

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session  
March 2, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:06 a.m. on Monday, March 2, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Bernice Mathews, Cochair  
Senator Steven A. Horsford, Cochair  
Senator Bob Coffin  
Senator Joyce Woodhouse  
Senator William J. Raggio  
Senator Dean A. Rhoads  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8  
Assemblywoman Bonnie Parnell, Assembly District No. 40

**STAFF MEMBERS PRESENT:**

Gary L. Ghiggeri, Senate Fiscal Analyst  
Melinda (Mindy) Martini, Senior Research Analyst  
Barbara Richards, Committee Secretary

**OTHERS PRESENT:**

Dana K. Bilyeu, Executive Officer, Public Employees Retirement System  
Tina M. Leiss, Operations Officer, Public Employees Retirement System  
Keith Rheault, Ph.D., Superintendent of Public Instruction, Department of Education  
Bryn Lapenta, Ed.D., Senior Director, Public Policy, Accountability and Assessment, Washoe County School District  
Barry Smith, Executive Director, Nevada Press Association, Inc.  
Barbie Lauver, Parent  
Karen Custer, Parent  
Jan Crandy, Cochair, Strategic Plan Accountability Committee for Persons with Disabilities  
Ray Bacon, Nevada Manufacturers Association  
Diane Burnett, Grandmother  
Bart Mangino, Principal, Bonanza High School  
Teddy Osantowski  
Julie Whitacre, Director of Government Relations, Nevada State Education Association  
Lonnie Shields, Assistant Executive Director, Nevada Association of School Administrators

Senate Committee on Finance  
March 2, 2009  
Page 2

COCHAIR MATHEWS:

Today we will hear the budget of the Public Employees' Retirement System (PERS).

## SPECIAL PURPOSE AGENCIES

### PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Public Employees' Retirement System – Budget Page PERS-1 (Volume III)  
Budget Account 101-4821

SENATOR WOODHOUSE:

In the spirit of disclosure, I am a retired Clark County School District teacher and administrator. I am a member of the PERS. In addition, I served as a member of the PERS Board from 1985 through 2001. I served as Chairman of the Board for 13 of those years.

COCHAIR MATHEWS:

I am disclosing that I am also a PERS recipient.

GARY L. GHIGGERI (Senate Fiscal Analyst, Fiscal Analysis Division):

I distributed some information to the Committee this morning. The first piece of information is from the Elko County School District concerning the Spending and Government Efficiency (SAGE) Commission's recommendation regarding the Nevada Youth Training Center, ([Exhibit C](#), original is on file in the Research Library).

There is a letter from Bruce Bledsoe, ([Exhibit D](#)), concerning the Cultural Affairs budget. There is a six-month report from Paul Townsend, Legislative Auditor, ([Exhibit E](#), original is on file in the Research Library) on the Office of the Lieutenant Governor, the Board of Finance, Nevada Attorney for Injured Workers, the Department of Health and Human Services and the Bureau of Disability Adjudication.

There is the progress report for the Senate Committee on Finance, currently on day 29 ([Exhibit F](#)). By the end of this week, the full Committee and Subcommittee will have reviewed 72.8 percent, or 262 of the 360 budgets assigned for their review. By the end of the week, the Subcommittee will have reviewed 23 of 63 Capital Improvement Projects included in the Governor's budget. There are currently 11 bills assigned to Committee. We will have heard seven of those bills by the end of this week.

I have also provided to the Committee a memorandum ([Exhibit G](#)), based on the information received Friday, February 28, concerning the sales-tax collections for December 2008, collected in January 2009. The collections in December were down 17.1 percent. Year-to-date collections are down 7.7 percent. The collections are down 12.1 percent in the October through December quarter, as compared to the October through December quarter of FY 2007-2008. To meet the Economic Forum projection of 8.6 percent for the balance of the fiscal year (F/Y), the collections will have to decrease by an average of 9.5 percent.

I believe we will have problems on both sales and gaming. When the Economic Forum meets on May 1, they probably will reduce the projections. I will defer to their judgment on that. I am bringing this to the Committee's attention so they

are aware of this. Gaming collections were down 22.4 percent for business in December, collected in January. For the October through December quarter, the collections were down 20.6 percent. To meet the Economic Forum's projection, collections will have to average a negative 6.8 percent in the remaining five months which may be optimistic.

DANA K. BILYEU (Executive Officer, Public Employees Retirement System):  
Prior to the presentation of our administrative budget, I want to talk to the Committee with respect to the proposed contribution rates for the upcoming biennium. A handout has been given to you ([Exhibit H](#)). The actuary performs annual valuations of the Retirement System, but the contribution rates are set, based on the even-numbered year's valuation to be implemented, beginning with the first year of odd-numbered fiscal years. Rates are affected by the valuation of June 30, 2008, but will go into effect beginning July 1, 2009.

The first chart in your handout ([Exhibit I](#)) shows the results of the 2008 valuation for the employer pay contribution plan. Approximately 94,000 of the 106,000 members of the PERS participate in the regular fund. Fully 82 percent of those members participate under the employer pay contribution plan. Approximately 12,300 members participate in the early retirement fund for Public Safety members. Almost 85 percent of those members participate under the pre-tax employer contribution plan. Employer pay is a shared contribution plan where employees pay one-half of the contributions, either by salary reductions or by foregoing equivalent pay increases.

The first line of the chart shows the existing rate currently being paid by the members of the funds, both regular and police and fire, based on the results of the 2006 valuation. The next line shows the result of the 2008 valuation. The third line shows the difference between the two rates. The bottom line applies the statutory rounding mechanism to arrive at the new contribution rates for July 1, 2009.

SENATOR RAGGIO:

I remember the days when single-digit rates were paid for both regular and police and fire members. It is almost astounding that under employer pay, we are now at almost 22 percent of salary to regular members and 37 percent to police and fire members. Did increased benefits contribute to the rise in rates? We have been cautious in recent sessions not to add benefits if it resulted in a rate increase.

MS. BILYEU:

When the System began in the 1940s and into the 1970s, the rates were set by statute. They were designed to match the social security rates, because members of the System did not participate, and still do not participate, in the social security system. For a long time, actuarial valuations were not performed. It was a flat rate, approximately 5 percent of pay on both sides. In the 1970s, the Legislature performed a study of the System. We had an independent group look at the System and give advice to the Legislature. The group said actuarial valuations of the System needed to be performed and we should recognize what the actual costs of the System are going forward. The Legislature put into place a series of reforms in financing and administering the System over time. In the 1970s, we started doing the actuarial valuations. Over time, we moved the rates up to match the full actuarial cost. For instance, in the police and fire fund, the rates were set at 15 percent and it was recognized that was not going

to adequately finance the earlier retirement provisions for that fund. In the mid-1980s, we went to full actuarial cost. We were at about 18.5 percent for the regular fund and now we are at 21.5 percent.

We want to ensure the System is being financed on a current basis. We do not use any assumptions which do not reflect the actual experience of the program. We perform experience studies every three to five years to ensure the assumptions used to value the System adequately reflect the actual demographics of the program. This is the second year the rates have been fairly static. We change rates every other year. What looks like a large rate change from the 2006 valuation is almost identical to the 2007 valuation.

I want to focus on the police and fire rates. When we perform the experience study, we recognize the increases in longevity make the annuities we pay out more expensive over time. We change the mortality tables, moving them forward, meaning people are living longer and we expect to pay the benefits for a longer period of time. Police and fire members retire about five years earlier than the members in the regular fund. They do not live quite as long as members in the regular fund but are seeing increases in longevity, similar to women in the regular fund. The average age entry into that program is approximately 32. The average retirement age is 55 for police and fire fund members.

Another thing affecting the police and fire fund differently than the regular fund is the fact that there are only about 12,000 members. Their funded ratio is 71 percent. The contribution that must be made to retire the unfunded liability of that program is about double that of the regular program. The third component affecting the police and fire fund is the salaries. The average salary in the police and fire fund is approximately \$70,000 versus the regular fund average of \$46,000. Early retirement is designed to provide the public with a youthful and vigorous front line public safety force. There is not a reward for hazard in their pay, but the actual pay itself, which is why there is a pay differential between the two funds.

The regular fund rates have increased. Demographics are the issue with longevity. Longevity is the most significant change that has been made in pricing the benefits. The cost of the benefits has remained fairly static. The Legislature has been conservative in granting benefits over time. There has never been a time when the Legislature has passed a benefit that has created an unfunded liability. When we have had gains in the investment market, the trade-off has been offsetting benefit changes. There have been no benefit improvements in the System since 2001.

SENATOR RAGGIO:

If you look at the chart on employee/employer pay in [Exhibit H](#), you have to recognize that, in addition to the published salaries the public sector worker receives, there is an 11.25-percent addition to salaries for regular members and a 19-percent additional benefit received on all public sector salaries. When we start comparing salaries of public sector salaries, we neglect to include that as part of their actual compensation. Nevada has been generous on both retirement and health benefits with respect to public sector salaries.

Ms. BILYEU:

I want to make a clarification about employer pay versus employee/employer pay. When employer pay was implemented in the 1970s, it was done for one reason: to save money. It has saved money over time. It saves for the member in financing their retirement because they are doing it on a pre-tax basis. It saves because there is no refundability. The actual cost associated with employee/employer pay is typically a full percentage point higher than in the employer pay program. The State has used salary reduction for employer pay since its beginning which is why you see two schedules for the State, employer and employee/employer pay.

SENATOR COFFIN:

When I came here 27 years ago, there were not as many women being hired as there are today. Women live six to seven years longer. That is going to cause an increase in payouts over the years, particularly in law enforcement and fire protection, because we have more women in these jobs. I believe we have not been overly generous and yet we have seen the costs escalate. I think that is because of salaries at local government levels. Some of those six-figure salaries do not sit well with the public. Some of those salaries are high because there is no contribution to PERS.

Ms. BILYEU:

There has been quite a bit of press with respect to salaries. Approximately 2 percent of the regular fund's salaries reported to us are over \$100,000 a year. That is what we pay benefits on. In the police and fire fund, it is approximately 11 percent. The differential is because of the hazardous types of duties they have. It is built into their pay, and on top of that they have overtime which is not reportable to PERS.

I will return to the rates to put them on the record for you. For regular members under the employer pay contribution plan there is a 1-percent rate increase that goes into effect July 1, 2009. Half of that, 0.5 percent, will be shared back to the employee and 0.5 percent will be shared back to the employer. For police and fire members the rate is increasing by 1.75 percent to the employee and 1.75 percent to the employer. Those rates are more volatile due to the smaller population into the relative funding status of that program. The chart shows the results of the valuation for members participating under the after-tax employee/employer contribution plan. Approximately 18 percent of the System participates under this plan. Again, the chief differentiating factor is refundability of employee contributions. Refundability causes the rate to be more expensive because the money comes back out of the System and is not used to fund retirement benefits.

TINA M. LEISS (Operations Officer, Public Employees Retirement System):

The Committee has been given my written testimony ([Exhibit J](#)).

An enhancement decision unit proposed by the Retirement System, E-275, provides for the replacement of workstations and servers at the end of life cycle and can no longer be supported. The amounts are in accordance with guidelines provided by the Department of Information Technology. This decision unit also includes amounts for necessary software upgrades and maintenance.

Enhancement unit E-849 includes the Board approved salaries for each of the statutory positions, in accordance with the *Nevada Revised Statutes* (NRS) 286.160.

E-849 Non-Classified Salary Adjustments – Page PERS-3

Enhancement unit E-673 was added by the Department of Administration to implement the SAGE Commission recommendations regarding health care subsidies for active and retired employees. This unit resulted in a reduction of the proposed budget.

E-673 Implement SAGE Commission Recommendation – Page PERS-3

The System has two minor budgets: one for the Legislators' Retirement System and one for the Judicial Retirement System.

COCHAIR MATHEWS:

Please elaborate on the SAGE Commission recommendation and the reduction of the proposed budget.

Ms. LEISS:

That recommendation is for the reduction of retiree health care subsidies. The reduction is 50 percent to those who retire before July 1, 2009, and elimination of the subsidy after July 1, 2009. Because our Agency pays the proportionate share for our retirees, the reduction of the subsidy results in a reduction of about \$100,000 in our budget.

COCHAIR MATHEWS:

Your Department did not adhere to the 6-percent salary reductions, longevity and merit increases. Will you explain why?

Ms. BILYEU:

The Retirement System is not subject to the Budget Act. The Department of Administration's budget implementations were not incorporated into our budget. The Retirement Board approves the budget that comes to the Legislature. It is a pass-through from the Department of Administration. When the Legislature makes the decision on the budgets, the budget implementations will be reflected in our budget.

SENATOR RAGGIO:

An issue has been raised regarding the Critical Labor Shortage Provisions (CLSP). At the end of this fiscal year, the Provision is scheduled to sunset. According to our calculations, the contribution rate would have to be increased an additional 0.25 percent if the Provision were extended. I do not think it affects early retirement. Utilization of the Provision is rare. There was a suspension of retirement benefits if you went back into public employment until 2001 when the CLSP were instituted. The Provisions allow members to return to work for a public employer and receive their retirement benefits if a critical labor shortage exists in their designated position. What happens when that comes to an end? Do you recalculate their benefits?

Ms. BILYEU:

The retiree has an option to reenroll in the System. It is not required. There is no new benefit accumulation to reenrolling. If they have retired with age eligibility

but have not reached their maximum benefit eligibility, they will reenroll. If they work less than five years, we calculate the new part of the benefit separately and add it to their old benefit. If they work more than five years, there are other rules allowing the combination of the two benefits. The Retirement Board is concerned about the rates increasing over time. When an experience study was performed of the CLSP, the cost was about 33 basis points to the contribution rate for the regular fund; causing the rate increase of 0.25 percent needed if the Provision is extended.

The Retirement Board has a funding policy in place that prevents the Board and the System from endorsing any benefit legislation that will be more costly. That is why there has been opposition from the System in regard to the extension of the CLSP.

COCHAIR MATHEWS:  
How expensive is the CLSP?

Ms. BILYEU:  
Prior to implementation of the Provision, we would not have paid benefits to individuals who came back to public employment. When we looked at the experience study, the cost of the benefits to individuals we had paid since the beginning of the Provision was \$54 million.

COCHAIR MATHEWS:  
Will you elaborate on the basic cost of the Judicial Retirement System (JRS)?

Ms. LEISS:  
The budget for the JRS is submitted to the Legislature differently than the PERS budget. Administrative costs are about \$85,000 a year.

Ms. BILYEU:  
The JRS and the Legislators' Retirement System (LRS) are calendar-year valuations. We did not give the data to the actuary until January of this year. The valuations will be given to the Retirement Board at the March meeting. We will deliver them to the Legislature as soon as we receive them. The fiscal analysts are aware of the time lag and we are making an effort to change the time involved to receive the numbers at the beginning of the Legislative Session.

COCHAIR MATHEWS:  
You are estimating contribution rates for the JRS need to be increased by 7 percent. Is that correct?

Ms. BILYEU:  
You are referring to the experience for the CLSP. Because it is the Senior Judge Program, the JRS payroll is small. We have 11 judges who are participating in the program and about 60 active participants. The ratio of active participants to retirees is a significant number which is why we estimated the large percentage increase.

COCHAIR MATHEWS:  
We will now open the hearing on Senate Bill (S.B.) 41.

**SENATE BILL 41**: Makes various changes to provisions relating to public retirement systems. (BDR 23-308)

Ms. BILYEU:

The System's technical legislation is S.B. 41. The Retirement Board has no proposed bill seeking benefit modifications in the 75th Legislative Session. I have provided my written testimony ([Exhibit K](#)).

SENATOR RAGGIO:

What is the reason for all of these changes?

Ms. BILYEU:

Currently, District Court and Supreme Court judges have a limited period of time to make their election to transfer to the JRS.

COCHAIR MATHEWS:

We will close the hearing on S.B. 41 and open the hearing on S.B. 12.

**SENATE BILL 12**: Revises provisions governing the Commission on Educational Excellence. (BDR 34-299)

ASSEMBLYWOMAN BONNIE PARNELL (Assembly District No. 40):

I represent Assembly District 40. I am here this morning as Chair of the Legislative Committee on Education. Senate Bill 12 is about transparency and accountability for a successful program. The bill has to do with the Commission on Educational Excellence and the program for innovation and prevention of remediation. During the interim, the Legislative Committee on Education reviewed the evaluation of effectiveness of programs funded by the Commission and received testimony concerning the distribution of funds. The Committee became aware of the potential of applicants requesting funding from multiple sources for the same or similar projects. In many instances, the Commission was aware that another group may have received and funded a similar request for funds. The Committee also learned that the Commission, in some instances, funded remedial programs that were not recommended by the Committee. The Legislative Auditor is required by law to conduct a biennial audit of programs. No specific guidelines are provided for that audit.

A proposal in S.B.12 requires applicants to include a statement with their application indicating whether the request for funds is to support a new program or continue an existing program. They would be required to identify all other sources of money requested or received by the applicant. The measure would prohibit the Commission from awarding funds for a program of remedial study available commercially, unless the program has been recommended by the Legislative Committee on Education and adopted by the Department. This provision would apply only to commercially available programs and would not prohibit a request for funds for innovative programs. The measure would require the Legislative Auditor, in the biennial audit, to review the length of time it takes for an applicant to receive approved funding from the Commission, make a determination as to whether the applicant utilized the approved funding for purposes approved by the Commission and make recommendations for the most efficient and economical use of the grant money by schools.

SENATOR RAGGIO:

The Committee is concerned that utilization was not always as the Committee and the Legislature intended. This was to provide innovative programs that could be measured as effective for remediation purposes. We found instances of possible abuse. The purpose of this program was to provide innovative ways to

deal with underachievement or nonperforming schools. We had examples of schools that were exemplary that put in place new ideas. We wanted to provide a fund that was adequate to accomplish those ideas. It is unfortunate there was misuse among the districts which is why the Legislative Committee is proposing these measures. We would be remiss if we did not mention the staff who keep the interim Committee functioning and I applaud their effort.

ASSEMBLYWOMAN PARNELL:

I have noticed something we need to keep in mind as we deliberate. I held an assembly on the Committee on Education. I invited students, dropout students, school counselors, deans, principals and school board members to come to the meeting to ask them how we can increase Nevada's high school graduation rate. These people attributed the new programs to the success in making a change in the numbers of high school dropouts. Many successful programs have been developed to keep students in high school through the fund for remediation and innovation. This was great legislation we passed in 2005.

COCHAIR MATHEWS:

We are closing the hearing on S.B. 12 and opening the hearing on S.B. 30.

**SENATE BILL 30**: Revises provisions governing the publication of the quarterly list of expenditures of school districts. (BDR 34-425)

KEITH RHEAULT, Ph.D. (Superintendent of Public Instruction, Department of Education):

The genesis of Senate Bill (S.B.) 30 started when we were asked to reduce our budgets this past year and to scrutinize what is being spent on the Department and the school districts. Chapter 387.320 of the NRS requires school districts to publish lists of expenditures of the district in the previous quarter. They need to put them in a newspaper of general circulation in the county in which the school district resides. Senate Bill 30 would eliminate the requirement of the newspaper publication but would still require the report be prepared by the district and placed on their Website. It would be posted on the Website quarterly. This measure will save thousands of dollars for districts by not having the newspaper expenditures.

COCHAIR HORSFORD:

What is the current cost to do this?

DR. RHEAULT:

One small district responded to us. Their cost was \$1,000. I believe Clark County's cost is in the tens of thousands.

COCHAIR HORSFORD:

Please provide this information to the Committee. There might be a problem with the transparency if they do not respond with their costs.

BRYN LAPENTA, ED.D. (Senior Director, Public Policy, Accountability and Assessment, Washoe County School District):

We brought the quarterly report cost history with us. It is about \$1,000 a year for the Washoe County School District. In the most recent quarter, it was \$287.05.

COCHAIR MATHEWS:

Not everyone has access to the Internet. People are accustomed to reading the paper, even though it is fading quickly.

BARRY SMITH (Executive Director, Nevada Press Association, Inc.):

I have presented an outline of my testimony to the Committee ([Exhibit L](#)). I am in favor of exposing these budgets and expenditures to the public and appreciate the cost-saving effort in these tight times. I think it is crucial to have the public's scrutiny of these expenditures. This practice has been in the law for over 50 years. Using the Website is an excellent supplement to having the notice in the newspaper. To me, there is a big difference between making information available and the responsibility a government agency has to push that information out there. The reason for general circulation is for finding something even if you are not looking for it. That is the theory behind the Public Notice System.

There are more than 350 school districts, counties, cities, state departments, divisions, agencies, commissions and so on. The system we have congregates public notices in the newspapers of the county you live in. Moving the notices exclusively to a Website means searching hundreds of department Websites to find that notice. We did a survey last summer and asked people where they preferred to read public notices. Of those responding, 56 percent said they preferred newspapers; 18 percent preferred the Internet; 87 percent said they believe governments should be required to publish local notices in newspapers; and only 10 percent of the people said they never read a public notice in a newspaper.

The State Treasurer has a Website for unclaimed property. People can look for their names to see if they have overlooked money or property. That Website gets very little traffic until it is published in the newspaper and then it is swamped. The effect of having the notices go into the newspaper is to draw attention to the information on the Website. There is a cost to provide information on the Internet. It is not free. Nevada has good access to the Internet. The people who have no access to the Internet are generally poor, minority or elderly. By placing public notices on its own Website, government is accountable to itself. It eliminates the third-party accountability the newspapers provide. They receive an affidavit of publication. We know the information has been published in the form it was intended. It is an important aspect of public notice that a third party, outside of government, is responsible for the publication.

SENATOR COFFIN:

I agree that the printed word still prompts people to go to the electron. Do not forget that the cost of newspapers is rising dramatically. Access to newspapers is becoming difficult and circulation is declining. Many of the things we require to be published should continue to be published. I see no reason why we cannot use this as a vehicle to require more information to be published on the Internet. These notices are not very detailed. I think we could require local governments creating electronic documents to be more thorough and detailed on the Internet. We do have complaints on expenditures of the school districts. We could require more transparency.

MR. SMITH:

In checking the school district Websites, there is a lot of information. I did not find this specific report. Nothing is stopping them from providing additional information.

COCHAIR MATHEWS:

Newspapers still charge by the line and every time information is added, it costs more money.

We will close the hearing on S.B. 30 and open the hearing on S.B. 80.

**SENATE BILL 80**: Revises provisions governing the P-16 Advisory Council.  
(BDR 34-586)

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

The P-16 Advisory Council was created by the 74th Legislative Session to assist in the coordination between elementary, secondary and higher education in the State of Nevada. The Council is charged with conducting a comprehensive review of Nevada's education system and forming a vision for Nevada students by strengthening partnerships between pre-kindergarten through grade 12 (PK-12) and higher education. During the interim, the Council met 11 times and received presentations by experts from across the country. Through deliberations, the Council unanimously approved reinstating Nevada's association with the American Diploma Project. This decision places Nevada with 34 other states dedicated to making sure every high school graduate is prepared for college or careers. The council has also partnered with the Nevada System of Higher Education and the Western Interstate Commission for Higher Education (WICHE) to implement the College Access Challenge Grant Program in Nevada. The goal of the program is to increase the number of low-income students who are prepared to enter and succeed in postsecondary education. Although the Council was able to make some strides towards strengthening partnerships between PK-12 and higher education during the interim, it has a long way to go. I believe the Council will only be able to continue on its path and make informed decisions concerning school, postsecondary education and workforce readiness if it provides increased administrative support for comprehensive research and analysis. Senate Bill (S.B. 80) proposes to transfer administrative support for the Council from the Office of the Governor to the Director of the Legislative Counsel Bureau (LCB).

I would like to commend the staff of the Governor's Office, Jodi Stephens, Legislative Director to the Governor, and Jan Brase, the Legislative Assistant to the Governor, for their diligence in assisting the P-16 Council during the interim. It has become apparent that the staff of the Governor does not have sufficient time to dedicate to the needs of the P-16 Council, including researching and analyzing this issue. I believe the staff of the LCB could better support the needs of the Council in the future. I have been informed the Legislative Commission has approved a bill draft request, not yet introduced, prohibiting the staff of the LCB, in certain instances, from being assigned to provide administrative support to any public body unless a Legislator is designated by statute as chair of that body. Because of this, I would like to propose an amendment to S.B. 80 requiring the Chair of the Council to be a Legislator.

COCHAIR MATHEWS:

I have a comment for the record. You have asked for an amendment requiring someone from the Legislature to Cochair the bill. There is some hesitation concerning this bill, even with the change. Until we can determine some sort of mechanism for doing this, we should hold it and discuss it with the Legislator.

We are closing the hearing on S.B. 80 and will open the hearing on S.B. 81.

**SENATE BILL 81**: Establishes the Special Needs Scholarship Program.  
(BDR 34-15)

SENATOR CEGAVSKE:

I am bringing forward Senate Bill (S.B.) 81. This establishes the Special Needs Scholarship Program. I have been an advocate of school choice for many years. While many public schools provide excellent educational programs, some children are better served in programs designed to meet their individual needs. No single public school can provide excellent programs in all areas of special education. Yet they are required to serve every child who enrolls.

I have been deeply moved by the work of the New Horizons Academy in Las Vegas. I have seen evidence there that the lives of special needs children can be changed through educational programs appropriate to their individual needs. Full school-choice programs provide parents with a portion of the public educational funding allotted for their child to attend a school of their choice. It gives parents the authority to send their child to the school that best suits their needs, whether it is a parochial school, another private school or a district charter public school. I sponsored S.B. No. 158 of the 74th Session to provide scholarships to special needs children. I believe schools dedicated to serving those populations will have the staff and resources to address individual needs in a way comprehensive special education programs in a public school cannot. Two Senate Committees recommended passage of that bill to the full Senate which passed the bill unanimously. Unfortunately, it was not considered in the Assembly. I have supported legislation in each of the past three Legislative Sessions to provide scholarships to students with special needs. I am here to try again with S.B. 81. I know the idea of choice in education is gaining acceptance in the Legislature.

I am proud to have sponsored S.B. No. 400 of the 74th Session which established a program of school choice for children in foster care. This measure passed both houses and was signed into law. Beginning this school year, there is a procedure providing a scholarship to a foster child that transfers to a public school other than the one where he resides. This procedure places the child's best interest ahead of the school boundary and restrictions. There is public support for school choice scholarships. In 1955, Dr. Milton Friedman proposed the idea of school vouchers. Today the Friedman Foundation for Education Choice (FFEC) honors his legacy by continuing to support the school choice movement. According to a survey conducted by the FFEC, there is support in Nevada for school vouchers, particularly for students with special needs. More than one-half of those surveyed supported allowing parents the option of using public funds to send their child to a private school, providing a tax credit to businesses contributing money to fund private schools and scholarships and allowing the use of public funds for children with special needs to attend a private school.

In summary, S.B. 81 establishes the Special Needs Scholarship Program. Under this program, special education students may enroll in an eligible private school or in a public school outside of the school district in which the student is zoned to attend. Public and private schools would apply to the Department of Education to become eligible to participate in the program. The measure requires an eligible private school in which the child enrolls receives an amount equal to the base cost per pupil. The Department is authorized through the measure to contract with an independent consultant for an evaluation of the scholarship program. Evaluation would include the level of satisfaction of children participating in the program and their parents or guardians, the effectiveness of the program in increasing the academic achievement or decreasing the behavioral problems of the children and the fiscal impact of the scholarship's program on the State and each school district.

I believe empowering parents to access the educational program best suited to their children's needs would provide the most successful outcome for the children. We passed the Millennium Scholarship Program and, in my opinion, it is the same as what we are trying to do here. I urge you to support this measure. There are some parents here to tell you why a choice for them and their child to get the best education is the reason we are here.

BARBIE LAUVER (Parent):

I am the mother of a 13-year-old son with high-functioning autism. I am also the founder of the Asperger's Syndrome/High Functioning Support Group of Las Vegas. I have provided you with my written testimony ([Exhibit M](#)).

After six years, our current membership has reached about 350 families. My son, John Matthew, was caught between worlds at the school district. Because he was behind academically he was put in the autism room with very low-functioning children where he picked up negative behaviors. He spent one day a week in a regular classroom with no support. He was totally overwhelmed, was bullied by other children and ignored by the teacher. Increasing academic and social demands are placed on students each advancing year which is problematic for children with learning disabilities. Through my personal experience and from members of my support group, I have learned these children often do not achieve their educational potential. They are often misunderstood and mislabeled as unmotivated, rude or weird.

I took him out of public school two years ago. His self-esteem was destroyed and he had literally shut down academically and behaviorally. I began homeschooling him and within two years he has grown over three years academically. Unfortunately, he misses attending school with other children. I joined with other parents and local autism professionals in creating The Achievement Academy which will open in September 2009. The Academy is a nonprofit, private school created for children in grades 1 through 8 with high-functioning autism and related disabilities.

The Academy's emphasis on teaching social and life skills development will be incorporated into the core curriculum. The Academy believes schools must teach these skills because academic achievement alone does not ensure success in society. We have 25 applications from families who want their child to attend our school. Some cannot afford the tuition we need to charge. That fact saddens me deeply. Children with autism are lonely and have no real friends. Exposure to other children in traditional schools is not enough to provide them

with the social skills they need to facilitate friendships. Traditional schools are unable to provide intensive and consistent daily social skills interventions and training. The Achievement Academy students will be exposed to a variety of community-based social situations, to practice what is taught at school.

I believe the best solution for our children with special needs is alongside other children with similar disabilities. Because most families do not have the financial resources necessary to afford private schools designed specifically for their children with special needs, it is necessary to receive support through a bill such as S.B. 81. This bill will allow parents to determine the best solution for educating their special needs children.

KAREN CUSTER (Parent):

As a mother of a child with special needs, my story is a bit different than Ms. Lauver's. My daughter has not been in a traditional classroom since the fourth grade. She is a senior in high school this year. She has been homeschooled and tutored because there is nothing allowing her educational needs to be met in the traditional school setting. It is very important we pass S.B. 81 to meet the needs of families who cannot afford to put their children in a private school. In the economic times we are having, passing this bill would benefit many families and allow us to give our children the same education as others receive.

JAN CRANDY (Chair, Strategic Plan Accountability Committee for Persons with Disabilities):

I have provided the Committee with my written testimony ([Exhibit N](#)). I believe S.B. 81 gives parents more options and choice in their children's education. Nevada is growing and alternative placements are becoming available. This bill will provide funding and more placements will be established. I would ask for an amendment allowing the children receiving the scholarship to have the protection of the Individuals with Disabilities Education Act (IDEA) to carry forward to their new placement.

RAY BACON (Nevada Manufacturers Association):

I am representing Nevada Manufacturers Association. I have provided written testimony to the Committee ([Exhibit O](#)).

I have no children and have no vested interest in this issue. However, there is a bill, Assembly Bill (A.B.) 162, which mandates health care for autism. It adds another medical mandate. In the process of researching this, I discovered a clipping from the *Rocky Mountain News* regarding a bill in Colorado that takes a different approach on the autism subject. I think this Committee should pay attention to this approach. What they are proposing in their bill is to designate a certain level of IDEA funding to set up separate charter schools. The issue is primarily not a medical issue. The issue is merely training and focusing on skills for children with autism to become functional. Using that approach, New Horizons could become a charter school or the district could set up their own charter school. Charter schools would become a choice and if the parent makes that choice, the IDEA restriction of "least-restrictive environment" would not apply.

If you have a high-functioning child, they might need that skill set for a period of time and then return to a public school, but they would have the training to get them functional. A low-functioning child may end up in the specialized school

environment for their entire school career. It is different from what is being proposed in the Assembly bill, but close to Senator Cegavske's proposal in S.B. 81. We probably would not have this functioning in our rural areas, but the vast majority of our autistic children are probably found in the large school districts. They could end up with enough of a population to merit something like this.

**ASSEMBLY BILL 162**: Requires certain policies of health insurance and health care plans to provide coverage for screening for and treatment of autism. (BDR 57-44)

Ms. BILYEU:

Section 40 of S.B. 81 proposes to amend the definition of public employer by specific exclusion of private schools. I have given you some written testimony (Exhibit P). We are asking that Section 40 be deleted from the bill. Section 11 of the bill makes it clear that a private school certified as an eligible school is not a public employer for any purpose. We believe Section 40 is not necessary. I have prepared an amendment for you (Exhibit Q) to delete this section from the bill.

DIANE BURNETT (Grandmother):

I am the grandmother of an autistic child who lives in the state of Washington. My daughter has opened a school there for low-functioning autistic children. Since they are a needy family and will be transferring to Las Vegas, I want to open a school in Las Vegas. I know the struggles the school district has with normal, developing children. There is a dire need for a school for children with autism, both high- and low-functioning. They are lost in our school district.

DR. LAPENTA:

To be eligible for a voucher, the school only needs to be licensed and not financially viable and not able to provide specialized service. We feel specialized service is critical. We are concerned the per-pupil dollars plus the extra money spent have to go to the voucher school with no expectation the funding will be used to provide special education services. Our public schools already contract with other schools to provide special education services they cannot provide.

SENATOR RAGGIO:

I did not understand your last point. Who are the other schools? Do we have some in Washoe County?

DR. LAPENTA:

I do not know specifically what schools. I will find out. There are charter schools that we contract to provide services when there is a certain service they cannot provide.

SENATOR RAGGIO:

I am having a problem understanding the concerns. I understand the first concern; the school should be able to demonstrate financial viability. I find it hard to understand the objection to this. Are you saying you oppose this? Are you recommending that something be put into law requiring financial viability? Saying we already have some kind of a contract and then not being able to say what that is concerns me. I think we need to know what alternative placements are available in Washoe and Clark Counties.

DR. LAPENTA:

I can get you the information on what alternative placements we have available. I do not have it with me today. Our concern is making sure the facility receiving the funding has those programs in place.

SENATOR RAGGIO:

I think those are good suggestions. It is within the purview of the bill requiring the State Board to approve the application and to make sure everything is in place. If the language of the bill is not adequate, people can suggest change in the language.

SENATOR COFFIN:

I am familiar with the New Horizons Academy. It fills a need the District does not provide, at least in Clark County. There seems to be a need for more of these schools. Why do we have to have people asking for these special schools? We have had a lot of testimony on this subject over the years.

BART MANGINO (Principal, Bonanza High School):

I represent Clark County School District. Currently, there are several things preventing additional special schools. Most of that is dictated by a student's Individual Education Plan (IEP) and the services provided, both at the home school and whether the student should qualify for a more restrictive placement. The public schools are bound by a less-restrictive environment. We have to prove the services are provided within the home school.

SENATOR COFFIN:

I think it is better for the students, their parents and the teaching staff to have specialized schools versus providing these services at each neighborhood school. There are many things the staff at a generalized school cannot possibly know.

MR. MANGINO:

Speaking for the Clark County School District, most schools have specialized programs within the school, be it autism or severely learning disabled children. Students from surrounding areas are provided transportation to the school. There is the opportunity for students to attend specialized programs within a general school setting.

SENATOR COFFIN:

Is there a debate going on about the subject; whether or not you can do this? Is there something I am missing? I do not expect you to continue giving me the same answer. Has it been determined by either federal government regulation or from our own experience that it is better to provide these services at each regular campus versus having specialized schools? What is keeping the districts from having more of these specialized schools?

MR. MANGINO:

I am not trying to be evasive. What you are faced with is whether the specialized school provides a student with an education in their least-restrictive environment. I apologize for not making myself clear regarding a specialized school versus a specialized program within an existing school. There is a difference. Additionally, I would have to check federal laws on this program. I will be happy to check that for you.

SENATOR RAGGIO:

We have had speakers this morning with children or grandchildren involved in this process. They represent groups that feel these specialized programs within each of these schools have been inadequate to address the issues with which they are dealing. How would your districts respond to those people who have experienced specialized programs within schools? I understand the concept of least restrictive, but in their experience, it has not been beneficial.

MR. MANGINO:

My initial response is to look at each case individually to determine why it was not effective versus why it was.

SENATOR RAGGIO:

These children are different and do not feel as welcome as other children. They are shunted aside by others in these schools, even though they have these specialized programs. I think the parents are saying the experience in a specialized school, such as New Horizons, is quite different for that child. The child enjoys a full day of being in the school with the same kind of environment. If you can guarantee the programs are adequate, the courses are being taught and the school is viable, there should be enthusiasm about doing this.

MS. LAUVER:

The reason least-restrictive environment is not working is because it does not have the support or teacher training. Basically, our children are shuffled around between an autism room, a resource room and a regular classroom where they have no ownership and no pride of where they are. This is a major blow to their self-esteem and they feel different every minute of the day. When the children are in a specialized environment, it is least restrictive because they can be themselves and are totally accepted and understood by teachers and peers. Their academics and social needs are totally met.

DR. RHEAULT:

We were asked to do a fiscal note on this bill. Looking at the requirements, there are a number of items that will add to the staff time it takes to administer the bill. We will have to develop an application process with schools interested in applying and for parents to submit information. We will have to look at the IEPs to determine the proportionate cost. We will have to set up accounting programs to pay the schools receiving the students. I did not attach any cost to my fiscal note because of the limited number of participants I expect by the next biennium if this bill passes. I did say I would keep track of staff time and come back in the next Session if we cannot manage with our current staff. There are two eligible participants: school districts that could enroll special education students from outside their district, and licensed private schools. There are 89 licensed private schools currently in this school year. Of those 89 schools, 45 are only offering kindergarten. There are only six counties that have private licensed schools in the State.

I think there is a small flaw in the bill. I would not want parents thinking they all have an option when there are no schools in the district. Section 12 of the bill requires the child to have an IEP. Children who are homeschooled or currently in a private school do not have an IEP. Another requirement is to be enrolled in a public school. Both of those requirements would restrict those parents from applying. The only ones eligible are students who are currently enrolled in a public school with an IEP. The child voluntarily takes the IEP to the new school.

There is no requirement for an IEP the second year. After the first year, we will have nothing to go by when we look at the proportionate cost.

These are some of the technical issues needing to be addressed. Hopefully, parents will not think there are many of these schools in place to accept them. There are a couple of new ones, but I do not know what the capacity will be. If there is more demand than space, provisions in the bill call for a lottery.

SENATOR COFFIN:

Are we running into a problem here because of a mainstream movement that feels the students ought to be in the least-restrictive environment? The parents have a true desire their child will eventually be part of a classroom that everybody else's child is part of. Is that the real reason for all this controversy? We want these children to be able to be on the same level and grade as all the other children. They may not ever be able to do that, but many people do not appreciate that fact and do not accept it.

DR. RHEAULT:

Senator, I believe you hit it. About six years ago, the federal government pushed the special education programs into the least restrictive environment which makes it difficult to offer specialized programs. I will put together a synopsis of why they have gone to the least-restrictive environment. I think we have pushed school districts, from a federal direction, into integrating the students into the regular programs.

TEDDY OSANTOWSKI:

I am working with the parents of autistic children. I have been in special education since 1959 and worked in the Clark County School District since 1999. I am well aware of the needs of the students and concerns of the parents. When you pull a child from the regular classroom in his core curriculum, the quality of education is lost. I know we look for the least-restrictive environment which the IEP would state, but we are limiting the students in their needs. The IEP is effective for three years but can be waived. The law does not state we have to adhere to that. That could be the choice of the local school district. We are saying there is a need for the special schools for students who get lost in the shuffle in regular classrooms. They can go into an educational setting where their needs are met. I would like the Legislature to look at the situation where the parents are not happy with the status quo and their children are not progressing. Autistic children have to be able to work on their social skills and we do not have that. One out of 150 children has autism which is a problem we cannot ignore. I hope you have enough concern about these children to support this bill.

COCHAIR MATHEWS:

Thank you for your testimony. Make no mistake, we are concerned about all of our children.

JULIE WHITACRE (Director of Government Relations, Nevada State Education Association):

I am with the Nevada State Education Association (NSEA). We would like to echo the comments of the Clark and Washoe County School Districts and the technical problems brought out by the Department of Education. I also want to point out that IDEA requires each child with special needs be provided an IEP. This IEP describes the special education services the child is going to need and

supports the resources the school district will use to fulfill that IEP. The IDEA also stipulates that parents must be included in developing, evaluating and modifying their child's IEP. Services identified in the IEP must be provided at no charge to the student or parent. Students cannot be refused services based on expense or on the grounds the disability may be too severe to benefit from the special services. In addition, children with special needs, whose behavior could result in disciplinary action, are entitled to a hearing to determine if that behavior is based on inadequate treatment of needs identified in the IEP and remain entitled to appropriate education services even if they are suspended or expelled.

When parents accept a voucher to have their child go to a private school, none of these protections apply to them. The U.S. Department of Education's Office of Civil Rights confirms that parents who use vouchers waive their rights and their child's rights under the IDEA. The best way to ensure every child, including those most vulnerable with special needs, has access to a free, quality education is to invest in our public school system and to implement strategies that have been proven effective, such as smaller class sizes, better professional development for general education teachers who teach children with special needs and assistance to facilitate inclusion of parents in the IEP.

LONNIE SHIELDS (Assistant Executive Director, Nevada Association of School Administrators):

I am speaking for the Nevada Association of School Administrators and professional employees. This is one of those rare times I can say it has all been said. We oppose this bill.

Ms. CUSTER:

I am a former teacher at the New Horizons Academy. I was there for five years. I will be teaching at the Achievement Academy this fall. The needs of these children in a special environment are completely necessary. I have seen these children start in a lower elementary grade, work through to high school and graduate with a sense of pride in their accomplishment. They graduate with self-esteem and go on to be proactive members of society. The IEPs are very important, but in the public school setting they do not always work. There are too many children in that setting and their needs are not being met individually.

Ms. LAUVER:

In a perfect world, the IEP would work. My son had a perfect IEP but it was not followed. I think that is where a lot of the parents' frustration is. They get exhausted fighting the school district to get their IEP met month after month and year after year.

Senate Committee on Finance  
March 2, 2009  
Page 20

COCHAIR MATHEWS:

Thanks to all of you who have testified today. We will close the hearing on S.B. 81. This Committee is adjourned at 10:57 a.m.

RESPECTFULLY SUBMITTED:

---

Barbara Richards,  
Committee Secretary

APPROVED BY:

---

Senator Bernice Mathews, Cochair

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