

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

**Seventy-Seventh Session  
June 2, 2013**

The Committee on Ways and Means was called to order by Chair Maggie Carlton at 12:04 p.m. on Sunday, June 2, 2013, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, 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](http://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](mailto: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 Crescent 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

Minutes ID: 1363



**STAFF MEMBERS PRESENT:**

Cindy Jones, Assembly Fiscal Analyst  
Michael J. 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 511.

**Assembly Bill 511: Provides for compensation of state employees.  
(BDR S-1251)**

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, presented a brief overview of Assembly Bill 511, which provided compensation for state employees. The first pay bill presented, (Assembly Bill 510) was postponed to facilitate the introduction of Assembly Bill 511. There was a technical adjustment made in the effective date for the General Fund Salary Adjustment account. There were no other changes made to Assembly Bill 511.

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

ASSEMBLYMAN HORNE MOVED TO DO PASS  
ASSEMBLY BILL 511.

ASSEMBLYMAN HICKEY SECONDED THE MOTION.

MOTION PASSED. (Assemblymen Flores and Kirkpatrick were not present for the vote.)

Chair Carlton closed the hearing on Assembly Bill 511 and opened the hearing on Senate Bill 516 (1st Reprint).

**Senate Bill 516 (1st Reprint): Revises provisions relating to tobacco.  
(BDR 32-1224)**

Alicia Lerud, Senior Deputy Attorney General, Office of the Attorney General, accompanied by Keith Munro, Assistant Attorney General, Office of the Attorney General (AG), spoke in favor of Senate Bill 516 (1st Reprint). The bill made alterations to the *Nevada Revised Statutes* (NRS) governing the sale of tobacco products in Nevada. Passage of the bill, according to Ms. Lerud, was

vital to the continued funding of the Millennium Scholarship Trust Fund and the Fund for a Healthy Nevada.

Mr. Lerud explained that in 1998, Nevada entered into the tobacco Master Settlement Agreement (MSA) between the nation's largest tobacco manufacturers and 52 states and territories. Under the MSA, participating tobacco manufacturers make annual payments to Nevada of approximately \$40 million. Since 1999, Nevada had received over \$600 million in payments. Nevada had been involved in lengthy litigation with the participating tobacco manufacturers relating to the annual payments. The litigation could have required Nevada to repay up to \$440 million; however, in 2012 the AG entered into a settlement agreement with the tobacco manufacturers to resolve the liability.

To fully effectuate the settlement and protect the continued receipt of annual payments, the NRS changes requested in Senate Bill 516 (1st Reprint) were necessary. Ms. Lerud noted that the bill made changes to the escrow statute of NRS. Section 33 of Senate Bill 516 (1st Reprint) added the language, "including, without limitation, any cigarettes sold on any qualified tribal land within the State." Escrow deposits would be required for sales occurring on tribal reservations where the purchaser was not an enrolled member of the tribe. This provision would not affect the Nevada tribe's ability to collect tribal excise tax under NRS 370.0751. The escrow deposits were not made by the tribal retailer but by the cigarette manufacturer.

Section 31 of the bill would give tribes an opportunity to recover part of the escrow deposits related to cigarettes sold on tribal reservations. Ms. Lerud pointed out section 31 also gave the state authority to enter into a compact with a tribe to implement the assignment provision. Separate from the terms of settlement, section 30 contained a second assignment provision that would allow escrow funds to be assigned to the state under limited circumstances.

Ms. Lerud advised the Committee that those were all of the major changes related to the escrow requirements. The balance of the changes requested in this bill were intended to enhance Nevada's enforcement of existing statute and to try to protect the receipt of future tobacco payments.

There being no comments or questions from the Committee, Chair Carlton opened the hearing for testimony from those in support of, neutral on, or in opposition to Senate Bill 516 (1st Reprint).

Ernie Adler, representing the Reno-Sparks Indian Colony, testified in a neutral position on the bill. According to Mr. Adler, the first bill the AG drafted had

been withdrawn and Senate Bill 516 (1st Reprint) was created as a replacement. The tribes would lose thousands of dollars in sales under the bill; however, the state could lose millions of dollars if the bill was not passed. Mr. Adler was aware that Senate Bill 516 (1st Reprint) did not regulate Indian retailers within the state although it would regulate wholesale sales related to Indian tribes. Additionally, Mr. Adler stated that the Reno-Sparks Indian Colony believed the bill did not impair current contracts and agreements with the State of Nevada and local governments, nor did the bill impair NRS 370.520, a statement of sovereignty the tribes had under NRS.

Mr. Adler presented [Exhibit C](#), written testimony of Arlan Melendez, Chairman of the Reno-Sparks Indian Colony, which stated that the Reno-Sparks Indian Colony had been assured by the Office of the Attorney General that the state would be mindful of NRS 370.520.

Hearing no response to her request for testimony in support of or in opposition to the bill, Chair Carlton requested a motion from the Committee.

ASSEMBLYMAN HORNE MOVED TO DO PASS  
SENATE BILL 516 (1st Reprint).

ASSEMBLYMAN HICKEY SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

Chair Carlton closed the hearing on Senate Bill 516 (1st Reprint) and opened the work session 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, presented a summary of Assembly Bill 367 (1st Reprint) along with a proposed amendment ([Exhibit D](#)). Assemblyman Daly explained the amendment removed section 5 of the bill, which had requested an appropriation from the General Fund of \$150,000. Section 2.5, subsections (a) and (b) amended the definition of a "constructional defect." The language of the original indemnification agreement provisions in section 1, subsection 1 had been revised and now stated:

A controlling party may enter into an indemnification agreement with a subcontractor, supplier, design professional or any other person providing a service for a development project and may

enforce that indemnification agreement to the extent that the underlying injury or damage is attributable to the negligent or otherwise wrongful act or omission, including, without limitation, breach of a specific contractual duty, of the promisor or the promisor's independent contractors, agents, employees or delegates.

Chair Carlton commented that the legislation addressed the contractor's concerns but did not change any of the access or evaluation problems that affected the homeowners.

Assemblyman Daly responded that the processes, whereby a homeowner sought relief through chapter 40 of the *Nevada Revised Statutes* (NRS) construction defects provisions, were not changed. The bill was an attempt to make a policy adjustment for the major problems: innocent contractors brought into lawsuits through contractual provisions with the developer and simple code violations that met the definition of construction defects. Because there had not been any action on this problem for ten years, Assemblyman Daly was attempting to address a small part of the larger problem through this legislation.

Chair Carlton appreciated the attempt to provide some relief for the subcontractors.

Assemblyman Hickey, a subcontractor, expressed his appreciation for the work on the legislation; however, he had concerns with the proposed amendment ([Exhibit D](#)). In section 2.5, subsection (b) the language, "Materially affects the fair market value of the residence, an appurtenance or the real property to which the residence or appurtenance is affixed," appeared to broaden the opportunities to identify "defects." While it might benefit subcontractors, he did not see it as materially helping the problem. For that reason, Assemblyman Hickey opposed the bill.

Hearing no response to her request for additional comments or questions, Chair Carlton requested testimony in support of the proposed amendment to Assembly Bill 367 (1st Reprint).

John Griffin, of The Capitol Company, accompanied by Charles Dee Hopper, representing the Nevada Justice Association, testified in support of Assembly Bill 367 (1st Reprint) because the process produced a compromise. He acknowledged the work that went into preparing the bill and the proposed amendment. He commented that the new language referenced by Assemblyman Hickey took a current code violation, modified it, and added other

factors. Mr. Griffin commented that legislation could not start from the largest concern and be modified upwards.

Hearing no response to the request for additional testimony in support of the bill, Chair Carlton requested testimony that was neutral on or in opposition to Assembly Bill 367 (1st Reprint).

Josh Hicks, representing the Coalition for Fairness in Construction, opposed Assembly Bill 367 (1st Reprint) and the proposed amendment. Mr. Hicks presented [Exhibit E](#), prepared by Leon F. Mead II of Snell & Wilmer, that referenced an earlier proposed amendment dated May 16, 2013, amendment 8983. With respect to section 1 of the bill, Mr. Hicks urged the Committee to examine the ramifications. Unintended consequences of the proposed language could be serious. In respect to section 2.5, Mr. Hicks agreed with the comments made by Assemblyman Hickey. He believed the language was broadening the definition of "constructional defect." Mr. Hicks stated that he had been advocating for the definition to be brought down to defects that were more legitimate. He believed the language in the legislation moved the definition in the wrong direction and would increase the volume of litigation.

Chair Carlton clarified that the organization Mr. Hicks represented [Coalition for Fairness in Construction] was a general contractor's organization. Mr. Hicks responded that the organization was made up of multiple builders including subcontractors.

Chair Carlton requested a breakdown of builders, general contractors, and subcontractors. Mr. Hicks did not have a specific breakdown but explained it was a mixture of all three.

In response to Assemblyman Hardy's question regarding how the legislation would increase litigation, Mr. Hicks explained that a consistent problem had been, in his opinion, allegations made in constructional defect cases that were not legitimate cases and did not belong in court. The Coalition for Fairness in Construction had advocated for a narrowed definition to assure that the defects were legitimate. The language in the legislation did not address that concern and, in fact, the broader definition would provide an attorney an argument that any defect would cause a "market-value impact." Mr. Hicks did not believe that the legislation would reduce the litigation.

Chair Carlton commented that Mr. Hicks appeared to have a different philosophy on construction defects than the creators of the bill. Mr. Hicks said he believed that was the opinion of the homebuilding industry.

Hearing no response to her request for additional testimony in support of or in opposition to Assembly Bill 367 (1st Reprint) and the proposed amendment, Chair Carlton requested a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 367 (1ST REPRINT) WITH PROPOSED AMENDMENT 9377.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

Assemblywoman Kirkpatrick stated that this question appeared before the Legislature every session. In her opinion, it was time that something was done on the construction defect problem. Although she understood that not everyone was on board with the legislation, she believed this policy would be a step toward making changes in how construction defects were handled. Whether or not people liked the policy, something had to be done.

Assemblyman Hardy stated that he would support this legislation today, but he was waiting for additional information from his legal counsel. He reserved the right to change his vote.

From her personal point of view, Chair Carlton recalled that during the 1999 Legislative Session, construction defect legislation was highly visible. This issue had turned into something beyond protecting the homeowner, the subcontractor, and doing what was right for the building industry. Using the construction defect problem for other concerns had bothered her. Chair Carlton was happy to see that there would be an opportunity for subcontractors to be removed from litigation when they were not party to the defect. Chair Carlton believed that the Legislature was taking a step in the right direction with Assembly Bill 367 (1st Reprint).

MOTION PASSED. (Assemblymen Grady, Hambrick, Hickey, Horne, and Kirner voted no.)

Chair Carlton closed the work session and opened the hearing on Assembly Bill 33 (1st Reprint).

**Assembly Bill 33 (1st Reprint): Revises provisions governing the partial abatement of certain taxes for certain energy-efficient buildings. (BDR 58-280)**

Stacey Crowley, Director, Office of Energy, Office of the Governor, presented proposed amendment 9431 ([Exhibit F](#)) to the Committee. She requested that

Chair Carlton provide assistance with the presentation of the proposed amendment.

Chair Carlton explained that there were initially some concerns about Assembly Bill 33 (1st Reprint) and time was needed to review other energy bills that were drafted for the legislative session. In final discussion of the bills left in the Committee, it was felt that section 1 of Assembly Bill 33 (1st Reprint) was important to move forward. Other sections were deleted following discussions with Assemblywoman Kirkpatrick. Chair Carlton requested that Ms. Crowley address section 1 of the bill.

Ms. Crowley pointed out that section 1 accomplished two goals. First, it allowed the Director of the Office of Energy to consider equivalent rating systems in addition to the current system used for the green building tax abatement program. The existing system was the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. There were other rating systems that were proven to provide benefits from a green building standpoint.

The second goal accomplished by the bill increased the amount of minimum points in the Optimize Energy Performance credit under the LEED rating system, or its equivalent, to be eligible for tax abatement. Ms. Crowley noted that in the amendment, the credit was raised two points for both the LEED silver level and the LEED gold level rating certification and three points for the LEED platinum level rating certification.

Assemblywoman Kirkpatrick advised Ms. Crowley that unfortunately there was no money to provide for any energy abatements. Consequently, all abatements had been removed from the bill by proposed amendment 9431. Assemblywoman Kirkpatrick inquired whether section 2, subsection 4 had raised the partial abatement from the original levels: the silver level was 25 percent, the gold level was 30 percent, and the platinum level was 35 percent of the portion of the taxes imposed pursuant to chapter 361 of *Nevada Revised Statutes* (NRS).

Ms. Crowley replied that the levels were the same, but the abatements had been limited to five years with a cap of \$100,000 per year.

Assemblywoman Kirkpatrick believed the amendment submitted by Clark County ([Exhibit G](#)) made sense.

Assemblywoman Kirkpatrick informed the Committee that she had provided incorrect information to Chair Carlton regarding this bill and apologized for the



error. The levels should have been raised and the time frame should have been shortened to five years, as stated by Ms. Crowley.

Chair Carlton asked Assemblywoman Kirkpatrick whether the language in section 4 in the amendment proposed by the Office of Energy ([Exhibit H](#)) should be made part of the bill.

Assemblywoman Kirkpatrick responded that she wanted to go a step further. She thought the first reprint was acceptable, but she believed that the amendment from Clark County ([Exhibit G](#)) should be included to require the commissioners of the affected counties to review and approve or deny the abatement application no later than 30 days after the board of county commissioners received a copy of the application.

Chair Carlton requested the Committee review the first reprint of the bill and the proposed amendment from Clark County ([Exhibit G](#)). Chair Carlton was concerned with the effect on property taxes.

Assemblywoman Kirkpatrick stated that the Local School Support Tax (LSST) was not part of the abatement, and schools were held harmless. Her major concern was based on the Uniform Building Code as adopted by the International Conference of Building Officials. If the points in the Optimize Energy Performance credits were not changed to 5, 7, and 11, respectively, more people would qualify. That was unacceptable.

Chair Carlton commented that the concern expressed in the Assembly Committee on Commerce and Labor was that certain counties would be able to veto projects. Not all counties had the same values regarding renewable energy. She was concerned with trying to find the proper balance.

Assemblywoman Kirkpatrick thought the balance would be to have the counties decide whether they wanted the projects in their counties.

Assemblyman Bobzien explained that the language in Assembly Bill 33 (1st Reprint) was consistent with the language in Assembly Bill 239 regarding the 30 days for the county to make a determination. In Assembly Bill 239, there was some guidance as to what the county must consider in making the determination. He did not see that guidance in the language in Assembly Bill 33 (1st Reprint). To maintain consistency, Assemblyman Bobzien suggested crafting the language to be more in line with the language negotiated with the counties for Assembly Bill 239.

Assemblywoman Kirkpatrick advised Assemblyman Bobzien that he would have about 16 hours to revise the language. Assemblyman Bobzien agreed.

Chair Carlton advised the Committee that Assembly Bill 33 (1st Reprint) would be put on hold. She wanted to ensure that section 1 of the bill would be retained.

Assemblyman Bobzien said he would work on the bill to ensure it was presented to both houses before the legislative deadlines.

Chair Carlton informed the Committee that there were a number of Committee members who also sat on the Assembly Committee on Commerce and Labor who were familiar with the complexities of renewable energy. The members who did not sit on the Assembly Committee on Commerce and Labor did not have the same background and needed an opportunity to review the bill carefully. Although it was important to move quickly on the bill, Chair Carlton wanted everyone to be comfortable with the language.

Assemblywoman Kirkpatrick knew that it was important to move section 1 of the bill to prevent jeopardy for the counties.

Assemblyman Grady appreciated Assemblywoman Kirkpatrick's position. He commented that he had often said that the state does a good job giving away the counties' money. This bill could have a disastrous effect on Churchill County because of the amount of geothermal energy located in the county. He agreed with Assemblyman Bobzien that something was needed to protect the counties.

Chair Carlton announced that Assembly Bill 33 (1st Reprint) would be set aside, and Assemblyman Bobzien would continue to work on the language. Chair Carlton requested researching how Assembly Bill 33 (1st Reprint) fit with Assembly Bill 239, which had been reported out and was on its way to the Assembly floor.

Assemblyman Kirner was curious about the new wording "or an equivalent rating system."

Ms. Crowley explained there were equivalent rating systems that had been in practice for a number of years. There had been comparisons done at the federal level to compare the LEED rating system with other systems such as "Green Glow." If it could be determined there were equivalent rating systems, there were persons who would prefer to work under different rating systems.

Those rating systems must provide the same output in terms of green building sustainable design energy efficiency.

Assemblyman Kirner responded that he was interested in the equivalency and the selection process.

Chair Carlton closed the hearing on Assembly Bill 33 (1st Reprint).

Chair Carlton recessed the hearing to the call of the Chair at 12:50 p.m.

Chair Carlton reconvened the hearing at 9:50 p.m. and reopened the hearing on Assembly Bill 33 (1st Reprint).

**Assembly Bill 33 (1st Reprint): Revises provisions governing the partial abatement of certain taxes for certain energy-efficient buildings. (BDR 58-280)**

Stacey Crowley, Director, Office of Energy, Office of the Governor, summarized the proposed amendment 9495 ([Exhibit I](#)) for Assembly Bill 33 (1st Reprint). The proposed amendment contained added language in section 2, subsection 1, paragraph (d) to authorize counties to accept or deny projects for certain energy-efficient buildings.

Section 1 of the bill allowed for the Director of the Office of Energy to consider equivalent rating systems to the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. Ms. Crowley pointed out that it also raised the points for persons to be eligible for tax abatements for green buildings. Section 1, subsection 2, paragraph (c) upped the credits by two points for LEED silver and LEED gold and by three points to reach the LEED platinum level compared to the current bill.

Section 2 showed the added language taken directly from Assembly Bill 239. It allowed the counties to participate in the tax abatement process. It also gave the authority for the county to review and approve or deny an application within 30 days. Ms. Crowley explained that to deny an application, the board of county commissioners must determine, based on relevant information that:

1. The projected cost of the services that the local government was required to provide to the building or other structure for which the abatement was received would exceed the amount of tax revenue that the local government was projected to receive as a result of the abatement;  
or

2. The projected financial benefits that would result for the county from any employment resulting from the use of the building or other structure and from capital investments by the owner of the building or other structure in the county would not exceed the projected loss of tax revenue that would result from the abatement.

If the county did not approve or deny the application within 30 days, the application was deemed approved.

Ms. Crowley noted that clean-up language included in section 2 limited existing buildings seeking a LEED tax abatement to a maximum of five years with the same percentage levels of abatement as new buildings and a \$100,000 per year cap.

Ms. Crowley also said that section 3.5 was a technical amendment stating the amendatory provisions of the act did not apply to a building or other structure for which abatement had been received or for which an application for abatement had otherwise been submitted.

Chair Carlton inquired whether the language addressed the concerns Assemblyman Grady had voiced earlier. Assemblyman Grady believed that the counties would approve of the language.

Assemblyman Bobzien believed the language in Assembly Bill 239 had been appropriate for connecting that bill with Assembly Bill 33 (1st Reprint). In his opinion, this was a good piece of energy legislation to include with the energy package for this legislative session.

Hearing no response to her request for questions on comments on Assembly Bill 33 (1st Reprint), Chair Carlton requested a motion.

ASSEMBLYMAN GRADY MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 33 (1ST REPRINT) WITH PROPOSED  
AMENDMENT 9495.

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

Chair Carlton opened the hearing on Senate Bill 486 (1st Reprint).

**Senate Bill 486 (1st Reprint): Makes appropriations relating to education.  
(BDR S-1178)**

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, provided a brief summary of Senate Bill 486 (1st Reprint). The bill was a one-time General Fund appropriation of \$1.5 million to the Department of Administration for the costs of implementing a pilot program for an assessment of the school readiness of prekindergarten and kindergarten students. Additionally, the bill appropriated \$1 million from the General Fund to the Interim Finance Committee for allocation to the Department of Administration for projects identified by the needs assessment related to the statewide longitudinal data system for the coordination between early childhood education programs, local school districts, the Nevada System of Higher Education, and the Department of Employment, Training and Rehabilitation for the support of the state's education and workforce development needs. The act became effective upon passage and approval. Initially submitted as a budget bill of about \$4 million, Ms. Jones said the amount was reduced based on feedback from stakeholders and study information.

Chair Carlton commented that this was not the only bill that needed to move forward for the education package.

Ms. Jones responded that other bills pending were Assembly Bill 162 (1st Reprint), Assembly Bill 266 (1st Reprint) [unrelated to education], and Senate Bill 504 (1st Reprint), which were complimentary bills for the education package. Although Senate Bill 486 (1st Reprint) could be approved and moved to the floor, Ms. Jones said that because the appropriation was from the General Fund, it would sit on the desk until the education bill (Senate Bill 522) was moved. The other option was to hold the bill in Committee.

Chair Carlton believed that it was preferred to hold the bill in Committee until it was appropriate to move forward.

Hearing no response to her request for comments or questions, Chair Carlton closed the hearing on Senate Bill 486 (1st Reprint) and opened the hearing on Senate Bill 521.

**Senate Bill 521: Authorizes expenditures by agencies of the State Government for the 2013-2015 biennium. (BDR S-1242)**

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, provided a brief summary of Senate Bill 521, which

was the Authorizations Act that the Committee had reviewed as Bill Draft Request S-1242. The bill authorized expenditures for revenues other than the General Fund, with the exception of the State Gaming Control Board and the Department of Transportation. A statutory provision required those two entities to be in the Authorizations Act rather than the Appropriations Act.

The Authorizations Act provided authority for state agencies to collect and expend monies other than State General Fund, including federal funds, gifts, grants, interagency transfers, service fees, and other funds. According to Ms. Jones, the total authorized funding recommendation for approval by the Legislature of ongoing operations was approximately \$12.39 billion for the 2013-2015 biennium. This amount included about \$531 million in Highway Fund appropriations.

The bill was the companion to the Appropriations Act that provided the funding to support the programs the Assembly Committee on Ways and Means and the Senate Committee on Finance had reviewed since the session began on February 4, 2013. Ms. Jones explained that Senate Bill 521 could be held in Committee or moved to the floor and held on the desk.

Chair Carlton believed it would be appropriate to send Senate Bill 521 to the floor so members of the Assembly would have time to review the document prior to voting.

Ms. Jones pointed out that there was duplication of accounts within the Appropriations Act and the Authorizations Act for those accounts or agencies that received both types of funding. There was also language to put policy parameters around the expenditure authority and to provide flexibility in certain instances.

Hearing no response to her request for comments or questions, Chair Carlton requested a motion on Senate Bill 521.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS  
SENATE BILL 521.

ASSEMBLYMAN KIRNER SECONDED THE MOTION.

MOTION PASSED. (Assemblyman Hambrick voted no.)

Vice Chair Horne assumed the duties of the chair and opened the hearing on Assembly Bill 489.

**Assembly Bill 489: Revises provisions governing the fees charged by state agencies for accepting payments by credit cards, debit cards and electronic transfers. (BDR 31-779)**

Assemblywoman Maggie Carlton, Clark County Assembly District No. 14, presented an overview of Assembly Bill 489 to the Committee. During the 2011 Legislative Session, Assemblywoman Carlton was surprised to learn the amount of money that the state spent in merchant fees for credit cards. When considering that amount of money and the budget cuts that were made for textbooks, class size reduction, mental health, indigent care, and other essential areas, she concluded that there should be a solution to reduce the fees. There were some agencies that spent large amounts for credit card fees, including the Department of Motor Vehicles (DMV). This was a complicated problem because of the contracts the state had with the merchants for handling the credit card fees.

Originally, Assemblywoman Carlton had hoped to provide all agencies using the fees a method to collect a basic convenience fee and defer General Fund dollars for basic services. She found that was more difficult than she had anticipated. Therefore, Assembly Bill 489 was narrowed to the DMV as a major user of the fees.

After much consideration, Assemblywoman Carlton determined that helping DMV with the convenience fee would decrease the impact on the Highway Fund and allow Highway Fund dollars to be used for jobs and other projects. This led to the development of Assembly Bill 489 and the proposed conceptual amendment (Exhibit J). It was determined that the statement on Exhibit J to "require the Department of Motor Vehicles to only use the fees collected to pay programming costs" was not a viable solution. It would require front-loading the programming costs and having the fees reimbursed. Considerable programming was required, much of which would generate money for the state. Therefore, the bill should be amended to mandate that only the DMV could require a cardholder to pay a \$2 convenience fee.

Within Assembly Bill 489, there was a \$50 transaction threshold; however, that was not allowed because the service agreements with the credit card companies did not allow differentiation between customers based on the amount of money spent. The proposed \$2 convenience fee would only apply to customers paying over the Internet. The other options for the customer would be to use a debit card or an e-check or visit the DMV in person.

When Assemblywoman Carlton spoke with her constituents, she was assured that the majority were not opposed to the \$2 convenience fee for using a credit card. The options would give constituents a choice.

Assemblyman Grady verified that the \$2 convenience fee was only for the Internet and would not affect the kiosks or over-the-counter transactions.

Assemblywoman Carlton was certain that it would not affect the over-the-counter transactions; however, she asked Troy Dillard, Interim Director of the Department of Motor Vehicles, to address the kiosk transactions.

Mr. Dillard stated that the DMV was neutral on Assembly Bill 489. He explained that the state contractual agreement with the merchant service provider that transacted the business for credit cards prohibited the use of over-the-counter transactions in association with a convenience fee. All other transactions would receive the \$2 convenience fee as proposed in the bill, including Internet, kiosk, and mail-in transactions using credit cards.

Assemblyman Grady asked whether Mr. Dillard believed the proposed fee would affect the use of the kiosks.

Mr. Dillard responded that limiting the use of kiosks was a concern. He was worried about pushing customers away from alternate services back into the DMV lines. Mr. Dillard had recently learned that over-the-counter transactions could not be charged the convenience fee.

Assemblyman Kirner noted that the convenience fee was currently in litigation to determine the legality of the charge.

Mr. Dillard did not know what the decision of the court would be. The DMV must work with the existing contracts.

Assemblyman Kirner inquired whether there were provisions in the bill for the DMV to retain the funds.

Assemblywoman Carlton replied that her intention was for DMV to retain the funds. The unused dollars would have a positive effect on the Highway Fund. The standard reversion clause was included in the bill. After two years, there would be sufficient information to determine how the convenience fees affected the budget.

Assemblyman Kirner thought that was good, and he would be anxious to see a report on the use of the kiosks when a convenience fee was imposed.



Assemblywoman Carlton also expressed concern over a possible downturn of kiosk use and an increase of customers coming into the DMV for services.

Assemblywoman Kirkpatrick was curious to know why the convenience fee would be charged for all transactions except over-the-counter transactions. According to Assemblywoman Carlton, the merchant services contract specified the fee could not be charged for over-the-counter transactions.

Assemblywoman Kirkpatrick stated that she did not believe the fee would be a deterrent to using the kiosks or the Internet. If the fee was imposed, she asked whether the number of users for the kiosks could be tracked to ascertain whether or not the usage had dropped.

Mr. Dillard stated that the numbers were tracked at each kiosk location for the type of transactions and whether debit card or credit card was used. Historical data was available so the new data could easily be tracked and compared. As an example, two years ago the DMV instituted a fee-funded basis for use of the kiosks, and there was an increase in the number of cancelled transactions. That had been overcome, as the DMV was able to add more services to the kiosks, making it a successful program. Because there was already a \$3 fee for using the kiosk plus the \$2 convenience fee, Mr. Dillard believed there would be a downturn in the number of kiosk users.

Assemblywoman Kirkpatrick remarked that it appeared every request from the DMV contained enormous programming costs. Legislators were looking for ways for DMV to support its programming costs, and this might be an option. She supported the concept and believed the public would use the service regardless of the \$2 convenience fee.

Assemblywoman Carlton had received a fiscal note, but it was not as accurate as she wanted because the kiosks were included. The projected revenue from the convenience fee for the 2013-2015 biennium could be over \$1 million. The cost of the programming would be \$289,000. She was hopeful the proposal would generate revenue that could be applied to the thousands of programming hours DMV required, as well as save Highway Fund dollars.

Assemblyman Aizley asked whether a kiosk would accept debit cards. He was curious to know if the debit card was used as a credit card at a kiosk, if the fee would be triggered. Mr. Dillard explained that debit cards were not subject to the fee.

Assemblywoman Kirkpatrick clarified that she had used both the kiosk and the Internet for transactions. She stated that when using a debit card, a PIN number was required, which was not necessary when using a credit card.

Assemblywoman Carlton was comfortable with customers having the choice to use either debit cards or e-checks if they did not want to pay the fee, but if a customer preferred to use a credit card, she believed the \$2 fee was nominal.

Assemblyman Hardy asked how much revenue was being lost through credit card transactions.

Mr. Dillard thought the annual budget was approximately \$5.5 million for vendor charges annually.

Assemblywoman Carlton concluded her testimony by stating that she and Mr. Dillard had been working on the bill for several months to ensure a comprehensive package was presented to the Committee.

Hearing no response to the request for testimony in support of or in opposition to the bill, Vice Chair Horne closed the hearing on Assembly Bill 489.

Assemblywoman Carlton resumed the duties of the Chair and advised that to allow members time to review the information, she would not call for a motion on Assembly Bill 489 during the meeting.

Assembly Committee on Ways and Means

June 2, 2013

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Chair Carlton called for public comment. Hearing none, she adjourned the hearing at 10:27 p.m.

RESPECTFULLY SUBMITTED:

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Linda Blevins  
Committee Secretary

APPROVED BY:

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Assemblywoman Maggie Carlton, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name: Committee on Ways and Means**

**Date: June 2, 2013**

**Time of Meeting: 12:04 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 516 (R1)	C	Ernie Adler, representing Reno-Sparks Indian Colony	Letter from Arlan Melendez
A.B. 367 (R1)	D	Assemblyman Skip Daly, Washoe County Assembly District No. 31	Proposed amendment 9377
A.B. 367 (R1)	E	Josh Hicks, Coalition for Fairness in Construction	Letter from Leon F. Mead, Snell & Wilmer, LLP
A.B. 33 (R1)	F	Stacey Crowley, Director, Office of Energy, Office of the Governor	Proposed Amendment 9431
A.B. 33 (R1)	G	Clark County	Proposed Amendment
A.B. 33 (R1)	H	Stacey Crowley, Director, Office of Energy, Office of the Governor	Proposed Language for Section 4
A.B. 33 (R1)	I	Stacey Crowley, Director, Office of Energy, Office of the Governor	Proposed Amendment 9495
A.B. 489	J	Assemblywoman Maggie Carlton, Clark County Assembly District No. 14	Proposed Conceptual Amendment