BRADLEY S. SCHRAGER (NV Bar No. 10217)
DANIEL BRAVO (NV Bar No. 13078)
**BRAVO SCHRAGER LLP**
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113
(702) 996-1724
bradley@bravoschrager.com
daniel@bravoschrager.com

DAVID R. FOX (NV Bar No. 16536)
**ELIAS LAW GROUP LLP**
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
Tel: (202) 968-4490
dfox@elias.law

*Attorneys for Proposed Intervenor-Respondents Rise, Institute for a Progressive Nevada, and the Nevada Alliance for Retired Americans*

**FIRST JUDICIAL DISTRICT COURT**
**IN AND FOR CARSON CITY, STATE OF NEVADA**

MARGARET M. OSBORNE, individually,

Petitioner,

v.

SCOTT HOEN, in his official capacity as the Carson City Clerk, and JASON WOODBURY, in his official capacity as the Carson City District Attorney,

Respondents.

Case No.: 24-EW-000251B
Dept. No.: II

**[PROPOSED] MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS OF PROPOSED INTERVENOR-RESPONDENTS RISE, INSTITUTE FOR A PROGRESSIVE NEVADA, AND THE NEVADA ALLIANCE FOR RETIRED AMERICANS**



In September, Citizen Outreach Foundation filed three mandamus petitions—in this Court as well as in Clark County and Washoe County—seeking to compel counties to process tens of thousands of third-party voter challenges under NRS 293.535, based on its review of third-party databases. All three counties had correctly rejected those challenges because they were not based on personal knowledge. Just weeks after filing the petitions, and perhaps sensing the weakness of its case, Citizen Outreach Foundation voluntarily dismissed all three petitions.

Now, Citizen Outreach Foundation is back for a fourth bite at the apple. Through its so-called "Pigpen Project," the organization has recently submitted more than three hundred voter

challenges through a separate statute, NRS 293.547, nine of which are at issue in this matter and were submitted by Petitioner. In doing so, however, Petitioner and Pigpen Project have flouted both the requirements of NRS 293.547 and the National Voter Registration Act ("NVRA").

Like NRS 293.535, NRS 293.547 requires personal knowledge. It provides a narrow opportunity for voters who have personal knowledge that another voter within their same precinct is no longer eligible to vote there to file a written challenge to that voter's registration. Petitioner, however, seeks to impermissibly expand the statute's scope to allow for challengers by voters who, like her, do not know the voters they are challenging and who have only second-hand knowledge about the voters' eligibility, in the form of what unnamed individuals "said" about the voters' residency when someone knocked on their door and asked. Such a ruling would not only be contrary to NRS 293.547's plain text, but it would also allow groups like Pigpen Project to use it to bring mass challenges to voters they do not know based on second-hand information—precisely the harm the legislature sought to prevent in enacting that statute. It would also constitute an unlawful end run around the NVRA, which expressly prohibits such systematic removals of voters within 90 days of any federal election. For all of these reasons, the petition should be denied.



## BACKGROUND

### I. Statutory Background

Maintenance of Nevada's voter rolls is primarily the responsibility of county officials, who "*may* use any reliable and reasonable means available" to correct the portions of the statewide registered voter list relevant to them, subject to procedural and substantive safeguards. NRS 293.530(1)(a) (emphasis added). Third parties like Petitioner may participate in that process only by filing voter challenges under either of two challenge statutes, NRS 293.535 and .547, both of which allow only challenges based on the challenger's "personal knowledge."

This case involves challenges under NRS 293.547, which allows registered voters to challenge other voters in their precinct by filing a written challenge within a short, five-day window ending 25 days before election day. NRS 293.547(1). Such challenges must be "based on the personal knowledge of the registered voter" and be "signed and verified" by the challenger. NRS 293.547(2)(b), (3). A challenge must contain, among other requirements, a "statement of the

facts upon which each ground for the challenge is based" and a "statement that the challenge is based on personal knowledge of the facts upon which each ground for the challenge is based." NAC 293.416(1)(c)(6)–(7). When valid challenges of this type are filed, county clerks must mail a written notice to the voter, and, if the voter does not return the mailed postcard within 30 days, mark the voter as inactive, and remove them from the rolls if they do not vote or take certain other actions in the next two general election cycles. NRS 293.530(1)(c), (g); NRS 293.547(5)(b). Clerks must also attach a copy of the challenge form to the challenged registration in the voter roster, NRS 293.547(5)(a), and the district attorney must investigate the challenge within 14 days and, "if appropriate," commence judicial proceedings "without delay" to cancel the voter's registration, NRS 293.547(6). If the challenged voter appears in person to vote, they may be required to provide a supplemental affirmation of eligibility before voting. NRS 293.303(2).

Several of these limitations on the voter challenge process reflect protections imposed by the NVRA. The NVRA prevents states from removing voters from the rolls due to a change of residence unless they first fail to respond to a mailed notice and then fail to vote in two federal election cycles. 52 U.S.C. § 20507(d)(1)(B). The NVRA also requires states to complete "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" no "later than 90 days prior to the date of a primary or general election for Federal office." *Id.* § 20507(c)(2)(A). Federal law therefore prohibits all such programs aimed at systematic removal until after the November 2024 election.

## II. Pigpen Project's Systematic Attempts to Remove Nevada Voters from the Rolls

The voter challenges at issue in this case were signed by Petitioner but filed by the Citizens Outreach Foundation, which runs the "Pigpen Project," a years-long effort to seek the removal of large numbers of voters from Nevada's voter rolls based on scant evidence. *See* Pet. Ex. 1; PigpenProject.com. Over the summer, the Pigpen Project filed tens of thousands of voter challenges under NRS 293.535, each based on review of third-party databases rather than personal knowledge. Counties across the state rejected the challenges because they were not based on "firsthand knowledge through experience or observation," NAC 293.416(3), and the Pigpen Project brought three mandamus actions—in this Court and in Clark and Washoe Counties—to

compel counties to process them. Proposed Intervenors were granted intervention both in this Court and in Washoe County. Pigpen Project soon after voluntarily dismissed each of those actions.

Meanwhile, the Pigpen Project announced that it had an "army of volunteers . . . collecting new challenges under Section 547."[1] And it has now filed hundreds of Section 547 challenges in counties across the state, including the nine challenges at issue in this case.[2] Each of those nine challenges is based on a single asserted fact: "Person who answered the door said [voter] no longer lives," "no longer lived," or "does not live" "at this address." Pet. Exs. 2–10. Respondents rejected those challenges as inadequate, and Petitioner asks the Court to compel them to process them.

## STANDARD OF LAW

Mandamus is appropriate only when the respondent has a clear, present legal duty to act. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981) (citing NRS 34.160). Issuance of a writ of mandamus is an extraordinary remedy, and courts have complete discretion in determining whether to consider it. *Cote H. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008) (per curiam). Petitioner has the burden to establish that mandamus relief is appropriate. *Halverson v. Sec'y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008).



## ARGUMENT

### I. Petitioner is not entitled to a writ of mandamus.

Petitioner is not entitled to the extraordinary and discretionary remedy of a writ of mandamus because Petitioner's challenges are facially inadequate. Challenges under NRS 293.547(2)(b) must be "based on the personal knowledge of the registered voter," meaning "that the person who files the challenge has firsthand knowledge through experience or observation of the facts upon each ground that the challenge is based." NAC 293.416(3); *see also Knowledge*,

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[1] Chuck Muth, *Fast and Furious: Quick Pigpen Project Update*, Pigpen Project (Oct. 3, 2024), https://perma.cc/27J9-647T.

[2] Chuck Muth, *SOS, AG Do "Snoopy Dance" Over Lawsuit Withdrawal, However...*, Pigpen Project (Oct. 15, 2024), https://perma.cc/MQU4-NSPY.

BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "personal knowledge" as "[k]nowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said").

All nine challenges at issue in this case fail this firsthand knowledge requirement because they are expressly based on *second*-hand knowledge: the fact that an unnamed third party "said" that each voter "does not live," "no longer lives," or "no longer lived" at the voter's address of record. Pet. Exs. 2–10. Courts across the country have routinely held that "[p]ersonal knowledge of a fact cannot be based on the statement of another." *State v. Smith*, 941 P.2d 725, 728 (Wash. Ct. App. 1997) (quoting 2 John Henry Wigmore, *Evidence* § 657 (revised by Chadbourn (1979)); *see also, e.g.*, *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 767 N.E.2d 707, 713–14 (Ohio 2002) (citing *Black's Law Dictionary* definition of "personal knowledge" and holding that individual "clearly lacked . . . personal knowledge" where "her knowledge . . . came from other people"); *Channel v. Home Mortg. Inc.*, No. CV 03-100-PHX-ROS, 2007 WL 9723961, at *1 (D. Ariz. Sept. 14, 2007) (holding that defendant "lack[ed] personal knowledge regarding the destruction of corporate records" where it was "undisputed that [the defendant] only knew that the documents were destroyed by the landlord because someone told him"); *S.E.C. v. First City Fin. Corp.*, 688 F. Supp. 705, 720 (D.D.C. 1988) ("Personal knowledge may not be based on the statement of another."). All that Petitioner has to offer, however, are the statements of others. The challenges all simply convey that some other, unnamed person "said" the voter does not live at the listed address. That is, by definition, not enough to satisfy the personal knowledge requirement, and the challenges are thus facially deficient.

The legislative history reinforces this conclusion. In 1991, the Legislature amended NRS 293.547 to require that, to file a written challenge, a voter must either be "registered to vote in the same precinct or district as the person whose right to vote is challenged" or the challenge must be "based on the personal knowledge of the registered voter." 1991 Nev. Laws ch. 675 (A.B. 652). The reason for this change was an understanding that "[c]hallenges have become nothing short of intimidation" and to prevent such mass challenges. Ex. C at 7 to Minutes of the Nev. Legis. Assemb. Comm. on Legis. Functions & Elections (May 14, 1991) (attached as **Exhibit 1**). Then,

in 2007, the Legislature amended NRS 293.547 to require that a challenger both be registered in the same precinct as the person challenged *and* that the challenge be "based on the personal knowledge of the registered voter." 2007 Nev. Laws ch. 478 (A.B. 569). The legislative record demonstrates that the intent of this change was to ensure that "a person actually have knowledge of the person being challenged or the reason the challenge is being made." *Nevada Assembly Committee Minutes, 4/3/2007*, Nev. Assembly Comm. on Elections, Procedures, Ethics, and Constitutional Amends., 74th Sess. (Nev., 2007) (attached as **Exhibit 2**). The Legislature understood this change "to eliminate . . . blind, scattered challenges" and limit challenges to those brought by "a person who, through his own experience, knows something to be true." *Id.* Petitioner is plainly not such a person—she knows only what the unnamed people who answered doors at voters' addresses "said."

Moreover, the faces of the challenges do not show that Petitioner has personal knowledge even of what those door-answerers "said." Each of the challenges has a checkmark indicating that the person challenged "[d]oes not reside at the residence for which the address is listed in the roster," coupled with a single sentence explaining that an unidentified person answered an unidentified door and "said [the voter] no longer lives [or "lived" or "does not live"] at this address." Pet. Exs. 2–10. The challenges do not say that Petitioner was the one who knocked on the door. As a result, neither Respondent Hoen nor anyone else reviewing the challenges would have any way of knowing whether Petitioner was describing her own personal experience of knocking on the door and speaking to another person or describing someone else's experience doing the same. The challenges must necessarily be assessed on their face, and they do not facially reveal compliance with NRS 293.547's requirements.

Finally, even aside from those threshold issues, the challenges provide too little information to support the conclusion—even as a matter of secondhand knowledge—that the challenged voters are not validly registered at the addresses in question. The challenges do not say who answered the door or what question the door-knocker asked the door-answerer to prompt the provided response. All of them state, with minor variations, that the individual in question does not live at the address in question. *See* Pet. Exs. 2–10. But "[w]here an individual is 'living' is

distinct from his residence and domicile." *Aldava v. Johnson*, 686 S.W.3d 205, 212 (Ky. 2024). There are any number of reasons why an individual might reside at a location but not presently live there—for example, if a student is away at college, a uniformed military member is away on deployment, or if a retired grandparent has temporarily relocated to help care for a grandchild. None of those circumstances would render a voter no longer validly registered. Nevada law specifically provides that being away for school or military service does not negate the intent required to maintain residency, NRS 293.487, and it further provides that voters lose their voting residence only if they depart "with the intention of establishing [their] domicile" elsewhere or "with the intention of residing [elsewhere] for an indefinite time," NRS 293.493, .500. And because the challenges do not specify what question, specifically, was asked at the voters' addresses of residence, the challenges are entirely consistent with those scenarios: an absent college student or active duty soldier's family, for example, might reasonably respond that the student or soldier "no longer lives" here, even if the address remains their permanent residence.

Petitioner attempts to rescue her deficient challenges by claiming that she "substantially complied" with NRS 293.547, but she misunderstands the rule of substantial compliance in Nevada law. Pet. at 6–7. True, Nevada's election laws "must be liberally construed." *Id.* at 6 (citing NRS 293.127). But they must "be liberally construed to the end that . . . [*a*]*ll electors*, including, without limitation, electors who are elderly or disabled, *have an opportunity to participate in elections* and to cast their votes privately." NRS 293.127(1)(a) (emphasis added). Such a goal is served by strictly enforcing the voter challenge requirements; loosening such requirements risks preventing eligible voters from participating in elections, which is exactly what NRS 293.127 seeks to avoid. Regardless, Petitioner has not substantially complied with NRS 293.547 because her challenge is not based on personal knowledge. That is not a small, technical, or trivial oversight: it is a fundamental failure to satisfy a basic, threshold requirement of the statute. As the Nevada Supreme Court recently reaffirmed, "a failure to comply with [statutory] requirements typically results in a lack of substantial compliance, unless evidence is submitted to the contrary." *Nev. State Democratic Party v. Nev. Green Party*, No. 89186, 2024 WL 4116388, at *2 (Nev. Sept. 6, 2024) (unpublished). Here, Petitioner entirely failed to comply with the statutory personal knowledge

requirement, so there is no possibility of substantial compliance. The cases Petitioner cites involve much smaller, ancillary discrepancies, so they are readily distinguishable. *See Williams v. Clark Cnty. Dist. Att'y*, 118 Nev. 473, 480–81, 50 P.3d 536, 541 (2002) (finding substantial compliance where individual separately submitted supporting affidavit from private investigator rather than attaching it to individual's own affidavit); *Cirac v. Lander County*, 95 Nev. 723, 727–31, 602 P.2d 1012, 1015–17 (1979) (holding that, where statute required that petitions be signed by taxpayers "as appears by the last real or personal property assessment roll," spouses with a community property interest were taxpayers and could sign petitions (quoting NRS 243.465)).

There is also a further bar to Petitioner's request that the Court compel Respondent Woodbury to "if appropriate, cause proceedings to be instituted and prosecuted in a competent jurisdiction without delay." Pet. at 9. As Petitioner implicitly acknowledges, the relevant language in NRS 293.547(6) directs district attorneys, following an investigation, to "if appropriate, cause proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay." The use of the word "appropriate" is a classic example of discretionary, rather than mandatory, language. And "[m]andamus may not be used to compel a discretionary act." *Brewery Arts Ctr. v. State Bd. of Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369, 372 (1992) (per curiam).

In short, Respondents have no duty to take any action in response to a challenge under NRS 293.547 that is facially deficient. Because that describes all of Petitioner's challenges here, which were expressly based only on what unnamed third parties "said," the mandamus petition must be denied.

## II. The relief sought would violate the NVRA by enforcing challenges that are part of a program to systematically remove voters from the rolls within 90 days of an election.

Petitioner is further not entitled to a writ of mandamus because the relief that she and Pigpen Project seek would violate the NVRA's prohibition against "any program the purpose of which is to systematically remove the names of ineligible voters" within 90 days of a federal election. 52 U.S.C. § 20507(c)(2)(A). The challenges at issue in this case were brought on October 9, 2024, and the present petition was brought on October 21, 2024—both within 30 days of the November 5 general election. *See generally* Pet.

To be sure, challenges to nine individual voters might not ordinarily, on their own, constitute a "program . . . to systematically remove" voters from the rolls. But these particular challenges form part of the Pigpen Project's undeniably "systematic[]" program to seek to remove voters from Nevada's rolls, a program that has included tens of thousands of voter challenges across the state over the last year. Indeed, the Pigpen Project bragged a few weeks ago that it had an "army of volunteers out there right now collecting new challenges under Section 547."[3] "[T]he 90 Day Provision has a broad meaning." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014). And federal courts have repeatedly held that the NVRA prohibits systematic removal programs within 90 days of an election even when they take the form of large numbers of voter challenges submitted by nongovernmental parties. *See Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1355 (N.D. Ga. 2020) ("Here, the challenge to thousands of voters less than a month prior to the Runoff Elections . . . appears to be the type of 'systematic' removal prohibited by the NVRA."); *N.C. State Conf. of the N.A.A.C.P. v. N.C. State Bd. of Elections*, No. 1:16CV1274, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016) (holding that "allowing third parties to challenge hundreds and, in Cumberland County, thousands of voters within 90 days before the 2016 General Election constitutes the type of 'systematic' removal prohibited by the NVRA"). The NVRA therefore required that Nevada complete any consideration of the Pigpen Project's challenges "not later than 90 days prior to" election day. 52 U.S.C. § 20507(c)(2)(A). It is too late, as a matter of federal law, for these challenges to be processed.



## CONCLUSION

The Court should deny the Petition.

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[3] Muth, *Fast and Furious: Quick Pigpen Project Update*, *supra* n.1.

## AFFIRMATION

Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this document does not contain the personal information of any person.

DATED this 24th day of October, 2024.

By: _____

Bradley S. Schrager (NV Bar No. 13078)
Daniel Bravo (NV Bar No. 10217)
**BRAVO SCHRAGER LLP**
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

David R. Fox (NV Bar No. 16536)
**ELIAS LAW GROUP LLP**
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001

*Attorneys for Proposed Intervenor-Respondents Rise, Institute for a Progressive Nevada, and the Nevada Alliance for Retired Americans*

## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2024, a true and correct copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS** was served via U.S.P.S. Mail, postage pre-paid Las Vegas, Nevada and via electronic mail as follows:

David C. O'Mara, Esq.
**THE O'MARA LAW FIRM, P.C.**
311 E. Liberty Street
Reno, Nevada 89501
david@omaralaw.net
*Attorney for Petitioner*

Jason Woodbury, Esq.
Benjamin R. Johnson, Esq.
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701
jwoodbury@carson.org
bjohnson@carson.org
*Attorneys for Respondents*

Billie Shadron, Judicial Assistant to
Hon. Kristin Luis
First Judicial District Court, Dept. 2
BShadron@carson.org

By: Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP



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| 1 | Minutes of the Nev. Legis. Assemb. Comm. on Legis. Functions & Elections (May 14, 1991) | 13 |
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# EXHIBIT 1



# EXHIBIT 1

**AB 652 Makes various changes relating to elections.**

Secretary of State, Cheryl Lau, addressed the committee on behalf of AB 652. She introduced Deputy Secretary of State for Elections, Robert Elliott. AB 652 was, she explained, a comprehensive election reform bill which resulted from efforts by county officials, legislators, and public.

The focus of AB 652, she explained, was the facilitation of voting process. The bill contained proposals for were modernizing methods to track voters; provisions for ballots to be sent to military personnel; and improvements of polling place procedures. In addition, the bill included suggested changes to voter registration list purging processes. Absentee voting would be upgraded in an effort to increase voter participation, and changes to update and streamline the election code were proposed.

Mrs. Williams expressed appreciation to Mr. McGaughey, and commended Secretary of State Lau for her inclusionary process which would result in greater voter participation and eliminate possibilities of disenfranchised voters.

Robert Elliott addressed the committee and echoed Secretary Lau's comments. He felt AB 652 was a nonpartisan approach to problems which had arisen concerning elections.

Mr. Elliott referenced Exhibit C, a rationale narrative for the AB 652. Next, he explained the U. S. Postal Service's National Change of Address Program, which utilized the best information available to keep up with ever-moving voters. Vendors licensed by the post office matched voter registration tapes to post office records. The program allowed for enhanced accuracy of voter registration address reporting.

Continuing, Mr. Elliott proposed the two largest counties be allowed to enter into an agreement with licensed vendors to have voter registration records updated. When voter registration lists were updated, he explained, voters would receive a notice the county had updated voter registration data. The voter would have 15 days to respond to the notice.

Next, Mr. Elliott referred to Exhibit D, Sacramento County's report on its use of the National Change of Address Program. He highlighted how Sacramento's experience had clearly demonstrated the program's efficiency. He stated candidates experienced

situations wherein mailers were returned which was costly to candidates. The program, he stressed, enhanced a candidate's ability to reach voters as a result of more accurate addresses.

Mr. Elliott explained Clark County post offices registered over 900 changes of address per day. Mr. Elliott moved to discussion of Exhibit E, a memorandum from Clark County Election Department and the Washoe County Registrar's Office. The counties analyzed costs associated with the National Change of Address program, including printing and mailing, and the cost was estimated to be $50,000. Results of the program's effectiveness would be assessed and recommendations prepared for the 1993 Legislature.

If AB 652 was passed, Clark and Washoe Counties would work with the Secretary of State's office to adopt regulations to ensure voters were not disenfranchised. Mr. Elliott responded to Mr. Sader's question and stated records tracked voter movement out of the county, and voters were notified of the need to reregister.

In general, Mr. Elliott explained AB 652's impetus was the need to develop a program which monitored voter address changes in Clark County and Washoe County. Based upon information Mr. Elliott had gleaned at conferences and from voter registration officials, this program was spreading quickly.

Nevada statutes, Mr. Elliott explained, did not provide for a penalty for voter system tampering. However, he said, the possibility of election computer fraud warranted a penalty for tampering, and he recommended a felony conviction because, as he exclaimed, "there was nothing more heinous than one who attempted to defraud an election by tampering with programs."

Section 6 of AB 652, Mr. Elliott said, resulted from voter participation problems during operation Desert Storm. This provision allowed an overseas voter to be faxed a ballot request. The voter would sign the ballot and mail it back to the county election official. The Federal Voting Assistance Program he said, established a program wherein voters stationed overseas requested ballots, and utilized fax technology.

Mr. Elliott discussed Mr. McGaughey's request regarding section 12 which dealt with security of voted ballots. Mr. McGaughey explained to the committee allegations were made regarding ballot tampering. He added sometimes ballots were left unattended, and subsequently delivered to the county courthouse.

A procedure was required, Mr. McGaughey asserted, to track ballots. Mrs. Williams interjected all agreed ballot security was essential. Mr. Elliott said the Secretary of State's office was meeting with county election officials to explain the processes to be imposed upon them. Mr. McGaughey also requested language to include security for election computer programs and tapes.

Mr. Elliott next discussed constituent complaints concerning polling place workers. These workers, Mr. Elliott asserted, should not issue challenges to voters. Mrs. Williams added she was familiar with the situation described by Mr. Elliott, and knew many people were disenfranchised from voting, and ultimately outraged because they could not vote on questions and judges. Nest, she said the Secretary of State's office had an excellent point in that voter challenges should be made only by election departments and not polling place workers.

Discussion ensued concerning page 5, lines 5 through 7. Mrs. Lambert expressed concern voters might not receive ballots. Secretary of State Lau and Mr. Elliott responded this would be covered with bill drafting staff.

Mr. Elliott moved to discussion of current law which allowed voters who moved after the close of voter registration to vote in their former precincts. He said polling place workers were probably not informing voters of this option. Language might be included to indicate voters who moved after registration closed should be instructed they could vote in their former precinct, thereby preventing disenfranchisement.

Responding to Mr. Scherer's question, Mr. Elliott stated the National Change of Address Program only identified actual street addresses.

Mr. Elliott referred to a 50-state survey he conducted on challenge processes. Most states allowed the voter to attest to who he said he was or sign a sworn statement. If the election was contested, courts decided if those not entitled to vote had participated. Mrs. Williams inquired if Nevada had one of the lowest numbers of registered voters per population, and Mr. Elliott responded affirmatively.

Following Mr. Elliott's overview of AB 652, Mrs. Williams created a subcommittee, including Assemblymen Porter, Dini and

Lambert, to evaluate the bill and work with Secretary of State Lau and Mr. Elliott.

Mrs. Williams complimented Secretary of State Lau and Deputy Secretary for Elections Bob Elliott for their work on the bill in the spirit of nonpartisanship. In addition, she commended Mr. McGaughey for his participation.

Ms. Vicki Hulbert, Executive Director of the State Democratic Party, provided Exhibit F, a position statement in favor of AB 652.

Assemblyman Vivian L. Freeman, District No. 24, referred to AB 319, a bill she introduced on February 7, 1991. She was aware of problems with voter registration during the recent campaign and election. She discussed the problem with Mr. Erickson and he advised her sections 1, 2, 3, and 4 were ideas formerly discussed. She decided to proceed with it and spoke with Mr. Elliott as to reasonableness. He informed her the Secretary of State would have a comprehensive bill. AB 319 was drafted to be certain these issues were covered. She proffered her support for AB 652. She felt the bill's methodology was effective and supported the bill in total.

Mr. Dini asked why the population clause was included, and Mr. Elliott replied it would not be cost effective in rural counties, and some rural counties indicated they would not benefit from this program.

There being no further business to come before the committee, the meeting adjourned at 3:40 p.m.

RESPECTFULLY SUBMITTED,

Sharon Burnham

Sharon Burnham, Committee Secretary

ASSEMBLY LEGISLATIVE FUNCTIONS
& ELECTIONS
MAY 14, 1991

EXHIBIT # C

**TESTIMONY O**

**Sections 2, 3, and 4** allow our largest counties to utilize the best information available to keep up with our ever moving voters, the information retained by the Post office's National Change of Address Program.

**Commentary:** Whenever a voter moves and executes a change of address, that information goes into a data base at the Post Office. Voter registration records are then sent to a vendor approved by the Postal Service. The registration records are matched to the post office information. Any identical matches become automatic updates. Any information that is virtually identical becomes what is called a "NIXIE" match which is accompanied by several footnotes explaining what the difference may be. The county election official then determines whether or not the "Nixie" file is close enough to update the voter registration record.

If a voter registration address is updated, the voter is sent a notice indicating so. If the change in address is not a permanent change, the card must be returned by the voter and the update is canceled. The secretary of state is charged with adopting regulations to administer this act and we anticipate that we will meet with the affected counties to work out any concerns. The appropriation in section 36 of $50,000 is intended to cover the cost of cards and mailings required in the legislation. The appropriation is based upon estimates provided by the 2 affected counties. We are also proposing that this be a pilot project, much like Motor Voter and that it be sunsetted.

The county registrar in Sacramento first utilized this program and liked its results. A copy of his article concerning his experience is attached. More and more counties and states are adopting legislation to allow the use of this program.

**Section 5** makes a person who attempts to or actually tampers with a mechanical voting system, voting device, or computer tabulation program, guilty of a felony.

**Commentary:** In these days of compute hacks, alleged election computer fraud and manipulation, Nevada's law provides for no specific penalty for tampering with computer programs or vote recording devices. We don't anticipate that this new law will dramatically affect in any way our prison population, but we need to send a strong message to any one who gets the idea that elections are open game for tinkering, that Nevada will deal with them in a harsh manner.

**Section 6** allows an overseas voter to request an absentee ballot and receive an absentee ballot by fax machine. The voted ballot, however, must be returned by mail in order to be counted.

**Commentary:** During the 1990 elections, the Federal Voting Assistance Program set up a faxing network that allowed fax ballot requests to be received by counties and allowed counties to fax the ballots to overseas voters who were participating on Operation Desert Shield. The program utilized a series of toll free numbers so that there was no cost to the voter or county clerk. The FVAP has made the program permanent and has expanded its use to any voter who is outside the country. We are concerned about the lack of an original signature on a faxed ballot, therefore, we are not allowing voted ballots to be faxed back for counting. this technology will greatly enhance our service to our overseas voters to ensure they are not disenfranchised due to slow moving mail.

**Section 7** is a technical change to the definition of absent ballot that is necessary due to proposed changes found in Section 18 of the bill.

**Section 8** Changes the date by which a candidate must withdraw his candidacy from 5 days after the close of filing to 7 days.

**Commentary:** The current 5 day withdrawal deadline falls on a weekend, as filing closes on Tuesday, the deadline falls on a Sunday. In election law, if a deadline falls on a weekend, that deadline bumps back to the previous working day. In this case, the deadline becomes Friday. In 1990, in Washoe County, a candidate petitioned the court to allow his withdrawal on the Monday after the close of filing. The court concurred, clearly setting a precedent for that type of activity. Therefore, we are asking for this amendment.



**Section 9** consists of technical changes to the law that have no effect.

**Section 10** is a duplicate of Section 9 and needs to be amended out. This was a bill drafting error.

**Section 11** proposes to increase the number of registered voters that may be in a precinct before the precinct must be split.

**Commentary:** This proposal primarily affects our 2 largest counties. Statutory limitations on the number of registered voters in a precinct are intended to provide for the speedy and efficient processing of voters at the polls on election day. Since the advent of punchcard voting, the statutes have been amended to allow greater numbers of registered voters in precincts because of the adaptability of the system to accommodate more voters. Additionally, larger numbers of voters are requesting to vote absent ballots, thereby reducing the number of voters going to the polls. By increasing the statutory limitation from 1,000 to 1,500, voters can still be processed speedily and efficiently by increasing the number of voting devices and adding additional election board officers at such precincts as may be deemed necessary.

**Section 12** adds to the list of regulations required to be adopted by the secretary of state's office, the adoption of procedures to be used to ensure the security of voted ballots from the time they leave the polling place until they are through the counting process.

**Commentary:** Assemblyman McGaughey will address this section.

**Section 13** allows the use of a facsimile of a signature on voter registration affidavits to be used when comparing a voter's signature he signs in the roster book against the affidavit signature.

**Commentary:** Clark and Washoe counties have or are getting the ability to digitize voter signatures from original voter affidavits. This technology places our largest counties on the cutting edge of records retention, petition signature verification retrieval. The counties will also be able to replace the affidavit books which now must go to the polling place with a computerized printout that contains the digitized signature. Without this change to the law, however, the counties will not be able to use the digitized signatures on printouts at the polls. To keep up with technology, this change is requested.

**Section 14** prohibits a polling place worker from challenging a voter based upon his residency unless a proper written challenge has been filed or the worker has personal knowledge regarding the voter's residency. This also prohibits personal knowledge from being based upon DMV records.

**Commentary:** A situation arose in Clark County where polling place workers were asking names and addresses of voters when they appeared to vote. Nevada law only allows the name and political party of the voter to be asked. IF a voter gave an address that was different than that on the roster book, the polling place worker would issue the voter a challenged voter statement and the voter would be shown to the challenged voter polling place where he would vote a restricted ballot. The voter had no right to determine if he still lived in the precinct, therefore entitling him to vote a full ballot. The underlying current here is that a polling place worker should not be challenging voters. No other county in the state has this process and in fact Clark County changed their procedures for the city elections. We are seeking to codify this prohibition.

**Section 15** revises the procedures for the execution of the challenge of a voter.

**Commentary:** Essentially, this section allows a voter who is challenged to swear, under penalty of perjury, that he is entitled to vote because he belongs to the party he claims to belong to, he has not voted before on that day, he lives at the address on the roster or still lives in the precinct and he is who he says he is. These changes put the onus of responsibility on the voter to swear

under penalty of perjury to the facts stated in the voting roster. Many states currently do allow the voter to execute an oath when they are challenged, very similar to what is proposed here. If the election is contested, these statements are considered by the court in determining the validity of the contest. In the meantime, our voters are not disenfranchised in any way and they do not face the inquisition by the polling place worker which may lead to fear, frustration and disenfranchisement.

**Section 16** makes necessary changes to the current law dictating what ballot a voter who is successfully challenged based upon his residency may vote. On line 23 the law is changed to allow challenged voting in the clerks office and at the polling place.

**Commentary:** With regard to allowing the voter to vote a challenged ballot in the clerks office, in 1989 the law was changed to allow special polling places for challenged voter at every polling place. However, often a voter will call the clerks office indicating that they moved and neglected to change their address. The clerk would advise them to come to the office to pick up a challenged voter statement and would then have to send the voter out to their precinct to vote. Often the calls came in close to the time the polling places were to close and the voter would not have had time to get to the polling place and vote his challenged ballot. Rather than requiring the voter to return to the polling place, this change allows the county clerk to accommodate the challenged voter in his office.



**Section 17** requires that absent ballots for those voters outside the state must be prepared 40 days before a primary or general election.

**Commentary:** We would first like to request an amendment to line 4 to read "For a primary election or general election, <u>whenever practical</u>, not later than 40 days before that election;

This change is in response to a request from the Federal Voting Assistance Program which has requested that states allow at least 40 days transit time for ballots going to overseas military voters. We can meet this requirement for the primary, but because of the closeness of the primary and general, we are requesting the permissive language "whenever practical".

**Section 18** allows any voter for any reason to request an absentee ballot. It also allows senior citizens and the handicapped to make one request for an absentee ballot for any elections to be held during the year of the request.

**Commentary:** There is a current trend among states to ease the access to absentee balloting as a way to increase voter participation. With Nevada's dismal voter turnout, we need to do everything we can. This change simply removes the conditions under which a voter can receive and absentee ballot. The same checks and

balances on the absentee balloting process are still in place to ensure the integrity of the process.

Many of our counties currently allow seniors and those unable to go to the polls the opportunity to make a single request for absentee ballots for a year. Since these are the people who usually utilize these requests, we are codifying what already occurs and encouraging those who may not vote due to the need to request an absentee ballot for every election, to make one request and be included in primary, general and special elections for that year. The military already allows this for overseas voters.

**Section 19** makes necessary changes in 293.316 to coincide with the proposed changes in section 18.

**Section 20** restores the dates when mailing precinct ballots must be mailed out to their pre 1989 periods.

**Commentary:** In attempting to deal with the overseas voter issue in 1989, the wrong section of the law was amended. We have amended the correct section of the law in Section 17 of this bill. What occurred was no assistance to overseas voters and in-state mailing precinct voters received their ballots 67 days before the primary. This caused a great many problems and considerable confusion. Therefore, we are correcting this error.

**Section 21** allows absentee ballots to be tabulated during election day and changes certain requirements regarding the tabulation of absentee ballots.

**Commentary:** Current law prohibits the counting of any ballots until after the polls close. However, many counties are ready and able to count absentee ballots during the day, as a great many have accumulated in their offices. With the increased need to have information quickly, yet accurately, this change will allow the counting of absentee ballots to be completed prior to the closing of the polls and will allow some vote returns immediately after the polls close. Current restrictions exist concerning the dissemination of information prior to the polls closing. Many states already count absentee ballots either early or after the regular votes are counted.

Subsection 4: In 1989 the legislature changed the law to require absentee ballots to be counted by precinct, rather than by similar ballot type districts. This was a good change which produced a better picture of vote results. However, the way the law now reads, if only 1,2,or up to 10 absentee ballots were cast in a precinct, the result of the absentee voting would be disseminated separate from the regular votes and a persons right to the privacy of their vote could be violated. In order to avoid this problem, this amendment requires that absentee ballot votes must not be identified separately from the regular votes of the precinct.

**Section 22** is intended to allow a state central committee of

a major political party of the executive committee of a minor political party to receive voter registration lists free of charge from the election offices.

**Commentary:** This section is drafted incorrectly, in that it currently reads that the state central committee must pay for the list. An amendment should be added to accurately reflect the intent of the change. In addition, when the statutes were changed in 1989 and major political party was added throughout the statute, the minor parties found they were now excluded from obtaining voter registration lists. This was an oversight that this amendment fixes. Under subsection 4, we have added, at the request of a constituent, the work computer disk and we are allowing any person, ie a candidate to receive the computerized information if it is available.

**Section 23** makes some technical changes regarding the control of affidavits that are given to a deputy registrar.

**Commentary:** Lines 43 and 44 require a deputy registrar to account for any unreturned affidavits. This is a current practice in many county election offices. Subsection 6 is amended to require the deputy registrar to submit a list of the serial numbers of the affidavits, as the affidavits are the controlling audit numbers, not the names of the voters that were registered. However, an amendment should be added to include that the list must have the affidavit number and the voters name.

**Section 24** allows a person who is unable to sign their name to register either at the clerks office or in front of a deputy registrar.

**Commentary:** The current law is very punitive in that it singles out those who probably have some form of physical disability and makes voter registration more cumbersome by requiring them to appear at the county clerks office. Robin Bogich, who is retiring and has a debilitating disease asked for this amendment.

**Section 25** requires a person who registers to vote at DMV and does not provide sufficient information for his affidavit to be completed to provide that information within 30 days of the receipt of notice for more information.

**Commentary:** Currently the deadline for the county clerk to receive the additional information is the close of registration. What has occurred is that affidavits have languished for months without any information being received. A voter who desires to be registered will complete the request for information under the proposed deadline. All others will become invalid applications.

**Section 26** is a technical change to reflect proposed amendments to current law concerning address changes.

**Section 27** makes further technical changes to reflect amendments proposed in other sections of the bill.

**Section 28** changes purge law to a purge only in presidential election year and gives county clerks an additional month to complete their purge.

**Commentary:** Nevada has made great strides in increasing opportunities for voters to register to vote. However, we still have a negative purge in that we purge for non-voting. Currently only 14 states, including Nevada purge every 2 years. About 80% of registered Nevadans vote in a presidential election year. By comparison, in 1990, the "off year" election, only 63% voted. The question is raised whether we are purging for temporary disinterest in the process or actual ineligibility to vote. The Center For Policy Alternatives, a think tank for many election issues, has recently recommended that a Presidential year trigger be used for purging. With the inclusion of the proposed NCOA program, we will be able to keep up with our voters who move and our lists will remain cleaner.

**Section 29** Revises the provisions regarding written challenges.



**Commentary:** Some situations have arisen in past elections where party representatives have merged addresses on records at the Department of Motor Vehicles with voter registration records and have challenged voters based upon their residency if there is any discrepancy in the addresses. The problem is that voters may still be in the same precinct, they may not have changed their driver's license address, the lists at DMV may have been old, or the voter, while not being eligible to vote in a new precinct, may be eligible to vote in his old precinct. The bottom line is that DMV information is not reliable. In addition, a single voter is able under current law to attach a challenge affidavit to a list of hundreds of names. This is not the intent of the law.

The changes in this section require written challenges to be filed 15 days before the election, rather than the current 7 days. This will allow the county clerk more time to administer the challenges. In addition, a challenge may contain the name of only one person whose right to vote is being challenged. This changes the practice of attaching a computer printout to a challenge statement. In addition, a voter who wishes to challenge another voter must have personal knowledge of the reason for challenge and may not base his challenge on information at DMV. Challenges have become nothing short of intimidation. When over 6,000 challenges are filed against voters in one county, something is wrong. This change in procedure restores the original intent of challenging a voter based upon personal knowledge that the voter is not qualified to vote. this is a policy decision that we are asking this legislature to make.

**Section 30** requires county clerks to provide voter

registration information to the Secretary of State on the 27th day of every month.

**Commentary:** Nevada is severely lacking in the ability to track voter registration trends, recoveries from purges and periods of peak voter registration activities. We currently only receive voter registration information in January of an election year, before the primary, the general and after the purge. We are requesting that this information be filed with our office every month, even in off years, to allow us to better track voter registration trends in our state.

**Section 31** is a clean up change.

**Section 32** is a technical change.

**Section 33** requires that all documents of a petition that has been circulated by submitted at the same time.

**Commentary:** During the 1990 elections, petitioners would start submitting petitions for signature verification to the county clerk, but would not submit the entire petition and would therefore allow themselves more time to gather signatures. It is our opinion that when petitions are submitted, they are complete and circulation should stop. This change addresses that issue.

**Section 34** consists of clean up technical changes.

**Section 35** requires a candidate who files for a recall election to file a declaration of acceptance of candidacy and pay the filing fee for the election.

**Commentary:** The former Washoe County Registrar felt that it was not equitable to allow these recall candidates to run in a special election without having to file and pay a filing fee.

**Section 36** contains the appropriation for the NCOA program.

**Section 37** requires the secretary of state to adopt regulations for the NCOA program by January 1, 1992.

**Section 38** sunsets the NCOA program.

**Section 39** deals with effective dates.

# EXHIBIT 2



# EXHIBIT 2

NV Assem. Comm. Min., 4/3/2007

Nevada Assembly Committee Minutes, April 3, 2007

April 3, 2007
Nevada Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments
Seventy-Fourth Session, 2007

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:53 p.m., on Tuesday, April 3, 2007, 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/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).



**COMMITTEE MEMBERS PRESENT**:
Assemblywoman Ellen Koivisto, Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman Ed Goedhart
Assemblyman Ruben Kihuen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James Settelmeyer

**COMMITTEE MEMBERS ABSENT**:
Assemblyman Harry Mortenson, Vice Chair (excused)

**GUEST LEGISLATORS PRESENT**:
Assemblyman Joseph P. Hardy, Assembly District No. 20

**STAFF MEMBERS PRESENT**:
Lorne Malkiewich, Director, Legislative Counsel Bureau
Patrick Guinan, Committee Policy Analyst
Kim Guinasso, Committee Counsel
Terry Horgan, Committee Secretary
Trisha Moore, Committee Assistant

**OTHERS PRESENT**:
Larry Lomax, Registrar of Voters, Clark County
Alan Glover, Carson City Clerk-Recorder
Barbara Griffin, Douglas County Clerk-Treasurer
David Schumann, Vice President, Nevada Committee for Full Statehood
Janine Hansen, President, Nevada Eagle Forum

Ned Reed, Senior Deputy Attorney General, Office of the Attorney General
Nicole Lamboley, Chief Deputy, Office of the Secretary of State
Nick Anthony, Legislative Relations Administration, City of Reno
John Kadlic, City Attorney, City of Reno
Chet Adams, City Attorney, City of Sparks
Jill Busby, Private Citizen, Sparks, Nevada
Tim Randolph, Private Citizen, Reno, Nevada
Lynn Chapman, State Vice President, Nevada Eagle Forum
Caren Jenkins, Member, Commission on Ethics

**Chair Koivisto:**

[Roll called.] We are going to hear Assembly Bill 569, the county clerks' bill, first today.

**Assembly Bill 569: Makes various changes relating to elections. (BDR 24-322)**

**Larry Lomax, Registrar of Voters, Clark County:**

I am going to discuss three amendments that I am proposing to the clerks' bill, and Alan Glover will present the remainder of the bill. Hopefully, these are non-controversial.

Amendment number one (Exhibit C) is intended to save the taxpayers in Clark County a lot of money. When this statute was written, NRS (*Nevada Revised Statutes*) 293.323 clarified that mail ballots had to be sent out by first class mail or by airmail if they were sent overseas. About six years ago, the U.S. Post Office, working with election departments across the country, came up with an official election mail logo which, if placed on an election-related mail piece, allows the Post Office to treat that mail piece as first class mail, whether or not it is a first class mail piece. The change we would like to make to the statute would be to say that a mail piece can be sent out by first class mail, or sent out printed with the official election mail logo, in which case it would be sent at a nonprofit rate. There would be significant savings but no change in service to the person receiving the mail piece; it would be treated as first class mail, regardless. In 2006, the cost of postage to send an absentee ballot, including the pamphlet explaining the ballot questions, was $2.07. Sending an absentee ballot using the official election mail logo would have reduced the postage to 63 cents. In 2006, that difference would have resulted in a savings of over $60,000 to Clark County. In 2008, we estimate that removing this technicality will result in a savings of over $100,000, and it makes no difference in service to the customer.

Amendment number two (Exhibit D) is the result of occurrences during the 2006 Election, and has to do with both written and oral challenges at polling places. In 2006, an individual challenged about 13,000 voters claiming that he lived in the same political district, meaning county, as the individuals he was challenging and therefore had a right to challenge them. The law currently reads that a person may be challenged “orally by any registered voter of the precinct or district ...”, and the same language is used in the written challenge section. We, and our lawyers, argued that the language “or district” was not a political district, but a voting district. A voting district is a reference to combining one or more precincts in a particular election for the convenience of the election. We went to court two different times and ended up prevailing on the issue, but it would be to everyone's benefit if this matter could be clarified in statute. If “district” is actually intended to mean “political district,” you are saying that a person could be challenged by any registered voter of the precinct or county, and that makes no sense. You could even interpret a political district to be the entire State in the sense of a statewide district such as a congressional district.

Our first suggestion is to limit the definition of “district” to a precinct. There was a rumor in 2004 that oral challenges at polling places were going to occur. They never did; however, the statutes still allow someone in a precinct who is a member of that precinct to go into a polling place and challenge every voter who shows up. There is nothing to prevent that or require the challenger to have any personal or first-hand knowledge of why he or she is challenging a particular voter. Our second suggestion, at paragraph 2, page 1, adds a requirement that a person actually have knowledge of the person being challenged

or the reason the challenge is being made. The intent is to remove the possibility of someone just standing in a polling place and blindly challenging every Democrat, Republican, or minority who shows up.

On the second page of this proposed amendment, under “written challenges,” I am making essentially the same change at paragraph 2(a) by deleting the word “district” and asking that the person be required to live in the same precinct and have “firsthand knowledge”. In 2006, approximately 13,000 people were challenged. In many cases it was all the members of one party in a particular precinct. The letter that was submitted with each challenge simply said, “In the media recently there has been a lot of news about illegals entering the county, therefore I challenge this person, claiming he is not who he says he is,” and then it had an individual's name.

**Assemblyman Conklin:**

Is the term “firsthand” defined anywhere in statute?

**Larry Lomax:**

If there is a better legal term, I would be happy to use it.

**Assemblyman Conklin:**

To clarify, we are talking about a person who, through his own experience, knows something to be true.

**Larry Lomax:**

That is my intent. I simply want to eliminate these blind, scattered challenges.

**Assemblyman Conklin:**

I want to understand your intent in case the word “firsthand” is changed.

**Larry Lomax:**

Amendment three (Exhibit E) concerns changes placed into law under the Help America Vote Act (HAVA). Now, when an individual fills out a voter registration form, that individual must provide a Nevada driver's license number. If the individual does not have one, the last four digits of the Social Security number must be provided. If the individual has neither, the Nevada statutes state that the individual must sign an affidavit to that effect and in that case, a number will be provided for the applicant. Nothing in statute indicates where the affidavit comes from or what it should look like, so the language at Section 1(c) adds this affidavit to the forms the Secretary of State is supposed to standardize across the State. This, again, is the result of a court case in which an individual insisted he could write his own affidavit, and we disagreed.

Changes in the amendment where the word “voter” is crossed out and “applicant” replaces it are administrative changes. The language was poor in this particular section and referred to someone who was submitting an application to register to vote, but kept referring to that person as a “voter” and this was used as an argument in court that the mere use of that term implied that the person was registered as soon as he filled out the form. This change clarifies that when you are applying to register to vote you are not a voter at that point in time.

Paragraph 6 on the next page is the result of a court case involving the standard voter registration form designed by the Secretary of State. There is an oath on the registration form listing all the requirements to be registered to vote that the applicant is supposed to sign. In this case when the applicant turned in his voter registration form, he had crossed out several of the items on the list. For instance, he had crossed out “I am a citizen of the United States” and wrote in a bunch of legal citations. I showed it to my district attorney to see whether or not I could accept that application because I needed clarification about the meaning when someone crosses all those items out. We went to court and we lost. The judge said I should have accepted the application as it was, so I am trying to get clarification. I am not an attorney, and I do not believe any of the other clerks are either, so it is

an unfair burden on the clerks to have to make such a determination about altered forms. We have a standard form, designed by the Secretary of State. I ask that we have the opportunity to submit such an altered form for legal review prior to accepting the application and registering the individual to vote.

**Assemblywoman Gansert:**

To register to vote, do you have to have a Social Security number?

**Larry Lomax:**

One person in Clark County has signed an affidavit stating he does not have a Social Security number. When we ran our mandatory check against DMV (Department of Motor Vehicles) and Social Security Administration records, they show he does have a Social Security number; however, the individual refused to explain the situation to us. He took us to court and a judge ruled we should register him anyway. So, I do not know the answer to your question.

I want to add that Clark County fully supports the bill. I hope there is nothing controversial in this bill because a lot of this bill is cleanup language. We are still using language that refers to punch cards, and those disappeared prior to the 2004 Election.

**Alan Glover, Carson City Clerk-Recorder:**

Even though the bill looks lengthy, it is not. It deals with NRS 293 and NRS 293C, which is the section concerning cities, so everything in NRS 293 is repeated in NRS 293C.

On page 3, in Sections 2 and 3, we define “ballot box” as well as “provisional ballot.” You will see throughout the bill we remove references to punch cards. On line 20 we delete the term “polibook” and use the term “roster.” There used to be two books, a pollbook and a roster, and we would intermix them all the time. We keep track of only one now, and it is the book you sign when you vote.

Section 8, lines 27 through 29, reference a facsimile of a ballot so one would know how to vote a punch card, and this change removes that language. Section 10, line 42, mentions withdrawal of a candidate because there was a candidate who filed for office, withdrew; then changed his mind and wanted to be placed back on the ballot. We had no way to handle that situation and this language explains how to handle it.

The language being removed in Section 11 was obsolete language relating to paper ballot precincts with 600 voters, which we no longer have. Page 5, Section 14, complies with what we actually do now. We used to have three board members at each precinct. With the new configurations we use, we have to have at least one member, but three are unnecessary. This language change just conforms to what we actually do and makes us more efficient.

Ms. Griffin from Douglas County has a change she would like to make on page 6, line 21. The county commissioners pay a reimbursement for election board members who travel. We do not have an amendment prepared for this change, but the bill still calls for those board members to be paid 10 cents per mile. That has been in statute for years and we would like to suggest, if the Committee agrees, that the reimbursement be adjusted to whatever the state or federal rate is. This is an issue in Elko and some of the larger counties.

**Chair Koivisto:**

Your suggested amendment would be at a rate not exceeding the current state travel rate?

**Alan Glover:**

Yes, it really needs attention. I think the Senate is considering conforming all those rates to federal rates.

On page 7, the new language starting at lines 18 and 26 was inserted by the previous Secretary of State. We are not married to this language, but it gives authority to the Secretary of State to define what a paper record is.

**Barbara Griffin, Douglas County Clerk-Treasurer:**

Changes on page 10 mention “town advisory boards” and conform with what we do with our general improvement districts, which is already in law. If a candidate does not have any opposition, that candidate can be declared to be elected, and it saves the town boards a great deal of expense. This is already in the statutes at NRS 318.

**Alan Glover:**

Language on page 14, Section 28, line 16, has to do with returning an absentee ballot. There was no provision for them being returned in person. Even if absentee ballots are returned in person, we still need to handle them just as though they came through the mail.

On page 15, lines 9 through 11, is stronger language to make certain the information we have is confidential.

On page 18, line 12, is something the rural counties asked for. On the first day of early voting, all counties are required to be open between 10:00 a.m. and 6:00 p.m. We ask that all counties be required to be open at least four hours during that period. On the first day of early voting, Storey County had 20 people vote, and of those, 10 came in within the first hour, but they had to stay open until 6:00 p.m. I am not opposed to removing those restrictions between 10:00 a.m. and 6:00 p.m. I would like our office to open earlier because we have a long line on that first Saturday. If you felt comfortable allowing the county clerks some authority to keep the polling places open longer on that Saturday, I think we all would; but the rural counties get so few people to early vote, it is a waste of time to sit there all day long at the court house with no one coming in. The bigger counties are going to be open as much as we can. We want to get those people early voted and processed.

**Chair Koivisto:**

Am I correct that, with this language, you cannot open until 10:00 a.m.?

**Alan Glover:**

That is true, although we have opened before 10:00 a.m. because we were ready to go, everyone was standing in line, and what would be the point of waiting until the exact minute?

**Chair Koivisto:**

We decided to open at 10:00 a.m. because a lot of early voting in Clark County is done at the malls and they do not open until 10:00 a.m. Is there some language that would be helpful but not cause problems for early voting locations at malls?

**Alan Glover:**

Perhaps on that first Saturday they would have to be open at least four hours. Remove any mention of the times and make it flexible enough to accommodate mall hours, or portable sites.

We have a proposed amendment to Section 45 of the bill, on page 24, line 9. The term “roster” was inadvertently inserted into the list of things that are sealed for 22 months. You do not want to seal the rosters for 22 months, so we are asking the word “roster” be deleted in the new language.

**Assemblywoman Gansert:**

Going back to the language about being open four hours on the Saturdays during early voting, did you want the hours to be between 8:00 a.m. and 6:00 p.m.? Early voting could be open from 8:00 a.m. until noon, as long as it was open for at least four hours within a given time frame. For instance, if early voting was taking place in a mall, it could open at 10:00 a.m., but if the site was not in a mall, it could open at 8:00 a.m.

**Chair Koivisto:**

Yes, with the language “for at least four hours” we could say early voting could begin at 8:00 a.m.

**Alan Glover:**

Yes, that would work.

**Assemblyman Segerblom:**

Is there anything that requires the number of hours early voting sites are open to be equal for all counties?

**Alan Glover:**

No, there does not appear to be any requirement that Esmeralda County be open the same number of hours as Clark County.

**Assemblyman Segerblom:**

My concern would be that Clark County was not open as many hours as Carson City or Douglas County.

**Alan Glover:**

In the larger counties with good early voting turnouts, we want to be open as many hours as possible to process those early voters because early voting is so much more convenient for people. Our experience is that on Saturday mornings, people get up, have breakfast or coffee, and come in. We have had early voters arrive at 8:00 a.m. and sit for two hours waiting to vote.

**Assemblyman Segerblom:**

In Clark County, we want to make certain our early voting polls are open the same hours.

**Chair Koivisto:**

I doubt Larry Lomax would change the hours in Clark County. I think the language, “at least four hours,” does not preclude being open longer.

**Barbara Griffin:**

Being open four hours really affects only the small counties because they do not have much of a turnout. During this last election I spoke with the clerk in Mineral County late in the day, and she said only 15 people had come in to early vote. The larger counties are going to have extended hours, as they have always done, because early voting is very popular and we encourage our voters to use it.

**Alan Glover:**

The language on page 25, on lines 28 through 31, has to do with giving free copies of voter registration lists to the state central committee and county central committees of major political parties. Since the Secretary of State has now made that information available for free on their website, it may not be as important.

Language on page 26, at line 21, refers to getting 50 applications for free in a 12-month period. The language had problems and needed clarification.

On page 27, starting on line 42, was a provision added by the Secretary of State's Office two years ago. The language looks proper and relates to a local government withdrawing a ballot question and how that would be handled.

The other major topic, referenced on page 30, line 20, has to do with receipts and is where language was inserted saying, “if the clerk uses a voter receipt.” Clark County still does use a voter receipt; however, the rest of the counties do not, so voter receipts should not be required in the rest of the State any longer.

On page 32 at line 16 is a reference to a damaged paper ballot and conforms to current practices. Page 33 of the bill starts into NRS 293C and is a repeat of the language in NRS 293. The other changes are on page 53 and relate to Elko County and deal with the Elko Convention and Visitors Authority. I have a statement from Win Smith, the Elko County Clerk, that I will read into the record:

> The Elko Convention and Visitors Authority elects its Board Members in a manner similar to the GID (General Improvement District) statutes. These offices, two from the City of Elko, one from outside the city limits, and within the Convention Center boundaries are, more often than not, uncontested. The boundaries at this time split four mailing precincts, so this entails two ballot styles with an increased cost to our ballots. Assemblyman John Carpenter is also working at this time to change and extend the boundaries of the Convention Center to coincide with the precinct boundaries. Placing the uncontested candidates from a district contest on the ballots is a costly procedure. The Elko County Clerk's Office constantly endeavors to trim the cost of elections in an era of ever-increasing costs.

This is special language being requested that would treat the Elko Convention and Visitors Authority Board as a GID. With that, I have no further comments.

**Assemblywoman Kirkpatrick:**

We are taking out all the language when it comes to paper ballots. Do you ever foresee using them again? When computers go down, people do not appear to know how to go backwards, and I wonder if we would find ourselves in a situation of having to postpone an election, or something like that.

**Alan Glover:**

We have been very careful drafting this language. Technically, an absentee optic scan ballot is a paper ballot, so the language dealing with the use of paper ballots is still there, but the punch card portion is being removed because we will never go back to that. There are still occasions where elections are run with paper ballots, so we have made certain all references to paper products that actually apply are still in statute, but the punch card language is gone, and I am very pleased with the way LCB (Legislative Counsel Bureau) drafted it for us.

**Assemblyman Ohrenschall:**

Last year, a constituent of mine attempted to register a political party change through a mail-in form. In the Clark County media, there had been a lot of publicity about a particular day being the last day to get forms mailed in if people wanted to be able to vote, so the individual mailed the form in and got the postmark. When that individual showed up to vote on election day, he was told there had been a lag from the date he swore out his mail-in registration and dated it to the date of the postmark and that he could vote in the nonpartisan races but not in the partisan ones. *Nevada Revised Statute* 293.5235, 7(b) says if there is more than a three-day lag between the date you filled out the mail-in form and the postmark, the date of receipt shall be the effective date and not the postmark date. Do you know what that is in statute and would you be open to any change?

**Alan Glover:**

That was probably one of the most difficult sections that was amended last session, and one that the clerks were not really in favor of. It had to do with who could sign petitions. I find it a very awkward statute to deal with as a practical matter, and my staff was driven crazy trying to work with it. I can see how it could happen because there are lag times entering data. I do not know if there is any better language, but we are open to any suggestions and would be very willing to work with you on that, because all the clerks have found this really hard.

**Barbara Griffin:**

Our concern with using the date when it was dated is that there is no one who could prove, or who had witnessed, that the applicant dated it on a certain date. Individuals who wanted to vote on election day could say, “I had it dated a long time ago; it is the post office's fault.” There is nothing preventing or precluding someone from post-dating an application when it is being filled out. That is partly why the decision was made to use the postmark, or the date of receipt, but we could not use the date completed by the applicant himself.

**Assemblyman Ohrenschall:**

I had two constituents attempt to early vote but they were told they were not on the rolls. I called the county registrar. What happened was the individuals had picked up the forms a couple of weeks before the deadline, filled them out, dated them that day, but not mailed them until the deadline. The forms had been postmarked by the deadline, but there was approximately a two-week lag between the signature date and the postmark, so they could not vote in the primary election. I wondered if there was any way the postmark could be the final date, not the date of receipt?

**Chair Koivisto:**

There may be an issue between the date the form was filled out and the time it was submitted.

**Barbara Griffin:**

This is what happened to your constituents: They dated the forms, but did not mail them for a couple of weeks. You are asking if the clerks could use the postmark date instead of the receipt date, and Alan Glover is correct. That was part of the discussion on those petitions because when individuals sign those petitions, the clerks need to know exactly what date to use, the postmark date or the date receipted. Which date to use also ended up in court and that is how the language was developed and why it was developed that way. Before I would commit to something, we should discuss this with Mr. Lomax, because he may have an additional concern.



**Assemblyman Ohrenschall:**

The constituents had the best of intentions but lagged when it came to mailing the forms and were really shocked not to be able to vote a partisan ballot. I did not know how to explain it to them.

**Assemblywoman Gansert:**

Going back to Section 84, subsection 3, where it talks about, “Not earlier than 4 working days before the election,” in public you can “count the votes” and then in subsection 5 it says one is guilty of a misdemeanor if you disclose that count. Does the “4 days earlier” refer to needing more time to count the absentee ballots? It seems as though that could potentially alter the results of an election if people know the results of absentee ballots. Perhaps the penalty for affecting an election should be increased.

**Alan Glover:**

They have to have four working days to count all those absentee ballots, especially in Clark County, but they are not “counted;” they are what we call processed. They are run through the card reader, but you do not know what the election results are until 7:00 p.m. on election night. During the last presidential election, Mr. Lomax had 80,000 absentee ballots, and to run those through the card reader the process needs to start early. As absentee ballots come in, they all must be opened, taken out of their envelopes, and flattened. I am not certain four days is long enough to actually process all those ballots, but Mr. Lomax says he can do it within that period of time. No one knows the results, because as they go through the card reader, you cannot get the results until 7:00 p.m. If someone had received the results, we would know it because the computer would indicate someone had asked for the total. You hit the button, ask the computer for results, and it starts printing.

**Assemblywoman Gansert:**

  

Right now, in this process, you are getting the results late anyway, and they are added at the end. Is there a reason not to add them at the end? Are you trying to get them all done in one day? If you need four days now, I am not sure how you are currently doing it.

**Alan Glover:**

We are doing it in four days.

**Assemblywoman Gansert:**

You are doing it in four days, so is the total count in?

**Alan Glover:**

The processing of absentee ballots starts at least four days before the election.

**Assemblywoman Kirkpatrick:**

It is a long process. Today is Election Day in Clark County. You can go on the computer at 7:10 p.m., and election results will be posted. None of the absentee ballots are calculated until after 7:00 p.m., and then the results come out in a stream. It takes several bodies to open absentee ballots and run them through the machine.

**Assemblywoman Gansert:**

I can understand the logistics, but do we need any language that confirms that the results of absentee ballots are not tabulated until 7:00 p.m.?

**Alan Glover:**

The language is correct and makes certain the clerks do not do that.

**Assemblywoman Kirkpatrick:**

For as long as I can remember, we have never had a problem in Clark County.

**Assemblywoman Gansert:**

As long as we are assured that although absentee ballots are counted, they are not tabulated and added to the totals until the appropriate time.

**Alan Glover:**

Right.

**Chair Koivisto:**

Are there any other questions from the Committee? [No response.] David Schumann has signed up in opposition to the bill.

**David Schumann, Vice Chairman, Nevada Committee for Full Statehood:**

There are a couple of controversial items I would like to highlight. On page 11 of the bill, at line 27, it reads, “provides a permanent paper record with a manual audit capacity,” but then, “which must be available as an official record for a recount” has been stricken. There is not a high enough level of trust for those electronic machines that we should be getting rid of that permanent paper backup. Maybe in another ten years we will be able to trust those machines, but striking that language is controversial and will not save that much money.

In Section 52, subsection 3(d) on page 29, the language says “Be capable of providing a record printed on paper (1) Each ballot voted on the mechanical recording device; and (2) The total number of votes recorded on the mechanical recording device for each candidate and for or against each measure.” Those go to the integrity of the whole process. There should be a backup. I worked for some years at Hewlett Packard in Silicon Valley. I am not capable of it, but I know there are people who can hack into these machines. I think the piece of paper is vital to the integrity of the process.

**Janine Hansen, President, Independent American Party:**

I am not in opposition to this bill. I wanted to clarify amendment #3 (Exhibit E) because it deals with some things that happened with Independent American Party candidates. I do agree with David Schumann's concerns about the paper ballot.

On amendment #3 at Section 1(c), it refers to “A standard form on which an applicant in accordance with paragraph 5 of this section can attest under penalty of perjury he does not have either a valid Nevada driver's license or a Social Security number.” There are a number of people who have serious concerns about the use of the Social Security number. Several years ago my nephew, who does not have a Social Security number, went to court to be able to register to vote without having a Social Security number. He won. I am sure there are other people in that situation.

Under HAVA those things are required. During the last election cycle, we had a candidate who wanted to register to vote in Clark County and to run for Recorder. This particular amendment specifically refers to him, I believe, because Larry Lomax refused to allow him to register to vote, and refused to allow him to file for County Recorder. It went to the District Court and the Supreme Court. The Supreme Court said he had to be allowed to register to vote and to run for County Recorder. In fact, the Court said a felony had been committed when he was not allowed to do that. I am sure that is why Mr. Lomax wants the amendment on the second page at Section 6. He made the decision but should have asked for advice in that regard.

Anytime you put your Social Security number on anything, even the last four digits, you are creating a situation in which that information, coupled with your driver's license number, could lead to identity theft. These records are public records. In Section 1, subsection 3, an applicant has to attest under penalty of perjury that he does not have these documents, and it might be true. Three of my grandchildren do not have Social Security numbers. That was a decision made by their parents, but many people continue to be concerned about the excessive uses of Social Security numbers. Some people have repudiated those numbers. I do not know all the reasons behind these actions, but I do know some people are concerned about the risk of identity theft. These people could be assigned another number, which would resolve the problem. To force them, under penalty of perjury, to swear they do not have these numbers is a violation of their religious beliefs and would be an argument they would make.

On the voting registration form, you have to mark that you are a citizen of the United States. I know people who consider that a citizen of the United States is a citizen of the “corporate United States” which they differentiate from being a citizen of the “United States of America.” If the language read, “citizen of the United States of America,” they would probably be willing to sign it, but because it only says they are a citizen of the “United States” they have some kind of philosophical objection, which I cannot identify for you because I am not that familiar with it. That may be one reason why some people cross things out on their voter registration form.

This issue came about because Larry Lomax did not allow our Independent American candidate to file, and the Supreme Court of Nevada decided that he could register to vote and could file for office. In the Ninth Circuit Court, there is currently a case being heard in Arizona concerning a Social Security number. A child had been assigned a Social Security number while in the hospital even though the parents objected. There are some concerns, particularly based on the religious beliefs of different people and sincerely-held philosophical objections, to the way these forms of identification are being used. Larry Lomax has been put in the difficult position of trying to fulfill his responsibilities, but we have to balance that with the religious concerns of other people. It is a good idea to have the district attorney determining the cross-outs, et cetera, so those determinations are not left up to the clerks. They do not have the expertise to do it.

**Chair Koivisto:**

There are a lot of amendments on this bill so we will have to bring it back to Committee and send it, and the amendments, to the Legal Division. I am closing the hearing on A.B. 569 and opening the hearing on Assembly Bill 516, the Attorney General's bill.

**Assembly Bill 516: Revises provisions governing the review of arguments advocating and opposing the approval of certain measures proposed by initiative or referendum. (BDR 24-522)**

**Ned Reed, Senior Deputy Attorney General, Office of the Attorney General:**

I am here to support the passage of A.B. 516 which will amend NRS (*Nevada Revised Statutes*) 293.252 to remove a conflict of interest which the Attorney General currently has under the statute. *Nevada Revised Statute* 293.252 pertains to constitutional and statewide initiative or referendum petitions. The statute sets forth a procedure whereby committees are formed to support and oppose each ballot measure. As an example, the Secretary of State appoints two committees, each consisting of between one and three people. Under NRS 293.252, the committees are then charged with the preparation of arguments, either for or against, a ballot measure. These arguments ultimately are the same arguments which appear in sample ballots sent to the registered voters.

When a committee submits its proposed argument to the Secretary of State, the Secretary must review the argument and, "shall reject each statement in the argument or rebuttal that he believes is libelous or factually inaccurate." The term "libelous" is a standard, requiring legal analysis of facts and a legal conclusion. To determine if a statement is libelous, the Secretary of State would, predictably, turn to the Attorney General for assistance. Therefore, it seems likely almost to a point of certainty that the Attorney General will be asked to assist the Secretary of State with his NRS 293.252 review at times in the future.

The Attorney General's concern arises with the next step in the procedure. If the Secretary of State rejects any portion of a committee argument, the committee "may appeal that rejection to the Attorney General." The Attorney General must review the reasons for the rejection and "may receive evidence, documentary or testimonial, to aid him in his decision." The Attorney General's decision is considered a final decision for purposes of judicial review. The procedures set forth in NRS 293.252 create a conflict for the Attorney General. As a legal counsel to the Secretary of State, the Attorney General must provide legal counsel to the Secretary of State as to the legal sufficiency of committee arguments; however, the statute also requires the Attorney General to then "sit in a quasi-judicial capacity to review" the same decision. This bill removes the conflict by doing three things:

- Removes the requirement that the Attorney General must review the Secretary of State's rejection of portions of committee arguments;
- Substitutes the Secretary of State for the Attorney General as being the final decision maker for purposes of judicial review; and,
- Provides an expedited judicial review of the final decision of the Secretary of State's rejection of portions of committee arguments.



**Chair Koivisto:**

Are there questions from the Committee? [No response.] Is the Attorney General being taken out of the equation so conflicts would go directly to the First Judicial Court?

**Ned Reed:**

That is correct.

**Assemblywoman Gansert:**

I know we talked about this last session, but I cannot remember why we went with this language.

**Chair Koivisto:**

Is this the same as the bill that came before us in the 2005 Session?

**Ned Reed:**

I really do not know.

**Assemblywoman Gansert:**

I think the Secretary of State did not want to make the decision, and that is why it was referred to the Attorney General. The Secretary of State deals with election issues but is not necessarily an attorney. That might be why it went to the Attorney General.

**Nicole Lamboley, Chief Deputy, Office of the Secretary of State:**

We do not have a problem with this bill, as the Secretary of State is a client of the Attorney General and if it is challenged, the Attorney General represents the issue that the Secretary of State has. It puts the Attorney General in an awkward position to represent both sides. If they appeal the decision to the Attorney General and then it goes to the court, it creates this barrier of conflict. We are in support of this change.

**Chair Koivisto:**

It seems to make sense.

**Assemblyman Ohrenschall:**

Are we running into a problem asking the Court to write a ballot question instead of making a legal ruling, as opposed to the current system? Maybe I am misunderstanding this.

**Ned Reed:**

The role of the Court here is to rule on the decision of the Secretary of State as to whether or not the Secretary of State is correct in finding certain parts of the explanation that goes to the voter to be either factually inaccurate or libelous. They just make a decision on that. All we are dealing with here is the explanation of the ballot question prepared by the committee. We are not dealing directly with the ballot question itself.

**Assemblyman Ohrenschall:**

Currently, if someone appeals to the Attorney General but is still not happy with the decision, does he have the option of going to court?

**Ned Reed:**

That is correct. They can go directly to the District Court for judicial review.

**Assemblyman Ohrenschall:**

If he does go to Court, does the Court usually send it back to the committee for rewriting, or does the Court rewrite it?

**Ned Reed:**

I do not know.

**Nicole Lamboley:**

I would have to verify what happens in that process.

**Chair Koivisto:**

Are there any other questions from the Committee? [No response.] We will bring the bill back to the Committee and hold it to have questions answered.

**Janine Hansen, President, Independent American Party:**

We have been very pleased with the process Assemblyman Mortenson created to allow the public to participate in writing the arguments on the ballot. I have done that myself. We support this measure because we think it is a more independent review. Years ago when we had a serious disagreement with the Secretary of State, before this process existed, we had to sue the Secretary of State and go to the Nevada Supreme Court to get the language on the ballot question changed. The language had been so unfairly written and was so biased. The Supreme Court actually changed the language of the explanation that was written by the Secretary of State and modified it according to our concerns.

Here is what can happen in this process if you have issues that the Secretary of State might be concerned about. The Secretary of State might recommend that those be changed before you have to go to Court. This results in a dialogue with the Secretary of State or with the local registrar of voters, so it is not just automatic that you go to Court if you disagree. There is the opportunity for dialogue, so a lot of issues can probably be resolved before they ever go to Court. That is a better process because it costs a lot of money, time, and effort to go to court. If there is a serious disagreement, that option to go to Court independent of the Secretary of State or the Attorney General's Office improves the process. It does not take away from the fact that they can make some adjustments in the meantime. We support this bill. We think it is more fair, more independent, and will improve the process Mr. Mortenson has worked on all these years.

**Chair Koivisto:**

Are there any questions from the Committee? Mr. Ohrenschall, do you have concerns about this? I do not think we are changing anything; we are simply skipping a step. We are taking the Attorney General's Office out of a bad position and going directly to the First Judicial Court for a decision.

**Assemblyman Ohrenschall:**

My concerns are alleviated.

**Nicole Lamboley:**

We did discuss this with the Attorney General's Office. In the bill, Section 1, subsection 7, it speaks about the decision of the Secretary of State to reject a statement as the final decision. The language then goes on to say, “by filing a complaint in the First Judicial District Court. The Court shall set the matter for hearing not later than 30 days ....” In order to allow the clerks the time to prepare the ballots, it would be better if that length of time, 30 days, was reduced to a more reasonable number such as within 5 days. Depending upon the timing, it could be very difficult. Page 9 of the bill refers to city clerks and says that, “The Court shall set the matter” within 3 days. We would like to shorten that 30-day length of time to something more reasonable. I spoke with the Attorney General's Office, and they are amenable to that change.

**Chair Koivisto:**

On line 35, page 3, you would like the language to read, “by filing a complaint in the First Judicial District Court. The Court shall set the matter for hearing not later than 5 days ...?”

**Nicole Lamboley:**

Yes, that would be our proposal.

**Assemblywoman Gansert:**

The 30 days was set because we were concerned about the calendar of the Court. When these issues arise, usually they are expedited. Do we need to get an opinion from them about whether we can reduce that to 5 days, or if it would be better to have something in between those two numbers?

**Chair Koivisto:**

We will hold the bill pending information from the Court to see if they can do the five days. I will close the hearing on A.B. 516 and go to Assembly Bill 570.

**Assembly Bill 570: Revises certain provisions relating to city government. (BDR 24-429)**

**Nick Anthony, City Attorney, City of Reno:**

This bill addresses two separate and distinct issues. First, it addresses canvassing election results. Second, it attempts to move from an elected to an appointed city attorney.

Section 1 of the bill changes city election results from five working days to six working days, thus the city council has six working days to report those results back to the Secretary of State. The reason for the one-day change is the Reno City Council meets on Wednesday, and the sixth working day following an election actually falls on a Wednesday. There may also be an amendment coming from the Secretary of State's Office that we are amenable to. That amendment would also include counties. I have spoken to the Washoe Country Registrar's Office, and they are in support.

The bill also deals with the Charters of Caliente, Carlin, Elko, and Wells. I have spoken to the League of Cities' representative for those cities, who has contacted those cities and they are in support as well. This bill provides them the additional flexibility of that one extra day.

There is one minor amendment that has been brought to my attention and I believe it is simply a drafting error. Referring to amending the Carlin Charter on page 4, the language says "on or before the first Wednesday after any election," that would be the day following the election, so that needs to be "six working days" as well.

Reno and Sparks are the last two cities in Nevada with elected city attorneys. This bill opens up the Reno City Charter and the Sparks City Charter to change those positions to appointed positions. The reason is a policy question for you, the policy makers, to decide. It is not a witch hunt or attack on any incumbent attorney. Nor is it incumbent that this proposal go to a vote of the people. The last time a city moved from an elected to an appointed city attorney was the City of Las Vegas that moved that way in the late 1980s with a Charter change through this very Body.

The bill grandfathers-in the existing Reno City Attorney through the year 2014, if he is reelected before this takes effect, as we are very happy with his performance.

**Chair Koivisto:**

This bill just affects the City Attorney for Reno but not Sparks?

**Nick Anthony:**

This bill, as currently written, does include Sparks as well.

**John Kadlic, City Attorney, City of Reno:**

I was elected the Reno City Attorney in November, 2006. My current term will expire in 2010. I am here to testify in favor of A.B. 570. Other than Reno and Sparks, all other city attorneys in Nevada are appointed. Most city attorneys throughout the United States are appointed. I do not know whether being elected or appointed is better because there are arguments that can be made on both sides.

I am concerned about my wonderful staff of attorneys and support staff who have been working very hard with the Mayor, the City Council, the City Manager, and all the city staff to do what is in the best interests of the City of Reno. I want this issue to be resolved in this session one way or the other, either the position will be elected or appointed, whatever you choose it to be.

**Assemblyman Segerblom:**

Is this position term limited?

**John Kadlic:**

No, it is not. None of the county clerks or district attorneys are term limited. Legislators and city councils are term limited, and county commissioners are term limited, but none of the other positions are term limited.

**Assemblywoman Kirkpatrick:**

What is the fiscal impact if the position were appointed versus the cost of the elections? When you are up for election, do you stop participating in different things, or is it like being a judge and you continue about your business?

**John Kadlic:**

I retired from the Public Employees Retirement System (PERS) in 2000 and then went into private practice. I returned to public life but had to choose whether or not to continue to collect my pension. I chose to continue to collect that pension, but if my position becomes an appointed one, there is a problem. That is why the bill is designed the way it is, to allow me another elected term. I am the only elected official in the State who is collecting a PERS retirement and might have his elected position changed to an appointed one.



**Assemblywoman Kirkpatrick:**

What happens when you are in the process of running for elected office? Do you continue to do your job? For instance, in the City of Las Vegas, the day you file for election you must take a leave of absence from your job. I am trying to understand the situation in Reno. Frankly, I think appointed is the way to go, but I do not live in Reno.

**John Kadlic:**

After my retirement, I went into private practice. Then this opening for Reno City Attorney opened up, I ran for the office, and won. I would like to have a second term and be elected again. After that, if the position becomes an appointed one, it would be fine with me. Whatever you think is in the best interests of the City of Reno. I want stability for the people in the office now. I am concerned more about them.

**Assemblywoman Gansert:**

Has a bill like this one ever been brought to the Legislature before?

**Nick Anthony:**

Not to my knowledge.

**Assemblyman Goedhart:**

What is the length of the elected term?

**Nick Anthony:**

The current elected term is four years. This bill would remove that four-year term, and the new city attorney would be appointed and directed by the City Council.

**Chair Koivisto:**

The confusion may be because the language says, “any elected city attorney who holds office on October 1, 2007.” It adds, “or through the conclusion of the elected term expiring in November, 2014.”

**Nick Anthony:**

We added that provision to grandfather Mr. Kadlic in so he would continue in his elected capacity and there would not be an appointment made until the year 2014.

**Assemblyman Segerblom:**

It seems as though we are getting ahead of ourselves if this does not take effect until 2014.

**Nick Anthony:**

When this issue came up, an exception would be made for his case, given the PERS background. The City Council is very happy with Mr. Kadlic's current performance; however, it is an issue now and has been in the past, so that is why we would like it addressed. We felt the time was right to address it now, and that is why we are looking prospectively forward.



**Assemblyman Segerblom:**

You do not know what the Council is going to say in 2014.

**Nick Anthony:**

This is an issue today, and we felt the time was right to bring it forward.

**Assemblyman Cobb:**

The section my colleague just referenced says, “Who holds office on October 1, 2007, is entitled to serve the remainder of the elected term or through the conclusion of the elected term expiring in November 2014.” That seems to be discretionary with the City Council, correct? They do not have to extend the term to 2014?

**Nick Anthony:**

That is not my interpretation of that section. I drafted that section and let me clarify. The intent was that, if Mr. Kadlic is still the elected City Attorney on October 1, 2007, he is entitled to serve the remainder of that elected term; or, if he is reelected in 2010, then he can serve out the remainder of that term, whichever occurs later. It is not discretionary, it is meant to give Mr. Kadlic the ability to run again in 2010 if he is still the elected City Attorney on October 1 of this year.

**Assemblyman Cobb:**

I see what you are saying. This applies only to the City of Reno? This would not apply to the City of Sparks, as well?

**Nick Anthony:**

That is correct. This provision is in the City of Reno Charter. Each charter is unique, in and of itself.

**Chair Koivisto:**

We have legislation coming over from the Senate to change the election times in Wells and Carlin from spring to fall, when the general elections are held. Would we run into issues with that bill?

**Nick Anthony:**

I do not believe so because this bill addresses only the canvassing of election results, not when an election is actually held, but when those results must be submitted to the Secretary of State.

**Chair Koivisto:**

Are there any other questions from the Committee? [No response.] I will ask others in support to speak now.

**Nicole Lamboley, Chief Deputy, Office of the Secretary of State:**

We discussed this bill with the City of Reno, and we are fine with it with the exception of one minor amendment. We asked that the language regarding canvassing be extended to include the chapter concerning counties, so that the language is consistent throughout the statutes regarding canvassing of election results.

**Chair Koivisto:**

We have a number of people who have signed up in opposition, and I will take them in the order in which they signed up.

**Chet Adams, City Attorney, City of Sparks:**

I am the elected attorney for the City of Sparks and am here in opposition to A.B. 570. Assembly Bill 570 relates specifically to the elected City Attorney for the City of Sparks as set forth in Sections 8 through 14 of the bill. I am not here to take issue with anything the City Attorney from Reno has said to you; I am here only in regards to the City of Sparks.

You are being provided with a handout (Exhibit F) that is a copy of a PowerPoint presentation I presented to the Sparks Charter Committee last year when it was considering the issue of whether or not to recommend to the Nevada Legislature this session whether the City Attorney's position for the City of Sparks should be changed from an elected to an appointed position. In the handout is a history of how and why the Sparks City Attorney is elected, and also copies of local editorials supporting the idea of an elected over an appointed City Attorney. There is a list of several cities throughout the country that currently elect their city attorney, as well as a roster from the California League of City Attorneys demonstrating that every major city in California currently has an elected city attorney.

Assembly Bill 570 is intended to amend the Charter of the City of Sparks to eliminate the citizens' right to vote for their city attorney. In Sparks, A.B. 570 will serve to eliminate or eviscerate the executive branch of Sparks' government. Right now the executive branch of Sparks' government is comprised of a mayor, who is elected and, although he has the right to veto, he does not have the right to vote on legislative matters. There is a city manager who is hired, fired, evaluated, directed, and supervised by the city council. As it stands now, the city attorney is the only elected official in the executive branch of Sparks' government who is there to serve as an independent voice and can make independent legal decisions without the fear of political ramifications. The city attorney answers directly to the voters.

Obviously, if the city manager can hire and fire the city attorney, and the city manager is under the direct control and supervision of the city council, the city attorney essentially becomes an arm of the legislative branch of Sparks' government. That has some ramifications. The city attorney loses his independence and must temper his legal decisions and legal actions to comport with what the city council and the city manager believe is appropriate in any given situation.

Assembly Bill 570 removes a requirement that the Sparks City Attorney be a member of the Nevada State Bar. Essentially, A.B. 570 allows the city manager and city council, vis-à-vis the city manager, to appoint a non-lawyer. Obviously, this has some

practical problems. A non-lawyer cannot defend the interests of the City of Sparks. A non-lawyer cannot prosecute in court. A non-lawyer cannot even sign legal pleadings affecting the interests of the City of Sparks.

Getting back to the issue of accountability, an appointed city attorney is not accountable to the voters, and as a matter of fact, the voters will have a very difficult time removing an appointed city attorney. As long as that city attorney is keeping the city manager and the city council satisfied, he or she probably has little chance of losing the job. An elected city attorney, however, is accountable to the voters and is responsible to the voters. If the voters are not satisfied with what the elected city attorney is doing, they can vote that person out of office. The elected city attorney is also subject to a recall petition by the voters. The elected city attorney can also be removed pursuant to an indictment, and obviously, Nevada law creates a civil proceeding for citizens in District Court to seek the removal of an elected city attorney.

Assembly Bill 570 completely destroys the city attorney's office because not only does it convert the city attorney from an attorney's position, it also completely writes out the assistant city attorneys. The assistant city attorneys are the individuals who show up on a day-to-day basis, prosecuting criminals, and defending the City of Sparks in civil matters, and these civil matters can be anything from fender benders and minor slip and falls, to multi-million dollar, high-profile federal cases. When talking about the checks and balances of government, if a non-lawyer is appointed as city attorney; that person will not have the ability to hire assistant city attorneys. If assistant city attorneys cannot prosecute criminal cases in court, think about that. Who will prosecute criminals in court? What will happen to the crime rate? Will the police have any incentive to enforce the law? What about the judges? Will this undermine the roles of the judges? That is what I am talking about when I mention the executive branch of Sparks' government and the checks and balances that will be undermined, if not done away with completely, if A.B. 570 is enacted.

What problems is A.B. 570 intending to address? Currently, citizens are allowed to vote for their district attorney, their attorney general, their sheriffs. Why is it such a bad idea to allow the citizens to vote for the city attorney? Why was a charter amendment affecting the City of Sparks included in City of Reno legislation? The Sparks City Council did not attach its name to this piece of legislation, nor did the City Council of Sparks conduct any public hearings or get any public input whatsoever from its citizens about whether they wanted an elected or an appointed city attorney.

At the beginning of the presentation on this bill, it was pointed out that the Cities of Reno and Sparks are the only two cities in the State of Nevada that have elected city attorneys, the implication being to bring uniformity to all the city charters in the State of Nevada as those charters relate to their city attorneys. Right now, the government of the City of Sparks probably mirrors the government of the State of Nevada as closely as any other charter city in the State. The State of Nevada elects its chief legal counsel, the Attorney General. For the sake of uniformity, I am sure if all the other states amended their constitutions to allow either the governor to appoint the attorney general or the legislature to appoint the attorney general, I would submit to you that the State of Nevada would not follow suit simply because all the other states did. Nevada prides itself on being independent and so, too, does the City of Sparks. The City Council of Sparks has passed a resolution that says they will oppose any and all attempts to consolidate. Why? Because they do not want their form of government changed. A city charter gives the citizens of every city the opportunity to select and participate in the type and form of representative government they want.

If it is the purpose of Nevada's Legislature to simply make all city charters uniform and take away citizens' freedom and ability to participate, why have city charters at all? Even cities created under the *Nevada Revised Statutes* have options.

Madam Chair, you mentioned in your opening remarks that we are all elected, we are all public servants, and that we owe a duty, an obligation, to the citizens, the voters to listen to them. Assembly Bill 570 eviscerates the citizens of Sparks' ability to participate in their government. It takes away their fundamental right to vote for an individual, to vote for one of their elected representatives on the City Council. I urge you not to recommend passage of A.B. 570 as it would burden the citizens of the City of Sparks with far more issues than what it is intended to address or resolve.

**Assemblyman Segerblom:**

Who is your client?

**Chet Adams:**

My client is the citizens of the City of Sparks, the Sparks City Council, the Sparks Police Department, and each and every department in the City of Sparks and the City employees.

**Assemblyman Segerblom:**

As I read this bill, if it were enacted, the new city attorney's client would be the city council?

**Chet Adams:**

As the bill is drafted today, the city attorney would be beholden to the city council and city manager.

**Assemblyman Segerblom:**

You keep saying the city manager, but the city attorney would be hired by the city council.

**Chet Adams:**

Under the provisions of this bill relating to the City of Sparks, the Sparks City Attorney would be appointed by the Sparks City Manager. This is not uniform. No other charter city in the State of Nevada allows its city manager to appoint the city attorney.

**Assemblyman Ohrenschall:**

Have the voters of Sparks ever voted on whether they want an elected or appointed city attorney?

**Chet Adams:**

The citizens of Sparks, just like the Sparks Charter Committee, have, on two occasions, in 1974 and in 1991, been asked whether or not they wanted an elected or an appointed city attorney. Both times, the Sparks' voters replied in the voting booths that they wanted an elected city attorney. This bill, A.B. 570, controverts not only what the City Council's own Charter Committee recommended, but what the citizens indicated they wanted. You asked who my client was and in this instance, I am here to represent those individuals who elected me.

**Assemblyman Ohrenschall:**

The City Attorney made the argument about independence. What about all the cities that appoint their city attorneys? I do not know if the city attorneys' duties include having to investigate the city council or the city manager or if that goes to the county district attorney, but in the other cities in our State that do appoint a city attorney, how does the city attorney handle a situation in which he might have to investigate a city council or city manager?

**Chet Adams:**

I cannot address or speak to the other city charters and their specific duties, as those duties are regulated or modified through the respective ordinances of the various cities. I can tell you that as the Sparks City Attorney, I have had occasion to prosecute the friends, family, and business associates of city council members, and have received phone calls in defense of those persons. I would imagine an appointed city attorney would be fairly careful when investigating a city council member, if that city council member's assent was required for that city attorney to keep his or her job.

**Assemblywoman Kirkpatrick:**

If we were to change the language to match Reno's where the city attorney was a member of the State Bar, would you be receptive, yes or no?

**Chet Adams:**

This is not about me or what I want. This is what the citizens of Sparks want and what they have said in the past.

**Assemblyman Goedhart:**

The language on page 7, line 28, is confusing, and I would like your opinion. It says, “any elected city attorney who holds office on October 1, 2007 is entitled to serve the remainder of the elected term or through the conclusion of the elected term expiring in November 2014.” It does not say that the person serving in office in 2007 has to win the popular vote in order to serve in that office until 2014. I think the better language would be to say the city attorney's position would be an elected position through the term that expires November 2014. Do you see a problem with that language as it is currently drafted?

**Chet Adams:**

It is susceptible to two different interpretations; nevertheless, this language is not applicable to Sparks.

**Assemblyman Goedhart:**

I know, I was just asking for your opinion since you are an attorney.

**Chet Adams:**

I agree there are two interpretations of that language. I defer to the Reno City Attorney and the representatives from the City of Reno.

**Assemblyman Settelmeyer:**

You mentioned conflicts of interest because it sets up a situation where an individual could be hired by the same person he would have to give a legal opinion on, correct?

**Chet Adams:**

The scenario was what an appointed city attorney would be faced with if that individual had to investigate a city council member, who had also appointed that same city attorney. I opined that we would have a conflict of interest in that particular situation.

**Assemblyman Settelmeyer:**

Does that not happen already? I have seen situations where district attorneys give opinions on cases and also have to render decisions on internal affairs.

**Chet Adams:**

Absolutely, in fact, on occasion I have had conflicts, and Nevada law allows me to go to the City Council and ask for outside legal counsel to participate in that particular matter.

**Jill Busby, Private Citizen, Sparks, Nevada:**

I am here today to ask you not to take away my right to vote. It is very important to me that I have the right to decide whether I want this person or that person to be our city attorney. Today it is our city attorney; tomorrow will it be our mayor or our city council members? I want that right and I do not want you to take it away from me. As a voter in the City of Sparks, I was not aware of this bill. If I had not been watching TV one night, I would never have heard about this bill. I watch the City Council meetings; go online and check their agendas to see what is going on, and this never came up. I am a little mad we were not informed about this bill.

**Tim Randolph, Private Citizen, Reno, Nevada:**

I was raised in Reno, and my parents taught us all to vote. We vote, my parents still vote, my daughters are registered to vote, and one came to Carson City the day before the session began to participate in legislative hearings. To my family, citizen participation is very important. In this case, I took the day off work to come here. I have been the chief prosecutor for the City of Sparks for 17 years. I was appointed by Steve Elliott and worked under him. When Mr. Adams became City Attorney, I worked under him. Whether you make this an elected or appointed position, I will still be an appointed person working for a different appointed or elected person.

I have nothing personal to gain in this case. I live in Reno; I cannot be the Sparks City Attorney. I am not running to be Reno City Attorney because I am very happy with my career in Sparks. Whether you change the law or not, it does not have an effect on my career, but I cannot sit and let Reno have its elected City Attorney taken away without saying something.

It is not true that Sparks and Reno are the only places that have an elected city attorney. Carson City also does because the District Attorney of Carson City is the attorney for the City. They have consolidated a county and a city. Everyone else appoints city attorneys by their city councils; however, if the idea is to make it all the same, why should you suddenly make the City of Sparks' City Attorney be appointed by the Sparks City Manager? It is not the same. In Reno and in Sparks, there is a long history of long-serving city attorneys, and no, they are not subject to term limits. Due to the insight and hard work of a prior elected city attorney of Reno, Patricia Lynch, the way domestic violence cases are prosecuted in northern Nevada is different because of the victim advocacy program she instituted as an elected official.

City attorneys should not be appointed, they should be elected. Boulder City prohibits gaming inside its city limits in its Charter. There are cities with appointed city attorneys and appointed judges, and there are no qualifications for the judges in those cities' charters. There are other cities with appointed city attorneys that elect all their judges. There is one city that uses its justices of the peace as ex-officio city judges, but may also appoint a third city judge to cover calendars not covered by the justices of the peace. City charters are not consistent. Trying to make them consistent by saying that everyone else does it is not appropriate. Sparks has 100 years of history. An elected city attorney has served it well. The Sparks' Charter has required the city attorney be elected even when it did not require the city attorney to be a resident of the city. If you look at the current status of city attorneys in the cities that appoint, some require them to be residents; some do not. One requires them to have been a Nevada Bar member for three years, hopefully with significant experience in municipal law. The District Attorney in Carson City only has to be a resident of the State of Nevada and a licensed member of the Bar. The requirements are not consistent, and when you look at the changes being proposed in the two city charters in A.B. 570, they are not consistent with each other. The Sparks term ends in two years; the Reno term gives the incumbent the right to be unopposed in an election in 2010. If there is a hurry to change this to an appointed process, let us do it now and not have him have an unelected four-year term following the one he was elected to last November.

Speaking with Mr. Kadlic before this hearing, I asked him about this situation. He replied that he had his two terms and was not worried about what would happen later. That is not representing me as a voter in Reno. I would like to have the opportunity to elect my city attorney. If that right is going to be taken away, I would at least like to be able to vote on the process. Every city charter has a provision for putting charter changes before their voters. All cities can put charter changes on their ballots. I would like to have that done. I would like to be able to vote on whether or not my elected city attorney stays an elected city attorney, and I would certainly like to have some say about whether a four-year term that he was elected to can suddenly turn into an entitlement under the statutes for an additional four-year term. That is not protecting the voters or the city council's ability to appoint because now there is going to be a seven-year gap before they are going to appoint, if that becomes necessary.

This change is not urgent and should not be done quickly. This is a change to cities' constitutions and should be looked at by the people who are affected. In neither case, Sparks nor Reno, has this been put before the people who have the ability to choose, the voters. Sparks apparently put this change before their Charter Commission and lost there, so they are trying to make the change through this route, through the Legislature. Reno has done nothing of the sort. I want to have my say in this and not have it happen in Committee. Reno says it is not incumbent to have an election. It may not be incumbent; it may not be mandatory,

you can do it here in your Committee, but I do not think that is right. This should go to the voters of Reno and Sparks and let them determine how they select their city governments.

**Assemblyman Conklin:**

You have taken time out of your day to come represent yourself, your family, and anyone else who agrees with your opinion. I commend you for that. There are not a lot of people who come here representing simply themselves, the voters. As a legislator, that always weighs more with me than anyone else who testifies before us.

You are, however, in the right jurisdiction because the *Constitution of the State of Nevada* says that it is incumbent upon this Body to determine what goes into city and county charters. The State has the sole obligation to determine what will be a city and what its constitution will look like.

**Lynn Chapman, State Vice President, Nevada Eagle Forum:**

I am appalled at some of the testimony here today on this bill. I would like to address the part of the bill concerning the City Attorneys of Reno and Sparks. I am a resident of Sparks and have been for over 22 years. I do know there was a recall petition for our City Attorney; it failed, but the people of Sparks had the right to attempt the recall. They had recourse when they did not like something that had occurred. What happens when we have an appointed attorney? There is no recourse for the people.

The people need to have connections with their local governments, and this is one way to do it. We get to know the local people, talk to them, and have a connection with them when we can vote for them, rather than having them appointed and becoming just another bureaucrat. Please do not pass this bill. This is a terrible thing to do to the Reno-Sparks people. We would rather have elected City Attorneys.



**Assemblyman Conklin:**

Ms. Chapman, when term limits passed in the late 1990s, I assume you voted for them. It was wildly popular when it passed. Were you under the impression term limits were for everybody?

**Lynn Chapman:**

Not necessarily. I did not vote for term limits because I believe term limits can be addressed at the ballot box. A lot of people thought it was a great idea at the time and now they are not so sure.

**Assemblyman Conklin:**

I agree with you. The ballot box is the ultimate term limit.

**Chair Koivisto:**

There are enough questions on this bill to bring it back to Committee. We will close the hearing on A.B. 570 and begin a work session on Assembly Bill 328.

**Assembly Bill 328: Makes various changes relating to elections. (BDR 24-1045)**

**Patrick Guinan, Committee Policy Analyst:**

[Mr. Guinan distributed a work session document with an explanation of the bill and proposed amendments (Exhibit G).] Amendments number 2 and 4 are problematic and relate to an email I received (Exhibit H).

**Kim Guinasso, Committee Counsel:**

With respect to amendments 2 and 4, I would like clarification from the Committee in terms of what the Committee's pleasure is with respect to Section 2, subsection 2 of the bill. I believe the requested amendment would have that provision changed to say that “the Attorney General and the district attorneys of this State may exercise jurisdiction to investigate and prosecute” a person who violates a provision of title 24 of NRS (*Nevada Revised Statutes*) and any other provision of state law, and upon referral by the Secretary of State--I assume that should read “a violation of federal law”--and then there is an explanation. This is what is included in your work session document as the proposed amendments from the proponents of the bill. Pat Guinan has since talked with the proponents, and you have their email. It would appear that what they want is to maintain that the Secretary of State has primary jurisdiction and then, at his discretion, he may refer a matter to the Attorney General or to a district attorney. Currently he has that ability, at least with respect to the Attorney General, but I am not as sure about the district attorney issue. If that is something you care to pursue, we could do that. With respect to the other idea of a sort of concurrent jurisdiction, I would definitely need clarification from the Committee on what is desired.

**Chair Koivisto:**

When the bill came to us, it listed the concurrent jurisdiction, but I think the Secretary of State has the primary jurisdiction. When we had election difficulties in Clark County, the district attorney did not feel it was his responsibility. In a case like that, we need to make sure the Secretary of State can request that a local district attorney take action.

**Assemblyman Cobb:**

I would like to look at amendment 3, my conceptual amendment. Is the language in the bill at Section 5, subsection 2(b) on page 4, line 13, referencing itself?

**Kim Guinasso:**

Their suggested language is “all elections held after he submits the request for an absent ballot and for a voter granted an absent ballot under section 2(b) so long as the voter continues to have a qualifying disability or condition.” What I understood to be your amendment, and the way I propose to draft the amendment, would not be to go with that language, but merely to go into the bill itself. As I understand it, the qualifications of “being at least 65 years of age or having a physical disability or condition which substantially impairs his ability to go to the polling place,” would be reinstated.

**Assemblyman Cobb:**

So you are combining several amendments here. We are reinstating the 65 years of age at subsection 2(a), and also reinstating the physical disability at subsection 2(b). Then you are referencing this new language back to subsection 2(b).

**Kim Guinasso:**

Right now, the way the subsection reads is that there is no requirement to be either at least 65 years of age or to have a physical disability. In order to make the amendment you are discussing, first we have to reinstate those provisions which require one of those conditions to be present in order to request an absent ballot for this purpose, which would be sort of a permanent absent ballot status. Your proposed amendment would be to have some qualifying language in statute to say that if the permanent absent ballot status is to be given on the basis of a physical disability or condition, that that permanent status would continue only as long as the disability continued. Someone who was temporarily disabled would be able to get an absent ballot for as long as the temporary disability lasted, but no longer than that.

**Assemblyman Cobb:**

Right, so this would then become subsection 2(c)?

**Kim Guinasso:**

The section is going to have to be significantly reworked. It does not work to just take out the lined-out language because then we would have two paragraphs (a) and two paragraphs (b).

**Assemblyman Cobb:**

That is fine with me.

**Assemblywoman Gansert:**

Could we go through the amendments, agree to them, and then see a mockup?

**Chair Koivisto:**

We will probably have to do it that way.

**Assemblywoman Gansert:**

How does one prove one has a physical disability? At the same time, I do not want to make it too difficult for someone who is truly disabled. I am also concerned about making absentee ballots permanent. When the clerks were here, they mentioned sending postcards to make sure a person was still at a particular residence address.

**Chair Koivisto:**

Look at amendment 6, which talks about how the clerk may remove someone from permanent absentee status. Does that answer some of your questions?

**Assemblywoman Gansert:**

It does answer some of my questions. I have a hard time recognizing someone being on permanent absentee ballot status. I may not be able to agree with that.

**Assemblyman Ohrenschall:**

In my discussion earlier on NRS 293.5235, sections 7(a) and (b) where if someone fills out a mail-in registration form and lets more than three days elapse before getting it postmarked is not able to vote. Would it be proper for me to propose an amendment to this bill addressing that?

**Chair Koivisto:**

If you are going to propose an amendment to the bill, you need to talk to the author of the bill.

**Assemblywoman Kirkpatrick:**

My question involves proposed amendment 6. I thought those provisions were everything we talked about. What part are you missing?

**Assemblywoman Gansert:**

All of this is contingent upon someone being at least 65 years of age and having a disability, but we really have no way of proving whether someone truly has a disability. Filling out a postcard is not that hard, versus always putting the voter on the absentee ballot list. I remember the clerks saying it was really expensive to send absentee ballots, so I do not know if we want the clerks to continually send those ballots when we have not verified the voters' status. Age is not a problem, it is the language, “or physical disability.” Putting the procedure on “autopilot” is questionable for me, and I do not know if we can solve it.

**Assemblywoman Kirkpatrick:**

Is there a definition of disability in statute?

**Patrick Guinan:**

I cannot say for certain. I would imagine there is a definition of disability in statute, but I do not know how well it would apply or how well it would translate to this situation.

During discussion on this bill, the clerks did mention that they do not make a practice of asking people to prove whether they are disabled or not. The clerks consider it to be a private matter and take each person's word for his disability.

**Kim Guinasso:**

I would point to the language in the current version of the bill that is proposed to be deleted, which says “physical disability or condition which substantially impairs his ability to go to the polling place.” That would be what I would look to as a description of the type of physical disability that is at issue.

**Chair Koivisto:**

We also have to consider that sometimes when people are older than 65, they may not drive any more. If they do not have someone to drive them to the polls, their option is to either vote an absentee ballot or not vote. We do not want to take that option away from people.

**Assemblyman Cobb:**

That is not the problem my colleague from District 25 has. I do not think she has a problem if we were to reference the old part of the bill at Section 5, subsection 2(a) which says, “at least 65 years of age, or ....” We are all fine with 65 years of age being a prerequisite for receiving a permanent ballot. My colleague's concern is that someone could break a leg, send in a request for an absentee ballot, and suddenly the burden shifts to the clerk at a pretty substantial cost. Perhaps we could look at a way to change the current form for an absent ballot to differentiate between someone requesting an absentee ballot simply because of an accident versus someone who is saying that he now has a permanent disability. Not because we want the individual to show proof, that is too much of a burden, but we do not want a situation where we are sending out absentee ballots at a cost of $5 each to people who no longer need them because we have inadvertently shifted the burden in this language.



**Assemblyman Settelmeyer:**

I agree with sending a mail card to verify a person is still at a particular address so that person would receive a ballot. My grandfather, a resident of another state, had been dead for five years, yet still continued to vote. It would be good to make sure the people at that address are the people we are seeking to give that mail ballot to.

**Chair Koivisto:**

I agree with you.

**Assemblywoman Kirkpatrick:**

Would the postcard be similar to what we currently do relating to property tax abatement? I am thinking of something really simple that one would mark and return if he were still in that category? That would be fine.

**Chair Koivisto:**

That is probably how it would work.

**Assemblywoman Gansert:**

If we get something back, that would be fine; and I am not concerned about the senior citizens over 65 years of age. The other thought I had was making it a permanent absentee ballot in the case of a permanent disability versus a condition that is transient. I do not know if we want to break that language out or go with something they do to check back in with the clerks.

**Chair Koivisto:**

Amendment 5 allows the “clerk to mail a notice to a permanent absentee voter prior to an election confirming their status.”

**Assemblywoman Gansert:**

I thought “status” meant mailing address and not necessarily disability.

**Patrick Guinan:**

The reason amendments 5 and 6 were submitted was precisely for that reason. Number 5 was proposed by the clerks as a partial response to the concern about how to verify if a person wanted to continue on permanent absentee status based on a disability. Number 6 was a separate amendment the clerks proposed and concerned validating mailing addresses, et cetera.

**Assemblywoman Kirkpatrick:**

On amendment 7, what is the difference between a category A felony and a category D felony?

**Patrick Guinan:**

A category A felony, as proposed in that amendment by the Secretary of State, is a very stiff penalty. That penalty is at the top of the list and is life imprisonment with the possibility of parole after five years. The Deputy for Elections' testimony on that provision was that the Secretary of State sees tampering with an entire election, as opposed to tampering with an individual ballot by one person, as a very serious crime. That is why they wanted that crime elevated to a category A felony. As you descend from category A, the punishments become less stringent.

**Assemblywoman Kirkpatrick:**

Are we staying with the category A felony?

**Patrick Guinan:**

That is the proposed amendment from the Secretary of State, and there was no opposition to that amendment from the sponsors of the bill.

**Chair Koivisto:**

The reason the penalty is so stiff is this refers to someone who is trying to influence a whole election and not just one or two votes.

**Kim Guinasso:**

Category D is not less than one year and a maximum term of not more than four years and, in addition to that, a fine may be imposed of not more than $5,000. Category A is a felony that carries a sentence of death or imprisonment in the state prison for life, with or without the possibility of parole. This would further specify that the possibility of parole would be available after five years. That does lessen the potential severity fairly significantly, but it would still be a category A felony. Category B is a felony for which the minimum term is 1 year and not more than 20 years.

**Chair Koivisto:**

What is the Committee's feeling on this, remembering if we change it here, we are still dealing with the Secretary of State's other bill and would have to change that language as well.

**Assemblywoman Kirkpatrick:**

I think that penalty is a little harsh.

**Assemblyman Settelmeyer:**

I am torn on the issue. I agree there needs to be a harsh punishment, yet at the same time you related a story where this occurred and the district attorney refused to process the case. If we are simply trying to put fear into people, go for the big one, which would be capital punishment.

**Chair Koivisto:**

If the statute at that time had carried a greater penalty, maybe the district attorney would have pursued it.

**Assemblyman Settelmeyer:**

Or he might not have pursued it because he did not believe it was an offense worthy of putting someone in jail for the rest of his life. Are we doing this because we agree with the penalty, or are we using fear to be certain people know we are going to be tough on voter fraud when an entire election is being affected?

**Assemblyman Ohrenschall:**

In terms of conservation of prison space, during the last few sessions we have tried to say we want our prison space for the most violent offenders. I agree with a harsh penalty, but I think category A is off the charts.

**Chair Koivisto:**

We may have to consider how many people it would affect.

**Assemblyman Goedhart:**

I agree. We have had so few people prosecuted under this statute we do not have to worry about filling up our prisons.

**Chair Koivisto:**

Are there any other questions or concerns about this?

**Assemblyman Conklin:**

Are we referring to the category A felony provision proposed by the Secretary of State? A category A felony is for the most egregious offenses and it should be highly punishable. One would question whether a category A felony, which is generally reserved for murderers or for treason, is a substantial penalty. I would request the following though--if we put it in this bill, let us not add it as an amendment to the other bill. If the category A penalty is the will of the Committee, I will support it; however, it is on the harsh side.

**Chair Koivisto:**

The consideration I have not heard yet is that our right to vote is intrinsic to our form of government. If someone tries to affect a whole election, it is the most egregious violation.

**Assemblyman Conklin:**

I agree with you, but one vote can change the outcome of an election. My interpretation is this would affect someone who messes with a voting machine which could have many, many votes on it. It is not a category A felony to affect one vote, but the intent is the same because one vote can change an election.

**Chair Koivisto:**

I will go along with what the Committee wants.

**Assemblyman Conklin:**

I am willing to go along with the Committee.

**Chair Koivisto:**

I would like to pass this bill out today and would like a motion to Amend and Do Pass with the amendments we discussed and the changes recommended by Kim Guinasso. We also need to address the disability for permanent absentee ballots and the way it is addressed in the language we have with a mail card to verify.

**Patrick Guinan:**

That would be amendment 5, the clerks' method to verify the status regarding the disability or non-disability status of the voter. Amendment 6 is other information including mailing address, whether the person still lived there, and things like that.

**Chair Koivisto:**

Correct. I am hearing that the category A felony is not what the Committee desires, so let us drop that punishment to a category B felony. Also, we would include the language that the Secretary of State is the chief election officer, but can refer things to the Attorney General or the district attorney for prosecution.

ASSEMBLYWOMAN KIRKPATRICK MOVED THE COMMITTEE AMEND AND DO PASS ASSEMBLY BILL 328, WITH THE AMENDMENTS JUST DESCRIBED, AND REREFER THE BILL TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

This bill does have a fiscal note and will have to go to the Assembly Committee on Ways and Means. Is there any discussion?



**Assemblywoman Gansert:**

In looking at amendments 5 and 6, number 3 under amendment 6 talks about the voter's status as being inactive or active and that is what is meant by “status,” not disability. I want to make sure that, when we talk about the “status,” that it is referring to whether the person still has a disability.

**Patrick Guinan:**

The disability is a separate mailing from the clerk and is included in their amendment 5. Amendment 6 is other information the clerks would like to get. Amendment 5 was the clerks' submission specifically to send a question to a permanent absent voter as to whether or not the disability remains. Amendment 6 was other information like “status inactive,” meaning they had moved out of the State.

**Assemblywoman Gansert:**

I wanted that clarification because it does not really explain the situation in amendment 5. The status would be regarding the voter's disability.

**Patrick Guinan:**

I am going to summarize the motion:

- Amendment 1 to reinstate the language of "65 years of age or with a disability" and the motion would be, "yes," to include that reinstatement;
- Amendment 2, the amendment would be to allow legal counsel or drafting to make the amendment follow the bill sponsors' intent that the Secretary of State does have primary jurisdiction over election law matters but that he also has the ability to refer matters to the Attorney General or to the district attorney as he sees fit;
- Amendment 3 does not need to be addressed because amendment 5 is the same issue, so strike amendment 3;
- Amendment 4 would be to follow the proponents' intent, which, as I understand it from legal counsel, would be to leave the language in the bill as is because it does accomplish what the proponent suggested, so amendment 4 would be stricken;
- Amendment 5 would be included and drafted so that it would specifically refer to confirming that the permanent absentee voter remains disabled;
- Amendment 6 is all right as it is;
- Amendment 7 would be accepted with the provision that it be changed from a category A felony to a category B felony.

**Kim Guinasso:**

A category B felony would be a term of 1 to 20 years, and it would be at the discretion of the court to set the length of imprisonment. Was there any concern about probation or anything like that? The former provision specified that probation would be available after five years.

**Assemblyman Goedhart:**

There is legislation referring to technological crimes. If one is changing the outcome of elections, it would probably be through technological means.

**Assemblyman Conklin:**

My suggestion would be that we keep the intent of the Secretary of State's provision. I am certain there was a five-year provision, but I am also certain a B-class felony still has a substantial sentence attached to it, so if we want to keep to the intent, keep the five-year probation.

**Chair Koivisto:**

A category B felony is a minimum of one year in prison. If you look on the last page of the work session document, the Secretary of State's language reads, "parole beginning when a minimum of five years has been served."

Is there any further discussion? [No response.]
THE MOTION PASSED UNANIMOUSLY.

[The Committee took a 20 minute break.]

Let us come back to order. We will open the hearing on Dr. Hardy's bill, Assembly Bill 312.

**Assembly Bill 312: Revises certain provisions relating to ethics in government. (BDR 23-527)**

**Assemblyman Joseph Hardy, Assembly District No. 20:**

Public servants are not perfect people. How do we help them? I sent in my financial statement to the Secretary of State's Office in 2003, as it was the office that reported it and put it up on a website. I found myself identified as a delinquent legislator who had not reported. I had erred in not sending that report to the county who then was supposed to send it to the Secretary of State's Office. When I inquired, I found that my form, received by the Secretary of State's Office, had been forwarded to the

Clark County Election Department who then sent it back to the Secretary of State's Office. I wondered if this was an ethical violation or just mere naiveté. The principles of one profession may differ from other professions. Lawyers have an ethical duty to defend people whom they know to be guilty; physicians have a duty to do no harm. Is it any wonder that we see the challenges of unethical behavior being debated? As a physician, I attended an ethics continuing education class taught by an attorney/ medical doctor. What at first seemed to be an easy question quickly became complicated as we discussed the ramifications and implications of the proposed problem. As a newly elected City Councilman in Boulder City in 1999, I attended a workshop on ethics, and amongst other things, the open meeting law was discussed. It was invaluable to me as an elected official to have that training.

I became acquainted with the Ethics Commission more personally when I requested a confidential hearing last year. I wanted to know how they felt about my attending the Mining Association Convention at Lake Tahoe. They generously allotted a half hour for the hearing, and I walked out two and a half hours later. The opinions were similar, yet varied from individual to individual in the application of the “same rules.” My premise was that I felt that I have almost a duty to attend events, conferences, dinners, programs, and panel discussions where businesses, charities, industries, special interest groups, and people are going to be so I can expose myself to the issues and solutions to problems that affect our State. Likewise, I felt it was prudent that the Ethics Commission could serve elected and appointed officials better if they could address potential problems in a proactive, even hypothetical, way so as to help keep people away from trouble, rather than catch them after the fact--a philosophy that prevention is better than the cure.

I suggested that there should be some way to report the attendance at an event or conference that was not considered a gift or income as those were the only two options in statute. Discussion and subsequent feedback from many people on that issue has brought me to the proposals in A.B. 312. Incidentally, in Section 1, subsection 1 of the bill, the two students who sat on the floor of the Assembly today are the children on my first cousins, once removed. That makes those children the sixth degree of consanguinity. The NRS (*Nevada Revised Statutes*) now identifies those within the third degree of consanguinity as those not allowed to “make a gift to an elected official.” This seems to me to be a potential problem for family reunions, particularly with large families, and the giving and sharing that occurs in those extended family situations. This bill clarifies “gifts” in summary; allows for attendance at events that qualify as tax exempt organizations; allows the Ethics Commission to render an opinion on a hypothetical circumstance in order to teach how to avoid problems; and allows for an additional reporting opportunity for conferences, conventions, and events that would be educational and/or pertain to the duties of the elected official.



I have distributed the consanguinity chart and the proposed amendment (Exhibit I) that would change third degree to fifth degree of consanguinity. That is in Section 1, subsection 1, page 2, line 11. My father was the youngest of his seven siblings. My aunt was the oldest of her siblings. She lived to be 104; my dad is 87 so I grew up with my first cousins once removed because they were the people my age.

**Chair Koivisto:**

Tell us what your bill does.

**Assemblyman Hardy:**

In Section 1 of the bill are definitions of consanguinity, but the language in subsection 4 would allow public officials and their spouses and/or guests to go to an event and have it be looked at as part of their optional duties so that it can be reported in some way and not looked at as “a gift of money or income.”

The language on page 6, in Section 6, subsection 3, deals with, by their own motion, the Ethics Commission being able to look at hypothetical situations. At line 9, actual conduct would also be able to be looked at on the Ethics Commission's own motion. This would empower the Ethics Commission to look at those things without having someone complain or bring forward a complaint.

On page 10 is a list of those events that would have incurred a cost or expense of $100 or more for the attendance, including the attendance of a spouse or guest, including travel and including the identity of the person who paid the cost and expense for the public official.

Starting on line 31 of the same page, language there would define those events, workshops, and seminars. The question has been asked whether the event pertained to one's particular committee. My response was that I vote on every single thing that comes before me; not just issues in my committees. I care about the whole State of Nevada.

**Chair Koivisto:**

Are there questions from the Committee?

**Assemblyman Goedhart:**

Referring to Section 1, subsection 1, at line 9, I have a twin brother who is playing blackjack, hits it big one night, and wants to give me his car. Can I take it?

**Assemblyman Hardy:**

Yes, but I cannot take the car from you. The Ethics Commission has the best consanguinity chart I have seen and it is very clear, your brother is the second degree of consanguinity.

**Assemblyman Ohrenschall:**

I see that you define “gift” in Section 1. I had been informed that, currently, the only statutory definition of gift is in the lobbying statute. Is this definition of gift congruous with the definition in the lobbying statute?

**Assemblyman Hardy:**

Someone else knows that better than I do.

**Caren Jenkins, Member, Ethics Commission:**

We appreciate Assemblyman Hardy's attempt to define any of the terms we have to apply to the reality of our world. Section 1, subsections 2 and 3, are existing law and are simply being moved into this definition from Section 7 in the bill. These definitions were not moved word for word, but the concepts are moved into the definition of gift.

Subsection 4 of Section 1 could create a circumstance similar to the percent for arts program in southern Nevada where, when you build a building, a certain percentage of your building costs have to be used for public art. Similarly, this may create a windfall for charitable organizations because, certainly, anyone hosting an event can name a charitable organization as a beneficiary of any amount of the proceeds of that event to qualify here. As a result, the Committee or Assemblyman Hardy may want to quantify the amount of benefit to the charitable organization by saying that the majority of the proceeds of the event go to a charity, or an event that primarily benefits a charitable organization. One could hold an event, such as a week-long conference on a cruise ship, $25 of which goes to the Boy Scouts of America. That $25 would benefit a 501(c)(3) organization, but that is a big loophole.

Section 6, page 5, differentiates actual conduct by a public officer or employee. This Committee may note that the Commission currently has the ability, on its own motion, to bring a complaint against any public officer or employee. This specifies that we can only bring something on our own motion regarding actual conduct by a public officer or employee. The intent was to add the Commission's ability to use a hypothetical set of facts or circumstances, and is simply the Legislative Counsel Bureau's drafting opportunity to repeat the same thing three times in a row. It seems to me that this subsection says, “On the Commission's own motion,” we can issue an opinion regarding the propriety of hypothetical conduct or actual conduct on our own motion. I believe we already issue opinions on hypothetical conduct. One of the main areas of emphasis for our executive director is the training of public officers and officials. He does training sessions all over the State and hopes to do a lot more. It would be impossible to do the question and answer portions of those training sessions without the “what ifs”, which are ideas about the interpretation of the application of facts and circumstances of the Ethics in Government Laws. The Commission has the

authority to issue opinions about hypothetical facts and circumstances. It was the intent of this bill to have us do it much more formally, but nothing currently prohibits us from doing so.

The final pages of the bill do two things. They create a reporting requirement for those events that a public officer or employee attends where he or she receives a value of $100 or more. Often as Legislators you are invited to events where you are comped. There may be two different reporting values by two different Legislators appearing at the same event. If I, as a lobbyist, were to buy Mr. Ohrenschall's ticket at $100, Mr. Ohrenschall would need to report the total value of the cost and expenses that were paid on his behalf. If Mr. Kihuen's admission was waived by the sponsoring organization, and the cost of the meal was $32.50, his reporting for the same exact event would be the value of the cost and expenses that were waived. Mr. Kihuen and Mr. Ohrenschall would have attended the same event but reported different values received. That may have been the intent, or it may not have been, but I think the intent was that there be a reporting.

The definition of “event related to public office” is a new one in our statutory scheme. It would be helpful if we are requiring public officers to report values received at events related to their public office to define the same. This is a reasonably good definition. We are in support of any further definition, but we also would really like some legislative history on how to apply it.

**Assemblyman Goedhart:**

On page 10, line 7, does that only have to be reported if that particular donor had given $200 or more? There seems to be a threshold.

**Caren Jenkins:**

I do not believe so. I believe the language concerning gifts of $200 or more is under Section 7(1)(e) and says if you receive gifts in excess of an aggregate value of $200 from a donor. Section 7(1)(g) is simply a list of each event and the value received from your attendance at that event, if you received more than $100 of costs and expenses.

**Assemblyman Goedhart:**

If it is a gift, the threshold is $200, but for attending an event the threshold is $100?

**Caren Jenkins:**

That appears to be the way it is drafted. I believe the intent was to be more flexible about attendance at events because it is a part of those “unofficial duties” that Assemblyman Hardy referred to.

**Assemblyman Goedhart:**

How does this make it more flexible? Now, you can attend, but you have to report it. What happened before?

**Caren Jenkins:**

Before, there was a provision to report events to which you were comped. Some public officials reported them and some did not.

**Assemblyman Goedhart:**

This more clearly delineates it and sets the ground rules for everyone?

**Caren Jenkins:**

I believe that is the intent.

**Chair Koivisto:**

Are there further questions? [No response.] There are a couple more bills we are dealing with concerning gifts and reporting, and before we process this bill, we need to make certain the bills are in agreement. Craig Walton emailed us proposed amendments (Exhibit J) being distributed now. I am going to close the hearing on A.B. 312 and work on it when we have the other bill dealing with the same subject. Now, we will open the hearing on Assembly Bill 593.

**Assembly Bill 593: Makes various changes relating to the Legislature and the Legislative Counsel Bureau. (BDR 17-1081)**

**Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB):**

Being distributed now is an explanation of A.B. 593 and a proposed amendment (Exhibit K). As background, whenever we had an issue relating to the Legislature, the Legislative Counsel Bureau would request a bill through the Legislative Commission, and we would have five or six bills floating around. A few sessions ago, we decided to put all the changes into one bill. If you do not like one of the ideas, you can pull it out and pass what is left of the bill. If we think of something else, it gets put into the bill. We refer to this as the "LCB generic bill" and this is what is in front of you, A.B. 593.

The changes are unrelated except for the fact that they all have something to do with the Legislature. Going through the bill, Section 1 takes out the $150 fee for bill book service and allows the fee to be established by the Director. We do not like the idea of having a specific fee in the statute. It may be higher or lower; we will set it at whatever an appropriate rate is.

Section 2 relates to ethics and removes the duty of the Legislative Counsel to represent a legislator before the Commission on Ethics. The remaining provisions would leave it as discretionary with the Commission. One of the problems is, for example if Legislator A engages in some conduct you think is questionable, the Legislative Counsel may be advising Legislator B on the propriety of that conduct while defending Legislator A. Also, some of these cases are very serious. They have even led us to impeachment. If you get past the preliminary stage, you probably need a good defense attorney, not a nonpartisan staff person who is a bill drafter. This would still allow the Legislative Commission to agree that the issue being raised was one that applies to the Legislature in general, and that it wants the Legislative Counsel to defend it. They would direct the Legislative Counsel to defend, but it would not be automatic.

Section 3 deals with the Governor's portrait. I have no idea why the Legislative Commission is responsible for this, and I would like to change it and have the Director of the Department of Cultural Affairs do it. They already do most of the work on it; all we do is approve the portrait.

Section 4 adds to the description of the legislative grounds the property that currently constitutes the State Printing Office. We transferred that property to the Legislature a few sessions ago, and we are adding that to the legal description. The real change is at page 4, lines 39 and 40, and is that the title is going to be held in the name of the Legislature, and this will be true of all our property. Right now the title to all the legislative property, including this building, is held in the name of the State of Nevada and is assigned to the Legislature for use. The statute gives us exclusive jurisdiction over it, but it is not in our name. When we did the lease/purchase for the warehouse, we found it to be a real problem that we did not have title to the property. I have talked to the State Land Registrar, Pam Wilcox, who did most of the work on the lease/purchase, and she is entirely in favor of this language.

In Section 5, the Silver Haired Legislative Forum statute got a little messed up. We have staggered, two-year terms that purport to be appointed every two years, but if they are staggered, they need to come up every year. In addition, when reapportionment was done, the Senate districts from which they were appointed were not changed. There is a reference to the Western Nevada Senatorial District, which does not exist any more, so Section 5 says one Forum member will be appointed December 31, the second year of that term and get them on annual terms starting in January. It will also give the Commission until December to confirm the Senators' appointments to those positions.

In Section 6 the language is clarifying that the cost of living adjustments started two years ago. As a result, all the Assemblymen and half the Senators will receive $137.90 while the other half of the Senators are at $130. Next time, the current Senators will stay at that salary while the newly elected Senators will move up and all the Assemblymen will move up. This never affects the Assembly; it is just the holdover Senators who are affected by that provision.

Sections 7 and 8 are transitory provisions. Section 7 requires the State Land Registrar to do what we put in the permanent statute for the current property and just transfer it to our name. Section 8 requires the Legislative Commission to make the initial staggered appointments to the Silver Haired Legislative Forum, clarifying the language that if the Commission does not get around to making replacements, that the current members will stay on and that members can be reappointed.

I would like to add an additional proposed amendment. There is a provision that exempts the Legislative Counsel Bureau from certain provisions relating to the Public Works Board. There are some provisions outside NRS (*Nevada Revised Statutes*) 341.141 to NRS 341.155 that purport to give the Public Works Board a little more authority over our projects than we think is appropriate. The proposed amendment would say that the entire Public Works Board chapter does not apply to the Legislative Counsel Bureau and make it clear that we may still use those services, if we choose, for particular projects of the Legislative Branch.

**Assemblyman Segerblom:**

Why did this bill come to us? Do we have jurisdiction over the Legislative Commission?

**Lorne Malkiewich:**

It is a legislative matter, and the procedures' committees generally have authority over matters relating to the Legislature.

**Assemblyman Segerblom:**

Is this Committee similar to the rules committee in Congress?

**Lorne Malkiewich:**

We have nothing comparable to the rules committee, but this Committee does have some jurisdiction over appointment of attachés and things like that, so it is the legislative version of a rules or procedures committee.

**Assemblyman Ohrenschall:**

Let us say a legislator received an opinion from the Counsel Bureau either in writing or verbally about a particular action and then that action was complained about to the Ethics Commission. Pursuant to the changes proposed in Section 2, would the Counsel still represent the legislator if he or she had relied upon the advice of the Counsel Bureau?

**Lorne Malkiewich:**

There are some provisions in the Ethics in Government statutes about the ability of a person to rely on the advice of counsel. That is unaffected. To the extent that advice of counsel constitutes a defense, it is at least a defense to willfulness because one cannot say a person willfully violated a statute if your counsel, in good faith, gave you an opinion. As far as defending the person, the opinion could be used; however, it would not be automatic for the Legislative Counsel to defend the individual. It would be a good reason to go to the Legislative Commission and say, “I believe this is why the Legislative Counsel should be approved to defend me in this case.”

**Assemblyman Ohrenschall:**

Right now, when a legislator is challenged on something with the Ethics Commission, do most use the Legislative Counsel as their defense, or do they seek outside counsel?

**Lorne Malkiewich:**

We have been defending legislators and have found conflicts of interest arising more and more often recently. Up until now, and until it gets serious, the Legislative Counsel has represented the person. If one gets past that initial stage and the Director

of the Commission on Ethics says there is sufficient evidence to have a full hearing of the Commission, at that point we try to convince the person to get his own counsel, and generally they have.

**Assemblywoman Gansert:**

Regarding compensation mentioned in Section 8, this is not any form of raise; this language is just a clarification of how cost of living adjustments work?

**Lorne Malkiewich:**

That is correct. It is a clarification of what we are currently doing this session; but it has no affect on Assembly salaries because you have two-year terms. It also limits the salaries of Senators who are just elected.

**Chair Koivisto:**

Is there any discussion?
ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 593.
ASSEMBLYMAN COBB SECONDED THE MOTION.
THE MOTION PASSED UNANIMOUSLY.

Is there anything else to come before the Committee? [No response] We are adjourned [at 7:52 p.m.].

RESPECTFULLY SUBMITTED:

_____
Terry Horgan
Committee Secretary

APPROVED BY:

_____

Assemblywoman Ellen Koivisto, Chair

DATE: _____



**EXHIBITS**

**Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments**

**Date: April 3, 2007 Time of Meeting: 3:45 p.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance roster |
| AB 569 | C | Larry Lomax, Registrar of Voters, Clark County | Proposed amendment |
| AB 569 | D | Larry Lomax | Proposed amendment |

  

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|---|---|---|---|
| AB 569 | E | Larry Lomax | Proposed amendment |
| AB 570 | F | Chet Adams, City Attorney, City of Sparks | PowerPoint presentation in opposition |
| AB 328 | G | Patrick Guinan, Committee Policy Analyst | Bill explanation and proposed amendments |
| AB 328 | H | Patrick Guinan | Email to one of the bill sponsors |
| AB 312 | I | Assemblyman Joseph Hardy | Consanguinity chart and proposed amendment |
| AB 312 | J | Craig Walton, President, Nevada Center for Ethics | Proposed amendment |
| AB 593 | K | Lorne Malkiewich, Director, Legislative Counsel Bureau | Proposed amendment |

NV Assem. Comm. Min., 4/3/2007



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