

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

**Seventy-Eighth Session
May 21, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4:15 p.m. on Thursday, May 21, 2015, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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:

Senator Patricia Farley, Senate District No. 8



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Matthew Griffin, representing Nevada Resort Association
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Alan H. Glover, Special Assistant to the Secretary of State, Office of the Secretary of State
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Stacey Shinn, representing Progressive Leadership Alliance of Nevada
Kermitt L. Waters, Private Citizen, Las Vegas, Nevada
Lynn Chapman, representing Nevada Eagle Forum
Janine Hansen, President, Nevada Families for Freedom
Kyle J. Davis, representing America Votes
Leora Olivas, State Director, Silver State Voices and Let Nevadans Vote Coalition
John Wagner, State Chairman, Independent American Party of Nevada

Chair Stewart:

[Roll was taken.] We will begin with Senate Bill 434 (1st Reprint).

Senate Bill 434 (1st Reprint): Makes various changes relating to initiative and referendum petitions. (BDR 24-1150)

Senator Patricia Farley, Senate District No. 8:

I submitted this bill upon request in an effort to ensure that each petition receives a threshold level of support from the voters, and to discourage frivolous or harassing petitions that unnecessarily consume public and private resources, and cause inefficiency, unfairness, and waste. The provisions set forth in Senate Bill 434 (1st Reprint) ensure that the voters receive accurate, reliable, truthful, and helpful information to assist them in making informed decisions on certain ballot proposals. These procedures also ensure that single-subject and description of effect requirements give the voters a clear and definite choice on the proposal, and prevent confusion and deception.

Voters should always be presented with the opportunity to consider the merits and consequences of each proposal separately, without being confused, misled, or manipulated by complex or complicated multisubject proposals.

What does this bill do? This bill provides that before a formalized statewide initiative and referendum petition is filed with the Office of the Secretary of State (SOS) prior to circulating the petition for signature, that the proponents of the petition must first file with the SOS a proposed petition signed by not less than 1,000 voters from any part of the state. The proposed petition must include the full text of the proposed measure and a neutral summary of not more than 200 words describing the purpose of the proposed petition. The signatures on the proposed petition must be verified pursuant to the existing petition signature verification requirements. The proponents must also file the information statement along with the proposed petition that includes proponent contact information, the purpose of the proposed petition, and any other information deemed necessary by the SOS. After the SOS determines that the proposed petition has a sufficient number of signatures, the bill's proponents must file with the SOS a description of effect of the petition, and a copy of the proposed petition must be transmitted to the Office of the Attorney General (AG). Any person wishing to bring a single-subject challenge against the proposed petition must do so within 15 working days of the petition being declared sufficient. Any future single-subject challenges are barred after this prescribed time.

Senate Bill 434 (1st Reprint) also provides that any person may file an objection to the proponent's description of effect not later than seven working days after the description is filed with the SOS. Such an objection must explain how the description allegedly violates the specific petition requirements. If the objection is filed, the parties may agree to meet and confer in good faith to negotiate the stipulated description of effect. However, if the parties fail to negotiate the stipulated description of effect, the AG must file a complaint in Nevada's First Judicial District Court asking for a declaratory judgment regarding whether the proponent's description of effect violates the statutory requirements. The District Court must conduct expedited proceedings and enter an order that approves or revises the proponent's description of effect. After the District Court enters its order, the proponents may file a petition including the description of effect with the SOS to begin the process of qualifying the petition as a formal petition.

Senate Bill 434 (1st Reprint) also requires that the SOS prepare a handbook for initiatives and refer them to proponents for circulation. Finally, the bill clarifies the handling of competing measures on the ballot and requires that the notice to the voters be provided on the ballot, but only one of the differing or competing measures may be enacted into law.

In conclusion, I submitted this bill upon request and with your permission, Mr. Chair, I would like to ask Matt Griffin, as well as Brett Kandt, to comment further on the bill.

Matthew Griffin, representing Nevada Resort Association:

This bill represents, for those who have not been involved in depth with the initiative process, a structural change to the process. This would ensure that a better petition comes out of the filing process in the Secretary of State's efforts and their endeavors to file a petition, record it, and post it on the website, and to file materials that are involved with it. The result of this filing is a petition that better informs voters of its purposes and what its effects will be.

In Nevada, since 2005, there have been amendments to the process that have been more specifically designed at, for lack of a better term, one-offs. For example, we used to live in a state where we had to get signatures from 13 out of 17 counties. That was thrown out by the courts.

Also, in 2005, there were changes when the description of effect requirement and the single-subject requirement came in. Those were, in some sense, fixing one of the problems but not all of them. There will be testimony here today on the pros and cons of this proposed legislation, and opinions on the petition process, and on petitions that have been filed. A lot of the petitions that have been filed with the SOS are never even taken to the point in the process of collecting signatures. Some are challenged by the court, but more of them are never circulated. They are filed with the intention to get something on file with our state that a petition exists but are not pursued by their proponents. This bill allows anyone who wants to petition their government to get a law changed or the *Nevada Constitution* changed, but in this bill, the process is designed to ensure that when the voters sign the petition, they understand what they are signing. This bill also helps the proponents understand what they are proposing, that they understand what the effects of that proposal will be, and if that petition goes to the ballot, it would be vetted properly and openly so that the voters can make a better educated decision on it.

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

I am here in support of this bill. Our role in this process, which is set forth in section 6.5 of the bill, is to ensure that there is an effective, efficient process for determining what the description of effect will be.

Assemblyman Ohrenschall:

Senator, in the preamble of the bill, rampant fraud in the initiative process is mentioned. Have there been prosecutions? Is there fraud going on in the current process that we are trying to solve?

Senator Farley:

No, not rampant fraud, but I will defer to Mr. Griffin. We have problems with the matching of the single-subject rule and description of effect.

Matt Griffin:

Rampant is a subjective term. There is fraud in almost every petition that I have been involved with. There are certain realities of a petition signature-gathering process that exist no matter what the state can do. Currently, the state does not do anything. With the petitions that are filed, whether they are collected by volunteers or collected by paid signature gatherers, there are signatures that come back, books that are not returned, or are circulated with the same name or the same handwriting. I am sure we have heard about the signature signing party in Henderson, Nevada, in 2007. We do not have anything that ties the proponent to the actual petition, so the file is already valid, and I do not have to file with the political action committee (PAC) because in the law, I can file as a person or as an association. This bill says that when people file for an initiative petition, the SOS has to be informed of their PAC, that they are proponents, and their contact information. The reason for this is there is a better chance of finding people who commit any acts of signature gathering.

Assemblyman Ohrenschall:

There is signature verification, correct? The SOS and county clerks verify that every signature is a valid signature, correct?

Matt Griffin:

They do not verify every signature; it is a random sampling, and depending on the results, they might go through the full verification process if it is within a certain threshold of the number required. They verify a percentage of most statewide petitions.

Assemblyman Ohrenschall:

My other question pertains to prepetition gathering of signatures. On the National Conference of State Legislatures' (NCSL) website, I could not find

a requirement in other states similar to the initiative referendum and recall that we have in Nevada. The closest thing I could find was that the state of Alaska requires a prepetition of 100 signatures as an act of good faith to show that there is public interest. I am concerned about the determination of the number of 1,000 signatures and where that number comes from, and also why those 1,000 citizens who signed that initial petition cannot be counted in the actual initiative petition. It seems like it is a barrier making it harder for someone who wants to get an initiative petition on the ballot. Why does Nevada need prepetition gathering of signatures?

Matt Griffin:

Oregon, California, Florida, and Mississippi have it. There are eight states that have some form of precirculation signature requirement. In Oregon, the requirement is higher than what we are proposing in this legislation. Oregon has a lot of petitions that are run and passed in that state. Their process is infinitely harder than what is proposed in this bill. The number of signatures required is three or four times more than what is proposed in this bill.

Assemblyman Ohrenschall:

Do they count toward the overall petition?

Matt Griffin:

I do not know. There is no philosophical objection as to why they are or are not counted. The reason was because looking at the language in this bill, currently under constitutional law, the statutory petition cannot be filed any earlier than January 1 of the year preceding the election. If a constitutional petition is run, it would be September, and for a referendum, it would be August. That is a firm date in the *Nevada Constitution*, and it cannot be circulated before that date. This bill is not intended to pinch the timeline or run the clock out on people. It provides for an additional 90 days to collect 1,000 signatures. For example, if a statutory petition is run on January 1, collecting signatures could begin in November. Because we are outside of the constitutional threshold of when signatures can be collected, it was legal counsel's opinion that it is not lawful to count those 1,000 signatures toward the actual number that is turned in.

Assemblyman Ohrenschall:

Is this even though those initial 1,000 signatures support the petition?

Matt Griffin:

That is correct, but it does not mean that you do not have that information to go back and collect the signatures from those people. It just means that because petitions are circulating before the *Constitution* allows it, they cannot be counted toward the constitutional threshold.

Kevin Powers, Committee Counsel:

That is correct. I worked with the proponents of the bill on drafting the provisions and that was one of the reasons we extended the preperiod before the constitutional beginning date. So those signatures collected during the preperiod would not be valid for the petition once it became a formalized petition and was collected under the constitutional time frame. In addition, when the proposed petition is circulated, it is circulated under a neutral summary that is not the same as the description of effect. In order for signatures to count toward the constitutional requirement, the petition has to be identical for every person who received the petition. So during the preperiod when the proposed petition is circulated, there is a difference in the petition because the neutral summary is different than the description of effect. For those two reasons, because there is the preperiod and the difference between the neutral summary and the description of effect, it was the opinion of this office that those 1,000 signatures would not be properly counted for the petition once it started going under the constitutional process.

Assemblyman Thompson:

My question is on section 6.5, subsection 3, paragraph (a) of the bill stating that someone can file an objection with the SOS on their website no later than seven working days, and so forth. Is there any other way this can be done because not everyone in our state knows to look on the Secretary of State's website? How can we make that filing more broad and inclusive?

Brett Kandt:

That was the proposal from public notice, which was developed in consultation with your legal counsel. I do not know if there are any other ideas out there for broader public notice. We were trying to come up with something that was efficient and would allow the determination of what would be an appropriate description of effect to be made in a reasonable time frame so that the signature-gathering process could proceed.

Assemblyman Thompson:

It would probably be a better question for the SOS since they maintain their website. It should be made easily visible and as accessible as possible because there are a variety of tabs that can be selected, so if people want to challenge it, they can.

Assemblyman Trowbridge:

The right to petition our government is a fundamental right, and I think it needs to be addressed carefully. If the goal is to make it quicker and easier and fair for everyone, that is great. But if we are trying to throw obstacles in the way, I think we are messing with something that is very fundamental to the American way of doing things.

If I follow the procedures, and I do not know whether the introduction that Senator Farley gave us was sequentially accurate, but if we start off with filing a petition with 1,000 signatures, and then file the full text and a neutral description, I do not know how a proponent can prepare a neutral statement. The reason I say that is because you would think from the get-go they would be a tad biased or they would not be involved in the process. Next in the process, someone has to verify a sample of the signatures, and then the information statement and purposes are reviewed by someone who makes the determination as to whether the neutral statement is, in fact, neutral, or in 200 words describes all aspects of the proposal. That is going to be a masterpiece in literature, and if the reviewer wants to change a word, we are back to ground zero and it would have to start all over again.

If there is a disagreement that would involve the proponents and opponents in a challenge, which would result in a public hearing, a meet and confer, or some kind of compromise meeting which could on forever, it could be expensive for a citizen-initiated petition. It could be a group of ranchers in Ely who want to do something but they are taking on some well-funded organization. If someone was going to pay for the whole thing, for example, the state would pay for both sides, and it would not be as expensive. It is extremely complicated and I have concerns about it speeding up the process and making it fair.

There are too many opportunities for this to be turned into something that is anti-citizen such as the challenges and going back to ground zero. The signatures that were collected are discounted and it will have to be done again, so that is another burden. With the requirement of 1,000 names and addresses, someone has to knock on 1,000 doors and get the signatures again. Those of us who have knocked on doors trying to get signatures know that does not happen quickly. I do not think the Senator would disagree with that statement.

Another thing is if the neutral proposal is going to be challenged, I will ask the attorney this question. If you play law student with me, how many challenges can you find in this particular question? Shall the government paint all the curbs blue each year? How many challenges can you find in that question? The answer is which government, what shade of blue, each year, and who

pays. You cannot have a single-issue question, can you? It makes it extremely difficult. That is where I am coming from. If those minor issues are cleaned up, I will support this bill; otherwise, we have a tough row to hoe.

Brett Kandt:

I think your example demonstrates why it is crucial that there be a fair and accurate description of effect developed before the signature-gathering process proceeds, for that very reason, so that there is common understanding over what the description of effect is.

Assemblyman Trowbridge:

Could we make a modification to the bill stating that the Office of the Attorney General (AG) would provide staff to help petitioners develop a neutral statement?

Brett Kandt:

We represent the state. We do not represent the petitioners, so we are trying to clarify what our role in this process is and how we can help facilitate the determination of an accurate and fair description of effect without getting into the process of writing them ourselves.

Kevin Powers:

It is a two-step process. When the proponent submits the proposed petition, the proponent puts a neutral summary on that proposed petition but the neutral summary is not subject to judicial or administrative challenge. No one can challenge a neutral summary; they circulate the proposed petition with that neutral summary for the 1,000 signatures. After they have obtained those signatures, that is when they develop the description of effect and the description of effect is what is subject to the review process in section 6.5 of the bill.

Under existing law, when a proponent files a proposed petition, there is already a process in place to immediately go to court and challenge the description of effect. That process has been considerable and lengthy in some of these petitions. One of the complaints of the circulators is that the legal process was lengthy and cut into their circulation time. In section 6.5, this bill creates a very compressed timeline. The proponent files a description of effect, and anyone who objects has to do it in that compressed timeline. Then there is a compressed process for coming up with a stipulated description of effect. If all of those fail in that short timeline, that is when the AG files the lawsuit for declaratory judgment and the court has to act in a short time to either approve the proponents' description of effect or to come up with a revised description of effect. When the court does this, that is what gets circulated with the petition.

This office does not support or oppose any particular piece of legislation; I just want the Committee to know the mechanics of the bill.

Assemblyman Ohrenschall:

This is a question for our legal counsel. Using the same scenario, if Assemblyman Trowbridge circulates a petition to require that all sidewalk curbs be painted blue throughout the state, and assuming this legislation becomes law, he goes through this process and I want the sidewalk curbs painted red. How would I find out about this petition, and how much time would I have to object to it? Would I need an attorney in order to object or would I be able to go to the SOS and object on my own behalf? Would I be sent a notice, or how would I be contacted?

Kevin Powers:

As far as a citizen being notified whether a petition has been filed, under existing law, and under existing structures, the petition has to be filed somewhere and that is with the SOS. The SOS posts a copy of that petition on their website. The only other notice that could be provided would be the SOS sending out a notice to every citizen. That would be the only alternative because if a general petition is filed for changing the law, it is filed with the filing officer, so if people are interested, they have to pay attention to the Secretary of State's website.

In this bill, because of the proposed petition process, when a proponent files a proposed petition, he or she has to go through the 1,000-signature-gathering process. That extends the time that the petition is available on the website for those who want to oppose it, to be able find it on the website, and determine whether they want to oppose it during that time period. At that point, if the 1,000 signatures are obtained, that is when they can start challenging it. With the 90-day precirculation period, it extends the time when it is available to the public and someone can determine, if the 1,000 signatures are gathered, if he wants to challenge it.

Assemblyman Ohrenschall:

In section 6.5 of the bill, after the description of effect is filed, any objector has seven days, correct?

Kevin Power:

That is correct, but they would have already filed the proposed petition, so people would have been aware of the proposed petition and should be watching the Secretary of State's website to determine when that petition gets the 1,000 signatures. Then the proponent has to file the description of effect.

In answer to your other question, this does not limit anyone from having legal counsel filing an objection. Anyone can file a written objection with the SOS to the proposed description of effect.

Assemblyman Ohrenschall:

I read in the bill that in order to object, someone must include a legal argument. If a layperson wants to object to Assemblyman Trowbridge's petition, he or she could write a legal argument, but if hiring an attorney is not affordable, this would be difficult for unrepresented people who want to participate in the process through objecting, correct?

Kevin Powers:

The provisions of the bill state that when an objection to the description of effect is filed, an explanation has to be filed as to why the description of effect violates the statute. It would require any layperson to look at *Nevada Revised Statutes* (NRS) 295.009 and explain in lay terms exactly why he or she believes that the description of effect violates that statute. The description of effect is supposed to be a short, 200-word explanation of what the proposed petition is supposed to do. It is written by laypeople and can be analyzed by laypeople who can express objections. There is no requirement that anyone has to have legal counsel.

Chair Stewart:

Is anyone in support of this bill?

Alan H. Glover, Special Assistant to the Secretary of State, Office of the Secretary of State:

We are neutral on this legislation and we can make it technically work in our office. We have no objections to the way the language is written.

Assemblyman Trowbridge:

Can you give me an idea of how many citizen-initiated petitions have been submitted in the last two or three years?

Alan Glover:

I am not sure of the number, but I think Mr. Griffin could answer that question.

Matt Griffin:

In 2012, there were ten petitions filed; one went to circulation, eight of them were not circulated but were withdrawn or expired, and one was removed by a court order. In 2010, the Nevada Personhood Initiative was filed seven times, and was never circulated for signatures. It was filed once and under the notice requirements that now exist, nobody knows what petition is what, or when it

was filed, or which one is active. The majority of these are not pursued. There are 30 to 50 percent of these that go to court and one, two, or none that go to the ballot.

Assemblyman Ohrenschall:

Of those six that were filed in 2012, did all six end up in litigation?

Matt Griffin:

No, only one or two of them. In 2012, the Harrah's sports arena initiative was filed. Under the current rules, if someone challenges the description of effect and loses, which happened in the arena case, it goes to circulation. In that case, a year and a half later, after the signature requirement was met and after the legislative process, the Nevada Supreme Court ruled that the description of effect was invalid and threw the whole thing out. This legislation is aimed at getting the answers up front on the description of effect so that people have something that they know they can circulate after the declaratory relief action that the First Judicial District Court has accomplished.

Assemblyman Ohrenschall:

All of these actions have to be brought up in Carson City. For example, if Assemblyman Trowbridge is circulating his initiative petition for blue curbs in Las Vegas and I object and try to fight it by saying it violates the single-subject rule because of the different shades of blue, he has to travel to Carson City to go to court. If I decide to sue him, he will need an attorney who would have to go to the First Judicial District Court in Carson City. He would not be able to take court action in Las Vegas under current law and under this bill, correct?

Matt Griffin:

That is correct. Under current circumstances, if he wanted to challenge this, he would have to go to court. Under this bill, he would not have to go to court, but he could challenge it through the Secretary of State's Office or the AG by submitting what Mr. Powers has described as his objectives and the alternatives. The reason people have to explain why they have a problem with the petition is because they could file an objection that has no meaning and then the AG is forced to take it to court. I could say I do not like your petition because I like bananas, which has nothing to do with the petition, which would then force the SOS and the AG to file a declaratory relief action. With the language in this bill, people cannot have a groundless challenge like that, but they would have to say what their problem was with it and how they plan to fix it. If those two elements can be satisfied, the AG will take that court action for them.

Assemblyman Ohrenschall:

Under this bill, after those remedies have all been exhausted, it could still end up in court over questions of the single-subject rule, correct? There could be the administrative layer of either defending or fighting against the petition but then there could still be the court battle over whether it is filed under the single-subject rule, correct?

Matt Griffin:

That is correct. This bill clarifies the single-subject rule. There have been dedications in the past when revenue has been raised and it goes to public safety or education. Based on old court decisions in Carson City, petitioners have been reluctant to say that they want to pay for textbooks or more officers. They just dedicate generally. In this bill, nothing in the *Nevada Constitution* requires people to do a general dedication. It allows them to choose the specific purpose that they want to fix. It requires them to do that in the First Judicial District Court and incorporates a lot of the court decisions on what is the proper description of effect as well as the single-subject rule. It takes past decisions and codifies them in statute in the hope that a petitioner will be on better notice of how to draft an initiative petition.

Assemblyman Ohrenschall:

I appreciate that explanation. One thing that has always concerned me about having to bring these court cases in Carson City is that for folks who want to circulate an initiative petition, it is hard because not only are there legal fees, but also travel expenses. My other question relates to the language in the bill regarding the petition for initiative or referendum locally. My concern is that this could cover a county, city, or other local petition. If someone wanted to circulate a local petition in Hawthorne, and there are not 1,000 registered voters there, how will they be able to qualify the local initiative petition in Hawthorne, McGill, or Ely?

Kevin Powers:

The process with regard to the proposed petition and the collecting of the 1,000 signatures is for statewide petitions only. The challenge process in the First Judicial District Court in Carson City is for statewide petitions only. If someone files a local petition with the county, city, or a smaller subdivision, those processes are not controlled by the parts of this legislation dealing with the proposed petitions requiring 1,000 signatures.

Assemblyman Ohrenschall:

The prepetition would not be required for a local petition, correct? But, for anything statewide, if Assemblyman Trowbridge wanted to paint sidewalks blue and I wanted to fight that, he and I would have to come to Carson City to do battle, correct?

Kevin Powers:

That is correct. That petition would have to be circulated statewide because there are four petition districts, and signatures would have to be collected from those districts for a formalized petition. That is another distinction to be made with the proposed petition. For a formalized petition, signatures must be collected from four petition districts. For a proposed petition, the 1,000 signatures do not have to come from the four petition districts. They can be collected from one county or one city to qualify for the first proposed petition for the statewide 1,000 signatures.

Chair Stewart:

Those who are in favor of the bill, please come forward. [There was no one.] Is anyone opposed to the bill?

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

I appreciate the effort to try to streamline the initiative petition process. There have been problems and there are some good parts in the bill. We are concerned about the prepetition. My read of the other states that have something like this is not that it is a requirement of signatures that cannot be used later, but it is more of a "sponsorship" thing where those signatures are gathered and helping with the process. I am not sure that my understanding of the language in this bill is what we see in other states that were mentioned on the record.

Most of my concerns are in section 6.5. The language in that section refers to the fact that if someone does not object within the seven-day window, that person is forever barred from objecting to the petition. At the American Civil Liberties Union (ACLU), our position is that we have people come to us six months after hearing that a petition has been circulated and they say, Hey, can you help us because we have a problem with this petition. If no one objected and/or we did not object to the initial description of effect, we cannot go to court.

We see this bill as a separation of powers issue in that there are responsibilities and powers that are taken out of the hands of the court and delegated to the AG and SOS, which are Executive Branch offices. We would like to see all of those things that say the state is completely immune from its mistakes and that no one can help everyday Nevadans in their fight against petitions, no matter what the petition is for. We have been on both sides of those issues, and we think that everyone should have the ability to do so.

If the timeline is an issue, do not take it away from the SOS, but leave the option open to have the SOS and AG work with people or have the option to go to court. Do not totally close the option to go to court.

We also understand section 14.6 about fiscal notes; however, we would like to see an option to challenge those fiscal notes. This bill calls for the Legislative Counsel Bureau (LCB) to provide fiscal notes when working with the proponent of the bill and we want the option to challenge it.

Stacey Shinn, representing Progressive Leadership Alliance of Nevada:

I want to address section 4 of the bill regarding the requirement for the prepetition of 1,000 signatures. This is an undue burden on every Nevadan's constitutional right to run an initiative petition. The fact that petitioners cannot later use those 1,000 signatures, should they be approved by the SOS, forces us to spend more time and money than under current law. If the stated abuse in the initiative petition process is fraud, then we do not see how gathering these additional signatures solves this problem. The main reason for gathering signatures is to make sure that there is enough interest in this issue, and this is already being accomplished under the current process. Initiative petitions are the people's way to change government and participate in democracy. We do not feel that we should be making it more difficult for people to be able to engage in that process.

Kermitt L. Waters, Private Citizen, Las Vegas, Nevada:

For those of you that may not know or remember, we had an initiative on the ballot in 2005 and 2007 that I wrote called the Nevada Property Owner's Bill of Rights (PISTOL). It basically covers a property owner's rights so that eminent domain could not be used to take their land away and give it to some other private party.

In Las Vegas, there was a history of eminent domain being used to take property from individuals and give it to the casinos. When *Kelo v. City of New London*, 545 U.S. 469 (2005), came out of the U.S. Supreme Court, I decided to write PISTOL. It was a nightmare to get it going because simultaneously with that initiative petition, the Legislature in 2005 passed Senate Bill No. 224

of the 73rd Session, sponsored by former Senator Randolph J. Townsend. I was told by the committee that it was not a problem and not to worry about it and that people would not need a lawyer to write this petition.

The bill provided not only the single-subject restriction, but it also provided that there had to be a 200-word description of effect. I can take an initiative and send it to 200 people, and I would get 250 different answers. It provided the poison pill of all things—it gave anybody statutory standing to sue to challenge it. When an initiative petition is filed throughout the few states that have the initiative process, people cannot file a challenge. If they do, it will get thrown out because the courts do not want to be bothered with an initiative because it may not pass. So they do not have standing in common law. I oppose any and all parts of this bill as an undue burden on free speech. The Nevada Resort Association is the organization that sponsored this bill so what does that tell you? The reason those petitions did not get filed is because they sued the petitioners and had them taken off.

Assemblyman Ohrenschall:

Ms. Shinn, a few years ago, Progressive Leadership Alliance of Nevada (PLAN) circulated petitions at picnics and barbecues that were not the kind of petitions you would see at the Department of Motor Vehicles (DMV). It was grassroots. I am worried about what a bill like this would do to an organization like PLAN. It is not the Marijuana Policy Project that has a lot of money and that is hiring the company to have signature gatherers, but it is a mom-and-pop grassroots organization. When the extra 1,000 signatures are added in that are separate from the overall petition, I wonder what effect it will have on a group like PLAN that is not a highly funded organization.

Stacey Shinn:

We are worried for the exact same reasons because it is the high-paid, high-monied, high-powered interest groups that can get around more obstacles and hurdles, but it is hurting the smaller grassroots organizations when more hurdles are put in the way when it comes to things like initiative petitions.

Assemblyman Ohrenschall:

Ms. Spinazola, my question concerns fiscal notes. As legislators, we all have seen fiscal notes come from different agencies; some we agree with, and some we think, wow, that is either astronomically high, or very low. I am wondering about the lack of an appeal process for that fiscal note because if the voters are going to be told this costs either nothing, or \$500, or \$5 billion, and it cannot be appealed, what happens then?

Vanessa Spinazola:

In section 14 of the bill, it states LCB provides the fiscal notes for the petition. It is not clear to me how that would be challenged even by the proponent. It is a benefit to our state to know how much something is going to cost, but it is something that can be debated. Every proponent of a petition should be able to bring in their own experts or their own experience, and talk about what they think it is going to cost.

Assemblyman Ohrenschall:

Mr. Waters, how much litigation have you been involved with in your work on initiative petitions in terms of opponents saying that a petition violates a single-subject rule? Do you think this will create more litigation for someone trying to get an initiative petition on the ballot, or do you think it is going to be resolved by the proponents?

Kermitt Waters:

I currently have two cases pending, one in the U.S. Supreme Court and one in the federal courts over the single-subject rule. I tried to put an initiative through in 2007 or 2009, and I was sued by the Nevada Resort Association. When I tried to put the PISTOL initiative through, I was sued by the Nevada Resort Association, the chambers of commerce, the Retail Association of Nevada, and so forth. Mr. Griffin said that there were petitions filed but they did not go anywhere. The reason was because the petitioners were sued, and they could not afford the attorney fees.

Lynn Chapman, representing Nevada Eagle Forum:

There is something good about the bill and that is the handbook. I think it is a great idea to have a handbook to show people how they are supposed to petition. It is getting so convoluted that they will need one. It is not an easy process to gather signatures. In order to get 1,000 signatures for a prepetition, what do we say to the people? Do we say, hey, sign my petition because I need 1,000 names and addresses so that I can get a petition going and guess what, your name and address for this petition will not count? Is that what we are supposed to say? That is silly and I think it is a terrible thing to do to people.

Janine Hansen, President, Nevada Families for Freedom:

The purpose of this bill is to hinder the petition process, not to facilitate the petition process. This has been an objective of the Legislature for some time. When the single-subject rule was passed, that almost destroyed the opportunity for ordinary people to petition, because what it did was throw all these things in the courts and unless someone had millions of dollars, he or she could not defend them. What needs to happen is that the single-subject rule should be

amended so that it will be a single-subject rule like the Legislature has—an opportunity to discuss the real subject. The Legislature has a single-subject rule that is very large in context, but petitioning has a single-subject rule that is very small in context. The purpose of this bill is to eliminate the right to petition.

Earlier, we heard that if 1,000 signatures have to be gathered in advance, that they can be collected again at a later time. The person who said that has never collected signatures. I have collected them in every county in this state and not only in Nevada but in other states. It is a very difficult process, especially if you are working with volunteers. In 2000, we collected 120,000 signatures in order to get on the ballot.

If there is a concern about the description of the effect, people do not read it. All they do is take your word for it and no one reads what the petition says. So someone could have 500 pages or two sentences of explanation and it will never be read. The entire purpose of this proposal is to squelch the right to petition. President John Adams signed the Alien and Sedition Acts, the purpose of which was to stop free speech. Thomas Jefferson and James Madison objected and could have been jailed under the Alien and Sedition Acts. This type of squelching petition legislation is the same as the Alien and Sedition Acts in that it eliminates the right to participate. The Nevada margin tax for public schools initiative, Question 3, lost on the ballot overwhelmingly which shows that the process works. The people understood and voted no. We do not need more restrictions. If this is truly to facilitate it, then they can slice it down so it will facilitate it, instead of further interfering with the constitutional, God-given right to petition and free speech.

Assemblyman Ohrenschall:

Ms. Hansen, thank you for your testimony and your hard work on initiatives and on policy. My questions concern the issue of seven days to challenge the description of effect. Do you think that members of the Independent American Party could get that done? If the description of effect was posted on the website, would you be able to get that challenge to the SOS within seven days?

Janine Hansen:

I think it is an extremely difficult timeline especially working with volunteers and if there is not paid counsel. It is almost impossible and that is often the case with volunteer organizations. We have been involved in many initiative petitions and if people do not challenge, then they are precluded from future challenges. So not only is their right to object limited, but it would be eliminated. This is a problematic portion of the bill.

Kyle J. Davis, representing America Votes:

We are in opposition of S.B. 434 (R1). I think a lot of the arguments have been made in terms of our belief that this restricts the ability of citizens to participate in the initiative petition process, and to seek the ability to solve their problems through the ballot if they feel other avenues are not available to them. This bill further restricts that process. Over the years in the Legislature, we have had different bills that we have attempted to make changes to in the initiative process, and it seems like we have one in every session. Yet every time there is an election, we do not see that many questions on the ballot. We do not have a problem like they do in Oregon or in California, where there is so much on the ballot that it bogs things down. In fact, we only have a few questions on the ballot, and I do not see that we need to create new things to be put into place when there is not a problem that we have not been able to solve through existing means.

Assemblyman Ohrenschall:

Mr. Davis, you represent America Votes, which is a national organization. In other jurisdictions that America Votes represents and works on policy issues that have the initiative referendum recall process, like we do in Nevada, have you and America Votes experienced the prepetition requiring 1,000 signatures before circulating petitions?

Kyle Davis:

I am not sure. I will have to get back to you with that information.

Leora Olivas, State Director, Silver State Voices and Let Nevadans Vote Coalition:

We appreciate the effort to reform the initiative process and cut down on both frivolous petitions and challenges. Some of the clarifications regarding the single-subject challenges are welcome as is increased information gathering and sharing by the SOS. We also like the concept of the potential mediation process to avoid court altogether. Other requirements in this bill are onerous and serve only to make the process more complicated. Both parties would now have to monitor and navigate a lengthy multistep process prior to filing or challenging a petition which has tight turnaround times and deadlines. This will frustrate both the petitioner and the challenger, and achieves the opposite goals of simplicity, efficiency, and predictability. Therefore, we oppose this bill because of the complicated prepetition and description of effect processes it will create. Pat Fling, Executive Director of the organization Acting in Community Together in Organizing Northern Nevada (ACTIONN), which is a member of the Let Nevadans Vote Coalition, submitted a letter ([Exhibit C](#)) in opposition to this bill to members of this Committee.

Chair Stewart:

Is anyone else in Las Vegas in opposition to this bill? [There was no one.]
Is there anyone else in opposition to the bill in Carson City?

John Wagner, State Chairman, Independent American Party of Nevada:

I have also been involved in many petition drives. I am pleased that PLAN and ACLU agree with our party on this issue. Because everything else I wanted to say has been covered, I say "me too."

Chair Stewart:

Is anyone else in opposition to the bill? [There was no one.] Is anyone neutral to the bill? [There was no one.] Senator, do you want to make a final statement?

Senator Farley:

This is a legally complicated issue and there are a few points that need to be cleared up, so I am asking Mr. Griffin to join me because with his background and experience, he is best suited to do that.

Matt Griffin:

I submit to the Committee that allowing for a process to challenge a fiscal note is going to destroy the process of petitioning. When the education or margin tax initiative was challenged in the district court and went to the Nevada Supreme Court, one of the issues that was challenged was that there was no identification of how much the petition raised. The Nevada Supreme Court determined that it was a ridiculous challenge, and it would not be entertained. The reason is because if several economists were put in the same room, they could each come up with a different number of how much money a petition raises. If a fiscal note is taken to court, that petition will fail.

Concerning the single-subject rule, Mr. Waters is currently in the process of litigating a petition we are all involved with, and it enacts three or four taxes, creates an appellate court, and does several other things. The reason the single-subject rule in this building is different than the initiative subject rule is because in the petition process, there cannot be a hearing or an amendment to the petition. For voters, they get what they get.

I know there is a concern in the Committee, and rightfully so, that the process should not be difficult for people to propose a petition. I agree with that 100 percent. The language in this bill does not change the process that we have, but fixes it. I am talking about Article 19 of the *Nevada Constitution* and the First Amendment of the *U.S. Constitution*. Under the *Nevada Constitution*, people have a right to propose an initiative. There is also an equal right under

the *Nevada Constitution* to enact or reject an initiative by the person being polled. That is to say that in the *Nevada Constitution*, my right as someone who signed or who is voting on the petition is equal to the right of the person who proposed it.

This seeks to protect the people so that they know what they are signing and have an idea of who is circulating the petition, and if it gets to the ballot, they know what they are voting on because they have the tools in front of them to make the decision. I submit that this bill is not intended nor does it have the effect of hindering the process of proposing a petition; rather it has the effect of enhancing the participation of someone who might sign the petition or who might vote for the initiative on the ballot.

Chair Stewart:

The hearing is closed on Senate Bill 434 (R1). We will open the work session on Senate Bill 510.

**Senate Bill 510: Makes various changes relating to the State Personnel System.
(BDR 23-1272)**

Carol M. Stonefield, Committee Policy Analyst:

Senate Bill 510 was heard in this Committee on May 19 and was presented by the Secretary of the Senate. This bill authorizes certain employees of the Legislative Branch to transfer, as part of the normal transfer process afforded to other state employees in the classified service, to any position in the classified service of the state for which they are qualified, without regard to the duties and compensation of the position. These provisions apply only to employees of the Legislative Branch who have served four consecutive months or more in the Legislative Branch. There are no amendments. [Referred to work session document ([Exhibit D](#)).]

Chair Stewart:

Do I hear a motion to do pass S.B. 510?

ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS
SENATE BILL 510.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Chair Stewart:

Is there any discussion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Seaman will present the floor statement.

Senate Bill 421 (2nd Reprint): Makes various changes relating to statewide primary elections. (BDR 24-1148)

Carol M. Stonefield, Committee Policy Analyst:

Senate Bill 421 (2nd Reprint) was heard in this Committee on May 19, and was presented by Senator Settelmeyer. There is a lengthy description of the bill's contents in the work session document ([Exhibit E](#)), but essentially, it proposes two major actions. The first one is that it moves the statewide primary election from the second Tuesday in June to the last Tuesday in February and makes various conforming changes in the *Nevada Revised Statutes* to candidate filing dates, submission of ballot questions, and the filing of financial disclosure statements.

The second change in this bill includes establishing a presidential preference primary election. A major political party will participate unless the national committee chair opts out. The cost is a charge to the state. Statutes relating to precinct meetings and rules of a party's central committee are also revised. [Work session document ([Exhibit E](#)).]

There is a mock-up proposed amendment ([Exhibit F](#)) that has been drafted by the Legal Division and the Committee Counsel is prepared to discuss it.

Kevin Powers, Committee Counsel:

Before you, in the mock-up ([Exhibit F](#)), is a proposed considerable revision of the bill, in its second reprint form. As it exists now, the bill would move the primary date for state and local officers to the last Tuesday in February, and also provides for a presidential preference primary. The mock-up would undo any changes to the state and local elections. The primary date for state and local elections would not be affected under the mock-up; it would stay in June. The mock-up focuses on the presidential preference primary. It would have the same setup as Ms. Stonefield mentioned; it would be an opt-out provision. The bill would read that there would be a presidential preference primary on the last Tuesday in February of a presidential election year unless the chair of the national committee of the party opted out and chose not to have a presidential preference primary for that major political party.

The bill also emphasizes the process that would be used in carrying out the presidential preference primary. In particular, if a voter wanted to become a registered voter for that presidential preference primary, the voter would have to go through the same registration process and make the same deadlines as they would have to meet for any other type of election. There are differences

for the presidential preference primary in that the clerks would not have to distribute sample ballots, and there is no early voting, but instead, the presidential preference primary would be a one-day voting process.

There would be absentee and military and overseas ballot voting. There would be one day of voting on the last Tuesday in February, absentee and military and overseas ballot voting, but no early voting.

Finally, the key is that the presidential preference primary election would be the only election conducted in the state. There would not be any state elections conducted as the bill originally proposed, and if there are any other procedural processes, they would be conducted according to the existing election laws.

Chair Stewart:

Thank you, Mr. Powers. You mentioned the opt-out issue in the mock-up which is important as well. We just received this amendment today, so we will give the Committee time to look it over. Are there any questions pertaining to the amendment?

Assemblyman Ohrenschall:

Under this bill, if one of the parties opted to have the presidential preference primary, there would be no early voting, only election-day voting and absentee voting, correct?

Kevin Powers:

That is correct. As the mock-up is drafted, there would no early voting, only same-day voting on the day of the election, and absentee voting. The mock-up provides that voters in the county could vote at any polling place and would not have to vote based on their specific precinct.

Assemblyman Ohrenschall:

Are there any restrictions to absentee voting relating to who can vote using the absentee ballot or anyone who wants to vote using the absentee ballot? Would there need to be a medical restriction or if they were out of town?

Kevin Powers:

The rules in the mock-up that now apply to absentee voting and military overseas voting would be the same as those that apply to the presidential preference primary election. If the person was a registered voter of that party and he or she wanted to vote by absentee ballot, that person would follow the same procedures that now exist for voting by absentee ballot.

Assemblyman Thompson:

In section 36, subsection 4 of the mock-up, it states that the time frame for which the polls would be open is from 8 a.m. to at least 8 p.m. Is that correct, because now the time frame is 7 a.m. to 7 p.m.

Kevin Powers:

This was part of a draft that was provided to our office, but since then, there has been a recommendation to change that to 7 a.m. to 7 p.m., which is the time frame for current primary and general elections.

Chair Stewart:

I would be agreeable to the time frame of the polls being open from 7 a.m. to 7 p.m. and just leaving it as is. I want to give all of you time to look this over, so we will end the work session.

Is there any public comment? Seeing none, we will recess until the call of the Chair [at 5:26 p.m.]. [Chair Stewart adjourned the meeting at 5:40 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Hartman
Committee Secretary

APPROVED BY:

Assemblyman Lynn D. Stewart, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Legislative Operations and Elections

Date: May 21, 2015

Time of Meeting: 4:15 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 434 (R1)	C	Pat Fling, ACTIONN	Testimony in opposition
S.B. 510	D	Carol M. Stonefield, Committee Policy Analyst	Work session document
S.B. 421 (R2)	E	Carol M. Stonefield, Committee Policy Analyst	Work session document
S.B. 421 (R2)	F	Kevin Powers, Committee Counsel	Mock-up amendment