

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-ninth Session
February 21, 2017**

The Senate Committee on Finance was called to order by Chair Joyce Woodhouse at 8:04 a.m. on Tuesday, February 21, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Joyce Woodhouse, Chair
Senator David R. Parks, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Ben Kieckhefer
Senator Pete Goicoechea
Senator Becky Harris

STAFF MEMBERS PRESENT:

Mark Krmpotic, Senate Fiscal Analyst
Alex Haartz, Principal Deputy Fiscal Analyst
Lona Domenici, Committee Manager
Cindy Clampitt, Committee Secretary
Mary Sullivan, Committee Secretary
Kurt Englehart, Committee Assistant

OTHERS PRESENT:

Jim R. Barbee, Director, Nevada Department of Agriculture
Donnell Barton, Administrator, Food and Nutrition Division, Nevada Department of Agriculture
Lindsay Anderson, Government Affairs Director, Washoe County School District
Jodi Tyson, Government Affairs Director, Three Square Food Bank; Food Bank of Northern Nevada

Mary Pierczynski, Ed.D., Foster Consulting; Nevada Association of School Administrators; Nevada Association of School Superintendents; Nevada Association of School Boards

Brad Keating, Legislative Representative, Community and Government Relations, Clark County School District

Traci Davis, Superintendent, Washoe County School District

Kristen McNeill, Deputy Superintendent, Washoe County School District

Byron Green, Chief Student Support Services, Washoe County School District

Thomas B. Ciesynski, CPA, Chief Financial Officer, Washoe County School District

Natha Anderson, President, Washoe Education Association; Nevada State Education Association

Erik Jimenez, Legislative Affairs Director, Argentum Partners; United Cerebral Palsy of Nevada

Jessica Ferrato, Principal, Crowley and Ferrato Public Affairs; Nevada Association of School Boards

Andrew Fueling, Director of Fiscal Services, Carson City School District

Brian M. Patchett, CEO/President, Easter Seals Nevada

Will Jensen, Director, Office of Special Education, Nevada Department of Education

Roger M. Rahming, Deputy Superintendent, Business and Support Services Division, Nevada Department of Education

Nicole Rourke, Associate Superintendent, Community and Government Relations, Clark County School District

John Vellardita, Executive Director, Clark County Education Association

Sylvia Lazos, Policy Director, Educate Nevada Now

Jeremy Aguero, Principal, Applied Analysis

Jenn Blackhurst, Honoring Our Public Education

CHAIR WOODHOUSE:

We will open the hearing on Senate Bill (S.B.) 3, which revises provisions for the Breakfast After the Bell Program, which provides breakfast to certain pupils at public schools.

SENATE BILL 3: Revises provisions governing the Breakfast After the Bell Program that provides breakfast to certain pupils at public schools. (BDR 34-135)

JIM R. BARBEE (Director, Department of Agriculture):

Senate Bill 3 is a language fix for the Breakfast After the Bell Program that we brought during the 2015 Legislative Session. This was S.B. No. 503 of the 78th Session. I have also provided a written statement ([Exhibit C](#)). The Nevada Department of Agriculture (NDA) had intended to require a 10 percent increase in participation in breakfast nutrition programs in fiscal year (FY) 2016 - 2017. The law as drafted and enrolled actually placed an unrealistic mandate of a 10 percent increase in the Program each and every year moving forward. This language fix will remove the mandate and require school districts to maintain or increase their participation moving towards the Program goals. If a school decreases its participation rate, they will be required to submit a corrective action plan. This was the actual intent when we brought the bill the last Session.

SENATOR HARRIS:

Do you currently have any schools that are participating at a 100 percent level?

MR. BARBEE:

No schools are at 100 percent.

DONNELL BARTON (Administrator, Food and Nutrition Division, Department of Agriculture):

We do not have any schools participating at 100 percent. We have one school at 90 percent. Most of them are around 60 percent.

SENATOR HARRIS:

My concern is for the point in time in which schools have high participation like 90 percent to 95 percent. There would be no room for them to improve? They simply have to maintain? I want to be sure there are no penalties or unnecessary reports required.

MR. BARBEE:

Clark County School District (CCSD) brought that concern forward. They had a school participation at 90 percent, then they had a change in leadership and they dropped to 60 percent. The CCSD wanted to know if they needed to do a report if they still were meeting the goal. Yes, they would have to do a corrective action plan. This is one sheet of paper that identifies what happened and what has changed. We are managing these federal funds, and if there is a drop in Program participation, even at goal, we need to find out what transpired.

It is not held as a negative. They need to address the reason and the corrective action taken to improve their participation moving forward. The reimbursements of the funds would not be impacted in this circumstance.

SENATOR KIECKHEFER:

Changing the language to "maintain" is perfectly acceptable. Are you comfortable with participation rates? There is nothing in the language as written that incentivizes schools to increase participation.

MR. BARBEE:

We still would have goals identified with the Program on the federal side. Those are articulated on the fact sheet, "Nevada Department of Agriculture, SB503: Breakfast After the Bell" ([Exhibit D](#)). We would ask them to continue to strive for goals. We have had such a significant increase in the implementation of this Program. We went from a 20 percent participation rate to a 44 percent rate, just in the first year. We do not have the final numbers for the second year. We had a goal of \$3 million and increased General Fund revenues coming into the State. We actually had \$8 million. We have had great success. We definitely moved the Program forward. We will continue to work with the school districts to target those goals and improve the Program. If they are maintaining, we are much better. I believe we had the highest increase in participation in this last year, nationwide.

SENATOR KIECKHEFER:

What are you hearing from the schools in the districts about practicalities of implementing the program? This is a big change for many schools.

MR. BARBEE:

It is a mixed response. We left flexibility in the implementation. It was not just breakfast in the classroom or breakfast in the cafeteria. The actual school has the choice of how to implement the Program. This is why we have had great success. We have allowed school districts local control in terms of how they set up the Program. We have not had any large negative or catastrophic issues in implementation.

CHAIR WOODHOUSE:

I would agree there has been nothing catastrophic, but I think there are some issues that need to be addressed. We have talked about those previously.

SENATOR DENIS:

How much influence do you have on the participation rate? Other than implementing the Program, do you have influence in the schools as to increasing or maintaining participation rates?

MR. BARBEE:

Yes, we do have influence. Our staff provides technical assistance. We have nutritionists and program specialists that work with the districts across the State. We have impact or influence on how the programs are implemented. I think the reference from the Chair over some of the concerns that she has, gives us the opportunity to take that back to the districts. Many of those things are local control issues. For example, the packaging can be an issue for the students to open. There are some concerns about breakfast in the classroom because of the mess it can create or time away from instructional hours. We work with the school districts to give them strategies to improve the Program.

SENATOR DENIS:

Is there a point when we get to a saturation level and this is the best participation rate the districts will obtain or be able to maintain?

MR. BARBEE:

Yes, that is specifically why we are bringing this language fix. I think we recognize that at some point you will not be able to gain 10 percent every year. In some cases, maintaining is a significant piece. We are well above where we were two years ago. We see maintaining as a success because moving forward there are no State funds tied to this. It becomes fully independent in its operation. The only increase in funding the school districts will have is the increase in reimbursement from the federal program. There are no State dollars being invested.

SENATOR DENIS:

You are saying if they increase their participation, they increase the amount of reimbursement?

MR. BARBEE:

Correct. That is why we brought the Program forward with the one-time State investment to get it initiated and operational. From that point forward, the increased reimbursement rate helps fund the Program and any increased costs to the Program by having greater participation.

CHAIR WOODHOUSE:

We will call for those individuals who wish to come forward in support of S.B. 3.

LINDSAY ANDERSON (Government Affairs Director, Washoe County School District):

I represent the Washoe County School District (WCSD). We are in support of S.B. 3. We believe that the changed language will help us in one of our schools that is having a hard time getting up to the participation level. We appreciate the support of the NDA and will continue to work with them.

JODI TYSON (Government Affairs Director, Three Square Food Bank; Food Bank of Northern Nevada):

I am here to support S.B. 3. I want to respond to questions that were asked. When the food banks look to help the implementation of the Breakfast After the Bell Program, we looked at the school by school level of participation between students that are eating lunch and encouraged them to also have their students eat breakfast. Narrowing of the gap between those who are participating in breakfast and those who are participating in lunch has been our goal. In some schools, we have more than 100 percent participation in terms of the free and reduced lunches. More of them are eating breakfast than are eating lunch. It was a positive thing for us in terms of the food bank.

We looked at free and reduced lunch and how to add meals to the food system so that more children, who are at risk for food insecurity, have access to those meals. We think this has been a great Program. We agree that we need to look at whether schools need to increase participation by 10 percent.

The schools new to the Program increased their participation to 44 percent. Schools that have been participating before S.B. No. 503 of the 78th Session was passed had a participation rate of 62 percent. We do know through maturity in a program that schools will make some efficiency changes to increase their participation in the Program. The food banks want to continue to support that effort.

There are 217 schools participating within the entire State. There are schools that are below 70 percent free and reduced lunch. They have a need and have room to increase participation.

The Governor's recommended budget includes a pilot program to look at schools in the CCSD that are between 60 percent and 69 percent participation. The CCSD and the food bank can look at increasing the rate of participation among free-and-reduced-lunch children; we can then increase their schools' participation for the breakfast program.

We are in support of S.B. 3 knowing that there are other areas that the food banks and our school districts can work on to increase participation.

MARY PIERCZYNSKI, ED.D (Foster Consulting; Nevada Association of School Administrators; Nevada Association of School Superintendents; Nevada Association of School Boards):

I am representing the Nevada Association of School Superintendents, the Nevada Association of School Administrators and the Nevada Association of School Boards. We are in support of S.B. 3. It is a very important program for our schools.

BRAD KEATING (Legislative Representative, Community and Government Relations, Clark County School District):

The CCSD is in full support of S.B. 3 and its quest to increase participation for Breakfast After the Bell. This school year, CCSD has 180 schools participating in the Program. Most schools have met the State-mandated goals. Twenty of those schools have increased their participation by at least 10 percent. To Senator Harris' question earlier, we appreciate your concern regarding the Department's willingness to make the changes. Currently there are 3 schools in CCSD that are tracking above 90 percent. This change helps us ensure that we maintain that percentage. With the 180 schools that are participating in the Breakfast After the Bell Program, CCSD has served 6.9 million breakfast meals from August 2016 to January 2017. We look forward to working with the NDA to raise that number even higher in the coming years. We support S.B. 3.

CHAIR WOODHOUSE:

We also want to work on those pieces that are not working very well. We will close the hearing on S.B. 3.

We will open the hearing on S.B. 49, which revises provisions relating to funding for pupils with disabilities in public schools.

SENATE BILL 49: Revises provisions relating to funding for pupils with disabilities in public schools. (BDR 34-405)

TRACI DAVIS (Superintendent, Washoe County School District):

I am a native Nevadan. I have spent 16 years working in CCSD and am entering my fifth year in Washoe County as superintendent. I have been a teacher and a principal. I am a parent of a child with a disability in special education. Since coming to WCSD, we put emphasis on improving outcomes for special education students by partnering with national companies to ensure that we are making the necessary growth. We increased support for our special needs students by transferring millions of dollars of our own general fund monies. We have reviewed our practices to ensure that we are targeting the needs of all students. During our focus on improving outcomes for special education students, the new weighted formula was ruled out and it included the 13 percent cap on students eligible for State funds. This seems to be in direct conflict with what we are trying to do for all children in WCSD and all children in Nevada.

We understand the cap was put in place to protect against overidentification by districts in order to gain additional funds. Overidentification is a real concern. In WCSD we have taken significant steps to ensure we have a process to prevent overidentification and minimize disproportionality. We know what happens when children are overidentified that should not be in special education.

We believe underidentification is a serious concern. Students that need special education may fall through the cracks. We tend to discuss overidentification. No one is discussing underidentification and how that affects children. I believe that concern has not been addressed either by policy or legislatively.

When a district is over the cap, will the cap create an incentive not to serve students because it will require taking investments away from other general education funding?

We believe in accountability and the consistent use of best practices to identify students. In subsection 6, section 1, of *Nevada Revised Statutes* (NRS) 387.122, we have added language to allow NDA to audit our process for added accountability. We believe that school districts should be held accountable for overidentification and underidentification. Our goal is to serve every student based on the needs of those children.

KRISTEN MCNEILL (Deputy Superintendent, Washoe County School District):
Federal law obligates districts to seek out all children with disabilities who are in need of special education services. The WCSD has taken this responsibility extremely seriously and is actively looking for these vulnerable students to give them the head start they deserve. We know that as recently as this past Friday, the U. S. Department of Education (USDOE) announced to the State of Texas that they are now targeting 12 districts in a federal investigation into whether students with disabilities are getting the help they need because of their 8.5 percent cap. This is a follow-up to the October 2016 guidance by the USDOE to Texas to stop using a cap on special education because there has been evidence of students being denied services.

Families moving into our community, in northern Nevada, are wary of our ability to provide services to all of our special needs students.

BYRON GREEN (Chief Student Support Services, Washoe County School District):
We understand the 13 percent was selected because it was a national average at the time. Averages can be deceiving. Nationally, the range across states is from 17.5 percent in Maine and Massachusetts to 8.6 percent in Texas. The majority of states have higher rates than Nevada. Similarly, the range in Nevada mirrors the Nation from 8 percent to 17 percent.

The varying methods of identification of students and the varying makeup of the communities are likely the reasons for the differences across districts. The one-size-fits-all approach does not work for the Nevada school districts.

Ms. DAVIS:

All the information led us to the conclusion that a cap on the number of special education students eligible for weighted funding is wrong for Nevada and wrong for Nevada's children. We are trying to improve graduation rates and give our special education students access to a regular curriculum while being held to a strong accountability measure. In WCSD, we are committed to all students. All districts across this County are dedicated to all children. We think the State-funding formula should follow suit.

SENATOR GOICOECHEA:

What is the multiplier and how is it used? Is it times two, or is it the Distributive School Account (DSA) plus half for a special education student?

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Ms. DAVIS:

For me, the problem is with the overall cap. How the cap is formulated I will defer to the finance person to explain.

SENATOR GOICOECHEA:

I need to know what that value is.

THOMAS B. CIESYNSKI, CPA (Chief Financial Officer, Washoe County School District):

The goal of the legislation, as we understand it, is to work toward a 2.0 weight. I believe last Session we were at 1.50 weight. You are moving towards a 2.0 weight.

SENATOR GOICOECHEA:

That is it, thank you.

CHAIR WOODHOUSE:

I believe right now it is 1.53 for special education students.

SENATOR KIECKHEFER:

What is the average cost of providing services to students with disabilities across similarly situated students?

MR. CIESYNSKI:

For the WCSD to educate them, it is approximately \$12,000 per student.

SENATOR KIECKHEFER:

Is that an average?

MR. CIESYNSKI:

That is correct.

SENATOR KIECKHEFER:

What percentage of students is currently identified as special education in WCSD?

MR. CIESYNSKI:

Based on NevadaReportCard.com for School Year 2015-2016, WCSD had 13.67 percent special education students.

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SENATOR KIECKHEFER:

Is your district uniquely situated as being over the 13 percent cap?

MR. CIESYNSKI:

No, please refer to page 2 of ([Exhibit E](#)), "Special Education Rates by District".

CHAIR WOODHOUSE:

I noticed on page 2 of [Exhibit E](#), you have the question, "Is 13 percent the right number? If so, why?" You indicate that 15.4 percent may be the best estimate. I see the rationale for that. Is there any other rationale that you would include in bringing forth a 15.4 percent cap?

MS. DAVIS:

I believe if we put a cap on a special education student, we could also put a cap on any student. It is not about the percentage, it is about providing support for all students. It is a cap on our most vulnerable students. We work in this County and State to improve graduation rates for all. The cap should be about graduation for every student.

CHAIR WOODHOUSE:

This is a very good point. During a K-12 funding formula study committee there was a concern of over identifying students as special education students by the experts we spoke with. This is why the cap exists. Senator Denis chaired this Committee.

SENATOR DENIS:

The Committee needed to put something in place to get more funds for the special education students, but not give an incentive to identify students as special education, just to receive extra funding. This is why the cap exists.

MS. MCNEILL:

The district is extremely cognizant of those parameters. We have several processes in place for accountability measures so that would not be an incentive. There is no incentive for a district to overidentify special education students. We are working very closely with the Nevada Department of Education (NDOE) as well as other school districts.

CHAIR WOODHOUSE:

We will move to support on S.B. 49.

NATHA ANDERSON (President, Washoe Education Association):

I am the President of the Washoe Education Association (WEA). I am speaking on behalf of WEA and the Nevada State Education Association (NSEA) in support of S.B. 49. Philosophically, putting a cap on this number does not provide a great public school for every child. As a classroom teacher, I had no idea the cap existed. I found out about the cap from talking with others in my district. Our principals and administration tried to keep it away from the students and the teachers. They wanted us to provide the services to our students because we are here to be teachers. I have provided written testimony supporting S.B. 49 ([Exhibit F](#)).

Senator Denis discussed overidentification. It takes lot of work for teachers to identify a student as a special education student. It takes time doing the paperwork, getting study aids, extra tutoring and providing documentation. We do this to help our students. Having a cap is not helpful. WEA, NSEA and I all believe that every eligible student that needs help should have that help, both physically and financially from the State, federal and local governments. I ask that you support S.B. 49.

ERIK JIMENEZ (Legislative Affairs Director, Argentum Partners; United Cerebral Palsy of Nevada):

Our organization is a nonprofit primarily based in Washoe County. We provide competitive and integrated employment services for people with disabilities. Families have indicated public schools have not given the appropriate resources and attention to their children. This is the largest barrier to competitive employment that we are seeing in those with physical and cognitive differences. We are in support of S.B. 49 in order to give our children the resources they need without caps while they are in public school. Hopefully this translates into future employment.

JESSICA FERRATO (Nevada Association of School Boards):

We are here in support of S.B. 49. We believe it will enable our districts to serve all students with special needs.

ANDREW FUELING (Director of Fiscal Services, Carson City School District):

I am the Chief Financial Officer (CFO) for the Carson City School District . We are in favor of removing the 13 percent cap on special education students. Currently we have 14.5 percent of our students identified as requiring special needs. There are 1,099 students with an individualized education plan (IEP).

Subject to the 13 percent cap, we would receive funding for only 978 of these students. With the cap, we have 121 special education students who would not be recognized under the current funding mechanism.

There is concern about overidentification. From a fiscal standpoint, looking at the numbers, I do not know that overidentification is an issue. For the current fiscal year, the Carson City School District has over \$11 million budgeted for special education. We have approximately 1,100 special education students. On average, our special education student costs the district an additional \$10,000 to provide these services.

If we receive \$3,800 per student, assuming the cap has been removed, we have a shortfall of \$6,200 per student. It is covered out of our general fund. We make that transfer as every district does to the special education fund. For every additional student that is identified, I would expect to have an additional \$6,200 transferred out of our general fund.

I have a disincentive to identify more students. Unless special education was fully funded by the State, I have a perverse incentive to reduce the number of special education students in my district. From a fiscal standpoint, my optimal special education students would be zero, resulting in no transfer from my general fund. It is not to increase the cap to 14.5 percent, 15.5 percent, or 20 percent; it is to reduce that transfer from my general fund. Transferring \$6,200 is better than transferring \$10,000 with the cap set at 13 percent. The Carson City School District is currently at 14.5 percent. Essentially, I am transferring the full cost of those students above the 13 percent cap. Carson City School District would certainly support no longer having a cap for identification of funding.

BRIAN PATCHETT (CEO/President, Easter Seals Nevada):

We are in support of S.B. 49 for the reasons that have already been stated and see this as a benefit to serve more children in Nevada school districts. Easter Seals serves almost 9,000 children and adults with disabilities every year. If we can be more successful while they are in school and make them more employable, it would be wonderful.

WILL JENSEN (Director, Office of Special Education, Nevada Department of Education):

We are taking a neutral position. The graph on ([Exhibit G](#)) does point something out that needs to be considered. In the first year, Clark County with no cap has a negative amount of \$1,660,962 in the last column titled, "Difference Between CAP vs No Cap". That is not money we are taking from them; it is revenue that they would have in the *Executive Budget*. Districts that are under the cap will pay for the districts that are over the cap.

I am neutral with regards to the cap. We had a significant amount of committee work and a very expensive external evaluation. We have had many funding structures from the Average Daily Membership (ADM), previously referred to as ADM-11, unit funding structure, to our current weighted system. From my perspective, we made those changes, in part, based on inequity in the system.

I am a little hesitant about changing the plan so soon. We need to be careful we do not create an inequitable system of funding for special education students. The 13 percent cap was based on a national average. I think the national average is about 12.9 percent. We remain concerned, as I heard many others are, about potential overidentification of students with disabilities.

Senate Bill 3 strikes out the hold harmless language that was in S.B. No. 508 of the 78th Legislative Session. School districts were guaranteed to receive State monies at a minimum the same amount from the previous year. This bill eliminates that hold harmless or Maintenance of Effort (MOE) factor. If the cap were to be removed, that would be an essential element to keep out of the bill. We will not be able to maintain the fiscal level of effort that we did in the previous year. There is only one pot of money. If we add students to the pot, the amount per student goes down. As such, if MOE remained a guarantee from the State, we might not be able to pay out those monies depending on the number of students.

SENATOR KIECKHEFER:

If we strike the MOE language out of the statute, we are still required under federal law to hold MOEs to par.

MR. JENSEN:

Yes, that is correct. We would spend the same amount of money, but the distribution to individual districts could vary. Therefore, we might have to say to

Churchill County, "we are not able to meet your current level of identification or what we paid you last year". Those monies would have to come from their general fund.

SENATOR KIECKHEFER:

Are MOE provisions from the federal government under the Individuals with Disabilities Education Act statewide and not at the district level?

MR. JENSEN:

Yes, that is correct.

SENATOR KIECKHEFER:

We talked about a multiplier; it is not actually distributed through a multiplier. Please talk about how the money is actually distributed and why it is done this way currently?

MR. JENSEN:

We looked at the amount of money appropriated and equity adjustments. What has been consistently the case over the last two years and the feedback we have heard, is regarding the inflationary adjustments that use to exist with ADM funding. When it went up, it went up for everyone. In this case, it does not.

We gave a 2 percent increase to every district and made sure an inflationary adjustment was provided. Then we looked at equity against the multiplier.

ROGER M. RAHMING (Deputy Superintendent, Business and Support Services Division, Nevada Department of Education):

As we moved from the unit funding to more of a case-based funding, or weight, there were two tests. Maintenance of Effort in aggregate and MOE on a per-pupil amount. We multiplied those dollars to come up with this MOE. We made sure all of the districts had those dollars. Then the remaining dollars we moved to those districts that were far below the State average of 1.53. If the districts want to have a MOE, the cost goes up. It goes up based on the salary scale. We looked at an inflation factor.

What we are doing currently is looking at the MOE from the previous year. This year we take 2 percent from the previous year, and give that to every district. Every district will have an increase based on a roll up.

If there is enrollment growth in this special education population, those with IEPs, we will give them a one-time average State per-pupil amount.

Then there is a residual amount. We created three buckets. The third bucket moves those districts below the State average forward, as an equity adjustment. We have this roll up of 2 percent, we add to it the dollars based on enrollment of special education students, and the residual aims to push those districts up closer to the State average. This is based on the population of special education students.

SENATOR KIECKHEFER:

I think it is important to recognize it is not a simple multiplier. The district is not getting 1.53 times the amount of money they would otherwise get. In this year, WCSD did not get any more money than they did in the previous year based on a multiplier, right? We are using the money appropriated in addition to our base to buy up the amount per pupil for special education children in other districts.

MR. RAHMING:

You are correct.

SENATOR GOICOECHEA:

As I am looking at the 2 exhibits you submitted, it looks like you applied the 13 percent across the board to all districts.

MR. RAHMING:

You are correct.

SENATOR GOICOECHEA:

Once the cap is removed some of these will go up, and the ones below the cap will not go down; they are providing a service.

MR. JENSEN:

The third column on [Exhibit G](#), "Increase from FY 17 to FY 18 with Cap", is the increase that they would get based on the inflation. The far column, "Difference Between CAP vs No Cap", is the increase or decrease the districts would experience based on a no cap scenario and based on our October 1, 2016 count.

SENATOR GOICOECHEA:

It is zero, and this tells me that without a cap you are limited to what monies are available.

MR. JENSEN:

Yes, I used the money that was available. It would be great if there were an unlimited way to fund every student at a consistent multiplier.

SENATOR GOICOECHEA:

This is the amount available at the 13 percent cap. I see your concern. Once we remove the cap, there is only one direction to go and that is up. The districts at 8 percent, 11 percent or 12 percent are probably not going down anymore.

MR. JENSEN:

You are correct.

CHAIR WOODHOUSE:

Any other speakers in neutral position?

NICOLE ROURKE (Associate Superintendent, Community and Government Relations, Clark County School District):

The CCSD has a neutral position because this is a very complex formula and addresses very complex issues. We agree all children need to be served. We are not here to argue about identification. We believe that every student who needs the service should be provided this service. We do that currently.

You heard from Carson City School District that they provide money from their general fund. I am here to tell you that we put in over \$300 million each year from the general fund to our special education fund to make sure our students receive that service.

We know the numbers put before you show a cost to CCSD. In order to mitigate some of this, we would like to make a few recommendations.

One, there needs to be a formula for counting students the same way across all districts. Currently, there is not. The general formula has some calculations differences involving Pre-K and other populations that might skew the student counts.

Two, we may need to look at a formula that may provide a lower per-pupil count on students that are qualified over the 13 percent cap. I believe North Carolina provides a similar formula. We can get you more information if you would like.

Three, there needs to be an equitable statewide multiplier. Right now we are at 1.51; some districts are at 1.8 because of the MOE. We need to move towards the solid 2.0 weight for every district.

We need to keep the hold harmless clause at least for now.

JOHN VELLARDITA (Executive Director, Clark County Education Association):
I represent 18,000 teachers. We concur with CCSD's recommendations. It is about funding this piece of legislation if it were to go into effect. We have no problem removing caps. We believe that every child, regardless of a particular need or zip code, should be adequately funded to get the best education possible.

Available resources are the problem in Nevada. These conversations cannot be taken out of context. This is not a conversation where we pass something and find there is an adverse impact to one school district in order to enhance additional funding for another. This is "robbing Peter to pay Paul". When we have had these conversations about fully implementing a weighted funding formula, one of the concerns heard statewide, is there should not be any adverse impact for any school district. I think the same applies here. Former Senator Debbie Smith articulated this message very effectively. When talking about what is the appropriate funding it cannot be done by district; it has to be done in the context of the State as a whole. We concur with the school districts concerns and recommendations.

We would like to see more information from NDOE on any kind of adverse fiscal impact if the funding remained the same. Then we would like to see whether or not this Committee would entertain a discussion around additional funding to meet the needs if the cap were lifted for every student in every district regardless.

MR. CIESYNSKI:

I have three comments. First, we were appreciative that the NDOE listened to our concerns regarding inflation. This was an issue that affected all 17 school

districts and the charters as well. This was an issue from last Session that I believe is being addressed this Session. It is an equitable solution for all districts. There is an added cost to maintain these programs.

Second, in terms of the \$29.5 million that was distributed in FY 2016-2017, moving from per-unit funding to per-pupil funding, 12 school districts received no additional funding in this fiscal year. This was a huge concern for those districts. All districts make transfers into their special education fund. We are putting in \$32 million additional dollars for our districts. We are going to pay for those students, with or without, a cap.

As we discussed this bill, it was about what was right in terms of the correct identification of students. We are going to pay for them one way or the other.

Ms. DAVIS:

It sounded like district against district. This is about Nevada's children. We are not here to harm CCSD or any other district. We are here about a philosophy around the students in Nevada. My daughter is going to wear a cap on graduation day. Her cap is not going to say 13 percent. The cap is going to say, "we care about every child that walks in the door." We are going to meet the needs of children in spite of the dollar sign.

I understand the dollar sign, but I understand children too. I understand what it takes to get children to the finish line. It is unique and something that only happens in a classroom where you have a teacher with 30 children and have to figure it out. Today I understand the money.

We are not here to harm CCSD. We want to hold harmless as well. There was zero intent on harming any district. As superintendents, we had dialogue about this issue. I wanted to know where and why there is the 13 percent cap. As we continue this pathway, we talk about the graduation rate for Nevada students including all special education children, not just 13 percent of them, making it to the finish line with a cap.

SENATOR GOICOECHEA:

If we remove the cap, do you agree with others testimony that it could affect the hold harmless? I represent the rurals and some of them are really struggling.

MS. DAVIS:

We had the finance people work out the numbers because we did not want to harm others. We understand that it looks different in rural school districts. It would not be fair for them to receive less money.

MR. CIESYNSKI:

Yes, I agree with Superintendent Davis. We would not want to harm any school district in this process. The hold harmless is important. Everybody should start the fiscal year where they ended the prior fiscal year. We definitely want to make sure that is part of the bill or amended in the bill.

SENATOR FORD:

I appreciate the testimonies of Dr. Davis, Mr. Vellardita and Senator Goicoechea's comments. We are all here and know what needs to happen. The question is do we have the fortitude and the gumption to actually make it happen. What I hear is options. If we do not increase the pot and remove this cap, we run the risk of a lawsuit. As a lawyer, that is concerning to me. We need to remove the cap as a matter of fairness to all of our students in the State, not just in Washoe County, Clark County or in the rurals, but every student in the State. Having a cap, the State runs the risk of a lawsuit; this is problematic.

We need to remove the cap, and we need more money to hold the rurals harmless. The Legislators on this Committee and those in our Chamber have to be amenable to finding funds to appropriate education. If we do not, then we have failed our children even more. I hear what you are saying along with Mr. Vellardito and what others have said, and it is the only way we have going forward. The onus is on us as members of this Committee and the members of our Chambers to ensure we do exactly what we say, what we acknowledge, and what we have to do right now.

It is not just about special education. The threat of a lawsuit is not just in special education, it is whether we are adequately funding our education system. We definitely have to look at education overall in this whole process.

SYLVIA LAZOS (Policy Director, Educate Nevada Now):

I have provided written testimony supporting S.B. 49, ([Exhibit H](#)) and ([Exhibit I](#)). I just want to add one more thought. Senator Ford is 100 percent correct. We are looking very seriously at the legal issues behind our current education

funding. I want to add that our CFOs of 14 school districts have looked carefully at the amount of funding that is being provided under S.B. No. 508 of the 78th Legislative Session for special education. They estimate that we are falling short about \$330 million dollars.

What that means is that school districts have to take from general funds and transfer these monies to special education. When they do that, they are doing two things.

One, they are doing what they believe is legally necessary to fulfill their special education obligations, the total number of IEPs, and what that obligates them to provide in terms of services.

Two, they are taking from the general education budget and services to general education children, and transferring these monies to fund special education, which is legally mandated. What we are doing in effect is pitting parents against parents. This is divisive. We do not want to choose which children get full services and which children do not. I commend the Senator's comments that we have to seriously look at how we are funding public education and in particular, S.B. No. 508 of the 78th Legislative Session, and what it is doing in terms of special education and the impacts it is having on general education.

Chris Daly, Deputy Executive Director of Government Relations, on behalf of NSEA provided written testimony in support of S.B. 49 ([Exhibit J](#)).

CHAIR WOODHOUSE:

This concludes the hearing on S.B. 49. We will move to S.B. 89. I will relinquish the gavel over to Vice Chair Parks.

SENATE BILL 89: Creates the K-12 Public Education Stabilization Account.
(BDR 31-65)

VICE CHAIR PARKS:

We will open the hearing on S.B. 89. This bill was prefiled as going to the Senate Committee on Government Affairs on February 9, 2017. The Committee took no action and rereferred the bill to the Senate Committee on Finance. I will open the hearing on S.B. 89 with Senator Woodhouse.

SENATOR WOODHOUSE (Senatorial District No. 5):

I am here today to present S.B. 89 for your consideration. I have provided written testimony ([Exhibit K](#)). Former Speaker Barbara Buckley and Joyce Haldeman from the CCSD brought forth this very same bill in the 75th Legislative Session. Former Senator Debbie Smith and I pursued it in intervening Sessions.

We have heard many times about needing to safeguard K-12 funding from the ups and downs of the economy. During times of economic downturn, we need a mechanism to ensure that our schools are protected from deep funding cuts. I am proposing a K-12 Stabilization Account similar to a Rainy Day Fund used to stabilize the Nevada's General Fund. The K-12 Stabilization Account proposed in S.B. 89 will minimize cuts to education during economic downturns.

This bill only uses existing funding. Fifty percent of funds that reverted to the State Distributive School Account (DSA) at the end of odd-numbered years, would be transferred to the K-12 Stabilization Account. The other 50 percent would go to the Account for Programs for Innovation and Prevention of Remediation.

The Superintendent of Public Instruction would be authorized to request a transfer of funds from the Stabilization Account to the DSA when there is a shortfall in the DSA. This request would be made of the Legislature, when in session, or to the Interim Finance Committee during periods between sessions. Jeremy Aguero will go into detail on this measure.

JEREMY AGUERO (Principal, Applied Analysis):

I have prepared a few slides ([Exhibit L](#)). I will talk about reversions and rescissions and how they relate to the DSA. This goes directly to what Senator Woodhouse just talked about on how the revenues that are generated for the DSA are ultimately reverted back to the State's General Fund or augmented in one way or another.

Reversions are excess funds within the DSA at the end of each biennium that revert to the State's General Fund. This is when revenue comes in over expectations. This money then reverts to the State's General Fund. Reversions are theoretically offset by supplemental appropriations made from the State's General Fund when K-12 education funds are lower than anticipated. This is the opposite of a reversion. The idea is that the Legislature will provide

supplemental appropriations in order to keep K-12 education as best as it can whole.

Reversions flowing out of the DSA into the State's General Fund are in the far left column on page 3 of [Exhibit L](#) for each biennium from 1971 through 2013. We will have the information for the 2015-2017 biennium once the Legislative Appropriations Report is complete. The report will not be available until after this Legislative Session. About \$736 million reverted back to the State's General Fund during the period of 1979 through 2013.

The center column represents supplemental appropriations. These are monies coming from the State's General Fund and flowing into the DSA to shore up funding shortfalls. For the same time period as the reversions, you will see they total \$665 million. The most significant supplemental appropriation occurred during the economic downturn in 2007 through 2009.

On the far right is the cumulative balance of supplemental appropriations less reversions. The balance is about \$71 million out of the DSA since the 1979-1981 biennium. You can see how large this cumulative balance grew. These reversions historically were often used for one-shot appropriations. Which meant those monies were not available at the point in which the State needed them to shore up their education fund.

It is often put in the context of whether or not the State is able to make education whole relative to the amount of dollars that are reverted back to the State's General Fund.

There is a second concept, rescissions, which are equally if not of greater importance. These are times in which the State's guaranteed per-pupil funding is actually adjusted to make the State budget balance. This happens during extraordinary circumstances, although it has happened a number of times during this study period. A rescission is a reduction made to the guaranteed per-pupil funding to augment the State budget when revenues are lower than expected. These generally occurred during economic downturns, in 1979 to 1981, 1989 to 1991, 2005 to 2007 and in 2007 to 2009. These totaled \$183 million in funds that were reduced in terms of money that would have otherwise gone to education.

The chart on the right side of page 5, [Exhibit L](#), is the cumulative reductions in per-pupil guarantees for the same period. It is the same \$183 million. You get a sense of how that has grown and the cumulative impact during the study period presented.

On the next slide, page 6 of [Exhibit L](#), the reversions and the rescissions are added together. Combined they have resulted in a net loss of \$253 million for K-12 education programs since the 1979-1981 biennium. Reversions over supplemental appropriations plus rescissions have had a fiscal impact of \$253 million during this period.

The next slide, on page 7 of [Exhibit L](#) shows the trend over time showing the \$253 million in terms of its total. Relatively modest during the early years then up to \$500 million during the 2005 to 2007 period, then coming back after some significant supplemental appropriations in the 2007-2009 biennium, when we had both State and federal funds reallocated to education.

The final slide on page 8 of [Exhibit L](#) is sources and limitations on how this data was collected and which bills of the Legislature were used to calculate the rescission calculation. It includes both the 2008 and 2010 Special Sessions for your review.

VICE CHAIR PARKS:

Graphically we can see what has transpired over time.

SENATOR KIECKHEFER:

I have a question about the cumulative rescission chart. Are you carrying forward a decision made from one year and extrapolating it out into future years or future biennia? There is no guarantee that a future Legislature will keep that same decision in a subsequent biennium.

MR. AGUERO:

You are correct. This is why I presented it on two sides. The one on the left shows the annual totals, and the one on the right shows them carried forward. The Legislature would have the ability to make whatever decisions it ultimately needed.

SENATOR KIECKHEFER:

If you were to average it out over the period of 35 years for the rescissions and reversions, it would be about \$7 million per year.

MR. AGUERO:

I think that average would be correct relative to the total on the second to last slide. The second point I want to make, and I think the intent is, to make sure the money is ultimately available at the point it is needed. Had the funds been collected and available as opposed to having been spent in the 2005 to 2007 time period, I would respectfully submit that even though the average would be spread over the entire period, the State Legislature and the Governor would have had more flexibility in order to deal with education funding. In addition, they may have been able to mitigate more of the cuts that occurred had the \$500 million been available.

SENATOR KIECKHEFER:

I may disagree with you about the issue of flexibility. When money is in our General Fund, it is all fungible. If the Legislature wanted to put it all in K-12 education, they would have the authority to do so. Maintaining that flexibility is somewhat important for this body. Is the idea of the model as presented to capture the reversions to offset the rescissions?

MR. AGUERO:

I read it as being a little more simplistic. I will defer to Senator Woodhouse if I am misunderstanding. My belief would be that at the end of each biennium there tends to be a reversion that comes back into the State's General Fund. As set forth in S.B. 89, it would be available to the Legislature for education to come forward to petition its use when there was a shortfall in that funding.

In terms of the rescissions, I believe that is going to have to be a function of the Legislature to decide how it wants to treat the DSA and per-pupil funding on a go forward basis. I do not necessarily think this bill is going to address the rescission issue because it is essentially an adjustment to a guaranteed payment at a specific point in time.

This is more along the lines when education funds are coming in significantly less than what was projected and there is a pool of money that is set aside specifically to try to insulate education services from the fiscal impacts of an economic downturn. This would certainly provide an option other than a

rescission that may be necessary. I view it as just being a rainy day fund for education to provide another level of insulation for K-12 schools.

Ms. ROURKE:

I am representing Clark County School District. As explained to you by Senator Woodhouse and Mr. Aguero, this bill has a long history of attempts to come before this body for approval. We believe that an education rainy day fund is appropriate to mitigate times when the economy does not allow the State to meet the guarantee and stabilize funding to our classrooms. There have been years we had to look at staffing and other things to make deep cuts to our education budget. Clark County School District is in support of S.B. 89.

Ms. PIERCZYNSKI:

I am representing the Nevada Association of School Administrators and Nevada Association of School Superintendents. For several years we have included this in our iNVEST document. I know you are familiar with iNVEST but you may not have seen this year's edition. iNVEST and our superintendents support the stabilization fund.

Ms. ANDERSON:

On behalf of the WSCD, we are in support of S.B. 89. This rainy day fund has been included in the board platform that our Board of Trustees adopted on behalf of the Legislative Session.

Ms. FERRATO:

I am here in behalf of the Nevada Association of School Boards. We are in support of S.B. 89. As previously mentioned this is part of iNVEST and the boards within the State have all supported this historically. Our State has traditionally been a boom and bust State and during the downturns we have seen some serious cuts to education. We find this is vitally needed in the State.

MR. VELLARDITA:

I am representing Clark County Education Association. We are in support of S.B. 89. We agree with the concept of a fund in reserve in case there is a need. The money that was initially appropriated that would be in this fund was appropriated for education purposes. We still think it is in the context of its original intent.

This bill has a process. This money is not just given out. There is a process where if the Legislature were in Session there would be a request. It goes to the Superintendent of Public Instruction to request approval. There is also a process if the Legislature is not in Session to seek approval. There is a check and balance. It has to be justified for need. For those reasons we believe given the tremendous downturn in the economy in Nevada and the fact that this economy is contingent upon two main industries and is suspect to that kind of future downturn, preserving some kind of rainy day fund for public education is prudent and smart policy.

JENN BLACKHURST (Honoring Our Public Education):

I represent Honoring Our Public Education, which is a parent advocacy group. We represent almost 1,000 families in southern Nevada. I am here to support S.B. 89, which creates the stabilization account. The creation of this account shows respect for the taxpayers of our State and is a true commitment to public education in Nevada. As has been stated during the recent recession, education funding was cut. I personally sat in on trustee meetings where these cuts were explained and the budget was presented. Parents were asked for their opinions on what they thought should be cut. If we had a stabilization account at that time, I believe we would have survived the recession in much better shape. We feel that K-12 education is important enough that we take the necessary steps to build a safeguard against any unforeseen revenue shortfall.

Ms. LAZOS :

During the last downturn in the economy, drastic cuts in Clark County were made to the English language learners specialists. All of our English Language Learners Program (ELL) staff of over 100 of highly trained teachers were cut. It is my personal belief that when we did that we set back ELL education and ELL students tremendously. Having a rainy day fund in place would avoid these cuts in Clark County and allow us to move forward in a more rational and planned way.

VICE CHAIR PARKS:

Please state your support for S.B. 89.

Ms. LAZOS:

I support S.B. 89 for Educate Nevada Now.

Chris Daly, Deputy Executive Director of Government Relations, NSEA, provided written testimony in support of S.B. 89 ([Exhibit M](#)).

SENATOR KIECKHEFER:

In S.B. 89, it states that a shortfall exists in the DSA only when the local funds that are used in calculating the basic support are at least 2 percent less of what was budgeted. Is there a reason we are not including State funds in the language? State funds are also a big portion of what we include in the DSA. We can only access these funds if there is a shortfall in local revenue but not State revenue?

In section 3, subsection 1, lines 37 through 42, states that "For the purposes of sections 4 and 5 of this act, a shortfall exists in the State Distributive School Account if the projections of local funds available pursuant to NRS 387.163 are at least 2 percent less than what was anticipated when the Legislature determined the amount of basic support for the biennium."

SENATOR WOODHOUSE:

Senator Kieckhefer that is a good question and as we process this bill we will need to look at it as well as addressing the Account for Programs for Innovation and Prevention of Remediation. There may be some changes in that based on the Governor's recommendation. There is work that needs to be done. We will find the answer to your question.

SENATOR KIECKHEFER:

It seems to me that funds should be available and it should not matter where the shortfall is coming from.

SENATOR WOODHOUSE:

That is correct.

VICE CHAIR PARKS:

Is there anyone in opposition to S.B. 89? Seeing none. Is there anyone who would like to speak who takes a neutral position?

MR. RAHMING:

We are in the neutral position and for us it is to understand the mechanics of the bill and watch it as it proceeds through the Session. What was touched upon through the *Executive Budget*, there is a repurposing. Moreover, there is a

bill draft request that has not been submitted, but I believe it will be submitted sometime this week. It repurposes the Account for Programs for Innovation and the Prevention of Remediation to the Special Education Contingency Fund, Budget Account (B/A) 101-2615. So through our presentation on January 31, 2017, most of the funds, ZOOM, Victory, and New Teacher Incentives, were moved out of this account and moved into B/A 101-2699, Other Education Programs. This account again is slated to be repurposed and renamed.

EDUCATION

K-12 EDUCATION

Contingency Account for Special Ed Services — Budget Page K-12
EDUCATION-25 (Volume I)
Budget Account 101-2615

Other State Education Programs — Budget Page K-12 EDUCATION-22
(Volume I)
Budget Account 101-2699

SENATOR WOODHOUSE:

I will make the commitment to you that the issues that were brought forth today, particularly from the NDOE and Senator Kieckhefer, we will work on a better piece of legislation. When the bill was prefiled, I did not know about the change in the Account for Programs for Innovation and Prevention of Remediation. Our intent is what Mr. Aguero said, "it is a simple mechanism to protect our schools and most importantly our children in times of economic downturn in our State".

VICE CHAIR PARKS:

We will close the hearing on S.B. 89. I turn the gavel back to Chair Woodhouse.

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CHAIR WOODHOUSE:

Before we do our last piece of business today, are there any comments to share? Seeing none, we will go to public comment. Seeing none, this meeting is adjourned at 9:38 a.m.

RESPECTFULLY SUBMITTED:

Mary Sullivan,
Committee Secretary

APPROVED BY:

Senator Joyce Woodhouse,

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 3	C	1	Jim Barbee / Department of Agriculture	Testimony in Support
S.B. 3	D	2	Jim Barbee / Department of Agriculture	Breakfast After the Bell
S.B. 49	E	2	Washoe County School District	Presentation in Support
S.B. 49	F	1	Natha Anderson / WEA / NSEA	Testimony in Support
S.B. 49	G	1	Will Jensen / NDOE	Final Special Education Allocation Spreadsheet
S.B. 49	H	1	Sylvia Lazos / Educate Nevada Now	Testimony in Support
S.B. 49	I	1	Sylvia Lazos / Educate Nevada Now	School Districts Budgeted Transfers to Special Education Spreadsheet
S.B. 49	J	1	Chris Daly / NSEA	Testimony in Support
S.B. 89	K	3	Senator Woodhouse	Testimony in Support K-12 Stabilization Account
S.B. 89	L	8	Jeremy Aguero / Applied Analysis	Education Funding Review and Analysis of Reversions and Rescissions 1979 to 2015
S.B. 89	M	1	Chris Daly / NSEA	Testimony in Support