

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

**Seventy-Sixth Session
May 28, 2011**

The Committee on Ways and Means was called to order by Chairwoman Debbie Smith at 8:10 a.m. on Saturday, May 28, 2011, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Debbie Smith, Chairwoman
Assemblyman Marcus Conklin, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman David P. Bobzien
Assemblywoman Maggie Carlton
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman John Hambrick
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblyman Randy Kirner
Assemblywoman April Mastroluca
Assemblyman John Ocegura

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1

STAFF MEMBERS PRESENT:

Rick Combs, Assembly Fiscal Analyst
Brenda Erdoes, Legislative Counsel
Mike Chapman, Principal Deputy Fiscal Analyst
Sherie Silva, Committee Secretary
Cynthia Wyett, Committee Assistant

Chairwoman Smith adjourned the May 27, 2011, meeting of the Committee on Ways and Means, which had been in recess. She opened the hearing on Assembly Bill 469 (1st Reprint).

Assembly Bill 469 (1st Reprint): Revises provisions governing public property and purchasing. (BDR 27-678)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1, explained A.B. 469 (R1) consisted of several pieces. A key piece would allow the state to lease unused state buildings and state-owned land for economic development. She distributed a copy of a summary of state-owned property (Exhibit C) that was available to lease to new businesses seeking to locate or expand in the state.

Assemblywoman Kirkpatrick and Purchasing Division representatives had met with the local governments to discuss consideration of "best value" when awarding bids for goods and services. She explained section 7 of the bill revised the items a local government must consider when requesting bids, including a requirement to consider which bid would provide the best value rather than just the lowest cost. She noted the state had considered best value when awarding bids for many years.

Michael Skaggs, Executive Director, Commission on Economic Development, testified that an amendment to the bill enabled removal of the fiscal note that was attached by the Commission on Economic Development.

Jim Lawrence, Administrator and State Land Registrar, Division of State Lands, State Department of Conservation and Natural Resources, said the Division had originally submitted a large fiscal note because the bill required the state to lease every piece of vacant land in state ownership. He said the state was limited in natural land assets. Some of the most valuable lands were in Carson City and the capitol complex, and there was a long-term strategic plan to build state buildings and consolidate state agencies to reduce rental payments for nonstate facilities. Mr. Lawrence said the fiscal note was for the replacement of those lands if they were to be leased, but

the amendment to the bill required identification of performing and nonperforming vacant land and lands being held for strategic purposes. The Division would work with the Commission on Economic Development to market the vacant lands for revenue. Mr. Lawrence stated the Division supported the bill as amended, and there was no longer a fiscal note.

Assemblywoman Kirkpatrick said she needed to amend the bill to revise dates in section 5; she would have the amendment later in the morning. The change would extend the date for smaller school districts to implement revised procedures for requests for proposals for services not provided by the districts.

Chairwoman Smith asked for questions from the Committee; there were none. She asked for public testimony in support of or in opposition to the bill; there was none. She closed the hearing on Assembly Bill 469 (R1).

Chairwoman Smith announced the Committee would move into work session. She opened the hearing on Assembly Bill 74 (1st Reprint).

Assembly Bill 74 (1st Reprint): Revises various provisions relating to the regulation of the insurance industry. (BDR 57-472)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, recalled that A.B. 74 (R1) was heard in Committee on May 24, 2011. The bill was requested by the Committee on Commerce and Labor on behalf of the Division of Insurance and revised a number of policies and regulations of the insurance industry. He explained the bill had been referred to the Committee on Ways and Means because the language in the fiscal note had suggested the Division would be required to hire new employees and fund them from a grant that was not reflected in the fiscal note.

Mr. Combs said representatives of the Division had testified that the amendments that were made in the Committee on Commerce and Labor removed the need for the positions referenced in the fiscal note. Based on that testimony, he said Fiscal staff had no concerns with the bill.

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS AS
AMENDED ASSEMBLY BILL 74 (1ST REPRINT).

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 222 (1st Reprint).

Assembly Bill 222 (1st Reprint): Creates the Teachers and Leaders Council of Nevada. (BDR 34-873)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, recalled that A.B. 222 (R1) was heard in the Committee on April 27, 2011, and it created the Teachers and Leaders Council of Nevada. The Council would be required to make recommendations to the State Board of Education for the establishment of a performance evaluation system for teachers and administrators.

Mr. Combs said the fiscal note on the bill as provided by the Department of Education was \$24,000 in fiscal year (FY) 2012 and \$8,000 in FY 2013 for the costs of council meetings and travel. He noted the Council consisted of 15 members, and Keith Rheault, Ph.D., Superintendent of Public Instruction, Department of Education, had testified that the Council would need to meet approximately six times in the first year of the biennium and twice in the second year.

Mr. Combs did not believe there was any testimony against the bill, but a number of persons had testified in favor. He noted an appropriation of \$24,000 in the first year and \$8,000 in the second year would need to be added to the bill as written.

Assemblyman Hickey recalled there were some parent leaders and groups concerned about the inclusiveness of some of the nominations. He asked Chairwoman Smith to explain the circumstances.

Chairwoman Smith said section 5 of the bill described the members who would serve on the Council and how their appointments would take place. The bill was amended in the Committee on Education to provide that the two members appointed by the Superintendent of Public Instruction "must not otherwise be eligible for appointment pursuant to paragraphs (a) to (g) inclusive." She said the two seats were intended to be open for members, such as an interested parent or a member of the public, who could not otherwise be appointed through an organization.

Assemblyman Hickey asked whether an individual who was not a member of the Nevada Parent Teacher Association (PTA) could apply for the seat provided in section 5, subsection 1, paragraph (g). Chairwoman Smith said anyone could join the PTA and apply for the appointment. There were two avenues for parents to participate.

Mr. Combs recalled there had been public testimony regarding section 5, subsection 1, paragraph (d), which provided for the appointment of two administrators and a superintendent of schools from a list of nominees submitted to the Governor by the Nevada Association of School Administrators. He said the suggestion was made that the superintendent might more appropriately be nominated by the Association of School Superintendents.

Chairwoman Smith responded that Mr. Combs was correct, and if the bill was moved out of Committee, section 5, subsection 1, paragraph (d) would need to be amended to reflect the two different organizations submitting nominees to the Governor.

Assemblyman Bobzien said he did not interpret section 5, subsection 1, paragraph (g) to require that the appointee had to be a member of the PTA. It was logical that a member of PTA might have a better chance of being appointed, but it was important to note that requiring submission of prospective members through various organizations was a convenient way to complete the appointment of quality nominees quickly.

Chairwoman Smith added there was a lot of precedence in the *Nevada Revised Statutes* for nominating members of committees and commissions; all of the organizations were currently in statute. She remarked the bill was an important piece of the education reform package to implement the new teacher evaluation system.

Assemblyman Kirner agreed it was an important part of moving from the current evaluation system of pass-fail to the four-tier evaluation system. He asked whether the Council would sunset.

Chairwoman Smith said the Council would not sunset because there needed to be a mechanism in place to revisit any new system and make necessary revisions. The intention was to keep the same membership, but meetings would be on an as-needed basis.

Chairwoman Smith noted that A.B. 222 (R1) also included the 50 percent requirement for student achievement. She said it had been her intention to pursue raising some foundation-type money to support the Teachers and Leaders Council. She was aware the Department of Education had other means of receiving contributions, and she asked whether a specific gifts and grants account would need to be created.

Mr. Combs said he was not sure what other areas were available for the Department to accept gifts and grants. He suggested the Department could make provisions for accepting gifts for the Council without adding a new account, and if needed, one could be added at a later date.

Chairwoman Smith said she had talked with two foundations that indicated an interest in helping the Council to fulfill its work.

Assemblyman Kirner asked whether the school districts could contribute to the process. Chairwoman Smith replied they could, and judging from her past experience, they would most likely do so in the form of consulting and staff support.

Assemblyman Kirner speculated that the recent Supreme Court decision revising the budget might provide the school districts with more ability to participate financially in the process.

Chairwoman Smith suggested that the amendment include the gifts and grants language to accommodate the school districts if they wanted to contribute and raise private money at the same time. She noted the appropriation attached to the bill was \$32,000, which would provide minimal funding. She added that Clark County Superintendent Dwight Jones had extensive experience in Colorado in obtaining additional resources.

ASSEMBLYMAN BOBZIEN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 222 (R1), INCLUDING THE \$32,000
APPROPRIATION, THE ADDITION OF THE ASSOCIATION OF
SCHOOL SUPERINTENDENTS TO THE SELECTION PROCESS,
AND A PROVISION FOR THE DEPARTMENT OF EDUCATION TO
ACCEPT GIFTS AND GRANTS FOR SUPPORT OF THE COUNCIL.

ASSEMBLYMAN AIZLEY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 245 (1st Reprint).

[Assembly Bill 245 \(1st Reprint\)](#): Revises provisions governing eligibility for certain tax exemptions. (BDR 32-348)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, recalled that A.B. 245 (R1) was first heard in Committee on May 11, 2011. The bill was requested by Assemblyman Lynn Stewart, and

it authorized a veteran to transfer to his or her spouse the exemption from the Governmental Services Tax (GST) to which the veteran otherwise would have been entitled.

Mr. Combs explained the fiscal note had indicated that no new exemptions would be created by passage of the bill, but he believed there could be instances in which the exemption was not taken by the veteran, but the spouse may have a vehicle that did not have the veteran on the title. After talking to the Department of Motor Vehicles to determine the actual cost, he believed the lost GST revenue would be minimal. Mr. Combs suggested the Committee make its decision based on whether the policy was valid.

Mr. Combs recalled Assemblyman Kirner had requested clarification of a situation in which the vehicle was owned by a trust. The Department of Motor Vehicles had indicated that trusts would be covered.

ASSEMBLYMAN HAMBRICK MOVED TO DO PASS AS
AMENDED ASSEMBLY BILL 245 (1ST REPRINT).

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 402 (1st Reprint).

[Assembly Bill 402 \(1st Reprint\)](#): Requires a state agency to enter into or participate in a contract to allow it to accept credit cards, debit cards or electronic transfers of money to the agency unless it is impracticable for the agency to do so. (BDR 31-968)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, explained A.B. 402 (R1) was requested by Assemblyman Ocegüera, and it was heard in Committee on May 27, 2011. The bill required state agencies to enter into a contract to accept credit cards, debit cards, or electronic transfers of money unless it was impracticable for the agency to do so.

Mr. Combs said a large number of fiscal notes had been submitted on the bill. He recalled that the Office of the State Treasurer had testified the Office was unclear about the resulting financial effect: it would depend on how many agencies and how many transactions resulted from the use of the credit cards. Mr. Combs said during the course of the hearing, there was a request for information regarding the number and dollar amount of returned

checks. The Treasurer's Office had provided a list of returned checks processed from February through April of this year, and there were 637 returned items totaling approximately \$409,000. He said most of the returned checks were for the Department of Motor Vehicles, but the largest dollar amount was from the Department of Taxation.

Mr. Combs recalled there was discussion that if an agency thought it was impracticable to either enter into a contract on its own or to participate in the Department of Administration's contract for state agencies, the agency would be able to explain to the Interim Finance Committee why it was impracticable to participate. He said one of the reasons an agency could claim it was impracticable would be a lack of funds in its budget to fund the cost. Mr. Combs said he could not eliminate the fiscal notes, but putting the language on the record would allow the agencies to opt out of the requirement for financial reasons.

Assemblyman Hambrick asked whether it would be fair to extrapolate the \$409,000 in returned items for three months out to twelve months. Mr. Combs replied that would be a valid number to estimate an annual amount. He noted many of the taxes were collected by the Department of Taxation on a quarterly or monthly basis, and one could assume the amount would apply over the course of a year. The amount for the Department of Motor Vehicles would probably be consistent from month to month.

For the record, Chairwoman Smith clarified that the intent of the language "unless it is impracticable for the agency to do so" would enable, not require, an agency to participate.

Assemblyman Grady asked whether a Letter of Intent could be issued to track participation and dollar amounts. He noted there would be bank charges incurred in addition to the amount of the returned checks. He speculated there was a much larger loss of revenue overall.

Chairwoman Smith concurred, adding that the State Controller also had to pay collection charges for the checks she was unable to collect.

Assemblywoman Carlton assumed that by requiring the agency to testify to the Interim Finance Committee to explain why it could not participate in the contract to accept credit cards, the Committee would be able to track which agencies were participating and whether the credit card option was working. She wanted to begin tracking the amount of money credit card companies were making off of the state to determine where the money was going.

ASSEMBLYWOMAN MASTROLUCA MOVED TO DO PASS
AS AMENDED ASSEMBLY BILL 402 (1ST REPRINT).

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

With regard to Assemblyman Grady's comment concerning bank charges, Chairwoman Smith asked whether a Letter of Intent would be required to ensure that all information would be reported to the Interim Finance Committee.

Mr. Combs replied the language in section 1, subsection 3, stated that a state agency that had not entered into a contract or was not participating in the contract that the Department of Administration would be required to put into place would have to report the reasons for nonparticipation to the Legislative Commission and the Interim Finance Committee on or before July 1 of every even-numbered year. He said if the Committee wanted more reporting, it should be done through an amendment to the bill rather than a Letter of Intent.

Continuing, Mr. Combs added that a Letter of Intent could be issued to specify what information the Committee wanted included in the report. Section 1, subsection 3 of the bill required the report to include the reasons the agency had not entered into the contract, including any supporting financial information and the efforts the agency had taken to allow it to enter into or participate in such a contract in the future.

Assemblywoman Mastroluca asked whether the Legislative Counsel Bureau (LCB) Audit Division could be asked to conduct an audit to track the program. Chairwoman Smith replied that would be possible, but she thought it would be more reasonable to make that request in the next biennium after the program had been in place. She asked whether Assemblyman Ocegüera was satisfied with the language in the bill.

Assemblyman Ocegüera replied he was, but he agreed with the suggestion to have the LCB Audit Division review the exemptions and associated information.

THE MOTION TO DO PASS AS AMENDED ASSEMBLY BILL 402
(1ST REPRINT) PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 404 (1st Reprint).

Assembly Bill 404 (1st Reprint): Revises provisions regarding properties leased for use by the State. (BDR 27-381)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, noted that A.B. 404 (R1) was sponsored by Assemblyman Ocegüera and was heard in Committee on May 27, 2011. The bill required state agencies to provide the Chief of the Buildings and Grounds Division of the Department of Administration with an inventory of real property leased to the state and used by state agencies. The bill also required the Chief of the Buildings and Grounds Division to post on its Internet website a list of all real property leased or owned by the state. Finally, the bill extended the requirements to go through the Buildings and Grounds Division for administration of leases to certain agencies currently exempt from that process, including the State Gaming Control Board, the Department of Public Safety, and the Department of Motor Vehicles. Mr. Combs said that although the Gaming Control Board was exempt statutorily, it was currently using the services of the Buildings and Grounds Division, and therefore there was no financial effect on either agency.

Mr. Combs said the Department of Motor Vehicles (DMV) had testified that if the bill passed, it would be required to pay the lease assessment that all state agencies paid to the Buildings and Grounds Division to offset the costs for the service. The total cost to DMV would be \$6,551 in fiscal year (FY) 2012 and \$6,878 in FY 2013; Fiscal staff agreed with the amounts.

Mr. Combs said the Department of Public Safety had submitted information that its lease assessment for the upcoming biennium would be significantly more: \$20,327 in FY 2012 and \$20,566 in FY 2013. He said Fiscal staff's major concern was that the Division of Parole and Probation was funded entirely with General Funds, and that agency would be a large contributor to the lease assessment costs. However, Mr. Combs said, Parole and Probation had indicated that because the assessments would be paid from its operating category, it would be possible to cover them from savings in operating. The Division did not believe a fiscal note was needed.

Mr. Combs recalled that the Buildings and Grounds Division had indicated that it would need a new position to address the addition of the leases to the lease log, and the \$32,000 to \$34,000 in annual additional assessment revenue would be used to partially offset the costs of the position. He pointed out there was no need to include the position in the bill because the Buildings and Grounds Division was a non-General Fund agency that could request a new position from the Interim Finance Committee if funding was

available. Costs for the position in excess of the assessment revenue would be taken from the Buildings and Grounds Division's reserve account.

From a fiscal standpoint, Mr. Combs stated there would be a fiscal impact, but it would be to the Buildings and Grounds Division's budget, and it would be funded partially with the assessments generated by the bill from the Department of Public Safety, the Department of Motor Vehicles, and the licensing boards covered under A.B. 404 (1st Reprint). He noted the licensing boards would generate approximately \$6,000 per year in assessment revenue, which could be funded from their existing license fees.

ASSEMBLYMAN KIRNER MOVED TO DO PASS AS AMENDED
ASSEMBLY BILL 404 (1ST REPRINT).

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 546 (1st Reprint).

Assembly Bill 546 (1st Reprint): Makes various changes to provisions governing early childhood care and education. (BDR 38-739)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that A.B. 546 (1st Reprint) was heard by the Committee on Education, and the bill provided for the establishment of the Early Childhood Advisory Council by the Department of Health and Human Services. The bill required the Council, in consultation with the Department of Education, to establish goals for the training of persons employed in early childhood care. Mr. Combs said the training requirement generated a \$10,000 fiscal note from the Department of Education to develop the training module to be used for implementation of the standards adopted by the state.

Mr. Combs recalled a proposed amendment was presented at the Committee on Education hearing that would add a new subsection 3 to section 7 of the bill to allow the Department of Education to accept gifts, grants, and donations from any source for assistance in developing the required training module. He said there was no provision in the bill stating that if funding was not raised, the Department of Education would not have to develop the standards, and therefore the proposed amendment would not remove the fiscal note.

Mr. Combs noted that section 7, subsection 2 read, "To the extent that money is available to pay for the training, the Department of Education shall arrange to have the training provided" However, there was no similar language included in the bill for the actual development of the training module, and therefore he believed the Department would be required to develop the module and would need the funding for that purpose.

Chairwoman Smith recalled there had been testimony in the Committee on Education that there was a contribution forthcoming to assist in funding the module.

ASSEMBLYWOMAN MASTROLUCA MOVED TO AMEND AND
DO PASS ASSEMBLY BILL 546 (1ST REPRINT).

ASSEMBLYMAN HICKEY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Smith opened the hearing on Assembly Bill 331.

Assembly Bill 331: Makes various changes concerning the use of consumer reports. (BDR 52-831)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, noted A.B. 331 was sponsored by Assemblyman Conklin and was heard in Committee on May 19, 2011. The bill provided that if an employer used a credit report for hiring, there had to be a nexus between the credit report and the position for which the applicant was applying.

Assemblyman Conklin said an amendment to the bill was currently being prepared, but he would prefer to move the bill in Ways and Means and submit the amendment on the Assembly Floor or in the Senate. He noted the amendment was for the purpose of clarifying some language and complied with the intent of the bill.

Assemblyman Kirner affirmed the bill was intended to provide an option to use a credit report in filling certain jobs. He asked how it would be determined which jobs warranted use of a credit report and who would provide regulation.

Assemblyman Conklin said there were certain jobs that warranted a credit report: positions that handled large sums of cash or had access to certain personal information or other persons' property. He recalled that

Assemblyman Ocegüera had remarked that rescue, police, and public safety personnel who went into private homes would justify use of a credit report as a hiring tool. Regulation would be a matter of ensuring that the employer understood that it was his obligation to justify use of the credit report for hiring purposes and not to simply exclude applicants.

Assemblyman Conklin added the bill addressed a serious consumer issue as individuals' credit declined because of the economy. If there was not the necessary nexus between the job and credit requirements, many good candidates, whose credit would otherwise improve with a job, could be eliminated. He said another instance would be a franchise, where even though the nexus might not exist, there was a superseding precedent, either by franchise agreement, a business agreement, or a licensing requirement, that everyone hired must meet a certain criteria.

Assemblyman Conklin said attempts were being made to craft language in the proposed amendment to clarify the areas that would justify the use of a credit report. The total was to provide flexibility for the employer, but to also ensure there was a nexus.

Assemblyman Kirner asked how the policy would apply to a temporary employment agency that compiled a list of potential employees for a large variety of jobs. He also questioned monitoring and grievance procedures.

Assemblyman Conklin replied those problems currently existed without legal coverage. He speculated that temporary agencies would not check credit because credit agencies charged for reports. The temporary agencies collected releases from applicants up front, but they would most likely not check credit unless requested to do so by a client who had a reason to have the nexus.

Assemblyman Conklin noted there had not been any opposition to the bill. The Chief Executive Officer of Manpower was at the Committee on Commerce and Labor hearing, and he indicated to Assemblyman Conklin that he agreed with the bill.

Assemblyman Hickey said he had voted against the bill in the Committee on Commerce and Labor because of the ambiguities, his reservations about the nexus, and the leeway employers possibly should be granted. He would vote against the bill again but reserved the right to change his vote on the Assembly Floor after the bill was amended.

Assemblyman Hardy stated he had voted for the bill in the Committee on Commerce and Labor, and he would vote for it again but also reserve the right to change his vote on the Assembly Floor.

Chairwoman Smith suggested the Committee move the bill and allow Assemblyman Conklin the opportunity to continue working on the amendment. It was important for constituents during these economic times; good people were losing their jobs and homes every day, and the bill may assist them in their employment efforts.

Assemblyman Kirner said he was comfortable with the conceptual discussion. He would vote in support of the bill, but he would reserve the right to change his vote on the Assembly Floor if he was not comfortable with the amended language.

ASSEMBLYMAN OCEGUERA MOVED TO DO PASS
ASSEMBLY BILL 331.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (Assemblyman Hickey voted no.)

Chairwoman Smith announced at 9:15 a.m. that the Committee would recess until the call of the Chair.

Chairwoman Smith reconvened the meeting at 10:25 a.m. She opened the hearing on Assembly Bill 571.

[Assembly Bill 571](#): Revises provisions governing prohibitions on smoking tobacco. (BDR 15-1294)

Chairwoman Smith announced that an amendment to the bill was being proposed, and she invited the proponents of the amendment to the testimony table.

Sean Higgins, Gordon Silver Attorneys and Counselors at Law, representing the Nevada Tavern Owners Association, United Coin Machine Company, Affinity Gaming, LLC., and others, explained the amendment before the Committee ([Exhibit D](#)) represented an attempt to clarify and further limit the types of establishments that would be defined as an age-restricted, stand-alone bar, tavern, or saloon and/or a stand-alone bar, tavern, or saloon. He said the first draft of the bill contained areas of openness or ambiguity concerning the definition of some items, and the amendment proposed to

clarify the intent of the law, which was simply to allow the option to have food service in a stand-alone bar, tavern, or saloon.

Mr. Higgins reviewed the proposed amended language (proposed language is in *italics*):

Section 1, subsection 9, paragraph (a):

9. For the purposes of this section, the following terms have the following definitions:

(a) "Age-restricted stand-alone bar, tavern or saloon" means an establishment:

- (1) Devoted primarily to the sale of alcoholic beverages to be consumed on the premises;
- (2) *Which holds a non-restricted license as defined in NRS 463.0177 or a restricted license as defined in NRS 463.0189;*
- (3) In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment; and
- (4) In which patrons under 21 years of age are prohibited at all times from entering the premises.
- (5) *That must be housed in either:*
 - (I) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or*
 - (II) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.*

In addition, Mr. Higgins explained, a section was added which read, *Patrons under the age of 21 are prohibited at all times from any area within a stand-alone bar, tavern or saloon where smoking is permitted.* An enforcement section was also added providing that any age-restricted stand-alone bar, tavern, or saloon that allowed a patron less than 21 years of age to loiter inside the area where smoking was permitted would be liable for a civil penalty of \$1,000 for the first offense and \$2,000 for the second or any subsequent offense.

Mr. Higgins offered to answer questions from the Committee.

Assemblyman Hickey affirmed that the purpose of the bill was to allow a bar or tavern area that currently allowed smoking to serve food in that area only. Mr. Higgins replied Assemblyman Hickey was correct.

Assemblyman Goicoechea said he did not consider the bill to be a smoking bill, but rather a proposal to allow food to be taken into a bar that allowed smoking to provide the patrons the opportunity to eat while drinking. He said the enforcement component was essential for him to support the bill. He asked who would be responsible for the enforcement.

Mr. Higgins replied Assemblyman Goicoechea was correct. Pursuant to the Nevada Clean Indoor Air Act, smoking was currently allowed in a stand-alone bar, tavern, or saloon, but food could not be served to the patrons. The bill would allow the owner of the establishment to make the decision whether to add food service to the area.

With regard to the enforcement component, Mr. Higgins explained that currently police officers conducted stings at taverns for underage sale of alcohol and cigarettes. He said the establishment would be subject to a fine if it had served alcohol or sold cigarettes to anyone under age, and the enforcement of the provisions of A.B. 571 would be similar. He emphasized that the purpose of the bill was not to determine who was or was not smoking: it was to keep children out of smoking areas.

Assemblyman Goicoechea remarked that the enforcement arm in the rural counties would be the Investigation Division of the Department of Public Safety. He asked whether there was any mandated enforcement of the current smoking law by local officials.

Mr. Higgins was not aware of any specific language mandating local officials to enforce the smoking law. He noted no one could require the Health Division to enforce the law if it did not choose to enforce it. He believed enforcement would not be difficult.

Assemblyman Atkinson noted existing law prohibited persons less than 21 years of age to be in a smoking or gaming facility, and that law should currently be enforced. He shared Assemblyman Goicoechea's concerns regarding who would be responsible for enforcement.

Mr. Higgins replied children were not allowed to loiter at the gaming machines at a bar, but there was no existing law prohibiting minors from being in a smoking section of a tavern. He said A.B. 571 would actually

tighten the current law by requiring persons to be over 21 years of age to be in a smoking section.

Assemblyman Atkinson affirmed that police would conduct stings for smoking.

Assemblyman Goicoechea replied that the bill was not related to nonsmoking regulations. Currently a tavern that served food could not allow smoking, a tavern that did not serve food could allow smoking, and the violator would be the smoker himself—not the location. Assemblyman Goicoechea said the regulations would remain for locations that allowed patrons under the age of 21. However, if an establishment allowed children into the area where smoking was allowed and there was food service, the owner would now be in violation and subject to penalty.

Assemblyman Hickey noted that many opponents of the bill were concerned with the problem of second-hand smoke. He asked what provisions, if any, were afforded employees that might have health concerns.

Assemblyman Goicoechea replied that the bill in its initial form did not consider employees; there were no provisions for workers. He said there were an ample number of restaurants that did not allow smoking, and the option to work in a smoking facility was the employee's choice.

Chairwoman Smith asked Legislative Counsel to clarify the enforcement provisions currently in law and those contained in the amendment to A.B. 571.

Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau, said she did not see how the enforcement provisions would work. The offense would be a civil penalty, and law enforcement did not enforce civil penalties. To provide enforcement by law enforcement agencies, allowing children in the smoking section of a bar, tavern, or saloon would have to be made a criminal offense.

Chairwoman Smith asked for clarification between restricted and nonrestricted licenses.

Ms. Erdoes replied adding the definitions of a restricted and nonrestricted license would have the effect of providing a distinction between nonrestricted gaming licensees, including casinos; restricted gaming licensees, which included bars, taverns, and saloons with slot machines; and bars, taverns, and saloons that did not have slot machines or gaming. The

change in whether food could be served in a restricted-license facility would not apply to the nongaming bars, taverns, and saloons.

Assemblyman Goicoechea clarified that a nonrestricted licensee did not have to comply with existing law, and large casinos were currently exempt.

Ms. Erdoes replied the Clean Air Act applied to restricted and nonrestricted gaming licensees in the same manner as all other bars regarding the current limitations on food in the bars. The proposed amendment to A.B. 571 would allow food to be served in bars, taverns, and saloons that had slot machines. The restriction would remain in place that only persons over 21 would be allowed in those establishments.

Assemblywoman Carlton wanted to be sure that the bill did not apply to nongaming establishments—it would not apply to Applebee's, Chili's, Olive Garden—neighborhood family restaurants that did not have gaming.

Ms. Erdoes affirmed that the changes being proposed would not change the current law for nongaming bars, taverns, and saloons.

Assemblywoman Carlton remarked correspondence from her constituents indicated there was concern about those establishments, but it appeared the new provisions would not impact them.

Chairwoman Smith asked Mr. Higgins to address Ms. Erdoes' remarks concerning licensing and penalty provisions.

Mr. Higgins replied that Ms. Erdoes was correct: the bill was intended to apply to establishments with a gaming license that either chose to allow smoking and not serve food or to serve food and not allow smoking. With regard to enforcement, Mr. Higgins agreed that clarification was needed. He noted there was an anti-loitering law on casino floors, which might provide some guidance for language in the amendment.

Chairwoman Smith asked for further questions from the Committee; there were none. She asked Mr. Higgins to work with Ms. Erdoes to amend the language, particularly with regard to penalties.

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Chairwoman Smith asked for public comment; there was none. She adjourned the meeting at 10:45 a.m.

RESPECTFULLY SUBMITTED:

Sherie Silva

Committee Secretary

APPROVED BY:



Assemblywoman Debbie Smith, Chairwoman

DATE: September 20, 2011

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 28, 2011

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 469 (R1)	C	Assemblywoman Marilyn Kirkpatrick	Summary of State-Owned Property
A.B. 571	D	Sean Higgins, Gordon Silver Attorneys and Counselors at Law	Proposed Amendment to A.B. 571