

**MINUTES OF THE
SENATE COMMITTEE ON EDUCATION**

**Seventy-ninth Session
May 9, 2017**

The Senate Committee on Education was called to order by Vice Chair Joyce Woodhouse at 3:39 p.m. on Tuesday, May 9, 2017, in Room 2134 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 Moises Denis, Chair
Senator Joyce Woodhouse, Vice Chair
Senator Tick Segerblom
Senator Don Gustavson
Senator Scott Hammond
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Pat Spearman (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Amber Joiner, Assembly District No. 24
Assemblyman William McCurdy II, Assembly District No. 6
Assemblywoman Dina Neal, Assembly District No. 7
Assemblywoman Ellen B. Spiegel, Assembly District No. 20

STAFF MEMBERS PRESENT:

Todd Butterworth, Policy Analyst
Asher Killian, Counsel
Shelley Kyle, Committee Secretary

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OTHERS PRESENT:

Steve Jimenez, Extern, Nevada Hispanic Legislative Caucus
Chris Daly, Nevada State Education Association
Craig M. Stevens, Clark County School District
Mary Pierczynski, Nevada Association of School Superintendents; Nevada Association of School Administrators; Nevada Association of School Boards
Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees
Ruben Murillo, Jr., President, Nevada State Education Association
Constance Brooks, Vice Chancellor, Government and Community Affairs, Nevada System of Higher Education
Kent Ervin, Nevada Faculty Alliance
Michael Flores, College of Southern Nevada
Megan Rauch, Director, Education Policy, Guinn Center for Policy Priorities
Ricky Gourrier, Communities in Schools, Nevada
Brad Keating, Clark County School District
Felicia Ortiz, Member, District 3, State Board of Education; Vice Chair, Community Implementation Council for the Reorganization of the Clark County School District
Chelli Smith, Director, Southern Nevada Regional Professional Development Program

VICE CHAIR WOODHOUSE:

I will open the meeting with Assembly Bill (A.B.) 196.

ASSEMBLY BILL 196 (1st Reprint): Provides for an endorsement that a teacher, administrator or other educational personnel may obtain in cultural competency. (BDR 34-659)

ASSEMBLYMAN WILLIAM MCCURDY II, (Assembly District No. 6):

With me today is Steve Jimenez, Nevada Hispanic Legislative Caucus, who is here on behalf of Assemblywoman Olivia Diaz, Assembly District No. 11. I am here to present A.B. 196. Existing law requires the Commission on Professional Standards to adopt regulations establishing the qualifications for the licensure and endorsement of teachers. Assembly Bill 196 proposes the Commission establish by regulation the requirement for a teacher, administrator or other

educational personnel to obtain an endorsement on his or her license in cultural competency.

STEVE JIMENEZ (Extern, Nevada Hispanic Legislative Caucus):

The Nevada Hispanic Legislative Caucus Chair, Assemblywoman Olivia Diaz, has asked me to present her remarks on A.B. 196.

Assemblywoman Diaz is a public elementary school teacher and has always worked in the inner city. Fortunately, she shares a commonality with the majority of her students who came through her classrooms at C.C. Ronnow Elementary School regarding their Latino or Hispanic culture. She could talk to them about the Dia de Los Muertos, Day of the Dead, and discuss what Cinco de Mayo meant. She found ways to infuse this information into her lesson plans when they had to either read, research or write about something. Oftentimes, the children do not hear the information in their homes. She knew her students were going to be excited to learn something new about their culture.

She notes that Legislators who sit on the Committees on Education in both Houses wonder how to improve the quality of education for the students in our State. Our Legislators want to ensure that every Nevadan graduates ready for college and careers, and Assemblywoman Diaz believes A.B. 196 can help with both of these objectives.

Ensuring there are multicultural education courses available at our institutions of higher education that lead to a cultural competency endorsement will allow teachers to voluntarily seek the tool set they need to meet the needs of the students in their classrooms—which are increasingly diverse classrooms.

The Clark County School District (CCSD) had 320,400 students in the 2015-2016 school year. Hispanic or Latino students totaled 45.7 percent; 26.2 percent were Caucasian, 13.3 percent were black or African American, 6.4 percent were Asian, 6.4 percent were multi-racial, 1.6 percent were Hawaiian or Pacific Islander and 0.4 percent were Native American.

Assemblywoman Diaz notes that practitioners know that effective educators in multicultural classrooms relate teaching content to the cultural backgrounds of their students. Leading researchers state that motivation is inseparable from culture. When we look at the lack of achievement in the Latino/Latina subgroup or the African-American community, we need to be really thoughtful and reflect

on this piece. Are we providing culturally responsive education in the diverse classrooms in our State?

Unfortunately, the makeup of the teachers does not reflect the makeup of the classrooms. Therefore, these individuals do need to have that multicultural lens and training in order to be effective teachers.

SENATOR HAMMOND:

Are you suggesting that this multicultural endorsement might be required to work in some of the schools across the State?

ASSEMBLYMAN MCCURDY II:

No, this is not a mandate. It allows an opportunity for an educator, administrator or any licensed professional to obtain this endorsement on his or her license. A principal might recommend his or her staff have the endorsement on a license, but that would be the administrator's call.

This does not only apply to our urban areas, but to our rural areas as well. Rural areas may want someone who has a cultural competency endorsement because it enhances the classroom environment and allows for a more vibrant educational setting. This would not be a requirement or a condition of employment. It would only be a benefit for classrooms or in administrative offices.

CHRIS DALY (Nevada State Education Association):

The Nevada State Education Association (NSEA) supports A.B. 196, and I have submitted our letter of support ([Exhibit C](#)).

CRAIG M. STEVENS (Clark County School District):

The CCSD is in support of A.B. 196. We believe this will help diversify and help to attract teachers to come to those schools that need diversity. This is a great idea.

MARY PIERCZYNSKI (Nevada Association of School Superintendents; Nevada Association of School Administrators; Nevada Association of School Boards):

I am representing the Nevada Association of School Superintendents (NASS), the Nevada Association of School Administrators (NASA) and this afternoon, the Nevada Association of School Boards (NASB) whose representative could not be

here today. We are in support of A.B. 196. Eventually, this kind of endorsement could be sought after like the Teaching English as a Second Language endorsement is for some schools. These endorsements help our teachers understand the diverse cultures we have in our Nevada schools.

STEPHEN AUGSPURGER (Executive Director, Clark County Association of School Administrators and Professional-Technical Employees):

We are in support of this bill and agree with the supportive testimony we have heard this afternoon.

RUBEN MURILLO, JR. (President, Nevada State Education Association):

As President of the NSEA, I am representing 40,000 educators across the State. We are in support of this bill. I grew up in a Mexican-American community in Hutchinson, Kansas, and all of our teachers were Caucasian. By the time I finished the sixth grade, all the teachers at the school were culturally competent in teaching in the community I grew up in. It is important we make sure that educators who teach our children are aware of the cultural competencies necessary to educate our children.

SENATOR HAMMOND:

How did those teachers in Hutchinson, Kansas, become culturally competent?

MR. MURILLO:

They wanted to understand and know what the Hispanic community was about. The communities of Mexican-Americans, Hispanics, or Latinos are very embracing. Food is always a good denominator. It is wanting to be involved, being engaged with the people, and wanting to know the community that they taught in. There was no turnover of the teachers. There has to be communication and the desire to know the children that one works with.

SENATOR HAMMOND:

I am not against the bill; I think it is great, and it gives people an opportunity to learn more about culture. I am making one point. I also love it when students feel like they are teaching me something about their culture. All of a sudden, we are creating a bond with one another.

My understanding of the Hispanic culture is when I was in second grade and a classmate brought sopapillas into class. Teachers may not know everything about a culture when they begin teaching, but they have an opportunity to ask

questions and learn about the cultures in the classrooms. When teachers take the time to listen and learn more about their students, there is a bond that develops.

MR. MURILLO:
It can work both ways.

ASSEMBLYMAN MCCURDY II:

After hearing our testimony and the words of support, I hope the Committee has a greater understanding of why this bill is needed. Nevada is growing by leaps and bounds and is becoming more diverse every day. This endorsement is not a be-all-end-all. It allows educational personnel an opportunity to establish the framework they can expand upon once they enter the classroom and try to understand more deeply what the students are going through. This is not just about urban areas and not just about rural areas. It is about all students and all teachers having an opportunity to share collectively each of their backgrounds.

VICE CHAIR WOODHOUSE:

I will close the hearing on A.B. 196 and will open the hearing on A.B. 202.

ASSEMBLY BILL 202 (1st Reprint): Requires an interim study concerning the cost and affordability of higher education in this State. (BDR S-722)

ASSEMBLYWOMAN AMBER JOINER (Assembly District No. 24):

The University of Nevada, Reno main campus is in my district, and as many of you know, it is finals week on the campus. My main presenters were unable to be here today because of finals week. Dead day is tomorrow on campus. There are students out there who appreciate this bill.

The purpose of A.B. 202 is to create an Interim study to examine two main issues.

First, the study would examine the affordability of higher education in Nevada, and second, it would update a comprehensive study of programs in the Nevada System of Higher Education (NSHE) that was conducted more than ten years ago.

The cost of education at our universities has climbed substantially in the last decade. Between the fall of 2005 and the fall of 2016, the average resident

tuition and fees for Nevada's four-year institutions more than doubled. Income did not keep pace. In the last decade, the ratio of tuition and fees to median household income also doubled.

Last year, the Associated Students of the University of Nevada, Reno (ASUN) presented their legislative priorities to those of us who were their Legislators. Expanding the Silver State Opportunity Grant (SSOG) to university students was a key legislative priority for them.

The ASUN Student Senate even passed a resolution bringing the full weight of the undergraduate student population behind expanding the SSOG to university students. I was president of the ASUN about 20 years ago, so I understood this meant a lot to the students to go through this process and create this priority. I remembered those struggles myself, working full-time as a student trying to cobble together financial aid.

This past year as an adjunct professor at University of Nevada, Reno (UNR), I saw many students in my own classes struggling with debt, missing class because they had to work, and having their work obligations interfere with their course work, their ability to excel and ultimately, their ability to graduate on time.

I strongly believe that we, as a State, should be doing more to ensure that education is affordable and accessible. We need to be supporting students more so they can remain in school, graduate on time and not have crippling debt when they graduate.

Originally, this bill would have expanded the SSOG to include university students. The SSOG now only includes community college and State college students. Unfortunately, the proposal to include university students was not as simple as it sounded. There were great concerns from the community colleges that adding university students would dilute the program. The amount of funds would be spread too thin, and we would not be helping as many students as we wanted.

I previously taught at the community college level and believe wholeheartedly in their mission. I did not want to affect the community colleges or in any way harm students at that level. When NSHE ran the numbers for me to see what a

fiscal note would be by creating a comparable university grant program, it was fiscally infeasible. That is why this study was born.

I requested volumes of data and information from our staff and NSHE and arrived at the conclusion this is a much larger problem. Simply adding a group of students to an already existing grant program is not going to solve the issue of affordability.

We need to get a better handle on what our options are as a state. I am not giving up on the idea that the SSOG might be good for our university students and might be something we can fund in the future. You will see in A.B. 202, it is one of the items we need to look at. There may be other ways that we, as a State, can help those students, and that should be examined in the study.

The second topic the bill addresses is in section 2, subsection 2. The same topics that were addressed in the Interim study in 2005 will be addressed again in order to provide an updated guidance about where our needs are as a system.

In 2005, the Committee to Evaluate Higher Education Programs examined system wide the topics you see in the bill, and NSHE has stated it would be helpful to the system to have this study updated.

In 2017, we live in a different world than we did in 2005. We are in a postrecession economy; we have new technologies coming to our State, and our workforce needs are different. It seems like a good idea to update this study to make recommendations about where as a system we should be putting our resources as far as programs and making sure we are being responsive to the workforce needs.

Section 2, subsections 1 through 7 include some of the topics in the study to be studied again. Section 2, subsection 6 is a new request, and that is to examine whether the system of compensation for faculty at each institution of NSHE is appropriate in order to recruit and retain quality faculty that further programs of higher education and research. Nevada has not kept up with our merit pay for our faculty, and we are losing some of our best people to headhunters for universities and colleges in other states. Through the study, we want to make sure we are compensating appropriately, so we keep the best and brightest people in our faculties.

Two individuals have given me permission to submit their written testimony for the record today on A.B. 202. Veronica Charles is the former director of legislative affairs for the ASUN and has submitted testimony ([Exhibit D](#)). She points out that 33 percent of the 18,000-plus undergraduate students at UNR have debt. Also, ASUN Director of Legislative Affairs Spencer E. Schultz submitted his testimony ([Exhibit E](#)) regarding working full-time and trying to graduate.

CONSTANCE BROOKS (Vice Chancellor, Government and Community Affairs, Nevada System of Higher Education):

We thank Assemblywoman Joiner for allowing A.B. 202 to be amended in a way that would be most helpful to our State, to NSHE and to our students. We appreciate the addition of the faculty compensation study, which would be helpful to our faculty.

We also thank Assemblywoman Joiner for being responsive to our students. The genesis of this bill came from students at UNR who were overwhelmed by the burden of their student debt and hoping to find some remedy to that issue. Assemblywoman Joiner showed her commitment to our students by bringing this bill forward.

Prior to this Session, Chancellor John V. White from NSHE met with several members of leadership from both Houses and asked for a redo of the capacity study from 2004. This is a direct response from his request, and we are extremely grateful.

KENT ERVIN (Nevada Faculty Alliance):

The Nevada Faculty Alliance represents the eight NSHE institutions. We appreciate A.B. 202 and think the study will be helpful.

I will provide you with a little background information. There is a nationwide trend that indicates support for public institutions of higher education has been declining and student costs have been increasing. Nevada is no different from other states. From fiscal year (FY) 2008 to FY 2017, the Nevada State General Fund support for NSHE declined 11 percent or \$69 million in actual dollars and has not been adjusted for inflation. General Fund support of the instructional budget went from 77 percent in FY 2008 to 65 percent currently. Adjusting that for inflation and the increase in student enrollments, the State real funding, meaning real dollar funding per student full-time equivalent (FTE), has declined

31 percent in the same time period, while student revenue per FTE has increased 27 percent in real dollars.

That is the background of why the affordability of public college education has been impacted by the costs increasing particularly for the students. We believe the items in section 2 are appropriate.

We appreciate the addition of studying the compensation for faculty. A sustainable and competitive system of compensation for faculty includes four components. The first component is being competitive with other institutions nationally in the pool that we hire from; second is having regular cost-of-living adjustments; third is having regular advancement opportunities for faculty within their ranks as well as for promotion, and the fourth component is that faculty benefits are maintained and competitive. We hope these items can be examined and other states are looked at to see faculty compensation and how things are done. There are variations from state to state.

MICHAEL FLORES (College of Southern Nevada):

I agree with the remarks of Dr. Ervin. When this bill was heard in the Assembly prior to finals week, the Chamber was packed with students from the north and the south. Now finals week is in full swing at the universities, and students are unable to attend today's hearing.

We know the importance of college affordability for our students and know it is their biggest challenge. The SSOG is appealing to everyone, even at the university level. We are grateful for Assemblywoman Joiner working with us on A.B. 202 and taking the time to amend her bill.

ASSEMBLYWOMAN JOINER:

I do appreciate if the Committee will consider this measure. If this study happens in the Interim, my hope is we can find more solutions for our students to have more affordability in their higher education and not as much debt.

VICE CHAIR WOODHOUSE:

I will close the hearing on A.B. 202.

CHAIR DENIS:

I will open the hearing on A.B. 275.

ASSEMBLY BILL 275 (1st Reprint): Requires the establishment of a statewide framework for providing integrated student supports for certain pupils and their families. (BDR 34-920)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 20):

Assembly Bill 275 will provide a statewide framework for integrated student supports. This bill is needed because many times students have factors other than academic factors that affect their ability to learn and do well in school.

By setting up a framework for integrated student supports, we will be able to get these students the help they need so they can be successful. An example of this is related to a bill I had in the 78th Session. I had discovered a number of students in my district were having reading problems because they needed glasses and could not see the words on the paper. We were able to pass a law that enables parents to obtain glasses for their children at reduced prices, or even free of charge.

There are factors that go beyond needing glasses. In Washington, D.C., it was discovered kids were not coming to school because they did not have clean clothing at home. To fix the problem, washing machines were installed in the schools, and the kids were given soap. The kids knew if they came to school they could do their laundry.

There are a number of things we can be doing to make it easier and possible for our kids to be learning that are not necessarily academic. There are organizations that can provide these services.

I have worked with various providers and the State Department of Education (NDE) so that A.B. 275 sets out the parameters for doing this, tracking accountability and making sure it is working so we can set up our kids for success.

MEGAN RAUCH (Director, Education Policy, Guinn Center for Policy Priorities):

The Guinn Center supports A.B. 275. We believe the intent of this bill speaks to two key findings in our research. The first is that students perform better in schools when their other nonacademic needs are being addressed, and the second is their increased accountability measures and reporting requirements can help shape best practices and inform future policy decisions. Nearly 22 percent of Nevada children live in poverty, and we believe that addressing the

needs of these children as well as the needs of the hundreds of thousands of other children who come from high-need at-risk communities from around our State, through integrated supports can help prepare these children to succeed in school, and they will be better prepared for the New Nevada workforce.

Two programs that are already in place that provide wraparound services in schools that I would like to speak about quickly are Victory schools, which serve specifically students in schools with a high rate of Free and Reduced-Price Lunch (FRL) students. As of May 2016, early results from Victory schools showed mostly positive results with increases in literacy proficiency rates across schools. These schools reflect a smaller achievement gap by nearly 2 percent difference in reading proficiency between all FRL students in the State and these same schools in 2013-2014, which is prior to the implementation of the Victory schools program that provides wraparound services for these kids. Second, Communities in Schools (CIS) is a dropout prevention program that also provides wraparound services to students in need and has increased graduation rates significantly. I have submitted my written testimony ([Exhibit F](#)).

MS. PIERCZYNSKI:

I am representing the NASS, NASA and the NASB. We support A.B. 275. We know that poverty and children who come to school and do not have their basic physical needs met are not going to do well in school. We hope this bill moves forward.

RICKY GOURRIER (Communities in Schools, Nevada):

I am representing CIS, which is the largest provider of integrated supports. One important factor of this bill is that the Every Student Succeeds Act of 2015 (ESSA) designates integrated student supports as an allowable expense under Title I, but ESSA does not define integrated supports. This bill clarifies the definition.

As Assemblywoman Spiegel mentioned, CIS does provide nonacademic barrier removal services to kids throughout the State. Last year, we served roughly 59,000 students throughout Nevada. I appreciate your support of this bill.

BRAD KEATING (Clark County School District):

We echo the statements you have heard in previous testimony. As a district, we need to do anything we can to set up our students for success. We support A.B. 275 wholeheartedly, and I thank the NDE, CIS and

Assemblywoman Spiegel for working on this bill. The CCSD has had an incredible relationship since 2004 with CIS in providing those services to our students, and we look forward to continuing those support services to our students after this bill is signed.

MR. DALY:

I am representing 40,000 educators across our State working to deliver a high-quality public education to every student. The NSEA supports A.B. 275. Along with our parent association, the National Educational Association, we champion community schools and a lot of the programs that have been mentioned in this hearing and in the hearing in the Assembly side. Educators for generations have had the responsibility of teaching and going the extra mile for kids. Educators will continue to do that, but given the severity and impacts of poverty on kids unable to come to school not in the best position to learn, the framework for additional services and additional supports are important. Until the day we can end poverty, racism, oppression in communities and have all kids in school and in a good place, we need to be doing these kinds of things.

FELICIA ORTIZ, (Member, District 3 State Board of Education; Vice Chair, Community Implementation Council for the Reorganization of the Clark County School District):

I am here to give testimony on A.B. 275 with specific regard to wraparound services and integrated supports in our most needy schools. I have witnessed firsthand the effectiveness of some of those supports and what it is doing for the children of our city and our entire State.

I have seen the amazing work that some of these organizations do going above and beyond to help our kids and to level the playing field. I completely support A.B. 275 and hope the Committee will move forward with it.

SENATOR WOODHOUSE:

I want to thank Assemblywoman Spiegel for bringing this bill forward. Your stories reminded me when I was a first-grade teacher and the Partnership Director for the CCSD. We put some of these kinds of programs in place for kids. When at-risk students have their needs met and can come to school with shoes, clean clothes, their hygiene needs met and other things in order for them to feel comfortable to come to school, they have such joy and love for school. These wraparound services are important for students all over our State.

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CHAIR DENIS:

I will close the hearing on A.B. 275 and open the hearing on A.B. 400.

ASSEMBLY BILL 400 (1st Reprint): Revises provisions relating to instructional materials. (BDR 34-446)

ASSEMBLYWOMAN DINA NEAL (Assembly District No. 7):

Imagine a space where teachers are allowed to be entrepreneurs and use their licenses to go beyond teaching, using their minds to create a textbook or instructional material on their own time, own the copyright to the work and be able to sell it to the school district or to any other entity. Assembly Bill 400 creates a pathway and ability for a teacher to go beyond his or her space with their created material.

There is some confusion on why a teacher would need to do this. I have thought about the absence of textbooks and how we have been going around and around with instructional materials in the schools. Teachers have been doing the curriculum forever, they know it, they are already thinking about innovative ways to teach, expand and develop. Why not allow a pathway for them to do just that? That was the impetus for this bill.

I do not know if there are other states that are doing this. I began to research this idea, and in my research I found cases that pertained to when a teacher had to deal with a copyright issue and whether the rights to the copyright could belong to him or her. I found cases that support that.

Section 1 of the bill states the board of trustees of a school district or the governing body of a charter school shall transfer to an employee of the school district or charter school, as applicable, free of charge, the copyright for any instructional materials created by the employee outside the scope of his or her employment or otherwise relinquish any claim to the copyright for such instructional materials.

Instructional materials is defined in section 1, subsection 6: As used in this section, the term "instructional materials" does not include tests, quizzes, homework problems or lesson plans.

All of those things are in the scope of a teacher's job, and they are required to do in their job as a teacher. Those are not the extra effort and the intellectual capacity and creativity that A.B. 400 is addressing.

Section 1, subsection 2 says the NDE shall establish a database of instructional materials created by employees of school districts and charter schools in this State. The curriculum engine and database now exists. Teachers are already dropping and sharing some of their instructional materials inside the database. For example, Regional Professional Development Programs (RPDP) can be found in the database.

A question came up that if a school district or NDE paid for a text or instructional material that advances instruction, would a teacher have to pay to use the material? Once the material drops into the database, it is under the fair use law—freely shareable, freely used and free of charge. The payment for the material is within the contract. The teacher would enter into a contract with the governing board for that material.

The copyright would then be transferred to the teacher. This is the portion that I am asking for the teacher to be paid. I am asking for a teacher to be paid for the intellectual work and am also asking for the teacher to have control over the copyright.

Once the material is in the database, it is freely shareable like anything else. Another teacher would not have to pay for the material; they would be able to use it. A different rule would apply. Now when a teacher uses a book for classroom use there is a fair use implication that does not require permission to use the material in the classroom setting. It has been set apart for educational purposes.

Section 1, subsection 3, paragraphs (a) and (b) continue to talk about what must exist within the database. On the Assembly side, we needed to define basic textbook or textbook and supplemental textbook which is done in section 1.5, subsections 1, 2 and 3.

Section 2 is a conforming provision to make sure that anything in conflict does not violate the collective bargaining agreement. Currently, there is nothing in the collective bargaining agreement that prevents a teacher from being allowed to create a contract, and this provision would not prevent that.

Section 3 states the act will be effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on January 2, 2018, for all other purposes.

Some of the concerns that have come up regarding this bill are: how is this legal? Why should a teacher be able to do this? In copyright law, there is the work for hire doctrine, which allows for an exception. It is an exception for works created outside of the scope of a person's employment that requires a written agreement.

There was a case in the New York state where there was a challenge to whether a teacher owned his work. This is when I discovered the carve-out is that the teacher does not own the text, quizzes, homework problems and the preparation work, but if teachers create material outside of the scope of their employment, that is their own intellectual work produced on their own time, then legally, they would be allowed to enter into a contract for that work and own the work.

The school district was in opposition to this bill because it felt the district should have the license and be able to give the license to the teacher and own the license. My question to them was why should you own something you did not create?

The school district wanted to own the material and then give the license to the teachers, and the teachers would operate under the caveat that they could use it in a certain manner. I disagreed with that because my idea was to create a pathway for teachers to be entrepreneurs. They should have a right to use their professional licenses to expand their intellectual capacities and their work. If their work benefits the school, why not create an ability for them to do that? That is why I created this bill.

SENATOR HARRIS:

Is the idea of transferring the copyright from the school district to the teacher a way to get around the work for hire doctrine that is so prevalent in copyright law?

ASSEMBLYWOMAN NEAL:

Yes and no. When I sat with counsel in our Legislative Counsel Bureau (LCB) Legal Division, they said the simplest way to make this happen is to transfer it over. That is the permission and the copyright activity.

I asked the LCB counsel if I needed to set the teachers up to seek permission, and they told me no. They told me that I would make them transfer it over, and that is the actual copyright activity.

SENATOR HARRIS:

I want to make sure teachers are going to be protected. Typically, the work for hire, any work that you do that is similar in nature to the work you perform, the copyright goes to the actual employer. In a practical way, I am trying to assure that teachers do receive the copyright. Are you envisioning some type of declination form where the school district would say that they give up all of its rights to any intellectual property created by a teacher, or are you looking at a more affirmative thing like copyrights, to the extent that they exist, are the property of the teacher who created them?

ASSEMBLYWOMAN NEAL:

The latter. It would be a contract that they would have to enter into. I do want to cite this. There was a case called *Pavlica v. Behr* in the Southern District of New York. A science teacher, Robert Pavlica, wrote a manual explaining a method of teaching independent science to high school students. The school challenged that it owned the copyright to the manual Mr. Pavlica had written. The court ruled that Mr. Pavlica prepared the manual on his own initiative without direction or supervision by his superiors, and the court distinguished the case from another case called *Shaul v. Cherry Valley-Springfield Central School District*. It was determined that Mr. Pavlica designed an entirely new course without the assistance of, or at the direction of his employer. That is the key part of the work for hire doctrine. Did you do it without direction? Did you do it through your own creative activity? The protection is you enter into a contract.

If this bill passes, that pathway will exist for them to engage in that conversation. If they decide midyear that this is an activity they can do, they can start the conversation with the governing board.

SENATOR HARRIS:

My concern is when the lines get blurry. The third prong on that case was Mr. Pavlica created a course that did not exist before. There was no way that could be considered in the scope of his employment. What happens when there is a second-grade teacher that has created some literacy materials that may or may not be part of the core curriculum of what is taught in second grade and he or she wants to have it copyrighted? I want to make sure the protections are there.

ASSEMBLYWOMAN NEAL:

I think the protections are going to be there. Although, you say that it is a third prong, Mr. Pavlica was teaching science. He did a science manual. It is not as if it was not closely related. It was the fact about how it was used, how he did it and when he did it. We need to be crystal clear that the dispute or any future dispute that would come up is going to follow a standard contractual agreement, which is what you said in the latter. I will own the copyright because at the beginning in section 1, subsection 1, it says the district shall transfer to an employee, free of charge, the copyright for any instructional materials that are created outside the scope.

That is the first part. We already know there will be a transfer, and there is no question because the word is shall. The protections or how the use or the limited use will be delineated in the contract are the same as any other contract, to say here are my rights to this work that I created. Although I am teaching second-grade literacy, I am going to use it because you do not have any textbooks in this class that expands, for example, paragraph development is the teacher found a new method to teach paragraph development. This was instructional material that was created after work and did not come from the school. It came from the teacher's experience and everything that he or she had learned. The teacher was able to advance his or her knowledge, expand instructional material on paragraph development and teach the material to students. How do you protect that?

The teacher would lay out what their terms are under the work for hire exceptions saying, with the exclusion, we know that it belongs to the school if this is test prep, tests, homework or quizzes. Anything else that is your own creation outside of the assistance or direction of the employer belongs to you. I do not know how it would be written, but I know those are some of the caveats that would need to take place, and the contract has to happen first.

SENATOR HARRIS:

If someone is creating a new process, they would be filing for a patent. Perhaps, there is some copyright stuff, too. When we start getting into intellectual property to make sure people are adequately protected, there is that piece of the conversation. I do not want to dwell on that.

ASSEMBLYWOMAN NEAL:

That is a wrong example in terms of method. If a book was created, and the content and everything was delivered from the teacher's own creativity, not necessarily the method, then we are still in the copyright.

SENATOR HARRIS:

Let us see if we can borrow a page from higher education. We have professors who teach at universities and regularly write textbooks and case materials who get to keep the copyright to those materials. How is what happens in higher education different than what happens in kindergarten through Grade 12 (K-12)? What can we borrow from the processes that higher education has already established?

ASSEMBLYWOMAN NEAL:

We would borrow, and it is not different. Higher education already has it set up; there is a contract they enter into and an understanding. What we would be doing in K-12 would be changing the dynamic and treating the teacher like a professor. One of the understandings when a contract is signed is that the individual has the capacity to do extra work if he or she chooses, and here is the contract if he or she makes the choice to do the extra work. There would be a delineation of how that would work. That is exactly how it would work.

SENATOR HARRIS:

That is what I thought. I am glad you got that down on the record.

MR. AUGSPURGER:

This discussion was absolutely interesting, and it caused me to think that most of my adult life I have been in and around classrooms in schools. During that period of time, I have marveled at the brilliant people we have working with our children and the development of materials. I am amazed at the fact someone else who had nothing to do with the material development can capture it. It is time for this bill to be passed, I support A.B. 400.

It is a great opportunity for our teachers, and it refers to other employees. I assume it would include administrators or other employees in the building. It will create an entrepreneurial approach that we have not seen before in the districts across our State. I am strongly in support of this bill.

MR. DALY:

The NSEA supports A.B. 400 to make sure instructional materials including textbooks created by an employee on their own time, become the property of that employee. That also can be accessed through a database by other school district employees. We think the best source of compelling instructional materials and textbooks is often a classroom teacher. This bill would honor the work done on their own time by those employees. It would promote ingenuity in the development of instructional materials and provide a universally available database for other educators to use.

CHELLI SMITH (Director, Southern Nevada Regional Professional Development Program):

Today I am speaking on behalf of all three regional professional development directors. We have three concerns pertaining to the vetting agent in A.B. 400.

First, we do not have any sense of how much time will be spent on vetting these materials; however, if a large number are submitted, it could impact our ability to provide professional development. Beyond the actual review, we will need to develop a rubric and to ensure fairness. Each submitted material should be screened by three separate reviewers with the name of the author or authors removed.

Second, part of this vetting would contain a search to ensure that there are not copyrighted materials and/or pictures being used within the materials. We would like some assurance that if we endorse a material that has copyrighted materials within it, we will not be held responsible. Additionally, all material posted on the NDE Website must be Americans with Disabilities Act compliant. Our staff does not have this expertise.

Finally, as professional development providers, we have a supportive role. We are somewhat concerned that not approving a material will place us in an adversarial role with some teachers or schools.

MS. PIERCZYNSKI:

I am representing NASS and NASB. We are opposed to this bill, and Ms. Smith has outlined some of our concerns. It is the management of the whole process in a school situation. Also, there is concern about collaboration and the stifling of collaboration between teachers and sharing of materials.

MR. STEVENS:

I am representing the CCSD, and we are opposed to A.B. 400. We believe federal copyright laws are already in place. There is a long precedent of federal copyright law when it comes to how material that is created on the job is managed and what is not created on the job. We would like to strike section 1, subsection 1, and have the law aligned again with what federal copyright law is.

We also believe this will stifle communication and working together with other educators. If the school district automatically transferred the copyright, then other educators would have to purchase that license to use it in their classrooms. What happens if several educators work together in their off-hours, who would get the copyright? How does that work?

This bill opens up a lot of our educators to lawsuits and other things they may not realize once they create some material. We believe federal copyright law already covers this. If the NDE would want to create a way the instructional material could come into a database, we would support something like that. We still believe the federal government already covers this. We are opposed to A.B. 400.

SENATOR HARRIS:

I expect that as part of the contract, the teacher would grant a nonexclusive user license to the use of the materials to retain the ability for him or her to continue to use his or her materials. Is that what you envision?

ASSEMBLYWOMAN NEAL:

Yes. When I started the process, I called Dr. Canavero of the NDE and told him my idea. I asked him if the process would be cumbersome and if it would create something new. His answer to me was no. I am not saying that Dr. Canavero is endorsing the bill.

The two of us began talking about the current process of vetting textbooks. There is a pathway already in place by the NDE to adopt textbooks. How is this process any different than it is now if Pearson Education walked through the same door?

Should we not examine Pearson Education materials to see if the materials will advance the curriculum and knowledge of our students? We have cases where the textbooks and literature books that did not advance our children because the books replayed the stories over and over.

If there is a committee already engaged in the process of vetting textbooks, it is the same process for RPDP. The same questions would be asked in the process of RPDP. We want to know that the material is legitimate. We do not ask Pearson Education those questions because it is a big company. Pearson Education could violate copyright law in its material.

Now, I want to create a pathway for a teacher to be an entrepreneur. They are on the line for any legal activity they do. More often than not, a teacher is going to create something that is unique and innovative because that is what they know best.

SENATOR HARRIS:

Is it your intention with regard to shared copyrights to mirror the federal law, or do you anticipate doing something different?

ASSEMBLYWOMAN NEAL:

It will be the same. I wanted the teachers to own what they have, and have the free transferability that everyone else has once he or she owns it.

SENATOR HARRIS:

Federal copyright law states that when you have multiple owners claiming copyright, regardless of the amount of time dedicated to the product, whether it is five minutes or five months, the individuals share the copyright equally.

ASSEMBLYWOMAN NEAL:

We would have to delineate and spell out that matter. Within that shared use if 95 percent of the work was delivered by the person, then I mean..... .

SENATOR HARRIS:

We get back to whether there was a contract between the parties, which is beyond the scope of this.

ASSEMBLYWOMAN NEAL:

Right. That is why a contract has to exist.

SENATOR HARRIS:

A contract would have to exist between the parties, which is outside the bill content.

ASSEMBLYWOMAN NEAL:

Yes.

CHAIR DENIS:

I will close the hearing on A.B. 400. I will open the meeting to public comment.

MR. KEATING:

I want to clear the record in what was said a few minutes ago. The CCSD does have textbooks, and we regularly adopt new textbooks. We do have a committee and a commission that reviews our textbooks.

Advanced Technologies Academy (A-TECH) was selected for the 2017 Las Vegas Business Press State of Nevada Innovation Award; A-TECH is implementing the extensive use of instructional technology throughout its classrooms and has some of the top career and technical education programs in the Country.

A Title I school with nearly 1,100 students, A-TECH has a 99.6 percent graduation rate and was the only school among the list of 21 nominees for the award. Clark County School District is proud of the students and staff at A-TECH for receiving this honor.

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CHAIR DENIS:

Is there further public comment? With no further business, the meeting is adjourned at 4:59 p.m.

RESPECTFULLY SUBMITTED:

Shelley Kyle,
Committee Secretary

APPROVED BY:

Senator Moises Denis, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 196	C	1	Chris Daly / Nevada State Education Association	Letter of Support
A.B. 202	D	1	Veronica Charles	Letter of Support
A.B. 202	E	1	Spencer E. Schultz	Letter of Support
A.B. 275	F	3	Megan Rauch / Guinn Center for Policy Priorities	The Importance of Integrated Supports for Student Success