The Assembly Committee on Ways and Means and the Senate Committee on Finance, Joint Subcommittee on K-12 Education/Higher Education was called to order by Chair Morse Arberry Jr. at 8:08 a.m. on Friday, April 17, 2009, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature’s website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau’s Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman Morse Arberry Jr., Chair
Assemblywoman Debbie Smith, Vice Chair
Assemblywoman Barbara E. Buckley
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Tom Grady
Assemblyman John Oceguera

SENATE COMMITTEE MEMBERS PRESENT:

Senator Bernice Mathews, Chair
Senator Steven A. Horsford
Senator Warren B. Hardy II
Senator William J. Raggio

STAFF MEMBERS PRESENT:

Mark W. Stevens, Assembly Fiscal Analyst
Gary L. Ghiggeri, Senate Fiscal Analyst
Brian M. Burke, Principal Deputy Fiscal Analyst
Alexander Haartz, Program Analyst
Linda Blevins, Committee Secretary
Vickie Kieffer, Committee Assistant

NEVADA SYSTEM OF HIGHER EDUCATION

Chair Arberry opened the meeting on the Nevada System of Higher Education (NSHE) budget work session and requested that Fiscal staff provide a budget overview.
Alexander Haartz, Program Analyst, Fiscal Analysis Division of the Legislative Counsel Bureau, presented an overview of the major issues of the NSHE budget in preparation for budget closings. Mr. Haartz noted the final budget closings for this account were tentatively scheduled for May 8, 2009.

The first of five major issues opened for discussion was the federal state education stabilization funding scenario. Mr. Haartz noted there were several issues the Subcommittee should address for budget building purposes, the first of which was the waiver test. Under the American Recovery and Reinvestment Act of 2009 (ARRA), the Secretary of Education must apply a waiver test to the applications submitted by each state. The test would determine whether the state qualified for a waiver of the maintenance of effort (MOE) requirement.

Mr. Haartz explained that the waiver provided a mechanism by which the MOE requirement could be removed from the equation. The waiver test was based on the fiscal year (FY) 2009 legislatively approved budgets for the NSHE and kindergarten through grade 12 (K-12). The total of the two budgets equaled 55.78 percent of the total legislatively approved budget for FY 2009.

Per Mr. Haartz, it was the understanding of Fiscal staff that under the federal application requirements, the Governor's recommended budget for FY 2010 and FY 2011 would have to be raised to that 55.78 percent level. This was interpreted to mean that additional funds equal to 4 percent would be required in FY 2010 and a little over 6 percent in FY 2011.

Mr. Haartz noted it was important for the Subcommittee to keep in mind that this proportionality was required to be maintained throughout the budget-building process. If additional dollars were added for non-K-12 or the NSHE agencies and items, it was necessary to add additional dollars back into K-12 and/or the NSHE in order to maintain the 55.78 percent proportionality. Based on Fiscal Analysis Division calculations, staff believed it was cost-prohibitive at this time, and the calculations did not support eligibility for a waiver for Nevada. Therefore, the information presented by Mr. Haartz was based on the "no-waiver scenario."

Under the "no-waiver scenario," the states must first meet the MOE, which, according to Mr. Haartz, was tied to FY 2006 funding. The federal application required states to raise FY 2009, FY 2010, and FY 2011 General Fund operating budgets to the FY 2006 level.

Discussions with the U.S. Department of Education indicated that states had flexibility in terms of methods of calculation of the numbers. There were certain built-in exclusions included in the federal application. For example, when determining the state support, the application required that for purposes of calculating the MOE, tuition and fees paid by students were not supposed to be part of that calculation. The same was true of research and development money and capital projects. Additionally, there were exclusions that states had flexibility in applying, such as funds that were appropriated to a third party. An example of this would be salary adjustment money which was not appropriated directly to state agencies, but appropriated to the Board of Examiners.

In reviewing the exclusions, Mr. Haartz explained that although the federal direction indicated states had flexibility, they must be consistent. Therefore, for purposes of calculating the MOE requirement, the FY 2006 General Fund "qualifying" operating expenditures, as indicated in the following table, were $541,840,538.
Per the application, Mr. Haartz believed that the state would be required to raise FY 2009, FY 2010, and FY 2011 funding to that level to meet the MOE requirement. The table indicated no MOE shortfall for FY 2009; however, because The Executive Budget had cut NSHE significantly, there was an MOE requirement that had to be met for FY 2010 and FY 2011. In FY 2010, the MOE shortfall was $122,253,011, and in FY 2011, it was $127,001,995.

That money would have to be added into the NSHE budgets for the state to qualify for the stabilization funds. Mr. Haartz noted there was no MOE issue for the K-12 funding.

Mr. Haartz continued, pointing out that the next part of the sequential stepwise process that the federal application required states to follow was the restoration component. The federal intent was that states use stabilization money to the extent available, to restore K-12 and higher education budgets to the higher of either FY 2008 or FY 2009.

Mr. Haartz directed attention to the following table:

According to Mr. Haartz, Fiscal staff had reviewed the calculations and applied the concept of both mandatory and optional exclusions, and it appeared that FY 2008 was going to be the benchmark against which FY 2009, 2010, and 2011 had to be raised. Calculations suggested that for FY 2008, the "target
"level" was $604,246,497. The FY 2009 actual expenditures would be $16,878,848 less than the FY 2008 "target level." That was based on current year-to-date expenditures starting at the $677 million level, the various budget reductions required, which was approximately $58 million, and applying the qualifying exclusions. With stabilization funds, it was necessary to add $16,878,848 to the FY 2009 budget.

Mr. Haartz pointed out that the Governor's recommended budget for FY 2010 was $423,385,960 to which the $122,253,011 would need to be added. To reach the "target level" for FY 2008, the NSHE would be eligible for or the state would need to put $62,405,959 of federal stabilization funds into FY 2010.

Mr. Haartz explained that one of the goals of the federal stabilization funds was to avoid "funding cliffs." The federal government recommendation was for states to smooth the allocation of stabilization funds where appropriate, to ensure that one year was not disproportionately higher or lower than the other. Applying that principle, Fiscal staff had looked at the $16,878,848 available in FY 2009, the $62,405,959 that would be available and for which NSHE would be eligible in FY 2010, and the $37,594,920 available to NSHE in FY 2011, and recommended the total be "smoothed" and divided into each fiscal year. Fiscal staff recommended that $58,539,863 be available in FY 2010 and FY 2011.

The impact of the "smoothing" was that for FY 2010, the total budget for General Fund and stabilization, including MOE, would be $604,078,834 for both FY 2010 and FY 2011. There would be no funding cliff and funding was equal in each year.

To arrive at the $604,078,834 and the allocation of stabilization funds, Mr. Haartz noted the federal application required funds to be allocated proportionate to the relative shortfalls that both K-12 and higher education had in reaching either the FY 2008 or FY 2009 level. Fiscal staff applied the proportionality requirement so that out of the $324 million available in stabilization funding, approximately $116.8 million was proportionately allocated to higher education, while the balance of $207.5 million would be proportionately allocated to the K-12 budgets. All of the states would be following the same sequential federal formula to arrive at these calculations.

If funded at the $604,078,834 level, Mr. Haartz stated that amount represented 89.22 percent of the legislatively approved $677 million FY 2009 budget. That translated to a 10.78 percent budget reduction in both FY 2010 and FY 2011.

Responding to Senator Mathews, Mr. Haartz noted that was a decrease from the 34 percent reduction recommended by the Governor.

Assemblywoman Buckley was curious whether Fiscal staff had the opportunity to analyze the percentage of funds that could be restored to K-12 under both scenarios. For example, the Governor had recommended a 34 percent cut for the NSHE, and she wanted to know, both with and without the waiver scenario, what the percentage of cuts would be to the NSHE and to K-12.

Mark W. Stevens, Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, commented that he would prepare the information.

Assemblywoman Buckley believed that the numbers should be carefully considered before any decisions were made.
Chair Arberry requested someone to appear before the Subcommittee from the Budget Division.

Cathy Gregg, Budget Analyst for the Budget Division, advised the Subcommittee that Andrew Clinger, Director of the Department of Administration, had been contacted and he was en route. She did not have any information regarding the submittal of the application for the federal stimulus money or the waiver.

Senator Raggio believed the issue was that the Governor was requested to submit the application based on the fact that the Legislature had suggested that a waiver would be necessary. It was important for the Fiscal staff and the Budget Division to work together to determine whether or not that should be the case. The Governor had to make the application, and the Legislature should determine whether or not to proceed with the waiver process.

Assemblywoman Smith thought the main question was the status of the application for the stimulus dollars as time was of the essence.

It was Chair Arberry’s understanding that the application deadline was fast approaching. He noted the 2009 Legislative Session was nearing its end; therefore, decisions must be made as quickly as possible.

Senator Mathews thought the application was not only for a waiver but also for the stimulus money.

Ms. Gregg agreed the Subcommittee’s concerns were valid, and the Budget Division was aware of the approaching deadlines.

Daniel Klaich, Executive Vice Chancellor for the Nevada System of Higher Education (NSHE), requested an opportunity to comment on the presentation made by Mr. Haartz. He asked that the NSHE be allowed to review the calculations performed by the Fiscal staff and provide input. Mr. Klaich advised that the NSHE had worked with Fiscal staff to come up with common numbers, but the NSHE had not had the opportunity to provide input for the additional calculations that had been made.

Mr. Klaich further noted that the "target" appropriation referred to by Mr. Haartz, was a "cap." Therefore, it was not a "target" appropriation for the NSHE, but rather a "cap" on appropriations and the allocation of the dollars. In that case, it appeared the input of the NSHE would be critical. Some of the numbers were different than calculations performed by the NSHE, and he requested the opportunity to review the numbers with Fiscal staff.

Chair Arberry said that was acceptable.

Mr. Haartz agreed that it was important to note that while he used the term "target," the federal application process and the calculations that states were to use worked as a "cap."

Moving to the concept of the enrollment projection methodology, Mr. Haartz recalled that at previous hearings there was discussion regarding how to use enrollments for purposes of calculating formula funding and distributing formula funding. The NSHE had been requested to provide two alternatives to the Governor’s recommended budget. One methodology used the three-year
weighted average, the traditional approach. The other used a flat enrollment methodology based on FY 2009 actual enrollments.

Additionally, the Subcommittee asked for information regarding the second alternative which was at the $617 million funding level, and what the formula allocations would look like if the three-year methodology was applied, rather than the flat methodology.

Based on the information provided by the NSHE, Mr. Haartz provided the following table which showed how the allocation would change if the three-year methodology was applied instead of the flat methodology:

<table>
<thead>
<tr>
<th>Institution</th>
<th>FY 2010 GF Funding Level</th>
<th>FY 2010 3-Year Enrollment Methodology</th>
<th>FY 2011 GF Funding Level</th>
<th>FY 2011 3-Year Enrollment Methodology</th>
<th>FY 2011 GF Funding Level Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>125,567,792</td>
<td>127,036,494</td>
<td>125,657,049</td>
<td>128,593,755</td>
<td>($2,936,706)</td>
</tr>
<tr>
<td>UNR</td>
<td>154,719,302</td>
<td>158,364,045</td>
<td>151,269,237</td>
<td>158,233,107</td>
<td>($6,933,870)</td>
</tr>
<tr>
<td>UNLV</td>
<td>105,289,436</td>
<td>110,129,952</td>
<td>106,997,925</td>
<td>100,171,859</td>
<td>($6,826,067)</td>
</tr>
<tr>
<td>CSN</td>
<td>118,786,923</td>
<td>118,175,204</td>
<td>119,502,019</td>
<td>118,373,311</td>
<td>$1,128,302</td>
</tr>
<tr>
<td>TMCC</td>
<td>40,591,358</td>
<td>40,072,290</td>
<td>39,801,212</td>
<td>39,848,714</td>
<td>($42,503)</td>
</tr>
<tr>
<td>WNC</td>
<td>20,586,200</td>
<td>20,581,933</td>
<td>20,500,169</td>
<td>20,510,956</td>
<td>($10,787)</td>
</tr>
<tr>
<td>NSC</td>
<td>15,324,892</td>
<td>15,082,024</td>
<td>14,318,137</td>
<td>13,191,836</td>
<td>$1,126,301</td>
</tr>
<tr>
<td>UNR</td>
<td>12,911,436</td>
<td>13,354,254</td>
<td>13,235,129</td>
<td>13,154,808</td>
<td>($70,321)</td>
</tr>
<tr>
<td>NFB Equip.</td>
<td>987,280</td>
<td>1,000,099</td>
<td>977,914</td>
<td>997,840</td>
<td>($23,926)</td>
</tr>
<tr>
<td>Totals</td>
<td>$483,235,787</td>
<td>$483,235,785</td>
<td>$483,235,786</td>
<td>$483,235,785</td>
<td>$1*</td>
</tr>
</tbody>
</table>

* Totals do not net to $0 due to rounding

Mr. Haartz noted that under the flat enrollment methodology, it appeared that UNR and UNLV would receive more formula funding than the community colleges. Conversely, if the three-year weighted enrollment methodology was applied, the universities would receive less funding than the community colleges.

For Fiscal staff to prepare budget closings, Mr. Haartz explained that additional input from the Subcommittee and the NSHE was required on the two methodologies.

Chair Arberry requested that Mr. Klaich provide the requested information.

Mr. Klaich responded that the question went directly to the proportionality of the cuts. In his opinion, the message from the Subcommittee was that regardless of the methodology applied, the Subcommittee did not want to see any "outliers" or institutions that were severely cut. The NSHE had never applied the formula under the current situation. The formula traditionally had been a vehicle that had applied marginal dollars and growth dollars, but now it was a declining revenue position and a fixed appropriation.

Mr. Klaich suggested that the Subcommittee not apply the three-year rolling average as one mechanism of determining the allocation of dollars within the system. The current and flat enrollment model seemed to be a more reasonable approach given that with significant cuts it would be difficult for institutions to project continued growth trends.
Mr. Klaich noted that this was only one aspect. He reiterated the request to work with Fiscal staff to determine what the lump sum appropriation was to the NSHE to ensure that no institution was disproportionately disadvantaged by the formula application.

Chair Arberry inquired whether the NSHE preferred the flat methodology even though it was more damaging to the community colleges.

According to Mr. Klaich, the Board of Regents (Board) had discussed the issue and agreed the flat methodology was preferable.

Senator Mathews asked whether the decision was unanimous from the Board and the presidents of the institutions.

Mr. Klaich stated that he could not say whether the decision was unanimous, but it was the recommendation. It was important to note that it was only one piece and to remove that piece without allowing the NSHE to work with Fiscal staff on the other issues could have a disproportionate effect on one institution or another.

Assemblywoman Buckley asked whether the Board of Regents or the university presidents had approved the flat methodology and what adjustments would have to be made.

Mr. Klaich replied that both the Board and the presidents had approved the flat methodology. He believed there were at least a couple of "outliers" in the application of the formula. There were structural inequities in the formula that the NSHE had identified, quantified, and approved through the Board that related to the funding of the College of Southern Nevada (CSN). He believed that within the ultimate allocation of funds that the NSHE received, that issue should be dealt with separate from the overall allocation.

Assemblywoman Buckley noted that the flat enrollment methodology provided greater funding to the universities, and the three-year weighted average provided greater funding to the community colleges and Nevada State College. She inquired whether the NSHE recommended anything specifically with regard to the calculations to avoid having the universities and community colleges pitted against each other, and whether Mr. Klaich had concrete recommendations with regard to the methodologies.

Mr. Klaich stated that his recommendations were that once the amount of dollars available to the NSHE on a gross appropriation amount were determined, the funds should be removed to provide for inequities prior to running the formula.

To clarify, Assemblywoman Buckley restated that when the NSHE knew what the Legislature planned to appropriate to the NSHE, Mr. Klaich would, within those sums, recommend transfer to reduce inequities between campuses.

Mr. Klaich confirmed Assemblywoman Buckley's understanding of the situation. He noted that the amounts would not be available prior to budget closings, but the NSHE could provide methodologies and run examples so that a formula could be given to Fiscal staff. When the final funding was determined, the methodology could be applied, if desired. Mr. Klaich did not know, at this time, what the methodology would be.
Assemblywoman Buckley asked whether Mr. Klaich had a formula in mind based on student presence, percentage of cuts, or other methods. Once there was a formula, it could easily be applied.

Mr. Klaich remarked that he had a formula in mind, but he did not have the authority to make the final decision. He was still in discussions with the presidents, the Board, and the Chancellor.

Senator Horsford inquired where the NSHE was in discussions with Clark County regarding local contribution toward the community college.

Mr. Klaich indicated the conversations had taken place directly between the Chancellor and the chairman of the county commission. To the best of his knowledge, the discussions had been positive and supportive, but the discussions had not been concluded.

Noting that time was short, Senator Horsford requested a formal concept on how the process would work and how it might address some of the inequity with the flat enrollment methodology for the College of Southern Nevada. Additionally, regarding the flat enrollment methodology, Senator Horsford requested the NSHE work with Fiscal staff in preparing the budgets accordingly.

Mr. Klaich agreed to work with Fiscal staff as directed.

To be able to direct Fiscal staff, Mr. Haartz inquired whether the Subcommittee had a preference of one methodology to be prepared for budget closings or whether both methodologies should be used.

Senator Hardy believed it was difficult to make a determination until additional information was received regarding the methodology to mitigate the impact on the various institutions; therefore, he requested both methodologies be used for budget closing documents.

Mr. Haartz moved to the issue of “hold-harmless” funding discussed in the context of reduced total state funding and the ongoing shifts in student enrollment. It would be beneficial to Fiscal staff if the NSHE commented on their definition of stop-loss and what campuses would benefit from it.

Mr. Klaich responded that the NSHE staff would run the formulas to show the exact dollar amount and include the dollars in a presentation.

Chair Arberry noted that May 8, 2009, was the date for the NSHE budget closing. The numbers must be input immediately to meet the deadline.

Assemblywoman Buckley questioned how the NSHE proposed to determine and distribute the stop-loss funding and whether it was supported by the Board.

Mr. Klaich responded that the Board of Regents understood that decisions must be made by the Legislature on a real-time basis and that a meeting could not be called whenever a question was brought up; therefore, confidence was placed in the Chancellor to make the decisions. Mr. Klaich discussed these matters daily with the Chancellor. He was confident that decisions worked out with the presidents, the Chancellor, and him would be respected and supported by the Board.
Comments and adjustments made were deviations from the formula and would have to be approved by the Legislature. Mr. Klaich would be returning with changes that were inconsistent with a strict application of the formula, but that the NSHE believed appropriate under the circumstances. The methodology that Mr. Klaich had in mind focused on the concept the NSHE heard from the Subcommittee on proportionality, and that there should not be institutions that were disproportionately affected by running the formula in a down cycle, particularly considering structural inequities built into certain funding.

Assemblywoman Buckley noted that the issue had been discussed in the previous legislative session with regard to UNLV and the issue of the UNLV funding. There were changes in the Millennium Scholarship eligibility, opening of the Nevada State College, the changes to the grade point average, and changes in the admissions to UNLV. After the changes were implemented, there were fewer students and millions of dollars in funding was lost. She believed the Legislature had painstakingly adopted the funding formula and that, perhaps, the budget reductions had prevented a solution from being developed or suggested by the NSHE with regards to the UNLV situation. Assemblywoman Buckley pointed out there must be a long-term fix. Whether that should be considered in an interim committee remained to be seen. With the limited time left in this legislative session, it was important to ensure that no campus was disproportionately hurt and, in the long-term, to study the structural inequities and solutions.

Mr. Klaich remarked that he had discussed the issues with the Chancellor and they were in agreement with Assemblywoman Buckley. The NSHE and the Legislature had a long history of working on the formula together and periodically looking at it and making modifications to the formula as required. The tuition and fee policy had been discussed in the last two legislative sessions, which the NSHE believed was part of the long-term fix.

Moving to the iNtegrate project, Mr. Haartz noted the NSHE had identified the funding for iNtegrate as a top priority for the 2009-2011 biennium. Fiscal staff research indicated that this appeared to be an allowable use of the stabilization funds. For the purposes of budget closings, Mr. Haartz inquired whether the Subcommittee preferred the closing documents be prepared with $5 million in each year of the biennium.

Assemblywoman Smith questioned whether there had been any resolution to the issue of increasing student fees to fund the iNtegrate system.

Mr. Klaich replied that the issue had been discussed and resolved. The information regarding the amounts and uses of those funds had been provided to Fiscal staff.

Responding to Assemblywoman Smith, Mr. Klaich noted the fees would not be used for the basic budget of the iNtegrate program. The fees would be used to assist the campuses in the functional and technical backfill needed to implement the projects. The Board put a "sunset" on the fees when the project was implemented. The fees would be reviewed to determine necessity. The costs were not included in the original budget presented to the 2007 Legislature.

Assemblywoman Smith believed the amount was $92 million over a 5 to 6 year period.
Mr. Klaich noted that was the top end of the budget. The student module presented to the Legislature in 2007 had a $25 million budget, and the NSHE set aside an additional $5 million for the student information portion of the project. His discussions with the project director indicated that the $92 million was significantly overstated.

Assemblywoman Smith asked what would happen to the money collected from the increased student fees while the system was being built.

According to Mr. Klaich, the money could not be used to provide funds for building the system. Until the system was fully operational, the fee was intended to pay for two cost items. The first was running parallel systems while the legacy system was being replaced. The second was the training of new people at campuses to use the system. There were also additional campus responsibilities that were not within the budget.

In response to Assemblywoman Buckley, Mr. Klaich noted the current cost for the project was $30 million for phase I. He did not have the numbers for phase II. It was reported to the 2007 Legislature that the full phasing of project phases II and III, finance and human resources, were estimated at $92 million. The NSHE was in renegotiations with the hardware and software suppliers, and Mr. Klaich believed the $92 million was significantly overstated.

To clarify, Assemblywoman Buckley stated that the NSHE was discussing restoration of $10 million for the General Fund portion of phase I, but she was curious to learn why proceeding with the iNtegrate system in this biennium was considered a priority during a budget crisis as opposed to keeping staff from being laid off and classes reduced.

Mr. Klaich indicated that it had been a difficult decision. The software vendor on the legacy system discontinued maintenance of that system and it was certain the system would fail in the future. The system supported all of the basic student services at the campuses.

The contract was entered into following the close of the 2007 Legislative Session. Contracts were signed for phase I, and significant dollars would be lost if the project was stopped and then restarted at a later time.

Moving to the next issue, Mr. Haartz pointed out there were several adjusted base budget items for which Fiscal staff requested direction from the Subcommittee in preparation for budget closings. The first item dealt with the elimination of operating capital investment revenues. This item increased the need for General Fund appropriations by $2.96 million annually. The Subcommittee must determine whether it wanted Fiscal staff to build closing budgets with the funds included or eliminated in concurrence with The Executive Budget. The Subcommittee should also determine how to use the revenues in the 2011-2013 biennium.

Mr. Klaich requested the Subcommittee remove the investment revenue. The NSHE agreed that the inclusion of the investment income was a normal part of the budget process, and in the future, the NSHE would be willing to request the revenue be put back into the budget.

Chair Arberry suggested that Fiscal staff prepare a Letter of Intent to address the issue.
Mr. Haartz discussed the Workers' Compensation premium. He recalled that as part of the budget reductions for this fiscal year, the NSHE reverted the entire FY 2009 Legislative appropriation of approximately $4.1 million. Fiscal staff requested permission to work with the NSHE on possible reduction of the premiums.

Mr. Klaich commented that at least part of the reversion was due to good risk management policies within the NSHE. The rates were not necessarily too high. He believed the matter could be resolved by working with Fiscal staff prior to budget closing.

Chair Arberry noticed the presence of Andrew Clinger, Director for the Department of Administration, and requested he provide testimony to the Subcommittee on the federal stimulus application process and the Governor’s plan for submission.

Mr. Clinger noted that he had been waiting for the U.S. Department of Education to provide additional guidance on the waiver, waiver application, and stabilization fund application. He would be participating in a conference call later in the day with representatives from the U.S. Department of Education and was hopeful he would have the information following the call.

Chair Arberry asked whether, following the conversation with the U.S. Department of Education, Mr. Clinger could begin the application process.

Mr. Clinger noted that he had limited information, but he would ask the U.S. Department of Education whether the application could be submitted pending later submission of the waiver. Following the conference call, Mr. Clinger would report to Fiscal staff.

Senator Mathews was under the impression that the application was available online but that the guidelines were not.

Mr. Clinger noted that the application and guidelines were in-hand, but he was waiting for an additional waiver application and information.

Senator Mathews asked whether the stimulus application could be completed now with the waiver completed separately.

Mr. Clinger responded that he was hoping to find out whether that was a possibility. One of the requirements in the stimulus application was to attest that the state would meet the maintenance of effort (MOE). If the state was not going to meet the MOE, the state must apply for the waiver. He was uncertain whether the two applications could be submitted separately.

Senator Horsford noted that the application could be submitted without the waiver but believed that the Budget Division was struggling because The Executive Budget did not meet the MOE requirements either with or without the waiver.

Mr. Clinger was uncertain whether the application could be submitted without the waiver because one of the requirements in the application was that the state attests it was meeting the MOE. The state could not attest to that.

To clarify, Senator Horsford restated that without the waiver, the Governor's budget could not meet the MOE.
Mr. Clinger confirmed.

Senator Horsford suggested that the Budget Division was delaying the submission of the application without the waiver because the Governor's budget did not meet the MOE requirements.

Mr. Clinger responded that the waiver was necessary for the state to have the flexibility to not meet the requirements to put the level of state support into higher education that the stimulus application required.

Senator Horsford asked whether Mr. Clinger had reviewed the analysis completed by Fiscal staff. The analysis indicated that just to meet the requirements of the waiver at the 55 percent level, the state must restore some level of funding to higher education.

Mr. Clinger pointed out that he did not receive a copy of the Fiscal staff analysis.

Senator Horsford stated that the analysis was available upon request.

Mr. Clinger agreed to review the analysis if it was sent to him.

Senator Horsford requested that Mr. Clinger work with Fiscal staff. With the waiver, education funding in The Executive Budget would have to be restored to a 55 percent share of funding, but the Governor's budget did not provide funding at that level.

Although he agreed, Mr. Clinger pointed out that even if an application was submitted for the waiver, there was a separate calculation for the MOE requirement. Whether the state could meet that requirement was yet to be seen.

In response, Senator Horsford remarked that the MOE could not be met with the Governor's budget and other options should be considered. He believed the Legislature was closer to a solution than the Governor's budget proposed. He requested Mr. Clinger "cut to the chase," work with Fiscal staff, get the stimulus application started, and wait to determine whether to apply for the waiver, because, meanwhile, the legislative budget was being held hostage.

Mr. Clinger was willing to comply with Senator Horsford's request, but he pointed out that he did not have the Fiscal staff analysis and did not know how these things could be met. He was not privy to the same information that Senator Horsford had available but was happy to submit the application if the information was available and was applicable.

Senator Horsford understood the problem and requested that Fiscal staff provide the analysis.

Assemblywoman Buckley commented that in Fiscal staff's and leadership's conversations with the U.S. Department of Education, she believed they had figured out every aspect of the waiver versus no-waiver situation. She requested Mr. Clinger work with Fiscal staff to ensure he agreed on all of the assumptions set forth in both scenarios. She was hopeful that by next week there would be a full understanding of all technical aspects of the application. She thought it was clear that regardless of whether or not the state was granted a waiver, the federal government required that education be funded at a
certain level and that level was not met in The Executive Budget. The Legislature's initial review was that it made sense for the state to accept the education stimulus money to restore some of the proposed education cuts. However, to do that, the state must fund education at a higher level than the Governor's budget proposed. The Governor must submit the application for the stimulus dollars and must assure that the budget was funded higher than the level he had proposed, which was an issue that must be dealt with squarely and soon. The Governor must commit to funding education to secure the waiver.

Mr. Clinger agreed with Assemblywoman Buckley's analysis of the situation but explained there were at least two different scenarios. If the state did not apply for the waiver, there was one level of restoration, but if it applied for the waiver, there was another level of restoration.

Assemblywoman Buckley remarked that what further complicated the issue was the state's method of funding. For instance, when the state had to commit in FY 2010 and FY 2011 the same funding level as FY 2009, and when counting the supplemental appropriation necessary, it required the state to fund the education budget at a higher level. This was not going to be General Fund money, but the Local School Support Tax (LSST) shortfall had to be made up too. The U.S. Department of Education said that revenue still counted. All of the decision points were going to have bearing on which one made more financial sense.

Mr. Clinger was aware that the restoration could be for either the FY 2008 actual or FY 2009 projected. Additionally, there were areas of the application which could be adjusted to make this work. He was hopeful that he would have the opportunity to review the analysis with Fiscal staff.

Assemblyman Denis believed the options were to apply for the stimulus money without the waiver, apply for the stimulus money with the waiver, or not to apply for the stimulus money. He inquired whether the Budget Division was committed to any one of those options.

Mr. Clinger responded that the state would apply for the funding. At this time, he anticipated submitting applications for the waiver and stimulus money simultaneously.

It was unclear to Assemblyman Denis what was causing the delay.

According to Mr. Clinger, the federal government had not issued the waiver guidance and the waiver application. He explained that there were two applications. He was uncertain whether the stabilization fund application could be submitted, if the state was not going to meet the required MOE, unless the waiver application was submitted.

Assemblyman Denis asked when the waiver application information would be distributed by the federal government.

Mr. Clinger did not have that information but was hopeful that when he participated in the conference call with the U.S. Department of Education later in the day, he would be given all of the necessary data.
Based on Mr. Clinger's testimony, Senator Horsford noted that the Budget Division intended to apply for the stabilization funds with the waiver which required $122 million in FY 2010 and $127 million in FY 2011 to meet the MOE. If that was the intent, Senator Horsford questioned how Mr. Clinger proposed to identify revenues to meet the MOE requirements based on the approach the Governor would take.

Mr. Clinger stated there was approximately $240 million of state funds freed up because of the higher Medicaid matching rate plus additional TANF (Temporary Assistance for Needy Families) funds. The plan was to use a portion of the freed-up dollars to help meet the MOE requirements.

Senator Horsford asked whether Mr. Clinger had the analysis of that scenario and whether he was willing to share it with Fiscal staff.

Mr. Clinger agreed to meet with Fiscal staff and supply the analysis.

Mr. Klaich requested copies of the Fiscal staff analysis and the opportunity to work with them on these issues.

Mr. Haartz continued the presentation of the NSHE budget questions, noting the next issue which required additional guidance was the Western Interstate Commission for Higher Education (WICHE) program transfer. The Executive Budget recommended the transfer of the WICHE administrative and loan and stipend accounts into the NSHE System Administration account. In building the budget closing documents, Fiscal staff needed to know whether the intent was to keep the two WICHE accounts separate, thereby remaining as standalone budgets in The Executive Budget, or to have them folded into the NSHE System Administration account.

Senator Mathews suggested the options be made available in the closing documents.

The next matter addressed by Mr. Haartz dealt with WICHE personnel issues. The Governor recommended the elimination of 2 of the 3.51 FTE (full-time equivalent) positions. The NSHE and the WICHE program recommended elimination of the 0.51 FTE program officer position rather than the 1.0 FTE accountant technician position. Because the finances would be supervised by NSHE System Administration, the request was that in lieu of adding a new 0.20 FTE position in the WICHE administration budget, the WICHE would pay a cost-allocation charge to cover the existing NSHE position's time and effort. The Subcommittee must determine whether this option should be addressed in the closing budget documents.

Assemblywoman Smith was interested in the collections issue of the WICHE budget, but she was uncertain which option would better ensure that the collection rate remained high.

Dr. Jane A. Nichols, Vice Chancellor, Academic and Student Affairs, System Administration Office for the Nevada System of Higher Education (NSHE), explained that the position recommended to be cut in half was the fiscal position that worked on collections. The other position in the office was primarily a program position that worked on recruitment of students and oversight of student placements. Dr. Nichols shared the concerns of Assemblywoman Smith that collections should receive the utmost attention.
The restoration of this position to a 1.0 FTE position was critical to ensure collections be a top priority.

In the opinion of Assemblywoman Smith, it did not make sense to eliminate a position that would keep the collections up in this account.

Mr. Haartz moved to the discussion of budget amendments submitted by the Budget Division on behalf of the NSHE.

The first budget amendment on behalf of the University of Nevada, Las Vegas (UNLV) resolved the issue of overstatement of student-fee revenues. The budget amendment proposed to add General Fund in the amount of $1,321,082 in FY 2010 and $1,893,637 in FY 2011.

Per Mr. Haartz, the second budget amendment submitted was for the University of Nevada, Reno (UNR) Fire Sciences Academy (FSA) operating and maintenance funding. The Executive Budget proposed to transfer $456,242 in the second half of FY 2011 to the Office of the Military. The Budget Division submitted an amendment to reverse the action. Mr. Haartz noted there was no net effect and it did not add new General Fund to the budget, but it restored the funding that was being transferred out of the UNR budget.

The third amendment described by Mr. Haartz was for the Desert Research Institute (DRI) and added General Fund in the amount of $56,166 in FY 2010 and $97,611 in FY 2011 for non-formula equipment (workstations). The amendment appeared reasonable to Fiscal staff.

Chair Arberry requested the NSHE comment on the FSA amendment.

Dr. Milton D. Glick, President, University of Nevada, Reno (UNR), explained that a portion of the transfer of the FSA success was dependent on federal legislation. Given the pace of federal actions, UNR agreed with the Governor's Office that the transfer should be delayed until the end of the biennium to allow time to work with Fiscal staff, the Governor's Office and the Congressional delegation to get the federal legislation passed.

Assemblywoman Buckley asked whether the request was being withdrawn and whether it would be presented in the next biennium.

Dr. Glick clarified that the request for the transfer of operating and maintenance costs was being withdrawn but not the request for capital appropriation.

Assemblywoman Buckley remarked that although she understood the request, she did not support the proposal.

Chair Arberry requested Fiscal staff to meet with the UNR staff to discuss the issues of the Capital Improvement Project.

As far as the DRI amendment, Chair Arberry pointed out that the Fiscal staff needed direction.

Assemblywoman Buckley asked that Fiscal staff be directed to move on the DRI issue, and Chair Arberry so directed.
Mr. Haartz addressed the adjustments, corrections and omissions to The Executive Budget requested by the NSHE. The requests were not part of the budget amendments brought forward by the Budget Division. Mr. Haartz pointed out that any funding approved for NSHE requested adjustments, omissions, or corrections reduced funding available for distribution as formula funding.

The first item was a technical adjustment on external audit costs. Mr. Haartz noted that subject to any questions or concerns by the Subcommittee, it would be included as a budget adjustment. Costs had been reduced through a new contract which resulted in General Fund savings.

There being no questions or concerns, Chair Arberry noted the request appeared reasonable to the Subcommittee.

The second item described by Mr. Haartz was the dental residency transfer. The NSHE requested a transfer between the UNLV School of Medicine and the UNLV School of Dental Medicine. This was a no-cost programmatic transfer. Subject to Subcommittee concerns, Fiscal staff would incorporate the change in the budget-closing documents.

There being no questions or concerns, Chair Arberry noted the request appeared reasonable to the Subcommittee.

Mr. Haartz noted the third issue concerned the UNLV Paradise property lease and had been discussed on a number of occasions. The Executive budget overstated the General Fund needed for leasing the Paradise School property by $1,724,150 in each year of the biennium. Fiscal staff requested direction from the Subcommittee in determining how the $1,724,150 should be allocated.

Senator Mathews inquired whether an option could be included in the closing documents.

Mr. Haartz believed that was an acceptable option.

Assemblywoman Buckley recommended that UNLV be allowed to use the funds to offset some of its budget reductions; however, she agreed with Senator Mathews.

Mr. Klaich requested that as part of the review, the Subcommittee consider that as part of the swap that resulted in the lease savings, UNLV gave up a portion of its campus property. It appeared reasonable to him that the funds be retained in the UNLV budget to offset some of the budget problems as suggested by Assemblywoman Buckley.

Senator Mathews reiterated that the matter should be included in the budget closing documents with options.

Assemblywoman Buckley agreed.

Mr. Klaich stated that it appeared there would be a substantial funding of the NSHE either through MOE or stimulus funding which would impose a cap on the appropriations. These dollars were potentially outside of the calculus and already included in the Governor’s recommendation.
Mr. Haartz moved to the issue of new space operating and maintenance costs. The Subcommittee had previously reviewed the following key additions proposed by NSHE:

- The elimination of 93,000 square feet of Getchell Library space in UNR's budget, maintaining funding for enough space to "mothball" the building in FY 2010 and FY 2011.
- The addition of 9,340 square feet in the Jot Travis Building at UNR. Fiscal staff had determined the funding was not duplicative.
- The addition of 32,122 square feet at UNLV for the Tropicana parking garage which appeared to be consistent with historical funding by the Legislature.

Mr. Haartz noted that Fiscal staff had grouped those three items together and requested Subcommittee consideration for inclusion in the budget closing documents.

Senator Horsford requested additional information on the addition of 49,873 square feet of Lawlor Events Center space in the UNR budget.

Mr. Haartz explained that at prior hearings the Subcommittee expressed concern regarding the concept of providing long-term General Fund support for the Lawlor Events Center for other than the utility funding currently provided. Additionally, the Subcommittee indicated the funding was not a priority. Fiscal staff requested direction on whether or not to include this funding in the budget closing documents.

Based on testimony at previous hearings, Assemblywoman Buckley believed this item did not make the list of priority items.

It was Senator Raggio's understanding that the Lawlor Events Center revenues were decreasing because other event facilities had been constructed in the Reno area. He inquired what the financial situation was at the Thomas and Mack Center in Las Vegas.

Gerry Bomotti, Senior Vice President for Finance and Business, University of Nevada, Las Vegas, believed that both Lawlor Events Center and Thomas and Mack Center had similar operating and maintenance assistance from the state. Thomas and Mack Center had been competitive with other facilities in Las Vegas, but the downturn in the economy had caused a decrease in revenue.

Senator Raggio pointed out that if the state was going to provide assistance for one of the event centers, it should provide additional funding for both centers.

Assemblywoman Buckley requested that Fiscal staff provide background information on the event centers funding for the Subcommittee.

Mark W. Stevens, Fiscal Analyst, Fiscal Analysis Division for the Legislative Counsel Bureau, stated that the information would be compiled and provided to the Subcommittee for review.

Chair Arberry commented that it was not always possible to treat all issues equally. The NSHE brought up the issue of reduced revenue for Lawlor Events Center but not for the Thomas and Mack Center.
Senator Raggio did not agree but acquiesced.

Assemblywoman Buckley believed it was important for all entities to work together to avoid severe cuts for all campuses. The decisions were difficult for everyone involved.

Mr. Haartz pointed out that there were some nominal additions and subtractions that would be brought forward in the closing documents. They were minor technical adjustments.

The next issue Mr. Haartz examined was payroll adjustments for UNR that had not been included in The Executive Budget. The NSHE on behalf of UNR, had requested $747,457 over the biennium to address plus 5 percent salary adjustments that were omitted from various budgets.

Additionally, added compensation in the form of stipends and letters of appointment in the amount of $807,962 were inadvertently omitted from the budget. Mr. Haartz noted that staff would address these issues at the time of budget closing but needed Subcommittee guidance. Staff had not been informed by the NSHE whether these were priority restorations.

Bruce Shively, Assistant Vice-President for Planning, Budget, and Analysis, University of Nevada, Reno, explained that the requested funding was for shift differential payments for custodial staff and campus police officers. The expenses would be incurred in the coming fiscal years, but the line items were not included as part of the original budget request. The omission was not discovered until The Executive Budget was reviewed. The NSHE was requesting restoration of the funding.

According to Mr. Shively, stipends for department chairs were not included because The Executive Budget did not recognize salary expenses that did not have full-time equivalent (FTE) associations. Unlike the other institutions, UNR did not include FTEs with stipends or letters of appointment.

Chair Arberry asked whether this should be considered a priority item.

Mr. Klaich indicated his understanding of the cap, but stated that because the omission was an error on the part of the NSHE, the Subcommittee might consider other sources for funding.

Chair Arberry inquired whether the NSHE would be able to fund the adjustments through anticipated savings rather than with General Fund money.

Mr. Klaich replied that the NSHE would do whatever was necessary.

In continuing, Mr. Haartz noted there was an additional base-budget adjustment for UNR that was not included in The Executive Budget. Staff had determined that in the budget-building process, the UNR set aside approximately $1.57 million in reserve. It appeared that $303,000 of the reserved amount was restored leaving a balance of approximately $1.26 million per year that would otherwise be a base-budget expenditure.

In discussions with the Budget Division, it was indicated that a budget amendment would not be submitted to restore the funding. The Budget Division believed that for instructional support overall, sufficient funding was included in
The Executive Budget. Mr. Haartz was seeking direction from the Subcommittee because the NSHE viewed this item as a priority.

Mr. Klaich noted that the Budget Division made an error for which, he believed, the NSHE should not be penalized. He requested the funding be included as a priority item.

Senator Horsford requested additional information on the matter from the Budget Division.

Cathy Gregg, Budget Analyst for the Budget Division, advised the Subcommittee that the information would be provided.

Mr. Haartz addressed the issue of projected contract costs for information technology at the College of Southern Nevada (CSN). This was a technical adjustment which appeared reasonable to staff.

Additionally, the NSHE calculations for property and contents insurance premium costs reflected an increase in various budget accounts. Staff requested approval of the Subcommittee to make necessary technical adjustments in the various budget.

Under the issue of the non-formula budget equipment funding allocation to Nevada State College (NSC), Mr. Haartz explained that when the Board of Regents recommended to the Governor that the flat enrollment methodology be used for budget cuts, one of the items recommended was that non-formula budget equipment not be allocated across non-formula budgets. It was recommended that the money be transferred in each year of the biennium to NSC. Staff noted that the NSHE did not officially make a request for this funding, but it was brought up during conversations; therefore, staff was bringing the matter to the attention of the Subcommittee for guidance and clarification.

Mr. Klaich noted that the issue was discussed with Fiscal staff as indicated by Mr. Haartz, but the NSHE omitted the item from one of the scenarios, which caused considerable confusion. When the issue was originally considered by the Board of Regents, it was a specific attempt to lessen the proportionate cut to NSC. Mr. Klaich recommended that the item be addressed in the scenarios which would be presented to the Subcommittee.

The final issue addressed by Mr. Haartz was an informational item. Mr. Haartz recalled that during prior hearings there was discussion regarding the $823,380 built into the School of Medicine's base budget. Since FY 2007, the funding had been used for the Cleveland Clinic/Ruvo Center for Brain Health Partnership. Staff noted for the Subcommittee that the majority of the funding would be transferred either through a grant or other mechanism to the Center for staffing and consulting costs. The balance would be kept at the School of Medicine for residency and fellowships. No specific action was required for this item. Funding was originally established for state FTEs, which was changed to contractors and consultants, but was now being changed to grants to the Cleveland Clinic/Ruvo Center for Brain Health Partnership. If the Subcommittee did not have issues or concerns with the change from previous funding utilization, no action was necessary.
Chair Arberry noted the Subcommittee would hold this item for later consideration.

There being no further comments or questions, Chair Arberry adjourned the meeting at 10:00 a.m.

RESPECTFULLY SUBMITTED:

Linda Blevins
Committee Secretary

APPROVED BY:

Assemblyman Morse Arberry Jr., Chair

DATE: ________________________________

Senator Bernice Mathews, Chair

DATE: ________________________________
## EXHIBITS

Committee Name: Assembly Committee on Ways and Means/Senate Committee on Finance Joint Subcommittee on K-12 Education/Higher Education

Date: April 17, 2009  Time of Meeting: 8:08 a.m.

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