MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Seventy-Third Session
May 26, 2005

The Committee on Ways and Means was called to order at 8:00 a.m., on Thursday, May 26, 2005. Chairman Morse Arberry Jr. presided in Room 3137 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry Jr., Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Mr. Mo Denis
Mrs. Heidi S. Gansert
Mr. Lynn Hettrick
Mr. Joseph M. Hogan
Mrs. Ellen Koivisto
Ms. Sheila Leslie
Mr. John Marvel
Ms. Kathy McClain
Mr. Richard Perkins
Mr. Bob Seale
Mrs. Debbie Smith
Ms. Valerie Weber

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Steve Abba, Principal Deputy Fiscal Analyst
Linda Smith, Committee Secretary
Susan Cherpeski, Committee Secretary

Chairman Arberry asked the secretary to call the roll and then opened the hearing on S.B. 493.

Senate Bill 493 (1st Reprint): Provides certain tax incentives for registered motion picture companies. (BDR 18-354)

Robert E. Shriver, Executive Director, Commission on Economic Development, said S.B. 493 would improve motion picture productions in Nevada by providing incentives to the production companies. The bill included:

- An exemption from the motor vehicle fuel tax, which primarily affected the large production vehicles. Mr. Shriver said none of the surrounding states that competed for motion picture productions charged a fee for the large production trucks. The exemption would be for those qualifying

motion picture companies that received notification from the Division of Motion Pictures working in conjunction with the Department of Motor Vehicles.

- Sales tax abatements would be allowed for companies in Nevada for motion picture productions for the duration of filming.

Assemblyman Seale said S.B. 493 had been heard recently in the Commerce and Labor Committee, but said he could not recall the amount of the fiscal note.

Mr. Shriver explained that the taxes imposed on the revenue from the rental of transient lodging had been amended out of the bill and that tax had the greatest fiscal impact. The Motor Carrier Division calculated the impact of the exemption from the motor vehicle fuel tax to be approximately $67,000 a year. The Commission's fiscal note was approximately the same, $67,000 in the first year of the biennium and approximately $38,000 in the second year.

Edgar Roberts, Administrator, Motor Carrier Division, Department of Motor Vehicles (DMV), said the Department did not have a position on S.B. 493. However, the Department had submitted a fiscal note reflecting the added expenses the DMV would incur should S.B. 493 pass. S.B. 493 exempted those vehicles registered with a motion picture company from licensing as a special fuel user and obtaining a temporary fuel permit at a cost of $30 each to operate on Nevada's roadways. The fiscal note included an amount of $86,119 in FY2006 and $38,023 in FY2007, and $76,047 in future biennia. Passage of S.B. 493 would require developing a program on the Department's application to record and track the vehicles. The DMV technology groups had estimated 1,457 hours of programming, development, and testing time; a one-time cost of $48,095 in FY2006. Removing the requirement for the motion picture companies to purchase 24-hour temporary fuel permits would cost the State Highway Fund $37,800 in FY2006 and $37,800 in FY2007, and $75,600 in future biennia. Additional costs to the Department included forms revisions and associated mailing costs. Mr. Roberts said he was present to request that expenses incurred by the DMV in implementing the changes be included in the DMV budget through an appropriation should S.B. 493 pass. Mr. Roberts said he would be happy to answer any questions.

Carole Vilardo, representing the Nevada Taxpayers Association, said she appreciated what the Lieutenant Governor was trying to do through S.B. 493; however, she had to speak against Sections 4 and 5 of the bill. Section 4 repealed the 2 percent state portion of the sales tax, which had not previously been done without a vote of the people. Administrative changes had been made, but those changes had been made as the result of audits and the need for clarification on a particular provision. Ms. Vilardo explained that the Sales and Use Tax Act was approved by referendum and, as such, could only be changed by referendum. There were very specific exemptions, primarily charitable, educational, literary, and scientific, which were enumerated in Article 10 of Section 1, subsection 8, of the *Nevada Constitution,* and the exemption included in S.B. 493 did not fit those categories. In addition, NRS 372.260 through NRS 372.350 detailed the exemptions on the sales tax statutes and specifically addressed the fact that there had to be an application to the Department of Taxation, and the entity had to fit within the categories and receive approval of the Department. Ms. Vilardo said that attempting to take the section out of the bill that dealt with the state portion of the sales tax and exempt only the local portion was not in compliance with the Streamlined Sales Tax Agreement, which did not allow bifurcated tax rates. Under current law all partial exemptions had to be eliminated effective January 1, 2006. Ms. Vilardo said she appreciated the need to attract motion picture companies

to Nevada to diversify the economy. Nevada and many other states were attempting to create incentives for the film companies since so many had moved productions to Canada; Louisiana had recently created a major incentive. Ms. Vilardo reiterated that Sections 4 and 5 of S.B. 493 were not appropriate and asked the Committee to amend out those sections prior to considering passage of S.B. 493.

Assemblyman Marvel asked if Ms. Vilardo had presented testimony on S.B. 493 before the Commerce and Labor Committee. Ms. Vilardo indicated she had submitted written testimony to Commerce and Labor and said she would provide a copy of the testimony to the secretary (Exhibit B).

Assemblywoman Giunchigliani said it appeared S.B. 493 included a tax break that would discriminate against local stagehands and give a break to out-of-state stagehands. Mr. Shriver replied that S.B. 493 had nothing to do with labor rates, but rather motor vehicle fuel tax for the vehicles entering the state. Mr. Shriver referred to a film that was made in West Wendover, Nevada. The trucks traveled between Salt Lake City and West Wendover, which was required for the film production, and each time the vehicle returned to Nevada, additional fees were charged. Ms. Giunchigliani referenced Section 6 of the bill and read the following, "A company that is registered and engaged in making a motion picture is exempt from imposition of any fees." She said there was no language included that Nevada stagehands would have a hiring preference. Mr. Shriver pointed out that the language referred to by Ms. Giunchigliani only pertained to the fees for motion picture companies. The hiring preference was included under *Nevada Revised Statutes* (NRS) Chapter 231, the motion picture statute. Mr. Shriver stated that in an earlier legislative session the Commission on Economic Development had worked with the Labor Commissioner to make sure individuals employed by the motion picture industry were paid according to the motion picture industry standards. Mr. Shriver said S.B. 493 would allow the companies to enter Nevada and purchase goods and services; goods and services were included in Sections 4 and 5 of S.B. 493. Mr. Shriver said most of the language included in the bill addressed the motion picture companies that were in the State for staging and similar activities.

Ms. Giunchigliani said she shared some of Ms. Vilardo's concerns related to the sales tax. She then suggested Mr. Shriver have discussions with the AFL-CIO and said that organization also had concerns with the hiring preference issue.

Chairman Arberry closed the hearing on S.B. 493 and opened the hearing on A.B. 562.

Assembly Bill 562: Revises provisions regarding implementation of No Child Left Behind Act. (BDR 34-1459)

Assemblyman Richard Perkins, District No. 23, said he would be presenting A.B. 562. Mr. Perkins read from prepared testimony:

> No one can argue with the goals of the No Child Left Behind Act. We want to set high standards and provide our schools the tools that they need. In Nevada we set those high standards long before No Child Left Behind when we passed sweeping education reform in 1997. That bill raised standards and instituted accountability measures to track the effectiveness of our programs to help students achieve those standards. We have built on that reform every session since. No Child Left Behind is a Washington cookie-cutter approach to education reform. You cannot speak for

its need in other states, but in Nevada we were already vigorously pursuing higher standards, and we should not be asked to set aside our priorities for someone else's ideas of what needs to be done. Even worse, while Washington is telling us from afar what is best for Nevada, they are mandating that we do it their way without providing us all the funds to implement the programs they have decided are best for us.

This should not be considered a partisan effort, red state or blue state issue, pro-Bush or anti-Bush issue; this is about the right of our state to develop education policy that meets our needs. This bill is based upon legislation that was passed by the very Republican state of Utah, whose Legislature and Governor got fed up with being told by the federal government that you will do it this way, and, oh yes, you will use your own state tax dollars to do it the way we tell you. Utah found this unacceptable, and frankly so do I. That is the reason for this bill -- to do the analysis necessary to see just how much No Child Left Behind is not being funded in Nevada, and to make sure we spend our precious education dollars on programs that we have determined work best for our state, not what Washington has decided for us.

One of the most important parts of this bill is the analysis to determine just how much money we are losing as a result of No Child Left Behind. The nonpartisan, nonprofit Children's Defense Fund estimates that the shortfall for our state is a whopping $38 million for fiscal year 2005. Other states have done an analysis of their shortfalls, and the results are startling. Because of the way No Child Left Behind determined its categories, its designations can be confusing. Seven Nevada high schools were ranked among the top 1,000 schools by *Newsweek* recently, but four of those did not make adequate yearly progress based upon No Child Left Behind. Other states in addition to Utah have found ways to express their displeasure as well. States set their own math and English standards under No Child Left Behind and Nevada's are among the highest in the nation. I believe they are somewhere near the eighth highest for both math and English test scores. Nevada is an independent state. We are an independent people. We believe we have the right and responsibility to stand up to the federal government when we believe they are interfering in those functions and decisions that belong to us. No Child Left Behind is a classic example of the federal government trying to inflict its will on us without the money to do so; most assuredly an unfunded mandate.

Mr. Chairman, if I might revisit some of the concepts that I just talked about.

The goals were very laudable. The law, No Child Left Behind, calls for closing the achievement gap among students that can be traced to racial or ethnic heritage, economic advantage, command of the English language, or disability that necessitates an individualized education plan. It also calls for ensuring every classroom teacher is highly qualified in the subject he or she is assigned to teach. Both goals are very laudable, both goals Nevada was already pursuing. In 2001, for example, we passed legislation to require the districts to reduce the numbers of teachers teaching subjects for which

> they were not licensed. Since then, it is my understanding, that the number of out-of-field teachers has been reduced 70 percent, again trying to accomplish the highly qualified teacher standard. This is also an unprecedented expansion of the federal role in public education. The law imposes a single system of education that requires schools to test all students in certain grades every year. Schools must make adequate yearly progress in all demographic subgroups or risk being labeled as failing. States must provide transfer options and supplemental services to those schools labeled as failing. States must provide technical assistance for schools needing improvement, and eventually local boards of trustees risk losing control of schools that do not improve according to the rigid expectations of the federal law.
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> Federal funding is a small portion of overall education funding in our country. Nationally, it provides only about 8.3 percent of funding for elementary and secondary education for the 2003-2004 school year. In Nevada, the federal government provided only 6.1 percent of the total funds spent that year. The current gap between the federal authorization level and the appropriation is $9.4 billion according to the National Conference of State Legislators. Prior to the No Child Left Behind Act the federal role in education was limited to specific activities targeted categorically and funded accordingly, such as Title I programs for economically disadvantaged children.
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> State estimates of the cost to implement No Child Left Behind are staggering. Indiana, for example, declared they would have to increase their base funding by 31 percent, not including special education students. Maryland estimated that to enable low income students to meet standards would cost 1.7 times the base per pupil costs, requiring an increase between 34 and 49 percent, Nebraska 45 percent, Montana estimates between 34 and 80 percent depending on the location of the child, and Vermont estimated it would add 15.5 percent to its total school costs for remediation and testing alone.

Mr. Perkins said he could provide a number of other statistics, but felt the point had been made. He stated that the No Child Left Behind Act clearly was "an overreaching by the federal government." Nevada had a great plan in place to accomplish educational goals and S.B. 493 attempted to accomplish those goals.

Mr. Perkins indicated he had toured the State during the past interim as Chairman of the Interim Education Committee and found that the problems with the NCLBA affected all schools, both urban and rural. He referred to a remote school in the Elko County School District that failed to meet adequate yearly progress (AYP). If the school failed to meet AYP for a second year it would be deemed in need of improvement and that would allow all of the students in the school the option of choosing another school to attend. However, the closest school was 60 miles away. The NCLBA did not address issues with the rural schools.

Assemblyman Marvel asked if the problems with the NCLBA had been addressed during the K-12 Joint Subcommittee hearing on the Distributive School Account. Mr. Perkins said he did not sit on the K-12 Subcommittee and was not in a position to answer the question.

Assemblywoman Leslie interjected that the NCLBA had been discussed in the K-12 Joint Subcommittee at various times throughout the session in terms of funding and what was and was not working in Nevada. There had been discussion of a bill similar to A.B. 562 that followed what other states had done.

Ms. Giunchigliani commended Mr. Perkins for bringing forward the issue of the problems with the NCLBA. She thought the federal government, in its attempt to make certain no child was left behind in the education process, superceded states' rights and ignored the fact that many states had already moved to strengthening their standards, costing money and time. Mixed messages were being sent on schools that were struggling versus ones that were not. Ms. Giunchigliani hoped A.B. 562 would allow for elimination of some of the duplication, save some money, and allow refocusing on teaching rather than focusing on testing.

Mr. Perkins reiterated that there was no argument on the goals of the NCLBA. Nevada wanted high standards and accountability but wanted to do it in a Nevada fashion, not a Washington fashion. The bill was the first attempt to engage Washington in dialogue to let Nevada have more control over the State's educational system. Mr. Perkins read the text of Section 6 of A.B. 562:

> If money is not provided by the federal government for the support of a program required by the No Child Left Behind Act, or if money provided by the federal government for the support of a program required by the No Child Left Behind Act is subsequently reduced or eliminated, school officials may reduce or eliminate that program to the extent allowed by law.

Mr. Perkins emphasized that the intent of A.B. 562 was not to violate federal or Nevada law, and reiterated that it was important to have a dialogue with the federal government related to Nevada's concerns with the NCLBA.

Mrs. Smith referred to the section of A.B. 562 that included an appropriation for an independent consultant to review the NCLBA funding. She asked if Mr. Perkins envisioned using the Request for Proposal (RFP) process for the consultant position included in the bill. There needed to be a review of the accountability requirements related to the NCLBA, an area that was not funded, yet the schools and districts were expected to comply. Mr. Perkins said he did envision using an RFP to find the consultant. He noted that lack of funding for the NCLBA had been discussed by the National Conference of State Legislatures (NCSL) and other organizations, and many states were considering initiating legislation similar to A.B. 562. Mr. Perkins noted that there were only 11 or 12 days left in the 2005 Legislative Session and bills having appropriations were still being heard. He said,

> I would not let the money be a fatal flaw to the bill. We have our own in-house staff, we have an Interim Education Committee, we have our Department of Education, we have a number of people within the state that if, again, if the money was a sticking point in this bill that we could accomplish many of these same things. More than anything else I think it's Nevada standing up for Nevada, telling the federal government to leave us alone, let us do it how we want to do it, and then creating that analysis to figure out how much they are negatively impacting our educational system.

Mrs. Smith said she thought the consultant and the analysis requirement included in A.B. 562 was extremely important.

Assemblyman Denis referred to Mr. Perkins' comment that A.B. 562 was based on legislation passed in Utah and asked if that legislation had been passed recently. Mr. Perkins said Utah's legislation had been passed within the last month and was signed into law three weeks ago. He pointed out that Utah had addressed the issue two years ago as well. President Bush sent Dr. Rod Paige, Secretary of Education, to Utah to have a dialogue with the Utah Legislature and that Body decided to hold their bill to see if the changes needed for the NCLBA would be addressed at the federal level. Because the changes did not occur, the Utah Legislature brought back the bill. Mr. Denis said he thought A.B. 562 was a step in the right direction.

Ray Bacon, Nevada Manufacturers Association, said the Association opposed A.B. 562. He said the Association recognized that the NCLBA had been painful in the state of Nevada, primarily because the performance numbers were not what "we would like them to be." Mr. Bacon said the situation in Utah was substantially different. Utah student performance had been very good in national testing numbers for many years. Mr. Bacon said his contacts in Utah indicated part of what was driving the mode was the increasing Hispanic population. Schools that in the past had outstanding performance were landing on the AYP list because of having to deal with the new issue of a large minority population.

Mr. Bacon referred to his written testimony (Exhibit C) and said there were a few things he wanted to bring to the Committee's attention. The Standards Council, chaired by Assemblywoman Smith, did an outstanding job. Nevada's standards were competitive with other states, however, the performance of Nevada's students was not where it needed to be. There were successful schools, such as Anderson Elementary School in Reno which was an 80 percent minority school that went from needing improvement for three years in a row to exemplary in two years. Mr. Bacon said the success of Anderson Elementary was a function of great leadership and focus. Part of the problem with meeting the requirements of the NCLBA was due to the rapid growth of Nevada. Mr. Bacon pointed out that Senator Ensign's involvement resulted in a growth factor being included in the NCLBA and federal funding for Nevada had increased faster than any other state. Mr. Bacon continued and said there were tight restrictions on teacher licensing procedures and had been for many years. However, there were numerous teachers teaching out of their area.

Mr. Bacon referred to a large document that contained studies related to the NCLBA and said he had not made copies for the members, but would leave the document with staff. He said the studies would be a good resource and suggested that Nevada could utilize some of the information that had already been documented in the studies, which should result in a small cost to the State.

Mr. Perkins asked Mr. Bacon to indicate which sections of A.B. 562 he could not support and said the bill had been carefully crafted.

Mr. Bacon said he thought perhaps reviewing the study was an appropriate action, but simultaneously there were things that could be done immediately that had not been done, which were detailed in the last paragraph of his handout (Exhibit C). Mr. Bacon suggested that the contents of A.B. 562 might be early and he did not think the large appropriation included in the bill was needed based upon the numerous other studies completed related to the

NCLBA. He suggested a study by LCB staff that was based on existing studies in the area to arrive at a preliminary number and then make that number a function of the Interim Committee on Education as to whether to recommend something for the next session. Mr. Bacon said Nevada's problem and learning gap between the "haves and have nots" was substantially greater than most of the states. The biggest problem, based on national testing numbers, was the Hispanic population and the other minority populations. The changes between grade 4 and grade 8 were substantially lower than what was taking place in almost every other state. Not only did Nevada have a large gap to begin with, but the progress in closing that gap was not as fast as other states. Mr. Bacon said he thought Nevada needed to understand its problems first and indicated that all the NCLBA had done was point out that Nevada had a problem.

Mr. Perkins noted that the NCLBA was part of Nevada's problem because of all the mandates included in the Act. Nevada had set goals through the Standards Committee and had accountability measures in place. The educational system in the state had worked under the Nevada Educational Reform Act (NERA) for approximately four years and then had to change directions to implement all the requirements of the NCLBA.

Ms. Giunchigliani echoed Mr. Perkins' comments. She recalled Senator Ensign's presentation before the Legislature soon after passage of the NCLBA that indicated Nevada would not have to participate in the NCLBA if the funding was not available or the impact was negative. Ms. Giunchigliani said Nevada's standards were high and there had been a great deal of hard work to improve the education process long before passage of the NCLBA. Ms. Giunchigliani noted that Nevada had not added a single day to the school year to address all the standards and all the testing; instructional time had actually been reduced, which had a significant impact on the students. Ms. Giunchigliani emphasized that Nevada did not need to wait around to see what Utah or any other state was going to do. She emphasized that the federal government, in mandating the requirements of the NCLBA, failed to consider the fact that some states were already increasing standards and improving the educational process. Ms. Giunchigliani said the larger issue was having the time to teach, providing quality salaries, and making sure that schools were empowered to work with parents. The NCLBA did not bring that kind of quality to the programs and could detract from the programs.

Dr. Keith Rheault, Superintendent of Public Instruction, Nevada Department of Education (NDE), said, based upon his review of the preamble of A.B. 562, he supported the bill and thought it was right on target and would make a good resolution that would provide some direction to the NDE staff and other school officials. He said he did not disagree that there were a number of things that needed to be addressed in the NCLBA, such as the overidentification of schools not meeting average yearly progress (AYP). Dr. Rheault said there needed to be more flexibility, such as allowing a longer period of time before having to include test scores for English as Second Language (ESL) students. The tests were currently included in the pool after one year and there was proof that a longer period of time was required for ESL students to become proficient in English. Dr. Rheault said there also needed to be flexibility in the highly qualified teacher requirement since Nevada hired so many teachers from out of state. He indicated that he did have some difficultly in how to implement Section 6 of A.B. 562, which stated that school officials could reduce or eliminate a program to the extent allowed by law if the money was not provided. Dr. Rheault pointed out that when the NDE had advised the U.S. Department of Education that the funding provided through the NCLBA was insufficient the response was always that there was money but they would

never indicate how the funds could be allocated for the various programs. Dr. Rheault said he would be supportive of Section 9 of A.B. 562 because there had never been a comprehensive study of the funding available for compliance with the NCLBA. As an example, under the Nevada Education Reform Act (NERA) of 1997, criterion-referenced tests were required in grades 3, 5, and 8; the NCLBA required testing in grades 3 through 8, so the Department had to have three additional tests. Dr. Rheault thought an independent review by a consultant having knowledge of the national scene would provide the State with powerful ammunition to request more flexibility and to recommend some changes to the law when it was time for the reauthorization of the NCLBA in 2007. Dr. Rheault said he would be happy to answer any questions.

Anne Loring, representing the Washoe County School District (WCSD), said the District's Board had not taken a position on A. B. 562. She said a few years ago the Board and former Superintendent, Dr. James Hager, did sign on to a national resolution along with hundreds of other superintendents, school boards, and others around the country asking that Congress not turn back the clock with the NCLBA. The WCSD did support the intent of the NCLBA to increase student achievement and to close the achievement gap among different ethnic groups, socioeconomic groups, special education students, and English Language Learners (ELL). Ms. Loring recognized that the Committee members had heard many success stories within the State and said thanks to the NERA and the NCLBA there were successes throughout Nevada in the schools and, more importantly, with the students. More children were reading and doing mathematics at grade level than ever before. Ms. Loring said the WCSD wanted to thank the Legislative Body and its predecessors because the members positioned the school districts to be successful with the NERA and had provided the Standards Council. Ms. Loring said Assemblywoman Smith, because of her outstanding leadership, and the Council members had received well deserved kudos for establishing rigorous standards. Before many other states, the Nevada Legislature saw the importance of teacher qualifications and continuing professional development by the support and establishment of the Regional Professional Development Programs (RPDPs). She said, "You saw, ahead of the federal government, the need to transition to criterion-referenced tests to get a better handle on how our kids in Nevada are doing on our Nevada standards."

Ms. Loring continued her presentation and said one of the unsung success stories of the Legislature was the funding provided for schools needing improvement long before that became a national issue. During the current session, members were addressing some of the major issues to help children succeed; full-day kindergarten, incentives for teachers, and how to help the ESL students become proficient in English as fast as possible. Ms. Loring said Nevada's local school districts had met with Nevada's national delegation to discuss areas of concern related to the NCLBA; the funding issue and the way that special education and ESL students were treated for AYP; the assumptions for those students were the same as for students of different ethnic groups and socioeconomic groups. Ms. Loring said an obvious conflict with the NCLBA was having high schools ranked high nationally but not meeting AYP because of the varying criteria.

Ms. Loring said the WCSD thought the key value of A.B. 562 was the study, or impartial analysis, of the NCLBA funding and the funding for student achievement. It was important to identify the amount of funding needed to meet the requirements of the law. There needed to be an accounting of the costs of the pre-NERA tasks such as accountability reporting, the costs of the NERA, the costs of the NCLBA, and the costs of implementing the NCLBA.

Randy Robinson, Nevada Association of School Boards, said both Ms. Loring and Dr. Rheault had done an outstanding job of relating the concerns of the Nevada Association of School Boards (NASB). The NASB also supported the study of the funding. Mr. Robinson said he had planned to invoke some comments from the iNVest in Education proposal, as well as some of the "where as clauses" that addressed the national debate related to the NCLBA. However, in the interest of time, Mr. Robinson said he would read excepts from a letter sent by the Lincoln County School District in response to an inquiry from one of Nevada's congressional delegation members asking about the unfunded mandates of the NCLBA. He read the following:

> You asked the school district leaders to describe how the No Child Left Behind Act is an unfunded, or underfunded mandate. If the mandates of the NCLB were truly funded, we would be able to hire new employees to cover the extra duties. As an example, our test director went from 5 percent of a principal's time to 20 percent of a principal's time, at a cost of about $13,000. All school principals now spend at least 10 percent of their time responding to AYP issues at a cost of about $60,000. Our Human Resource Director, another principal, increased her time by at least 10 percent checking records, assisting teachers and paraprofessionals, at a cost of about $8,000.

Mr. Robinson said he recognized the dollar amounts referenced in the paragraph did not seem significant, and said he would like to conclude with the following paragraph:

> Keep in mind that these costs are covered by a principal's time. This means they are not in classrooms working with teachers and students. They have less time to be instructional leaders because of the NCLB mandates. These costs may appear minimal to those who are used to dealing with dollar signs and exponents together, however, in a small district like Lincoln County School District an additional $50,000 in expenditures is incredibly significant.

Mr. Robinson said he shared the concerns of the Lincoln County School District with the Committee in order to illustrate some of the costs that did not immediately appear on a balance sheet. The NASB was not opposed to the NCLBA, but did feel that the NERA was way out in front.

In conclusion, Mr. Robinson referred to Anderson Elementary, which had been invoked several times during the current legislative session as a model in achievement. Mr. Robinson said he did not want to detract from the school's success, but the success was not achieved because, or perhaps in spite of, the NCLBA. The success of Anderson Elementary School resulted from leadership, focus, and hard work. In conclusion Mr. Robinson stressed the importance of cataloging the additional unfunded, or underfunded mandates resulting from the NCLBA in an accurate and consistent manner.

Chairman Arberry closed the hearing on A.B. 562 closed and opened the hearing on S.B. 101.

Senate Bill 101: Makes appropriation to Legislative Counsel Bureau. (BDR-1218)

Lorne Malkiewich, Director, Legislative Counsel Bureau, explained that S.B. 101 was a one-shot appropriation included in The Executive Budget, which included three components.

- Funding for the cost of reproducing out-of-print publications. The LCB was required to sell the *Nevada Reports* and the *Statutes of Nevada* and had responsibility for reproducing those reports. Every two years the Bureau identified volumes of the reports and statutes that needed to be reprinted and requested an appropriation.
- Funding for information technology updates. The amount varied from session to session, which could create anomalies in the budget. The amount requested resulted from the Information Technology Subcommittee reviewing the technology needs for the 2005-07 biennium. The total amount requested for the updates was $1,091,235. Mr. Malkiewich said his handout (Exhibit D) included a breakdown of funding into general categories; within each of the general categories the IT Subcommittee had approved specific projects. Because of the nature of information technology the actual projects might vary slightly.
- Funding in the amount of $335,000 for building improvements and an emergency generator.

Mr. Malkiewich explained that the Budget Subcommittee had trimmed the LCB request of $8 million for Capital Improvement Projects (CIP) to $335,000. As an informational item, Mr. Malkiewich noted that the LCB had hoped to construct a warehouse adjacent to the State Printing Office that would provide more storage space for the Printing Office and also provide storage space for the Legislative Building. Mr. Malkiewich said a second project that was deemed important by the LCB was paving the block on which the Capital Apartments were formerly located, which would create 100 additional parking slots until construction could begin on a new building. The Capital Apartments had been purchased in order to have a new LCB office building constructed and at some point the agency would like to begin looking at some planning money for a new building. Mr. Malkiewich said the paving project could probably be completed for $25,000 or $30,000.

Mr. Malkiewich said S.B. 101 was complete and ready to go, the appropriations were included in The Executive Budget and he said he did not want to include anything outside of the budget.

Mr. Marvel asked if the LCB continued to lease storage space and Mr. Malkiewich answered in the affirmative. The storage space was located several miles away on Highway 50. Mr. Malkiewich said even with a new storage facility there might continue to be a need for a small, off-site storage unit, which would be much cheaper and would save on staff travel time. In response to a question posed by Mr. Marvel on the cost of a new building, Mr. Malkiewich said the LCB had initially proposed $7 million but was working to reduce that amount. One of the problems was the time window for constructing the building; less than 18 months from approval to completion. Mr. Malkiewich said he thought the lease amount was approximately $60,000. He said he did not want to represent that constructing a new building would be an offset to the current rental facility. The big benefit would be in the efficiency. A new storage facility would also free up a small amount of space in the loading dock area of the Legislative Building.

Mr. Denis requested a more detailed list of the projects, which Mr. Malkiewich agreed to provide. In response to a question posed by Mr. Denis, Mr. Malkiewich stated that the LCB was not part of the cost allocation system of the Department of Information Technology (DoIT) except for making some payments for use of the central system. As far as purchasing, the LCB could take advantage of the DoIT's purchasing contracts, but was not required to.

Chairman Arberry closed the hearing on S.B. 101, and opened the hearing on S.B. 209.

Senate Bill 209 (1st Reprint): Provides that unclaimed capital credit of certain nonprofit cooperative corporations is not subject to provisions of Uniform Disposition of Unclaimed Property Act under certain circumstances. (BDR 7-839)

James Wadhams, representing the Nevada Rural Electric Association, said S.B. 209 dealt with the Unclaimed Property Act, sometimes called the Escheat Law. He referred to page 2 of the bill, lines 16 through 20, which addressed capital credits, in particular capital credits of nonprofit cooperative corporations organized with the delivery of electricity. Although most of the populated area of the state was covered by investor-owned utilities, the vast majority of Nevada's land mass was covered by cooperatives and power districts. A large utility such as Nevada Power might have 40 or 50 people per line mile; a rural electric might have 1 person per line mile. The cooperatives were formed as owner-member controlled with no stockholders. Mr. Wadhams said,

> The amount of money at the end of the year that they hold beyond their expenses is not really profit, but it has to be allocated to each member because they are the owners of the organization. For those of you familiar with nonprofits, we have a law that properly says that monies from a nonprofit cannot inure to the benefit of any person. These capital credits, that are really an accounting entry, are not owned by an individual and, as a result, the attorneys for both the State Treasurer's Office and the cooperatives believed that they are not subject to the escheat law, but there was enough ambiguity, so the purpose of this bill is to clarify that these sorts of capital credits in nonprofits do not escheat. I want to be sure to say that customer deposits for service do escheat if they are not reclaimed during the period of time that they may be held. They do escheat to the state and are transferred to the state.

Mr. Wadhams said the fiscal note of S.B. 209 was relatively nominal because currently two of the three cooperatives that would be affected by the bill had nothing to escheat. The third cooperative, Valley Electric that served the Pahrump area and Nye County, had some property that would escheat because the Articles of Incorporation recorded the credits as property of the individual members. Even if S.B. 209 passed, those funds held by Valley Electric would still escheat unless and until they might change their Articles of Incorporation, an entirely separate matter. Wells Rural Electric, which served the northeastern quadrant of Nevada, and Mount Wheeler Electric, which served the east central part of the State, had no funds in this category currently being escheated. In summary, Mr. Wadhams said S.B. 209 would clarify the law.

Mr. Marvel said he understood that Wells Rural Electric could use the money for scholarships. Mr. Wadhams said the capital credits were part of the money held for the operation and expansion of the infrastructure of the utility. Out of their

funds, which were not particularly identified as capital credits, there was money used for a variety of things that the board of directors, elected by the subscribers, might determine. Mr. Wadhams pointed out that there was not a direct tie between the capital credit and a donation to a charity.

Mr. Seale said the capital credits were amounts of surplus and were returned to the owners. He pointed out that in some instances the owners could not be located so the funds were held. Mr. Seale asked if at some point in time a utility would make a distribution of those capital credits to the owners that could be located. Mr. Wadhams said the capital credits were temporarily identified with a member of the organization and after a period of time the credits were absorbed back into the entire structure, in effect, redistributed to the remaining members. Mr. Seale said that made sense.

Chairman Arberry closed the hearing on S.B. 209 and opened the hearing on S.B. 247.

Senate Bill 247 (1st Reprint): Revises provisions governing tax on live entertainment. (BDR 32-680)

Senator Dina Titus, District No. 7, said the 2003 Legislature passed a tax package that was quickly seen as full of problems. The entertainment tax turned out to be a bookkeeping nightmare and also failed to generate the anticipated amount of revenue. In addition, the tax did not apply to striptease clubs, which had proliferated in southern Nevada. Senator Titus said over the past year there had been numerous problems related to the entertainment tax. The Senator explained that she introduced S.B. 247 to reform the entertainment tax. Senator Titus referenced a packet of information that included some letters of support and a statement from the Department of Taxation that addressed the economic impact on the General Fund of the reforms found in the bill (Exhibit E). S.B. 247 would divide the existing live entertainment tax (LET) into two categories; live entertainment and live adult entertainment. The live entertainment tax would apply only to nonrestrictive gaming facilities and would be administered by the Gaming Control Board and would exempt any sporting events that occurred in the nonrestrictive gaming facilities and would remain at the 10 percent on admissions, drinks, food, and souvenirs, currently included in statutes. The live adult entertainment tax, included in Section 11 of S.B. 247, would be administered by the Department of Taxation and would be 10 percent on everything in nonrestrictive gaming and nongaming facilities which offered live adult entertainment as defined in Section 8. Live adult entertainment would not include nudist colonies, naturists, or houses of prostitution. Senator Titus pointed out that the revised LET would no longer be required for family-oriented sporting events and could perhaps result in Las Vegas capturing a second NASCAR race, a baseball team, or an All-Star basketball game. Small venues such as taverns or restaurants that might have an occasional piano player or a weekend band would no longer be required to pay the LET. Senator Titus said passage of S.B. 247 would do a better job of capturing adult live entertainment, which was an industry that placed additional burdens on government through law enforcement needs and liquor regulations.

Senator Titus noted that individuals who performed live adult entertainment worked under contract, therefore the owners of the facilities did not have to pay unemployment or benefits. Many of the performers would eventually become a burden on the state through the social services programs. Any loss in revenue from elimination of the sporting events and the seating requirements would be more than made up in the revenue that would be generated when all of the live adult entertainment venues were taxed.

Senator Titus referenced the last few sentences included in a letter included in the handout (Exhibit E) from Dino DiCianno, Deputy Director, Department of Taxation, which read:

> What that gain in LET would be is difficult to estimate at such a short notice. In my mind it will be at least $4 million. In addition, there would be a gain in sales tax collected at the ten percent level by including all of the gentlemen's clubs.

Senator Titus concluded her presentation and said, "We are not talking about a hit, we are talking about a wash at the minimum, or a gain of about $4 million or perhaps more."

Chairman Arberry asked if the Senator felt there had been adequate time to measure the effectiveness of the tax package passed by the 2003 Legislative Session. Senator Titus said she had not advocated rolling back the existing tax package and acknowledged that the legislative body had worked extremely hard on the package. She stated that the entertainment tax needed to remain in place, but should be restructured in a way that would generate more tax dollars, not less, and the taxes should be easier to administer. Because the regulations the Tax Commission worked so hard on over the last year were included in S.B. 247 there would be no need to redo the definitions. Senator Titus said it was her understanding that the Department of Taxation could implement the bill without any difficulty.

Mr. Hettrick said he did not have any problem with S.B. 247. He pointed out that the legislators had received a great deal of mail from the naturist groups and said he could find the language for the brothel exemption but could not find any wording to change the language in the bill to cover the naturists. Senator Titus said the exemption for the naturists was not put in the bill on the Senate side. It was brought up in the first hearing held in the Commerce and Labor Committee and she said it was her understanding that that committee would recommend an amendment to exempt the naturists. Mr. Hettrick said he supported the intent of S.B. 247 and wanted to make certain the bill included language that exempted naturists from the LET.

Craig Hartman, representing the Naturist Action Committee, said he had concerns with the language referenced by Mr. Hettrick that would exempt the naturists and said he would like to see the language before speaking in favor of S.B. 247. Mr. Hartman said the naturists were not looking for an exemption, but merely a change in the wording.

Mr. Hettrick said he had presented a suggestion on the language to be included in the bill relative to the naturists and thought there had been a time issue in the Commerce and Labor Committee. He pointed out that the Senator had indicated that she was more than happy to make certain the language related to the naturists was included. There was no question that the Commerce and Labor Committee would include something in the bill that would exempt the naturists from being taxed as live adult entertainment. Mr. Hettrick assured Mr. Hartman that S.B. 247 would be amended to exempt naturist activities. Mr. Hartman said the Naturist Action Committee might have some language that could be used in an amendment.

Alfredo Alonso, Lionel Sawyer and Collins, said he was representing MGM and Paramount Parks, and referred to the amendments he had presented to the members for consideration in a previous hearing. He then referred members to

the handout titled *Gaming Control Board's Technical Amendments to S.B. 392*, (Exhibit F).

Joe W. Brown, Jones Vargas Law Firm, said he was representing the Las Vegas Motor Speedway and Speedway Motorsports. The Las Vegas Motor Speedway operated year-round and held events for dragsters, Legend cars, stock cars, and motorcross. The one major event of the year was the NASCAR race, the largest event of any kind held annually in Nevada. In March of 2004 over 140,000 individuals came into Las Vegas for the NASCAR race, the figures for 2005 were not yet available. The visitors averaged a stay of four nights and were not only paying premium rates at the hotels, but also gambled, dined in the restaurants, attended the shows, shopped, and purchased gas. The economic impact of the NASCAR race was $248 million. Mr. Brown said the Las Vegas Motor Speedway and Speedway Motor Sports supported S.B. 247 and believed that speedway racing should be exempted from the entertainment tax. The athleticism and skill displayed by the professional race car drivers certainly brought them within the purview of the amended bill.

Scott Scherer, representing Paramount Parks, said the "Star Trek amendment" had been discussed in prior hearings and he would not repeat the testimony. He said he would be happy to answer any questions the members might have.

Ms. Giunchigliani asked if the language Mr. Scherer referred to was the same language that was submitted for A.B. 554. Mr. Scherer said Mr. Bruton Smith, Chairman of the Board of Speedway Motorsports, had indicated that he was aggressively pursuing a second NASCAR race. However, there were six other tracks around the country and he would take the races to the most profitable locations with the largest crowds.

Alfredo Alonso clarified that the information provided to members was the same that was provided to members last week but also included a few of the issues that were discussed at the table. He briefly reviewed the contents of the packet that he had provided to the members.

Terry Graves, representing The Beach nightclub in Las Vegas, pointed out that many entities were included in the live entertainment tax that were not intended to be included. S.B. 247 would remove those entities from the LET. The Beach nightclub was one of the businesses included and was a nightclub and bar that primarily served local residents. Given the structure of the original statute, in S.B. 8 passed by the 2003 Legislative Session, that club would have had a 10 percent tax on every area of the business, which would have been a death knoll for that club. Mr. Graves said he had worked hard throughout the interim with the Tax Commission and the Gaming Commission to formulate the regulations that the club now worked under. Those regulations were basically the language included in the amendment being offered by the Nevada Restaurant Association (NRA). Mr. Graves said The Beach was in support of S.B. 247 and the NRA amendment.

Dennis Neilander, Chairman, State Gaming Control Board, said he was present to respond to any questions the members might have related to the amendments (Exhibit F). He said the Board had taken a neutral position on S.B. 247 but said he had discussed the matter with Senator Titus to make sure, if the bill passed, there was an understanding of how the tax would be collected. Mr. Neilander said the amendments were "fix amendments." He pointed out that there were three different bills that related to the LET and the amendments included consensus language from all parties who had introduced the various bills. Mr. Neilander said the Gaming Control Board did not believe

any of the amendments Mr. Alonso referred to would have a material fiscal impact on the forecast the Board presented to the Economic Forum.

Chairman Arberry closed the hearing on S.B. 247 and called for short break.

Chairman Arberry called the meeting back to order at 9:51 a.m. and opened the hearing on A.B. 77.

Assembly Bill 77 (1st Reprint): Revises provisions regarding courses in automobile drivers' education and requires reduction in insurance premiums for certain insureds. (BDR 34-474)

Assemblywoman Giunchigliani said A.B. 77 was heard several weeks ago by the Committee. She said the main issue that caused the impact of both the implementation and the fiscal note seemed to be the reference to earning a high school credit. She suggested removing the reference to the credit, which would provide flexibility to allow drivers' education courses outside of school hours. Ms. Giunchigliani referred to a mock-up of the proposed amendment to A.B. 77 (Exhibit G) and reviewed the recommended changes:

- Page 2, lines 9 and 10—new language: "In order to obtain a drivers license a student must complete a drivers education course." Ms. Giunchigliani pointed out that there might have to be language included to indicate a student under the age of 18 would be required to take the course.
- Page 2, lines 31 through 33—removed the credit requirement, which should reduce a great deal of the fiscal impact.
- Page 2, lines 42 through 45—new language: "The Board of Trustees and local automobile dealerships are encouraged to establish an agreement to obtain cars as a donation to use for the classroom driver behind the wheel training. The dealerships may use the donation as a charitable deduction."

Mr. Marvel asked if Ms. Giunchigliani had checked with the Internal Revenue Service (IRS) to verify that the dealerships' donations would qualify as charitable donations. Ms. Giunchigliani indicated she had not but would ask the bill drafters. She suggested deleting the sentence allowing the donation to be a charitable deduction and add it back in if a determination was made that the deduction was allowable. She thanked Mr. Marvel for bringing the issue forward.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED AMEND AND DO PASS A.B. 77 WITH THE DELETION OF THE STATEMENT THAT THE DEALERSHIPS MAY USE THE DONATION AS A CHARITABLE DEDUCTION.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Hettrick and Mr. Perkins were not present for the vote.)

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Assembly Bill 109 (1st Reprint): Revises provisions governing regional training programs for professional development of teachers and administrators and makes appropriations. (BDR 34-479)

Ms. Giunchigliani said she had emailed the proposed revisions to A.B. 109 to the Committee members. She explained that A.B. 109 revised provisions governing the regional training programs for the professional development of teachers and administrators. The revision would delete a number of sections in the bill since the areas had been included in the budget.

Ms. Giunchigliani briefly reviewed the changes, which had been recommended by LCB staff to improve the support team process for the schools not meeting adequate yearly progress (AYP). The changes included designating the Nevada Department of Education as the facilitator of the support team and would give the support team the authority to require plans, strategies, tasks, and measures. For the required reports the words "names and" were added. The amended section would read, "set forth the names and duties of each person who is responsible for carrying out the revisions." The final change would state that the "Department shall establish a concise monthly progress report."

Ms. Giunchigliani said the key sections that were submitted by the Department of Education were included in Section 4, the policy section, to make it clear that the districts would receive the funding, but the funding for the implementation of the actual training would go to the standing boards that monitored the Regional Professional Development Programs (RPDPs). Sections 6, 7, 8, 9, 10, 11, and 12 and subsection 2, would be deleted.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO PASS.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Hettrick and Mr. Perkins were not present for the vote.)

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Chairman Arberry adjourned the meeting at 9:58 a.m.

RESPECTFULLY SUBMITTED:

_____
Linda Smith
Committee Secretary

APPROVED BY:

_____
Assemblyman Morse Arberry Jr., Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 26, 2005 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B	Carole Vilardo, NV Taxpayers Association	Copy of testimony
	C	Ray Bacon, NV Manufacturers Association	Copy of letter to Chairman Arberry and Committee members
	D	Lorne Malkiewich, Director, LCB	Handout
	E	Senator Titus	Packet of information provided by Department of Taxation
	F	Alfredo Alonso, representing Lionel Sawyer and Collins	Gaming Control Board technical amendments to S.B. 392
	G	Assemblywoman Giunchigliani	Proposed amendment to A.B. 77