MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-sixth Session
June 6, 2011

The Senate Committee on Finance was called to order by Chair Steven A. Horsford at 9:19 a.m. on Monday, June 6, 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

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Clark County Senatorial District No. 5
Senator Michael A. Schneider, Clark County Senatorial District No. 11
Assemblyman Marcus L. Conklin, Assembly District No. 37
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman John Oceguera, Assembly District Clark, No. 16
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Laura Freed, Senior Program Analyst
Mark Krmpotic, Senate Fiscal Analyst
Jackie Cheney, Committee Secretary

OTHERS PRESENT:

John Madole, Executive Director, Nevada Chapter Associated General Contractors of America
Norman L. Dianda, President, Q&D Construction Inc.
Thomas H. Gallagher, Chief Executive Officer, Summit Engineering Corporation
Jay Parmer, Builders Association of Northern Nevada
Rose McKinney-James, The Solar Alliance; Bombard Renewable Energy; Amonix
Kyle Davis, Political Director, Nevada Conservation League
Warren B. Hardy, Ex-Senator; Hamilton Solar
Stacey Crowley, Director, Office of Energy, Office of the Governor
Judy Stokey, Executive, Government and External Affairs, Nevada Energy
Daniel O. Jacobsen, Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General
Stephanie Day, Deputy Director, Budget Division, Department of Administration
Robert E. Dickens, Ph.D., Director, Office of Governmental Relations, University of Nevada, Reno
Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Diane J. Comeaux, Administrator, Division of Child and Family Services, Department of Health and Human Services
Kevin R. Ranft, American Federation of State, County and Municipal Employees Local 4041
Sean Higgins, Nevada Tavern Owners Association; Golden Gaming; United Coin Machine; Affinity Gaming
Alfredo Alonso, Las Vegas Convention and Visitors Authority
Michael Hackett, Nevada State Medical Association; American Cancer Society; Cancer Action Network; Nevada Tobacco Prevention Coalition; Smoke-Free Gaming of America
Robert Sack, Division Director, Environmental Health Services Division, Washoe County District Health Department
Lawrence K. Sands, D.O., M.P.H., Chief Health Officer, Southern Nevada Health District
Amy Beaulieu, Director of Tobacco Control Policy; American Lung Association; Nevada Tobacco Prevention Coalition
Amber Joiner, Director of Governmental Relations, Nevada State Medical Association
Christopher Roller, American Heart Association; Nevada Tobacco Prevention Coalition
Tom McCoy, J.D., Nevada Director of Government Relations; American Cancer Society; Cancer Action Network

Chuck Callaway, Director of Intergovernmental Services, Las Vegas Metropolitan Police Department
Tim Kuzanek, Captain, Washoe County Sheriff's Office
Richard Boulware, First Vice President, National Association for the Advancement of Colored People
Tonja Brown, Advocate for the Innocent
Julie Butler, Records Bureau Chief, Department of Public Safety, Criminal History Repository
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Keith Munro, First Assistant Attorney General and Legislative Liaison, Attorney General Office
Rebecca Gasca, Legislature and Policy Director, American Civil Liberties Union of Nevada
Janine Hansen, State President, Nevada Eagle Forum
Kristin L. Erickson, Chief Deputy District Attorney, Nevada District Attorneys Association, Washoe County

CHAIR HORSFORD:
This meeting is called to order. We will begin with Assembly Bill (A.B.) 401.

ASSEMBLY BILL 401 (2nd Reprint): Makes various changes concerning constructional defects. (BDR 3-382)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
Assembly Bill 401 clarifies the definition of a construction defect, to whom and when attorney fees are awarded, and revises the statutes of limitation and repose.

I met with interested parties to develop solutions to problems all of us have had for a number of years regarding constructional defects. As early as July 2010, I met with the Nevada Builder's Coalition and asked for a list of the five most important items to address. The items listed were attorney fees, definition of a construction defect, statutes of limitation and repose, the Nevada State Contractor's Board involvement and real property disclosure statement modifications. The first three are addressed in this bill.

This bill revises the definition of a constructional defect to state that if the workmanship, design, construction, manufacture, repair or landscaping exceeds the standards set forth in the applicable law, local codes or ordinances, such workmanship will not constitute a construction defect. This wording was lifted from language passed out of this house last Session. This should deter some of the merit list claims by limiting the types of claims that may arise and ease the evidentiary burden on the construction industry by providing a simple and valid defense.

Regarding attorney fees, some believe the existing language implies attorney fees are automatic. The language is revised to clarify that attorney fees will only be payable to the prevailing party. Disputed fees will be determined and approved by the court.

Currently, the law states the statute of limitations is ten years for known deficiencies, eight years for latent deficiencies and six years for patent deficiencies. Assembly Bill 401 revises the statute of limitations to be up to three years after discovery for willful misconduct or fraudulent concealment; and for nonwillful actions, six years after the substantial completion of the residence or three years after discovery. These changes will result in Nevada having one of the lowest standards for statute of limitations and repose in the country.

In summary, this bill does three things. It further defines constructional defects, it clarifies the attorney fee issue and it revises the time limits for constructional defects. These changes have been discussed and agreed upon by the Governor and legislative leadership in both parties. Since then, these items have become fairly contentious.

CHAIR HORSFORD:
I agree with you. These changes do reflect the terms of the agreement reached among the Governor and Legislative leadership.

JOHN MADOLE (Executive Director, Nevada Chapter Associated General Contractors of America):
There are tens of thousands of people out of work in the construction industry. Until the law on construction defects is fixed, it is unlikely we will return to economic health. There is nothing meaningful in A.B. 401. The recommended changes are attempting to put a band-aid on a mortal wound. This bill needs to be fixed. The law needs to be fixed. However, it is my fear if A.B. 401 is passed, it will be said something was done when, in fact, this bill does nothing to solve the problems. We ask this Committee to reject this bill.

NORMAN DIANDA (President, Q&D Construction Inc.):
I am president and owner of Q&D Construction Inc. I have done business in Nevada for the past 47 years. Assembly Bill 401, as it stands today, does nothing for us. In fact, it will make things worse. I met personally with Assemblyman Oceguera long before this Session began. I told him that until we get rid of guaranteed attorney fees, nothing will improve. We paid our legal counsel to review A.B. 401. Additionally, all the construction associations and the construction industry as a whole have reviewed this bill. This bill improves nothing. Please defeat A.B. 401.

THOMAS H. GALLAGHER (Chief Executive Officer, Summit Engineering Corporation): I have provided a copy of my personal testimony (**Exhibit C**). I am here in opposition to A.B. 401. I have been working on construction defects since its inception in 1995 and every two years thereafter. It seems every time there is another Legislative Session, the law gets a little bit worse. This bill is a major step backwards. Instead of reading my testimony into the record, I will read the analysis of the bill done by my attorney, Nathan J. Aman, employed by Fahrendorf, Viloria, Oliphant and Oster, L.L.P.

> The changes being offered in A.B. 401 are completely drafted by the Plaintiffs' bar to shore up ambiguities in Chapter 40 for the complete one-sided benefits of the Plaintiffs' bar. The claim that the "prevailing party" is entitled to attorney's fees is not a compromise. What it means is that all Plaintiffs' counsel needs to do is prove the smallest violation of a code (i.e. a nailing pattern is not correct in a small area) and by the terms of the current statute there is a defect. Thereby, Plaintiffs' counsel need only prove $1 of damages to be entitled to attorneys' fees.
>
> "Reasonable attorney's" fees are also not what it means logically. In the legal world, the term reasonable attorneys' fees typically means all the fees that were incurred. Thereby, the assertion by Mr. Oceguera that the "prevailing party" provision will in someway make the statute better is not true in real litigation practice. All it will do is guarantee more litigation as the Plaintiffs' bar realizes all they need to do is prove $1 in damages to get potentially hundreds of thousands of dollars in attorneys' fees. That does not help the homeowner who gets the $1 for the repair; it only helps the attorneys. Simply put, the changes in this bill make Chapter 40 worse.
>
> Another egregious attempted change is to guarantee the Plaintiffs' counsel get attorneys' fees if the contractor makes every possible repair. Section 2, Paragraph 3. If the true purpose is to get the house fixed, and the contractor attempts to do right by doing the repairs, how are they then liable for attorneys' fees? This change will not foster repairs as the contractor is not going to do the repair and then pay attorneys' fees. What you are left with is a situation where they make the repairs and pay attorneys' fees or do not make the repairs and have the potential of paying attorneys' fees. The obvious reaction is not to make the repairs if the contractor is going to be liable for fees either way.

> Coming from an attorney who practices in this field every day, each of the changes are made to solely benefit the Plaintiffs' lawyers. There is nothing (minus potentially the change to the statute of repose) that is a compromise to the contractors. While the words may sound logical to the lay person, the legal implications of the changes are meant solely to benefit the Plaintiffs' lawyers.
>
> If given the opportunity, it would be interesting to pose the question, what contractor or defense lawyer was involved in drafting A.B. 401? The obvious answer will be none.
>
> I hope that helps. I apologize for it being long – but the two main points are "prevailing party" is not a fix – it is an illusion that will make the statute work in the legal world. And second, if the purpose of the statute is to repair homes, why is the option to repair being punished by tacking on attorney's fees? That eliminates the compromise that gave rise to the right to repair in the first place.

During the fifteen years I have been involved in this, Assemblywoman Smith has said we have to do little bits at a time to get something big to happen. In the last fifteen years, we have been taking baby steps backwards and I cannot see where there has been anything done by this body to help our situation.

JAY PARMER (Builders Association of Northern Nevada):
We are the building industry in Washoe County and the surrounding areas. Yesterday, the Senate Committee on Judiciary held a hearing on this bill. A number of our members came and asked the Legislature not to move on A.B. 401. The building industry does not support A.B. 401 as it is now written. The proposed revisions make the law worse, not better. We urge this Committee not to pass A.B. 401. We pledge to work during the interim to develop meaningful reform for consideration in the 2013 Legislative Session.

CHAIR HORSFORD:
The hearing for A.B. 401 is closed. The hearing is opened on A.B. 416.

ASSEMBLY BILL 416 (2nd Reprint): Revises provisions governing certain programs for renewable energy. (BDR 58-849)

ROSE MCKINNEY-JAMES (The Solar Alliance; Bombard Renewable Energy; Amonix):
Assemblyman Bobzien, the sponsor of this bill, is unable to be here and has asked me to present the bill on his behalf.

Assembly Bill 416 is a culmination of a significant amount of discussion over the course of this Session with an emphasis on revising the provisions of the Solar Energy Systems Incentive program, the Wind Energy Systems Demonstration program and the Waterpower Energy Systems Demonstration program. The bill introduces a mechanism designed to mitigate the impact on ratepayers for programs that have been in place for a number of years but require some adjustments.

In developing these revisions, an opportunity was afforded to all parties to participate. While the changes in this bill represent a consensus, not everyone went away with complete satisfaction. These revisions improve the programs and will increase the benefit to ratepayers over time. For purposes of these programs, the Public Utilities Commission of Nevada (PUCN) will be empowered to approve solar energy systems, wind energy systems and waterpower energy systems totaling not more than 150 megawatts of capacity. The 150 megawatts applies only to capacities related to these programs and will not impact systems installed without these incentives.

The current program will remain in place until 2013 to give PUCN the opportunity to promulgate regulations to implement the programs as revised in this measure. A number of technical issues have been corrected in this bill.

Some individuals who participated in the process are available to speak today and can respond to questions.

SENATOR KIECKHEFER:
Can you please provide more specifics about what the bill is intended to do?

MS. MCKINNEY-JAMES:
The existing Nevada SolarGenerations program is being extended and a performance-based incentive is being added. This moves away from what has been done in the past which was to provide both residential and commercial customers with an up-front rebate. By using this new mechanism, the costs are spread over time, providing the opportunity to do additional projects. Most importantly, we are giving the discretion to PUCN to implement the program which provides another venue for parties to make their case with respect to any unique issues they may have. As previously mentioned, the allowable capacity for the individual projects is capped at 150 megawatts.

SENATOR KIECKHEFER:
Are you presenting the amendment to this bill?

MS. MCKINNEY-JAMES:
The amendment is included in the second reprint that you have before you.

SENATOR KIECKHEFER:
We have another amendment.

CHAIR HORSFORD:
That is Senator Schneider's amendment regarding a feasibility study. Are there any further questions or comments related to Ms. McKinney-James' presentation?

KYLE DAVIS (Political Director, Nevada Conservation League):
I have been involved in this legislation from the beginning helping to bring together a consensus regarding the content of A.B. 416.

This bill extends the program not only for solar energy projects, but also for waterpower and windpower projects. The water and wind programs were put into place by the 2007 Legislative Session as demonstration programs. They have proven to be successful and will meet their goals as outlined in the 2007 Legislation. As explained by Ms. McKinney-James, A.B. 416 introduces a performance-based incentive which we believe will be better for ratepayers. The dollars will stretch further. This bill provides the flexibility to PUCN to design a program that is nimble and spends dollars wisely. This is a great step forward.

WARREN B. HARDY (Ex-Senator, Hamilton Solar):
I am here representing Hamilton Solar. Our primary concern has been that the programs must be structured to permit businesses to build a business model that will allow them to survive beyond the incentives. I appreciate the clarifications that Ms. McKinney-James made regarding capacity and the intention to continue the current program until the new program is in place. After conversations with those who have been proponents of the bill, we are satisfied that the intent is to provide for a continuous rollout instead of the stopping and starting that has been occurring, making it difficult to build a business model that makes sense. With these off-the-record reassurances, we are, therefore, in support of A.B. 416.

STACEY CROWLEY (Director, Office of Energy, Office of the Governor):
I am in support of A.B. 416. The 150 megawatt cap is compatible with the net metering cap that is referenced in Senate Bill (S.B. 59). A 2 percent cap statewide is about 150 megawatts.

SENATE BILL 59 (1ST Reprint): Increases the cumulative capacity of net metering systems operating in this State (BDR 54-408)

JUDY STOKEY (Executive, Government and External Affairs, Nevada Energy):
Nevada Energy supports A.B. 416 as amended. This bill makes substantive changes to renewable generation incentive programs while incorporating important consumer protections. This is a compromise bill where we all came to the table. We believe the customers and residents of Nevada will benefit from this bill over any of the other proposals. I am submitting a written statement and spreadsheet for the record (**Exhibit D**).

DANIEL O. JACOBSEN (Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General):
I represent the Office of the Attorney General's Bureau of Consumer Protection. We have followed this bill carefully. We support A.B. 416 primarily because it keeps the funding for the renewable energy that ratepayers have to bear roughly at current levels. We think that is appropriate. The $255 million for solar, and the $60 million for the other renewables, is about the same as consumers are funding today. The PUCN will have some latitude to deal with special circumstances and needs, but the intent is that the funding remains consistent with what it is today and will be spread evenly over the next ten years.

There is an amendment sponsored by Senator Schneider that may be addressed later, asking PUCN to study the feasibility and advisability of establishing a feed-in tariff program. We are opposed to that proposal. We do not think ratepayers should be subsidizing yet another element of solar generation. The State is already meeting the renewable portfolio standard. There is enough solar to meet the needs. Consequently, PUCN should not be spending time and money evaluating a feed-in tariff program.

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
We passed out of the Senate this Session a requirement for PUCN to put together a program for a feed-in tariff program for renewable energy systems in Nevada. When it got to the Assembly, it met with some opposition. I went over and negotiated with members of the Assembly. The result was to reduce the requirement to implement a program to only doing a feasibility study.

I am proposing in the amendment before you (**Exhibit E**) that PUCN do a study on a feed-in tariff to meet the needs of a particular area of Nevada's portfolio. The PUCN would report the findings from the study back to the Legislature during the 2013 Legislative Session. This study will determine whether a feed-in tariff could work in certain areas. It would not be a feed-in tariff like Spain approved. This would be a feed-in tariff for a particular area of our portfolio that I believe will work. There are at least two Assembly members who do not believe it will work. Without a study, there are no facts, only personal opinions. That is not the way to put together a business

plan. We need the experts to look at this and give us their opinion. Next Session, the Legislature can make their decision based on research and facts. It is a small price to pay to get a real benefit for the ratepayers of Nevada.

CHAIR HORSFORD:
This would only be a study. There are no implementation requirements or imposition on any program. It is simply an investigatory docket review based on the provisions outlined in the amendment.

SENATOR SCHNEIDER:
That is correct.

SENATOR CEGAVSKE:
Has there been a study on this in the past?

SENATOR SCHNEIDER:
I believe there was a study done on a broad feed-in tariff program. This proposal is for a feed-in tariff for a small portion of the portfolio standard.

SENATOR CEGAVSKE:
Do you know the results of the other study?

SENATOR SCHNEIDER:
It was a few years back. I do not remember. I will be gone next Session, but the Legislators who will be here can use this information. It is important going forward that we take a close look at our portfolio standard and assess what we can do to move renewable energy forward. Nevada is the capital of renewable energy. If we do not do a study like this to determine how it might work, we are doing ourselves a disservice. Nevada has an opportunity to get manufacturing here and other initiatives to help the economy. If we turn our backs and do not consider all the options, we are being unwise and will miss opportunities.

SENATOR CEGAVSKE:
Who will pay for the study?

SENATOR SCHNEIDER:
The PUCN would have to allocate the dollars.

SENATOR CEGAVSKE:
Does PUCN have the money and have they agreed to this?
SENATOR SCHNEIDER:
They have money.

CHAIR HORSFORD:
The PUCN is a regulatory body. They do what the Legislature and the Governor direct them to do like any other State agency. They cannot take a position in favor or against this issue. They have to implement the will of the Legislature and the Governor.

SENATOR CEGAVSKE:
Does PUCN do studies like this on a regular basis?

CHAIR HORSFORD:
They have to open a docket for any rate case review. This would be a docket review on the feasibility of a feed-in tariff program. That is within the scope of what PUCN does.

SENATOR CEGAVSKE:
We would be mandating them to do a study for which no one has determined the cost.

CHAIR HORSFORD:
The PUCN is required to do rate case reviews. That is their job.

SENATOR DENIS:
I understand PUCN does these kinds of reviews and studies. My concern is what other things have we directed them to do this Session and whether they have the manpower to do this. Do they have the flexibility to hire consultants or others to help them complete this study?

SENATOR SCHNEIDER:
I would defer to the Chair. I would think they have flexibility to hire consultants.

SENATOR DENIS:
Would PUCN have to come to the Interim Finance Committee (IFC) if they need to hire consultants or others to help do the study?

SENATOR SCHNEIDER:
I do not know.

MARK KRMPOTIC (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
The only reason to come to IFC would be to fund the consultants. In this case, PUCN is a self-funded agency. I would envision they would establish authority in a

category to fund the consultants from their reserve or out of the mill assessment funding.

CHAIR HORSFORD:
Senator Schneider, would you be agreeable to adding a provision that would say this would be done as funds are available?

SENATOR SCHNEIDER:
I would be comfortable adding that statement. The mill assessment tax fund is available for PUCN to use for this project.

SENATOR CEGAVSKE:
Did you say that PUCN cannot respond to this?

CHAIR HORSFORD:
The PUCN cannot take a position advocating for or against such a policy.

SENATOR CEGAVSKE:
If there are PUCN representatives here can they respond to Senator Denis's and my questions?

CHAIR HORSFORD:
We are in Work Session on these bills and we are late for the Floor Session. I am ready to take a motion on A.B. 416.

> SENATOR LESLIE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 416 WITH THE PROPOSED AMENDMENT FROM SENATOR SCHNEIDER AND ADDING THE STATEMENT "AS FUNDS ARE AVAILABLE" TO THE PROVISION REQUIRING PUCN TO CONDUCT A FEASIBILITY STUDY FOR A FEED-IN TARIFF PROGRAM FOR RENEWABLE ENERGY SYSTEMS IN NEVADA.
>
> SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CEGAVSKE VOTED NO.)

*****

CHAIR HORSFORD:
Assemblyman Conklin will be presenting A.B. 332.

ASSEMBLY BILL 332 (1st Reprint): Makes various changes relating to the Economic Forum. (BDR 31-307)

ASSEMBLYMAN MARCUS L. CONKLIN (Assembly District No. 37):
The current system requires the Economic Forum to meet early in December of even-numbered years, just prior to the Legislative Session, to provide forecasted numbers to the Governor for budget purposes. They do a follow-up projection in May of the odd-numbered years, during the Legislative Session, to provide updated numbers immediately prior to the closing of the State budgets. Assembly Bill 332 does not change that process.

This bill requires two additional Economic Forum meeting dates; one on or before June 10 of even-numbered years and one on or before December 10 of odd-numbered years. These meetings are intended to gather updated data from the industry and other State sources about what is going on in the economy. Based on current economic indicators, the Economic Forum will present the updated information to IFC and will make the information available to the public on the Legislative Website. This will provide the public, the Governor, the Legislature and officials in all branches of government some understanding of which direction the economy is going. This information is intended to act as a tsunami warning of issues that can affect the budgets. In the past, we have had no early warning signs or expertise giving us a “heads up” about how things are going in the industry and what is occurring on a national level. We should at least be talking about them so we understand what our potentialities are for future biennia.

A study was recently done by the Pew Research Center in conjunction with the Nelson A. Rockefeller Institute of Government in New York on how states forecast and what happens in up-and-down markets. One of the conclusions of the study was simply this. States have a propensity in good times to understate how good things are which usually results in a budget surplus. But, that number pales in comparison to the number of states that have overestimated how good things are during bad times. The reason this is important, is because every time we overestimate what things are in bad times, we end up with significant budget shortfalls. This bill will establish a method for the Economic Forum to gather more information to improve

the forecasts. One of the recommendations that came out of the Pew Research Center and the Rockefeller Institute report was to allow for more meetings.

Assembly Bill 332 provides the platform for gathering up-to-date information from outside sources, bringing together a breadth of knowledge. As a result, our Economic Forum will be better able to fully understand external forces in relation to the forecasted numbers provided by the State Budget Office and the Legislative Counsel Bureau (LCB). They will be well prepared to take on that task with the most up-to-date information from outside sources. From my standpoint, it is much like what the Federal Reserve Bank does. The Bank itself handles all of its internal forecasting and economic indicators, but it has a Federal Reserve Board, with members from the community that come from a broad range of industries that spend their time in the community, gathering information. It is not that they need all the data, but rather they are looking for information from insiders about what is going on. This data is provided to the Federal Reserve Bank who then takes all its numbers and uses the subtle information that is not in the numbers to come up with a better forecast. That is what we are talking about here. Assembly Bill 332 allows for the collection of the other side of the equation to our data. It provides more sunshine on the process and provides early warning signs as things either go up or down in the economy.

SENATOR KIECKHEFER:
The Department of Employment, Training and Rehabilitation (DETR) does monthly reports on the State's economic activity. I have found those reports to be fairly robust and helpful. Do you envision the Economic Forum reports being similar to that, or anticipate they will use DETR's reports as a resource during its overall assessment?

ASSEMBLYMAN CONKLIN:
The DETR is a current participant in the Economic Forum and would continue to be a participant in providing valuable information. There are a number of people and entities who do not normally participate in the Economic Forum, but who could offer insight from industry. A good example is the university systems. What we are trying to do is allow the Economic Forum the opportunity to gather data that is not shown in the forecasts coming from the Budget Office and LCB to give a broader and more in-depth picture of Nevada's economy.

CHAIR HORSFORD:
Can Staff please explain the fiscal note?

MR. KRMPOTIC:
There were fiscal notes applied to the original version of this bill by the Department of Administration (DOA) and LCB. The DOA and LCB staff the Economic Forum. The additional fiscal resources that were required in the case of LCB were based on a more robust version of the bill. Originally, the bill called for quarterly meetings. The bill has since been amended to reduce the additional meetings to two per year. It is now believed LCB can absorb the additional duties with existing staff. However, the Committee may wish to request a representative from DOA to speak regarding the impact to their agency.

STEPHANIE DAY (Deputy Director, Budget Division, Department of Administration):
The DOA would also like to remove the fiscal note for A.B. 332.

CHAIR HORSFORD:
I will accept a motion on A.B. 332.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 332.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
We will move to A.B. 476.

ASSEMBLY BILL 476 (1st Reprint): Revises provisions relating to the Trust Fund for the Education of Dependent Children. (BDR 34-888)

ROBERT E. DICKENS, PH.D. (Director, Office of Governmental Relations, University of Nevada, Reno):
I am here representing the Nevada System of Higher Education (NSHE) in support of A.B. 476. As amended, this legislation provides a $25,000 appropriation to the Trust Fund for the Education of Dependent Children. This fund provides a scholarship account for the education of children up to the age of 23 who are the survivors of Nevada police officers, firefighters, officers of the Nevada Highway Patrol and volunteer ambulance drivers or attendants who were killed in the line of duty.

The 1995 Legislative Session established the Trust Fund after the murder of one of our campus police officers, George Sullivan. It was a terrible tragedy but the positive

benefit was not only this legislation, but also the establishment of a coalition between public safety officials and higher education. The Trust Fund began with a $20,000 General Fund appropriation. It was replenished in 2005 with another $50,000 General Fund appropriation. To date, 18 students have received assistance from this fund. Four students are currently enrolled and are benefiting from the Trust Fund. During the current interim period, General Fund support was insufficient to pay all the required costs. Wells Fargo Bank donated $10,000. The NSHE approached IFC for an allocation from the Contingency Fund, but it was determined that the previous legislation did not authorize such an approach. At that point, the Speaker of the Assembly, the Chair of the Committee on Ways and Means and others, helped raise private funds in the amount of $17,000 from a number of police and fire protective associations throughout the State. With the receipt of these funds, the program was able to continue throughout this fiscal year. However, without additional funds, this important program cannot continue the next school year.

The current balance in the Trust Fund is $4,000. The costs for the program are approximately $23,500 a year. We have a reserve of about $7,000. The NSHE has applied for an additional $25,000 from Wells Fargo. With the $25,000 General Fund appropriation provided in A.B. 476, the program would be financed through the upcoming biennium.

There are two important changes included in A.B. 476. One allows us to carry forward balances in the fund from one year to the next. The other change authorizes NSHE to approach the Board of Examiners and IFC if sufficient funds are not available to cover the costs of higher education fees for all the eligible dependents. Please pass this important legislation.

SENATOR LESLIE MOVED TO DO PASS A.B. 476.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
We will move to A.B. 484

ASSEMBLY BILL 484 (1st Reprint): Makes various changes relating to unemployment compensation. (BDR 53-1245)

MS. DAY:

Sections 3 and 4 of A.B. 484 request appropriations of $23.9 million in FY 2010-2011 and $40.1 million in FY 2012-2013 to fund the interest for the Unemployment Compensation Fund. A representative from DETR is here to present the remainder of the bill.

CYNTHIA A. JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
Amendments to A.B. 484 were requested by the Department to adjust the trigger mechanisms for the State Extended Benefit (SEB) program in order to take full advantage of federal funds available to pay continued benefits. Without changing these triggers to align Nevada law with the currently available triggering mechanisms at the federal level, Nevada's SEB program would end in July 2011. By making these minor changes to the bill, Nevada's unemployed workers will be able to access SEB through the federal sunset date of December 31, 2011. Approximately $48.6 million worth of benefits will be made available to Nevada workers that would not be available if this bill was not passed. Assembly Bill 484 also includes a minor change to the trigger-off mechanism so that the last week of the eligible SEB period, the SEBs are paid 100 percent by the federal government as opposed to a 50:50 split as would normally occur in the SEB program. This reduces the pressure on Nevada's unemployment insurance trust fund by $1.4 million.

SENATOR KIECKHEFER:
Are the appropriations in sections 3 and 4 for the interest payments due the federal government as a result of borrowing money from them to pay unemployment benefits?

MS. JONES:
Yes, that is correct. To date we have borrowed about $773 million. Those appropriations are the interest payments required by the federal government which are due by September 30 both of this year and next year.

SENATOR KIECKHEFER:
There was some talk that some of those interest payments may be waived or delayed.

MS. JONES:
There have been various forms of legislation proposed at the federal level along those lines. The President's 2012 budget also contemplates a two-year waiver of the Unemployment Trust Fund Interest. It remains to be seen whether there will be enough support at the federal level to be passed into law. We continue to be hopeful. Assembly Bill 484 contains language that if funds are not needed, the money will be reverted to the IFC Contingency Fund.

CHAIR HORSFORD:
If there are no further questions on A.B. 484, I will entertain a motion.

SENATOR KIECKHEFER MOVED TO DO PASS A.B. 484.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
We will move the discussions to A.B. 494.

ASSEMBLY BILL 494 (1st Reprint): Makes appropriations to restore the balances in the Stale Claims Account, Emergency Account, Reserve for Statutory Contingency Account and Contingency Fund. (BDR S-1267)

MS. DAY:
Assembly Bill 494 provides appropriations to restore the balances in some of the accounts. The Stale Claims Account appropriation is $3.5 million. The Emergency Account is $50,000. The Statutory Contingency Account Fund is $2.2 million and the IFC Contingency Fund appropriation is $5 million.

SENATOR DENIS MOVED TO DO PASS A.B. 494.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
Next, I would like to discuss the Summit View Juvenile Correctional Center. Fiscal Staff prepared a draft letter of intent (**Exhibit F**) for which I would like to obtain approval from this Committee.

MR. KRMPOTIC:
In the Twenty-sixth Special Session of the Legislature actions were taken, as recommended by the Governor, to close the Summit View Juvenile Correctional Center. The juveniles in the facility, and a number of staff, were transferred to the Nevada Youth Training Center in Elko. Summit View has remained vacant for almost

a year. A small amount of funding was available to provide for upkeep and maintenance. Since Summit View was built by a private entity, continuing debt payments are being made.

A letter of intent was drafted jointly by the Chairs of the Senate Committee on Finance and the Assembly Committee on Ways and Means. The letter indicates that in addition to the option of selling Summit View, the Department of Health and Human Services should examine alternative options for the operation of Summit View. These options include the possibility of entering into a management agreement with a private entity which operates or manages programs for juvenile offenders. Such an entity would make payments to the State which could offset the cost of the State maintaining the property. It is intended such an entity would receive juvenile offenders for treatment at Summit View from jurisdictions other than Nevada. It is further the intent of the Senate Committee on Finance and the Assembly Committee on Ways and Means that the Department presents its findings concerning these options to IFC on a periodic basis. There are certain covenants regarding the financing for the facility that must be met to operate the facility. Staff suggests this verbiage be included in any financial arrangement for use of the property.

CHAIR HORSFORD:
Any private entity using the property must meet the criteria for the use of the facility. Is there any objections regarding the letter of intent provided we include the technical changes discussed?

SENATOR KIECKHEFER:
Is the intent to exclude admissions from Nevada? The letter indicates the operator of the facility would receive juvenile offenders for treatment from jurisdictions other than Nevada.

SENATOR LESLIE:
No, that is not the intent. The intent is that the facility be able to treat juveniles closer to their homes, including children from California or other areas outside our jurisdiction. This flexibility is necessary to make any partnership work.

CHAIR HORSFORD:
The wording can be clarified.

SENATOR CEGAVSKE:
If the facility is bought outright, are there any restrictions about who can be served?

MR. KRMPOTIC:
I believe the facility was funded with tax-free bonds. That places a restriction on the types of entities that can operate the facility. For example, if a “for profit” entity purchases the property serving out-of-State juveniles, there may be a problem. We would need to consult with our bond counsel on any proposed arrangement to ensure there are no provisions that would be violated.

SENATOR CEGAVSKE:
Could someone purchase the land without purchasing the building?

MR. KRMPOTIC:
I do not know the answer to that question. I would need to consult with legal counsel.

DIANE J. COMEAUX (Administrator, Division of Child and Family Services, Department of Health and Human Services):
The property cannot be sold without the buildings. The property must be sold at fair market value which currently is $14.7 million. That amount would have to be set aside in its entirety. The State must continue paying the bond and interest payments. It is not permissible to pay the bond off early.

SENATOR KIECKHEFER:
Has any interest been shown in this facility?

MS. COMEAUX:
There has been interest shown in a number of areas. We have had interest for people to come in and operate the facility as a juvenile correction facility. Based on the bond, the State is limited in what can be done. For example, if we open it up so youth can be brought in from other states, the other states would have to contract with the Nevada Division of Child and Family Services, not the entity running the property. We would have to do a flat-rate contract with a management company to come in and run the facility. For any youth being served who come from areas outside our jurisdiction, there would have to be a contract to pay the State directly and we, in turn, would have to pay the provider for services.

SENATOR KIECKHEFER:
Is that all doable?

MS. COMEAUX:
Yes, I believe it will be.

SENATOR CEGAVSKE:
Is this a 30-or 40-year bond for this property?

MS. COMEAUX:
I am not positive, but my understanding is there is about ten years left on it. I can find out and get back to you.

CHAIR HORSFORD:
Without objection, we will go forward preparing this letter of intent on how we would like to proceed henceforth. It is my intent to try to get the Chair of the Assembly Committee on Ways and Means to issue this letter jointly with me.
This meeting is now in recess at 10:23 a.m. until the Call of the Chair.

This meeting is reconvened at 2:53 p.m. We will begin with A.B. 560.

ASSEMBLY BILL 560 (2nd Reprint): Makes various changes relating to the compensation and benefits of state employees. (BDR 23-1158)

MR. KRMPOTIC:
Assembly Bill 560 is a budget implementation bill. The bill eliminates the time and one-half pay for working on a holiday and suspends longevity pay and merit pay increases for the upcoming 2011-2013 biennium. I am certain you are all familiar with these provisions having heard them over the course of the budget hearings.

CHAIR HORSFORD:
There is a proposed amendment from the American Federation of State, County and Municipal Employees. I have spoken with representatives off line. They are welcome to explain the amendment, but I do not believe it can be considered, based on the impact it would have on future budgets.

KEVIN R. RANFT (American Federation of State, County and Municipal Employees Local 4041):
Our proposed amendment (**Exhibit G**) allows employees who meet the standard performance to be able to maintain their merit step position in order to maintain parity in the State system.

CHAIR HORSFORD:
As I explained, the problem is this provision would be committing a future Legislature for a budgetary impact. Therefore, unless there is objection from the Committee, this amendment cannot be considered at this time. However, we appreciate the intent behind it.

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 560.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
Next, we will move to A.B. 571.

ASSEMBLY BILL 571 (1st Reprint): Revises provisions governing prohibitions on smoking tobacco. (BDR 15-1294)

SEAN HIGGINS (Nevada Tavern Owners Association; Golden Gaming; United Coin Machine; Affinity Gaming):
Assembly Bill 571 amends the Nevada Clean Indoor Air Act. When the Clean Indoor Air Act was enacted in 2006, it clearly allowed for smoking in taverns. The preamble for the petition states the intent was to protect children and families from secondhand smoke in most public places, excluding stand-alone bars and gaming areas of casinos.

When these smoking bans were implemented, taverns lost revenue. We have studies showing taverns in 2007, immediately following the enactment of the Nevada Clean Indoor Air Act, lost an average of 17 percent of their topline revenues. During this same period of time, other general economic indicators from Nevada such as taxable food sales, liquor sales, other general taxes and gaming revenues of the State leveled and did not start dropping until almost a year later in November or December of 2007 when the current recession commenced. There is evidence from approximately 77 percent of the tavern locations, including their profit and loss statements, showing the Clean Indoor Air Act has had a detrimental effect on the revenues of these businesses.

The only issue here is about allowing tavern owners to decide whether they want to allow their patrons who can currently smoke, also be allowed to be served and to eat food in those smoking areas. Any taverns which chose to allow smoking and food service would be required to limit persons in those smoking areas to those 21 years and older and would be subject to civil and criminal penalties under A.B. 571. This bill is about allowing business owners to choose how to run their businesses and for customers to decide whether they want to patronize those businesses. Children will not be exposed to secondhand smoke. Children will not be allowed in the smoking areas of these locations.

I did not write the original petition. We have to live within the constraints of that original law and all of its flaws. We have tried to do so. We believe we have drafted clear, concise language which only does what I have just described. I urge you to support A.B. 571. We would not be in support of any potential amendments offered here today.

SENATOR RHOADS:
What is a stand-alone bar?

MR. HIGGINS:
I will read the definition that we are proposing. A stand-alone bar, tavern or saloon is an establishment devoted primarily to the sale of alcoholic beverages to be consumed on premises in which food service or sales may or may not be incidental at the discretion of the operator of the establishment. Smoke from such establishment cannot infiltrate into areas where smoking is prohibited under the provisions of this section. The smoke must be housed in either a physically independent building that does not share a common entry-way or indoor area with a restaurant, public place or other indoor work places where smoking is prohibited by this section or a completely enclosed area of a larger structure such as a strip mall or airport provided that indoor windows must remain shut at all times and doors must remain closed when they are not actively in use.

SENATOR LESLIE:
What is your response to the criticism that the people voted on this and why we should change it beyond your contention that the tavern owners have lost money?

MR. HIGGINS:
There is a mechanism in every petition stating laws can be refuted after three years. In this particular petition, 310,000 people voted in favor of this petition and 265,000 voted in favor of a competing petition. To say people voted overwhelmingly in favor of this would not be correct. Fifty-three percent voted in favor and 47 percent voted against this measure. A good portion of the population voted to continue to allow smoking.

SENATOR LESLIE:
You are combining all kinds of arguments. First you say people are losing money. Secondly, you say the vote was so close that one cannot really say that one group overwhelmingly supported it. What is the third argument?

MR. HIGGINS:
The third argument is the language about incidental food service being difficult to interpret and consequently difficult to implement. There are inconsistencies in how it is implemented.

SENATOR LESLIE:
My constituents are overwhelmingly in favor of keeping the law the way that it is. I am not hearing a convincing reason for why this should be changed.

SENATOR CEGAVSKE:
I owned a convenience store for 13 years where my family and I were personally impacted by the Nevada Clean Air Act. I experienced firsthand the devastation to our industry from the enactment of this legislation. The group that my husband worked with did a pilot program in a convenience store in Pahrump for one month before the initiative became law. In one month, sales decreased 30 percent. Many convenience stores have experienced a 40 percent to 50 percent loss of revenue. Proponents of the Nevada Clean Air Act said not one person would lose a job. People have lost jobs. People have lost their homes because they have lost their jobs. My constituents and others I have talked to around the State say the potential impact of the Nevada Clean Indoor Air Act was not fully understood. I have family who are still unemployed because of the legislation.

SENATOR RHOADS:
We have a bar out in rural Nevada that serves food. They serve food to the deer hunters in the fall and on a daily basis to the miners, cowboys and ranch hands. This business is only a kitchen room, bar and pool table. Would that business be affected by A.B. 571?

MR. HIGGINS:
The owner could decide whether or not to allow smoking in the bar. If smoking is allowed and the patronage is limited to people age 21 or older, customers could have food in those smoking areas. If there is a specific food service area, smoking would not be allowed in that area.
SENATOR DENIS:
What happens to employees who are subjected to the secondhand smoke?

MR. HIGGINS:
People are allowed to smoke in areas where people work today. Smoking is not being expanded to areas where it is not allowed presently. This bill proposes in areas smoking is allowed and the patronage is limited to persons age 21 or older, those patrons can also order and eat food in those areas.

ALFREDO ALONSO (Las Vegas Convention and Visitors Authority):
As you know, A.B. No. 309 of the 75th Session was passed in the 2009 Legislature. This legislation stated smoking is not prohibited in the area of the convention facility in which a meeting or trade show is being held during the time the meeting or trade show is occurring if 1) the meeting or trade show is not open to the public; and 2) is being produced or organized by a business related to tobacco or professional association for convenience stores; and 3) involves the display of tobacco products.

After A.B. No. 309 of the 75th Session went into effect, the American Cancer Society sued the Legislature and the Las Vegas Convention and Visitors Authority (LVCVA) stating A.B. 309 was unconstitutional. The district court ruled in favor of the Legislature and LVCVA. The case has been appealed to the Supreme Court. While the LVCVA is confident the Supreme Court will reject the Cancer Society's claims on appeal, the appeal will require further expenditures of public resources by the Legislature, the LVCVA and the judiciary. The reenactment of the Convention Center exemption in A.B. 571 would eliminate further costs and expenses because the appeal would be rendered moot.

In section 1 of A.B. 571, the exemption for convention centers and trade shows is removed. In section 2, the exemption is reenacted word for word as it is in current law. These sections are effective immediately after passage.

Given the current state of the economy, Nevada cannot afford to lose any more conventions or trade shows. After the enactment of the Nevada Clean Indoor Air Act, the LVCVA and others lost tobacco-related trade shows. The Retail Tobacco Dealers of America and the National Association of Convenience Stores are two such shows. Given the exemption, the retail tobacco dealers of America are holding their show in Las Vegas in July 2011. They are expecting 5,500 attendees with an economic impact of approximately $6 million. The National Association of Convenience Stores is scheduled to be in Las Vegas in 2012. They are expecting 30,000 attendees and the show is estimated to generate approximately $31 million in economic impact. There is also a show called The Big Smoke which will be held in October 2011. The two largest competitors in the convention business for these types of shows are Orlando and New Orleans. Neither of those cities prohibit smoking in those types of shows.

MICHAEL HACKETT (Nevada State Medical Association; American Cancer Society; Cancer Action Network; Nevada Tobacco Prevention Coalition; Smoke-Free Gaming of America):
I am here today on behalf of those organizations in opposition to A.B. 571. I respectively disagree with proponents of this bill that it does not expand areas where smoking would be allowed. Allowable smoking areas are being expanded by

amending the existing definition for a stand-alone bar, tavern or saloon and by creating a new exemption for a stand-alone bar, tavern or saloon.

Assembly Bill 571 is bad public health policy. It is a step backward when most states are moving forward in terms of smoke-free laws. Ultimately, public health comes at a cost to both the State and to the people who live in this State. Recently, a study released by the University of Nevada, Reno, indicated that since the Nevada Clean Indoor Air Act was enacted, hospital admissions for strokes and heart attacks decreased significantly. This resulted in a decrease of $33.3 million in hospital charges, including $1.5 million to Medicaid payers and $11.5 million to Medicare payers.

The other issue is the economic impact that the Nevada Clean Indoor Air Act has had on businesses. Recently, the American Cancer Society released a study that was based on information collected from the Nevada Department of Taxation and from the Department of Employment, Training and Rehabilitation. This information concluded the current recession began before the passage of the Nevada Clean Indoor Air Act. Additionally, information compiled from both Washoe County and Clark County indicates that permits for new bars and restaurants have increased each year after the Nevada Clean Indoor Air Act was enacted.

Assembly Bill 571 will make enforcement more difficult, perhaps to the point of being impossible to enforce. This includes violations of the Act and the enforcement of the age restrictive provisions being created with the new stand-alone bar provision that has been included.

In response to Senator Leslie's comment, I firmly believe the voters knew exactly what they were voting for in 2006 and were emphatic about it. Not only did they vote to approve the Nevada Clean Indoor Air Act, but they also voted to defeat a competing measure that was put on by the proponents of A.B. 571. The reason I believe the voters knew exactly what they were voting for in Question 5 is how that question was phrased on the ballot. It said, "Shall Chapter 202 of the *Nevada Revised Statutes* be amended in order to prohibit smoking tobacco in certain public places in all bars with food handling licenses but excluding gaming areas of casinos and certain other locations?" If A.B. 571 is passed, it will go against what the voters voted for. They clearly did not want smoking in bars with food handling licenses.

ROBERT SACK (Division Director, Environmental Health Services Division, Washoe County District Health Department):
After reviewing all of our permitted facilities in Washoe County, there are approximately 150 facilities that would consider expanding smoking that are not now allowing smoking.

My division is charged with the enforcement of this Act. When the Act was first passed, a tremendous amount of time was spent with facilities trying to ensure compliance. We got compliance with all but a few facilities. About that time, the Supreme Court severed the criminal part of it which also severed the civil and due process parts of the Act. We have a great deal of compliance now, but we do not have a mechanism to enforce compliance for those who backslide. There are some facilities that are in violation and we have no mechanism that is effective to enforce the Act. We have submitted some proposed amendments to strengthen the enforcement part. If those were enacted, we could deal with the Act effectively. The proposed changes set forth in A.B. 571 do not resolve problems identified by the Supreme Court regarding vagueness and conflicting definitions.

LAWRENCE K. SANDS D.O., M.P.H. (Chief Health Officer, Southern Nevada Health District):
I am here to testify in opposition of A.B. 571. I concur with all the comments made by Mr. Hackett and Mr. Sack. We have had similar experiences here in Clark County. We are concerned about the inclusion of dual definitions for stand-alone bars and age-restricted stand-alone bars. This creates confusion in enforcement in determining where smoking is allowed and where it is prohibited. The provisions for the enforcement of the over age 21 was put in without any mechanisms for enforcing this action. The health authorities have never had jurisdiction in enforcing over age 21 or any other age restrictions. Reno law enforcement has also made it clear that they are opposed to this bill because of the added enforcement responsibility.

Lastly, our concern is that this bill will expand smoking into areas where smoking is now prohibited. Assembly Bill 571 expands smoking into areas beyond what was intended by the Act passed by the voters. Southern Nevada Health District remains firmly opposed to any changes to the Nevada Clean Indoor Air Act, particularly those that allow additional areas of smoking.

AMY BEAULIEU (Director of Tobacco Control Policy; American Lung Association; Nevada Tobacco Prevention Coalition):
The American Lung Association is determined to protect individuals from the toxic air that secondhand smoke leaves behind. The scientific facts and the experience of nearly half the states in the United States are telling us loud and clear that we need a comprehensive, smoke-free air law in Nevada to protect our citizens from secondhand smoke.

The Nevada Clean Indoor Air Act was passed by a voter ballot initiative in 2006. The voters knew what they wanted then and they know what they want now. The American Lung Association in Nevada conducted a statewide poll of 802 registered

voters at the end of February 2011, the week before the Legislative Session started. More than four in five of Nevadan voters support current laws that prevent smoking in public places and generally believe that all Nevada workers should be protected from secondhand smoke in the workplace and all other public places. Support for the 2006 Nevada Clean Indoor Air Act is extremely strong, stronger than when the law first passed with a total of 83 percent of voters saying they support the law. Two-thirds of voters strongly support the law and more than 70 percent say that they have been exposed to less secondhand smoke as a result of the law. Similarly, 86 percent of Nevada voters say it is important to them to have a smoke-free environment in all workplaces and indoor public places. Eighty-three percent agreed that all Nevada workers should be protected from secondhand smoke in the workplace. By nearly an 8:1 margin, more Nevada voters believe the rights of customers and employees who breathe clean air in restaurants and bars outweighs the rights of smokers who smoke in those places. Only 4 percent of voters say that going out in Nevada has become less enjoyable for them since restaurant bars and other social places have become smoke free.

Everyone deserves the right to breathe clean air. Every breath of secondhand smoke sends 69 known carcinogens and thousands of chemicals through your body. Without a strong smoke-free law, Nevada will leave our family and friends exposed to secondhand smoke. This is especially true for restaurant and bar employees, blue collar workers and often the youngest members of our workforce. African Americans and Hispanics are particularly at risk as many work in places where they are exposed to secondhand smoke. No one should have to risk their health in order to earn a paycheck or enjoy a night out at a restaurant or bar. It should not matter if you are a white collar or blue collar worker, rich or poor, or more or less educated. Without a comprehensive smoke-free air law, we leave restaurant and bar employees and patrons exposed to potentially lethal secondhand smoke. There is growing momentum across the country and the world to protect everyone's right to breathe healthy air. We would be the first state in the Nation to roll back our law. We rank at the bottom of so many lists. Do not let Nevada be the first on this one.

AMBER JOINER (Director of Governmental Relations, Nevada State Medical Association):
We are in strong opposition to A.B. 571. Many of our points have already been covered by others. The one I will speak about that has not been sufficiently covered is the danger that this poses to employees. The proponents have said that they are not trying to allow smoking where it is currently not allowed. However, the proposed changes do expose many more employees to secondhand smoke. Any owner of a currently nonsmoking tavern, bar or saloon can flip a switch a minute after A.B. 571 passes and become a smoking, age 21 and older location and also be able to serve food. This would mean employees, who originally thought they signed up for a

nonsmoking job, would suddenly be working in a smoking location. They would have to choose between their health or the job. Nonsmoking family style sports bars where children and families are allowed, could establish a smoking area. The Assembly has clarified through amendments that these areas will only allow people over age 21. Walls may be installed to create some separation; however, that creates infiltration problems and there are no requirements for doors or separate ventilation systems.

This has been portrayed as a jobs creation bill. This is not a jobs creation bill but rather, a jobs shifting bill. The amount of disposable income in our communities is not going to change when this bill passes. Some people who are currently spending money in nonsmoking restaurants may move some of their business to smoking taverns. Some employees may move to other locations to work once they learn they are working in a smoking atmosphere.

CHRISTOPHER ROLLER (American Heart Association; Nevada Tobacco Prevention Coalition):
I will be brief as most of the reasons we oppose this bill have already been stated. I want to reiterate it is a workplace hazard issue for your heart. The study that was mentioned done by the University of Nevada, Reno, showed a 17 percent reduction in heart attack and stroke admissions in Nevada since the passage of the Nevada Clean Indoor Act. The economic benefits are hundreds of millions of dollars in savings to the State. This far outweighs any other perceived economic benefits of this bill. I will end in reiterating our opposition to this bill. The health reasons are clear.

TOM MCCOY, J.D. (Nevada Director of Government Relations; American Cancer Society; Cancer Action Network):
I will speak to the references made by the proponents to the economic aspects of the Nevada Clean Indoor Air Act. The economy has affected businesses, not the passage of the Nevada Clean Indoor Air Act. Based on the Nevada Department of Taxation, Category 722, food services and drinking places were experiencing consistent monthly sales declines prior to the Clean Indoor Air Act taking effect in December 2006. Food services and drinking places in Clark and Washoe Counties both reflect increased trends of improvement to the point where there was a news release that says, “Statewide taxable sales for March 2011 represent a 9.6 percent increase. The largest increases in statewide taxable sales were realized by food services and drinking places.” It is not about the economy; it is about health.

CHAIR HORSFORD:
The hearing for A.B. 571 is closed.

I will entertain a motion on A.B. 401 regarding construction defects.

SENATOR LESLIE MOVED TO DO PASS A.B. 401.

SENATOR DENIS SECONDED THE MOTION.

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

*****

CHAIR HORSFORD:
We will open the hearing on A.B. 552.

ASSEMBLY BILL 552 (3rd Reprint): Revises provisions related to the collection of biological specimens for genetic marker analysis. (BDR 14-539)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
I will be presenting A.B. 552 with the proposed Amendment 7382 (**Exhibit H**). This bill has been through considerable hearings in both houses over the last couple of months. This bill requires DNA samples to be taken upon arrest for certain felonies. The administrative assessment fee for obtaining a biological specimen has been revised to an even dollar figure. The current reprint of the bill shows $2.50. We want to revise this figure to either $2 or $3 to make it easier for the courts to process. If a court magistrate determines that probable cause does not exist for the person's arrest, the DNA specimen must be destroyed within five business days. The Amendment removes all category E felonies from being eligible for DNA sampling, with the exception of sexual offenses or those involving use or threatened use of force. This excludes small drug offenses, minor financial crimes and other low-level felonies from the DNA requirement.

Another significant change suggested in Amendment 7382 is the Department of Public Safety is required to create a standard form to request DNA be expunged. A procedure must be established to ensure individuals are informed before a DNA sample is taken that they may be eligible to have the DNA expunged. Anyone that is eligible will be given a form explaining this upon their release from custody. The Amendment condenses significantly all time lines for expunging records. The sample must be destroyed within six weeks after written requests. Persons are eligible to have their DNA expunged when they have not been charged with additional felonies or sexual offenses within five years after the original conviction which resulted in their DNA being taken. The Amendment includes more stringent language to ensure compliance by the laboratories and law enforcement on expunging and handling of

DNA. It requires that the forensic laboratory ensure that the specimens are expunged. The forensic laboratory must also mail a copy of the expunged record order to the person at their last known address. Any costs for this are paid by the county. The law enforcement agency or laboratory that fails to expunge or violates any section will be liable for civil penalties in addition to criminal penalties. It is a serious violation for this information to be used in an inappropriate or illegal fashion. The Amendment deletes the requirement for a social security number.

We suggest the collection of samples not start for two years instead of one year. This will allow the laboratories time to prepare for implementation and allow time for sufficient funds to accumulate to administer the program. As you may recall, when Brianna Dennison was murdered, there was a huge backlog of DNA samples that our local laboratories were not able to run. Private funding was raised to be able to get through the backlog. Ultimately, DNA did help in that conviction.

Testimony was made in the policy committees about what a significant difference this legislation can make both for convicting bad people and also for exonerating innocent people. We heard testimony of one case after this law was implemented in one state that would have saved thirteen lives and eventually freed one man from prison who had been wrongly convicted of killing two of those thirteen victims. There are benefits on both sides of the issue. This legislation is a safe and reasonable thing to do. I am hopeful you will consider this legislation on its merits and know that similar laws have been passed and implemented in more than half the states in this country.

CHAIR HORSFORD:
People are often arrested for a felony conviction and then they plead down. How would this be handled under this legislation?

CHUCK CALLAWAY (Director of Intergovernmental Services, Las Vegas Metropolitan Police Department):
Under this legislation, if someone is arrested for a felony, their buccal swab would be taken immediately. That sample would be held until the court established that probable cause existed for that arrest and then at that point the sample would be entered into the system. If that person is subsequently not convicted, they would be eligible to have that sample expunged from the record. There is a proposed amendment to this bill that Senator Roberson worked on with law enforcement. In that amendment there is a form that would be given to the arrestee at the time they are released from jail that explains what they need to do to have their record expunged.

CHAIR HORSFORD:

That answer relates to whether or not they are convicted. My question is pertaining to those who plead down from a felony conviction.

MR. CALLAWAY:
My understanding is that if they were arrested for a felony and then plea-bargained to something less than a felony, and that offense went on their record as a conviction, then the DNA sample would remain in the system.

CHAIR HORSFORD:
Is the swab taken at the police station?

MR. CALLAWAY:
Keep in mind we do not have a system in place currently to do this. Our plan is when that system is established, we will take the genetic marker sample or the buccal swab at the time of booking.

CHAIR HORSFORD:
Have you evaluated what the costs would be to implement his system?

MR. CALLAWAY:
Our agency submitted a fiscal note.

CHAIR HORSFORD:
What is the process for expunging a record?

MR. CALLAWAY:
Under the current system, once a person has petitioned the court to have their record expunged, that person receives an authorization from the court that is given to the laboratory staff. The genetic marker sample is then deleted from the system and a notification is sent to the criminal history repository. This is the same process that is currently done for convicted individuals.

CHAIR HORSFORD:
I have a question regarding the wording on page 5 of the Amendment where it says "A court or magistrate shall for any person arrested for an offense for which a biological specimen must be obtained pursuant to this section…" Why does it say a person arrested for any offense? Earlier in the section it refers to persons arrested for a felony? Why is the language here broader?

TIM KUZANEK (Captain, Washoe County Sheriff's Office):
My copy says, "arrested for an offense," as opposed to arrested for any offense.

CHAIR HORSFORD:
It would then be referring to someone arrested for a felony?

MR. KUZANEK:
That is correct.

CHAIR HORSFORD:
On page 7 of the Amendment, what is meant by the language that says "any cost that is incurred to expunge a biological specimen and genetic marker analysis … is a charge against the county in which the person was arrested?"

MR. KUZANEK:
The county would absorb any costs for removing the record.

SENATOR LESLIE:
Why do people have to fill out a form to get their DNA record removed?

MR. CALLAWAY:
This simplifies the process and reduces costs. To automatically track and expunge records would significantly increase the fiscal impact. It is being proposed that the person be given the information upon release from the jail on how to expunge the records.

SENATOR LESLIE:
My concern is people being released from jail may get many pieces of paper and may not have the wherewithal to follow through with all the requirements to have their records expunged. Through my work in the criminal justice system, I know how hard it is to get information about adjudications. The system is difficult and convoluted for anyone to obtain information.

One last question, what about the rural areas? Are they going to be able to do this process?

MR. KUZANEK:
This has been discussed through the Nevada Sheriffs and Chiefs Association. The Washoe County laboratory handles DNA processing for 14 of the 17 counties. We are confident that we can ensure a system is in place to collect the samples and get the samples to the laboratory in the same fashion that we in the Washoe County office.

RICHARD BOULWARE (First Vice President, National Association for the Advancement of Colored People):

I am speaking in opposition to A.B. 552 and also in support of a proposed amendment prepared by the National Association for the Advancement of Colored People (NAACP) which we would like considered, if the bill goes forward.

The NAACP has strong concerns about this bill. Our primary concern is the collection of DNA for individuals arrested, but who are not convicted. Currently, if someone is arrested with probable cause, who is not yet convicted, their DNA can be collected. This bill requires a determination of probable cause be made within 48 hours, but it will occur without a defense attorney present. The court will make the determination based on a police report. Consequently, there will be a lot of DNA collected for individuals who are arrested, but who are not convicted. It is also difficult to get a record expunged. It is not just a simple process of completing a petition. The person must submit certified copies of specific records such as the order itself. I am a lawyer and even I have difficulties getting copies of these records. The reality is, most of these individuals will not have the wherewithal to go through the process to get their records expunged.

Those stopped by a police officer, who are arrested for a serious allegation, will have their DNA taken. Later, if the allegations in terms of a felony offense are dismissed to something like a traffic violation, their DNA pursuant to this statute will remain in the system. Unfortunately, Latinos and African Americans are more likely to be stopped, searched and arrested. There is a definite invasion of privacy of those arrested, but not convicted and, based on history, this will disproportionally affect minorities. Additionally, there needs to be access to one's own DNA without cost for purposes of exonerating themselves. This is not provided for in this legislation.

The NAACP is generally opposed to A.B. 552. However, if this bill is going forward, an amendment (**Exhibit I**) is proposed requiring the collection and tracking of additional information for individuals who are stopped in traffic violations and are arrested, but not convicted. It is believed there is increased racial profiling and disparate minority arrests, particularly resulting from various forms of traffic and pedestrian stops by police. This is especially true for Latinos and African Americans. As a result, A.B. 552 implicitly targets these individuals who are more likely to be stopped and arrested without being convicted. Collection of this data is important to protect the rights of those individuals.

ASSEMBLYWOMAN SMITH:
The majority of people who have been wrongly convicted, and have been exonerated because of DNA, are minorities. That gives me comfort. This is a science we can rely on. It will not disproportionately harm people. It will have the opposite effect.

MR. CALLAWAY:
With all due respect, we request the Committee not to accept the amendments proposed by NAACP.

CHAIR HORSFORD:
If these amendments are accepted, will you reject the bill?

MR. CALLAWAY:
Yes, that is correct.

TONJA BROWN (Advocate for the Innocent):
I am proposing an amendment to A.B. 552 (**Exhibit J**), which states, "In the event the court denies the petitioner genetic marker analysis testing, the petitioner may undergo the testing and analysis at his or her own cost, without the court's concurrence." The purpose of this amendment is to protect the innocent, including those who are already incarcerated. We do not want to convict innocent people, yet we know innocent people have been convicted.

The current laws leave the determination about DNA testing up to the courts and the district attorney. Therefore, all people convicted do not have the right for DNA testing if the court denies it. Recently Judge Valorie Vega, of the Eighth Judicial District in Las Vegas, denied DNA testing for an individual who has been incarcerated for eight years. This amendment will allow everyone the right to DNA testing. Please do not deny these individuals the right to prove their innocence.

There is no fiscal cost for this amendment. There are monies available through foundations and family members. If the person is proven innocent through the DNA testing, the taxpayer will no longer pay for the incarceration. This means we save money while protecting the rights of the innocent. If nothing else passes on this bill, please let this amendment stand on its own. Give those in Nevada who have been wrongly convicted a chance to prove their innocence. Please pass this one provision.

JULIE BUTLER (Records Bureau Chief, Department of Public Safety, Criminal History Repository):
There is incorrect information contained in subsection 5 on page 4 of Amendment 7382 to A.B. 552. I request the opportunity to work with Assemblywoman's Smith's office to work on necessary wording changes.

Specifically in subsection 5, paragraph (a) of subparagraph (3) where it reads, "the procedure which a person from whom a biological specimen was obtained pursuant to this section must follow to have his or her biological specimen destroyed and the

genetic marker analysis expunged pursuant to this section" and subsection 5, paragraph (b) where it states, "The person may complete and send to the Central Repository for Nevada Records of Criminal History a request that his or her biological specimen be destroyed and the genetic marker analysis expunged pursuant to this section." The Central Repository does not keep the specimens. The only thing we do is note as a flag in the criminal history file whether DNA is available. We do not have anything to do with keeping or destroying the actual specimens. This language needs to be corrected. The DNA sample can only be removed from the DNA Index System (CODIS) by the forensic laboratory. All we would do is remove the flag in the criminal history.

Secondly, there was testimony about the social security number with respect to the arrests. It is standard throughout the criminal justice system that the social security number is recorded upon the arrest of anyone. It is a standard identifier.

CHAIR HORSFORD:
What happens when no social security number is available?

MS. BUTLER:
The field is left blank. When available, the social security number is used routinely as a standard identifier for anyone taken into custody as part of the arrest and booking process.

CHAIR HORSFORD:
How would you track a person from whom you obtain a DNA sample, but do not have a social security number?

MS. BUTLER:
We use fingerprints. The current process is when we take the swab we also get two index fingerprints. Our office matches the fingerprints with the arrest on file and we then can confirm that the DNA sample belongs to that individual.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
We are opposed to A.B. 552. I agree with your comments, Mr. Chairman, made to the press earlier today where you stated, "An issue this important bears careful vetting." Fortunately, we have the time to do this. We believe the funding mechanism that is included in this bill is inadequate. The DNA collection fee today is $150 as opposed to the $2 being proposed in this bill. As a result, the additional funding required will come out of the General Fund, out of county funds or from somewhere else. This means fewer police, fewer parole officers, fewer teachers or other public servants. A big backlog of DNA will be created making it less possible to solve crimes instead of more possible to solve crimes. Lack of funds could cause periodic

program suspensions. We appreciate some of the people who worked with us and tried to address our concerns. Unfortunately, the amendments do not address the constitutionality issues, the complexity issues and a breadth of other issues. The way the bill stands now, we will be taking DNA samples from people who bounce checks or shoplift candy bars. Most importantly it does not address the actual costs.

If this cannot be implemented for at least two years, then let us please wait to pass legislation. We need to study this in the interim and get all the questions answered in order to do it the right way. I stand ready to work with anybody to help address these concerns. Let us not rush into passing this at the end of this Session.

SENATOR KIECKHEFER:
Where is shoplifting on the list of felonies?

MR. JOHNSON:
It is a category B felony. It is a burglary. If you enter any place with the intent to commit a petty larceny, that is a burglary. I see this often where low-level thefts like that are charged as a burglary.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Attorney General Office):
We are testifying in support of A.B. 552. It provides an opportunity for science we can rely upon. We respectively request the Committee to pass this bill out to the full floor so it can be debated more fully if it needs to be. Mr. Boulware, from the Federal Public Defender's Office, raised some issues that have some interests, but I do not believe they play a role in this bill. Those are issues that may be discussed in another bill.

CHAIR HORSFORD:
With all due respect, it is our latitude as the policy makers to determine which provisions go into which bills. I believe that the amendment offered by the NAACP is appropriate and germane to this measure.

MR. MUNRO:
We were simply stating our position.

REBECCA GASCA (Legislature and Policy Director, American Civil Liberties Union of Nevada):
We stand in support of the amendment put forth by NAACP because of its disproportionate impact on regional and ethnic minorities. We are also heartened to hear the support of Assemblywoman Debbie Smith for addressing some of the immigration-related affects of this in current law. I want to make sure that the

Committee notes that the Nevada Attorneys for Criminal Justice also submitted several amendments that address some of the due process concerns to access one's own DNA. Those were introduced initially in the Senate Committee on Judiciary and have also been resubmitted to this Committee.

It is important to understand that the Central Repository is accessible to potential employers. The provisions of this bill essentially would allow additional information about mere arrests to be sent to the Central Repository. What this means is that under NRS, potential employers can use the information in determining employment decisions. An adequate provision that allows for due process for a person to get their information out of there, if they have only been arrested and never charged, is absolutely necessary in order to protect the due process of individuals who are trying to get jobs in this economy.

If this bill does not have an implementation date for two years, why are we rushing into passing a bill now? It would be prudent to spend the interim working out the details on this bill. We do not want to see this rushed through.

CHAIR HORSFORD:
What is the current time line for expungement?

MS. GASCA:
I am not the appropriate person to answer that question. There is probably someone else here who could answer the question. I do want to note however, regarding the expungement, that the provisions put into this bill appear adequate. It is important to understand that the State has no prerogative to demand the Federal Bureau of Investigations (FBI) expunge any records from CODIS. While it sounds good, it will never be applied. It is unfortunate that the policy committees on both sides of the Nevada Legislature have overlooked this. There is no way the State of Nevada can ever demand the FBI expunge anyone's DNA records.

MS. BUTLER:
Nevada does not expunge the records; we seal them. It depends on the level of the offense. For some offenses it is 15 years and others may be 7 years. Those offenses are governed under Chapter 179 of NRS.

CHAIR HORSFORD:
Do the provisions of this bill apply to that process?

MS. BUTLER:
The provisions apply to removing the flag on the criminal history. Expunging the DNA sample out of CODIS is a separate process that does not have anything to do with our agency.

SENATOR MICHAEL ROBERSON (Clark County Senatorial District No. 5):
I was not planning on testifying, but I need to say a few things for the record. When I first heard A.B. 552, I had many of the same concerns others have voiced today. The more I have worked on this bill with the sponsors and others, those concerns have gone away to a large extent. Chairwoman Wiener in Judiciary, Senator Breeden and I have worked with LCB on this to try to address the civil liberties concerns. A lot of things have been said today. I want to make certain everyone on this Committee understands the current state of this bill.

Unless there is probable cause for an arrest classified as an A through D felony or an E felony concerning a violent crime or sexual in nature, or a misdemeanor that is sexual in nature, your DNA will never go to CODIS. It will have to be destroyed if there is no probable cause within five business days of that determination by the court magistrate. That will be done at the local government's expense. There is an exoneration procedure which initially was ten years and now it is five years. The local government law enforcement is responsible for the entire cost of that expungement and they have to make their best efforts to make that happen within a six-week period.

A similar law to what we are talking about exists in 25 states. This is not something new. The Governor of New Mexico called me and others on the Judiciary Committee recently because this has been so highly effective in the state of New Mexico. Some are concerned that this is somehow potentially unconstitutional because we are taking a cheek swab. For decades, if not centuries in this country, citizens have been able to be arrested and kept in jail for months upon months without a conviction. In some instances they have had their property seized without a conviction. That is still the case. We are talking about a cheek swab. It is the twenty-first century equivalent of a fingerprint. There was a time when the taking of fingerprints was considered by some to be a violation of a person's Fourth Amendment rights. Today, you would be hard-pressed to find someone who would reasonably question the ability of law enforcement to take a suspect's fingerprints. On the other hand, what I know to be true is that our failure to pass this legislation will result in innocent Nevadans, husbands and wives, sons and daughters, brothers and sisters, fathers and mothers being hurt and even killed when they do not otherwise have to suffer that horrible fate. The truth of the matter is, there are bad people in this world. Fortunately, the wonders of modern science provide us an opportunity to identify these bad people and stop them from hurting others. At the

same time, many wrongly accused and convicted people have been exonerated due to this same technology. I ask all of you, which is worse, subjecting some people who turn out to be innocent to a cheek swab versus subjecting innocent people to a lifetime in prison or even the death penalty due to a wrongful conviction that could have been prevented with this technology.

This is an extremely valuable law enforcement tool to be seriously considered. The sponsors of this bill have been great in acknowledging concerns with funding. That is why they proposed that this does not get implemented for two years. Here is the problem. Everyone knows how difficult it is to get legislation through. If we do not pass this today, the sponsors of this bill will have to start this whole process over in two years. I am not suggesting this bill is perfect, but I am suggesting it is needed and has been highly effective in 25 other states. It has not been found to be unconstitutional by any state. We have two years to refine this and make sure that we have everything in place for it to work. The measures in this bill will save lives. From the bottom of my heart, I ask you to support and pass A.B. 552.

JANINE HANSEN (State President, Nevada Eagle Forum):
We are in opposition to A.B. 552. I did present an amendment, in Senate Judiciary, which would help with the funding issues. There is obviously a funding issue if the sponsors have to delay the implementation for two years. It is not self-funding and there will be continuing funding issues in the future when it is implemented. It should be self-funded. I would just say, we have heard a lot of emotional testimony. We do need to consider what the future will bring. I do not know how many of you have been handcuffed, thrown into a paddy wagon and hauled off to jail. I have been. I was exercising my right to petition and I was later exonerated. That does not mean that innocent people will not be violated by those in the criminal justice system. It does not mean that we must not use every care in making sure that we protect the rights of individual citizens. John Adams made it clear that it is better to let ten guilty men go free than to violate one innocent man's rights. Although our great sympathies are with the family of Brianna Denison, we must look to the future to be sure that we protect the freedoms of our children, that we will not become the subjects of government, but that the government is subject to the people and to our individual God-given constitutional rights.

KRISTIN L. ERICKSON (Chief Deputy District Attorney, Nevada District Attorneys Association, Washoe County):
We are in strong support of A.B. 552. So many people have come together and worked hard and we believe what has come out in A.B. 552 is an excellent piece of legislation. In addition, I must address the prior testimony that the Washoe County District Attorney's Office overcharges shoplifting charges as burglary. I take big

issue with that statement. There are two sides to every story, and I suggest you have only heard one-half of the story.

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
I am chairman for the Assembly Committee on Judiciary. Last Session, I was in opposition to this measure. I promised the Attorney General and the Brianna Dennison family, I would work with them during the interim to try to make it a better bill. I believe we have included provisions in the bill that provide me comfort that I did not have before. As some of you may know, part of my law practice is criminal defense. I take my profession seriously. If this had provisions which gave me pause, I would not have supported this measure in sending it forward for your consideration.

I would like to take this opportunity as a citizen to give you information, as Kristin Erickson said, that you only heard one-half of the story. I would like to give you my portion of a story of a personal nature. Senator Kieckhefer asked if persons were actually prosecuted and sent to prison for petty shoplifting. I will tell you from first-hand experience that this does happen. I received a letter from my sister who is in prison during this Legislative Session. She is in prison because she shoplifted clothes in a department store. Because of previous convictions for drug use, she was put in prison for one to three years at the taxpayer's expense. Although the value of the clothes was only approximately $200, she entered the structure with the intent of committing a crime. I constantly hear people doubt whether or not that actually occurs. In my profession I have seen it. In my family, I have experienced it. It happens.

SENATOR LESLIE:
Have you had a chance to review the proposed NAACP amendment?

MR. HORNE:
I have not had a chance to review it.

CHAIR HORSFORD:
I am closing the hearing on A.B. 552.

We have an outstanding issue to discuss on A.B. 560.

MR. KRMPOTIC:
The Committee approved A.B. 560 earlier today with a do pass as amended. Legal Counsel just advised that there is a wording change that needs to be made in the bill. This is the bill that suspends longevity pay, suspends merit pay and also eliminates the premium holiday pay for State employees. The section regarding the

premium holiday pay needs a wording change. On lines 19 and 20 it reads, “this payment is in addition to any payment provided for by regulation for working on a legal holiday.” The words “working on” need to be stricken from the amended version of the bill.

CHAIR HORSFORD:
I will accept a motion to reconsider our action on A.B. 560.

> SENATOR LESLIE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 560 INCLUDING THE TECHNICAL AMENDMENT MADE BY LEGAL COUNSEL.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
The Committee is in recess beginning at 4:38 p.m. until the Call of the Chair.

The Senate Committee on Finance is called back to order at 8:36 p.m.

The first bill I want to discuss is A.B. 527.

ASSEMBLY BILL 527 (1st Reprint): Makes an appropriation for the implementation and operation of a principal leadership training program. (BDR S-1154)

This bill is from the Governor on behalf of the Budget Division. You have Amendment 956 (**Exhibit K**) before you for consideration which changes the appropriation from $500,000 to $100,000, and it is included in the budget.

> SENATOR RHOADS MOVED TO DO PASS A.B. 527.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS CEGAVSKE AND KIECKHEFER WERE ABSENT FOR THE VOTE.)

*****

CHAIR HORSFORD:

The next item is A.B. 553.

ASSEMBLY BILL 553 (1st Reprint): Revises provisions governing subsidies for the coverage of certain persons under the Public Employees' Benefits Program. (BDR 23-1222)

LAURA FREED (Senior Program Analyst, Fiscal Analysis Division, Legislative Council Bureau):
I will walk you through the amended version of A.B. 553. The bill affects retiree health insurance for State workers. Section 2, subsection 6, states no Public Employees' Benefits Program (PEBP) subsidy will be provided to those retirees who were hired on or after January 1, 2012. Those retirees may remain in the PEBP pool and pay the unsubsidized premiums until they reach Medicare age.

CHAIR HORSFORD:
We are working with Amendment No. 960 (**Exhibit L**) as adopted by the Assembly. This is one of the reform bills that states new employees starting January 1, 2012, will no longer be able to get the direct health care benefit after retirement. They can only buy into it.

MS. FREED:
They will remain on PEBP until they reach Medicare age and they would rely on their Health Savings Account to pay that. They would not receive a subsidy from PEBP.

SENATOR PARKS:
After Medicare age, is there a supplemental program available to these individuals?

MS. FREED:
They would move out into the individual Medicare market at that time.

SENATOR KIECKHEFER MOVED TO DO PASS A.B. 553.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will entertain a motion from the Committee on A.B. 571 heard earlier today regarding prohibitions on smoking tobacco.

MR. KRMPOTIC:
I have the first reprint of the bill. There were no amendments considered by this Committee.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 571.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS DENIS AND LESLIE VOTED NO.)

*****

CHAIR HORSFORD:
I will next entertain a motion for A.B. 581.

ASSEMBLY BILL 581: Revises provisions relating to the Account for Foreclosure Mediation. (BDR 9-1303)

MR. KRMPOTIC:
Assembly Bill 581 is a budget implementation bill. It simply allows for the use of proceeds of the foreclosure mediation program to be used for other purposes to be defined by the Legislature. I remind the Committee that the budgets for the Judicial Branch were closed using $300,000 in each year of the biennium from the foreclosure mediation reserves to fund the Supreme Court budget and thus reduce the General Fund in each year.

SENATOR KIECKHEFER MOVED TO DO PASS A.B. 581.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CEGAVSKE VOTED NO.)

*****

CHAIR HORSFORD:
I want to make a statement regarding A.B. 552. We will not be taking a vote on the bill in this Committee. Despite the strong merits of the bill, there are profound implications for privacy rights and I believe there are issues with expunging DNA of the innocent that remain unanswered. This is not the type of legislation that we can hear for less than a week before the end of the Session and fast-track. There are very high stakes in this legislation and the issues are not minor. We cannot leave

items unresolved. The bill came with no recommendation from the policy committee and the Chair found no reason to bring it up for a vote at this time.

As there is no further business, we will recess until adjournment of the floor.

This meeting is adjourned at 12:59 a.m.

RESPECTFULLY SUBMITTED:

_____

__

Jackie Cheney,
Committee Secretary

APPROVED BY:

_____
Senator Steven A. Horsford, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 401	C	Thomas H. Gallagher	AB 401 Testimony
A.B. 416	D	Judy Stokey	AB 416 Amendment No. 7209
A.B. 416	E	Senator Schneider	Proposed Amendment for A.B. 416
A.B. 560	F	Mr. Krmpotic	Proposed Letter of Intent
A.B. 560	G	Kevin Ranft	Proposed Amendment for A.B. 560
A.B. 552	H	Assemblywoman Debbie Smith	A.B. 552 Amendment No. 7382
A.B. 552	I	Richard Boulware	Proposed Amendment for A.B. 552
A.B. 552	J	Tonya Brown	Proposed Amendment for A.B. 552
A.B. 527	K	Chair Horsford	A.B. 527 Amendment 956
A.B. 553	L	Ms. Freed	A.B. 553 Amendment No. 960