

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-sixth Session
May 18, 2011**

The Senate Committee on Finance was called to order by Chair Steven A. Horsford at 6:43 p.m. on Wednesday, May 18, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Steven A. Horsford, Chair
Senator Sheila Leslie, Vice Chair
Senator David R. Parks
Senator Moises (Mo) Denis
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Ben Kieckhefer

STAFF MEMBERS PRESENT:

Rex Goodman, Principal Deputy Fiscal Analyst
Mark Krmpotic, Senate Fiscal Analyst
Jackie Cheney, Committee Secretary

GUEST LEGISLATORS PRESENT:

Senator John J. Lee, Clark County Senatorial District No. 1
Assemblywoman Debbie Smith, Assembly District No. 30

OTHERS PRESENT:

Daniel J. Klaich, J.D., Chancellor, Nevada System of Higher Education
Constance J. Brooks, Senior Management Analyst/Lobbyist, Clark County
Andrew Clinger, Director, Department of Administration
Carole Vilardo, President, Nevada Taxpayers Association
Michael E. Fischer, Acting Director, Department of Cultural Affairs

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Michael J. Willden, Director, Department of Health and Human Services

Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry

Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services

Barry Gold, Director of Government Relations, Nevada American Association of Retired Persons

Leo M. Drozdoff, P.E., Director, State Department of Conservation and Natural Resources

Chris Freeman, Supervisor, Nevada Tahoe Conservation District, Division of Conservation Districts, State Department of Conservation and Natural Resources

Dan Kaffer, Coordinator, Natural Resources Conservation Services, United States Department of Agriculture

Barbara Perlman-Whyman, President, Nevada Association of Conservation Districts

Robin L. Sweet, Interim Court Administrator and Director of the Administrative Office of the Courts, Office of the Court Administrator, Judicial Branch Agencies

Johnean J. Morrison, Administrative Services Officer, Nevada Highway Patrol Division, Department of Public Safety

Stephanie Day, Deputy Director, Budget Division, Department of Administration

Jack Mallory, Director of Government Affairs, District Council 15, International Union of Painters and Allied Trades

Robert A. Ostrovsky, President, Ostrovsky and Associates

CHAIR HORSFORD:

The Senate Committee on Finance is called to order. We will begin with the hearing for Senate Bill (S.B.) 374.

SENATE BILL 374: Temporarily redirects a portion of the taxes ad valorem levied in Clark County to support the College of Southern Nevada. (BDR S-992)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

Please accept proposed Amendment 6729 to S.B. 374 ([Exhibit C](#)). This amendment establishes a funding formula review for the Nevada System of Higher Education (NSHE). This review will demonstrate the per-student deficiency between the University of Nevada, Las Vegas and the University of

Nevada, Reno. Additionally, it will show the disparity of funding per-student spending between Great Basin College in Elko at \$10,468 per student compared to Western Nevada College in Carson City at \$9,014 per student, Truckee Meadows Community College in Reno at \$6,460 per student and the College of Southern Nevada in Las Vegas of \$5,057 per student. The funding formula review will occur during the next interim. A report with the findings and recommendations will be made to the Legislative Commission prior to the Seventy-seventh Session of the Nevada Legislature.

CHAIR HORSFORD:

Thank you for your hard work and advocacy, particularly on behalf of the community colleges.

DANIEL J. KLAICH, J.D. (Chancellor, Nevada System of Higher Education):

I am in support of proposed Amendment 6729. I consider this to be one of the most critical pieces of legislation for higher education presented this Session. It will help improve and modernize the funding to higher education.

CHAIR HORSFORD:

Information about the funding formula review was provided to the Joint Meeting of the Senate Committee on Finance and the Assembly Committee on Ways and Means this morning. I received a few comments and suggestions from the committees' members regarding this legislation which I will compile into one document. The final legislation must be clear and correctly reflect the intent.

MR. KLAICH:

Hopefully, the review findings will be used to build the budget for the next biennium. We do not want to wait four years to realize the benefit of the changes to the funding formula.

CHAIR HORSFORD:

Is \$150,000 sufficient to complete this study?

MARK KRMPOTIC (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

It cost \$150,000 when this study was last conducted ten years ago. The closing document presented to the Committees this morning identified a potential cost range of \$200,000 to \$250,000. All costs should be reviewed and confirmed before they are finalized in this bill.

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CONSTANCE J. BROOKS (Senior Management Analyst/Lobbyist, Clark County):
Clark County opposed S.B. 374 as originally drafted because it diverted revenue from Clark County. However, we are now in support of S.B. 374 with Amendment 6729.

SENATOR KIECKHEFER:

In proposed Amendment 6729, which describes the appointment of three voting members of the Committee, there is no mention of party affiliation. Is it the intent to appoint two members of the majority party and one member of the minority party?

CHAIR HORSFORD:

Yes, that is the intent. Please review the draft Amendment 6729 and submit your comments with any recommended revisions by tomorrow.

SENATOR CEGAVSKE:

Section 2, subsection 5 of Amendment 6729, indicates the Legislative Counsel Bureau will provide the necessary professional staff and a secretary for the Committee. How much will this cost and how will it be paid? Section 2, subsection 6, indicates the Committee members will be paid a salary and per diem. I recommend the members participate without compensation considering the current financial state of affairs.

MR. KRMPOTIC:

As the amendment is currently drafted, the Legislative Fund would pay the compensation and per diem for participating Legislators. I would assume the Administration account within NSHE would pay for the compensation and per diem for the Board of Regents participants. I am uncertain how the members appointed by the Governor would be paid.

CHAIR HORSFORD:

The answers to those questions will be obtained and brought back to this Committee along with a compilation of all the members' comments. As there are no further questions, I will close the hearing on S.B. No. 374.

The hearing is now open on Assembly Bill (A.B.) 248.

ASSEMBLY BILL 248 (1st Reprint): Revises certain requirements for the proposed budget of the Executive Department of the State Government. (BDR 31-146)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

Assembly Bill 248 is about performance-based budgeting. A similar bill was passed last Session, but was vetoed by the Governor. The current administration has embraced performance-based budgeting. In fact, the administration was going to bring forth a similar bill, but rather than have two bills, decided to work with me on this bill. The Budget Division and the Fiscal Analysis Division have helped in developing and perfecting A.B. 248.

The typical baseline budgeting is based upon what an agency or department spent in a previous year. In performance-based budgeting, priorities are set and budgets are constructed toward achieving particular outcomes. Nevada has already begun to use some performance-based budgeting; however, solid requirements and standards are lacking. It is important the requirements are clearly stated in the statute going forward so there are no questions about the process.

Assembly Bill 248 provides the Legislature with the necessary tools for analysis-linking budgeting priorities to agency performance. The bill requires the *Executive Budget* to include long-term performance goals, explain how the budget will fund and measure progress toward those goals and explain each step toward achieving those goals.

The agencies and departments must set valid measureable performance indicators to evaluate progress toward intermediate and long-term goals. The performance indicators must be detailed enough for the Legislature to properly measure the progress and the cost benefit. Any changes, additions or deletions to the performance indicators must be accompanied with an explanation for the change. All performance indicators will be posted online.

The Governor may authorize agencies to hold public hearings on their budgets. Other states have held public hearings before the Legislative Session starts. This allows for more public input and results in more information being brought forward to the Legislators.

Assembly Bill 248 requires agency budgets to include the total full-time equivalent (FTE) positions, how many months each position has been vacant and the reason for the vacancies. An amendment has been adopted by the Senate that clarifies that the budgets may be subclassified by function and by agency or any other manner determined by the budget chief. The expenditures must be summarized by program or budgetary account in addition to the category of expense.

Many other states have already implemented, or are in the process of implementing, performance-based budgeting measures of some kind. Washington and Oregon, for example, are delivering services more efficiently and transparently than ever before. Assembly Bill 248 will provide Nevada with the ability to provide services more efficiently, increase transparencies and plan strategically for the long term. It will improve upon the current performance indicators and ensure the Legislative decisions are in line with the overall priorities.

SENATOR KIECKHEFER:

Will this change the internal process of how the budget is built or does it primarily provide a supplement to the budgets making it easier to understand the budget?

ASSEMBLYWOMAN SMITH:

The way I understand it, we will continue to have the line-by-line categorical information. The Administration would build the budget using the same system we have always had.

ANDREW CLINGER (Director, Department of Administration):

The line item detail will still be there. The difference is the line item detail will be mapped to the supporting activities. The performance measures and caseload data will then be mapped to those activities. From my perspective, I would like to see the State move more toward the performance and away from the specific line items. I understand Assemblywoman Smith's concern about totally eliminating the line item information. However, over time there should be more emphasis at looking at the activities and the outcome of those activities versus the line item detail.

ASSEMBLYWOMAN SMITH:

My main concern is that the Legislators have access to the line item detail the same as the Budget Division does. I do agree that we sometimes get bogged down in the details.

SENATOR LESLIE:

I appreciate this bill. I like the concept. I was frustrated this year with the priority setting. It seemed to be more about how much money is available. Under performance-based budgeting, will the priorities be established with input from the public and the Legislature?

MR. CLINGER:

Core goals would first be established for the entire State government by the Governor or through collaboration with the Governor and Legislative leadership. From there, each activity is tied back to and supports one of the overall core State goals. Within that process, somewhere along the line, there should be public input.

SENATOR PARKS:

I like this bill. I was a budget director and then subsequently a chief financial officer over many years. I did budgets from the mid-1970s through the mid-1980s. As budget director of the City of Las Vegas, I experienced the sampling of many different types of budgeting including zero-based budgeting. I found performance-based budgeting to be the best overall system. The best part about this type of budgeting is linking the funding with results. I am supportive of this bill.

SENATOR DENIS:

If the budget is performance-based, agencies will be required to do performance indicators that show outcomes. Additionally, setting clear goals will promote desired results.

CAROLE VILARDO (President, Nevada Taxpayers Association):

It is a pleasure to support A.B. 248. It has been twenty years since the State changed from straight line items to the budget system we now have. None of us have liked what we have had to deal with this year on the budgets. Putting performance into the budget and having measurements will substantiate what is working which will assist in setting future priorities. I like the idea of being able to provide input before the budget is developed. I am hopeful the four volumes

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of budgets can be reduced to two volumes sometime in the near future. The information in the fourth volume is the most useful. I am supportive of A.B. 248 and am looking forward to seeing it pass.

SENATOR KIECKHEFER MOVED TO DO PASS A.B. 248.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR HORSFORD:

We will now open the hearing on S. B. 427.

SENATE BILL 427: Provides for the merger of various state agencies into the Department of Administration. (BDR 18-1161)

MR. KRMPOTIC:

The Committee has been given a mock-up of S. B. 427 entitled Proposed Amendment 6791 to S.B. 427 ([Exhibit D](#)). The bill, as originally drafted, provides for certain provisions regarding reorganization of State government. The mock-up was drafted to combine provisions from S.B. 424, S.B. 435 and S.B. 427 related to the reorganizational aspects of the Department of Administration (DOA), Department of Cultural Affairs, the Commission on Tourism, Department of Personnel (DOP) and the Department of Information Technology (DoIT).

SENATE BILL 424: Creates the Department of Tourism and Cultural Affairs (BDR 18-1163)

SENATE BILL 435: Transfers the Office of Historic Preservation from the Department of Cultural Affairs to the State Department of Conservation and Natural Resources (BDR 18-1173)

MR. CLINGER:

The Committee was provided a 19 page matrix ([Exhibit E](#)). Because the mock-up, [Exhibit D](#), is 74 pages, the matrix is intended to provide a summary and guide through the changes. The matrix illustrates in a spreadsheet the

original section number, the amended section number, the original department, the related *Nevada Revised Statutes* (NRS) section number and section title, a brief summary of the change, a description of the amendments and effective date. Because three bills are being combined into one, the last column shows the originating bill.

I will give a quick overview of S.B. 427. The changes set forth in this bill are consistent with the budget closings the Committee has been doing over the past few weeks. This bill, as amended, implements the merger of the State Public Works Board with the Buildings and Grounds Division within DOA as well as the merger of DOP, DoIT and the State Division of Library and Archives within DOA.

There are some policy sections in the bill unrelated to the merger that I will highlight for the Committee. Section 30 of S.B. 427 allows the administrator of the Division of Enterprise Technology Services, formerly DoIT, to appoint the heads of the units and offices within that division and stipulates that those classified positions will be changed to unclassified service within the State. The incumbents will remain in the classified system as long as they remain in the positions. The persons hired after these individuals will be hired as unclassified employees.

SENATOR HORSFORD:

What is the justification for making these positions unclassified? Why is it important going forward that these positions be politically appointed?

MR. CLINGER:

I would not call these politically appointed. They are essentially at will employees. This change will give management more flexibility in their hiring practices.

SENATOR HORSFORD:

I see this as circumventing the formal hiring process. In my view, this is political. I cannot support this bill with this provision unless justification can be provided as to why this is necessary.

MR. CLINGER:

If the Committee is more comfortable without this section in the bill, I am amenable to removing it.

SENATOR HORSFORD:

Is there any justification you want to put on the record substantiating why these positions should be unclassified?

MR. CLINGER:

The justification is simply for ease of management. Again, I do not see it as a political appointment. All of my current administrators are unclassified. Some of them are grandfathered in because they were originally in positions that were classified. This is a similar action.

MICHAEL E. FISCHER (Acting Director, Department of Cultural Affairs):

We have two positions like this included in this bill. If you would like, I am happy to discuss them with you later.

MR. CLINGER:

Section 45 of S.B. 427 requires all State agencies, including the State Gaming Control Board, Department of Public Safety and the Department of Motor Vehicles to utilize the Buildings and Grounds Division services when leasing space. Those agencies currently can go out and obtain their own space.

The proposed Amendment 6791, [Exhibit D](#), combines all the changes regarding the Department of Cultural Affairs in A.B. 424, A.B. 435 and S.B. 427 into S.B. 427. Originally, S.B. 427 eliminated all the Divisions within the Department of Cultural Affairs, except the State Library and Archives Division. The other divisions were addressed in two separate bills. It was confusing to have three separate bills. Combining the changes into one bill is less confusing.

Another policy decision included in section 1 of the Amendment is the Governor may appoint a chief information officer of the State. In doing so, he may designate the Administrator of the Division of Enterprise Information Technology Services as the Chief Information Officer of the State. This could be a separate position, but it is intended the Administrator would be designated as the State Chief Information Officer.

The titles of all the administrators within DOP are standardized. Some of the statutes refer to them as chiefs and some as administrators. The Amendment changes all the titles to administrators.

In section 53 of the Amendment, page 18 of [Exhibit D](#), the reference to the Nevada Energy Commissioner is changed to the Director of the Office of Energy. This aligns the position title with the changes approved for the State Office of Energy.

The authority is added for the administrator of the State Public Works Board to appoint the deputy administrator of the buildings and grounds. This was not included in the original bill.

The communication fund for mail services in the State Library and Archives Division is created because the mail room is moving from the Buildings and Grounds Division into the State Library and Archives Division.

The changes regarding the State Fire Marshall inspections of State buildings are deleted. These duties will remain with the State Fire Marshall and will be addressed in a separate bill.

Finally, the proposed amendment changes the effective date to October 1, 2011, for all changes except the supplemental appropriations contained in the bill. Language is added to allow for administrative tasks such as relocating staff and office equipment upon passage and approval. Those are effective upon passage and approval, but the merger is officially effective October 1, 2011.

The matrix spreadsheet provided, [Exhibit E](#), describes each change in detail. In consideration of your time, I will defer to the Committee about how you would like me to proceed.

CHAIR HORSFORD:

How much money will these transfers and consolidations save?

MR. CLINGER:

The estimated total savings is \$1.8 million over the biennium. I do not remember the amount of General Fund savings. Most entities within DoIT are internal service funds where they charge other agencies, so indirectly there is a savings to the General Fund just from the \$1.8 million.

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CHAIR HORSFORD:

Is that savings before moving people and making the other costs resulting from relocation?

MR. CLINGER:

The \$1.8 million savings overall is after the costs of relocating staff.

CHAIR HORSFORD:

Can you please work with Fiscal Staff to identify all the sections where there is any mention of changing positions to unclassified? I am not against this if it is justified and appropriate.

SENATOR KIECKHEFER:

Can you please go over the two supplemental appropriations contained in the bill?

MR. CLINGER:

In sections 143 and 144 of [Exhibit D](#), there are two supplemental appropriations for the Department of Cultural Affairs. Section 143 appropriates \$150,806 to the Department to offset lower than projected emission revenue. This is related to reductions made in the Twenty-sixth Special Session where we had included some additional fee revenue in their account. The fee revenue did not come in as projected. This supplemental appropriation is required to cover that. In section 144, there is a supplemental appropriation of \$36,848 for the retirements of the employees in the Division of Museums and History.

CHAIR HORSFORD:

The hearing on S.B. 427 is closed. The hearing on S.B. 440 is open.

SENATE BILL 440: Creates the Silver State Health Insurance Exchange.
(BDR 57-1172)

MICHAEL J. WILLDEN (Director, Department of Health and Human Services):

The Patient Protection and Affordable Care Act of 2010 (PPACA) was passed in March 2010. I chair a working group that has been assessing the impact of the requirements and has been developing an implementation plan. I have done several presentations to the Legislature on the provisions in the budgets related to the PPACA.

All the budgets impacted by the PPACA have been closed. Items such as the CLASS Act Survey, fraud, waste and abuse components, the oversight of the provider enrollment, fair hearings issues and funding for the update of the State eligibility engines have been included.

There are several time lines in the PPACA between now and 2019 regarding implementation. The Health Insurance Benefit Exchange described in S.B. 440 is required to be in place by January 1, 2014.

I am often asked about the Governor's position regarding the PPACA considering Nevada's involvement in the Florida lawsuit. This lawsuit challenges the constitutionality of some parts of the legislation. The Governor's directive to the Department is to continue moving forward implementing the PPACA. The law will be obeyed as it now stands until a different ruling occurs.

I have provided the Committee with my prepared testimony ([Exhibit F](#)) regarding S.B. 440 and the PPACA. The Department has received a \$1 million federal grant to begin the implementation process. A number of consultants have been hired and the working group has been functioning for approximately 14 months.

Enabling State legislation must be passed. I have been asked if this legislation could be postponed until 2013. The answer is no. Some form of legislation needs to pass. The PPACA requires the Secretary of Health and Human Services to conduct a readiness test on every state by January 1, 2013. If Nevada does not have enabling legislation and cannot demonstrate adequate progress, the federal government will run Nevada's Health Benefit Exchange. The working group recommended, and the Governor concurs, that a Nevada run Exchange is preferred. That does not mean a solely run Nevada Exchange. The Department has been working with a number of other states evaluating the potential of a regional concept for the Exchange.

Sections 1 through 12 of S.B. 440 lists specific terms and definitions attributed to the Health Benefit Exchange. The Department has submitted a proposed amendment to section 11, ([Exhibit G](#)), correcting the definition of a qualified small employer to be consistent with the federal requirements.

Section 13 defines the purpose of the Exchange. Simply stated, it is a place where insurance will be bought and sold. The Exchange will help Nevadans have access to health insurance products including subsidies and cost sharing

reductions aimed at reducing the number of uninsured Nevadans. There has been much discussion in previous committee meetings about the eligibility engine and how people can be moved seamlessly through the system.

Section 14 provides for assisting small employers in facilitating enrollment of their employees in qualified health plans in a small group market. After extensive discussion, it was decided the Exchange should not be exempt from the State Purchasing Division rules. All State Purchasing Division rules will apply.

Section 15, explained on pages 3 and 4 of [Exhibit F](#), establishes the governance structure. It is recommended there be a seven-member voting board and three ex officio nonvoting members. The Governor would appoint five members, the Majority Floor Leader of the Senate would appoint one member and the Speaker of the Assembly would appoint one member. The qualifications and expectations for members are set forth in this section. [Exhibit G](#) summarizes the requested amendment to this section.

Section 16 sets a three-year term for each voting member.

Section 17 directs the Board to elect a Chair and Vice Chair for one-year terms.

Section 18 states Board members will serve without compensation unless there is funding available, in which case, they would receive the usual per diem and travel expense reimbursements that State officers and employees receive.

Section 19, explained on pages 4 and 5 of [Exhibit F](#), sets forth the Board meeting and voting requirements.

Section 20 allows for the appointment of subcommittees and advisory committees with members who have experience or knowledge relevant to the functions of the Exchange. This provides the platform to obtain specific input from the insured, insurance brokers/agencies and health care providers as needed.

Section 21 states the Board will comply with State open meeting laws.

Section 22, referred to on page 5 of [Exhibit F](#), describes the duties and powers of the Exchange including adopting bylaws, reporting and audit requirements.

The Board of Directors can also contract for various professional services to conduct the business of the Exchange. The Department proposes an amendment as described in [Exhibit G](#) specifying the Board may contract for legal services.

Section 23 requires the Board to appoint an Executive Director who would be in the nonclassified service.

Sections 24 and 25 requires the Board, the Department of Health and Human Services (DHHS), State Medicaid, Child Health Insurance Program and the State Division of Insurance to work collaboratively to support the functions of the Exchange including the creation of a single point of entry for users and the establishment of intergovernmental agreements.

Section 26 allows the Exchange to obtain an advance from the General Fund if there are any time delays on receipt of federal revenues. The federal government will pay for all planning, development and implementation costs for the Exchange until 2015. Effective 2015, the law indicates the Exchange will be self-funding.

Section 28 exempts the Exchange from the Administrative Procedures Act. The policy and procedures need to be nimble with the ability to implement regulations quickly. The Department proposes an amendment to this section adding the Division of Insurance with a limited exemption in order to work with the Exchange in implementing timely regulations related to the Exchange's business. [Exhibit G](#) describes the proposed amendment to section 28.

Section 29 sets forth the terms of the Board members.

Section 30 requires the Exchange to have a plan for implementation by December 31, 2011.

The Director of DHHS will be responsible for administrative matters of the Board until the Executive Director is appointed.

I encourage the passage of S.B. 440 to ensure Nevada's compliance with the provisions in PPACA by adding the proposed amendments as outlined in [Exhibit G](#).

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SENATOR CEGAVSKE:

Will there be any effect if Nevada loses the lawsuit?

MR. WILLDEN:

I believe the lawsuit is a fifty-fifty proposition. A few federal judges have ruled one way and some have ruled the other way. This is now destined to go before the U.S. Supreme Court. The Governor's instructions are to proceed with implementation. If there is a court decision indicating the legislation is unconstitutional, we will stop implementation and reevaluate the situation.

SENATOR CEGAVSKE:

What will this cost Nevada for something that may be deemed unconstitutional?

MR. WILLDEN:

We are doing our best to make the federal government pay for the entire cost of planning and implementation. There have been some State costs invested in terms of staff time. Our consultants are working to develop a cost-allocation methodology to ensure all staff time invested in this project is charged to the federal government. As previously mentioned, Nevada has received a \$1 million planning grant to cover expenditures.

SENATOR CEGAVSKE: :

In section 15 of S.B. 440, can the minority leadership be included in the voting entities?

CHAIR HORSFORD:

Please note these are administration bills.

SENATOR KIECKHEFER:

How will this be self-supporting by 2015? Where will the money come from? Also, how will the health insurance subsidy work?

BRETT J. BARRATT (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):

The methodology for self-funding is undecided at this point. The Board will play an active role in deciding the best method for Nevada. Utah charges a fee that is included in the premium collected by the Exchange. A portion of the fee is distributed to the broker responsible for the individual member or small

employer. Part of the fee goes to the administration of the Utah Exchange. Nevada could start the program with something similar to the Utah model.

SENATOR KIECKHEFER:

Do you have any idea what the total annual cost will be and how much can be levied out of that?

MR. BARRATT:

I do not have that information yet. It is likely there would be a fee included in the premium paid by the person purchasing health insurance through the Exchange that would be directed toward the cost.

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):

The individuals participating in the Exchange will be eligible for subsidies if their income is below 400 percent of the federal poverty level. The federal government will provide funding to offset the premium costs in the form of an advanced tax credit or reduced premiums. When individuals apply through the eligibility engine available on the Website or over the telephone, they will be determined eligible for the level of subsidy for which they qualify. This amount will then be applied as a reduction to the premium. It is not yet clear how the Exchange will get reimbursed by the federal government.

SENATOR KIECKHEFER:

Is this a Web-based application process?

MR. DUARTE:

The eligibility engine will be invisible to anyone accessing the Exchange. Individuals can apply on a Web-based application. The system will automatically determine their eligibility and the amount of subsidy they qualify for.

SENATOR KIECKHEFER:

Will the system determine eligibility for other programs administered by the DHHS and at least make referrals to those programs?

MR. DUARTE:

Considering the tight time frames and the size and scope of the information technology project, the focus will be on developing the mechanism to purchase the Exchange coverage and will only be linked to determining eligibility for

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Nevada Medicaid, Nevada Check Up and premium subsidies. Sometime after this is up and running, the Department can look at connecting it to other programs.

Regarding the funding for this project, the Department is in the process of a market study aimed at estimating the number of people who will potentially qualify for the Exchange coverage. This will provide a budget projection and help define the size of this project long term. Sometime in late June or early July 2011, the Department will apply for a State Planning and Establishment Grant to build the nuts and bolts of the Exchange. These grants will continue to be available between now through 2014.

SENATOR CEGAVSKE:

What happens if the money for this does not come through?

MR. WILLDEN:

Somewhere there is language that says participation is contingent upon receipt of funding. The Department does not intend to ask for General Fund monies. The Department will continue to pursue 100 percent federal funding through the implementation grants. The budgets are being closed with what is known today. As these federal grants become available, the Department will come to the Interim Finance Committee requesting these dollars be added to our budget.

SENATOR CEGAVSKE:

What happens long term if the federal funding stops?

MR. WILLDEN:

The federal government will be paying for planning, development and implementation from now until January 2015. In January 2015, the law requires the Exchange to be self-funding. The difficult discussions will be in the 2013 Legislative Session when it is decided how the Exchange will be funded going forward.

CHAIR HORSFORD:

It worked in Massachusetts.

SENATOR LESLIE:

In section 15 of S.B. 440, which lists the expertise required of the governing Board members, what is meant by having experience as a consumer who would benefit from services provided by the Exchange?

MR. WILLDEN:

This would be an individual who has actually used the services provided by the Exchange. The intent is to have a consumer-based voice on the Board.

SENATOR LESLIE:

The Governor made the choice to have the State run the Exchange rather than the federal government. Is that correct?

MR. WILLDEN:

There are three choices for operating the Exchange. It can be a regionally operated Exchange with the responsibility shared by more than one state, operated solely by the State or operated solely by the federal government.

SENATOR LESLIE:

Since the Governor has indicated the State will run the Exchange, does he support S.B. 440?

MR. WILLDEN:

That is correct.

CHAIR HORSFORD:

In section 15 of S.B. 440, the description of the consumer needs to be more definitive to designate a low-income working individual who is also eligible for Nevada Medicaid.

Where it lists the nonvoting members of the Board who shall be assisting the voting members of the Board, why not specifically list the Insurance Commissioner instead of the Director of the Department of Business and Industry or his designee?

MR. WILLDEN:

We listed the three department directors or their designees.

CHAIR HORSFORD:

It should be the Insurance Commissioner specifically, because that is where the health plans are licensed. Additionally, why does the Director of Administration need to be included?

MR. WILLDEN:

We looked at what had been done in Massachusetts and some of the other states that found that the Administration was beneficial in providing financial expertise. This is a nonvoting role.

CHAIR HORSFORD:

In section 23, I am again questioning the unclassified service. If there is a problem with the State personnel process, the process should be changed. It is not right to continue circumventing the process by allowing positions to be filled as unclassified.

BARRY GOLD (Director of Government Relations, Nevada American Association of Retired Persons):

The Nevada American Association of Retired Persons (AARP) applauds the effort of all the State agencies and administration who were involved in bringing this legislation to the Legislature. I have spoken with Director Willden, Commissioner Barratt and other State agency staff about this piece of legislation. Their work has resulted in a complete, thorough, enabling piece of legislation for the Health Insurance Exchange.

This new competitive insurance marketplace will give consumers more control, quality choices and better protection when they buy insurance. Individuals, families and small businesses will be able to choose if they want to buy coverage through this new marketplace. A better way to describe the Exchange is to call it a competitive health insurance marketplace because that is truly what it is. This is going to bring greater transparency to the insurance industry. It will give individuals access to easy to understand information so they can make real comparisons between plans and find the best coverage for themselves and their families. It will also give individuals in small businesses the advantages that large companies now have when they negotiate for group rates in high-quality care. The new competitive health insurance marketplace will give Nevada, not outside interests, the power to ensure Nevadans have the control, choices and protections when they buy insurance.

Nevada AARP is proposing a friendly amendment that I previously shared with Director Willden. The intent of this amendment is to extend the scope of the expertise requirement areas. It is proposed that one of the Board members have expertise in consumer advocacy including experience in consumer outreach and education. We feel strongly this is an important addition because a consumer will only have consumer focus and orientation. That is important. However, they will not have the necessary expertise in consumer outreach, education or advocacy important in designing and implementing a marketplace that will attract consumers who will then actually use it. The Exchange must provide more than a consumer orientation. It must be easily marketable to consumers, be attractive enough to draw them to it and make them want to use it. The consumer advocacy expertise will ensure the consumer orientation and consumer friendly focus and the outreach and education expertise will assist with success in the public information efforts that will be necessary and ultimately drive the actual utilization.

The Nevada AARP is looking forward to working with the State agencies, the Governor and the Legislature in creating a competitive health insurance marketplace that will meet the needs of Nevada families and businesses. When we survey our members they say they want to stay healthy. Access to affordable, quality health care is important to all Nevada families. Senate Bill 440 will create this affordable, competitive health insurance marketplace. On behalf of our 305,000 members across the State, Nevada AARP strongly supports S.B. 440 and urges this Committee to pass it with our amendment that will ensure the consumer and advocacy focus are included as well as education and outreach to ensure the success of this new insurance marketplace.

CHAIR HORSFORD:

You raise a number of valid points particularly around the outreach efforts. The State experienced underutilization with the Nevada Check Up program because of inadequate outreach efforts.

We will close the hearing on S.B. 440 and open the hearing on S.B. 446.

SENATE BILL 446: Revises provisions governing the composition of the State Department of Conservation and Natural Resources. (BDR 18-1209)

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LEO M. DROZDOFF, P.E. (Director, State Department of Conservation and Natural Resources):

Senate Bill 446 is a budget bill. This bill eliminates the Advisory Board on Natural Resources, the Division of Conservation Districts, the State Conservation Commission and the Commission for the Preservation of Wild Horses. It transfers the duties of the State Conservation Commission to the State Environmental Commission. Clarification is made that there is one deputy director of the Department rather than two assistant directors.

All of our budgets have closed and this bill is consistent in all areas except the Division of Conservation Districts. The Governor's recommended budget provides \$1,000 for each of the 28 conservation districts for each year of the 2011-2013 biennium. This morning the Joint Committees closed the budget utilizing a different option.

First, I want to make clear the Department was in support of the Governor's recommended budget. The current Division of Conservation Districts consists of three persons. After the budget passage this morning, the Division will be one person. My request, rather than having a Division of one person, is to have a program of one person who would report to the Director's Office.

CHAIR HORSFORD:

Based on the decision today to not eliminate the Division of Conservation Districts, will you be offering an amendment to S.B. 446?

MR. DROZDOFF:

Yes, I will work with Fiscal Staff and get that going as soon as possible.

SENATOR LESLIE:

I do not understand your statement about the Governor supporting \$1,000 for each conservation district. I thought S.B. 446 eliminated the conservation districts.

MR. DROZDOFF:

The original budget had an add back of \$1000 for the districts.

CHRIS FREEMAN (State Conservation Commissioner, Nevada Tahoe Conservation District, Division of Conservation Districts, State Department of Conservation and Natural Resources):

I have been involved in the conservation districts for over thirty years. I am requesting the current statutes in NRS 548, that guide and direct the Division of Conservation Districts and their programs, remain intact. I will work with the Department and the Commission on this.

The Division of Conservation Districts could work as a program the same as it has operated as a Division. This program works with people at the local level on various issues such as weed control, water quality, grazing issues, wild horse issues, working with federal agencies on land issues, biofuels, solar energy and many other things they do not always get credit for doing. This organization needs the guidance and support from the State as specified in NRS 548. Whatever decision is made, it is important a legal designation be maintained within the State authorizing them to carry out their responsibilities. It is also important to have staff tasked with identifying and applying for available funds to help them carry out their programs on a daily basis.

DAN KAFFER (Coordinator, Natural Resources Conservation Services, United States Department of Agriculture):

I too have worked with conservation districts for thirty years. I have assisted in returning Nevada tax dollars of almost \$20 million a year to work on conservation issues across the State. Our most important partner for the last 75 years has been the conservation districts. It is important that a direct mechanism for implementing conservation work be in place, including wildlife, wind, greenhouses and all the other items discussed by Mr. Freeman. The conservation districts need to remain a viable and active partner in the conservation programs in Nevada.

BARBARA PERLMAN-WHYMAN (President, Nevada Association of Conservation Districts):

The 28 conservation districts in Nevada work in all facets of the projects from the ground floor up to Washington, D.C. If the conservation districts were removed, Nevada would be the only state to not have the conservation districts governed by the State. These are large districts making it difficult to communicate. It is important to have the oversight of the Commission. An alternative to eliminating the Division of Conservation Districts has been presented in previous meetings. I have those changes which are currently not in

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S. B. 446. I am asking the alternatives presented for the conservation districts to remain as part of the State be considered.

CHAIR HORSFORD:

Are you aware of the action taken this morning on this in the budget closings that restored the conservation districts?

MS. PERLMAN-WHYMAN:

Yes, I am.

MR. KAFFER:

The current bill as it is written eliminates the Division of Conservation Districts and the State Conservation Commission.

CHAIR HORSFORD:

That will be revised.

MR. KAFFER:

If the Division of Conservation Districts and the State Conservation Commission are not eliminated in S.B. 446, and NRS 548 stays intact, the districts and the Commission can continue to carry out their programs.

CHAIR HORSFORD:

That is the intent. Based on the budget closings, that provision will be amended which should address your concern.

I will close the hearing on S.B. 446 and open the hearing on A.B. 475.

[ASSEMBLY BILL 475 \(1st Reprint\)](#): Makes a supplemental appropriation to the Nevada Supreme Court for an unanticipated shortfall in Fiscal Year 2010-2011 relating to a third judicial selection process. (BDR S-1094)

ROBIN L. SWEET (Interim Court Administrator and Director of the Administrative Office of the Courts, Office of the Court Administrator, Judicial Branch Agencies):

Assembly Bill 475 requests additional funding for a third judicial vacancy that occurred this year. Previously, our original budget was for \$18,000 for two processes. Judicial selection is authorized by the *Nevada Constitution* under

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Article 6, section 20. An amendment was requested to lower the amount once we selected the site. We have now completed the judicial selection and have submitted the names to the Governor. Many of the Commission members volunteered to forgo commission pay. Based on this, we ask that A.B. 475 be withdrawn. The funding is no longer needed.

SENATOR CEGAVSKE MOVED TO WITHDRAW AND INDEFINITELY POSTPONE A.B. 475.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR HORSFORD:
We will now open the hearing on A.B. 481.

[ASSEMBLY BILL 481 \(1st Reprint\)](#): Makes an appropriation to the Nevada Highway Patrol Division of the Department of Public Safety to replace certain fleet vehicles. (BDR S-1250)

JOHNEAN J. MORRISON (Administrative Services Officer, Nevada Highway Patrol Division, Department of Public Safety):
Assembly Bill 481 makes an appropriation to the Nevada Highway Patrol Division to replace certain fleet vehicles.

SENATOR CEGAVSKE:
What is the cost of a new vehicle and what is the procedure for disposing of the old vehicles?

MS. MORRISON:
The mileage threshold was raised to 105,000 miles for sedans and 125,000 miles for sport utility vehicles (SUVs) and trucks. The current request only includes sedans and SUVs. It costs approximately \$42,000 to outfit a sedan and \$51,000 to outfit an SUV.

SENATOR CEGAVSKE:
What is meant by outfit?

Ms. Morrison:

These are the costs to convert the vehicle into a patrol vehicle.

SENATOR CEGAVSKE:

What happens when they are sold? Where does the money from the sale of the used vehicles go?

MS. MORRISON:

We process a property disposition report which transfers ownership of that vehicle from the Nevada Highway Patrol to the Purchasing Division. The car then goes out to auction. The proceeds received from the sale are deposited directly into the Nevada Highway Fund. The funds never come back to the Nevada Highway Patrol.

SENATOR DENIS:

How long does it take on average for a vehicle to reach the mileage threshold?

MS. MORRISON:

It depends upon the geographical location of the vehicle. Vehicles in rural areas accrue mileage faster than urban areas. Generally, vehicles last five to seven years, depending upon their location.

SENATOR DENIS:

What happens to all the equipment when the vehicles are sold?

MS. MORRISON:

There is a fairly high recycle rate on the components used to ready a car for patrol. There is no certainty, however, about whether the parts can be recycled. The manufacturer changed specifications on the vehicles. For example, a prisoner cage taken out of one of the used vehicles may not fit the newer vehicle model being purchased. Sometimes it is not possible to extract parts without damaging them. We do try to recycle and reuse as many of the accessories as we can.

SENATOR DENIS:

How is this considered in the budgeting process?

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MS. MORRISON:

Each new car is budgeted with the costs of all new accessories because it is unknown how much can be reused.

SENATOR KIECKHEFER:

I want to disclose that my father-in-law is an auto dealer in Nevada and my wife occasionally works there. I do not know if he sells vehicles to the Highway Patrol, but to make certain there is no conflict, I will be abstaining from voting.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 481.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR KIECKHEFER ABSTAINED FROM THE VOTE.)

* * * * *

CHAIR HORSFORD:

The hearing on A.B. 481 is closed. We will move to budget closing items before returning to the bills.

MR. KRMPOTIC:

Please refer to page 4 of the Senate Committee on Finance, Closing List #7, dated May 18, 2011 ([Exhibit H](#)).

This is an outstanding item that was not closed when budget account (B/A) 101-4868 was previously heard.

ELECTED OFFICIALS

Governor's Office Energy Conservation — Budget Page ELECTED-30 (Volume I)
Budget Account 101-4868

The issue is whether to use the Property Tax Abatement program revenue to offset General Fund appropriations in B/A 101-4868.

The *Executive Budget* recommends a transfer of the Property Tax Abatement program and other activities from B/A 101-4869 to B/A 101-4868.

Renewable Energy and Energy Efficiency Authority — Budget Page ELECTED-41
(Volume I)
Budget Account 101-4869

The transfer includes Real Property Tax revenue totaling approximately \$1.3 million in FY 2011-2012 and approximately \$1.9 million in FY 2012-2013 and federal funds totaling \$39,005 in FY 2011-2012 and \$305,667 in FY 2012-2013. Senate Bill 426 was referred to the Committee making changes to the NRS to enable this transfer.

[SENATE BILL 426](#): Makes various changes related to energy. (BDR 58-1156)

The Governor's budget recommends Real Property Tax revenue received by the Nevada State Office of Energy (NSOE) during the 2011-2013 biennium in the amount of \$50,771 in FY 2011-2012 and \$54,261 in FY 2012-2013 be allocated for operating expenses for the Property Tax Abatement program. The Committee is reminded that this program calls for 55 percent of the proceeds to be distributed to local government entities. Beginning July 1, 2011, 45 percent of the proceeds collected will be deposited in the Renewable Energy Fund administered by the Nevada Energy Commissioner and requires no less than 75 percent of the money in the fund to be used to offset the cost of electricity to retail customers. The statute is not specific about the other 25 percent, but it appears these funds may be spent pursuant to other uses established by the Commissioner through regulation.

In response to questions asked during the Agency budget hearings, NSOE confirmed that five applicants have been approved for property tax abatements. At the time the abatements were approved, the tax amount of the Abated Tax revenue to be received by NSOE was \$1.65 million in FY 782011-2012 and \$1.63 million in FY 2012-2013. These amounts are higher than the amounts recommended in the *Executive Budget*. Fiscal Staff have included the adjustments in the Closing Report based on the revised revenue projections for the Property Tax Abatement program. Additionally, Staff has included technical adjustments to B/A 101-4869 previously closed by the Committee. The Committee should note that the revised revenue projections and technical adjustments result in a reserve balance at the end of

FY 2012-2013 totaling \$492,509. Therefore, it appears the Reserve would be sufficient to offset the General Fund in this account totaling \$205,633 in FY 2011-2012 and \$260,247 in FY 2012-2013.

When B/A 101-4868 closed on April 20, 2011, in the Assembly Committee on Ways and Means, the Committee approved the utilization of the Property Tax Abatement program revenue to completely offset General Fund appropriations in B/A 101-4868. This Committee also voted to allow the Agency to receive an advance from General Fund in each year and to have General Fund appropriations totaling \$100 in each year to provide access to the Contingency Fund.

The decision before the Committee is whether to approve the utilization of Property Tax Abatement revenue to support NSOE during the 2011-2013 biennium as recommended in the *Executive Budget* with the adjustments recommended by Staff. Further, does the Committee wish to offset General Fund appropriations utilizing the revenue from the Property Tax Abatement program as approved by the Committee on Ways and Means, or one of the alternative sources described on page 6 of the Closing Document, [Exhibit G](#). The potential offset is not part of the *Executive Budget* and would result in a General Fund savings up to \$465,800 for the 2011-2013 biennium.

SENATOR LESLIE MOVED TO APPROVE THE UTILIZATION OF PROPERTY TAX ABATEMENT REVENUE TO SUPPORT NSOE, B/A 101-4868, DURING THE 2011-2013 BIENNIUM AS RECOMMENDED IN THE *EXECUTIVE BUDGET* WITH ADJUSTMENTS RECOMMENDED BY FISCAL STAFF AND TO COINCIDE WITH THE CLOSURE ACTIONS TAKEN BY THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MR. KRMPOTIC:

Based on the Committee's action, Fiscal Staff will add \$100 each year of General Fund appropriation to provide access to the Contingency Fund and will

include language in the General Appropriations Act to provide for a General Fund advance. Your action aligns closing actions on B/A 101-4868 made by this Committee with those taken by the Assembly Committee on Ways and Means. We will now discuss B/A 101-1011 beginning on page 1a of the Closing Document, ([Exhibit H](#)).

Governor's Washington Office — Budget Page ELECTED-10 (Volume I)
Budget Account 101-1011

Budget account 101-1011 was heard by the Committee in April 2011. There were no major issues noted for this account. Budget account 101-1011 establishes a Washington, D.C. Office with 2.0 FTE staff who monitor regulations issued by federal agencies and who convey potential impacts to Nevada, the Congress and the Administration. Additionally, the Office represents the Governor with the National Governors' Association and the Western Governors' Association participating in the policy process of each organization. The Office is currently operated by District Strategies, LLC, a Washington, D.C.-based limited-liability company.

Funding in the amount of \$247,079 is recommended for each year of the 2011-2013 biennium through transfers from the Commission on Economic Development, the Commission on Tourism and the Department of Transportation as shown on pages 2 and 3 of [Exhibit H](#). The decision before the Committee is whether it wishes to close this budget as recommended by the Governor.

CHAIR HORSFORD:

I asked previously for information about whether this will go out for competitive bids.

STEPHANIE DAY (Deputy Director, Budget Division, Department of Administration):

A three-month amendment will be made to the current contract to allow for sufficient time to do a request for proposal (RFP).

CHAIR HORSFORD:

I do not see this as an essential service considering the limited budget and other critical needs. The fact that this has not been put out to bid is a big concern to me.

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SENATOR LESLIE:

How long has it been since a competitive contract was done on this?

Ms. DAY:

I cannot find in the records where an RFP has ever been done.

SENATOR RHOADS MOVED TO APPROVE B/A 101-1011 AS
RECOMMENDED BY THE GOVERNOR.

SENATOR CEGAVSKE SECONDED THE MOTION.

SENATOR KIECKHEFER:

I too am bothered that this has never gone out for a competitive bid, however, their intent is to now go through the RFP process. Having worked in both the Governor's Office and an Executive Branch agency, this office has been useful in providing timely information from the federal government that would be otherwise difficult to obtain. Consequently, I will support the motion.

CHAIR HORSFORD:

You can get any questions answered by the Majority Leader of the United States Senate who has a much larger staff working for the federal government.

THE MOTION FAILED. (SENATORS DENIS, HORSFORD, LESLIE AND
PARKS VOTED NO.)

* * * * *

CHAIR HORSFORD:

I will accept another motion.

SENATOR LESLIE MOVED TO NOT ACCEPT B/A 101-1011 AS
RECOMMENDED BY THE GOVERNOR AND APPROVE ELIMINATING THE
FUNDING FROM B/A 101-1011.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE, KIECKHEFER AND RHOADS VOTED NO.)

* * * * *

CHAIR HORSFORD:

We will open the hearing on S.B. 207 and S.B. 208. We will not be discussing the policy on these two bills. There has been extensive discussion in the Senate Committee on Commerce, Labor and Energy regarding these two bills. There are fiscal-related impacts to these bills requiring them to come to the Senate Committee on Finance. Today, we will only be discussing the amendments and any fiscal-related notes.

SENATE BILL 207: Authorizes the imposition of an administrative penalty against an employer who misclassifies an employee as an independent contractor. (BDR 53-165)

SENATE BILL 208: Creates the Task Force on Employee Misclassification. (BDR 53-164)

JACK MALLORY (Director of Government Affairs, District Council 15, International Union of Painters and Allied Trades):

I am representing the District Council 15, the Southern Nevada Building and Construction Trades Council and the Nevada State American Federation of Labor and Congress of Industrial Organizations. We are in support of S.B. 207 as it was originally drafted; however, we are offering an amendment to the bill for your consideration (Exhibit I). For the record, I submit the following testimony.

Senate Bill 207 was proposed by the Interim Committee to Study Employee Misclassification and was intended to create civil penalties for employers who misclassify employees as independent contractors.

In the Senate Committee on Commerce and Labor hearing on this bill, there was a large amount of testimony, particularly about the definition of Independent Contractor (subsection 4, paragraph (c) beginning on line 40 of page 2 and ending on line 8 of the original bill). A good portion of that testimony, including specific questions

by Committee members regarding the application of this new definition expressed some concern about the potential impact that this definition may have on existing legitimate independent contractor relationships.

In section 1 of the amendment, we are proposing to delete "regardless of the intent of the employer" on line 4. We believe that this is necessary because of another portion of the proposed amendment related to administrative penalties. On lines 5 and 6, we have proposed adding "or fails to properly classify an individual as an employee." While this may seem duplicative, the intent of this addition is to try and capture workers who are paid cash for their work without any type of tax filings.

After considering testimony that was offered during the hearing on this bill in the Senate Committee on Commerce and Labor, it was obvious to us that there are potential circumstances where an employer may inadvertently or unintentionally misclassify an employee as an independent contractor. In light of this, we are proposing adding an additional section to the first offense language which appears on lines 9 through 11. The proposed amendment creates a two tiered administrative penalty that is based on intent. Subsection 1, paragraph (a), subparagraph (1) establishes a lesser penalty for unintentional misclassification. Subsection 1, paragraph (a), subparagraph (2) leaves the original penalty; however it would only apply for willful misclassification. It is our belief that willful would be an act that is knowingly and intentionally committed.

On lines 31 through 41, we considered testimony that was offered and out of an abundance of caution. We are proposing deleting the "ABC test" from the bill as the definition of independent contractor and reverting to the existing statutory definition contained in NRS 616A.255. Our intent is to not make the language so strong that it would have an adverse impact on existing valid independent contractors and general business. This belief was strengthened during a meeting with several lobbyists who represent various sectors of business. Based on discussions during that meeting, we believe that at this time, it isn't possible to create an expanded

definition of independent contractor that would apply to all sectors of business without potential unintended consequences that could possibly expand who could legally be classified as independent contractors who currently could and should be classified as employees. This specific proposal maintains the existing law regarding the definition of independent contractor. If someone is currently an independent contractor, they would not be affected by this legislation, nor would there be an impact on a business who uses their services. Additionally, we believe that if S.B. 208 becomes law, the Task Force on Misclassification would have an opportunity to review the application of existing law and regulations to determine whether the issue is a regulatory problem or an enforcement problem and would additionally have the ability to make recommendations for potential resolutions of problems that they discover.

Section 2 of the proposed amendment beginning on line 42 of page 2 and lines 1 through 13 of page 3 is language that was taken from S.B. 147 which failed to meet the first committee passage deadline. This language was proposed by the Interim Study Group to try and address problems with individuals who knowingly advise employers to misclassify their employees as independent contractors. We believe that this is an important measure. It creates strong civil penalties for these individuals. During the hearing there was testimony and a document presented that detailed how this is occurring and has occurred in the construction industry. This has had a chilling effect on the construction industry, particularly the residential industry. Legitimate contractors who follow the rules cannot compete with companies who have a significant economic advantage because of this scheme.

Section 3 of the amendment on lines 14 through 21 of page 3 proposes adding a section from S.B. 242 which also failed to meet the deadline. It simply requires that the definitions of employee and independent contractor be added to the workers' compensation notice that is currently required to be posted by law. We believe that this provision is important simply because it provides specific notification to workers regarding employment status.

SENATE BILL 147. Establishes civil liability for knowingly advising certain persons to misrepresent the classification or duties of employees for the purposes of industrial insurance. (BDR 53-167)

SENATE BILL 242. Revises provisions relating to workers' compensation (BDR 53-168).

CHAIR HORSFORD:

Please present the proposed amendment for S.B. 208.

MR. MALLORY:

Senate Bill 208 is specifically the task force bill. The task force would be responsible for reviewing existing policies, facilitating greater communications between departments of government and making recommendations for policies and potential legislation to this body in the future. We are in support of S.B. 208 as it was originally drafted; however, we are offering an amendment to the bill ([Exhibit J](#)) for your consideration. For the record, I submit the following testimony.

In the Senate Commerce and Labor Committee hearing on this bill, there was a large amount of testimony, particularly about the definition of Independent Contractor (section 6 of the bill on lines 23 through 35 of page 2 of the original bill). A good portion of that testimony, including specific questions by committee members regarding the application of this new definition expressed some concern about the potential impact that this definition may have on existing legitimate independent contractor relationships.

We considered testimony that was offered and out of an abundance of caution. We are proposing deleting the "ABC test" from the bill as the definition of independent contractor and reverting to the existing statutory definition contained in NRS 616A.255. Our intent is to not make the language so strong that it would have an adverse impact on existing valid independent contractors and general business. This belief was strengthened during a meeting with several lobbyists who represent various sectors of business. Based on discussions during that meeting, we believe that at this time, it isn't possible to create an expanded definition of independent contractor that would apply to all sectors

of business without potential unintended consequences that could possibly expand who could legally be classified as independent contractors who currently could and should be classified as employees.

This specific proposal maintains the existing law regarding the definition of independent contractor. If someone is currently an independent contractor, they would not be affected by this legislation, nor would there be an impact on a business who uses their services. Additionally, we believe that if S.B. 208 becomes law, the Task Force on Misclassification would have an opportunity to review the application of existing law and regulations to determine whether the issue is a regulatory problem or an enforcement problem and would additionally have the ability to make recommendations for potential resolutions of problems that they discover.

SENATOR KIECKHEFER:
How will this change the fiscal note?

MR. MALLORY:
It is not appropriate for me to speak on behalf of the agencies. The Labor Commissioner attached a fiscal note to S.B. 207. As I recall, they estimated approximately 200 violations per year. They included an estimated per-hearing cost. Because of the reversion to existing regulatory standards for independent contractors, we believe the potential number of violations will decrease. The Labor Commissioner stated in the fiscal note that there is some discretionary action. The language contained in the bills that we retained in our amendment regarding penalties is permissive. The term "may" is used rather than "shall."

SENATOR KIECKHEFER:
Regarding the determination of whether something was done intentionally versus unintentionally, is an additional layer created for fact finding to determine whether it was willful or unintentional that will increase the costs?

MR. MALLORY:
It would be best for the Labor Commissioner's Office to issue a statement on that. However, during testimony on the original bills, the Labor Commissioner

applies what he calls, "the smell test," when determining whether or not an individual could potentially be misclassified as an independent contractor. I would assume in applying that smell test they would be able to determine, at least initially, whether they would proceed with a deeper investigation regarding the merit of an intentional violation.

SENATOR KIECKHEFER:

When the amount of a fine can vary from \$250 to \$15,000, I do not believe an employer will settle for a smell test.

CHAIR HORSFORD:

Unfortunately, that is how the Labor Commissioner has approached many of its fines.

ROBERT A. OSTROVSKY (President, Ostrovsky and Associates):

I am representing the Nevada Resort Association. I will not be commenting on the proposed language. I object to the fact that I have never seen these amendments until one hour ago. I have lobbied here since 1979. I have been in these hallways for the past 12 hours. No one came to me, no one handed them to me and no one asked my opinion. Consequently, it is difficult for me to respond to the language, but I will object to the process. This was the way we lobbied 20 years ago. It is not the way we lobby today.

CHAIR HORSFORD:

I do not know why the amendments were not provided.

MR. MALLORY:

We provided a copy of this draft to Samuel McMullen, representative for the Las Vegas Chamber of Commerce, with the intent of having a discussion with him. We set up a meeting time and when we arrived we learned we were meeting with Mr. Ostrovsky, Mr. Alonzo, Mr. Graves, Mr. Flint and a lady from the Realtors' Association. We had no advance notice that we would be meeting with those additional individuals. When we had that meeting, we assumed that Mr. McMullen had shared this draft amendment with the other people we were meeting with. We did not intentionally withhold this information.

CHAIR HORSFORD:

It behooves everyone to try to be as transparent as possible. However, I also do not think there are any surprises in this bill.

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MR. OSTROVSKY:

I am not asking the Committee to not take action tonight. There will be another opportunity for a hearing on the Assembly side of the house. I just wanted to voice my opinion about something I feel very strongly about, transparency.

CHAIR HORSFORD:

The reason I am ready to move these bills is because these are interim study bills. There were months and months of testimony through the interim committee process.

SENATOR LESLIE MOVED TO AMEND AND DO PASS S.B. 207 WITH THE PROPOSED AMENDMENT.

SENATOR PARKS SECONDED THE MOTION.

SENATOR KIECKHEFER:

The fiscal impact has not been substantiated. I will not be supporting the passage of this bill for that reason.

THE MOTION CARRIED. (SENATORS CEGAVSKE, KIECKHEFER AND RHOADS VOTED NO.)

CHAIR HORSFORD:

Is there a motion on S.B. 208?

SENATOR LESLIE MOVED TO AMEND AND DO PASS S.B. 208 WITH THE ATTACHED AMENDMENT, [EXHIBIT J](#).

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE, KIECKHEFER AND RHOADS VOTED NO.)

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There being no further business, the meeting is adjourned at 8:59 p.m.

RESPECTFULLY SUBMITTED:

Jackie Cheney,
Committee Secretary

APPROVED BY:

Senator Steven A. Horsford, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Senator Lee	Amendment 6729 to S.B. 374
	D	Andrew Clinger	Amendment 6791 to S.B. 427
	E	Andrew Clinger	S.B. 427 Matrix on Proposed Amendment
	F	Mike Willden	S.B. 440 Testimony
	G	Mike Willden	Amendments to S.B. 440
	H	Mark Krmpotic	Closing List #7
	I	Jack Mallory	Amendment to S.B. 207
	J	Jack Mallory	Amendment to S. B. 208