

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Seventy-Eighth Session
May 28, 2015**

The Senate Committee on Revenue and Economic Development was called to order by Chair Michael Roberson at 4:04 p.m. on Thursday, May 28, 2015, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Roberson, Chair
Senator Greg Brower, Vice Chair
Senator Joe P. Hardy
Senator Ruben J. Kihuen
Senator Aaron D. Ford
Senator Pat Spearman

COMMITTEE MEMBERS ABSENT:

Senator Ben Kieckhefer (Excused)

GUEST LEGISLATORS PRESENT:

Senator Mark Lipparelli, Senatorial District No. 6
Senator David R. Parks, Senatorial District No. 7
Senator James A. Settelmeyer, Senatorial District No. 17
Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Tony Rivano, Committee Secretary

OTHERS PRESENT:

Caleb Cage, Director of Military and Veterans Policy, Office of the Governor
Steve Hill, Executive Director, Office of Economic Development, Office of the Governor

Greg Ferraro, Nevada Resort Association

Tom Clark, Black Rock City LLC

Bruce Breslow, Director, Department of Business and Industry

Terry Johnson, State Gaming Control Board, Las Vegas

Chair Roberson:

We will start with the hearing on Assembly Bill (A.B.) 71.

ASSEMBLY BILL 71 (1st Reprint): Revises provisions relating to military veterans and members and relatives of members of the Nevada National Guard. (BDR 32-297)

Caleb Cage (Director of Military and Veterans Policy, Office of the Governor):

I have submitted my written testimony ([Exhibit C](#)) covering A.B. 71

Senator Spearman:

With respect to tax exemptions, veterans do not know all of their entitlements. Are there provisions or other ways to notify veterans and especially their families given the 57 Nevada service members killed in the Afghanistan and Iraq wars?

Mr. Cage:

There are two different audiences for the two different provisions in A.B. 71. The first provision provides education to employers. The Office of the Governor has been working since 2012 on a way to conduct veteran outreach through Web-based and in-person approaches. The Department of Taxation, the Department of Veterans Services, the Office of the Governor, through the Interagency Council on Veterans Affairs, and others are inclined to pursue an advertising campaign in order to inform employers of this opportunity to receive the payroll tax deduction if they hire veterans who have been unemployed for 3 years.

The Department of Employment, Training and Rehabilitation has the capacity to identify the veterans who are receiving unemployment claims from

ex-service members and reach out to those ex-service members as they come into Department offices. The Department also employs a robocall program that could call all veterans on its list, informing veterans they are eligible for the tax exemptions because they have been receiving unemployment insurance for 3 months, and they could let employers know that businesses are eligible to receive tax exemptions.

There are arrays of options that can be pursued. With respect to Gold Star family members, sections 5 through 8 of the bill specifically address Nevada National Guard members and their families. We would reach out through the Adjutant General for the State of Nevada, Brigadier General William R. Burks, to make sure that the individual soldiers, service members and airmen and airwomen in both components of the Nevada National Guard have the pertinent information. We also work closely with the Gold Star family survivor support teams in the State that work with these families directly, and we would make sure that the necessary information was available.

Chair Roberson:

Is there a proposed amendment to A.B. 71?

Mr. Cage:

Amendments have been discussed in the past, and we are open to amendments.

Senator James A. Settelmeyer (Senatorial District No. 17):

I am proposing an amendment based on legislation I have proposed in the past. Specifically, S.B. No. 330 of the 77th Session and A.B. No. 295 of the 75th Session allowed a person who qualified as both a veteran and a surviving spouse of a veteran to claim both the veteran's exemption from property taxes and Government Services Taxes. Nevada law permits a veteran to claim one exemption. Thus, the tax credit of a veteran who passes away can be given to the surviving spouse, unless he or she also served in the military. In such instances, the veteran is not permitted to take the deceased veteran's exemption. This requirement forces a veteran to choose between his or her service or his or her spouse's service.

One of my former constituents elected to choose his spouse's benefit because she was 95 percent disabled while serving in Burma during World War II. Since my former constituent was a service member of the Army Air Corps, the

amount of money is de minimis and according to the Department of Taxation would amount to approximately \$5,000. It is not good policy to force people to choose between their benefits or their spouses' benefits because if they were not married, we would allow someone to have it.

Chair Roberson:

Do you know when the proposed amendment to A.B. 71 will be ready?

Senator Settlemeyer:

I have sent Proposed Amendment 7741 to A.B. 71 ([Exhibit D](#)) to Committee staff.

Chair Roberson:

We will close the hearing on A.B. 71 and open the hearing on Assembly Bill 161.

ASSEMBLY BILL 161 (1st Reprint): Authorizes certain businesses to apply to the Office of Economic Development for a partial abatement from certain taxes. (BDR 32-699)

Assemblywomen Irene Bustamante Adams (Assembly District No. 42):

Assembly Bill 161 was heard in conjunction with Senate Bill (S.B.) 93, which was heard in the joint meeting of the Senate Committee on Revenue and Economic Development Committee and the Assembly Committee on Taxation February 19. The bills contained differences in the application of the years for the partial tax abatement. Assembly Bill 161 required the Governor's Office of Economic Development to approve a partial abatement for a period of not more than 10 years, while S.B. 93 contained a 20-year requirement. Assembly Bill 161 has since been amended to reflect the 20-year partial abatement requirement.

SENATE BILL 93 (1st Reprint): Authorizes certain businesses to apply to the Office of Economic Development for a partial abatement from certain taxes. (BDR 32-291)

Other bill provisions such as capital investment, number of employees and clawback provisions have been maintained in the bill.

Steve Hill (Executive Director, Office of Economic Development, Office of the Governor):

Assembly Bill 161 is the exact same bill as S.B. 93, which was heard and passed by this Committee as well as the Senate Standing Committee on Finance. The Senate passed S.B. 93 in the April 8 floor session.

Chair Roberson:

We will close the hearing on A.B. 161 and will include the bill in the work session at the end of this meeting. We will now hear Senate Bill 266.

SENATE BILL 266: Revises provisions relating to the tax on live entertainment.
(BDR 32-720)

Senator Mark Lipparelli (Senatorial District No. 6):

I will go over key provisions of Proposed Amendment 7700 to S.B. 266 (Exhibit E). This Committee has heard S.B. 266 in two prior meetings, April 7 and May 20. Since those two meetings, we have met with various interested parties and have additional opportunities to make analyses of the fiscal impacts, pluses and minuses, and I will report where we stand.

Beginning with page 1, "escort" and "escort services" are included as part of the Live Entertainment Tax (LET) application. You will note that in sections 1.03 and 1.07.

The next major change is contained in section 1.4, beginning on page 2, line 3, which addresses the issues associated with admission. Specifically, page 2, line 4 of section 1.4 makes clear that "comp" tickets to such LET events are not taxable. There is a possible exemption that requires inclusion which relates to the sale of luxury boxes in stadiums where tickets are provided on a complimentary basis. In these situations, matters are not working harmoniously. Section 1.4, subsection 3, paragraph (b), attempts to clarify that the LET applies to admission fee to the facility. If there are payments made for buying a table, seat, lounge chair, or other types of premium payments made within a facility, that is not to be included in the LET, it is only applicable to the cost to enter the building.

The problem with not addressing the issue that we address in section 1.4, subsection 3, paragraph (a) is that it is possible to grant a patron complimentary admission but then make a minimum required purchase. Consequently,

section 1.4, subsection 3, paragraph (a) provides that in such an instance, free admission may be granted as long as it does not require some other purchase. For example, an individual can enter a facility for free, thus the admission charge does not trigger the LET because it is free entry, but you must buy a seat at a table from us. If this occurs, the sale of the seat would be applicable to the LET. If there were otherwise an admission fee, it would not be applicable. A venue may sell a luxury box along with 10 tickets; in such instances, the tickets should be included as an exception to luxury box sales.

The next series of changes concern conforming changes in statute that were provided by Counsel. References to nude or partially nude dancing and escorts are all conforming changes to bring in escorts as part of this bill.

The next major series of changes in [Exhibit E](#) are contained in section 2, subsection 2, paragraph (b), and subparagraphs (4) through (6) on page 3, lines 26 through 35. The legislative intent of these changes is to trigger live entertainment on admission and remove language that is the subject of litigation, confusion and audit confusion.

The bill attempts to make it abundantly clear that it is an admission to a facility that is providing event entertainment—something that constitutes a performance, such as an entertainer who is paid to put on a performance for which people pay an admission.

The following scenario is presented to provide an example of this provision—a club pays Jimmy Buffett to put on a performance that includes a series of songs. Proposed Amendment 7700 to [S.B. 266](#) attempts to preclude the uncompensated spontaneous performance of limited duration from being captured by the LET. While this is viewed as a clear mandate, a regulator or auditor must interpret what an uncompensated spontaneous performance of limited duration implies. Thus, this legislation attempts to distinguish an instance in which a celebrity or singer makes a spontaneous uncompensated limited performance from the aforementioned Jimmy Buffett scenario.

Proposed Amendment 7700 to [S.B. 266](#) also addresses go-go dancing, which is considered an exemption and exclusion. Consequently, what was previously viewed as ambient entertainment is not included in this legislation. Unfortunately go-go dancing has been difficult for regulators and auditors to interpret vis-à-vis the LET. This language attempts to clarify that if

go-go dancing is occurring behind the scenes in a club, it does not constitute live entertainment.

Section 2, subsection 2, paragraph (b), subparagraph (6) addresses marketing or promotional activities, including, without limitation, dancing or singing of short duration associated with the serving of food or beverages. For those familiar with clubs, there are often bottle service events where a patron makes a substantial purchase of liquor associated with a sponsored event that includes singing or dancing accompanied by bottle service. The scenario does not constitute a performance if it is associated with the purchase of food and beverages. This is not a Jimmy Buffett concert; it is solely associated with the purchase of food or beverages and lasts for a short duration. It is for Committee members or the enforcing agencies to interpret what constitutes limited duration.

Section 2, subsection 3 captures live events provided at facilities with a maximum occupancy greater than 15,000, which is intended to capture large outdoor or indoor events that take away the exemption of patrons dancing. Section 2, subsection 3 would thus capture events such as Burning Man. Such large events could include activities conducted by patrons at the event. Thus, events where the occupancy exceeds 15,000 and patrons are conducting events described in section 2, subsection 2, paragraph (a) would be subject to the LET. Section 2, subsection 4 focuses on escort services and its definition.

On page 4, section 3, subsection 1, paragraph (a) increases the tax rate to 9 percent, from 8.5 percent as previously proposed. From a fiscal perspective, this holds all revenue matters constant by bringing in other parties and avoiding a revenue shortfall by lowering the rate from the current 10 percent.

Section 3, subsection 1, paragraph (c) incorporates unarmed combat at an 8 percent LET rate, which is consistent with the same hold harmless credit a promoter receives under section 3.2, subsection 4 on page 6.

Beginning on page 4, section 3, subsection 2, line 19 describes the charitable and religious exemptions that are offered for events having occupancy levels up to 7,500. This essentially captures nonprofit organizations holding events where occupancy levels do not exceed 7,500. The 7,500-occupancy figure represents a compromise after studying various event venue sizes because there was a

substantial concern that religious and nonprofit organizations moving beyond the 7,500 occupancy threshold would be competing with private world events.

Section 3, subsection 5, paragraphs (a) through (c) on page 4, lines 47 through 51 contain language that is consistent with language familiar to this Committee. The tax does not apply to live entertainment by elementary, junior high, middle and high schools or sporting events sponsored by the Nevada Interscholastic Activities Association or events at an equivalent competitive level.

Moreover, events sponsored by nonprofits that do not exceed the 7,500-occupancy level are covered by the exemption. A required change that I will read into the record concerns athletic contests performed by the Nevada System of Higher Education (NSHE), which include University of Nevada, Las Vegas, and University of Nevada, Reno. Such contests should include the word "tournament," which will be added to section 3, subsection 5, paragraph (c). Events, contests, tournaments or exhibitions provided by NSHE institutions participating in such events would be obligated to pay the LET.

Most of the language contained on page 5 is consistent with existing legislation. However, section 3, subsection 5, page 5, lines 8 and 9 eliminate "merchandise sold" because it is no longer relevant that the LET is triggered off the admission tax.

The next relevant change is the exemption of professional sports teams, as long as the team is based in Nevada and the home-based team is a participant in the contest. Previously the exemption applied only to minor league baseball. Proposed Amendment 7700 to S.B. 266 extends the exemption to Nevada-based professional athletic teams and the events they conduct.

On page 6, section 3.2, subsection 4, lines 42 through 46 cover the credit associated with the fees paid by boxing and mixed martial arts that are tied to *Nevada Revised Statutes* (NRS) 467. These events would not be exempt from disciplinary fees that are required under NRS 467. It is important to ensure that this matter is not overlooked since this could be construed that if a disciplinary fee were charged to a boxing event promoter, the LET fees would be credited against the disciplinary fee, which this legislation attempts to avoid.

Language contained on pages 7 through 9 is consistent with prior bill versions; there may have been minor changes but nothing of consequence.

From a global perspective, the goal of this legislation is to broaden the base of the LET. We are settling on 9 percent since we believe that will cover any amendments removing food and beverage, which has been a complex aspect of the LET that is triggered off live entertainment. On one side, we are making the LET substantially less complex to manage for those responsible for paying the tax, but the goal continues to be to broaden the base and lower the rate. This viewpoint has been mentioned in the service area as we attempt to include more participants and reduce the rate.

I would like to add an additional element regarding boxing which stems from conversations with Mark Krmpotic, Senate Fiscal Analyst. Since boxing events are becoming participants in the LET, we will try to follow A.B. 393, essentially making the Nevada Athletic Commission (NAC) a self-funding agency through the payment of the LET.

ASSEMBLY BILL 393: Revises provisions relating to the Live Entertainment Tax.
(BDR 41-591)

In discussions with the money committees, the NAC will be permitted to retain up to \$500,000 in its budget to do the things envisioned in A.B. 393 and to conduct drug testing and cover investigation fees. We have an agreement from Mr. Krmpotic that this could be accomplished in the appropriation bills and bills that will come before us in the ensuing days.

Senator Hardy:

What is go-go dancing?

Senator Lipparelli:

Go-go dancing is typically pedestal dancing or dancing in areas within clubs performed on a raised platform. State auditors face confusion over the issue with respect to whether go-go dancing should be treated as live, ambient entertainment. Go-go dancing occurs in the background and is not the primary purpose for patrons attending the venue. Nevada's rules are arcane on the issue of whether go-go dancers should be employees or independent contractors. Moreover, is go-go dancing part of these employees' jobs when they are not serving drinks? The complexity associated with compliance is difficult.

Proposed Amendment 7700 to S.B. 266 clarifies this issue since it excludes go-go dancing on a pedestal, thus viewing it as ambient or behind the scenes of a club.

Following the previous Jimmy Buffett example, the Jabbawockeez dance troop performing at the Luxor Las Vegas is subject to the LET because patrons pay admission specifically to see the show. Rockettes shows are similar entertainment since patrons pay the admission to specifically attend a Rockettes performance. Consequently, the Live Entertainment Tax applies to situations where patrons attend a venue to view a specific performance and not the spontaneous, background ambient-type dancing that occurs in clubs.

Senator Ford:

I have questions regarding escorts and the terminology in this bill. Specifically, do we define what other intimate parts are? On an enforcement level, are we trying to ascertain whether someone has been paid for sexual conduct. Is it necessary to scrutinize the behavior associated with the term sexual conduct such as the touching of intimate parts?

Senator Lipparelli:

I will defer to Counsel.

Bryan Fernley (Counsel):

The definition of escort service described in sections 1.03 and 1.07 of Proposed Amendment 7700 to S.B. 266 are taken from the Clark County municipal code. The reason for choosing these definitions is that these definitions had been upheld by the Nevada Supreme Court as not being vague.

Senator Ford:

You are inferring that the language contained in sections 1.03 and 1.07 of Proposed Amendment 7700 to S.B. 266 have been vetted by the Nevada Supreme Court and courts elsewhere. Is there an appropriate definition that should be included in the bill? I realize the Clark County Municipal Code contains a definition for sexual conduct, but will we need to include our own interpretation?

Mr. Fernley:

Proposed Amendment 7700 to S.B. 266 does contain the Clark County municipal code definitions, thus nothing further than that is required.

Senator Brower:

Do the escort provisions contained in sections 1.03 and 1.07 of Proposed Amendment 7700 to S.B. 266 make clear that sexual conduct is not captured by escort conduct since it is with some exceptions illegal to pay for sexual conduct in our State?

Senator Lipparelli:

We are neither billing nor encouraging sexual conduct as an entertainment practice.

Senator Brower:

Are we trying to clarify what an escort service is not?

Senator Lipparelli:

I would defer to Counsel, who has addressed this issue from a sexual conduct perspective.

Mr. Fernley:

The definitions of escort and escort service are worded to exclude any person or business offering sexual conduct. Such businesses would be excluded from the definition of escort service and thus not subject to the LET.

Chair Roberson:

Given the voluminous quantity of information contained in this bill and this Session's time constraints, we will not process this bill today. I plan to have a work session tomorrow because I want all Committee members to absorb this bill to address any concerns.

Senator Lipparelli:

Assemblywoman Marilyn Kirkpatrick, representing Assembly District No. 1, will be a cosponsor on the bill. Assemblywomen Kirkpatrick and I have had continuous meetings, and I appreciate her efforts and the time she has devoted to this legislation. I am happy and honored to have her listed as a cosponsor.

Chair Roberson:

I think that is entirely appropriate because we all know the great work Assemblywoman Kirkpatrick has put into this issue over the years.

Senator Ford:

Does the 9 percent rate in Proposed Amendment 7700 to S.B. 266 make the LET revenue neutral? Alternatively, will there be a \$15 million revenue shortfall as the fiscal note implies?

Senator Lipparelli:

We have gone through several rounds of analyses and at 9 percent, there is no loss of revenue.

Greg Ferraro (Nevada Resort Association):

The Nevada Resort Association supports the changes contained in Proposed Amendment 7700 to S.B. 266, but fine-tuning is required. We are looking at specific issues that both sponsors are aware of. The Nevada Resort Association will continue to work with the sponsors, and we feel that this is a tremendously good work product. We hope to wrap up any outstanding issues in the next 24 to 48 hours, if possible.

Tom Clark (Black Rock City LLC):

Black Rock City LLC has a neutral stance on the bill since we have not had sufficient time to absorb Proposed Amendment 7700 to S.B. 266. I appreciate the work Senator Lipparelli has expended to meet the standards and concerns we have had regarding this legislation, and I hope we can submit a letter of approval presently. Black Rock City LLC is the company that organizes the annual Burning Man event, which far outpaces the 15,000 occupancy thresholds identified in the bill. We appreciate Senator Lipparelli's work on the bill.

Bruce Breslow (Director, Department of Business and Industry):

Are there any limitations to the promoter credit mechanism? Statute provides that the NAC can charge \$1 per ticket, which can be used for drug testing or for amateur program grants. The amateur grant money represents the primary funding source for the amateur program.

Governor Brian Sandoval's recommended budget includes a 2 percent increase to self-fund the NAC. Admission to an unarmed combat event is subject to an 8 percent LET. The promoter of an unarmed event is entitled to a 25 percent credit against the tax owed equal to the fees, taxes or other charges paid by the promoter to the NAC. The 8 percent tax on admission, offset by the 25 percent credit equals the 2 percent increase cited in the Governor's budget. In addition

to the admission charges, the \$1 per ticket fee helps to fund the amateur program.

Proposed Amendment 7700 to S.B. 266 appears to suggest that the promoter will receive credit for paying the additional fee to cover the amateur program or funds to be used for drug testing. We have found that duplicitous promoters have solicited Department attorneys in an effort to maximize the tax credit. Consequently, is there are way to narrow the credit mechanism language so it applies to something more specific than NRS 467?

Senator Lipparelli:

I would be willing to discuss the matter with Mr. Breslow in connection with tax issues not covered in the bill. Deonne Contine, Executive Director of the Department of Taxation, had similar observations, and I would be happy to clarify the issues raised. Having viewed the Governor's budget and the items that have already been approved, it was our estimate that the 8 percent tax would more than cover NAC funding. To the extent that the 8 percent is insufficient or the belief it is not—I would be happy to work with Mr. Breslow on issues that are not clear in this bill.

Terry Johnson (State Gaming Control Board, Las Vegas):

The State Gaming Control Board offers neutral testimony on S.B. 266. The Board is in the process of reviewing Proposed Amendment 7700 to S.B. 266. In the interim, I would like to convey the following comments; it is particularly helpful for regulators to have a robust record on go-go dancing. A major part of regulatory challenges in implementing the LET turns on the exemptions to the tax. The Board has encountered instances where the exemptions or exceptions are stated in ambiguous terms, triggering conflicts between the Board and the affected entities.

The previous go-go dancing discussion was helpful in that it defined the Legislature's intent with an otherwise ambiguous term. Additional ambiguous terms contained in the bill include performances of limited or short duration, even a performance itself. The degree to which the Board could have solid clarification as to what the Legislature intends and ideally as stated in the four corners of the statute itself would be helpful to both regulators and those we regulate.

An admissions-based system would be administratively easier for regulators to implement than the more subjective system that exists. Subjectivity leads to litigation and disputes over intent. Consequently, the admissions-based concept could be helpful. Finally, to the degree that this bill is revenue neutral and depends on revenue from disc jockeys working at nightclubs, it would be incumbent upon us to examine the language dealing with disc jockeys. I noticed that the disc jockey language has changed from early versions.

On page 2, section 2, subsection 2, paragraph (a), subparagraph (9), beginning with line 51 of Proposed Amendment 7700 to S.B. 266 includes changes to the language covering a disc jockey's performance. Disc jockey revenue projections should be based on revenues from performances by disc jockeys. Additional examination of the bill's language is required to ensure clarity with respect to the disc jockey events the Legislature intends to tax. Nevada contains seven of the top ten highest grossing nightclubs in the U.S. If disc jockey revenue is to be captured by the LET, we should make sure the law is clear.

Senator Lipparelli:

I would be happy to continue conversations with the State Gaming Control Board. We initially excluded disc jockeys from the LET; however, now that they have become a part of the equation in terms of admission, there is a potential to keep the rate as low as possible to broaden the base. Disc jockeys capture a sizeable portion of attendees; we are confident that Proposed Amendment 7700 to S.B. 266 will cover any revenue shortfall and may even result in a positive revenue windfall. Any input that the Board provides would be welcome since the Board is charged with enforcing the tax.

Chair Roberson:

I will close the hearing on S.B. 266. We will open the work session on A.B. 71 and A.B. 161.

Given that the Proposed Amendment 7741 to A.B. 71 is not available, I would accept a motion to do pass A.B. 71. Any amendments can be handled in a floor session, if necessary, but I ask for a motion now to do pass.

SENATOR SPEARMAN MOVED TO DO PASS A.B. 71.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Roberson:

Moving to work session on A.B. 161, I would accept a motion to do pass A.B. 161.

SENATOR FORD MOVED TO DO PASS A.B. 161.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Roberson:

The work session is closed and we are open for public comment. Seeing none, the meeting is adjourned at 4:56 p.m.

RESPECTFULLY SUBMITTED:

Tony Rivano,
Committee Secretary

APPROVED BY:

Senator Michael Roberson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 71	C	2	Caleb Cage / Military and Veterans Policy, Office of the Governor	Testimony
A.B. 71	D	10	Senator James A. Settlemeyer	Proposed Amendment 7741
S.B. 266	E	9	Senator Mark Lipparelli	Proposed Amendment 7700