MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND EDUCATION

Seventy-fourth Session
May 14, 2007

The Senate Committee on Human Resources and Education was called to order by Chair Maurice E. Washington at 1:46 p.m. on Monday, May 14, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maurice E. Washington, Chair
Senator Barbara K. Cegavske, Vice Chair
Senator Dennis Nolan
Senator Joseph J. Heck
Senator Valerie Wiener
Senator Steven A. Horsford
Senator Joyce Woodhouse

GUEST LEGISLATORS PRESENT:

Assemblyman Garn Mabey, Assembly District No. 2
Assembly David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Serretta Fast, Intern to Assemblyman Mabey
Marsheilah D. Lyons, Committee Policy Analyst
Joe McCoy, Committee Policy Analyst
Sara Partida, Committee Counsel
Betty Ihfe, Committee Secretary

OTHERS PRESENT:

Terrie McNutt, State Spirit Director, Nevada Interscholastic Activities Association; State Director, Spirit in Nevada, National Federation of State High School Associations

Joyce Haldeman, Clark County School District
Bill Garis, Athletic Director, Clark County School District
Ronald L. Lynn, Building Official, Building Division, Department of Development Services, Clark County; Nevada Organization of Building Officials
Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors; Southern Nevada Home Builders Association
Vinson W. Guthreau, Government Affairs Coordinator, Nevada Association of Counties
Chris Knight, Director, Office of Administrative Services, City of Las Vegas
Peter J. Mulvihill, P.E., Chair, State Board of Fire Services
Douglas R. Sartain, President, Certified Fire Protection, Incorporated; President, Nevada Association of Fire Equipment Companies; Director, Southern Nevada Multi-Housing Association
Jim Wright, Chief, State Fire Marshal Division, Department of Public Safety
Jeff Donahue, President, Fire Prevention Association of Nevada
William R. Hill, Communicable Disease Program Manager, Bureau of Community Health, Health Division, Department of Health and Human Services
Joseph Turco, American Civil Liberties Union of Nevada
Ann Lynch, HCA Far West Division
Maureen Cole, Deputy Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation

CHAIR WASHINGTON:
We have three measures before us. They are Assembly Bill (A.B.) 386, A.B. 443 and A.B. 529.

ASSEMBLY BILL 386 (1st Reprint): Requires the Nevada Interscholastic Activities Association to adopt regulations governing spirit squads. (BDR 34-1108)

ASSEMBLY BILL 443 (1st Reprint): Revises provisions relating to communicable diseases. (BDR 40-1057)

ASSEMBLY BILL 529 (1st Reprint): Clarifies the applicability of regulations of the State Fire Marshal concerning building codes. (BDR 42-375)

We will open the hearing on A.B. 386.

SERRETTA FAST (Intern to Assemblyman Mabey):
As a high school cheerleader serving as captain in my senior year and as a cheerleading coach in a high school in the Clark County School District (CCSD), I have seen many injuries, including one to a fellow cheerleader who suffered a serious concussion after falling while being held high in the air.

My written testimony (Exhibit C) points out two issues. The first issue is while the Nevada Interscholastic Activities Association (NIAA) has safety rules and guidelines for cheerleaders and coaches, they are not enforced, especially those regarding stunts. The second issue is cheerleading is classified as an organization or activity and not as an athletic activity or a sport.

Assembly Bill 386 requires cheerleading coaches to all use the same rule book and requires them, for each year they coach, to get safety and stunt certified with the National Federation of State High School Associations (NFHS) and with the American Association of Cheerleading Coaches and Administrators (AACCA). The bill also would classify cheerleading as an athletic activity, not just as an organization or activity. Being an athletic activity would allow cheerleaders and coaches the option of obtaining catastrophic insurance. If cheerleading is classified as a sport, insurance coverage is more complicated to obtain because of the federal Title IX of the Education Amendments of 1972, 20 *United States Code* sections 1681-1688 regulations of the Title 20 – Education, Chapter 38 – Discrimination Based on Sex or Blindness Act (Title IX).

Since most schools will be out of session by July 1, 2007, the current effective date of the bill, I request the effective date of the bill be changed to July 1, 2008, to allow a reasonable time for compliance. Passing A.B. 386 will minimize the number of injuries each year and allow our spirit leaders to be safer.

CHAIR WASHINGTON:
If cheerleading is not classified as a sport, then the insurance requirements for Title IX are obscured, is that correct?

MS. FAST:
Yes, that is correct.

CHAIR WASHINGTON:
How is cheerleading currently classified?

MS. FAST:
Cheerleading is currently classified as an activity or organization. If this bill passes, it will be classified as an athletic activity.

CHAIR WASHINGTON:
How do other states classify cheerleading?

MS. FAST:
The NFHS and the AACCA recommend cheerleading be classified as an athletic activity. Florida and some other states have followed their recommendation.

CHAIR WASHINGTON:
Are there any best practices safety measures in place for competitions or does the NIAA adopt their own procedures?

MS. FAST:
We are asking the NIAA to enforce the NFHS regulations and require coaches to be certified under the AACCA.

CHAIR WASHINGTON:
I am surprised the regulations have not been enforced.

MS. FAST:
While the NIAA is very supportive of cheerleaders, it has been my experience the regulations are not enforced.

CHAIR WASHINGTON:
Are these the same safety standards that are applied to college athletics?

MS. FAST:
No, there are totally different rules for college athletics.

CHAIR WASHINGTON:
Are they more stringent?

MS. FAST:
Colleges can do many more things than are allowed in high schools.

CHAIR WASHINGTON:
Would these rules apply to cheerleading squads at the youth athletic sports level such as the Pop Warner games? I see some young women being thrown into the air during their stunts at those games.

MS. FAST:
No, this bill addresses cheerleading and stunts at the high school level.

SENATOR HECK:
Does the NIAA have requirements for coaches and have safety precautions in place for the other sanctioned sports?

MS. FAST:
Sanctioned sports follow the NFHS coaching regulations. Since cheerleading is not a sport, none of that pertains.

SENATOR HECK:
In A.B. 386, why do we not just recognize spirit squads as a sanctioned sport rather than reiterate the regulations already in existence for the other sanctioned sports?

MS. FAST:
Title IX makes it difficult for cheerleading to be classified as a sanctioned sport.

CHAIR WASHINGTON:
Title IX applies to college athletics, but it does it apply to high schools?

MS. FAST:
There are complex competition rules for cheerleading. For instance, if a cheerleader cheered for 10 games, he or she would have to go to 11 competitions. The problem is there is no way you can exceed the number of games you cheer in order to qualify to compete.

ASSEMBLYMAN GARN MABEY (Assembly District No. 2):
We looked into the issue of classifying cheerleading as a sanctioned sport, but it is complicated because of the competition issue. Many of the spirit squads do not want to compete. They just want to cheer at their school events, so we purposely left out the sport classification issue. If cheerleading is classified as a sanctioned sport, providing funds for uniforms, transportation and the other

requirements becomes an issue. I would support cheerleading as a sport, but I do not think we are ready to do so at this time. We want the existing regulations to be followed; currently they are not. This bill would require them to be followed.

CHAIR WASHINGTON:
I am trying to determine if Title IX applies to high schools.

MARSHEILAH D. LYONS (Committee Policy Analyst):
We will get the answer for you by the work session on Monday.

SENATOR WIENER:
Spirit squads are usually coed with some combination of young men and young women. Title IX is differentiated into separate men's and women's athletic teams at the college level.

SENATOR CEGAVSKE:
In my experience on the Senate Committee on Finance, Title IX has only been discussed when we are addressing the university system. The bill says there is a fiscal effect on the State, but there is nothing on the fiscal note. What is the status of the fiscal note?

It is my understanding that the biggest problem is with the NIAA because high school cheer coaches are not trained or certified. Certified professionals are not training these young women. The girls want to perform, but the NIAA says they cannot both cheer and perform. Apparently, the NIAA has been uncooperative and unwilling to work with parents and other groups. Cheer coaches need to be trained and certified within our own State with fees charged as necessary.

CHAIR WASHINGTON:
Who actually governs the cheerleading squads? Is it the school district or is it the NIAA?

TERRIE MCNUTT (State Spirit Director, Nevada Interscholastic Activities Association; State Director for Spirit in Nevada, National Federation of State High School Associations):
In addition to my positions with the NFHS and the NIAA, I am also the rules interpreter for the State through Spirit in Nevada. It is my responsibility to regulate the rules that govern spirit squads.

SENATOR HECK:
The current *Nevada Administrative Code* (NAC) 386.754, subsection 1 already states exactly what this bill says. It states, "Each spirit squad shall comply with the provisions of the *Spirit Rules Book* of the NFHS ... ." If you are saying they do not do that, it is a question of enforcement, is it not? The bill also proposes to recognize spirit squads as an athletic activity; however, athletic activity is not defined anywhere. How is an athletic activity different from a sanctioned sport?

MS. MCNUTT:
You are correct. The NIAA already has all these policies in writing and currently regulates them. The missing piece to this is requiring the coaches to be trained. Since it is not required, the NIAA can only "highly suggest" that all spirit coaches attend classes. The classes are offered in both the north and the south twice a year, in the spring and in the fall. Since I conduct those classes, I know we offer all the classes we are being asked to provide. Again, the problem is there is no way to enforce attendance at those classes. There is nothing that states if the coach does not go to the class, he or she is reprimanded or will incur some penalty for noncompliance. I agree with Assemblyman Mabey; there should be some regulation which requires cheer coaches to be trained and certified.

My concern with A.B. 386 is on page 2, lines 16 and 17. It proposes that spirit squads be classified as an athletic activity. From the NIAA's perspective, athletic activity means it would become an athletic sport. If this bill is passed and cheerleading becomes an athletic sport, that action will result in other requirements such as uniforms, transportation, funding and salaries for coaches.

CHAIR WASHINGTON:
Would this add a burden to the school districts?

MS. MCNUTT:
Yes, it would. Perhaps that kind of support should be provided, but this part of the bill would require more research and costs would need to be assigned. This aspect needs to be studied much more before it is put into effect.

CHAIR WASHINGTON:
If cheerleading is reclassified as an athletic sport, are you saying more liability would be involved?

ASSEMBLYMAN MABEY:
It is not my intention for cheerleading to be classified as an athletic sport. That language was suggested to us by the AACCA. I have no objection to removing lines 16 and 17 from page 2 if it clarifies the bill; however, if we can define an athletic activity, that would be helpful.

CHAIR WASHINGTON:
Those of you who are here representing school districts, how do your school districts define cheerleading or spirit squads?

JOYCE HALDEMAN (Clark County School District):
I defer to Bill Garis, the athletic director for the CCSD who is in the hearing room in Las Vegas.

BILL GARIS (Athletic Director, Clark County School District):
The CCSD recognizes the importance of safety for spirit squads. Most cheerleader advisors are trained, but not all of them. Since there is no requirement for them to be trained and there is no enforcement in place, some do not get trained. We support cheer coaches being trained and would like that to include junior high school and middle school cheer coaches as well.

With the growth of spirit squads plus its increasing competitive element, at some point cheerleading may become a sport. While we have held competitions in Las Vegas, with the able assistance of the NIAA, and while there are several cheerleading champions in Nevada, the CCSD is neither for nor against cheerleading becoming a sport. However, if that should happen, it will put an additional financial burden on the schools. Since an athletic activity is not yet defined, I recommend that part be removed from the bill.

Our goal is to ensure that our spirit squads are protected and that the cheer coaches are adequately trained. For future decisions and implementation, it would be prudent to involve the cheer coaches throughout the State and to include Ms. McNutt in the process.

SENATOR HECK:
None of us would argue with the overriding motivation to increase the safety of spirit squads. Do we require coaches for other sports to have safety training or are we holding spirit squads up to a higher standard?

MR. GARIS:
The NIAA does require coaches to take coaches' education which includes first aid, cardiopulmonary resuscitation and principles of coaching. Coaches have a one-year grace period from the time he or she is hired to complete the training. This year, our office designed a database to identify trained coaches in all the sports. We have put the schools on notice that if coaches have not been trained, they are to get trained. This model should include our cheer coaches as well.

SENATOR HECK:
What is that regulation that requires them to complete that training?

MR. GARIS:
I do not know, but I will get that information to you.

CHAIR WASHINGTON:
Does that training include all squad coaches, the freshmen, junior varsity and varsity coaches?

MR. GARIS:
Yes. That includes any coach working with our students, including head coaches, assistant coaches and volunteer coaches.

SENATOR WIENER:
I have worked on licensure legislation to certify athletic trainers since 1999, and the bill was passed four years later in the 72nd Session, so athletic trainers are licensed. Even with all the study for that legislation, an athletic activity has still not been defined. I continue to be concerned about the skill level of coaches because of the many things that can go wrong. If there is any expertise I can lend to work out some language, I would be pleased to assist.

CHAIR WASHINGTON:
Who sets the coaching education standards?

MR. GARIS:
Those standards are set by the NFHS as are the cheerleader standards. Locally, we can add to the instruction, but it is the NFHS standards that are implemented nationwide.

SENATOR HECK:
If we made the language specific to include cheer coaches, would that take care of the matter?

CHAIR WASHINGTON:
The purpose of spirit squads has been defined on page 2, lines 28-32 of the bill. If the standards have already been set by the NFHS and are to be enforced by the NIAA, that should take care of those requirements for cheer coaches. If we want to omit the athletic activity portion, there would still be enough intent in the bill to obtain insurance coverage. Assemblyman Mabey, would that be agreeable to you?

ASSEMBLY MABEY:
That would be fine with me.

CHAIR WASHINGTON:
As Senator Heck has pointed out, since the rest of the bill is already in statute, we are narrowly defining spirit squads in A.B. 386. We will close the hearing on A.B. 386.

We will open the hearing on A.B. 529.

ASSEMBLY BILL 529 (1st Reprint): Clarifies the applicability of regulations of the State Fire Marshal concerning building codes. (BDR 42-375)

RONALD L. LYNN (Building Official, Building Division, Department of Development Services, Clark County; Nevada Organization of Building Officials):
Our concern about this bill is it conflicts with the *Nevada Revised Statutes* (NRS) sections for local jurisdictions. The NRS chapters 244 – Counties: Government and 278 – Planning and Zoning give counties the authority and responsibility, with the accompanying liability, to adopt the building codes regulating the design, construction, maintenance and safety of buildings, structures and properties within the county. However, the NRS 477.030 confuses, obscures and limits that authority by requiring counties of population of 100,000 or more to enforce the State Fire Marshal's (SFM's) building codes and regulations which were adopted in the *Nevada Administrative Code* (NAC) without transferring to the SFM the responsibility and the accompanying liability.

With the conflicts between the counties' building codes, ordinances and regulations and the SFM's building codes, rules and interpretations, the NAC 477 requires the most stringent to apply. The problem is that stringency is fairly easy to interpret if the regulation says the guard rail must be a minimum of 32 inches high. That way, 34 inches would be more stringent and 30 inches would be less stringent. However, interpretation is not easy when dealing with the complicated structures in which the totality of all the systems must be analyzed for their effect upon the intent of the code.

MR. LYNN:
The code does provide for the building official to allow for alternates; however, each one of these alternates, which in Clark County numbers in the hundreds in any given year, would have to be looked at as potentially being less stringent. The alternates would have to go to the SFM for a determination of stringency. There is an ambiguity in the State law. In other words, regardless of the size of the project, legally, they need to have their plans reviewed. Historically, the SFM has been from three to nine years out of date with Clark County. For instance, currently the SFM is working on the 2003 regulations, and Clark County has adopted the 2006 regulations.

We totally and completely support the SFM. However, with my over a quarter of a century in this business, I am concerned we are violating the letter and the intention of the law because we do not send our information to the SFM. I sent my first code to the SFM in 2002 with no official response. We need direction to not violate any of the building codes.

The original intent and text of the bill was to address the building code in counties of 400,000 or more. It did allow for even those communities within Clark County to opt out and stay with the SFM, if they so chose. The bill is a very flexible and fluid bill. To assist the SFM, the Assembly did add an amendment emphasizing that the fire codes could not be anything less than the *International Fire Code* (IFC).

CHAIR WASHINGTON:
Would the builder or the contractor have the choice of opting in or opting out?

MR. LYNN:
No. It would not be the builder or the contractor; it would be the chief administrative body of the entity. For example, if City A, even being in Clark County, decided they wanted to stay with the SFM, they could do so.

CHAIR WASHINGTON:
When we addressed this previously, we amended S.B. No. 274 of the 73rd Session, but the Governor vetoed it. Do you recall why he did?

STEVE HOLLOWAY (Executive Vice President, Las Vegas Chapter, Associated General Contractors; Southern Nevada Home Builders Association):
As I recollect, it had something to do with prevailing wages.

CHAIR WASHINGTON:
Your recollection agrees with that of the members of this Committee and the staff.

VINSON W. GUTHREAU (Government Affairs Coordinator, Nevada Association of Counties):
The Nevada Association of Counties approved this bill and agrees with the amendment. In a prior hearing, there was testimony stating that Clark County has over 180 inspectors in the field, and the SFM currently has zero inspectors. This is not a criticism of the SFM. It just gives some ability to the counties to use some of the features that we have.

CHAIR WASHINGTON:
It appears you are attempting to end the bifurcation with the larger counties, Clark County and perhaps Washoe County, to be able to provide inspection, design and fire marshal plans. Are you suggesting the counties should handle their part and the SFM should handle the State's part?

MR. LYNN:
That is correct. Although this bill is just for Clark County, it does exclude schools and State buildings. This also does not affect any of the prior administrative or legal requirements that were put in place as the result of the MGM Grand Hotel and Casino (MGM).

MR. HOLLOWAY:
In addition to representing the Associated General Contractors, for the record, I am also testifying on behalf of the Southern Nevada Home Builders Association. These are the two largest organizations representing contractors and builders in southern Nevada. We support this bill and strongly urge your passage of it for the reasons you have been hearing in testimony today.

CHRIS KNIGHT (Director, Office of Administrative Services, City of Las Vegas):
We echo the comments of the Clark County representatives and support this bill.

PETER J. MULVIHILL, P.E. (Chair, State Board of Fire Services):
In addition to being the chair of the State Board of Fire Services, I am the Assistant Fire Marshal of the North Lake Tahoe Fire Protection District serving Incline Village and Crystal Bay. The State Board of Fire Services, State Fire Marshal Division, Department of Public Safety, has discussed this bill in previous iterations and in January 2005 passed a resolution in opposition to it. It unanimously reaffirmed that opposition in January of this year. Despite what you hear from Mr. Lynn, this is not about who does inspections, who reviews the dual planner views or about bifurcation. The SFM's regulations and statutory authorities require him to adopt a minimum building and fire code for the State. The fire protection requirements for new construction are contained within the building code. The fire code is a maintenance requirement of those systems.

The situation currently is that no jurisdiction in the State may adopt a building code that has a lower level of safety than what is specified by the SFM. Jurisdictions may adopt a different code or they may adopt the same code with amendments to provide a higher level of safety. This bill asks you to take that safety net away from the largest county in the State. The Board of Commissioners of Clark County, the individual city councils and the mayors of the cities in Clark County would be free to adopt any building code they saw fit. It is true they would be liable for whatever happens, but we do not think this is an appropriate direction for the State to take. The State should maintain a minimal level of safety.

Each local jurisdiction has a unique situation and certainly the construction in Clark County is unique. Until two years ago and for the ten years prior to that, I was a practicing professional engineer in Las Vegas, so I am well aware of the unique situations in Clark County and the alternate methods and

performance-based designs that are used there. None of the plans were sent to Carson City for the SFM's approval. They were all approved locally by Clark County, the City of Las Vegas or by the City of Henderson. This dual operation does not currently exist.

In order for you to have the most accurate information, this morning in checking Clark County's Website, I found that Clark County has adopted and currently has in effect the *2000 International Building Code* (IBC) rather than the 2006 IBC mentioned earlier.

DOUGLAS R. SARTAIN (President, Certified Fire Protection, Incorporated; Nevada Association of Fire Equipment Companies; Southern Nevada Multi-Housing Association):

As president of both groups, I am representing Certified Fire Protection, Incorporated and the Nevada Association of Fire Equipment Companies, and as a director, I am also representing the Southern Nevada Multi-Housing Association. Eliminating the SFM's minimum building codes and standards in Clark County would be disastrous and possibly catastrophic. There are six critical and detailed reasons for this statement in my written testimony (Exhibit D). I will summarize them for you at this time.

The first is changing building codes does change fire codes which lessens the safety for buildings and people. Second, Clark County would have no minimum standards for building. Third, there would be a large state sales tax loss with no impact for current or future fiscal years. Fourth, new technology would be used without having to submit to or get approval from the SFM's office. Fifth, buildings could be built cheaper but not necessarily safer. Sixth, any unqualified or illegal person could obtain a fire inspection license.

Additionally, if this bill passes, it will trigger some other pressing issues which should be properly addressed. For instance, why have a large majority of senior building and fire officials been muzzled by their superiors? Who will direct and oversee the writing of the new codes, and who will oversee the licensing and inspection of companies that currently inspect hotels and casinos?

Assembly Bill 529 is clearly a step backward in providing safety for the hotels, guests and citizens of Clark County. As a 50-year native of Las Vegas and a witness to the devastation of past fires in Clark County, I urge you, and make a plea to you, not to pass this bill.

CHAIR WASHINGTON:
Who publishes the *International Fire Code* (IFC), and is that the same code the SFM uses?

MR. MULVIHILL:
It is published by the International Code Council (ICC). The ICC also publishes the *International Building Code* (IBC), the *International Mechanical Code* and others. Yes, it is the code the SFM uses.

CHAIR WASHINGTON:
In the "Legislative Counsel's Digest" of the bill, page 2, lines 20-26, it explains that Clark County would adopt a code "... at least as stringent as the edition of the IFC most recently published ... ." Please clarify this for us.

MR. SARTAIN:
The SFM can also amend the standard in any way the SFM chooses.

CHAIR WASHINGTON:
Stringent means that standards cannot be less than what the IFC states, correct? The SFM could make the standards more stringent or maintain the level established in the IFC, but not make standards less, is that true?

MR. MULVIHILL:
The IFC does not include all the requirements contained in the building code. There are some protection systems such as smoke management, structural provisions and other areas pertinent to new building construction, additions, remodels or expansions which are detailed in the building code but are not mentioned in the fire code. Only the provisions in the fire code dealing with the maintenance of fire protection systems, hazardous materials and exits from buildings would remain in place.

CHAIR WASHINGTON:
If we amend the bill to include not less stringent than the building code and the IFC would that be acceptable?

MR. MULVIHILL:
That is currently the law. The authors of this bill are asking that they be allowed to adopt any building code with any amendments.

CHAIR WASHINGTON:
If we amend the bill to state they can only abide by the current IBC, would that be clearer?

MR. SARTAIN:
The National Fire Protection Association codes and standards are also used but have not been addressed in the bill.

MR. MULVIHILL:
If you added that to the bill, there would be no reason to pass it because those are the current requirements in State law.

SENATOR HECK:
The SFM has adopted the IFC as the standard, is that correct? The counties are asking to be allowed to adopt the IFC which is at least as stringent, or are they asking to use a different code?

MR. MULVIHILL:
They are asking to adopt a building code that may or may not be the IFC with whatever amendments they please. The IBC has been adopted by the SFM and is the current minimum code.

SENATOR HECK:
The SFM uses the IBC, correct?

JIM WRIGHT (Chief, State Fire Marshal Division, Department of Public Safety):
The SFM's minimum code consists of the IBC with some amendments and the IFC with some amendments.

SENATOR HECK:
What this bill is proposing is to allow the counties to use a code of whatever type that is at least as stringent as the IFC, is that correct? How does the SFM get involved with or have the authority to regulate issues relating to building construction that have nothing to do with fire suppression? I understand there are some pieces in the building code that may deal with fire suppression or fire safety, but you spoke about other things relating to structural components. How does that fit into the SFM's realm of influence?

MR. MULVIHILL:
Fire departments such as mine at North Lake Tahoe are all-risk type agencies. Since we respond to everything from fires to structural collapse and from medical to other rescue type operations, we are concerned about the safety of people in buildings. We are not just concerned whether there is a fire inside, we are concerned whether people trip and fall down the stairs or whether the ceiling falls down on top of them. We have to rely on the combination of both the IFC and the IBC to provide a safe environment for people to occupy and use a building.

SENATOR HECK:
Do you think the local jurisdiction, the local fire department or the local county building department do not share the same concerns you do about structural collapse or other safety aspects of building?

MR. MULVIHILL:
I believe the local fire and building officials do share that concern, but what we are concerned about is the special interests and influence over the governing bodies in adopting codes. If this bill passes, you would be allowing the governing body to basically pick the level of protection, either following or not following the recommendations of the professional staff.

CHAIR WASHINGTON:
Is the current procedure to submit plan checks to you at the State level?

MR. MULVIHILL:
I am a local fire official, but the SFM is here and can respond to your question.

CHIEF WRIGHT:
Since becoming the SFM last September, I have researched the history and intent of the NRS and the NAC pertaining to the duties and responsibilities of the SFM. I have discovered there has been a theme and desire to diminish the responsibility of the SFM in various counties.

As the SFM, it is my responsibility to set and enforce all laws and adopt regulations relating to the prevention of fire statewide, with the exception of counties with populations of 100,000 or more and in consolidated municipalities. In those exceptions, they are required to enforce the SFM regulations through locally adopted fire codes which are to be at least

as stringent as the code adopted by the SFM. The SFM codes are adopted to serve as a minimum code to be applied statewide for a basis of consistency. Local jurisdictions can adopt stricter codes, but not less. Currently, plan checks from Clark County do not come directly to the SFM due to the population cap.

In my written testimony (Exhibit E), there is a listing of the codes for all 50 states. You will note that 43 states have mandatory minimum codes. The Las Vegas MGM fire in 1980 and the Mizpah Hotel (Mizpah) fire in Reno in 2006, the two most deadly fires in Nevada, occurred in the two counties where the SFM has been excluded. Allowing these counties to be exempt from a state minimum fire code because of a population number is wrong. While local control is usually desirable, my experience as a fire service veteran convinces me that there is truly a need to have the State establish and enforce a minimum code for the ensured safety of the public. Without this, it is a reality that local control of codes and regulations can be influenced by special interests who may not have the safety of life and property as their priority. As the SFM, I urge you not to pass A.B. 529.

MR. SARTAIN:
Concerning the issue of new technology, the NAC 477.285 and 477.287 allow for relief from strict applications. Variances can be obtained simply by providing an alternate method. Also, the IBC 2003 140.11 allows for alternates. As far as plans being submitted to the SFM's office, as a contractor for 30 years in Las Vegas, the only time we submitted plans to the SFM's office was when we built a school or a state building. It has never been an issue in the SFM's office, which has always been helpful in getting issues resolved.

The three groups I represent ask you to protect the citizens of Clark County and the State. If Clark County wants to make changes to its code, they can do that. They can take the base codes set by the SFM currently in place and amend them to their satisfaction. We do not need to remove them, because they can be amended. Do not make the codes less stringent for the sake of making the building cheaper to build. Some details from the MGM fire investigation report are on page 2 of my testimony, Exhibit D. The MGM fire, the second largest life-loss hotel fire in U.S. history, and most likely many of the fires listed on page 3, could have been avoided if the building and fire codes and standards had been required.

CHAIR WASHINGTON:
Because of recent hotel and motel fires, the Reno City Council is in the process of determining whether or not sprinklers and other fire suppression measures need to be applied across the board to retrofits of existing buildings or new construction. As the SFM, are you overseeing or requiring the Reno City Council to meet the current IFC?

CHIEF WRIGHT:
We have not had any involvement with the City of Reno pursuant to the sprinkler ordinance in their high-rise structures. In the unfortunate Mizpah fire and the recent fatality in the motel fire, both structures had been exempted by local control from the retrofit laws when they were implemented.

The NRS does give the SFM the ability to work with local jurisdictions to develop fire protection ordinances and codes, but we must be asked to participate. Again, because of the population cap, we are excluded from participation unless specifically asked to participate. We have not been asked to participate. With my 35 years of fire protection experience, I am surprised that after the deaths from the fires, this has not been taken more seriously and looked at statewide. History does repeat itself. My concern is that the code issue be finalized allowing the SFM to establish minimum codes statewide. Then require local jurisdictions to enforce their fire codes which have to be as stringent as the State's minimum code. Local jurisdiction would not be allowed to enact any ordinance or code that would be less than the State minimum.

MR. LYNN:
Since I was around during the MGM fire, I feel compelled to address some of the comments from an historical point of view. First, the statute under discussion was in effect prior to the MGM fire, according to Cliff Jefferts, the deputy district attorney who did the research. The fire chief did want more sprinklers, but the building official indicated the code did not support that decision. The decision was referred to the SFM by the Clark County fire chief. The SFM chose a position of inaction. Apparently, it was a conscious decision at the time which is stated in the transcripts of testimony from the MGM fire litigation.

Second, the code of construction of the MGM was a 1970 uniform building code. This code permitted trade-offs for sprinklers by using compartmentalization and by taking into account areas that had 24-hour use.

This is stated in the January 1982 issue of the *National Fire Protection Association Journal*. John Pappageorge, who was deputy fire chief at the time, informed me that a letter was sent to the International Conference of Building Officials (ICBO) for an interpretation. I was on the board of directors of the ICBO, which later merged with the other international code groups, and I am currently on the board of directors of the ICC which promulgates both the IFC and the IBC. If you establish a base document which is not subject to the interpretation of the SFM for stringency determination and you specify using the IBC, I certainly can support that.

JEFF DONAHUE (President, Fire Prevention Association of Nevada):
The Fire Prevention Association of Nevada (FPAN) is a nonprofit organization comprised of 290 members. The membership is primarily fire inspectors, fire officials, building officials, industry members related to fire and life safety, as well as members of the general public who have interests in fire and life safety. We have previously testified in opposition to A.B. 529, and we continue to be opposed to it.

We agree with the SFM that this is an opening for the building official in Clark County, contrary to what he may tell you now that his codes are more stringent than the base code. If there is not a base minimum, there is nothing to say that by the next code adoption cycle, Clark County will adopt whatever code they chose, especially if it is influenced by industry.

I am concerned about how we keep going back to the MGM. Our organization is more concerned about what is happening now. There are issues under consideration at the national level which will affect the *International Residential Code*, IBC and the IFC. We think if A.B. 529 is adopted, Clark County will act to eliminate some of the provisions that may be adopted in the international codes that may occur in the meeting next week in Rochester, New York.

If there is such a conflict between Clark County, or any of the counties, those representatives should meet with the SFM to resolve those conflicts and any procedural agreements such as interlocal agreements and memorandums of understanding. This is more productive than submitting this bill time after time to remove the authority of the minimum standards of the SFM in a specific county. Again, on behalf of the 290 members of the FPAN, we are opposed to this bill.

CHAIR WASHINGTON:
We will close the hearing on A.B. 529 and open the hearing on A.B. 443.

ASSEMBLY BILL 443 (1st Reprint): Revises provisions relating to communicable diseases. (BDR 40-1057)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):
As background, I have been involved in human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) issues for over 25 years. In 1987, I served on the first AIDS Advisory Task Force created by former Governor Richard Bryan. From 1987-1989, the task force made recommendations and put together regulations which were adopted by the 65th Session of the Legislature. A lot of changes have taken place and, sadly, a lot of complacency has developed. The perception today is AIDS is a chronic, treatable disease and that is most unfortunate.

Those initial HIV/AIDS statutes are still in place, and we need to bring them up to the real-world situation. This bill is an attempt to update those statutes. Assembly Bill 443 specifically provides guidelines for the critical issue of post-test counseling that should occur if a positive HIV test result is received. In 2006, the Centers for Disease Control and Prevention revised some regulations and many of those recommendations are in A.B. 443. The bill also includes recommendations for HIV testing for adolescents and adults in all health care settings. These recommendations indicate that positive test results should be communicated confidentially through personal contact by a provider. Another goal in communicating positive results to HIV-positive persons is to link them to counseling, clinical care, support and preventive services.

SENATOR HECK:
I am curious about the inclusion in the bill of the medical laboratories (labs) that do the tests. What kind of onus does this bill put on them? Medical labs receive specimens, run tests and send the results back to whoever ordered the tests. Other than drawing the individual's blood, lab personnel never interact with the client. Medical laboratories are not in the position to ensure someone receives the appropriate counseling or referral.

ASSEMBLYMAN PARKS:
That same concern was discussed in the Assembly, and the decision was to leave the medical laboratory section in the bill.

SENATOR HECK:
On page 3, lines 21-37 regarding the employment practices, are these issues already covered under federal Americans with Disabilities Act (ADA)?

ASSEMBLYMAN PARKS:
Yes, HIV and AIDS do have some protection under the ADA, but as to the specific level of protection, I do not know. I know that employment nondiscrimination is not in federal statute.

CHAIR WASHINGTON:
The employment section does seem somewhat problematic. Without knowing what the federal statute is concerning the confidentiality of employment practices, unless an employer asks, how would an employer know if the person has contracted or is carrying the virus, since the information is confidential?

ASSEMBLYMAN PARKS:
The situation in the real world is quite often an individual will become ill, might show signs of having an HIV infection or might have to take time off for treatment. What this section seeks to do is to protect those individuals. Today, there is a wide variety of medications people can take to bring their T-cell or viral load down to an undetectable level; however, they would still have an HIV diagnosis. What this bill seeks to do is to help protect that individual from being discriminated against in the workplace.

CHAIR WASHINGTON:
As I read the bill, it is concerned about persons seeking employment rather than persons already employed. Because the information is confidential, how would an employer know the applicant has HIV/AIDS unless he or she asks?

ASSEMBLYMAN PARKS:
On page 3, lines 22 and 23, presumably "employ" means to potentially terminate a person who is already employed.
CHAIR WASHINGTON:
I will confer with staff to clarify this issue.

SENATOR NOLAN:
Does this bill have any application to the type of test an individual would take with these kits from the drugstore? Does federal law then require the testing

facility, which may be out-of-state, to communicate with the person if he or she tests positive, and then must they offer some level of counseling?

ASSEMBLYMAN PARKS:
Those kits are not as popular as they once were, and I am not aware if they are still available at drug stores. They were not inexpensive, and I presume you could still buy one over the Internet.

SENATOR NOLAN:
I was in drugstore in Carson City recently, and they did have those kits on the shelf along with the other self-test drug kits, such as for diabetes. All those kits are fairly expensive. I wonder how this bill would apply to those labs that process those kits.

WILLIAM R. HILL (Communicable Disease Program Manager, Bureau of Community Health, Health Division, Department of Health and Human Services):
There was a discussion regarding whether or not this bill would be applicable to the laboratories. On page 3, lines 11-15, it states "... if unable to provide referrals pursuant ..." to lines 8-10, referral to the local health authority for a subsequent referral to providers within the community for future services, including, without limitation, medical care, mental health care and addiction services. This covers medical laboratories that do the tests and pass the results to the provider of services. However, there could be an event for a laboratory, for whatever reason, which does the HIV tests of their own volition without a medical order. This was left in the bill in the event of that occurring. It could be removed, but it was felt it was appropriate to leave it in the bill for now.

SENATOR HECK:
I have a concern about including the medical labs because I would not want them to get caught up in the confidentiality issue. Most people who have blood drawn do so because a health care provider has ordered it. There is a safety net for those labs.

CHAIR WASHINGTON:
Senator Heck, are you looking for some kind of immunity for these labs?

SENATOR HECK:
No, I am not seeking immunity. I just have a concern about the labs being included in the bill without providing a safety net for them. They may be caught in this confidentiality issue and not equipped to handle it.

CHAIR WASHINGTON:
Assemblyman Parks, if you do not mind, I will ask our Committee Counsel to review the federal statutes so we are clear about the employment, confidentiality and laboratory issues.

ASSEMBLYMAN PARKS:
That would be fine with me.

JOSEPH TURCO (American Civil Liberties Union of Nevada):
The American Civil Liberties Union (ACLU) is in favor of A.B. 443. As a point of information, because the laboratories possess this information, they are subject to confidentiality. The bill balances the public health issues and public education issues with the privacy and dignity of the patient. This pleases the ACLU. The culturally sensitive education, the confidentiality, the post-test counseling and the referrals are all positive parts of this bill.

Only one caveat concerns us. On page 2, lines 8-14, it is essential for anyone being tested for HIV to be tested only with their informed consent. That portion could be more clearly written to ensure that the individual is informed in order to decide whether or not to be tested. The ACLU does support this bill.

ANN LYNCH (HCA Far West Division):
My facilities operate three outpatient labs, and there is no way the laboratories can do the counseling. Labs are merely facilities for physicians who receive their reports. They should not be in a position of counseling or interpreting results to their clients. That is not their role; it never has been nor should it be. Leaving the laboratories in the bill, under any circumstances, would be a burden on any lab. Even in the health fairs we conduct, the information does not go to the patient, it goes to the physician. I support the bill and urge its passage; however, I encourage you to delete the laboratories portions.

CHAIR WASHINGTON:
There is a fiscal note attached to this bill of approximately $1 million over the biennium. What is the status of the fiscal note?

ASSEMBLYMAN PARKS:
That fiscal note was removed. It was with the original bill, but it is not included with the first reprint. The testimony given in the Assembly Committee on Ways and Means Committee was that the note had been removed.

MR. HILL:
The rewrite of this bill was a joint effort of the three health districts as well as members of the university system. In the rewrite, there was no fiscal note attached because the bill codifies what we are already doing. The bill assures people who test HIV positive that they can get the right type of counseling.

MAUREEN COLE (Deputy Administrator, Nevada Equal Rights Commission Division, Department of Employment, Training and Rehabilitation):
In response to the question about failure to hire as a discriminatory act, under current law it is the Nevada Equal Rights Commission's (NERC) understanding that HIV/AIDS is covered under the ADA. In a failure-to-hire case, just as in any other basis, the charging party would need to allege some facts and bring forth proof that the employer knew or regarded the individual as HIV positive or having AIDS.

CHAIR WASHINGTON:
Does the language in A.B. 443 mirror the language in the ADA? If so, would it not be beneficial to make reference to the U.S. Code or the 1988 ADA legislation as opposed to putting the language in the bill?

MS. COLE:
There are some references to this such as in the U.S. Department of Labor 29 *Code of Federal Regulations* section 1630 which has numerous references to the applicability of the ADA to HIV/AIDS. Another example is in the U.S. Equal Opportunity Commission's *Compliance Manual* which the NERC uses as a reference. It indicates that an individual who has HIV infection, including asymptomatic HIV infection, has a disability which is covered under the ADA. A number of references are listed to support that proposition.

CHAIR WASHINGTON:
Would you mind working with the staff on this portion of the bill?

MS. COLE:
I would be glad to do so.

CHAIR WASHINGTON:
We will close the hearing on A.B. 443.

With no other business to come before the Senate Human Resources and Education Committee, the meeting is adjourned at 3:12 p.m.

RESPECTFULLY SUBMITTED:

Betty Ihfe,
Committee Secretary

APPROVED BY:

Senator Maurice E. Washington, Chair

DATE: