

THE FOURTH DAY

CARSON CITY (Friday), February 26, 2010

Assembly called to order at 1:47 p.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Moises Denis.

Our Heavenly Father, this afternoon, as we gather to meet once again, we are grateful for the opportunity and privilege of serving the great people here in the state of Nevada. We are grateful for our families, our friends, and our loved ones that support us, help us, and sacrifice so that we might be here. We are grateful for our health and our strength, and we would ask that Thou would be us with us this day as we deliberate and as we discuss, that we will be able to find commonalities and be able to find the things that will help us come to a solution.

We know that these are difficult times. There are many that are struggling each and every day; the things that we do impact their lives. Help us, that we might have Thy spirit with us as we do these things, that we will make the right decisions. Bless us, that all will go well and that our families and loved ones will be safe and protected while we are away and that we might quickly be able to be back with them and be able to do the things that we need to do in our lives. We thank Thee for these blessings and for giving us this opportunity, Father, and say these things in the name of Jesus Christ.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 25, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bill No. 3.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

By the Committee of the Whole:

Assembly Concurrent Resolution No. 2—Urging certain actions by the school districts and the Nevada System of Higher Education to respond to the current budget shortfall.

WHEREAS, The serious downward movement of the economy of the United States has, in turn, had a negative effect on the economy of the State of Nevada, including high rates of unemployment and an alarmingly high rate of foreclosure; and

WHEREAS, Although the 2009 Session of the Legislature addressed what was then a looming budget gap by making cuts to the State's budget of about \$1 billion and implementing temporary

tax increases amounting to an estimated \$781 million, recent economic projections yield a nearly \$900 million budget shortfall; and

WHEREAS, While meeting its constitutional duty to balance the State's budget, the Legislature has taken extraordinary measures to shield public education from further cuts with the recognition that public education funding is imperative to ensure the future success of Nevada's children and in the long term, to ensure the success of Nevada's economic recovery; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Legislature hereby urges the boards of trustees of the 17 county school districts and the Board of Regents of the University of Nevada to make every possible effort during this fiscal crisis to protect the needs of Nevada's students and to ensure a high-quality public education while examining ways to maximize efficiency by:

1. Examining the function and efficacy of programs and services to determine whether any should be eliminated or replaced because they no longer serve a useful purpose;
2. Examining whether benefits offered to higher-level staff can be reduced or temporarily reduced;
3. Reviewing the ratios of administrators to staff and administrators to students and considering adjustments to those ratios if it is determined that the number of administrators is too high in relation to the number of staff or students, as applicable;
4. Posting organizational structures, administration levels and budgets on publicly available websites to ensure transparency;
5. Examining overhead costs to determine if there are efficiencies that may be gained in implementing alternative methods of purchasing, maintenance and other practices;
6. Ensuring that any adjustments made to salaries and benefits are made in a fair and equitable manner so that some employees are not exempt from the impact of such adjustments; and
7. Considering the "shared sacrifice" that is necessary to prevent massive layoffs and to ensure a high quality of service to Nevada's students; and be it further

RESOLVED, That on or before September 1, 2010, the board of trustees of each school district and the Board of Regents of the University of Nevada provide a report of their findings and any adjustments made and actions taken as a result of those findings to the Director of the Legislative Counsel Bureau for transmission to the Interim Finance Committee and the next regular session of the Nevada Legislature; and be it further

RESOLVED, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the president of the board of trustees of each school district and the Chair of the Board of Regents of the University of Nevada.

Assemblyman Oceguela moved that the resolution be referred to the Committee of the Whole.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Assembly Bill No. 4—AN ACT relating to education; temporarily providing flexibility for school districts from the requirements of pupil-teacher ratios; and providing other matters properly relating thereto.

Assemblyman Oceguela moved that the bill be referred to the Committee of the Whole.

Motion carried.

By the Committee of the Whole:

Assembly Bill No. 5—AN ACT relating to education; providing a temporary waiver from certain requirements governing expenditures of money for textbooks, instructional supplies, instructional software and instructional hardware by school districts, charter schools and university schools for profoundly gifted pupils; and providing other matters properly relating thereto.

Assemblyman Ocegüera moved that the bill be referred to the Committee of the Whole.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering Assembly Concurrent Resolution No. 2 and Assembly Bills Nos. 4 and 5.

Motion carried.

IN COMMITTEE OF THE WHOLE

Chair Buckley presiding.

Quorum present.

Assembly Concurrent Resolution No. 2 considered.

ASSEMBLYWOMAN SMITH:

Thank you, Madam Chair. I'm here this afternoon to talk about a package of bills that has been developed based on the current fiscal crisis we are facing, and based on a great deal of testimony and input we've had, particularly in our Interim Finance Committee over the last several weeks.

I would like to start with Assembly Concurrent Resolution No. 2. I think we have all heard over the past few days what the impact of our budget situation has on our education system financially, and what it means to our communities and to our students, teachers, parents, and to our business community, as well. I do believe that we're working collectively to mitigate those cuts, to make those cuts as low as they can be, so that the students in the classroom are impacted as little as possible. In doing that, I think we all agree that we would like to make sure that our public has the most accountability possible in these difficult times, and in times when we are trying to make these cuts smaller, and also for us to provide some flexibility in the legislation that we are talking about today. So, we have this resolution that I would like to walk through with you that would be directed to our 17 school districts and to our Nevada System of Higher Education. I think it sends a very strong message from this legislative body to the decision makers at each of the 17 school districts and, of course, to the Board of Regents for the Nevada System of Higher Education.

Firstly, we would like to encourage each of those boards to examine all of their programs and services. It's exactly what we've been doing here over the last biennium, in particular, in looking at every dollar we spend, every program we fund, the cost effectiveness, who we serve, and whether it is efficient. We want to make sure that at the district and higher education level those same examinations are taking place.

Item 2 is examining whether benefits offered to higher level staff can be reduced or temporarily reduced. I think that speaks for itself. We heard many of those comments on this floor, and in public testimony as well, that it's important for us, particularly in these difficult budget times, that we make sure that across the board we're looking at salaries and benefits that are offered. Are they fair? Are they shared?

Item 3 is one we've heard about a lot. This is the ratio of administrators to staff and students, and whether those are appropriate. Some of that information, I think we have seen over time, and we do hear that reductions have been made as budget cuts have been implemented, but I know we always have the sense—and there's always a lot of public discussion about whether we're looking at those ratios—whether we're making sure that the cuts stay as far away from the classroom as possible, and this would be the suggestion that those numbers need to be looked at and also demonstrated to the public.

Item 4 is the transparency issue requiring that the organizational structures, budgets, and administrative information be placed on websites for the public's perusal and ability to see where their public tax dollars are being spent, and how.

Overhead costs, we have certainly done a lot of that here looking for efficiencies and ways that we can streamline and cut back on some of our overhead costs. We would like all of the districts and the higher education system to do the same.

Item 6 is ensuring that adjustments made to salaries and benefits are made in a fair and equitable manner. We've seen a lot of email and letters, had a lot of phone calls and testimony from employees about their feelings that sometimes practices aren't distributed fairly amongst the employees.

That also relates to Item 7, which is the shared sacrifice that I think we've all talked about, and we would all like to see happen. Our state employees, in particular, have really taken a lot of the brunt of this financial turndown and our budget crisis. I think this resolution encourages all of our employees to be able to participate in the sacrifices that have to be made. I think the public has indicated that this is what they expect and what they want to see. These are difficult times, so we would like all of the districts and the higher education system to examine all of their practices in this area, and make sure that they are making every attempt to make sure that employees are all treated equitably and fairly, as much as possible.

So, Madam Chair, that is the gist of this resolution. Of course, it is a resolution, and we hope that in its transmission to the school districts, to the leadership, the 17 boards, and the Board of Regents, that they will take these requests seriously, as we are taking our job seriously in trying to mitigate the cuts that we have to pass on for them to ultimately deal with at their level. Thank you, Madam Chair.

CHAIR BUCKLEY:

Thank you, Assemblywoman Smith. Are there questions from the Committee about the resolution? I don't see any. Thank you very much.

ASSEMBLYWOMAN SMITH:

May I move on to Assembly Bill 4, Madam Chair?

CHAIR BUCKLEY:

Let me see if we have any public testimony on this. Is there anyone who would like to provide testimony on Assembly Concurrent Resolution No. 2? Okay, I think people are tired. I just want to make a comment. I think this measure is really important. We are making extraordinary efforts to cut the proposed reductions to K-12 and higher education, and we probably could have cut higher education and K-12 by 10 percent on Monday and gone home, but we didn't want to see the layoffs of 3,000 teachers and increased class sizes, so we're still here making that happen. In exchange for that, we need everyone to look at their existing programs. There are a couple in higher education that I wonder why they're still there. We constantly receive reports about administrator to teacher ratio, and whether it's true or an urban myth; it doesn't matter, because perception is reality. The case has to be made to the public why so many administrators are needed. That's not done yet, and that needs to happen. We hate reading in the newspaper about higher education administrators getting special benefits. They can't. We have to do more with less. It seems to me that if we're allowing those things to happen, while making extraordinary efforts to protect education, and those things go on, then the public wonders why we tried so hard. So, I just would like to add from my position that we all have to make sure that we're preserving what is essential, and that means cut-backs at the top. So, I think this resolution says that. Any other comments? So, we'll close the public hearing on Assembly Concurrent Resolution No. 2 and open the hearing on Assembly Bill 4.

Assembly Bill No. 4 considered.

ASSEMBLYWOMAN SMITH:

As you all know, existing law imposes requirements for class-size reduction in grades 1-3. In the 2009 Session, we appropriated money for class-size reduction in an amount estimated to achieve ratios of 16-1 in grades 1 and 2 and 19-1 in grade 3. In recognition of the extreme fiscal situation we are dealing with in this session, and based upon the consistent testimony we have heard from school districts for flexibility, this bill authorizes school districts to increase class size by 2 pupils per teacher for the 2010-2011 school year only. If the school district elects to increase class size, it must use the saved money to minimize the impact of budget reductions on class size in grades 4-12. The reduction of class sizes in grades 4-12 must be carried out in a fiscally neutral manner so that it does not cost more to implement that plan than it would be to implement the traditional class-size reduction program. This bill provides the flexibility that the school districts have been asking for, and I think it is an important piece of what we are working on to solve our immediate budget crisis.

I would like to say, Madam Chair, that as a person who has been stalwart in asking for class-size reduction legislation, many, many years ago, and working to maintain it, this is a difficult one for me to ask for, but I know that it is necessary so that, again, we have some shared sacrifice and we spread the pain of the budget situation that we are in. I remember when the class-size reduction legislation was being promoted when it was a bill and being heard in the Legislature, and there was a big banner hanging in the lobby of the Legislature that said, "Who is for kids and who is just kidding," and that was a very symbolic thing for me as a parent who had three children in the public school system at that time, and had our middle child in a first grade class that had 35 students in it, with one teacher and a half-time aid that was in the class every other day, and 35 students. I was so happy when this bill passed and our youngest daughter was able to experience the benefits of being in a smaller class size. When I would go to volunteer in the class, I saw how productive it was to be in that environment with fewer students.

I have been an advocate all of these years and so this is hard for me, but again, I think it is what we have to do to get through this situation that we are in. I cannot bear the thought of some of the classes that are so large at the upper grades having to be larger because teachers may have to be laid off and there will not be the ability to make these changes within the class-size reduction. The bill is written very tightly so that there is room for two students to be added to these lower grades, and the money has to be spent so that the impact is mitigated at the higher grades 4-12, and it does have a sunset provision, so this is for the next school year. Again, this is one of the main things that districts have asked to have and because personnel costs in the district are the highest costs and again because it is the teacher in the class room that is what is so important to the achievement of our students. The size of classes is a very important thing that we deal with in this Legislature, and I think to help keep these high school classes from reaching 45 kids or a 7th grade class having 35 kids, this is what we have to do. Madam Chairman, there are representatives from the two larger school districts here, and also from the school board association, who will be speaking on behalf of the other districts that can answer any questions that our members may have on the technical issues regarding any class-size reduction questions, and also lend their support for this idea. Thank you.

CHAIR BUCKLEY:

Thank you, Assemblywoman Smith. Are there questions of the Committee? Assemblyman Carpenter.

ASSEMBLYMAN CARPENTER:

In Elko, we have been allowed to go to a class size, I think from kindergarten to 6th grade, of 22 to 1, and it has been in effect for many years. Would this legislation have any effect on them or could they actually put a couple more kids in the class if they wanted to or had to?

ASSEMBLYWOMAN SMITH:

Yes, this would benefit other districts that have already had the flexibility because it would extend it through grade 12, and I think you will hear Mrs. Merrill, representing school boards associations, testify on that issue.

CHAIR BUCKLEY:

Is there anyone from the public who would like to testify on Assembly Bill 4?

JOYCE HALDEMAN, ASSOCIATE SUPERINTENDENT, CLARK COUNTY SCHOOL DISTRICT LAS VEGAS, NEVADA:

Before I testify in favor of this bill, I just need to make sure that you understand what strong advocates the Clark County School District is of class-size reduction. We strongly feel that it makes a difference in the early years of childhood learning, and it makes a difference in how well children learn to read and learn basic math skills. We share Assemblywoman Smith's trepidation of how we are dealing with this issue right now. However, these are extraordinary times when we recognize that we do need to make sacrifices across the board. The Clark County School District has dealt with budget cuts in the past. One of the things, that is a convenient and easy way for us to do it, is to simply add another student per class. It is a high dollar amount if we add one student per classroom across the district; it is nearly \$27 million that we can save. When we are faced with budget cuts, it is always a temptation for us to do that. With the class-size reduction protection for those early grades, the higher grades have really taken the brunt of those maneuvers over the past few years, as we have dealt with budget cuts. Reluctantly, we agree that it is time for us to share that sacrifice and have those early grades be increased by a couple of students. We appreciate that the bill is a one-year fix. We really look forward to making sure that when this session is over, and we are dealing with things on a long term basis, that class-size reduction is protected. We are grateful that we are not tapping into the class-size reduction fund, and that we are keeping it in the areas that it goes to reduce the number of pupils in a classroom. We are very supportive of those things.

Over the years we, in Clark County, have worked in many ways to make sure we use class-size reduction dollars appropriately. When the bill first was passed, I was a PTA parent working on the class-size reduction because I was worried about my five children who were attending public schools and I thought that the class sizes were too large. I remember when the bill was passed; there was a concern that we did not have the right facilities in order to implement class-size reduction in Clark County when it started out. It was one of those, "which comes first, the chicken or the egg." Do you build the classrooms and then hope that people will fund them at a lower class size? Or do you pass class-size reduction and then worry about the facilities? We did the second, and for a long period of time there was a lot of team teaching in Clark County. Then I became a district employee and one of the roles that I had in that position was to work on the school bond campaigns. When a major bond campaign passed, one of the first things we did was change the construction of the buildings so that these lower grades would be at the capacity of a smaller class size. We have some limitations in how many students that we can add to the classes in grades 1-3, simply because of the size of the classroom that we have constructed to go along with these classes. We have just about virtually eliminated team teaching in Clark County. We have very few situations left where we—because of the demographics of the area and the way things are configured—that we still have team teaching. It is just about completely gone. I feel we have made a lot of progress on class-size reduction. I really hope that we do not regress with that, but even saying those things, we strongly support this. By increasing class size by one student in grades 1-3, we will save \$15 million. If we increase it by two students, it will help us save \$30 million, and that is an important amount for us right now as we face these budget cuts.

CRAIG HULSE, DIRECTOR OF GOVERNMENT AFFAIRS, WASHOE COUNTY SCHOOL DISTRICT:

In the interest of time, I will echo the sentiment from my colleague from Clark County. This is also something we are not happy that we need—we are in trying times right now—and with this bill and the language, it allows us the flexibility and that stays consistent with our message through this entire thing that once we have a cut, and once we know what we are going to do, that we have as much flexibility as possible to do that, and that is what this allows through June

30, 2011. We also lend our full support to this language and we appreciate the hard work of this Committee and Assemblywoman Smith.

DR. DOTTY MERRILL, EXECUTIVE DIRECTOR, NEVADA ASSOCIATION OF SCHOOL BOARDS:

On Tuesday afternoon you heard from Sharla Hales, the immediate past president of the Nevada Association of School Boards, on behalf of our 107 school board members in Nevada. She encouraged you to provide flexibility as local boards consider responsible cuts in their individual school districts. We appreciate the increased temporary latitude that is provided in this bill and we encourage your support. In response to Assemblyman Carpenter's question, in Section 1, subsection 3, it states, "A district may elect to increase the class size by not more than two pupils." Some districts that have applied class size reduction in other grades may not need to consider this as an option but it does provide the latitude in school districts where boards do need to consider this option. Thank you for your service, particularly during such difficult times.

ASSEMBLYWOMAN WOODBURY:

I had a question about the expiration date. Will that take into account year-round schools that end in August, or will this be readdressed in the next session, to make sure that this can continue through August of 2011?

JOYCE HALDEMAN:

I don't know that I am really qualified to answer that, but the way that I read the bill is that it would be extended to contracts that have been signed within that period of time. Once you have a contract, until it expires, we are set.

ASSEMBLYMAN CARPENTER:

To the representative from Clark County, what kind of student ratios do you have in your other classes, if you can give me an idea?

JOYCE HALDEMAN:

The current ratios that we have right now are grades 1 and 2 are funded at 1 to 16, and grade 3 is 1 to 19. Grades 4-6 are funded at 1 to 25. The secondary grades are funded at 1 to 30. When I tell you they are funded that way, that is an average amount that we use but every class size is different. For example, if you have a AP Chemistry II class that has 12 students in it, then there is another class somewhere that has the balance of those students in it, to make up for that small class size. Some of our class sizes with PE or band, and some of the larger classes, are larger than that, 60 or even 75 students per teacher. As regular classrooms go, we try to keep to the 30, but many times they creep up, especially in some of the general education classes, so that some English and math classes have in excess of 35 or 40 students.

CHAIR BUCKLEY:

For the Clark County School District, do you track that? I know that because most of the time we get averages, and averages really do not tell you that there are 45 students in a class. Do you track that?

JOYCE HALDEMAN:

You might recall during the last session that I was asked that question and I had a couple of people who spent a good many hours trying to track that. We have, of course, 330 schools and a lot of classrooms within each of those schools, so it is pretty hard to keep those class sizes tracked. What we finally ended up doing is tracking extremes; we took out some of those classes like PE or orchestra that have lots of kids in them because of the way they are taught, and then tried to look for the classrooms that had extreme numbers, anything over 35 and anything under 12. I cannot quite remember the numbers. I could probably resurrect that, but it was for a previous year. It is not something that we have easy access to produce those numbers for.

ASSEMBLYMAN MUNFORD:

Since I have been elected to the Legislature, I have had the opportunity to visit about five or six of the high schools in Washoe County/Reno and I direct this question to Mr. Hulse. In regard to the ratios in the schools, I did not see much of a problem with class size; they were pretty level. How is the ratio in the elementary and middle schools? When I was a teacher I

would have relished some classes like that. I am still an advocate of class-size reduction, but I want to know your ratio in the elementary and middle school grades.

CRAIG HULSE:

We have the same ratio—for grades 1-3, they are funded by law; 16-1 for grades 1 and 2; and 19-1 for grade 3. I do not have the information for grades 4-8 with me and I apologize for that. In our high schools, we average about 30/32 to 1 and that is not controlled by class-size reduction and grades 1-3 were consistent with what the current law is funded at.

ASSEMBLYMAN ANDERSON:

In setting the ratio for the accelerated programs, such as advanced chemistry and those others, does Clark County use the minimum number of students before a particular program can qualify; in other words, if you are going to have a fourth year French program or fourth year German program, do you have to have a minimum of 12 students to qualify? Or do you go ahead with programs that have less than 12 students?

JOYCE HALDEMAN:

Generally speaking, yes, we do have to have a minimum number. There are some exceptions to that and it has to do with if there is an expertise or a program where it builds upon each other and we promised that to the students, but generally speaking, those programs are so popular that meeting the minimum class is not a difficult situation. I do not want to give you just a blanket “yes,” because there may be some exceptions, but generally speaking, yes, we have a minimum. I believe that it is 15 students but it might be more than that. I would have to check and find out.

ASSEMBLYMAN GUSTAVSON:

I have a two-fold question on class-size reduction. I know that class sizes are quite large, especially down in Clark County because they have been unable to keep up with the growth that has been going on down there recently, though the last couple of years I think your enrollment has dropped off somewhat. The first part of the question is: How many schools do you have under construction right now? Once those schools are completed, do you think that will alleviate the problem of large class sizes?

JOYCE HALDEMAN:

We are on the construction of our final four schools that have been dealing with the growth. We would like to construct more schools to replace existing older schools, but that is also put on hold right now. The schools that are under construction for growth are actually dealing with students that are currently in the district in other over-crowded schools. In fact, on Tuesday night of this week, the school board had a zoning meeting that was very contentious about the rezoning for those new schools. It is always a problem when you get a new school but then you have to do the rezoning to go with it. We are finished with that part of the construction program.

ASSEMBLYMAN GUSTAVSON:

Do you think that will help alleviate some of the problems with large class sizes right now?

JOYCE HALDEMAN:

I want to say yes, but I will tell you that every school has an attendance zone that is fairly large. We, unfortunately, build schools at an outrageous size and they have a lot of students in them, so the formula that we use for funding teachers is really what drives our class size, not so much the facility. It is the formula that we have for funding.

CHAIR BUCKLEY:

If you cut the funding, you have to increase class sizes, so it does not help at all. If we kept the funding the same for education and provided them teachers for the new schools—yes—it would reduce class sizes in high schools. If you are cutting the funding that you need to hire the teachers, then you are not going to have any relief. Is that right?

JOYCE HALDEMAN:

That is correct.

CHAIR BUCKLEY:

Is there anyone else that would like to provide testimony on Assembly Bill 4? Seeing none, I will close the public hearing on Assembly Bill 4 and open the public hearing on Assembly Bill 5.

Assembly Bill No. 5 considered.

ASSEMBLYWOMAN SMITH:

Madam Chair, thank you again. School districts and charter schools under existing law are required to expend a certain amount of money each fiscal year on textbooks. You may remember that last session we actually passed a couple of bills regarding this issue. One of them was A.B. 13, which authorized a school district or charter school to submit a request to the Department of Education for a waiver from that minimum textbook expenditure during economic hardship. This bill is a bit of a housekeeping bill that would waive the requirements that we set forth in Assembly Bill 13, and provides all districts with the waiver. We know that all 17 districts were applying for the waiver, and felt that in an effort to save on staff time—for the Board of Examiners, the school districts, the Department of Education—it would make sense to just, for this biennium only, grant that waiver, so that the districts have the flexibility to use that money for other things. That doesn't mean they won't be buying textbooks, but it means again that it gives them the flexibility. I would imagine they would have all been granted the waiver due to the budget situation we are in. This will make the system much more efficient, and make it happen faster. Thank you, Madam Chair.

CHAIR BUCKLEY:

Thank you, Assemblywoman Smith. Are there questions from the Committee? Assemblyman Settelmeyer.

ASSEMBLYMAN SETTELMEYER:

Thank you, Madam Chair. I was just curious, on a statewide basis, how much money is in the textbook fund, totaled together?

ASSEMBLYWOMAN SMITH:

I didn't bring the budget amount with me for this biennium. I will get that for you and provide that to you before we leave this floor session.

ASSEMBLYWOMAN DONDERO LOOP:

Madam Chair, I would like to disclose that while I work for an instructional material company, my company, nor myself, will benefit any more than any other company by this, so I will not be abstaining from voting.

CHAIR BUCKLEY:

Thank you for the disclosure. Any further comments or questions of the Committee? Seeing none, thank you very much. Is there anyone who would like to provide public testimony on AB 5? Seeing none, I will close the public hearing on AB 5 and bring these measures back to the Committee. The Chair would entertain a motion on ACR 2. Potential conflict of interest declared by Assemblywoman Dondero Loop.

Assemblyman Ocegüera moved to adopt Assembly Concurrent Resolution No. 2.

Assemblyman Conklin seconded the motion.

Motion carried.

Assemblyman Ocegüera moved to do pass Assembly Bill No. 4.

Assemblyman Conklin seconded the motion.

Motion carried.

Assemblyman Ocegüera moved to do pass Assembly Bill No. 5.
Assemblyman Atkinson seconded the motion.
Motion carried.

On motion of Assemblyman Ocegüera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 2:32 p.m.
Madam Speaker presiding.
Quorum present.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee of the Whole, to which were referred Assembly Bills Nos. 4, 5, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, Your Committee of the Whole, to which was referred Assembly Concurrent Resolution No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

BARBARA E. BUCKLEY, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that Assembly Concurrent Resolution No. 2, just reported out of committee, be placed on the Resolution File.
Motion carried.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 2:35 p.m.

ASSEMBLY IN SESSION

At 7:56 p.m.
Madam Speaker presiding.
Quorum present.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 26, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bill No. 3.

Also, I have the honor to inform your honorable body that the Senate on this day adopted Senate Concurrent Resolution No. 1.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 3.

Assemblyman Ocegüera moved that the bill be referred to the Committee of the Whole.

Motion carried.

Assemblyman Ocegüera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering Assembly Bill No. 3.

Motion carried.

IN COMMITTEE OF THE WHOLE

Chair Buckley presiding.

Quorum present.

Senate Bill No. 3 considered.

CHAIR BUCKLEY:

Let's consider Senate Bill 3. We've asked Brenda Erdoes, our Legal Counsel, to come forward and to assist us by presenting the bill. Just for the members and for those listening, our agenda for this evening is we're going to hear testimony on Senate Bill 3 and then we will adjourn for the evening. We're going to come back in tomorrow at 11 a.m., as I think most people know we made some significant progress today with legislative leaders and the Governor. We're going to meet again in the morning, and if luck goes our way, we may have a consensus, or we hope to have a consensus and a bill for this body to consider. Maybe I'm an optimist, but the talks went very well. Let's consider Senate Bill 3.

BRENDA ERDOES, LEGISLATIVE COUNSEL, LEGISLATIVE COUNSEL BUREAU:

Thank you, Madam Chair. The bill in front of you, if you start on page 3, that's where the text of this starts, you'll see that the first sections are amendments to Chapter 391, *Statutes of Nevada 2009*, and that was the money bill in which this was included as sections 3, 4, and 5 during the 2009 Legislative Session. What you're seeing here is an amendment of Section 3 of the bill from the 2009 Session that set up the furlough program. Just basically, going line by line, the concept here is that on line 7, and you'll see this throughout, the classified employees—if you recall in the furlough bill from last session—had a different plan than all the other employees in the sense that those employees could take the furlough hours in any combination that they wished. The rest of the employees under this furlough program are required to take the furlough in 8-hour days, and one day per month; the classified employees had more leeway in terms of how to use that. They didn't have to take them all in one 8-hour day a month. What we were doing is adding the employees of the Legislature, the Legislative Counsel Bureau, and the Budget Division of the Department of Administration to the group with the classified employees because the thought was that you wouldn't want us and legislative employees or the Budget Division staff to actually be taking furlough days during session. So, what this will do is enable us to have flexibility; we will still take the full number of furlough days, but what we'll do is take them before and after session and so will the Department of Administration, so that just adds that part in there.

On line 23, you start to see the first change. That's what this bill did as drafted. It changes the furlough time from 8 hours to 10 hours, so you'll see those changes throughout. Where the 8s are changed to 10s, that is to reflect that this bill is moving from 8 hours to 10 hours for the furlough. The changes at the bottom of that page are, again, adding the same thing, just accounting for the fact that the Legislature's employees, as well as the Counsel Bureau, and the Budget Division, are added to the classified employee part. Again, on page 4, that is essentially what that is. On the top of page 4, however, line 1 accounts for the difference between what was the case, which was 8 hour furloughs going to 10 hour furloughs. That is actually 120 hours of furlough leave that would be taken each year. The rest of the changes here, until you get down

to line 23, on page 4, are making the same change in the places that it needed to be made and to account for the 8 to 10 hour days and also the addition of those folks to the classified employees.

The provisions of lines 23 through 28 are an authorization for school districts to require their employees to take unpaid furlough days; however, the way this is set up it is not the same program as the state. It enables the school districts to put together a program of their discretion—how many days, how many hours, how it works—would be up to them. They're not part of this program with the 10 hours and four 10s. The rest of the changes over to page 5, on line 20, are still conforming changes. On line 20, subsection 8, provides that this provision says that on subsection 4, which I just described, does not apply to the extent that the provisions authorizing the furlough would conflict with the provisions of the collective bargaining agreement. That is possibly the case, anyway, because of impairment of contract, but we stuck that in there just to make this a little bit easier to make it work.

Regarding the provisions of 24 through 28, you may recall that shortly after the 2009 Session, there was an issue as to whether the licensing boards were required to take the furlough leave. We were required to draft an opinion. We came to the conclusion that they did not need to take the furlough leave because they were outside the Budget Act, but since there was some question, we thought that it would be good to add that in this time to make it clear that this doesn't apply to the licensing boards. The requirements there are that their sole function is regulation, and that they are not subject to the Budget Act. That's what that citation is right there. The next section, Section 2, which starts on page 5, essentially amends Section 4 of the act from last session and makes some conforming changes. It says public employers because now we have, not just the state, but a quasi-state and school districts. This begins the part where the other substantive change in this bill provides that employees who are exempted from the furlough, their pay will be cut in an equivalent amount. So, the way that this will work now is, instead of whole exemptions from the furlough, and it would be by positions, so if the positions in the agency are exempted from the furlough then they would take a pay cut that is equivalent to the amount of the reduction from the furlough days. This is accounting for that language.

Also in the back of the bill, related to this, is a provision that voids all of the existing exemptions that have been granted from furloughs and provides that the agencies must apply again for furloughs. The reason that we did that is that now that the exemption from furlough causes a reduction in pay, we thought that the process should start over. There are approximately 2,060 some employees who are exempted from the furlough, so that starts again.

The language in paragraph b of subsection 1 of Section 4, which starts on line 42, provides that in the case of school districts the school district will determine if the employee will be held harmless under PERS. This is amending the provisions that are currently in the 2009 bill, which held state employees harmless from PERS for the pay cut. In other words, the contributions are still made on the same amount as they would be, but for school districts it's left to the discretion of the school district. The changes on page 6 are all related to the change from the 8 hours to 10 hours. The rest of these are all just conforming changes on what you have to report to PERS.

The next substantive changes are on page 7, line 25—that's being taken out. Previously, if you got an exemption from the furlough, then you wouldn't be reducing the amount in your budget. The agency was required to identify other cuts that could offset that amount, but now that it's going to be offset by a pay cut. You don't need that provision anymore.

Line 33 reflects a change that was made in the amendment on the Senate side, to require for the exemptions that are approved by the Board of Examiners and the Board of Regents be approved by the Interim Finance Committee before they become effective. Those exemptions that are granted by the Public Employees Retirement Board, the Supreme Court, and the Legislative Commission remain as they are, which is they don't go to IFC for approval.

The provision that starts on page 8, line 12, describes that the provision that I already told you about, which is that if the furlough position is exempted, the employee would have an 8.75 percent pay cut in lieu of the furlough leave. Section 4, which starts on line 19, of page 8, is the provision that reduces the salaries. An equivalent amount of the employees of the Legislature and the employees of the Assembly and the Senate, you may recall, have their pay set out in Chapter 218, in the chart. That chart provides for increases, so this provision says that in calculating the amount of the compensation, not only is it reduced by the same amount, but no step increases may be given during this same period where the state employees have furloughs.

Section 5 of the bill is the section that provides that all state offices must be closed on Fridays and be open for the transaction of business for 10 hours, from 7 a.m. to noon, and then to 6 p.m. There is an exemption. Exemptions are provided later. They would be granted by the same entities that provide exemptions for the furlough themselves, which is the Board of Regents for NSHE and the Board of Examiners for the Executive Branch. These are the same ones.

Line 42, on page 8, basically, deals with holidays. When you have four 10s, Monday through Thursday, and the holiday is on Friday, then that would be 10 hours in addition. This bill provides that during any week in which you have one or more holidays, the plan goes back to five 8-hour days so that the employees would work the five 8-hour days and then actually take off one of the days as the holiday or two if it's Thanksgiving and Family Day.

ASSEMBLYMAN HARDY:

Thank you, Madam Chair. On page 8, line 18, if a position has already had a prior cut in salary, does this take into account the cut already taken in salary, based on the employees unreduced salary? Have we defined that, if that becomes an issue?

BRENDA ERDOES:

I'm sorry, I need some clarification. When you say if the employee's salary has already been cut . . . I don't know what situation you are describing.

ASSEMBLYMAN HARDY:

If we have an employee who had already had a cut in pay or salary, is this before their prior cut or is this from the base that is in effect, at a certain date?

BRENDA ERDOES:

I think that this doesn't take into account if the salary was cut previously for some other reason; but if what you're asking about is how, this bill does provide, if you had special or other adjustments for, like the 5 percent, those adjustments, as well as overtime, are paid on the basis of the unreduced salary of the employee. Is that addressing your question or am I missing it?

ASSEMBLYMAN HARDY:

So, if I want to speak in lawyer's speak, I would probably understand it better. If I make \$10 an hour and then I receive a pay cut to \$9 an hour and then this furlough swings over as a percent of decrease, would it match the equivalent of the furlough because I am exempt? Would I go down to 45 cents or would I go 50 cents or what would be my base?

BRENDA ERDOES:

Under this bill, there is only one pay cut that would happen. So, if they were taking furloughs and it was cut, it is actually just a reduction in pay based on that furlough day. But, if they were exempted, then that same reduction would carry over. It wouldn't be counted twice, so the salary would only be reduced one time.

ASSEMBLYMAN HARDY:

It would be reduced from the most recent base that the person was at? Not the prior base that they were a year ago?

BRENDA ERDOES:

It would be at the prior base before the furlough reduction. If they were reduced for some other purpose, then it would go on top of that. Is that what you're asking?

ASSEMBLYMAN HARDY:

Yes. I think what I'm saying is whatever I was supposed to make last month, or the month before this takes effect, this would be below that.

BRENDA ERDOES:

This would be below that only if you had been exempted from the furlough plan, so that no pay cut had been made. If you were under a furlough plan, and then you were exempted and went to the pay cut, your salary would stay the same.

ASSEMBLYWOMAN SPIEGEL:

Thank you, Madam Chair. Just along a similar vein, just so that I am clear, I know that after the last session the people who worked at the Nevada State Museum had the museum closed one day, so they cut were back by one day a week. They're not going to be cut further are they?

BRENDA ERDOES:

No. This bill leaves in the exemption from the whole furlough program for those employees. That was in the bill before, and this bill does not take that out, so they will still remain exempt from the furlough program.

ASSEMBLYWOMAN PARNELL:

Thank you, Madam Chair. Brenda, on page 3, lines 23 through 26, it says an employee must take one day and cannot take portions of the day, and then on page 4, lines 10 through 15, it says that they can be taken in portions. Can you explain the difference in those two?

BRENDA ERDOES:

Yes. On page 4, where it says they can be taken in portions, it applies to classified employees and has applied to classified employees in the past. We are adding the Legislature, Legislative Counsel Bureau, and Budget Division staff to that category. The rule that you read on page three, which says you have to take the flat 10 hours per month in one day, applies to all the rest of the employees.

ASSEMBLYWOMAN PARNELL:

Okay. I just wanted that clarified and on the record. I talked with some people that really, especially the lower salaried employees, when they have to take, now, 10 hours in one pay period—it has really been a hardship. They've been trying to split that up. I just wanted to make sure they still could.

BRENDA ERDOES:

So, going back to page 8, I just want to point out the provision because it goes to Assemblyman Hardy's question. Lines 15 through 18 provide that when a person takes a pay cut in lieu of a furlough leave, the payment of any special or other adjustments to the base rate, any overtime, is going to be calculated based on the unreduced salary.

I think we got to page 9 and the provisions on subsection 3. An office and its employees may be exempted; these are the exemptions that we talked about. Those exemptions, as you can see from lines 9 to 25, are made by the same entities which exempt the employees from furloughs—the Board of Examiners for the Executive Branch and the Board of Regents for NSHE. Then, subsection 5, on lines 26 through 30, requires that the exemptions granted for this, for the 8-hour days, which is what this section is about, would have to be reported to IFC no later than 60 days after they were made. Then, subsection 6, which is lines 36 through 38 on page 9, provides that notwithstanding the requirements that are put in subsection 3, an employer or an employee of an office that is exempted from the requirements of this section may take the leave in portions of the day. We put that in because if you were exempted from the four 10s and you were taking a 10-hour furlough and you were working an 8-hour day, you can see that you would have to take a day in a portion, so that is just allowing that flexibility for those employees as well. Subsection 7, which is on lines 39 to 43, on page 9, is for all the offices that don't get an exemption. They're closed on Friday and they're open 10 hours a day, Monday through Thursday. This provides that if there is any kind of deadline that falls on a Friday, where someone would need to file on a Friday, that deadline is automatically, under this, extended to the next business day, at the end of that day.

ASSEMBLYMAN HAMBRICK:

Thank you, Madam Chair. Going back to page 8, referencing the units and organizations that would be on 40 hours, what about those commissions that are funded solely by federal funds, both on staff, travel, and anything else that comes strictly from federal funds? Are they subject to this provision?

BRENDA ERDOES:

Yes. They are. They continue to be. The 2009 furlough program included all the employees across the board. So it would apply to the federal employees. This bill does not change that.

CHAIR BUCKLEY:

Brenda, there was a case in California, I think, having to do with Social Security disability processors. Did you consider that as you were drafting that section?

BRENDA ERDOES:

Yes, we did. In fact, there are several of those cases. We looked at the holdings from the California court and determined that there was no issue with the way that these furloughs were being applied with the federal money.

ASSEMBLYMAN CARPENTER:

Thank you, Madam Chair. On page 9, at the bottom of the page, on lines 44 and 45, it says that it does not apply to a board, commission, or agency, the sole function of which is a regulation, and then there is another paragraph in the regulation before that, that says the commissions or agencies are exempt. I was wondering the reason for that. Seems to me they get money from the taxpayer, so they should be subject to the same thing. I just wonder why.

BRENDA ERDOES:

This provision was put in to make it parallel to the furloughs. After the last session, we looked at the language and determined that it did not apply to these boards that are funded solely through the receipt of fees from the people that they regulate. It's a policy choice that the Legislature made, and you can certainly change that. This is the exemption from the four 10s. There is an exemption earlier from the furloughs themselves for these boards. That's a policy choice that this Legislature can make.

ASSEMBLYMAN ARBERRY:

Thank you, Madam Chair. Brenda, on page 8, at the bottom, lines 42 through 45, number 2, can you explain that a little more? Maybe I'm reading it wrong. Is that if a holiday falls in that week, they now then go to 8 hours a day that week?

BRENDA ERDOES:

Yes. That's how it works, so that the holiday can be taken. Because holidays are 8 hours and the furlough days are 10 hours, the problem with that is if you had four 10s, for example, and the holiday fell on a Wednesday, then that would be a 10-hour day, so technically the holiday is 8 hours, so then either the employee would have to take two hours of leave or come in for two hours on the holiday to make the system work. Similarly, if the holiday fell on a Friday, they would have already worked the 40 hours so then you couldn't pay them for the eight unless you paid them overtime. So, to eliminate that problem we just provided that in the weeks where there was one or more holidays. You just go back to the five 8s. Then, they are prohibited from taking a furlough day during that week because it would be short. It's just a way to make the system work.

CHAIR BUCKLEY:

Okay. There are no more questions.

BRENDA ERDOES:

I think we're on page 10, Section 6. This is an exception to the rule that there will be four 10s Monday through Thursday and that on Friday the office would be closed. That exemption is in here for the Board of Regents to establish a schedule for NSHE, which would be rolling 10-hour days so that they would stay open for the five days a week. The rolling 10-hour days, the way that works is to allow staffing so that like some employees would be 10-hour days, Monday through Thursday, and others would be Tuesday through Friday, or some variation of that, so that they were all staffed and they were not closed on any day, but the employees still worked for tens. Section 7, on lines 9 through 28 . . .

CHAIR BUCKLEY:

Brenda, there's a question there.

ASSEMBLYMAN DENIS:

Thank you, Madam Chair. Did we look to see if there are any agencies that might have additional statutes that determine what their work days are, that specifically say you have to be open Monday through Friday, or that type of a thing?

BRENDA ERDOES:

We did and only found the one section in 281, which was for all the state employees and that is amended in here. We're hoping we didn't miss any. Section 7, page 10, essentially provides that if more overtime is going to be required as a result of this furlough program, that is if an agency is going to have more overtime than they had in the previous year or in previous years of the biennium if they're matched up, then the agency is required to file an overtime plan and have that overtime plan approved by the same entities that grant the exemptions, so the Board of Examiners for the Executive Branch, the Legislative Commission for the Legislative branch, and the Supreme Court for the Judicial branch. That is a plan where components of that plan would be left to the body that was going to be approving the plan, so that they could ask for whatever information they want in order to make that determination.

Section 7.5 is a change to the provisions of 209.183. This is a part of the provisions of the bill which limit the additional pay or additional salary adjustments, in that they are prohibited to be paid to new hires after March 1, 2010. So, this one was in statute; most of them are in regulation. We needed to change this statute to conform to that requirement, so you can see that. It says each person employed before March 1, 2010, is eligible. It is the rural travel expenses provision, which is an adjustment to salary.

Section 8.1 on page 11 provides that the commission in Section 284 is the Personnel Commission; so it provides an exception for subsection 4 of 284.175, which we're going to get to. These are all conforming exceptions on this page, as you come down. The effect of this Section 8.5 is to require the additional adjustments that are currently being paid under regulation to not be paid to employees who are hired on or after March 1, 2010, and that's the Personnel Commission.

The provisions in Section 9 on page 12 are changes to conform to the requirements of the law. The law sets out the definition of overtime and this matches. The last part of this, the 40-hour week, matches up to the FLSA (Fair Labor Standards Act), but then we have the provision in statute you'll see on lines 41 through 43. That provides that overtime is time worked in excess of eight hours in one calendar day, in any 16 day period or 40-hour work week. We had to add the provisions for 10-hour days right above that, which is the same provision, but only for 10-hour days, to provide that flex scheduling when there is overtime.

The next change is on page 13 and it applies specifically to corrections officers, to require there that they work three consecutive 12-hour shifts and not less than seven 12-hour shifts during each 14 day period, so that they work a total of 84 hours in a period before they start working overtime. There's an FLSA provision that provides for that 84 hours of work, to make that work.

On lines 29 through 34 on page 13, there's a conforming change to just provide that bi-weekly schedule. The eligibility for overtime will be determined in accordance with the Fair Labor Standards Act, which applies anyway, so it just simplifies that section. The next changes are in Section 10, on page 14, starting on line 12. That section as it is currently is in the bill; those changes were made to account for the 10 hour days. If we left the working day language in there so this an accrual of annual, there is a parallel section for sick leave, and if you left accruing at 1.25 working days for those employees who work 10 hours, the number of annual leave hours would be actually 12.5 and that would be an increase from the number of annual leave hours that are currently granted. So, we converted the working days to hours and put them in here. The same thing is true all the way through. The numbers are just converted to hours instead of days.

Section 11 is doing the same thing for sick leave, converting it to hours. The next change is all the way over to page 17, lines 10 through 14. These sections don't appear in the language but they are transitory sections so there are new provisions to the bill.

Section 12 defines working day. We had the same problem with that in some Personnel Commission regulations, so to keep the Personnel Commission from having to go all the way through the regulation process to conform something to this bill, we just provided in here that where they use that term in regulation it would be conformed to the provisions that we just told you about, the annual leave and sick leave provision changes in 284.

Section 13 is the provision that I described earlier where we void all the existing exemptions for furloughs and provide that the agencies can reapply for those. Section 13.5 is a section which provides for the continued payment of the allowances that are additional and we list in here which allowances those are. It's the rural travel in NRS 209 and 209.183. These are all of the additional allowances that are allowed in those regulation sections. We provide for those sections as they existed on February 23, 2010, which was the first day of the session. The section goes on to say that if an employee defined in the section was receiving payment of these types of payments on February 23, 2010, or becomes eligible, then they would continue to get those payments. In subsection 2, we just described it to make sure that if this was challenged, it was clear that this didn't make any additional people eligible and didn't take away any eligibility.

Section 14 of this act is the last section on page 18. It differentiates for you the sections that expire by limitation and those that don't. Going to subsection 3 first, on lines 12 through 14, what those sections do is take the furlough act from Sections 3, 4, and 5 of the 2009 bill and make those and the new changes to that expire by limitation on June 30, 2010. Subsection 2 is concerning the allowances and the statutory changes, which do have a sunset, and the other sections of the bill become effective upon passage and approval. That's the entire bill. If you have questions, I'd be happy to answer them.

ASSEMBLYWOMAN SPIEGEL:

Thank you, Madam Chair. Brenda, just to clarify, if somebody has accrued but has unused either sick or vacation time, will that be converted to hours and then taken on an on going basis in terms of hours instead of days?

BRENDA ERDOES:

Actually, there won't be any conversion necessary. I'm not quite sure why the statute spoke in days in the beginning, but what the personnel systems do, of the different branches, is automatically convert that. When see it on your paycheck, they're taken by hours anyway, so there won't be any difference there.

ASSEMBLYWOMAN MASTROLUCA:

Thank you, Madam Chair. Brenda, I want to go back to Section 5. It says that businesses will be open, or that state offices, departments, boards and commissions will be open, from 7 a.m. until 6 p.m., Monday through Thursday. Does it say that in those weeks where there is a legal holiday that the business hours of the office will change to 8 a.m. to 5 p.m. for any day that is not a holiday?

BRENDA ERDOES:

Yes. The employees will work the 8-hour days instead of the 10-hour days.

ASSEMBLYWOMAN MASTROLUCA:

I'm a little concerned if we have people who are going to the DMV and they know that it's open from 7 a.m. to 6 p.m., and then don't think about the fact that there was a holiday on Monday for Labor Day, and now they go at 5:30 p.m. and the DMV is closed. I am also thinking that the week between Christmas and New Years—that's two weeks in a row—that the DMV is only going to be open 8 hours a day. Is that common in other states that have gone to this format?

BRENDA ERDOES:

We did not actually see any other state laws which provided for this level of detail. What we saw was that there were various ways in which this issue was worked out. Another option here would be to make it so that you kept the office hours but you went to a rolling schedule during those hours to keep them open. In other words, it would be rolling in the day and you would

bring in part of your employees from 7 a.m. to 4 p.m. and the other part from 9 a.m. to 6 p.m. Any of those options are available. The reason we didn't put that in is because this applies to so many employees, small offices as well as large, that if you're going to have one rule for all of the offices there would have been additional fiscal impact for the small offices where you have, especially in the rural areas, a small number of employees. We were told that they would be unable to cover those periods, without additional overtime. It is a policy choice that the Legislature can make. It's sort of balancing no matter which way you go, but it certainly can be changed.

ASSEMBLYWOMAN MASTROLUCA:

Madam Chair, that is something that I would like to consider for large groups like DMV and things that our public really depends on. I would like to see if we could look at that a little further. Thank you.

BRENDA ERDOES:

I would also point out that there are the exemption provisions from the four 10-hour days, if they wanted to get an exemption. For example, the DMV could go to the Board of Examiners if they wanted to do that, to go to a different schedule than the four 10s or being closed on Friday.

ASSEMBLYWOMAN MASTROLUCA:

The exemption is for the hours for the employees. Correct? Not for the hours of business.

BRENDA ERDOES:

No. There is an exemption in here from the four 10s and being closed on Friday.

ASSEMBLYMAN HARDY:

Thank you, Madam Chair. Just to confirm on page 9, southern Nevada Veterans Home, for instance, would probably qualify for exemptions so they can do 24/7 care of their patients on line 8, and then they would try to figure out which one of those would grant them the exemption from furloughs, so that they could have the salary reduction. Is that correct?

BRENDA ERDOES:

Yes. I believe it would be the Board of Examiners because they are considered to be in the Executive Branch, and then they could decide whether it would be all of the employees of that agency or only the ones who supported the 24-hour care. All the details could be worked out at that point.

ASSEMBLYMAN DENIS:

Thank you, Madam Chair. Brenda, in that same section that you talking about just a second ago, on Section 5, on line 42, where it starts to talk about the holidays, it says that the hours are at least from 8 a.m. to 12 p.m. Wouldn't that give them the option to be able to do 7 a.m. to 6 p.m. still because it say at least those hours, which doesn't limit them and they can still do the rolling?

BRENDA ERDOES:

I believe you're right, and I would correct the answer. This is something that we added in, so you're right. We did figure that out. If they could stay open from the 7 a.m. to 6 p.m., they could definitely do it under here, if they chose to.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. Brenda, we already do this in some of our departments already. I know for instance that the DMV, if there's a holiday, than they're automatically closed on that Saturday. They take both the Friday and Saturday, so we're already alerting the public on some of these issues already. Is that not correct? Most of them post their hours on the website.

BRENDA ERDOES:

Yes. I believe that is correct.

ASSEMBLYWOMAN KIRKPATRICK:

Then, lastly, I'm glad to hear you talk about the regulation process because it was painful last time. I didn't want to have to go back through it, but they also can have their hours be adjusted, as well, through their regulation process, correct?

BRENDA ERDOES:

I believe so, and in a lot of cases, I don't even think they'd have to do the reg process.

ASSEMBLYMAN OCEGUERA:

Thank you, Madam Chair. For the members, there are a couple changes that need to happen to this bill still and those amendments are being worked on, so we won't be voting on this bill tonight. There's an issue on the uniforms, and there's an issue on the sick leave, which are being addressed right now and can be cleared up in the Senate. Theoretically, there may be another change if all agreements hold true. So, there are probably three amendments coming on this bill in the morning.

CHAIR BUCKLEY:

There is some discussion, potentially, of reducing the furlough hours and eliminating the extra hours, but we will further discuss that. It appears that there is some agreement to do that. Brenda, if we did process that amendment, are those changes difficult to draft?

BRENDA ERDOES:

No. I'm not sure what you're asking, but we've been working on them all afternoon trying to get ready for them, so we believe that we have worked it out. Some of them are more complex than others, but we believe that we have worked it out.

ASSEMBLYMAN MORTENSON:

Thank you, Madam Chair. Rigid laws are more likely to have unintended consequences than flexible ones. I wonder if this Committee would consider taking out the provision that there can be no partial days. It seems to me this would be a good decision for a department head to make or a division head, or maybe even a supervisor. Especially since LCB has seen fit to regulate themselves so that they can take partial days. I'm thinking of somebody who may be trying to go to school, while they're holding a job down, something of that nature.

BRENDA ERDOES:

That is a policy choice for the Legislature to make. I think there was, in the request to us, information that the four 10s, with the closure on Friday, was intended as a money saving measure, and that's why this was set up in this manner. As far as the flexibility for how you use the hours, which went to the state Department of Personnel; that was their request for one day a week. I believe that the reason that that was requested is that there are a group of employees, a fairly large number of employees, that are exempt from the FLSA and they don't get paid overtime. Those employees, if they have variable furloughs, any week in which a day they are required to account for their hours—and that what this would be with the furlough day—that week they are subject to being paid for overtime. In other words, the state would have to pay them overtime. The way that they're working this now is that the state agencies prohibit the overtime in those weeks where the furlough day is taken. If the employee was allowed to take the furlough day across the weeks, then I believe that those employees would become nonexempt and you would need to pay them for their overtime. There would be a financial cost to that, and I think that's why that decision was made. The LCB employees in the Legislature are already exempt from the FLSA.

ASSEMBLYMAN MORTENSON:

Couldn't a person who, let's just say, was trying to take a couple of hours off each day to go to school, or something like that, could they not make up their time on a furlough day and not have to be paid overtime?

BRENDA ERDOES:

I think the answer is yes. However, those employees who are in that group can take two hours off a day. They are not required to work the full eight hours. They're not required to

account for their hours, and that's the trade off in the FLSA for exempting them from the overtime requirement. So, they can already do that. The furlough doesn't add anything to that. They can do that without any reduction in pay.

CHAIR BUCKLEY:

It's complicated. As a director, I struggle with that in my own office. You have the professional employees having no overtime, but you can't dictate the number of hours they work. You're paying for a service for this many hours. If they don't work it and you're not getting your money's worth, you have to treat it as a disciplinary matter, as opposed to docking them because of the rules. So, it seems like a furlough program seems so easy, but it's difficult. I think what we tried to do is to make it work because we're, at least, giving something to our employees at the same time that we're taking pay from them. It's not easy though, that's for sure. I think Brenda and the Executive Branch did a really good job on this bill. It's staggering considering all of the issues that you have to balance.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. I just wanted to say to my colleagues, I do have all of the policies that each department went through with their employees on the original furloughs, which Brenda says are not going to change. They did work well within their own departments to make sure that they could accommodate so many different things. They took into consideration the busy times of year. There were a lot of different issues that they considered, and I am more than happy to give that to anybody in here. I think there are about 17 policies, both Senator Horsford and myself asked for them at the Legislative Commission. I will tell you that the first meeting of the Legislative Commission was very painful for a lot of us, to work on it. I think Ms. Blotter did a very good job. Our Legal Department worked with them. I would hate to undo all of the many hours that went into setting those policies, so I am happy to share with anybody.

ASSEMBLYMAN CARPENTER:

Thank you, Madam Chair. I'm still wondering why we're exempting the boards and commissions and agencies. It seems to me they are paid by fees and maybe if they had to comply with this, maybe the fees wouldn't need to be so high, the same as our taxes. Hopefully, they are not going to be so high with these changes. Maybe we could help people on the fees, too. I just like a little discussion of that.

CHAIR BUCKLEY:

Okay. We'll save that for tomorrow. Are there any other comments or questions for Brenda? Thanks again, Brenda, for that really thorough explanation. We appreciate it. Is there anyone that would like to provide public testimony on Senate Bill 3? We have Mark Murphy signed in and Ronald Bratch.

RONALD BRATCH, CORRECTIONAL OFFICER, CARSON CITY:

I appreciate the consideration of the 12-hour shifts. I believe it will save the state money throughout the state by us picking up the extra hours on an 84-hour schedule, saves 70 employees, for their benefits, across the state. As part of the furlough, I have talked to a lot of the correctional officers in the area, and we don't see the furloughs really working in the Department of Corrections because of the 24-hour coverage each day. We understand that we will be taking a pay cut, so the new hours that we'll be working on the 84-hour schedule will be, basically, donated to the state with no problem. We understand the problems that the state is having.

I would like to address a couple of the cuts that we would like to sunset. The rural area differential for our fellow officers in the south, for driving a long way to those rural areas—we think this money is important as an offset. We believe that the 12s will also cut down on savings to the state because we're commuting three days less and it's a per day rate. The other thing is bilingual pay, which is very important to us because the bilingual pay is for the officers, so if we have communication barriers, they're there for us and we would hate to see them lose their pay for their extra expertise. Thank you.

CHAIR BUCKLEY:

Thank you for your testimony.

MARK MURPHY, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES:

I did want to say that we appreciate the work that this body, the entire Legislature, is doing to try to minimize the impact of the cuts that have to be made to meet the budget deficit, to try to minimize the impact on state employees. They do realize what situation the state is in and have been giving their fair share to help solve the problem and they appreciate your efforts to try to minimize that. Most state employees favor the shift to the four 10s schedule. You have already heard testimony on the 12 hour schedule for the Department of Corrections. I just wanted to note the support of most employees for those. I wanted to emphasize what you just heard in terms of the importance of sunsetting a couple of provisions that will eliminate premium pay for certain skills and for certain jobs that employees do. Those are in Section 8.5, Subsection 4, and that's the premium pay for employees who have those special skills like bilingual pay, shift differential, and rural area pay. There is no sunset on that section, so that employees hired after March 1, would no longer be able to get those premiums and the state would no longer be able to offer those premiums to fill important positions and duties with skilled state employees. Section 7.5 is the rural area differential and that is the same. It does not sunset, and we believe that it should. I understand other issues are being worked out, and I appreciate that. I wanted to state our support for the overall bill, and the importance of amending these couple of sections. Thank you.

JOYCE HALDEMAN, ASSOCIATE SUPERINTENDENT, CLARK COUNTY SCHOOL DISTRICT:

I wanted to express our appreciation for the clarification that we think the amendment in S.B. 3 provides for school districts. There is a weakness to the bill from our perspective and that is on page 5, Section 1, subsection 4, that has to do with the provisions of the subsection to the extent that these provisions conflict with the provisions of a collective bargaining agreement. Of course, that means for us that it's dependent upon the willingness of both parties to come to the table to do collective bargaining on this. Nevertheless, we recognize that this provision does us no harm, and we think it has the potential to help us a great deal. We appreciate the leeway that was given to the districts to set the program the way that we think it works the best and the leeway that's given to us about whether or not we would be held harmless with the PERS. We are very appreciative of that language. We think that the amendment has clear references to the school district. The way that I read the bill, this bill clearly signals the legislative intent that the policy of the state during this budget crisis is that the furlough should be a negotiated item. We recognize that both parties have to come to the table to do this, but we truly appreciate this language and its clear intent because to us it signals that a shortened work year ought to be negotiated at the bargaining table during this time of crisis. Thank you very much.

CHAIR BUCKLEY:

Thank you for your testimony. Are there any questions? I don't see any. Thank you very much. Is there anyone else that would like to provide testimony on Senate Bill 3? Seeing none, we will close the public hearing on Senate Bill 3.

On motion of Assemblyman Oceguela, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 8:57 p.m.

Madam Speaker presiding.

Quorum present.

Assemblyman Oceguela moved that the Assembly adjourn until Saturday, February 27, 2010, at 11 a.m.

Motion carried.

Assembly adjourned at 8:57 p.m.

Approved:

BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL
Chief Clerk of the Assembly