

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

**Seventy-Eighth Session  
April 9, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4:08 p.m. on Thursday, April 9, 2015, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and also on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://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](mailto: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:**

None

**Chair Stewart:**

[Roll was taken.] How many of you are here for Assembly Joint Resolution 7, which is not on the agenda? [There was a show of hands.] I have received a lot of emails and letters that I am being insensitive and not responding to the will of the people. So, we are going to begin this work session by having a vote on A.J.R. 7.

**Assembly Joint Resolution 7:** Submits an application to Congress to call a convention of the states limited to proposing certain amendments to the Constitution of the United States. (BDR R-1069)

**Carol M. Stonefield, Committee Policy Analyst:**

Assembly Joint Resolution 7 proposes to apply to Congress to call a convention of the states limited to proposing amendments to the *U.S. Constitution* that impose fiscal restraints of the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office of its officers and members of Congress.

**Chair Stewart:**

Do I have a motion to do pass A.J.R. 7?

ASSEMBLYWOMAN FIORE MADE A MOTION TO DO PASS  
ASSEMBLY JOINT RESOLUTION 7.

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MOORE, MUNFORD, OHRENSCHALL, SEAMAN, STEWART,  
THOMPSON, AND TROWBRIDGE VOTED NO.)

Next we will hear Assembly Bill 302.

**Assembly Bill 302: Makes various changes relating to statewide primary elections. (BDR 24-801)**

**Carol M. Stonefield, Committee Policy Analyst:**

In your work session document for today, the next bill for consideration is Assembly Bill 302, which was heard in this Committee on March 24 and was brought forward by Assemblyman Hambrick.

The bill proposes to establish a presidential preference primary election; however, when the Committee heard this bill, an amendment was proposed. There is a mock-up in your binder [work session document ([Exhibit C](#))].

The amendment proposes to establish a presidential preference primary election in February of a presidential election year. To the extent possible, a presidential preference primary election shall be governed by existing election provisions. The Secretary of State shall adopt regulations. The state central committees shall make an effort to agree on a date for the presidential preference primary elections, and they shall submit a request to the Secretary of State to conduct a presidential preference primary election.

Each registered voter of the party is eligible to vote in a presidential preference primary. Until the end of the first ballot in a national convention of the party, a delegate is bound to vote in accordance with the preference expressed by the members of the state party through the presidential preference process and the rules adopted by the state central committee. The cost of this primary election is charged to the state. Revisions are also made to the notice of a county convention of the political party and the notice of a precinct meeting. In years of presidential preference primary elections, precinct meetings shall not be held until after the primary elections.

**Chair Stewart:**

Do I have a motion to amend and do pass A.B. 302?

ASSEMBLYMAN TROWBRIDGE MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 302.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Is there any discussion?

**Assemblywoman Fiore:**

When this bill was presented, I thought it was a great idea, but our state party has voiced concerns on the bill. I am not going against our state party so I am voting no.

**Assemblyman Elliot T. Anderson:**

Like Assemblywoman Fiore, I have concerns about this bill. I am worried about losing our early caucus status, and I think it is important for our state for us to guarantee we have the presidential contenders coming here to ensure that they listen to issues that are important to us. We are a small state and will never have a large delegation in Congress. This is the biggest way to have an effect on national politics. I urge everyone, Republican or Democrat, to vote no.

**Assemblyman Munford:**

I agree. I echo and piggyback onto my colleague's comments.

**Chair Stewart:**

Mr. Powers, it is my understanding that this is optional to the individual party and would not preclude the Democratic Party from having a caucus, is that correct?

**Kevin Powers, Committee Counsel:**

The original A.B. 302 would have required both parties to have a presidential preference primary. The proposed amendment is a gut-and-replace amendment because it removes all the provisions of the existing bill. It creates provisions where each party has the discretion to decide whether to ask for a presidential preference primary. Neither party needs to; one could and the other could not. It is purely discretionary, so it provides the parties with an option but not a requirement. If the parties were to select that option, the presidential preference primary would have to be held on some date in February. It would not change the period of time when the current caucuses are taking place. It is optional for each party, and if there is a presidential preference primary for either party, it would have to occur in February.

**Chair Stewart:**

This would give the option for the party to determine whether they want to have a presidential primary. It would be the decision of the Democratic Party if they wanted to have a caucus. They still could have their caucus, and if the Republican Party did not want to have a presidential primary, they could reject it. This gives flexibility and an option, correct?

**Kevin Powers:**

That is correct.

**Assemblywoman Fiore:**

That is okay; I will vote for it.

**Assemblyman Elliot T. Anderson:**

I understand what the bill says, but the point is that we are sending the wrong message to the national parties by adopting this legislation. They are going to get worried about what we are doing here. We are an early caucus state and the reason we have the early contest is because we are a caucus state. If this changes, it will give other states an opening to take our early spot. Even with the option, it is sending the wrong signal, and we cannot control the national parties.

**Chair Stewart:**

I still believe it gives the parties flexibility and the power to do what they wish to do. Are there any other comments? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblyman Munford says he wishes to reserve his right to change his vote on the floor. Assemblyman Trowbridge will present the floor statement.

The next bill before the Committee is Assembly Bill 320.

**Assembly Bill 320: Designates certain elective offices as nonpartisan offices.  
(BDR 24-923)**

**Carol M. Stonefield, Committee Policy Analyst:**

Assembly Bill 320 was heard on April 2 in this Committee and presented by Assemblyman Silberkraus. It proposes to designate certain elected offices as nonpartisan. In addition to those already designated as nonpartisan, the bill proposes to add the following offices: constable, county assessor, county clerk, county commissioner, county recorder, county treasurer, district attorney, and public administrator [work session document ([Exhibit D](#))].

The bill clarifies that a candidate who is declared elected at a primary election shall be deemed to have been elected at a general election for statutory purposes. If a vacancy occurs on a board of county commissioners, the board may, in lieu of appointment by the Governor, declare a special election to fill the vacancy. There are no amendments.

**Chair Stewart:**

Do I have a motion to do pass?

ASSEMBLYWOMAN SEAMAN MADE A MOTION TO DO PASS  
ASSEMBLY BILL 320.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblyman Silberkraus will make the floor statement.

The next bill for consideration is Assembly Bill 381.

**Assembly Bill 381: Revises provisions relating to elections. (BDR 24-966)**

**Carol M. Stonefield, Committee Policy Analyst:**

This bill, which was presented by Assemblywoman Kirkpatrick and heard in this Committee on March 31 relates to provisions in Assembly Bill 461. If acceptable to you, Mr. Chair, the staff will cover both of those bills and then take separate motions.

Assembly Bill 381 provides for the filling of a vacancy in a major political party nomination for a partisan office if the vacancy occurs due to the death or adjudicated mental state of the nominee. The current deadline of the last Friday in June is extended to July 31 [work session document ([Exhibit E](#))].

In both city and county elections, the bill eliminates the deadline for filing written challenges on the basis of qualifications of the candidate. If the court determines that a challenge is valid or that the person is otherwise unqualified, the court shall order the challenged person to pay attorney fees and court costs of the challenger. The court shall also order the person to pay a civil penalty of not less than \$5,000. If the deadline for making changes to the ballot has passed, the Secretary of State and the clerk must post notices at polling places and notify voters in any other manner ordered by the court.

There is a proposed amendment which removes most of the sections but retains the provisions relating to civil penalties and makes the provisions consistent with those in Assembly Bill 177, as amended by this Committee on March 31.

The next bill for consideration is Assembly Bill 461.

**Assembly Bill 461: Revises provisions governing elections. (BDR 24-614)**

**Carol M. Stonefield, Committee Policy Analyst:**

Assembly Bill 461 was heard in this Committee on April 7 and was one of this Committee's bills. It provides that any person who knowingly and willfully files a declaration of candidacy or acceptance of candidacy which contains a false statement is guilty of a category C felony [work session document ([Exhibit F](#))].

A declaration of candidacy or acceptance of candidacy cannot be accepted for filing unless the candidate provides a valid identification card with a photograph and a utility bill, bank statement, or other document that indicates the candidate's name and residential address. If a court finds that a person fails to meet residency requirements and knowingly and willfully filed a declaration that contained a false statement, the person shall pay court costs and fees incurred by the Attorney General or district attorney.

There is a mock-up amendment for this bill in the work session document, and our Committee Counsel is prepared to discuss how these two bills have been revised.

**Kevin Powers, Committee Counsel:**

While drafting these mock-ups, the goal was to maintain the substantive provisions that did not conflict with A.B. 177 and to remove any of the substantive provisions that did conflict with A.B. 177.

In A.B. 461, which was requested on behalf of the Secretary of State, section 1 provides that in any preelection challenge where a candidate is found to be disqualified from office, the court can order that candidate to pay the reasonable attorney's fees and costs of the party who brought the action, including if that party was the Attorney General or a district or city attorney.

Also in A.B. 461, the Secretary of State had suggested increasing the penalty from a gross misdemeanor to a category C felony, and this would make it a category E felony to be consistent with A.B. 177.

Finally, the additional component from the Secretary of State's bill was adding a provision to the declaration of candidacy advising the candidate that they are now signing a declaration with the understanding that if they knowingly and willfully file a declaration of candidacy with a false statement, they have committed a crime punishable as a category E felony. They will then be subject to a civil action disqualifying them from office and subjecting them to court

costs and attorney's fees. Those are the main substantive provisions retained in the Secretary of State's bill.

We will now refer back to A.B. 381, which is Assemblywoman Kirkpatrick's bill. In the beginning of the bill, the same provision dealing with civil actions would expose the candidate who was found disqualified from office to pay attorney's fees and court costs [work session document ([Exhibit E](#))]. Also, the court can provide for additional notice to the voters that the candidate is disqualified and the candidate would be subject to a civil penalty starting at \$5,000. That is the main substantive provision retained by A.B. 381.

**Chair Stewart:**

Assembly Bill 177, A.B. 381, and A.B. 461 are all compatible. The important provision in A.B. 381 is the \$5,000 fine. Do I have a motion to amend and do pass A.B. 381?

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 381.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Is there any discussion?

**Assemblyman Ohrenschall:**

Mr. Powers, in A.B. 381, the primary penalty for a candidate found to be disqualified would be a minimum \$5,000 penalty, but there are no similar provisions in A.B. 177 on whether or not to replace the candidate. The new enhanced criminal penalties found in A.B. 461 are not found in A.B. 381. I want to make sure I understand A.B. 381 correctly.

**Kevin Powers:**

That is correct. Assembly Bill 381 focused strictly on a \$5,000 civil penalty for the disqualified candidate, whereas A.B. 461 deals with criminal penalties.

**Assemblyman Ohrenschall:**

About A.B. 381, I recall that the \$5,000 or higher penalty would come out of someone's personal funds and not campaign funds, correct?

**Kevin Powers:**

That is in existing law. In *Nevada Revised Statutes* (NRS) 294A.160, subsection 2, it specifically provides that campaign contributions cannot be used to pay a civil penalty or criminal fine.



**Chair Stewart:**

Is there any other discussion on A.B. 381? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Kirkpatrick will present the floor statement. Is there a motion to amend and do pass A.B. 461?

ASSEMBLYMAN TROWBRIDGE MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 461.

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

**Chair Stewart:**

Is there any discussion?

**Assemblyman Elliot T. Anderson:**

I would like clarification of "knowingly and willfully filed" from Mr. Powers. It is my understanding that would mean you have knowledge or facts that you are in the wrong district and would include an element of intent. Do I understand that correctly and if so, how is it possible for someone to not file it knowingly and willfully?

**Kevin Powers, Committee Counsel:**

The first part of your statement is correct. The candidate would need knowledge of the facts that constitute the crime and also need the criminal intent or mens rea of willfully or doing it with that knowledge. It is possible for someone to file a declaration of candidacy thinking they are in the correct district, but in fact they are not. There are situations where a house can be near a border of a district and they may not have known they were in the wrong district. That person would not have the willfully criminal intent to be subject to the criminal penalty that is in this bill. A more effective answer is that simply filing a declaration of candidacy in the wrong district is not a crime. The candidate must have knowledge that he does not live in that district and file the declaration of candidacy with that knowledge. So, it is not simply accidentally filing in the wrong district.

**Assemblyman Ohrenschall:**

I am voting against the bill. One of the reasons is because during the hearing on it, I asked Scott Anderson with the Office of the Secretary of State how many prosecutions he was aware of that had happened under the current law. He said he was not aware of any.

You could come to the Legislature and state that a penalty is not stiff enough and is not deterring people, but people I have met said the penalty should be up to 12 months in the county jail, which is the penalty for a gross misdemeanor. Most of the people I meet would not want to spend one night in the county jail. It is not a pleasant place, and I believe we have a stiff penalty now. There is no record of it being prosecuted, and I think it is premature for us to elevate these types of crimes which, while very troubling, are nonviolent crimes. We know our prisons and jails are overcrowded. To make a determination to elevate these crimes to felonies when we do not know if the current system is working, because there have been no prosecutions, is premature.

**Assemblyman Elliot T. Anderson:**

I want to ditto Assemblyman Ohrenschall's comment. I wish we could prosecute people with the legislation we have now. If it is not being done, what makes us think that it is going to be done with a category E felony where now people are losing their rights under the Second Amendment and their right to vote? That is a serious collateral consequence, which I do not think is necessary if we are not even prosecuting people now.

**Assemblyman Trowbridge:**

I think the points made by the two previous Assemblymen on this Committee are accurate. In reference to Mr. Powers' comments, it sounds like it would be tough to get someone convicted as to whether or not they were determined to be in the wrong district and intentionally filed their declaration of candidacy. The fact that nothing has been pursued could be because the punishment is not severe enough. I acknowledge that because they have not tried it does not mean that they will now.

**Assemblywoman Seaman:**

I think it is important to put stronger consequences in this bill, but I will support it because we have had candidates who have filed a false declaration of candidacy. We need to ensure that those who are writing the law are obeying the law.

**Chair Stewart:**

Is there any further discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblywoman Shelton will present the floor statement. The next bill before the Committee is Assembly Bill 459.

**Assembly Bill 459: Revises provisions relating to elections. (BDR 24-1082)**

**Carol M. Stonefield, Committee Policy Analyst:**

This bill was heard in this Committee on April 7. It is the Committee's bill and was presented by Chair Stewart. Assembly Bill 459 requires the Department of Motor Vehicles (DMV) and certain courts to provide to the Secretary of State and the county clerks information related to persons who may not be citizens of the United States for the purpose of determining if such persons are registered to vote. If a person applies for a driver authorization card and does not provide proof of citizenship, the bill includes a process for determining if such a person is a citizen, whether that person should be removed from the voter rolls, and whether the person should be reinstated on the voter rolls.

The bill provides that if a person submits written affirmation that he or she is not qualified to serve as a juror because he or she is not a citizen, the court must forward that document to the Secretary of State and the county clerk. The DMV is not required to provide an application to register to vote to a person who qualified for a driver authorization card and is not a citizen of the United States. The Secretary of State shall establish a procedure to ensure that a person who is not a citizen does not submit an application to register to vote.

There is a mock-up and a conceptual amendment that has also been proposed for consideration [work session document ([Exhibit G](#))]. The changes in the mock-up state that the county clerk is not required to cancel the voter registration of an individual if such an action is prohibited by federal law. If an individual summoned for jury duty declares he or she is not qualified to serve because they lack citizenship, the written affirmation must be made under penalty of perjury. The mock-up removes the requirement that the county clerk mail a notice of cancellation of voter registration to a person who signs the affirmation.

The conceptual amendment proposes to delete section 7 relating to an arrangement between the DMV and the Social Security Administration to share information. We have received testimony that they already have such an arrangement. The conceptual amendment adds the following:

- The certificate of citizenship or certificate of naturalization number to the list of acceptable citizen proofs.
- The date of birth to the information required to be submitted by the DMV to the Secretary of State.
- Language that provides that the written affirmation include notice that by signing the form the person's voter registration will be cancelled.

- Language that requires the court, the clerks, and the Secretary of State to keep the affirmation strictly confidential and only use it for the purpose of checking voter registration.
- Language that any information the clerks or the Secretary of State receives must be kept confidential.

**Kevin Powers, Committee Counsel:**

For added clarification to the Committee, the conceptual amendment would be in addition to the mock-up and they can be combined, so the conceptual amendment would add to the mock-up and not replace it.

**Chair Stewart:**

I hope this makes it easier for the person to bring their driver authorization card number and not the actual paper with them. Do I have a motion to amend and do pass A.B. 459?

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 459.

ASSEMBLYMAN TROWBRIDGE SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblywoman Fiore will present the floor statement. The next bill before the Committee is Assembly Bill 460.

**Assembly Bill 460:** Expresses the intent of the Legislature to increase its membership in the next reapportionment and redistricting cycle.  
(BDR 17 1126)

**Carol M. Stonefield, Committee Policy Analyst:**

This bill was heard in this Committee on April 2. It is a Committee bill and was presented by Chair Stewart. The bill states it is the Legislature's intent that the size of the Legislature be increased in the next reapportionment and redistricting cycle. The Senate would be increased to 22 members and the Assembly to 44 members. The bill also directs the Legislative Counsel Bureau (LCB) to prepare for this possibility by studying logistical issues relating to increasing the size of the Legislature, including office space and seating in the respective chambers, and costs associated with increased personnel, travel, and staff expenses. There are no amendments [work session document ([Exhibit H](#))].

**Chair Stewart:**

Do I hear a motion to do pass A.B. 460?

ASSEMBLYWOMAN SHELTON MADE A MOTION TO DO PASS  
ASSEMBLY BILL 460.

ASSEMBLYMAN ELLIOT T. ANDERSON SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Thompson will present the floor statement. The next bill is Assembly Bill 462.

**Assembly Bill 462: Makes various changes relating to elections. (BDR 24-615)**

**Carol M. Stonefield, Committee Policy Analyst:**

This bill was heard in this Committee on April 7 and was requested by this Committee on behalf of the Secretary of State, who in turn requested it on behalf of the county clerks. It makes various changes to election provisions. The bill revises definitions of certain election-related terms to conform with electronic files and polling places. It clarifies that election board officers are appointed for polling places in the county and not limited to precincts and districts in the county. The bill permits the election board officer to fulfill the existing requirement to update the alphabetical listing of voters who have voted during the election by either posting it in the polling place or publishing it online.

Existing law provides that the Chair and at least one other member of the election board must deliver the ballots and election materials to a central location. This bill revises that to provide two members of the election board will deliver the ballots and materials, and if possible, the members will be of different political parties.

Existing law also provides that an election board officer shall instruct a voter to sign the roster. If the signature does not match, the voter must provide an acceptable form of identification and shall update his or her signature as prescribed by the Secretary of State.

The bill permits the county clerk to provide sample ballots electronically if the option is available and if a registered voter elects to receive a sample ballot by electronic means. The bill also increases the maximum number of registered voters in precincts from the existing limit of 1,500 to 3,000.

It will eliminate the requirement to publish the full text of a statewide measure in a newspaper of general circulation. Each county clerk shall cause a condensation of a statewide measure, its explanations, arguments, rebuttals, and fiscal note to be published.

On ballots, currently the name of an independent candidate is listed as "independent" or "IND." The bill changes that to "no political party" or "NPP."

There is a conceptual amendment that has been proposed [work session document ([Exhibit I](#))] and would make changes to conform to electronic voting equipment and polling places, including defining the term "roster" to mean the record, defining the term "sample ballot" to include ballots distributed by electronic means, deleting references to precincts in the appointment of election board officers, and deleting certain intersectional references.

If this Committee votes amend and do pass, additional revisions would be made to conform the provisions of this bill with those of Assembly Bill 94 as it was voted out of this Committee on March 19.

**Kevin Powers, Committee Counsel:**

The provisions of A.B. 94 that the Committee passed dealt with distributing sample ballots by electronic means to registered voters. That would be optional on the part of the local election officials. They could establish such a system, and if they did, it would be the option of the registered voter to receive the sample ballot electronically.

**Chair Stewart:**

Do I hear a motion to amend and do pass A.B. 462?

ASSEMBLYWOMAN SHELTON MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 462.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblyman Moore will present the floor statement on A.B. 462. The next measure before the Committee is Assembly Joint Resolution 8.

**Assembly Joint Resolution 8: Proposes to amend the Nevada Constitution to require approval of certain initiative measures by a two-thirds vote. (BDR C-916)**

**Carol M. Stonefield, Committee Policy Analyst:**

The resolution was brought forward by Assemblywoman Dickman and was heard in this Committee on April 2. The resolution proposes to amend the *Nevada Constitution* to require an affirmative vote of a supermajority. When a proposal to increase revenues through a tax, fee, assessment, or rate is submitted to the voters, either through initiative petition or referendum from the Legislature, the measure must pass by a two-thirds majority of those casting votes on the measure. There are no amendments [work session document ([Exhibit J](#))].

**Chair Stewart:**

Do I have a motion to do pass A.J.R. 8?

ASSEMBLYWOMAN FIORE MOVED TO DO PASS  
ASSEMBLY JOINT RESOLUTION 8.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Is there any discussion?

**Assemblyman Elliot T. Anderson:**

I am voting no. I think it takes away from the people's power to vote measures through that they like. I do not go along with the idea that democracy is accomplished with a two-thirds vote. It is accomplished by a 50 percent plus one vote. This should not be changed.

**Assemblyman Ohrenschall:**

A few years ago, when the U.S. Supreme Court issued its decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), there was an initiative petition on the ballot called the People's Initiative to Stop the Taking of our Lands (PISTOL). It tried to protect property rights from the excesses of eminent domain used by local and state governments. It was very popular and did not contain any fees. It received 60.81 percent of the vote.

I am concerned that there are going to be initiatives where the primary goal may not be to raise taxes or levy fees, but there might be something associated with that goal. It will be subject to this two-thirds vote requirement, and by trying to get to 70 percent of the vote, I think it will make the initiative process impossible. We have a great state Legislature, but there are times when the

people want to present an initiative and take democracy straight to the people. I am concerned about the roadblocks this measure would put in front of "we the people."

**Assemblyman Trowbridge:**

I put myself in the category of a strict constitutionalist on this issue. I feel that changing the rules so that one-third of the people plus one can stop an initiative places it in a position that the minority rules. I do not think that is the American way. I will be voting no on this proposal.

**Assemblywoman Fiore:**

I love this bill.

**Chair Stewart:**

Is there any further discussion? [There was none.]

THE MOTION FAILED. (ASSEMBLYMEN ELLIOT T. ANDERSON,  
MUNFORD, OHRENSCHALL, THOMPSON, AND TROWBRIDGE  
VOTED NO.)

The last bill before the Committee is Assembly Bill 60.

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

**Carol M. Stonefield, Committee Policy Analyst:**

This bill was heard in this Committee on February 5 and was presented by the Executive Director of the Commission on Ethics. The bill extends to public employees the abstention requirements relating to matters where they have conflicts of interest [work session document ([Exhibit K](#))]. It removes the prohibition against accepting an anonymous complaint if the Commission has sufficient information to do so. It also revises the timeline for rendering a Commission opinion from the date when the Commission receives the request to the date when it determines it has jurisdiction. The bill clarifies that the confidential investigative file relating to a request for an opinion includes information provided to or obtained by an investigatory panel of Commission members or Commission staff. It permits a public officer or public employee who made a first-party request for opinion relating to employment with a business or industry over which the individual had regulatory authority to discuss the request and related materials to certain persons without waiving confidentiality. It revises from mandatory to discretionary the consideration by the Commission of mitigating factors when determining if a willful violation has occurred.



The bill clarifies that to qualify for safe harbor provisions, a requester who relied on advice of legal counsel retained by the public body or public employer must have done so prior to the act or failure to act, and that the advice was not contrary to any published opinion from the Commission.

There are two amendments, but they are not in the work session document. There are hard copies before the Committee members, and they are also available on the Nevada Electronic Legislative Information System (NELIS). One is a proposed mock-up, Amendment 9812 ([Exhibit L](#)), that was first drafted by a working group. The second is a revised proposed amendment ([Exhibit M](#)) to the mock-up, and our legal counsel is prepared to discuss these two documents.

**Kevin Powers, Committee Counsel:**

With regard to document No. 1 ([Exhibit L](#)), the working group met to arrive at a consensus addressing the concerns of local governments. The local governments were concerned with the original bill that added public employees to section 2 of the bill. Presently, under existing law, public employees are required to disclose a conflict of interest, but they do not have the abstention requirement as public officers do. The bill's intent was to add those public employees to the abstention requirements. The local governments were concerned with those provisions. The mock-up from the working group would have added a definition of the word "decision" to make it specific that a public officer or a public employee would have to disclose and abstain only if he or she was making a decision that involved a substantial and material exercise of discretion, such as adopting ordinances, enacting administrative policy, adjudicating quasijudicial matters, or making decisions about approving contracts, expending public money, or issuing licenses. This provision's definition of "decision" would also exclude anything that was ministerial, routine, or ordinary in the course of a public officer's or employee's duties.

Following the working group sessions, the local government agencies were still dissatisfied, so their proposal is to remove anything dealing with adding the public employees to section 2 of the bill. That would mean sections 1 and 2 of the mock-up would be removed from the bill so the public employees would not be affected by any of those provisions. In addition, local governments want subsection 1 of section 3 to be removed from the bill. That provision allows an extra 45 days for the Commission to determine whether it has jurisdiction for first-party requests. Local governments want the Commission to arrive at its decision for first-party requests as soon as possible. Those are the local governments' proposals to change the mock-up.

The local governments have requested one other change that was not presented to the Committee and was not presented by the Commission on Ethics. This

would change how long certain proceedings of the Commission would remain confidential. Presently, proceedings before the Ethics Commission remain confidential from filing of a complaint until the investigatory panel determines whether there is just and sufficient cause for the full Commission to render a decision in the matter. The proposal by the local governments is to keep the confidentiality through all of the hearings of the Commission until the Commission issues a decision or order. That would make the Commission's evidentiary hearing closed to the public. The Chair has indicated because that was not presented to the Committee it should not be considered as part of this amendment.

Ultimately, the amendment would be the mock-up with the exception that section 1 of the mock-up would be removed. Also, section 2 of the mock-up dealing with *Nevada Revised Statutes* (NRS) 281A.420 would be removed. Finally, the green language in section 3, subsection 1, dealing with NRS 281A.440 would be removed from the mock-up.

**Chair Stewart:**

I will take a motion to amend and do pass A.B. 60.

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 60.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

**Assemblyman Ohrenschall:**

I was partial to the first mock-up and thought we had a good compromise in terms of striking a balance. I understand the concerns of local government, and we tried to address those concerns. I will support the bill either way, but I prefer the language in the first amendment.

**Chair Stewart:**

Mr. Powers, in layman's terms, please readdress the proposed mock-up and the amendment to the mock-up.

**Kevin Powers:**

The Committee would be approving the mock-up except removing from it what is shown as section 1, section 2, and the green language in subsection 1 of section 3. The rest of the mock-up would remain. Those removals should address the primary concerns expressed by the local governments during the hearing and the meetings of the working group.

The other mock-up changes should address the other concerns expressed by the Committee during the original hearing on the bill. The Commission had requested removal of the prohibition which states you cannot have anonymous complaints. This mock-up would ensure that the prohibition on anonymous complaints remains in the law.

This mock-up also addresses Committee's concerns with a jurisdictional issue on third-party complaints. This provides that the Commission must determine whether it has jurisdiction on a third-party complaint within 45 days after the complaint is filed. The Commission has to operate under a short time frame to determine jurisdiction, but that time frame would also allow the public officer to file motions and briefs challenging the jurisdiction of the Commission.

Although the Commission was hoping to have anonymous complaints to protect public employees who would be whistle-blowers, on page 7, in section 3, subsection 9, this mock-up would provide that a person who filed an Ethics Commission complaint could ask that the person's name be kept confidential if the public officer or employee works for the same public body or employer as the person they are filing the complaint against. This would provide whistle-blower protection for a person who files a complaint against another person in the same agency. However, the Commission could not use the evidence provided by that person's testimony unless they disclose that person's name and that person then testified at the public hearings. The protection is for the person who filed the initial complaint, but if that evidence is necessary, the person would be required to testify and disclose their identity to the public officer whom the complaint is filed against.

The other provision that the Commission requested in the original bill was the "safe harbor provision," which is when a public officer seeks the advice of legal counsel. This clarifies that the public officer is entitled to that safe harbor provision if they relied in good faith on the advice of their legal counsel, the advice was provided before the public officer took the action, and the advice was based on a reasonable legal determination under the circumstances when the advice was given that the act would not be contrary to a prior published opinion of the Commission. This clarifies the safe harbor provision and should address all of the concerns raised by the Committee at the hearing.

**Assemblyman Ohrenschall:**

Mr. Powers, in the second mock-up proposed by local government, the whistle-blower protection still remains, correct?

**Kevin Powers:**

The whistle-blower protection still remains in the existing mock-up. The only changes being made from the local government mock-up is removing those provisions relating to NRS 281A.420 dealing with disclosure and abstention.

**Assemblyman Ohrenschall:**

Pursuant to those whistle-blower protections, if I am an employee at the Department of Transportation and I know my supervisor is giving contracts to his brother-in-law, I could report it to the Ethics Commission. I would be protected from the supervisor knowing I reported it, but I would not receive that protection if I worked at the Department of Transportation and I reported someone who worked at the Dairy Commission, correct? It would only protect me if I am reporting an ethical problem within the agency I am employed by, correct?

**Kevin Powers:**

That is correct.

**Chair Stewart:**

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

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Ohrenschall will present the floor statement on A.B. 60. Is there any public comment? [There was none.] We are adjourned [at 5:04 p.m.].

RESPECTFULLY SUBMITTED:

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Patricia Hartman  
Committee Secretary

APPROVED BY:

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Assemblyman Lynn D. Stewart, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Assembly Committee on Legislative Operations and Elections

**Date:** April 9, 2015

**Time of Meeting:** 4:08 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 302	C	Carol M. Stonefield, Committee Policy Analyst	Work Session Document
A.B. 320	D	Carol M. Stonefield	Work Session Document
A.B. 381	E	Carol M. Stonefield	Work Session Document
A.B. 461	F	Carol M. Stonefield	Work Session Document
A.B. 459	G	Carol M. Stonefield	Work Session Document
A.B. 460	H	Carol M. Stonefield	Work Session Document
A.B. 462	I	Carol M. Stonefield	Work Session Document
A.J.R. 8	J	Carol M. Stonefield	Work Session Document
A.B. 60	K	Carol M. Stonefield	Work Session Document
A.B. 60	L	Carol M. Stonefield	Amendment
A.B. 60	M	Carol M. Stonefield	Mock-up