MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND EDUCATION

Seventy-fourth Session
March 16, 2007

The Senate Committee on Human Resources and Education was called to order by Chair Maurice E. Washington at 9:11 a.m. on Friday, March 16, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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:

Senator Terry Care, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Joe McCoy, Committee Policy Analyst
Sara Partida, Committee Counsel
Patricia Vardakis, Committee Secretary

OTHERS PRESENT:

Gloria P. Dopf, Deputy Superintendent for Instructional, Research and Evaluative Services, Department of Education
Frank Schnorbus
Former Assemblywoman Sharron Angle
Craig Kadlub, Clark County School District

Anne Loring, Washoe County School District
Julie Whitacre, Nevada State Education Association
Michelle Clayton, Legislative Counsel, National Conference of Commissioners on Uniform State Laws
P. Michael Murphy, Coroner, Clark County
Terence P. Ma, Ph.D., Secretary, Committee 0n Anatomical Dissection; Director of Gross Anatomy, Touro University Nevada
Mitchell D. Forman, D.O., Touro University Nevada
Daniel C. Holler, County Manager, Douglas County
Doug Johnson, Chair, Board of Commissioners, Douglas County
Nancy McDermid, Board of Commissioners, Douglas County
Tom Perkins, Deputy District Attorney, Douglas County
Alfredo Alonso, Olympia Group, LLP
John W. Griffin, Focus Property Group; Olympia Group, LLP
Scott Morgan, Community Services/Parks & Recreation Director, Douglas County
Debbie A. Shosteck, Tahoe-Pyramid Bikeway
Mary C. Walker, City of Carson City; Douglas County; Lyon County
Robert R. Jensen, President, Nevada Trial Lawyers Association
Tim Tetz, Executive Director, Nevada Office of Veterans' Services
Frankie Finlayson

CHAIR WASHINGTON:
I will open the hearing on Senate Bill (S.B.) 158.

SENATE BILL 158: Establishes the Special Needs Scholarship Program. (BDR 34-10)

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):
Senate Bill 158 establishes the Special Needs Scholarship Program, which would allow children with individualized education programs (IEPs) to enroll in private schools and public schools other than those they are zoned to attend. Children with special needs require a higher degree of individualized attention and accommodations than regular education students. Often these needs lie in alternative forms of supervision, adjustments in the physical layout of the schoolroom, the location in which the instruction is provided or in the specific relationship between the school and the community of which the student is a part. In order to provide the educational experience most suited to their

circumstances, it is preferable to allow the widest array of options to special education students in selecting a school.

Key provisions of this bill would allow special education students to attend eligible private schools or eligible public schools outside of their regular school district. This bill includes a number of provisions that ensure the suitability of eligible schools; it requires that private schools be fully licensed according to State law and be financially viable. The student would not be required to participate in any religious activity that an eligible private school has as part of its educational program. A school would be required to provide the parent or legal guardian with a regular report on the student's academic progress. Senate Bill 158 prohibits the State from interfering with the operations of the eligible private school.

The Department of Education would administer the program and would be responsible for granting, revoking and certifying the eligibility of the participating schools. For the purpose of the apportionments from the State Distributive School Account, S.B. 158 requires the school to be included in the count of pupils in the school district in which he attends school. The eligible school would receive the proportionate cost of providing a special education to the child. The student's transportation costs would not be assumed by the school district in which the student was originally zoned or by the school district in which he chooses to attend.

SENATOR CEGAVSKE:
The Special Needs Scholarship Program is modeled after a Florida initiative, the McKay Scholarship, which began a pilot program in 1999 and went statewide the next year with almost 1,000 students participating. The success of this program can be seen in the yearly increases in enrollment from 5,013 to 17,300 students in the 2005 and 2006 school year. According to a 2003 study published by the Manhattan Institute, the program has been extremely popular among the families of participating students. Among participants, 92.7 percent reported being satisfied or very satisfied with McKay Scholarships. Parents reported improvements in services provided by the McKay Scholarships and class sizes. The report called attention to the fact that over 90 percent of parents of students who have left the program believe it should continue to be available to those who wish to use the program. Senate Bill 158 would be an opportunity for Nevada to mirror the success of the Florida program and to enhance the educational experience of Nevada's special education students.

If there was a special-needs student in a rural area, who needed a special education program and could not get it, but a school in Clark County had a special education program and it became a scholarship program, the student could apply to the public or private school. The New Horizons Academy is an example of such a school. Many parents have approached me because the cost of this school is prohibitive. This would be a means of taking care of student's needs that are not met in the public education arena. This program has been proven.

I encourage your support of S.B. 158.

SENATOR HECK:
Would all the public schools be eligible or already be certified? If not, why?

SENATOR CEGAVSKE:
Students must apply for the McKay Scholarship Program.

MS. PARTIDA (Committee Counsel):
A student who is enrolled in a school district would be receiving special services according to their IEP. This bill is targeting students who want to transfer to a public school outside their district and allow certain funds to go with the pupil.

SENATOR HECK:
The bill is not stating that a public school cannot provide the services; they need to be eligible for the participation in this program.

MS. PARTIDA:
Correct.

SENATOR HECK:
Does the language on page 2, lines 27 through 31 of S.B. 158 mean, based on the IEP, there are different amounts of funds being ascribed to each child as they move because they have a different IEP and the amount of funds would not be uniform?

SENATOR CEGAVSKE:
The amount of funds could be different, depending on the student's needs.

MS. PARTIDA:
There could be different amounts based on the student's IEP. Some students' needs are more severe than others. Regulations would need to be adopted to determine the amount of funding.

SENATOR HECK:
Is this a current practice?

SENATOR CEGAVSKE:
Yes.

SENATOR HECK:
How does a child who is not enrolled in a school get an IEP?

SENATOR CEGAVSKE:
There are students who go through a preschool or a "special children's clinic" and are assessed starting at birth for varied reasons.

CHAIR WASHINGTON:
Special education teachers within the public school system must do the IEPs.

SENATOR CEGAVSKE:
Individual evaluations plans can be done by early intervention. There are different groups that can write an IEP plan. In the school setting, a special education teacher is involved in the process, but others are involved in processing the IEP depending on the child's needs. There is a team of people who assess a student and write the IEP.

CHAIR WASHINGTON:
I need clarification on this point. It is my understanding the initiation of the IEP must be done by a special education teacher.

GLORIA P. DOPF (Deputy Superintendent for Instructional, Research and Evaluative Services, Department of Education):
The IEP committee does the educational plan for the youngster after an evaluation has been completed. The IEP committee takes the evaluation data and the youngster having already been determined eligible and translates that information into an annual individualized education plan. In State and federal law, there is a team. The team includes the youngster's parent, teacher, a

special educator and school district administrator who knows the services that are available within the district. The plan must be revised annually. The issue is, if it is coming from a district IEP, there will be the construct of the required committee which drives the recommended distribution of services to the certified private school or the certified public school under the scholarship program. We are not certain what would be done after the first year's IEP. The law is silent about once the youngster is in a private school and how the IEP would be constructed for the continuation of the year and whose responsibility it would be if in a private school mode, a youngster would have any further rights to an IEP. The law would need to be made clear in those areas, because parentally placed youngsters in a private school under Individuals with Disabilities Education Act (IDEA) and our State law, which conforms to it, no longer have IEP rights. They are part of what is known as a service-plan process. The first year of the transfer would be done through an IEP process as constructed through the school district, and the service needs and the amounts of funding attached would be driven by that district-configured IEP which would conform to law. I am not certain what would happen in the annual revision process.

CHAIR WASHINGTON:
If a student in a private institution is applying for the scholarship and an IEP has to be performed, who configures the team to determine the assessment of the ability of the student? If that student is in a private institution, then who starts the process? Who develops the team? If the child is awarded the scholarship dealing with public funds, there needs to be some continuation of the evaluation. Would the original team remain intact and perform the evaluations annually as prescribed by law?

MS. DOPF:
If it is going to be an IEP-driven requirement, it must meet the requirements of law which requires input of the student's teacher, parents, special educator and district administrator. The issue needing clarification is that if the program initiates or requests where the youngster is already in a private school, does the law even contemplate that? Also, if it does, because private schools are not under an IEP requirement, how would they fulfill the requirements of the law?

CHAIR WASHINGTON:
If State Distributive School Account (SDSA) funds and federal funds based on IDEA are involved, then that would constitute the private institution becoming a

quasi private-public institution. Therefore, the laws would be applicable to the private institution.

MS. DOPF:
I would defer the intent of the law to Senator Cegavske. There is a section in S.B. 158 that attaches the rights to that which is referenced in code to a parentally placed private-school youngster. A parentally placed private-school youngster in federal law does not have IEP and due process rights. They have a service right which is a negotiation between the district and the private school when the youngster is special education eligible in a private school for a proportionate share of the federal funds. The parents making the choice to place the youngster in a private school give up their right to the free appropriate public education (FAPE) guarantee by State and federal law when the public agency provides the program and makes that placement under the condition of a diminished right and a reduced service right for the youngster. It is not an IEP right. If the bill is passed, those are some of the points that need to be addressed and clarified.

FRANK SCHNORBUS:
I am a foster parent of five special-needs children. Senate Bill 158 is clear. These are not parentally placed children, but are enrolled children. The IEP would still be in effect. These children would be getting the SDSA and the scholarship portion of the funding. I support this bill. In many cases, the previous school placement did not work for the child. Then the question is how can the needs of the child be best met? This is particularly true with children in middle school or high school. The emotional needs of these children are important. To have a special program for these children would be significant.

I do not represent Koinonia Foster Homes, but they would be supportive of this bill. They operate a private school in Reno which this would benefit. The Rite of Passage operates a school and would be interested in a legal provision such as S.B. 158 provides. The only unaddressed issue is; if a child is transferred in the middle of a school year, how does the SDSA funding go to the private school if "count day" has accrued? This would be a concern for the private school for the child that came in November.

CHAIR WASHINGTON:
There are issues that need to be resolved concerning S.B. 158.

SENATOR CEGAVSKE:
The language addressing the issues is on page 2, lines 10 and 11 of S.B. 158 which contain references to ascribing the meaning of individualized education programs and on page 4, lines 39 and 40 where the language states, "The child is a pupil with a disability and has an individualized education program."

CHAIR WASHINGTON:
There are some concerns and requirements that must be met. Further discussion is needed.

FORMER ASSEMBLYWOMAN SHARRON ANGLE:
I am in support of S.B. 158. As a teacher in private and public schools, I implemented IEPs for special education children. My testimony concerns an experience with a private school in Winnemucca. In the first year, there were 14 students; half were special education children in junior high and high school. The second year, there were 24 children, junior high and high school special education students. The reason was their parents were at their wits' end. There was no more choice. The public school system had failed them. There are so many children in need that it is difficult to implement those individual educational plans. In a private setting where there is a smaller class size, we were able to meet the needs of each individual child and test for the educational gaps. We found that because of environment, disability and other factors, many of these children missed many days of school. Because of their special needs, they were not able to catch up. These children need consistency and not to have gaps in their education. There was significant progress at the end of the school year.

I am an advocate of choice for parents. Not all children learn at the same rate or have the same capacity to learn. Special education children need individual attention and care. The pace needs to be slower and to meet the needs of the child. Senate Bill 158 fills a need which is not being filled presently.

CHAIR WASHINGTON:
There is no dispute concerning the merits of the bill. The question concerns the transfer of the funds and whether it is in compliance with the IDEA and the SDSA, and how the students are assessed by the individual schools.

ASSEMBLYWOMAN ANGLE:
I urge the Committee to please work through the issues.

CHAIR WASHINGTON:
We will have staff work with the Department of Education and look at the McKay plan to resolve any issues.

MS. DOPF:
We will work with Senator Cegavske and staff to resolve any issues regarding the federal standards and State law. Section 12, subsection 6, on page 5 of S.B. 158 creates the standard of right for these youngsters. This language addresses parentally placed special education youngsters in private school and that standard is not a FAPE standard. If your intent is to provide the FAPE standard, the costs will be different and there needs to be a mechanism to assure the FAPE in a private school because they are not under that standard at present. Section 12, subsections 6 and 8 are the federal issues that need to be resolved. These subsections clarify that parentally placed private school youngsters, based on the conforming federal law, are giving up a FAPE right. My knowledge of the McKay program is that this language was similarly adopted into the McKay program. The youngsters that went into the McKay program, in Florida, went in with the understanding that they were no longer entitled to the FAPE standard. Section 12, subsection 8 would confirm this. If a district fails and the parent disputes the appropriateness of the district program, and they go through a due process and the due process upholds the failure of the district to provide a FAPE and places the youngster in a private school, because the youngster was placed by the district through due process, the youngster continues to have a FAPE right. Those two subsections would underscore that the current configuration of the bill is such that it would be the parentally placed private school youngster which is not a FAPE standard.

CRAIG KADLUB (Clark County School District):
The Clark County School District (CCSD) has no opposition to private schools or home schools. They both serve the community by helping address divergent needs and views. Our board of trustees has maintained that taxes collected for public purposes should not be diverted to private interests. We are familiar with the argument of voucher proponents which is, if a person pays taxes and does not use the service, they should be able to reclaim those taxes for personal use.

Taxes are levied to serve the common good of the public, not the diverse and private needs of special interests. We are operating in an environment of extreme accountability where public schools are scrutinized for everything from calorie content of snacks to complying with requirements that specify the number of minutes that must be allocated for each component of the mandated curriculum. It seems inconsistent that the Legislature would consider giving funds to schools that do not need to follow State standards, do not need to administer proficiency exams, are not required to provide the same level of federally mandated services, do not need to meet the same licensure requirements for staff and are exempt from many other statutory and regulatory obligations. Private schools and home schools are important pieces in the overall education picture, but let us keep them private by not diverting public funds to support their programs when our public schools are in need of resources.

ANNE LORING (Washoe County School District):
We echo the testimony of the CCSD. The definition of the bill of the eligible school does indicate it must be licensed, financially viable and cannot discriminate. It does not indicate that the eligible school needs to have any particular expertise to serve the students that have IEPs from the public schools. We are concerned about diverting federal and State money that is providing well-defined services to these youngsters to private schools that are not obligated to provide the same level of service. We share the concern about using public funds to support private education that is not held to the same academic standards, the level of proficiency for students on our Nevada standards, the same graduation standards and the high school proficiency exam.

CHAIR WASHINGTON:
Senate Bill 158 is trying to provide a service that the public institutions are not providing to meet the needs of those special education students which the private institutions are providing. The issue is to make the funds available to meet the needs of those students within those private institutions. It is a meritorious piece of legislation. We need to be certain that the State is in compliance with applicable laws.

JULIE WHITACRE (Nevada State Education Association):
Supporters of vouchers and scholarships tend to dismiss the impact vouchers have on public schools. It is a fact that vouchers take needed funds from public schools with a vast majority of students with fewer resources. Voucher supporters do not mention fixed costs such as transportation, maintenance and

utilities which are not reduced when a few students cut across different geographical areas and grade levels and leave public school for a voucher school. On page 4, lines 41 through 43 of S.B. 158, there is language which allows children who have not attained school age to receive these scholarships. The concern is these children have not been counted as part of the SDSA and no State funds have been allocated for these children, yet funds will be taken from the SDSA to give them a scholarship to attend a private school.

Depending on the child's disability, the cost for these children is from $15,000 to $20,000 a child to educate. This is a substantial sum to be taken from the public school system. There is a trend, nationwide, that students who receive scholarships and vouchers to attend private schools return to public schools midway through the year. This reduces the funds available to the public schools. A September 2000 study found approximately half of the students receiving private scholarships in Dayton, Ohio; New York City and Washington, D.C., returned to public school by the second year of the program.

Edgewood Independent School District in San Antonio, Texas, is an illustration of the financial impact of private scholarships. More than 800 students used $4,000 scholarships to attend private or parochial schools. The school district lost $5,800 for each student who left. At least 50 percent of these students returned to the public school, causing the district to lose $4.8 million.

CHAIR WASHINGTON:
We will close the hearing on S.B. 158 and open the hearing on S.B. 169.

SENATE BILL 169: Adopts the Revised Uniform Anatomical Gift Act. (BDR 40-968)

SENATOR TERRY CARE (Clark County Senatorial District No. 7)
In 1999, Senator Cegavske sponsored a uniform act. This bill is a revision of a uniform act adopted by Nevada in 1989. The conference that promulgates these uniform acts always strives for uniformity. Why revise the act? The answer is: since the promulgation of the earlier revised act and its adoption by a majority of states, many of those states have amended what originally was the uniform act for a variety of reasons. There has been improvement in technology involving treatment, transplantation of eyes, tissue and organs. There has been an increase in demand for research in those areas since 1989. Many states have made their own amendments to the prior uniform act. Because of the many

developments since 1989, it is important that the Uniform Anatomical Gift Act be reformed.

There is an issue involving the coroners' offices and donors' networks. Ken Richardson, Executive Director of the Nevada Donor Network, Incorporated, is in agreement with an amendment that will be offered by P. Michael Murphy, Coroner, Clark County. We are in agreement with the amendment.

On February 14, 2007, the Nevada Legislature recognized September 14 as tissue and organ donor day in Nevada. This underscores the field of anatomical gifts.

MICHELLE CLAYTON (Legislative Counsel, National Conference of Commissioners on Uniform State Laws):
The Committee has been provided with a packet of information (Exhibit C, original is on file in the Research Library) including summaries and bullet points about the new Uniform Anatomical Gift Act. There is an article, "The 2006 Revised Uniform Anatomical Gift-A Law to Save Lives." There are letters of endorsement from the various organizations supporting this new law.

The National Conference of Commissioners on Uniform State Laws promulgated the Anatomical Gift Act of 1968 which was enacted in every jurisdiction within three years. In 1987, when the act was revised, only 26 states enacted those changes. There is nonuniformity among the states. The federal Congress has become involved in organ donations. There are national laws that are out of synchronization with state organ-donation laws. We have had 24 introductions. The law has passed in three states and is on the desks of two governors.

The main purpose of the act is to strengthen the donor's right to donate or to refuse, if that is their choice, and to expand the list of people who can donate if a person has not made that decision. The act will provide new tools for the organ procurement organizations. Uniformity in the area of the law is important because these organ procurement organizations work across state lines and it is a time-sensitive area of the law.

P. MICHAEL MURPHY (Coroner, Clark County):
I support S.B. 169. We have spoken extensively and formed an agreement between the Nevada Donor Network and the Clark County Coroner's Office specifically about the amendment we are proposing (Exhibit D). The key to the

amendment is the donor network or the organ procurement organization. The Coroner's Office would work closely with our medical examiners to ensure that we have a balance between the need for the organ and the need to appropriately provide our core service which is to determine the medical cause of death and the manner of death. Specifically, in child deaths and some adult deaths, the procurement of an organ could prevent prosecution of a case. The adoption of this language will not only ensure, but mandate, that the two organizations work closely together to make sure the needs of both organizations are met appropriately. In addition, our core service of providing information to families, prosecutorial information and specifically, speaking for the decedent, would be maintained. Organizations such as the National Association of Medical Examiners and the International Association of Coroner Medical Examiners are in support of the whole concept that is being proposed, but have concerns about the language in the section of the bill to which we have proposed changes. It is not our goal to prevent procurement. We have a strong relationship with the Nevada Donor Network as a part of disclosure. They lease space from us for postmortem procurement to reduce the time period they have to recover organs. Our relationship should be maintained in the appropriate manner and the amendment will allow this to be accomplished.

SENATOR CARE:
We agree with the amendment.

SENATOR NOLAN:
I would like to make a disclosure. Besides being a donor, I am a sworn investigator of the Clark County Coroner's Office. I am in a reserve capacity at this time and this bill will not affect me any differently than anyone else. I will be voting on the bill.

TERENCE P. MA, Ph.D. (Secretary, Committee on Anatomical Dissection; Director of Gross Anatomy, Touro University Nevada):
I will read from my written testimony (Exhibit E) concerning my support of S.B. 169.

MS. CLAYTON:
It is not the intent of this legislation to cause problems with these types of donations. In my work in other states, I have not heard of any particular concerns with regard to these sections, particularly the donor registry. We

would be happy to talk to these groups and make sure we are not causing any unintended consequences.

MITCHELL D. FORMAN, D.O. (Touro University Nevada):
I echo the testimony of Dr. Ma. If the proposed amendment could be included in the legislation, we would have accomplished a great deal.

CHAIR WASHINGTON:
I would like the parties to discuss the issues so that we can proceed with the bill during a work session.

We will close the hearing on S.B. 169 and open the hearing on S.B. 195.

SENATE BILL 195: Enacts provisions governing the operation and use of a recreation area. (BDR 40-492)

DANIEL C. HOLLER (County Manager, Douglas County):
The Douglas County Comprehensive Trails Plan (Exhibit F, original is on file in the Research Library) tries to focus trails into the public lands, Division of Forestry, State Department of Conservation and Natural Resources lands and the U.S. Bureau of Land Management (BLM) lands, but all of them start or end on private property. One of the challenges we have had is the concern that residents and owners have of property that is adjacent or next to these trails. Recently, we have been working for the acquisition of properties along the Carson River in order to have legal access to State land. The State claims the river from the ordinary custom high-water mark on either side of the river so that it becomes a State property. During the winter, people hike, walk and float on the river. We tried to create some points of legal access, which created concerns for neighboring property owners and some of the ranching community who have irrigation diversions within the river and the concerns about what happens if someone gets injured in those areas. We tried to create a bill that would allow us to address those issues. We have heard similar concerns expressed by other counties.

We are working on river-type trails through Carson City and Lyon County which have the same concerns. We want to address these types of issues so that we can reduce some the public and private property owners' concerns as we attempt to enhance the recreational opportunities.

DOUG JOHNSON (Chair, Board of Commissioners, Douglas County):
This problem surfaced a couple of years ago. We had some issues with trail heads. Our county is surrounded by Division of Forestry and BLM land and to get there you must go through private property. We try to get easements through planning. The current issue is that no one wants an easement next to their property because of trespassers and the liability it may entail. We are trying to mirror the ski resorts. Everyone knows that if you go beyond the boundaries, you are the responsible party. We are trying to tie this in with existing legislation. We have reviewed some amendments and we are open to suggestions and changes. Senate Bill 195 would help Douglas County to maintain our access to our government lands.

NANCY MCDERMID (Board of Commissioners, Douglas County):
The ranching and farming community needs assurance of protection in order to give the easements to access the Carson River. Northern Nevada is advertising outdoor recreation. We need to be able to compete with other areas for those outdoor recreationists and provide a quality-of-life enhancement for our citizens. Part of our area includes the Tahoe Basin. One of the key issues of maintaining lake clarity and improving it is to get people out of their automobiles. One way to accomplish this is to allow them access around the Nevada side of the Lake Tahoe with a bikeway, pedestrian ways and other ways of accessing recreational areas, but private property adjoins federal and State lands. Senate Bill 195 would enable us to work with the private property owners to assure them that we can allow for these easements without them being subject to litigation.

SENATOR WIENER:
There are many standards in place for the person who would be participating in this recreational activity on these lands. These standards put a substantial burden on the user. The intent would be to relieve them of responsibility when the "standard of knowingly" is imposed. Unless there is the "knowingly," do they sustain liability for anything that happens?

MR. HOLLER:
The standard of care that we have reviewed is similar to skate parks where warnings are posted, information is available and it is necessary to sign a liability form. That standard of care is necessary so people will know they are taking on those types of issues when they go on the trails. They know there are

hazards and if they are injured, they went into those areas knowing there were risks.

SENATOR WIENER:
Would S.B. 195 create a complete protection for those people participating in the recreational experience?

TOM PERKINS (Deputy District Attorney, Douglas County):
The bill does not create absolute protection, but it is not the intent of the legislation.

SENATOR WIENER:
If the bill does not create absolute protection in order to entice the participation for the landowners, what is their liability?

MR. PERKINS:
We are proposing amendments to S.B. 195 (Exhibit G). We are trying to create standards for behavior of the user. I am going to request an amendment for those persons who go out-of-bounds and go onto property that is outside the recreation area. What we are seeking for the adjacent landowners is that they do have a standard of care. It is not the same as when you invite someone onto your property or when there is a fee to come onto the property to engage in an activity. It is not the same standard that would affect a trespasser. It has to do with correcting known, dangerous conditions rather than active responsibility for their care. There is no absolute immunity prescribed or intended by this legislation. It is a lesser standard than inviting someone into your home.

SENATOR HECK:
I have concerns with section 9 of S.B. 195 and the amount of things a user will need to know, especially when you are asking people to familiarize themselves with any dangerous condition relating to an irrigation system in or near the recreation area. A person cannot go out on a trail and know what the natural conditions are in a recreational area.

MR. PERKINS:
I agree. We do have responsibility to warn people of these conditions. We are talking about points of access to public lands. This bill seeks to make people responsible for themselves when they go onto public lands and not charge the operator or adjoining landowner with responsibility for what happens. I agree

that information should be provided to the user to alert them as to what hazards are in the area.

SENATOR HECK:
My concern is holding someone liable for not avoiding something they are not aware exists.

SENATOR WIENER:
When the "knowingly" piece is addressed, it should be addressed as though the individual was a first-time hiker in that area. There needs to be some responsibility in providing them with information so they can make an informed and knowledgeable decision.

MR. JOHNSON:
Most of the parcels or easements we are referring to are short. We are talking about an easement that may only be from 2 to 20 acres. These are short accesses. It is an implied intent of responsibility to the people hiking down these easements. It is not an absolute protection for the property owners. We are trying to get as many of the right-of-ways and easements to access our public lands. It is difficult because of the present law. We are not talking about 20- to 30-mile easements. It may only be a 200-foot easement.

SENATOR HECK:
The bill refers to a trail as a recreation area. If the trail is 100-miles long, then it would be included in this bill.

MR. JOHNSON:
This is the reason we are looking at every option. Senate Bill 195 is an all-encompassing bill and is Statewide.

MR. PERKINS:
There is another proposed amendment to S.B. 195 (Exhibit H). It amends section 3 to redefine "Operator." It removes "a person, including" from the language. The second amendment deletes subsection 4 of section 10. Section 10, which is patterned after the skateboard and snow recreation statutes, would prescribe a new standard of care for someone offering a trail, trail access or water access. Chapter 41 of the *Nevada Revised Statutes* (NRS) provides a standard of care for these off-site facilities. We are concerned about a new standard of care for off-site access. We have had discussions with

representatives from the Nevada Trial Lawyers Association about their concerns and will continue to work with them to resolve any issues.

They have some valid concerns about people trying to avoid responsibility. At the same time, the local government does not want to be responsible for the hazards people undertake when they take access to public areas.

The final part of our amendment is on page 2, Exhibit G. This would refer to someone going out-of-bounds to a prohibited area.

CHAIR WASHINGTON:
In section 3 of S.B. 195, you suggest deleting the language "a person, including."

ALFREDO ALONSO (Olympia Group, LLP):
Our concern is from a master-developer standpoint. When these trails are built into a large new development, there are many ways of this being accomplished. Sometimes, the homeowners association takes over the maintenance or it continues to be the master developer's responsibility. We do not want to be in a position to police these types of trails or have the homeowners association police the area. We understand what Douglas County is trying to do and support their efforts.

CHAIR WASHINGTON:
Mr. Perkins, in your amendment you included an operator or private property owner to not be liable for the damage or injuries of those using the trail. Am I correct?

MR. PERKINS:
The language speaks to when a person enters an area which is not designated for use or located outside the recreation area.

JOHN W. GRIFFIN (Focus Property Group; Olympia Group, LLP):
We voice the same concerns as Mr. Alonso has stated.

SCOTT MORGAN (Community Services/Parks & Recreation Director, Douglas County):
I have been involved with the formation of S.B. 195. It came about through a number of concerns in my relationship with working with various park users. A

different complexity arose when Douglas County purchased its first riverfront property. There is a dirt lot which was used for storage materials and construction which was privately owned and was a popular area with local residents for river access. There were a number of concerns voiced by our agricultural community. These are concerns that we had not heard when developing a piece of park property in Douglas County. The agricultural community had never considered the river as a recreational use. It was a water convenience system for them and supported their livelihood. It irrigated their crops, watered their cattle, and they built many improvements in this river and our mountain canyons.

The river changes daily. It is a dangerous and perilous piece of property. As water passes through the area, it changes the conditions, boundaries and location. As private property owners, they explained that even when warning signs are posted near their irrigation diversions and systems, a storm can remove the signs and the river can change, damaging their diversions and creating a safety hazard for the users. As we purchase property along the river and attempt to create access, it has heightened the concerns of private property owners along the Carson River. The property owners support the recreational use of the river, but they do not want this enhanced access to the river because of the increased liability. We are attempting to create a balance which allows people access to these areas and provide proper insulation to the property owners for that access.

SENATOR WIENER:
I am concerned about the person who would have no knowledge of what dangers there would be on any given day, but you are asking for protection for the landholder knowing that it is a high-risk environment. Even an experienced person would not have any preparation for changing conditions.

MR. MORGAN:
There is a public demand for access to these areas. People were using the highway right-of-way and going into the river. They are looking for an area to safely access this resource that has sanitation facilities. There were no toilets, trash cans and no ongoing maintenance to the river access site. We thought the access area could be enhanced. Adequately warning people of the dangers is our responsibility.

We worked with the Legislature two sessions ago to outline our responsibilities concerning skateboard parks. We have 200 people using our skateboard parks daily. There are adequate responsibilities on the users which have worked to everyone's advantage.

To do a daily inspection of the Carson River from California to Lahontan Reservoir would be difficult. There needs to be some responsibility on the user. They are currently using the areas without adequate facilities to properly access the resource.

SENATOR WIENER:
The distinction between the two entities is the skateboard park is a fixed, managed, predictable environment with an assumption of risk. Based on your testimony, the river areas are always changing and therefore are not comparable. The level of predictability of one and the high unpredictability of the other should demonstrate the need to create a well-informed system of warning. Just because you may say, "the people will do it anyway" does not make it any less dangerous. The law may say you are not responsible because you do not assume that level of liability. There is still common sense providing a substantial amount of information, especially when the environment changes.

Our job as public officials is to look out for the people we serve. If we are providing an opportunity for them to access these areas and we are more informed about the risks, then it is our responsibility to provide the information about the risks involved.

SENATOR HECK:
This goes back to section 9 of S.B. 195. Comparing these areas to the ski park or skateboard park section of current statute, section 9 is more explicit. In the other statutes it implies, "Heed the warnings and don't do anything stupid." The burden is placed on the user in section 9 of S.B. 195. Even in the ski section, the burden is on the operators to make certain the boundaries are clearly marked. The user can only heed or become familiar with the information that the operator provides. This is where the burden must lie.

MR. MORGAN:
There is a subtle difference between a river and a ski area. The boundary of a river changes almost daily and for many reasons. The only comparison to a skateboard park is that they are both inherently dangerous. There are people

who wish to put themselves in that peril. We want to create locations to adequately warn them.

SENATOR HECK:
I am looking at the private property side of the river. There could be a warning sign that states, "Water levels change, be aware."

SENATOR WIENER:
The difference is not subtle. One is fixed and one is ever-changing. There is a vast difference in environments. We need to provide as much information as possible about the area at a location before the public would take on the burden or risk.

MR. PERKINS:
I understand the concerns being expressed. We will make an effort to remedy the concerns of the Committee and will provide you with an amendment.

DEBBIE A. SHOSTECK (Tahoe-Pyramid Bikeway):
Douglas County is raising this issue and the Tahoe-Pyramid Bikeway has encountered the issue. It underscores what is happening in the State. There are many people who want to have recreational opportunities. The State is advertising to promote tourism and for people to take advantage of the recreational opportunities in the State. It is raising conflicts with existing landowners who might be using land in the way it has been historically used. There will be this constant tension between people who want to have greater access and the concerns regarding safety. While the Tahoe-Pyramid Bikeway supports S.B. 195 in concept, it is important for users to take responsibility for themselves. We do have a few concerns.

The existing recreational-use statute in NRS 41 already protects landowners from recreational users who enter upon the premises. The terminology "premises" is not clear that it might include a trail on that land. Our reading of the statute as it exists is that a landowner is going to be protected unless they act willfully or maliciously towards a user that comes onto their property. The protection of the landowner is in existence currently and exists in all 50 states.

The concerns expressed and the analogy made with a skateboard park or ski area and a river area is different because they are controlled areas. The way the trails are defined in S.B. 195, we are talking of a vast variety of terrain and size

of acreage. It is not realistic to have signs all over the State warning of risks. There needs to be some limits, which is what the recreational-use statute tries to address. The distinction is critical and it is difficult to balance the need to put some onus on the user, and there will not be any access to recreational areas unless we "give the landowners a break."

The amendment that Douglas County suggested to delete section 10, subsection 4 is critical. As it is written, it conflicts with the recreational-use statute, NRS 41.510. The Tahoe-Pyramid Bikeway would support deleting that language from the bill as it has been introduced.

We have concerns with the definition of an operator. It is not clear whether it is ownership or owning property that might have a section of trail going through it. Does that put responsibility on a landowner to put up warning signs?

SENATOR WIENER:
You expressed a concern about excessive signs. Trailheads are good places to start with the warning signs, because it is a natural entry point. Would that address your concerns about excessive demands for signage and warnings?

MS. SHOSTECK:
I agree with you that would be logical place to put signage. With regard to the concerns you have raised earlier, if the trail is 20-miles long there may be a natural hazard around every turn. There may also be multiple means of accessing a trail. The image we have of a trailhead with signage and a map with destination spots will not be the case with regard to every possible thing on a trail under some of the definitions that have been proposed.

MARY C. WALKER (City of Carson City, Douglas County, Lyon County):
I wish to state for the record that the City of Carson City and Lyon County support S.B. 195. This will enable us to expand our trails and their access areas. Walking trails and biking trails are one of the most popular recreations our citizens require. We will work with the parties to assure the public is protected. Senate Bill 195 is a balance of responsibility. As operators and owners, we will be responsible for the construction and maintenance of these trails and access areas, but we need to delineate the responsibilities of the users. Carson City was the first entity in Nevada to build a skateboard park. It attracts many children. We are trying to bring a quality of life to our citizens.

CHAIR WASHINGTON:
Lee Berkley Rowland has submitted written testimony on S.B. 158 and S.B. 195 (Exhibit I).

ROBERT R. JENSEN (President, Nevada Trial Lawyers Association):
Senate Bill 195 in its present form is concerning. The language is broad. It is commendable to have our citizens enjoy their environment. When a statute gives potential immunity to certain individuals or entities without discussing people's right of recourse and duties of landowners, it is necessary to be concerned. The bill, as currently proposed, would limit the operator definition to governmental entity. Currently, a governmental entity has no duty to warn of a hazardous or dangerous condition on land that they own or control. If they have knowledge of a dangerous condition, then they have an obligation to deal with the problem. In S.B. 195, there is no provision for the governmental entity to post warning signs or maintain the trail.

The goal of S.B. 195 was well-meaning but the bill is broadly written. I share Senator Heck's concerns. There is no affirmative duty to warn of dangerous conditions on the part of the landowners, but there are numerous duties on the part of the user. Senate Bill 195 is a problematic bill as written. If the bill is going to be passed in some form, then it needs to be narrowly defined to accomplish the needs of Douglas County. There are many issues which need to be tailored to make it work. In its current form, the bill creates liabilities and immunities that cannot be envisioned at the present time

CHAIR WASHINGTON:
Are you working with the Douglas County representatives to address your concerns?

MR. JENSEN:
Yes. The bill will need to be significantly altered.

CHAIR WASHINGTON:
We will close the hearing on S.B. 195 and open the hearing on S.B. 219.

SENATE BILL 219: Creates the Gift Account for Veterans in the State General Fund and authorizes the use of money in the Account for the support of outreach programs and services for veterans and their families. (BDR 37-637)

TIM TETZ (Executive Director, Nevada Office of Veterans' Services):
I am in support of S.B. 219. I have prepared two documents (Exhibit J) that outline the status of the current legislation. Senate Bill 219 accomplishes three tasks. One, it creates a gift account for veterans. This gift account is "only used for the support of outreach programs and services for veterans and their families." Secondly, it corrects a portion of the NRS and deposits all veterans' license plate money into this gift account for veterans. Finally, corrects the issue that the veterans have with the license plate money lapsing over into the General Fund.

The veterans' license plates were created as one of the first vanity license plates in Nevada in 1993. Originally, the money was given to the Veterans' Home Account, the operations account which runs the daily operations of the home. As with all other operations accounts in the State, money in that account reverted to the General Fund at the end of the year. In the last several years, this became a problem when the Veterans Home started to bring in more income than was budgeted. In 1999, the Gift Account for Veterans' Homes was created and it includes personal gifts from veterans and their families and tax-exemption money on the property taxes that veterans decided to waive. The veterans' license plates in 1999 were designated to support veterans' homes. The money collected was still deposited in the Veterans' Home Account and continued to revert at the end of every year.

In 2003, we tried to correct this situation. The money was reallocated, but did not take effect until July 1, 2005. The first $100,000 of each year would be deposited into the Gift Account for Veterans' Homes and the remainder was to be deposited into the General Fund. It was the intention and the way the NRS is written, but the accountants did not take it out in that way.

In 2005, we introduced a bill to correct that problem, but it was not passed. In 2005, the National Guard was added to the list of military license plates. In fiscal 2006, the Gift Account for Veterans' Homes kept $100,000 of the license plate money. It took 13 years before any of the money stayed with the Veterans' Home. The remainder was incorrectly donated into the Veterans' Home Account, contrary to the NRS. Currently, the Executive Budget Office and the Legislative Counsel Bureau are trying to correct that error. The Veterans' Home Operation Account reverts over $2 million, which included over $200,000 in veterans' license plate money to the General Fund last year. This year, we have transferred $100,000 into the Gift Account for Veterans' Homes

and to date we have collected an additional $117,000, which has been collected in veterans' license plate fees. We predict that by the end of 2007, there will be approximately $190,000 that veterans have given through the Veterans' License Plate program that will go directly to the General Fund and not help out the veterans for which the money was intended.

The Gift Account for Veteran's Homes goes to outreach and support for veterans and their families. Some of the things that we can do are things that we presently cannot do on our limited budget. This might include pre-deployment and post-deployment briefings and support for the National Guard or deployment family support. It might include women veterans' outreach or rural outreach programs and our homeless outreach programs. We would like the account to be for the veteran or the family member who gifted money to this account or bought the license plate.

SENATOR WIENER:
By establishing the gift fund, would you be able to keep the money?

MR. JENSEN:
The people have gifted the money to us to keep at the veterans' home.

SENATOR WIENER:
When the money goes into the operation fund, does the money revert?

MR. JENSEN:
Yes. This would allow the money to go to the right intention.

FRANKIE FINLAYSON:
I will read my prepared written testimony (Exhibit K) in support of S.B. 219.

CHAIR WASHINGTON:
There being no further issues before us today, I will adjourn the meeting of the Senate Committee on Human Resources and Education at 11:29 a.m.

RESPECTFULLY SUBMITTED:

_____
Patricia Vardakis,
Committee Secretary

APPROVED BY:

_____
Senator Maurice E. Washington, Chair

DATE:_____