MINUTES OF THE AUGUST 24, 2009
MEETING OF THE
INTERIM FINANCE COMMITTEE
LEGISLATIVE COUNSEL BUREAU
Carson City, Nevada

Cochair Bernice Mathews called a regular meeting of the Interim Finance Committee (IFC) to order on August 24, 2009, at 8:37 a.m. in the Chancellor's Office Conference Room, Nevada System of Higher Education System Administration Office, 2601 Enterprise Road, Reno, Nevada. The meeting was videoconferenced to the Grant Sawyer Office Building in Las Vegas and Great Basin College in Elko. Exhibit A is the agenda, Exhibit B is the guest list, and Exhibit C is the meeting packet. All exhibits are available and on file at the Fiscal Analysis Division of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT IN RENO:

Senator Bernice Mathews, Cochair
Assemblyman Bernie Anderson for Assemblywoman Barbara Buckley
Assemblywoman Heidi Gansert
Assemblyman Tom Grady
Assemblywoman Debbie Smith
Senator William J. Raggio
Senator Randolph Townsend

LEGISLATIVE COUNSEL BUREAU STAFF IN RENO:

Brenda J. Erdoes, Legislative Counsel
Gary L. Ghiggeri, Fiscal Analyst, Senate
Mark Stevens, Fiscal Analyst, Assembly
Becky Lowe, Secretary, Fiscal Division

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Steven Horsford, Cochair
Assemblyman Morse Arberry Jr., Vice Chair
Assemblyman Marcus Conklin
Assemblyman Moises (Mo) Denis
Assemblyman Pete Goicoechea
Assemblyman Joseph Hogan
Assemblywoman Marilyn Kirkpatrick for Assemblywoman Ellen Koivisto
Assemblywoman April Mastroluca for Assemblywoman Sheila Leslie
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman Lynn Stewart for Assemblyman Joseph Hardy
Senator Bob Coffin
Senator Joyce Woodhouse

LEGISLATIVE COUNSEL BUREAU STAFF IN LAS VEGAS:

Lorne Malkiewich, Director, Legislative Counsel Bureau

COMMITTEE MEMBERS PRESENT IN ELKO:

Senator Dean Rhoads

COMMITTEE MEMBERS EXCUSED:

Assemblywoman Barbara E. Buckley
Assemblyman Joseph Hardy
Assemblywoman Ellen Koivisto
Assemblywoman Sheila Leslie

Cochair Mathews called the meeting to order and asked for a roll call.

I. ROLL CALL.

Lorne Malkiewich, Director, Legislative Counsel Bureau, and Secretary of the Interim Finance Committee, called the roll by location, beginning with Las Vegas. Mr. Malkiewich announced a quorum of each House was present.

*II. APPROVAL OF GIFTS, GRANTS, WORK PROGRAM REVISIONS, ALLOCATION OF BLOCK GRANT FUNDS AND POSITION CHANGES IN ACCORDANCE WITH CHAPTER 353, *NEVADA REVISED STATUTES.*

Gary Ghiggeri, Senate Fiscal Analyst, explained there were two work programs under Agenda Item II. The first was for the Office of the Governor to establish two positions, the American Recovery and Reinvestment Act (ARRA) Reporting Officer and the Executive Assistant. Included in the request was the ability to contract for an ARRA reporting system and development services.

The second work program was from the Department of Business and Industry Housing Division - Weatherization, which would provide the addition of approximately $10.5 million of ARRA funds to provide weatherization for eligible households.

1. **Office of the Governor – FY 2010 –** Addition of $257,709 in transfer from Federal ARRA to establish two positions focused on ARRA reporting requirements. The two positions include an ARRA Reporting Officer and an Executive Assistant. The ARRA Reporting Officer will be responsible for organizing the State's ARRA reporting. Also included in this request is authority to contract for ARRA reporting system development services. Requires Interim Finance approval since the amount added to the personnel category exceeds $50,000. **Work Program #C16245**

Cochair Mathews asked for discussion on the first work program, the $257,709 transfer from federal ARRA funds to establish two positions for oversight of the stimulus money.

Assemblyman Goicoechea indicated that he needed to clarify two points; there had been numerous questions in the northern part of the state. The first question was whether the Committee had to function under the open meeting law now that the Legislature was no longer in session; there seemed to be some debate.

Brenda Erdoes, Chief Legislative Counsel, stated that Chapter 241 of NRS exempted the Legislature from the open meeting law, but it was her belief that the Legislature had complied with the open meeting law in every way possible. She maintained, and the Attorney General's Office agreed, that it would be a separation of powers issue for the Attorney General to enforce the open meeting law against the Legislature, which was why Ms. Erdoes believed the Legislature was exempt. However, she said it had been the past history of the Legislature to comply with the open meeting law in every way feasible.

Cochair Mathews said that as Chair, she would not recommend the policy be changed at this time.

Assemblyman Goicoechea asked if the current meeting had been properly posted, and Cochair Mathews replied it had.

Assemblyman Goicoechea asked if IFC, as a standing committee of the Legislature, had to have a presence in Carson City to be legal.

Ms. Erdoes replied she knew of no such requirement. The meeting was posted for Reno and Las Vegas, which complied with the open meeting law and any other applicable laws.

Assemblyman Goicoechea thanked Cochair Mathews and Ms. Erdoes for the clarification.

Senator Raggio commented that, with regard to the first work program on the agenda, he had a copy of a letter from the Office of the State Controller (Exhibit D) that suggested the work program be reviewed by the Interim Finance Committee. He said he would not participate in the vote on the matter because when the Governor's request for the stimulus coordinator position was brought before IFC at the last meeting on August 3, a motion was made before the Committee to place the position in the Budget Office, but then it was determined the position could not be an unclassified position within the Budget Office and that it should be placed in the Controller's Office. For whatever reason, the motion was altered and changed, and the Committee voted to place the position in the Controller's Office, a matter that had not been noticed previously in the meeting. Senator Raggio believed the Governor had acted in good faith in

presenting the request at the time and that the Committee acted inappropriately by not passing the initial motion to have the position under the auspices of the Governor, at least in the Budget Office. He had voted no on the motion, as did a number of others on the Committee. It was his opinion that the vote was strictly on a partisan basis, which was unfortunate since the issue of stimulus funding was of such importance.

Senator Raggio said he had received a call from Lynn Hettrick, the Governor's new Deputy Chief of Staff, who indicated that the Governor had received an oral opinion from the Attorney General indicating that the matter came under the authority of the Governor to present programs of necessity that did not require action by the Interim Finance Committee. For that reason, Senator Raggio did not plan to participate in the vote on the issue, and he recommended the Committee go back and restore the motion that was originally presented, reconsider it, and place the position where it belonged, which was in the office of the Budget Director.

Cochair Mathews said she had read about the opinion from the Attorney General's Office in the newspapers, although she did not recall that it was an oral opinion. She remarked the IFC had always abided by the opinions of the Attorney General's Office.

Assemblywoman Gansert said her understanding was the same – that the Governor had the authority to do what he did and the Attorney General wanted to affirm his authority. She would not be participating in the vote either.

Senator Coffin said that, as the minority leaders of the Senate and the Assembly had stated, they had a position on an issue which they said they would not discuss. However, Senator Raggio had skillfully found a way to take a position and advocate that position on an issue which he was not going to discuss.

Senator Rhoads remarked that he would not be voting on the issue for the same reasons cited by Senator Raggio; he believed the matter should be in the hands of the Governor.

Assemblyman Oceguera said he understood that under the Constitution there were three separate and distinct branches of government. It also provided that the Legislature appropriate money. He felt comfortable and confident in participating in the vote and keeping the process as it had been in the past, with the Legislature overseeing the appropriation of money. He would be participating in the vote.

Senator Raggio said he had asked Mr. Hettrick where the funding would come from for the cost of the positions, and Mr. Hettrick indicated that funds were included in the ARRA grant for this purpose. Senator Raggio had asked how long the funding would last, and Mr. Hettrick said there was authority to fund the

position through the ARRA stimulus funds into the next legislative session. Senator Raggio said his concerns had been answered.

Assemblywoman Smith remarked that apparently ARRA funds were available for the position, which was clearly the difference in the discussion at this meeting from the last meeting. She had two questions for Senator Raggio concerning the issue of further discussion, the first being if it would be his opinion that the Legislature had no authority over the remaining ARRA funds; she noted there were large sums of money due to be spent. Her second question was if the Committee did not have the authority to have a different outcome than what was requested at the last meeting, she didn't understand how a different outcome could come from today's meeting either. She was confused with the technicalities, but she was more interested in moving forward and knowing if Senator Raggio would be participating in the expenditure of the remaining ARRA funds.

Senator Raggio remarked he was not the attorney for the Interim Finance Committee. He was an attorney, and he did recognize the principles of separation of the branches of government. He was only referring to this particular issue; he believed the Committee had acted inappropriately on August 3 when the request from the Governor was discarded and a substitute motion was made. Based on that action and the Governor now indicating that the issue was a matter of necessity, which Senator Raggio believed was provided for in the statutes, and relying on the opinion of the Attorney General, the issue now before the Committee was whether it was going through an act that was not necessary. Apparently, that was the case. The Controller's Office had been asked by the Governor's Office to process the work program, but she was not willing to do so without IFC review. Senator Raggio suggested the Controller ask the Attorney General for clarification of the Controller's authority.

Continuing, Senator Raggio said that with respect to other stimulus funds, he could not say what his position would be one way or the other. If the matter came before the Committee, as this issue had originally, he would consider the request. According to the act, the ARRA money would be under the authority of the Governor, who was responsible for submitting the required certifications. Senator Raggio added he had not had any discussions with the Governor; he had talked with Mr. Hettrick to get clarity on the Governor's position. If future requests were submitted to the IFC, Senator Raggio said he would be prepared to weigh each one on its own merits.

Cochair Mathews affirmed that Mr. Hettrick was the spokesman for the Governor, and Senator Raggio replied his title was Deputy Chief of Staff.
Cochair Mathews asked Ms. Erdoes to discuss the Attorney General's opinion. Ms. Erdoes replied her understanding of the opinion was that when the Governor declared the matter as an emergency, those items should be processed. The two work programs currently before the Committee were not declared as

emergency items. She referred to pages 7 and 19 of the meeting packet (Exhibit C), and pointed out that the requests were not submitted as emergency work programs. In fact, at the bottom of each of the work programs was an explanation that they did not require Interim Finance approval pursuant to Executive Order and the ARRA. There was no mention of them being emergency items, which was why Ms. Erdoes believed they had been submitted to IFC. Committee approval was required so that there would be no question that the Controller could process them. Ms. Erdoes said she had not seen the Attorney General's opinion, but this was her understanding of it.

Senator Horsford asked Ms. Erdoes if it was her opinion that it was appropriate for the IFC to take action on the work programs, based on the Executive Order that the Governor had signed. He added the current request also indicated how the positions would be funded, which was different from the request made at the August 3 IFC meeting.

Ms. Erdoes replied she believed it was within the discretion of the Interim Finance Committee to act on the item at this meeting.

Assemblyman Goicoechea requested more clarification. If pages 7 and 19 stated that the items did not require IFC approval, he wondered why they were being considered by the Committee.

Ms. Erdoes replied the reason stated on the bottom was from the Governor's Office when the forms were submitted, but the statement did not declare the items as emergency, which was the issue before the IFC.

Assemblyman Goicoechea asked if he was correct in understanding that the Attorney General's opinion stated the Governor was within his rights.

Ms. Erdoes said the difference was that the Governor had to declare the work programs as emergency items, such as the protection of life and property clause in NRS 353.220 for the other work programs.

Lorne Malkiewich, Director, Legislative Counsel Bureau, stated he would like to provide further explanation as to the reason the work programs were before the Committee. He said when the work programs were sent to the Controller's Office for action, as Ms. Erdoes had indicated, the rationale for not sending them to IFC was stated at the bottom of pages 7 and 19. The Executive Order could not override state law, the Daines case made that clear, and the ARRA did not supersede state law; Governor Sanford's dispute with the South Carolina Legislature made that clear. As a result, the Controller sent a letter to Mr. Malkiewich, as secretary of the Interim Finance Committee, forwarding the two work programs for review because the justifications were not valid. The Governor has since, under subsection 5 of NRS 353.220, declared them emergency items, which was what the Attorney General had opined on. Under

declaration of an emergency under NRS 353.220, the work programs would take effect immediately, and the Governor would report them to the next meeting to IFC. If an item required expeditious action, the Governor would submit it, and the IFC had 15 days to meet and approve it, or it would become law. All others had to be submitted and approved within 45 days or they took effect without IFC approval.

Mr. Malkiewich said that on Friday, August 21, at 3:49 p.m., he received another letter from the Governor's Office indicating that the work programs had been declared an emergency. He discussed the matter with Ms. Erdoes and questioned whether the IFC no longer needed to consider the matter. However, they were still concerned that at the time the work programs were submitted, there was no determination that emergency action was required. At that point, the meeting had been posted, but there was still concern. If IFC approved the measure, then regardless of whether the after-the-fact declaration of emergency was effective, the work program revisions would become effective. Therefore, it was with an abundance of caution that he and Ms. Erdoes believed it would be prudent for the Committee to approve the work programs anyway; then there would be no question that they would take effect.

Assemblywoman Smith asked Ms. Erdoes if there had not been discussion earlier in the session about the authority on the ARRA funds. She recalled there had been discussion during one of the hearings.

Ms. Erdoes said her recollection was there were several discussions, and her office had been considering the matter. There was one statement in the whole act that said that the act superseded state law, and from that, her office had discerned that the rest of the act did not. She said since there was no conflict, her office did not find any basis to preempt federal law. If federal law was going to preempt state law, her office would state that; however, after reading the act, it became clear it was not the intent for the ARRA to supersede all state law.

Cochair Mathews asked if a motion could be made, not to rescind the previous action, but to vote on the issue as stated by Mr. Malkiewich; Ms. Erdoes replied affirmatively.

Senator Raggio said the Committee had not been furnished a copy of the letter that Mr. Malkiewich had received in which the Governor had declared the item an emergency measure, and he requested that a copy be made for the members and included in the record (Exhibit E).

Assemblywoman Gansert said it was her understanding that the work programs were basically the same, except as originally submitted they were not declared emergency items, but the Governor's Office subsequently changed them to emergency items at 3:49 p.m. on Friday, August 21. Because of the open meeting law, the work programs could not be changed to recognize that they

were emergency items under Executive authority, which would make the matter moot since a vote would not be required.

Ms. Erdoes said there was concern that because the form had not been changed when resubmitted, it was thought the better action, due to the amount of funds involved, would be for the Committee to act.

Assemblywoman Gansert asked if a review would not be required if the forms had been changed.

Ms. Erdoes said that was correct; the issue was that the forms had not been changed, which was of concern. There was nothing to indicate that the work programs required emergency action, and the best action would be for the Committee to approve them, there would be no question, and the Controller could process them.

Cochair Mathews stated the work program could then be voted on as submitted in a timely manner.

Assemblyman Anderson said he had listened carefully to Senator Raggio's concerns, and it appeared to him that if the original motion had modified the Governor's intent, he would presume that the Committee would have the right to amend at a properly noticed meeting to make it consistent with the testimony presented, and thus the motion that was passed, which was the one Senator Raggio was in opposition to, would have also changed the Governor's intent. He did not want to see any delay in getting the work programs started. The public was not concerned about the disagreements between the Governor and the Legislature; the public wanted the stimulus dollars into the economy, which was the shared feeling of the Committee. He suggested that the two issues be voted on and finalized.

Cochair Mathews asked for a motion.

> ASSEMBLYWOMAN SMITH MOVED FOR APPROVAL OF WORK PROGRAM NUMBER 1.
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> SENATOR HORSFORD SECONDED THE MOTION.
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> THE MOTION CARRIED.
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> Assemblyman Goicoechea voted nay.
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> Senator Raggio, Senator Rhoads, Senator Townsend, Assemblywoman Gansert and Assemblyman Stewart did not vote.

2. **Department of Business and Industry – Housing Division – Weatherization – FY 2010 –** Addition of $10,466,951 in American Recovery and Reinvestment Act of 2009 (ARRA) funds to provide weatherization assistance to eligible households. Requires Interim Finance approval since the amount added to the ARRA - Subgrantees category exceeds $50,000. **Work Program #C15817**

Senator Horsford asked Legal Counsel if the provisions requested in the work program required the agency and the contractors to follow the provisions of Senate Bill 152 as passed by the Legislature and approved by the Governor on June 9, 2009.

Ms. Erdoes replied there was nothing in the agenda item stating that all applicable laws would be followed. However, she did not see anything in the work program changes requiring that all applicable laws had to be followed, which she believed was because it was assumed that would be the case in all work programs; i.e., whatever laws applied to a situation would be followed. She said the answer to his question was, at least in the sense that once the work program change was approved and the agency went forward, it would be required to comply with all applicable laws, and she believed that S.B. 152 would apply to the weatherization program that was before the Committee.

Senator Horsford expressed appreciation to Ms. Erdoes for her explanation and the Committee's indulgence on the work program. He said that aside from the issue of the Interim Finance Committee itself, this was a program where there was very specific legislative authority given with the passage of S.B. 152 on how the funds would be used. He wanted it stated on the record that it was his intent that the Housing Division would follow the provisions of S.B. 152 that were passed and effective upon approval on June 9, 2009.

Senator Horsford also requested the record reflect that the 10 percent, which was $700,000 in start-up funds, was approved by IFC in April 2009. Currently there were no contracts authorizing the agencies to perform work and, therefore, the provisions of S.B. 152, which went into effect June 9, 2009, should be followed. He expected that the Housing Division would comply with the law, and he was prepared to make a motion to that effect.

Senator Coffin pointed out that the law was important to follow and since it was considered so important, it was not stated over and over again when one was passed. Those who were in office were to support, by their oath, the constitutional laws of the state of Nevada. Those responsible were to either perform the job according to the oath they took, or they should surrender the right to hold the office – regardless of the branch of government. All those concerned in the three branches of government recognize their place; the courts were the ultimate arbitrator to resolve disputes. Whether someone had a personal opinion about the status of the Interim Finance Committee as opposed to a full

Legislature was beside the point. Senator Coffin said he was required to observe the laws as a member of the IFC and the Legislature. He tried to change the law in 1993 to no avail, but he still observed the legitimacy of the Interim Finance Committee, contrary to the opinion of the Executive Branch. If there were people with such strong opinions that they felt they could convey to the public that they would not observe a law and set a terrible example for the public, then he felt they should reconsider their positions instead of setting bad examples for the public.

Assemblywoman McClain disclosed that she was a board member of HELP of Southern Nevada, which she believed received weatherization funds, but she would be voting.

Senator Raggio said he had a brief discussion with the Majority Leader on this matter, and again there was an issue as to whether action was required by IFC, and therefore he would not participate. His first concern was that the stimulus funds should have been out for several weeks, and it was delayed because of the confrontation going on between the IFC and the Governor's Office, and apparently the Controller's Office, since she had not processed the work programs. Senator Raggio said his objective was to get the stimulus funds flowing on this particular program. His concern was that requests for proposal (RFPs) had been issued earlier, there was a discussion, and the first round of stimulus money would not be available to certain groups that would otherwise be considered. It apparently had become a union/non-union controversy, and because the American Builders' apprenticeship program was not in place, it would not be able to participate in the first round of stimulus funds. Senator Raggio believed it was inappropriate to take a position at this time. He reiterated he would not participate in the vote.

Assemblywoman Gansert said she would not be voting on the measure for the same reasons, and it was her hope there were no future confrontations and that the funds could be processed in an orderly manner. She too wanted to get the funds flowing as quickly as possible, and because the Governor was using his Executive authority, the monies would be disbursed.

Cochair Mathews agreed that the issue was about the people of the state of Nevada and not about individuals.

Senator Rhoads said he would be voting no; the Governor had declared the item an emergency issue and the funds should be released to the people who needed them.

SENATOR HORSFORD MOVED TO APPROVE WORK PROGRAM NUMBER 2, WITH THE CONDITION THAT THE RECORD REFLECT THAT THE LAW AS APPROVED ON JUNE 9, 2009, WOULD BE FOLLOWED BY THE HOUSING DIVISION.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

For clarification, Senator Raggio said he recalled that S.B. 152 required that health insurance be provided by the contracting agencies. He understood the five agencies involved were non-profits; he wondered if they would be required to provide health insurance.

Senator Horsford said the law indicated that health insurance must be offered, whether it was in the form of the employee or the employer; he would defer to Legal Counsel for other needed clarification.

Ms. Erdoes said that was a provision of S.B. 152, although there was another layer between the non-profits and the people who were employed and there were contractors who could also offer an insurance plan.

Mr. Stewart said he would not be voting on the issue. He believed that Mr. Charles Harvey, who had been appointed by the Governor as the ARRA Reporting Officer, was a very competent individual and willing and able to carry out his duties; IFC action was not necessary.

Senator Raggio said that implicit in what he had been placing on the record was the understanding, with which the Governor's Office had concurred, that information on all of the ARRA expenditures would be provided to the Legislature, and particularly to the IFC Stimulus Oversight Subcommittee, so he was assured that the Legislature would be kept informed. When necessary, and in non-emergency situations, matters could and would be properly considered by the Committee.

Cochair Mathews remarked it would be beneficial for the Committee to receive that stipulation on the record from the Governor's Office rather than in phone conversations and through the press. She believed discussion should be held with each other and not the media.

Senator Raggio agreed, adding that he believed the Governor's Office should have attended today's meeting to discuss his position on the items rather than have them presented in the manner they were.

Cochair Mathews said over her 16 years of service, this was the first time there had not been dialogue among the parties.

Assemblyman Grady said he was bothered that if the meeting had been conducted in Carson City, where it should have been held, the discussion would have been different with all members at the same table hearing all of the discussion. He requested that future meetings be held in Carson City rather than in multiple locations.

Cochair Mathews concurred; when discussing financial matters of the state, the members should be in one place for meaningful discussion. Again, over her 16 years of service on IFC, the Committee had never been broken up as it had been recently.

THE MOTION CARRIED.

Senator Rhoads and Assemblyman Goicoechea voted nay.

Senator Raggio, Senator Townsend, Assemblywoman Gansert, Assemblyman Grady and Assemblyman Stewart did not vote.

III. PUBLIC COMMENT.

Pat Sanderson testified from Reno. He thanked Assemblyman Goicoechea and Senator Rhoads for voting no. He did not think it was proper for anyone on any important subject to take a back seat and not vote. This was a very important issue that meant work for the people of the state of Nevada. He said that regardless of which way members were trying to posture themselves, they were elected officials, and they should have enough gumption to vote.

IV. ADJOURNMENT.

Cochair Mathews adjourned the meeting at 9:30 a.m.

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Senator Mathews, Cochair
Interim Finance Committee

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Lorne Malkiewich, Director,
Legislative Counsel Bureau and
Secretary, Interim Finance Committee

EXHIBITS INTERIM FINANCE COMMITTEE		
Exhibit	**Witness/Agency**	**Description**
A	Fiscal Analysis Division Legislative Counsel Bureau	Agenda
B	Fiscal Analysis Division Legislative Counsel Bureau	Guest List
C	Fiscal Analysis Division Legislative Counsel Bureau	Meeting Packet
D	Lorne Malkiewich, Secretary Interim Finance Committee; Senator Raggio	Letter from State Controller Requesting IFC Review of Work Programs
E	Lorne Malkiewich, Secretary Interim Finance Committee	Letter from the Governor Declaring Work Programs as Emergency Items