

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session
May 29, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 09:06 a.m. on Friday, May 29, 2009, in Room 2134 of the Legislative Building, Carson City, 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 Bernice Mathews, Cochair
Senator Steven A. Horsford, Cochair
Senator Bob Coffin
Senator Joyce Woodhouse
Senator William J. Raggio
Senator Dean A. Rhoads
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3

STAFF MEMBERS PRESENT:

Brian M. Burke, Principal Deputy Fiscal Analyst
Rick Combs, Senior Program Analyst
Gary L. Ghiggeri, Senate Fiscal Analyst
Eric King, Program Analyst
Carol M. Stonefield, Supervising Principal Research Analyst, Research Division,
Legislative Counsel Bureau
Cynthia Clampitt, Committee Secretary

OTHERS PRESENT:

Allen Biaggi, Director, State Department of Conservation and Natural Resources
James R. Lawrence, Administrator and State Lands Registrar, Division of State
Lands, State Department of Conservation and Natural Resources
Julie W. Regan, Communications and Legislative Affairs Chief, Tahoe Regional
Planning Agency
Kyle Davis, Policy Director, Nevada Conservation League
Tim Cashman, Nevada At-Large Member, Tahoe Regional Planning Agency,
Governing Board
Ronald P. Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada and the Washoe County Public Attorneys'
Association
Robert L. Holley, President, Park Ranger Association of Nevada
Richard Gilbert, Management Analyst, Department of Public Safety
James W. Penrose, Attorney, Nevada State Education Association
Andy Anderson, Commissioner, Local Government Employee-Management
Relations Board
Trevor Hayes, City of North Las Vegas

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Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada

Julie Whitacre, Nevada State Education Association

Joyce Haldeman, Associate Superintendent, Clark County School District

Dianne Cornwall, Director, Department of Business and Industry

Dan Musgrove, Nevada League of Cities

Wes Henderson, Nevada Association of Counties

Constance Brooks, Clark County

Troy Dillard, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles

COCHAIR MATHEWS:

We will open the hearing on Assembly Bill (A.B.) 18.

ASSEMBLY BILL 18: Authorizes the issuance of bonds for environmental improvement projects for Lake Tahoe. (BDR S-375)

ASSEMBLYWOMAN PEGGY PIERCE (Clark County Assembly District No. 3):

During the past interim I have been the Chairwoman of the Committee for the Review and Oversight of the Tahoe Regional Planning Agency (TRPA) and the Marlette Lake Water System.

This is the bonding bill that will pay for the environmental work on these bodies of water for the next ten years. This is a part of the long journey to protect and restore the clarity of Lake Tahoe. It is a responsibility we share with the federal government and the State of California.

Progress has been made during the last ten years. The big effort at Lake Tahoe is to protect and regain clarity. I would like to say we have turned the corner on clarity, but we are not quite there yet. Some clarity is still being lost. We hope within the next ten years to level out and perhaps gain clarity. The efforts to save Lake Tahoe are a collaborative effort between all the state agencies and the federal government. Senator Rhoads is also on the interim Committee.

ALLEN BIAGGI (Director, State Department of Conservation and Natural Resources):

I am the current Chair of the TRPA Governing Board. I have provided my written comments for the Senate Committee on Finance ([Exhibit C](#)). The Department supports A.B. 18.

Since the 1960s, Lake Tahoe's famed water clarity, once at over 100 feet, has been declining to a point today of approximately 70 feet. Studies have indicated nutrients such as phosphorus, nitrogen and sediment from urban areas are the primary cause of this decline. Other Lake Tahoe environmental concerns are the threat of invasive species such as the quagga mussels and the declining health of the forest. Forest health was a major factor in the June 2007 Angora Fire which burned 254 homes and 3,100 acres of forested lands.

When President William J. Clinton and Vice President Al Gore visited Lake Tahoe in 1999, they placed a spotlight on the declining natural resources of the area. The outcome was the Lake Tahoe Environmental Improvement Program (EIP), resulting in more than \$1 billion committed to the Lake. Nevada was the first of the stakeholders to provide its full support to the EIP.

Through approval of A.B. No. 285 of the 70th Session, \$82 million was authorized to the EIP over a ten-year period. The Division of State Lands was tasked with coordinating an interagency, interdisciplinary team to oversee Nevada's restoration efforts.

Scientists who study Lake Tahoe reported in 2008 that the decline in water clarity has slowed. There have been vast improvements in forest health and reduced potential for catastrophic wildfires.

Assembly Bill 18 continues Nevada's commitment through the issuance of not more than \$100 million in general obligation bonds over the next ten-year period. The bill is structured similar to previous legislation which required authorization for funding every two years. At those times, a list of priorities and projects to be funded are provided.

The bill requests the issuance of \$4.42 million in bonds for fiscal year (FY) 2009-2010 and FY 2010-2011. Mr. James Lawrence, Administrator, Division of State Lands, and I met with the Governor's Office and the State Treasurer's Office Staff to ensure the concept of the bill was sound from policy and fiscal perspectives.

I have provided the Committee with a list of the EIP projects undertaken in the last ten years ([Exhibit D](#)).

JAMES R. LAWRENCE (Administrator and State Lands Registrar, Division of State Lands, State Department of Conservation and Natural Resources):

I am available to answer questions.

JULIE W. REGAN (Communications and Legislative Affairs Chief, Tahoe Regional Planning Agency):

I have provided my written testimony to the Committee ([Exhibit E](#)).

Because of the extraordinary support of the EIP partners, more than \$1.1 billion has been invested in environmental restoration over the last ten years and we are beginning to make a positive difference.

The key success of the EIP is its ability to leverage funds. This bill is a critical component for continuation of the EIP over the next ten years. While we recognize the State's challenging economic conditions, supporting Lake Tahoe is an investment that will reap economic and societal benefits for decades to come.

KYLE DAVIS (Policy Director, Nevada Conservation League):

Assembly Bill 18 is an important bill for the future health of Lake Tahoe.

TIM CASHMAN (Nevada Member at-Large, Tahoe Regional Planning Agency, Governing Board):

I wish to extend my support for this important investment in the national treasure of Lake Tahoe.

SENATOR COFFIN:

What is the method for payback for the bonds authorized with this bill? Is it through property taxes?

GARY L. GHIGGERI (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

Funding for the redemption of bonds will be included in the Capital Improvement Projects (CIP) legislation that will be heard later today. It is repaid from property tax revenue at approximately 1.5 cents of property taxes built into the CIP legislation. It funds not only bond retirement for this issuance, but for past bonding as well.

SENATOR COFFIN:

Is it for more than this project?

MR. GHIGGERI:

It includes repayment for the CIP, Nevada Department of Transportation, Department of Cultural Affairs and Question 1 bonds through property tax abatement. The total property tax the State will receive for this purpose is 17 cents of valuation.

SENATOR RAGGIO:

What is the status of the commitment from the California and the federal funding for the EIP? California is also having economic struggles.

MR. BIAGGI:

California is in a dire financial situation. Its commitment is an issue still pending. The federal government appears to be moving forward in fulfillment of their commitment.

MR. LAWRENCE:

The federal government committed \$300 million to the EIP in 1998 and they have been meeting that commitment through the Southern Nevada Public Lands Management Act. In addition, I am hearing legislation is being drafted for a continued \$300-million commitment over the next eight years.

California is in tough times, but the California stakeholders in the EIP have committed more than \$500 million toward the EIP over the last ten years. That amount is nearly double the amount of their original commitment.

SENATOR RAGGIO:

We should request periodic reports to the Interim Finance Committee (IFC) on that situation because it is a shared responsibility.

MR. BIAGGI:

Would quarterly reports be acceptable?

SENATOR RAGGIO:

I would defer to the Chair. If there is some type of major drop in commitment, we need to know.

COCHAIR MATHEWS:

Quarterly reports to our staff will be acceptable.

SENATOR RAGGIO MOVED TO DO PASS A.B. 18.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

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COCHAIR MATHEWS:

We will open the hearing on A.B. 214.

[ASSEMBLY BILL 214 \(1st Reprint\)](#): Revises provisions regarding industrial injuries and occupational diseases. (BDR 53-25)

RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada and the Washoe County Public Attorneys' Association):

The Peace Officers Research Association asks you to support A.B. 214. Similar legislation passed both Houses of the Legislature during the 2007 Session but did not make it to the Floor of the Assembly in time for final passage.

Assemblywoman Bonnie Parnell, Assembly District No. 40, has sponsored the measure this Session. It was heard on April 10, 2009, in the Assembly Committee on Commerce and Labor and passed from that Committee shortly thereafter. It was passed from the Assembly Committee on Ways and Means yesterday and received nearly unanimous support as it was reported out of the Assembly.

This bill provides heart and lung coverage and baseline testing for those benefits to the park rangers and approximately 11 to 15 Department of Public Safety (DPS) category I peace officers who were mistakenly omitted from the *Nevada Revised Statutes* (NRS) 617.135. That statute defines which members are eligible for heart and lung coverage benefits.

When the DPS was reorganized in 2005, the position titles were changed and unless the position was specifically listed in NRS 617.135 those positions were deemed ineligible. These positions are full-time peace officers. This bill would provide access to the remaining category I peace officer groups who are not currently covered by the heart and lung benefits. There are approximately 31 park rangers who would be covered by the provisions of this bill.

I have provided your Committee with a position paper ([Exhibit F](#)). Mr. Robert L. Holley, President, Park Ranger Association of Nevada, has also provided a pamphlet he designed explaining the responsibilities of the park rangers ([Exhibit G](#)). There are 24 Nevada State Parks. There is one park ranger for every 80,000 visitors to the parks. In officer-safety situations, their back-up coverage is typically not nearby. They usually depend on other local law enforcement agencies or cope with incidents by themselves. If possible, they address fire suppression, first aid and other kinds of public safety services.

We request support for their efforts to join the rest of the category I peace officers in heart and lung coverage. It is a fairness and equality issue. The cost is approximately \$16,000 for the park rangers. The DPS has withdrawn its fiscal note and stated they could absorb the costs to cover their remaining officers. Ms. Karen Caterino, Administrator, Division of Risk Management, Department of Administration, testified before the Assembly Committee on Commerce and Labor in support of A.B. 214.

COCHAIR MATHEWS:

In your testimony, you stated the fiscal note was \$16,000, but in the body of the bill it states \$16,615 annually, for a total biennial cost of \$33,230. Are you indicating the fiscal note can be absorbed by the agencies?

MR. DREHER:

The DPS can absorb its portion of the fiscal note. Assembly Bill 173 was heard this Session that provided heart and lung coverage to the arson investigator. The fiscal note on that legislation was also negated by testimony from the DPS that they could absorb the costs.

[ASSEMBLY BILL 173](#): Makes various changes relating to occupational diseases.
(BDR 53-898)

Apparently, Assemblywoman Parnell, sponsor of A.B. 214, is unavailable and has asked me to read her comments for this Committee ([Exhibit H](#)).

Assembly Bill 214 has a unique distinction. It passed both Houses of the Legislature with the same language in the 2007 Session, but the Senate passed it late on the final night and it did not have time to be reported back to the Assembly.

The passage of the bill will achieve parity for all category I peace officers regarding heart and lung coverage. The only remaining peace officer designation that does not fall under the heart and lung coverage are the park rangers. *Nevada Revised Statutes* 289.260 grants the designation of category I peace officers to our park rangers.

Her testimony is to address the inequity of those who currently do not receive this coverage. It seems only right that all who fall under the same category should be eligible for the same benefits.

The bill also addresses the unintended consequences of the reorganization of the DPS in 2005. As a result of that reorganization, 11 category I peace officers lost their heart and lung benefits granted by NRS 617.135. This bill restores those benefits.

If the classifications were to change again, we would have to propose legislation to, again, insert the new classifications into statute.

ROBERT L. HOLLEY (President, Park Ranger Association of Nevada):

I am present to urge passage of A.B. 214. It will place fewer than 50 category I law enforcement officers, remaining in Nevada, into the heart and lung provisions for infectious diseases coverage with their thousands of category I counterparts throughout the State. We have similar duties, such as first response to fires and dragging hoses. We also mend injuries which brings us into contact with potential infectious diseases. We take violent individuals into custody and deal with firearms, drugs and many other functions. We are frequently asked to go into the community to provide backup for our county first responders because of our similar skills and training.

The Assembly Committee on Ways and Means amended A.B. 214 to include the funding for the coming biennium.

COCHAIR MATHEWS:

Is this a baseline test that must only be done once?

MR. HOLLEY:

It requires a yearly physical examination.

MR. DREHER:

There are two parts to A.B. 214. One part allows the park rangers to receive baseline testing. If they take the baseline testing and heart problems are detected, a rebuttable presumption is established. If they have no heart claims, then the provisions would be the same as other category I officers. Those are the conditions we agreed to with the Division of Risk Management.

COCHAIR MATHEWS:

So, the park rangers would receive a baseline test. Is everyone in category I peace officer status required to obtain an annual physical examination?

MR. HOLLEY:

That is correct.

SENATOR COFFIN:

I have supported this legislation in the past. It seems it gets tangled in the legislative process. I am aware more incidents are occurring because of the drug culture invading the rural areas of the State. Which individuals were confronted and held hostage for a time in northeastern Nevada last year?

MR. HOLLEY:

It was not a park ranger. I am not sure what agency it was.

COCHAIR MATHEWS:

It was a Department of Wildlife officer.

SENATOR COFFIN:

The point is, everyone in the rural areas work together. We had difficulty funding adequate law enforcement for the rural areas. That seems to be where the incidents are occurring. Criminals find a little bit of water and a lot of privacy to grow their plants. Park rangers are on the edge of this activity. Confrontations are going to increase.

RICHARD GILBERT (Management Analyst, Department of Public Safety):

The DPS has offered to withdraw its fiscal note. We can absorb the cost of the examinations if our additional officers are included in the legislation.

You may have heard in the past that even officers in administrative positions are called upon to serve members of the public in times of need. In November 2007, Captain P.K. O'Neill responded when a domestic dispute arose near his office. He was overwhelmed by the individuals who managed to take his weapon from him. Only through their ignorance of the pistol, was he not shot, or seriously injured.

All category I peace officers have the potential to respond to these kinds of situations. All of these officers should have the protections offered by the heart and lung statutes that authorizes them to obtain a baseline test and ongoing

physical examinations that ensure they will have the ability to respond to members of the public for these kinds of incidents.

COCHAIR MATHEWS:

We will close the hearing on A.B. 214 and open the hearing on A.B. 409.

[ASSEMBLY BILL 409 \(2nd Reprint\)](#): Makes various changes concerning the Local Government Employee-Management Relations Board. (BDR 23-048)

JAMES W. PENROSE (Attorney, Nevada State Education Association):

I am present to support A.B. 409. The sponsor of the bill, Assemblyman David P. Bobzien, Washoe County Assembly District No. 24, is unable to be present due to the Assembly Floor Session in progress.

Our firm provides representation to school employees, police officers, fire fighters and other entities that engage in collective bargaining. The Employee Management Relations Board (EMRB) is the three-member Board that regulates labor/management relations in the public sector for Nevada. The Board was established in 1969. Our firm has probably litigated more cases before the EMRB than any other in the State.

Assembly Bill 409 grew out of a need to address two problems involving the EMRB. One is the evidentiary hearings that occur before the EMRB. These hearings, from our perspective, take far longer than is necessary. There have been cases where a single witness would be on the stand for an entire day, not responding to questions from the litigating parties, but to questions from the Board. In our view, some of those questions addressed issues peripheral to the matter under litigation.

The other issue is the EMRB has failed to explain its determinations and unexplained departures from the established precedents. The Board was created as a body to develop specialized expertise in government/employee relations. They were to develop a body of law. The collective decisions of the EMRB are in the Nevada Law Library. The Board has departed from the established precedents without explanation.

These issues have lengthened the amount of time required to have cases heard by the EMRB. Hearings that should be completed in one day or less are taking between three and five days to complete. Because the Board only meets monthly, cases are extremely delayed.

The other result has been that, when a decision is received that has not been explained, the natural inclination is to seek judicial review causing substantial petitions for judicial review and appeals to the Nevada Supreme Court for review of the EMRB decisions.

This bill provides for the use of an arbitrator from the Federal Mediation and Conciliation Service (FMCS) to hear any proceeding that requires the taking of evidence. In those cases, the arbitrator hears the evidence; makes a proposed finding of fact and conclusions of law; and proposes a decision. Those documents would be sent to the EMRB for review, approval or modification. Under A.B. 409, the factual findings of the arbitrator would be binding on the EMRB, if supported by substantial evidence. The Board could modify the legal

determinations and proposed decision of the arbitrator as long as an explanation for its actions is included.

The bill provides that if both parties stipulate, they may utilize the Commissioner of the Board to conduct the evidentiary hearing. If one party believes the use of an FMCS arbitrator creates an undue financial hardship, they can request a waiver of that requirement by the Board and the decision would be rendered by the Commissioner of the EMRB.

Currently, the three members of the EMRB are appointed by the Governor. Under existing law, not more than two members of the Board may be of the same political party. Section 9 of A.B. 409 would change the appointment process to provide one member be appointed by the Governor, one member be appointed by the Majority Leader of the Senate and one member would be appointed by the Speaker of the Assembly.

The fiscal impact of this legislation will result in reduced costs for the Board and for parties who appear before the Board. One area of concern raised by the EMRB in opposition to A.B. 409 is the increased costs incurred by the Office of the Attorney General for attendance at the various evidentiary hearings. The number of days being spent by the deputy attorney general (AG) will be reduced because the efficiency of the Board will be improved. Beyond that, the bulk of the costs for the deputy AG will be in connection with representation of the Board in petitions for judicial review and for appeals before the Supreme Court.

If the Board does what is required under A.B. 409, and we have the decision of the arbitration officer, there should be fewer appeals and the costs of the deputy AG will be reduced.

The more time spent by parties in any administrative hearings, the more costs are incurred in attorney fees. Costs for attorneys from my office for a full-day hearing are between \$1,500 and \$2,000, dependent on the hourly billing rate. Reducing the number of days for a hearing will reduce costs to the parties involved.

We urge support of A.B. 409.

SENATOR HARDY:

In the years I served on the Senate Committee on Government Affairs, we tried to ensure bipartisan representation on the Board. There does not appear to be any guarantee of bipartisan participation within A.B. 409.

MR. PENROSE:

Section 9, page 4, lines 35 and 36 of A.B. 409 contains existing law under NRS 288.080 providing not more than two members of the EMRB may be members of the same political party. That provision is not affected by the bill.

SENATOR HARDY:

In that scenario, let us assume the Governor is a Democrat, the Senate Majority Leader appointed a Democrat, then the Speaker of the Assembly would be required to appoint a Republican?

MR. PENROSE:

That is correct.

MR. DREHER:

We support A.B. 409. When Assemblyman Bobzien proposed the bill we had concerns but, after a number of meetings with the stakeholders, we have reached agreement in support of A.B. 409.

COCHAIR MATHEWS:

Are members of the Board required to travel, or are the meetings held in Carson City?

MR. DREHER:

Mr. Andy Anderson, Commissioner of the EMRB, is present and could answer that question.

ANDY ANDERSON (Commissioner, Employee Management Relations Board):

For the record, "Our Board and our Agency stand in opposition to this legislation."

COCHAIR MATHEWS:

We will complete the testimony of those in favor of this bill prior to hearing from the opposition.

TREVOR HAYES (City of North Las Vegas):

The Committee often asks what problems will be solved by a piece of legislation. Currently, hearings before the EMRB are lasting from four to six days for something a FMCS arbitrator could complete in a one-half day hearing. Money is being spent by the local governments and the unions on these matters. Earlier, you heard testimony on attorney costs for these hearings. I believe the attorney costs for a hearing are more like \$3,000 to \$4,000 for each day. The cost of having an arbitrator will be far less when a hearing lasts six days. More consistent decisions will be rendered. There is currently a lack of consistency in decisions. The process will be streamlined with fairer results for the labor unions, their employees and for the local governments included in A.B. 409. It is not often you have management and unions joining to support a piece of legislation.

MR. ANDERSON:

Our opposition to A.B. 409 begins with the arbitration or hearing officer concept. The provisions are different than what is typically called for with an arbitrator. An arbitrator is generally an independent person whose decision is final and binding. The provisions of the bill would create an arbitrator or hearing officer as an extension of the EMRB. A deputy AG must be present at our hearings at a cost of \$125 per hour. That cost will remain. The deputy AG will also be required at the arbitrator hearings. The AG costs will increase.

Another problem with the hearing officer concept is that it assumes the EMRB does nothing prior to a hearing. When we receive a complaint and the various pleadings, there are issues that must be addressed prior to a hearing. The Board must still be convened to make a determination as to whether or not to convene a hearing. Once the Board has decided to convene a hearing, under this legislation, a hearing officer must be selected. Once the hearing officer hears a case, the hearing officer, or the litigants, appears before the EMRB. The Board determines whether to approve the proposed decision or deny it and send the case back down. No time is saved. The EMRB must review all the transcripts to determine whether the hearing officer was proper in his finding.

The fact the hearing officer's decision would be binding on the Board creates another problem. The hearing officer may or may not be from Nevada. He or she could be an arbitrator from California or Utah, making decisions that may not follow the established precedents of the EMRB.

There is a stipulation that if a litigant cannot afford the cost of arbitration, which could be between \$5,000 and \$10,000, they could appeal to the EMRB and opt to utilize the Commissioner as the hearing officer. I have been the Commissioner for ten months. I can see built-in conflicts with that concept. As the Commissioner, I am a facilitator. I do not receive calls from the larger unions or the associations. I receive calls from the individuals who have complaints against their employer or their union. I facilitate with reference to the laws. I eventually determine whether or not a complaint is legitimate and provide the forms for filing a complaint. These are the same people who cannot afford the attorney fees. I spend time to facilitate their request to appear before the Board. How can I, two or three months later, be impartial as a hearings officer? If I declare a conflict of interest, that leaves the individual with no other options.

COCHAIR MATHEWS:

Are all meetings held in Carson City?

MR. ANDERSON:

No, the law states the EMRB must go to the geographical area in which the incident occurred. We may travel to Elko or Ely. Generally, however, we hold hearings in Reno, Carson City and Las Vegas.

COCHAIR MATHEWS:

Are travel costs incurred? I have heard an arbitrator costs less than an attorney. Do they charge the same billable hours?

MR. ANDERSON:

An arbitrator generally charges by the day. Their fees range from \$800 to \$1,600 per day.

COCHAIR MATHEWS:

What would an attorney charge for a day of services?

MR. ANDERSON:

I do not have that answer.

COCHAIR MATHEWS:

I am trying to understand how, if an arbitrator costs \$800 per day and a deputy AG bills \$125 per day, a savings would be achieved through use of an arbitrator.

MR. ANDERSON:

A representative from the Office of the Attorney General must be present with the arbitrator because the arbitrator is an extension of the Board.

COCHAIR MATHEWS:

So costs for both the arbitrator and the deputy AG would be incurred?

MR. ANDERSON:

That is correct. Currently the hearing is held before the Board. The deputy AG acts as the legal advisor and, therefore, must be present. The deputy AG is not hearing the case; they are a legal consultant to the Board during the hearings.

MR. HAYES:

The cost of the arbitrator would be shared between the labor union and the local government. It is not a part of the EMRB budget. The deputy AG costs would be reduced because the amount of time required for a hearing would decrease from approximately six days to perhaps one-half day to one day. It will cost the local governments and unions less as well, by reducing the number of billable hours for attorneys. In my firm, fees range from \$200 to \$700 per hour. Using an hourly rate of \$400, one day of attorney fees would be \$3,000, and then multiplied by six days. Local governments would be happy to pay an arbitrator \$10,000 to receive a more consistent decision.

MR. ANDERSON:

There is a misconception that the Board is responsible for the length of a hearing. Some hearings are lengthy, but it is unfair to blame the time frame entirely on the Board. Not to belittle attorneys, but the length of time is based on examination and cross-examination by the attorneys rather than on the Board's actions.

COCHAIR MATHEWS:

What would happen if an arbitrator conducted the hearing? Examination and cross-examination would still occur.

MR. ANDERSON:

The same testimony would be taken. It would take the same amount of time before an arbitrator, or the Board. The EMRB has a right to ask questions and the members occasionally ask prolonged questions. The arbitrator will have the same concerns and questions. The statement that the hearing could be reduced to one-half day is unrealistic. The time frame may be slightly reduced, but it will not be reduced from six days to one day.

COCHAIR MATHEWS:

We will close the hearing on A.B. 409 and open the hearing on A.B. 505.

ASSEMBLY BILL 505 (3rd Reprint): Revises provisions governing pupils enrolled in high school. (BDR 34-784)

CAROL M. STONEFIELD (Supervising Principal Research Analyst, Research Division, Legislative Counsel Bureau):

I am appearing at the request of Assemblywoman Parnell, who is currently attending the Assembly Floor Session.

This bill was requested by the Assembly Committee on Education. I am the Staff person assigned to that Committee. This bill is a continuation of the interest by both the Assembly Committee on Education and the Legislative Committee on Education for high school reform.

The Legislature enacted A.B. No. 212 of the 74th Session which began the high school reform movement. During the 75th Session, the Assembly Committee on Education devoted two hearings to taking

public testimony regarding concerns about high schools. The results of those hearings are compiled in A.B. 505.

This bill contains career and workforce readiness indicators; adjustments to the Ninth Grade Academic Plan passed in 2007; a financial responsibility course; a requirement for local boards of trustees to create teen-mentoring programs; and establishes policies for the programs that would not be implemented until the 2011 school year. To the extent funding is available, they must establish policies on credit recovery for high school students who are deficient. The bill recommends development of policies for anonymous reporting of unlawful activities on school property. This bill also repeals certain archaic statutes allowing students to leave school at the age of 14 or the completion of eighth grade. It includes an adjusted-adult diploma. That is the reason A.B. 505 is before this Committee. Dr. Keith Rheault, Superintendent of Public Instruction, is present to address provisions of that policy.

KEITH W. RHEAULT, PH.D. (Superintendent of Public Instruction, Department of Education):

The Department of Education (NDE) supports A.B. 505. Section 1 is the primary area that affects the NDE. It covers the development of college and workforce readiness standards. There are commitments from the NDE and the Nevada System of Higher Education (NSHE) to move forward. It would set the standards for college entrance and workforce readiness. We would use those standards and work our way down to the high school exit standards to ensure alignment.

Dr. Jane A. Nichols, Vice Chancellor for Academic and Student Affairs, NSHE, was unable to attend this hearing, but she asked that I convey the support of the NSHE for section 1 of A.B. 505.

The bill was referred to this Committee due to section 7. That section would add a new adjusted-adult diploma to the State. There is a difference of opinion on this piece as to whether there would be a fiscal cost for that provision. It would require the State Board of Education (BOE) to adopt regulations for an adjusted-adult diploma. I am confident the Board could develop regulations specific enough to eliminate additional costs. The difference of opinion arose because this provision is so closely aligned with the Special Education Adjusted-Adult Diploma for high school students. There is a fear that litigation could result as to perceived rights for an adult student receiving the diploma because it might be associated with special education rights.

This bill contains important provisions. If section 7 would cause the bill to die, we could work on that provision during the interim rather than causing the bill to die. Section 1 of A.B. 505 is critical to allow us to move forward on the college readiness workforce standards.

SENATOR RAGGIO:

I am a proponent of preserving the integrity of a diploma. What is the purpose of section 7 authorizing an adjusted-adult diploma?

DR. RHEAULT:

A portion of the intent is not present in the third reprint of A.B. 505. The second reprint version would have required that a person eligible to receive an adjusted-adult diploma be 22 years old, meaning they would have been beyond

the special education entitlements. The only difference would have been if they could not pass one or more portions of the test. They would have to have been a previous student with an Individualized Education Program (IEP). They would have to have been a former special education student, 22 years of age or older, and have completed all the course work for the adult diploma but could not pass one of the examinations. It would be similar to the adjusted high school diploma where a student is allowed, as long as they complete their IEP requirements, to receive a valid diploma.

Because the third reprint of A.B. 505 now states the BOE will develop the regulations, those considerations must be addressed if it passes in this form.

SENATOR RAGGIO:

What is the purpose of section 10 of A.B. 505?

DR. RHEAULT:

The policy described in section 10 is already being used in most school districts. If a student cannot pass an examination for one of the proficiency areas, they are required to provide support for the proficiency test. This section reaches down to the level of credits before a student takes the proficiency examination. If ninth graders are deficient in credits they are likely to drop out of high school. This section would ensure all districts have a policy which identifies how student credit deficiencies in Grades 9 through 12 will be addressed.

SENATOR RAGGIO:

When this bill was redirected to the Senate Committee on Finance, there was an indication that the fiscal note was staggering. What is the cause for that?

DR. RHEAULT:

In the third reprint of A.B. 505, the piece that was added in section 10 stating "may be included to the extent money is available" alleviates that concern.

SENATOR RAGGIO:

You and I know that is a device to get legislation passed. We either have the funding in place or we do not. What is the cost for this measure?

DR. RHEAULT:

The one school district that testified at the last hearing stated its cost was approximately \$5.6 million.

SENATOR RAGGIO:

Was that the Clark County School District?

DR. RHEAULT:

That is correct.

SENATOR RAGGIO:

It would be irresponsible to pass this legislation. What sections of A.B. 505 are imperative for the school districts to function?

DR. RHEAULT:

From the standpoint of the NDE, section 1 is imperative. I will rely on the school districts to provide support for the rest of the proposed legislation.

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SENATOR RAGGIO:
That was my analysis.

SENATOR COFFIN:
The Student Legislature drafted the concept of the teen-mentoring program. That provision should be retained.

DR. RHEAULT:
That provision was in S.B. 77.

[SENATE BILL 77 \(1st Reprint\)](#): Provides for the establishment of programs of teen mentoring in public high schools. (BDR 34-696)

SENATOR COFFIN:
Was that provision in A.B. 505 as well?

DR. RHEAULT:
No, we discussed how the two bills could be coordinated.

SENATOR COFFIN:
Section 9 mentions the teen-mentoring program and we do not know whether the Governor has signed S.B. 77.

MS. STONEFIELD:
I believe S.B. 77 has been signed by the Governor. The financial responsibility for A.B. 505 was in a Senate bill sponsored by Senator Allison Copening, Clark County Senatorial District No. 6, which has also passed.

SENATOR COFFIN:
Assembly Bill 505 is a unifying piece of legislation. It should not necessarily be discarded.

COCHAIR MATHEWS:
Are there any further comments on the fiscal note for A.B. 505?

DR. RHEAULT:
A number of the policy provisions include the language, "to the extent money is available." It will probably appear again. I see this bill as establishing policies without enactment until funding is available. We have worked with bills such as this in the past.

SENATOR COFFIN:
Sometimes school districts can find funding from other sources.

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union):
The national American Civil Liberties Union (ACLU) and the Nevada ACLU have been involved with litigation concerning school bullying. For example, a child cannot learn because the environment becomes oppressive or discriminatory. Section 11 of A.B. 505 requires school districts to adopt a policy which allows a student enrolled in a public school to anonymously report any unlawful activity that has occurred. In our experience, having an anonymous reporting process is one of the best ways to ensure students are comfortable speaking about unlawful discrimination or acts of violence that may be affecting their school environment. Social studies indicate anonymous reporting is ideal for those of

high school age or lower because of the stigma attached to those who speak up.

It does not appear section 11 of A.B. 505 would have a significant fiscal impact. We support passage of section 11 of A.B. 505.

SENATOR COFFIN:

The Research Division has just informed me that S.B. 77 has been signed by the Governor.

JULIE WHITACRE (Nevada State Education Association):

The Nevada State Education Association (NSEA) supports A.B. 505. This bill is truly a culmination of a number of interested parties coming together to express their ideas. It is an accurate reflection of what is necessary to graduate more students in Nevada.

JOYCE HALDEMAN (Associate Superintendent, Clark County School District):

It is with reluctance that the Clark County School District registers its opposition to A.B. 505. We support the concepts of the bill; however, we are concerned about the repeated language that indicates "as money becomes available." It is a buzzword we have heard frequently during this Session because there is no money available. The ideas and policies are good proposals. Every time the phrase, "as money becomes available" appears, my attorney reminds me money is available for whatever the Legislature decides to spend it on. Be careful of that phrase, because the Legislature provides the school districts with funding and it is a matter of choice for the utilization of the funding.

Having said that, the portion of A.B. 505 that gives us concern is the section providing for an adjusted-adult diploma. My staff, in the Adult Education Division, feels strongly that this is the wrong policy. There is confusion within the third reprint which does not clarify for whom the adjusted-adult diploma is to be provided. I am under the impression it is for anyone over the age of 22. Section 7 does not specify that age. It may be students who are younger than 22. Currently, in our comprehensive high schools, a student who has an IEP may remain on campus and continue working toward his diploma until 3 days before his 22nd birthday. When he is on a comprehensive campus, all necessary assistance, as identified in his IEP, is available and paid for by the school district.

Should these kinds of diplomas be offered in an adult education setting we are concerned the school district will be required to provide a duplication of services for those students to allow them to meet the requirements of the IEP. However, if the language is limited to those over the age of 22, we would continue to have other concerns for implementation of the provisions.

In theory, a student who may be 25 and, for whatever reason, did not complete his or her diploma prior to age 22, could arrive at an adult education campus and indicate he or she wanted to receive an adjusted-adult diploma. The administrators at the campus would review the former student's transcript and determine what requirements were necessary to qualify for an adjusted-adult diploma. Assembly Bill 505 states the student must have had an IEP in place when he or she left school. The school district would provide the student a course of study to complete. We do not understand how we could expect that student to complete the remaining credits under an IEP if we do not provide the

services outlined in the IEP. We cannot meet that requirement yet, if we do not, legal action might be taken in the future.

We want to help individuals receive a meaningful diploma, but we cannot meet the requirements for an adjusted-adult diploma.

COCHAIR MATHEWS:

What is the approximate cost to your school district to meet the requirements specified in A.B. 505?

Ms. HALDEMAN:

If the adjusted-adult diploma addresses individuals under age 22, we estimate a cost of \$6.4 million. That is based on a calculation of the number of adult education students enrolled and assuming 12 percent of them would have an IEP.

COCHAIR MATHEWS:

If they are under age 22, are they counted as a regular student?

Ms. HALDEMAN:

Students under age 22 can attend their respective comprehensive high school. If A.B. 505 addresses students older than age 22, we have no idea of the cost for that segment of the student population. Our largest concern for that segment is the anticipation and expectation of the student that the school district would provide special education services which we are not equipped to provide. If we do not provide the services, legal action might be taken against the school district.

COCHAIR MATHEWS:

Is the cost higher for those students over the age of 22 because the services to meet the IEP are not currently available?

Ms. HALDEMAN:

Our concern is for students 18 to 22 years of age. The bill would require us to duplicate services in the Adult Education Division for services already available in their existing high school, without legislative action.

My first caution would be not to require us to duplicate services. There is no need to create an adjusted-adult diploma for students who can already receive a diploma through their high school.

My second caution is this: if A.B. 505 applies to students over the age of 22, we cannot anticipate the costs because it may require us to provide services not currently provided and the potential for legal actions against us.

COCHAIR MATHEWS:

We will close the hearing on A.B. 505 and open the hearing on A.B. 540.

ASSEMBLY BILL 540: Requires the Local Government Employee-Management Relations Board to charge and collect a fee from local government employers. (BDR 23-1208)

DIANNE CORNWALL (Director, Department of Business and Industry):
Assembly Bill 540 would remove the EMRB from funding through the General Fund. No State employees are served by this Board. We requested the legislation to save the General Fund allocation for State programs and adjust the fees charged where they belong, with the entities that utilize this Board. We arrived at a dollar amount of the fee by reviewing the General Fund budget assigned to this Department and dividing it by the proposed number of individuals that would be served.

At that point a fee of \$4 appeared adequate. Then we realized we would be required to pay for the services of the deputy AG for nonGeneral Fund agencies. We added those costs into the initial funding figure and arrived at an approximate fee of \$7. We placed a fee request of \$10 in A.B. 540 because there are variables effecting what the actual fee should be.

SENATOR COFFIN:
Is this a shift of cost from the State to local governments?

MS. CORNWALL:
That is correct.

SENATOR COFFIN:
This is the kind of legislation the Governor has been vetoing in recent days. Yet A.B. 540 is a bill proposed by an Executive Branch agency.

MR. GHIGGERI:
This legislation would implement the recommendation as included in the *Executive Budget*, which was recommended by the Governor to fund the operation of the EMRB. This was discussed in the Joint Committee on General Government and Accountability of the Senate Committee on Finance and Assembly Committee on Ways and Means and was reported from the Subcommittee recommending approval.

SENATOR COFFIN:
I thought the State was charging such fees in the past because the State is the honest broker in these disputes. I will listen to further testimony.

MS. CORNWALL:
I do not have the history of the EMRB. We were trying to identify a fair funding method to be equitable for all those who use the services of the Board.

MR. ANDERSON:
Assembly Bill 540 is the funding bill for the EMRB. If we are not funded, we do not exist. I can answer questions the Committee may have in reference to the history of the legislation and how the fee was structured.

MR. DREHER:
Both the Peace Officers Research Association of Nevada and the Washoe County Public Attorney's Association are requesting support of A.B. 540. In October 2008, Commissioner Anderson invited a variety of stakeholders across the State to attempt to resolve the funding problems of the EMRB. In A.B. 409, the Committee heard the concerns regarding delayed hearings. Much of that is related to funding. Currently, the EMRB has exhausted its funding for the year and there are complaints still pending.

The fee provided in A.B. 540 is \$10 a year for each employee. There are approximately 73,000 local government employees affected by the bill. Some of the funding would come from the State in support of educators. The remainder would be funded by local governments up to \$10 annually per member. When Commissioner Anderson first assumed his role, the figure was approximately \$7 annually, or 58 cents per member, per month.

We discussed other ideas, including dual allocation with both the employer and employee sharing the cost. The result is before the Committee today. We have reached this point after attending the Joint Subcommittee hearings and giving testimony in support of A.B. 540.

The EMRB needs the funding to operate for the next two years and to continue to exist.

SENATOR COFFIN:

This is more cost-shifting to the counties.

SENATOR HARDY:

You indicated discussions suggested splitting the fee between the employer and the employee. Why was that method not chosen?

MR. DREHER:

I cannot answer that question. One thought was that if the matter were taken to the collective bargaining table, local government could use this as a bargaining chip. Some local governments supported the monthly fee of 58 cents per employee, while others objected.

The initial discussions considered charging the employee the entire amount each month. Then local government representatives stated it would probably be bargained out.

SENATOR HARDY:

I suspect that is the case. It is just one more bargaining issue.

MS. CORNWALL:

It was the Governor's wish that the employees not be charged the fee. The funding for local school districts will be allocated from the Distributive School Account (DSA).

SENATOR HARDY:

The employees clearly benefit from the EMRB.

MS. CORNWALL:

The employees currently benefit from the EMRB and do not pay a fee for that right.

DAN MUSGROVE (Nevada League of Cities):

We are opposed to passage of A.B. 540 for many of the reasons already discussed today. It is another cost shift to local governments, both counties and cities; both small and large. We are also realists. Therefore, we come with an alternative as discussed by Senator Hardy that was rejected by the Governor. We believe there should be equal ownership and support of a Board such as the EMRB.

The way A.B. 540 is written equates to a head tax on every employee of a local government. There are appointed employees that have no access, nor would they use the EMRB, because they are considered at-will employees. When I was a local government lobbyist, I worked for the local government as the director of government affairs for both a city and a county. I served at the will of my city or county manager. I did not have access to the EMRB.

We are asking for consideration at the level of regulation development, working with Mr. Anderson, to determine a formula based upon the number of classified employees; the number of employers to bear the costs; and to fund the EMRB at an appropriate level. When the funding ends, hearings cannot be scheduled. The EMRB should have an equitable budget with equal ownership of the merits and funding of the Board.

We are in opposition to the shift of yet another burden onto local governments. However, we understand the State budget is closed and a method to fund the EMRB must be found.

COCHAIR MATHEWS:

Did you have an opportunity to present your testimony before the Assembly Committee on Ways and Means?

MR. MUSGROVE:

I did not. I do not know if Mr. David Fraser, representing the Nevada League of Cities, presented those points of testimony. He is currently attending a different Committee meeting.

SENATOR HARDY:

I keep hearing that we are shifting the burdens to local governments. I was a member of the Joint Subcommittee that considered this budget. The notion that the State should fund the EMRB is absurd. We are funding those Boards and Commissions for which we have responsibilities and obligations. Characterizing this as an unfunded mandate to local governments, when the EMRB serves local government employees, is absurd. I would question how the State ever got involved in the first place.

If we accept the proposal to split the costs between employees and employers, the matter will simply become a subject of collective bargaining. It is likely the local governments would ultimately pay the entire amount regardless of what action we take. What is your perspective on that?

MR. MUSGROVE:

It is the taxpayers who ultimately pay these costs. It is a matter that can be worked out. Perhaps it is something the organizations address through its dues. I am not sure we put it on the backs of the employees at the bargaining tables. Perhaps we should look at it collectively and determine who utilizes the services. At this point, local government is paying the entire bill for these services.

SENATOR HARDY:

No, the State does.

MR. MUSGROVE:

According to A.B. 540, the local governments would pay the costs.

SENATOR HARDY:

I do not object to the costs being split between the employer and the employee. I also concur with Mr. Dreher that it could further complicate bargaining.

SENATOR COFFIN:

I need background on the EMRB. Has it not been in place much longer than my tenure in the Legislature?

COCHAIR MATHEWS:

Testimony indicated the EMRB was created 40 years ago.

SENATOR COFFIN:

I previously used the term that the EMRB was the "honest broker." That is why it was established. It is upsetting to see so many years of efficient government ripped apart on a whim. This bill was introduced by the Governor as an unfunded mandate on local governments. I am unsure what action should be taken with only a few days left in this Session.

COCHAIR MATHEWS:

Sometimes, when you are puzzled, it forces you to make a decision.

WES HENDERSON (Nevada Association of Counties):

We too are opposed to A.B. 540 for reasons similar to those stated in earlier testimony. We conducted an informal survey of some of our counties. Elko County believes they have one or two cases that appear before the EMRB each year. Nye and Esmeralda Counties remember no instances of cases before the EMRB over the past seven or eight years. Not only is the cost being shifted to the cities and counties, it is not being shifted based upon the utilization of the Board's services.

SENATOR HARDY:

As a policy issue, why should the State continue to bear the burden of the costs for a local government Board?

MR. HENDERSON:

Senator Coffin noted the salient point with his "honest broker" concept. The intended function of the EMRB is to have an independent review to resolve these management issues.

SENATOR HARDY:

That is not being changed. We are changing who will be paying for the EMRB.

MR. HENDERSON:

I agree. If I were an employee and I needed to take a complaint to an independent Board, I would be more comfortable knowing one entity in the dispute was not paying for the Board's services.

SENATOR HARDY:

I still do not agree.

COCHAIR MATHEWS:

I do not consider who is paying the bill when I appear before any board. I appear because I have a complaint or need assistance.

SENATOR COFFIN:

I have never agreed with the concept of Subcommittees because critical budget items such as this are being decided by three or four members of the Body.

CONSTANCE BROOKS (Clark County):

As a local government employer, we are in opposition to A.B. 540. We have more than 13,000 employees and this would be one of many financial burdens placed upon the counties throughout this Legislative Session.

MS. HALDEMAN:

The Clark County School District is neutral as to the provisions of A.B. 540. We are grateful the DSA funding includes an offset to help fund the cost of the EMRB. We do not use the EMRB more often than a few times each year, but each time it is needed, we are grateful it is available.

I am concerned with the provision in the bill that states the per-employee fee could be up to \$10 annually. The amount included in the DSA is approximately \$271,000 in FY 2009-2010 and \$226,000 for FY 2010-2011. My rough calculations indicate these amounts of funding are approximately a \$7 per-employee. Is there a control on how much will be charged for each employee? We want to ensure a funding gap will not be created.

MS. CORNWALL:

The \$10 figure was a numerical place marker. The initial calculation indicated a \$4 fee would be needed. Then we discovered there were additional costs necessary to accommodate the services of the Office of the Attorney General. It is somewhat of a sliding scale. We suspect the cost will be between \$6 and \$7 per employee, but there are many variables that impact that calculation, such as how many employees are covered or the cost for deputy AG services.

MS. HALDEMAN:

We agree, as long as controls are in place.

MR. GHIGGERI:

The budget of the EMRB is established in the Authorizations Act. Any changes to that relate to NRS Chapter 353, which would require approval by the IFC.

SENATOR COFFIN:

I would like to have assurance that if A.B. 540 is passed by the Legislature, the Governor will sign the legislation. Is he aware of this legislation?

MS. CORNWALL:

I cannot speak for the Governor. This provision was in the Governor's recommended budget and they are aware of the provisions.

SENATOR COFFIN:

If the legislation is not passed, the EMRB is eliminated.

MS. CORNWALL:

That is correct.

SENATOR COFFIN:

If the Governor vetoes the bill, the Board is eliminated. I need to hear from the Governor's Office concerning this measure.

COCHAIR MATHEWS:

We cannot hold this legislation awaiting communication from the Governor's Office. Part of the decision is whether the legislation is good policy, that it is necessary, and that it is contained within the *Executive Budget*. We will make a decision based upon those precepts.

SENATOR HARDY:

After hearing from Staff, splitting the costs is not feasible at this time. I would like to see future discussions on that proposal.

SENATOR HARDY MOVED TO DO PASS A.B. 540.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN VOTED NO AND SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

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COCHAIR MATHEWS:

We will open the hearing on A.B. 561.

ASSEMBLY BILL 561 (1st Reprint): Eliminates the Consumer Affairs Division of the Department of Business and Industry for the 2009-2011 biennium and transfers certain duties and powers of the Division. (BDR 18-1201)

MS. CORNWALL:

This bill eliminates the Consumer Affairs Division located within the Department of Business and Industry (B&I). This bill has been amended due to concerns by Cochair Horsford that the Agency should be continued. We worked with the Legislative Counsel Bureau (LCB), Fiscal Analysis Division Staff and Robin Reedy from the B&I. We drafted approximately 14 difference scenarios on how this Division could be saved and found no solution. The Division is included in the Governor's recommended budget as nonfunded. During the last Committee hearing, the Committee agreed to provide two clerical positions to answer the phone and refer individuals to appropriate agencies to address their problems. There was a vacant position in the Director's Office of the B&I. We are placing the individual who was Administrator of the Consumer Affairs Division into the vacant position within the Director's Office to assist with closure of the Division.

We have worked with the Office of the Attorney General concerning its discomfort with parts of the language. The garage function is being transferred to the Department of Motor Vehicles (DMV). The mortgage lending pieces are being placed with the Division of Mortgage Lending in the B&I.

SENATOR COFFIN:

I oppose A.B. 561.

TROY DILLARD (Administrator, Compliance Enforcement Division, Department of Motor Vehicles):

Sections 5 through 35 of A.B. 561 facilitate the transfer of the regulation for garages and body shops to the DMV. We are in support of those sections of the bill. In addition, a budget amendment was previously approved during the

budget closing which facilitates the transfer of an existing position to the DMV to continue the regulation by the DMV instead of the Consumer Affairs Division.

SENATOR RHOADS MOVED TO DO PASS A.B. 561.

SENATOR HARDY SECONDED THE MOTION.

SENATOR COFFIN:

There was another bill that addressed the motor vehicle complaints.

MR. DILLARD:

That is correct. There is a companion bill, A.B. 482, that is identical to sections 5 through 35 of A.B. 561. It is currently in the Senate.

[ASSEMBLY BILL 482 \(2nd Reprint\)](#): Makes various changes relating to the repair of motor vehicles. (BDR 43-1124)

SENATOR COFFIN:

I voted against A.B. 482 on the Floor of the Senate. In addition, Senator Randolph Townsend felt the complaints in the automobile industry would be better addressed by the DMV.

This is another piece of legislation where the Senate Committee on Government Affairs addressed the policy. I do not sit on that Committee and I have not heard any of the debate. The Consumer Affairs Division was created in 1971 by Governor Mike O'Callaghan and I am concerned it is one more instance in which good programs that have been tested over time are dismantled. I will oppose A.B. 561.

THE MOTION CARRIED. (SENATOR COFFIN VOTED NO AND SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

COCHAIR MATHEWS:

We are in recess at 10:53 a.m. until the call of the Chair.

We are reconvened at 2:30 p.m. We will open the hearing on Senate Bill (S.B.) 330, First Reprint.

[SENATE BILL 330 \(1st Reprint\)](#): Enacts the Initiative for a World-Class Education in Nevada. (BDR 34-171)

STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

I have provided the Committee with proposed amendment 5400 to S.B. 330 ([Exhibit I](#), original is on file in the Research Library). Sections 3 and 4 eliminate two proposed positions; the director of assessment and accountability and the director of innovations, research and development. These positions are not in the salary bill and are not funded.

Page 5, section 5.7, of [Exhibit I](#), includes the provision requested by the Ready for Life Initiative, through the Nevada Public Education Foundation. The language would establish a statewide council to address support of youth. It would be composed of not less than six members. [Exhibit J](#) depicts how the

statewide council would be structured and the intended statewide representation.

The provisions would allow regional approaches for the Ready for Life Initiative, which have been supported by the Annie E. Casey Foundation and the Bill and Melinda Gates Foundation to allow a statewide rather than regional initiative, as is currently in place within Washoe and Clark Counties.

Page 9, section 11, of [Exhibit I](#), deletes the language regarding the appointment of the superintendent of public instruction by the Governor with approval by the Legislature through Legislative confirmation. That is the portion of the bill which addressed reform issues. The language was deleted out of respect for the current superintendent of public instruction for several reasons. It took on more personality than policy. Maintenance of the current structure and allowing the BOE to select the superintendent is important during this period.

Secondly, with the changes in other portions of governance, when it is time for selection of a new superintendent, the process can be revisited. Assembly Concurrent Resolution (A.C.R.) 2, currently being processed, can address the process and models that may work going forward.

ASSEMBLY CONCURRENT RESOLUTION 2: Directs the Legislative Commission to conduct an interim study concerning the governance and oversight of the system of public education. (BDR R-301)

Pages 16 through 19, section 21.3 of [Exhibit I](#), makes changes to the Innovation and Prevention of Remediation Program which was previously administered by the Commission for Educational Excellence, and would now be administered by the BOE.

SENATOR RAGGIO:

Page 17 of [Exhibit I](#), subsection 1(e), changes governance from the Commission to the Board and adds an advisory committee appointed pursuant to subsection 9. Please explain that provision.

SENATOR HORSFORD:

Page 19, subsection 9 of [Exhibit I](#), indicates the BOE may appoint an advisory committee composed of six members from throughout the State to carry out the provisions of this section. Currently, the Commission is tasked with that function, independent of the BOE. The amendment would place the function under the BOE and they may establish an advisory committee to review the applications at its discretion.

SENATOR RAGGIO:

Would the advisory committee have the authority to make grants?

SENATOR HORSFORD:

[Exhibit I](#) says "to carry out the provisions of this section ... and the committee serves at the pleasure of the State Board and without compensation." The committee could carry out the provisions for items listed on pages 16 through 19 of [Exhibit I](#).

SENATOR RAGGIO:

I understand the BOE approving the grants, but this would seem to allow an advisory committee, appointed by the BOE, to issue grants. Is that the intent?

SENATOR HORSFORD:

To the extent the BOE decided to do so, that is the intent.

The next change is on page 37, section 47, of [Exhibit I](#). This section contained the language for the pay-for-performance model. It deletes the sections which would allow the current process to be administered. Later, on page 43, section 69.3 indicates the study established through [A.C.R. 2](#) would study the establishment of a program of performance pay as it was outlined in [S.B. 330](#). It would not be implemented in law under this legislation. The item would become a part of the study and dependent upon the recommendations of the study, the best model to use going forward would be considered.

The current model approved during the 2005 Legislative Session, allowing the local development of a pay-for-performance model, would be in place.

SENATOR RAGGIO:

I do not understand why sections 47 and 47.5 are deleted. I deemed those sections important for establishing the criteria for determination of performance for pay. Now, there seem to be no guidelines.

SENATOR HORSFORD:

We need to move toward a more rigorous pay-for-performance model. It is likely pay-for-performance specifications may soon become required by the federal government. However, current law allows for performance models at the local level through established standards, although funding for implementation was eliminated due to recent budget reductions.

The sections were deleted to allow the remainder of [S.B. 330](#) and [A.C.R. 2](#) to move forward, to consider all pay-for-performance models in the study, and to have a report made to the 2011 Legislature.

SENATOR RAGGIO:

I understand funding is not available for performance pay during the 2009-2011 biennium. I thought [S.B. 330](#) had a good plan for rewarding teacher performance with excellent criteria. It is a step backward. It sounds like pressure was applied somewhere.

SENATOR HORSFORD:

No pressure was applied. The reality is we have exhausted the opportunity to move the legislation as initially envisioned. The language of section 69.3 clearly incorporates the language as proposed as a part of the evaluation the study would undertake. It would allow all stakeholders to make suggestions and report the best course of action to the Legislature.

Page 45, sections 72 and 73 of [Exhibit I](#), address the Commission and the term of office for the superintendent. Because the selection of the superintendent will still be a function of the BOE, the modifications were not necessary at this time.

Section 76 on page 46 of [Exhibit I](#) would establish the authority by the BOE to appoint members to the advisory committee. It is authorized to appoint

individuals who have served on the Commission for Educational Excellence. We did not fund the Commission for Educational Excellence. It was left as a line item in the *Executive Budget* to the extent funds become available; thus the structure must be maintained.

SENATOR RAGGIO:

I appreciate the extensive efforts put forth. The Committee that heard testimony on this measure has spent long hours in review of its provisions. What are the major changes accomplished by S.B. 330, as amended? I approach this from the standpoint of having worked long and hard over many years on the Nevada Education Reform Act which has served us well since 1997.

SENATOR HORSFORD:

A considerable number of hours were spent by the Senate Committee on Health and Education and the Education work group of all the stakeholders that met over a month-long period.

The major provisions that remain in S.B. 330 are section 8 which changes the composition of the BOE from ten districts, plus one at-large district to consist of one member from each of the Congressional Districts and the appointment of one member by the Governor, one member by the Board of Regents and two members by the Legislative Commission. The structure of the BOE would be changed significantly.

SENATOR RAGGIO:

Are they no longer an elected Board as a whole body? Would three members still be elected?

SENATOR HORSFORD:

That is correct. Currently, three members are elected from each Congressional District. That would change when a new Congressional District is established.

SENATOR RAGGIO:

Of the seven members, is one a nonvoting member?

SENATOR HORSFORD:

That is correct.

SENATOR RAGGIO:

Why is the member appointed by the Board of Regents designated as a nonvoting member?

SENATOR HORSFORD:

The purpose is to have collaboration between the Kindergarten through Grade 12 (K-12) System and the NSHE, and to ensure there is a representative on the BOE for interaction through the K-20 System. There is already an elected Board of Regents. It may be problematic to have that person also be a voting member on the BOE.

Section 9 of S.B. 330 requires the BOE to establish clear and well-defined goals for the education of pupils in the State, including the improvement of the NDE related to the System of Accountability in Nevada Program and to meet those specific objectives. Based on the efforts of yourself and others over the past

several Legislative Sessions, we have drastically improved our standards. Now that needs to be enhanced by establishment of clear and well-defined goals in specific areas where measurements can be made from Session to Session.

SENATOR RAGGIO:

No one can argue with the goals of this legislation.

SENATOR HORSFORD:

The other major provisions relate to the Ready for Life Initiative on behalf of the Nevada Public Education Foundation, appointed by the BOE. I want to disclose, for the record, "My wife is a member of the Nevada Public Education Foundation, but I do not think that affects me any more or less." She is not materially compensated. The proposal was recommended to establish the statewide council. [Exhibit J](#) delineates the proposed structure of the council. We have been working for several years to establish the Ready for Life Initiative. It has been implemented in Clark and Washoe Counties. Those County's structures are well-established. There are major initiatives helping to improve the high school graduation rate. A major statewide goal is to improve the graduation rate by 10 percent prior to the year 2013.

The bill would establish the council to include representation from Churchill County, the Washoe County Ready for Life collaborative, and the Southern Nevada Regional Committee on Planning for Youth collaborative. Any other future Ready for Life Initiatives would also be participants.

The membership of the council would include: the Nevada Public Education Foundation; the Department of Employment, Training and Rehabilitation; the NDE; the Division of Child and Family Services, Department of Human Services; the Office of the Attorney General; a Senate representative; an Assembly representative; a member from the Governor's Workforce Investment Board Youth Council; the NSHE; a tribal representative; a representative from the NSEA; a representative from the Nevadans for Quality Education; and one representative from the southern Nevada region, the Washoe County region, Churchill County and a rural county representative. We are close to the establishment of the Initiative in Elko County through the efforts of the superintendent of the Elko County School District.

Establishment of the statewide council would create a coordinated effort to address high school graduation rates across the State. The council would acquire grants from private foundations to support the work.

SENATOR RAGGIO:

How would this be funded? Are we discussing section 5.7 of S.B. 330?

SENATOR HORSFORD:

No funding is requested in the amendment to S.B. 330. The Ready for Life Initiative already receives grants and private donations that support its work. They have received local, State and national grants. No allocation through the Legislature is necessary at this time.

SENATOR RAGGIO:

Would section 5.7 of S.B. 330 mandate the composition in statute?

SENATOR HORSFORD:
That is correct.

SENATOR RAGGIO:
[Exhibit J](#) contains a diagram of the structure of the council and will become a part of the record.

Are there other major changes proposed in S.B. 330?

SENATOR HORSFORD:
No, sir.

SENATOR RAGGIO:
I want to ensure, when some of us have left the Legislature, that our efforts to improve the quality of education are still ongoing. This is a good step forward.

SENATOR HORSFORD:
Those comments are greatly appreciated. They mean a lot coming from the person who helped to establish the current standards. It is my intent to carry on the work you and others have done in this area. No one owns education issues. They are not a partisan issue. We all believe in education for every student and child in Nevada. We may disagree on exactly what the process should be, but as with S.B. 330, there are areas on which we can agree.

COCHAIR MATHEWS:
We are eroding the voice of the public in the election of which people will govern education. As Legislators, we have the opportunity to make a choice on the proposed council. The public should have an additional elected voice on the council whom they can hold accountable for the council's efforts.

I am concerned the council could ultimately have a Governor's appointment and a Legislative Commission appointment that may not represent the public at all.

I had similar concerns with appointments to the Board of Regents and to the BOE. Soon, the school boards will be appointed, if we continue on the same path. That issue, and how it will be funded, are my concerns with this legislation.

SENATOR HORSFORD:
We have had these discussions in the past. With input from the stakeholders, I have looked at various models. Many states have state boards of education for which all members are appointed. Some states have no state board of education and the systems are governed by the appointment by the Governors of the superintendent and some states have elected superintendents and appointed boards of education. Currently, all boards in Nevada are elected. This bill, in section 8, attempts to strike a balance by moving the process forward with a mixture of elected and appointed positions. The three elected members would be elected from the three Congressional Districts.

Page 8, section 8, lines 20 through 35, of S.B. 330 specifies the experience of those who may be appointed. The candidates must be a resident of Nevada; have had experience in pre-kindergarten, elementary, secondary or post-secondary education; experience in public policy or public administration; or be active in the business community or industry of this State. To the extent

practicable, those members appointed must be from a list of nominees provided by associations and organizations within the State which are concerned with public education issues, including organizations representing educational personnel.

We have attempted to understand and address those concerns. Legislators are all elected and there is a tremendous expectation from the public that, between the Governor and the Legislature, we are constitutionally responsible for education funding and providing a structure for "normal" schools. There is a greater role we must play as the Executive and Legislative Branches of government to provide a structure.

The *Constitution of the State of Nevada* clearly states the Board of Regents will be elected. The *Constitution* does not require the BOE to be elected. This is a statutory decision and it is time for that provision to be revisited. It is a governance structure that must be reviewed to move education in this State forward.

COCHAIR MATHEWS:

I am not a conspiracist, but I am concerned with the specifications of the bill. Someone should qualify as a member of the council if they have been a member of the Parent Teacher Association, or a parent with multiple children at home. I should be qualified as a parent within a community, or as a person concerned about education, to run for that office. The northern Congressional District stretches from Tuscarora toward the southern end of the State. Yet there would only be one representative on the council from that District.

I have concerns. I have seen us left out of the process with this very kind of thing. It is a scary situation. When you have lived 75 years, you have seen all kinds of ploys. The pendulum swings both ways, and they let you swing in the middle for a while, but it is soon going to swing in the other way. This is beginning to swing the wrong way.

SENATOR RHOADS:

I have the amendment for S.B.212 and the stakeholders have concurred. Can we place this bill on the agenda for May 30, 2009?

[SENATE BILL 212 \(2nd Reprint\)](#): Revises provisions governing initiative petitions. (BDR 24-649)

SENATOR HORSFORD MOVED TO AMEND AND DO PASS S.B. 330 WITH AMENDMENT NO. 5400 AS PROPOSED.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENTOR HARDY WAS ABSENT FOR THE VOTE.)

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SENATOR COFFIN:

Mr. Eric King, Fiscal Analysis Division, LCB, will briefly present the report from the Joint Subcommittee on Health and Human Services/CIPs, of the

Senate Committee on Finance and the Assembly Committee on Ways and Means.

There was no money. Our ability to bond shrunk from approximately \$400 million to approximately \$150 million, after two revisions of bonding authority were received from the Office of the State Treasurer. The predictions of the property tax revenues over the next two years are bleak.

As a Subcommittee, we had to ensure the life-safety issues and the most immediate preservation needs of the State properties were addressed. A project to construct a new Child and Family Services building in Las Vegas was determined to be a priority. It will enable us to quickly bill Medicaid for children in acute care versus those in residential care.

Earlier in the Session, we had considered renovation of the old Muril H. Stein Hospital in Las Vegas as a place to temporarily house some of these children. That approach was later deemed to be unfeasible.

COCHAIR MATHEWS:

Mr. King will summarize the five projects contained in A.B. 564, and then you can summarize the bill.

ASSEMBLY BILL 564: Authorizes and provides funding for certain projects of capital improvement. (BDR S-1336)

ERIC KING (Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

I will discuss the five projects to be funded and highlight other planned CIP projects. The first project in the bill is 09-C01, for the Department of Corrections (DOC), to create a regional medical facility at the High Desert State Prison (HDSP) in southern Nevada, for approximately \$8 million.

09-C01 – Retrofit Housing Unit No. 11 at HDSP Phase V

Project No. 09-C03, requesting approximately \$16 million, was eliminated. In lieu of that project, Project No. 09-C23L on page 3 of [Exhibit K](#), was added, for renovations at the Cheyenne Campus Laboratory of the NSHE in Las Vegas. It includes main building fire alarm, heating, ventilation and air conditioning and lighting upgrades. The cost of that project is approximately \$14.4 million with \$1 million included for Agency funds.

09-C03 – Southern Desert Correctional Center Core Expansion

09-C23L – Cheyenne Campus Laboratory Renovation, NSHE

Project No. 09-C02a on page 1 is, as Senator Coffin explained, the construction of a new 36-bed-acute care child and adolescent hospital in Las Vegas.

09-C02a – 36-Bed Child and Adolescent Hospital

Project No. 09-C15 on page 2 was the proposal to collocate a readiness center at the Fire Science Academy in Carlin. That project is now the new Elko Readiness Center for which the State Public Works Board (SPWB) will need to approach the IFC for approval of a site plan before the project is approved to move forward.

09-C015 – Elko Readiness Center

The last project I will mention is on page 6 of [Exhibit K](#). It is Project No. 09-P02a, the advance planning for the William F. Harrah College of Hotel Administration Academic Building at the University of Nevada, Las Vegas. It was proposed in May to advance the schematic designs at a cost of approximately \$3.2 million. The Subcommittee decided to preserve the commitment from Harrah's Entertainment, Inc. The project should be increased to the inclusion of construction documents at a cost of approximately \$6.4 million.

09-P02a – Hotel College Academic Building

SENATOR COFFIN:

The last item, Project No. 09-S10, on page 7, indicates we did not agree with the proposal from the Administration for the second budget in a row. It would have given the SPWB the approval to move without prior oversight from the Legislature. We rejected that \$98-million authority. Mr. King's outline, supplemented with my earlier comments, sums up [A.B. 564](#).

The DOC graciously indicated they would work with diminished resources. The beneficiaries of the subtractions from the DOC projects will be the NSHE, as meager as it is.

An individual might look at [Exhibit K](#) and ask why so much was spent for the NSHE in northern Nevada in comparison to what was spent in southern Nevada. The southern Nevada NSHE was generously allocated funding over the past two biennia. The projects in Reno and the Truckee Meadows Community College were in advanced stages and had completed their private fund-raising efforts which merited their inclusion in the 2009 CIP allocations.

MR. GHIGGERI:

Section 19, on page 10, of [A.B. 564](#) includes the authorization to issue \$15 million in general obligation bonds.

COCHAIR MATHEWS:

Has the money pledged from the Harrah's Corporation been received? Has there been a contractual commitment to the funding?

SENATOR COFFIN:

The funding has been committed from the Harrah's Corporation to the Foundation. The Harrah's Corporation testified they would not object to commitment for partial funding of \$2.5 million to \$3 million at this time, rather than the State losing the entire \$25 million commitment. The State is matching the funding at approximately \$3.2 million.

COCHAIR MATHEWS:

I need assurance the Harrah's Corporation's commitment is still in place.

SENATOR COFFIN:

This is a solid commitment.

SENATOR RAGGIO:

For the record:

I want to direct the attention of the Committee to section 13, on page 9 of A.B. 564, which refers to Project No. 09-C15 which is identified as the new Elko County Readiness Center. That requires approval from the IFC, or the Legislature if it is in Session. We are waiting to see whether or not the Military will come up with a new plan whether to complete the Elko Readiness Center or the movement of the site to Carlin.

It is my understanding that, dependent on what information the IFC or the Committee receives from the Department of the Military and the funding they commit to provide regarding a site designation, the intent is the IFC will have the authority to make the change of location based upon the recommendations and funding from the Department of the Military.

SENATOR COFFIN:

That is the intent of the Subcommittee. A similar precedent was set with the Grant Sawyer State Office Building in Las Vegas.

SENATOR COFFIN MOVED TO ADOPT THE JOINT SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES/CIPs REPORT ([EXHIBIT K](#)) FOR THE CIP PROJECTS.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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RICK COMBS (Senior Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

Action needs to be taken on the bill as well.

SENATOR COFFIN MOVED TO DO PASS A.B. 564.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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COCHAIR MATHEWS:
Seeing no further business before the Committee, this meeting is adjourned at 4 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Clampitt,
Committee Secretary

APPROVED BY:

Senator Bernice Mathews, Cochair

DATE:_____