MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-third Session
May 3, 2005

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:08 p.m. on Tuesday, May 3, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Barbara Cegavske, Chair
Senator William J. Raggio, Vice Chair
Senator Warren B. Hardy II
Senator Bob Beers
Senator Dina Titus
Senator Bernice Mathews
Senator Valerie Wiener

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblyman Richard D. Perkins, Assembly District No. 23

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Michael Stewart, Committee Policy Analyst
Elisabeth Williams, Committee Secretary

OTHERS PRESENT:

Janine Hansen, Nevada Eagle Forum
Craig Kadlub, Clark County School District
Stacy M. Jennings, Executive Director, Commission on Ethics
Madelyn Shipman, Nevada District Attorneys Association

Dorothy (Dotty) Merrill, Washoe County School District
Lynn P. Chapman, Nevada Eagle Forum
Allen Lichtenstein, American Civil Liberties Union of Nevada
Pamela B. Wilcox, Acting Administrator, Division of Conservation Districts, State Department of Conservation and Natural Resources
James Settelmeyer, Chairman, State Conservation Commission, Division of Conservation Districts, State Department of Conservation and Natural Resources
Don Soderberg, Chairman, Public Utilities Commission of Nevada
J. David Fraser, Nevada League of Cities and Municipalities
Kent Lauer, Nevada Press Association

CHAIR CEGAVSKE:
I will now open the hearing on Assembly Joint Resolution (A.J.R.) 9.

ASSEMBLY JOINT RESOLUTION 9: Proposes to amend Nevada Constitution to provide for forfeiture of public office for three or more breaches of ethical duties. (BDR C-181)

ASSEMBLYMAN RICHARD D. PERKINS (Assembly District No. 23):
Last year, we, as a Legislative body, were called together for a special session. The purpose of that session was to go through the impeachment proceedings for the State Controller's three willful violations of ethics laws. Those proceedings cost the taxpayers a great deal of money. This resolution is not about the Controller. It is a result of what we learned from that experience. Believe it or not, this was a provision which came forward in my discussions with the Attorney General about a year ago. It preceded anything we heard in November and December of 2004.

It is my belief that if a public official commits three willful ethical violations, we should not be wasting State time and funds going through the proceedings we went through. To me, that constitutes an egregious offense that warrants removal from office. Assembly Joint Resolution 9 proposes to amend the Nevada Constitution and states that any State or judicial officer who commits three or more willful ethical violations, forfeits his or her office. This new law would prevent an official from agreeing to admit to their ethical violations in

order to avoid criminal prosecution. In these situations, an official may hope they may be able to avoid prosecution while keeping their office, but as a result, they risk putting the State through a costly and embarrassing public hearing. I believe that A.J.R. 9 would prevent that from happening. It is a simple concept, three strikes and you are out. It is time for us to hold every elected official accountable for his or her actions. This preventative measure is the first step we, as elected officials, can take in order to restore the public's confidence.

SENATOR RAGGIO:
I wanted to ask our research staff, why are justices of the peace not subject to impeachment? That was in the original *Constitution of the State of Nevada* and that is retained in A.J.R. 9, but I was wondering what the reason was for that.

I think your idea is good. I am wondering about what you mean when you say three or more breaches of ethical duties. Some breaches are relatively minor infractions. I am curious as to what this would mean. You could be found violating three minor infractions in one day. Was there some discussion about what that term actually means?

ASSEMBLYMAN PERKINS:
We had a number of discussions about that during the Assembly committee hearing. It is not often we find someone who actually commits three violations. In our State's history, people have been found guilty of three or more ethical violations two or three times; more people have been accused of three or more ethical violations. It is not my intent for this concept to capture somebody who has just made an honest error. If officers violate ethics laws one time, they are not at risk. If an officer does it twice, he is not placing himself at risk. The officer has to commit three separate breaches of ethical duties before the office is at risk.

SENATOR RAGGIO:
I know what you are after. I am glad our legal counsel is here. I had a question about the phrase, "commits three or more breaches of ethical duties." For example, if a Legislator sent out a letter to request a campaign contribution on

his or her official letterhead, that would be a breach of ethical duty. Suppose that legislator sent out more than three letters in one day; is that something which would be considered three or more breaches of ethical duty? I also had a question about relatively minor ethical breaches. I am wondering how we are going to treat those if this is put into the Nevada Constitution.

ASSEMBLYMAN PERKINS:
If it occurred in one day, I would think something like that would be considered one continuous act. I am not sure how the Nevada Commission on Ethics would view it.

MICHAEL STEWART (Committee Policy Analyst):
The reason justices of the peace are exempted out of this is because in Article 7, section 3, of the Nevada Constitution, they are treated separately in terms of removal from office.

BRENDA J. ERDOES (Legislative Counsel):
That is absolutely correct. It is required by the Nevada Constitution's separation of powers. The Nevada Supreme Court would say that is absolutely required.

CHAIR CEGAVSKE:
I will close the hearing on A.J.R. 9 and will open the hearing on Assembly Bill (A.B.) 419.

ASSEMBLY BILL 419 (1st Reprint): Makes various changes relating to public officers and employees. (BDR 23-1020)

ASSEMBLYMAN PERKINS:
In conjunction with A.J.R. 9, A.B. 419 takes ethics accountability a little further. This preventative measure will help restore the public's trust in its elected officials. In light of so many incidents which have occurred in the past couple of years, whether they are indictments in the Clark County commission or the impeachment issues, the Attorney General and I have been working together to craft a plan to help hold Nevada officials to a higher standard. We worked for the last year or so with Attorney General Brian Sandoval and his staff to put together many of the provisions in A.B. 419.

In the bill there is better protection for whistle-blowers who uncover corruption or abuse by elected officials. I believe Nevada employees need better protection when they come forward with what they saw happen, without the fear they might lose their jobs or have their credibility ruined. It further strengthens the Open Meeting Law and has stricter penalties for those who violate it. I know we had some opposition in the other House to the strengthening of the Open Meeting Law and the provisions that are in this bill. There are those who have suggested the Open Meeting Law is an unfunded mandate from this body to local governments. Given the activity of the past couple of years, I believe this is important in order to restore the credibility in our elected bodies.

There is also implementation of criminal penalties for major violators. There was some ambiguity brought to my attention by the Attorney General's Office as to whether or not the criminal penalties could apply if the civil remedy was being pursued in some of the ethical violations they were looking into. On current ethics laws, they were lacking effectiveness because there are not serious consequences. The Attorney General's Office needs to be able to enforce the penalties for elected officials who violate these laws. Assembly Bill 419 is designed to look ahead at the problems which can be avoided in the future. Hopefully, it will hold all elected officials accountable for their actions. This is a good measure and a necessary step that we, as elected officials, must take in order to restore the public's confidence.

In section 1 of A.B. 419, it provides additional whistle-blower protection by providing confidentiality to those who give information. I know there was a great deal of conversation and debate about the definition of political campaigning that is in section 2, subsection 8, and throughout the bill. I would be happy to work with the Committee, if this Committee chooses to work with this bill, to try to find some language that works while not capturing inadvertent things which go on. Section 2, subsections 11 and 12, strengthen the Open Meeting Law. Section 3 contains the increase in the penalties for ethics violations from $5,000 to $10,000 for the first willful violation, $10,000 to $15,000 for a separate act or an event that constitutes a second willful violation and then not to exceed $30,000 for a separate act or event.

Section 5 contains additional measures of protection for whistle-blowers. I know there was some heartburn over how long the time period is before action could

be taken. A 60-day time frame is workable. Section 5, subsection 4, discusses "The issuance of an order against a person for taking reprisal or retaliatory action ...." Again, that is an additional whistle-blower protection. Section 6, subsection 2, paragraph (d), also contains additional whistle-blower protection. Section 7, subsection 4, refers to strengthening the Open Meeting Law.

One of the things taken out of the bill was a prohibition keeping local government officials and candidates/elected officials from doing fund-raising except during a particular period. The provision was much like the provisions we have in this body. The time frame put into the bill was tight, so the Assembly chose to amend that out. If it is the will of this Committee, I would certainly be willing to work with you to find the right time frame. I do not know that an elected official would need to fund-raise around the clock at the local level, since they meet often and deal with many issues on an ongoing basis. I do not know of any specific violations or times when someone has taken a contribution and then, in the same proximity, voted on the same issue. This would be a concept that would further strengthen our ethics laws and restore the confidence of our public.

CHAIR CEGAVSKE:
I will open the floor for public testimony on A.B. 419 and A.J.R. 9.

JANINE HANSEN (Nevada Eagle Forum):
I heard the testimony on A.J.R. 9 in the Assembly and I had some concerns. One is a concern Senator Raggio has already mentioned. What constitutes a breach of ethical duty? Is it a small infraction, a large infraction? How do you determine that? There was no way to differentiate in this bill if the three small infractions are egregious enough for that official to deserve to lose office. That is an important issue.

Another issue is there is no due process provided for the people who come under this jurisdiction. We find, in our administrative procedures, public officers have far fewer rights than someone accused in a criminal prosecution. Under criminal prosecution, you, at least, have the constitutional rights of due process, the right to trial by jury, the right to face your accusers and there are other rights which are denied you by this process. It is important that if people are

going to face this kind of penalty, they have their basic constitutional rights afforded them, which they are denied by this bill because there are no protections under due process. I am seriously concerned about how this would be implemented. One Senator in northern Nevada had 11 complaints lodged against him. They were eventually cast aside, but it was a concerted effort to smear him. This bill can be used against officials by people who have an agenda against them. I think the officials need to be afforded some constitutional protections. I oppose all administrative hearings that do not have these rights. I am significantly concerned about this one.

I would also like to give a few comments about A.B. 419. Section 9 says, "Unless a greater penalty is provided by specific statute, any violation of this chapter is a misdemeanor." I might be in favor of that if it means people would actually be afforded the same constitutional rights as criminals. They would have due process and the right to face their accusers. Perhaps, instead of civil penalties, a misdemeanor is a much better way to go. It provides people some constitutional rights to defend themselves.

Section 3 contains a significant increase in civil penalties. As I have said before, civil penalties are imposed by administrative bodies, which are usually unaccountable and unelected. These are huge fines. I am concerned this will dampen people's interest in even participating in government. We do know portions of the ethics law were found to be unconstitutional. For the last eight years, I have referred to them as the "speech police" portion of the law. We need to be careful as we pursue additional civil penalties that deny people their constitutional rights and impose huge fines because soon there will not be anyone willing to run for office. One of the problems with defending yourself with these civil penalties is that you have to hire your own attorney to defend yourself when the State comes against you. Just because of inexperience or default, you can end up with huge penalties against you. I have serious concerns about increasing the fines to that extent.

One other issue I have is the language which is throughout the bill, but starts in section 2, subsection 7, "Except for an activity relating to a political campaign ...." In this Committee, you have discussed the difficulty in defining precisely what that means. Does it mean a telephone call to someone an official left a message for in the middle of a campaign? Certainly, we do not want

people violating ethical standards, but they could be small breaches which could have severe consequences and people would be left with no constitutional way of defending themselves. I have some serious concerns and I hope you will look at this very carefully as you move forward.

SENATOR MATHEWS:
Did you testify on this bill in the Assembly committee?

MS. HANSEN:
Yes, I did.

SENATOR TITUS:
Section 2, subsection 11 in A.B. 419 says, "A public officer or employee who is a member of a public body shall not attend a meeting of that public body where action is taken in violation of any provision of chapter 241 of [*Nevada Revised Statutes]* ...." I am not sure what that means. If the public officer or employee does that, is he or she guilty of a misdemeanor or have to pay a fine? What does that mean?

MS. ERDOES:
Section 2, subsection 11 prohibits a member of a body from attending a meeting that violates the open meeting law. If convicted of that violation, it would be a misdemeanor according to the provisions in section 9 of A.B. 419.

SENATOR TITUS:
I have another question about A.J.R. 9. I think if it is a willful violation or if the person is found guilty, the person should be impeached. That was my position in the recent hearings, but I do not know about the language "three or more breaches of ethical duties." Does that mean if the person is actually convicted of some kind of offense? I am afraid if the language just says "commits" and it is called a "breach of ethical duty," that would never mean anything because it is subject to interpretation. Is that the case or is there something in statute that is specific? Does the person have to commit the breach of ethical duty or be convicted of it?

MS. ERDOES:
I would tell you this language is somewhat enabling. In other words, nothing would happen under this language until the Legislature actually enacted a provision to take the office from you, unless a court was willing to construe it on the basis of a lawsuit. Somebody could make the argument this was self-executing, and then the court might be willing to decide whether breaches were truly breaches of ethical duties under this constitutional provision and then might be willing to forfeit the office. My best opinion would be that the Legislature will probably come in with enabling language to define what breach of ethical duty is and define when the forfeiture takes place and how it all works.

SENATOR TITUS:
Would that be a statute that would pass after this was added to the Constitution? Would the statute fill in the details? Is that what you are saying?

MS. ERDOES:
Yes, and often that is a tool used in the Nevada Constitution to enable the Legislature to make the section work. This is a statute where breaches of ethical duties are something that, remaining undefined, you would either leave to the court or to the Legislature to say what ethic duties are being breached. In other words, we would see what the statutes are at the time. You might want to leave this somewhat open for the Legislature's interpretation. That would be the argument for something like this.

SENATOR TITUS:
If this were added to the Nevada Constitution, what circumstances would be left where we would ever do an impeachment and possible removal?

MS. ERDOES:
This bill does not take out the impeachment provisions, so if there was one egregious ethical violation, then that could be subject for impeachment. You could have any other combination as well. For the most part, this might take the place of the impeachment procedure.

SENATOR TITUS:
How does this then interact with what happened last time? There were three willful violations, so it had to go to the Legislature. Does this overturn any of that or does it supplement it?

MS. ERDOES:
I would suggest that the Legislature should probably make a change to that statute. Currently, the statute says three willful violations and then it has to be reported for impeachment proceedings. That language does not really conflict with the language in A.J.R. 9 because, in one sense, the willful part is different. To me, it would be confusing to leave that statute on the books. I would suggest the Legislature amend those statutes to make them match up better with this constitutional revision.

CRAIG KADLUB (Clark County School District):
My intent is to register a concern and then get some reassurance on section 1 of A.B. 419. Our general counsel expressed the opinion that the anonymity through the investigatory process might actually impede the investigation. He is of the opinion that the accused ought to know their accusers. In the event this bill goes through with that language, the reassurance we would like is that the accuser does not remain anonymous, should any proceeding result. It does say "during an investigation," so if the accuser comes forward and there is some resultant proceeding, then that is fine. We believe anonymity should not be in place forever. I am providing my legal counsel's written comment (Exhibit C).

STACY M. JENNINGS (Executive Director, Commission on Ethics):
In general, the Commission on Ethics is supportive of A.B. 419 because it strengthens the ethics laws and ensures the public trust. I echo the same comments for A.J.R. 9.

I want to clarify something on A.J.R. 9 that I heard during the conversation between Ms. Erdoes and Senator Titus. The provision which triggers impeachment is one willful violation, not three willful violations. That is in *Nevada Revised Statute* (NRS) 281.551, subsection 5, paragraph (a).

SENATOR BEERS:
My colleague from District 7 ran into a situation where she was contacted by people who had contributed money to Assemblyman Perkins via his Web site during the Legislative Session. It appears to have been entirely accidental and overlooked, but there is no argument that Assemblyman Perkins should have known better and removed the ability to make those contributions, which makes the act willful. Under this proposal, he would have to forfeit his office, unless I am misinterpreting how this would work. I believe that is wrong. I do not

believe a mistake like that should warrant automatic removal from office, much less your referral for impeachment. Am I misunderstanding how this all comes together?

CHAIR CEGAVSKE:
That is one of the things we have been talking about. What are the breaches of ethical duties? What does that constitute? That is what Senator Titus was trying to get a definition on, and that is what we asked legal counsel. The interpretation gets all of us. Who interprets this?

SENATOR BEERS:
I am comfortable with the voters interpreting it.

MS. ERDOES:
Unless the Legislature enacts legislation interpreting or enabling language that would specifically say what breaches of ethical duties are, the only way this would be enforced is for someone to take it to court and have the court decide. I cannot tell you what the court would say about an example like Senator Raggio illustrated earlier about three letters going out on campaign letterhead that is prohibited, or if three contributions that violate the statutory limitation would not be held by the court to be separate breaches. Unless the Legislature were to enact legislation that specifically stated what the breaches are, it is possible the court might hold those are three breaches and the person would have to forfeit his office.

SENATOR TITUS:
Is this something we could do in statute now, or do we have to do a constitutional amendment?

MS. ERDOES:
I do not believe you can do this by statute, now, because the Nevada Constitution currently requires the impeachment of the officers you are talking about in A.J.R. 9. This is an exception to the impeachment rule that is currently in the Constitution.

MADELYN SHIPMAN (Nevada District Attorneys Association):
I am here to speak on A.B. 419. My initial interest in the bill was related to the Open Meeting Law provision in section 7, subsection 4. I am not able to muster up a lot of support for the idea of saying we should not have greater enhanced penalties. I tried to come up with some language which might work to deal with some of the issues I see in this language that were similar to some of the issues and language in Senate Bill (S.B.) 465. That bill died in committee.

The testimony on the Open Meeting Law portion in section 7, subsection 4 has raised some other issues I want to address. The Nevada District Attorneys Association is generally opposed to having any enhanced penalties for Open Meeting Law violations. That is primarily because, at this point in time, the tools that are currently authorized to the Attorney General have not been used as they could be to obtain the result this language is intended to achieve, which is to get the attention of the public bodies. If there is a desire to increase penalties, I wanted language that would be a little tighter. One of the suggestions addresses Ms. Hansen's comments. Public bodies vary: they could be a subcommittee with citizens who do not really understand what they are doing even with training, an elected body or final-decision-making bodies. I have drafted some language which makes it clear that in this section of the statute, there must be an action brought.

Section 7, subsection 1 discusses actions brought by the Attorney General to enjoin or to void an action of a public body. Our amendment (Exhibit D) removes the person language so a person is never going to be subject to these civil penalties. Section 7, subsection 2 discusses an aggrieved person bringing an action to sue a public body. Section 7, subsection 3 sets the time lines. Section 4, the new paragraph, adds a person. Our amendment removes "person." The amendment also makes it clear that it has to be found by a court.

You were discussing big breaches versus little breaches. The same discussion over a lack of specificity on an agenda item drafted by a secretary versus the knowing attendance at a meeting by a person they knew was not noticed properly under the Open Meeting Law occurred in the Senate Committee on Government Affairs on S.B. 465. There is a great variation of potential violation.

The language I have drafted was intended to say the civil penalty would only apply under the circumstances where a same or similar violation had occurred previously. Presumably, someone who had done it, or a public body that engaged in an activity, would know not to do it again. If they did that same or similar type of activity a second, third or fourth time within a five-year period, the penalties could apply.

With that said, the discussion also raised some interesting questions in my mind. When I used to do training with my citizen boards, I used to talk about the ten ethics commandments. I would go through NRS 281.481 and go through those 10 provisions that apply to public officers and agents of a public body. This would add an eleventh. It is already a misdemeanor and is in statute if the person knowingly violates the Open Meeting Law. Ms. Hansen discussed the new language in section 9. *Nevada Revised Statute* 281.481 is a list of ethical standards. It was never intended to be a code of criminal activity. I am not sure what it is really saying. A violation of the chapter would mean if you violate a standard that is not drafted in a manner to require the knowledge a person should have in order to commit a criminal act. Should that be a misdemeanor? I am raising it just as an issue. It seems to have come up during the discussion.

DOROTHY (DOTTY) MERRILL (Washoe County School District):
We had a concern about section 7, subsection 4 of A.B. 419. We are here to say we believe that Ms. Shipman's amendment tightens and clarifies the understanding of what is really going on here. We agree with the language, "the same or similar nature of the first offense" and the penalties for a subsequent offense thereafter within a five-year period. We support this amendment and wanted to indicate it clarifies the intent.

SENATOR MATHEWS:
Could someone explain section 2, subsection 8 of A.B. 419?

MS. ERDOES:
The existing language excepts Legislators from use of governmental time, property or equipment. Section 2, subsection 7 is the provision that applies to all public officers or employees other than Legislators. Section 2, subsection 8 applies to Legislators. The same changes are made to both subsections in this bill. Section 2, subsection 8 already says, "A member of the Legislature shall not use governmental time, property, equipment or other

facility for a nongovernmental purpose or for the private benefit of himself or any other person." The new language in section 2, subsection 8, paragraph (a), adds another exception which states, "Except for an activity relating to a political campaign and the preparation of statements of financial disclosure ... and reports of campaign contributions and expenditures ... this paragraph does not prohibit ...."

It is worded oddly, but the exceptions, "for an activity relating to a political campaign and the preparation of statements of financial disclosure" are excepted out of the allowance that section 2, subsection 8, paragraph (a), says, "this paragraph does not prohibit." In other words, the paragraph does not prohibit, "A limited use of state property ... if the use does not interfere with the performance of his public duties: the cost or value is nominal; and the use does not create the appearance of impropriety." However, the language in section 2, subsection 8, "Except for an activity relating to political campaign and the preparation of statements of financial disclosure ..." takes those things out of that exception. Under this new language in section 2, subsection 8, paragraph (a), a Legislator would not be allowed even a limited use of State property for an activity relating to a political campaign and the preparation of statements of financial disclosure. There is similar language for public officers in section 2, subsection 7.

SENATOR MATHEWS:
It is confusing and unclear. There are a lot of ambiguities there. I do not know if you need to remove some language.

MS. ERDOES:
The problem is it is a double exception or a double negative. Perhaps we could word it better so it is clear what is allowed and what is not.

SENATOR RAGGIO:
We all have an idea where we would like to see measures like A.B. 419 go. The existing language for public officers and the Legislators was designed after a lot of discussion. We went through this exercise session after session to make sure somebody is not going to be unwittingly violating the ethics law because of some limited use of property. That is the reason the existing language was

crafted in the manner it is. To me, I think it is quite clear. Set aside this issue of the preparation of statements of financial disclosure. We all understand that is probably something that should not be done.

I want to continue with something Senator Mathews was leading to. If there is a strict exclusion in the statute to say State property cannot be used for personal purposes if it involves activity relating to a political campaign, a Legislator who receives or makes a telephone call involving his or her political campaign would fall into that trap. If a Legislator is in his or her office and returns a call from someone who is handling a political campaign, prints some material or uses the telephone, it seems to me you fall into a trap. That is what I am saying. I know we are all trying to go the extra mile to avoid what is of concern. However, we went through a lot of effort to put in the language that is there. I do not want to create something that is a minefield for people in public office to fall into. I want to stop anything that is obviously egregious, but we need to be careful with what we try to do in this area.

SENATOR CEGAVSKE:
We had testimony on another bill a few weeks ago, and this was one of the issues we debated.

LYNN P. CHAPMAN (Nevada Eagle Forum):
I want to make one comment about A.J.R. 9. We are actually more in favor of an impeachment process because people get to have their day in court. The cost issue has come up, but it is less costly for an impeachment process than to pay and fund the Ethics Commission.

ALLEN LICHTENSTEIN (American Civil Liberties Union of Nevada):
One of the things Ms. Erdoes mentioned that is important is A.J.R. 9 is not self-executing, and that means there is no mechanism for enforcing this. It is unclear what is covered and not covered, whether "commits" means a conviction approved by a court or an accusation or what it even means to have an ethical breach. I can foresee a situation down the road where this comes up without any way to enforce anything. Someone might think an individual fits into this category, but unlike an impeachment process where there is a hearing and a determination, there is no mechanism for that. Ultimately, it will end up in a court, and without further clarification, it will be the courts making these laws instead of the Legislature. This sounds good, but the ambiguities in this bill make the constitutionality of it questionable. In terms

of functionality, this bill is a complete mess. Ms. Erdoes did mention it would require other legislation to fill in these particular kinds of details. That may happen, and that may not happen. As it stands, if a court were to look at this and try to determine what the Legislature intended, they would have to go back to the Legislative history. I am not sure that a transcript of today's hearing would be able to provide a lot of guidance.

If there is a desire on the part of the Legislature to have some kind of automatic process that would prohibit the Legislature from looking at the facts and nuances of each situation to see whether removal is warranted, then the process and the substance needs to be fairly clear. We want to avoid a situation where somebody feels an officer should leave his office, but the officer does not agree. I would urge far more work on this kind of idea before anything passes.

SENATOR MATHEWS:
Did you testify on this measure in the Assembly?

MR. LICHTENSTEIN:
Yes, I did.

CHAIR CEGAVSKE:
I am going to close the hearing on A.J.R. 9 and A.B. 419 and open the hearing on A.B. 64.

ASSEMBLY BILL 64 (1st Reprint): Revises provisions relating to ethics in government. (BDR 23-1079)

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):
Assembly Bill 64, as amended in the Assembly, allows the Ethics Commission to hire outside counsel under certain circumstances. I believe Stacy Jennings is here to explain that part of it. She has provided a briefing on A.B. 64 (Exhibit E).

I am most interested in getting a provision that would exempt the conservation district supervisors from filing a financial disclosure. In legislation now, if a person did not receive $6,000 in compensation, they do not have to file a financial disclosure. The soil conservation district supervisors felt they did not have to file a financial disclosure because they did not make $6,000. In reality, they did not make anything. The Attorney General came with an opinion on January 14, 2005, that the forms needed to be filed. The financial disclosures

were supposed to have been in on January 15, 2005. A lot of them did not have time to do them. There were a lot of questions from these supervisors as to why they should be filing these financial disclosures. In reality, most of them are volunteers who work on the district level. In Elko, there are eight conservation districts. The State contributes $5,000 to each conservation district, and then, the Elko County commissioners match that. They felt they should not have to file these financial disclosures because the amount of money they are handling is negligible. Also, there is an audit of all these funds they handle. They handle weed-control programs, range reseedings and soil-conservation matters to ensure clean water. They had a great deal of trouble when they found out they would have to file these financial disclosures. That is the reason this bill is here. It exempts them.

CHAIR CEGAVSKE:
The individuals you are talking about do not get a salary of any kind, but is there a per diem?

ASSEMBLYMAN CARPENTER:
They do not get a salary, but I do not know if they get a per diem or not. They volunteer to be on the soil conservation board. I think they do not get a per diem when they go to one of these meetings, because they are just concerned about conservation practices on the ranches and farms here in Nevada.

SENATOR RAGGIO:
I am assuming, in A.B. 64, you are only exempting the elected supervisors because those who are appointed are already exempt. Then, something was added to this, and that is what we are looking at here. There are some provisions on ethics.

ASSEMBLYMAN CARPENTER:
I believe there were two amendments added. One had to do with the Ethics Commission's counsel or lawyer. The other amendment was added by Assemblywoman Giunchigliani to make sure the $6,000-compensation situation was removed. From now on, anyone who receives any kind of a salary or compensation, other than travel or per diem, would have to file one of these. Then, it specifically exempts the soil conservation supervisors from having to file this financial disclosure.

PAMELA B. WILCOX (Acting Administrator, Division of Conservation Districts, State Department of Conservation and Natural Resources):
I just wanted to confirm what Assemblyman Carpenter said. We did have a situation where district supervisors were brought under this requirement by a change made last Session. They were given no notice. We, the Ethics Commission and the Secretary of State did not realize that. On January 14, 2005, we did get the Attorney General's opinion which said they were subject to the law. It caused great consternation because those officials would be subject to fines for this year and the previous year for not turning in these forms. Assembly Bill 64 is intended to remedy that situation.

SENATOR WIENER:
I am looking at the effective day, which is January 1, 2004. Does that retroactivity cover the people you just described who did not turn in their forms this year or the previous year?

MS. WILCOX:
Yes, it does.

CHAIR CEGAVSKE:
I will now close the hearing on A.B. 64 and open the hearing on A.B. 546.

ASSEMBLY BILL 546 (2nd Reprint): Repeals certain provisions enforced by Commission on Ethics. (BDR 23-899)

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):
Assembly Bill 546 intended to do two things at the beginning of the Session. The first was to repeal what I used to call "the truth squad." The second piece was to deal with the issue of "willful" and its definition in the ethics laws. Since there were two other bills in the Assembly on the issue of "willful," that language was removed from A.B. 546. This bill simply removes and repeals the provisions prohibiting a person from making a false statement of fact concerning a candidate or a question on a ballot. The measure also repeals the provisions prohibiting a person from willfully impeding the success of a campaign of a candidate or the passage or defeat of a question on a ballot.

On March 26, the Senior U.S. District Judge Lloyd D. George declared the provisions unconstitutional. That information is in a packet that Ms. Stacy Jennings sent to you (Exhibit F). You will note that I, along with

Senator Beers, was a member to challenge this law. This is the third or fourth time we have attempted to repeal the language. This is now somewhat moot since the court did rule that it was not appropriate to have the provisions in statute. More importantly, it has a potentially chilling effect on free speech. If you were to pass this bill, it would repeal that language from the statute. It would not impact the rest of the ethics opinions, but it would prevent the Ethics Commission from making determinations on what they do or do not like in a campaign.

I have long shared this Committee's concerns about negative campaigning. Unfortunately, it gets done, and unfortunately, it works. The repealing of this law will not change that one way or another. There have to be people who focus on facts. It may not have been an ethical issue or it may not have been inaccurate, they just did not like what was said. Therefore, they ruled the information in a piece of campaign material was inappropriate. That was what led us to this issue. Senator Beers was serving on my elections committee; that was the first case which was brought forth. This bill would undo that piece, and I would urge your consideration.

SENATOR BEERS:
Where is the part in this bill which dealt with the language "willful"?

ASSEMBLYWOMAN GIUNCHIGLIANI:
In the reprinted bill, they removed all the statutes which dealt with the "willful" issue because it is being dealt with in another bill.

MR. LICHTENSTEIN:
The *Nevada Press Association v. Nevada Commission on Ethics* case in 2005 described by Assemblywoman Giunchigliani and Exhibit F was ours. Assembly Bill 546 is a housekeeping bill. The court made it clear that, constitutionally, this provision could not survive on due-process grounds. This provision did have a chilling effect. One of the things the court said was there was no real justification for having this particular process, as opposed to having candidates who felt aggrieved go through the normal judicial process. There was a time element to this. The problem with rushing through it was it violated due process and people who were accused did not have adequate time to mount a defense.

It is also important to note that this, as written, does not just apply to candidates or supporters of candidates, as was noted by the court, but

newspapers are also subject to this. The editor of one newspaper in Wendover was brought before the Ethics Commission to defend his editorial which was fairly egregious. We would urge A.B. 546 to be passed to take off the books what the court has already said is unconstitutional.

CHAIR CEGAVSKE:
I would like to reopen A.B. 64 for public comment.

SENATOR RAGGIO:
I was hoping someone was going to address how the bill got into the present form. Assembly Bill 64 started out to exempt the people from a conservation district. Somehow, it ended up with two amendments that are not germane. One is to remove the $6,000 threshold, which is equivalent to $500 a month in compensation, for which reporting is required. Someone has to explain why that and the other amendment to allow the Attorney General to appoint outside legal counsel for the Commission are in the bill.

MS. WILCOX:
This provision was added at the request of Assemblywoman Giunchigliani, and I cannot speak to her reasons.

SENATOR RAGGIO:
I understand that, but we have had no testimony in front of this Committee as to why that threshold was removed. I wondered what the reason for that was.

ASSEMBLYMAN CARPENTER:
It was an amendment which was added by the Assembly committee. I do not know the exact reasons for it. I do think it works to catch more people.

JAMES SETTELMEYER (Chairman, State Conservation Commission, Division of Conservation Districts, State Department of Conservation and Natural Resources):
I want to explain the history of how this bill came about. A district attorney told an individual he had to fill out a financial disclosure. The person asked the Division of Conservation Districts if that was true, so we asked for an Attorney General's opinion. That opinion came out the day before the forms were due. I had discussions with the Secretary of State's Office and the Governor's Office to try to determine what we could do about this. While I was trying to sort this out, the people from the conservation districts told me they wanted to quit.

They did not want to volunteer to help if they were going to be fined several thousands of dollars. However, the Secretary of State's Office said they were still liable for this year and the previous year they did not file their documents. Most of them decided if they were going to get fined anyway, they might as well stick around. They then asked for a resolution to this issue, and that resolution comes in the form of A.B. 64.

The Attorney General's Office and the Secretary of State's Office indicated they both had slightly better things to pursue and prosecute than a bunch of volunteers. They indicated they would be in support of legislation to that effect. We wanted to make it so people who are just volunteering their time, the very people we want to participate in government, would not be scared away from doing so. Sometimes, I worry that in an effort to catch the real criminals, some of these laws are actually scaring away volunteers who are the best people to help. Then the people who are willing to serve will be the people we do not want.

CHAIR CEGAVSKE:
Ms. Jennings, I believe you were at the hearing on this, so you might be able to answer Senator Raggio's question.

MS. JENNINGS:
Both Assemblyman Carpenter's problem and the issue with the $6,000 you addressed came from the same amendment. In 2003, the Legislature amended who had to file a financial disclosure. The intent in those hearings was that everyone elected to office and all candidates for public office would need to file. You changed the reporting requirement for appointed public officers. You also put that $6,000 in for the same reason this gentleman was just testifying to. There are many people who are essentially volunteering for many boards and commissions. They are making a small amount of per diem, but they have to file these forms. For whatever reason, the forms are not filed, either they do not know about them or they overlook them, and then they get thousands of dollars in fines. Then, many want to quit volunteering their time on these boards and commissions. In 2003, then Assemblyman Beers and I had a dialogue on the record about that. He had me pull records from the Ethics Commission of how much these people make. We came up with the threshold of $6,000 for exempting appointed people to office. However, in a conference committee, they changed that $6,000 and put it on for candidates, as well. The Assembly

talked about that a little this Session. That is how that got on this bill. It was the first bill that came through which had the financial disclosures in it and they wanted to clarify that.

SENATOR RAGGIO:
As you indicated, the existing law is that any appointed officer and any candidate for public office whose annual compensation will be $6,000 or more has to file. Is it the case that this amendment removes the threshold altogether?

MS. JENNINGS:
It removes the financial threshold for candidates only. The appointed public officers would still have to make more than $6,000 before they have to file.

SENATOR RAGGIO:
Would the candidate now be required to report for any office that has no compensation?

MS. JENNINGS:
Yes.

SENATOR RAGGIO:
Even though there is no compensation?

MS. JENNINGS:
The statute reads if they are entitled to receive compensation.

SENATOR RAGGIO:
Anyone who is elected to any office, whether there is any compensation or not, now has to file?

MS. JENNINGS:
That is correct, under current statute, as it is written now, anyone who is elected to office has to file.

SENATOR RAGGIO:
It was the law that unless the office that somebody was a candidate for had paid compensation of at least $6,000, they did not have to file these reports.

There are a lot of offices people run for that have no compensation or their compensation is much less than $6,000. That is the reason we put that in. It is my understanding this bill takes the $6,000 threshold away.

MS. JENNINGS:
It does take that threshold away for candidates for public office.

SENATOR RAGGIO:
If a person is a candidate for office, if this bill passes and there is no compensation, does that person still have to file a report?

MS. JENNINGS:
No, my understanding is a candidate for office would only have to file if they were entitled to receive compensation and if they were elected. There is no compensation for the members of the Board of Regents. Under this bill, if a regent were running for office, he or she would not have to file because the candidate is not entitled to receive compensation. Once elected, they would have to file.

SENATOR RAGGIO:
I am looking at section 2, which is an amendment to NRS 281.561. If there is compensation, other than travel or per diem, regardless of the amount, a candidate will be required to file.

MS. JENNINGS:
That is correct. That whole discussion happened in 2003, as well. That was when the decision was made that someone who is elected to office must file. The people from the conservation districts were not contemplated in that. They had contacted our office to ask if they were considered public officials. I was not sure, and I thought they should consult with their counsel. They did; I have a copy of the letter they wrote to the Attorney General on March 29, 2004. The response from the Attorney General came on January 14, 2005, which was the day before the filing deadline. It took the Attorney General's Office almost a year to get a response. I do not think these people were contemplated in any of the discussions on the record in 2003. It is probably a good idea to let these people out of that provision.

SENATOR RAGGIO:
Do you think the provision changing the compensation threshold and making it minimal is a good idea?

MS. JENNINGS:
The whole reason there are financial disclosures on candidates is because the public has a right to know about the people who are running for office. Right now, a lot of elected offices make less than $6,000 a year. If you keep that threshold in, you are excluding a lot of candidates from that reporting requirement. It does not affect us because Secretary of State Dean Heller collects those.

SENATOR RAGGIO:
I do not have a dog in this fight. I am just curious. We put the threshold in because we want to encourage people to run for office. Some of these offices are for the honor only, and $500 or less a month does not buy a lot these days. It is not the easiest task in the world for the novice to fill out one of these forms. I am not arguing against that, I just have a philosophy. I like to make it inviting for people to run for office. We need to encourage people, and we are making it so uninviting. That is the reason we had a compensation threshold. We felt for some of these minor offices, there cannot be a lot of campaign contributions forthcoming. I can imagine a lot of people who run for these offices are lucky to collect anything in a campaign, let alone go through all the filing requirements. To now say that anything you are elected to, that pays any kind of compensation, seems to be going against that philosophy.

MS. JENNINGS:
My experience with candidates for office is they are confused about how much they might make. Their hearts are really in just running. A lot of people do not even know what to put down on compensation because they have no idea what they might or might not earn if they ran for office.

I provided you some testimony, Exhibit E, and I would like to go over the amendment. Earlier this year, our counsel was on leave for 12 weeks. We had no one to take that person's place. We asked the Attorney General to represent us in some pending judicial review cases we had. The Attorney General was kind enough to do so, but he had concerns about the way the statutes are written. Right now, it says we can only ask him for help if our counsel has a conflict. Our counsel did not have a conflict, our counsel was not there. If we

have a vacancy in our counsel position, this bill would allow us to ask the Attorney General to represent us. If they had a conflict, they could allow us to hire outside counsel. It would only be in the event that our own person was not able to participate.

MS. HANSEN:
I am happy to see that there are some people who are going to receive retroactive relief from horrendous fines. Regarding section 2, subsection 1, I am very much opposed to this. I would ask that you amend this portion out of the bill. Senator Raggio is right. More and more people are uninterested and unwilling to run for office. They might just be running for a water district or some other thing. They would have to fill out this financial disclosure, which is invasive. It has never kept a single person in office honest. This just discourages people from running. It inhibits the pool of people that are available to run. It does expand the reach of the Ethics Commission, which I am opposed to. I do not think it serves any purpose to have people fill out financial disclosures when they are making so little money. They are mostly just serving because they want to serve.

Ms. Jennings said this would exclude a lot of candidates. That means there are a lot of people who would be affected by this. A lot of people who may not, in the future, be willing to run. The more oppressive these laws interfering with our right to free speech, the less free we are. We become essentially fascists regulating everything. Freedom is gone. I encourage you to amend the new language in section 2 out of the bill.

CHAIR CEGAVSKE:
Do you just want to restore the $6,000 threshold?

MS. HANSEN:
Yes, I would like to keep it in the original form.

MS. WILCOX:
Senator Raggio, you raised questions on the changes to NRS 281.561. We got caught up in this confusion because the change last Session made it so neither a candidate nor someone elected would have to file if they really received less than $6,000. It sounds to me that you would like to go back to the language before the change was made last Session. It was confusing to have a different threshold for candidates than for those once they are elected. The dropping of

the threshold from $6,000 to any compensation would make it easier and would encourage people to run because if they made anything, they would not have to file. The confusion is over whether you have to file during the period for which you are a candidate or if you would have to file only if you are elected. That is why we ended up asking for an Attorney General's opinion because we found it so confusing. It was difficult to counsel the conservation district supervisors. I am listening to all this confusion and I wonder if you want to have your own counsel look at this and explain to you what the intent is. I agree with you, it is confusing. I also agree that we want to encourage people to run for these offices that do not pay much, and we do not want to make it difficult for them to do so.

SENATOR BEERS:
I would like to have an amendment considered. It would remove these filing requirements on people who are running. It would be clear that it is only people who are elected or appointed who have to deal with the issue of filing.

CHAIR CEGAVSKE:
I will close the hearing on A.B. 64 and open the public hearing on anything but A.B. 538.

MS. HANSEN:
I support A.B. 546. I support the repeal of the "speech police" laws. I have opposed them for the eight years or more that they have been in the law. I have said from the beginning they were an unconstitutional violation of our free speech. In the Nevada Constitution, it says, not only shall no law be passed abridging freedom of speech, but no law should restrict freedom of speech. If this was not a restriction of freedom of speech, then I do not know what else it could be called. It is absolutely incredible that we would have the government monitor our political speech, the most important kind of free speech to keep us free. Thank goodness we had people overturn this law. Hopefully, some of the other laws which violate our rights will be overturned. I am happy to support the repeal of this "speech police" portion of the law.

CHAIR CEGAVSKE:
I will now close the hearings on all the bills except A.B. 538. I will now open the hearing on A.B. 538. There is a packet on A.B. 538 from Ms. Jennings (Exhibit G).

ASSEMBLY BILL 538 (1st Reprint): Makes various changes relating to ethics in government. (BDR 23-272)

MS. JENNINGS:
I provided Exhibit G, which is four pages of details. A lot of these provisions are technical in nature. The Public Utilities Commission requested a provision relating to the cooling-off period. We are recommending removal of the criminal penalties associated with the honorarium statute, which is NRS 281.553, because we are a civil body only, so we cannot recommend a violation on a statute with a criminal penalty. Since that is in the ethics statutes, we recommend it become just a regular ethics violation. We are asking for a three-year statute of limitations on ethics laws. Currently, there is a general statute of limitations, unless it otherwise says, of three years. When you couple that with our jurisdiction statute, it begs the question of whether that is the case. We were specifically asking that you only allow us to go back three years on an ethics violation.

The bill also proposes to take the definition of a public officer, as it is currently written in statute, and create a new definition that is identical to the definition of public officer presently found in NRS 281.4365, but is applicable only to filing financial disclosure statements. We are not interested in making anyone new file a financial disclosure statement. Then, we would take the existing definition of a public officer that would be applicable to the rest of our statutes, which provides advisory opinions and investigates complaints, and we would change that definition slightly for those purposes.

The existing definition talks about two things. The first is that to be a public officer, by definition, your position has to be created by statute or an ordinance of the city or county. That would not change. There is a small group of people to whom that applies. The first thing you would have to meet in order to be a public officer is the position must actually be created in a statute or an ordinance of the city or county. The second part of the current definition is you must exercise a public power, trust or duty. The Legislature had initially put that in, but did not define it until 1985. That definition said a public power, trust or duty means you are doing three things: One, you are exercising administrative policy and discretion in policy; Two, you are enforcing the laws of a state, city or county; Three, you are responsible for the expenditure of public money.

What we have seen in our office is a significant number of people fall out of the jurisdiction of the Commission under that definition of a public officer. That is because they are only doing two of those three things. Most often, they are enforcing laws of a state, city or county and they are setting policy, but they do not have a budget. These are members of many state occupational licensing boards like the medical boards, dental boards, pharmacy boards and even the State ethics board has someone like me, who is charged with their budget. Since they do not do budgetary things, those people are falling out of the definition. The State Board of Health sets significant policy. They are funded through the Health Division, so they do not have a budget. At the State level, there are some appellate boards. One I recall specifically was a board that was doing appeals for workplace issues. The board was created by the State. It is a citizen's appeals board for workplace complaints. They do not have a budget; that person fell out of the scope of the Commission's investigatory authority.

At city- and county-government levels, there are people who are on planning commissions. City of Las Vegas Planning commissioners are public officers, but the city of North Las Vegas Planning commissioners are not public officers. It depends on how their ordinance is written and if they have the power to spend money or not. I do not think you want to take that out of the definition of a public officer because that is an important function. There are a lot of people you should want to be accountable because they are enforcing laws and setting policy that just are not meeting that definition.

This bill does not have a fiscal impact. I do not think this bill will create an additional workload on the Commission because we are already doing exhaustive research to figure out if people are public officers when we could just investigate the complaint. As I have testified before, over 80 percent of our complaints are dismissed by panel. It is an easier way to clear the public officer's name rather than us sending the complaint back to the person who filed it and then telling the media we would not do anything about it.

That is the most controversial part of the bill. It is an administration bill. The Governor's Office is in support of it. The Nevada Association of Counties does not have a problem with the bill, as introduced or amended. Initially, I was going to say you have to do any of those three criteria in the definition of public power, trust or duty. That gave the Nevada League of Cities and Municipalities some discomfort. We changed it, so you have to be doing two of those three things. They still have some discomfort with that. Some of it relates to people

they believe might fall into the definition of public officer, but I believe do not because they are already public employees. Secondly, they have some concerns about the workload it might place on the agency. The budget, as closed in the Senate and Assembly, gives us adequate funds to handle this without any additional fiscal impact to the agency.

CHAIR CEGAVSKE:
I was looking at the cooling-off period in section 2, subsection 1. It prohibits "A former Commissioner or the Public Utilities Commission of Nevada ... [appearing] before the ... Public Utilities Commission of Nevada on behalf ...." I was wondering why we were picking on one individual. I remember there was something in the paper recently about someone stepping down from an elected position to take a job. There has been a lot of discussion about should there be a cooling-off period of time for elected officials. For example, someone from the Senate or Assembly could not go right into a government job for which they used to have oversight. Was that addressed at all in any of the hearings? That has been a concern for a while, but no one has addressed it. We have an opportunity to put in an amendment that would address that.

MS. JENNINGS:
Assembly Bill 530, which is Clark County's ethics bill, has some language about cooling-off periods, but it strictly relates to local governments being able to impose a more restrictive cooling-off period than what the State provides. The State's cooling-off period has not been tinkered with in some time. I would defer to Mr. Soderberg to talk about that.

DON SODERBERG (Chairman, Public Utilities Commission of Nevada):
Section 2 of A.B. 538 is simply a clarification. The original cooling-off period for the Public Utilities Commission was drafted sometime in the 1980s. I do not know if it is just the way we drafted things back then, but it started to become imprecise. It got to the point where we could not give a good definition to it. It was cumbersome in talking to potential employees and even potential commissioners as to what they could and could not do when their time with the Commission ended. We had asked our general counsel's office, on a couple of occasions, to give us definitional support and our own office sometimes gave us conflicting definitions. Not too long ago, I asked our general counsel's office to call Ms. Jennings' office, and they told us our interpretation was wrong. That was when we thought it would be a good idea to draft the language to what we believe it is supposed to be and what your predecessors' intent was in the

1980s. The intent was a commissioner should not be going to work for a utility the day they leave, and they should not be representing anyone, utility or not, before the Commission for a year. We wanted to tighten up those grey areas so we know what we are doing, and we can explain to people, who might be seeking an appointment to the Commission, what it does and does not mean. Hopefully, from there, we do not have conflicting legal opinions every 18 months or so.

CHAIR CEGAVSKE:
What if the language were drafted so it applies to anyone who is appointed or elected? Would that cover your concern as well? There would be a year cooling-off period, and it would have the language in there. Or do you feel it has to be specifically for the Public Utilities Commission?

MR. SODERBERG:
It is my belief it was the intent of your predecessors that NRS 281.236 apply to us and the Gaming Control Board. If there was a provision encompassing what you have discussed, I would assume, as a lawyer who has not practiced in ten years, that it would probably be better served as a separate section because there are other things which go deeper into this portion of NRS that apply just to us and the Gaming Control Board.

J. DAVID FRASER (Nevada League of Cities and Municipalities):
Nevada League of Cities and Municipalities strongly affirms ethics in government and in all walks of life. We appreciate the level of communication we have had with the Ethics Commission. We were not able to come to an agreement because we believe the present statutory definition of public officer is appropriate and should meet all three of those criteria.

As Ms. Jennings indicated, we have concerns with section 4. Under statute, as Ms. Jennings indicated, to be defined as a public officer and therefore fall under the jurisdiction of the Ethics Commission, you need to meet a threefold definition: you formulate public policy, you expend public funds and you enforce laws or ordinances. As she indicated, it was originally proposed that the definition could mean any one of those criteria. It has now been amended to require a person to fall under two of the three criteria. We still believe it would cast too wide a net on who would then be defined as a public officer.

The reason we care, other than from a policy perspective, is because we have a financial stake in this. Under legislation passed in the last Session, local governments were assessed over 60 percent of the Ethics Commission's budget. We believe this would have a stronger financial impact because there would be a greater number of people defined as under their jurisdiction. They indicate they want to include planning commissions under their jurisdiction, which this would clearly do. We feel that is unnecessary because those planning commissions and other board members this would catch are appointed and immediately accountable to elected officials. In other words, if there were something unsavory happening on a given planning commission, the governing body that appointed that individual could remove them immediately. We also believe this will potentially cast a wider net and catch people like department heads of an agency who have any discretionary spending authority. They could, depending on how you would define expending of public funds, catch code enforcement officers or police officers. Of course, those groups already have strong systems in place to check any ethical violations. We just feel that if this definition was changed, the number of people subject to the jurisdiction of the Ethics Commission would be much larger. We cannot foresee how this would not indicate a need for increased staffing and costs and workload. It is just unnecessary; there are systems in place to do that.

CHAIR CEGAVSKE:
You and Ms. Jennings have not come to an agreement on the bill, so you are not in support of this legislation.

MR. FRASER:
That is correct. We oppose the bill. The current statutory requirement, which requires meeting all three requirements, is appropriate. If the bill were to leave that alone, we would be neutral on it, but as proposed, we oppose it.

MS. HANSEN:
I have some concerns about this bill. One of them is in section 4, which expands the Ethics Commission. It seems to me every time we come to the Legislature, there is some reason to expand the authority, to spend more money, to find more people to fall under the jurisdiction of a commission, an agency or some kind of bureaucracy in government. Every single time we are here, the Ethics Commission has another reason more people should fall under its jurisdiction. There has not been any expressed problem. We have heard no testimony that there is a big issue or any kind of earlier ethics that should have

been reviewed by the Ethics Commission, but were not. We are just expanding the authority and scope of the Ethics Commission once again. We did hear testimony that these particular commissions the Ethics Commission wants under its authority do have accountability to their locally elected officials. That is where it ought to be because they have more understanding and jurisdiction over these than unaccountable, unelected members of the Ethics Commission. Who is the Ethics Commission accountable to? The answer is no one. How is that appropriate? We do not have some kind of accountability for the Ethics Commission, yet they want accountability for everybody else. That is amazing. We did not hear testimony about how many people would be caught in this, but apparently the League of Cities and Municipalities thinks it will be significant and the costs of the Ethics Commission will rise. I am certain that will happen. With government expansion, there are always extra costs.

Section 16, subsection 1, does exactly the same thing as A.B. 64. It takes out the $6,000 threshold. This means that people, if they are elected, who do not make $6,000 still have to file. This is the same issue we discussed earlier. It says, "each candidate for public office." I certainly would support Senator Beers' suggestion that we have the filing for those who are actually elected rather than those who are just candidates. It would simplify things immensely. It would also encourage more people to run. It would be a much cleaner system if we just had those who are elected filing financial disclosures rather than those who are just running. I would encourage you to amend this portion out of the bill and put it back to what the original law is in this particular section. You should also do the same to section 4. They should remain as they are.

CHAIR CEGAVSKE:
I will now close the hearing on A.B. 538 and reopen the hearing on A.B. 546.

KENT LAUER (Nevada Press Association):
We were the lead plaintiff in *The Nevada Press Association v. Nevada Commission on Ethics* lawsuit mentioned earlier, so I want to explain our concerns over the campaign "truth squad" law. Our major problem with that statute is the act applies to any person. It could apply to a newspaper editor who writes an editorial. In fact, a newspaper editor was hauled before the Ethics Commission because of an editorial he wrote regarding a mayoral race in West Wendover. He had to actually appear before the Ethics Commission and defend his First Amendment right to write an editorial regarding a local race.

That is our primary concern, and that is why we joined in the lawsuit. We cannot have newspaper editors being hauled in front of a tribunal to defend their First Amendment rights when they write an editorial regarding a political campaign. This act could also apply to someone who writes a letter to the editor regarding a political race. I just wanted to get on the record and state our specific objection to that statute and why we believe it should be repealed.

CHAIR CEGAVSKE:
I will now adjourn this meeting of the Senate Committee on Legislative Operations and Elections at 4:11 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: