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

## Seventy-Eighth Session
## May 4, 2015

The Senate Committee on Legislative Operations and Elections was called to order by Chair Patricia Farley at 3:40 p.m. on Monday, May 4, 2015, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Patricia Farley, Chair
Senator James A. Settelmeyer, Vice Chair
Senator Greg Brower
Senator Kelvin Atkinson
Senator Tick Segerblom

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Amber Joiner, Assembly District No. 24
Assemblywoman Victoria Seaman, Assembly District No. 34
Assemblywoman Shelly M. Shelton, Assembly District No. 10
Assemblywoman Heidi Swank, Assembly District No. 16

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst
Kevin C. Powers, Counsel
Daniel Stewart, Policy Advisor, Assembly Leadership
Linda Hiller, Committee Secretary

**OTHERS PRESENT:**

James Smack, Chief Deputy Controller, Office of the State Controller
Yvonne Nevarez-Goodson, Executive Director, Commission on Ethics
David Cherry, City of Henderson
Jacob Reynolds

Robert Frank, Citizen Task Force for Voter Rights
John Wagner, Independent American Party
Tony Shelton, Policy Director, Assemblywoman Shelly Shelton
John Fudenberg, Clark County
Janine Hansen, Nevada Families for Freedom
Scott Anderson, Chief Deputy, Office of the Secretary of State
Lorne Malkiewich

**Chair Farley:**
Before we begin, I want to thank our Broadcast and Production Services for its last-minute efforts to enable videoconferencing to Las Vegas. Today's Agenda does not show it because it was previously unavailable for our time slot.

I will bring the meeting to order with Assembly Bill (A.B.) 24

**ASSEMBLY BILL 24 (1st Reprint)**: Authorizes payroll offsets to recover money related to delinquent balances on state-issued travel charge cards. (BDR 23-458)

**James Smack (Chief Deputy Controller, Office of the State Controller):**
This bill is a commonsense bill, providing the State a mechanism that private employers already have to recover unpaid cash advances or expenses on State travel cards. I have submitted my written testimony (Exhibit C).

**Chair Farley:**
Does the employee sign something to acknowledge consequences if the cash advance is not paid back?

**Mr. Smack:**
Most agencies will have their own policies, but this bill gives payroll and purchasing departments an opportunity to get involved via deduction if an agency has not taken care of the issue.

**Chair Farley:**
I will close the hearing on A.B. 24 and open the hearing on A.B. 60.

**ASSEMBLY BILL 60 (1st Reprint)**: Revises provisions relating to ethics in government. (BDR 23-309)

**Yvonne Nevarez-Goodson (Executive Director, Commission on Ethics):**
This bill was amended in the Assembly, making a bill that should work well for the Commission on Ethics and all interested parties.

Assembly Bill 60 reflects six main amendments to the Nevada Ethics in Government Law*, Nevada Revised Statutes* (NRS) 281A. The first main focus of the bill is intended to refocus and clarify the ability of the Commission on Ethics to make a determination of a willful violation. In 2013, the Legislature amended the provisions of NRS 281A to require the Commission to consider various mitigating factors when imposing a willful violation of the Ethics Law.

The Commission determined it was a good compromise since prior to that time it was a strict liability standard whereby nearly any violation required the Commission to impose a willful violation. The unintended consequence was that the mitigating factors made it difficult for the Commission to impose a willful violation. The amendments to willful violation offered in section 1 and section 4 of the bill allow the Commission to consider other factors that might warrant a willful violation finding even if the existence of otherwise mitigating factors are present in the case. The Commission always had that authority—this bill simply clarifies the ability of the Commission to proceed.

Section 3 of the bill relates to NRS 281A.440. Subsection 3 and subsection 4 of section 3 clarify timing of the investigation that the Commission undertakes in third-party requests for opinion. A request for opinion is another word for a third-party complaint. The Commission realized the existing timing required the Commission to complete its investigation within 70 days of receiving the complaint. That was challenging because many cases received by the Commission are ultimately undergoing a consideration of jurisdiction at the outset. These two subsection amendments clarify an additional time frame for the Commission to make a determination of jurisdiction before that timeline for an investigation commences.

Subsection 9 of section 3 of the bill governs the concern initiated in the Assembly regarding anonymous complaints. One action the Commission requested in its original version of the bill was to be able to accept anonymous complaints. Part of the reasoning for that request was to accommodate public employees and public officers who intend to file complaints against individuals within their agencies. The feedback we received indicated a concern about retribution when filing a complaint for fear of retribution and retaliation.

This version of the bill offers a compromise stating the Commission will not accept anonymous complaints but will otherwise protect the identity of a requestor in that circumstance. The condition for this is if that person becomes a witness with relevant testimony, the Commission is required to turn that person's name over so the subject has an opportunity to cross-examine and request the appropriate discovery.

Subsection 10 and subsection 17 of section 3 clarify that the Commission's investigatory panel process is likewise part of the investigation. Therefore, the materials and issues considered by the investigatory panel are deemed confidential.

Section 4 of A.B. 60 is our safe harbor, allowing the subject of a third-party complaint before the Commission to rely on the advice of legal counsel appointed for that public entity to save that individual from a willful violation. If that advice is offered to the public officer or employee before the action is taken, based in good faith on the advice of the attorney and not inconsistent with a prior published opinion of the Commission, we would then impose the safe harbor. This would protect that subject from any finding of a willful violation by the Commission.

The last provision of the bill governs the confidentiality provisions of our first-party request for opinion. Those are opinions requested by public officers and employees for advice. Typically, statutes require that confidentiality be waived even if the individual who is the requestor of that opinion identifies that he or she came to the Commission on Ethics. These provisions attempt to say that, with limited exposure, we would authorize that public officer or public employee to waive confidentiality with respect to specific individuals or individuals authorized by the Commission without waiving it to the entire world.

**Chair Farley:**
On average, how many baseless complaints do you get?

**Ms. Nevarez-Goodson:**
During the last fiscal year, we received an average of 78 complaints, and we rejected 55 just on a jurisdictional basis before the investigations even began.

**Senator Segerblom:**
Looking at the issue that came up with the school board in Las Vegas, would this have changed that outcome?

**Ms. Nevarez-Goodson:**
This bill would not have changed that specific instance. I understand Senate Bill (S.B.) 380 is intended to address that particular concern.

**SENATE BILL 380**: Revises provisions governing ethics in government. (BDR 23-19)

Are you referring to the circumstance where the Commission imposed a violation for the use of government resources in support of a ballot question?

**Senator Segerblom:**
Yes.

**David Cherry (City of Henderson):**
We support A.B. 60 as amended.

**Jacob Reynolds:**
I support this bill. I have worked with Ms. Goodson on multiple occasions, and I agree the Commission needs greater discretion.

**Ms. Nevarez-Goodson:**
On the record, I want to thank the legislative staff for its work with the Commission in producing this document.

**Chair Farley:**
I will close the hearing on A.B. 60 and open the hearing on A.B. 177.

**ASSEMBLY BILL 177 (1st Reprint)**: Revises provisions governing elections. (BDR 24-627)

**Assemblywoman Victoria Seaman (Assembly District No. 34):**
This bill, A.B. 177, is both personal and necessary. The bill has four chief goals. The first is to ensure that no candidate for this Legislature is above the law. Second, it removes the partisanship that has distorted the law. Third, it makes sure that only eligible candidates who actually receive votes in their district

become members of the Legislature. Fourth, it promotes the spirit behind representative democracy providing that an elected representative should be a member of the community he or she is elected to represent. I have submitted my written testimony (Exhibit D).

**Assemblywoman Shelly M. Shelton (Assembly District No. 10):**
In Assemblywoman Seaman's case, the timing of her court case enabled her to reach out to voters during early voting. I was not that fortunate because the judge did not make a decision in my case until the last day of early voting. On Election Day, we went to the precincts in our district with family members to educate voters on what had taken place. Most voters were not aware. When we showed voters the court order, they did not want to vote for an ineligible candidate of either party. The reality that someone was ineligible did not sit well with the voters in District 10. Ms. Seaman's voters also spoke loudly on Election Day. This bill presents what our constituents want.

**Daniel Stewart (Policy Advisor, Assembly Leadership):**
This bill deals with enforcing the restrictions on what is required to be a qualified candidate. According to State statute, you have to be a qualified elector of the district you represent. You must live in your district for at least 30 days and be a minimum 1-year resident of the State. We added to those qualifications by increasing the district residency requirement to 180 days and the State residency requirement to 2 years. It is in the Nevada Constitution that the Governor must be a resident of the State for a minimum of 2 years, so this seemed like a good number.

There are also statutory terms for eligibility for a candidate. Section 1.5 of the bill defines the term "ineligible candidate" as any candidate for any office who:

> dies; is adjudicated insane or mentally incompetent; fails to meet any qualification required for the office pursuant to the Constitution or laws of this State; or is found by a court of competent jurisdiction to be disqualified from entering upon the duties of the office pursuant to the Constitution or laws of this State.

The rest of the bill speaks to what that means. If the discovery of ineligibility is made before July, which is the deadline for changes made to a ballot, that candidate's name will be removed from the ballot. If a candidate's name is removed from the ballot because he or she died or was declared adjudicated

insane or mentally incompetent, the candidate's party can select a replacement to fill that vacancy in the General Election.

We did not allow that vacancy provision to apply to individuals declared ineligible because of residency issues. We felt problems with residencies may stem from parties not vetting their candidates thoroughly enough. This will give an incentive to push those vetting investigations up to prevent ineligible candidates from getting on ballots.

After the change period occurs, where you can no longer make changes to ballots, there are two remedies. This is the meat of this law. If you are declared ineligible after ballots go out, the registrars still have to go through the process of putting up signs in the election office where they can be seen and putting stickers on ballots informing voters of the discretion. We want voters to know a vote for an ineligible candidate will be a lost vote. There will be signs and stickers on absentee ballots informing voters that the candidate is ineligible. The real meat, though, is that if an ineligible person wins, those votes are not counted. This happened with a 2014 primary for the Democrat gubernatorial race where the category "None of These Candidates" finished first. Those votes were disregarded and the primary win went to the person who came in second.

So votes for an ineligible candidate who finishes first on the ballot will be disregarded and the election win will go to the person who finishes second. This information will be on all the notices to voters—that any vote for an ineligible candidate will not count.

**Chair Farley:**
If one candidate overwhelmingly won an election, was later disqualified and then the candidate from a different party who came in second was declared the winner, your winner would not be the individual that voters chose to represent their district. That person put into office would not be a majority winner, and he or she would represent a party the voters did not choose. The voters' voices would not have been heard. Is that okay?

**Mr. D. Stewart:**
From the testimony in meetings with constituents, I think this is okay. This happened before, like in the 2014 gubernatorial race I spoke of earlier where None of These Candidates won but the elected person was the second-place vote getter. It is a heavy punishment, but it is the best way to discourage

ineligible people from running and hoping their wins on Election Day will save them and put them in office anyway.

**Senator Atkinson:**
I note that the vote on A.B. 177 was 25 yea and 17 nay in the Assembly final passage; obviously, all the kinks were not worked out of this bill. Using your analogy, if someone is eliminated from an election, say, a member of one party who received 70 percent of the vote, the second-place vote getter, possibly from a different party who only got 30 percent of the vote, becomes the default winner. You will then have a person in office who the voters essentially rejected. I understand the problem with residency, but the end result makes no sense to me.

**Assemblywoman Seaman:**
In my case, we had a district court judge declare my opponent ineligible the day before early voting. When the constituents learned that candidate was ineligible, those who had already voted before learning of the ineligibility stated that they would not have voted for that candidate had they known. Honesty and integrity trumps policy, they said. Because of the Andrew Martin situation 2 years prior, the Republican Party spent more than $50,000 sending out postcards and flyers to inform voters. We worked twice as hard to let people know my opponent was ineligible because we knew from talking to constituents that this fact was more important to them than any policy. Voters do not want to have a representative who breaks the law before writing the law as a Legislator.

**Senator Atkinson:**
I was not a fan of what happened with Andrew Martin, and he was seated. But the fact is that your voters changed their minds based on this one issue. The voters decided to put someone in office over this one issue. I do not have an issue with that. But if someone gets the greater percentage of the votes and then is declared ineligible, we need to change the law to reflect that. I do not agree with putting someone in office who has just lost an election just because the winner of the election was declared ineligible. That makes no sense to me. The voters said no.

**Assemblywoman Seaman:**
I appreciate that. I do not know if I would have won by more than 26 points had my party not put in all that money. In this election, I do not know if the voters only voted for me after they changed their minds because my opponent

was ineligible or if they were already going to vote for me. I do know people were disenfranchised by what happened.

**Senator Atkinson:**
Are you suggesting that had the ineligibility of your opponent not happened, you would have lost the election?

**Assemblywoman Seaman:**
No, I do not know if I would have won by more points.

**Mr. D. Stewart:**
These qualified elector requirements are constitutional requirements. No vote of the people can overturn constitutional requirements. In another scenario, where an ineligible candidate who wins the election does not get seated, the county commission can appoint someone into the vacancy. That puts someone into office who got no votes in the election. At least the option in this bill would install someone with part of the votes.

**Chair Farley:**
My biggest concern is that if we have a heavily Republican or Democratic district and the winning candidate is declared ineligible, a candidate from the other party could be seated to represent this district. If this happens, the voice of the people is not being heard. I completely agree with the problem this bill intends to solve, but if the voice of a district is not being represented, how can we solve this?

**Senator Brower:**
If a candidate is ineligible, he or she is ineligible, period. That candidate should never have been on the ballot. The alternative to not disqualifying the victor who was adjudicated to have violated the law is to allow him or her to be seated. That seems untenable, which is the point of this bill.

During the Andrew Martin case, it was outrageous to sit on this side of the building and watch the other end of the building do nothing. He was adjudicated ineligible after an evidentiary hearing by a judge in Clark County, and still he was seated. No one in the other chamber did anything about it. It was shocking.

Every session I have been here, there have been rumors about some Legislators not living in their districts, but this case was someone who was adjudicated

ineligible and still seated into office. There was nothing in the law at that time to prevent it, which is why we are here today. I hear the concerns about this bill and the representation, but I do not know that the alternative is something we can stand by and accept any longer.

**Senator Atkinson:**
I agree the ineligible candidate should not be seated, but the replacement should be truly representative of the district he or she will serve. My district is 64 percent Democrat and 14 percent Republican, so if it was represented by someone who is not in the Democratic Party, it would not serve the district. There is no way that should happen. There should be another way. We actually already have that mechanism, where the county commission appoints a replacement, and I am okay with that. But to arbitrarily let the election and the office go to the second-place candidate is not fair. The voters rejected that candidate.

**Senator Brower:**
The problem is, where do we draw the line? In this Session, like never before, we see Republicans elected from majority Democratic districts. Do we say that a candidate cannot be seated if he or she just won in a district that is 10 points in favor of the opposite party of that candidate? Twenty points? Where do we draw the line? It is unfair to assume that the majority of registered voters in any given district would never vote for a candidate in another party. We have seen too many anomalous examples of that in this Session alone.

**Assemblywoman Seaman:**
Assemblywoman Shelton and I are both in majority Democratic districts, and yet we both got elected because Democrats chose to vote for us. I walked my district three times and was able to resonate with the constituents. That is what this bill is about. It is not about political parties, it is about the constituents and the fact that they deserve to have candidates who will represent them with honesty and integrity, both when campaigning and in office. In our cases, the voters did not care about party; they cared about which candidate would best represent them.

**Senator Atkinson:**
You are way off base. That is not what I am suggesting. It is not about party for me, it is about the will of the people. Amen, it worked in your case. We can debate all day about what your voters assumed and why they voted for you, or

what caused the red wave in the State this past election year. No one has an issue with that. I certainly do not. The point of contention for me is how we replace that ineligible candidate.

**Chair Farley:**
Can we look at some other states to see how they handle this issue? That might help the bill make more sense to the Committee. I think we all agree on what you are trying to accomplish with this bill.

**Mr. D. Stewart:**
We can check with other states and see what they say. One of the reasons for the hammer in the bill is to make the parties vet their candidates more thoroughly in the beginning so there are no ineligible candidates. The parties may not care about a specific candidate, but they care about the party label at the end of the candidate's name, especially when they come up here for majority status. If the parties are going to have a vested interest to make sure none of their candidates are declared ineligible, this would help encourage a more thorough vetting earlier in the process—in the primary or certainly before Election Day. That is the intent of the bill.

There is a proposed amendment from Clark County. There are a couple of ways these challenges can occur. One is the official challenge period where you inform the filing officer who investigates. In the bill, we have extended the challenge period to the first Friday before early voting. Talking to the registrars of voters, since this is a specific thing in a county challenge period or a filing challenge period, we think it is best to move the date back to what it was, which was the end of July. There is nothing to prevent someone from filing his or her own lawsuit, which is what has happened. In all cases, one thing we added to the bill at the request of clerks and other people is that the prevailing party—the person challenging, the district court, the attorney general, private individual, etc.—has an opportunity to recoup fees.

**Chair Farley:**
Assemblywoman Seaman walked her district three times. She would have won. Some people only filled out a piece of paper and won, but that is a fluke. During a real election, if a candidate gets out and works the district, I want to make sure the constituents ultimately get the party representative they vote for.

**Assemblywoman Seaman:**
I agree, but I had to spend weeks in court and a lot of money—through my hard work, I did win. But if we can declare a candidate ineligible, we would not have to counter again and spend money and send out flyers. When a candidate is declared ineligible and can still win, it is a disservice to the other candidates and constituents.

**Senator Settelmeyer:**
I am sure everyone on this Committee agrees that a person who commits a fraudulent act that is proven by a court should not be seated. The question is how do you get to the next step?

I want to clarify your changes in sections 9 and 21. If you change the deadline, the amount of shenanigans your opponents could utilize to continually file actions against you all the way up to the Monday preceding the general election would be problematic. Has that been changed back to statute?

**Mr. D. Stewart:**
Yes and no. Yes in respect to official challenges; where you lodge a challenge with the registrar, that deadline is placed. However, the challenge period is not the only way you can bring an action. I understand the lawsuits brought were for declaratory relief and injunctions—you can file those up to any time.

**Senator Atkinson:**
Can you explain the change in the residency requirements from 30 days for a district and 1 year for living in the State to 180 days and 2 years?

**Mr. D. Stewart:**
My understanding is the change is twofold. Even with the proposed requirement changes, Nevada has a very low time period for people to live in their districts before running for election. We found districts in New York and Texas where a candidate has to live in his or her district for up to 5 years before running for office. Initially, Assemblywoman Seaman had the requirements at 1 year in one's district and 5 years in Nevada, but in discussions with community members, we decided to push it back a little.

**Senator Atkinson:**
I was just requesting the reason for the change.

**Mr. D. Stewart:**
One reason was that if the deadline is stretched back within the district to 180 days, that itself would help discourage candidates from jumping around from district to district. If the deadline is only 30 days, people can decide at the last minute to run and shop other districts to run from. This was pushback against that possible behavior.

The second reason for the change is to get to the core of representative democracy so members who serve their districts actually come from their districts and have a personal relationship with their constituents. This takes time.

**Senator Atkinson:**
I understand that on the district residency and how long someone lives in the State, but I am not sure the argument you are making for the change of 30 days to 6 months makes a difference. I can use myself as an example. You can have someone who lives a few blocks outside a district, but because of redistricting, he or she has to move. It happened to two of my first opponents, one of which was drawn out of his own Assembly District by a couple of blocks. These things happen.

If you make it too strenuous in a transient state like Nevada, it could be too restrictive. We have fine representatives who have been here less than 2 years. When we get inflexible, we do the State an injustice by limiting access.

**Assemblywoman Seaman:**
I lived in my district a couple of years before running. It is a diverse district. It took me months to walk the different areas even though I shopped there, lived there and did everything there. To really get to know a district's issues requires an investment of at least 180 days. Constituents ask for this. My constituents were shocked a candidate only had to live in a district for 30 days. Many of the issues and concerns for this bill are coming from the constituents.

**Senator Atkinson:**
You keep talking about your district, but your district does not represent the rest of our districts. In 14 years, I have never heard this topic mentioned. Even while this was going on during the election period, I did not hear about it from my constituents, and I walked my district twice. That is the way the legislative races should work—candidates should get out and campaign. You are speaking

for your district and I respect that, but it is not true everywhere. You went through the incident, and Assemblywoman Shelton went through it too, and I commend you both, but your districts do not speak for the rest of the 42 districts.

**Senator Segerblom:**
Assemblywoman Shelton represents my district, and she worked hard in that election.

**Mr. Reynolds:**
I support A.B. 177. I represented Ms. Seaman in her lawsuit against Meghan Smith in Las Vegas. This type of problem goes to the core of public trust and a belief the system is not rigged. If a person can lie on the declaration of candidacy, be declared ineligible and disqualified by a court, and still be seated, it destroys public confidence in the integrity of elections and the system as a whole.

In this instance, the opposition, Ms. Smith, could not identify the home she claimed to live in on a map. She could not give the address. She had run in two different districts, a carpetbagger-type of politician trying to find a solid Democratic district to run in. I believe Ms. Seaman was 14 points down in voter party registration but still managed to win the election. We had a full trial.

This bill does not restrict a candidate from running as an independent. If the candidate runs as a member of a major party with that letter after his or her name on the ballot, the party should then be responsible for filtering the candidates to ensure the eligibility to run in a specific district.

There is an attorney fees provision for people who successfully defend a challenge. For people who successfully challenge a candidate, there is no attorney fees provision. If Meghan Smith had won the challenge, she could have received her attorney fees in cost, but Ms. Seaman had no option to do the same. We think that should be included in the bill to make a level playing field. These lawsuits are condoned by the Nevada Supreme Court, allowing a suit up until the time of the election for declaratory relief. The Court has also said that for all districts, the public policy is that the candidates must have a connection with the districts they aim to represent.

**Robert Frank (Citizen Task Force for Voter Rights):**
I represent a nonpartisan volunteer group concerned about election integrity issues. We helped provide input into the language for this bill. As a layperson and computer scientist involved in computer security, I could not believe my ears when I heard that someone could deliberately lie on an application and still go through the election process and be elected. It makes no sense. This bill should make it possible for the process to eliminate this type of person as early as possible, especially before the primary. Certainly, it should be long before the ballots are printed. We should never have to worry about whether there are ineligible candidates on a ballot. The Secretary of State should eliminate the possibility of this happening.

Some of the original draft language in the bill says that even if a candidate ended up on a ballot erroneously, there are provisions to ensure every voter would be told personally about that candidate's ineligibility. This would be useful if the voter did not happen to see a posted sign or sticker in the place where voting takes place. If the voter then chose to vote for the ineligible candidate, the vote would be wasted and the voter would be aware of that. I thought that was the main aim of this bill. If not, we missed the point. Before they vote, voters need to know that an ineligible candidate cannot be seated.

**Chair Farley:**
We all agree it is wrong to be ineligible in an election and agree that a candidate found to be ineligible should not be seated.

**John Wagner (Independent American Party):**
We in the Independent American Party do not have this problem because we vet our candidates at conventions. If the candidate files in March, there is a long time for court action to take place. The parties should have some responsibility to investigate these candidates. If a candidate was found to be ineligible, there would be time for a substitute to be installed. We support this bill as amended from the Assembly.

**Senator Atkinson:**
We have heard about parties vetting their candidates today. Let us be real, though. This is a democracy. If someone wants to file for office, he or she will do it. It has nothing to do with parties. You can vet these people all you want, but when it comes time to signing up, anyone can do it. You cannot stop a

rogue candidate from doing that. The vetting process will not stop an independent person from filing.

**Tony Shelton (Policy Director, Assemblywoman Shelly M. Shelton):**
The purpose of A.B. 177 is not to change the results of an election. The hope is that longer residency requirements will create a closer bond and more honest representation between a candidate and the community he or she represents. During my wife Shelly's campaign, we had family members at the polling places. I was there and watched 21 voters change their booklets of who to vote for. All 21 were Democrats, and all said they would rather vote for an honest Republican than a dishonest Democrat. I believe this is the way most voters feel—they want to vote for an honest candidate. We hope this bill results in honest politicians who live among the people in their districts.

**John Fudenberg (Clark County):**
We support A.B. 177 with the proposed amendments Daniel Stewart mentioned.

**Janine Hansen (Nevada Families for Freedom):**
We support this bill with the amendments made in the Assembly.

**Assemblywoman Seaman:**
The meat of this bill is not to allow ineligible candidates to be seated or allow for their votes to be counted. We needed a remedy for someone declared ineligible, and this is the remedy we thought would be nonpartisan and would serve to deter people from filing false affidavits and claiming to live in districts where they do not live.

**Chair Farley:**
I will close the hearing on A.B. 177 and open the hearing on A.B. 461,which was requested by the Office of the Secretary of State.

**ASSEMBLY BILL 461 (1st Reprint)**: Revises provisions governing elections. (BDR 24-614)

**Scott Anderson (Chief Deputy, Office of the Secretary of State):**
Assembly Bill 461 is a simple bill that addresses residency qualification requirements for candidates. It increases the penalty from a gross misdemeanor to a Category E felony for candidates who knowingly misrepresent themselves

on their declarations or acceptances of candidacy. It has some similarities to A.B. 177 relating to the residency requirement and qualifications, but has no resolution on how a candidate should be seated. I have submitted my written testimony (Exhibit E).

**Senator Brower:**
In section 1, subsection 1, the bill refers to "any preelection action." I would interpret that as meaning that the action or lawsuit was filed before the election. Is that your interpretation—as opposed to concluded before the election?

**Mr. Anderson:**
I would have to look at that. Some of the language in this bill is conforming language. I will get back to you.

**Senator Brower:**
Under the remedy set forth in section 1, how would the disqualified person be replaced?

**Mr. Anderson:**
This bill does not address that issue. We initially thought there were already remedies; that this could be determined by the courts.

**Senator Brower:**
Say it was a legislative race, and the person was disqualified as ineligible, there would be a vacancy in the office. In the legislative context, would the county commission then pick a replacement before session started?

**Mr. Anderson:**
I would defer that question to our staff.

**Chair Farley:**
We could also ask our legal counsel, because he drafted much of this language.

**Kevin C. Powers (Counsel):**
An important principle to both A.B. 177 and A.B. 461 is that neither bill is limited to the legislative context. These laws would apply to all State and local elections. That is an important distinction.

Regarding Senator Brower's first question, the Nevada Supreme Court has defined a preelection challenge as a challenge commenced prior to the election. This would apply to any action commenced prior to the election. In section 1, this bill sets forth what the court would do in a preelection challenge if it finds that the candidate failed to meet any qualification of the office. One, it would declare that the candidate is disqualified from entering upon the duties of the office, and two, the court may order the person to pay reasonable costs and attorney fees.

This bill does not change the existing statutory structure. If a court declares a candidate ineligible before the date for changing the ballot, then that candidate's name must be removed from the ballot. If that decision from the court comes down after the lawful date for changing the ballot, then notice must be provided to the voters. Even though that notice is provided, if the declared ineligible candidate receives the most votes, two things could happen depending on if the candidate is running for a legislative office or any other office.

If the candidate is running for a nonstate legislative office, that declaration of ineligibility should result in a declaration by the court that the office is vacant. That vacancy should be filled like any other vacancy is filled under law. A county commission seat vacancy would be filled by the Governor.

With regard to legislative offices, if you have that declaration under statute wherein a court declares the legislative candidate ineligible for office and that candidate receives the highest number of votes, then that legislative candidate goes before the Legislative House. Members of the Legislative House then decide under Article 4, section 6 of the Nevada Constitution whether to seat that individual.

What A.B. 177 would do is change that equation so the ineligible candidate never receives the certificate of election. Without that, a candidate would not be presented to the Legislative House as an eligible candidate. This bill does not do anything with regard to legislative candidates or other candidates. All it does is specify the attorney fees cost remedy and puts notice in the declaration of candidacy and the acceptance of candidacy of the potential consequences for being an ineligible candidate: potential criminal violation, civil suit, attorney fees and costs.

This bill is limited to notice and the consequences, and it also specifies those consequences in the law. It increases the criminal penalty from gross misdemeanor to a Category E felony. This bill relies on statute regarding what happens after that declaration of ineligibility.

**Senator Brower:**
In section 1, subsection 1, paragraph (a) says the person is disqualified. Is this new?

**Mr. Powers:**
It is an existing provision taken from a different part of the law and moved to this bill. The idea is there are several different types of preelection challenges, including the statutory preelection challenge; the declaratory judgment action under *Nevada Revised Statute* (NRS) 281.050; a writ of mandamus action you can bring—all of those preelection challenges could have different remedies and procedures. The idea in section 1 is that if you bring any of those challenges, the remedy would be the same—the court would declare the person ineligible for office and the court could order attorney fees and costs.

**Ms. Hansen:**
I support A.B. 461. I am glad to see the penalty change from a Category C felony, which was proposed in the original bill, to a Category E felony. We do not want people in prison for election fraud, which is a nonviolent crime. We need to look to other remedies for that.

On page 7, in section 2, subsection 3, paragraph (b), subparagraphs (1) and (2) specify two forms of identification needed by the candidate—a valid driver's license or identification card and a utility bill, bank statement, paycheck or other official document with the candidate's address. There is a potential problem with this. I live in a rural community, and my driver's license does not have my street address. I do not know why, but it is not there. I also do not have a utility bill in my name; it is in my husband's name. I do not have some of the other documents listed as needed to file for office either. If a candidate comes from out of town to file for office and does not have both those documents, this would present a problem. How would he or she know both of these proofs of residency are required? What if it is the last day to file? The previous requirements were to have one or the other of those proofs of residency, not both.

**Senator Atkinson:**
I have never heard of a driver's license not bearing an address. When someone asks for your ID, they usually ask if that is your current residence.

**Ms. Hansen:**
I have no idea how that happened in my case. I would have to ask the DMV. In rural counties, sometimes there is not an assigned address, maybe that is why.

**Mr. Wagner:**
We support this bill because it puts teeth into the law. If someone thinks it is a felony to fraudulently file for office, it might make that person think twice.

**Mr. Fudenberg (Clark County):**
We support A.B. 461.

**Senator Atkinson:**
I am confused. When Clark County favors a bill, what is it you favor? Is it the class felony aspect of the bill? I think that is crazy. When Clark County is in favor of these election bills that are highly partisan, what does the County agree to? I would like to talk to them because a County that represents everyone should be more cautious about saying it supports something without being specific about what exactly it supports.

**Mr. Fudenberg:**
I am not sure if that was a question or a statement. I could put you in contact with Joe Gloria, the Registrar of Voters for Clark County.

**Senator Brower:**
Senator Atkinson raises an interesting issue. On one hand, it would seem harsh to impose felonies which could result in prison time for such violations. I am reminded that in California, an incumbent state senator who was redistricted and lied about his residency was charged under California law and sentenced to prison. This does seem harsh but not unprecedented. We need to sort that out.

**Senator Settelmeyer:**
The sad reality is, we never enforce these laws.

**Mr. Powers:**
As far as the Category E felony, under NRS 193.130, generally, when you are sentenced to a Category E felony, the judge provides for a minimum term of not less than 1 year and a maximum term of not more than 4 years. However, except in serious violent crimes, a Category E felony requires the judge to suspend the sentence and enter a sentence of probation. There is not a jail time sentence with a Category E felony as long as a violent crime is not involved.

**Mr. Frank:**
I support this bill. I had the impression A.B. 461 and A.B. 177 were not in conflict, would deal with the same statute and would be merged in some way to not conflict. Am I right about this?

**Mr. Powers:**
Yes, that is correct. The provisions of these two bills were crafted so if both bills are enacted, they can be fused together in codification without conflict.

**Mr. Frank:**
Thank you. I support both bills.

**Mr. Anderson:**
Assembly Bill 461 is a much narrower bill than A.B. 177. It gives some teeth to the law and may be a deterrent to candidates filing for election in a district where they do not live.

**Chair Farley:**
I will close the hearing on A.B. 461 and open the hearing on A.B. 384.

**ASSEMBLY BILL 384**: Establishes the Nevada Legislature Oral History Program. (BDR 17-1011)

**Assemblywoman Heidi Swank (Assembly District No. 16):**
This bill would establish a Nevada Legislature Oral History Program.

**Assemblywoman Amber Joiner (Assembly District No. 24):**
The purpose of this bill is to formalize in statute the Nevada Legislature Oral History Program, which has been dormant for the last 6 years. I have submitted my written testimony (Exhibit F). We also have a handout with information about the original project that took place in 2008 and 2009 (Exhibit G).

Don Williams, the former research director of the Legislative Counsel Bureau (LCB) who was involved in the last Oral History Program, was unable to be here today but sends his strong support in the form of a letter (Exhibit H).

**Assemblywoman Swank:**
Section 1, subsection 2 specifies that oral histories will be collected and preserved as money is available. Section 1, subsection 3 directs the Research Division of the LCB to submit a plan to the Legislative Commission for approval. This plan should include procedures for conducting and preserving the oral histories and any related materials.

The plan would also include policies, such as the format for submitting externally conducted oral histories. Some Legislators have brought in their own oral histories, and we want to match the formats and standards, both for the oral history and the material.

Policies also deal with the release of oral histories and related materials to the public. This is about Legislators having control over the release of their own information. We would like to see oral histories of current Legislators who are early in their career, not just experienced Legislators. These would be held and kept confidential until the Legislator authorized the release or passed away. The aim of the Program is to not release information the subject would be uncomfortable with. Another policy of concern is to govern the transfer of the oral histories and related materials to the Division of State Library and Archives of the Department of Administration.

Section 1, subsection 4 allows the Director of the Research Division to accept gifts, grants and donations for the Program.

Section 1, subsection 5 states that all oral histories are confidential and must follow the policies for their release developed by the Research Division and approved by the Legislative Commission.

Section 1, subsection 6 says the Research Division may transfer the oral history and related materials to the Division of State Library and Archives of the Department of Administration.

Section 1, subsection 7 lays out additional requirements for the Program. Section 2 of the bill states that this program is exempt from the requirement

that all public books and records of a government entity be made public. This is because we will be collecting the oral histories of current Legislators, and we want to ensure those are kept confidential until ready to be released.

**Senator Brower:**
Before this Session started, I was thinking about what this place must have been like in the 1860s, 1870s and 1880s. I assumed someone had written a book about it, but it does not appear that anyone has. Senators Segerblom and Settelmeyer have probably heard family stories about what it was like, but the rest of us do not get the chance to hear those stories. I support this bill.

**Senator Segerblom:**
Did Mark Twain say something about the Nevada Legislature in his writing? Is there immunity in case Legislators say things they did were illegal, so you cannot come after Legislators until after they die?

**Assemblywoman Swank:**
I would suggest that Legislators not disclose illegal acts.

**Lorne Malkiewich:**
I support A.B. 384. I am the living fossil here, having worked in the 1980s with many of the people who had their oral histories completed. I worked on that project and with many of the Legislators involved. You know you are old when you have worked with the parents of Legislators. I worked with Senator Segerblom's mother, and I worked with Alan Glover from the Office of the Secretary of State when he was Senator Glover. This is a good bill with no fiscal impact.

**Mr. Frank:**
I support the concept of this bill and think it is long overdue. Are all members of both the Assembly and Senate eligible for oral histories? I would hope everyone would qualify because I would like to know more about the new as well as the old members of the Legislature. The histories of all of our people willing to serve the public should be preserved.

**Assemblywoman Joiner:**
In the original Oral History Program, we used several criteria in choosing the first wave of subjects. We did try to choose Legislators who had made large contributions, but we also wanted a variety from rural and urban areas and

different political parties. The vision we have with this bill and this phase of oral histories is that all Legislators would be eligible, and every year the LCB would look at its budget and prioritize them. Some Legislators could contribute their own oral histories and add them to the collection.

**Mr. Frank:**
I would encourage all the new members of the Legislature as well as the experienced members to collect your information as you go along because the public would like to know what you have to say about your service, no matter how long it is. That would be a good thing to do as a matter of discipline.

**Chair Farley:**
I will close the hearing on A.B. 384 open the work session.

**Michael Stewart (Policy Analyst):**
The first bill we are addressing is A.B. 23, an election bill from the Office of the Secretary of State heard on April 29. I have submitted a work session document explaining this bill (Exhibit I).

**ASSEMBLY BILL 23 (1st Reprint)**: Makes various changes to provisions governing elections. (BDR 24-446)

SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 23.

SENATOR BROWER SECONDED THE MOTION.

**Senator Atkinson:**
I think I remember the amendment. Did it come after the passage from the other House?

**Mr. Anderson:**
There was an amendment put in through the Assembly side. We had added "independent" in four different spots, but it should have only gone into two. The amendment on this side is to take those two out.

**Senator Atkinson:**
Thank you. Our legal counsel just showed it to me.

THE MOTION PASSED UNANIMOUSLY.

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**Mr. Stewart:**
The next bill is A.B. 61, sponsored on behalf of the Division of Human Resource Management (DHRM), Department of Administration. It eliminates the requirement that the Personnel Commission and the Administrator of the DHRM submit certain biennial reports to the Governor. I have submitted a work session document (Exhibit J).

**ASSEMBLY BILL 61 (1st Reprint)**: Revises provisions requiring the submission of certain reports by the Personnel Commission and the Administrator of the Division of Human Resource Management of the Department of Administration. (BDR 23-286)

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 61.

SENATOR BROWER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Mr. Stewart:**
The next bill is A.B. 63 on behalf of the Office of the Attorney General.

**ASSEMBLY BILL 63**: Clarifies that certain candidates who are elected despite ending their campaigns must file with the Secretary of State certain campaign finance reports. (BDR 24-436)

The bill clarifies that if a candidate for elective office ends a campaign without officially withdrawing his or her candidacy and is elected to office, the candidate must resume filing campaign contribution and expenditure reports starting with the next report due after that election to office. I have submitted a work session document (Exhibit K).

SENATOR ATKINSON MOVED TO DO PASS A.B. 63.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Mr. Stewart:**
The next bill is A.J.R. 4, the daylight savings bill from Assemblyman Chris Edwards. I have submitted a work session document (Exhibit L).

**ASSEMBLY JOINT RESOLUTION 4**: Urges Congress to enact legislation allowing states to establish daylight saving time as the standard time throughout the calendar year. (BDR R-583)

Remainder of page intentionally left blank; signature page to follow.

**Chair Farley:**
Can I entertain a motion to do pass? Seeing no one wanting to make a motion on this bill, I will pull it back. Seeing no one wanting to make public comment, I will close this hearing at 5:32 p.m. and adjourn the meeting.

RESPECTFULLY SUBMITTED:

_____
Linda Hiller,
Committee Secretary

APPROVED BY:

_____
Senator Patricia Farley, Chair

DATE:_____

| EXHIBIT SUMMARY | | | | |
|---|---|---|---|---|
| **Bill** | **Exhibit / # of pages** | | **Witness / Entity** | **Description** |
| | A | 2 | | Agenda |
| | B | 4 | | Attendance Roster |
| A.B. 24 | C | 1 | James Smack / Office of the State Controller | Written Testimony |
| A.B. 177 | D | 3 | Assemblywoman Victoria Seaman | Written Testimony |
| A.B. 461 | E | 3 | Scott Anderson / Office of the Secretary of State | Written Testimony |
| A.B. 384 | F | 2 | Assemblywoman Amber Joiner | Written Testimony |
| A.B. 384 | G | 3 | Assemblywoman Amber Joiner | Nevada Legislature Oral History Project |
| A.B. 384 | H | 1 | Don Williams | Letter of Support |
| A.B. 23 | I | 3 | Michael Stewart | Work Session Document |
| A.B. 61 | J | 1 | Michael Stewart | Work Session Document |
| A.B. 63 | K | 1 | Michael Stewart | Work Session Document |
| A.J.R. 4 | L | 1 | Michael Stewart | Work Session Document |