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

Seventy-Seventh Session
May 23, 2013

The Committee on Ways and Means was called to order by Chair Maggie Carlton at 8:13 a.m. on Thursday, May 23, 2013, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Maggie Carlton, Chair
Assemblyman William C. Horne, Vice Chair
Assemblyman Paul Aizley
Assemblyman Paul Anderson
Assemblyman David P. Bobzien
Assemblyman Andy Eisen
Assemblywoman Lucy Flores
Assemblyman Tom Grady
Assemblyman John Hambrick
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblyman Michael Sprinkle

GUEST LEGISLATORS PRESENT:

Assemblyman Skip Daly, Washoe County Assembly District No. 31
Assemblyman Richard Carrillo, Clark County Assembly District No. 18
Assemblyman Andrew Martin, Clark County Assembly District No. 9
Assemblywoman Olivia Diaz, Clark County Assembly District No. 11

STAFF MEMBERS PRESENT:

Cindy Jones, Assembly Fiscal Analyst
Michael Chapman, Principal Deputy Fiscal Analyst
Linda Blevins, Committee Secretary
Cynthia Wyett, Committee Assistant

Following call of the roll, Chair Carlton opened the hearing on Assembly Bill 367 (1st Reprint).

Assembly Bill 367 (1st Reprint): Revises provisions relating to constructional defects. (BDR 3-670)

Assemblyman Skip Daly, Washoe County Assembly District No. 31, provided a summary of Assembly Bill 367 (1st Reprint) for the Committee. The bill had been referred to and amended by the Assembly Committee on Judiciary. There had been discussions among the homebuilders, subcontractors, trial lawyers, and others in an attempt to amend the policy portion of the bill. The proposed amendment (Exhibit C) was not a compromise agreed to by all parties concerned.

According to Assemblyman Daly, no changes in the policy regarding construction defects had been made since 2003. In meetings with leadership in both houses of the Legislature, it was decided to move forward with reasonable policy changes. There were changes in the indemnification and hold harmless portions of the bill. One major problem with construction defect complaints was that innocent subcontractors were brought into litigation through the indemnification clause. Assemblyman Daly believed not everyone would support the bill; however, it would be a policy change on something the Legislature could address.

A companion to the indemnification clause was a change in the definitions for "controlling party" and "development project." This was done to avoid litigation for subcontractors who had nothing to do with the construction defect. Assemblyman Daly believed if the bill was successful, the number of contractors in litigation and the number of items in litigation could be reduced. He thought that the proposed changes would remove the fiscal note for the study portion of the bill.

Chair Carlton asked whether Assemblyman Daly believed everyone was equally unhappy about A.B. 367 (R1) and if the $150,000 for a proposed study of indemnification clauses in construction contracts was eliminated in the proposed amendment.

Assemblyman Daly stated that it was his understanding that the homebuilders, subcontractors, and the coalitions were unhappy with the definition and indemnification changes. The trial lawyers were not pleased with all of the changes. After trying unsuccessfully for ten years to make changes in the policy, Assemblyman Daly thought this was a good start. He added that the proposed amendment (Exhibit C) did not include the removal of the study, but that could be adjusted.

Chair Carlton called for questions from the Committee.

Assemblyman Hickey disclosed that he was a subcontractor. He was aware that not all of the construction defect policy problems could be addressed this session; however, the bill did not address the concerns of subcontractors and general developers. Specifically, the definitional areas were "watered down" from what the building community wanted to see as part of a compromise. He asked whether the definitional change in the amendment would do much to correct the problem.

Assemblyman Daly responded that in his discussions with the trial lawyers and the Legal Division, Legislative Counsel Bureau, it was decided that anytime the phrase "and has to meet other criteria" was included, it made a definite change. Not everyone was happy with the bill, believing it did not go far enough to help. Assemblyman Daly said he had been studying the problem since 1995. This was a complicated issue. The Legislature must decide whether it was going to make a policy change. The policy change should exclude innocent subcontractors from litigation who had nothing to do with the defects. He admitted the bill was not perfect, but it did address the most identified problems.

Assemblyman Hickey disagreed, saying that the bill did not address the problems because subcontractors could not "fix" problems. The pathway to a solution was to have the general contractors responsible for the jobs rectify problems. Any reputable contractor would like to fix a problem before it ended up in litigation. In his opinion, the bill only helped a few subcontractors but did not help the homeowners or members of the contracting industry who were suffering from the convoluted way the law was applied. Assemblyman Hickey advised that he would not support the bill.

Chair Carlton understood that construction defects were a passionate issue. As mentioned prior to the hearing, Chair Carlton wanted to address fiscal notes and avoid policy discussions. For A.B. 367 (R1), work had been done to remove the study from the bill. She appreciated Assemblyman Hickey's comments.

Hearing no response to her request for testimony in support of or neutral to the bill, Chair Carlton requested testimony in opposition to A.B. 367 (R1).

Joshua Hicks, representing the Coalition for Fairness in Construction, expressed opposition to A.B. 367 (R1) and to the proposed amendment. He was accompanied by Lee "Rocky" Cochran and Jesse Haw, cochairs of the Coalition for Fairness in Construction. The Coalition submitted Exhibit D for the record. Mr. Hicks pointed out that there had not been policy discussions on A.B. 367 (R1) because it was referred out of the Assembly Committee on Judiciary without discussion.

Chair Carlton interjected that she needed to have the history of the bill. Because it passed out of the Assembly Committee on Judiciary, there must have been a hearing.

Assemblywoman Kirkpatrick stated that in the spirit of trying to work with both sides to come up with policy beneficial to the state, there was no hearing on the bill. There were working groups and the opportunity for discussion to form a consensus. She believed that Assemblyman Daly would be open to a public workshop to discuss the bill. Assemblywoman Kirkpatrick noted that Mr. Hicks was in the working group, and she had discussed the matter with him. She did not want the Committee to believe this was the first time Mr. Hicks was seeing the bill and amendment.

Assemblywoman Kirkpatrick admitted this was a major problem in the construction industry and the Legislature had failed to finalize any legislation. She recalled that Assemblyman Daly and Assemblyman Wesley Duncan, Clark County Assembly District No. 37, had come to her and requested working together to keep the bill alive. Discussions had taken place with Assemblymen Daly, Duncan, Hickey, and Kirkpatrick and Mr. Hicks, Mr. Cochran, and Mr. Haw.

Mr. Hicks clarified that he meant there had not been a public hearing on the policies in the bill. He stated that the Coalition for Fairness in Construction had been involved in the discussions mentioned by Assemblywoman Kirkpatrick.

Lee "Rocky" Cochran, representing the Coalition for Fairness in Construction, was appreciative of the opportunity to comment on A.B. 367 (R1) and the proposed amendment. He stated that he also represented members of Associated General Contractors of America (AGC) Las Vegas Chapter, AGC, Southern Nevada Home Builders Association, and others who stood in strong opposition to A.B. 367 (R1) and the proposed amendment. The bill made indemnification nearly impossible. The amendment made the definition of

a construction defect more unclear than the current law. Mr. Cochran said that the goal of the Coalition was to attempt to slow down the stem of litigation that had evolved over the years among homebuilders, homeowners, subcontractors, suppliers, and vendors.

Jesse Haw, representing the Coalition for Fairness in Construction, spoke in opposition to A.B. 367 (R1) and the proposed amendment. In his opinion, the bill was not good for homeowners or the construction industry and did not solve the problem.

Tray Abney, representing The Chamber [Reno-Sparks-Northern Nevada], expressed opposition to A.B. 367 (R1) and the proposed amendment. The construction industry had appeared before the Legislature repeatedly requesting a solution to the construction defect problem, but the industry did not believe this bill was the answer.

Sean Stewart, representing the Associated General Contractors of America, Las Vegas Chapter and the Nevada Contractors Association, agreed with the comments made opposing A.B. 367 (R1). He spoke in opposition to the bill and amendment, noting that the organizations he represented had the same concerns voiced in earlier testimony.

Leon F. Mead II, Attorney-at-Law, Snell and Wilmer, Las Vegas, specialized in law related to construction. He had been practicing construction law for 23 years. Mr. Mead was opposed to the bill and the proposed amendment. With respect to the bill and sections dealing with indemnification, he submitted that making certain provisions in a construction contract void that were typical and known throughout the nation was against public policy in any construction contract or context. Section 1, subsection 4 of the bill was particularly problematic. Subsections 1 and 2, although they purported to try to limit the situation to construction defects in residential situations, residential construction defect also applied to multiuse projects, such as CityCenter Las Vegas. The elimination of the ability to have additional insured endorsements and obtain indemnity from downstream substance suppliers would increase the cost of insurance for those projects and eliminate the ability to have owner controlled insurance programs (OCIP) and contractor controlled insurance programs (CCIP). He encouraged the Committee not to move forward with A.B. 367 (R1).

Chair Carlton noted there were members of the Committee who were aware of CCIP and OCIP. She pointed out that the discussion had been ongoing in the Legislature for several decades.

Assemblywoman Flores pointed out that when changes were made to "boilerplate language" as a public policy statement or purpose, it was problematic. She asked Mr. Mead whether there were other states that had chosen to go one way or the other on this problem. She was aware that Minnesota and California had an anti-indemnification law on the books, thereby making it a public policy issue. She was curious to know if there were other states that had chosen to take this on as an important public policy topic.

Mr. Mead responded that in a previous legislative session, he and Assemblyman Horne had put together an analysis of every state and the indemnity clauses in construction contracts. The type 1 clause was indemnity for a third party's actions, and type 2 was indemnity for co- and joint-issues. None of the states had made it against public policy to have such clauses, but said that such clauses would not be enforceable when limited by law.

Unfortunately, according to Mr. Mead, this was not just a boilerplate problem. Indemnity and insurance clauses were a matter of negotiation at many levels in routine situations on construction projects. In reading the endorsements, none of the language would assist a homeowner with a construction defect, and it would not assist in limiting or reducing the number of parties or amount of work involved in construction defect lawsuits.

John Madole, representing the Nevada Associated General Contractors, respected what Assemblyman Daly had accomplished but did not believe the major problem had been addressed.

John Griffin, representing the Nevada Justice Association, noted that there had been hearings in the Senate on bills similar to A.B. 367 (R1). Mr. Griffin was opposed to this bill and the proposed amendment. As to the indemnification piece, his position was that it provided no benefit to a homeowner, but was more applicable between a homebuilder and subcontractor. Because he was advocating on behalf of the homeowner, if anything, the indemnification piece worked in a secondary way, potentially against a homeowner. Mr. Griffin found it interesting to listen to people advocate that a subcontractor who had nothing to do with the home defect would be involved with litigation. As to the provision that changed the definition of defect, Mr. Griffin was opposed.

Assemblyman Horne wanted to put on the record that in past sessions he had been involved in legislation related to construction defect problems. In meetings with other legislators, members of the construction community,

and Mr. Mead, Assemblyman Horne had encouraged the development of an indemnification plan to avoid serious consequences.

Assemblyman Horne believed the opposition had made valid points regarding possible ramifications if the indemnification provisions were made part of public policy. The positive side of that was the subcontractor would not always get brought into a lawsuit inappropriately. Assemblyman Horne was hopeful a common ground had been found, but it appeared that was not the case. Although he had not been involved in the negotiations this session, Assemblyman Horne wanted the Committee to know that the participants involved knew there was a possibility of conflict if a compromise was not reached.

Hearing no response to her request for public comments, Chair Carlton closed the hearing on A.B. 367 (R1) and opened the hearing on A.B. 256 (R1).

Assembly Bill 256 (1st Reprint): Makes various changes relating to motorcycles. (BDR 43-661)

Pete Vander Aa, Program Administrator, Program for the Education of Motorcycle Riders, Department of Public Safety (DPS), provided a brief summary of Assembly Bill 256 (1st Reprint). The DPS program was developed in the early 1990s to provide training for motorcycle riders. Approximately 6,000 riders were trained each year through the DPS, the community colleges, and six independent providers. Additionally, the program conducted small safety campaigns. The program was self-funded and supported by a $6 motorcycle registration fee, class tuition, and grant funding.

The *Nevada Revised Statutes* (NRS) had provided a class tuition cap of $100 since the early 1990s. Mr. Vander Aa testified that it was no longer possible to provide two and one-half days of training for $100. Independent providers charged up to $300 or more for the same class. The DPS and the community colleges under contract with the DMV were capped at the $100 tuition. Approximately 75 percent of all students were trained through the colleges or DPS. The program provided testing on behalf of DMV so a student could earn an M-class license. Because of the $100 cap for the community colleges, the Nevada Rider Motorcycle Safety Program provided a $40 per student subsidy and training motorcycles for the community colleges, which allowed them to recover program costs.

Mr. Vander Aa believed that by fiscal year (FY) 2015, the program would no longer be viable. Since FY 2010, the program had run a deficit of approximately $45,000 each year with a budget of less than $500,000 per year. Raising the tuition cap to $150 would not affect the General Fund, as the tuition was a user fee only.

Mr. Vander Aa explained that another concern addressed in the bill was the use of money for the program. Prior to 2010, NRS provided that the money collected from registration and tuition fees should be used only for the Nevada Rider Motorcycle Safety Program. The language was added during the 26th Special Legislative Session (2010) to allow the money to be used for other purposes. Subsequently, about $126,000 of the reserves were put into the General Fund. The suggested language in A.B. 256 (R1) would remove the language added in 2010, so that any money put into the program through registration and tuition fees could only be used for the Nevada Rider Motorcycle Safety Program.

Chair Carlton confirmed that A.B. 256 (R1) and A.B. 472 enacted the decision units to raise the program fees. Assembly Bill 472 had moved through the Assembly Committee on Ways and Means and was now in the Senate Committee on Finance. She suggested amending out the fee portion of A.B. 256 (R1) and leaving the language portion because A.B. 472 had been passed. That would eliminate the fiscal note for A.B. 256 (R1) and the bill could be moved.

Assemblyman Richard Carrillo, Clark County Assembly District No. 18, commented that the Nevada Rider Motorcycle Safety Program was essential and should continue to be funded. Since the program began, the economy had suffered a serious downturn, and the number of riders had increased.

Hearing no response to her request for public comments, Chair Carlton closed the hearing on A.B. 256 (R1) and opened the hearing on A.B. 325 (R1).

Assembly Bill 325 (1st Reprint): Authorizes a court to commit certain convicted persons to the custody of the Department of Corrections for an evaluation. (BDR 14-742)

Assemblyman Andrew Martin, Clark County Assembly District No. 9, provided a brief summary of Assembly Bill 325 (1st Reprint). The bill restated and reformulated a presentencing evaluation program for felons. An earlier program was repealed in 1997. The policy goals were to enable prosecutors and judges to make better conviction decisions. There was no

fiscal note for the bill, and it was expected there would be long-term savings from a lower prison population.

Chair Carlton advised Assemblyman Martin there was an unsolicited fiscal note from the Department of Corrections (NDOC) (Exhibit E). The NDOC believed that the bill would require hiring new staff or redirecting existing staff resources, preventing them from providing services to the inmate population. There was no provision in the bill to limit the number of offenders that might be sent to NDOC for evaluation. There was no existing data to project the actual costs that would be incurred. Accordingly, while NDOC would incur new costs associated with this bill, those costs could not be projected with any accuracy.

Brittany Shipp, Policy Assistant for the Majority Leader of the Assembly, Nevada Legislature, pointed out that the language of the bill was permissive by using "the court may" rather than "shall" when admitting a person into the program. There were long-term savings anticipated by preventing persons from being unnecessarily incarcerated.

Assemblyman Horne stated that the bill came as a recommendation from the Advisory Commission on the Administration of Justice, which believed it beneficial for offenders and had the potential of saving money. According to Assemblyman Horne, James G. "Greg" Cox, Director, Department of Corrections, was also a member of that Commission. Assemblyman Horne was uncertain whether Mr. Cox had opposed the recommendation.

Chair Carlton opened the hearing for testimony in support of A.B. 325 (R1).

Steven Yeager, representing the Office of the Clark County Public Defender, voiced support for A.B. 325 (R1). He did not anticipate that the program would be used often, only in cases where the judge was trying to decide whether prison or probation was in the best interest of the offender. He believed the program would be used judiciously and only in difficult cases when the judge was trying to obtain more information on the appropriate sentence. If a person could be diverted to probation, there would be a cost savings to the state.

Chair Carlton opened the hearing for testimony in a neutral or opposing position on A.B. 325 (R1).

Quentin Byrne, Administrator, Offender Management Division, Department of Corrections, expressed opposition to the bill. The cost was a potential problem for NDOC. Running each inmate through the 21-day intake process cost approximately $800, and the cost to keep an inmate in a medium

custody institution was about $55 per day. An increase in the inmate population would require additional staff or diversion of existing staff from their responsibilities. Currently, there was an average of 116 new intakes per week and inmates had to be moved from the intake facilities to institutions. If there were substantial increases in the inmate population because of this proposed legislation, it would be problematic for management of the institutions.

Chair Carlton inquired whether Mr. Byrne had been involved in the Advisory Commission on the Administration of Justice conversations Assemblyman Horne had recalled. Mr. Byrne responded that he was not involved.

Assemblyman Eisen asked what happened to offenders when there was a question of whether or not they should be incarcerated. It appeared there were offenders on probation who should have been incarcerated and vice versa. There was the potential to either decrease or increase the prison population.

Mr. Byrne explained that NDOC was not involved in any of the evaluations or consideration of whether a person should be put on probation or incarcerated. He presumed the Division of Parole and Probation, Department of Public Safety, would make a recommendation and all parties involved would review all of the information before making a decision.

Assemblyman Sprinkle inquired whether the possibility of a decrease in the prison population had been taken into consideration by NDOC when preparing the fiscal note.

Mr. Byrne responded that was part of the reason a fiscal note could not be prepared based on a projection of increased or decreased numbers of inmates. He stated that nationwide this type of program had not worked, and there was not a positive effect on the size of the inmate population. The amount of time allowed for evaluation of the offenders would not significantly influence their needs for programming or another diversion to prevent them from reoffending.

It seemed to Assemblyman Horne that Mr. Byrne was skeptical of the effectiveness of diversion programs; however, Assemblyman Horne did not believe Mr. Cox opposed diversion programs. He asked whether Mr. Byrne had data supporting his opinion.

According to Mr. Byrne, he did not intend to say that diversion programs were ineffective. The NDOC supported diversion programs that were effective. He was referring to short evaluation programs that would often turn into a "scared-straight" program.

Chair Carlton appreciated the information and noted the Committee would work through the nuances of the bill.

Hearing no response to her request for public comments, Chair Carlton closed the hearing on A.B. 325 (R1) and opened the hearing on A.B. 413 (R1).

Assembly Bill 413 (1st Reprint): Revises provisions relating to taxation. (BDR 32-1010)

Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1, accompanied by Assemblyman Cresent Hardy, Clark County Assembly District No. 19, presented a summary of Assembly Bill 413 (1st Reprint). Assemblywoman Kirkpatrick noted that a fuel indexing chart (Exhibit F) and a proposed amendment to A.B. 413 (R1) (Exhibit G) had been prepared for review by the Committee.

According to Assemblywoman Kirkpatrick, the bill was complicated and it was necessary to review portions of the policy to understand the fiscal note. She was not aware of a fiscal note from the Department of Motor Vehicles (DMV) to put the plan into action; however, the DMV could receive a 1 percent commission when the plan was operational.

The chart (Exhibit F) described the proposed fuel indexing for southern Nevada. The proposed amendment involved three sections of chapter 373 of *Nevada Revised Statutes* (NRS). These amendments were in section 1.1, section 1.3, and section 1.5. Section 1.1 of the bill applied to Clark County. That section provided enabling legislation to index local fuel taxes through an ordinance approved by the Clark County Commission before October 1, 2013. If the ordinance was not approved, the authority to impose the indexing would be lost. Assemblywoman Kirkpatrick noted that she had seen resolutions from the Regional Transportation Commission (RTC) of Southern Nevada and believed the county should have the opportunity to move in that direction.

Assemblywoman Kirkpatrick pointed out that section 1.3 of the proposed amendment related to the statewide portion of how the taxes would be imposed. Voters must approve a statewide ballot question at the November 8, 2016, general election. This was a two-pronged piece of

legislation. The state recognized that there was a shortage of funds for highway infrastructure, and money had to be taken from the Highway Fund for maintenance. It would be beneficial to approve statewide indexing to collect additional funds through the International Fuel Tax Agreement (IFTA).

Section 1.5 of the proposed amendment applied to all counties, except Washoe County, allowing those counties to index local fuel tax rates through local voter approval. Assemblywoman Kirkpatrick noted that the Elko County Commission recently increased its gas tax to nine cents per gallon, which could then be indexed. The provisions in section 1.5 would not apply to Washoe County because earlier legislation had already resulted in fuel tax indexing in that county.

Assemblyman Hardy explained the distribution of proceeds for the first three years of the fuel indexing, as described in Exhibit F, would be directed to the Clark County area. If the vote described in subsection 5 of section 1.1 failed to pass in 2016, Clark County would be able to continue to use the higher indexed fuel tax rates, but they would not be allowed to continue indexing the rates. The proceeds collected under section 1.3, if approved by the voters, would be allotted to the Highway Fund. The proceeds from the vote in section 1.5, if approved by a county, would be distributed within the county in the same manner as the local tax rates being indexed.

The reauthorization by the voters of the indexing of the rates described by Assemblyman Hardy in all three sections outlined in Exhibit F would be required after ten years, in 2026.

Chair Carlton agreed this was a confusing plan. She described the plan as enabling the Clark County Commission to adopt an ordinance before October 1, 2013, to impose the tax indexing. If there was no ordinance, there would be no tax indexing. If the ordinance was approved, the indexing would be in effect for three years and then would have to be approved by the voters. The ordinance would be put before the voters again ten years after that.

Assemblyman Hardy agreed with Chair Carlton's description of the proposal. The voting portion of the proposal was very important to give the counties the right to impose the tax. The road systems had struggled over the last several years. In his opinion, it was important to a viable economy. If the state infrastructure was failing, it was difficult to attract tourists or sustainable businesses.

Assemblyman Hardy continued, noting that additional key provisions of the proposed amendment (Exhibit G) to A.B. 413 (R1) were shown at the bottom of Exhibit F. Section 1.7 and section 8 provided that the annual increases in the indexed rates imposed pursuant to sections 1.1, 1.3, and 1.5 could not be pledged to the repayment of bonds or other debt beyond five full fiscal years after the bonds were issued or the debt incurred. The Legislature or county commission, as applicable, could continue the pledge of the increases in the taxes beyond the five-year period, but only for subsequent five-year periods.

Assemblyman Hardy further explained that section 12 of the proposed amendment (Exhibit G) required the DMV to adopt regulations to establish a system to provide for the reimbursement and repayment of any amounts owed by any person under a Nevada version of IFTA as a result of the imposition of a tax on diesel fuel pursuant to NRS 373.066 [Washoe County's fuel indexing authority statute] or sections 1.1, 1.3, or 1.5 of the proposed amendment. The system adopted by DMV must not be administered in a manner that adversely impaired any outstanding bonds issued under chapter 373 of the NRS.

Assemblywoman Kirkpatrick stressed the importance of allowing the Clark County commissioners to make these decisions. Having worked with many of the businesses in southern Nevada, she believed the public would support this type of bill so Clark County would have legislation allowing the county commission to evaluate the legislation and take care of its own needs. In addition, the state must have the ability to generate revenue across the state to put into highways. This bill would create jobs. When the legislation was passed for Washoe County in 2009, the county was able to create jobs. She was not aware of any fiscal notes attached to A.B. 413 (R1).

Assemblywoman Kirkpatrick believed that DMV would not have difficulty with this program for the counties. There could be a financial implication when the questions went to a popular vote, but DMV would receive a 1 percent commission to help offset its costs. She was curious to hear from DMV and whether the Washoe County plan could be duplicated in Clark County for a small amount.

Chair Carlton confirmed that the Committee had heard the programming component of the bill.

Assemblywoman Flores asked whether this was a two-step process, whereby it would be made permissive for Clark County and a ballot process would be put into place to deal with the statewide indexing concern resulting from the IFTA relationship.

Assemblyman Hardy explained that the first section of the bill would give the Clark County Commission the ability to impose the indexing for three years with a two-thirds majority vote from the commissioners. For the tax to continue, it would have to go to a vote of the people. Through discussions, it had been determined that the voting component should go statewide because the entire state was suffering the effects of a deteriorating infrastructure.

Assemblyman Sprinkle commented that he was not a member of the Legislature in 2009 when the Washoe County fuel indexing legislation was passed. He wanted to confirm that the reason Washoe County was not included in A.B. 413 (R1) was because the county already had the system in place.

Assemblyman Hardy said that was true. The state portion would be voted on in Washoe County, but the legislation could not override the county portion. Washoe County had no cap on its tax. The bill provided authority for the Washoe County Commission to be able to slow the rate increase if they chose.

Assemblywoman Kirkpatrick further explained that Clark County would have the ability to slow down the rate increase, whereas Washoe County was not given that authority. She was hopeful that if the bill was heard by the Senate, discussions could take place to ensure consumers and the Washoe County Commission would have the same authority to slow the rate increase as was afforded to Clark County.

Assemblyman Hardy pointed out the indexing rate was based on the federal Producer Price Index (PPI), not on a state or local PPI. The federal PPI appeared to be a more consistent rate than the Consumer Price Index.

Assemblyman Anderson expressed his appreciation for allowing Clark County to participate and make the decision on this tax. He believed the commissioners were closer to the voice of the people because they had to pay the increase if it was enacted. He inquired whether there was an estimated cost for the consumer.

Assemblyman Hardy responded that the PPI was averaging an additional cost of about 2.8 cents per year per gallon of fuel. This translated to approximately $30 per year additional for a family of four.

Assemblyman Anderson asked whether there was an estimate of which counties would enact the tax.

Assemblyman Hardy noted that several counties had not yet met the nine cent cap that was already in place. He thought that Elko County recently met the cap rate. He believed that in going to the statewide vote, Elko County could decide the best course of action. Many of the counties needed money but had not hit their cap and were looking to the Legislature for assistance. Often county commissions were hesitant to enact tax increases and preferred the Legislature take the brunt of the opposition.

Yolanda T. King, representing Clark County, expressed the Board of County Commissioners' support for A.B. 413 (R1).

Jack Mallory, representing Southern Nevada Building and Construction Trades Council, stated that there had been data generated over the years regarding the positive influence of road construction. It was estimated that $1 billion in spending for road construction would create approximately 13,000 jobs. Every dollar spent turned over twice in the local economy. Mr. Mallory expressed full support for the bill.

Danny Thompson, representing Nevada State AFL-CIO, stated that with the advent of hybrid vehicles, fuel-efficient vehicles, and better fuel standards, the funding mechanism for maintaining the highway systems was faced with shortages. Given the fact that vehicles tore up the roads but did not pay for the roads was a serious problem. Without the ability to index the gas charge, decisions would have to be made in the future about which roads would be shut down. He advocated for this at the Regional Transportation Commission (RTC) of Southern Nevada. Washoe County had put this type legislation into action, and it showed in the road maintenance. He believed this indexing would also be a solution for southern Nevada. He supported the bill.

Patrick T. Sanderson, representing Laborers International Union Local #872, AFL-CIO, testified that the indexing had been successful for Washoe County, and he was hopeful that the rest of the state could now benefit. Mr. Sanderson was in support of the bill.

Paul J. Enos, representing Nevada Trucking Association, was appearing in support of A.B. 413 (R1). He noted that he had testified in opposition during the policy hearing; however, there had been changes to the bill that had changed his position. He expressed appreciation for everyone associated with the bill. He believed that putting the fuel indexing in action statewide would fix some of the problems truckers involved in interstate commerce dealt with when a party to the International Fuel Tax Agreement.

As an example, Mr. Enos explained that a carrier who bought all his fuel in Washoe County but did most of the miles out of state in California would not get credit for the full tax rate he was paying. This would put him at an economic disadvantage with California carriers. Section 12 of A.B. 413 (R1) addressed the problem by providing a refund mechanism. Mr. Enos projected that only carriers with a facility in Nevada would take advantage of the refund mechanism. A carrier from out of state who filled up in Washoe County would probably not apply for a refund on that portion of the fuel tax.

Mr. Enos pointed out that the bill did not create a county use tax, but if purchasing fuel from a county with fuel indexing and using the fuel out of state, the carrier would look at the miles traveled out of state, not outside of the county. The carrier would get a refund for those dollars. He recognized that the majority of fuel purchased by carriers was diesel fuel, but the refund mechanism could be on all types of fuel so the carrier could apply for the refund under this bill. If the program went to a statewide indexing system, the refund mechanism became moot because IFTA would administer local taxes only if they were applied statewide.

Chair Carlton thanked Mr. Enos. She believed the Committee would now have a better understanding of the bill.

Paul Moradkhan, representing Las Vegas Metro Chamber of Commerce, offered support for A.B. 413 (R1). He believed the bill helped to address many of the transportation infrastructure needs in southern Nevada. The loss of purchasing power, the need to leverage against federal funds, and the funding of critical need projects in southern Nevada were compelling reasons why the Las Vegas Metro Chamber of Commerce supported the bill. The bill appeared to be good public policy. A strong investment in good road structures and systems was important to economic development, job creation, and economic diversification. He thought the bill would help in repairing the roads and creating jobs in southern Nevada.

Terry Graves, representing Henderson Chamber of Commerce, supported the bill. The Chamber was recently given a presentation by RTC and appreciated that the ballot question had been included in the proposed legislation.

Michael Hillerby, representing Focus Property Group and John Ritter, noted he had testified in earlier hearings on this bill. He supported the bill for economic development and job creation.

Clifton Marshall, southern Nevada business owner, supported the legislation. He was a former Clark County planning commissioner and member of the RTC of Southern Nevada's Citizen Advisory Committee. He believed that passage of A.B. 413 (R1) was critical to the valley's growth and development. A sound transportation system was an important element to attract new businesses to southern Nevada. Another benefit from the bill would be improved safety for pedestrians and motorists by adding traffic-control devices to the streets. He urged the Committee to support the bill.

Sam Palmer, representing the American Council of Engineering Companies, was supportive of A.B. 413 (R1). The design professional community was on the front line of infrastructure design and construction in Nevada. Funding constraints brought on by the recession had been a depletion of both state and local funding for transportation infrastructure in Nevada. Nevada continued to fall further behind in the list of projects necessary to maintain base levels of traffic and commerce. Southern Nevada had been particularly hard hit because of the inability to keep pace with the hypergrowth prior to the recession and because of a lack of funding. Indexing was a commonsense way to ensure that the revenue raised from those who used the roads was not eroded by inflation. The bill stemmed the erosion of transportation revenues for southern Nevada and kept the revenues in the county where they were generated. The design professionals looked forward to getting back into the workforce and rebuilding southern Nevada infrastructure. He advocated for the passage of A.B. 413 (R1).

Sean Stewart, representing the Nevada Contractors Association, expressed support for the bill. He stated that contractors were the largest consumers of fuel in Clark County. He supported the measure because it would generate jobs for Clark County.

Darren Enns, representing Southern Nevada Building and Construction Trades Council, expressed support for the bill because it would generate jobs in southern Nevada.

Chair Carlton requested testimony from anyone with a neutral position on A.B. 413 (R1).

Wayne A. Seidel, P.E., Administrator, Motor Carrier Division, Department of Motor Vehicles (DMV), pointed out that section 12 contained language for the DMV. The refund system discussed earlier called Nevada IFTA (NIFTA) was a new program; IFTA was designed with Nevada as signatory of the state level tax and considered the miles traveled within the states and provinces. Through the clearinghouse, the tax dollars collected throughout all the states were calculated for the actual miles and were distributed accordingly. The refunds proposed differed from the policy section and created refunds at the local jurisdictional levels. He believed this was not intended to be a part of IFTA. The DMV would have to research staffing for the new NIFTA to determine costs.

Chair Carlton responded that the Committee was aware of the DMV concerns.

Fred Hillerby, representing Washoe County Regional Transportation Commission (RTC), noted that Washoe County has had the fuel indexing program in operation for nearly three years. Bonds had been issued and the concern had been not to put the bondholders at risk by interrupting the refinancing mechanism. Much of the language he had heard was new. The RTC was neutral on A.B. 413 (R1) at this time. He thanked Assemblywoman Kirkpatrick and Assemblyman Hardy for working on the bill.

Rudy Malfabon, P.E., Director, Department of Transportation (NDOT), testified that NDOT was neutral on A.B. 413 (R1). He believed that Washoe County had done a good job putting the fuel indexing system into operation. He believed that Clark County would benefit through job creation and economic development. He could not support the bill until the proposed amendment (Exhibit G) had been examined.

Hearing no response to her request for testimony in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on A.B. 413 (R1) and opened the work session on A.B. 491.

Assembly Bill 491: Temporarily revises various provisions relating to state financial administration. (BDR S-1162)

Michael J. Chapman, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, provided a brief summary of Assembly Bill 491. The bill was heard by the Assembly Committee on Ways

and Means on April 10, 2013. Assembly Bill 491 was necessary to implement the recommendations included in The Executive Budget.

Mr. Chapman explained that section 1 of A.B. 491 extended the period during which the increases in the basic governmental services tax (GST) were allocated to the State General Fund. The increases resulted from the 10 percent increase in the depreciation percentages [which reduced allowable depreciation] approved by Senate Bill No. 429 of the 75th Legislative Session (2009) through fiscal year (FY) 2013. The Governor's recommendation used the revenue from the increases in FY 2014 and FY 2015. The legislation called for the deposit of the increased amount in S.B. No. 429 to the General Fund for four years, expiring at the end of FY 2013. Beginning in FY 2014, the money would be deposited into the Highway Fund. Section 1 would continue the redirection of those funds for the 2013-2015 biennium.

Section 2 of A.B. 491 transferred commissions collected and penalties retained by the Department of Motor Vehicles (DMV) from the Motor Carrier Division and Field Services accounts to the General Fund in FY 2015 only. According to Mr. Chapman, the 2011 Legislature approved a transfer of the commissions and penalties in both years of the current biennium. Commissions included in subsection 1 totaled $20,680,534 and penalties included in subsection 2 totaled $4,074,856. Based on recent revenue projections used to close the DMV budgets for the Motor Carrier Division and Field Services, Fiscal Analysis Division staff recommended the amount of commissions in subsection 1 be increased to $20,813,716 and the penalties amount in subsection 2 to be increased to $4,097,964 as shown in the proposed amendment (Exhibit H). This was approximately $156,290 more than the amounts included in the current version of the bill.

Mr. Chapman advised that there was opposition to the bill by Q&D Construction, Granite Construction, and Craig Holt, representing the Association of General Contractors, Nevada Chapter.

Hearing no response to her request for comments or questions, Chair Carlton requested a motion on the bill.

> ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 491.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> MOTION PASSED. (Assemblyman Horne was not present for the vote.)

Assembly Bill 488: Revises provisions relating to the transfer of duties and consolidation of certain governmental agencies. (BDR 18-1136)

Richard Combs, Director, Legislative Counsel Bureau, provided an overview of Assembly Bill 488. Mr. Combs assisted with the development of the proposed amendments to the bill (Exhibit I). The bill related to the consolidation of the Health Division and the Division of Mental Health and Developmental Services (MHDS) of the Department of Health and Human Services (DHHS) into the Division of Public and Behavioral Health of DHHS. Additionally, it transferred the authority for developmental services in the MHDS to the Aging and Disability Services Division (ADSD) and transferred early intervention services from the Health Division to the Aging and Disability Services Division.

Mr. Combs recalled there were two amendments proposed at the May 6, 2013, hearing. One of the lengthy amendments was proposed by the DHHS and the other was from Barry Lovgren, a Nevada citizen. Mr. Combs assisted with combining the amendments to avoid conflicts and include requests from DHHS and Mr. Lovgren. Mr. Combs presented the information to the Legal Division of the Legislative Counsel Bureau to develop a mock-up of the amendment (Exhibit I) and an alignment chart for comparing the bill and the mock-up (Exhibit J).

Mr. Combs noted that section 2, subsection 2, paragraph (a) of the bill was a change requested by DHHS to authorize the Director of DHHS to appoint the Executive Director of the Nevada Indian Commission. This authorization was not a part of the amendment distributed at the May 6, 2013, hearing but was included in Exhibit I at the request of DHHS.

Section 3 ensured the that one of the deputies of the new division had expertise in mental health services. Mr. Combs pointed out that the changes made in sections 4, 17, 22, 23, 24, 26, and 61 reflected changes requested to the Commission on Mental Health and Developmental Services, including renaming it as the Commission on Behavioral Health. The Commission would address mental health problems, substance abuse disorder concerns, intellectual disabilities and related conditions, as well as co-occurring disorders. Mr. Combs explained that there were a number of subsections added to the bill mock-up to make technical adjustments necessary to accommodate the transfer of duties regarding intellectual disabilities and related conditions to the ADSD.

Section 8 addressed a request from the DHHS to eliminate the Bureau of Laboratory and Research from the Health Division. According to Mr. Combs, this was a part of combining the mental health component

of MHDS and the Health Division. The DHHS requested in section 12 to authorize the Administrator of the new division to delegate to employees other than just the deputy administrators of the new division. Currently, there was a provision which said the authority of the Administrator could be delegated only to the deputies. The DHHS requested at the May 6, 2013, hearing to revise the qualifications of the Administrator of the new division of Public and Behavioral Health. Mr. Combs asked the Committee to look to section 21 for those requested changes.

Sections 21.5 and 46.5 of the bill authorized the new division as well as the Division of Child and Family Services (DCFS) to hire osteopathic physicians and doctors of medicine. The current statutes only mentioned doctors of medicine.

In section 25, DHHS requested to have the State Board of Health be the entity to adopt the regulations related to mental illness, substance abuse disorders, and co-occurring disorders. This was formerly under the purview of the Commission on Mental Health and Developmental Services.

Sections 30.5 and 32 through 44 were technical changes to limit the provisions of chapter 433 of the *Nevada Revised Statutes* (NRS) only to mental illness, except for the provisions needed to apply to both mental illness and intellectual disabilities. Chapter 433 addressed both mental health and intellectual disabilities; however, the chapter would be split with many sections transferred to chapter 435 to be under the purview of ADSD.

Mr. Combs continued, noting that sections 46 and 47 contained changes to update a reference to a new provision to be discussed later. There were requirements for the DCFS Administrator to work with the ADSD staff on intellectual disability concerns rather than with the MHDS provisions.

Sections 48 through 59.7 added new sections to chapter 435 regarding intellectual disabilities. The sections were identical language to current language in chapter 433. This would allow both divisions to have the same statutory authority.

Sections 60 and 61.5 amended existing sections of chapter 435 of the NRS to change references from mental retardation to intellectual disability. There were changes requested in sections 62 through 64, 69 through 74, 80.5, 92, 95, 103, 125, and 133 to change the State Health Officer position to the Chief Medical Officer. Again, this was part of the consolidation of the mental health programs with the Health Division programs.

Section 140.5 and 140.7 in Exhibit I were new sections added by the Legal Division to address the change in certification of mental health and mental retardation technicians to mental health technicians and intellectual disability technicians and how the registrations would be handled when the organization was split. Section 140.7 had to do with certain regulations that would continue to apply even though the entity that had adopted the regulations would no longer exist.

Mr. Combs advised the Committee that sections 128, 131.5, and 131.7 relating to the transfers of funds needed to be addressed by someone from DHHS. Mr. Combs said that he was unable to determine whether the sections were technical changes or whether the DHHS had spoken to the Legal Division following drafting of the amendment.

The mock-up (Exhibit I) should accommodate everything the DHHS had requested in its amendment except for items Mr. Combs would be discussing. Additionally, the mock-up incorporated much of Mr. Lovgren's amendment request. Mr. Combs pointed out there were two items requested by Mr. Lovgren that were not in the mock-up. The first had to do with where the power and duty for the programs relating to persons with developmental disabilities resided. Mr. Lovgren's proposed amendment suggested that authority would be with the Administrator of ADSD; however, the DHHS preferred that authority be left with the Director of DHHS. The second proposal suggested by Mr. Lovgren was that the State Board of Health should be replaced by the Commission on Public and Behavioral Health as the entity responsible for adopting certain regulations. The DHHS preferred the authority remain with the State Board of Health.

Mr. Combs explained that changes to names of various divisions and agencies were not done in the mock-up. Under NRS 220.120, following the end of the session and while doing the codification, the Legislative Counsel Bureau could make changes to the titles of certain agencies as necessary as a result of policy decisions made by the Legislature. The provision was added in NRS to reduce the number of pages for a bill that made policy changes. Many of the sections Mr. Lovgren requested to be added had been purposely omitted from the bill so the sections could be addressed during codification. Mr. Combs had given a list of the sections related to Mr. Lovgren's proposed amendment to the Legal Division for its reference if the bill was passed.

Chair Carlton recognized the work Mr. Combs had put into the proposed amendment to A.B. 488. Chair Carlton requested questions from the Committee. There being none, she requested that DHHS provide financial information on the bill.

Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services, testified the changes explained by Mr. Combs went back to a question posed by Assemblyman Sprinkle at the hearing on May 6, 2013. The medical marijuana program had transferred money to the MHDS for alcohol and drug abuse treatment programs. The language was no longer necessary and the changes were technical.

Assemblyman Eisen believed one of the sections in the proposed amendment was confusing. Looking at page 31 of the mock-up (Exhibit I), section 54.6, which read:

> The State is not responsible for payment of the costs of care and treatment of persons admitted to a facility not operated by the Division or where, before admission, the Administrator or the Administrator's designee authorizes the expenditure of state money for such purpose.

Assemblyman Eisen thought it sounded like the Administrator authorized the money, but the state would not have to pay. He believed the language was confusing and should be clarified.

Mr. Combs said he could not explain why the provision was in the bill or what it had been in the past. Section 54.6 copied current language from chapter 433 of NRS into chapter 435 of NRS so the same provision would apply to both mental health and intellectual disability to ensure both types of facilities would be covered by the same provisions.

Jane Gruner, Administrator, Aging and Disability Services Division, Department of Health and Human Services, explained that the language was there so the cost of hospitalization would not be placed on the divisions. The language was a part of NRS and copying the language was to fine-tune the chapters.

Hearing no response to a request for comments or questions on A.B. 488, Chair Carlton requested a motion on the bill.

> ASSEMBLYMAN SPRINKLE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 488.
>
> ASSEMBLYMAN KIRNER SECONDED THE MOTION.
>
> MOTION PASSED UNANIMOUSLY.

Assembly Bill 435 (1st Reprint): Revises provisions governing insurance. (BDR 57-1171)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, provided a summary of Assembly Bill 435 (1st Reprint) for the Committee. The bill was heard by the Assembly Committee on Ways and Means on May 8, 2013. In closing the budget for the Division of Insurance, Insurance Regulation account, the joint full committees [the Assembly Committee on Ways and Means and the Senate Committee on Finance] approved the Governor's recommendation to increase fraud assessment fee revenue totaling $184,500 in each year of the biennium, pending approval of A.B. 435 (R1), which would add clarifying language to statute requiring all companies to pay the annual assessment regardless of the amount of policy written during a calendar year. Section 1 allowed the Division of Insurance to collect the fees. There were no proposed amendments to the bill.

There being no comments or questions from the Committee, Chair Carlton requested a motion.

> ASSEMBLYMAN EISEN MOVED TO DO PASS AS AMENDED ASSEMBLY BILL 435 (1ST REPRINT).
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.
>
> MOTION PASSED UNANIMOUSLY.

Chair Carlton advised the Committee that Assembly Bill 425 (1st Reprint) would be held until she could obtain additional information on the bill. She opened the hearing on A.B. 46.

Assembly Bill 46: Revises the provisions governing the funding of capital projects by school districts in certain counties. (BDR 32-413)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that Assembly Bill 46 was heard by the Assembly Committee on Ways and Means on May 13, 2013. The bill was an act related to the funding of capital projects of school districts, providing for the imposition and administration of a new sales and use tax and ad valorem tax in certain counties for the capital projects of the school districts. There were no fiscal notes, and Ms. Jones was not aware of any proposed amendments.

Assemblyman Bobzien pointed out the bill was presented on behalf of the Washoe County School District. Assemblyman Bobzien was pleased with the work during the interim on behalf of the Washoe County delegation. The bill had broad support from community members, parents, and teachers. Because the rollover bond expired, the Washoe County School District was without bonding capacity to address about $511 million in capital need. The bill did not solve the problem but was needed to move capital projects forward.

Assemblyman Bobzien explained the background of A.B. 46. Washoe County was singled out many years ago by the Legislature with an inequity whereby the County had no access to the real property transfer tax or the room tax levy available in Clark County. The rural districts had other options, but Washoe County had nothing for capital construction. He believed many bipartisan candidates had campaigned on this bill and had pledged to make this legislation their top priority. Many Washoe County legislators had schools in their districts that were in deplorable condition. This was a poor learning environment for the children, and he asked for Committee support to pass this legislation.

Chair Carlton advised Assemblyman Bobzien there was an unsolicited fiscal note of $33,469 from the Department of Taxation for A.B. 46.

Assemblyman Hickey regretted that the former superintendent of the Washoe County School District opted out of the funding stream that had helped the Clark County School District. There was bipartisan recognition of the need in Washoe County. The challenge was that there was not the required support from the legislators to pass A.B. 46 as a statewide measure to support local schools. Assemblyman Hickey recognized it was a local problem, and he believed that was the challenge for the legislators and the Governor. The local newspaper, a supporter of the legislation, had stated, "Let local residents solve a local problem locally."

Assemblyman Hickey was continuing to work with the delegation to find an amendment that could send the legislation to the local community with the support of the delegation and the business community in Washoe County. Assemblyman Hickey thought the supporters of the bill would have to take the legislation back to the community to advocate for school districts so local representatives would have a better understanding of the need. For that reason, he would not support A.B. 46 but reserved the right to change his vote on the floor if a solution could be found for the problem.

Assemblyman Sprinkle agreed with Assemblyman Bobzien's comments and understood the needs of the Washoe County School District. He believed this should be addressed at the state level. He did not think an amendment to fund the Capital Improvement Program (CIP) projects at the county level would be supported by the county.

Assemblyman Kirner commented that he had labored over this problem at length and recognized there was probably not enough support to pass A.B. 46. To keep the legislation alive, he thought it should be directed to the county commissioners. In his opinion, it was a Washoe County problem and should be resolved by the county. Assemblyman Kirner stated that as he had testified at an earlier hearing, he had constituents both opposed to and in support of the measure, but all agreed it should be resolved at the local level. Therefore, he would not support A.B. 46 without an amendment to move it to the local level.

Chair Carlton reminded the Committee that no amendments had been proposed.

Although Assemblyman Horne represented Clark County, he had not heard why there was opposition to A.B. 46. He was weary of legislators who said, "The people sent me here to do the people's business" yet wanted to send the proposed legislation to another elected body to decide. The bill was before this Committee, and he believed because there was no debate on the need, the bill should be put to a vote. It did not appear this Committee was doing its job by not taking action on this bill.

Assemblyman Grady agreed with Assemblyman Horne. In his opinion, this was a Washoe County problem and should appear on the county ballot or be discussed by the Washoe County Commissioners. Assemblyman Grady was not comfortable with sending the legislation back to the school board. It should be handled by a vote of the people on the county commission.

Assemblyman Anderson commented that he represented southern Nevada and his district was not directly affected by the proposed legislation. In his opinion, A.B. 46 was not unlike the fuel indexing bill (A.B. 413 (R1)) heard earlier. In that situation, the counties were requesting legislative authority for the fuel tax; however, in this circumstance the county boards were requesting the authority to put this on the ballot or to make a decision locally. He believed the county commissioners were elected because they were closest to the voices of the people. This legislation only affected Washoe County and Assemblyman Anderson found it difficult to make a decision that only affected one county. He understood that was not unique, but when taxing the people, the county should make the decision.

Chair Carlton requested Chris Nielsen, Executive Director, Department of Taxation, provide information on the unsolicited fiscal note for the Committee.

Mr. Nielsen addressed the unsolicited fiscal note of $33,469 which was a one-time programming cost to make necessary changes to collect the tax and make an appropriate distribution.

Hearing no response to a request for additional comments or questions, Chair Carlton asked Assemblyman Bobzien to provide a brief cleanup of the bill.

Assemblyman Bobzien explained that he had a problem with the concept amendment. He reminded the Committee that the county commission had no nexus with the schools. There was an elected school board that had requested this legislation. The school board had determined the legislative process was the best vehicle to move the proposal forward. He had many conversations with the Washoe County commissioners on this problem and had learned there was no desire to enact this legislation. Some of the commissioners were resentful that the Legislature would consider sending the problem back to the commission because of a failure to have the courage to act. At the risk of this becoming a Senate floor debate, the Legislature had a constitutional obligation under article 11, section 2 of the *Nevada Constitution* to provide for a uniform system of common schools. This legislation, in his opinion, fell under that obligation. For that reason, he wanted to make a motion.

> ASSEMBLYMAN BOBZIEN MOVED TO DO PASS ASSEMBLY BILL 46.
>
> ASSEMBLYMAN SPRINKLE SECONDED THE MOTION.

Assemblyman Kirner commented that he would oppose the motion but reserved the right to change his vote if the bill was amended.

> MOTION PASSED. (Assemblymen Anderson, Grady, Hambrick, Hardy, Hickey, and Kirner voted no.)

Chair Carlton closed the work session and opened the hearing on Senate Bill 461.

Senate Bill 461: Makes an appropriation to the Division of State Lands of the State Department of Conservation and Natural Resources for the replacement of equipment beyond its normal scheduled replacement. (BDR S-1187)

James R. Lawrence, Administrator and State Land Registrar, Division of State Lands, State Department of Conservation and Natural Resources, provided a brief overview of Senate Bill 461 for the Committee. The proposed legislation provided for a one-shot appropriation of $29,553 for the Division of State Lands of the State Department of Conservation and Natural Resources to purchase computer hardware and software. The purchase of the computer hardware and software would bring the Division into compliance with the computer replacement schedule recommended by the Division of Enterprise Information Technology Services (EITS).

Mr. Lawrence pointed out that for the Department to meet required budget reduction targets, computer replacement purchases were not requested in the budget submittals for the past two biennia. As a result, the equipment had exceeded its warranty life. Repairs were often made through the use of salvaged parts from retired computers. All of the computers were running the Microsoft XP operating system which would not be supported after July 1, 2014. The appropriation would put the agency back on schedule and in compliance with the replacement schedule.

Hearing no response to her request for questions, comments, or public comment, Chair Carlton closed the hearing on S.B. 461 and opened the hearing on S.B. 462.

Senate Bill 462: Makes an appropriation to the Central Repository for Nevada Records of Criminal History within the Department of Public Safety for the initial phase of the project to modernize the Nevada Criminal Justice Information System. (BDR S-1184)

Pat Conmay, Chief, Records and Technology Division, Department of Public Safety (DPS), provided a brief summary of Senate Bill 462 for the Committee. The bill proposed an appropriation for the Central Repository for the Nevada Records of Criminal History, Records and Technology Division of DPS to modernize the Nevada Criminal Justice Information System. That system supported all law enforcement agencies through the use of criminal history data and related systems. The system was currently running on an antiquated USoft technology platform that was 17 years old. The agency had performed an independent study which recommended

replacing the system over a six-year period. The requested appropriation in S.B. 462 would begin the modernization process.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on S.B. 462 and opened the hearing on S.B. 468 (R1).

Senate Bill 468 (1st Reprint): Revises certain fees collected by the State Engineer. (BDR 48-1155)

Jason King, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources, provided the Committee with a summary of Senate Bill 468 (1st Reprint). The bill was requested by the agency to authorize fee increases to cover more of the actual cost of the services provided and to allow the Division of Water Resources to retain the fees.

It was important, according to Mr. King, for the Committee to understand the initiative of the Division for the next biennia. Historically, the Department of Conservation and Natural Resources (DCNR) was maintained by General Funds. The DCNR assessed about 40 fees for the services it provided. Those revenues were deposited into the General Fund. Every legislative session, the DCNR requested an appropriation from the same General Fund. The funding for DCNR was dependent on the health of the state economy. More than 95 percent of the DCNR budget was staff salary, supplies, and rent. The result was the General Fund staffing levels fluctuated with the economy.

Mr. King opined this was not an appropriate way to fund the Division of Water Resources for the driest state in the nation. He was proposing to move away from almost 100 percent General Funding to a mix of fee retention and General Funds. Senate Bill 468 (1st Reprint) was the first step in the planned process to transition the Division to increased levels of non-General Fund support. The Division viewed the initiative as an investment in the future management of water resources in Nevada. The additional revenue would be used not only to stabilize staffing levels, but also to create a method to shore up programs such as adjudications. Included in the proposed 2014-2015 budget was a request for five critical adjudication staff.

The bill proposed to incrementally increase all existing base fees by approximately 20 percent. The Division had performed a detailed analysis of the fees which showed the current fee structure did not cover the actual

costs incurred in performing the services. Mr. King did not believe those paying the fees should be subjected to paying an increase of more than 20 percent. Therefore, four new fees were proposed for services currently provided for free. The Division was proposing to employ the concept of beneficiary-pays principle. The person receiving the benefit from the Division's services would pay an increased share for the Division to perform those services instead of the state subsidizing that work.

The bill additionally proposed the Division retain fee revenue and receive less General Fund support in the future. Mr. King testified that by having "all the eggs in one basket," the staffing levels and program support would continue to rise and fall as the state economy fluctuated. Moving to a more fee-funded agency would provide stability for staffing levels.

Chair Carlton was pleased to hear about the proposal for five new adjudication positions. Regarding the new fee "for issuing and recording each permit for additional rate of diversion where no additional volume of water is granted," Chair Carlton requested clarification on the phrase.

Mr. King explained the added fee was an amendment to the original bill. The Division called that type of permit "diversion rate only." For example, a farmer might apply for water rights to irrigate his pivot. Depending on the size of the pivot, a new "appropriation of water permit" could cost about $2,000 to $4,000. If the farmer then drilled a well and the well did not provide sufficient irrigation water, the farmer was faced with having to drill another well. The "diversion rate only" amendment allowed the farmer, who had paid a larger permit fee, to apply for a diversion rate only for the right to drill another well with a reduced fee of $1,000.

Chair Carlton appreciated the explanation. She was familiar with the term but was confused by the phrasing.

Assemblyman Grady had received a request from a constituent who, to save water, was changing to crops such as vegetables and greens in addition to onions, alfalfa, and other crops. With the underground irrigation the farmer was currently using, the fee was added at his request because he understood the efforts of the Division of Water Resources engineers and record maintenance. The constituent was in full support of the fee.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on S.B. 468 (R1) and requested a motion.

ASSEMBLYMAN GRADY MOVED TO DO PASS SENATE BILL 468 (R1).

ASSEMBLYMAN AIZLEY SECONDED THE MOTION.

MOTION PASSED. (Assemblyman Bobzien was not present for the vote.)

Senate Bill 480: Makes an appropriation to the State Gaming Control Board to change from a COBOL-based technology system to a modern technology system. (BDR S-1183)

Brian Duffrin, Chief, Administration Division, State Gaming Control Board, reviewed the one-shot appropriation request (Exhibit K) for the Committee. Accompanying Mr. Duffrin was Andrew Tucker, Information Service Manager, State Gaming Control Board.

Mr. Duffrin pointed out the bill requested a one-shot appropriation to navigate away from the Common Business-Oriented Language (COBOL) system. The appropriation would allow hired consultants to assist in the process. The COBOL system managed all of the records for the licensees, approval of the Nevada Gaming Commission, records for the Enforcement Division, revenue and gaming taxes received by the state, and other critical information. Because COBOL was an obsolete programming language, there was fewer staff capable of managing the system.

Mr. Duffrin explained the system was put into place in 1981. The Board had unsuccessfully tried for several legislative sessions to upgrade the system. In fiscal year (FY) 2010, the Board received about $165,000 to navigate off COBOL to hardware that provided security and the safety of running another platform off of another system. Mr. Duffrin believed it would take approximately six years to complete the migration to another system. The amount requested for the one-shot appropriation was $2,000,436.

Assemblyman Anderson requested clarification regarding the consultant. He was curious how much of the appropriation would be used for the consultant and the total cost of the project in future biennia.

Mr. Duffrin responded that the majority of the cost was for the consultant. There were also minor costs for software and hardware licenses. The total completion cost for the project was estimated at about $10.7 million.

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, informed the Committee that information in The Executive Budget showed the project began in the 2001-2003 biennium and was expected to be ongoing through fiscal year 2019 with an estimated cost for the migration of about $10.7 million, including the one-shot appropriation requested in S.B. 480 for the 2013-2015 biennium There was an estimated cost of $4.3 million in the 2015-2017 biennium and $4.4 million for the 2017-2019 biennium. The projected costs were based on foreseen hardware and software programming and training costs. This did not include contingency funding or unforeseen expenditures. This information was available in The Executive Budget under the one-shot appropriations section.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on S.B. 480.

Assembly Bill 423: Revises provisions governing reports of presentence investigations. (BDR 14-741)

Chair Carlton announced that Assembly Bill 423 would not be heard at this hearing and would be rescheduled.

Assembly Bill 239: Makes various changes relating to energy. (BDR 58-224)

Chair Carlton announced that Assembly Bill 239 would not be heard at this hearing and would be rescheduled.

Assembly Bill 335: Creates the University of Nevada, Las Vegas, Campus Improvement Authority. (BDR S-866)

Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1, presented Assembly Bill 335 to the Committee. The bill was heard in the Assembly Committee on Taxation on April 4, 2013. She presented the mock-up amendment (Exhibit L).

Assemblywoman Kirkpatrick testified that during the last legislative session she had committed to working on this legislation for the 2013 Legislative Session. Even though the state was in need of revenue, many southern Nevada citizens worked tirelessly on this bill. Assemblywoman Kirkpatrick realized that the legislation would eventually bring jobs into the state, but the state could not afford to use tax dollars when it was trying to generate revenue for critical needs.

Assemblywoman Kirkpatrick noted that the bill had been "gutted," and there was no longer a fiscal note for taxation. She believed in the project. The bill allowed a formal board to go forward and investigate the necessary steps to bring a stadium to southern Nevada. Business communities would be able to work with the university to create a solid plan for the stadium.

Chair Carlton pointed out that the bill had been rewritten to eliminate the Department of Taxation fiscal note. Assemblywoman Kirkpatrick confirmed that was her understanding.

Assemblyman Kirner inquired whether there was an obligation for the board studying the feasibility of the project to report to the state or another organization with the timeline and possibility for the plan.

Assemblywoman Kirkpatrick responded that it would be preferable for the board to report to the Legislature. She believed that the group in southern Nevada should study stadium feasibility, and the Legislature should not be involved until such time as the study had been completed. The board was made up of a broad range of people who were interested in southern Nevada and the university system.

Assemblyman Hardy requested Assemblywoman Kirkpatrick explain the 2065 date.

Assemblywoman Kirkpatrick requested Assemblyman Hardy turn to page 12 of the amendment (Exhibit L), section 24.5, subsection 1, which stated that the Board of Directors "shall study the need for, feasibility of and financing alternatives for a large events center and other required infrastructure and supporting improvements in the Authority area." Subsection 4 on page 13 of the exhibit detailed the preparation of a report on the study. The report must detail what the state involvement would entail. Assemblywoman Kirkpatrick believed it was important to have historic reporting for the record.

Chair Carlton requested testimony from others in support of A.B. 335.

Donald D. Snyder, Interim Dean, William F. Harrah College of Hotel Administration, University of Nevada, Las Vegas, spoke in support of A.B. 335.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on A.B. 335 and opened the hearing on A.B. 388 (R1).

Assembly Bill 388 (1st Reprint): Revises provisions relating to renewable energy systems. (BDR 58-517)

Assemblyman David P. Bobzien, Washoe County Assembly District No. 24, provided a brief summary of Assembly Bill 388 (1st Reprint), calling the Committee's attention to the proposed amendment (Exhibit M). Abatements were no longer the subject of A.B. 388 (R1) so the fiscal note was removed. Assemblyman Bobzien called attention to the geothermal energy portion of the bill and recalled a conversation regarding Senate Bill 252 in the Assembly Committee on Commerce and Labor. The language in S.B. 252 cleaned up the renewable portfolio standard (RPS).

There was a persistent concern as to whether geothermal energy was considered to be renewable energy under chapter 701A of *Nevada Revised Statutes* (NRS). The technical section of the bill was on page 5, section 4, subsection 3 of the proposed amendment (Exhibit M). There was the concept of station use credits and how they were calculated for portfolio energy credits, which was the subject of S.B. 252, passed by the Assembly on May 22, 2013. This was brought about by the Federal Energy Regulatory Commission (FERC) definition which clarified station use as it related to geothermal energy.

Assemblyman Bobzien requested Terry Care, representing K Road Moapa Solar, LLC, testify regarding other aspects of the bill. The Moapa Band of Paiutes had entered into a 50-year lease agreement with K Road Moapa Solar for 2,000 acres of land located on the reservation. The property would be the site of a solar photovoltaic project put together by K Road Moapa Solar. Additionally, there was a 25-year power-purchase agreement with the Los Angeles Department of Water and Power (LADWP). Groundbreaking for the fully permitted project would take place in June 2013. The project was anticipated to create 600 or more construction jobs for Nevada.

Mr. Care noted there was a contract between the Moapa Paiutes and K Road Moapa Solar. In a letter to Assemblyman Bobzien, the Moapa Paiutes supported the amendment (Exhibit N). The Tribe had waived sovereign immunity for contractual matters between K Road Moapa Solar and the Moapa Band of Paiutes relative to this project. The Tribe also agreed that the contracts would be governed by Nevada law, and disputes under the contracts would be resolved in Nevada courts. The purpose of the amendment was to put this agreement into statute.

Responding to a question from Assemblyman Aizley, Sean Gallagher, Managing Director, Government/Regulatory Affairs, K Road Moapa Solar, explained there were existing transmission lines available from Utah to Los Angeles, California to carry the power for this project.

Assemblywoman Flores inquired about the purpose of putting the contract details into law even though the Tribe had agreed to waive the sovereign immunity. She was uncertain of the purpose when independent parties were negotiating contracts.

Mr. Care responded that the question had been raised in discussions with the Legal Division, Legislative Counsel Bureau. There had been many negotiations and the Legal Division found the language compatible with accomplishing the goal.

Assemblyman Bobzien further explained in a situation where the Tribe had waived sovereign immunity, the Tribe was comfortable with clarifying the ground rules and including them as part of NRS.

Assemblywoman Flores was concerned because she did not want to do something that was detrimental to transactions with the Native American tribes in Nevada.

Mr. Care believed all parties involved wanted the project to move forward.

Assemblyman Grady asked whether one tribal council could bind another tribal council and if the tribal council changed, whether the sovereign immunity would stand.

Mr. Gallagher thought that tribal governments, not unlike other governments, could change their minds. However, if they entered into a contract, the contract was enforceable. The sovereign immunity was waived for this contract. The purpose of this legislation [A.B. 388 (R1)] was to ensure it was enforceable in the state courts.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on A.B. 388 (R1) and opened the hearing on A.B. 353 (R1).

Assembly Bill 353 (1st Reprint): Authorizes the Board of Regents of the University of Nevada to establish a financial aid program for students enrolled in the Nevada System of Higher Education. (BDR 34-918)

Assemblywoman Olivia Diaz, Clark County Assembly District No. 11, provided a brief summary of Assembly Bill 353 (1st Reprint). Assemblywoman Diaz was accompanied by Crystal Abba, Vice Chancellor, Academic and Student Affairs, Nevada System of Higher Education (NSHE), and Steve George, Chief of Staff, Office of the State Treasurer, to provide the fiscal portion of the bill.

Assemblywoman Diaz noted she had attended a Complete College America Alliance conference and had learned much about Nevada's postsecondary education benchmarks. This bill was developed to increase graduation rates at Nevada's colleges and universities. She was hopeful the Legislature would grant more access so part-time students could become full-time students.

Ms. Abba introduced the "Committee on Access and Affordability, Report and Recommendations" (Exhibit O). The report provided the impetus for this legislation. It included data specific to how it could report students who come from low-income families. The fiscal note showed the impact to NSHE was zero. Procedures and guidelines would have to be put into place should the bill be enacted. That process would take minimal staff time.

Mr. George testified in support of A.B. 353 (R1). The Office of the State Treasurer conducted audits from out-of-state firms. It was determined that a specified segment of the Abandoned Property Trust Account could be transferred to the Fund for Financial Aid for this program.

Chair Carlton confirmed with Mr. George that General Funds would be diverted to this financial aid program.

Assemblyman Hambrick was unclear how this program would work with the Millennium Scholarship Program.

Ms. Abba responded that the program that was envisioned under this bill was a need-based program. It would augment funds students received from the Millennium Scholarship. A student would have to meet the merit-based criteria to receive the Millennium Scholarship, and if the student met the need-based criteria under A.B. 353 (R1), the student could also receive this funding. Studies showed that if low-income students overestimated the cost for the institution, the student usually decided that rather than finding a lower-cost institution, the student would not attend college. This bill was

about ensuring that students from low-income families had the enough funds available to them to go to college.

Assemblyman Sprinkle asked what percentage of the funds received year-to-date would be contributed to this financial aid program should the legislation be enacted.

Mr. George answered that the entire amount would be transferred from the audits received from contracting with out-of-state audit firms. This was a specific segment of income that would be transferred. There was a much larger amount transferred to the General Fund annually.

Chair Carlton clarified that the first reprint of the bill reduced the original impact from about $8 million each year to approximately $3 million each year.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton called for public testimony. There being no public testimony, she closed the hearing on A.B. 353 (R1).

Chair Carlton recessed to the call of the Chair at 11:26 a.m. The hearing was adjourned 8:22 a.m. on May 24, 2013.

RESPECTFULLY SUBMITTED:

_____
Linda Blevins
Committee Secretary

APPROVED BY:

_____
Assemblywoman Maggie Carlton, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 23, 2013 **Time of Meeting: 8:13 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 367(R1)	C	Assemblyman Skip Daly, Washoe County Assembly District No. 31	Proposed Amendment
A.B. 367(R1)	D	Lee "Rocky" Cochran, Coalition for Fairness in Construction	Letter of Support
A.B. 325(R1)	E	Assemblywoman Maggie Carlton, Clark County Assembly District No. 14	Unsolicited Fiscal Note from Department of Corrections
A.B. 413(R1)	F	Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1 and Assemblyman Cresent Hardy, Clark County Assembly District No. 19	Fuel Indexing chart
A.B. 413(R1)	G	Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1 and Assemblyman Cresent Hardy, Clark Count Assembly District No. 19	Proposed Amendment
A.B. 491	H	Michael J. Chapman, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau	Proposed Amendment
A.B. 488	I	Department of Health and Human Services and Barry Lovgren, private citizen	Proposed Amendment
A.B. 488	J	Department of Health and Human Services and Barry Lovgren, private citizen	Amendment Alignment Chart
S.B. 480	K	Brian Duffrin, Chief, Administration Division, Gaming Control Board	One-shot Funding Guideline

A.B. 335	L	Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No. 1	Proposed Amendment
A.B. 388(R1)	M	Assemblyman David P. Bobzien, Washoe County Assembly District No. 24	Proposed Amendment
A.B. 388 (R1)	N	Terry Care, representing K Road Moapa Solar	Letter of Support and Proposed Amendment
A.B. 353(R1)	O	Crystal Abba, Vice Chancellor, Nevada System of Higher Education (NSHE)	Report and Recommendations