

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

**Eighty-First Session
February 23, 2021**

The Committee on Legislative Operations and Elections was called to order by Chair Brittney Miller at 4:04 p.m. on Tuesday, February 23, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Sandra Jauregui, Vice Chair
Assemblywoman Jill Dickman
Assemblyman Jason Frierson
Assemblywoman Cecelia González
Assemblyman Glen Leavitt
Assemblyman Andy Matthews
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblywoman Clara Thomas
Assemblywoman Selena Torres

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tom Roberts, Assembly District No. 13

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Director, Legislative Counsel Bureau
Marsheilah D. Lyons, Committee Policy Analyst
Kathleen M. Norris, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Jordan Green, Committee Secretary
Trinity Thom, Committee Assistant



OTHERS PRESENT:

Kim Wallin, Chair, Commission on Ethics
Tracy L. Chase, Commission Counsel, Commission on Ethics
David Dazlich, Director, Government Affairs, Vegas Chamber
Steven Cohen, Private Citizen, Las Vegas, Nevada
Janine Hansen, State Chairman, Independent American Party
Melissa Clement, representing Nevada Right to Life
Bruce Parks, Private Citizen, Sparks, Nevada

Chair Miller:

[Roll was called. Committee rules and protocol were explained.] We have three bills on the agenda today. I would like to open the hearing on Assembly Bill 65. This bill is submitted on behalf of the Commission on Ethics, and it makes various changes related to the provisions governing ethics and provides penalties. With us today, I would like to welcome and introduce the Chair of the Commission on Ethics, Kim Wallin; the Vice Chair of the Commission, Brian Duffrin; and the Commission Counsel, Tracy Chase.

Assembly Bill 65: Revises provisions relating to ethics in government. (BDR 23-257)

Kim Wallin, Chair, Commission on Ethics:

Now more than ever with citizens having less and less trust in government, we need to place a greater emphasis on ethics to help restore that public trust. Assembly Bill 65 will help to do that by improving the protection of whistleblowers, which is very important right now. In fact, just the other day I was taking an ethics class for my certified public accountant license, and there was a statistic quoted that certified fraud examiners were seeing an uptick in fraud and wrongdoing of 11 percent—just from May to November alone—and they said it is only going to get worse [*Fraud in the Wake of COVID-19: Benchmarking Report - December 2020 Edition*, published by the Association of Certified Fraud Examiners].

Assembly Bill 65 will also improve the due process for those who have had an ethics complaint filed against them, and it will streamline some of our processes so we can operate more efficiently. I want to thank you for your consideration of A.B. 65, and I will now have Tracy Chase, Commission Counsel of the Commission on Ethics, take you through the presentation [[Exhibit C](#)].

Tracy L. Chase, Commission Counsel, Commission on Ethics:

The Commission on Ethics has requested that I go over the primary provisions of A.B. 65 and how the bill revises the Nevada Ethics in Government Law [Chapter 281A of *Nevada Revised Statutes* (NRS)].

The basic purpose of the Nevada Ethics in Government Law is to ensure that public officers and public employees maintain proper separation between their personal conflicts and their public duties in order to protect the public's trust in its government [page 2, [Exhibit C](#)].

Assembly Bill 65 improves the Commission's processes; it increases opportunities to obtain education on the Nevada Ethics in Government Law by public officers and public employees; it enhances transparency and has increased due process procedures; it clarifies certain provisions of our ethical code of standards; and it streamlines certain administrative matters. I want to note for the record that Senate Bill 129 (2nd Reprint) of the 80th Session, in part, applies to A.B. 65. A lot of the provisions of S.B. 129 (R2) of the 80th Session were taken through to the final day of session, but the 80th Session was so busy that the bill did not make it to a final vote. There is a lot of relevant legislative history in those records.

One of the important missions of the Commission is to educate and provide advice to public officers and public employees [page 3]. We do this through the advisory opinion process, and Assembly Bill 65 streamlines that process. Currently, if a public officer or a public employee requests advice on his or her own conduct, the process starts, and it goes before the full Commission to render an opinion. The statute requires that that process be completed within 45 days unless there is a waiver by the requester [NRS 281A.680]. Assembly Bill 65 allows the Executive Director and Commission Counsel to provide informal advice. This is especially important when public officers and public employees have last-minute conflicts arise, and they are trying to figure out how to comply with the Nevada Ethics in Government Law and perform their public duties. The advice from the Executive Director and Commission Counsel must be consistent with Commission precedent, and the advice is subject to review by the Commission as well. The goal of this is to provide an immediate resource to public officers and public employees. Additionally, if they seek that resource and obtain the preventative advice, they are afforded safe harbor protections from a violation of the Nevada Ethics in Government Law.

Advisory opinion proceedings are currently confidential from the time of the requester's filing all the way through judicial review unless the requester waives that confidentiality [page 4]. Assembly Bill 65 confirms that the informal advice, which I previously mentioned, would be confidential as well. The bill also addresses an inconsistency between the Nevada Ethics in Government Law and the Open Meeting Law [NRS Chapter 241]. Under the Nevada Ethics in Government Law, judicial review is to be held in a closed session before the courts unless, of course, there is a waiver by the requester. The Open Meeting Law has a provision that to respond to litigation, the Commission must go into a public meeting to designate litigation direction. The inconsistency is that we are required to maintain the confidentiality of advisory opinions. Therefore, the Commission is requesting an exemption from the Open Meeting Law. Again, if the requester waives confidentiality, A.B. 65 provides how a public hearing will be held by the Commission to consider the advisory opinion request.

Here [page 5] are some other revisions to the advisory opinion process in A.B. 65. Once a request is filed, the Commission may need additional information to complete its opinion related to that request. With these revisions, the Commission may request additional information, and the 45-day timeline that is statutorily required to process the written opinion is tolled, or basically extended for the period of time until that supplemental information is received. Assembly Bill 65 also allows for a stay by the Commission of an advisory opinion

request if the Commission receives an ethics complaint that has the same or similar matters that are being requested in the opinion. The bill authorizes the Commission to determine which written opinions would constitute binding advice, and it clarifies when a local ethics committee may refer questions to the Commission.

Assembly Bill 65 permits good cause extensions of time. You will see throughout the presentation [[Exhibit C](#)] that good cause extensions of time are provided at every level of proceedings of the Commission, whether it be advisory opinion or ethics complaint matters. The reason for this is the COVID-19 pandemic has really shown the Commission the need for flexibility to grant good cause extensions in matters.

Assembly Bill 65 also improves the complaint processes before the Commission [page 6]. A member of the public may file a complaint with the Commission alleging that a public officer or a public employee has violated the Nevada Ethics in Government Law. That complaint has a process it goes through to the Commission. In general, it has a jurisdictional review process, and if it proceeds to an investigation, it has an investigatory process that is concluded by a three-member panel. That panel can refer the complaint to the Commission for additional proceedings, or the panel has authority to dismiss or try to resolve the complaint at that phase of proceedings.

Assembly Bill 65 has some improvements to the complaint process [page 6]. Again, in every phase of proceedings, the Commission is requesting the ability to grant good cause extensions. In addition, when a public officer or a public employee who is employed at the same agency as the subject of the complaint files a complaint and requests confidentiality, the complainant is currently afforded confidentiality protections under the Nevada Ethics in Government Law. This is the whistleblower protection that the Chair of the Commission was referencing earlier. The process improvements are also due process improvements, and public officers and public employees are now required to cooperate in investigations unless they have legal protections otherwise.

I will talk about the whistleblower or confidentiality protections for complainants here [page 7]. As I indicated, the confidentiality protections are for those requesters who are employed by the same agency as the subject of the complaint, or for a requester who can demonstrate that there is a viable threat of physical harm. Provisions of A.B. 65 extend the confidentiality protections to the materials that the complainant files. When a requester for a complaint files the materials, he or she is required to back up the complaint with evidence that there has been a violation of the Nevada Ethics in Government Law. Oftentimes that evidence will demonstrate who the filer of the complaint is—perhaps there is a handwritten note, or it is such a small agency that if the requester is granted confidentiality by reason of being in the same agency, the subject can narrow the field of who filed that complaint or try to guess who filed the complaint. The Commission is requesting—and you will see this throughout all the different phases of the complaint process—basically a notice process, and I will explain what that is in a few slides. Also, if the complainant is a witness in the adjudicatory hearing before the Commission, certain precautions are established to continue to protect his or her identity as the filer of that complaint.

If the complaint goes past the jurisdictional acceptance phase and the Commission directs an investigation, the Executive Director of the Commission is charged with completing that investigation within 70 days. Again, instead of the complaint being provided to the subject—because the subject is already provided the opportunity to provide the Commission a response to the complaint—a notice of investigation will replace the copy of the complaint [page 8]. This ensures confidentiality protections of the filers who are entitled to those protections under the Nevada Ethics in Government Law. In addition, some other improvements to the investigative stage of proceedings would be investigative subpoenas and the good cause extensions of time at this phase of the ethics complaint as well.

Once the Executive Director completes her investigation, she is to provide a recommendation to a three-member review panel of the Commission on whether there is sufficient evidence for the complaint to be referred to the Commission for a hearing on the complaint [page 9]. The review panel process improvements are twofold. One is the good cause extensions of time that I have already mentioned. Assembly Bill 65 also increases the time for the review panel to issue a panel determination. This is very beneficial in the process for two main reasons. First, it provides the review panel the ability to ask for additional information to determine whether it should refer the complaint—or perhaps there is not sufficient evidence, and the panel can dismiss the complaint. Second, it allows time for the review panel to direct what is called a "deferral agreement." A deferral agreement is an agreement between the subject and the Executive Director that basically defers the charges under certain conditions, and on compliance with those conditions, the complaint is dismissed.

Assembly Bill 65 provides for additional terms that can be added into the deferral agreement [page 10], including ethics training, public apologies, public admonishments, and conditions on future conduct. It should be noted that the deferral agreement is a contract between the Executive Director and the subject, and it is approved by the review panel. If the subject does not want to be bound to the conditions of a deferral agreement, then the case will move forward—as determined by the review panel in its panel determination—to the Commission for a full adjudicatory hearing.

Once there is a referral of a case to the Commission by the review panel, there are improvements in A.B. 65 to the adjudication of that complaint before the Commission [page 11]. Again, that written notice of charges is provided to the subject, and this is important because the review panel may not find sufficient evidence to move the case along. Therefore, there may be only one of several charges that were originally alleged that will continue to the Commission.

At this point in time, party status is confirmed [page 11]. The Executive Director and the subject are the parties in the adjudicatory phase of proceedings. The Executive Director is represented by a position in the Commission's office that is referenced as associate counsel. I am Commission Counsel, and I provide legal advice to the Commission itself on how to conduct the hearing and any other compliance obligations on conducting adjudicatory hearings. Associate counsel represents the Executive Director as a party and provides a presentation on whether there has been a violation of the Nevada Ethics in Government Law

by the subject in question. Assembly Bill 65 defines what those due process parameters are for legal representation for Commission attorneys. For example, as Commission Counsel, I could not represent the Executive Director in those matters—that would be a due process issue. All these parameters comply with NRS Chapter 233B on what is required to hold adjudicatory hearings.

The one difference in A.B. 65 from the prior bill, S.B. 129 (R2) of the 80th Session, is that the Commission determined it was appropriate to ask that the Executive Director be a licensed attorney [page 11]. The reason for this is very important—the Commission has a small staff of six people. For example, if the associate counsel has a conflict—perhaps he or she has a relative who is the subject of the complaint—then the associate counsel cannot provide services on that complaint because it would be against appropriate ethics laws. At that point in time, if the Executive Director is a licensed attorney, he or she can act as conflict counsel and present the case to the Commission. After the referral, A.B. 65 provides for a written scheduling order and discovery order just like you would have in a court proceeding. Again, at this phase of proceedings, we have good cause extensions of time.

Once the complaint is through to the Commission, there are some improvements to the complaint disposition process in the adjudicatory phase of proceedings [page 12]. If you recall the three-member review panel, under current law the review panel members are precluded from participating in the adjudicatory proceedings before the Commission. Just like a court will use another judge, Assembly Bill 65 permits a review panel member to mediate resolution or settlement in the adjudicatory phase. This would only be with the consent of the parties—meaning the subject and the Executive Director—and the settlement negotiation or mediation would be separate from the adjudicatory process that is before the Commission.

In addition, A.B. 65 provides safe harbor protections to all recognized forms of preventative advice so long as that advice is consistent with Commission precedent and the requirements of the Nevada Ethics in Government Law [page 12]. That would include the informal advice from Commission Counsel and the Executive Director, advice that is provided from legal counsel for the agency, or an advisory opinion obtained from the Commission.

Assembly Bill 65 also provides the Commission additional time to prepare the final written opinion after it holds the adjudicatory hearing [page 12]. Unless there is a waiver, the Commission's processes in this phase of the proceeding are very short. Basically, the Commission must take it from the notice of complaint to a hearing within 60 days—this includes discovery, written motions, perhaps depositions, and subpoenas—so it is very fast. If there is no waiver, the hearing will be within the 60 days, so A.B. 65 allows the Commission another 30 days to prepare its written findings of fact and conclusions of law as is required for these types of hearings.

Next, I will turn to highlights of amendments to the code of ethical standards, which is set forth in NRS 281A.400 [page 13]. There are really three major areas. The top two that are referenced on this slide [page 13] both pertain to NRS 281A.400, subsection 7, which

basically defines what a misuse of government property is by a public officer or a public employee. If there is a misuse of government property, it may be excused if there is a policy established by the agency within the defined parameters. The current law does not require that the policy be established in writing—Assembly Bill 65 does. This prevents ad hoc changes in policies or creation of policies to excuse conduct when the agency does not have that as part of its policy to all employees.

In addition, if there is a limited-use exception, one of the requirements is that limited use does not create an appearance of impropriety [page 13]. Assembly Bill 65 adds a definition of "appearance of impropriety" to NRS 281A.400, subsection 11. That language is consistent with U.S. Supreme Court case law and Nevada Supreme Court case law.

There are two other additions to the code of ethical standards [page 13]. First, it will be a violation of the Nevada Ethics in Government Law to interfere with the Commission's witnesses or investigations. Second, there is the addition of the unconscionable abuse of an official public position. I will note that this is a very high-level standard, and it does not capture any conduct within the course and scope of official duties, negligence, or bias.

Assembly Bill 65 also makes a couple amendments to the disclosure and abstention requirements set forth in NRS 281A.420 [page 14]. Under NRS 281A.420, subsection 1, public officers and public employees are required to disclose certain matters: gifts or loans; whether they have a significant pecuniary interest in the matter that they are working on; whether they have a commitment in a private capacity to another person that would be affected by the public matter they are working on; and if they have provided compensated advice or representation for a person in the last year before an agency and that matter relates to the public matter they are considering. It is that fourth area—the compensated prior representation or counseling in the last year—that Assembly Bill 65 amends. The bill still requires disclosure of prior representation in the last year but adds an abstention analysis to it to make sure that the matter is reviewed to determine whether abstention would be required based upon the facts—just like the other three disclosure requirement areas.

For clarification, I mention on this slide [page 14] that, under the Nevada Ethics in Government Law, abstention would be required when the facts present a clear case that the public officer's or public employee's participation would be materially affected by the conflict under the application of the reasonable person standard.

Assembly Bill 65 also makes a few changes to the one-year "cooling-off" provisions that are set forth in NRS 281A.550 [page 15]. Subsection 3 of NRS 281A.550 only applies to public officers and public employees of the Executive Department, and it relates to the hiring of public officers and public employees by the regulated business industry. There is a factor test to determine whether the prohibition of the cooling-off period of one year would apply. What A.B. 65 does—and this was requested in S.B. 129 (R2) of the 80th Session—is raise

the level relating to public employees to a management level. Currently, the law captures anyone above a clerical level, so this would raise the threshold to higher-level public employees in the agency.

The other cooling-off provision is NRS 281A.550, subsection 5, which applies to vendor contracts [page 15]. Currently, if the vendor contract was over \$25,000, the contract was awarded in the last year, and the position had the ability to influence or actually influenced the contract award, then the cooling-off period would apply. Assembly Bill 65 adds another factor. It indicates that those public officers who materially implemented or administered the contract would also be subject to the cooling-off period. Many times there are high-level people who have direct oversight and management of a contract and are working closely with a vendor contractor, so this would capture them in the cooling-off requirements as well.

Assembly Bill 65 creates a few provisions that relate to our acknowledgement forms [page 16]. An acknowledgment form is the form that appointed and elected public officers must file with the Commission on Ethics by stated deadlines. They file the form to confirm that they have read and understand the Nevada Ethics in Government Law. There is a list that is already provided to the Office of the Secretary of State as to who the public officers and public employees are from a given agency. The Commission would also like to be provided that information from the various agencies [section 11 of A.B. 65], so we can assure compliance with the Nevada Ethics in Government Law. The Commission would send out notices—perhaps indicating we had not received the acknowledgment form. At this point in time, the Nevada Ethics in Government Law does not have any fines or penalties for late filing on that.

You will find several supplementary slides at the end of this presentation [pages 18-25, [Exhibit C](#)] to assist you in reviewing the changes in A.B. 65 and to provide some background information, which I will leave it to the Committee members to review.

Before we go into questions, I wanted to let the Committee know that the Commission on Ethics has circulated A.B. 65 and has received feedback from the locals on two provisions. The first is section 8, subsection 2—the duty for public officers and public employees to cooperate with the Commission in its investigations. Public attorneys raised the concern that when they are representing the subjects of ethics complaints, the attorneys would have the duty to cooperate in the investigation. The Commission has provided the Chair, Vice Chair, and me delegated authority in a public meeting to process amendments to A.B. 65. We do not have any objections to this minor amendment, and we will follow up with Legislative Counsel Bureau staff and Committee staff.

The second provision of A.B. 65 that received feedback is section 27, subsection 3—the subpoenas for personnel records. The concern is whether the personnel records would become public documents if they were considered as evidence in a public adjudicatory hearing before the Commission. Although these records would be part of the investigative

file and have those protections, we have no objection to establishing a process by regulation, so either a stipulation or a motion to request sealing of records could be made by the parties. Regulations would provide the appropriate mechanism for personnel and other confidentiality records to be submitted under seal at the adjudicatory hearing.

With that, I am happy to answer any questions you may have.

Chair Miller:

Committee members, please message me to be recognized if you have a question.

Assemblywoman Jauregui:

I want to start with one quick question. I have concerns regarding section 22, subsection 2, which requires the Executive Director to "be an attorney who is licensed to practice law in this State." I know we had discussions about it in 2019 as well, but my concern here is that there is nothing preventing you from hiring an attorney who is licensed in this state if that is the will of the Commission. By requiring in statute that the position be an attorney, you are limiting or possibly disqualifying other potential candidates who might otherwise be qualified individuals for this job. If it is the will of the Commission to look for an attorney when needing to fill the position, you can—but at least you are not prevented from hiring another qualified individual to fill that role if the person is not an attorney—I do not think we should be limiting the position to an attorney. I know this was brought up in 2019 and we had the conversation then, so can you explain what the thought process was in bringing it back?

Tracy Chase:

There are a couple reasons that the Commission decided to bring this back, and it is the one difference from S.B. 129 (R2) of the 80th Session that was brought back. One reason is it is a training issue. With such a small agency, our time deadlines are so tight that to have somebody else come in and really understand the process of the Nevada Ethics in Government Law and how to put it forward to the Commission takes training.

Another reason is that most of the public officers and public employees are under the authority of the Commission—even the Office of the Attorney General could be under our authority for an ethics complaint, although the Office of the Attorney General could act as conflict counsel. Currently, there is a provision in law that allows the Commission to hire outside counsel. One of the biggest concerns is the cost associated with that, especially given the state's budget, so we have always tried to limit the cost of conflict counsel.

Yes, you are correct. The Commission can go ahead and advertise for the position and include that as a preferred qualification.

Assemblywoman Jauregui:

Perfect, you made my point there. The Commission can always advertise that as a preferred qualification but not limit the opportunity in statute. Otherwise, a qualified individual might not be considered because he or she is not an attorney. However, if it is the Commission's desire to hire an attorney, there is nothing prohibiting it from doing so.

Assemblyman Leavitt:

My question is broader. I wondered what prompted the need for the revisions to the current law. Has this been an ongoing thing where you were trying to make these revisions and just did not get them through in previous sessions? Or was there a situation that prompted these changes?

Tracy Chase:

In 2017, the Commission had a bill go through that made changes to the Nevada Ethics in Government Law [Senate Bill 84 (2nd Reprint) of the 79th Session]. We have been monitoring those changes, which is why we came back in 2019 with some revisions to our processes [S.B. 129 (R2) of the 80th Session].

The COVID-19 pandemic has really exacerbated our lack of ability to provide good cause extensions. As we processed these cases, we also noticed that there could be additional clarity and protection for whistleblowers. Unfortunately, a complainant's confidentiality is compromised if it is a small agency and the subject can figure out who the complainant is from the materials that we are currently required to provide. We have seen some issues, which is why we decided to come back with A.B. 65. It is pretty much a procedural bill for the most part.

Assemblywoman Torres:

As I was reading, I noticed that in several places throughout the legislation—including sections 43, 44, 45, and I am sure in a number of other locations—there is an extension for the amount of time or the ability for the Executive Director to waive the time requirement completely. This makes me a little uneasy because it seems that the Executive Director would then be able to extend that time almost indefinitely. Could you talk about the intention for doing that, the reason why that is necessary, and whether the Commission has been able to function with the time requirements currently? Because if that is the case, I am not sure that I see a reason for the ability to allow those extensions.

Tracy Chase:

There are a couple reasons on the time requirements. The Commission has timelines to process the different phases. I will highlight it with the adjudicatory phase—the Commission has 60 days to go through an enormous amount of material. We had some cases where we had to subpoena records, and we could not get the records within 60 days. We were lucky enough to get waivers from the subject, but if the subject does not want to waive, we are stuck with the timelines that are set forth in NRS. We have not yet had to dismiss a case, but our resources get redirected and, unfortunately, that can have a trickle-down effect of delaying the other cases that have a waiver. The timely processing of the cases in the order

they come in is a big factor. If you have to delay an older case for a new case coming in, you could lose witnesses, evidence, and testimony, so that was one of the major reasons for allowing the Commission to navigate its extension issues.

If the Commission grants an extension of time, a dedicated time will be provided, and it will be based upon the good cause standard that is set forth in A.B. 65. In addition, the Executive Director currently can extend times to respond to an ethics complaint in the investigative phase. The Commission may determine whether an extension of time is proper in other phases, but the Commission currently has no ability to extend the time unless the subject agrees to it.

For example, during the COVID-19 pandemic we could have a staffing issue. We only have six people, so if we had an exposure in our office and our timelines cannot be extended, it would create hardship in processing.

Assemblywoman Torres:

I feel like this gives the Executive Director an extreme amount of power to be able to waive that time without having a conversation with the subject at hand. This might be the other extreme and give too much flexibility to the office. I would urge the Commission to look at other ways to achieve that without granting this amount of power.

Assemblywoman Jauregui:

You are removing the word "willful" in section 32, subsection 11, where it used to read: "Willful refusal to execute and file the acknowledgement required by this section" It is replaced with "refuses," so I assume it is the same thing—but if someone willfully refuses, I can see how he or she would be in violation of NRS Chapter 281A. What if someone accidentally did not execute or file the acknowledgment? Why did you remove the word "willful" and make it so that it was not a purposefully done action?

Tracy Chase:

The word "willful" was removed because, if someone does not file an ethics acknowledgement form, the Commission has already provided the Executive Director authority to send out a notice saying, "Please file the form." That is one reason we are hoping to have those lists of public officers—to secure compliance rather than have ethics complaints on whether a person filed an acknowledgement form.

In addition, the word "willful" was removed from A.B. 65 because there was some confusion. They thought it was a purposeful act, but if you have continued negligence and you just do not do it, it may not be willful—perhaps you are busy and not thinking about it. Either the form is filed, or it is not, and the Commission will basically indicate to those people on the list of public officers to please file the form. Also, I do not recall in my six years with the Commission that it has ever fined someone for not filing the form—although it could. The Commission does have authority to.

Assemblywoman Jauregui:

Section 27, subsection 3, says: "Except as otherwise provided in this subsection, upon the request of the Executive Director, the Chair . . . may issue a subpoena during the course of any investigation . . .," and it goes on to list what can be subpoenaed, including any "records otherwise deemed by law to be confidential." Does that mean the Commission can subpoena information or records protected by attorney-client privileges or doctor-patient privileges? Are we giving you the authority to be able to break those privileges?

Tracy Chase:

No, it is just the opposite. If there is a confidentiality privilege in state law, this provision would not override that.

Chair Miller:

Are there any additional questions? [There were none.] We will open for testimony in support of A.B. 65.

David Dazlich, Director, Government Affairs, Vegas Chamber:

We are testifying today in support of A.B. 65. We feel a robust and simplified ethics code for all public employees and elected officials is vital to the operations of Nevada government and public trust. We think that this bill is a good step in streamlining these processes and ensuring that every claim is given sufficient consideration, so we would urge your support.

[There were no more callers in support.]

Chair Miller:

Is there anyone who wishes to testify in opposition to A.B. 65?

Steven Cohen, Private Citizen, Las Vegas, Nevada:

Very, very rarely in these two last sessions that I have been on the front lines do I change my mind based on the presentation—but I have for many of the reasons outlined during the Q and A. I will be happy to work with the presenters and the Committee on a midpoint. Thank you, and I yield.

[There were no more callers in opposition.]

Chair Miller:

Is there anyone who wishes to testify as neutral to A.B. 65? [There was no one.] Thank you so much to the Commission on Ethics for presenting today. I will now close the hearing on Assembly Bill 65. [[Exhibit D](#) and [Exhibit E](#) were submitted but not discussed and are included as exhibits of the hearing.]

I would like to open the hearing on Assembly Bill 129, sponsored by Assemblyman Roberts. This measure revises the thresholds for a committee for political action to open and maintain a separate account and report contributions and expenditures.

Assembly Bill 129: Revises provisions governing campaign finance. (BDR 24-508)

Assemblyman Tom Roberts, Assembly District No. 13:

Today I am going to present Assembly Bill 129. I will start with a little story about how I came to realize the need to attempt to pass this bill, I will go over the technical changes in the bill, and then I will open for questions.

I spent 34 years in law enforcement, including a little more than 24 years with the Las Vegas Metropolitan Police Department (Metro) in southern Nevada. During my last few years, I was the Assistant Sheriff of the Law Enforcement Investigations and Support Group at Metro. Part of my responsibilities was overseeing all the criminal investigations at Metro, some of which were into political corruption and involved the abuse and misuse of campaign funds. Many of those investigations into campaign funds involved and resulted in the prosecution of members of this body as well as other bodies in our state. A commonality in these cases was that minor indiscretions with campaign funds lead to major criminal activity. A lack of visibility and transparency of campaign funds allowed for these minor indiscretions and abuses to occur.

There were several changes to individual campaign accounts in 2017 and 2019 by this legislative body that gave more visibility to the public and lowered the donation thresholds, expenses, and cash-on-hand reporting. I believe that these changes were a move in the right direction, and they lessened the likelihood of abuses. I would note that a majority of these changes passed with unanimous support, or almost unanimous support, in both sessions.

During the last election cycle, I received several campaign materials—just like some of you did—and some were from committees for political action (PACs). I make it a habit to look up PACs to learn more information about them. Many of these groups fully disclose contributions and expenses at any dollar amount—in actuality, it is more commonplace than not—even when it is not required. I also saw some PACs reporting tens of thousands of dollars in donations and expenses that gave little or no information listed on the form. Basically, there were funds spent in several tens of thousands of dollars in donations, and there was zero visibility on it—giving voters and donors no ability to see what their money is going to. As a result, I did a little research.

I found that candidates for federal offices and federal PACs itemize all contributions and expenditures over \$200, and both federal candidates and federal PACs are required to report cash on hand [*United States Code*, Title 52, Section 30104]. Candidates for nonfederal offices in the state of Nevada are required to report contributions and expenditures over \$100, and they must report cash on hand [*Nevada Revised Statutes* (NRS) 294A.120, 294A.200]. This threshold was lowered in 2017, as I mentioned before. Assembly Bill 129 decreases the threshold amount for which PACs must report contributions and expenditures to \$100 and requires PACs to report cash on hand. This brings PACs in line with what candidates already do in Nevada. It also more closely mirrors the federal reporting requirements.

With that said, the purpose of A.B. 129 was not intended to shed light on low-dollar donors, but to focus on where the money is being spent and to require the reporting of cash on hand—giving voters visibility on where their money is going and reducing opportunities for misuse and abuse. Based on some feedback that I have received from citizens and advocacy groups, I am open to leaving the donation threshold amount at \$1,000 with a later amendment if it pleases the Committee.

Now I will go over the mechanics of Assembly Bill 129. Under existing provisions of NRS, a PAC is generally defined as a group that solicits or receives contributions and makes or intends to make contributions or expenditures designed to affect the outcome of an election [NRS 294A.0055]. While PACs currently are required to open and maintain a separate account for contributions and to report contributions that exceed a certain amount, these requirements are inconsistent with the requirements for individual candidates. Section 4, subsection 3, requires a PAC to open and maintain a separate account to deposit contributions of \$100 or more not later than one week after receiving them. Sections 2, 3, 6, and 8 require a PAC to report contributions and expenditures during a reporting period if the contribution received is in excess of \$100; the contributor's total exceeds \$100; an expenditure exceeds \$100; or the total cumulative expenditure exceeds \$100.

In addition, A.B. 129 increases the reporting requirements for PACs to include the total of all contributions received during a reporting period that are \$100 or less; the balance in the account on the ending date of the reporting period; and the total of all expenditures made during the reporting period that are \$100 or less. Sections 5, 7, and 9 through 12 make conforming changes to reflect the new requirements. Section 13 specifies that the new requirements only apply to reports on contributions and expenditures filed by a PAC after January 15, 2022.

This concludes my presentation on A.B. 129. As I said before, I am open to leaving the contribution levels the same. This bill was never intended to shed light on the donors but to allow more oversight and transparency on the operations of PACs. With that, I will take questions.

Chair Miller:

Do we have any questions from Committee members?

Assemblywoman Dickman:

I really appreciate your willingness to change the donor portion of it because we have seen where people have experienced retribution for being donors—especially with controversial ballot initiatives and some recalls. Small donors are just individual, ordinary citizens for the most part, and I think that was a lot of the concern people had with this bill. Thank you for being open to changing that.

Assemblyman Roberts:

When I first drafted the bill to bring the requirements in line with the research I did, it was

very common that most PACs and other groups in the state already reported all contributions. I did not see it as a huge issue until the bill received feedback from some groups, so I feel that there could be movement there. Again, it was not the intent to expose minor donors.

Chair Miller:

Are there any additional questions? [There were none.] Is there anyone who would like to testify in support of A.B. 129? [There was no one.] Would anyone like to testify in opposition to A.B. 129?

Janine Hansen, State Chairman, Independent American Party:

I did send in my testimony [[Exhibit F](#)]; however, I would like to broaden what I have said there. One of the most important things is the experience in California on an issue on the ballot for marriage between a man and a woman. They published everyone's addresses on a Google map, and they were subjected to slashed tires, vandalism at their homes, threats, and intimidation. This is real, and this can happen.

When I ran for the Nevada Senate as an Independent American several years ago, I was told repeatedly that people would only give me \$100 because they did not want their names to show up on the Office of the Secretary of State's website because the Republican Party or other powers that be would not like it and would come after them. These laws suppress political free speech, which is our most important free speech.

Years ago, I participated in the "Ax the Tax" referendum petition campaign. We had a gentleman from the Lake Tahoe area who donated money. He had a distribution business. When his name showed up on the Office of the Secretary of State's website, the casinos that were against the donations cancelled all his contracts, and he ultimately lost his business. These are real things that happen to real people, and we have to be very careful to protect donors—especially small donors—so they are not subject to harassment, threats, and intimidation. This is part of the cancel culture, and if we are to protect free speech, we need to protect those who are giving money to causes, ballot questions, and other events.

It is very important that if we do not defeat the bill entirely—because I am against the entire bill—we at least cut out the part that Assemblyman Roberts talked about with regards to donors. I hope you recognize the fact that free speech is money, and without money, there is no free speech. Those who suffer the most are those who have the least power in the political system because of all these rules. Our founders never envisioned all these rules to have to report money for political campaigns, and they believed in anonymous free speech. What cures the problem of free speech for one person [Allotted time was exceeded.]

Chair Miller:

I understand you also submitted written testimony [[Exhibit F](#)]. Please continue with our next caller.

Melissa Clement, representing Nevada Right to Life:

I am testifying today in opposition to A.B. 129. Campaign finance reform is problematic as it has the very real effect of impacting the First Amendment—freedom of speech. In today's cancel culture, it is not by any means a stretch of the imagination to foresee that opponents of viewpoints can use the donation disclosures as a means to identify, target, and intimidate individuals who have donated to causes. In fact, this has happened. We saw it in California, and we have seen it elsewhere. This has a chilling effect on speech—pure and simple. One hundred dollars is a tremendously low threshold and would most definitely be found unconstitutional. As such, I truly appreciate Assemblyman Roberts' willingness to amend the bill, and I hope that the Committee considers this amendment. If not, I urge you to vote against A.B. 129.

Bruce Parks, Private Citizen, Sparks, Nevada:

I am a member of Battle Born Patriots. You may recognize the name as the group that instituted the last recall against the occupant of the Governor's Mansion. I would like for you to know that in the interest of transparency, we included every donation we had received in our first report that we had to send to the Office of the Secretary of State. It became apparent that was a mistake. Our donors were targeted. The next time we had to report, I reported only donations that were in excess of \$1,000. There were not many.

I would like for you to strongly consider doing away with A.B. 129. It does nothing to further transparency in campaigns or PACs. It opens Nevadans to retribution for simply being involved in the political process—a fundamental right guaranteed by our constitution. That you would consider the threshold of \$100 is reprehensible, and I do not understand it. If you are not going to amend this, then please do away with it.

[There were no more callers in opposition.]

Chair Miller:

Do we have anyone who would like to testify as neutral to A.B. 129? [There was no one.] Thank you, Assemblyman Roberts, for bringing forward this bill. I will go ahead and close the hearing on Assembly Bill 129.

We will move to our next agenda item, which is a work session for Assembly Bill 110. There is a proposed amendment for the bill, and Brenda Erdoes, Director of the Legislative Counsel Bureau, is online to walk us through the amendment.

Assembly Bill 110: Revises the Nevada Lobbying Disclosure and Regulation Act. (BDR 17-900)

Assemblyman Jason Frierson, Assembly District No. 8:

I do not want to put the Legislative Counsel Bureau (LCB) in an awkward position because staff are not allowed to advocate for legislation. Is it all right if I lay out the overview of the intent of the amendment [pages 2 through 7, [Exhibit G](#)] and then Brenda Erdoes, Director of LCB, can walk the Committee through the actual language?

Chair Miller:
Absolutely.

Assemblyman Frierson:

Assembly Bill 110 was amended to address what appeared to be some confusion at the bill hearing regarding the preamble, which laid out what got us to today but was not part of the actual language that would go into *Nevada Revised Statutes* (NRS). To avoid the confusion that this is specific to COVID-19 or the pandemic, this amendment takes that out and allows us to focus on the actual bill. The amendment that Director Erdoes is going to walk you through is intended to provide clarification that A.B. 110 is not expanding the types of people who need to register but simply taking into account that virtual participation is a new normal. As we are adapting and modernizing, this may continue to be the way that some people participate and lobby even beyond the pandemic. The intention is to make sure that folks who lobby on behalf of another person or another entity without coming into the building are required to report the same as if they had entered the building.

I was glad to discuss this with my Assembly colleagues who had concerns, and I provided language to them with the expectation that this resolved those concerns and made clear the intention of A.B. 110. The other thing I will point out is the amendment adds that this applies both in a regular and special session. With that, I would invite Director Erdoes to walk through the actual language of the amendment.

Chair Miller:
Thank you for that clarification.

Brenda J. Erdoes, Director, Legislative Counsel Bureau:

As Speaker Frierson indicated, this proposed amendment [pages 2 through 7, [Exhibit G](#)] removes section 1 of the bill, which was that intent section. The amendment instead adds a new paragraph (h) to subsection 2 of NRS 218H.080 in section 2—which is intended to accomplish the same goal in a more substantive manner. By adding an exception to subsection 1 of NRS 218H.080, it is clear that a person whose only lobbying activity is infrequent and irregular is not required to register as a lobbyist unless the person engages in a pattern of conduct that amounts to lobbying over the longer term.

The proposed amendment also adds a new section 2.3 to the bill to amend NRS 218H.200. This is added to clarify that a person is only required to register as a lobbyist when he or she acts as a lobbyist. It was already in one of the provisions of existing law, but as we looked through the section, it seemed like it would be good to clarify that the requirement to register as a lobbyist only applies during a regular or special session of the Nevada Legislature. Once you are registered as a lobbyist for one of those sessions, you must continue to comply with the provisions of NRS Chapter 218H regarding lobbyists until the next session of the Nevada Legislature.

There is a similar provision adding a new section 2.7. It adds the same language that we added in section 2.3 to make clearer the period of applicability for the requirement to register as a lobbyist—which is actually stated in NRS 218H.180. This makes it consistent so that when you are reading all these provisions, it is clear and you know that you need to register when you have lobbying activities during a regular or special session. After you have registered, you are considered a lobbyist for all the regulatory provisions of NRS Chapter 218H until the next legislative session.

The only other changes in this proposed amendment are in section 3, which is the transitory provision. We wanted to make it clear that the transitory provision only relates to the 81st Session of the Nevada Legislature while A.B. 110 is out there and being changed. The Legislative Counsel's Digest was made to be consistent with all those changes as well. I am happy to answer any questions that you might have.

Chair Miller:

Thank you, Director Erdoes. Are there any questions from Committee members? [There were none.] I will accept a motion to amend and do pass Assembly Bill 110.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 110.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

Are there any comments or questions on the motion?

Assemblywoman Dickman:

I wanted to thank Speaker Frierson and Director Erdoes for working with us to address some of the concerns we had about the potential effects of this bill down the road. I really appreciate them working to make this easier for us to vote for.

Assemblyman Matthews:

I want to echo what Assemblywoman Dickman said and express my appreciation for Director Erdoes, Speaker Frierson, and all the others who helped address those concerns. Of course, transparency is something we all should support—it is something I certainly support. I know that was clearly the intent of this bill from the beginning, and I think that is great. Again, I just want to express my gratefulness for all the work that went into getting this bill to a very, very good place right now.

Assemblyman Leavitt:

I am going to sound like a broken record. I also want to show my appreciation to Speaker Frierson and Director Erdoes for their work on this for the sake of clarification and converting the language to express the true intent of the bill—transparency, which I very much appreciate. I will be a yes on this bill.

Chair Miller:

Are there any other questions or comments before we proceed? [There were none.]
Could we take a roll call vote, please?

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement for Assembly Bill 110 to myself, and we will move to the last agenda item, which is public comment. While we queue up those who would like to speak, I will remind everyone that public comment should pertain to topics under the purview of this Committee and will be limited to two minutes per person. [There was no one.] We will wait another moment to give anyone who may be dialing in a chance. Sometimes it moves quickly from Committee business to the time to call in. Does there appear to be anyone? [There was no one.]

With that, this concludes our meeting agenda for today. We do not have a meeting scheduled for Thursday, February 25, 2021. The agenda will be posted when the next meeting is scheduled. Thank you, everyone. We are adjourned [at 5:24 p.m.].

RESPECTFULLY SUBMITTED:

Jordan Green
Committee Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Nevada Commission on Ethics: Assembly Bill 65 revisions to Nevada Ethics in Government Law (NRS 281A) Public Officers and Employees," presented by Tracy L. Chase, Commission Counsel, Commission on Ethics.

[Exhibit D](#) is a document titled "Summary of AB 65 – 2021 Legislative Session," submitted by Tracy L. Chase, Commission Counsel, Commission on Ethics.

[Exhibit E](#) is a document titled "Summary of the AB 65 – 2021 Legislative Session," submitted by Tracy L. Chase, Commission Counsel, Commission on Ethics.

[Exhibit F](#) is written testimony dated February 23, 2021, submitted by Janine Hansen, State Chairman, Independent American Party, in opposition to Assembly Bill 129.

[Exhibit G](#) is the Work Session Document for Assembly Bill 110, submitted by Marsheilah D. Lyons, Deputy Research Director, Research Division, Legislative Counsel Bureau, presented by Brenda J. Erdoes, Director, Legislative Counsel Bureau.