

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

**Seventy-Ninth Session
February 23, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:38 p.m. on Thursday, February 23, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42



STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Chaaron Pearson, Officer, State Fiscal Health and Economic Growth,
The Pew Charitable Trusts, Washington, D.C.
Steve Hill, Executive Director, Office of Economic Development, Office
of the Governor
Dagny Stapleton, Deputy Director, Nevada Association of Counties
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro
Chamber of Commerce
Patti Jesinoski, Private Citizen, Henderson, Nevada
Barbara K. Cegavski, Secretary of State, Office of the Secretary of State
Wayne Thorley, Deputy Secretary of State for Elections, Office of the
Secretary of State
Janine Hansen, representing Independent American Party
Joe P. Gloria, Registrar of Voters, Election Department, Clark County

Chairwoman Diaz:

[Roll was taken. Committee protocol and rules were explained.] I will open the hearing on Assembly Bill 143 and invite Assemblywoman Bustamante Adams and any other guests to the table.

Assembly Bill 143: Creates a Legislative Committee on Tax Expenditures and Incentives for Economic Development. (BDR 17-807)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

As the Chairwoman mentioned, I am here today to introduce Assembly Bill 143, which proposes to create a new interim committee to review tax expenditures and economic development incentives. Joining me at the table today is Russell Guindon, Principal Deputy Fiscal Analyst from the Fiscal Analysis Division of the Legislative Counsel Bureau (LCB), who is here to help answer technical questions about the tax report if you have any. Also, traveling from Washington, D.C., is Chaaron Pearson, Project Manager from The Pew Charitable Trust.

This legislation that I am bringing forth has been done in several other states, so it is a national model. Different states set it up differently, but reviewing and understanding how the money is going out is an evaluation tool that several states are using.

The question is, What problems are we trying to solve and why is it good for Nevada? As a freshman legislator, I had the privilege of watching Assemblywoman Marilyn Kirkpatrick introduce Assembly Bill 1 of the 76th Session, which required a report by the Department of Taxation ([Exhibit C](#)) on every tax expenditure: how much was going out, how many people were using it, et cetera. Now, instead of printing it out, it is on the Nevada Electronic Legislative Information System (NELIS), and you can see how thick the document is. The new report that just came out counted 256 tax expenditures, amounting to over \$43.5 million over the biennium. In 2003, during my sophomore term, it was the first time we got to see the report after the bill passed and was put into law. I remember having loads of questions. I wanted to go through every single page, but the time within the committee did not allow us to do that. We only had a three-hour window, so I felt very frustrated. I thought we should take a deeper dive into looking at each expenditure and how much was going out.

I looked at the model that we currently have in the Sunset Subcommittee, and that committee reviews all boards and commissions. We were able to do that at an interim level and take a deeper dive to examine what they are doing, look at the audit reports, and look at any complaints. I used that to develop this bill to create a new interim committee to do a comprehensive review of all expenditures.

I will take the bill section by section. I also brought the very thick tax expenditure report I just mentioned ([Exhibit C](#)), and a tax incentives report ([Exhibit D](#)) with me. Sections 2 through 4 outline the definitions, but section 5 is where the meat starts. It determines the membership, which consists of six members, three from the Assembly and three from the Senate. It also states that the Speaker of the Assembly and the Senate Majority Leader will each appoint two people from their house, and then the Assembly and Senate Minority Leaders appoint one member from each of their houses. Preference goes to people who serve on taxation or money committees, because that is where they usually hear these bills. Section 5, subsection 2, describes the process to select the Chair and the Vice Chair.

Section 6 talks about the number of meetings the Committee will have and the reports that they will take into consideration.

Section 7 says that the Committee will function like other interim committees that we currently have. It describes its powers and deadlines, what the start and end dates are, and what a quorum is. The fiscal impact will be less than \$5,000 per year.

Sections 7 and 8 also identify what the members review during their time together: what is the purpose or intent of the expenditure, and who benefits from the expenditure. They should also take into consideration what the incentive is trying to accomplish, and if there are other expenditures that are doing the same thing. We need more data to make an appropriate evaluation. What is the administrative cost or credit of the incentive? What is the fiscal impact of the revenue that is going out of the state since we give up that credit, incentive, or abatement? Is there a better way to accomplish what we are trying to achieve? After completing the review of a specific tax expenditure selected for consideration and the periodic review of the economic development incentive, the Committee will have to decide on any recommendations for legislation.

The Committee has several actions. The incentive could be going extremely well for our state, and they could do nothing but give the green light to continue. It could recommend elimination for ineffectiveness or due to an out-of-date statute. If you will notice in the report, some of the incentives date back several decades. You will notice that because it has the year in which it was enacted. They could also modify the expenditure to bring it back to the intent. They might realize from the data that it needs to be modified, and they will have the ability to make that recommendation.

As noted in the bill, the Committee would rely on the Department of Taxation, the Governor's Office of Economic Development (GOED), LCB staff, and outside consultants as needed to gather and present the information to the Committee.

Finally, the bill requires a report be submitted to the Legislature each session, and for the Committee to present its report to the taxation committees. The reporting to the taxation committees achieves a very critical goal of ensuring that the work of the interim committee helps inform decision making during the session.

Before I conclude, there are two changes that I would like to have this Committee consider. The first one is from GOED. It is in section 8, subsection 8, and I would like it to read, "Make recommendations to the Legislature concerning the addition, elimination, or modification of tax expenditures." This is a tool, and I have a high respect for GOED and the Executive Director, Steve Hill, who leads it. I go to almost every GOED committee meeting because I am a fan of what they are trying to do, and I know that they need to monitor how the abatements are working. I appreciate his suggestion on bringing that forth.

There is also an amendment from the Nevada Association of Counties (NACO) ([Exhibit E](#)) that clarifies that local government should be included in the review. I agree with that because it does have a local impact.

That concludes my testimony, but if you have specific questions about the report, Mr. Guindon is here to answer them. Ms. Pearson is here to give you a national perspective of what other states are doing in order to make sure they know where the money is going and how it affects the state.

Chaaron Pearson, Officer, State Fiscal Health and Economic Growth, The Pew Charitable Trusts, Washington, D.C.:

Pew is a public charity that provides research and technical assistance to governments at the local, state, and federal levels.

My project helps states make evidence-based reforms to their economic development tax incentives. To do that, Pew's research shows that one of the most important steps is to set up a process for regular evaluation, which is precisely what this legislation would do.

Lawmakers across the country are looking for ways to create jobs, raise wages, and help the local economy thrive over the long term. Incentives are one of the primary tools that states use to try to achieve each of those goals. Incentives also collectively cost governments many billions of dollars.

Regular, rigorous evaluation is a proven way to ensure that tax incentives and other tax expenditures are serving the needs of your budget, economy, and taxpayers. Evaluations have provided reliable information on the economic impact of incentives, including the extent to which they are successfully influencing business behavior. These studies have also uncovered flaws in the design or administration of incentives and have recommended improvements.

But the important data that evaluations provide has not always been available. In fact, until recently, lawmakers across the country often lacked any high-quality information on the results of incentives. In many states, incentives have been evaluated inconsistently or superficially, if they have been studied at all. In Nevada, various agencies such as the GOED and the Department of Taxation provide valuable data on incentives, but these reports are not focused on measuring the effectiveness of the programs and identifying improvements.

Across the country, more and more lawmakers are concluding that they need better information to help make informed decisions. Since the start of 2012, more than 20 states have enacted laws either requiring evaluation of tax incentives or improving existing evaluation requirements. In almost every case, evaluation legislation received strong bipartisan support. These bills have also brought together supporters and skeptics alike of incentives who agree on the need for better information.

This bill creates a new panel, the Legislative Committee on Tax Expenditures and Incentives for Economic Development, to lead the evaluation process. This is a proven approach. Six years ago, Oregon created the Joint Committee on Tax Credits, a panel much like the one envisioned by this legislation. Earlier this month, Oregon reported that the state was saving hundreds of millions of dollars as a result of the work of that committee. Those savings did not come about primarily by eliminating tax credits; instead, Oregon has worked to reform incentives, so that they cost less and provide a greater return on the state's investment.

Similarly, North Dakota tasked an interim committee with evaluating incentives starting in 2015. In the first round of evaluations, the committee found that some incentives were working well, allowing lawmakers to invest in those programs with confidence. The panel also uncovered what lawmakers see as a potentially serious flaw in the state's Angel Fund Investment Tax Credit. Program rules have allowed angel funds to invest in out-of-state companies, many of which have no economic impact in North Dakota. Now, lawmakers are considering how to reform the program.

The legislation before you follows the North Dakota model of having an interim committee lead evaluations. That approach makes sense in states like Nevada, where the Legislature only meets biennially, allowing for thorough interim studies.

The bill also reflects national best practices by authorizing the new committee to contract with private consultants or academic institutions to formally evaluate incentives. By tasking skilled professionals such as economists or tax policy experts with studying tax incentive programs in detail, states can determine how well their incentives are performing. Several states, including Oklahoma, Mississippi, and Tennessee, have had success contracting with private sector consultants or academic institutions.

For example, Oklahoma hired a private consulting firm with two former state budget directors on its staff to conduct its 2016 evaluations. This approach resulted in detailed evaluation with thoughtful discussions of each incentive that laid out clear, well-supported policy options. These evaluations are helping to inform legislative action in Oklahoma. This session, lawmakers are considering more than a dozen bills to implement recommendations from the evaluations.

Finally, most evaluation laws require all major tax incentives to be studied on a rotating multi-year cycle with different groups of incentives reviewed each year. That way, both legislators and expert evaluators can study a subset of incentives in detail each year. This bill follows that proven approach. It establishes evaluation of economic development incentives on a six-year cycle, while also providing the new committee with the flexibility to study other tax expenditures of interest as well.

Pew's research of all 50 states leads us to believe that, through this approach, lawmakers will receive regular information to help them determine which incentives are working, which are not, and how to make improvements. As a result, they are able to design policies that get better results for Nevada's state budget, businesses, and workers.

Assemblyman Hansen:

Does this committee also study external consequences? We have a situation where we have abatements and various things for Tesla in Storey County, but the bulk of the people who will be working there may very well end up residing in Washoe County. There are some issues where you have all the costs being picked up by Washoe County, but all the money stays in Storey County. Does it deal with anything like that?

Assemblywoman Bustamante Adams:

The simple answer is yes. The Committee would have the opportunity to hear all of the factors that would have an impact on the incentive that we do not have time to hear during a regular committee hearing.

Assemblyman Hansen:

When you say incentive, does that also include abatements? It does not say abatements, but I assume it is the same thing.

Assemblywoman Bustamante Adams:

Yes. What "tax incentives" includes is actually in statute. That could be credits, abatements, et cetera. I will ask Mr. Guindon to expand on that.

**Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division,
Legislative Counsel Bureau:**

The proposal is tied to the definition of a tax expenditure that is in *Nevada Revised Statutes* (NRS) Chapter 360 and was approved in the tax expenditure bill that Assemblywoman Kirkpatrick had passed. That includes tax deductions, abatements, credits, deferrals, exemptions, exclusions, subtractions, and preferential tax rates. It is not limited to that, however.

Assemblyman Daly:

I understand because I served on the Sunset Subcommittee, and some of these things need to be looked at. When they came in and asked for them—and I will use the sales tax anticipated revenue (STAR) bonds as an example—they said this is all of the expectations and benefits that we are going to get, and gave us all of these wonderful projections that did not turn out that way. Then we had to go back and amend and tighten it up by saying they would have to prove some of it. Finding some of those things so we can best identify what works and what does not is a useful exercise. Regarding section 8, subsection 2 where the State can enter into contracts, I agree there is some technical stuff that the committee would want someone to do a study on. Some of those cost several hundreds of thousands of dollars. I know there is a part where you can go for grants and gifts, but it would have to be a very substantial gift. Do you have any idea how you might accomplish that?

Assemblywoman Bustamante Adams:

The answer is we left that so the committee could have some flexibility. We did put it in the budget, so it does have a fiscal note attached to it for how much the committee would cost. With the use of the dollars, we would be able to do the examination. We included that mechanism for flexibility. They could partner with an academic institution that could take it under its wing to review it, so we put in the language to be able to accept grants and gifts. There are several other entities, other nonprofits, that are interested in giving a donation, so we can be sure we can cover our costs. I will have Mr. Guindon talk about the fiscal note and how we estimated that.

Assemblyman Daly:

I can talk with Mr. Guindon about the fiscal note. I did not see one on the computer. I do have a concern about that because those can be expensive. There is a section where you can write for grants. I assume you would need to have a grant writer, and that there is an office for that which would work with the committee to write grants. Do you think we can get all of that done? If we are there, the committee could probably do some good work.

In section 9, you exempt the committee and the report that you are going to give from the five-year review, which was in Senate Bill 405 of the 77th Session, which we both voted for. I wonder why you want to exempt the report for the five-year review.

Assemblywoman Bustamante Adams:

Are you referring to section 9 of the bill on NRS Chapter 218D?

Assemblyman Daly:

Yes. That is in section 9. What that requires is a five-year review. After five years you put in a report that no one reads, so they say after five years you have to review the report to see if anyone is reading it, and then you exempt yourself from it.

Kevin Powers, Committee Counsel, Legislative Counsel Bureau:

The statute that Assemblyman Daly is referring to is NRS 218D.380. It deals specifically with requirements in the law for continuing reports that extend over time. Because this is an interim committee, its report will be submitted only once. There will not be another report submitted, so it will not require review of the report every five years. The purpose of this is to ensure that the continuing report requirement is necessary in the law, so it requires the continuing statute to be reviewed every five years to determine whether it is something the Legislature wants to continue receiving.

Assemblyman Daly:

It may or may not apply, but we have excluded it because we do not want it.

Kevin Powers:

The report is only going to come once since it is an interim committee. Interim committees only exist for the interim period, so they will do one report, then the committee will have to move on from there.

Assemblyman Hansen:

Is there any duplication or overlap in this bill with existing and similar functions? I understand that GOED has its own internal audit of some sort. Can you elaborate on that? Are there any other types of committees or organizations, perhaps in the Executive Branch, that are also doing an audit function similar to this?

Assemblywoman Bustamante Adams:

In GOED, when I attend the meetings, they do have an audit function for the things that they oversee, but as Mr. Guindon referenced earlier, the expansion of the words "tax expenditure" covers a lot of things. For example, back in 1965 if you were legally blind, we gave you a credit. That would not be something that GOED would review. It would not come across their purview. It is expansive and not just limited to economic development. They do their own internal reviews, and they do have an audit function.

Regarding your question on the Executive Branch, they do reviews of agencies. There is a sunset committee that reviews boards and commissions, but I am not aware of that doing a deep dive on tax expenditures.

Assemblyman Hansen:

We have discussed the idea of extending the reports that are being turned in by Tesla, et cetera. Is there anything in this bill—you mentioned a possible amendment—where that function and one of my bills might be incorporated into this bill so it has a higher shot of passing?

Assemblywoman Bustamante Adams:

I would say no. We are having a conversation about that. I agree that Tesla and other things that have that high of an impact on our state should be continually reviewed. I think it is open to that conversation because their effect on our state is going to be long-term. We might have been a little shortsighted when we cut the audits and reviews off in such a short time. I support the fact that we should continue to review those.

Assemblyman Hansen:

Excellent, we are on the same page.

Chairwoman Diaz:

I will encourage Assemblyman Hansen to have this conversation offline to see if you are open to any amendment language. I think the intent is to further educate us, the legislators, about how we are trying to diversify our economy and bring more exciting, innovative projects into the state. Also, to educate us through the interim and what we can do alongside of GOED. I see this as a benefit to both GOED and the Legislature to come together and talk about it and see what we can do to continue attracting more exciting projects to our state.

Assemblywoman Bustamante Adams:

That is exactly what we are going for. That is why I appreciate Mr. Steve Hill talking about adding the word "addition" to section 8. It is not a penalizing mechanism. It is just a better tool to evaluate what is going out and does it still work for us. We do not have a sunset on some of these things that we incorporate, so if you do not go back and examine it, we may not be doing the best for Nevada or being fiscally responsible and accountable for the money that goes out of our state.

Chairwoman Diaz:

I see no further questions. I will now open it up for those who are here in support of Assembly Bill 143.

Steve Hill, Executive Director, Office of Economic Development, Office of the Governor:

I need to make sure that everybody understands that I am confining my support for this bill to the interaction between the Governor's Office of Economic Development and the proposed policy in the bill. We are in support of this measure.

Most of you who have been here for multiple sessions realize that very often the interaction that we have at GOED and the Legislature is pretty much confined to one hearing and one meeting every two years. It is not a system that is easily set up for members of the Legislature to understand what we do and why we do it. The policy that is in this bill will allow a group of legislators to more deeply understand and be able to weigh in and represent the Legislature more thoroughly in developing the policies that our office implements. The added benefit of that is that it will engender more trust in the system, and we think that is important. We are in favor of the bill and would like to thank the sponsor for including the one change that we recommended.

Dagny Stapleton, Deputy Director, Nevada Association of Counties:

We are in support of this bill. As Assemblywoman Bustamante Adams mentioned, we have a proposed amendment ([Exhibit E](#)). The Nevada Association of Counties' (NACO) position on tax incentives is that, as many of these incentives include the abatement of county tax dollars—including sales, use, and property taxes—counties would like to make sure that consideration is given to how these abatements affect them. A substantial portion of tax abatements granted in Nevada are of county revenues.

Counties support the additional analysis and overview of existing incentives, including the effectiveness, cost, and impact of these incentives that A.B. 143 would create. We asked the sponsor if her bill could include analysis of how these incentives impact local government, and we are thankful to her for working with us and being agreeable to adding the language that we have suggested.

Our amendment specifically proposes to add language to the list of tasks that the Committee on Tax Expenditures and Incentives is asked to complete. Section 7, subsection 4, basically says for each economic development incentive reviewed by the Committee, the Committee shall examine and comment on it. We propose to add, "The impact of the incentive on local government revenues and services." Further down, under what will become section 7, subsection 4, paragraph (f), subparagraph (2), it talks about the impact of the incentive on the state and we would like to add "and local economies."

In section 8, subsection 1, paragraph (g), where possible additional duties of the Committee are outlined, the bill says that the Committee may evaluate, review, and comment on the cost of a tax expenditure, including lost revenue. We propose to add "from both the State as well as local government."

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:

We support the bill as well and would like to thank NACO for bringing forth the amendment that includes the impact on local governments. As you are aware, a lot of the taxes that are abated are the taxes that would normally go to local governments, so we think it makes perfect sense to study the impact on those to make sure we are getting the most out of the incentives that we give away.

Chairwoman Diaz:

Is there anyone else in support of A.B. 143?

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Chamber would like to offer its support to this bill. As you have heard, this is a recommended policy from The Pew Charitable Trusts in Washington, D.C. From the business perspective, we think it is important to have a better tool available to the legislative body to have additional opportunities to understand the impact that this has, to identify the strengths of the program, and perhaps to identify potential areas of improvement. Therefore, the Chamber would like to offer its support.

Chairwoman Diaz:

Is there anyone else in Carson City in support? [There was no one.] Is there anyone in Las Vegas? I am making sure I do not miss anyone who did not sign in. [There was no one.] We will move to opposition in Carson City or Las Vegas. I do not see anyone. Is there anyone wishing to testify in the neutral position in Carson City or Las Vegas?

Patti Jesinoski, Private Citizen, Henderson, Nevada:

I am looking at the bill and the effect that these incentives will have on the individuals and small businesses. In this legislative session, we are looking at real estate tax increases, increasing the cost of individual license plates and commercial plates, business inventory tax increase, the gross million-dollar sales tax to go down to capture the \$500,000 cap for small businesses, the decrease in property value taxes due to high-population buildings going in next to homes, the decrease in property tax of 10,000-gallon fuel tanks that have gone in next to our home in Henderson, and the increase in the cost of living for individuals and small businesses that seems to be for the benefit of larger corporations. I wonder if it is the continued intent of the State to tax the individuals for the benefit of larger corporations to get these incentives and abatements.

Chairwoman Diaz:

I believe the intent of the Assemblywoman is to make sure that we revisit these abatements and credits that are given to the corporations to see if the yield and the benefit that we expect are actually occurring. Through this interim study and in-depth analysis, it will be evident if we need to continue doing it. I appreciate your insight.

I will close the hearing on Assembly Bill 143.

With that, we will welcome our Secretary of State in Las Vegas and open the hearing on Assembly Bill 21. This proposal is from the Office of the Secretary of State.

Assembly Bill 21: Makes various changes relating to elections. (BDR 24-2)

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

In the audience in Carson City is my Chief of Staff Scott Anderson and Wayne Thorley, the Deputy for Elections. I would like to turn this over to Wayne to go over the provisions of Assembly Bill 21.

Wayne Thorley, Deputy Secretary of State for Elections, Office of the Secretary of State:

Very simply, Assembly Bill 21 addresses an issue that seems to occur each election cycle, and that is whether candidates live where they say they live and whether they are eligible for the offices they are seeking based on residency. We are hopeful that this bill will provide some clarification on the residency requirements and hold candidates accountable who violate the residency requirement. The bill also contains a small section on campaign finance.

For the purpose of determining eligibility for office, existing law defines "actual residence" as the place where a candidate is legally domiciled and maintains a permanent habitation. When a candidate maintains more than one place of permanent habitation, existing law states that the place designated by the candidate as his or her principal, permanent habitation is deemed to be the candidate's actual residence. The Nevada Supreme Court has held that the place designated by the candidate as his or her principal, permanent habitation must be the place where the candidate actually resides and is legally domiciled in order for the candidate to be eligible for the office. Assembly Bill 21 amends the statutory definition of "actual residence" to reflect the Supreme Court's holding.

Assembly Bill 21 requires candidates for office to present two types of identification and documentation as proof of the candidate's identity and residency. One type of acceptable identification would be a card issued by a governmental entity that contains a photograph of the candidate and the candidate's residential address; and the other type of acceptable identification required would be a current utility bill, bank statement, paycheck, or document issued by a governmental entity that contains the candidate's name and residential address. Current law requires only one type of documentation be provided as proof of identity and residency when filing for office.

Current law states that a person who knowingly and willfully files a Declaration of Candidacy that contains a false statement is guilty of a gross misdemeanor. This bill does not change that penalty, but it clarifies the statutory language regarding the penalty. Assembly Bill 21 also adds new language to the Declaration of Candidacy form and the Declaration of Residency form in order to more clearly inform candidates of the gross misdemeanor penalty and the other provisions of this bill.

Sections 5 and 7 of the bill give people two additional days in which to file a written challenge of candidacy pursuant to *Nevada Revised Statutes* (NRS) 293.182 and NRS 293C.186. The current deadline for filing a written challenge is five days after the close of the candidate filing period. The change to the language to five working days, in practice, extends the deadline by two days.

Assembly Bill 21 provides that, if during a preelection challenge the court finds a candidate failed to meet any qualification required for office, the candidate is disqualified from taking office, and the court may order the candidate to pay the attorney's fees and costs of the party who brought the action.

Last, Assembly Bill 21 deals with two campaign finance issues. First, the bill requires that a candidate's campaign bank account be in a financial institution located in Nevada. It has come to our attention that this provision may be in violation of the interstate commerce clause, so we would like to propose a simple amendment that the change be to "a financial institution located in the United States."

Second, the bill requires political action committees and other political committees that receive contributions to open a separate account, so they are not commingled with other funds the organization may bring in. The bill gives candidates and committees until June 30, 2018, to comply with these campaign finance provisions.

I would like to also mention one other conceptual amendment in section 2 of the bill. Right now, NRS 293.1755 says that no person may be a candidate for office "unless", and then goes on to discuss the residency requirements. *The Constitution of the United States of America* sets the candidacy requirements for federal office for both the U.S. House of Representatives and the U.S. Senate. In the *Constitution*, the requirement is that the candidate be a resident of the state on the day of election. The 30-day requirement preceding the close of filing does not apply to federal office. That has been established by the *Constitution*. The Ninth Circuit Court of Appeals has established that, and the Attorney General issued an opinion back in 2002 that came to the same conclusion. We would like to see an amendment added that clarifies page 3, line 28. Where it says "a candidate for any office," it should say instead "a candidate for any office excluding federal offices."

In conclusion, we believe that Assembly Bill 21 is a simple solution to a problem affecting the integrity of Nevada's election process. Thank you for the opportunity to present this bill.

Assemblyman Oscarson:

I think these are badly needed changes in the process and the policy. I appreciate your bringing it forward after having seen some of the past election dilemmas that the Office of the Secretary of State and the courts have dealt with.

Assemblyman Elliot T. Anderson:

In section 1, can you help me with the definition of "preelection action" and exactly when that time period occurs. I assume from the Declaration of Candidacy during filing, but when does your office consider that the election has started?

Wayne Thorley:

Mr. Powers might be able to more clearly define exactly what that means. Our Office believes that the preelection challenge period goes from the end of the candidate filing period to any time before the actual election occurs. There are a number of preelection challenges specifically identified in law. One of them is a written challenge that any elector can bring within five days after the close of the candidate filing period. That requires that the Secretary of State or the county clerk, depending on who the filing officer is, review the information and forward that on to the appropriate prosecutor, whether it be the Office of the Attorney General or the local district attorney's office, to follow up. Of course, there are declaratory and injunctive relief and other actions that can be brought forth by private citizens related to a person's qualification to hold office.

Assemblyman Elliot T. Anderson:

I am concerned about the section on attorney's fees and the district attorney or city attorney being awarded attorney's fees—section 1, subsection 1, paragraph (b)—since they do not bill their hours. I have no idea how you could determine what reasonable attorney's fees would be. Also, I want to ensure that it is clear how that can be paid. Can it be paid for by a campaign account? Are you anticipating that they pay that way? It is not clear. Or is that a personal sanction?

Wayne Thorley:

There are existing statutes that prohibit candidates from paying penalties and fees from their campaign account. It would be our belief that any fees or other costs that are awarded would have to be paid out of an account other than the candidate's campaign account.

Assemblyman Elliot T. Anderson:

What about the part about governmental entities billing hours? How is that going to be determined?

Wayne Thorley:

I do not have an answer for that right now. It is something that we will certainly look into. We are willing to work with you to come to an agreeable resolution.

Assemblyman Daly:

The time to file an objection goes all the way up to election day. As you know, there is a deadline when you cannot get your name taken off the ballot, so you will appear on the ballot anyway. We had issues with signs being put up that said the person does not live here. We have had cases where that person actually won. The question would be, How would that conflict with the disqualification that is in this bill and conflict with the constitutional authority of the Assembly and the Senate to judge the qualifications of the members?

Kevin Powers, Committee Counsel, Legislative Counsel Bureau:

Before we get into the members of the Assembly and the Senate and legislative candidates, let us talk about everyone else who runs for office. As the statutes are set up now, if a court in a preelection challenge finds that a nonlegislative candidate does not meet the qualifications for the office and the time for changing the ballots has passed, that candidate's name remains on the ballot. If they receive the most number of votes at the election, that creates a vacancy in the office, and then the laws governing vacancies are used to fill that nonlegislative office. Regarding legislative candidates, Article 4, section 6 of the *Constitution of the State of Nevada* provides that each house will be the judge of the qualifications, elections, and returns of its members. That is an exclusive constitutional power that other branches of the government cannot interfere with.

What the Nevada Supreme Court and other courts have found is that the dividing line is generally the general election. If someone brings a preelection challenge against a legislative candidate and the court enters the final judgment—including an appeal—before the general election, that is a binding judgment, and that candidate is disqualified from taking office. However, if a final court judgment has not been entered before the general election, the jurisdiction to judge the qualifications goes to each house, and each house applies the law and determines whether the candidate was qualified for office and whether to seat that person as a member of the Legislature.

What I would recommend in this legislation is that those constitutional provisions clearly apply and would take precedence over these statutes. It would be advisable for the Committee to amend some of these provisions of the bill to address that constitutional issue. We have done that in the past, particularly NRS 283.040, which deals with the residency qualifications of incumbents. That section of the law has a specific provision that says it does not apply to the extent that it conflicts or is otherwise inconsistent with any provision of the *Nevada Constitution* regarding the power to judge the qualifications, elections, and returns of the members of the Legislature. That is something that could help in interpreting the statute to make clear that, with legislative candidates, the process is slightly different than with all other candidates.

Assemblyman Daly:

That is the way I understood it. In section 1, some of the language about potentially being disqualified, et cetera, needs some clarification. I know the City of Reno has a charter change, and they are going to ward-only voting. It will not go into effect until 2024 because they have to let the people finish out their terms, and then they will redraw the wards. Someone may be outside of their ward but could continue in their office. Is there going to be a conflict with that in this statute? I do not want someone putting in a challenge that you no longer live in the ward. This is something we should try to anticipate.

Kevin Powers:

Is that pending legislation or active legislation?

Assemblyman Daly:

Pending legislation.

Kevin Powers:

We would need to review the bill. Typically, when there are bills changing districts, whether it is legislative or local government districts, there are transitory provisions at the end of the bill making clear that the effect of the change in districts does not disturb existing terms of office. That would have to be addressed in that particular bill.

Assemblyman Daly:

That is addressed in that particular bill, but would you need the same transitory language in this bill to also say that it does not affect anyone who might be caught up while we are making the change? That is my concern. That language is proposed in the legislation.

Kevin Powers:

What the transitory language in the bill will do is ensure that the person who is in the existing office in the existing ward would remain qualified for that office until the end of his term. He would not lack the qualifications of the office under state law and would, therefore, not fall within this provision.

Assemblyman Hansen:

Assemblyman Daly asked the main thing about the interesting dilemma that we had. There was an individual who was officially disqualified by the court. The court had posters at the polling places saying that this individual did not qualify and voters should not vote for him, but he won the election and came to our body. He was duly elected by the people even though they knew that the court had said that he was not to be elected. Our body then had the exclusive jurisdiction of determining the outcome of the election. This is an interesting constitutional dilemma because, by this statute, by court order he could not serve as a legislator even though he had been duly elected. We, as a body, had a secondary obligation to either ignore the will of the people who duly elected him in spite of not being qualified, or let him serve. There are all of these odd checks and balances that come into play, so even if this were passed, in that scenario, it would ultimately come back to us. We have the constitutional authority to basically override this bill and the court because he served a full

term, even though the court said he was not qualified. It seems that we ultimately have the authority on these elections irrespective of whatever the statutes are.

Kevin Powers:

The dilemma that you bring up has been addressed by the courts. They said it is incumbent on the challenger to bring the challenge as soon as possible. They can then take advantage of the provisions of the law that require the name of the candidate to be removed from the ballot. You will not have the problem of the candidate being elected if his name is not on the ballot. If the challenger acts dilatorily and does not move quickly with the court action, then you are right. The jurisdiction will transfer itself to this house, and the house will make the determination. The resolution is on the challenger.

Assemblyman Ohrenschall:

I understand there might be an amendment coming on section 9 due to the constitutional question. What problem is solved by the requirement that the bank be located in the state? What is the genesis of that section?

Wayne Thorley:

We are seeking to address our ability to subpoena records when we do investigations to ensure we have the ability to access those records and complete the investigation. As you mentioned, we are aware of potential constitutional problems with adding "located in this state" to that statute. We are proposing an amendment to change that to "located in the United States." We will still have the ability to subpoena records as needed, and the campaign funds will not be kept in a financial institution outside of the United States.

Assemblyman Elliot T. Anderson:

Section 10, subsection 5—which is on page 16 of the bill—proposes to change the definition of "actual residence." It seems a bit circular. "Actual residence" means the place of permanent habitation where a person actually resides. Since this is so circular, I thought clarification would benefit the Committee and the record in case it is litigated. I think it behooves us to have your office's take on what you think that means.

Wayne Thorley:

The wording of section 10, subsection 5, came from a 2002 or 2004 Supreme Court holding on what the definition of "actual residence" means. I see your point that it could be considered circular: your actual residence is where your actual residence is. For our office's interpretation, what we are getting at is that the actual residence is where the candidate permanently maintains a habitation and is legally domiciled. Where this issue generally comes up, which is rare, is when the person has one residence that he lives in, but also has multiple residences that he maintains in the state, such as rental properties, et cetera. He may also split his time between residences. That is when this definition comes into play in determining the candidate's actual residence.

Chairwoman Diaz:

While we are in this section, it has come to my attention that section 10 might not be in alignment with the *Nevada Constitution*. I would like our legal counsel to speak to that.

Kevin Powers:

It would be wise for the legislators to add a reference to Article 4, section 6 of the *Constitution of the State of Nevada* to this section, so that it is clear to the reader that the statute has to be read consistent with that constitutional provision.

To follow up on the actual residency definition, as the person testifying has mentioned, the goal is to codify the definition that the Nevada Supreme Court provided us in the cases that are cited in the digest: *Williams v. Clark County District Attorney*, 118 Nev. (2002) and *Chachas v. Miller*, 120 Nev. (2004). The definition provides that "actual residence" means the place of permanent habitation and has to meet two elements: to be an actual residence and to be a legal domicile. What the courts have said is that a person can have more than one actual residence but only one legal domicile. The courts have indicated that "legal domicile" is your legal place of residence, where you reside most of the time, and has all of the incidents of residence; for example, the address on your driver's license, where most of your mail goes, and where you spend most of your time. One of the cases, the *Williams* case, was where the person's cat was. Those are indications of legal domiciles. Even if you have more than one actual residence, for the purpose of your candidacy, your actual residence is also your legal domicile. The goal is to codify that definition into law, so the case laws are consistent with the statutory language.

Assemblyman Elliot T. Anderson:

That now makes more sense to me.

Assemblyman Daly:

I do not understand why district attorneys are excluded in section 2, subsection 3 of the existing law.

Wayne Thorley:

There is a requirement in statute that district attorneys be licensed attorneys in this state. However, there are many rural communities that do not have licensed attorneys who are eligible candidates for district attorney, so we have district attorneys who represent districts where they do not reside.

Assemblyman Daly:

In section 5, subsection 1, we eliminate the word "court" and do that throughout the bill. It says "attorney's fees and," then it says "costs of." What other types of costs are we potentially putting someone on the hook for? Work time? I think it opens it up too far. I do not know if you have considered that. If I were a devious person and looking to cause trouble, I could add a bunch of other things to my costs that they would be on the hook for if I prevail. We need to rethink that.

Kevin Powers:

The goal is to create consistency in the use of terminology and how it is used throughout the statutes. The term "costs" in the statutes is defined in NRS 18.005. When that term is used in connection with attorneys' fees, you will see that it says attorney's fees and costs, and it refers back to the definition in NRS 18.005. Throughout this bill, anywhere it says "attorney's fees," we remove "court" costs because the term is actually "costs."

Assemblyman Daly:

My question goes back to section 10. I understand what you are saying, but we can come up with a better definition. We can put some of the actual court language in to say what it means in statute to make it clearer. People will understand what they are reading without needing to go to a court case. I agree that you cannot have two legal domiciles, but we do not define it in statute where it should be.

Kevin Powers:

We can address Assemblyman Daly's concerns. Oftentimes, there are terms used in statute that have meaning in case law, and we do not want to disturb that meaning. We can add a nonexclusive list of factors used to determine legal domicile. We can look to the existing case law for some of those factors, but not make it exhaustive. We do not know what other possible factors could arise in future case-by-case adjudication of the courts. There is no way to anticipate all possible contingencies when dealing with terms like "legal domicile."

Chairwoman Diaz:

Please try to connect offline to amenably resolve the terms of the language.

Section 2, subsection 2, says, "Any person who knowingly and willfully files a declaration of candidacy or acceptance of candidacy which contains a false statement regarding the person's residency in violation of this section is guilty of a gross misdemeanor." Why a gross misdemeanor versus a hefty fine?

Wayne Thorley:

The gross misdemeanor penalty for knowingly and willfully filing a declaration of candidacy that contains a false statement is already in statute. This bill does not seek to change that whatsoever. It provides clarification of that penalty and adds referral language to the penalty in other current sections of statutes. It does not change that.

Chairwoman Diaz:

Is that accurate and consistent with what is currently in our law?

Kevin Powers:

With regard to the criminal penalty and gross misdemeanor, that is correct. The goal of the bill is that every section that deals with acceptance of candidacy or declaration of candidacy has the same language, so that the reader understands that filing a false statement is a gross misdemeanor. The existing penalty is, in fact, a gross misdemeanor.

As far as civil fines, I would need to see whether there is a civil fine authority in addition to a criminal penalty. I will get back to the Chairwoman about that.

Wayne Thorley:

I am not aware of anyone being criminally prosecuted for these provisions in the last five or six years. There have been many preelection challenges that the courts have considered, and they have all been civil. That goes back to the "knowingly and willfully" standard, which is an extremely high standard to prove. The prosecutors in our state generally do not move these cases to the top of their lists.

Kevin Powers:

There is a provision in NRS 293.840 that provides, "In addition to any criminal penalty, a person who violates the provisions of this chapter is subject to a civil penalty in an amount not to exceed \$20,000 for each violation. This penalty must be recovered in a civil action brought in the name of the State of Nevada by the Attorney General or by any district attorney in a court of competent jurisdiction." Not only would the person who files the false statement be subject to the criminal penalty—a gross misdemeanor in existing law—but he would also potentially be subject to the existing law of a civil penalty as well.

Chairwoman Diaz:

Are there any further questions from the Committee? I see none. With that, I will open testimony in support of the bill. [There was no one.] Is there anyone in Las Vegas in support?

Patti Jesinoski, Private Citizen, Henderson, Nevada:

I am in full support of this bill, so that we will have fewer loopholes and elect the most qualified persons to the offices.

Chairwoman Diaz:

Is there anyone here to testify in opposition?

Janine Hansen, representing Independent American Party:

I am in support of this bill, but I have one concern. Prior to this hearing, I did talk to someone from the Office of the Secretary of State.

In sections 3 and 6, the bill talks about having two forms of identification in order to run. That may be fine under most circumstances, but I live in a rural community where that has been a problem for me. This is my driver's license. [She held up her Nevada driver's license.] My residential address is not on my driver's license; it has the address assigned by the United States Post Office so that I can get my mail. My street address is not on it when I need it. Once, when I came to Carson City to file for office, I was thankful that I had my concealed-carry permit—which actually has my residential address on it—and did not have to drive back to Elko to get some identification. Everyone may not have that, however. There are many communities around the state that have rural addresses like Elko. A lot of times, when asked about your address, you say, "Go down to the end of the dirt road and turn right at the barn that is falling down." They do not have regular addresses in many of these places. It is often a problem for such things as registering to vote, cashing a check, or needing identification with my debit card. This is constantly a problem; I have to put both addresses on everything.

In addition, I do not have a utility bill in my name; it is in my husband's name. I do not have a personal bank statement. I do not have a paycheck. I do not know what "document issued by a government entity" is; but it might mean a passport. I find this to be a problem, and I am only aware of it because I am at this meeting. There may be other people filing in Carson City who have driven hundreds of miles but do not have what they need when they get here. This is a concern.

Assemblyman Hambrick:

When you fly on an airplane, does the Transportation Security Administration (TSA) accept the license you put in front of them? I would think if the TSA, a government agency, accepts it, that it would be good everywhere else.

Janine Hansen:

The TSA accepts it, but they do not know it is not correct because it has a street address that looks like a residential address. It does not look like a post office box, but it is a rural address. However, it is not acceptable to the Secretary of State, including to register to vote.

I do have a residential address, and it is on my concealed-carry permit. I do not know why it is not on my driver's license.

Kevin Powers:

In order to facilitate this discussion, the bill language could be provided to allow the Office of the Secretary of State to adopt, by regulation, additional forms of identification as determined by the Secretary of State to be sufficient to establish residency. They could identify other forms of identification that are not specifically in the bill.

Chairwoman Diaz:

Is there anyone who wishes to testify in the neutral position here or in Las Vegas?

Joe P. Gloria, Registrar of Voters, Election Department, Clark County:

I want to express a concern on page 9, line 40, which is section 5, subsection 1. There is an added word that increases the time for the challenge period. I do not think that "working" days is necessary for two reasons. First, we should encourage those people who think they have good reason to challenge a candidate to do it as soon as possible. Second, although it does not sound like much, by increasing the challenge period by two days in Clark County, when we are preparing to meet the federal requirements for a 45-day delivery of mail ballots overseas, we will not be able to give the go ahead to our printer to start work in a timely manner. I have communicated my concerns to the sponsors, and I am hoping that they will be willing to strike that.

Assemblyman Elliot T. Anderson:

If I recall, the last day to withdraw is a Friday. Is that correct? I am looking for clarity on when that last day to withdraw a candidacy is.

Joe Gloria:

I believe it is on a Friday. That means, if it goes to working days, we would have to wait until the following Friday before we could pass on instructions for the printer to move on. If it stays with calendar days, that deadline will be on Wednesday of the following week.

Assemblyman Elliot T. Anderson:

I do not have a dog in this fight, so I will leave this to all of you. Does two days really make that much difference? I understand the need to convince candidates to file challenges quicker. Are people able to file something on a Saturday or Sunday?

Joe Gloria:

I do not think there have been any complaints in our office about the length of time that folks are allowed to file in the challenge period. We are not regularly open for business on Saturday and Sunday. I cannot overemphasize the need to keep the statute the way it has been all of this time. We have not had any complaints related to that, and it is important to us because our printing process is very complicated in Clark County, and we prefer not to delay the process if at all possible.

Chairwoman Diaz:

Secretary Cegavski, are you amenable to Mr. Gloria's amendment?

Barbara Cegavski:

Yes, we are. We talked with him in the office, and we are amenable to take that one word out. That has no bearing on this bill for us, so that is fine.

Chairwoman Diaz:

Are there any further comments? I see no one coming up to testify.

Wayne Thorley:

We will reach out to everyone who had questions that we were not able to answer. We will work with those who have concerns and get some amendments and bring this back for the Committee to consider.

Chairwoman Diaz:

I will close the hearing on Assembly Bill 21. We will move on to public comment if anyone here or in Las Vegas wants to offer public comment at this time. I see no one. Thank you for the good questions and discussions. This meeting is adjourned [at 3:04 p.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is an undated document titled "2015-2016 Tax Expenditure Report," prepared and compiled by the Nevada Department of Taxation in partnership with the Nevada Department of Administration, the Nevada Department of Motor Vehicles, the Nevada Gaming Control Board, and Local Governments throughout Nevada, presented by Assemblywoman Irene Bustamante Adams.

[Exhibit D](#) is a document titled "Tax Incentives" that is part of the Executive Budget 2017-2019, submitted by Assemblywoman Irene Bustamante Adams.

[Exhibit E](#) is a proposed amendment to [Assembly Bill 143](#) presented by Dagny Stapleton, Deputy Director, Nevada Association of Counties.