), NRS 281A.400(7)(a) is applicable to public employees rather than public officers. It is also applicable to incumbent public officers who may be running for reelection. This provision governs the use of government property, facilities, staff time, et cetera, for a private, personal purpose. We know the government resources belong to the public and should not be used to benefit our private interests. The last two issues are attempts to benefit a personal or financial interest by influencing subordinates and the seeking of other employment or contracts through the use of an official position.

Chair Stewart:

Are there any questions from the Committee? Seeing none, we will open the hearing on Assembly Bill 60.

Assembly Bill 60: Revises provisions relating to ethics in government (BDR 23-309).

Yvonne M. Nevarez-Goodson, Executive Director, Commission on Ethics:

The Commission has put forward A.B. 60 in an attempt to inform the Legislature regarding issues the Commission has experienced governing its processes and procedures in the last biennium and even before that time. The goal of this legislation is intended to be informational. We will abide by any of the policies the Legislature wants to put forward in terms of our governing statutes and what we might be asked to interpret on behalf of public employees and public officers.

This bill encompasses seven issues. The first part governs the abstention provisions. Abstention principles apply across the board when dealing with conflicts of interest. Public employees are asked to make government decisions in their capacity as government employees concerning conflict of interest. This legislation is making the same conflicts of interest applicable to public employees that are presently applicable to public officers.

The second issue is the timing of the investigations. There is a 70-day timeline to investigate complaints from the public unless the timeline has been waived by the subject of the complaint. It could be a lengthy process for the Commission to fully examine the jurisdictional issues presented in a complaint. Once the determination is made of the appropriate jurisdiction, an investigation timeline should commence. The Committee members and the general public are concerned this will prolong the process. There is no definitive timeline for the

Commission to render its determination on jurisdiction. The Commission will consider an amendment to accomplish those concerns. The Commission meets approximately once a month and would consider an appropriate timeline to issue a jurisdictional determination.

Assemblyman Trowbridge:

After the complaint is filed, the subject and the filer of the complaint should be entitled to a quick decision on jurisdiction. Perhaps a 45-day time limit would be sufficient to allow the parties involved to decide whether or not to pursue the issue. If it is a frivolous case, there is no need to continue. Once the determination is made, it could move forward. I would prefer a timely determination for both the jurisdiction and resolution.

Yvonne Nevarez-Goodson:

We are agreeable to discussing the appropriate timelines. Another issue presented in A.B. 60 relates to whether it would be appropriate for us to start accepting anonymous complaints. This issue deals with the position the requesters are put in before the Commission and addresses confidentiality concerns the Commission faces when it has received a complaint. It is intended to approach questions regarding public integrity issues. The Commission is concerned it is not getting access to the major complaints in the state because the requesters are required to list their name publicly on any complaint on which the Commission would accept jurisdiction.

Assemblyman Elliot T. Anderson:

I appreciate your advising this is a "whistleblower" issue. I do not think there is anyone here who wants to get in the way of whistleblowers. Is there any way to limit the provision if it is done to harass someone as an opposing political member? This is my concern. Is there any way we can keep a public employee's name confidential? I am concerned about instituting a system encouraging people to not use common sense with this type of complaint.

Yvonne Nevarez-Goodson:

There are other ways to accomplish the same goal. The Commission would never accept a broad-based allegation from a complaint, whether it is a publicly identified request or an anonymous complaint. There is going to be a threshold level of evidence required for us to accept jurisdiction over any filed complaint. In fiscal year 2014, we received 70 complaints from the public, but the Commission accepted jurisdiction over only 20 of them. It is possible many did not involve public officers or *Nevada Revised Statutes* (NRS) Chapter 281A, but more often than not, those complaints were dismissed because they were not submitted with a threshold level of evidence to support the allegation to warrant an initiation of an investigation. I think it is fair to assume the Commission

would never want to be associated with mudslinging or allegations brought on without that level of evidence.

Assemblyman Thompson:

Is there a certain criteria to determine the validity of an investigation so it makes it more objective?

Yvonne Nevarez-Goodson:

The definition of the evidence required to meet the standard is what is known as credible evidence. That definition includes that the evidence must be from a reliable source, and it must be reliable evidence credible to support the allegation. That determination is initially made by the Commission's executive director and counsel. For example, we might review a public document and determine the source of the document, versus if it looks as if someone created that document on his own desktop. If we have questions about the credibility of a document from that aspect, we may deny it.

If we do deny jurisdiction over a complaint for lack of sufficient credible evidence, it is not with prejudice. This means we may inform the requestor it does not meet our standard and they can resubmit appropriate evidence. They have the opportunity to resubmit, but we doubt the creditability of that evidence. That standard is further evaluated by those parties' appeal rights to those parties to the full Commission.

Assemblyman Thompson:

Am I hearing you say that if you receive a complaint and it is not credible, you go back to the person and ask him to tighten it up and make it a little bit stronger? Should it not be that the person submitted it, it was not accepted, so let us keep it moving?

Yvonne Nevarez-Goodson:

I should clarify it is true we do not necessarily invite the individual to come back with additional evidence. It is just that we do not dismiss it with prejudice. It is always open to someone to resubmit with credible evidence. If someone calls us and questions why something was dismissed, we might say we doubted the credibility of the evidence. You have the right to appeal to the Commission if you want to challenge the decision. We do not expressly invite them to resubmit, nor do we preclude them from resubmitting if they have different evidence they want to put forward.

Assemblyman Ohrenschall:

My concerns also have to do with section 3 on page 6 of the bill, allowing anonymous complaints to be filed. Perhaps there is an alternative solution

where the identity of the complainant could be kept confidential until further in the process if the complaint is found meritorious. My concern is in line with Assemblyman Anderson's, that the floodgates will open with frivolous and meritless complaints because there is a personal or political motive. I understand wanting to broaden the net we are casting in terms of finding problems, but I worry this might go too far. I hope you are open to alternative solutions.

Assemblyman Trowbridge:

Along the same lines, it seems the criteria for accepting a complaint is weak in that a lot of the complaints stem from the intent. For example, if a political opponent decided to file a complaint because a candidate had accepted a donation for a particular purpose, you would check the records to determine whether the person had accepted the donation. You have a complaint that is alive now, but you have not even addressed the issue of the purpose, which may have been erroneous. The anonymous person filing the complaint can go to the newspaper and say a charge has been filed and ethics complaints have been issued against the candidate. If you have 45 days to respond, the campaign is over by then. That is a legitimate concern.

Assemblywoman Seaman:

How many staff does the Commission have investigating these complaints at one time?

Yvonne Nevarez-Goodson:

We have only six full-time staff at the Ethics Commission for our statewide agency. We have a legal arm and an investigatory arm. As the executive director, I attempt to govern the conduct of the investigations that take place. We have one senior investigator, and our associate counsel is also charged with separating the due process issue from our commission counsel, while overseeing the investigations taking place to insure the legalities are appropriate in responding to legal motions filed during the course of an investigation. The short answer is we have three full-time staff who handle the investigations.

Assemblywoman Seaman:

Is it possible these anonymous complaints could overload your staff?

Yvonne Nevarez-Goodson:

We have concerns there may be an increase in the caseload with public complaints. We are already in a position where the majority of the complaints, even from requestors who identify themselves, are dismissed at the outset. We determined it would be an appropriate ability for Commission staff to be able to assess those complaints as they arrive. Unfortunately it would be almost

impossible for us to anticipate what those numbers might be until we go through that. To date, the Commission has not overturned any of the jurisdictional determinations.

On the overall policy consideration from the Commission's perspective regarding anonymous complaints, we want to capture the types of complaints that are of actual public integrity concern. We are endeavoring to protect the interest of the requestor, who may be thrust into a public process similar to the subjects. Nine out of ten people who file these requests and have actual information about the conduct are employees or subordinates and fear retribution for initiating the complaints. We deal with issues not just in the course of their name being made public, but also when they have firsthand knowledge and become a witness to the allegation. We also have difficulty as a Commission, and not from our investigatory arm, getting those witnesses to cooperate with our investigations. We have subpoena power to use when it is important. When a requestor is identified as a witness with knowledge of the alleged conduct, the subject has every right to cross-examine the witness to evaluate their credibility. That witness is always going to be properly vetted by both sides.

When we receive a complaint and accept jurisdiction of that complaint, we notify the requestor and initiate an investigation. Under the confidentiality provisions of NRS Chapter 281A, the Commission is required to keep the issue confidential. That is for good reason. There are instances when the evidence is not what we initially thought it was and the complaint will be dismissed. We do not have control over a requestor informing the media that he or she brought a complaint against a public officer and the Commission on Ethics is making an investigation. When the media receives the information, I am notified and can either confirm or deny the receipt of the request for opinion. It can be disingenuous because they are holding my signed document indicating we have accepted jurisdiction of the issue and are investigating.

Some of those policy considerations are issues of intent behind this proposed legislation. We can work together to limit the scope of the anonymous complaints.

The next issue is a clarification to the confidentiality provisions of first-party requests for opinion. This is our advisory opinion process. Currently in the law, we have a statement indicating an individual public officer or employee who requests an advisory opinion before the Commission has the right to maintain the confidentiality of the provision, but they could waive that confidentiality either expressly or through their conduct. Situations often arise when a public employee or the supervisor brings a request for opinion to the Commission

because they have a concern about a conflict of interest. Another situation would be a supervisor who has concerns about an employee seeking a private sector position in violation of the cooling off provisions. Sections 3 and 6 on pages 8 and 15, provide that those individuals seeking advisory opinions might have the ability to waive the confidentiality of the Commission's decision to their employer, or another individual, with appropriate notification to the Commission. So it is a limited waiver of confidentiality.

Assemblyman Elliot T. Anderson:

I have another question on section 6. I was thinking about the ability of the U.S. Supreme Court to continue to give us better precedents in order for individuals and businesses to have more certainty about the statutes. Are we taking away the precedential value by restricting the opinions of the Commission?

Yvonne Nevarez-Goodson:

The Commission drafts a written opinion with respect to every request for opinion that comes before the Commission, whether it is confidential or not. If it is a confidential opinion, and the individual wants to retain that confidentiality, the Commission abstracts the written opinion for publication. It sanitizes anything referencing the subject of the opinion or any identifying information by virtue of the agency they represent. The Commission writes an opinion for every request for opinion what it addresses.

Assemblyman Ohrenschall:

I understand the proposed language in sections 3 and 6 is not going to change the fact that every opinion is still going to be published. There may be redactions so names and other items are not listed, but the fact pattern will be there. There would still be precedential value under existing law if the language in sections 3 and 6 passes, correct?

Yvonne Nevarez-Goodson:

Yes, that is correct. The Commission will still issue a written opinion for every case. These two provisions regarding confidentiality indicate to the individual public employee or public officer who wishes to retain the confidentiality of that opinion that they may disclose the opinion to certain individuals without waiving it to the entire world. When a confidential opinion is published, the individual's supervisor knows the specific circumstances because the individual has been able to show the original opinion the Commission issued.

When there are advisory opinions, the Commission issues two written opinions. It issues the actual written opinion to the individual with the specific circumstances outlined. Then the individual has the opportunity to say I am

comfortable waiving the confidentiality and you may publish the opinion or say I wish to retain the confidentiality of the opinion and would you publish an abstract of the opinion. In those instances we publish yet another opinion, which is that abstract version.

Assemblyman Ohrenschall:

So this proposed new language gives more freedom to the person who is requesting the opinion, correct?

Yvonne Nevarez-Goodson:

Yes, it does. The next issue we hope to clarify in A.B. 60 is to confirm that the investigatory process before the Commission remains confidential.

Pages 8 and 9, section 3, have a provision clarifying that the Commission's investigatory panel processes are part of the investigatory process and should remain confidential. We have had challenges about whether information the panel might bring back to our investigator during the course of panel proceedings would be deemed confidential material, and we would like to ensure the confidentiality until the Commission's panel makes its determination.

Page 10, section 4 concerns the implementation of mitigating factors the Commission was required to consider in Senate Bill No. 228 of the 77th Session. Last session, Senator Hardy requested we amend our bill to impose the consideration of various mitigating factors in the Commission's determination of a willful violation. Before the 2013 changes, the Commission found that every violation by a public officer or public employee was almost by definition mandatorily required to be a willful violation. The definition of willful is that it is an intentional and knowing act. It did not require the act was in bad faith or knowingly in violation of the law; it was the conduct itself which was intentional. The Commission decided it was a strict liability standard. The Commission's intent regarding willful conduct is to determine if the conduct is an intentional disregard for the law. Senator Hardy's bill maintained that it is an inappropriate standard for the Commission to be interpreting willful violations. We prefer the Commission be mandated to review these mitigating factors in determinations regarding willful violations. The unintended consequences of S.B. No. 228 of the 77th Session are, since 2013, the Commission has realized it went to the opposite extreme where it has been difficult for the Commission to impose a willful violation. Possibly there is a situation where there is absolute bad faith or total disregard for the law, but because the individual has not previously committed an ethics violation or did not financially benefit, those mitigating factors might trump what the Commission believes to be willful conduct. We hope the compromise is going to continue to apply to these mitigating factors that are presented in the law. We are bound by the precedent

the Commission has issued in our prior opinions and would not issue a decision in a similar case without considering the same factors. In this case, the appropriate compromise would be going from mandatory language to discretionary language.

Assemblyman Elliot T. Anderson:

Is this a factors test and not a disjunctive test? You do not get one of these and are ruled out from finding a willful violation. Can these factors be waived as long as the situations are treated comparably? If this is the first time, why are the others factors outweighed?

Yvonne Nevarez-Goodson:

You are correct; it does not read that way. Since 2013, the Commission has not held a hearing. All of the complaints before the Commission have been settled and negotiated with either the subject or subject's counsel. If it is in terms of negotiating ability for the Commission to be required to review these factors, we are bombarded with arguments that the mitigating factors must apply, and if one applies, the Commission is required to assess all the details. The Commission's perspective is not adverse to applying those factors. If applicable, we will consider them as part of the evidence. The Commission is reviewing its ability to have negotiating leverage regarding its ability to consider other factors.

Assemblyman Elliot T. Anderson:

Relating to section 5, when determining a penalty, would it still be mandated to consider those factors in setting the penalty? If you are trying to have leverage in negotiations, can you maintain we do not have to waive these factors?

Yvonne Nevarez-Goodson:

That is a great idea, and I will present it to the Commission for their consideration. It is an appropriate issue for dealing with sanction versus the designation of willfulness at the outset.

Assemblyman Ohrenschall:

The intent of the Committee was not to tie the Commission's hands; it was just that all these factors would be considered in terms of whether a willful violation was found. I understand there have not been willful violations since last session. Are you saying this is attributable to the factors or the complaints?

Yvonne Nevarez-Goodson:

I do not want to signify that those factors are the only reasons why the Commission has been unable to find a willful violation. In many situations, the conduct was not willful through the application of the mitigating factors or

otherwise. I believe the Commission is finding itself in a position of being bombarded with legal arguments because of the existing factors.

Assemblyman Ohrenschall:

In these cases since adjournment of the last session, the arguments made regarding these mitigating factors have been at the negotiation phase, not at an adjudicatory full hearing, since there has not been one.

Yvonne Nevarez-Goodson:

Yes, that is correct.

The last issue presented in A.B. 60 involves the provisions of section 5, on page 12. This is known as our safe harbor provision. We have a provision in NRS Chapter 281A.480 allowing for public officers and employees to rely in good faith on the advice of legal counsel appointed to the public agency. We encourage public employees and public officers to seek the advice of their legal counsel because we cannot be everywhere at once. This legislation focuses on the aspect of good faith reliance on legal advice. We would like the legal advice to be in advance of the conduct. Referencing Senate Bill No. 228 of the 77th Session, the Commission has noticed a problem in cases where the attorneys are taking the fall for conduct. We are receiving affidavits and declarations indicating the public lawyers have gotten it wrong but otherwise advised the individual regarding the conduct. What has not been provided to substantiate that legal advice is that the advice was sought in advance of the conduct. Our purpose for this legislation is to clarify the advice is good faith reliance on legal counsel and was sought in advance of the conduct.

The amendment to that section was used to ask about the public officer and clarify that the conduct was not contrary to any prior published opinion of the Commission. Because we are encouraging reliance on legal counsel, we believe the requirement should be properly on legal counsel to determine the advice is contrary to a published opinion rather than the public employee. If those two issues can be satisfied, the Commission will invoke the safe harbor provision and not impose a willful violation against a public officer or public employee.

Chair Stewart:

Are there any questions? [There were none.] Is there anyone wanting to testify in favor of A.B. 60? [There was none.] Is there anyone who wants to testify in opposition to A.B. 60?

Mike Cathcart, Business Operations Manager, City of Henderson:

Questions from the City Attorney's Office regarding this legislation have been discussed by this Committee, in particular, section 3 and section 4, concerning

the jurisdiction timeline and also the piece about the factors. We would like to be invited to the table to discuss any possible amendments to this legislation.

Chair Stewart:

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

Joyce Haldeman, representing the Clark County School District:

We have concerns with A.B. 60. We think the language is vague and offers a lot of different interpretations, and as the bill moves forward, I would like to have our attorney here to voice his concerns. As you know, we have 38,000 employees in the Clark County School District. Opening up this statute to employees, not just elected officials, would be a large policing job for us, even if every employee questioning what they were doing was going to seek an opinion of the attorney in advance. We believe this bill is fraught with unintended consequences, especially sections 3 and 4, which we were most concerned about.

Chair Stewart:

Are there any questions for Ms. Haldeman? [There were none.] Are there others who wish to testify in opposition? [There were none.] Is there anyone testifying in neutral? [There were none.] I recommend that those who are opposed to this legislation meet with the sponsor of the bill and try to work out some of these issues.

The hearing on A.B. 60 is closed. Is there any public comment? [There was none.] The meeting is adjourned [at 5:47 p.m.].

RESPECTFULLY SUBMITTED:

Patricia Hartman
Committee Secretary

APPROVED BY:

Assemblyman Lynn D. Stewart, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: February 5, 2015

Time of Meeting: 4 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Barbara K. Cegavke Secretary of State	Elections Overview
	D	Yvonne M. Nevarez-Goodson. Commission on Ethics	Nevada Commission on Ethics