MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Eightieth Session
April 2, 2019

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 6:49 p.m. on Tuesday, April 2, 2019, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator James Ohrenschall
Senator Ben Kieckhefer
Senator Pete Goicoechea

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Steven Jamieson, Committee Secretary

OTHERS PRESENT:

Brad Keating, Clark County School District
Jason Goudie, Chief Financial Officer, Clark County School District
Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute
Mary Pierczynski, Nevada Association of School Superintendents
Bryan Wachter, Retail Association of Nevada; Las Vegas Metro Chamber of Commerce
Lindsay Anderson, Washoe County School District
Jessica Ferrato, Nevada Association of School Boards
Mary Walker, Carson City; Douglas County; Lyon County; Storey County
Maureen Schafer, Executive Director, Council for a Better Nevada
Glenn Christenson, Chairman Emeritus, Las Vegas Global Economic Alliance
Jonas Peterson, Chief Executive Officer, Las Vegas Global Economic Alliance

John Shea, HOPE for Nevada
Edgar Patino, Latin Chamber of Commerce
Chris Daly, Nevada State Education Association
Michelle Kim, Clark County Education Association
Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO
Marlene Lockard, Service Employees International Union Local 1107; Las Vegas Police Protective Association Citizen Employees
Matt Walker, Clark County Association of School Administrators and Professional-Technical Employees
Tom Dunn, Professional Fire Fighters of Nevada
Mike Ramirez, Las Vegas Police Protective Association
Rick McCann, Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition
Drake Ridge, Las Vegas City Employees Association
Mike Weyand, Secretary, Las Vegas Peace Officers Association
Ruben Murillo, President, Nevada State Education Association
Kent Ervin, Nevada Faculty Alliance
Will Adler, Las Vegas City Employees Association
Les Lee Shell, Clark County
Dagny Stapleton, Nevada Association of Counties
Jamie Rodriguez, Washoe County
Warren Hardy, Nevada League of Cities and Municipalities
Tyre Gray, Las Vegas Metro Chamber of Commerce
Marcos Lopez, Field Director, Americans for Prosperity
Adrian Duran, Americans for Prosperity
Wiz Rouzard, Community Engagement Director, Americans for Prosperity
Bruce Snyder, Commissioner, Local Government Employee-Management Relations Board

CHAIR PARKS:
I will open the hearing on Senate Bill (S.B.) 26.

SENATE BILL 26: Revises provisions governing school financial administration. (BDR 31-398)

BRAD KEATING (Clark County School District):
Senate Bill 26 is one of the two bills that the Clark County School District (CCSD) brought forward this Session.

JASON GOUDIE (Chief Financial Officer, Clark County School District):
My remarks will be accompanied by a visual presentation (Exhibit C).

When I became Chief Financial Officer of the CCSD in 2017, the unassigned ending fund balance (EFB) was approximately $6.5 million on a budget of $2.4 billion. This low EFB is about 0.3 percent of our revenues and equates to about 1 day of operations in reserve. In 2018, we increased the EFB amount to about $19 million, almost 3 days of reserves. We are budgeted to take the EFB to approximately $41 million or 6 days of expenditures.

The Department of Taxation, through the Committee on Local Government Finance, put the CCSD on fiscal watch primarily due to the low EFB. Having an adequate EFB allows the District to utilize these reserves to cover unforeseen expenditures or revenue shortfalls, rather than cut expenditures from the schools, as has been done in the past. An adequate reserve will help us provide more certainty around finances for the schools. An adequate reserve will allow the schools to adequately plan and spend their funds to best support education and the students, rather than try and hold on to money in case of another budget cut. Senate Bill 26 will also help our employees by providing a source of funding to cover shortfalls, rather than the District being required to make reductions to the workforce.

I understand the challenge of increasing this reserve during a time in which we are struggling for funding. However, establishing an adequate reserve is even more critical during these times of uncertainty. This bill will help improve the financial stability of the District, which is good for the State, the taxpayers, our employees and the students. The students need the best education we can provide.

Our proposal is, essentially, to take what is enacted in the *Nevada Administrative Code* (NAC) and transfer it to the *Nevada Revised Statutes* (NRS). There are slight revisions to the language. The bill removes the term "budgeted" from the "budgeted ending fund balance" language in NAC 354.660, to ensure the fund balance is covered.

This will protect the EFB of school districts up to 8.3 percent. In the Seventy-eighth Legislative Session, the concept was kept out of NRS because the language was already in NAC. Recent arbitration decisions have brought forth the question of whether NAC holds the same weight as NRS. Adding the NAC language into NRS would help ensure that our EFB is legally protected and that we can increase the EFB over time to provide the reserves we need to adequately secure the financial stability of the District.

Page 4, Exhibit C, shows the percentage of revenues of the unassigned EFB reserves over the past 10 years. The EFB was at 1 percent, around $20 million, for several years. The EFB started to increase between 2014 and 2016, but it plummeted to 0.3 percent in 2017, or about $6.5 million. We have slowly started to grow the EFB in the years since 2017.

Page 5, Exhibit C, puts the information from page 4 into perspective. Page 5 shows the number of operating days provided for in the EFB. Over the past ten years, we have been working with less than four days of operating expenses in reserves. Adequate reserves are a critical component of ensuring financial stability.

SENATOR KIECKHEFER:
You referenced an arbitrator's decision. Could you tell us more about what happened in that instance where the arbitrator evidently disregarded NAC?

MR. GOUDIE:
The last few arbitrator decisions have not blatantly disregarded NAC, but there are discussions in the arbitrator's decisions which our legal team deemed questionable under NAC. The legal team questioned how the arbitrator referenced use or availability of the EFB as a source of the decision. From a legal perspective, we utilized the second decision to pursue the NAC question. A State judge upheld the arbitration decision as it related to whether the decision complied with NAC.

SENATOR KIECKHEFER:
What was the arbitrator's decision? Did the arbitrator decide that he or she could look at your EFB, below a certain percentage, as ability to pay?

MR. GOUDIE:
The arbitrator's decision was ambiguous and did not directly state that the arbitrator was taking from the EFB. However, the reference of the EFB as a source within the overall budget was mentioned a number of times.

CHAIR PARKS:
Could you provide more background as to 2017 when the EFB was 0.3 percent? What contributed to that low number? Was it due to some major factor in particular?

MR. GOUDIE:
Several factors contributed to that period. During the 2016-2017 school year, there was an agreement between the Clark County Education Association (CCEA), which represents our licensed personnel. There was a large increase in the compensation base for the CCEA group. Additionally, there was an arbitration with the administrators union in which we did not prevail. With these decisions, the District incurred unbudgeted costs. There were also some revenue shortfalls primarily related to full-day kindergarten funding. In the following year, the money came in through some reconciliation with the State. At the time, that created a deficit.

CHAIR PARKS:
You indicate this is the unassigned EFB. Does the money come from the District's general fund, or does it include other funds as well?

MR. GOUDIE:
It includes the general operating fund, which includes our general fund and special education fund.

SENATOR KIECKHEFER:
These balances are very low. The State generally requires agencies to maintain a 60-day reserve balance for cash flow purposes. Does the low balance affect the District's credit rating?

MR. GOUDIE:
Yes, it does impact our credit rating. One of the primary factors the credit rating agencies look at is our EFB. We issue bonds twice a year. When we invite the raters in to discuss the bonds, they express concern regarding the EFB. Last year, we were downgraded with one of our rating agencies. After the

downgrade, we were able to budget to increase the EFB and sustain the credit rating to avoid a further downgrade. However, it is certainly a risk.

DANIEL HONCHARIW (Senior Policy Analyst, Nevada Policy Research Institute):
The Nevada Policy Research Institute supports S.B. 26 because it represents a step in the right direction. However, we do not believe the bill goes far enough. A better policy would exempt at least 25 percent of the EFB from consideration during the collective bargaining process. I have submitted my written remarks in favor of S.B. 26 (Exhibit D).

CHAIR PARKS:
General accounting standards dictate a reserve of 8.3 percent which equates to 30 days of operating budget monies. Are you saying there should be a minimum of three months in reserve?

MR. HONCHARIW:
Most local governments rely on the 25 percent standard. I think that would be appropriate for school districts.

MARY PIERCZYNSKI (Nevada Association of School Superintendents):
This has been one of the major concerns and goals that the Nevada Association of School Superintendents (NASS) has raised in our iNVest document. Adequate reserves are important for students and for our employees. This policy is already in NAC, S.B. 26 just puts it in NRS. The credit rating for bonds is important. This policy will help with the credit rating.

BRYAN WACHTER (Retail Association of Nevada; Las Vegas Metro Chamber of Commerce):
It is critical that the school districts be able to start rebuilding in a more fiscally sound and responsible way. A lot of that has to do with the ability to plan for both regular and unforeseen future expenses. We have seen a direct result in a downgrade of the CCSD's bond rating.

We need to provide our school districts with this protection so the 2017 CCSD situation does not reoccur. Due to arbitration decisions and special education funding, schools and school organization teams had to go back and cut from their strategic budgets because the CCSD did not have the protections or the EFB to absorb the costs. Those dollars were directly lost in the classroom. We lost new positions, new technology and new materials.

Funds subject to collective bargaining make up 88 percent of the District's budget. Only 12 percent of the $2.4 billion budget is in reserve for everything else. This includes lights, field trips, books, desks and such. This is an important protection to prevent more from being eroded and placed in the 88 percent. We want the school districts to plan and provide the materials the students need to succeed.

LINDSAY ANDERSON (Washoe County School District):
There is no upside to the management for hoarding or withholding money. We are simply trying to meet accounting standards. The Government Finance Officers Association recommends a 10 percent EFB as the standard for local governments. If a school district or local government goes below a 4 percent EFB, the entity is often called before the Committee on Local Government Finance to explain what is happening and make sure it is on the right trajectory. The Committee confirms that there does not need to be receivership or some other intervention on behalf of the school district. Some districts are in that position.

In 2017, Moody's Investors Service downgraded the Washoe County School District (WCSD) bond rating from an AA to an A. The primary reason was our declining EFB. We have made efforts to bring the EFB back up. Our bond rating has not changed since we increased the EFB, but it continues to cost us money.

The WCSD is behind in building schools. Any dollar we can put toward building schools is important to us so we can deliver on the promise we made to voters in 2016.

CHAIR PARKS:
Does the WCSD budget include projected pay raises for employees?

MS. ANDERSON:
Each year is different, depending on where we are in our employee negotiations. For example, this year we are building our budget. There are some increasing costs built into the budget but because we are approaching negotiations with all five of our collective bargaining units, it is a lot of guessing. There are some increases included as we project forward. Whether that ends up happening is always a guess.

SENATOR OHRENSCHALL:
The CCSD testified that an arbitrator ruled NAC 354.660 did not exclude the EFB from determination in the ability to pay. Has that occurred with the WCSD too?

MS. ANDERSON:
The last arbitration decision I am aware of was in 2011. I am not sure if it specifically referenced the EFB but because we were already so far through the year, the arbitrator decided we had the ability to pay. As a result, our EFB suffered. I cannot say if that decision was because of our EFB.

JESSICA FERRATO (Nevada Association of School Boards):
The Nevada Association of School Boards supports the bill. I echo the comments made previously by the CCSD, the WCSD and the NASS. This bill is imperative to the school districts. Every district in the State has signed off on the iNVest document which Ms. Pierczynski mentioned. The districts support the ability to maintain a stronger EFB. There is a good case for other government bodies to maintain a higher balance than what is asked in this bill.

MARY WALKER:
I am a 20-year member of the Committee on Local Government Finance, but I speak only for myself. I was one of the members who voted to put the CCSD under fiscal watch. The sole reason for the fiscal watch notice was the 0.2 percent fund balance the District had at that time, representing only one day of operating expenses in cash reserve. That was concerning.

The CCSD is still on fiscal watch. The law basically says if you have a fund balance less than 4 percent, you have to explain why it is so low. Four percent equates to only two weeks of reserves.

The fund balance saves money by allowing an entity to bond at a lower cost. The EFB is also important because we always have recessions. We had a recession from 1981 to 1982, as well as recessions in 1991 and 2001. Starting in 2008, we suffered through the Great Recession for 5 years. We will have more recessions. When a recession hits, a fund balance will allow an entity to use the fund balance instead of laying off employees. It is good public policy. It is good fiscal policy.

Local governments, other than school districts, are allowed a 25 percent fund balance. Senate Bill 111 considers changing the local government allowance to 2 months' worth of reserves or a 16.7 percent EFB.

SENATE BILL 111: Revises provisions governing collective bargaining by local government employers. (BDR 31-651)

Local governments have a higher allowance than the school districts that have some guarantee from the State because of per pupil funding. If a recession hits, the State takes the immediate hit most of the time. For that purpose, it would be okay if the school districts had an 8.3 percent fund balance, which is in NAC. Other local governments, such as cities and counties, are dependent on the Consolidated Tax, which is primarily sales tax. The revenue structure for cities, counties and other local governments is much more volatile. Schools have a greater guarantee; thus, 8.3 percent is appropriate for school districts and a higher amount is needed for other local governments.

SENATOR KIECKHEFER:
As someone who spends most of his time worrying about maintaining a balanced State budget and appropriating State General Fund dollars, I would rather see the districts at the 60-day EFB requirement.

MAUREEN SCHAFER (Executive Director, Council for a Better Nevada):
Our organization supports many issues impacting quality of life for all Nevadans. The issue of educational progress and excellence weighs greatly on our Council. Establishing and maintaining a reasonable amount of an undesignated fund balance within operating funds is one of many important fiscal considerations for local school districts. A reasonable level of unreserved, unappropriated fund balance provides a needed cushion for unforeseen expenditures or revenue shortfalls and seeks to ensure that adequate cash flow is available to meet the cost of operations within a planned budget.

As Mr. Goudie said, this is the school districts' only savings account. Over the past decade, the CCSD savings account has carried as little as seven days of funds to operate the District during an emergency. At one point, this fund was as low as one day of operating capacity. In recent years, the members of the Legislature have worked to modernize and move education forward in the State. Today, S.B. 26 is an effort to improve the quality of school finance through increased budget stabilization.

GLENN CHRISTENSON (Chairman Emeritus, Las Vegas Global Economic Alliance):
I served as Chair of former Governor Brian Sandoval's Spending and Government Efficiency Commission for the System of Public K-12 Education in Nevada. After the passage of A.B. No. 469 of the 79th Session, I served as Chair of the Community Implementation Council. My 47-year business career includes serving as a partner with the accounting firm now known as Deloitte & Touche LLP and as Chief Financial Officer of a company now known as Red Rock Resorts.

In all that time of service, I have yet to see a successful organization that does not have a healthy reserve for unforeseen future challenges to that organization. The administrative changes called for in this bill take language from NAC and insert the language into NRS. This modest change will help protect school districts from collective bargaining arbitration which has contributed to dangerously low unrestricted reserves in the CCSD.

I support increasing teacher compensation but only within the context of the district's financial sustainability and ability to pay. The current practice is not financially prudent. Senate Bill 26 would provide for a better financial structure for the school districts and protection for taxpayers.

JONAS PETERSON (Chief Executive Officer, Las Vegas Global Economic Alliance):
Our organization supports S.B. 26. Building up an EFB or a reserve fund is a basic management strategy to reduce risk and help plan for economic downturns. Unfortunately, during recent years the CCSD has gone as low as having less than one day of operating expenses in the EFB. We simply need to do better. Senate Bill 26 will help the CCSD better plan for the future, achieve a higher bond rating and become more financially stable.

JOHN SHEA (HOPE for Nevada):
HOPE for Nevada supports this legislation. Protecting the EFB up to 8.3 percent is long overdue and in keeping with the practice of other Nevada school districts. We are also grateful for the clarity this will provide in the event of future arbitration. As a Nevada business owner, I would not responsibly operate my business with little or no reserve monies, or EFB. Our municipalities do not operate this way. Our school districts do, or should, not operate this way. School districts should have necessary resources and the protection of a reasonable EFB to operate successfully for our children.

EDGAR PATINO (Latin Chamber of Commerce):
Supporting education in our school districts has always been important to the Chamber. A successful school district is good business and critical to the success of southern Nevada and our entire State. The Latin Chamber of Commerce supports S.B. 26. The school district's EFB is critical for operating expenses, which are imperative for the day-to-day function of our schools. Our school districts need to have the ability to manage their finances effectively.

CHRIS DALY (Nevada State Education Association):
The Nevada State Education Association opposes S.B. 26. We would love to see financially healthy school districts, but the sad truth is that the districts are not financially healthy. Nevada's schools are chronically underfunded. According to *Education Week's Quality Counts*, Nevada ranks forty-seventh in the Country in per pupil funding, last in class size and last in overall education quality. These low rankings do not come because of a school district's potentially low EFB.

The Senate Education Committee hears a great deal about the needs in our classrooms—the need to do more for at-risk students, the need to work to reduce student-to-teacher ratios and the need to attract and retain educators. In Nevada, the salary gap between teachers and other occupations with similar educational and other requirements is higher than the national average. The salary gap is $15,000 per teacher. The answer to these vexing financial problems lies not in S.B. 26 but in adequate and sufficient funding for Nevada schools. The Senate Finance and Assembly Ways and Means Committees need to take on this issue.

MICHELLE KIM (Clark County Education Association):
The Clark County Education Association strongly opposes S.B. 26. This bill would allow the CCSD to restrict the EFB of 8.3 percent from collective bargaining. By law, this bill would exclude that money from consideration by an arbitrator who is determining the District's ability to pay compensation and benefits for collective bargaining purposes.

Since 2011, 2 percent rollups have been included in the Distributive School Account (DSA) to pay for salary increases, which are done by steps and columns, and increases to health insurance. However, this rollup money has never gone to educators. The District recently passed a budget that includes zero dollars for educator salary increases or increases in benefits. With no new revenue to fund education, if the Legislature were to pass S.B. 26, there would

be no ability for educators to get any increases in salary. Furthermore, there would be no good-faith collective bargaining.

We appreciate the District's attempt to build a reserve for the future. However, while human capital makes up the largest portion of the District's budget, no new revenue has been planned and nothing has been budgeted for educator salary increases or other benefits. This bill will result in nothing more than a discretionary fund at a time when the District already has trust issues in the community with regard to fiscal management and accountability.

In part, this issue has driven the CCEA to pursue legislation or assurances from Legislators that money allocated for salary increases such as rollups will, in fact, get to the educators. Senate Bill 26 would direct all rollup allocations right into the CCSD's ending fund balance, preventing those funds from being used for what the members of the Legislature approved.

This bill would encourage and allow the CCSD to not budget for educator salary increases or increased healthcare costs. We believe CCSD is proposing this bill because it has failed to bargain in good faith and lost multiple arbitrations. The District has lost arbitrations not just with the CCEA but also with the administrator's union. Both arbitrators found that the District had the ability to pay. The arbitrators found that the CCSD had the ability to pay, and the award did not use any money from the EFB.

This bill sets the amount of money protected from collective bargaining so high that there would be no real collective bargaining because a district could always say they have no money. The District is now attempting, through S.B. 26, to create a protective wall against 8.3 percent of its budget. The District is doing this to ensure it does not have to pay educator salary increases.

SENATOR KIECKHEFER:
Has the District not been honoring the contractual obligations for people who move up the steps? If you move up from Year 2 to Year 3, do you see a flat salary?

MS. KIM:
Yes. It has to be negotiated, and if it is not budgeted … .

SENATOR KIECKHEFER:
But it is in the contract, right?

MS. KIM:
Yes, but with the loss of the evergreen clause, you have to negotiate the increase each year. However, every time we go to the table to negotiate, there is no money. They did not budget for educator salaries, so if you were to wall off this percentage as well, all of that money would be hidden. The Clark County School District would appear to have no money, and we could not prove that it had the money.

SENATOR KIECKHEFER:
I have concerns with how we allocate money to the school districts, but that is a separate issue.

The contract with the CCEA goes through 2021, correct? Teachers in Year 1 will move into Year 2 next year, but their salaries will be flat, they will not receive their movement up the ladder?

MS. KIM:
Exactly.

CHAIR PARKS:
You implied that the CCSD was able to move money away from its operating budget and general fund that allowed it to say that it does not have funds available. Can you explain that?

MS. KIM:
The CCSD budgets its money outward for next year. The District did not budget for educator salary increases, but it put all the money into things such as supplies. The EFB is whatever is left plus whatever is not spent, but you do not know what is not spent. The EFB just has unassigned money.

CHAIR PARKS:
But is it an identifiable amount of funds?

MS. KIM:
Yes.

CHAIR PARKS:
You do not get six months down the road and see that the reserves are … .

MS. KIM:
Unidentifiable … .

CHAIR PARKS:
Super high … .

MS. KIM:
In the 2017 arbitration Mr. Goudie mentioned, the arbitrator was clear in saying there was an ability to pay without having to go into the EFB. When the CCEA won the arbitration, the CCSD appealed the case in the attempt to get a court decision saying that the arbitrator had violated NAC. The judge disagreed with the District and did not find that the arbitrator violated NAC.

CHAIR PARKS:
The court found there was an ability to pay.

MS. KIM:
Yes.

STEPHEN AUGSPURGER (Executive Director, Clark County Association of School Administrators and Professional-Technical Employees):
We strongly oppose S.B. 26, for a number of reasons. First, 8.3 percent sounds like a small amount, but 8.3 percent of a $2.4 billion general fund budget will be $200 million. Mr. Goudie said there was a $6.5 million beginning fund balance this year. This bill is not reasonable, given the times we are in.

Second, every year, the Legislature approves rollup money. That is typically 2 percent which goes to normal movement on the salary schedule. But since at least 2015, there has been no normal movement on the salary schedule, even though those schedules have all been negotiated. That is in contrast to previous years when employees would have a reasonable assurance of an increase. If you were on the first step, at the beginning of the next contract year you would go to the second step, and that money would come from the rollup fund from the Legislature.

Also included in that rollup was State health insurance money to support staff employees who purchased their insurance with the District plan. That money would also go to the Teachers Health Trust and the administrator health trust to provide that benefit to the members of each. Since 2008, we have had a 9 percent increase in the negotiated contribution because the District has primarily withheld that money. In the same period, we have had over a 44 percent increase in health benefits.

Somehow, we have to find a balance. The District needs a reasonable EFB so it can meet unanticipated expenses. Employees should be given an assurance that if a salary schedule is negotiated, it will be honored. I am not talking about a cost-of-living increase, I am simply talking about normal movement on the schedule. Normal increases have not been honored for years. Employee health benefit contributions have stayed primarily flat while we have had an ever-escalating employee premium.

We have to find a balance. What is the right balance for the District to pay? What is the right balance for the employee to pay? We are not expecting the District to pay everything. However, we would expect that money the Legislature allocates — thinking that it is going to movement on the salary schedule and employee health benefits — gets used for its intended purpose. Right now, it gets buried into a $2.4 billion general fund budget and used for things that have nothing to do with employee movement on the schedule or offsetting the cost of health insurance.

Our organization has been in existence since 1971. In 2016, we declared an impasse for the first time in more than 40 years. We had always been able to reach agreement with the District for reasonable salary increases. Sometimes, we agreed that, to be reasonable, there was no increase. The first time we ever had an arbitration was in 2017.

We did an historical analysis of the CCSD, looking at the relationship between EFB and bond rating. We found no relationship between the two. In some of the years when the District had the best bond rating, the District had the lowest EFB. The converse was also true.

We have heard tonight about issues with trust and community confidence, and there are certainly issues with employee confidence in the District's ability to manage its money. I have confidence in Mr. Goudie's ability to manage the

money, but when those two arbitrations occurred in 2017, the District thought it had an EFB in August of 1.75 percent. However, by mid- to late September, the District realized the EFB was 0.2 percent. On a $2.4 billion budget, that is a lot of money to not know where it went. The District has a long way to go in terms of having community confidence in its ability to manage that money. The District also has a long way to go in working with employee groups to make sure that a burden is equally shared.

SENATOR KIECKHEFER:
The bill applies equally to all school districts. Are other districts having the same issues as the CCSD for the payment schedule to be fulfilled as negotiated?

MR. AUGSPURGER:
I would say yes because I listened to the superintendents' presentation of iNVest a few weeks ago. One of the superintendents who was presenting indicated that rollup money was not even sufficient to cover normal movement on the salary schedule.

SENATOR KIECKHEFER:
That is fair. Are they still meeting their obligations to their employees?

MR. AUGSPURGER:
Given his reply, I would say they are not; they have a shortfall. I cannot say that for sure.

SENATOR KIECKHEFER:
I will check with them.

RUSTY MCALLISTER (Executive Secretary-Treasurer, Nevada State AFL-CIO):
I originally thought I might be neutral on this bill. After hearing some of the testimony from CCSD representatives and reviewing some of the things said, I am opposed to S.B. 26.

In 2015, S.B. No. 168 of the 78th Session was passed, changing the EFB reserved to local governments in the collective bargaining process. In section 2, subsection 3 of S.B. No. 168 of the 78th Session, "For any local government other than a school district, for the purposes of chapter 288 of NRS, a budgeted ending fund balance of not more than 25 percent" became exempt from negotiation for the purpose of collective bargaining. The 2015 bill does not give

a specific EFB total for a school district because, for local governments and the school district, that had always been 8.3 percent. Under NAC, it remained 8.3 percent for school districts.

There is one problem with the District's statement that this bill is simply going to codify NAC into NRS by putting the 8.3 percent in the statute. The language in NAC says, "a budgeted" 8.3 percent balance. The language the CCSD wants to put into NRS takes out "budgeted." Budgeted is the key word. As employee organizations, we have always felt it was necessary to have the "budgeted" language in the statute.

It is important for local governments to have a cushion. They should budget for that cushion. They do that at the beginning of the year when they submit their budgets to the Legislature. If you take out the "budgeted" language, they just put money away; then at the end of the year they say, "well, this is what we have left over." Taking out "budgeted" sets a number and says, "you can't touch anything inside that," taking all that money off the table. Budgeted is the key word.

If they want a cushion, they can budget a cushion. They can budget a reserve. They have the ability to do that. They choose not to. Not all local governments, but some. They insinuate that they are just putting NAC into statute, but it is not the same. Taking out that word changes the whole level of interpretation of what is available. It takes everything off the table and allows them to tuck money away repeatedly. They can put it in supplies or anything else. We have found it in vacant positions. They budget for vacant positions; at the end of the year, they pull it back into the budget and spend it.

If they want to put "budgeted" back in, it will actually mirror NAC. That would be more appropriate.

MARLENE LOCKARD (Service Employees International Union Local 1107):
The Service Employees International Union (SEIU) Local 1107 stands in solidarity with the opposition to this bill.

CHAIR PARKS:
I will close the hearing on S.B. 26 and open the hearing on S.B. 111.

MR. MCALLISTER:
When the change in the EFB language was being done in the Seventy-eighth Session, we negotiated with the sponsor of the bill. It was our belief that the change to 25 percent was too much, and it had to be a budgeted EFB. No local government entity is typically going to budget a 25 percent EFB because it does not want to tie up its money. The EFB allowance used to be 8.3 percent. We thought we had come to an agreement to allow a 16.67 percent EFB, but it fell through. It did not get placed as an amendment into a bill on the last day of the Session; therefore, it never made it to the Governor's desk as 16.67 percent.

While 8.3 percent is considered 1 month of expenses in reserve, 16.67 percent is considered 2 months of reserve. The national Government Finance Officers Association recommends that, regardless of size, local governments should have at least two months in reserves. We looked at the accounting standards when, in 2015 and again in 2017, we passed this same legislation, and it was vetoed by the Governor. We did not try to go back to the 8.3 percent. We tried to do two months of reserves, a standard recognized as responsible across the Country. We want to move the EFB for local governments back to 16.67 percent of the EFB.

CHAIR PARKS:
Having been involved in the discussion, this was an agreed-upon amount. A previous Legislative Session cannot speak for a current Session, but this was well-negotiated among all parties. This was an agreed-upon amount that somehow did not make it across the Governor's desk.

MR. MCALLISTER:
That is correct. It was negotiated back-and-forth for quite some time. Ultimately, in the hectic hours of the final day and night, I went to the Minority Leader and asked about getting it amended into a bill. She assured me that it would get done, and it did not get done. The only bill the Governor had to consider was the one with the 25 percent EFB.

CHAIR PARKS:
I spent the better part of two decades, from the 1970s until the late 1990s, as not only a budget director but also a chief financial officer for a governmental entity. The documents we always filed with the Local Government Section of the Department of Taxation mandated, least as far as the general fund goes, a

minimum of 4 percent and range up to 8.3 percent, or 14 to 30 days of operating expenses in reserve. This bill would require two months in reserve, as opposed to the three-months reserve currently in statute. Some of the standard accounting practices stay within the 8.3 percent.

MR. AUGSPURGER:
We support this bill. We have submitted an amendment (Exhibit E). I will review that amendment which adds the following language to section 1.

> For a school district, for the purposes of calculating an ending fund balance, funds appropriated by the state for the purpose of employee benefit contributions or "rollups" for salary schedule progression shall be subject to negotiations with an employee organization and must be used by a fact finder or arbitrator in determining the financial ability of the school district to pay compensation or monetary benefits.

This amendment speaks to the idea that in every Legislative Session the Legislature has provided Nevada school districts with a 2 percent rollup. Every Legislative Session, additional health insurance money has been available for employee groups. That money flows to the school districts. In Clark County, the money flows to the CCSD. That money is not used for the purpose for which it is intended. When it comes to the District, the money is embedded in the DSA. The District incorporates the DSA into its general fund budget, and the rollup money is used for other expenses. Those expenses are determined by the districts. This amendment will ensure the intent of the Legislature in providing that money for normal movement on the salary schedule and increasing the health benefit to the employees.

SENATOR KIECKHEFER:
The 2 percent rollup costs account for more than just step-and-ladder increases. The rollup is supposed to account for inflation, medical inflation and all sorts of different things. Do you propose the full 2 percent be included in this allocation or just the portion supposed to be dedicated to those step-and-ladder increases?

MR. AUGSPURGER:
We would want the allocation to include anything for normal movement on the salary schedule, such as longevity, step increases and column increases. We

also want the allocation to include whatever employee health benefit money is given by the Legislature.

This year, my understanding is the fund includes about $272 million with a 3.1 percent increase in the first year of the biennium and a 3.7 percent increase in the second. If Clark County receives 70 or 75 percent of the funding, that allocation would come to Clark and then be available for discussion in negotiation or for an arbitrator's decision to increase the employee contribution for health benefits. We just want the money to be used as intended.

SENATOR KIECKHEFER:
You want us to specifically peel out the piece that is employee-related versus all other types of inflation?

MR. AUGSPURGER:
I do not know how that fund is organized. You probably know much more about it than myself. I think there was originally an intent to fund the normal movement on salary schedules. With inflation and time, that 2 percent is probably not sufficient to do that across the State.

SENATOR KIECKHEFER:
The 2 percent is always subject to discussion.

Why did you decide to attach this amendment to this bill, rather than the previous one, which is related specifically to the school district EFB?

MR. AUGSPURGER:
We had discussions with the CCSD regarding this concept of using employee money, money for salary schedule movement and health benefits, for its intended purposes. The District would like to do that. It speaks to the overall low funding that the District receives. The District does not believe, at this point, that it is able to do that.

In 2015, $32 million was put on the table for movement on the salary schedule and employee health benefits. At the end of the 2015 Legislative Session, that money was withdrawn and we have never seen it again.

MATT WALKER (Clark County Association of School Administrators and Professional-Technical Employees):
This amendment does not allocate the funds directly to any of the bargaining units. When a negotiation goes to arbitration, this clarifies for an arbitrator that he or she should not consider the 8.3 percent mentioned in NAC but should consider the funds specifically appropriated by the Legislature for salary increases and benefits. The arbitrator should consider the allocated money to be a differentiated source of funds outside of the 8.3 percent.

CHAIR PARKS:
To Senator Kieckhefer's question, S.B. 26 was requested by the CCSD, so it is more appropriate to place this amendment in a separate bill.

TOM DUNN (Professional Fire Fighters of Nevada):
We support S.B. 111. In 2015 and 2017, there were multiple conversations about 16.67 percent being more appropriate than 25 percent EFB. There was agreement among all parties in 2015, including local government, that 16.67 percent was appropriate. Unfortunately, that language did not change.

In 2017, S.B. No. 469 of the 79th Session attempted to change the allowance to 16.67 percent EFB. Since 2017, some local government agencies from northern Nevada, Washoe County and the City of Reno have not been able to obtain 16.67 percent, much less the 25 percent.

The Committee on Local Government Finance has heard multiple testimonies and discussions on the topic of what the proper EFB should be. In those meetings as well, it was determined that the appropriate level was 16.67 percent.

MARLENE LOCKARD (Service Employees International Union Local 1107; Las Vegas Police Protective Association Citizen Employees):
In 2015, I was there the night when we had reached an agreement and were waiting at the waning hours before adjournment for the amendment to be attached as had been agreed. The amendment was never attached. The Interim period has been a struggle to put in place what was agreed at the time by all the stakeholders who had worked on this particular issue most of that Session.

MARY WALKER (Carson City; Douglas County; Lyon County; Storey County):
I have provided to the Committee a written statement and list of best practices in local government finance (Exhibit F). I have also provided a press release from 2015 (Exhibit G contains copyrighted material. Original is available upon request of the Research Library.).

Exhibit G is a press release issued by Moody's Investors Service after S.B. No. 168 of the 78th Session was enacted in 2015. That bill established the 25 percent EFB not subject to negotiations. The press release explained that S.B. No. 168 of the 78th Session was "credit positive" because it gave more financial flexibility to local governments.

Pages 2 through 4, Exhibit F, copy the Government Finance Officers Association (GFOA) best practices in determining the *Appropriate Level of Unrestricted Fund Balance in the General Fund*. According to the document:

> GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures … Furthermore, a government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level.

The GFOA cites "the predictability of its revenues and the volatility of its expenditures" as factors a government should consider. The GFOA further states, "higher levels of unrestricted fund balance may be needed if significant revenue sources are subject to unpredictable fluctuations or if operating expenditures are highly volatile."

I support S.B. 111 because it still maintains the minimum GFOA guidelines that two months of regular general fund operating expenditures, not subject to negotiations, be maintained in the fund balance. Senate Bill 111 is still a credit positive fiscal policy. It is a sound fiscal policy. Senate Bill 111 will provide local governments with financial stability in times of recession. Local government expenditures are largely in personnel. Having a sound fund balance could enable the local government to ride out a recession with minimal layoffs.

MIKE RAMIREZ (Las Vegas Police Protective Association):
We support S.B. 111 and echo everything our colleagues have said.

RICK MCCANN (Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition):
Many of us know the history going back to 2015. The Chair is an expert. We support everything we have heard so far.

DRAKE RIDGE (Las Vegas City Employees Association):
We support S.B. 111.

MS. KIM:
We support S.B. 111 and our fellow union members. A 16.67 percent EFB restricted from collective bargaining is more than appropriate.

MIKE WEYAND (Secretary, Las Vegas Peace Officers Association):
We also support S.B. 111.

MR. DALY:
We also support S.B. 111. We support our sisters and brothers working in local governments. We also support the amendment proposed by Mr. Augspurger. We think the amendment will bring a fair balance to school district negotiations.

MR. HONCHARIW:
I have submitted my written remarks in opposition to S.B. 111 (Exhibit H).

CHAIR PARKS:
I will close the hearing on S.B. 111. I will open the hearing on S.B. 153.

SENATE BILL 153: Revises provisions relating to collective bargaining. (BDR 23-405)

SENATOR DAVID R. PARKS (Senatorial District No. 7):
There is a long history for S.B. 153. We have seen this bill in various iterations over recent years. It was introduced in S.B. No. 241 of the 78th Session. It was reconsidered as S.B. No. 356 of the 79th Session. The 2017 bill passed out of both Houses but failed to be enacted into law.

MR. MCALLISTER:
The language in this bill is essentially the same as the language in a bill last Session. That bill was passed by both Houses but fell under the veto pen of the Governor.

I will talk about a few provisions of the bill. Other testifiers will discuss certain sections which deal specifically with school administrators and teachers.

Section 1 removes language that talks about the time in which the Local Government Employee-Management Relations Board (EMRB) shall conduct hearings. Previous legislation reduced that period to "not later than 45 days" after the Board decided to hear the complaint. The Legislature provided additional funding to the Board, which allowed the Board to expand from three members to five members. The Board is now hearing cases in a timely fashion. There is no backlog of cases. When issues regarding negotiations and discussion are brought before the Board, the Board is taking care of the cases. The Director of the EMRB has put policies in place and is moving things along. There is no backlog, so the language about 45 days is not needed anymore.

In 2015, changes to NRS 288.150 gave employees union business leave or the ability to negotiate union business leave, as long as the leave was either paid for or offset by a concession during the negotiation process. We asked former Senator Michael Roberson to put that in the 2015 bill because, over the course of time, we had negotiated many times to add union business leave into contracts.

Local governments do not give us anything for nothing. The negotiation process is exactly that—a negotiation. When we ask for or submit for a benefit, there is an associated cost value to the benefit. The employer can tell us right then that the benefit will be a certain percent of salary. We know exactly how much that costs, and they do too. It is a buy and sell. It is a negotiation.

The 2015 legislation said that if you had already negotiated union business leave, you could negotiate a concession. Almost all of us already had. This language needs to be removed because the local governments had a different interpretation of the change to NRS. The interpretation of the local governments was that you needed to negotiate union business leave every contract.

When I negotiate a benefit and give up 0.5 percent of salary, I give up 0.5 percent of salary in perpetuity. I do not ever get that back. Under the interpretation of the local governments, you make me renegotiate for those same hours that I have already given up a percentage of salary to obtain. Local governments are acting under the idea that the employees did not give up anything to get this. Of course we did. The government says, "Well, prove it," but they take and provide the minutes.

Some contracts specify that this is in lieu of something, but there are others who have negotiated union business leave in the past. It is unfair that local governments have interpreted that you have to negotiate that every time and give them more every time.

That is why we ask in section 2, subsection 2, paragraph (e) that the words "consistent with the provisions of this chapter" be removed. This will allow us to continue doing what we were doing prior to 2015, providing those services and negotiating them as we always have.

Section 3 addresses a key source of the controversy that has occurred since certain legislation was passed in 2015. This controversy is also based on differences in interpretation. The controversy is around the issue of evergreen clauses. An evergreen clause provides that if a contract expires, the provisions of that contract will continue until a new contract goes into force.

Local governments interpreted changes to NRS 288.155 to say, "When the contract expires, there are no increases." If an employee would normally have been given a step increase, the employee does not get the increase. For a lot of public employee groups, in-service step increases are based on the date of hire and go forward through an employee's career. If negotiations go long and the employee does not get a step increase, the employee does not get the increase for another year. The employer does not give the employee back pay for the increase. If an employee is promoted, the employee would normally get an increase. If a contract expires, the employer will promote an employee but not pay for the promotion. We do not feel that is a fair practice.

In 2015, the people proposing the bill sold the idea that by doing this, negotiations would speed up. The bill sponsors contended that labor or the organizations were slowing down the negotiation process in order to keep a contract in place. That is not the case. It is rare when the employee

organizations are not available to negotiate. You meet when you have to meet to get the business done.

Local employee organizations say, "You tell us when we'll meet and we'll meet." Local governments say, "Well, you know, look at our schedule here." Under their interpretation of statute, why would the local government negotiators want to meet with an employee organization? There is no reason for the employer to meet because when the contract expires, the employer does not have to pay any increases. The employer has no incentive to negotiate. All the benefit is in the employer's favor. The changes in 2015 were going to speed up negotiations, but they have done the opposite.

The changes made in 2015 have slowed down negotiations and increased the number of arbitrations. Mr. Augspurger stated that they had not had any arbitrations for 40 years; then all of a sudden this passed and they have had to go to arbitration. As soon as the bill was passed, some attorneys advised their local government clients to stop negotiating.

We need to return to good-faith negotiations on the parts of both employer and employee. By removing the language put in statute in 2015, we will have the ability to speed up negotiations. Removing the language from 2015 will decrease the number of arbitrations. The change we propose in S.B. 153 will reduce the cost of attorney's fees because we will not extend contract negotiations out.

Those are the provisions that deal with all employee organizations. Mr. Augspurger will discuss provisions specifically related to school administrators.

SENATOR KIECKHEFER:
What is the difference between a collective bargaining agreement and an agreement "between local government employers and employee organizations pursuant to this chapter"?

In section 3, subsection 1 you strike the words "collective bargaining agreement" and add "agreements entered into between local government employers and employee organizations pursuant to this chapter." It is presented as a sort of change without a difference, but rarely do we make a change without a difference.

MR. MCALLISTER:
The language added is the statutory language that existed prior to 2015.

CHAIR PARKS:
I do not see a difference; it was just a more appropriate choice of words. We can check to see if someone can give us a different meaning.

MR. MCALLISTER:
Nevada Revised Statutes 288 is the chapter on collective bargaining. Some agreements are not necessarily collective bargaining agreements, but they could be extended in a manner similar to collective bargaining. During periods when the contract is not up for negotiation, memoranda of understanding take place for various issues that arise. Labor and management will get together and negotiate a memorandum of understanding (MOU), which will be a supplement to a collective bargaining agreement. The "agreements" mentioned in section 3, subsection 1 would include both collective bargaining agreements and negotiated MOUs.

MR. AUGSPURGER:
Section 4, subsection 2 refines the scope of our bargaining group. In 2015, our bargaining group was redefined. Certain administrators were excluded from collective bargaining. The first year the 2015 language went into effect, administrators were excluded with a salary cap. In 2017, we changed the salary cap to something more specific, dealing with job title and job function. We still have about 45 people in Clark County who are excluded from the bargaining group. They are employees above the rank of a principal with superintendent, assistant superintendent or chief in their titles.

We have a conceptual amendment to the language (Exhibit I) in section 4, subsection 2. The amendment adds a "non-school administrator below the rank of superintendent" to the list allowed in our collective bargaining group. We have about 400 professional-technical employee members who would not fall into the category of assistant principal, principal or other school administrator. We want to make sure there is not an issue with someone wanting to exclude them from the bargaining group. This amendment will make the definition of the bargaining group more accurate.

I want to address two pieces of accountability included in section 20 of the bill. Section 20 deletes two sections of NRS which we find problematic.

First, NRS 391.830 requires certain administrators to reapply for their jobs every five years. The only administrators who are not required under NRS 391.830 to reapply for their jobs are principals and those who are excluded from collective bargaining. The reason for not reemploying them may have nothing to do with performance. This is almost an arbitrary and capricious rule. Embedded throughout NRS 391 are provisions by which licensed employees are either suspended, demoted or dismissed. There are 21 different things someone might do to be demoted, suspended or dismissed; 7 of those reasons can lead to dismissal on the first infraction. The existing accountability measures are strong.

We would like to think that accountability measures are focused on performance. Are the employees doing their jobs well? Are they not performing well? In this case, about 600 people will have to reapply for their jobs in the CCSD in the next year or two. We have no guardrails, no due process at all. We will have people who will lose their jobs simply because someone does not want them working in the CCSD. That is not fair. That is not consistent with what is legislated in NRS 391.

The second piece of accountability concerns NRS 391.825. When a principal is appointed, he or she is on probation for the first three years of the term. Once the principal completes the probationary period, two things can return him or her to probationary status: first, if 50 percent of the school's teachers request a transfer; second, if the school experiences a drop of one or more stars in the Nevada School Performance Framework Star Rating system in two consecutive years.

Over the four years that this law has been in place, no one has been returned to probationary status because of this legislation. There are other measures of accountability. When teachers leave a building, it is often not because of the principal. We are open to climate surveys and working with teachers on making sure that schools are great places for everyone to work, but we all know that people leave for a variety of reasons. Particularly in the CCSD, where the geographic area is quite large, people are always looking to get closer to home. We do not want to see a principal held accountable for a teacher who leaves for reasons beyond the school environment.

While we believe in accountability, we expect people to do their jobs. We do not support poorly performing employees. These two pieces of accountability are

neither reasonable nor based on performance. Therefore, they should be removed.

SENATOR KIECKHEFER:
You mentioned the two provisions that can put someone back into a probationary period. You did not reference subsection 1 of NRS 391.825, which makes the first three years of employment as a principal "at-will." Is that contained somewhere else in statute?

MR. AUGSPURGER:
Nevada Revised Statutes 391.820 outlines the probationary period for licensed employees. A teacher serves a three-year period of probation with no right to return after each year. A teacher who promotes to an administrative position serves, under law, an additional three years under probation—three separate years of probation with no right to return after any one of those years.

This language will require an administrator, assistant principal or dean who is promoted to the position of principal to only serve one additional year of probation. If a principal was hired from out of state, he or she would serve that three-year period.

SENTOR KIECKHEFER:
But if someone moves up into a new position of leadership, we hope that the person is well-trained and ready for the position. It does not always work that way. Is one year adequate to make that determination?

MR. AUGSPURGER:
One year is adequate. I do not know that three is better; perhaps five is best. I am not sure. The job is a difficult job. Given the nature of the State evaluation system and the accountability placed on principals and administrators, people ought to be able to tell in one year if the right choice has been made. The District has to have the will, if it does not think that person is working out, to exercise the provision of the statute. We should only be hiring the best people in principal positions. We should not be hiring people who have to learn on the job.

SENATOR KIECKHEFER:
I agree with that. However, when people ascend into new positions of leadership, they implement change over time, sometimes, because they do not

want to disrupt things. One year is probably insufficient time in which to gain a full impression of a new principal's skills in the position because the principal is still learning about the institution he or she has taken over.

MR. MCALLISTER:
Referring back to the evergreen clause reestablished in section 3 of the bill, I looked through the fiscal notes attached to this bill. I found it interesting that the CCSD placed a $36 million per year fiscal note on this bill. The District said the reason for the fiscal impact is because step increases cost $36 million per year. I asked when those step increases occur. The District responded that the step increases occur in September or August at the start of the school year.

If the District can delay the contract out past the first of September, past the step increase date, the District saves $36 million. If the District delays again, the District saves another $36 million. The District would now have saved $72 million for the biennium. This falls in line with some of the discussion we had earlier with regard to money appropriated for salary steps that never gets to the employees.

If an entity can carry a contract out past a certain period of time, there is no provision to increase employee pay retrospectively. We need the evergreen clause because statute delays negotiations. The law stalls things out and makes it so the local government entity has no incentive to settle a contract because the entity makes money when it does not settle a contract.

SENATOR KIECKHEFER:
Referring back to what Mr. Augspurger and I just talked about, section 17, subsection 9 changes the additional probationary period from 2 years to 1 year when someone ascends to the level of principal. Was it 2 years prior to 2015 when we made the changes regarding the at-will employment, or are we just reducing it from 2 to 1?

MR. AUGSPURGER:
Prior to 2015, it was one additional year of probation.

SENATOR KIECKHEFER:
It is two years, and we are reducing it to one.

MR. AUGSPURGER:
Yes, S.B. No. 241 of the 78th Session increased the probationary time for principals to 2 years.

SENATOR KIECKHEFER:
This is going back to the exact same language from prior to 2015?

MR. AUGSPURGER:
That is correct.

CHAIR PARKS:
Was there a second proposed amendment dealing with NRS 391.830?

MR. AUGSPURGER:
Senate Bill 126 is a bill from Senator Moises Denis in the Education Committee. That bill also speaks to eliminating the language contained in NRS 391.830.

SENATE BILL 126: Revises provisions relating to education. (BDR 34-906)

MR. DALY:
The Nevada State Education Association (NSEA) represents local affiliates that negotiate contracts with every school district in Nevada. Section 6 of the bill addresses a portion of NRS which dumbfounds many of our local presidents in rural districts and many members of bargaining teams. Section 6 of S.B. 153 changes NRS 288.217 back to pre-2015 language. This statute relates to the selection of arbitrators for school districts and employee organizations representing teachers and education support personnel. The language added in 2015 requires school districts and bargaining units to select an arbitrator at least 330 days before the expiration of the contract. Additional language in 2015 added requirements to the duties of the arbitrator.

The 2015 additions do not work because of the inability to find and secure an arbitrator in the rural areas of Nevada. The cost of finding an arbitrator is also prohibitive in rural areas. Moving back to the pre-2015 process for declaring impasse and selecting an arbitrator makes a great deal of sense for the majority of the collective bargaining processes happening across the State.

Section 6 also moves back the number of bargaining sessions required before either party can declare impasse from eight to four. Section 6 provides that the

arbitrator shall, within 30 days of being selected and after 7 days of written notice to the parties, hold a hearing to receive information. The final change back to the pre-2015 language is that if an arbitrator asks the parties to resume negotiations before final offers, the parties will have 30 days instead of 7 to potentially have those negotiations. I have submitted additional remarks in support of S.B. 153 (Exhibit J).

CHAIR PARKS:
The bill calls for a requirement of 4 negotiation sessions rather than 8 as well as a requirement to hold a hearing within 30 days. Is that correct?

MR. DALY:
Correct.

CHAIR PARKS:
Okay. The hearing is required after the selection of the arbitrator, and seven days after notice is given to the parties.

MR. DALY:
Correct.

SENATOR KIECKHEFER:
A minimum of three sessions are required.

MR. DALY:
The minimum is four bargaining sessions. You can have more than four bargaining sessions, but the new language here would require at least four sessions before either party could initiate the impasse process.

SENATOR KIECKHEFER:
Is there a sweet spot in terms of the number of sessions that bring people together? I question cutting the number of sessions in half. I have never sat in collective bargaining negotiations. I do not know where people cross over and start deciding to come together instead of driving each other apart.

MR. DALY:
The NSEA has 36 local affiliates at 36 different bargaining tables with county school districts ranging in size from one of the largest school districts in the Country to one of the smallest. I do not think that there is a universal sweet

spot. Few of our local affiliates ever go to arbitration, but we hear from our members and those who are on bargaining teams across the State that the language changed in 2015 does not work for many of the districts or any of the bargaining units.

SENATOR KIECKHEFER:
This is not my main concern with the bill. I wonder if reducing the number of mandatory sessions before arbitration to four just makes it easier for people to throw up their hands and go to arbitration.

MR. DALY:
An overwhelming majority of these negotiations are not going to arbitration. With that said, we heard in previous bill testimony about some negotiations going to arbitration in Clark County. The parties in Clark County probably knew by the fourth session. If neither party decides to move forward with the impasse process, they do not have to. The parties can keep bargaining for as long as they want.

CHAIR PARKS:
I have served on bargaining teams. I sat on the negotiating team for both the Las Vegas city employees and the Las Vegas firefighters. I provided some support for Las Vegas Metropolitan Police in their negotiations. I found that there are a lot of different people and a lot different ways to do negotiations. For example, on some occasions, one side might want to string things out, thinking that extending the bargaining discussion might improve its bargaining position. On other occasions, the process is just "Let's get it done."

In one negotiation, the members of the negotiation team came in somewhat green and unprepared. All the negotiation team members wanted to do was sit around and argue repeatedly. In the long run, the team members did not achieve what they thought would be an easy process.

RUBEN MURILLO (President, Nevada State Education Association):
Senate Bill No. 241 of the 78th Session was the result of an agreement with a Senator no longer in office and union officials looking to mitigate the attacks on education unions. I was privy to the workings of that strategy as were the leaders of other public labor unions. It was part of a larger political deal that did irreparable harm to the collective bargaining process for public employees. Ultimately, all but a small number of unions agreed to these changes to

NRS 288, but it was a bitter pill to swallow, and the aftereffect was immediately felt.

Our goal was to prevent labor conditions in Nevada from becoming like those in Wisconsin. However, compromising on fundamental beliefs by negotiating cuts to collective bargaining can have unforeseen consequences, especially when the other side has ulterior motives. Educators in Clark County immediately felt the impact when step and column salary increases were drained or denied by the District, which claimed an inability to pay. This decision led to lost salary and numerous arbitrations. Other districts across the State felt the same impact. What teacher or support professional would want to work in a state where a law would prevent him or her from receiving payment for negotiated step increases? These conditions help explain why teacher turnover is so high.

Senate Bill 153 will allow for discussions in which management and workers can negotiate under reasonable and fair conditions. Securing an arbitrator a year in advance does not necessarily set the stage for successful negotiations. Securing an arbitrator so far in advance creates a one-way path to arbitration.

Allowing negotiations to occur during the workday would be a blessing to those who live in our rural counties. Rural educators and administrators may live more than an hour away from their work locations. When S.B. No. 241 of the 78th Session passed, a local superintendent decried the impact on travel borne by the educators and administrators when negotiating after hours.

Senate Bill 153 will return the respect due to the negotiation process. The adoption of S.B. 153 will allow for negotiated salary increases our educators depend on to be automatically paid, instead of depending on convoluted salary schemes woefully inadequate in providing a stable source of income. This will help to recruit and retain educators as well as provide them with increased pay.

MS. KIM:
The Clark County Education Association (CCEA) is the collective bargaining agent for CCSD licensed employees. We support S.B. 153 which will repeal the changes made in 2015 under S.B. No. 241 of the 78th Session, a compromise bill. The CCEA was a part of the discussions in the 2015 Session. However, what was intended from that bill never came to fruition.

Under NRS 288.155 as amended in the Seventy-eighth Session, if a collective bargaining agreement expires, a local government employer is not required to pay any increased compensation or monetary benefits under the collective bargaining agreement until a successor agreement becomes effective. In 2015, the argument to support the elimination of the evergreen clause was that unions were delaying the collective bargaining process, as the evergreen clause had assured automatic increases negotiated in prior collective bargaining agreements.

Senate Bill No. 241 of the 78th Session attempted to ensure that good-faith bargaining would take place by both parties. The 2015 bill established a process through which parties had to agree on an arbitrator and dates for arbitration several months in advance of a contract expiration. The change was made to ensure that if no agreement was reached, a hearing would be held and a decision rendered before the contract actually expired. Employers were not obligated to pay any economic benefits to employees. Upon the expiration of the contract, the employer had the option to delay payment of the economic benefits for up to the first quarter of a fiscal year.

While we can appreciate the intent of S.B. No. 241 of the 78th Session to ensure good-faith bargaining, the experience has been the opposite. In a new successor labor agreement in 2017, the CCEA and the CCSD agreed to the timeline process in statute. We selected the arbitrator and the dates months in advance of the expiration of the contract; we had the eight scheduled negotiation sessions. However, good-faith bargaining did not take place and impasse was declared. There was simply no incentive for the employer to actually bargain in good faith, and no bargaining had really taken place. The employer did not want to pay and was dragging its feet as long as it possibly could. In fact, prior to bargaining, the employer had adopted a budget for the next year which included no increases for employees, even though the Legislature had passed a budget with 2 percent rollup costs for educator salary increases. The same thing is happening right now.

After declaring impasse, the parties were in arbitration for over 6 months with 18 hearing dates that cost nearly $1 million. After not prevailing in arbitration, the employer dragged things out further by appealing the decision to court, only to not prevail there either. In the end, the contract was not resolved until one year after its expiration. Such a delay was clearly not the intent of S.B. No. 241 of the 78th Session. The playing field was not balanced and, in

fact, favored the employer. The intent to ensure parties negotiate in good faith and secure a successor agreement before the expiration of the prior agreement cannot be realized in the statute as amended in 2015.

KENT ERVIN (Nevada Faculty Alliance):
The Nevada Faculty Alliance (NFA) represents faculty at all eight Nevada System of Higher Education institutions. The NFA is the collective bargaining agent for faculty at the College of Southern Nevada, Truckee Meadows Community College and Western Nevada College. Senate Bill 153 does not directly affect our members, because it is for local government groups, but we stand in support and solidarity. The litigation problems related to some of the provisions which this bill addresses are seen as a cautionary tale when we are evaluating S.B. 135 and S.B. 459, the collective bargaining bills for State employees.

SENATE BILL 135: Provides for collective bargaining by state employees. (BDR 23-650)

SENATE BILL 459: Provides for collective bargaining by certain state employees. (BDR 23-536)

Good collective bargaining statutes should promote collaboration and the rapid conclusion of negotiations.

WILL ADLER (Las Vegas City Employees Association):
Senate Bill No. 241 of the 78th Session essentially took the power out of the hands of the employees when negotiating collective bargaining. The 2015 bill gave all the power to the employers. Senate Bill 153 attempts to correct that imbalance and bring it back to the center. If you begin by bargaining from a position of weakness, you essentially start off by losing the fight. This bill will help correct the difference in power. The bill is a step in the right direction for all future collective bargaining.

MS. LOCKARD:
I represent SEIU Local 1107, which represents some 11,000 public sector employees and is one of the largest sector public unions in the State. I also represent the Las Vegas Police Protective Association Citizen Employees. We are here together to support S.B. 153, which will correct the negative consequences of the passage of S.B. No. 241 of the 78th Session.

I would like to speak to the evergreen clause, which seems problematic for many who are going to oppose this legislation. Opponents argue that the evergreen clause puts a contract in place until a new one is negotiated. At the end of the calendar year, private sector employers base the raises they give employees on the amount of growth which the company may have seen during the year. Except for dire situations, most businesses do not contemplate taking away increases previously given to employees.

The public sector has a similar process. Negotiations create a compensation package. At the end of the contractual agreement, the parties come back to negotiate. Usually these discussions are to negotiate new increases or additional benefits. A party may decide to give something up if an alternative has a higher value but rarely does a party go backwards to remove an increase. In the case of economic difficulties, an evergreen clause simply keeps a negotiated agreement flat until the economics settle or a determination is made going forward.

The term evergreen clause has been turned into a bogeyman, said without folks really thinking the term through and applying it to the private sector as well.

When S.B. No. 241 of the 78th Session was adopted, the most detrimental interpretation given by local government entities was encouraged and promulgated by lawyers. This interpretation had the opposite effect of the bill's purported intention to speed up the collective bargaining agreement and save taxpayer dollars. All that S.B. No. 241 of the 78th Session did was transfer those taxpayer dollars to the very same attorneys who promoted the most litigious course of action possible. Taxpayer dollars went to pay attorney fees instead of enhancing the lives of the working men and women of this State. These employees are the men and women who maintain our airports, manage our foster children, answer 911 calls and direct first responders and emergency services to dangerous and crisis events. Many inequities have been imposed on these workers over the course of the last 3.5 years.

MR. DUNN:
We support S.B. 153 which brings policies back to where there were prior to 2015 and relevels the playing field between employers and employees. Numerous lawsuits, legal fees, and Local Government Employee-Management Relations Board (EMRB) cases have been filed based on the unintended consequences of S.B. No. 241 of the 78th Session. This is the second

Legislative Session in which we have been trying to fix the problems from 2015. The negotiations process is supposed to be a level playing field between the employer and the employee. Senate Bill No. 241 of the 78th Session has not maintained that level playing field.

The same issues which the CCEA mentioned have been experienced by our firefighter organizations throughout the State, from Washoe County to Elko County to Clark County. Senate Bill No. 241 of the 78th Session has had a negative impact on the employee associations as well as the employer groups.

As Mr. McAllister said, we have had to prove what we gave up in concessions in order to gain union business leave. In some cases, smaller employee groups, such as those from general improvement districts, fire districts and some law enforcement organizations, were not allowed union business leave to negotiate their contracts or to discuss safety and workers' compensation issues with their employers. The same local government entities which have problems paying employee compensation had no problem paying a $400 per hour attorney to argue cases against the employees at the negotiations table, district court or the EMRB.

MR. MCCANN:
We support S.B. 153 as an attempt to repair wholesale damage done by S.B. No. 241 of the 78th Session that resulted in unexpected delays, protracted litigation and the reduction or elimination of time for our employees to meet and bargain on their contracts. The whole purpose of S.B. No. 241 of the 78th Session was purportedly to get people to the bargaining table. For most groups, it has had the exact opposite effect.

My organization represents about 10,000 public safety officers in about 20 separate law enforcement groups around the State. All but 1 of the 20 groups have collective bargaining. At no time during the past ten years have any of my groups gone to impasse and arbitration, let alone gone to arbitration for the purpose of delaying the settling of their contracts. It just does not happen. Our people do not do that. That is the definition of good-faith bargaining. We exercise good-faith bargaining with our employer partners all the time. Everyone is trying to get these things done. Senate Bill No. 241 of the 78th Session got in the way. We need it to move.

Senate Bill 153 restores employee rights and places labor and management on equal footing once again.

MR. RAMIREZ:
There is nothing I can say that has not already been said. We support S.B. 153.

MR. WEYAND:
We support S.B. 153 and echo the previous comments.

CHAIR PARKS:
I see that about half the room in Las Vegas is here in support of S.B. 153.

MR. HONCHARIW:
I have submitted my written remarks in opposition to S.B. 153 (Exhibit K).

LES LEE SHELL (Clark County):
Clark County is here in opposition to one section of the bill which you have heard much talk about tonight—the evergreen clause. The changes to that section caused by S.B. No. 241 of the 78th Session eliminated the contract rollover. The intent of eliminating the evergreen clause was to get the parties to the table in a timely manner to negotiate reasonably and to be thoughtful about the things that we actually wanted to discuss.

Since that change has gone into effect, Clark County has negotiated a total of 27 contracts, including fiscal reopeners and 12 full contracts. Clark County has 12 collective bargaining agreements. All but three of those agreements have been negotiated in a timely manner, leaving no gap between our contracts. The lack of contractual gap is good for the employees as well as the employers. You have heard testimony tonight about what happens if there is a gap in the contracts. The possibility of a gap in the contract gets our employees those negotiated increases in a timely manner.

We have only had one arbitration since S.B. No. 241 of the 78th Session passed. Clark County believes that the intent of the elimination of the evergreen clause in S.B. No. 241 of the 78th Session is working for the County. It was mentioned that with the removal of the evergreen clause, individuals were getting promoted after the expiration of a contract and not receiving corresponding promotional raises. That does not occur in Clark County. If an

employee is promoted, regardless of whether we are in the term of a contract, those promotional raises are included in the employee's pay.

DAGNY STAPLETON (Nevada Association of Counties):
We also oppose the bill because of section 3, which contains the evergreen provisions. We echo the comments of Ms. Shell. The evergreen provisions get the parties to the table in a timely manner. The evergreen provisions create an equal playing field for our members.

JAMIE RODRIGUEZ (Washoe County):
For the reasons stated by both Clark County and the Nevada Association of Counties, we oppose section 3 of the bill, as written.

WARREN HARDY (Nevada League of Cities and Municipalities):
I represent the entirety of our membership in our concerns relative to the evergreen clause. North Las Vegas is the only city that is not a member of our organization and thus not necessarily represented in this opinion. The discussion about leveling the playing field only becomes a factor or issue when there is a downturn in the economy which creates those complications.

We also have some concerns with regard to the elimination of section 20, which speaks to the union representation leave. We would submit that union representation leave is an issue that ought to be collectively bargained. How union leave should be dealt with ought to be a subject of the collective bargaining.

I would also speak to Ms. Lockard's comments on private sector salaries not going down during economic hardship. That is not an accurate statement. When I left the Senate in 2009, I went home to a 25 percent reduction in my salary because of the economic downturn. The reduction eventually went to 50 percent, which is when I quit the job. The notion that the private sector does not have to reduce salaries when economic downturns occur is not accurate. It is common for salary reductions to occur in the private sector. We do not like to do it, but it does occur.

TYRE GRAY (Las Vegas Metro Chamber of Commerce):
As large taxpayers, we are concerned with anything that would increase taxes upon businesses. We want to echo the comments shared by the counties and cities.

MARCOS LOPEZ (Field Director, Americans for Prosperity):
We stand in opposition to S.B. 153, a bill that, among other things, would extend collective bargaining to public managers, change response times for the EMRB, extend the terms of bargaining contracts and deal with direct, ongoing negotiations.

We fully support the freedom of public employees to join unions to advocate on their behalf. It is crucial to democracy that everyone have the ability to unite together with voluntary members. Everyone should have the right to lobby government and publicly advocate for their public policies. However, the best way to ensure that Nevada residents and our elected officials and public employees all have a voice is to have an open dialogue, not mandatory contract negotiations.

We oppose the provision that would extend the collective bargaining to public sector managers. This policy would undermine the ability of managers to oversee the execution of government functions and serve the interests of both taxpayers and employees they oversee. This is not an unreasonable concern. Early labor leaders such as Franklin Delano Roosevelt and George Meany, the first president of the American Federation of Labor and Congress of Industrial Organizations, believed that collective bargaining was altogether inappropriate for public sector employees.

We are against the provision which shortens the time frame in which labor unions and government employers can negotiate with one another before turning the process over to a third-party arbitrator. This abbreviation would undermine the bargaining process.

We are against the provision allowing expired contracts to continue through the evergreen clause. Many people have voiced concerns about bringing the evergreen clause back.

This bill would take public sector labor negotiations in the wrong direction. Although the U.S. Supreme Court ruling in *Janus v. Am. Fed'n of State, Cty. and Mun. Employees, Council 31*, 138 S. Ct. 2448, 201 L. Ed. 24 942 (2018) does not address the legality of collective bargaining, the Court found that all public sector union speech is inherently political because it "covers critically important public matters such as the State's budget crisis, taxes, and collective

bargaining issues related to education, child welfare, healthcare, and minority rights."

Public sector collective bargaining, like lobbying in general, can be understood to be political activity since it relates to public policy. Thus, Nevada's leaders should be looking for ways to increase transparency for voters and expand the individual rights of public employees. Instead, S.B. 153 seeks to expand the negotiation of public policies between government officials and labor unions behind closed doors while using third-party arbitrators to settle disputes instead of leaving decisions to officials elected by Nevadans.

Americans for Prosperity and our 50,000 members across the State oppose S.B. 153 and hope to redirect the conversation toward policies that remove barriers to opportunity and improve the lives of all Nevadans.

CHAIR PARKS:
I see that about half of the people in the room in Las Vegas are opposed to S.B. 153.

ADRIAN DURAN (Americans for Prosperity):
I am a member of a private sector union and a taxpayer. As a union member, I agree with the protection of workers. As a taxpayer, I would like to see where that money is going and how a deal is reached.

WIZ ROUZARD (Community Engagement Director, Americans for Prosperity):
We have to focus on taxpayers. The economic fabric is fluid; it can go up, it can go down. We need to have a government of transparency that allows us to accommodate the revenue we are generating.

According to collective bargaining economic analysis by the National Bureau of Economic Research, if Nevada had maintained its original prohibition on collective bargaining with all government unions, annual spending by State and local governments would have been about $800,000 to $1.7 billion lower in 2014. However, if unions for all employee groups gained the same powers as those now held by police, fire and teacher unions, annual spending is estimated to increase by between $282 million and $597 million.

Nevada lawmakers could realize up to $1.7 billion in annual cost savings by returning the State's original prohibition on government sector collective

bargaining. However, just making collective bargaining optional for local governments could save more than $1 billion annually. Without a mandate, local administrators would be free to choose whether to bargain collectively based upon the wishes of constituents. Constituents, in turn, would gain at least an indirect voice. This is important, given that we are a tourist industry and most people here own homes and work hard. It is all predicated on taxpayers. We need that transparency and accountability metric in place.

BRUCE SNYDER (Commissioner, Local Government Employee-Management Relations Board):
The EMRB is neutral on this bill. I want to speak on three things.

First, there were statements made tonight that if someone were to get a promotion, the evergreen clause would prohibit the employee from receiving a promotional wage. While this denial may have occurred in various local governments, in a case that went from the Board to the Eighth Judicial District Court, District Judge Linda Bell ruled that the evergreen clause does not prohibit a person who changes jobs and gets a promotion from receiving a raise.

Second, the provision on having a hearing within 45 days was put into effect so that any case involving bad-faith bargaining would have to be heard within 45 days. The current provision is not necessary. We have no backlog. We have five panels which meet per quarter. When we set cases last quarter, we only had four cases available to be heard. The same thing will happen this quarter. On April 22, we will be setting cases for the next quarter. Right now, there are only two cases ready. There may be four cases ready to be heard in the upcoming quarter. In 2017, this Committee increased the size of the Board from 3 members to 5 members, allowing the Board to sit in multiple panels of 3 members. The larger Board size has helped remove the backlog. Additionally, the 45-day requirement can create problems. These problems may arise if the Board has set a case within the 45-day period, but then for some reason an attorney is unavailable. In this situation, the party wants to move the case, but that amended date may be outside the 45 days. We then have to get waivers from all the parties in the case in order to allow the case to be heard outside the 45 days. The law does allow for a waiver; that happens occasionally.

When S.B. No. 241 of the 78th Session was passed, it had an effective date of June 1, 2015. Shortly thereafter, an unanticipated issue came up as to if the new law applied to certain specific collective bargaining agreements which had

been negotiated before the effective date of the legislation. The Board held, and the decision was affirmed by District Judge Bell, that even though the law took effect on June 1, it only applied to agreements negotiated after June 1, 2015. The Board had decided that changing the contracts retroactively would be in violation of the Contracts Clause of the United States Constitution. District Judge Bell upheld that decision, and it has been the Board's position ever since.

As it attempts to unwind S.B. No. 241 of the 78th Session, this bill is likely to have similar legal issues. There are more than 200 collective bargaining agreements in place across the State. If the bill passes and has an effective date of June 1, 2015, questions may be raised about altering the terms of an existing contract.

Speaking for myself, if the court previously ruled against the time provision of S.B. No. 241 of the 78th Session, it is likely to issue the same ruling with this bill. If a contract expires on June 30 and a new contract becomes effective July 1, it is likely this law would take effect on July 1 for that specific contract. If parties have negotiated a contract that does not expire until 2021, this bill may not apply to that specific contract until 2021. I expect this to be litigated just like it was last time. It would be good to fix this issue through the Legal Division of the Legislative Counsel Bureau.

Remainder of page intentionally left blank; signature page to follow.

CHAIR PARKS:
I will close the hearing on S.B. 153. The meeting is adjourned at 9:30 p.m.

RESPECTFULLY SUBMITTED:

Steven Jamieson,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	14		Attendance Roster
S.B. 26	C	7	Jason Goudie / Clark County School District	Visual Presentation
S.B. 26	D	1	Daniel Honchariw / Nevada Policy Research Institute	Written Testimony
S.B. 111	E	2	Stephen Augspurger / Clark County Association of School Administrators and Professional-Technical Employees	Proposed Amendment
S.B. 111	F	4	Mary Walker / Carson City; Douglas County; Lyon County; Storey County	Written Testimony and List of Local Government Finance Best Practices
S.B. 111	G	1	Mary Walker / Carson City; Douglas County; Lyon County; Storey County	Press Release
S.B. 111	H	1	Daniel Honchariw / Nevada Policy Research Institute	Written Testimony
S.B. 153	I	1	Stephen Augspurger / Clark County Association of School Administrators and Professional-Technical Employees	Proposed Amendment
S.B. 153	J	1	Chris Daly / Nevada State Education Association	Written Testimony
S.B. 153	K	1	Daniel Honchariw / Nevada Policy Research Institute	Written Testimony