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

Seventy-Third Session
May 30, 2005

The Committee on Ways and Means was called to order at 9:13 a.m., on Monday, May 30, 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

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Steve Abba, Principal Deputy Fiscal Analyst
Susan Cherpeski, Committee Attaché
Lila Clark, Committee Attaché

Senate Bill 265 (1st Reprint): Provides for allowances for certain travel expenses incurred by Legislators during legislative interim. (BDR 17-538)

Senator Dean Rhoads, Northern Nevada Senatorial District, presented S.B. 265, which concerned the rural legislative districts. Senator Rhoads pointed out that his district covered 72 percent of the state's area. The previous summer he had traveled from Tuscarora to Panaca, which was a 900-mile round-trip driving. The only other way to travel between those two places was to fly into Las Vegas for $450, rent a car for $130, and drive to those areas, which was rather expensive. Senate Bill 265 would reimburse travel expenses for any legislator who had to travel more than 50 miles to attend a public meeting. The limit was $5,000.

Senator Rhoads noted the fiscal note for S.B. 265 was estimated at $180,000; however, that was based on the assumption that all legislators could be reimbursed. Senator Rhoads opined that only legislators in the rural areas would take advantage of the allowance.

Vice Chairwoman Giunchigliani asked if the reimbursement applied to any legislator who had to travel farther than 50 miles to a public meeting. She asked how many individuals could be eligible.

Senator Rhoads said he did not have an exact number, but he thought it would be fewer than 6 legislators.

Vice Chairwoman Giunchigliani remarked that attending some public meetings was important, but not all public meetings were related to the duties of a legislator. Senator Rhoads pointed out that public meetings in the rural areas were very different from public meetings in the urban areas.

Vice Chairwoman Giunchigliani inquired as to how the $5,000 limit had been determined. Senator Rhoads indicated that the Research Division of the Legislative Counsel Bureau had developed that number.

Assemblywoman Leslie clarified that the bill stated that after someone filed to run again, they could not take advantage of the reimbursement. Senator Rhoads confirmed that was correct and added that it was an important part of the bill. Ms. Leslie agreed.

As there was no further testimony, Vice Chairwoman Giunchigliani closed the hearing on S.B. 265 and opened the hearing on S.B. 56.

Senate Bill 56 (2nd Reprint): Makes various changes concerning charter schools and distance education programs. (BDR 34-18)

Senator Maurice Washington, District 2, presented S.B. 56. Senator Washington indicated that he was accompanied by Marsheilah Lyons, Research Division, Legislative Counsel Bureau. He explained that S.B. 56 was one of several bills relating to charter schools, and he noted that there were proposed amendments to the bill. Senator Washington provided Exhibit B to the Committee and turned the time over to Ms. Lyons to outline the provisions and changes in the bill.

Ms. Lyons explained that Section 6 of S.B. 56 authorized a committee to form a charter school to apply directly to the State Board of Education for sponsorship without limitations. The time for review of application by a school district was expanded from 30 to 45 days. Section 8 amended the process for revoking a charter by requiring a sponsor to take action no later than 90 days after notice of intent to revoke was provided to the charter school. Further, the bill set forth notice requirements and limitations and also provided that the parties could agree in writing to waive the deadlines.

Ms. Lyons continued and said that Section 4 provided that a charter school dedicated to providing educational programs and opportunities for at-risk pupils must submit an annual report to the sponsor containing demographic information about the school's students. Section 11 authorized the Board to request payment for administrative expenses associated with sponsorship in the amount of 2 percent of the school's apportionment in the first year of the charter school's operation, and 1.5 percent in the second and subsequent years. Section 19 provided that charter schools sponsored by the Board should receive the sum of the basic support per pupil in the county in which the pupil resided as well as the local funds available per pupil and all other funds available for public schools in that county. Section 25 amended the provision for retesting of students in certain situations so that a charter school, rather than a school district, was responsible for the cost of retesting its students.

Ms. Lyons noted that Section 10 clarified that members of the governing body were deemed public officers and were subject to Chapter 281 of the *Nevada Revised Statutes* (NRS). Section 9 required the Nevada Department of Education to provide training for governing body members in education, law, and other statutory provisions relevant to governing charter schools. The bill reduced to three years the period of time a licensed teacher at a charter school could take a leave of absence from a school.

Ms. Lyons added that the measure also required an applicant for employment at a charter school to submit fingerprints for the purpose of obtaining the applicant's criminal history. A person with a criminal history could be employed by the charter school if the superintendent of public instruction determined that the conviction was unrelated to the applicant's job duties. Finally, the bill changed the deadline for filing written agreements related to certain enrollment in programs of distance education and permitted university and college faculty to teach distance education courses in the core academic subjects.

Vice Chairwoman Giunchigliani commented that the three-year licensing issue had been included in another bill related to charter schools. She asked if the language in the two bills was parallel.

Dr. Dotty Merrill, Assistant Superintendent, Public Policy, Accountability and Assessment, Washoe County School District, interjected that the other bill was A.B. 154 and the language was parallel.

Vice Chairwoman Giunchigliani asked what the main changes in the bill were. Senator Washington said that the main change related to state-sponsored charter schools as opposed to district-sponsored charter schools. Currently, in state statute, if a charter school committee application had been denied by a school district, the committee had to wait 45 days and then could apply to the State Board of Education. The bill allowed immediate access to the Board.

Vice Chairwoman Giunchigliani noted that the committees could then choose whether they wanted schools sponsored by districts or by the state. Senator Washington added that the bill also stipulated that the Board would receive 2 percent the first year and 1.5 percent each year after that for administrative costs.

Vice Chairwoman Giunchigliani inquired as to the current percentage for administrative costs. Dr. Merrill interjected that for a district-sponsored charter school in its first year of operation, it was 2 percent for administrative costs, and each subsequent year was 1 percent.

Dr. Merrill said she was representing the Washoe County School District and the superintendents from the Carson City, Douglas County, and Lyon County school districts. She referred the Committee to Exhibit C and explained that there were four "friendly" amendments. The first was related to Section 1 of S.B. 56. In the first reprint of the bill, the language was changed to refer to charter schools sponsored by the school district that, in assessment and accountability matters, the district would be responsible for the charter schools that had sponsors, and the state then would assume responsibilities for the state-sponsored charter schools. She proposed that the language from Section 1 of the first reprint be reinstated. Dr. Merrill pointed out that it was the same language that appeared in Section 1 of A.B. 180 and in A.B. 154. The change would make the bills related to charter schools consistent.

Dr. Merrill indicated that page 8 of Exhibit C, Section 15, subsection 2, would delete the requirement that a charter school sponsored by the Board had to submit its accountability information to the Department, which would then be included in the report of the school district in which the charter school was located. She noted that in the most recent reprint of S.B. 154, there was language indicating that the Superintendent of Public Instruction would prepare a report that contained information for all the state-sponsored charter schools, and the aforementioned amendment would make the two bills consistent. She added that the language from S.B. 154 could be used to replace the existing language.

Dr. Merrill indicated that the third proposed change was in Section 16, subsection 1(b), on page 27 of S.B. 56. The proposed change would mean that each charter school would be provided a description of all administrative support and services provided by the district to the charter school. She noted that the remainder of the language had linked that description with the reimbursement and indicated that there were services that the charter school could waive. Dr. Merrill stated that there were services that the district provided that could not be waived, such as mandatory training, so that language had been deleted.

Dr. Merrill said that the last proposed amendment appeared on page 10 of Exhibit C and amended Section 17, subsection 1(e). She explained that the subsections 1(e) and 1(h) referred to accountability reporting and the automated system of accountability information for Nevada, which disaggregated groups by information related to ethnicity, remediation, financial accountability, and so on. The amendment would change the last part to read that the information "shall be used for the purpose of improving the achievement of pupils, and improving classroom instruction but must not be used for the purpose of evaluating an individual teacher or paraprofessional." She said the district wanted to emphasize the importance of using the information for the purpose of improving classroom instruction and student achievement.

Vice Chairwoman Giunchigliani noted that Exhibit C showed the effective date as changing from April 1 to August 15 for the advisory board to review school attendance. She asked why the date had been changed.

Dr. Merrill noted that a similar change appeared in A.B. 180 and A.B. 154. That change allowed the inclusion of information about adequate yearly progress (AYP) so that the districts had all the information gathered for accountability reporting.

Vice Chairwoman Giunchigliani referred to Section 15 as outlined in Exhibit C, and said it appeared that the old language was being "struck" because it was rewritten in an earlier section regarding the July 15 information. Dr. Merrill clarified that the language in subsection 1 was being retained, while the language in subsection 2 was being deleted. She pointed out that language from A.B. 154 describing the report could be inserted into subsection 2.

Vice Chairwoman Giunchigliani asked to which report Dr. Merrill was referring. Dr. Merrill said she was referring to the accountability report.

Senator Washington interjected that it would be the same report that the superintendents had been submitting already. The language in A.B. 154 would be applicable and could be inserted.

Senator Washington directed the Committee's attention to Exhibit C and said the last amendment on page 10, which changed the word "may" to "shall" for

the accountability report, was acceptable. New language had been drafted (Exhibit B) for Section 16 on page 8 of the bill, and he hoped that the new language would alleviate the school districts' concerns. Senator Washington indicated that the new language stated that mandatory services would be provided by the school district and the schools had to participate in those mandatory services, but the optional services and their costs would be delineated and the charter schools could choose whether to receive or deny those services. The charter schools would then know exactly which services were mandatory and which were optional and their costs, so informed choices could be made.

Vice Chairwoman Giunchigliani clarified that the amendment would segregate the optional and mandatory services.

Senator Washington noted that on pages 1 through 7 of Exhibit C, the language "sponsored by" had been added; however, he did not agree with that addition. He explained that there was a report provided to the parents that aggregated all the schools within the district, whether they were public or charter. The district, with the language "sponsored by," was requesting that those schools sponsored by the state be aggregated out of the district's report and be given their own state report card.

Senator Washington said there had been concern about the reports, and he felt it was important that the reports list all schools, whether state-sponsored or district-sponsored, that were located within the county so that parents could make comparisons and make informed decisions. He suggested that, in order to address the concerns of the parents and the school districts, the state could denote in the report which schools were state-sponsored and which were district-sponsored. If that was done, then the "sponsored by" language in the amendment would be unnecessary.

Vice Chairwoman Giunchigliani agreed that the intent of that "sponsored by" language was to ensure that people were aware there were two options for sponsorship as well as to ensure that the reports indicated the actual sponsor of the charter school.

Senator Washington commented that it was a responsibility issue, and the districts should not be responsible for the reports of those schools sponsored by the state, but it was necessary to include that information so it could be accessed by parents and others who wished to make comparisons.

Vice Chairwoman Giunchigliani asked if a state-sponsored school would have to provide information to the local school district so that it could be included in the report. Dr. Merrill said that the language in A.B. 154 addressed that issue more clearly and included the language from Section 1. She said the language in Section 15, on page 8 in Exhibit C, would read:

> ...on or before July 15 of each year, the governing body of a charter school that is sponsored by the State Board shall submit the information described...to the Department in a format prescribed by the Department for inclusion in a report that the Department will provide for each charter school that is state-sponsored.

Dr. Merrill pointed out that if the Department provided that report, then the school district would be able to access that information and distribute it, if that was an acceptable compromise.

Vice Chairwoman Giunchigliani remarked that it would be necessary to include language that would allow the districts to indicate which schools were state-sponsored versus which schools were district-sponsored. She said the language from A.B. 154 could be added.

Vice Chairwoman Giunchigliani said that once the other two charter school bills were passed, there would be some discussion regarding conflicts and those changes could be made then.

Assemblyman Seale questioned the fiscal note of S.B. 56. Senator Washington said the "price tag" should be cost-neutral within the provisions of the bill for the State Board of Education to charge 2 percent for the first year and 1.5 percent each additional year. Mr. Seale commented that the cost was de minimis and Senator Washington indicated that was correct.

Vice Chairwoman Giunchigliani asked if the state would also charge an administrative cost. Dr. Merrill indicated that was correct. The state would charge 2 percent in the first year and 1.5 percent in subsequent years, while the district charged 2 percent the first year and 1 percent in subsequent years.

Craig Kadlub, representing the Clark County School District, thanked Senator Washington for being receptive and working with the districts to alleviate concerns. Mr. Kadlub pointed out that there had been no changes in charter school law since 2001, so some of the issues had been problems for a while, and the changes in the bill were of benefit to both charter school applicants and sponsors.

Mr. Kadlub said he agreed with the changes allowing the applicants to apply directly to the State Board of Education as well as the lengthening of the application review process. He noted that the revocation process also made more sense, because, in the past, the district had to allow non-compliant schools to continue operating for up to three months. He agreed with the date changes in the distance education application and supported the amendments proposed by Dr. Merrill (Exhibit C).

Mr. Kadlub directed the Committee's attention to Section 16 on page 27 of S.B. 56 and indicated that the Clark County School District's initial inclination had been to delete Section 16 because the 2 percent administrative cost in the first year and the 1 percent in subsequent years were not for services provided. Rather, they were comparable to the percentage that a grant recipient kept simply for administering the grant. He added that there were not any services that could be waived included in that cost.

Mr. Kadlub explained that typically, an application for a charter school was received before there were any per-pupil dollars to draw on. School district staff and the Department of Education staff then spent a substantial amount of time in application review. If the application was approved there were mandatory year-end reviews, which could only be accomplished after a substantial number of visits to the school. He pointed out that charter school issues arose daily, depending on the district and the number of charter schools within the district, particularly if a revocation or corrective action of some kind was necessary during the course of the year. Those reviews and those actions were nonnegotiable.

Mr. Kadlub added that there was a separate passage in Chapter 386 of the NRS that allowed a charter school to choose certain optional services, and those

services were negotiable and could be explained in a contractual arrangement. He emphasized that the 2 percent in the first year and the 1 percent in subsequent years was not part of those negotiations and were used to help the district support the responsibilities that it incurred in oversight responsibilities for the charter school.

Vice Chairwoman Giunchigliani clarified that Mr. Kadlub wanted Section 16 deleted. Mr. Kadlub indicated that had been the district's first request when the bill was heard because there should not be any negotiation regarding the administrative cost percentages. When those were implemented in 2001, it was made plain that they were strictly for oversight, not for provision of services that might be waived or selected.

Vice Chairwoman Giunchigliani remarked that the original intent of the administrative cost was being perceived incorrectly and deleting Section 16 would allow the administrative costs to continue, which was important because the administrative costs were linked to required oversight. She asked if Section 16 linked services to those administrative costs and would allow for charter schools to avoid paying the administrative charge. Mr. Kadlub said that was how he read the bill, and he thought the language appeared to be an attempt to "erode" the 2 percent and 1 percent administrative fees.

Senator Washington disagreed with deleting Section 16 and explained that a charter school received a bill for services that had been provided; however, the bill was not itemized and the charter school did not know for which services it was being charged. He said that the bill should be itemized by mandatory services and the costs associated with those services, as well as the optional services that a charter school might request and the cost of those services. He opined that deleting Section 16 would "muddy the water" when the intent was to clean up the language so that charter schools knew how and why they were being billed.

Vice Chairwoman Giunchigliani said it appeared that there were two separate issues: services and administrative oversight. She said that administrative oversight had been put into place for charter schools and was not related to services: it was for oversight to ensure that charter schools were in compliance. The issue of services was secondary and charter schools might require additional services, which should be reflected in the cost assessment.

Senator Washington stated that the important point was ensuring that the charter schools understood what they were being charged for and whether the services were mandatory or optional.

Ricci Rodriguez-Elkins, Executive Director, Center for Charter School Development, spoke in support of S.B. 56 and the amendments proposed by Dr. Merrill. Ms. Rodriguez-Elkins thanked Senator Washington for his additional consideration regarding the amendments. She referred to the discussion regarding oversight and services, and said she was in favor of Dr. Merrill's wording and agreed with Mr. Kadlub that the intent of the 2 percent administrative fee was to provide support to the districts for their supervisory and monitoring services.

Ms. Rodriguez-Elkins added that Senator Washington was correct in that the billing process was confusing to charter schools and a bill that clearly delineated the charges would be helpful.

As there was no further testimony, Vice Chairwoman Giunchigliani closed the hearing on S.B. 56.

Chairman Arberry opened the hearing on S.B. 306.

Senate Bill 306 (3rd Reprint): Authorizes pledge of certain sales and use tax proceeds and state funding for certain projects for promotion of economic development and tourism. (BDR 21-1286)

Senator Washington presented S.B. 306, and explained that the bill related to sales tax and revenue (STAR) bonds. He indicated that he would not go into great detail, but said that S.B. 306 was an economic development bill that would allow the City of Sparks to make improvements around the marina to generate needed retail attraction and economic development in that area. He indicated that there were some parameters for determining tourism improvement districts.

Ms. Giunchigliani asked that further details be provided as to what STAR bonds were, how they were used, and how that would affect school districts and local governments.

John P. Sande, III, Jones Vargas, on behalf of RED Development, LLC, which proposed to do the retail project on the marina in Sparks, spoke in support of S.B. 306. He explained that the bill would allow a pledge of up to 75 percent of sales tax within a tourism improvement district for the purpose of making improvements. He indicated that he had met with representatives of the Washoe County School District and labor unions and had attempted to address any concerns they had.

Ms. Giunchigliani asked how those concerns had been addressed. Mr. Sande explained that there had been assurances that any projects financed would have the prevailing wage, which was important from a labor standpoint. The school district had wanted assurance that it would not negatively affect the funding for the school districts, and he believed that, if anything, it would have a positive impact.

Mr. Sande pointed out that in order for an area to be designated as a tourism improvement district it had to meet the criteria in Section 9 of the bill. If the governing body chose to designate an area, it had to determine that no retailers would have maintained or would be maintaining a fixed place of business within the district on or within 120 days immediately preceding the date of the adoption of the ordinance. Page 5 of the bill contained the provision that the Governor could also make a determination that the project and the use of any money proposed to be pledged would contribute significantly to economic development and tourism in the state. In addition, lines 28 through 34 on page 5 indicated that if the Governor determined that the pledge of money would have a substantial adverse fiscal impact on educational funding, he could require a commitment from the municipality for the provision of specified payments to the school district in which the tourism improvement district was or would be located during the term of the use of any money pledged.

Mr. Sande noted that the tourism improvement districts would be in areas that did not have any retail establishments, so the projects would have a positive impact, particularly the marina project in Sparks. He added that the Commission on Tourism must also make a determination that it was a valuable project and the majority of the sales tax would be from tourism rather than local residents.

Ms. Giunchigliani questioned the provision that the Governor would make the determination. Mr. Sande explained that was correct, and lines 3 through 7 of page 5 stated that the county where the project was located also had to make the determination that there would be a substantial increase in the proceeds from sales and use taxes remitted by retailers with regard to tangible personal properties sold at retail, or stored, used, or otherwise consumed, in the district.

Ms. Giunchigliani inquired as to the difference between a tourism improvement district and a redevelopment district.

Greg Salter, Department of Community Development, City of Sparks, addressed Ms. Giunchigliani's question and explained that a redevelopment district used the new property taxes generated by a project; a tourism improvement district would use new sales tax increment. He said that 75 percent of the sales tax increment would be used to help in building the infrastructure for the tourism improvement district.

Ms. Giunchigliani pointed out that it had never been done before, and Mr. Salter said that there had been legislation related to STAR bonds passed in the 2003 Legislative Session, but those statutes had been placed in Chapter 271 of the NRS, which required that property assessment liens be placed on the property and those liens would be paid off by the sales tax increment. Mr. Salter explained that the problem with that, especially with the RED Development project, was that some of the property would have to have a $10 million to $20 million prime lien on it, and it was difficult to get construction financing for such a large amount.

Mr. Salter said that S.B. 306 would allow the city to establish a tourism improvement district that retained almost all the protections that were placed into statute under the previous legislation, but did not require property liens for the payment of the assessments. He added that the local government must make a finding that the tourism improvement district would have a positive fiscal impact before it could be established, and that positive fiscal effect had to consider all the taxes generated in the area, including property taxes and sales taxes. The fiscal report that must be prepared had to be addressed to the local school district as well as the local government, and the local government was required to give the school district 45-days notice before the local government held hearings. He reiterated that the fiscal effect study had to take into account all fiscal effects, including the effects on services provided by the school district, and there had to be a finding that the establishment of the tourism improvement district would have a positive fiscal effect before the project could proceed.

Ms. Giunchigliani indicated she was still uncomfortable with the possible impact to the school districts. She asked if the tourism improvement district could be in the same area as a redevelopment district. Mr. Salter said that it was possible to have both, but there still must be, even taking into account the property tax increment, a positive fiscal effect.

Ms. Giunchigliani referred to Section 9 on page 3, and expressed discomfort with the provision that would allow for the amendment of boundaries. She said it was a "game that's been played in southern Nevada…and [the program] was expanded well beyond what the intent of the law was."

Mr. Salter pointed out that there would have to be a series of findings before the boundaries could be amended.

Ms. Giunchigliani requested additional information regarding the 120-day requirement in Section 9, subsection 1(b) of the bill. Mr. Salter explained that the 120 days had been negotiated with the school district, and the purpose was to ensure that tourism improvement districts could be established in areas which did not have any retail. It was meant to prevent a retailer from intentionally going out of business for the purpose of qualifying for a tourism improvement district, and then reopening once the district was established.

Ms. Giunchigliani asked how the amount had been determined. Mr. Salter explained that 120 days was an estimate and it was thought that with that amount of time a business would not be able to manipulate the situation.

Ms. Giunchigliani questioned how an area could be deemed "blighted" if there had not been any retail for only 120 days. Mr. Salter noted that blighting applied to the establishment of a redevelopment district, not a tourism improvement district. Ms. Giunchigliani pointed out that the areas could overlap, and 120 days seemed like an inadequate amount of time. Mr. Salter said that the definition of blight did not take into account whether or not there had been retail activity in an area, it had to do with the condition of the buildings and the amount of economic investment in the area, so whether or not there was retail did not impact whether or not a redevelopment area would be established.

Ms. Giunchigliani asked what other states were using STAR bonds. Mr. Salter said there were approximately 5 states using STAR bonds, in particular Kansas and Missouri, and RED Development had established STAR bond districts in Kansas very successfully.

Ms. Giunchigliani asked if Mr. Salter could provide a map of where the areas without retail were. Mr. Salter agreed to provide that information and said that the City of Sparks had the marina and an area of approximately 90 acres to the east of the marina that was vacant and would be a prime area for establishing a tourism improvement district. He noted that it was also in a redevelopment area, but it was vacant land so it would qualify to be a tourism improvement district. There was also an area in downtown Sparks that the city was considering establishing as a tourism improvement district. Ms. Giunchigliani confirmed that S.B. 306 would apply statewide, and Mr. Salter said yes.

Assemblyman Marvel asked how the STAR bonds were working currently under the previous session's legislation. Mr. Salter said that as far as he knew none had been issued. The City of Sparks was the first entity to try the STAR bonds with the RED Development project, and the city had found that imposing a real estate assessment lien on properties made it difficult to get construction financing. In Nevada, there had not been any STAR bonds issued, but there had been bonds issued in Kansas with the RED Development project. He indicated that Kansas was projecting the bonds would be paid off well in advance of their maturity date, which meant that the sales tax revenue would immediately flow back to the state for the state's benefit far in advance of what was expected.

Mr. Marvel remarked that it could be an "innovative financial instrument."

Assemblyman Seale asked what authority would be issuing the bonds. Mr. Seale wondered whether it would be the municipalities, the State Board of Finance, or some other entity. Mr. Salter explained that the tourism improvement district would be established by municipalities, either a city or a county government, and the city or county would be issuing the bonds as well.

Mr. Seale asked if that meant those municipalities would be using their bond ratings rather than the state's rating. Mr. Salter said that the municipality could not issue a general obligation guarantee to the bonds nor could it use property tax increment to back the bonds. The bonds would be strictly revenue bonds, based solely on the sales tax increment received. He emphasized that the municipalities could not use their general obligation guarantee, so while there might be an indirect reference to the issuers' credit rating, it was an indirect reference. The bonds could not be backed with general obligation debt.

Assemblywoman McClain questioned whether the local governments would be liable if the sales tax revenue received was less than projected. Mr. Salter indicated that the local governments would not because STAR bonds were considered revenue bonds and were paid only out of the source of revenue stated as security for the bond. He pointed out that the bond holders were aware of that stipulation so if the taxes were insufficient to service the bonds, then the bonds were not paid and that was a risk the bond holders took. He reiterated that there was no obligation on the part of the municipality to inject any funds into the bond, and there was a specific provision in S.B. 306 that stated that inadequate revenue was not considered a default on the bonds.

Mr. Marvel asked if the interest on STAR bonds was tax-free. Mr. Salter said they could be, but it depended on the nature of the project financed. He said if STAR bonds were used to finance public infrastructures, such as streets, for a tax-exempt purpose, the bonds could be tax exempt.

Ms. Giunchigliani inquired as to the language in the bill that contained provisions related to open bidding, appraisals, and prevailing wage. Mr. Salter indicated that Section 14 of S.B. 306 contained those provisions.

Ms. Giunchigliani noted that it was "exempt from bidding," and she asked why. Mr. Salter said it was exempt from public bidding, which had been the case in S.B. 495 of the 2003 Legislative Session. Ms. Giunchigliani asked if it was subject to the prevailing wage, even though it was exempt from public bidding. Mr. Salter replied that page 9, subsection 2, stated that the prevailing wage provisions were contained in NRS 338.010 to NRS 338.090. Ms. Giunchigliani said that processes should be open to the public and properly bid. She stressed that Section 14 was of concern.

Mr. Salter explained that what typically happened with a STAR bond district was that the government entity had to enter into a development agreement with a developer to set up the STAR bond improvement district, and that was a public process with public hearings and was usually the result of public bidding to find a developer. That was not the case with the RED Development project because there was only one developer who could develop the land, and that was the developer who had site control. If S.B. 306 were passed, the city would enter into a comprehensive development agreement with that developer.

Ms. Giunchigliani requested additional explanation of the term "site control." Mr. Salter said that meant the developer had an option to purchase the land. Ms. Giunchigliani asked if that meant the bill had been proposed to help one particular group. Mr. Salter disagreed and said there were other projects, specifically a project in downtown Sparks, which could use the STAR bonds. Ms. Giunchigliani opined that the language in the bill lent itself to benefiting only one developer. Mr. Salter assured the Committee that was not the intent and other projects were being considered.

Ms. Giunchigliani asked if he would object to a public bid on the project, and Mr. Salter explained that public bidding would make the marina project impossible because there could only be one bidder. Ms. Giunchigliani pointed out that an open bid did not guarantee how many bidders there would be. Mr. Salter stated that if a developer had to have control of the site in order to bid, then there could only be one bidder. There could not be other bidders because they did not own the site and could not build on it. Ms. Giunchigliani asked if that meant that the owner of the property had already entered into a lease-option agreement with the one developer that the STAR bond would benefit. Mr. Salter said yes.

Assemblyman Hogan inquired whether the lease-option agreement was conditioned upon obtaining the development agreement with the municipality. Mr. Salter clarified that it was not a lease-option agreement, it was a purchase agreement, and the developer had the right to not purchase the property by December 31, 2005. The developer probably would not purchase the property if the developer did not have a development agreement with the city for the improvement district.

Mr. Hogan asked if it was possible to allow other bidders and if a different developer was selected, the current developer might not proceed with the lease-purchase agreement, and then the selected developer might then have the option to enter into a lease-purchase agreement.

Mr. Salter said that was possible; however, they were discussing privately-owned land, and the owner of the land could not be compelled to sell to a successful bidder. He pointed out that it could be a very cumbersome process because there might be other developers trying to "low ball" each other to try and obtain site control. That situation would not work well, particularly in the downtown project the City of Sparks was considering, because the redevelopment agency would have to assemble a large number of lots from 20 or 30 landowners that either had to participate in the project or had to be bought out by the city. Either way, trying to assemble a large amount of privately-owned land was very difficult to do in an arrangement where there was competitive bidding before the process even started.

Joe Johnson, representing himself, expressed concern regarding S.B. 306 and the proposal of the use of sales tax in the STAR bonds. Mr. Johnson said that while there might be support for a particular project, the bill allowed any municipality in the state to establish those tourism improvement districts in any area that presently did not have retail sales, which included most of the state. He recalled that there had been an agreement by the City of Reno on a shopping center at the junction of Mount Rose Highway and U.S. 395 using sales tax to offset infrastructure.

Mr. Johnson said there were a number of concerns. It was very easy to establish a net economic benefit in an area defined as not having retailers so many of the criteria needed for the findings were fairly obvious. He said that a person could operate an "ice cream stand" in an area where there were no other retailers, and that stand would have a positive net economic impact. He conceded that there was a review by the county, but that review could be offset by the Nevada Commission on Tourism.

Mr. Johnson directed the Committee's attention to page 5, line 3, and read "there will be a substantial increase in the proceeds from sales and use taxes remitted by retailers with regard to tangible personal property sold at retail, or stored, used, or otherwise consumed," and said that "otherwise consumed"

could mean construction would also qualify under that provision. He added that that seemed a minimal proof of positive net economic impact.

Mr. Johnson pointed out that there was some confusion in line 7 of page 7, which said that "the governing body of a municipality shall not enter into an agreement pursuant to subsection 1 unless the governing body has determined pursuant to subsection 3 of Section 9 of this act that the project and the use of any money pledged pursuant to Section 8 of this act will not have a positive fiscal effect on the provision of local governmental services...." He said that, while the language was unclear, he thought that meant there would be a positive fiscal effect if the municipality wanted to issue a STAR bond.

Mr. Johnson added that there was some question as to who was responsible for the bonds if, at some time in the future, it was determined that there was a negative fiscal effect on other services. He suggested that it would be appropriate to revisit the entire NRS section related to the STAR bonds. He opined that, in a time of immense growth in tourism in the state, it seemed inappropriate to use a particular project as justification for an expansion as broad as S.B. 306 would allow.

Richard Daly, Laborers' International Union of North America, Local 169, addressed the Committee. Mr. Daly apologized and said he had testified in favor of S.B. 306 in the Assembly Committee on Government Affairs and he was still in support of the bill to the extent that it would aid in development. However, he wished to express concern regarding line 37 of page 2, which said "the project may be owned by the municipality, another government entity, any other person, or any combination thereof," and said that in the case of a project that would potentially be financed with STAR bonds, there was concern regarding the exemption from competitive bidding in Section 14.

Mr. Daly noted that the prevailing wage did apply, but on line 7 of page 9, Section 14, subsection 2(b) indicated that the provisions contained in NRS 338.010 to 338.090 applied "pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of Section 13 of this act, regardless of whether the project is publicly or privately owned." He said that earlier testimony that a government agency might actually own a project in the tourism improvement district and provide infrastructure, such as streets and sewer lines, had been correct, but as he read the language in the bill, he was concerned that there was not any reason or justification for those types of projects, owned by the government, to be exempt from competitive bidding.

Mr. Daly agreed that there were site control issues for competitive bidding of other development projects because those involved privately-owned property, and the only access the city would have, other than purchasing, would be through the use of eminent domain. He said that if the city was working with the owner of the property through STAR bonds, that could be a positive situation, but if those developers were providing infrastructure owned by a government entity, there should not be an exemption from the competitive bidding process. There was not any similar exemption on any other publicly-owned works project.

Mr. Daly said the exemption was of concern, but he supported the concept of the bill. He was merely concerned that some of the language would allow some of the issues that had previously arisen in the marina redevelopment area where the city had built the infrastructure, and then the developers had moved in, and there had been claims that it did not create an incentive under the redevelopment law in NRS 279.500 for the subsequent apartments and other

construction projects to be covered by the prevailing wage. He emphasized that he did not want to see those issues, and he believed that government-owned projects had to be competitively bid.

Jeanette Belz, Nevada Chapter, Associated General Contractors (AGC), spoke in opposition to S.B. 306. Ms. Belz apologized to the sponsor of the bill for not testifying in opposition in previous hearings. She said the provisions in Section 14 with the prevailing wage issue and the exemption from public bidding had been overlooked, but the AGC had repeatedly testified in opposition on similar bills. She emphasized that the AGC was opposed to the exemption and would appreciate the Committee taking that into consideration.

Nicole Lamboley, representing the City of Reno, stated that the City of Reno was supportive of S.B. 306. Ms. Lamboley indicated that the City of Reno had worked with its counterparts in Washoe County to enact the legislation that would be a good economic development tool, not only for the projects that the City of Sparks was interested in pursuing, but also for the projects the City of Reno hoped to undertake. She added that her understanding of Section 14 was that the public bidding process would be required if the public entity was constructing the project, but not if it was privately owned, and under NRS 338, the City of Reno would be required to follow the law with regard to public bidding.

John Slaughter, representing Washoe County, informed the Committee that the Washoe County Commission had reviewed the legislation and was in support of S.B. 306.

Chairman Arberry asked if there was any further testimony. There being none, he closed the hearing on S.B. 306 and opened the hearing on S.B. 96.

Senate Bill 96 (1st Reprint): Makes appropriation to Office of Governor for contractor to update State's Energy Assurance Plan. (BDR S-1206)

Jim Walker, Nevada State Office of Energy (NSOE), presented S.B. 96. Mr. Walker explained that the bill would make an appropriation of $31,250 to hire a contractor to upgrade the current energy reliability plan to be in compliance with the guidelines recently developed and issued by the U.S. Department of Energy and the National Association of State Energy Officials.

Mr. Walker said that the bill was originally a request for $125,000 to hire the contractor, but an amendment had been requested and the amount had been reduced to 25 percent of the original amount, which was typically the amount necessary to match a federal grant, with the intention of pursuing a federal grant to use in completing the task.

Chairman Arberry asked what would happen if the bill did not pass. Mr. Walker indicated that, even without the funds, the NSOE would do its best to update the plan as there could be a liability and the state had to try and comply with guidelines available for energy assurance. He was concerned that if there was a problem with a shortage of energy, and the state had not done its best to comply with the guidelines, the state would be open to liability issues.

Mr. Walker said that the NSOE did not have the necessary expertise to be able to update the plan according to the guidelines, and the best way to update the plan in a timely manner and to protect the state was to hire a contractor.

As there was no further testimony, Chairman Arberry closed the hearing on S.B. 96 closed and opened the hearing on S.B. 485.

Senate Bill 485 (1st Reprint): Temporarily extends prospective expiration of provisions governing allowances paid by Public Employees' Retirement System to certain re-employed retired public employees and continues experience study. (BDR S-1107)

Dana K. Bilyeu, Executive Officer, Public Employees' Retirement System of Nevada (PERS), presented S.B. 485. Ms. Bilyeu made the following statement in regard to S.B. 485:

> Senate Bill 485 originally was designed to make permanent the critical labor shortage provision within the Public Employees' Retirement Act. That carried with it a fiscal note where the contribution rates for the regular fund employer-pay, both police, fire, and regular members, was impacted.
>
> After some review with the actuary, we were able to take the fiscal note off if the bill was amended to allow this provision to be a temporary extension to June 30, 2009. That was done in favor of additional experience so we would have a better opportunity to be able to price the benefit moving forward.
>
> With that amendment, which is contained in the first reprint of the bill, we were able to remove the fiscal note to this bill, and the Board adopted a neutral position with respect to the temporary extension of the critical labor shortage provision within NRS 286.

Assemblywoman Smith questioned the definition of the "critical labor shortage" as there had been public controversy over that provision.

Ms. Bilyeu explained that the critical labor shortage provision became part of the Act in 2001 and basically allowed retirees of the program to return to work in positions designated by the local government entity or the state and to receive their full benefit and their salaries at the same time. There were certain criteria that had to be met when designating a position as critical labor shortage. The turnover in the position, the length of time spent recruiting for the position, the type of position, particularly in the school districts where it had been used for recruitment of particular types of teachers, all had to be considered. There had also been designations due to locale; in the rural jurisdictions there were problems with recruiting so both the county commissions and the state Board of Education had been able to designate positions.

Ms. Bilyeu remarked that people often inquired as to why a bus driver was considered a critical labor shortage position, but in the County of Eureka there had been a couple of rural bus routes where individuals had to drive round-trip approximately 150 miles to take children to their schools, and the only people that the County had been able to recruit were retirees of the system. She stressed that the definition of critical labor shortage depended on the individual jurisdiction and the criteria chosen.

Mrs. Smith asked if there had been any discussion about reworking the definition to move away from the controversy. She agreed that there were certain areas that did have a critical labor shortage, but she was aware of other situations where the definition was being used to avoid the loss of expertise, and those situations did not seem to meet the intent of the legislation.

Ms. Bilyeu said there had not been discussion because S.B. 485 had been drafted in such a way as to allow the local governments and the state to make that determination. She pointed out that the PERS could not make choices about what was critical to each of the individual employers, so the definition had been left as it was and there had been approximately 150 positions since 2001 declared to be critical labor shortage positions, the majority of which were education-related; approximately 80 to 85 percent were either teachers or support personnel.

Ms. Bilyeu asserted that since the inception of the critical labor shortage provision, that provision had been used very cautiously, and there was a concern as to how it would be used in the future.

Mrs. Smith agreed that it was a good tool to use in areas where there were truly shortages, but she was concerned that if the provision was used improperly, there was no incentive to continue training people and filling those positions.

Assemblyman Seale asked how many positions were deemed critical labor shortage positions and if the employees filling those positions were paying into the PERS.

Ms. Bilyeu said that there had been a little over 150 positions determined to be critical labor shortage positions since July 2001. Retirees had the right to reenroll in the PERS, and the majority of retirees who had come back to work under the provision had reenrolled because they were allowed to accrue additional benefits during the period of time that they were reemployed. Ms. Bilyeu indicated that only 3 of the 150 employees had not reenrolled in the system.

Mr. Seale asked if reenrolling would keep the cost down. Ms. Bilyeu said that was correct as far as the fact that the positions were still paying into the system, but as the retirees were allowed to increase their own annuity stream, the potential was that their own individual annuities would be slightly more expensive.

Assemblyman Perkins pointed out that rather than eliminating the fiscal note, the cost had been "put off for a few years." Ms. Bilyeu said that the issue was the ability to properly price the benefit because, as had been indicated, the experience of the program since July 2001 had been somewhat suppressed. She indicated that when she had spoken to the actuary about extending that experience period, the actuary was encouraged by that because there was concern about the price of the benefit and whether or not the pricing was appropriate based upon what future use could potentially be. The PERS grew the use based upon certain criteria to project the benefit costs out over time, but the concern was that it was not enough. A longer period of review would show a more normalized use of the benefit, and the PERS would have a better opportunity to price it appropriately for purposes of including it in the contribution rate after the 2009 Legislative Session.

Mr. Perkins asked if it was fair to say there would be a cost in the upcoming biennium, but it was not known what that cost would be, and that would be analyzed at a later time.

Ms. Bilyeu said he was correct and that there would be a benefit cost. However, there had been concern because the bill originally made it a

permanent feature and it was difficult to make a permanent benefit change to the PERS because it was a contract by both statute and case law. There was confusion when a permanent feature was added and the pricing was not appropriate because the PERS did not know exactly what the future use would be.

Anne Loring, representing the Washoe County School District, expressed support for S.B. 485. Ms. Loring explained that the school district was required to submit rationale and proof of evidence of unsuccessful searches to fill a position before the provision could be used. The Washoe County School District had used the provision for approximately 30 positions each year. She pointed out that when it was needed, it was "really needed." The school district had used it for math and science teachers and school nurses.

Craig Kadlub, representing the Clark County School District, indicated that he was also in support of S.B. 485 for the same reasons stated by others. Mr. Kadlub added that the most critical reason for the provision was that it allowed the school district to have teachers licensed in the subject areas in the classroom, as opposed to resorting to a stream of substitute teachers.

Marty Bibb, Retired Public Employees of Nevada, spoke in support of S.B. 485, particularly in light of the information shared by the Executive Officer of the PERS that it involved a review of the usage of the provision to determine what the long-range financial impacts would be on the system. Mr. Bibb said that extending the study made sense, and given those factors, he supported the bill.

Danny N. Coyle, Director, Retiree Chapter, State of Nevada Employees Association (SNEA), said he was in support of the extension of the critical labor shortage provision. Mr. Coyle remarked that there were several members of the association that had been asked to return to work under the provision, and he was supportive of the extension.

Gary Wolff, Teamsters Local 14, representing State Law Enforcement, said he was in support of S.B. 485, particularly in education where there was no doubt that there was a critical shortage in some areas. Mr. Wolff said that when the original concept had been brought forward years earlier, he was supportive because the Highway Patrol and the police departments had critical shortages in manpower, and the provision seemed to be a good way to hire retired law enforcement personnel to conduct background investigations for the state agencies as state agencies did not have the leeway that county and city agencies did. However, the first two people who "jumped on the bandwagon" were the ex-Director of the Department of Public Safety, and when he was hired, he brought his long-time friend, and the provision had not been used in the manner that had been intended. He urged the Committee to be cautious in moving on the bill.

Mr. Wolff stated that there was a specific need met by the bill; however, the provision had the potential for abuse. He reiterated that he supported the concept of S.B. 485, and he thought the issuance of a Letter of Intent might solve some of the problems.

Julie Whitacre, Nevada State Education Association, expressed support for S.B. 485 due to the reasons outlined by others.

Chairman Arberry closed the hearing on S.B. 485 and opened the hearing on S.B. 304.

Senate Bill 304 (2nd Reprint): Authorizes Attorney General to issue identity theft passports to victims of identity theft. (BDR 15-940)

Sergeant Robert Roshak, Las Vegas Metropolitan Police Department, Nevada Sheriffs' and Chiefs' Association, said he supported S.B. 304 as it would benefit victims of identity theft.

Sergeant Michelle Youngs, Washoe County Sheriff's Office, Nevada Sheriffs' and Chiefs' Association, spoke in support of S.B. 304.

Chairman Arberry noted that there were not any witnesses present to explain the bill. He asked Sergeant Roshak to provide more information.

Sergeant Roshak explained that S.B. 304 would allow an individual who was a victim of identity theft to coordinate with the police department that took the report. That report would then be sent to the Attorney General's Office where the Attorney General's Office would issue an "identity theft passport." That passport would be used in situations where the victim was stopped by the police to verify that the victim had had his identity stolen. The passport would cause the police to take a second look and not arbitrarily arrest the individual. He noted that the passport could be used with creditors or when applying for credit.

Sergeant Youngs added that the bill would not create an official document, and law enforcement would not have to abide by it, but it would give law enforcement pause and cause them to look further into the identification of the person.

Assemblywoman Leslie questioned the use of the term "passport," and said that as a victim of identity theft, she had found that the creditors were the worst problem. She asked if the identify theft passport would mostly be used by law enforcement.

Sergeant Youngs said there were two sections in the bill and one section related to law enforcement and the other related to creditors. She pointed out that she could not speak to the intent of the Attorney General's Office.

Assemblyman Hogan asked if other states had used a similar system. Sergeant Roshak said that he had been present during other hearings when representatives of the Attorney General's Office had testified, and that testimony had indicated that the program had started in Virginia as a basic identity theft identification card, and the state of Ohio had a very involved system. The system in Nevada would be very basic, and if funding was received, the program could be increased to mirror Ohio's program more closely.

Assemblywoman Weber asked if there was a way to obtain statistics regarding identity theft. Sergeant Youngs said she could only speak on behalf of Washoe County, but identity theft was growing and the county was seeing cases daily and the cases were difficult because they crossed jurisdictional lines and could continue for months before being detected. She offered to provide statistics on the actual figures for the year.

Chairman Arberry commented that he had seen an increase in identity theft in the mortgage company business. He asked if there were any other questions. Seeing none, he informed the Committee that the bill would be rescheduled to allow the Attorney General's Office to testify in regard to the bill.

Chairman Arberry closed the hearing on S.B. 304.

DEPARTMENT OF AGRICULTURE
AGRI, PREDATORY ANIMAL AND RODENT CONTROL (101-4600)—BUDGET PAGE AGRI-76

Mark Stevens, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, addressed the Committee. Mr. Stevens explained that in processing the budget closings, an error had been discovered, and the Committee needed to make a decision. In the Predatory Animal and Rodent Control account there was a transfer of funds from the Department of Wildlife (NDOW). The revenue built into the budget from the NDOW was $138,047, and the actual expenditure was $40,000. There was approximately $138,000 in revenue built into the Predatory Animal and Rodent Control budget that they would not receive. The only other funding source would be General Fund, so staff was seeking guidance and approval to add the $138,000 to the account in each year of the biennium.

ASSEMBLYMAN MARVEL MOVED TO ADD THE FUNDING AND CLOSE THE BUDGET AS OTHERWISE INDICATED.

ASSEMBLYMAN DENIS SECONDED THE MOTION.

MOTION CARRIED. (Mr. Perkins and Ms. Giunchigliani were not present for the vote.)

BUDGET CLOSED.

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Chairman Arberry indicated that the Committee would consider passage of bills.

Senate Bill 303: Revises provisions governing persons appointed to National Conference of Commissioners on Uniform State Laws to represent State of Nevada. (BDR 17-1104)

Mr. Stevens explained that Senator Care had presented S.B. 303, which was related to the National Conference of Commissioners on Uniform State Laws, a committee on which two legislators were appointed. The bill would add two members of the University of Nevada, Las Vegas, law school as well as pay the traveling expenses for lifetime members.

ASSEMBLYMAN SEALE MOVED DO PASS S.B. 303.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

MOTION CARRIED. (Mr. Perkins and Ms. Giunchigliani were not present for the vote.)

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Assembly Bill 561: Extends reversion date of appropriation made in previous session to Fighting Aids in Our Community Today organization. (BDR S-1466)

ASSEMBLYMAN HETTRICK MOVED DO PASS A.B. 561.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

MOTION CARRIED. (Mr. Perkins and Ms. Giunchigliani were not present for the vote.)

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Assembly Bill 566: Requires Legislative Commission to contract with consultant to carry out certain duties and prepare report concerning health, safety, welfare, and civil and other rights of children who are under care of certain governmental entities or private facilities. (BDR S-1472)

Mr. Stevens indicated that A.B. 566 had been heard a few days earlier and would provide for a contract with a consultant relating to children's facilities within the state, such as the Nevada Youth Training Center and the Caliente Youth Center. It would provide $200,000 to the Legislative Commission who would then contract with a consultant. The bill would be effective upon passage and approval.

ASSEMBLYWOMAN LESLIE MOVED DO PASS A.B. 566.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

MOTION CARRIED. (Mr. Perkins and Ms. Giunchigliani were not present for the vote.)

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Chairman Arberry adjourned the meeting at 10:52 a.m.

RESPECTFULLY SUBMITTED:

_____
Susan Cherpeski
Committee Attaché

APPROVED BY:

_____
Assemblyman Morse Arberry Jr., Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 30, 2005 **Time of Meeting: 9:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 56	B	Senator Maurice Washington	Proposed Amendment (1 page)
SB 56	C	Dr. Dotty Merrill/WCSD	Proposed Amendments (10 pages)