

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

**Eighty-second Session
February 9, 2023**

The joint meeting of the Senate Committee on Legislative Operations and Elections and the Assembly Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 3:52 p.m. on Thursday, February 9, 2023, in Room 4100 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SENATE COMMITTEE MEMBERS PRESENT:

Senator James Ohrenschall, Chair
Senator Skip Daly, Vice Chair
Senator Heidi Seevers Gansert
Senator Lisa Krasner

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblywoman Michelle Gorelow, Chair
Assemblywoman Brittney Miller, Vice Chair
Assemblyman Reuben D'Silva
Assemblywoman Cecelia González
Assemblyman C.H. Miller
Assemblywoman Daniele Monroe-Moreno
Assemblywoman Sabra Newby
Assemblyman Steve Yeager
Assemblyman Rich DeLong
Assemblywoman Jill Dickman
Assemblyman Brian Hibbetts
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro (Excused)

Senate Committee on Legislative Operations and Elections
Assembly Committee on Legislative Operations and Elections
February 9, 2023
Page 2

STAFF MEMBERS PRESENT:

Nicolas Anthony, Senate Policy Analyst
Haley Proehl, Assembly Policy Analyst
Bryan Fernley, Counsel
Diane Rea, Committee Secretary

OTHERS PRESENT:

Francisco V. Aguilar, Secretary of State
Mark Wlaschin, Deputy for Elections, Office of the Secretary of State
Ross E. Armstrong, Executive Director, Nevada Commission on Ethics

CHAIR OHRENSCHALL:

We have two presentations, and we are going to start with the presentation from the Office of the Secretary of State (SOS).

FRANCISCO V. AGUILAR (Secretary of State):

I am here to talk about the important topic of elections. I am joined today by Chief Deputy Gabriel Di Chiara, and Mark Wlaschin. Mr. Wlaschin understands elections in detail that most of us do not. I am lucky to have him as part of the team. We also have others here from the Elections Division to answer any questions.

We are here today to give you a brief overview of the Office of the Secretary of State. Our elections are always conducted following all federal and State laws. We take election integrity violation complaints seriously. We investigate all allegations. To this day, we have seen no evidence of widespread voter fraud or voting machine errors in Nevada during the 2022 election cycle. I highlight this because during this Legislative Session there will be many discussions about the future of Nevada's elections and how we can make them better. It is important these discussions be rooted in fact and not speculation or false narratives.

The Office of the Secretary of State is one of the original offices established in the Nevada Constitution and is responsible for maintaining the official records of the acts of the Legislative and Executive Branches. Other duties have been added over time and range from Chief Officer of Elections, to registering a business entity filing and administration of the Uniform Securities Act.

Senate Committee on Legislative Operations and Elections
Assembly Committee on Legislative Operations and Elections
February 9, 2023
Page 3

The Office of the Secretary of State is organized into eight Divisions: Elections; Commercial Recordings; Securities; Notary; Document Preparation Services Program; Domestic Partnerships/Registry for Advanced Directives for Healthcare—Living Will Lockbox—which include managing document preparation services; Nevada Business Portal and Executive Administration; and Operations. As part of the Elections Integrity Task Force (EITF), we work closely with other law enforcement agencies at the federal, State and county levels.

Our main offices are found here in Carson City in the Capitol Building, the Meyers Annex, and the Blasdell Building. We also have an office in North Las Vegas City Hall.

MARK WLASCHIN (Deputy for Elections, Office of the Secretary of State):
Over the next 39 slides of our election overview ([Exhibit C](#)), I will cover the Secretary of State's Elections Division roles, responsibilities, and information about past and ongoing projects.

Nevada Revised Statutes (NRS) 293.124 directs the Secretary of State to function as the Chief Officer of Elections for the State and makes Secretary Aguilar responsible for the execution and enforcement of the provisions of Title 24 of NRS and all other provisions of federal and State law relating to elections.

The Elections Division consists of 13 full-time positions. We are supported by three full-time contractors who have been essential in ensuring key legislatively mandated long-term projects have moved forward despite significant turnover in the past two years.

SECRETARY AGUILAR:

You will hear my staff and me talk about this quite a bit during this Session because the turnover Mr. Wlaschin just referenced was not routine. It was brought about by aggressive and violent rhetoric aimed at our State and county election officials. These individuals are there to work a job and make sure our elections happen. This behavior must not be allowed. In a few weeks, I will be here to present a bill to protect our election workers from the kind of harassment and intimidation which forces our State to see a brain drain when it comes to election management.

MR. WLASCHIN:

We work closely with several staff members across the agency, including the Secretary of the Securities Division, who helps us with criminal investigations; the Operations Division that helps facilitate reimbursements to the counties; and Information Technology (IT) that supports proprietary applications used during an election cycle.

The Secretary is the head of the EITF, which is made up of several law enforcement agencies to address possible violations of elections law. We work with 17 county election officials. Two in Clark and Washoe Counties are registrar of voters appointed by the county commissioners. The other 15 are elected officials with several competing responsibilities. They are unified in their unwavering dedication to provide free and fair elections.

Slide 5 shows the significant turnover at the county level, and the institutional knowledge loss is unfortunate. We have been discussing means to mitigate the risk and will be presenting another bill to address it soon.

Your county clerks and registrars must master election-specific skills. The 15 elected clerks in our smaller counties have numerous other responsibilities their constituents expect them to attend to, such as being the public administrator, treasurer or clerk of the court. The demands have grown over the past five years. Elections administration was once 5 percent of their time but has grown steadily to encompass closer to 25 percent or even more during an election year.

As of February 1, 2023, we have approximately 1.8 million active-registered voters in Nevada. To be an active-registered voter simply means we have verified the identity and address for a voter. An inactive voter means we have received a return piece of official election mail identified as being undeliverable, or a voter has failed to respond to a confirmation notice from the county clerk.

It is possible to be an active voter without having voted for the past few years. It is also possible to be an inactive voter but then to go to the polls on Election Day, show your Nevada driver's license or tribal identification, reclaim your active status and vote.

The overall turnout for the 2022 primary was on par for a midterm primary election and just slightly lower than the 2020 primary. Voter turnout for the 2022 general election was also on par for a midterm general election.

Election Day votes increased over 2020 numbers, which decreased due to concerns about COVID-19. There was an increased percentage of voters who chose mail-in ballots. The number of mail ballots cast during the 2022 general election was approximately 25,000 less than the total number of voters for the 2014 general election. This shows the steady increases over the last eight years of organization and personnel requirements, costs and work required to run our elections at the counties.

The total turnout for the last three midterm general elections has steadily increased in participating voters, with an increase in involved and intensive electorate. The trends in total turnout for the last three presidential election cycles reinforced the expected increase in participation and suggests we may see a greater turnout during the 2024 election cycle.

Prior to 2020, Nevada had a no-excuse-absentee-ballot process in which any voter could request an absentee ballot. During the 2020 voting cycle, absentee ballots were used to reduce the risk of COVID-19 to voters and personnel. The transition to vote by mail was permanently adopted with A.B. No. 321 of the 81st Session. For any primary, general or special election, a mail ballot will be sent to the active registered voters who are eligible to vote in that election.

Following federal and State laws, there will always be ballots returned. State and county election officials worked hard to ensure ballots are maintained properly.

SECRETARY AGUILAR:

We are gathering the actual data from the 2022 general election to get a clear picture of those costs. Deputy Wlaschin informed me his team is reviewing the invoices and the cost appears to be about \$3.9 million specifically to cover the costs associated with mail ballots, which includes the cost of ballot stock, envelopes, outbound and return postage, and other associated processing and development fees.

MR. WLASCHIN:

We recognize there is an increased demand for voter education and voter engagement. To better inform our outreach and staffing decisions, we began tracking the questions received through phone calls and emails. The purpose was to identify topics and issues causing the most voter confusion.

We are working to create and staff a robust call center which tracks calls received and helps us understand precisely how many we have missed. Most calls we receive relate to voter registrations. The highest number of emails are related to the biennial regulatory review we started in January 2021 and completed in February 2022. That review was to update our regulations, increase security and transparency, and identify outdated regulations for repeal.

We review every allegation and when appropriate refer them to law enforcement. We have seen no evidence of widespread voter fraud or voting machine errors in Nevada. The elections integrity violation reports are primarily generated by the public, and are received via email, fax and mail. We previously received 30 to 50 during an election cycle. During the 2022 election cycle, we received almost 700, and we continue to receive more every week. These reports require significant staff time to review, discuss with county clerks and registrars, and respond.

On Slide 15 are the election-related bills that were passed during last Session.

SECRETARY AGUILAR:

There is quite a bit of work to do during a truly short period, especially between January 1 and February 6.

MR. WLASCHIN:

In addition to the judicial candidate filing, officials at the State and county level track and process candidate withdrawals and challenges, conduct poll worker training and pre-election audits, inspect and stage materials for polling locations and several other statutorily needed actions, all while processing mail ballots that will be arriving by this point. Our regulations are still under development and must be completed no later than the last business day in September.

The passage of A.B. No. 321 of the 81st Session meant that Nevada would become a vote-by-mail state but retain in-person voting opportunities during

early voting and on Election Day. State and county election officials have continuously reviewed and discussed means to improve the process to maximize security and reduce costs.

Assembly Bill No. 422 of the 81st Session is the transition from a bottom-up voter registration system to a top-down system. We provided a one-page summary of the implementation ([Exhibit D](#)) to help explain the importance of this transition and its positive impacts to the State.

Implementation of A.B. No. 422 of the 81st Session began immediately after the 2021 Legislative Session, but progress has been hampered by the widespread turnover. Our contractors came in to provide consistency and help ensure the projects move forward. We contracted with a consulting company with extensive experience in the election sphere in general that has helped other states go through this exact type of transition in the past. The experience and advice have been pivotal in ensuring we are identifying the proper business and technical requirements and are prepared to begin this complex Statewide IT project.

SECRETARY AGUILAR:

A speedy transition to a top-down system is one of my two major priorities. This will resolve several issues we have faced in recent years and will further improve the transparency and security of our elections. I have directed staff to implement this prior to the June 2024 primary election. This relies on one of our one-shot budget requests being fully funded.

MR. WLASCHIN:

Once the transition to a top-down voter registration system is complete, we will be able to implement A.B. No. 432 of the 81st Session, which requires an expansion of our automatic voter registration process to encompass several additional agencies and tribal governments.

We use two primary vendors for our voting systems, Dominion Voting Systems and Election Systems and Software (ES&S). It is important to recognize this includes more than just the voting machine you stand in front of when you cast your ballot. These systems are a collection of machines working together to allow a voter to cast his or her ballot securely and privately. Fifteen counties use Dominion Voting Systems machines and Lander County and Carson City use

ES&S. The process for a voting system company to create and sell a voting machine is elaborate and heavily scrutinized at the federal, State and county levels. The U.S. Election Assistance Commission has standards which must be met and conducts tests before it certifies a system for use. In NRS 293.2696, any voting systems used in Nevada is required to meet or exceed the standards for voting systems established by the U.S. Election Assistance Commission. The Nevada Gaming Control Board helps us ensure no substandard system is ever used.

You can cast a ballot on our air-gapped voting machines which are not connected to the Internet. Check-in kiosks are connected to the Internet as a means of preventing double voters. When you check into vote at a kiosk, you are flagged in near real time as having voted; if you ran down the street to vote at another voting center, it will already recognize you have cast your ballot and will prevent you from doing so again. That is one of the numerous behind-the-scenes controls we use to ensure election integrity. Our systems are now designed to ensure all votes are cast and counted accurately and securely while eliminating any hanging chads or ballot box stuffing.

SECRETARY AGUILAR:

These security measures mean fears of stuffing the ballot box by people who come across a mail ballot that is not his or hers is not possible. Every cast ballot is the first associated with an active-registered voter before it is counted.

MR. WLASCHIN:

Our voting machines all maintain paper audit trails. All the paper records are retained for 22 months after an election. Mail ballots are tabulated at a speed dictated by capacity of both staff and hardware. Since the passage of A.B. No. 345 of the 80th Session, our State allows for same day voter registration. Approximately 45,000 voters chose to either initially register or update their voter registration on the same day they voted.

Automatic voter registration was enacted by the voters in 2018 and further prescribed by A.B. No. 345 of the 80th Session. It was implemented in January 2020. It resulted in the registration of eligible voters through automated processes when they conduct specific transactions at the Nevada Department of Motor Vehicles (DMV). The process also identifies individuals who are not eligible and filters them out.

Another important process coming is one by which county clerks conduct voter registration list maintenance. This process is mandated by a combination of federal and State laws which identify what must be done and what can never be done to our voter rolls. The intent of these laws is to ensure voters remain on voter rolls unless they meet specific criteria so they may cast a ballot without administrative obstacles.

The Elections Division receives daily information from several agencies indicating a voter has moved. We provide the information to the county clerks and registrars who act upon the information to inactivate a voter's registration. This does not mean a voter cannot vote. It means he or she will not receive a mail ballot but can still update registration and vote in person up to the close of polls on Election Day.

Once the voter's registration is inactive, the county clerks and registrars can only cancel his or her registration when the inactive voter does not update his or her voter registration or vote in two federal general elections. If we are notified about a voter's death, the county clerks and registrars can cancel his or her registration at once. Following each election, we conduct a risk-limiting audit. The pilot program for the audit was required by S.B. No. 123 of the 80th Session.

Under our existing law, we must accept mail ballots up to four days after Election Day and allow two additional days for signature curing. On the seventh day, we compare provisional ballots to ensure they are eligible voters and none of them attempted to cast a provisional ballot in more than one county. Once we have reviewed provisional ballots, clerks and registrars can finalize the accounts and prepare the documentation for the county canvasses which must occur before the tenth day after the election.

Since 2010, more than 890,000 individuals have registered to vote online using our online voter application. The eligibility of these individuals is automatically verified through our collaboration with the DMV and Social Security Administration.

Our AURORA Campaign Finance Disclosure application enables the mandated filing of contribution and expense reports by candidates granting full public transparency in finances. Senate Bill No. 557 of the 80th Session revised the

requirements for campaign finance reporting. These changes went into effect January 1, 2020.

We allocate resources to address both the cyber and physical security requirements needed to ensure fair and secure elections and to ensure the security of all SOS systems. We request and use grants to enhance our security. We have joined organizations that share election-specific security information, including the Elections Infrastructure Information Sharing and Analysis Center, the National Association of Secretaries of State and National Association of State Election Directors. We work with numerous other State and federal agencies to ensure redundancy in our security measures. Our ability to block cyberattacks could not have been possible without these partnerships. In addition to our partners in cybersecurity, the SOS is also the lead agency for the EITF, a critical part of our effort to ensure the security of our elections through a collaboration of federal and State law enforcement agencies. The EITF formally meets and collaborates each election with all members maintaining routine and clear lines of communication between elections and sharing best practices, threat warnings and new developments.

The Help America Vote Act (HAVA) of 2002 is another major part of our effort to ensure election securities. The HAVA team ensures we effectively manage the sporadically provided federal grants in a manner which will continuously support the improvement of the administration of federal elections.

The Effective Absentee System for Elections (EASE) is an application used by the several thousand Nevadans who are currently serving in the military or are living overseas. Assembly Bill No. 121 of the 81st Session expanded use to include voters with a disability. Federal law provides voting protections for uniform service members, their family members and citizens residing outside of the United States. The EASE enables them to register to vote, request the ballot and send encrypted filings to their county clerk through our secure server. More than 2,000 individuals voted during this election cycle using the system, and we anticipate the number will continue to grow.

We have several petitions we initiated and have begun gathering signatures for, but only one offered enough signatures to go on the 2022 ballot; it was Question No. 3, dealing with open primary elections and ranked choice voting. It

Senate Committee on Legislative Operations and Elections
Assembly Committee on Legislative Operations and Elections
February 9, 2023
Page 11

was approved by voters and will be listed as Question No. 3 again during the 2024 general election.

Nevada is one of 24 states having an initiative and referendum process. The numbers are particularly important to those citizens who wish to pursue changes.

SECRETARY AGUILAR:

Several projects are underway which will further enhance the security and transparency of our elections. My top priority for the next election is a speedy transition to a top-down voter registration program. This is a massive Statewide IT project that we must get right the first time. The benefits to this system will help us, our constituents, the public and the press, and will help keep Nevada elections as the gold standard for the Country.

We must continue to prepare for ongoing cyberattacks. They will not go away and will only gain in complexity and volume during the next election cycle. We know it is going to happen and will continue to work closely with our State and federal partners to ensure our voter data is kept secure and our elections infrastructure remains unaffected.

Experienced election officials are not easy to come by, and we must do what we can to protect them and ensure their continued service for this great State. We must continue our outreach efforts. Our electoral process is complex but not magic. The more we can educate the public, press and community leaders, the more we will be able to build confidence and their trust.

ASSEMBLYMAN YEAGER:

You had indicated the number, or percentage, of voters who voted by mail in the 2020 general election was a greater percentage than voted by mail in the 2022 election. I would think it would be the opposite because of COVID-19 and want to confirm that was the case and ask if you had any insights on why it might have been a higher percentage of votes by mail participation in 2020 versus 2022.

MR. WLASCHIN:

The percentage of votes cast by mail during the 2020 general election was close to a little over 50 percent higher. As to why that occurred, I try not to

speculate on the decisions of the electorate. I will say while the percentage was higher, feedback from comments, questions, emails and phone calls, it indicates an increased preference for vote by mail. We do expect an increase in mail ballots.

ASSEMBLYMAN YEAGER:

If you have a breakdown of the partisan registration of those who participated using a mail-in ballot Statewide and can break that down by county without revealing voters' identification, I would be interested in seeing it because there is an assumption certain people tend to vote more by mail than others.

MR. WLASCHIN:

I will make sure to get that information to the Committee.

ASSEMBLYMAN D'SILVA:

Cyberattacks on our election apparatus or voting system are a fundamental national security concern and much of this comes from outside of the Country, but is there any sort of insight you can give us to some of those attacks that may be coming from within the United States? And what kind of measures are we taking to find these individuals and bring them to justice?

MR. WLASCHIN:

I cannot go into detail on the different techniques and tools our IT department uses, but I will say they are numerous and primarily prophylactic in nature. They are hard to identify because of the virtual private network system. Individuals inside our own borders and across our Country are doing this, which is part of the reason we work so closely with our federal partners to try to identify them. When we identify them, we work closely with our SOS IT team and the State IT team. Then it gets referred to federal law enforcement agencies who follow up.

SENATOR SEEVERS GANSERT:

You talked about clearing someone off the rolls if you are notified of a death. Is that a notification from a county, government sources or a family member? How do you verify if it is a family member?

MR. WLASCHIN:

There are a couple of ways we get that information. The first is through a tight collaboration we have with the State Registrar of Vital Statistics. They have a

certified death certificate, which is a document, or a series of documents, that the Registrar of Vital Statistics must sign. Once that is certified and confirmed, we get sent the information and we remove the individual. We also get them from Social Security Administration's master death file. If a family member has a certified death certificate, it can be brought to his or her county election official to have that family member removed.

SENATOR SEEVERS GANSERT:

There was information about the complaints being investigated. Could you brief us on what happens after an investigation?

SECRETARY AGUILAR:

It is appropriate for us to come back and give you that report as we build out that process.

ASSEMBLYMAN DELONG:

Could you break down the vote by mail as to how many came in by mail versus how many were dropped off during Election Day? Could you go through how the system guarantees only citizens are registered?

MR. WLASCHIN:

There are a couple of ways we make sure a noncitizen is not on our voter registration rolls. The first question at the top of a voter registration application form is, "Are you a U.S. Citizen?" The individuals who signed those voter registration forms are signing under penalty of perjury.

Second, with the specifics of the automatic voter registration program we use through the DMV, individuals who present an immigration document are not eligible to go through the system and are automatically filtered out.

Individuals who use the green card to get a driver's authorization card through the DMV do not go through the Automatic Voter Registration System. Sometimes, individuals do end up on the rolls for some reason and must go to their county clerk or registrar and provide identification.

CHAIR OHRENSCHALL:

You mentioned the help from HAVA funds to support the e-system to make sure military abroad can vote. Are any other HAVA funds being provided to the Secretary of State's Office and where are those being used?

MR. WLASCHIN:

We will get you the information for the specific breakdown of how our HAVA grant is used.

ASSEMBLYMAN YEAGER:

I was glad to hear there is a one-shot budget request for the top-down voter registration. What is that going to do in terms of our elections? Why do we need that? What is the goal of it, and is the impact going to be in terms of the logistics of the next election?

SECRETARY AGUILAR:

Top-down voter registration is appropriately called Voter Registration and Election Management Solution. It will allow us to collectively gather the data across all 17 counties and have a central place for the voter rolls and for all election information. Sometimes, you have 17 systems feeding into the Secretary of State's Office, and you end up with 17 different processes and 17 different avenues for information. We talk about our voter rolls; as universal mail ballots become more important in our elections, we need to ensure those voter rolls are as clean as possible and that the right individuals are getting the right ballots. It will also help us to gather data about our State's elections, make smarter decisions about where we are making our investments in our systems and make the right investments in our ballots which are being received by mail.

You heard the cost of \$3.9 million. As we can unify our systems throughout the State, we will bring those cost savings to some smaller rural counties to ensure they get the resources needed to run fair and secure elections.

Senator Seevers Gansert, in response to your earlier question, the investigations are on an ongoing basis in the office given the recent weakness of the 2022 elections. It also involves our securities team, and I would like our deputy who runs the Securities Division and oversees those investigators to be a part of that conversation.

Senate Committee on Legislative Operations and Elections
Assembly Committee on Legislative Operations and Elections
February 9, 2023
Page 15

CHAIR OHRENSCHALL:

We will move to our presentation from the Nevada Commission on Ethics (NCOE).

Today, we have the Executive Director of the Nevada Commission on Ethics, Ross Armstrong, and the Chair of the Commission on Ethics, Kim Wallin.

ROSS E. ARMSTRONG (Executive Director, Nevada Commission on Ethics):

My presentation ([Exhibit E](#)) will be an overview of the NCOE, and the Commission also has a quick reference guide ([Exhibit F](#)).

Why do we have ethics? The No. 1 reason is Richard Nixon. After the Watergate scandal in the 1970s, ethics commissions popped up across the Country, including in Nevada. Our Ethics in Government Law was first established in 1975, and the federal government followed shortly thereafter.

This presentation will cover some basic information about the NCOE, our three main functions, a bit of legislative history and a preview of what you might see this Session.

Your legislative declaration begins our Ethics Law. We are a public office for the public trust and shall be here for the sole benefit of the people, not for the sole benefit of the people and government, not for the sole benefit of family and friends of people in government.

We strive to enhance the public's faith and confidence in government. We know that over several years, there have been threats to the public's faith and confidence in our government.

Slide 6, [Exhibit E](#), notes the NCOE has three major functions: supplying education and outreach, providing advisory opinions to any public officer or employee, and—the one that gets the most media attention—receiving and processing complaints filed against public officials.

There are eight commissioners, four appointed by the Governor and four appointed by the Legislature. We can have no more than four members from the same political party on the Commission.

There are six of us with jurisdiction over about 140,000 Nevadans fitting the definition of public officer or employee. We have jurisdiction over people who are current and former public officers, local officers and employees for one year after they leave public service. We do not have any jurisdiction over private individuals, the judiciary, federal government employees and campaigns. We have those cooling-off provisions for one year after someone leaves public office.

In the last year, we were provided live training for 1,562 individuals, including training at the Nevada Government Civil Attorneys' Conference. We are modernizing our education and outreach approach, leveraging social media by injecting some ethics education into people's feeds as they are scrolling through their phones or their computers. We have started a process of recording and uploading topic-specific content on video-sharing websites. If you need a quick reminder about disclosure or cooling off, you can go there and listen to an entire training session.

In the Governor's recommended budget, we are requesting a public information officer during this Legislative Session to coordinate all those education and outreach opportunities.

Our next major function is advisory opinions. A public officer or employee can request an advisory opinion. He or she submits a request, then works with our Commission Counsel or another attorney in our office to get all the facts which are relevant. Counsel drafts an opinion and goes to the Commission. The Commission votes and then the opinion is issued. In the process, this is all confidential but at the end of the process, the individual can decide whether to waive confidentiality. The opinion is published if the person waives confidentiality; if not, we rewrite the opinion to remove his or her name and agency.

We provide service to city, county and State agencies.

The third major function is complaints. When an individual files a complaint with our office, he or she believes somebody has violated the Ethics Law. If the Commission accepts jurisdiction, it directs me to start an investigation. At the conclusion of that investigation, the case goes to a three-commissioner panel

that determines if there is sufficient evidence to send the case to the Commission for a full adjudicatory hearing.

If the Commission does not accept jurisdiction, it directs me to dismiss the complaint. The vast majority are dismissed either because we do not have jurisdiction or there is insufficient evidence.

We had complaints against local school board trustees.

One of the ramifications for violating Ethics Law can be a civil penalty. There are two ways a civil penalty is triggered under the Ethics Law. One is if the individual financially benefits from unethical behavior, the Commission on Ethics could capture that money and double the amount of money he or she benefited from and use that as a civil penalty. The other one is when the Commission determines the ethics violation has occurred, it determines whether it is willful or not. If it is a willful or a more serious violation, there are flat civil penalties.

In 1985, the Legislature decided to bring the Legislative Commission and Executive Branch Commission back to the Commission we have now.

Assembly Bill No. 496 of the 78th Session further narrowed some of the jurisdiction the Commission has over the Legislative Branch. We did have A.B. No. 65 of the 81st Session, creating stronger confidentiality and some procedural streamlining; Amendment No. 777 completely removed the Legislature from the jurisdiction of the Commission on Ethics. The Governor vetoed the bill.

We have been given Assembly Bill 66 with a number of the same things in the bill as last Session. We have taken out concerns like endless extensions and some qualifications for the job. We look forward to having a hearing on that bill and going into the details about those proposals and how they might enhance the Commission on Ethics for the people of Nevada.

ASSEMBLY BILL 66: Revises provisions relating to ethics in government. (BDR 23-264)

ASSEMBLYMAN D'SILVA:

We saw the actual proliferation of laws at the federal and State level in the mid-1970s, late 1970s and onwards. I am sure the ethics issues have always been around even before the mid-1970s. What was the real process? How did we investigate these things? And what sort of the legal process did we have?

MR. ARMSTRONG:

In the Legislative Branch, members have always policed themselves and had procedures for working with members who may not be ensuring the public trust. You must then look at your criminal statutes. Crimes like bribery, embezzlement and such would have provided ramifications prior to the Ethics Laws.

ASSEMBLYMAN YEAGER:

You took us through the process, but when you get to the end, what are the appellate rights? Do they appeal to a court? Do you have any data on how final determinations were appealed and what the outcomes were?

MR. ARMSTRONG:

For the appeal rights, we follow the Nevada Administrative Procedure Act, which is an adjudicatory hearing. Someone who disagrees with the outcome of an adjudicatory hearing can file a petition for judicial review and go through that process.

We have few cases that result in an adjudicatory hearing. We have stipulated and agreed-upon resolutions. We have education and outreach. We avoid the ethical issues if we have an opportunity to a stipulation where the individual agrees: to a lesser number of violations and also agrees to go back and get training on ethics; or to have the team at the applicable agency get training; or to change some of that local agency's policies and procedures.

ASSEMBLYWOMAN NEWBY:

You provide advisory opinions; what is your turnaround time on those? I ask as a public official seeking that guidance. Sometimes, it is because an issue comes up in a certain time frame that you need an opinion. I always found I could not get the opinion in time.

MR. ARMSTRONG:

Our statute has a 45-day time limit to provide an advisory opinion. We often get a request and do not have enough information to issue an opinion. We will reach out to the public official with ten questions to help us issue an advisory opinion. When those answers are returned, then we restart the 45-day clock. We see the issue you are talking about a lot. There is no way we can turn around an advisory opinion in a shorter time.

CHAIR OHRENSCHALL:

You mentioned complaints on some local boards; in the news media, we have heard about members on certain boards filing complaints against each other. If you find a retaliatory or unfounded complaint, is there any penalty against the person who filed the report if it is frivolous or anything like that?

MR. ARMSTRONG:

We used to have a process where if somebody was filing complaints repeatedly and were in bad faith, we would stop accepting complaints from that person. That was legally challenged and determined not to be allowed. We have no ramifications if somebody keeps filing a complaint other than to keep dismissing the complaint as baseless.

We do have one area where we have some ability to act. If we are in an investigation and someone intentionally interferes with that investigation who is not the subject of the complaint, we can bring a matter against that person and fine him or her for interfering with the process.

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Senate Committee on Legislative Operations and Elections
Assembly Committee on Legislative Operations and Elections
February 9, 2023
Page 20

CHAIR OHRENSCHALL:
We are adjourned at 5:27 p.m.

RESPECTFULLY SUBMITTED:

Diane Rea,
Committee Secretary

APPROVED BY:

Senator James Ohrenschall, Chair

DATE: _____

Assemblywoman Michelle Gorelow, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
	C	3	Secretary of State Francisco Aguilar and Mark Wlaschin / Office of the Secretary of State	Election Overview
	D	7	Secretary of State Francisco Aguilar and Mark Wlaschin / Office of the Secretary of State	Top-Down Voter Registration Implementation
	E	15	Ross E. Armstrong / Nevada Commission on Ethics	Presentation
	F	15	Ross E. Armstrong / Nevada Commission on Ethics	Quick Reference Guide