

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND EDUCATION**

**Seventy-fifth Session
May 13, 2009**

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 2:50 p.m. on Wednesday, May 13, 2009, 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 Valerie Wiener, Chair
Senator Joyce Woodhouse, Vice Chair
Senator Steven A. Horsford
Senator Shirley A. Breeden
Senator Maurice E. Washington
Senator Dennis Nolan

COMMITTEE MEMBERS ABSENT:

Senator Barbara K. Cegavske (Excused)

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Mindy Martini, Committee Policy Analyst
Sara Partida, Committee Counsel
Maureen Duarte, Committee Secretary

OTHERS PRESENT:

Christopher Ferrari, Imagine Schools
Barry Gold, Director, Government Relations, AARP Nevada
RoseMary Womack, Nevada Senior Corps Association
Paul Shubert, Bureau of Health Care Quality and Compliance, Department of Health and Human Services
Edward K. Foster, Regional Manager, Division of Plant Industry, State Department of Agriculture

Senate Committee on Health and Education
May 13, 2009
Page 2

Luana J. Ritch, Ph.D., Chief, Bureau of Health Statistics, Planning & Emergency
Response, Department of Health and Human Services
Michael McAuliffe, Nevada NORML Foundation
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada

CHAIR WIENER:

I will entertain a motion to send letters, signed by all members of the Committee, in thanks for the breakfast at Carson Middle School. Paula Berkley, on behalf of the Food Bank of Northern Nevada, provided letters for us to send to the school district and also to the welfare officials.

SENATOR WOODHOUSE MOVED TO SIGN AND MAIL THANK YOU LETTERS TO THE CARSON CITY SCHOOL DISTRICT.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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We will now open the hearing on Senate Bill (S.B.) 164.

[SENATE BILL 164 \(2nd Reprint\)](#): Revises provisions governing charter schools and university schools for profoundly gifted pupils. (BDR 34-298)

MARSHEILAH LYONS (Committee Policy Analyst):

Senate Bill 164 passed out of the Senate with a Committee amendment authorizing the sponsor of the charter school to nominate a member to the governing body when requested to do so by the governing body of a charter school. The bill was amended in the Assembly to authorize the sponsor of the charter school to appoint a member to serve on the governing body of a charter school. The difference is whether the sponsor can nominate someone to the governing body and then the charter school would, at its discretion, be able to add that person or not, or the sponsor would have the authority to simply appoint someone as a member of the governing body as outlined in Assembly Amendment No. 586 ([Exhibit C](#)).

Senate Committee on Health and Education
May 13, 2009
Page 3

CHAIR WIENER:

The change was a "flip" and also the policy decision was to take back, by amendment, what the interim committee had recommended. This is a policy consideration by the Committee.

SENATOR WASHINGTON:

I liked the amendments to the bill. I know we have looked at what the interim committee wanted, but I think it makes it a lot better and some at the charter school have spoken to me already concerning the amendments that we need in this Committee. At the pleasure of the Chair, I would move that we do not concur. I do not want to lose the bill, but we have made the bill better.

SENATOR WASHINGTON MOVED NOT TO CONCUR WITH AMENDMENT NO. 586 TO S.B. 164.

SENATOR WOODHOUSE SECONDED THE MOTION.

SENATOR NOLAN:

I will support the motion as well. There were some substantive changes made in the bill and at least in a conference committee they should be given the opportunity to hear the reasoning behind it, and the opportunity for them to understand why we did what we did.

CHAIR WIENER:

Remember the rules of this Session are "one conference committee," so we just expedite or release. We have heard a motion, a second and a discussion.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will see if they are willing to rescind the amendment. We will now open the hearing on Assembly Bill (A.B.) 26. We will do the work session first.

[ASSEMBLY BILL 26 \(1st Reprint\)](#): Revises provisions governing charter schools.
(BDR 34-411)

Senate Committee on Health and Education
May 13, 2009
Page 4

MINDY MARTINI (Committee Policy Analyst):

Assembly Bill 26 was heard on April 24, 2009, and essentially does three things. It changes the time period for submission of a renewal application from 90 days to 120 days for charter schools. Second, the Department of Education would submit an annual report on the progress of state-board-sponsored charter schools to the State Board of Education. The third item would require performance audits for charter schools unless there is reasonable evidence of noncompliance.

The next proposed amendment 4670 mock-up was submitted when you passed A.B. 100. It ties the reasonable evidence of noncompliance to the annual report that has objective goals, and so on, in charter schools. This is the only amendment submitted for this measure ([Exhibit D](#)).

[ASSEMBLY BILL 100](#): Revises provisions governing education. (BDR 34-424)

CHAIR WIENER:

There is a concern for clarification. Mr. Ferrari, please explain your concerns and suggestions.

CHRIS FERRARI (Imagine Schools):

As we discussed, we requested material which became controversial in searching for a new way to address the audit. Working with Ms. Partida, I believe she has come up with language to address my concern. When a charter school undergoes an audit, or for some reason loses their ability for the audit waiver every three years, they develop the criteria to get back under consideration for that exemption. There is some gray area to suggest that school would again have to go for another five years before they can requalify for that exemption. I believe the language Ms. Partida adds would say that if you have corrected all deficiencies, and everything noticed within that initial audit, you could again qualify for that exemption, [Exhibit D](#).

CHAIR WIENER:

Without waiting for five years?

CHRIS FERRARI:

Correct, without waiting for five years.

Senate Committee on Health and Education
May 13, 2009
Page 5

CHAIR WIENER:

Committee, are you comfortable with that concern and offering from Mr. Ferrari?

I will entertain a motion.

SENATOR NOLAN MOVED TO AMEND AND DO PASS A.B. 26 WITH PROPOSED AMENDMENT 4670 AND WITH CONCEPTUAL AMENDMENTS PROPOSED BY MR. FERRARI.

SENATOR WOODHOUSE SECONDED THE MOTION.

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

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CHAIR WIENER:

We will open the hearing on A.B. 40.

[ASSEMBLY BILL 40 \(1st Reprint\)](#): Revises provisions governing the review and approval of plans for the construction or alteration of school buildings. (BDR 34-322)

MS. MARTINI:

This bill requires the Clark County School District (CCSD) to establish its own building department for review and approval of construction by the school district. Background information indicates that other school districts are already exempt from the authority of the State Public Works Board. No amendments have been submitted for this measure.

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 40.

SENATOR BREEDEN SECONDED THE MOTION.

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

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CHAIR WIENER:
We will open the hearing on A.B. 56.

ASSEMBLY BILL 56 (1st Reprint): Revises provisions governing pupils with disabilities. (BDR 34-635)

MS. MARTINI:

This bill relates to the use of physical and mechanical restraints on pupils with disabilities. The proposed amendment 4730 to A.B. 56 ([Exhibit E](#)) dealt with two things. First, in cases where a pupil with a disability had five reports of the use of a physical restraint, and that restraint continued after review, the amendment requires the school district and the parents to include in the pupil's individualized education program (IEP) additional methods to use with the child including functional behavioral assessment. Previously, it said the parents and school district could consider including those additional methods. Now, it is a requirement.

Secondly, this amendment clarifies mechanical restraint may be used on a pupil only if the restraint is lessened or discontinued to determine if that pupil will stop injury to himself, [Exhibit E](#). Previously, it said to stop or control inappropriate behavior.

SENATOR NOLAN MOVED TO AMEND AND DO PASS A.B. 56.

SENATOR WOODHOUSE SECONDED THE MOTION.

SENATOR WASHINGTON:

I was just reading the Legislative Counsel's Digest of A.B. 56 about the constraints that need to be reported dealing with those pupils with disabilities. Was that in public as well as private schools, or was that requirement amended out? Never mind, I see it. It is existing law, so it is okay.

Senate Committee on Health and Education
May 13, 2009
Page 7

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

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CHAIR WIENER:

We will open the hearing on A.B. 101.

ASSEMBLY BILL 101 (1st Reprint): Revises provisions governing the support of children. (BDR 38-340)

Ms. LYONS:

Assembly Bill 101 was heard on May 1, 2009. It authorizes each county in the State to participate in the federal program for enforcement of child support. An amendment was proposed by Miki Allard, Staff Specialist, Division of Welfare and Supportive Services, Department of Health and Human Services (DHHS). They met with Ann McCarthy who expressed concerns, Egan Walker, and Deputy Attorney General Don Winne. The Division proposed amending the bill by removing sections 2 and 20, and adding to section 9 language to say basically that in extraordinary circumstances, the court may grant a de novo trial. They indicate this language mirrors language found in the Rules of Practice for the Second Judicial District Court, Rule 32, and these proposals reflect an agreement between the parties and they will continue to work on the issue during the interim.

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS A.B. 101 REMOVING SECTIONS 2 AND 20 AND MAKING CORRECTIONS IN SECTION 9.

SENATOR WOODHOUSE SECONDED THE MOTION.

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

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CHAIR WIENER:

We will open the hearing on A.B. 249.

ASSEMBLY BILL 249 (1st Reprint): Revises provisions governing the abatement of certain nuisances and the protection of public health and safety. (BDR 40-1043)

Ms. LYONS:

This bill was heard on May 6, 2009. If you recall, there were a couple of additions the Committee wanted to have considered. One related to clarifying a material failure, with a section of the bill adding commercial property where appropriate, and also proposing an amendment relating to swimming pools.

SENATOR NOLAN:

The proposed amendment is pretty much contained on page 3 ([Exhibit F](#)). This amendment is the result of a bill that was heard in the Senate Committee on Government Affairs. The bill originally was being fought for on behalf of the Southern Nevada and Northern Nevada Safety Coalitions, Southern Nevada Health District and also the City of Henderson. There was an effort on the part of the Coalitions to try to reduce the number of drowning deaths of small children. Both northern Nevada urban areas and southern Nevada experienced epidemic numbers of drownings, in particular in southern Nevada, but was very disturbing that on the day we had the hearing there was another drowning, a preventable drowning of a toddler, in Las Vegas.

Unfortunately, the bill that was brought forward which I had agreed to carry, was about a 20-page bill that was, to say the least, draconian. It had homeowners who were buying a new home having to put in a fence immediately around an existing pool, whether or not they had children, or they had to put in an alarm-type system. There were criminal penalties and a number of different things that we took aside and worked on for a number of days with the real estate community and the developers, and unfortunately, those discussions went on past the deadline to move this. Senator Lee, Chair of Government Affairs, agreed to work with me to try to find a bill to amend this. What we finally came up with was a consensus language. Senator Hardy was very agreeable in allowing us to insert this in his bill. It is a much more toned-down version, but we still feel we will have some impact on preventing small children's drowning deaths.

The amendment ([Exhibit F](#)) addresses those who are purchasing homes and have children between ages six months up to six years. Children in that age range are becoming ambulatory and move around. A child above that age who

does fall into a pool usually has the physical abilities to try to pull themselves out, or is able to reach the side of the pool, or even in shallow water they can walk themselves out.

Those homeowners would either be required to put in a secondary barrier, i.e., a fence around the pool or a motion alarm which is now readily available on the retail market from \$40 to \$200. A motion sensor, by sending an audible alarm, would indicate the barrier was broken on the pool or somebody went into the pool. Another option is simply to teach children how to swim, or drown-proof them. The bill would provide the training for that would come from the parents. Most of us train our children, or they can go somewhere for swimming lessons.

The health authority can establish regulations with which they would provide for these different statutes. There is no penalty for not doing this. The ultimate penalty for not trying to protect the children is having one of them drowned and those are situations you do not want to levy a criminal or civil penalty on anyone who has undergone that kind of loss.

This bill provides that upon the sale of a house with a pool, new homeowners, through the health authority, would be notified of statutes and regulations regarding swimming-pool safety and drowning prevention for smaller children. New homeowners will also receive brochures listing contractors who would put in fences, gates, lawns, etc. That is pretty much the total of the amendment.

CHAIR WIENER:

We did check to make sure it is appropriately located in this measure, and that we are playing by all the rules. Any questions on this new language that we are providing as a portion of A.B. 249?

SENATOR WASHINGTON:

To clarify, this is permissible language, and the health departments of the respective districts basically can set the regulations for these barriers, fences and sound devices. If the homeowner does not put the appropriate apparatus or provide swimming lessons for their children, are there no penalties tied to it?

SENATOR NOLAN:

That is correct, Senator Washington. They would leave the regulations to the respective health authorities. In discussions held with those authorities, it was not their intent to put in any type of criminal or civil penalty. There is no fiscal

note with this because there is no intention of having inspectors go around into people's backyards and look to see who has a swimming pool and who does not. That is not the intention. The real intent is to put into statute requirements for parents to put a fence around their pool, buy an alarm or teach the kids how to swim. Also, the parents are to be provided information about how to accomplish those things. The regulations are to be left up to the respective health authorities.

SENATOR WASHINGTON:

What type of regulations would you anticipate they might put in place if there are no criminal or civil penalties?

SENATOR NOLAN:

The discussions we held with the health authorities show this is a big initiative of theirs. I am under the impression the health authorities themselves are not in position through regulations to establish criminal penalties or civil fines. The only time the authorities will have to act on something is if there is a complaint, if they have a near-drowning, with fire and police departments responding, at a community pool, a pool in an apartment complex or even a pool at home that was not guarded. Then, emergency medical services would notify the health district and the health district would come out and say, "This is the law, you have to do this." Well, what happens if I do not? Right now, we are not anticipating having a stick associated with this. It is really just doing our best to compel people and that was one of the problems with the original bill. There was a criminal intent in there, and most people with kids and swimming pools, if they have not protected their kids, are just not very knowledgeable about the risks, perhaps.

CHAIR WIENER:

If I may add to that, it would also show legislative support for this. It would be meatier than a resolution, as one might believe it is the important thing to do and important to know, and it gives the opportunity for an education campaign to create awareness, with legislative action as the foundation for this information campaign.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS A.B. 249.

SENATOR NOLAN SECONDED THE MOTION.

Senate Committee on Health and Education
May 13, 2009
Page 11

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

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CHAIR WIENER:
I will open the hearing on A.B. 326.

ASSEMBLY BILL 326 (1st Reprint): Revises provisions governing controlled substances. (BDR 40-558)

Ms. LYONS:
The Committee heard the bill on May 11, 2009. There are no amendments to consider for this measure.

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 326.

SENATOR BREEDEN SECONDED THE MOTION.

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

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CHAIR WIENER:
I will handle A.B. 326 on the Senate Floor. We will now open the hearing on A.B. 327.

ASSEMBLY BILL 327: Requires the Board of Regents of the University of Nevada to submit a biennial report concerning the participation of certain protected classes in the Nevada System of Higher Education. (BDR 34-1063)

Ms. MARTINI:
This bill requires the Board of Regents of the University of Nevada to report biennially to the director of the Legislative Counsel Bureau on the participation of racial and ethnic minorities, women and other protected classes in higher education. No amendments have been submitted for this measure.

Senate Committee on Health and Education
May 13, 2009
Page 12

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 327.

SENATOR BREEDEN SECONDED THE MOTION.

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

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CHAIR WIENER:

I will handle A.B. 327 on the Senate Floor. We will now open the hearing on A.B. 393.

ASSEMBLY BILL 393: Revises provisions governing charter schools. (BDR 34-527)

MS. MARTINI:

This bill authorizes a charter school, dedicated to providing services to pupils who are at risk due to economic or academic disadvantage, to establish certain enrollment priorities for those schools. No amendments have been submitted for this measure.

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 393.

SENATOR WASHINGTON SECONDED THE MOTION.

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

CHAIR WIENER:

Senator Woodhouse will handle A.B. 393 on the Senate Floor.

Thank you to the Committee for all your good work. We will now open the hearing on A.B. 20.

[ASSEMBLY BILL 20 \(1st Reprint\)](#): Revises provisions governing homes for individual residential care and other facilities and agencies licensed by the Health Division of the Department of Health and Human Services. (BDR 40-335)

BARRY GOLD (Director, Government Relations, AARP Nevada):

The AARP is a nonprofit, nonpartisan membership organization for people aged 50-plus. Assembly Bill 20 offers security and protections for people living in homes for individual residential care by adding them to the list of facilities that have specific requirements for licensing and for their employees and independent contractors. This bill also increases protections for all facilities by including additional crimes that can affect the licensure of a facility and its employees. Ensuring adequate protections for our most vulnerable older adults who cannot look out for themselves must be a priority. We must have appropriate regulations that will keep opportunistic predators away from these facilities and penalties that will prevent any further abuse from happening.

Nevada AARP supports A.B. 20 to provide an increase in security and protections to those who are living in residential facilities as outlined in my handout ([Exhibit G](#)).

I would like to point out to the Committee that in my written testimony there are two typographical errors, in the second paragraph and in the last paragraph, where it refers to "A.B. 4." This should read A.B. 20

ROSEMARY WOMACK (Nevada Senior Corps Association):

I am also a licensed administrator for long-term care, and A.B. 20 adds to *Nevada Revised Statutes* (NRS) chapter 449 the homes for individual residential care. Those are the homes that have two to five residents that they are taking care of for a fee. They have not been recruited to this point. The group homes, the long-term care facilities and nursing facilities had been included in NRS 449, but not the homes for individual residential care. That is what it does, and asks them to supply the same things that we require of the other homes, which is a surety bond, a fingerprint and a background check for their employees.

Seniors are the last to complain when they are in an abusive situation because they are afraid they may not get proper care. To protect those seniors in the smaller homes where they are paying for services and paying for care, this bill is proposed. On page 8 of the bill, it shows the added criminal background checks

under NRS 449.188, and increases to 15 types of criminal checks, going back 7 years on the background checks. I believe all seniors need to be safe and not to endure abuse or exploitation. This is always our goal. I am in support of A.B. 20.

CHAIR WIENER:

We have worked group-home issues in previous sessions, and the protection of those who are housed in these group facilities, without capturing these "under certain number of resident populations." They are subject to some questionable acts because there are those who buy up many homes, going right under the radar, not having to play by the rules. It is time we make sure we take care of all our seniors.

PAUL SHUBERT (Bureau of Health Care Quality and Compliance, Department of Health and Human Services):

We are here to support A.B. 20 which would require homes for individual residential care to comply with the NRS concerning criminal history. As Ms. Womack indicated, this would equate the requirements for residential facilities for groups, which is a larger facility or facilities with a higher population, to the homes for individual residential care.

This bill expands the list of crimes to include certain crimes involving domestic violence against the victim and other crimes involving the use of threat or use of force or violence against a victim that are punished as a felony. This bill also expands the list of crimes to include certain sexually related crimes and crimes involving domestic violence against the victim punished as a misdemeanor within the immediately preceding seven years. This makes the provisions of this action applicable to a home for individual residential care.

This bill would also require a home to file a surety bond with the Health Division, as Ms. Womack indicated, and authorizes payment from that bond if the patient or resident is over the age of 60. A fiscal note has been submitted which summarizes the anticipated costs, including the costs associated with an increase in staff time, operating supplies and equipment in order to process the reports from the Central Repository for Nevada Records of Criminal History.

Senate Committee on Health and Education
May 13, 2009
Page 15

CHAIR WIENER:

Staff has provided us with the fiscal note on this measure, \$23,570 in fiscal year (FY) 2009-2010 and \$28,382 in FY 2010-2011. This is not an exempt bill. How do we handle that with a fiscal note, Ms. Partida?

MS. PARTIDA:

This can be talked about on the Senate Floor and they will catch that.

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 20.

SENATOR BREEDEN SECONDED THE MOTION.

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

CHAIR WIENER:

We will now open the hearing on A.B. 538.

ASSEMBLY BILL 538: Transfers the program for the medical use of marijuana from the State Department of Agriculture to the Health Division of the Department of Health and Human Services. (BDR 40-1180)

EDWARD K. FOSTER (Regional Manager, Division of Plant Industry, State Department of Agriculture):

This particular bill deals with an existing law that provides the limited and regulated use of marijuana by persons who suffer from certain medical conditions and who obtain a registry identification card through a program covered by the State Department of Agriculture (DOA) is exempt from prosecution under the laws of this State. This bill would transfer the responsibility of the governance of this registry identification card program from the DOA to the Health Division of the DHHS.

Legislation was built for this particular law after two votes by the people of Nevada. Another administrator from the DOA and I were in front of the Assembly Committee on Judiciary as the legislation was being formulated. We had the plan as it was mapped out to us and later passed. It appeared that we would be growing medicinal marijuana, distributing it and additionally doing the

registry and everything associated with the bill. When Mr. O'Brien, the other administrator, was done testifying, Assemblyman Anderson said to me, "Mr. Foster, can you tell us how we can fulfill the will of the people without getting into the drug business?" At that point, I explained how the registry would work. Nevada's registry would be based on other states, primarily Oregon's medical marijuana registry, which was pretty much straightforward. If you had certain physical dehabilitations, and there were seven, I believe, with a doctor's signature, you could get a medical marijuana card from the State. A holder could possess an ounce or less of marijuana and grow seven plants; three mature, four immature.

The DOA is a regulatory agency. We were prepared to put this together as far as the growing and registering. After seven years of doing this, we approached the DHHS with the realization we were not really in the right position to handle patients' health information. It seemed like in the majority of the phone calls we received about the program patients always brought up their medical condition. The calls could be an inquiry, a follow-up on registration or whatever the case may be. The patient could be in the system or was going to be in the system. The calls made us a little bit uncomfortable. We are very comfortable with animal disease and plant disease, but we have no background and no one on staff with any background in medical information. We contacted the DHHS and the Health Division. They met with both our attorneys general and worked through approval from the director of DHHS, the administrator of the Health Division and the director of the DOA at the time, Donna Rise. All thought it would be a very good idea to have this program in the Health Division.

I would like to say one last thing. If you were to look online and research this, in every other state that has a medical marijuana program, it is either governed by the Health Division or similar agency within the state system.

CHAIR WIENER:

When Senator Rawson chaired this Committee, I was humbled that he asked me to write the preamble to the bill so we could be as legal as possible. It took a lot of drafting and several drafters. There was quite a historic level of participation and I was proud to be working with the staff.

LUANA J. RITCH, PH.D. (Chief, Bureau of Health Statistics, Planning & Emergency Response Department of Health and Human Services):

We were approached to bring this program into the Health Division, and we are currently operating a program under contract with the DOA. We looked at the requirements for the program and realized the program was a registry, very similar to other registries that we operate in the Health Division. The one similar to this in some aspects is the Do Not Resuscitate Registry located in our Emergency Medical Systems Program.

The Emergency Medical Systems Program operates the Do Not Resuscitate Registry where they do receive physician statements and personal health information for individuals who are signing up for that registry. They also receive fees from individuals signing up for that registry who are issued a unique identification for people who are in the Do Not Resuscitate Registry. In addition, the Emergency Medical Systems Program also works with the Central Repository for Nevada Records of Criminal History in processing the criminal background checks for individuals who are applying for certification or licensure as an emergency medical technician (EMT). In that one program, I had several components of similar activities to what this registry requires. Therefore, we made the decision to place this program there with people who had expertise with criminal background checks and receiving patient information and issuance of unique identification.

The program has come a long way. We took physical custody of all the records and all the material from the DOA on December 1, 2008. Since that time, we have made tremendous strides in improving the customer service, if you would, or serving patients who are providing information to us, turning around the applications in a timely way.

Prior to the Health Division's involvement, there was an inordinate number of delays which individuals who applied for the program experienced. One of those was with a criminal background check. We now, on average, are meeting the 30-day requirement for processing applications. The criminal background check takes two to three weeks to accomplish. We are now paying for that service through Criminal Records Repository, and would anticipate, as a paying customer, that we would get responsiveness from the Criminal Records Repository for those inquiries.

We are running this program as a health program, which is what it should be. It is a very straightforward administrative program: one submits certain information, meets certain criteria, receives approval to receive a registry card, and is entered into the registry. This is the level at which the Health Division is administering it.

I do know both of our budgets have closed with statements in closing documents for both the DOA and Health Division. This transfer is included because there is a budget account that comes with this particular program in that our closing documents have this as a pending item, pending passage of this bill.

CHAIR WIENER:

I have a quick question. You are already doing this under contract, so in essence, you have accomplished what you need to do in terms of establishing infrastructure for this. Are the fees you are talking about paying to the Repository recovered from people making applications? You are paying, but do they pay you to get information?

Ms. RITCH:

Yes. The individuals under the statute are required to pay an application fee not to exceed \$50 just to get the application packet. In addition, in the first year they pay an additional fee not to exceed \$150 for the processing of that application. We are paying for those criminal background checks out of the fees currently being collected. At this time, we do not look at any need whatsoever to increase a fee; in fact, if anything, our experience over this next biennium will give us a foundation to determine whether or not that fee is actually too high, based on the expenses to run the program. Because the statute says not to exceed \$150, we could go into administrative regulation and rework those fees to be the actual cost to run the program. When the DOA initiated this program, they had staff at a much higher grade level operating the program than we currently have. I am uncomfortable with saying we could lower the fees now. As we gain experience over this next biennium with the full costs of the program, we will be able to assess and make adjustments to those fees as necessary. I do not see the \$45 for the criminal background check as an additional expense we need to pass on at this time.

CHAIR WIENER:

How many people participate in the program?

Senate Committee on Health and Education
May 13, 2009
Page 19

Mr. FOSTER:
There are 800.

CHAIR WIENER:
Are there any additional questions of the witnesses? We have copies from Michael McAuliffe from Las Vegas with extensive suggestions for amendatory language for A.B. 538. Except we do not know what he is referring to, because it does not mirror the legislation. The references do not mirror the bill.

Those in Las Vegas who are approaching the table now for A.B. 538, please make your remarks brief, avoiding redundancy of this Legislative Session, as we do have many measures before the Committee.

SENATOR NOLAN:
I think there are some people from the Clark County Health District to testify on behalf of A.B. 249 but did not know we did not have teleconferencing capabilities ...

CHAIR WIENER:
If there is anyone there for A.B. 249, it is on its way to the Senate Floor once the amendment is approved. I am assuming, based on the sign-in sheet, that everyone else in the south is there to testify on A.B. 538.

MICHAEL MCAULIFFE (Nevada NORML Foundation):
I am testifying today in favor of A.B. 538 and the adoption of our proposed amendment. This amendment is distilled from 16 proposed program changes as created and compiled by licensed medical cannabis patients and is intended as an incremental step in improving the operation of this program for both patients and the State. I have already sent to the Committee the proposed amendment to A.B. 538, a brief explanation of those amendments ([Exhibit H](#)) and a copy of my prepared testimony ([Exhibit I](#)).

Everyone here with me today is in support of A.B. 538 and if we do run out of time, I trust that you will take them as on the check-in list as they are present to support this amendment.

CHAIR WIENER:
Mr. McAuliffe, we do not know what you are referring to; A.B. 538 goes up to 20 sections.

MR. MCAULIFFE:

These are proposed changes to NRS 453A, the sections and subsections are of the existing law of NRS 453A, so NRS 453A.200 would be a new section of text added for reciprocity with other states that have medical marijuana laws. There had been no prior opportunity in any policy discussion, in either the Assembly or Senate, before this bill came to you today. This is our first and only opportunity to offer an amendment.

CHAIR WIENER:

I am working with our senior research analyst to appreciate how to convert what you are sharing with us to the bill before us. I know you have been working with my Committee Manager, Jeanne Baret, and it puts a smile on my face that you are a citizen who wants to engage in the process as do the others in the room with you.

MS. LYONS:

As I understand it, Mr. McAuliffe has some specific policy changes. The bill before us is an administrative bill to move the function from the Department of Agriculture to the Health Division. Mr. McAuliffe has some policies he would like the Committee to consider related to the program itself. That is part of the confusion. Members of the Committee do not have before them right now the sections to which you are speaking, so Mr. McAuliffe, you may simply want to speak to the policies you would like to have implemented.

For example, subsection 5 of section 200, page 2 of [Exhibit H](#), which you are referring to there, is to have a reciprocal program with medical marijuana programs in other states. If someone comes into our State and they are working under the provisions of the program they came from, Nevada would recognize that. It may be helpful to the Committee if you simply speak more to the policy. We have in your notes where those sections are and that might help the Committee follow you.

MR. MCAULIFFE:

What I see here in my copy of A.B. 538 is the entirety of NRS 453A.210 in the bill that was printed. Each of these sections and subsections are dealing with those specific points in the NRS 453. Since there were so many instances of "Department" being changed to "Division," the bill has been presented as opening up the entire law and striking the part in putting "Division" in every place. Everything I am proposing already has a spot in NRS 453A and is actually

printed into A.B. 538. The policy analyst is correct. The first point of this amendment deals with reciprocity for patients of other states. Nevada is a big tourist state. There are currently 14 other states with medical marijuana programs, and another 4 to 6 states very likely being added this year. The idea of reciprocity that allows us to drive in other states with our Nevada licenses makes sense. If you can bring Demerol from Delaware and OxyContin from Ohio, you should not be stopped because you have cannabis from California. It seems reciprocity is a fair thing to do as I have stated in [Exhibit I](#), second paragraph.

CHAIR WIENER:

As you are moving forward with this, we will certainly take testimony and listen to your concerns. You had spoken, unofficially, for all the others who have signed in showing support of this, and many of them want to speak. I am curious; this is huge and each issue is important to consider. For every issue you are offering to us, it is important to have dialogue. As this bill was introduced in the other House, this is an Assembly bill, did you participate in that? Usually, when it comes to the second House we do not address this level and extent of amendatory language as it has already processed through the first House through the policy committee, and if necessary, the money committee in the other House. Is this the first time you are bringing these proposals to the Legislature on this measure?

MR. MCAULIFFE:

I came to Carson City a couple of weeks ago and testified before the Assembly Committee on Ways and Means. This is the first time I am going through this process, answering the call of our U.S. President to all citizen activists. This is an area of knowledge for a number of us here, and we have concerns with the program. When I presented these amendments to the Ways and Means Committee, I did so being in open committee hearing, and I was not familiar with the complete procedure. After the meeting, I was very kindly schooled by Assemblyman Anderson on a more proper way and a more efficient way to do this.

In part, I was told if we could get the language close to the final text, to make it as easy as possible, that would be a good thing. If we found out exactly where it should be applied, that would be helpful. So, I am trying to take everything I have learned, not only from speaking with Assemblyman Anderson, and over a half-dozen other Legislators in Carson City, but also my experience this year

with Senators Woodhouse, Breeden, Schneider and various others, to try to do this in a manner which will make it easiest for you which will help us in the program, to move this program incrementally forward. You did say it has been seven and a half years; where has the time gone?

This is the first opportunity we patients in the program have had to give some input to make the program work a little better and be a little more responsive for us, and at the same time, to operate more efficiently for the State. Please forgive me if I am not doing this as schooled ...

CHAIR WIENER:

You are doing a great job. I wish any number of our witnesses would engage at the level you have engaged. Two people you mentioned are sitting before you today, Senators Woodhouse and Breeden. Because of the stage of the proceedings, we have a deadline, Friday, to process thoroughly that which might not be a consistent message. We are doing the best we can do with what we have.

You presented in front of a money committee, and they tend to be more concerned about the fiscal impacts. That is why you may have been schooled by one of the senior Assembly members in how to address a policy committee, as we are. The bill before us is to transfer the responsibilities from the DOA to the Health Division, and that is how the bill was drafted.

Certainly, amendments occur in legislation. What you are proposing is very serious and probably very necessary for us to be considering. Whatever happens in work session on this, if that is not addressed, it would be because it needs very thorough vetting and some serious policy consideration. One of my concerns is because of where we are in the Legislative Session, it is very difficult to even get quorums in committees because we are scattered in three places at the same time. That is the nature of defending our own bills in other committees and having different meetings to get us to wrap up the Session.

Right now, in fact, we are officially in a committee, but I have three of seven members we need to be able to give careful consideration. I was on this bill when it first came forward and I am somewhat familiar, not personally, but certainly legislatively with it. I have two members sitting here who were not there at the time, so it takes a little bit of education as well.

Because each amendment is a serious consideration, we will give it that level of attention. You are attempting to process and amend a piece of legislation. You do not have to wait for the next Session to begin in order to process and amend legislation. We are accessible by telephone, by e-mail and pony express. Most of our measures or bill drafts come to us from other people. We get ideas from people who contact us to introduce legislation. Whatever happens, sharing realities of where we are, this is something you could ask the Legislature to bring on a bill that stands on its own merit for the policy considerations.

Again, I am sorry to interrupt, but I needed to share that. Certainly, proceed, and we are willing to hear the members of your coalition or organization, those who signed in, but we do have to move into another committee fairly soon. This room is assigned to Senator Woodhouse's committee immediately following, so we need to be cognizant and respectful of that as well.

MR. MCAULIFFE:

I do appreciate that. I can say many others have made a determined effort, reaching out at every single Nevada Speaks function held this year and attending almost every town hall meeting. In general, we have not found many legislators to be sympathetic. As Senator Horsford said to me a couple of weeks ago, "Politically, it is really difficult to be in favor of marijuana." It is not that we want people to be in favor of it, but we are just trying to make these changes and have had neither the opportunity nor anyone who was politically willing to carry water for us in times past. We have been waiting for this bill to come up most of the Legislative Session. I spoke with Dr. Ritch in November, and we had talked about changes happening, and she said, "Well, you have to wait for the Legislature to convene," and so we are moving forward as best we can.

I certainly understand what you are saying and why some of these points could be seen as a significant departure. Others, such as reciprocity, just seem to be basic fairness. I would not think it would take a tremendous amount of time to come to consensus.

CHAIR WIENER:

Again, I am being rude and I apologize. I have just talked to our senior research analyst, Ms. Lyons, and certainly you can finish your presentation. We have finished the work session for today, and what we will do in our work session tomorrow and Friday will be to work on coming up with some way to present this as amendatory options. We will certainly present it to the Committee for

consideration as we move forward on the measure. That has been the pledge of this Committee that people are heard and the actions are brought before the Committee for consideration. It will take a little work on their behalf. The Committee is going to have to do additional work because they have it converted in a way that will make it compatible and easier for us to consider when it is in our document tomorrow, or Friday, as we move forward toward our deadline to get bills out of this Committee.

Certainly, present the rest of it. If the other participants who have signed in are members of your organization, or the people who have marked "self," have a consensus as to what you are saying, we have that on the record. These names and their positions will be entered into the record. We will present from your remarks to the Committee in a compatible format in our work session document as we go forward tomorrow and Friday.

MR. MCAULIFFE:

The people who are here, who are marking "self," are indeed that; citizens of Nevada, patients in the Nevada medical marijuana program, and they are using this forum to voice their agreement with me for changes in this program. I understand it is difficult and some of these points may have a point of contention, as it were, but in general, we see these as being the most logical for moving this program forward to make it better operationally for the State and responsive to the citizens.

I would like to give an example. Dr. Ritch was talking about the fingerprint check, charging \$45 for it, and that sort of thing. The reason this is done is because there is one exclusion to participation in this State program, and that is for people with a prior conviction for sales of a controlled substance. As the program is written now, you can kill, rape, pillage and burn, but if you sold a joint 30 years ago, you cannot be on the program. It is not that we in any way seek to reward those people, but in requiring that exclusion, you necessitate the criminal background check and you have added a cost which has slowed down the entire program. We have people here who have had to wait six or eight months to get their paperwork back from the State and on a one-year license that is a bit excessive.

Something like this is not about rewarding those who have past bad behavior. It is about bringing the cost down for the citizenry and making the program more efficient for the State. It seems it would be more administrative and less policy

change because we would be streamlining the entire operation and there would not be nearly as much need for the bureaucracy. As Dr. Ritch said, that could help bring down the cost all along.

My final point is, in the text of Question 9, which passed by a 65-percent vote in the year 2000, and the implementation of which you worked on, it clearly states the proposed amendment would authorize the State to authorize appropriate methods of supply to authorized patients. The use of the word, "supply," directly indicates the peoples' intent was to provide patients with a source of legitimate medicine rather than force them to produce their own.

Right now, the official view from the Health Division is that Nevada is a grow-your-own State. If you have a patient who gets on this program and is bedridden with cancer, muscular dystrophy or any other of a number of serious conditions, the State in effect says, "Yes, we will give you license and you can use this medicine, but you have to be a sustenance farmer, you have to grow your own medicine, you cannot grow too much, you cannot have too much at one time" So, in effect, you have to grow it all year long and be a slave to the garden. There is just something about this that violates the equal protection clause of the XIV Amendment of the *U.S. Constitution*. I know you are pressed for time so I will not go into my full remarks which I had sent up to your committee manager and I trust you can look those over. This is a constitutional issue. Any other patient in this country with any other medication can go someplace and buy it. For this one area to be a suspect class is constitutionally wrong. We need to address this.

I, as well as everyone with me, am more than willing to work with any member of the Legislature, the policy board or whomever we need to move this forward. We do not want to get put off time after time. There are sick patients who are suffering, who are dying, and we as enlightened and compassionate people should be able to make some accommodation to take care of these people in a manner both constitutional and compassionate.

CHAIR WIENER:

I appreciate your commitment to this issue and your willingness again to come forward to participate in a citizen Legislature as a citizen contributing to the process. For the record, for those of you participating in government today, I have your names, phone numbers, positions and who you represent. I have five additional people. If you have anything different than what we have heard

to add to the record, I invite you to come forward. We have for the record your support for the measure, along with Mr. McAuliffe's support for the record.

MR. MCAULIFFE:

I would like to say everyone here supports the amendment I have proposed and they do not need to take up any more of your valuable time, but we do hope someone from your office, or from the policy branch, will get back to some of us and let us continue to have some input here so we can all move forward for a better State and a better State government.

CHAIR WIENER:

I have changed the sign-in sheet based on what you have just shared, that everyone who has signed "in support" is in support of your amendment to A.B. 538.

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union of Nevada):

I want to thank you for hearing Mr. McAuliffe. Certainly citizen lobbyists are not expected to jump through all the hoops you expect of me. I think the key underlying these amendments as something to fully support is the fact this program for seven years has been under the DOA. This is a medicinal program. I think the amendments you are seeing really are bubbling up after seven years of waiting to get this program administered like a medicine. Looking at the amendments, we are certainly compelled to support them. They are the right thing to do, not only for medical patients, but also because we know that is the way to give full voice to what the voters did vote initially. They expected there would be a humane and reasonable method of supplying this medicine. I think these amendments are actually modest steps that get there. They are logical, they are great.

I understand the pragmatic realities. If the Committee is really not able to get there this Session, I certainly hope we can see the shift to the DHHS as a doorway to get in and fix the details for these patients. They should not have to be singled out and treated differently than any other patient whose doctor has given them a prescription. We support the amendment and the underlying bill as well as it will give us an entry toward treating this in a logical way.

In terms of the four amendments, they are all important, all worthy of your consideration, but the one that really stands out for me is permitting patients in the program to act as caregivers for each other. That seems to me to have

almost no consequences in terms of fiscal impact. Everyone in the program has already been run through the criminal database. What Mr. McAuliffe said has really struck me; we are asking the ill, even terminally ill, patient to become a gardener. They may not have the energy to do that. Just the one last amendment of the four stands out as the one fundamentally fair. It allows people to create a network of support without creating a fiscal impact or additional administrative need. It seems that would be fairly easy, so if there is one amendment you are willing to accept, I urge you to pick that one.

CHAIR WIENER:

We will be educators for those who are not here as we consider this in a work session. We will not re-hear the bill in work session. Dr. Ritch, this is new information. As one who will likely be administering the program, not just as a contract but as a full-blown administrator, do you have any thoughts?

DR. RITCH:

Many of the issues are very broad policy issues that involve realms outside of public health and outside the health "box" of medical marijuana. Part of my concern is there are people who may wish to weigh in on some of this that do not have an opportunity to do so, with the timelines that we have.

Regarding the caregiver, again, the hesitancy is in wanting to rush to a policy change without having the ability to really look at how the caregiver is defined and how a caregiver is operating. In the DHHS, we had the previous bill dealing with caregivers and homes for individual care. In the Health Division, we define caregivers as someone who is actually providing personal care to a patient, to someone who cannot, or does not have the physical means or mental means of caring for themselves. In other caregiver settings, we are very stringent in our requirement for a caregiver, to protect the patient. When looking at this, in this community and in this program, often the lay definition for caregiver is the person who grows the product, prepares the product and provides it to someone. That is a different definition of caregiving than what we use in DHHS. If you have one person who is a caregiver for multiple patients, then is this leading to a situation that is not really our issue in DHHS but it is a policy consideration? This perhaps allows the caregiver to produce, without a limit on the number of patients, the person who grows the product to have a large-scale operation with multiple patients, with very large volumes of the product being grown, prepared and delivered.

Senate Committee on Health and Education
May 13, 2009
Page 28

Again, it is a large policy issue. If we were talking about a caregiver in terms that we normally apply in our other health programs, we would be talking about a very narrow relationship. In this circumstance, it is not a narrow relationship; it is actually toward large-scale production, perhaps. That is a very complex policy area.

CHAIR WIENER:

You may remember, we did have legislation before the Senate Committee on Judiciary and lengthy debate as well.

I see no one else to come before us. I appreciate all who came forward with this very important issue. Is there anyone else to come before the Committee on A.B. 538? Is there anyone in support or in opposition? Is anyone neutral?

There being no other business before the Committee, we will go to public comment. Is there anyone with public comment? The meeting is adjourned at 4:20 p.m.

RESPECTFULLY SUBMITTED:

Maureen Duarte,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____