

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

**Seventy-Sixth Session
May 30, 2011**

The Committee on Ways and Means was called to order by Chairwoman Debbie Smith at 1:38 p.m. on Monday, May 30, 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 Ocegüera

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1

STAFF MEMBERS PRESENT:

Rick Combs, Assembly Fiscal Analyst
Mike Chapman, Principal Deputy Fiscal Analyst
Connie Davis, Committee Secretary
Cynthia Wyett, Committee Assistant

Chairwoman Smith welcomed members of the audience, and those viewing the meeting via videoconferencing and through the Internet, to the meeting. The Chairwoman advised that the Committee would consider several bills followed by a work session on bills previously considered.

Chairwoman Smith opened the hearing on A.B. 542 (R1).

Assembly Bill 542 (1st Reprint): Provides for the licensing and operation of craft distilleries in Nevada. (BDR 52-649)

George Racz, founder of the Las Vegas Distillery, presented A.B. 542 (R1), which related to alcoholic beverages that provided for the licensing and operation of craft distilleries in Nevada.

Mr. Racz testified that the bill was proposed for licensing and operating a distillery because, unlike brewery pubs and wineries, distillers were not licensed to operate in Nevada. Assembly Bill 542 (R1), previously heard and amended in the Committee on Commerce and Labor, would allow the Las Vegas Distillery to manufacture 10,000 cases of spirits a year.

Mr. Racz advised that the Las Vegas Distillery had a wholesaler-importer license and had already manufactured Nevada Vodka, which in two weeks would be bottled, and Nevada State Bourbon, which was in the barrels. He said, however, the bill, which was the "heart of a new small agricultural type of industry and the basis of craft distilling in Nevada," was needed so that his business could operate in the same way as licensed brewery pubs and wineries in the state.

Assemblyman Goicoechea asked why there was no fiscal note attached to the bill.

Chairwoman Smith responded that the Department of Taxation filed an unsolicited fiscal note that a representative of the Department would discuss.

Brody Leiser, Deputy Executive Director, Department of Taxation, identified himself for the record. Mr. Leiser advised that the Department of Taxation submitted an unsolicited fiscal note ([Exhibit C](#)) because the bill introduced a new license type for distilleries. He explained that the new license type would need to be added to the Department's computer operating system to process applications, issue licenses and renewals, and to provide the ability to record, reconcile, and distribute payments. Mr. Leiser advised that the Department estimated the costs for the addition of a new license type into the computer operating system at \$68,205. Additionally, he pointed out the costs provided in the fiscal note were initially submitted for fiscal year 2011 and should be moved to fiscal year 2012.

In response to a request from Chairwoman Smith, Mr. Leiser provided the following breakdown of the costs:

- \$16,925 – Category 01- personnel and overtime costs
- \$51,280 – Category 26 - information services and programming costs

Mr. Leiser advised that costs under category 26 for information services included hiring contract staff to assist in the implementation of the changes in the computer system.

Assemblyman Goicoechea noted that the bill included a \$75 licensing fee and asked how many craft distilleries were anticipated to be licensed.

Mr. Leiser advised that the Department of Taxation could not determine the potential number of distilleries that might apply for a license or the associated revenue that would result from passage of the bill.

Chris Nielsen, Interim Executive Director, Department of Taxation, advised that section 1, subsection 2, paragraph (e) of the bill would allow a craft distillery to sell limited quantities of spirits at retail for consumption off-premises, which would be an exception to the existing three-tier system. Mr. Nielsen advised that existing *Nevada Revised Statutes* (NRS) required wholesalers to remit excise taxes. He said representatives of the Department had determined that the distiller would also be required to collect sales tax and remit the associated excise taxes to the Department of Taxation for spirits sold at retail as would any other retailer.

Mr. Racz indicated he understood the requirement to collect sales tax and pay the excise tax. Additionally, he advised that currently there were between five and seven more distilleries that wanted to open in Las Vegas and Reno.

Assemblyman Hambrick asked whether the distillery would be importing grapes and products for blending purposes.

Mr. Racz advised that the Las Vegas Distillery purchased grains to make vodka, gin, whiskey, and bourbon. Mr. Racz explained that the Las Vegas Distillery purchased all of their wheat and corn used in their products from Winnemucca farms in northern Nevada. Additionally, he advised that grapes used to make fresh-fruit distillates were purchased from California.

Hearing no response to her request for additional testimony in support of, in opposition to, or from a neutral position, Chairwoman Smith closed the hearing on A.B. 542 (R1) and opened the hearing on A.B. 506.

Assembly Bill 506: Provides for transferable tax credits to attract filmmakers to Nevada. (BDR 32-682)

Assemblywoman Marilyn Kirkpatrick, representing Clark County Assembly District No. 1, presented A.B. 506 that provided for transferable tax credits to attract filmmakers to Nevada.

Assemblywoman Kirkpatrick, who also chaired the Assembly Committee on Taxation, advised that the request for transferable tax credits for film producers had been presented to the 2009 Legislature, and although the bill, at that time, was controversial and she was opposed to it, she had worked with those involved to come up with a way to make the tax credits work for Nevada. Assemblywoman Kirkpatrick advised that the bill would provide film producers a 15 percent tax credit based on the dollars they spent on film production in Nevada, which she said was consistent with the manner in which other states offered incentives.

Assemblywoman Kirkpatrick advised that A.B. 506 was heard in the Assembly Committee on Taxation with more than 50 individuals testifying in support of the bill. Although the bill was well received, adjustments were required in the form of an amendment to ensure that film producers received the tax credit only after they spent their dollars in Nevada and produced receipts for what they spent. Assemblywoman Kirkpatrick advised that copies of the proposed amendment had been distributed to Committee members.

Assemblywoman Kirkpatrick advised that Charles Geocaris, Director of the Nevada Film Office, was attending the meeting in Las Vegas, and she would turn the microphone over to him for a presentation.

There were no questions for Assemblywoman Kirkpatrick and Chairwoman Smith called on Mr. Geocarís in Las Vegas to begin his testimony.

Charles Geocarís, Director, Nevada Film Office, expressed his support for the bill, which he defined as "very important for the industry and for the future of Nevada." Mr. Geocarís said that Nevada had experienced competition from at least forty other states that offered tax incentives to the film industry. He explained that currently Nevada was not considered a location for any major motion picture because of the tax policy, a situation that passage of A.B. 506 would correct.

Passage of the bill, he said, would bring film projects to the state, and the expenditure of millions of dollars would provide an employment opportunity for many Nevadans. Mr. Geocarís advised that without tax incentives, there was no opportunity for discussions with producers of major motion pictures to film in Nevada.

Assemblywoman Kirkpatrick reiterated the importance she placed on the production companies spending all of their dollars in Nevada and providing receipts for the expenditures before they applied for a tax credit.

Assemblyman Kirner advised that he had reviewed the fiscal notes that had been submitted, which totaled a little less than \$1 million, and asked whether the plan for implementing the tax credit was similar to how other states were operating. Additionally, he asked whether Nevada would continue to be at a disadvantage because of the required receipts and the smaller incentive than those other states were providing.

Assemblywoman Kirkpatrick advised that the total cost set forth in the Department of Taxation's fiscal note was reduced because of the auditing process, which was consistent with the way other states operated. She advised, however, that auditors would be needed to audit the records of film production companies to determine that film production costs exceeded a certain amount depending on whether the production was a film or a commercial project.

Assemblyman Kirner asked whether passage of the bill would place Nevada on a par with other states in the competition for film industry business.

Assemblywoman Kirkpatrick advised that other states provided film production companies a 25 percent tax credit, which she indicated was more than Nevada should offer. Assemblywoman Kirkpatrick explained that because Nevada had

no state income tax and workmen's compensation insurance was less than in other states, a 15 percent tax credit was a reasonable percentage to begin with.

Brody Leiser, Deputy Executive Director, Department of Taxation, identified himself for the record and addressed the Department of Taxation's fiscal note ([Exhibit D](#)), which included expenses for five auditor positions for a total cost of \$861,218. Mr. Leiser explained that Department representatives initially assumed that each entity that applied for the tax credit would be audited as provided in Section 12 of the bill. He said, however, after further analysis, it appeared that an audit would not be required for each entity.

Mr. Leiser also advised that, based on the proposed amendment and conversations with representatives of the Commission on Economic Development, the number of entities that would be eligible for the tax credit dropped from an initial estimate of 300 to approximately 25 to 30 per fiscal year. Mr. Leiser advised that the Department of Taxation would remove its fiscal note if the proposed amendment was adopted because of the reduced number of audits that would be required. He advised that the Department would incorporate audits for approved entities into its audit selection pool, which would ensure that some of those entities were audited on an ongoing basis.

Assemblyman Kirner asked for information on the fiscal note submitted by the Commission on Economic Development.

Mr. Geocaris referenced the Commission on Economic Development's fiscal note ([Exhibit E](#)), which he said the Commission also agreed to remove because the costs for personnel, marketing, and travel would be absorbed in its existing program.

In response to questions from Vice Chair Conklin, who had assumed the duties of the Chair, Mr. Geocaris confirmed that the \$170,453 in expenses would be absorbed in the Commission on Economic Development's existing budget, and the Commission would remove the fiscal note. Mr. Geocaris explained that the bill initially provided film producers a 25 percent tax credit, but the proposed amendment reduced the tax credit to 15 percent. He said that it was, therefore, most likely that the number of film projects that had been anticipated would not materialize, and additional staffing would not be required.

Assemblyman Kirner again questioned how competitive Nevada could expect to be in the film industry marketplace.

Mr. Geocarlis said that although a concern, 15 percent was a starting point that the Nevada Film Office "very much" encouraged because currently Nevada could not attract any of the major motion picture companies or television and commercial productions.

Assemblywoman Kirkpatrick reported that she had spent the previous summer learning how the accounting process for film production companies worked and reiterated that she believed a 15 percent tax credit was a good starting point. Additionally, Assemblywoman Kirkpatrick advised that if the legislation passed, the Commission on Economic Development had agreed to provide the Legislature a report on the number of films that were made in Nevada because of the 15 percent tax credit.

Chairwoman Smith resumed the duties of the Chair and noted that the proposed amendment included narrative on the creation and duties of the Advisory Council on Nevada Motion Pictures. Noting that the members of the Advisory Council would serve without compensation, but would receive per diem, Chairwoman Smith asked who would pay the per diem.

Mr. Geocarlis advised that although the Nevada Film Office currently had a Film Advisory Board, he was unaware of the Advisory Council on Nevada Motion Pictures.

Chairwoman Smith asked Mr. Geocarlis to meet with Assemblywoman Kirkpatrick and the Committee's staff concerning the proposed amendment and the creation of Advisory Council on Nevada Motion Pictures.

Joshua Cohen, owner of Cohencidence Productions, Las Vegas, Nevada, expressed support for A.B. 506 and reported there were at least thirty individuals in the audience in Las Vegas who also supported bill. Additionally, Mr. Cohen thanked Assemblyman Aizley, Assemblywoman Kirkpatrick, and Assemblywoman Neal for the time they spent working on the bill.

J. R. Reid, President, JR Lighting, Inc., North Las Vegas, Nevada, appeared before the Committee to speak in support of A.B. 506. Mr. Reid advised that he had been involved in spearheading the movement to provide transferable tax credits to filmmakers and had long thought that Nevada needed to provide an incentive to filmmakers to compete with other states. He expressed a "firm belief" that the tax credit was good for business and good for creating a job market and that perhaps the percentage could be adjusted at some point in the future.

Mr. Reid pointed out that for every dollar spent on a tax credit, Nevada would receive a \$1.50 back in other taxes, from companies such as his, from payroll, and from the workers themselves, as well as from increased tourism, which he said made the bill revenue positive for the state as well as for his company. Mr. Reid thanked Assemblywoman Kirkpatrick and Assemblyman Aizley for the time they spent working on the bill.

Chairwoman Smith said that she knew how much Mr. Reid supported the bill from the good lobbying job he had done.

Tony Gennarelli, Business Agent Film & TV, Local 720, International Alliance of Theatrical State Employees and Moving Picture Technicians, Las Vegas, Nevada, identified himself for the record. Mr. Gennarelli expressed support for the passage of A.B. 506 on behalf of the hundreds of workers and their families who would be positively affected by passage of the bill because jobs would be created. He said that because jobs had been lost to the states that offered tax incentives, Nevada needed a level playing field to "get back in the game."

Mr. Gennarelli noted that film production was ramping up again in California because of recently applied tax incentives, and although Nevada was once known as California's back lot, the state was now bypassed for states that had tax incentives. Tax incentives for filmmakers, he said, would not only create many jobs for Nevada's working families but for commerce-related businesses as well. Additionally, he said the tax incentive would allow workers the opportunity to continue to work and live in Nevada rather than moving away to pursue their craft as many had been forced to do.

Danny Thompson, representing Nevada AFL-CIO, appeared before the Committee in support of A.B. 506. Mr. Thompson discussed the loss of jobs to other states that offered film incentives. Mr. Thompson spoke of the unique nature of the state and asked the members of the Committee to do what they could to bring jobs associated with the film industry back to Nevada.

George Flint, representing the Nevada Brothel Owners' Association, spoke in support of A.B. 506 and expressed his thanks that one of his bills had been passed out of the Assembly earlier in the day.

Mr. Flint indicated he had been contacted by Danny Thompson, who represented the AFL-CIO, concerning the loss of jobs related to the film industry because of the movement of the industry away from the state. An example he provided was a recent film entitled, *Love Ranch*, "a partially true review of the Oscar Bonavena murder at the Mustang Ranch many years ago." Although some local scenes were filmed in Nevada, Mr. Flint explained that about

70 percent of the movie was made in New Mexico. He said that for every dollar, including payroll, that was spent in New Mexico, the New Mexico government returned 5 percent to the film production company. Additionally, New Mexico underwrote a \$30 million, low-interest loan to make the movie, which Taylor Hackford produced and in which his wife, Helen Mirren, starred. Mr. Flint advised that he learned that at the time *Love Ranch* was being filmed in Albuquerque, 13 other major motion pictures were also being produced in New Mexico.

Mr. Flint attempted to discuss licensing brothels in Clark County and reported that according to Doug Gillespie, Sheriff of the Las Vegas Metropolitan Police Department, there were currently over 12,000 illegal sex workers operating in Las Vegas.

Chairwoman Smith, however, advised Mr. Flint that his remarks should be limited to the merits of A.B. 506.

Mr. Flint told the Committee that if the issue in Clark County could be addressed, a conservative figure of \$500 million could be provided to the state each biennium that would cover all expenses related to the incentive to attract filmmakers to Nevada.

Chairwoman Smith thanked Mr. Flint for appearing before the Committee to support A.B. 506.

Hearing no response to her request for additional testimony in support of, in opposition to, or from a neutral position, Chairwoman Smith closed the hearing on A.B. 506.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, suggested beginning the work session with A.B. 380 (R1), which was previously heard by the Committee on May 17, 2011.

Assembly Bill 380 (1st Reprint): Revises provisions governing certain programs for renewable energy systems. (BDR 58-308)

Mr. Combs advised that A.B. 380 (R1) provided that the Wind Program, the Waterpower Program, and the Solar Energy Systems Program would be extended to December 31, 2021, rather than expire on June 30, 2011.

When the Committee considered the bill on May 17, 2011, an amendment (Exhibit F) was submitted by Judy Stokey, Executive, Legislative and External

Affairs, NV Energy. The amendment for the Solar Energy Systems Program added language indicating that a utility would award incentives during an application cycle to applicants on a random basis until the capacity available to be issued in that cycle was awarded. The amendment would have deleted the changes to *Nevada Revised Statutes* (NRS) 701B.260, which would eliminate the program capacity cap for the Solar Program.

Ms. Stokey's amendment also proposed to add language to section 26, subsection 8 that beginning January 1, 2013, a utility would not be required to award an incentive if the award would cause the total amount of incentives awarded in a program year to participants in the three energy programs to exceed one-half of 1 percent of the total revenues received by all utilities in the state from retail customers during the preceding year.

Mr. Combs advised that the amendment also had proposed that the net metering cap be placed at 1 percent rather than the 3 percent of the utility's total peak capacity that was reflected in the bill. Additionally, if the total installed capacity of net metering systems exceeded 80 percent of the total peak capacity, the Public Utilities Commission could increase the limit by one-half of one percent to a new limit of one and one-half percent.

Assemblyman Atkinson noted and Mr. Combs confirmed that adoption of the second Amendment No. 862 would replace the first Amendment 435.

Chairwoman Smith said that it was important to remember that the proposed amendment changed what the policy committee did.

In response to Assemblyman Goicoechea's question concerning the cap as amended, Mr. Combs indicated that from his brief review, there would be no changes in the cap amount.

Assemblyman Bobzien advised that A.B. 380 (R1) would increase the incentives programs because other legislation was moving forward that addressed the cap.

Chairwoman Smith entertained a motion to amend and do pass with the amendment ([Exhibit G](#)) offered by the bill's sponsor.

ASSEMBLYWOMAN MASTROLUCA MOVED TO AMEND AND
DO PASS A.B. 380 (R1).

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Smith closed the work session on A.B. 380 (R1) and opened the work session on A.B. 453 (R1)

Assembly Bill 453 (1st Reprint): Requires a supplier of motor vehicle fuel to provide certain statements relating to the presence or possible presence of manganese in any motor vehicle fuel sold or distributed by the supplier. (BDR 51-689)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that A.B. 453 (R1) was heard in Committee on May 6, 2011. The bill required the supplier of motor vehicle fuel to ensure that all documents related to the transfer and sale of any fuel include a disclosure concerning the presence or possible presence of manganese in the fuel.

A fiscal note that totaled \$73,000 was submitted by the Department of Agriculture. The fiscal note reflected expenses in the first year of the 2011-2012 biennium of \$60,000 for laboratory equipment to test for the presence of manganese to ensure that retailers were correctly labeling their pumps and \$13,000 in operating expenses. The effect on future biennia was \$8,000 a year primarily for laboratory supplies.

Mr. Combs advised that the Fiscal Analysis Division staff reviewed the reserve level in the Gas Pollution Standards' budget account for the Department of Agriculture and confirmed that the equipment and operating costs could be paid out of reserves without reducing the account to "a dangerous level." Additionally, Mr. Combs pointed out that if the Committee wished to process the bill, it should be with the understanding that the Department of Agriculture would be approaching the Interim Finance Committee with a work program to purchase the equipment and the laboratory supplies they would need to conduct the tests.

Chairwoman Smith confirmed Assemblyman Goicoechea's understanding the Department of Agriculture would be required to use reserve funding to carry out the requirements of the bill.

Chairwoman Smith entertained a motion to do pass as amended A.B. 453 (R1).

ASSEMBLYMAN CONKLIN MOVED TO DO PASS AS AMENDED
A.B. 453 (R1).

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblymen Hambrick, Kirner, and Hardy voted nay.)

Chairwoman Smith closed the work session on A.B. 453 (R1) and opened the work session on A.B. 503 (R1).

Assembly Bill 503 (1st Reprint): Revises certain provisions governing the conservation of habitat for wildlife. (BDR 45-1091)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that A.B. 503 (R1) was heard by the Committee on May 21, 2011. The bill redesignated the habitat conservation fee, currently charged by the Department of Wildlife, as the conservation fee and established that fee at \$5 for residents and \$10 for nonresidents. Currently, the habitat conservation fee was a \$3 fee paid for an annual hunting, trapping, fishing, or combined hunting and fishing license. The bill also imposed the annual conservation fee on any person who wished to access a wildlife management area but was not the holder of a hunting or fishing license.

The fiscal note reflected the additional revenue that would be generated from the conservation fee that would increase from \$3 to \$5 or \$10 depending on whether the purchaser was a resident or nonresident. The fee revenue "far exceeded" the \$29,000 in costs for equipment and signage and the information technology costs to incorporate the new fee into the Department's computer system.

Mr. Combs noted that although there were no concerns with the bill from a fiscal standpoint, the bill did require a fee increase. Additionally, he advised that an amendment that the Department of Wildlife representatives worked on with Kyle Davis, Policy Director, of the Nevada Conservation League, would amend section 2, subsection 2, line 19 of the bill, which currently required the imposition of a \$5 fee to residents and a \$10 fee to nonresidents who did not hold an annual hunting, trapping, fishing, or combined hunting and fishing license. The proposed amendment would make the fee voluntary rather than required.

Chairwoman Smith asked whether Assemblyman Goicoechea's concerns had been addressed by the amendment.

Assemblyman Goicoechea discussed having worked with a representative of the Department of Wildlife to make the fee voluntary, which addressed his concern

that individuals would camp outside of a wildlife management area rather than pay the \$5 fee.

Assemblyman Bobzien expressed his appreciation to Assemblyman Goicoechea for working with Department of Wildlife representatives on the amendment, and while he would have preferred a mandatory fee, in the spirit of compromise he said he would be happy to move to amend and do pass A.B. 503 (R1).

ASSEMBLYMAN BOBZIEN MOVED TO AMEND AND DO PASS
A.B. 503 (R1).

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblymen Grady, Hardy, Hickey, and Hambrick voted nay.)

Chairwoman Smith closed the work session on A.B. 503 (R1) and opened the work session on A.B. 571.

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

Chairwoman Smith advised the members of the Committee that the proposed amendment on A.B. 571 had been placed on the Nevada Electronic Information System (NELIS), and a paper copy ([Exhibit H](#)) was also being distributed.

Sean Higgins, representing the law firm, Gordon Silver, and on behalf of the Nevada Tavern Owners' Association, Golden Gaming, United Coin Machine Company, and Affinity Gaming, appeared before the Committee to present the proposed amendment to A.B. 571.

Mr. Higgins advised that he had met with Brenda Erdoes, Legislative Counsel, concerning revisions she believed were necessary based on the language proposed to limit the act to locations with gaming licenses because there were currently establishments in Nevada where smoking was permitted that did not have gaming licenses. Thus, the amendment before the Committee contained the original intent of the bill, which was simply to allow food service in the "current tavern defined" establishments in Nevada.

Specifically, Mr. Higgins advised that the amendment proposed to revise section 1 of the bill to state that smoking tobacco would not be prohibited in areas within stand-alone bars, taverns, and saloons that patrons under 21 years of age were prohibited from entering.

Additionally, section 1, subsection 4 of the amendment reflected language that persons under the age of 21 would not be permitted to loiter in an age-restricted, stand-alone bar, tavern or saloon or an area of a stand-alone bar, tavern, or saloon where smoking was allowed.

Section 1, subsection 5 of the amendment reflected language that a supervisor on duty or any other person who violated subsection 4 would be guilty of a misdemeanor. Subsection 5 also included language that an age-restricted, stand-alone bar, tavern, or saloon or a stand-alone bar, tavern, or saloon that violated subsection 4 would be liable for a civil penalty of \$1,000 for the first offense and \$2,000 for a subsequent offense if minors were permitted to loiter in a smoking area.

Mr. Higgins expressed support for the proposed amendment and said that the intent of the bill was to simply allow food service back into taverns in which smoking was limited to persons 21 years or older.

Assemblyman Goicoechea questioned the language in section 1, subsection 12, paragraph (a), subparagraph (4), sub-subparagraph (II) that stated "A completely enclosed area of a larger structure such as a strip mall or airport, provided that the indoor windows must remain shut at all times and doors must remain closed when not actively in use."

In response, Mr. Higgins said he believed that the language meant that doors had to remain closed unless being used by patrons to enter or exit. He also pointed out that the language was taken from the original Clean Indoor Air Act passed by the voters in 2006.

Assemblyman Conklin recalled a discussion in a previous Committee meeting concerning establishments with nonrestricted gaming licenses as part of the restriction.

Mr. Higgins said that upon the advice of Legislative Counsel, that section of the bill was removed because it was unconstitutional. He explained that there were taverns in Nevada, with no gaming licenses, frequented by persons who were permitted to smoke whose rights would have been violated.

In response to Assemblyman Kirner who asked whether language concerning a convention facility was included in the bill, Mr. Higgins referenced the language on page 6, section 2, subsection 3, paragraph (e) that provided that smoking was not prohibited in an area of a convention facility in which a meeting or trade show was being held, if the meeting or trade show was not open to the

public, was being produced or organized by a business relating to tobacco or a professional association for convenience stores, and involved the display of tobacco products.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, referenced section 4, subsection 2, which he pointed out provided that section 2 of the act would become effective one minute after passage and approval of A.B. 571.

Assemblyman Kirner said legislators had received a lot of correspondence on the bill stating that a positive vote on A.B. 571 would be against the will of the voters who voted for the Clean Indoor Air Act. He said, however, it appeared that the bill was only concerned with attempting to serve food in establishments in which smoking was already permitted.

Mr. Higgins confirmed Assemblyman Kirner's assessment and advised that the clients he represented were not attempting to surreptitiously allow smoking in family restaurants. He said that the Clean Indoor Air Act, passed by the voters in 2006, was clear in that smoking was not prohibited in stand-alone bars, taverns, or saloons. Additionally, Mr. Higgins pointed out that the language in the proposed amendment provided that there was no reason for the food service restriction because if smoking was permitted, the establishment would be limited to those persons 21 years and older.

Assemblyman Aizley noted that there were facilities that currently offered dining, gaming, and smoking in separate areas and asked whether passage of the bill would allow patrons to smoke in a dining area of such an establishment.

Mr. Higgins advised that the bill did not provide that patrons could smoke in a dining area of a facility that offered dining and gaming, which was one of the reasons the amendment included the references to areas within stand-alone bars, taverns, and saloons and age-restricted, stand-alone bars, taverns, and saloons. He explained that there were establishments that had partitioned their taverns into sections that included nonsmoking restaurants where families and children were permitted. Mr. Higgins pointed out, however, if a bar owner decided to restrict the establishment to patrons 21 years of age or older, no one under 21 would be permitted to enter that establishment.

Chairwoman Smith indicated she would allow additional testimony to ensure that the Committee members understood the amendment.

Chairwoman Smith advised that Jennifer Hadayia, who represented the Washoe County Health District, although not present, had submitted an

amendment ([Exhibit I](#)) that had not been placed on the Nevada Electronic Legislative Information System (NELIS). Chairwoman Smith indicated that the Committee could consider the Washoe County Health District amendment, or if the bill was passed out of Committee, the amendment could be addressed by the Senate. Chairwoman Smith asked that the Washoe County amendment be uploaded to NELIS and indicated that she would take testimony regarding the amendment Mr. Higgins presented on A.B. 571.

Ron Dreher, representing the Peace Officers Research Association of Nevada, addressed the amendment and pointed out that section 2 of the bill already provided that sheriffs and deputies, within their respective jurisdictions, would enforce the provisions of the bill and issue citations for violations. He indicated, however, that requiring law enforcement to enforce the provisions concerning criminal penalties would create a significant fiscal impact for law enforcement entities and a lot of additional work.

Assemblyman Goicoechea pointed out that laws were enacted every day that meant there would be additional work and that there was no use establishing laws if they were not going to be enforced.

Michael Alonso, representing the law firm Jones Vargas advised that *Nevada Revised Statutes* (NRS) 463.350 already provided language concerning a misdemeanor for minors who loitered around gaming devices and table games, and as testified to earlier, there were some bars that did not include gaming but permitted smoking. Mr. Alonso said, however, that most of the establishments that were being discussed included gaming devices, and the law to ensure that minors were not loitering in areas around gaming devices had been established for quite some time.

Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network, testified in opposition to A.B. 571 and advised that the Cancer Action Network had opposed the bill from the start. Mr. McCoy said the amendment did not address health concerns for Nevadans.

Mr. McCoy discussed the American Cancer Society's concerns regarding the secondhand smoke that Nevadans would be exposed to with passage of A.B. 571 (R1). He also discussed the workers already exposed to secondhand smoke because of the exemption of convention facilities. [The area of a convention facility in which a meeting or trade show was being held was exempted if the meeting or trade show was not open to the public, was being produced or organized by a business relating to tobacco or a professional association for convenience stores, or involved the display of tobacco products.]

Assemblyman Atkinson expressed concerns regarding the enforcement aspect of the bill.

Mr. Higgins advised that the outcome of a previous hearing on the bill was that the Health District could issue citations for violations to the operator of an establishment if smoking paraphernalia was displayed in a nonsmoking area or because minors were allowed to loiter in a smoking area, similar to the current law that prohibited minors from loitering in gaming areas.

In response to Assemblyman Atkinson who asked about notifying authorities concerning underage persons loitering in a smoking area, Mr. Higgins advised that law enforcement agencies would impose criminal penalties while the Health District would issue citations and civil fines.

In response to Assemblyman Goicoechea's concerns regarding facilities that were out of compliance with the Clean Indoor Air Act, Mr. Higgins advised that the proposed amendment would require establishments that currently permitted smoking in food service areas to limit their clientele to persons 21 years or older. He said if an owner wanted to allow families with children under the age of 21 in an establishment that permitted smoking, a separate dining area would have to be constructed.

Assemblyman Goicoechea expressed additional concerns regarding stand-alone bars, taverns, or saloons that were perhaps separated by an open doorway from which patrons were subjected to smoke.

In response to Assemblyman Goicoechea, Mr. Higgins said that smoke coming through an open door would be a violation of the Clean Indoor Air Act, which provided that doors must remain closed unless being used to enter or exit an establishment.

Michael Hackett, representing the Nevada State Medical Association, American Cancer Society, Nevada Tobacco Prevention Coalition, and Smoke-free Gaming of America, appeared before the Committee to testify in opposition to A.B. 571.

On behalf of the organizations he represented, Mr. Hackett said that the bill and the proposed amendments were viewed as being in direct opposition to the preferences of the majority of Nevada voters who voted for the Nevada Clean Indoor Air Act in 2006.

Mr. Hackett commented on the issue of enforcement and pointed out that the Nevada State Supreme Court ruled in 2009 that the Clean Indoor Air Act was unenforceable by criminal standards and removed criminal penalties. A review of the proposed amendment, he said, reflected that the only criminal aspect being brought forward was that patrons under the age of 21 were prohibited from entering establishments that allowed smoking. Mr. Hackett indicated that the proposed amendment did nothing to improve what was perceived as a lack of enforcement.

In response to Mr. Hackett's testimony, Chairwoman Smith commented that he was straying into the broader aspect of the full act and that it was clear that the penalties were focused on the changes to the statute.

Mr. Hackett thanked the Chairwoman for her direction and noted the bill would expand the Clean Indoor Air Act to allow smoking in more areas than those currently permitted. He said the amendment would, in his opinion, allow sports bars, such as Bully's and Sparky's to create smoking sections.

Assemblyman Atkinson expressed continuing concerns with the enforcement of the civil and criminal penalties. Additionally, he agreed with the opponents of the bill concerning the will of the majority of Nevada voters who passed the Nevada Clean Indoor Air Act in 2006.

In response to questions Assemblyman Atkinson asked concerning who to notify in the event of violations, Mr. Higgins advised that most businesses followed the law especially those in Chapter 463 of the NRS that related to minors in gaming areas, or in the case of the proposed amendment, minors in smoking areas. Mr. Higgins said, for example, that gaming and liquor licenses were put in jeopardy for violations of Chapter 463. He said that if the amended version of the bill passed and a tavern with gaming machines continued to receive citations for allowing minors in a smoking area, the owner of the establishment could be sanctioned by the Nevada Gaming Control Board for unsuitable methods of operation. Mr. Higgins indicated he believed that the Health District could issue a civil citation simultaneously with the Gaming Control Board's actions.

Assemblyman Hickey noted that previous testimony indicated that the bill and proposed amendment would allow smoking in certain establishments, such as Bully's, and asked whether the statement was accurate.

In response to Assemblyman Hickey, Mr. Higgins advised that Bully's was defined as a stand-alone bar, tavern, or saloon. Bully's, he noted, served food

and had gaming devices and could only allow smoking if the clientele was limited to persons ages 21 or older.

Mr. Higgins explained that when the Clean Indoor Air Act went into effect, owners of some businesses took it upon themselves to separate their establishment into smoking and nonsmoking sections. The establishments did so by constructing walls and ventilation systems separated by a door and thus complied with the law to allow smoking but no food service on the bar side and food service with no smoking on the restaurant side. Mr. Higgins explained that passage of A.B. 571 would allow those establishments to continue in the same manner with the exception that they could not provide food service on the bar side and were limited to patrons who were 21 years of age or older.

Assemblyman Hickey asked whether, under A.B. 571, Bully's or a similar establishment could remodel to create smoking and nonsmoking sections.

In response to Assemblyman Hickey, Mr. Higgins advised that under the existing law, Bully's could allow smoking if the owner stopped serving food. He advised that Bully's, under the current law, would continue to be defined as a stand-alone but not an age-restricted bar if two separate sections were constructed that operated under one business license.

Amber Joiner, representing the Nevada State Medical Association, advised that Mr. Hackett had covered the Nevada State Medical Association's concerns related to the enforcement issues and acknowledged that "the over 21 issue" and separate areas that would be restricted to smoking and food service were understood.

Ms. Joiner took exception, however, to the language in section 1 that she said clearly stated areas within stand-alone bars, taverns, and saloons allowed smoking without restriction and on page 5 where the language defined stand-alone bars, taverns, or saloons. Ms. Joiner advised that because the Nevada State Medical Association's primary concern was whether passage of the bill would allow smoking in family establishments without restrictions, clarification was required concerning the designation of areas for smoking with no restrictions concerning walls, ventilation, or doors.

Chairwoman Smith indicated that one additional day would be taken for additional review of the language in the bill.

In response to Assemblyman Atkinson's continuing concerns regarding the enforcement section of the bill, Chairwoman Smith advised that she believed that the Washoe County Health District had addressed, in their proposed

amendment, that clarification was required concerning the ability for health authorities to effectively enforce the Nevada Clean Air Act. Chairwoman Smith asked the members of the Committee to review the proposed amendment ([Exhibit I](#)) by the Washoe County Health District.

Hearing no response to her request for additional testimony in support of, in opposition to, or from a neutral position, Chairwoman Smith closed the work session on A.B. 571 and, in response to a suggestion from Mr. Combs, opened the work session on A.B. 315, A.B. 316 (R1), and A.B. 345.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that the Committee considered A.B. 315, A.B. 316 (R1), and A.B. 345 on May 9, 2011. Since that time, he said Assemblywoman Mastroluca worked to combine the similar provisions of the three measures into two bills for which mock-ups were provided to the Committee for A.B. 316 (R1) and A.B. 345. He advised that a significant appropriation was eliminated from A.B. 345.

Additionally, Mr. Combs explained that in an earlier hearing, representatives of the Division of Aging and Disability Services and the Director's Office of the Department of Health and Human Services testified that the manner in which their budgets were closed allowed them to accommodate the duties and responsibilities they would receive through A.B. 316 (R1), which he said also applied to the amendments. Therefore, Mr. Combs advised that if the Committee so desired, no action was needed on A.B. 315, and A.B. 316 (R1) and A.B. 345 could be passed without concern of any conflicts.

**Assembly Bill 315: Establishes the Autism Treatment Assistance Program.
(BDR 38-986)**

No action was required by the Committee on A.B. 315.

Assembly Bill 316 (1st Reprint): Establishes provisions relating to persons with autism. (BDR 38-260)

Assemblywoman Mastroluca advised that the mock-up amendments for A.B. 316 (R1) and for A.B. 345 were provided through the Nevada Electronic Legislative Information System (NELIS). Beginning with A.B. 316 (R1), Assemblywoman Mastroluca advised that provisions from A.B. 315 would be encompassed within A.B. 316 (R1), and throughout the bill, the word autism would be revised to reflect autism spectrum disorder. Additionally, the mock-up included requirements for direct observation by a professional conducting an assessment for the determination of autism spectrum disorder.

Assemblywoman Mastroluca noted that page 2, section 1.5 added information from A.B. 345 to establish the Autism Treatment Assistance Program (ATAP) to serve as the primary autism program.

Continuing, Assemblywoman Mastroluca advised that page 3, section 3 included language that the board of trustees of a school district or the governing body of a charter school would conduct an initial evaluation of pupils with autism spectrum disorder in accordance with the Individuals with Disabilities Education Act (IDEA).

Additionally, language on page 4, section 4 required annual reporting by the Department of Education.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO PASS A.B. 316 (R1).

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Ocegura was not present for the vote.)

Assembly Bill 345: Revises provisions relating to services for persons with autism. (BDR 38-26)

Assemblywoman Mastroluca advised that the proposed amendment to A.B. 345 included the addition of the provisions from A.B. 316 (R1) and also allowed services for persons up to 21 years of age for disabilities as required by the Individuals with Disabilities Education Act (IDEA).

The bill also provided for uniform reporting on the progress and status of services provided to persons with autism and established the Autism Treatment Assistance Program (ATAP) to serve as the primary autism program.

Additionally, as previously indicated by Mr. Combs, the appropriation had been removed, which was reflected at the bottom of page 3 and the top of page 4. The amendment to A.B. 345 would also include the requirement for the initial evaluation of pupils with autism spectrum disorder in accordance with IDEA and would replace the word autism with autism spectrum disorder.

ASSEMBLYMAN HAMBRICK MOVED TO AMEND AND DO PASS A.B. 345.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Ocegüera was not present for the vote.)

Chairwoman Smith thanked Assemblywoman Mastroluca for her work with the sponsors on combining the three bills that were important to the autism community and commended the manner in which the issues were addressed without a fiscal note.

Chairwoman Smith closed the work session on A.B. 315, A.B. 316 (R1) and A.B. 345 and opened the work session on S.B. 154.

Senate Bill 154: Provides for the issuance of special license plates for family members of persons who died as a result of injuries sustained while on active duty in the Armed Forces of the United States. (BDR 43-700)

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that S.B. 154 was presented by Senator Settelmeyer and considered by the Committee on May 27, 2011. The bill would create a new license plate for family members of persons who died because of injuries sustained while on active duty in the Armed Forces of the United States.

Mr. Combs discussed the Gold Star license plate currently available for family members of fallen veterans who died while on active duty. He said, however, family members of persons who died subsequent to injuries sustained while on active duty were not eligible to receive the Gold Star license plate. Representatives of the Department of Motor Vehicles testified that passage of Senate Bill 154 and the issuance of the new license plates would create no fiscal effect on the Department.

Assemblyman Kirner commented that passage of S.B. 154 would be more expansive than presented. He explained that there were Vietnam veterans who suffered from the effects of Agent Orange and would eventually die because of associated complications whose families would be eligible to receive the new license plate. Assemblyman Kirner indicated that veterans injured in combat who received the Purple Heart could also apply to receive the Purple Heart license plate in recognition of their heroism. Although he expressed sympathy for family members of those on active duty, Assemblyman Kirner said he would oppose the bill.

Chairwoman Smith thanked Assemblyman Kirner for his comments and said she "pulled the bill into Committee" because of concern about the way the bill was written and the testimony by representatives of the DMV that the new plate would have no fiscal effect on the Department's budget.

ASSEMBLYMAN HAMBRICK MOVED TO DO PASS S.B. 154.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblymen Kirner and Hickey voted no.) (Assemblyman Oceguela was not present for the vote).

Chairwoman Smith closed the work session on S.B. 154 and addressed the introduction of bill draft request S-1309, which would revise A.B. 144 passed earlier in the session.

Chairwoman Smith advised that a clarification amendment was necessary for A.B. 144, an act that made various changes related to bidder preferences on state and local public works projects.

BDR S-1309—Revises provisions relating to the protection of children. (Later introduced as [Assembly Bill 574](#).)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BILL DRAFT REQUEST S-1309.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Oceguela was not present for the vote.)

Chairwoman Smith advised that an agenda had been posted for a Ways and Means meeting at 8:00 a.m., May 31, 2011, for the consideration of bills and a work session on bills previously considered.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised the members of the Committee that a work session was scheduled for the Joint Subcommittee for Human Services/CIP at 10:00 a.m., May 31, 2011, to review information related to the Capital Improvement Program, and a Joint Meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance was scheduled for 8:00 a.m., June 1, 2011, to close the Capital Improvement Program budget for the 2011-2013 biennium.

Chairwoman Smith adjourned the meeting at 3:21 p.m.

RESPECTFULLY SUBMITTED:

Connie Davis
Committee Secretary

APPROVED BY:



Assemblywoman Debbie Smith, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 30, 2011

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest List
A.B. 542 (R1)	C	Brody Leiser	Unsolicited Fiscal Note
A.B. 506	D	Department of Taxation	Fiscal Note
A.B. 506	E	Commission on Economic Development	Fiscal Note
A.B. 380 (R1)	F	Judy Stokey	May 17, 2011, Amendment
A.B. 380 (R1)	G	Bill Sponsors	Amendment No. 862
A.B. 571	H	Sean Higgins	Proposed Amendment
A.B. 571	I	Jennifer Hadayia	Proposed Amendment