

# NEVADA LEGISLATURE

Twenty-sixth Special Session, 2010

## SENATE DAILY JOURNAL

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### THE SECOND DAY

CARSON CITY (Wednesday), February 24, 2010

Senate called to order at 9:26 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

God of Grace and God of glory, when we have prayed for guidance and it comes, let us not think it strange if it be something we would not have thought of, for Your thoughts are not our thoughts and our ways are not Yours.

Make us eager to follow Your will and Your way of dealing with situations, rather than devising our own plans and then asking You to bless them.

Then we will discover how much better Your way is and how happy are those who walk in it. In Your Name we pray.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of appropriate media facilities: HIGH COUNTRY NEWS: Judith Lewis; KRNV-TV: Karen Todd; LAS VEGAS REVIEW-JOURNAL: Jane Ann Morrison, Laura Myers, Benjamin Spillman; KTVN-TV: James Shelby Flint, Blake McCoy, William Walton; KVBC-TV: Steve Crupi, Ian Lash, Miles Smith; KVVU-TV: Kevin Andre Bollinger, Justin Grant; NEVADA APPEAL: Brian Duggan; NEVADA NEWS BUREAU: Elizabeth Crum; NEVADA NEWSMAKERS: Samantha Stone; THE NEVADA SAGEBRUSH: Tara Verderosa; UNLV Hank

Greenspun School of Journalism, UNLV-TV: Andrew Garcia and Jennifer Ream.

Motion carried.

#### REMARKS FROM THE FLOOR

Senator Raggio requested that his remarks be entered in the Journal.

I am both puzzled and amazed at the Governor's statement which was reported in the RGJ.com indicating that I did not 'show up' at most of the meetings the Governor's office held concerning the budget process prior to the start of the Special Session.

Either the Governor's memory is failing or he has been misinformed, or he is intentionally distorting the facts.

Prior to the Session we have had at least eight meetings between the Governor's staff and Legislators and our Fiscal Staff.

I personally attended two at the Governor's office when the Governor was also present.

I attended another one at the Governor's office when he was not present.

As to the other five held in the Legislative building with the Governor's staff and the fiscal and budget personnel, I was present for all of them and the Governor did not personally attend any.

I do not understand why he wants to pick a fight with me – unless it is for political reasons because I am supporting his primary opponent – but my commitment has been at all times to have the Legislature work together with the Executive branch to reach a consensus, if at all possible, on how to deal with the excessive shortfall of \$890 million.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering issues relating to the State's budget shortfall with Senator Horsford as Chair and Senator Mathews as Vice Chair of the Committee of the Whole.

Motion carried.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 9:32 a.m.

#### IN COMMITTEE OF THE WHOLE

At 9:39 a.m.

Senator Horsford presiding.

Considering issues relating to the State's budget shortfall.

The Committee of the Whole was addressed by Senator Horsford; Daniel J. Klaich, Chancellor, Nevada System of Higher Education; Senator Nolan; Senator Coffin; Senator Carlton; Senator Cegavske; Senator Care; Senator Wiener; Senator Schneider; Senator Lee; Marc Johnson, Provost, University of Nevada, Reno; Senator Washington; Senator Amodei; Senator Townsend; Mark Krmpotic, Senate Fiscal Analyst; Senator Raggio; Senator Mathews; Andrew Clinger, Director, Department of Administration; Senator Amodei; Senator Woodhouse; Mindy Martini, Senior Research Analyst, Legislative Counsel Bureau; Pepper Sturm, Chief

Deputy Research Director, Legislative Counsel Bureau; Senator Woodhouse; Keith Rheault, Superintendent of Public Instruction; Heath Morrison, Superintendent, Washoe County School District; Joyce Haldeman, Associate Superintendent, Clark County School District; Craig Stevens, Nevada State Education Association; and Alison Turner, Nevada Parent Teacher Association.

Senator Horsford requested that all remarks made during Committee of the Whole be entered in the Journal.

SENATOR HORSFORD:

We are ready to continue the hearing on funding for higher education.

DANIEL J. KLAICH (Chancellor, Nevada System of Higher Education):

Thank you for allowing the students who came to Carson City yesterday to testify, particularly those who came by bus from Las Vegas and travelled all night to spend the day here, then went back by bus overnight to be back at classes this morning.

I will try to keep my remarks short and take questions from members of the Committee today. I would like to thank you for some of the comments made in the Committee yesterday regarding fairness, evenness and proportionality of cuts. We all understand that higher education got a disproportionately heavy cut last session. To the extent that we are treated fairly and proportionately this time around, it will be greatly appreciated. I would note that there is a discrepancy in the salary cut figures we have seen in the Executive Budget. We have provided information to the office of the Governor and your staff with what we think are the correct calculations. We think 1.75 is high, but we will leave it for our staff to work with yours.

The point I would like to emphasize before taking questions is that in a very real sense, while you are trying to solve the crisis before you, what you are going to do when you look at the education budget is charting the course of the future of Nevada, one way or another. While we struggle with getting people jobs and keeping people employed, which has to be our number one concern, the kinds of jobs needed in the education- and information-based society that will be the Nevada of the next decade and beyond are critical. I hope you will protect education, both higher education and our partners in K-12. That will be the engine of the diversification of this economy and the creation of a State we will all be proud to live in.

I appreciate the work that has been done by this body for so many years to support education and look forward to continuing support.

SENATOR NOLAN:

With the proposed cuts that are in front of us right now, we have gotten a lot of information, some of it anecdotal, from individuals with a great interest in preserving our higher education system. What do the proposed cuts mean to our higher education system in practical terms? What will it mean in regard to tuition? What will it mean for the ability of those going through college in terms of completing the course work they need? What departments would be affected most dramatically?

MR. KLAICH:

Let me start with those who want to retool, to enhance their skills to get off the unemployment rolls and back to having respect and pride in a job that pays. Those people come to our community colleges, which are the frontline soldiers of that fight. Enrollment in our colleges is up system-wide, but particularly in our community colleges. There is an enormous pressure there for people who want to improve their skills. I have taken a lot of flack in the national press for suggesting there be enrollment caps at community colleges. That goes against the core of community college education, but the fact is we cannot cut the budget the way we have and attempt to maintain the same quality of education. As I testified yesterday, if it comes

down to turning out well-trained students versus turning out lots of people, I will come down in favor of quality. As this process goes forward, we will be making decisions jointly on the level of access to higher education. I am not going to promise you there will be access for all with budget cuts falling at very high levels.

With respect to direct impacts, let me talk about UNLV and UNR. Both institutions are looking at relatively significant vertical cuts to programs that will close programs and colleges and eliminate full-time faculty and students in existing programs in order to maintain the quality of education.

Part of the problem is that we are aiming at a moving target, just as you are. The numbers have changed dramatically since the first call for reductions, to the Economic Forum, to the start of this Special Session, to today. The particular impacts change depending on whether we are talking about a cut of 8 percent, 22 percent, 10 percent, 5 percent, or whatever the number is. I will tell you that we are committed to strategic budget reductions as opposed to business as usual, because we are going into a new economic reality. The situation we are dealing with is one we will be dealing with for quite some time. I know everything is not within your control, but to the extent you can, the most important thing you can do for higher education is to give us some stability. Stability is almost as important as the size of the budget. If we are chasing from one cut to the next, we cannot do the kind of planning you would expect and that we would try to do for you.

The third part of your question had to do with student fees. Let me put that in perspective. Over the last five years, student fees have gone up 39 percent at the undergraduate level at the two universities. Students have stepped up every time we have asked them to and been a part of the process of maintaining the integrity of the budgets. This year, fees will go up 10 percent at the undergraduate level at the two universities. Next year, they will go up another 10 percent. There comes a point, though we have not reached it yet, where we are unable to maintain the level of enrollments and serve the students of Nevada with continually rising tuition, particularly when we have such a large population of low-income and underrepresented individuals and the next-to-lowest level of need-based financial aid for low-income families.

My concern is this. I benefited from Nevada public schools, college and the university. We should be looking out to provide people with a path to the middle class, a path to bettering themselves. If we raise tuition too high, that is a serious impediment to the very people we should be helping.

I expect students to continue to do their share. I hope it is not all back-filling, with State dollars going out the back door with student fees, because going forward, the Nevada System of Higher Education is going to have to become more self-sustaining. I understand that; I can read the tea leaves as well as anybody, and I know that has to be part of going forward. But we must maintain some ability to go to students in the future without giving up all the fee gap now and say, "We want to increase the quality of the educational experience. Are you willing to pay more for it?"

SENATOR NOLAN:

I understand. It is a difficult question, and there are a number of different proposals out there right now. For you to publically state where you look at cuts within the system might create anarchy, and do not want to make that situation any more difficult than it is. But we need to know what we are looking at with regard to the proposed 10-percent cut to higher education. If you are not prepared to talk about that now, I think you should be.

You indicated you already raised fees 39 percent, and they are going to go up another 10 percent. Is that 10 percent based on the Governor's most recently proposed cuts, or is that following up on what the Legislature did in 2009?

MR. KLAICH:

The latter. It is what we did in closing the budget at the last legislative session. We had approved increases of 5 and 5, and in discussions with the joint committee at the closing of the budget, we discussed an addition 5 plus 5. That is what became 10 percent this year and 10 percent next year.

SENATOR NOLAN:

So since the Legislature last convened, you will have raised student tuition 39 percent and then 10 percent, almost 50 percent. Is that correct?

MR. KLAICH:

No. The 39-percent rise goes back 5 years. Since the Legislature last convened, tuition has been raised 10 percent and 10 percent.

SENATOR COFFIN:

I will give you specific questions, and I want specific answers as succinct as you can give them to me. What are the criteria for the cuts that will occur? How are you measuring or detailing this process? What are your criteria for determining the value of departments, colleges and schools?

MR. KLAICH:

I spoke with the president of UNLV on this subject last night. They have compiled a list of their 20 most expensive programs. They have talked to their deans and their faculty senate leaders, and they are reviewing the cost-benefit analysis of those programs. That is the way one analysis is going. They are also looking at classes with low enrollment that can be eliminated. At UNLV, those are the two specific areas they are looking at.

SENATOR COFFIN:

Did you say lowering enrollment?

MR. KLAICH:

When there is not a lot of demand for a class, students are voting with their pocketbooks in registration, and those classes will be at risk.

SENATOR COFFIN:

How do you determine what is an expensive or cheap program? There are many ways of measuring this. What criteria do you use to cost a program? I suspect whatever UNLV is doing is a handy measurement for all the institutions.

MR. KLAICH:

I have met with friends and national consultants who have done work for the Legislature in the past. Some states calculate the cost of every course we offer. We assign a value of 1 to the cheapest based on competitive faculty salaries and other costs, and we have costed every course offered in the system.

SENATOR COFFIN:

Who is going to make the decision based upon cost? I suppose there are qualitative decisions that have to be made.

MR. KLAICH:

I would expect there have to be qualitative decisions. A high-cost program might be a very high-need program, such as nursing or engineering. There are some areas where cost cannot be the sole criterion. Every campus within the system has a committee of students, faculty and administration that is charged with reviewing and making recommendations to the board for program elimination.

SENATOR COFFIN:

Can you tell me simply what is the calculation for determining the cost of a program? How do you determine the most expensive and the cheapest?

MR. KLAICH:

The overriding consideration is the cost of faculty. That is borne by the market. In programs in the allied sciences, there will be heavy equipment costs that go into that. In a psychology course, it is largely going to be the market cost of the professor, and there are no equipment costs. It is the actual hard costs that go into offering the course.

SENATOR COFFIN:

Is that per student?

MR. KLAICH:

It is per course. We assume a given number of students, which has to be consistent over the class.

SENATOR COFFIN:

That helps me. I am not sure I got everything I wanted, but you are getting me there. My second question is how are the cuts going to be distributed in the system? It seemed to me that UNLV got cut a little more than others last session. Now that the cuts are system-wide, how are they going to be distributed? We have to assume cuts are coming, though we do not know the amount.

MR. KLAICH:

I have discussed this with the university and college presidents, and we are unanimous in this. My assumption going in is that the system needs to look at its structure to see if there is any redundancy in the system where money can be saved off the top and reduce the pass-through of whatever goes to the institutions. After the system does whatever it can off the top, my assumption at this point is that cuts will be distributed proportionately among the institutions in the system.

SENATOR CARLTON:

How much are students going to have to do with this discussion? Are you going to meet with them?

MR. KLAICH:

Every single campus has students on their committee, and they are active members of the committees. At UNLV, the council that reviews all their programs is called JET, the Joint Evaluation Team, and both graduate and undergraduate students are represented. That is the case at virtually every campus in the system. I expect student voices to be heard with us as they were here yesterday.

SENATOR CARLTON:

I am glad to hear that. My concern has been the redundancy of your public safety system within the university and the cost associated with it. There are some hiring freezes out there, and I realize the university has not been operating under a hiring freeze and recently hired someone within that system. That is troublesome to me, because I watch the furlough process happen to other public safety personnel across the board. Can you tell me how your public safety departments have handled the furlough system? What was the rationale behind making such an expensive hire when we are looking at making such terrible cuts elsewhere?

MR. KLAICH:

A good question, and not unexpected. There actually was a hiring freeze in place at the institution you are referring to. There are exceptions to that freeze for emergency hires for public safety. That particular hire went through the emergency process. It surprised me; I found out about it when I read about it in the newspaper, as you did, and I am not too happy with it. I have asked the president of the institution involved for a report on it. Since the individual did a lateral transfer from one southern campus to another, I have requested the presidents of both institutions provide me with a justification for the cost of their programs and plans for consolidation and

how we can save money by not having redundant security forces in place at two campuses in the same city. I cannot stand here and ask you to make tough decisions if I just shrug this off. We are going to have to look at those things, and I plan to.

SENATOR CARLTON:

I appreciate your investigating that public safety system. Does anybody else do that? I have looked across the country, and I cannot find anything similar in other states. Is this something that valuable education dollars for students should be spent on?

MR. KLAICH:

It is not uncommon to have campus security.

SENATOR CARLTON:

A police force is different.

MR. KLAICH:

There are different approaches to that. What we should be interested in is a more community-based force, walking the campus and making sure students get from point A to point B safely. I am very concerned about the safety of our students, faculty and staff on campus. I am not particularly concerned about campus police checking for DUIs and speeding on campus. I want them to be there helping our students remain safe and sound.

SENATOR CARLTON:

We are on the same page, and I appreciate your open-mindedness on this.

SENATOR CEGAVSKE:

Do we have any campuses outside of Nevada?

MR. KLAICH:

Yes. For example, UNLV has a campus at the Harrah Hotel College in Singapore. That is the only one that comes to mind immediately, but I will research it and get the information to you.

SENATOR CEGAVSKE:

Part of the reason I am asking is with the threat of budget cuts and the concern of students that we will be closing campuses, I wondered if you will close anything outside of Nevada before you close something inside. Has that been discussed at all?

MR. KLAICH:

It has not been discussed. As far as I am concerned, my first obligation is to Nevada students.

SENATOR CEGAVSKE:

I also wanted to note that a lot of professors are talking to their students and encouraging them to contact us, some of them for class credit. We have gotten letters, calls, emails and faxes. I have heard from several older students who moved to Nevada to go to school because the tuition was less expensive than other states they looked at. The people who called me are all mid-life career changes. They moved here to go to school, and then they will go back when they finish. Have you seen any trends?

MR. KLAICH:

Senator Care asked me last night if we are serving Nevadans who stay in Nevada. That is not data we regularly collect, so I contacted the alumni associations of the two universities. At UNR, approximately 80 percent of the graduates stay in Nevada. The latest alumni survey at UNLV shows that 70 percent of their graduates stay in Nevada, of which about 96 percent live in Las Vegas and Clark County. The great majority of our graduates from the two universities stay here.

SENATOR CEGAUSKE:

Could you tell us the number of students rather than the percentages?

MR. KLAICH:

I will get those numbers to your staff.

SENATOR WIENER:

There are those who will leave if the tuition goes high enough. Have you done any modest survey work to determine at what point that happens? You said earlier that they may not be able to stay. Do we have any idea how many people we will lose if we lose the programs? I would like to know if there is any national information about those who leave a state, how inclined they are to come back with what it is they have learned. My concern is if we send them away, we may not get them back, because they often stay where they graduate.

MR. KLAICH:

There are two issues there. When our students leave, they generally do not come back, and I know that from personal experience. The other thing we know is that when we lose students, particularly out of our community colleges, whether because classes are full or tuition is high, they typically do not come back. Those are two sets of students that we really have to be careful about. Once they leave our system, particularly for the access institutions, they slip off into other places that are less productive and more expensive and do not help us create the kind of state we want. I am not very knowledgeable about elasticity and where the tuition break is, but we know there is a point where the tuition will start driving students away. We are not there yet, but it is much more sensitive at the colleges than at the universities.

SENATOR SCHNEIDER:

What is the approximate enrollment at UNR and UNLV? How much have they gone up in the past year?

MR. KLAICH:

The provost at UNR indicates their head count is about 17,000. I believe the head count at UNLV is about 25,000. At the College of Southern Nevada, which is our largest institution, the head count is about 40,000 students per semester. Many more of those are part-time students than at the universities.

SENATOR SCHNEIDER:

That would probably be about half part-time, half full-time, something like that.

MR. KLAICH:

It is probably much higher part-time than full-time.

SENATOR SCHNEIDER:

How does the tuition at UNR and UNLV compare with our surrounding states: Utah, Arizona, Idaho, Wyoming and New Mexico?

MR. KLAICH:

I do not have that information with me, but I will provide you with charts this morning. Of the WICHE states, we are probably in the lower third of tuition.

SENATOR SCHNEIDER:

Are the numbers also up at the Nevada State College? What are the numbers there?

MR. KLAICH:

Enrollment at the Nevada State College continues to grow in about double digits, though the actual numbers are still small. I will also provide you with historical data on the growth in enrollment by numbers at that college.



SENATOR SCHNEIDER:

In the 2009 Session, we worked a lot on green energy programs and producing students in this new field. How do these cuts affect developing a college with that emphasis going forward? Are we putting that on hold? This is our economic development push. Does this cap that at all?

MR. KLAICH:

I do not think it caps it; it rolls it backwards. We are doing everything we can to work on federal grants. We have worked with members of this committee, notably Senator Townsend, for years on putting together federal grants, and we have received a number of federal grants. We have worked with the Majority Leader on workforce grants for the related field and our community colleges, and we have been successful in getting some of those grants. However, those federal dollars are limited, and they do not build the kind of infrastructure we want. My impression is that economic diversification is dependent on the vitality and viability of our community colleges and universities.

SENATOR LEE:

Our mission here is to keep the university system strong and vibrant. We want to work with you where we can with all the other tragedies that are happening in the State. That word "mission" brings to mind the mission of the University of Nevada Cooperative Extension (UNCE). I asked for information about the UNCE and its programs, which I have distributed to the Committee. The mission of the UNCE, being the land-grant college, was always to go out and work in the field with farmers, ranchers and other agriculture people. It troubles me that we seem to have left that mission, and now we include programs that train daycare workers, helping cities strengthen our economy the Family Storyteller program, helping towns create jobs. The mission of the land-grant college, and expressly of the UNCE, has expanded to such a point that you are providing services that are already being done by people in the community, so we have a redundancy. Maybe we have bloated the UNCE. Could you explain to me why we have to extend and expand the UNCE to cover all these urban issues?

MARC JOHNSON (Provost, University of Nevada, Reno):

The UNCE was founded in 1914, and the communities it serves have changed a great deal since then. At the turn of the 20th century, about 50 percent of the people lived on farms producing food. Today, it is more like 1 or 2 percent. As people moved on to urban areas, so did the UNCE. When we talk about training daycare workers, for example, we do things such as preparing them for licensure. Daycare is fundamental to making it possible for people to go to work, so that is a mission we took on. We are involved in 4-H; it is by far our largest program. It is a beyond-school setting for intellectual development of young people based on experiential learning and a relationship with caring adults. It helps develop them beyond school in leadership skills, knowledge and confidence. Children in 4-H are everywhere, rural and urban settings.

SENATOR LEE:

I would not dispute the fact that 4-H is something we should do through the UNCE, but there are a lot of items specifically geared for city residents. I would urge you, Chancellor Klaich, to consider redirecting the funding for the UNCE back into saving some of the teachers and nursing professionals and other organizations, rather than having these redundancies like the Family Storyteller program. That is what the library is for. I do not know that Nye County is using you much for programs that strengthen city's economics, but they could sure use you for the grapes out there. I think we could take the UNCE back to the basic job of the agricultural issues of our state. Bootstraps and Project MAGIC, these are State, county and city responsibilities that are probably already being taken care of on another level, and we could redirect these people to those places. You are all fighting for a certain group of people, and we are spreading ourselves thin with students. The State, the county and the other bodies that put money into the UNCE could sure use the money elsewhere right now. I ask you to consider moving the direction of the UNCE back to what the land-grant college was supposed to do, not to change its mission as people change, but to stay with agriculture. This is just a suggestion. You have done nothing

wrong; it is just an evolution, but I think we need to get back to the basic core that the UNCE was about.

MR. JOHNSON:

Some of these programs, like the Family Storyteller program, are direct responses to grant opportunities. We bring federal money to the State to support volunteers, magnify our work and hire additional staff. If we cut back in some of these areas, we will also lose the capability to write these grants and bring federal money to the State.

SENATOR WASHINGTON:

I have two questions. First, you mentioned that some disciplines may be cut because of the 10-percent cut. If we stay with a 10-percent cut, the Board of Regents have asked for flexibility to work with that cut. Is that still on the table? Second, if some disciplines are cut, have you considered moving some of them to, say, the Nevada State College? They have become very efficient in working with disciplines such as education and nursing, making sure they meet the demand. We do not want to lose those disciplines, and it would be good to find a system that is more efficient, costs less and has lower tuition. Has that been considered?

MR. KLAICH:

The answer to both questions is yes. Regarding flexibility, we gave the Committee a list of suggestions in response to questions we received at the IFC on how you could help us meet these cuts. Those are clearly all still on the table. Our flexibility and autonomy issues are slightly different than you may have heard from the superintendents yesterday. Regarding the possibility of moving disciplines to the state college, that gets back to Senator Carlton's question earlier regarding efficiency. We have to use your dollars wisely. If we can accomplish the same thing at a lower cost, we have an obligation to do that. To the extent it involves restructuring of institutions or programs, we have an obligation to look at that.

SENATOR AMODEI:

What cuts did NSHE take resulting from the 2009 Session?

MR. KLAICH:

The overall cut in the budget you approved was around 13 percent. The General Fund cut was around 24 percent. The difference was made up by funds from the American Recovery and Reinvestment Act (ARRA).

SENATOR HORSFORD:

I have four questions. First, I would like you to put on the record any concerns you have with the four-day, ten-hour work week (4-10) and how that will impact classified employees. Second, in our budget hearing, you talked about the challenges with the implementation of the furlough program, and I want to make sure all Committee members have the benefit of your input on that. Third, several members have asked about consolidation of programs. I want to know what discussion is occurring on consolidation of campuses throughout the system. Finally, I want to know what analysis has been done on managing staff ratios and what reductions are happening among administration and tenured faculty who do not have the same workload and responsibilities as others.

MR. KLAICH:

I will try to be as succinct as I can. Regarding the 4-10 proposal, I am a novice in that area. It presents a management challenge for us if we roll the 4-10, and this folds into your question on furloughs as well. We will do what we have to do, however. We can make it work, though it will be a challenge. I am not particularly in favor of the 4-10, but I have had some discussion internally with staff who are more familiar with the issue, and I believe we can make it work. I was widely quoted after the IFC about my comments on furloughs, which were interpreted as negative, so I suppose I should be more cautious here. The problem I had with furloughs was that our code, contracts and policy did not easily allow everyone to be affected, and that

bothered me. If a classified worker is going to have a furlough or a pay cut, everybody should too, including the chancellor and tenured professors. I had problems with the furloughs because they were unevenly applied due to our code provisions. We are past the point of uneven applicability. If we have further extensions or cuts or furloughs or anything like that, they have to apply to everybody across the board. I have directed our chief counsel to work with the presidents and the faculty chairs at my direction to make changes to our code to make sure that can happen.

The consolidation of campuses is the toughest of your four questions. However, we are talking about it. Everything has to be on the table. If there is a better way to serve the students of Nevada with the money we have, we have an obligation to look at it and serve the students, rather than serving the structure. I have started working on the costs of that, and I expect serious questioning from the Board of Regents on that. Our goal has got to be to serve the students, and so we will look at that.

SENATOR HORSFORD:

If campuses are proposed for consolidation, it will be discussed in public hearings so students, faculty and other interested parties can be part of the process and not have this just happen to them. Is that how you see it?

MR. KLAICH:

Absolutely. I will not run out of my office with a plan to make any big change; that is not the way it is going to work. It has to be considered in a public hearing and with consultation. It may not be immediately. We have to look at everything in this regard. There are constituents both inside and outside of our system who have a vested interest, and they have to be part of the process too. It has to be very open and transparent. That does not mean there will be consensus. You will have to do some things you do not like in the next few days. Similarly, once we understand what our cuts are, we are going to have to do some things that will not be popular. But people deserve a hearing, and they deserve openness. They will get that from us.

Your last question was about management-to-staff ratios. I am not very good on that subject. I will tell you, however, that all of our campuses have overloaded disproportionately the percentage of cuts allocated to them to administrative staff before going to the teaching faculty.

SENATOR HORSFORD:

I have asked all departments for their management-to-staff ratio and whether that is being reviewed. As you make these cuts or do not fill frontline positions, the work still occurs, meaning more work on those who are left; but sometimes, management positions remain, and those responsibilities are not necessarily adjusted. If we want an equitable, fair way to make these cuts throughout government, we need to keep that in mind, and it starts with the management-to-staff ratio.

MR. KLAICH:

I will get that information for you. I do not think we are overstaffed at the top. Just anecdotally, I will tell you that Dr. Carol Lucey, the president of Western Nevada College in Carson City, has a PhD in physics. There was a vacancy in the physics faculty, and since it was their only faculty member in that department, Dr. Lucey taught the course this year. There have been instances like that, and if you look around you will see administrative positions that are empty and have been frozen. However, rather than ask you to rely on my anecdotal evidence, I will provide the information you request.

SENATOR HORSFORD:

My last question was about tenured faculty who do not have the same workload responsibilities as others.

MR. KLAICH:

We have a system-wide policy on faculty workload for the universities, the state college and the community college, and we audit them all consistently. At every institution, we meet or

exceed the workload policies. That does not mean workload is distributed equally; there will be faculty who teach less and faculty who teach more. Overall, however, at every institution we meet and exceed faculty workload. When we could not impose furloughs on tenured faculty because of the contractual and code provisions, we did increase the workload requirement on them. The tenured faculty workload at UNR has increased about 19 percent, and at UNLV it is about 21 percent.

SENATOR HORSFORD:

That goes to Senator Cegavske's point, though. The average may be good system-wide, but if there are one or two people who are violating the intent of the policy, they demoralize the process for everyone else. There have been stories put out there that we have all heard. What I would like the system to tell us is that they are doing everything they can to ensure there is fair and even distribution of the impact, and that we do not have certain people outside of that policy doing things their own way because they have been allowed to for so long. In 25 years of surplus budgets, these questions were not asked. Now, the person who has been there and has earned the right to be tenured but who maybe is not carrying their weight is a problem for everyone who is doing the work.

MR. KLAICH:

I completely agree.

SENATOR COFFIN:

Times have changed since I attended 40 years ago. In those days, every professor taught, and they did research out of a love of research and to contribute to knowledge. They were compensated in many ways besides financially. Now things have changed; we have gotten big and high-horse about our research.

You may be wrong on the issue of furloughing all employees, including tenured faculty. There are certain individuals who bring money to our campuses, who finance themselves with the grants they bring. We knew that to be true in the last Session because this Legislature exempted the Desert Research Institute from the furlough program because they are very entrepreneurial. I do not think we should discourage entrepreneurial faculty or chase them away. We should encourage them and not push them away by saying that we need to reduce their pay to be fair to everyone else. I had lunch with a chemistry student yesterday who is funded by a professor who found his own \$4.5 million. He keeps this program going, and it is not costing you and me a dime. That kind of person we need a lot of.

Where Senator Horsford might be going with this is the question of people who do research without outside funding. They do not teach much because they are doing research, but we are paying for the research. Some of them just do not like to teach; they would rather write journal articles. They may be doing it for the benefit of mankind, but that has to be looked at more closely.

I need to know what UNR's criteria will be to decide what gets cut, some sort of dispassionate dollars and cents look at it. We have heard from UNLV on this. What is UNR doing in this regard?

MR. JOHNSON:

I have stacks of data on my desk. We are measuring the student credit hours taught by each program, such as a major or a department. We are looking at the number of degrees granted. We are looking at the number of students enrolled and the proportion of classes taught for students of their major as opposed to serving the whole campus. We are looking at grant dollars generated for those units that have the opportunity to generate grants. We are looking at centrality to mission. In December, we had a new strategic plan approved, and you will see throughout our proposal that everything will be tied back to goals in the strategic plan. We look at uniqueness of programs. If they are nationally unique, it is probably something we need to preserve. Those are the criteria we are measuring for each program.

SENATOR COFFIN:

That is a good answer from a good manager. Thank you.

SENATOR NOLAN:

Most of your tenured people are experts in their areas and conduct themselves accordingly, and it sounds like they have now come to the realization that they have to help carry more of the load. However, you have some people who, when they achieve that level, feel an air of entitlement, and it becomes difficult to manage them from an administrative perspective. What is it about the tenured status that provides a sort of protected class that makes it difficult to deal with problems? What can we do to help you deal with those issues?

MR. KLAICH:

Your characterization of it as an air of entitlement is apt. It is an entitlement that is earned as a result of a rigorous process at the university. The same thing that creates management challenges can also create the professor you want who challenges students and fosters ideas. I was sitting on the Board of Regents when we adopted the current code and took a lot of heat for stripping away a lot of rights. We were adopting it for circumstances we thought could occur. They did not occur until now. One problem we are facing is that some of the language in the code prohibits us from taking action. We are changing that. For example, it did not specifically say we could do a pay cut or define "furlough." We did not think of those things 25 years ago. Now, like you, we are having to think about them all now. We will not be unfair, but we are going to get a lot smarter about our definitions. We are doing that with the assistance of faculty.

The other issue that tenure creates involves constitutional rights to due process and code and contract rights to due process. These protections ensure that the entitlement cannot be taken away without good reason, and that is part of the misunderstanding of tenure.

SENATOR NOLAN:

That is a difficult question. When you are trying to downsize and use the best talent you have to cover the spaces you will have available, I want to be sure you have the tools you need. Perhaps it is a wake-up call for some of those people who have been disciplinary problems. Some of those people in tenured positions are very difficult to handle because of contractual arrangements. There is no space for that at this point.

MR. JOHNSON:

We have policies to handle those sorts of issues. For disciplinary issues, we have a section by which we can bring people up, and even tenured people can lose their jobs. If a person has two years of unsatisfactory performance, under this section, they are immediately put up for dismissal even if they are tenured. We have procedures for a program review called a curricular review that, if we run into real budget problems, we can unhook from both tenured and untenured staff.

SENATOR NOLAN:

So you have to deal with them as a problem for two years before you can get rid of them.

SENATOR HORSFORD:

Chancellor, it would be helpful if you could give us the process individuals go through to earn tenure and the due process you mentioned, separate from this discussion on the budget.

MR. KLAICH:

I would be happy to.

SENATOR COFFIN:

I do not want anything I said to be construed as being against tenure or anti-academia. We need tenure, and we need to protect these professors. When you walk onto a campus, you get a feeling of being around people who are free to think and free to speak as they wish. Whatever changes you make, we have to try to keep them as modest and measured as possible. You do not

want people fired just because of budgets. We have to be very careful to protect the professors. If there are some who are not working hard enough, get them to work a little harder. Use the nudge factor. Instead of losing sections, maybe have some more people teach a few more classes, that is all. We do not want to come across as people who are trying to hatchet up the process. We are growing, UNLV particularly, and we have to grow faster.

MR. KLAICH:

I hope my responses did not imply that. We are not trying to scare or demoralize anyone or demean anyone's contributions to the campus or the system. We are just trying to be responsive to the situation we find ourselves thrust into and to get through this in a way that is most fair and transparent, and that protects the structure we have to have for Nevada. We certainly do not want anyone to think their contributions are not appreciated.

SENATOR HORSFORD:

We have to keep in mind that we have to balance the fact that these are traditions and arrangements that are worldwide in higher education. These are recognized benefits, and if we do not offer them here in Nevada, it will just make it harder for us to compete for the talent.

MR. KLAICH:

I appreciate your saying that. The two universities do compete in the national and global market, and I apologize for not bringing that to the attention of the Committee.

SENATOR TOWNSEND:

Is there anything that prohibits you or the presidents from paying professors differently depending on who you are trying to compete with, how you are trying to build a particular college or school? Do you need flexibility to go after the best and the brightest?

MR. KLAICH:

We have salary schedules established for each discipline that we generally are required to hire into. You could be referring to someone we might colloquially call a superstar. For superstars, we are able to hire outside the salary range; however, that currently requires the approval of the Board of Regents. The short answer to your question is no.

SENATOR TOWNSEND:

Is that the result of a Board decision, rather than something we have done?

MR. KLAICH:

It is the Board's decision.

SENATOR TOWNSEND:

Do we need to ask the Board to be more flexible?

MR. KLAICH:

The Board has been good. I cannot recall a situation in which a president has brought a true superstar to the Board and defended that hiring that the Board has denied it.

SENATOR TOWNSEND:

Given the fact that not every course costs the same to provide, has there ever been a discussion about charging a different rate per course hour for different types of classes?

MR. KLAICH:

Yes. That discussion just took place this last year. Every other year, as part of the biennial review of tuition and fees, the Chancellor puts together a Tuition and Fee Committee. As part of our discussion, we are bringing forward to the council of presidents and the Board a proposal to allow the charging of differential tuition. It has not yet gone to the Board. Following up on a question that Senator Carlton asked, there is a provision in the recommendation that will come to

the Board for significant student input into the whole issue of differential tuition. Right now, we have something called special course fees. That creates a real truth-in-advertising problem for us, because we tell everyone that the course costs \$140 per credit, but there is this fee and that fee. I would rather see an honest analysis of differential tuition that tells the student what it will cost and gets rid of the special fees.

SENATOR TOWNSEND:

Lastly, is there anything, in either a regulatory or statutory manner, from us or the Board, that is an impediment to you going out and speaking directly to businesses and industries with regard to sponsoring the superstars? You might need to say to them, "Here is what our salary range is; he or she is way outside of this. We need you to come up with the money." Perhaps you might offer to name a chair after the company, in order to go after that person and bring them here from the University of Chicago or Cal Tech or wherever. Are there impediments to that kind of creativity that does not allow our presidents or our deans to go out and get the best they can?

MR. KLAICH:

The only impediment is money. Those individuals command high salaries. They typically get graduate assistants, equipment and labs. Putting together a package for a superstar is an expensive proposition, but there is no State law or Board policy that would impede seeking out those individuals, hiring them and bringing them to Nevada.

SENATOR HORSFORD:

We will now turn to the budget shortfall, reviewing a list of the non-General Fund accounts and potential revenue options. We will be reviewing the draft list that was developed in cooperation with the Governor's Office. There have been changes to this list from both the Legal and Fiscal divisions.

MARK KRMPOTIC (Senate Fiscal Analyst):

I have handed out a document titled, "State of Nevada Other Non-General Fund Sources Fiscal Year 2010 and 2011." This is a list of the fund sweeps that have been identified by staff in the Executive Budget Office (EBO). A couple of issues have come up since this list was drafted, and I will go over those.

The Insurance Insolvency Fund holds a balance of \$10,356,342, and the proposal was to sweep \$4,000,000. Legal has advised that sweeping this fund would be in conflict with a constitutional provision regarding funding for unemployment insurance compensation and how those monies can be used. For this reason, the \$4,000,000 from the Insurance Insolvency Fund will be removed.

The AB9/Q1 bond money originally appeared on the list but does not do so now. I believe there was \$200 to \$300 each year in interest proceeds from the Q1 bond fund that was to be swept. It is our understanding, in consultation with Legal staff and the Treasurer's Office, that these proceeds represent interest on the bond proceeds themselves. Therefore, it would be a legal conflict to sweep these funds. Legal staff have consulted with bond counsel on this, and they concur.

We have also removed the Self-Insured Association Insolvency Fund and the Uninsured Employers Claim Account. These funds had the same issue as the Insurance Insolvency Fund, and the sweep was removed.

The remaining sweeps on the list total \$192,778,988. That amount will be reduced by \$4,100,000 for the sweeps mentioned above that were removed, so the actual total is \$188,678,988.

SENATOR RAGGIO:

I note that a number of funds on this list have checkmarks next to them. Is there some significance to this?

MR. KRMPOTIC:

The checkmarks indicate changes from what the EBO had originally proposed, and I will go over those. This list has changed a lot in the last few days.

The EBO recommends sweeping the Bond Interest and Redemption Account of the money set aside to pay the principal and interest on a line of credit in each year of the biennium. In the first year of the biennium, \$15,000,000 was set aside. If the State does not exercise the line of credit, that \$15,000,000 can be swept. In the second year of the biennium, the amount identified by the EBO totaled approximately \$14,220,000. That has been reduced to \$14,000,000, which would allow some flexibility if the State needed to exercise the credit earlier than planned to pay interest on those proceeds. Right now, the estimation is that the State would draw down the line of credit beginning January 1, 2011.

SENATOR RAGGIO:

Does that mean the \$29 million listed on this sheet is appropriate legally and fiscally?

MR. KRMPOTIC:

Yes. That \$29 million is a real number.

The sheet shows \$6,921,414 being swept from the Capital Improvement Projects fund. At one time, this was a change from what the Governor proposed, sweeping the remaining monies from projects that had been completed. I believe this now appears on the Governor's list as a potential solution. That amount would sweep remaining General Fund monies from university capital projects, prison capital projects and general capital projects. Again, this is money remaining from completed projects.

SENATOR RAGGIO:

So these are projects that for the most part have been completed, and the funds are no longer needed.

MR. KRMPOTIC:

That is correct.

SENATOR COFFIN:

I still have not seen a detail on that to tie it into the number. Could I get that this afternoon?

MR. KRMPOTIC:

We have a detailed list to support the \$6,921,414 in this fund. We would be happy to provide it to the Committee.

SENATOR COFFIN:

It has not been presented to the Subcommittee on Capital Improvement Projects. As its chair, I would like to see it.

MR. KRMPOTIC:

Regarding the Supreme Court Reserve, initially an amount of \$1,500,000 was identified to be swept. In the latest proposal from the EBO, this was reduced to approximately \$700,000. Staff have not received any confirmation from the Judicial Branch at this point to indicate monies are available to be swept.

SENATOR RAGGIO:

Is that mostly administrative assessment money?

MR. KRMPOTIC:

I believe it is.



SENATOR RAGGIO:

Is there not a requirement that has to be met as to the percentage available for court purposes? I believe they cannot go below 49 percent.

MR. KRMPOTIC:

By statute, the allocation to the Judicial Branch cannot be less than 51 percent.

Next, you will note Department of Taxation Bonds. Earlier, the Governor had recommended that \$35 million be swept from this fund.

SENATOR RAGGIO:

These are the bonds taxpayers put up to guarantee they will pay their sales tax. We heard testimony that this is taxpayer money on deposit. If they pay their sales tax promptly, they get this money back. There was some testimony that there would be rebates that exceed the amount left in the first suggested sweep. This is reducing the amount down to this level at the suggestion of Dino DiCianno, the executive director of the Department of Taxation. However, there is still some risk involved in sweeping even this amount. Am I correct?

MR. KRMPOTIC:

That is correct.

The next item is the Wildlife Heritage Account. The Governor's original recommendation was to sweep the entire balance of \$5,662,790. This has been removed from the list.

SENATOR RAGGIO:

That money comes from donations from sportsmen's groups and so forth.

SENATOR LEE:

Did I understand you to say this item is no longer on the list? Is it under discussion by either side?

MR. KRMPOTIC:

It is not on the list, but my understanding is the Governor is still entertaining a sweep from the Wildlife Heritage Account.

SENATOR LEE:

I want to preserve this also.

MR. KRMPOTIC:

The next item eliminates a sweep from the Low Income Housing Trust Fund. The sweep was originally approximately \$3 million over the biennium.

SENATOR RAGGIO:

What was the reason for eliminating that sweep?

MR. KRMPOTIC:

I believe there was a concern regarding monies available to assist low-income persons with housing needs. It may have been requested by leadership to eliminate that sweep.

SENATOR RAGGIO:

What was the initial proposal?

MR. KRMPOTIC:

The initial proposal called for \$3,000,000 to be swept out of the account over the biennium. The current balance is \$17,650,046.

The next item is the Motor Vehicle Pollution Control account. The Governor is entertaining a sweep of \$700,000 from this account, which currently has a balance of \$894,154. By statute, proceeds over \$1 million are available to be granted to Clark County and Washoe County for

activities to reduce air pollution. Removing \$700,000 from this account would significantly reduce the amount available to be granted to those counties. Taking this sweep off the list would keep those monies available.

The next item is the Budget Reserve Account. This is an account established to record reversions to the General Fund. The EBO originally proposed to sweep \$700,000; they have increased this to \$1,223,266. The additional amount represents the receipt an Alien Assistance Grant in the Department of Corrections. This grant is often assumed in the budget at a certain level. That level is established without knowing what the federal government will grant the State for reimbursing the housing of aliens in the prison system. We have received confirmation that the Alien Assistance Grant is coming in at an amount greater than we budgeted for; therefore, it will be reserved for reversion to the General Fund, pursuant to section 7 of the Authorizations Act.

The last item is the Self-Insured Association Insolvency fund. These monies had the same issue as the Insurance Insolvency Fund, and the sweep was removed.

SENATOR TOWNSEND:

There is an item listed here as "Disaster Relief" under the Legislative Counsel Bureau (LCB). Is that an account provided to the IFC in case something comes up that we need to provide funds for?

MR. KRMPOTIC:

The Disaster Relief Account is established and under the administration of the LCB similar to the IFC Contingency Fund. The amount in this fund, which is currently \$6,846,757, provides for monies to be allocated to cities or counties based on damage that occurs as a result of a disaster. Recently, the IFC approved an allocation to the City of Caliente to provide for flood repair damage.

SENATOR TOWNSEND:

I have been on the Legislative Commission for 20 years, and I have never seen this account. It is really an IFC account, not just an LCB account.

MR. KRMPOTIC:

Correct. It was established in 1999, I believe.

SENATOR TOWNSEND:

Regarding the Department of Taxation Bonds account, did Legal Counsel review the authority to tap into that and not create a problem?

MR. KRMPOTIC:

Legal Counsel has reviewed that item, as well as each of the other sweeps that are provided for statutorily. We have not received any advice from them that sweeping that money would conflict with any constitutional provision. When the Committee receives the bill draft to review, I believe there will be language in the bill that allows the Legislature to use this money for other purposes than it was originally intended in statute. If memory serves, there may be language in the bill that indicates if claims for these cash bonds on the part of those who put them up exceed what is available, it would be an obligation of the State to meet them. In other words, they would be paid out of the General Fund.

SENATOR MATHEWS:

Most people do not know they are supposed to get that money back. They send you a notice that you need to pay it, and then they never tell you that you are going to get it back. So the grace period passes, and they pocket your money.

SENATOR CARE:

Apparently, the sequence of events was that the Governor's Office put together a list of sweeps, and it was done without any review of the legal consequences, including constitutional

implications and conflicts. Already we have had several of these pulled out owing to constitutional conflicts. As Mr. Krmpotic stated, they have also been reviewed for statutory complications. I would like some reassurance from the Legal Division regarding the process they went through to do this review, how extensive it was and the like. Most of us are not familiar with many of these accounts.

SENATOR HORSFORD:

When we bring the actual bill draft, which I hope will be soon, I will ask Legal Counsel to be present and be prepared to answer that question.

SENATOR NOLAN:

Regarding the sweep from the Emergency Response Commission, I am a commissioner on that body. Is this the fund that is used both to respond to state local emergencies and to match federal grants? That fund was pretty much wiped out in the Fernley flood, and prior to that, in the floods in 1997. It is an important part of helping emergency responders respond to and mitigate emergencies, but also it is needed for matching emergency grant funds from the federal government.

MR. KRMPOTIC:

The amount being swept here, \$520,429, is actually split between two budget accounts. I believe approximately \$200,000 comes from the account established in the same section of statute. Revenues from one of the specialty license plates feed into this account; I believe it is the "United We Stand" plate. The other \$300,000 of this sweep comes from the State Emergency Response Commission reserve. That is the money the local emergency planning committees allocate to various local governments for planning for response to hazardous materials spills or other incidents.

SENATOR NOLAN:

Do you know if that completely cleans out that account?

MR. KRMPOTIC:

It does not, though I do not know the reserve off the top of my head. I want to say that majority of the remaining \$704,832 listed here is in the State Emergency Response Commission account, with a lesser amount included in the contingency account for hazardous materials.

SENATOR COFFIN:

I do not know the full budget of the Dairy Commission, but I note that we are taking \$350,000 from their balance of \$587,310. I have often wondered over the last 30 years whether this is so antiquated that we ought not to get rid of it. All it does in our urban areas is cause us to pay a high price for milk. I do not think people can even advertise they have milk for sale, and I think they cannot compete in price. It seems to be a floor on the price of milk. What is their total budget?

MR. KRMPOTIC:

I do not have that information with me. When we reviewed the fund sweep, we reviewed the budgetary obligations for the biennium in relation to the amount that was available to be swept.

SENATOR COFFIN:

I would appreciate if I could get that today.

SENATOR HORSFORD:

We will bring this information back with the BDR when it is ready. We will then go through each provision to see where there may be consensus or disagreement.

Director Clinger, thank you for coming back. There were a couple areas in the Governor's recommendations that we did not finish going through yesterday. Perhaps we can start with the Public Employees Benefit Program (PEBP) "Premium Holiday" item and go from there.

ANDREW CLINGER (Director, Department of Administration):

The State currently pays a state subsidy into the group insurance plan, and State employees pay a premium for their health insurance. The PEBP Premium Holiday would be one month during which the State would not contribute the subsidy and the employee would not contribute the premium. What this does is draw down the PEBP reserves. They have two reserves: an Incurred But Not Reported (IBNR) reserve and a catastrophic or rate-stabilization reserve. A premium holiday would essentially wipe out the rate-stabilization reserve, sweeping \$11,361,933, and leave the IBNR fully funded. I have had discussions with PEBP staff who indicate that if we drain reserves to the level we have recommended, there may be a need for a rate increase to health-insurance premiums to employees in plan year 2011, for which they will set rates very soon. We asked them to give us some alternative plans for this. Under the current program, the State subsidizes roughly 85 percent, and we asked them to give us plans for 80 percent and 75 percent. Each of those has an impact on the employee portion: if you reduce the State's portion of the premium and do not make any plan changes, the employee's portion goes up. We have therefore recommended the sweep to the fund or the premium holiday. Decisions will have to be made on the benefits package in the next Session if changes need to be made, including the portions paid by the employee and the State.

SENATOR RAGGIO:

Are you saying that if we did not do the premium holiday, an alternative would be to change the percentage of the subsidy provided for the remainder of this biennium? If not, what is the alternative to a premium holiday? What percentage is the current subsidy?

MR. CLINGER:

It is different depending on what plan you are in, but the average is 85 percent. The alternative plans the PEBP gave us were to reduce that to 80 percent and 75 percent. Reducing it to 80 percent does not generate the same savings as the premium holiday. I did not bring that information with me, but I can give you the breakdown if you would like.

SENATOR RAGGIO:

It would take a lower percentage of subsidy beginning July 1, is that correct?

MR. CLINGER:

Yes. Beginning in FY 2011, it would change the State's contribution from 85 percent to 80 percent or 75 percent. The offset would be that the employee's premiums would go up.

SENATOR RAGGIO:

In order to get to a savings for the State of this \$11.3 million. Of course, there is also an impact upon local governments who subsidize in the same manner.

MR. CLINGER:

That is correct. It is a multi-employer pool, so there would be other employees who were impacted by the decision.

SENATOR CARLTON:

In the interest of full disclosure, I will state I am covered by the PEBP. They are the health insurance for my husband and me, since he is a State employee.

My concern is the rate of subsidization for different employees. You have a southern HMO and a northern HMO, and you have a PPO. Is there a way for us, instead of looking at this across the board, to make this more equitable, to make it more fair to all employees? If you have an employee in an HMO, they are subsidized at a certain rate. If they want to put their spouse on, they pay extra. That is fair. However, when you add those numbers together and compare it to what is being paid for the PPO, it is not equitable. That is something we need to look at. I know HMOs are not available in all parts of the State, so I understand the choice. However, in the world I came from before working in the nonprofit world, through the union plan I was in, everyone got the same amount. So much an hour for every employee was paid into the plan, and

that is how it worked. I would like us to look at the fairness of how we subsidize different employees.

SENATOR HORSFORD:

Committee, what is your appetite for this item? We are in the Committee of the Whole, and it is time for us to start having a debate as a Committee about some of these items. To the extent that there is general consensus to keep it on the list or to delete it, now is the time for us to start doing that. This item seems problematic to me. It does not address the fairness and equity objectives we would like to have for all State workers. Is that the general consensus?

SENATOR RAGGIO:

I would reserve on that.

SENATOR HORSFORD:

I am not asking for a binding commitment. I would just like to get a feel for where members are generally on this issue.

SENATOR WASHINGTON:

I am not sure I share the same sentiments as my colleagues, so I would prefer to keep this item open. It has some merit, and I would like to flesh it out.

SENATOR WIENER:

Based on what we have learned here and discussions I have had, I tend to lean against this item. I would not support developing it conceptually.

SENATOR COFFIN:

I will disclose that I pay premiums as a dependent in the plan, so I suppose I have a small amount of skin in this game. I am concerned about the fact that we have cut benefits, including tripling the deductible. We have done a lot to make it more expensive. If we take this money and throw it into the General Fund, we will make it that much harder to restore benefits when the time comes. I am sure there is an attitude in the Senate that we want to restore benefits that have been cut in the last couple years of emergencies. This takes us almost \$12 million away from that, so I would definitely not support the proposal as written.

SENATOR NOLAN:

The issue as it has been identified is problematic. However, I am not comfortable if we go through the list and start peeling off anything we may have to come back and visit later to get to that bottom line, with the exception of items we have identified as unconstitutional or impractical. I do not know if there is a better way to do it.

SENATOR HORSFORD:

That is fair. The approach needs to be that these are not for final binding direction or votes. This is just to get a sense of the Committee's opinion. We have a sense on some issues of whether we will do it or not. Rather than keeping it under discussion, if there is support or there is not, we need to get to that.

SENATOR MATHEWS:

I would like to disclose that I am a member of the PEBP.

SENATOR AMODEI:

I appreciate the fact that the Chair is trying to move this along, and I agree with that. My only hesitation is that we are looking at a lot of things that will have an impact on employees. We have heard that this may result in something down the road that increases premiums to make up for the premium holiday. In order to make a value judgment on this, which we all will do, it would be more helpful to have the whole picture in front of us in terms of what we are looking at for furloughs, increased premiums and how it will affect K-12 versus higher education. I would

rather keep this item on the list so we can take a 360-degree view of what we are doing to various groups of public servants, as opposed to taking them on one at a time.

SENATOR LEE:

Mr. Clinger, could you tell me the Governor's opinion on the sweep from the Department of Wildlife Heritage Account?

MR. CLINGER:

We have a sweep of \$5,662,790 from that account. That has not changed, to my knowledge.

SENATOR HORSFORD:

Under our staff's direction, we are recommending that item be restored. That will be up for further review when the bill draft comes back.

We will leave the premium holiday up as a question mark. There seems to be a split opinion on that item.

SENATOR RAGGIO:

I know we are trying to get through this. However, if we are going to go down this list and remove from consideration items that seem to get a majority vote in the Committee of the Whole without knowing where we are going otherwise, that would seem to indicate that these items are going to be precluded from consideration. I am not sure we ought to just take them off the list. If it is intended to preclude discussion or inclusion in order to reach an accord, it may pose a major problem.

SENATOR HORSFORD:

I respect that. The intention is not to take items off the list; rather, it is to get a sense of where we stand right now. It will still be a part of the overall options we are deciding as bills are brought to us. However, now that we have reviewed this for a few weeks, clearly there is some opinion on whether or not certain items that should definitely be part of the budget shortfall solution or things we know may be problematic. I do not know that there will be a lot of items in either category, because unfortunately we do not have many options.

SENATOR RAGGIO:

The problem is everything you take off the list, you have to find a revenue replacement for. That is going to be a more difficult process.

SENATOR HORSFORD:

Absolutely. I could not agree with you more.

MR. CLINGER:

The next item, PEBP REGI Investments, is related to funding set aside for the Other Post-Employment Benefits (OPEB) liability. This is group insurance for retirees. We have a \$3.6 billion liability from an actuarial standpoint on group health insurance for retirees. This account was established in 2007 to begin to prefund that OPEB liability similar to the way PERS is funded, so that we have a trust fund set aside for the retirees' group health insurance. There is currently a little less than \$25 million in that trust fund. The Governor is recommending to sweep \$6,900,000 from this fund in FY 2010 and \$7,860,000 in FY 2011, for a total of \$14,760,000 over the biennium. This represents the General Fund portion of that account. We recommend we begin to draw down on that account over the next two years, so that at the end of that time there would be no money in that trust fund.

SENATOR CARLTON:

I understand what you are trying to do, and I think you are trying to go down the right path. We wanted to deal with some of those liabilities when times were good, but now, we cannot. Unfortunately, though, there is not the same amount of money in the trust fund now that we originally put into it. We have lost some money. My only plea to you is that when you take this,

let it grow a little bit more, then go get it. From what I have seen in a few of the documents, it is starting to come back. If we act too quickly, we could end up losing even more money. Also, you said there was \$25 million, but I do not see \$25 million here; this looks more like \$15 million. Could you explain the difference?

MR. CLINGER:

You are right that we have had a negative return on the fund since we started investing it. I think we have lost \$4 million. The difference between the \$25 million in the fund and the \$15 million sweep is that the General Fund only represents about 60 percent of the contributions into the fund. The other contributions are highway funds and federal funds. It depends on how an employee is funded. While the fund would be drained through this process, the other funding sources will get their benefit from it. This is just the General Fund benefit.

SENATOR CARLTON:

This will not affect the benefits of any current State retiree, correct? This was merely an actuarial move to securitize the future debt we have for retirees.

MR. CLINGER:

That is correct. This does not change the retirees' benefits or premiums. It simply reverses the direction we started to go in funding that liability.

SENATOR CARLTON:

Thank you. I am now comfortable with this item being on the list.

SENATOR COFFIN:

I would like to refresh my memory on this. We have two kinds of retirees: those who retired before 1986 and those who retired after. Who is it who is not qualified for Medicare? This is the key thing, particularly for those who do not have Medicare. In other words, we set this aside because we were deeply troubled about the yo-yoing budgeting we do. In good conscience, we felt we needed to try to address this early before a problem hit. Well, we did address it, and now a problem has hit. If you take it away, you break faith with those older people who are very nervous about it. Are there two kinds of retiree health insurance beneficiaries, where some are more reliant on this kind of fund and some that are less reliant on it?

MR. CLINGER:

We do have some retirees who are eligible for Medicare, and some who are not. I am not sure what the cutoff point is. Again, however, this is not going to impact any retirees. This is not saying we are not going to fund Medicare retirees for their group health insurance. The fund was established in 2007 as a result of the change in the Governmental Accounting Standards Board (GASB) rules. That is the body that sets the rules as far as what governmental entities are required to put on their financial statements. With the change in the GASB rules, this is a liability that all governmental entities are required to put on their books. When we had to put this liability on our books, we began to think about funding it similar to the way we fund PERS. By taking this trust fund away, we are simply reversing our action on starting to fund that \$3.6 billion liability we have.

SENATOR COFFIN:

I understand that GASB does force government to look honestly at its liabilities. We have been pay-as-you-go, but we have found that more and more difficult. That is why we started this. The thing is that those retirees read the tea leaves quite well. They see us cutting benefits, and they are worried that we will lose faith with them and just stop paying. They have every right to be worried about it. This panics people. Do you see my point?

MR. CLINGER:

I do see your point. I will say that we are only one of ten states that has begun to do this. Many other states have not started this process yet. We will continue to be on a pay-as-you-go

system, and we will have to continue to report that liability on our books until we have a program in place to fund that liability.

SENATOR HORSFORD:

Is there general agreement to keep this item on the list? I see no objection.

The next item is the DSA share of REGI premium holiday, which brings in a total of \$3,053,798. I would assume this item has the same response as the previous item on the PEBP premium holiday.

MR. CLINGER:

The next item, transfer from Healthy Nevada Fund (262-1090) brings in \$21,300,000 in FY 2010 and \$8,828,165 in FY 2011, for a total of \$30,128,165 over the biennium. The transfer from the Public Health Trust Fund (263-1091) brings in \$5,922,687 in FY 2010 and \$4,839,733 in FY 2011, for a total of \$10,762,420. These are the same two issues listed on the "Other Non-General Fund Sources" sheet listed as "Trust Fund for Healthy Nevada" and "Trust Fund for Public Health," and our numbers agree. This is the portion of the tobacco funds that go into these two accounts and fund various health and human services programs. What we are doing is sweeping those tobacco funds out of these two accounts into the General Fund.

SENATOR HORSFORD:

We have gotten a large number of emails on this subject. It looks like this sweep is necessary, but a lot of nonprofit programs that do smoking cessation and related projects are going to be affected by this. Are there any concerns, or is this one we are just going to hold our nose and do? Hearing none, we will move on. There is heartburn with this, but we will have to continue to consider it.

MR. CLINGER:

The next item, "Other Non-General Fund Sources," is the total of the sweeps your staff just went through. We show \$32,804,850 in FY 2010 and \$64,430,547 in FY 2011, for a total of \$97,235,397 for the biennium. There are a few differences, which I believe your staff went through. Senator Lee pointed out one on the Heritage Fund. In addition to the ones your staff has noted, we currently have \$5.6 million coming out of the NDOW Heritage Fund. We also have \$3 million coming out of the Low Income Housing Trust Fund; \$750,000 from AB9/Q1; \$700,000 from the Motor Vehicle Pollution Control; and \$500,000 from the Self-Insured Association Insolvency.

SENATOR HORSFORD:

It has been brought to my attention that we need to request a formal bill draft on the Non-General Fund Sweeps as proposed. We have the list recommended by staff as presented by Mr. Krmpotic, along with the work they have been doing on the constitutional and legal barriers, and we also have the sweeps as proposed by the Governor.

Senator Care moved to request a bill draft comprised of the sweeps contained in the document titled "State of Nevada Other Non-General Fund Sources Fiscal Year 2010 and 2011."

Senator Woodhouse seconded the motion.

SENATOR TOWNSEND:

I have a technical issue. I presume we are using the list drafted by our staff. The number we ended up with was \$188,678,988, and Mr. Clinger's total was \$97,235,397. What accounts for this difference of almost \$100,000,000?

MR. CLINGER:

In going through the document you received from staff, I would say that total also includes the following items: \$30,128,165 from the Healthy Nevada Fund; \$10,762,420 from the Public



Health Trust Fund; \$632,516 from the Rainy Day Fund; \$643,960 from the Budget Reserve Account; \$29,220,625 from the Bond Interest and Redemption Account; and \$30,000,000 from deferring the General Fund portion of the line-of-credit payback.

SENATOR TOWNSEND:

So our list jibes with yours; it is just broken out differently. Is that correct?

MR. CLINGER:

Yes, except for the items I pointed out that they took off.

SENATOR SCHNEIDER:

I would like to make it clear that this bill draft is just a draft. We can still object to some of these items or add other items.

SENATOR HORSFORD:

That is correct.

The motion carried unanimously.

MR. CLINGER:

The next item is an extension of the enhanced FMAP Medicaid matching rate. We are anticipating an additional two quarters at this rate, which will bring \$88,488,706 of federal funds. This will then free up General Funds in the Medicaid program.

SENATOR RAGGIO:

How likely is that? Has it been passed by Congress?

MR. CLINGER:

I received an e-mail today that it had been passed by Congress, but I have not had a chance to look at it to see if it included this yet. The enhanced FMAP was in the President's budget. If it is passed, this is Nevada's share. The Division of Healthcare Financing and Policy ran these numbers based on the rate we are currently receiving and extending that for two quarters. This is what they project we will receive.

SENATOR COFFIN:

Which part of Medicaid did that \$32 million come from that was thrown into the education for covering teacher salaries?

MR. CLINGER:

A portion of it came from the Medicare Part D clawback based on the ARRA FMAP. We received an additional \$16,328,228 in federal funds over the biennium. The other sources that got us to \$35 million were \$6,921,414 from natural 2005 and 2007 CIP reversions; and \$4,081,000 from additional unclaimed property receipts. There are more, but I do not currently recollect which items they were.

SENATOR COFFIN:

I felt uncomfortable taking Medicaid money to pay for education. We will just have to reserve judgment on that till later. I am sure staff will refresh our memory.

SENATOR HORSFORD:

Obviously, we are in agreement with taking the FMAP money.

MR. CLINGER:

The next item will suspend the transfer of \$3.8 million from the unclaimed property receipts the State collects year to the Millennium Scholarship fund (MSF). Prior to the 2009 Session, this was \$7.6 million a year. This amount was cut in half then, and this would eliminate the transfer

for the current biennium. The next item, which is related to this, sweeps an additional \$5 million from the MSF. With this, without any changes in policy or revenue streams, the MSF will be upside down by \$1.5 million in FY 2014.

SENATOR HORSFORD:

I have expressed concern about this. Next Session, we will have to have a serious discussion about needs-based and the criteria by which students qualify for this in order to preserve it. I was concerned by the comment that the MSF was established under Governor Guinn with the express intention that it not live on. I remember the promise that was made. I think the intent is for this program to be able to support eligible high school students to pursue higher education in Nevada institutions. I know we have had to go to these funds repeatedly, but we are to the point where students who are now freshmen in high school do not know if this program will still be there when they graduate from high school. That is not the right message to send to them.

I would like to request that staff work with the Treasurer's Office and figure out what can be done to extend the life of the program. I understand the sweep of \$5 million was included in the sweeps list, which is appropriate for the bill draft. We need to identify any other potential approaches that would allow us to extend the life of this program by taking, sweeping or redirecting revenues as necessary.

SENATOR WOODHOUSE:

I would like to second your comments regarding asking the Treasurer's Office to take a look at this. I too am concerned. We have promised our young people over the years that they would have this opportunity, and the estimates of how long the MSF will last keep coming down. We need to do everything we can to make sure the program lives on.

SENATOR COFFIN:

I cannot support this change at all. My 16-year-old daughter is an example of thousands of other kids who are getting good grades, and the Millennium Scholarship program is one of those carrots those kids are going for. It is better than a stick. If you support education, you will not support this kind of transfer and reduction. Kenny Guinn had a darn good idea in 1999 when he announced this program. I will not contribute to the end of it.

SENATOR WASHINGTON:

Being here over some time lends itself to a little history. In the 2007 Session, there were two bills introduced to restructure the Millennium Scholarship program for qualification. One was introduced by Senator Townsend, the other by myself. Both of those bills died, and here we are looking at this again.

SENATOR CARE:

Like a lot of you, I was here when Governor Guinn announced this program in his State of the State address in January 1999. I am not sure without seeing the Legislative history, but I recall that the Millennium Scholarship program was supposed to last for some time. Senator Washington is correct that there was legislation that did not pass, but I thought there was also some that did pass. The qualifying GPA is now 3.25, I believe. If we could get from staff a summary of the legislative history of the Millennium Scholarship program, including the bills that have come and gone concerning it, that would be helpful.

SENATOR HORSFORD:

Once we get the information back from the Treasurer's Office, we will revisit both of these items.

MR. CLINGER:

The next two items, the transfer of ARRA funds from the Department of Corrections and NSHE, do not save any money over the biennium. This is just a shift of ARRA funds from one fiscal year to the another, from 2011 to 2010.

The next item is the transfer of \$29,220,625 from the IFC contingency fund for electricity and heating costs over the biennium. This money was appropriated by the 2009 Legislature to the IFC contingency fund for unforeseen increases in utility bills of State agencies. Similar funding was included in the last biennium, which I believe was cut in the first round of cuts. If we cut these funds, agencies will either have to come to the regular IFC contingency fund or find the savings within their own budgets.

SENATOR HORSFORD:

Going to a four-day work week will address some of that. People need to adjust the thermostat accordingly.

MR. CLINGER:

We anticipate there will be some savings in utilities going to a 4-day 10-hour work week. The Division of Internal Audits, within the Department of Administration, performed an audit on the cost savings of a 4-10 work week, and they estimated a little over \$600,000 annually in savings in utilities.

The next item is the transfer of \$1,611,578 in FY 2010 and \$4,561,940 in FY 2011 from the Nevada Check Up (101-3178) fund for a total of \$6,173,519 over the biennium. These are surplus funds due to the caseload being lower than projected. That is the good news; the bad news is the reason the caseload is lower is because more individuals are now qualifying for Medicaid.

SENATOR HORSFORD:

That is part of it, but I cannot let this one pass without saying something. It is true that many who were eligible for Nevada Check Up are now qualifying for Medicaid because they have lost whatever income they were earning. However, there is still a class of people out there who are eligible for Nevada Check Up. Because we do not do any outreach, other than that done by the Covering Kids Coalition, the people who would be eligible do not know this program exists. The State has never provided outreach for this. Please correct me if I am wrong.

SENATOR WASHINGTON:

We did put money in for outreach.

SENATOR HORSFORD:

It was proposed, but it was one of the things that was eliminated in the early round of budget cuts.

SENATOR WASHINGTON:

I am talking about several sessions ago. We put money in it for outreach when we first initiated the program. The reason the numbers have not gone up is not because there has been no marketing, but because those who were eligible refused to participate due to the stigma attached to Nevada Check Up. We had to overcome that hurdle. The marketing of it was centered on quashing that stigma. We have always had problems trying to get the numbers up in that program.

SENATOR CEGAVSKE:

When Mike Wilden was here, he commented that we did have people who went out to playgrounds, parks and Laundromats to talk about Nevada Check Up. At an IFC meeting a couple of sessions ago, they brought a list of all the people who had applied and talked about a number who were not eligible. So we know they did do outreach at one time.

SENATOR HORSFORD:

It was my understanding that has been done by the Covering Kids Coalition, a nonprofit organization that does not receive State support.

SENATOR CARLTON:

I believe this program began about the time I was first elected to the Legislature. It was housed within a Statewide nonprofit and moved. It has had a couple of iterations and different people running it. I disagree with Senator Washington on the stigma of the program. You cannot look at this program in just one moment of time; you have to look at what has happened to the State over the last ten years and the demand for the program.

I have a problem sweeping money from a program on one sheet and asking truly poor people to pay more for their premiums on another sheet. This is health insurance for poor people. It is very simple and very basic. It is to keep kids out of the emergency room and get them into primary care so they are taken care of and can learn well and do well.

SENATOR WASHINGTON:

I will not belabor the point. I was here when we initiated this program when we received a grant from the Clinton administration. At that time, it was called the State Children's Health Insurance Program, also known as SCHIP. We went through the interim to put this program together, and we called it the Nevada Check Up program. When we initially started it, there was no premium attached. We initiated a small minimum premium to ease the stigma of receiving a handout. I do not see that adding an additional \$25 or \$50 to the premium will hamper the program or be a problem for those who wish to participate.

SENATOR HORSFORD:

Mr. Clinger, can any of this excess be used to keep the premiums for the Nevada Check Up program from increasing? I think it was a 300-percent increase for the lowest income individual who qualifies.

MR. CLINGER:

This body can certainly do that.

SENATOR HORSFORD:

Is there any restriction on this portion of money? Can it be used for other purposes?

MR. CLINGER:

This is natural savings in the program. Certainly, if this body chose to do that, they could.

SENATOR CARLTON:

These are tough times. This program means that the working poor may be able to at least insure their children. If we start raising the premiums, we are going to have more uninsured children in a state where we already have a very high rate of uninsured people. If there is a way to use extra money to subsidize the program for a bit longer until the economy improves, we should do it. We know we are going to come out of this and things are going to get better, and we can talk about a rate increase when that happens. In the meantime, this is a wise use of our money.

SENATOR WASHINGTON:

Are you saying you do or do not want the rate increase?

SENATOR CARLTON:

If a rate increase is necessary in the future, we can discuss it then. Right now, we have money to use to defer a rate increase. If we have extra money, we should put it back into the program where it is most needed.

SENATOR HORSFORD:

Raising the fees as the Governor recommends brings in \$1 million, and this is a \$6 million savings due to projection of caseload. This leaves us \$5 million to the good. I am not saying it should not increase at all, but I do not think it should increase 300 percent.

SENATOR WASHINGTON:

I am in agreement that some portion of the premium should be raised. This program was initially targeted for children who are 200 percent above poverty level. You are talking about a family of four that is making \$40,000 to \$50,000 a year. The numbers are a little bit different.

SENATOR HORSFORD:

It is tiered. It starts as low as 100 percent of the poverty level and goes up to 200 percent. It is the people who are the working poor who can least afford it we are trying to address.

SENATOR CEGAVSKE:

When Mike Wilden was here, I asked him to tell us if the costs have risen. I have not heard back from him yet, but that would weigh in with what we are looking at.

SENATOR HORSFORD:

I would like to ask staff to work with Mr. Wilden and Mr. Clinger to get answers to the questions that were asked on this matter. The recommendation would be, to the extent possible, to reduce the premiums fee increases to something more reasonable using some portion of the \$6 million to pay for it. It should then be brought back for further review by the Committee of the Whole.

MR. CLINGER:

The next item is a transfer from the IFC contingency fund for unemployment assessments of \$1,359,834 in FY 2010 and \$554,405 in FY 2011 for a total of \$1,914,239. This is funding that was appropriated by the 2009 Legislature. These funds were originally set aside for increases in the unemployment assessment State agencies pay. We have our own pool we pay out of on a pay-as-you-go system. We are recommending the funds set aside for this purpose be reserved for reversion, and if agencies face a shortfall due to increased unemployment assessment, they will either have to come to the IFC contingency fund or find the savings within their own budgets.

SENATOR HORSFORD:

Is there any comment on that item? Hearing none, we will move on to the next item. We went over the projected savings from the 4-10 work week and 10-hour furlough program with Legal Counsel.

MR. CLINGER:

Would you like me to discuss this item?

SENATOR HORSFORD:

I do not know that it requires much more discussion, unless there are questions about how it might work. There is a consensus that this is a proposal we need to move forward with.

MR. CLINGER:

The next two items are 1.75-percent salary reductions for NSHE and K-12 to maintain equity with State employees for a savings of \$9,480,000 from NSHE and \$35,703,000 from K-12 over the biennium. Not to get into a debate on the cuts again, but I will remind the Committee that we reduced the 10-percent reductions for K-12 by \$35.7 million. The total reduction for K-12 is \$175 million, and it is included in the total 10-percent salary reduction for all State employees

SENATOR HORSFORD:

So this 1.75-percent cut was taken off the table by the Governor.

SENATOR RAGGIO:

We are really leaving it on just for appearance's sake to show there is inequity in salary reductions, if that is the term. It actually was a reduction of that amount, insofar as the DSA portion is involved.

MR. CLINGER:  
That is correct.

SENATOR HORSFORD:  
The other item is a recommendation by the Governor to reduce funding for higher education an additional 1.75 percent beyond the \$67 million. It is proposed as a 1.75-percent salary cut, although in fact the Board of Regents will decide that. There is some concern about how we are treating groups differently on this one.

SENATOR AMODEI:  
Yes. I asked some questions yesterday, and I have a little information this morning. We need to look at these areas in the context of what was done in the 2009 Session. When I compare what has been done to higher education to what was done to K-12, that is going to be a fruitful discussion area in terms of trying to be fair. Not all groups are the same, but there should be some modicum of fairness. We all need treatment for amnesia if we say the funding cuts that were visited on higher education in the regular session did not happen.

SENATOR HORSFORD:  
Are we saying, as a Committee, that we would prefer not to include the 1.75-percent cut as part of the reduction to higher education?

SENATOR AMODEI:  
I would recommend we eliminate that item from the bill draft.

SENATOR HORSFORD:  
Is there any objection to that? I hear none.

MR. CLINGER:  
Let me clarify something on that item. The NSHE has two classes of employees. They have classified State employees who would be affected the same as other classified employees by the 10-percent salary reduction. It is the professional employees who are affected by the 1.75-percent cut.

SENATOR HORSFORD:  
We heard a lot about that. I met with the Classified Council, and I never again want to be in the position of trying to explain why a janitor at a college campus got a pay cut and a tenured faculty member did not. That is the issue. It was ultimately decided by the Board of Regents, but going forward, we need to make sure the three employee groups we represent—State workers, K-12 and higher education—are treated, as Senator Amodei said, with a modicum of fairness. Let us at least try to treat people fairly.

MR. CLINGER:  
That is the point I am making. By pulling out all of those dollars, what you are saying is you are not going to reduce the classified employees in higher education. Now you have created division between classified employees in higher education and classified employees elsewhere in the State.

SENATOR HORSFORD:  
We will get to the State workers before we are done with this process. Let us move on to the next item.

MR. CLINGER:  
The next three items are recommendations from my office for additional savings. The first is vacant positions we are recommending for elimination that the agencies had not cut. They were either extensions of vacancies they had proposed for partial reduction over the biennium or

additional vacant positions they had not put on their list. The savings here is \$1,358,735 in FY 2010 and \$4,619,910 in FY 2011, for a total of \$5,978,645 over the biennium.

The next item is travel and training reductions. We identified non-critical travel and training, leaving in travel where it is required as part of the mission of the agency. If, for example, the agency has a mission to audit businesses, they obviously need to travel to do that. All other travel and training was cut from the agencies' budgets. This will save \$586,604 in FY 2010 and \$772,430 in FY 2011, for a total of \$1,359,034 over the biennium.

The next item is other recommended reductions. A complete list of those reductions can be found on our Website at [www.budget.state.nv.us](http://www.budget.state.nv.us). The savings here is \$5,176,303 in FY 2010 and \$4,424,739 in FY 2011 for a total of \$9,601,042 over the biennium.

SENATOR CARLTON:

Did we get a copy of that information?

MR. CLINGER:

I do not believe so, no. I do not have copies of it, but I do have the list with me and can go through some of the items if you like.

SENATOR CARLTON:

Is that where dignitary protection and other items like that are listed? We have had so many lists.

MR. CLINGER:

We do not have dignitary protection on that list. We do have the combining of the Division of Investigations with Narcotics Control into one account, which then allows us to eliminate four positions in the Department of Public Safety.

SENATOR CARLTON:

In the interests of time, it would be good for us to have a copy of that list to review.

SENATOR HORSFORD:

Please make sure we have that same list.

MR. CLINGER:

I can bring a copy of this list.

SENATOR HORSFORD:

We would not oppose any of these reductions you are recommending. That goes without saying. We will review the list, and if there are any questions later, we will ask them.

MR. CLINGER:

The next item is the Insurance and Registration Verification Program proposed by the Governor. This is the InsureNet license plate reader program. InsureNet estimates that the revenue generated from this program would be in excess of \$100 million, and they are giving us a guarantee of \$30 million. That amount would be set aside in a trust fund for the State to access if we do not reach that amount in revenue.

SENATOR CARE:

The difficulty with this for me is that my understanding of this program is confined primarily to newspaper articles. In previous sessions, we have had discussions about cameras at intersections. I would guess that this program would mean a photograph or an image of the front plate, when we know that not all cars in Nevada are required to have a front plate, not to reopen that discussion.

This all seems speculative to me. I do not know how we can even consider something like this.

SENATOR HORSFORD:

I have not heard from anyone from InsureNet, so I do not know what their representations are, other than what they have said to the Governor's office. I do not believe the fees that will come in from the Nevada LIVE program will go to the budget shortfall, because they are directed toward other DMV-related operations. Is that correct?

MR. KRMPOTIC:

The Nevada LIVE program is an insurance-verification program with the Department of Motor Vehicles. The fees that are generated would be the reinstatement of registration if someone is caught driving without insurance, and those fees will go into a special account that will eventually revert to the Highway Fund for this biennium. The Legislature has diverted a portion of those funds to the General Fund.

SENATOR HORSFORD:

What is the general attitude of the Committee regarding InsureNet?

SENATOR LEE:

It might be something worthwhile to study in the next legislative Session. However, at this point in time, I do not think we should bring it forward.

SENATOR HORSFORD:

Is it the general consensus that this proposal not be entertained further? I am seeing unanimous shaking of the heads, so we will no longer consider the InsureNet proposal.

MR. CLINGER:

The next item is the net proceeds of minerals tax. We are anticipating an additional \$25 million a year, for a total of \$50 million over the biennium, due to the Governor's recommendation to decrease the deductions allowed under the net proceeds of minerals tax by approximately 50 percent.

SENATOR RAGGIO:

It is my understanding, and I think the Fiscal Division has verified this, that when mining companies file on March 1, it is anticipated we will probably receive at least this amount through the normal process because of higher prices and greater production. I would leave this item in at that amount and determine there are other items we want to look at. Is that your understanding, Mr. Clinger? You do not have to deal with the sticky wicket issue at least for that amount, with respect to changing the definition or the compilation of what net proceeds are appropriate.

MR. CLINGER:

I have heard that based on the February returns, they anticipate an additional \$30 million to \$32 million. What people are saying is that then translates into \$60 million because we anticipate the same amount in FY 2011. I have not been able to verify that with the Department of Taxation, but I am looking into it.

SENATOR RAGGIO:

If it is true that we are going to realize an additional \$50 million or more in the normal course of collections, would the Administration's position still be that we should seek additional revenue by looking at the definition of net proceeds?

MR. CLINGER:

If we can verify that \$60 million is the correct number, we would no longer recommend changing the reductions.



SENATOR RHOADS:

I agree with the Minority Leader. I think we are going to be looking at big-time numbers. I am glad to hear you say that if the numbers do come up that big, there will be no further action on the mining industry.

SENATOR HORSFORD:

The issue is the way the proposal stands is not acceptable by the Governor on the deductions. The realization that the price per ounce has increased, and therefore revenues will exceed our last projection, fits into what Senator Raggio is saying. For purposes of how we proceed as a Committee, it is important that we distinguish between the proposal on the deductions versus other options where there is more agreement with the industry on how we can have them participate in this solution to balance the budget. As the proposal on deductions stands, there are legal and possibly constitutional concerns with how that would proceed. At a minimum, it is important for us to change how we approach mining. Perhaps we could put this down as a mining solution and, unless there is opposition, ensure there is consensus that the deduction approach is not the right one and that we pursue every other option that allows us to get as much as we need to balance the budget—or rather, that we ensure mining is part of providing a reasonable solution toward helping us balance the budget.

Is there a different opinion on the deductions proposal as it was recommended by the Governor? Do we want to continue to consider that or put this down as something other than that proposal? The Governor's proposal is deductions for \$50 million. What Senator Rhoads and others are saying is that there is a likelihood we can anticipate an amount close to or more than \$50 million just through the increased contribution rate. If there is agreement generally, we can pursue that approach, along with whatever other solutions we can come up with that is reasonable to the mining industry, versus the approach on deductions.

I am seeing general agreement with that. I would like to reclassify this as a mining solution and leave the number at \$50 million for now. I know there is the potential for that number to increase.

MR. CLINGER:

The next item is the Department of Taxation unclaimed property account. In looking at all the different accounts that could be swept, in the cash bond account within the Department of Taxation, we were able to identify \$1,777,612 as being unclaimed property. We recommend this be swept into the General Fund.

The next item is the elimination of the plus-5-percent salary add-on, which would save us \$2,750,000 over the biennium. This is the additional 5-percent pay differential employees receive for being bilingual or supervising someone out of their class, for example. The recommendation from the Administration is to eliminate all the plus-5s across the board.

SENATOR COFFIN:

This will be an immediate pay cut for some people. One of the reasons we do this is to avoid compression. Is it possible that if you take this away, employees who are getting this now because they are supervisors could actually end up making less than the people they supervise?

MR. CLINGER:

They would not end up making less. They would end up making the same. Our recommendation would be that if you have classes of employees supervising other class of the same grade, instead of putting in a plus-5, those positions should be reclassified to positions more appropriate and entitled to supervisory pay.

SENATOR CARLTON:

My concern is about removing differential pay for bilingual employees. There are numerous public safety officers out there who are bilingual, and not just in Spanish. If you are arresting someone and trying to read them their rights, if you do not have a bilingual officer, you have to out into the open market and hire an interpreter. Taking away this plus-5 incentive could end up costing us more money in the long run. I do not want to see cases thrown out of court because

when suspects were processed, their rights were not explained so they could understand them. In addition, there are officers who get this money now, so this is a 5-percent pay cut for them. If I am wrong, please correct me.

SENATOR OLSEN:

We will still have officers who speak Spanish whether they are paid or not. When I was with the Las Vegas Metropolitan Police Department, prior to doing what is called an ADP for someone speaking a foreign language, we called in someone who spoke that language to assist the officer. That is still going to occur.

SENATOR CARLTON:

They will just do it without being paid for it.

SENATOR OLSEN:

They did it before, yes. Regardless of what kind of officers they are, they will do it for the benefit of the process and the safety of the officers who need the interpretation done. They will not refuse to do it.

SENATOR CARLTON:

That sounds reasonable. However, we have been paying someone to do a job, and now we are asking them to take a pay cut and still do the job. It comes down to asking State employees to do more with less. I am glad we can get away from the cost of outside interpreters, though.

SENATOR HORSFORD:

We need to see how we are going to end up treating all state workers before we can decide this one. We are singling out one group for more of a pay cut than everyone else, and I have a concern about that as well.

MR. CLINGER:

The next item is outstanding insurance premium tax. The Insurance Commissioner indicated that with approximately \$500,000 worth of additional audit help, he estimated they could collect an additional \$5,000,000 in outstanding premium tax.

SENATOR HORSFORD:

There is some disagreement on this item. I think there is much more than \$5 million that can be collected. The testimony I heard was that there was a range between \$3 million and \$12 million, but we have an audit that shows between \$90 million and \$160 million of outstanding obligations or payments. Some of that we will never collect because the carriers are gone or the businesses are not paying. However, I believe this number is low. I would like to ask staff to review it and come back with some other options for us to consider with back-up and justification for how we get there. Is there any opposition to that? Hearing none, we will wait for staff to bring us that information.

The next item, reduction in State purchasing contracts for a savings of \$1.5 million, is much the same. This is one of the items we recommended. Our staff did an analysis at 15 percent, and just in the General Fund they identified savings of \$12.6 million. I have heard that not all those contracts can be renegotiated. I do not know if we need to pass a law that allows that to be the case. However, to say we will only collect \$1.5 million from advertising, management and legal contracts, when we are asking our employees to take such a big pay cut, is not fair. I want to see that number increased. I would like to ask staff to go back and work on a number that is more reasonable.

MR. CLINGER:

It is not that we do not believe these contracts can be renegotiated. They all have terminations clauses in them that we can invoke. It is rather that we do not believe they can all be renegotiated for less. Having said that, we are examining all State contracts right now. State agencies were

directed by the Governor's office to cut 15 percent, so they are going through that process and we are getting that information from them now.

SENATOR HORSFORD:

Fiscal, please get a number based on what we think the projections could be and bring it back to the Committee.

MR. CLINGER:

The next item is an estimate of voluntary retirements. The Public Employees Retirement System (PERS) has identified over 400 employees in the State central payroll system who are eligible for retirement. The estimated annual salary of those employees is estimated at \$25 million a year. We are estimating 20 percent of that, or \$5 million, would be eligible for General Fund savings.

SENATOR CARLTON:

What were the criteria used to identify those 400 people? What incentive are you giving them to take that voluntary retirement so they do not get impacted on the back end?

MR. CLINGER:

There is no incentive as part of this. This is just an estimate of what we will see in natural retirement over the course of FY 2011. The number of employees eligible for retirement came from PERS.

SENATOR CARLTON:

I guess I misunderstood. This is not early retirement or a buyout. This is just what would have naturally occurred.

MR. CLINGER:

That is correct. The savings is based on either keeping their positions vacant after they retire or bringing their replacements in at a lower salary.

SENATOR CARLTON:

In that case, this is not so much voluntary retirement savings as attrition vacancy savings.

MR. CLINGER:

That is correct.

SENATOR CARLTON:

There were employees who thought they could get out at 29 years for the price of 30, but it seems that is not true.

MR. CLINGER:

That is not what this proposal is, no.

SENATOR CARLTON:

Did the Governor's office ever investigate that concept? A number of municipalities in southern Nevada have done it and have realized some savings.

MR. CLINGER:

We did look into it, yes. Part of the problem with it is the upfront cost of buying out employees and buying the years of service. Currently, NRS requires that if you lay off an employee with so many years of service, you must buy a certain number of years of retirement. If you were going to do some sort of voluntary retirement, I do not know if you would do it at a different level and maybe not buy as many years as the layoff provision requires. Again, it boils down to having the money now to get savings in the long run. Certainly, in the long run you would save the funds, but not unless you have the upfront money.

SENATOR CARLTON:

I do not understand the logic. If you can buy a year of retirement for \$10,000, you can retire a 29-year employee who is making \$70,000 a year. How is that a bad equation?

MR. CLINGER:

I am not sure the cost is \$10,000. It depends on the level of the employee. It is typically a lot more than that.

SENATOR CARLTON:

However, it is less than we are paying them to work.

MR. CLINGER:

It depends on how many years you are buying and how many years you will realize the savings. There is a point where if you buy one year and keep the position vacant for two years, there is a payoff.

SENATOR NOLAN:

Would that buyout include any unused sick leave and/or vacation time, or is it over and above that?

MR. CLINGER:

It would be above and beyond that. There is a requirement that we buy off or pay up to 240 hours of annual leave, and there are also requirements for buying out sick leave. That would be on top of the amount we would have to buy their retirement. You basically have three pieces: the retirement piece, any annual leave they have and their sick leave. When you add all those things up, it gets very expensive.

The next item is the National Judicial College and the College of Juvenile and Family Justice. In the second year, this item would eliminate the funding for both institutions for a savings of \$289,845 over the biennium. The funding is being reduced 10 percent in FY 2010, and this would eliminate the balance of their funding in FY 2011.

SENATOR RAGGIO:

As everyone knows, I have been an ardent supporter of these two institutions, along with the Desert Research Institute. They are the crown jewels of our higher education system with worldwide recognition. We are talking about less than \$300,000, and this is their life's blood. This is a small savings. If someone thinks I will be held hostage for to resolve the final decision, forget it. However, my preference would be to take them off the cut list.

SENATOR NOLAN:

If I am not mistaken, much of the curriculum of the Judicial College is fee-based. Since this is one of very few national judicial colleges in the country, would an increase in fees help to offset any deductions that might occur?

MR. CLINGER:

I am unfamiliar with the budgets of these entities and how they are funded. I would have to look into it and get back to you. Perhaps representatives from the two institutions would be better equipped to answer your question.

SENATOR LEE:

I am a graduate of the Nevada Judicial College. We are affecting not only the national group of people who come to the College, but also the people from the smaller communities who become justices of the peace, since this is where they are trained. We do not have full-time lawyers in some of the small communities. If we take this training away from them, we have no way of replacing them in the future with trained people. I completely agree with what Senator Raggio said. This is something I cannot ever support.

SENATOR HORSFORD:

We need to hear from representatives from these institutions and get an answer to Senator Nolan's question about how they are currently funded beyond the General Fund. We will arrange to get that information and bring it back.

MR. CLINGER:

The next item represents the closure of the Casa Grande Transitional Housing Facility in southern Nevada. The savings there are a net of the amount required to pay the debt-service payments and a water fee, resulting in a net savings over the biennium of \$613,341.

SENATOR HORSFORD:

Mr. Skolnik gave us a list of options, and this one was recommended by the Governor's office. Casa Grande houses 228 people, I believe, and there is a bond payment due. In addition, there are restrictions as to which offenders can be housed there, based on the commitment to the adjacent property owners in an industrial area of southern Nevada. Because closing Casa Grande only nets us a General Fund savings of \$600,000, I would propose staff look at instead closing the Northern Nevada Restitution Center. It has no bond payments, it only houses 88 people and its closure would save us \$1 million. This is a matter of common sense. I would like staff to look into that and bring the information back to us so we can decide between the two.

MR. CLINGER:

The next item is an estimated amount of reserve sweeps from the Supreme Court, totaling \$704,159 over the biennium. This represents approximately 10 percent of the reserves within the Supreme Court.

SENATOR HORSFORD:

For the Committee's information, this is not included in the bill draft we introduce regarding sweeps. I have received correspondence from the Supreme Court asking that we not follow the Governor's recommendation to sweep this money. We can revisit it if needed.

MR. CLINGER:

The next item is additional unclaimed property receipts as identified by the State Treasurer in a memo she sent to leadership and staff last week. The estimated savings is \$4,081,000 over the biennium.

The next item is reversions from 2005 and 2007 Capital Improvement Projects (CIPs). These are funds remaining in these projects that can be reverted to the General Fund.

The next item is the Medicare Part D Clawback based on the ARRA FMAP enhanced rate for a savings of \$16,328,228 over the biennium. This item was previously discussed. This is additional federal funds coming into the State.

The last item is a spend-down of the General Fund ending balance of \$4,963,635. This would bring down the ending balance of the General Fund to exactly 5 percent, which is what is required by statute that we maintain.

The final result of all these recommendations is to leave us \$944,623 to the good.

SENATOR WIENER:

I would like to make a statement for the record regarding the sweep from the Healthy Nevada Fund, which funds tobacco cessation programs. Through presentations to the Legislative Committee on Healthcare, we have learned that these education programs have had substantial success in reducing smoking. There seems to be a presumption that we do not need to do any more in reducing smoking among young people and others. What we are concerned about was that if we stop doing this education for the young people and reducing those rates, the smoking rate will go back up.

Without this active prevention effort, we will pay the price in healthcare costs and other costs to our communities that are much more extensive than this investment in preventative and early intervention programs. I want to go on the record that this huge sweep gives me a sick feeling in my gut. We are going to pay for this later on in healthcare costs in Nevada.

Committee of the Whole in recess at 1:46 p.m.

Committee of the Whole back in session at 3:26 p.m.

SENATOR HORSFORD:

We will start with the hearing on the "Race to the Top" program. Committee members, you should have a copy of BDR 34-29 in front of you. My thanks to Senator Woodhouse and the Legislative Committee on Education for their work on this draft language. I will turn the floor over to her to walk us through the program overview and the BDR.

SENATOR WOODHOUSE:

The Race to the Top program is part of ARRA and has been established by the federal government as a competitive grant program to award approximately \$4.35 billion to states to encourage and reward them for creating conditions for education innovation and reform, implementing ambitious plans in four education reform areas described by ARRA, and achieving significant improvement in student outcomes. The U.S. Department of Education has developed non-binding budget ranges that place each state into one of five categories, with an estimated range of money they may be eligible to receive if awarded a grant. Nevada has been placed in category 4, which has a budget range of \$60 million to \$175 million. To be eligible to submit an application for these funds, a state must meet certain requirements. In addition, a state may accumulate points on the basis of its demonstrated achievements in school reform and its proposals for future such reforms.

At this time, I would like to ask staff to provide a brief overview of the Race to the Top criteria.

MINDY MARTINI (Senior Research Analyst):

I am Mindy Martini with the Research Division of the Legislative Counsel Bureau. As legislative staff, I cannot advocate or oppose any of the proposals before you. I am here at the request of Senator Woodhouse to provide you with a brief overview of the Race to the Top criteria. I will be referencing a document titled "Race to the Top Program: Executive Summary" that has been distributed to the Committee.

As Senator Woodhouse noted, the Race to the Top Fund is a competitive grant program designed to encourage and reward states that are:

- Creating conditions for education innovation and reform;
- Achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and
- Implementing ambitious plans in four core education reform areas. The four areas are:
  1. Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy;
  2. Building data systems that measure student growth and success, and inform teachers and principals about how they can improve instruction;
  3. Recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and
  4. Turning around our lowest-achieving schools.

An important factor included in the application is the requirement tied to the percentage of school districts that agree to participate in the reform efforts. It is a decision of each school district within the state as to whether they will participate in the Race to the Top reform efforts; a state cannot mandate participation. A defining factor as to whether a school district will decide to participate in the Race to the Top reform efforts will be tied to the funding provided to each school district to carry out the requirements of the application.

The application criteria does allow a state to supplement the formula funds received by a school district with the funds reserved for statewide use if it chooses to do so. This might encourage more Nevada school districts to participate in the reform efforts.

If a school district decides to participate in the Race to the Top, they must commit to substantially implementing all of the reform efforts. They are all required; they cannot pick and choose.

If awarded, the state has four years to spend the funds.

Looking at the application, there are 500 points possible. Half of the points (250) are based on a state's accomplishments prior to applying for the funds, and the other half are based on what the state is planning to do. The Phase 2 deadline for the application is June 1, 2010.

There are six major selection criteria categories for which a state will receive points. The U.S. Department of Education has issued very detailed instructions on how they will evaluate applications and award points. It is several hundred pages, so I am providing only a very general summary.

A. State Success Factors—125 points. This category includes such things as the state's existing education reform agenda and the school districts' participation in it. It also includes building strong statewide capacity to implement, scale up, and sustain proposed plans. Finally, it includes demonstrating significant progress in raising achievement and closing gaps.

According to testimony received from the State Superintendent of Public Instruction at the Legislative Committee on Education meeting on December 11, 2009, Nevada will do well in most of the criteria. The one area where we may be weak is in the area of sustaining proposed plans, as it required a commitment to continued funding of the reforms after program funds end.

B. Standards and Assessments—70 points. This category includes such things as developing and adopting common standards, as well as developing and implementing common high-quality assessments. It also includes supporting the transition to enhanced standards and high quality assessments.

According to testimony received from the State Superintendent, Nevada will do well in most of the criteria. A few points may be lost for not having the common core standards fully adopted by August 2010.

C. Data Systems to Support Instruction—47 points. This category includes such things as fully implementing a statewide longitudinal data system, accessing and using state data, and using data to improve instruction.

According to testimony received from the State Superintendent, Nevada will do very well in this category. I believe the State Department of Education has applied for a new federal Longitudinal Data Systems grant that would greatly help Nevada in this area.

D. Great Teachers and Leaders—138 points. This category has the largest number of points and, according to the State Superintendent, is Nevada's weakest category. It includes providing high-quality pathways for aspiring teachers and principals; improving teacher and principal effectiveness based on performance; ensuring equitable distribution of effective teachers and principals; improving the effectiveness of teacher and principal preparation programs; and providing effective support to teachers and principals.

Two of the weaknesses the Superintendent pointed out were that we do not have alternative pathways for principals, and that the evaluation system is not required for teachers and principals. We have done very well in equitable distribution of teachers in needy schools.

E. Turning around the lowest-achieving schools—50 points. This category includes intervening in the lowest-achieving schools and school districts and turning around the lowest-achieving schools.

According to the State Superintendent, Nevada should do well in this category.

F. General Selection Criteria—55 points. This general category includes such things as making education funding a priority; ensuring successful conditions for high-performing charter schools and other innovative schools; and demonstrating other significant reform conditions.

Here, the State Superintendent has testified to the importance of maintaining the percentage of funds for education. We do have a charter school program, so the State Superintendent notes that we should do well in this area.

SENATOR WOODHOUSE:

During the 2009-2010 Interim, the Legislative Committee on Education has focused its attention on the eligibility requirements and the various selection criteria as set forth in the Race

to the Top application guidelines. The Committee has received testimony that Dr. Keith Rheault, Superintendent of Public Instruction, is working with various parties, including the superintendents of the 17 school districts, to review various actions that could help the State gain more points in its application. In addition, the State of Nevada could enhance its application by making certain changes to regulations or increasing the pace for implementing certain interagency projects.

Eligibility to apply for the Race to the Top funds has been a major topic of discussion over the past few months. One of the requirements of the competition is that there must not be any legal, statutory or regulatory barriers at the State level to linking student achievement data to teachers and principals for purposes of evaluation. Nevada does not currently meet that requirement and therefore, at present, we cannot apply for those funds. We all agree that this is not acceptable.

In response to calls from Legislative Leadership, the Legislative Committee on Education held two meetings in December to address this matter. The first meeting, held on December 11, laid out our options, and we discussed a number of recommendations for potential actions. During the week between the two meetings, the Vice Chair of the Committee, Assemblywoman April Mastroiua, Assemblyman Lynn Stewart and I worked with the school board, NSEA and school district representatives on language that would be agreeable to each of these key parties.

The Committee then held a work session on December 17 to consider revisions to the *Nevada Revised Statutes* that would make Nevada eligible to apply for the Race to the Top funds. We considered three proposals:

1. Remove the prohibition on the use of certain information concerning pupils to evaluate a teacher or paraprofessional. This was a deletion of the 15 words that created the barrier.
2. Add clarification that the information could not be used as the sole criterion for evaluating the performance of a teacher, paraprofessional, or other employee.
3. In addition to the language in the first and second proposals, add clarification that the information could not be used for taking disciplinary action against such an employee.

After substantial discussion during the work session, the Committee approved language incorporating all three proposals. This removes the only barrier the State faces in being eligible to apply for the Race to the Top funds. It is my hope that this language will be strongly considered by the Legislature in the near future. Therefore, as Chair of the Legislative Committee on Education, I place before you option 3, which is the compromise agreed to by the teachers association, school board, and school district representatives. This document passed unanimously by the Committee with one member absent.

The Committee has also looked at statutory changes to increase the potential points Nevada could receive in its Race to the Top application. Although, in general, the State appears to be in a good position to apply for the Race to the Top funds, there are statutory and regulatory changes that could be made that may increase the points we receive. For example, the Superintendent of Public Instruction pointed out a possible need for a statutory change to Section 7 of Senate Bill No. 416, as approved by the 2009 Legislature. That provision requires the temporary suspension of any additional district-wide tests. In the next few months, the Department will be working with the school districts to determine what other measures will be used to evaluate teacher performance for those grades that do not use the current State tests. This temporary suspension of additional district tests may be a factor if the revised evaluation system includes other tests at the district level.

Staff is here to provide a summary of the Committee's framework for its Race to the Top activities. However, before closing, let me state that I firmly believe all of us are responsible for making sure that the next generation of Nevadans receives a quality education. We must hold everyone accountable to ensure that we accomplish this goal.

As a former teacher and principal, I know that students will perform up to their abilities when parents keep their children focused and communities create partnerships to promote opportunity and achievement. We need to transform the relationships among teachers, students, parents, and communities so that we all do our part. As the former director of the Clark County School District's School Community Partnership Program, I witnessed what collaboration between the



private and public sectors can produce. By coming together, we ensure a better education for our children and in doing so, we build a better Nevada.

PEPPER STURM (Chief Deputy Research Director):

As legislative staff, I cannot advocate or oppose any of the proposals before you. I am here at the request of Senator Woodhouse to provide you with further information about the activities of the Legislative Committee on Education during this interim period.

As Senator Woodhouse noted, the Legislative Committee on Education has structured its interim work plan around the Race to the Top application. Mindy has noted the Race to the Top selection criteria that will be used by the U.S. Department of Education to evaluate each state's application. Each of the meetings of the Education Committee was structured to provide a comprehensive review of each category of criteria. This included an overview of each category, an evaluation of Nevada's strengths and weaknesses within each of the specific subcategories and potential actions that can be taken to improve our point score for the application.

To date, the committee has held three meetings specific to the selection criteria, plus the December meetings mentioned by the Chair to craft a recommendation for removing the barrier to apply for Race to the Top funds. The meeting on November 17, 2009, reviewed criterion B, Standards and Assessments. The meeting on January 13, 2010, reviewed criterion D, Great Teachers and Leaders. The meeting scheduled for March 16 will look at criteria for C, Data Systems to Support Instruction, and E, Turning Around the Lowest-Achieving Schools. The meeting scheduled for April 7 will take up the final criteria: A, State Success Factors, and F, General Section Criteria.

The committee has taken certain actions after each of these items and expects to have additional recommendations, especially as the U.S. Department of Education provides feedback to the states on the Phase I applications. I will review the significant actions taken by the Legislative Committee on Education concerning Nevada's Race to the Top Application.

#### Potential Statutory Changes:

1. At its meeting on December 17, 2009, the committee voted to recommend that the provisions of NRS 386.650 be revised to repeal the prohibition on the use of student achievement data and to provide that the information may be considered but must not be the sole criterion in evaluating performance of teachers, paraprofessionals or other employees, or in taking any disciplinary action against an employee.
2. Although the committee took no action, Dr. Rheault pointed out a possible need for a statutory change to section 7 of Senate Bill No. 416 of the 2009 Legislative Session. That provision requires the temporary suspension of any additional district-wide tests. In the next few months, the Department of Education will be working with the school districts to determine what other measures will be used to evaluate teacher performance for those grades that do not use the current State tests. This temporary suspension of additional district tests may be a factor if the revised evaluation system includes other tests at the district level.

#### Committee Letters Urging Action or Regulatory Changes:

1. One regulatory change considered by the committee involves the additional points that might be gained for having alternative certification processes in place for Nevada's professional educators. The State already has such a mechanism for teacher licensure but does not have anything in place for administrators. To address this issue, the committee voted to send a letter to Dr. Rheault and to the Commission on Professional Standards in Education supporting the review and development of an alternative route to administrator licensure with a focus on the needs of rural communities and school districts.
2. The committee also voted to send a letter to Dr. Rheault urging him to take all necessary steps to prepare and submit Nevada's application at the earliest possible date. The committee also called upon Dr. Rheault to accept offers of assistance from Nevada school districts and other interested education stakeholders.
3. The committee sent a second letter to Dr. Rheault asking him to exercise his prerogative to commit Nevada to joining a consortium of states that is working toward developing and implementing common assessments aligned with common core academic standards. The

committee urged him to select a consortium that includes a significant number of states, as provided in the Race to the Top guidelines.

4. According to testimony received by the committee at its meeting on December 11, 2009, the automated System of Accountability Information for Nevada (SAIN) provides or is capable of containing all of the elements listed except the reporting of student-level college readiness test scores. At its meeting on December 17, 2009, the committee voted to urge Dr. Rheault to proceed with modifications to the SAIN to provide for the reporting of such tests.
5. Points can be accumulated for data systems that allow for tracking of graduates of teacher preparation programs when they enter Nevada public school classrooms. Although a related project is currently underway, the committee voted to send a letter to the Board of Regents of NSHE urging them to work with Dr. Rheault to review and put in place any needed changes to improve Nevada's acceptability for Race to the Top funds, and to have Dr. Rheault work with private institutions preparing teachers for licensure as well.

SENATOR WOODHOUSE:

The Legislature holds the means to overcome the barriers to the Race to the Top funds. The application itself is in the hands of Dr. Rheault, and I have asked him to address the progress of the application process.

KEITH RHEAULT (Superintendent of Public Instruction):

The primary reason we are here this afternoon is to consider removing the barrier to using student achievement data towards teacher evaluations. When the issue first came up, there were only four states that had this requirement: California, Wisconsin, New York and Nevada. The other three states have annual legislative sessions and have removed the barrier, so Nevada is the only state that still needs to do this. Most of the other states met the requirement to be eligible because they did not address the use of student achievement in teacher evaluations in statute at all. My proposal to resolve this issue was to remove the 15 words in statute, which would make us eligible for the Race to the Top and allow us to apply. We can live with the compromise language that came out of the committee.

I have a preliminary timeline running from the time the Race to the Top applications were released in November 2009. Applications are due June 1, 2010. We add things to this timeline daily. My staff has spent significant time working on collecting the data that needs to be in place. We have also formed a task force with higher education to address the college-readiness standards. The task force has met several times and has proposed a new definition for college readiness and criteria, and it is on the agenda of the state board for the March meeting with formal adoption hopefully in May. We have met with the Commission on Professional Standards, and they have established a task force to look at the alternative routes for administrators.

We have spent a lot of time working on this. With furloughs and freezes on overtime, the sooner I know we are going to be eligible to apply, we can go full steam ahead with the application.

A key component of this process is getting the buy-in of the school districts. Without that, there really is no reason to go after the grant. In Nevada, because of the formula we have to use to distribute funding, five school districts will receive \$50,000 or less if we are successful and are awarded \$175 million. Also, I need to remind you that the grant money will be spread over four years. It is not \$175 million in a lump sum, and the funding must be spent to meet the requirements of the grant. In those five district, it will be \$12,500 a year, which is not even enough to hire a part-time person. I have committed to getting the districts interested.

Under the terms of the Race to the Top, the State retains 50 percent of the funds approved. They allow States to supplement the formula. It will depend on the final reform actions we want to take. For example, if we choose to expand empowerment schools within the State, I could reserve State funding to provide specific supplements to any district that is interested in forming or starting an empowerment school. We could give them that money separate from the formula. That will encourage other districts to participate.

In looking at the number of states that applied, there were two phases. The first phase was due in January, and 40 states applied. Nevada was one of the ten that did not apply. The only state

that is currently out of the running is Texas, where the governor said they are not applying under any circumstances.

SENATOR HORSFORD:

Nevada is the only state that has a barrier in the law that forbids us to apply. Is that correct?

DR. RHEAULT:

That is correct. That was why we were one of the ten states that did not apply in the first phase.

A final note is that they put a lot of emphasis on school district participation. They will have to sign a memorandum of understanding. They base it on the percentage of school districts participating. Since we only have 17 school districts in Nevada and a number of them will only receive a limited amount of money, a number of the smaller districts are contemplating not participating because of the amount of work involved. However, a second factor in the application allows a state to demonstrate that the percentage of students within the state from participating local education agencies is high. I have commitments from Clark County and Washoe County to participate. With those two districts, we have 86 percent of the students in Nevada participating. I scanned the applications of some of the 40 states that went in, and only one has more than 80 percent of their students participating. So we may not get 100 percent participation, but if we get two or three of the mid-sized districts participating, we will be over 90 percent participation.

SENATOR CARE:

Could you walk us through how the proposed change in Nevada law is consistent with the requirements listed in the Executive Summary you gave us? I am focusing in on the new language in section 1, subsection 1, paragraph (h) of the BDR which states, "The information may be considered, but must not be used as the sole criterion, in evaluating the performance of or taking disciplinary action against an individual teacher, paraprofessional or other employee." Then in the section of the Executive Summary dealing with criterion D, "Great Teachers and Leaders," I am looking at section (D)(2)(ii), which states, "Design and implement rigorous, transparent, and fair evaluation systems for teachers and principals that (a) differentiate effectiveness using multiple rating categories that take into account data on student growth ... as a significant factor." This suggests to me that the use of an exclusive criterion is not necessarily required. Am I reading the right part of the summary?

DR. RHEAULT:

You are reading it exactly correct. The U.S. Department of Education has told other states that have applied that "significant factor" means the piece on student achievement needs to be at least half or 51 percent of the total evaluation score. It should not be the sole criterion, and in fact we should have multiple measures other than student achievement. In the Act itself, the phrase "multiple measures" means we will need to produce a report dividing teachers into highly effective teachers, effective teachers and ineffective teachers based on student achievement.

SENATOR CARE:

Does the language in the BDR give any discretion to the evaluator to change the weight student achievement will have for individual teachers? Can the evaluator set student achievement as 60 percent for one teacher and 80 percent for another, in order to get rid of a teacher they want to dismiss?

DR. RHEAULT:

I would not read it that way. Participating districts would have to redevelop their evaluation systems from scratch because they do not currently use student achievement in evaluations.

SENATOR RAGGIO:

I would like to go further on that same issue. We are talking about eligibility, and we are currently the only state that has this barrier in statute. I think I heard you say that removing it

would clearly make Nevada eligible to apply in this second phase. If we use the language being proposed in this bill draft, we would be the only state that has some qualifying comment with respect to deleting this language. Prior to this Session, I asked if this proposed language had been submitted to the U.S. Department of Education, and whether the modifying language would minimize or impair eligibility. The answer I got was that they will not comment. Is that true?

DR. RHEAULT:

The U.S. Department of Education is not commenting on anything. They think it might give a state an advantage unless they put out comments to every state.

SENATOR RAGGIO:

This is my point. We know for a certainty that if we remove the offending language, there is no question that we are eligible. You said you could live with the modification in the language. Can you give us a 100-percent guarantee that we will absolutely be eligible for Race to the Top?

DR. RHEAULT:

I think I could give a 100-percent agreement that we would be eligible. If the final wording is that we remove the barrier but we cannot use student achievement for discipline purposes, we could lose a few points in the explanation of that.

SENATOR RAGGIO:

I appreciated your answer to Senator Care, because I had honed in on that same language in the Executive Summary, the requirement that student achievement must be "a significant factor" in teacher ratings. That is what troubles me about the modifying language in this bill draft. First, as a lawyer, I am troubled by the phrase, "The information may be considered ..." It seems to me that, if we are going to do anything, it ought to say, "The information must be considered ..." rather than "may be considered." It goes on to state that the information "must not be used as the sole criterion in evaluating the performance ..." I understand what that means, and I understand what our intent here would be if we adopted this. But our intent is not going to be communicated to the U.S. Department of Education. They will look at this and conclude that Nevada has decided student achievement is not or should not be a significant factor.

I am open to being convinced, but at this moment, I think the safest, most realistic thing to do is to just remove the language, as apparently 49 other states have done.

SENATOR HORSFORD:

It is my understanding the states structured the language in a broad spectrum of ways. For example, Wisconsin repealed their firewall but added provisions to prevent dismissal on the basis of test scores, New York allowed their firewall to sunset and California repealed the language. It is not that everybody had this prohibition, and then the Race to the Top application came out and they all had to change it. Some states never had a prohibition. Other states had a prohibition and chose to go about changing their laws differently. Is that not correct?

DR. RHEAULT:

That is correct. I am not aware that Nevada would stick out as the only state with a different type of explanation as to how we are going to use student achievement data. As you mentioned, a number of states use the word "may." Some states thought it would strengthen their application to revise their statutes to say student achievement data must be used in teacher evaluations. Using the word "must" probably makes for a stronger application because of the commitment it shows. However, some states hedged their bets. Apparently, their thinking was that if they did not get the Race to the Top funding, they did not want the local school districts to have to change their evaluation system with no funding to do it. I think that is why some states said "may," which allows it to happen but does not require it in case they do not get funded for Race to the Top.

SENATOR CEGAUSKE:

I would like to go into the Race to the Top money itself. What is the matching funds requirement for Nevada? We are in a budget crisis, and I am concerned about what the State and the school districts will have to provide. Is their money somewhere to provide that?

DR. RHEAULT:

There are no specific matching fund requirements when you read the Race to the Top bill. However, we do get 30 points under criterion (A)(2) for "building strong statewide capacity to implement, scale up, and sustain proposed plans." That is why I said there is not much I can do in writing the application to guarantee we can sustain all the programs funded under this grant. I fully expect to lose some points in that area because of our fiscal situation. When you look at it overall, it has a slight bias toward states that are not fiscally strapped like Nevada. They award 30 points if you can demonstrate you are going to continue the programs you start.

I am not saying we would lose all the points. For example, in our student accountability system, we can do 11 of the 14 requirements right now and are working towards the others, and that can be sustained without further funding. However, there are other items under professional development of teachers and those items required by the law that I could not guarantee the funding. There is another 10 points, under criterion (F)(1), for "making education funding a priority." They determine this by comparing State funding in 2008 to State funding in 2009. Regardless of whether you pass this BDR, we could argue that the State did make education funding a priority based on the fact that you only cut us 5 or 10 percent when there was a 22-percent shortfall in revenues.

It is not that we will not be eligible, but it will weaken our competitiveness. I will have a much better idea when the first round of applications are awarded and I see the point totals it takes to get selected. It will be highly competitive. They have said that anywhere from 15 to 20 states may get funding. If it takes 450 points out of 500 to get the grant and I am giving away 40 points right here, it does not matter how good a grant we write.

SENATOR CEGAUSKE:

With that being said, one of the good things about applying for this is we do have some very good programs we can duplicate. We have been given, in our various interim committees, areas where we could duplicate those programs, know that they work and carry them on. The Education Commission of the State has also offered their services to help us, which is good.

Criteria (B)(1) is adopting common core standards. After sitting on the Council to Establish Academic Standards for several years, I wanted to share my concerns about this. Everybody wants the states to get together on this and collaborate on creating state standards. However, some states fear this will migrate into a national requirement for common core standards, which will bring more regulations and more requirements from the federal level. The states were collaborating in hopes that it would just be the states working together for this. Would you comment on that?

DR. RHEAULT:

If you are not familiar with the Common Core State Standards Initiative (CCSSI), 48 states, including Nevada, signed a voluntary agreement saying we would work together to look at developing common standards in English and mathematics. When the CCSSI was developed, it was done on a voluntary basis. After they were developed, we could provide input by signing on to it. They have not been released yet. They were supposed to be released last week, and there has been a delay in working on them. It said a state had three years to consider adopting them. From my perspective, that was perfect, in that we have aligned our standards adoption with the textbook adoption cycle, and things would have been nicely aligned.

However, Race to the Top does not give us an option. It says if you are applying for Race to the Top funds, you will adopt the common core standards, and it thus went from voluntary to mandatory. That is where some of the fear came in, that move from a voluntary, state-led basis to the U.S. Department of Education attaching themselves to it and saying, "You will adopt these standards."

I have not committed to the State doing this. There are 40 points attached to adopting the CCSSI standards. The only state that has said it will adopt the standards is Kentucky. I do not know how they have done this, since the standards have not yet been released. I would rather go through this in a systematic way. If we do not get the standards done by August 8 when the Race to the Top application is due, I am not going to sell our current standards down the road, since I think they are good. If it makes sense and the Council agrees, after we hold workshops and public input sessions, and if it happens before or after August, that is what we will do. It could cost us some points in the application, but what you are saying is we are going to change all our standards, cause the districts to realign their curriculum to meet the new standards and adjust their textbook adoptions on the hope that we might get funding. If we do not get the funding, there is no money to support the districts in doing this.

SENATOR CEGAVSKE:

There are other questions: Which state's standard are they going to adopt? Are they going to mismatch standards to states? We do not know any of that and will not know. Did they give us another date for the release of the standards?

DR. RHEAULT:

I had an e-mail last week saying that they hoped to get the standards out at the end of the first week in March. I am expecting them by March 7.

SENATOR TOWNSEND:

I believe you stated criterion D, Great Teachers and Leaders, was the weakest area of our application. It is my understanding from individuals in both business and education that it is going to take a significant amount of person-hours to get this application filled out correctly to give us a chance. Do you have that capability in your shop at this time, or are you going to have to hire grant writers? How comfortable are you with filling this out correctly?

DR. RHEAULT:

We are comfortable. The U.S. Department of Education estimated it would take 640 man-hours to complete the application. I put it to my staff as a priority that this will get done. It is not going to be the Nevada Department of Education that stops the application from being competitive. We have had a number of volunteers from school districts, the Nevada Foundation and private individuals. Many members have been contacted by John Lagatta, who is providing some assistance and is actually summarizing all 40 states. I have had nothing but support, saying they would assist in any way they can, and we plan to take them up on that. We are putting together four working groups, one for each of the four main criteria areas, and we are inviting anyone to those who can help us develop the reform efforts.

The actual writing of the grant application is technical. I have a staff grant writer, but both Clark County and Washoe County have volunteered the services of their grant writers. The Nevada Foundation has a grant writer. I think we are good on the grant-writing process. My concern is getting enough public input to make sure these are the reform efforts. For example, this last week I postponed a couple of public review sessions so I could be here for this Special Session. If I had someone who could facilitate public input, those public sessions could continue when I was away. That would be the only assistance that would be helpful. I am not concerned about protecting my turf; I do not care who does the work, as long as we collect the information and make sure it is right.

SENATOR TOWNSEND:

Thank you for that answer. This is new territory for all of us. If you find you run into difficulties, please let the co-chairs of this Committee know so they can disseminate that information to the rest of us. Maybe we can bring some other resources to bear to try to help.

SENATOR HORSFORD:

Senator Woodhouse, I understand this is now something under your purview as the chair of the Legislative Committee on Education, so that you are receiving regular updates on the status of the Race to the Top application. Is that correct?

SENATOR WOODHOUSE:

Yes. Dr. Rheault made a report to us at our last meeting, and his progress reports are on all our agendas for the future. We continue to stand ready to assist as well.

SENATOR TOWNSEND:

We all want to be helpful, so please keep us informed. This is a substantially greater endeavor than some people might think.

I have the same concern my colleagues voiced regarding the added language in the bill draft. In section 1, subsection 1, paragraph (h), the word "may" means the information does not have to be considered at all. I am also concerned because we went from talking about teacher performance to talking about disciplinary actions against teachers, paraprofessionals and other employees. How did those other groups get in here, and what do they have to do with this application?

SENATOR WOODHOUSE:

This was an effort to bring a number of parties together for a compromise so we could find a way to remove the barrier. This is what we were able to do.

SENATOR TOWNSEND:

Did you discuss the option of simply removing the offending language? I was not there, and I am curious what the dialogue was.

SENATOR WOODHOUSE:

The option to remove the 15 offending words and stop there did come before the committee, but there were not the votes to pass it. That is why we continued to work on getting a compromise.

SENATOR TOWNSEND:

That is fair. Thank you.

DR. RHEAULT:

I am comfortable with the word "may" being in statute. For the purposes of the application, it will not be an option; if a school district chooses to participate in the funding, they must use the student achievement data in teacher evaluations. It will be a requirement to participate.

SENATOR TOWNSEND:

I do not want to argue with you, but the important thing is what is in the State law. I am not comfortable with just trusting that everything will happen the way we want. We want to do this right and give you the tools to accomplish it without bringing in extraneous issues. Those two added lines are extraneous to the whole debate, and I am not comfortable leaving all that in.

HEATH MORRISON (Superintendent, Washoe County School District):

I came to Nevada as a part of Washoe County School District's reform agenda. We have a board of trustees who have decided to challenge the status quo and build a better educational system in one of the largest school districts in the country. However, change is hard, and Race to the Top gives us 4.3 billion reasons to change.

It is important that we not do things just because they look easy or convenient. If the requirements of Race to the Top did not pass the sniff test, if we did not believe they would make public education considerably better, why would we do them? In Washoe County, we are excited about the alignment of our reform agenda to Race to the Top. How could we not be excited about standards that will raise the level of expectation on all students and create

accountability systems to measure how we are doing against those standards? We are not afraid of accountability; we welcome it. How could we not want to institute reforms that will guarantee we will have effective leaders in every school and great teachers in every classroom? We think that is the right approach to educational reform. How can we not have the courage to admit that despite good efforts, we have some schools that are not doing right by our children? We have to have the courage, conviction and foresight to address that.

When we look at Race to the Top, we believe it is the right thing to do in Washoe County. We believe it is the right thing for Nevada to submit an application. That is why we pledged our support to Dr. Rheault to be one of the leaders in this district to help apply for that grant, not just for the 64,000 students in our district, but for all students in Nevada.

I had the opportunity to be in the schools today, and I got a lot of questions about what was going on in Carson City. The biggest question I got was whether Race to the Top was going to be discussed, and whether the special session would allow Nevada to be eligible. A lot of people do not understand why we would not apply for it. Senator Townsend asked if this would be a difficult application. It is one of the most difficult grants I have ever seen. The estimate of 600-plus hours to complete the application is legitimate. That is why Washoe County and Clark County have joined together with Nevada's Department of Education, along with many others, to facilitate the process: because we think it is the right thing to do. There is tremendous support to get this done.

It is true that we may not get the grant. However, I have met many of you in this room, and you are people who believe in doing what is right rather than what is easy. This is the right thing to do for the children of Nevada. Even if we do not get the Race to the Top grant, we are going to learn some things about reform and how to talk about public education that will make us a better state and will make all 17 school districts better. We will be thinking about reform.

I had the opportunity to have a private conversation recently with U.S. Secretary of Education, Arne Duncan. He said that this is how federal grants are going to happen in the future. The provisions in Race to the Top are not a one-shot deal. They are reform-minded, and many of our current federal grants are going to follow a similar reform-minded pathway. Even if we do not get Race to the Top, we will be better prepared for federal money in the future by going through the process here and now. That change is coming at the federal level, and we need to bring it to the state and local level.

I have also heard it said that we should not apply for Race to the Top because we cannot afford it. What happens when the grant runs out and we have programs we can no longer support? If we get this grant, we could get upwards of \$175 million over four years. If the grant runs out without producing demonstrably better results anywhere in Nevada, we would not want to continue it. But if the grant considerably improves public education for all of our children, allowing us to raise expectations and close or eliminate the achievement gap, are we really going to believe we cannot find a way to continue that and provide a better tomorrow for our children?

I am probably one of the most recent Nevadans who has come before you, and I do consider myself a Nevadan. In any other state I have lived in, I have never heard people say, when times get tough, "We are all Marylanders; we can do this," or "We are all Virginians." But since I have come to Nevada, I have heard many people say, "We are all Nevadans, and we can do this." I believe that if we apply for this grant and we get it and produce a better school system across the 17 districts, we will all come together to better serve our children. I come before you today hoping we will find a way to make ourselves eligible for this grant, get it and create the better schools we all want.

SENATOR WASHINGTON:

Why do we need this particular grant to do what is right? Based on what I have in the application and what I have seen on the Internet, some of the requirements of Race to the Top we have already implemented. We are already trying to provide the best education for our students in this state. Why is it necessary for us to pass this legislation to access this grant money? We have set standards; we have looked for the best and the brightest teachers; we have tried to close the achievement gap. All of the things the application requires us to do to submit an application, we have been working on for a number of years. I have seen the way the federal



government work. It is almost a bait-and-switch operation. They hook you, and then they switch to something else.

What concerns me the most is the sustainability issue. There are requirements in there that after the grant money is gone, the State must maintain and fund the programs themselves. It looks like a road that leads to more federal mandates and federal control. I could be wrong, but what I have heard so far is making all the red flags go up. Convince me I am wrong.

DR. MORRISON:

This goes to my answer to the question of why we should be applying for this. It is responsible to ask whether we can sustain these programs. However, whether we are the best funded state in the country for education or the worst, if these are the right things to do, we have to do the best we can with what we have got, as Thurgood Marshall said. If creating common standards at high levels, creating accountability systems to measure how we are doing, putting great teachers and great principals in every school, and having the courage to turn around poor-performing schools are the right things to do, and I believe they are, why would we not apply for this grant, use these new monies, at a time when we are having to make reductions in our public education system, to ramp up what we have committed to do? If those monies are not there four years from now, we have a responsibility as leaders to continue to do them.

People tell me to run my school district like a business, and it always makes me want to know which business, since we are doing much better than many businesses right now. But what I love about the way business is run is that they understand you need to commit to new resources if you want to have a better future. Race to the Top is \$175 million we can bring to the State right now to do this thing called public education better than we have ever done it. Even if those monies run out and cannot be replaced, we have an obligation to the 17 school districts to continue to do those things because they are the right thing to do for children.

I talk about reform all the time because it is desperately needed. I am proud of our school district; we have great employees and really good schools. However, we need to get better. It is hard to talk about reform because reform means change. As our budget is challenged right now, every dollar we try to put toward making a better school district will be challenged with, "How can you afford it?" Even if it is the right thing to do, you have to use political capital to convince people it is the right thing to do because all they will see is the dollars that are not sustaining things that have always been part of the way we have done things.

The thing that is exciting about Race to the Top is it is very prescriptive. If it was asking us to do things we did not support, I would be hoping you would say no, it is not right for Nevada. But again, better accountability systems, higher standards, great teachers and principals in every school and turning around poor-performing schools are all good things. It will be outstanding to have reform-minded dollars right now, so that if people ask why we are spending money on these programs, we can say that it is because this money has to be used for this purpose. You cannot supplant the money. It will be used to reform and make a better school system for every child.

SENATOR WASHINGTON:

Would your commitment to reform change if you did not get the grant?

DR. MORRISON:

No. In Washoe County, we are committed to change.

SENATOR HORSFORD:

If we were in the Education Committee, Senator Washington, I would debate you on this. Under No Child Left Behind, we got a lot of federal rules and no money. Now at least there is a commitment to fund the reforms. That is an improvement over the situation of the last eight years.

SENATOR CEGAVSKE:

We did get federal dollars for No Child Left Behind, though it was not as much as we wanted.

I have a question for both districts. If we do switch to the common core standards, how will that affect your district?

JOYCE HALDEMAN (Associate Superintendent, Clark County School District):

Our curriculum staff have been working on the common standards for quite some time and have been part of the driving force to do that. We are gearing toward the changes that need to be made. Certainly, a change like that will be difficult; it always is, and change that is easy is not much of a change. We think we are up to the challenge, and we are committed to making those things work. It will be a surprise for everyone when we adopt the common core standards. Some things will be left behind that were important to some teachers, and other things will be added to the table. However, changing for the better is part of what we do as an organization.

DR. MORRISON:

We are currently in the process of looking at our curriculum and the standards. We are trying to increase the rigor for all schools and all children whether Nevada adopts the common core standards or not. We are looking at the common core standards, and we are looking at the standards for AP and IB classes. We are doing that regardless of what happens with Race to the Top.

SENATOR CEGAVSKE:

Generally, those standards are brought to the Education Committee. After we consider and update them, they are brought to the school districts, and you adopt them and make the changes. Are you going above and beyond what we send to you?

DR. MORRISON:

Yes, that is correct.

SENATOR CEGAVSKE:

You are making them more rigorous. Is this something the Department of Education has to approve?

DR. MORRISON:

We are going to be aligned to the Nevada standards. However, we believe it is the responsible thing to do to add rigor to what we are currently doing in Washoe County. We are in partnership with the state Department of Education. We are not moving away from the Nevada standards; we are just trying to increase the level of rigor for all schools and all children.

SENATOR CEGAVSKE:

Are you doing that through professional development?

DR. MORRISON:

We are doing that through reform committees, improvement of our strategic plan and revisions to the curriculum.

MS. HALDEMAN:

Any of you who have interacted with Arne Duncan will know that he is going to do business differently than his predecessor. When you want to enact change, you can use a carrot or a stick. We have seen the stick approach in the past, but Mr. Duncan clearly operates with the carrot. There are some funds available to us if we are willing to meet the standards he has outlined. That is clearly demonstrated in the Race to the Top application as well as all the other applications for ARRA dollars. If we can demonstrate that we are going to meet certain core standards, the money is available to us. That is not going to change. It is not that we will be punished if we do not do those things. We can stay the way we are and continue to do business as we have. However, if we do, we will not receive the funding that is available to help us with those things. If we are willing to meet the challenges and change our way of doing business, there may be money available to us.

I also wanted to put on the record a clarification. There has been some question about whether the Clark County School District supports the compromise language worked out in the Interim Committee on Education. The answer is yes, we do. We started out just trying to remove the 15 words; we thought that was the cleanest and easiest way to meet the standard. However, the compromise that was worked out is fine for us. As I talked to staff in my Human Resources division, they could not envision a situation in which only student achievement would be used as a basis for disciplinary action. It is always matched with something else. For that reason, the language saying it may not be used as the sole criterion is fine with us. We do not see any problem with implementing it.

We strongly encourage you to adopt that language and let us move on with this application.

SENATOR MCGINNIS:

Senator Townsend mentioned his concerns with the language. Are we mincing words with this language? Dr. Morrison, you spoke about how difficult this application process is. Are you concerned that we are going in with watered-down language when we are going to be up against states that are not going to mince words?

DR. MORRISON:

I concur with my colleague. This is a competitive state grant, and we have to look at all the factors that make us competitive. I am encouraged by Dr. Rheault's statement that between Clark County and Washoe County, we have almost 90 percent of the students in the state. That puts us ahead of most states in terms of support by the school districts. The people reviewing these applications look for a lot of different things. We support the language in this bill draft because buy-in by the associations is also an important factors for this grant. Mr. Duncan firmly believes it is one thing to get a grant and another to execute it. You can implement a grant like this at people or with people. It is very important for a grant like this to have buy-in at all levels, with the majority of students represented, in collaboration at the state and local level and in collaboration with our associations. When our board of trustees discussed this issue, our local teacher's association stated that if we became eligible with this language, they will work with us on the evaluation systems. That is the way to do this.

I talk about reform a lot, but we do it in partnership with our associations. The best way for this grant to go forward is for it to have the language proposed, and with the buy-in from the majority of districts and associations. That will give us the best competitive edge, and I believe we have a shot.

SENATOR LEE:

If we get this money, are there yearly benchmarks we have to meet, or do we get it for four years because we qualified in year one?

DR. RHEAULT:

The plan of the grant is that we would be approved for the total amount. In the grant, there are things you cannot get done the first year. For example, I would envision the teacher evaluation changes taking into the second year. We have to provide individual budgets by year as to when we plan to meet certain goals, and they will reimburse us as we complete those goals. We are not going to draw the full \$175 million at one time.

SENATOR LEE:

So when you qualify for year one and you get the money, you know what to expect for the next three years. There will not be any changes, so that means you will not be back to us because the rules have changed and now you need more money.

DR. RHEAULT:

We will know what was in our application. That is what we will be held to. We will know that we have the money; we will not have to go back in year 2 to rejustify.

SENATOR RAGGIO:

Did I hear you say that some states have removed this language but sunsetted it? Are you saying we could take this language out, get the grant and then put the language back in? What would be the effect of that?

DR. RHEULT:

I believe the information about sunsetting had to do with New York, which was one of the four states that had a barrier. They got off the hook because the barrier to using student achievement data had a sunset date of this year.

SENATOR RAGGIO:

Collateral to this, Mr. Sturm indicated you had some suggestion that we might want to look at regarding Senate Bill No. 416 of the 75th session, which required us to temporarily suspend additional district-wide tests. Is that something we should look at, or is that going to be a devaluing situation insofar as point consideration?

DR. RHEULT:

I do not think it will. I suggested that as one option we may need to look at. Senate Bill No. 416 sunsets June 30, 2011. We would not get to any test development or need for a new test before that time. When I went back and read that bill closely, it has a provision excluding tests required by state or federal law. If we are approved for this grant and a school district signs onto it, I would interpret that wording in statute to mean the tests are a requirement of federal law if you want to participate in the grant. I do not think we need to change anything during this special session. If we find it will be helpful and you do not plan to sunset the bill draft, we might have some discussion.

SENATOR RAGGIO:

I have another question about the impact of this money. All of us are concerned not only with the shortfall in the current biennium, but with the shortfall in the upcoming biennium, which is predicted to be three times the size of this one. For example, the room tax money that now goes to the General Fund will go to supplement K-12 funding in the next biennium, which means some \$300 million will not be available to the General Fund.

With regard to the limitations of the usage of this grant money, is it limited to things specific to accountability, standards and so on? Is there some indication that it can only be used to supplement existing funding, not supplant it? What are the restrictions?

DR. RHEULT:

Whatever we say we will use the money for in the application, that is what we will be held to. For example, I can imagine our application expanding the use of empowerment schools because this is a strong area we can build on. In 2009, we had \$10 million for empowerment schools in our budget that had to be reverted. We can build it into this grant that we are going to use this money for empowerment schools, even though we reverted some, without fear of saying it is not supplemental. However, if the state previously funded items similar to that and funding gets pulled because Race to the Top is funding it, that might raise questions in the federal government. Because of all the reversions over the past few years, I am not sure there are any programs other than full-day kindergarten and class-size reduction that have not been touched.

CRAIG STEVENS (Nevada State Education Association):

Since well before the inception of Race to the Top, the issue of tying test scores to teacher evaluations has not been an easy one. The NSEA fully supports the collaboration that occurred among all stakeholders on this issue with regards to Race to the Top. Through the interim legislative process, a compromise was reached. With this language, Nevada will finally become eligible to apply for these funds. The NSEA fully endorses the language produced by the Interim Legislative Committee on Education and believes the collaboration we went through will help to score more points for our Race to the Top application.

ALISON TURNER (President, Nevada Parent Teacher Association):

The Nevada PTA supports the recommendation of the Legislative Committee on Education. We are very appreciative of all the hard work by many stakeholders to hammer out an acceptable compromise that also opens the door to this opportunity for Nevada. In terms of teacher compensation, the Nevada PTA supports the development of research-based strategies and/or programs that identify established criteria and compensate the most effective teachers, including this type of pay-for-performance model. We also note that this must be carefully structured to take into account our phenomenal rate of transience, both within school districts and in and out of the state.

In addition, Nevada is no stranger to the will to adapt and reform. During the 2009 Session, this Legislature approved a statewide pilot to develop a pay-for-performance model, a pilot to develop an empowerment school model, a statewide parental involvement coordinator position to help build on work already being done in several school districts, and additional innovation grant monies to schools and school districts. All were eliminated in the first round of budget cuts.

All reform must take the crucible of local conditions into account. They have an enormous impact on students, teachers, schools and school districts. These conditions include transients, transfer rates and the 100-plus languages supported by Nevada school districts.

It should be noted that we are eligible for a range of funding under Race to the Top, from \$6 million to \$175 million. This is an opportunity, not a panacea.

Committee of the Whole in recess at 5:01 p.m.

Committee of the Whole back in session at 5:12 p.m.

SENATOR CARE:

Momentarily, when the Chair asks for a motion, I will move for the introduction of what has been labeled as BDR 34-29. What is being handed out now is an alteration to the first draft of the BDR that was distributed earlier today. The only change is the deletion of the word "may" and the insertion of the word "must" in section 1, subsection 1, paragraph (h). The provision now reads, "The information must be considered, but must not be used as the sole criterion . . ." That language is consistent with existing law. It also comports with the remarks made by Dr. Rheault that the language would be contained in the application itself.

Senator Care moved to introduce BDR 34-29.

Senator Wiener seconded the motion.

Senator Raggio moved to amend the motion to delete the phrase "but must not be used for the purpose of evaluating an individual teacher or paraprofessional" from section 1, subsection 1, paragraph (h) of BDR 34-29 without adding any further language.

Senator Townsend seconded the motion.

The motion failed. Senators Mathews, Horsford, Care, Coffin, Schneider, Carlton, Parks, Breedon, Lee, Copening, Woodhouse and Wiener voted no. Senator Nolan was absent for the vote.

The motion to introduce BDR 34-29 carried. Senators Townsend, Amodei, Rhoads, Washington, McGinness, Olsen, Cegavske and Nolan voted no.

SENATOR RAGGIO:

I voted aye for one reason: it is necessary that we remove the offending language. However, I want to be on record as saying that I think we should have only taken out the barrier language rather than qualifying it.

Senator Lee moved to do pass Senate Bill 2.

Senator Woodhouse seconded the motion.

The motion carried. Senators Townsend, Amodei, Rhoads, Washington, McGinness, Olsen, Cegavske and Nolan voted no.

On the motion of Senator Wiener and second by Senator Breeden, the committee did rise, and report back to the Senate.

### SENATE IN SESSION

At 5:36 p.m.

President Krolicki presiding.

Quorum present.

### MESSAGES FROM THE GOVERNOR

STATE OF NEVADA  
EXECUTIVE CHAMBER  
CARSON CITY, NEVADA 89701

February 24, 2010

THE HONORABLE STEVEN A. HORSFORD, *Senate Majority Leader*, Nevada State Senate  
401 South Carson Street, Carson City, Nevada 89701

*To the Honorable Members of the Nevada State Senate:*

The Nevada State Constitution, in Article 5, Section 9, provides that the Governor may on extraordinary occasions convene a Special Session of the Legislature by proclamation, and when convened in Special Session the Governor may request the Legislature to consider matters other than those set forth in the call.

I have therefore issued an amendment to the proclamation calling the Legislature into a Special Session to include certain policy issues relating to education reform, collective bargaining and water rights, and terminating the Special Session no later than 11:59 P.M. Pacific Standard Time on Sunday, February 28, 2010.

My staff and I hope to work with you over the next few days on these important policy issues.

Sincerely,

JIM GIBBONS  
*Governor*

### OFFICE OF THE GOVERNOR EXECUTIVE ORDER

#### FIRST AMENDED PROCLAMATION BY THE GOVERNOR

On February 23, 2010, I, Jim Gibbons, Governor of the State of Nevada, through my proclamation, convened a Special Session of the Nevada Legislature. Section 9 of Article V of the Nevada Constitution provides that the Governor may request the Legislature, when convened in Special Session, to consider matters other than those set forth in the call. With this First Amended Proclamation, I am exercising my constitutional authority to bring additional legislative business to your attention.

Therefore, during this Special Session, I ask the Legislature to consider the following additional matters:

1. Revising NRS 386.650(1)h) by eliminating language prohibiting the use of student test scores for the purpose of evaluating teachers or paraprofessionals;
2. Amending Chapter 288 of NRS regarding collective bargaining to allow for re-opening of collective bargaining contracts at the discretion of local governing boards, to provide that collective bargaining discussions are subject to Nevada's Open Meeting Law, and to specify that all collective bargaining contracts that receive funds from the State general fund are subject to final approval by the State Board of Examiners;

3. Revising Title 34 of NRS by adding a new chapter that provides for scholarships available to Nevada resident students in grades 1-12 who attend private schools;

4. Revising NRS 388.700-388.720 by eliminating the mandatory language relating to the reduction of pupil-teacher ratio in certain classes;

5. Revising Chapter 385 of NRS by eliminating the elected State Board of Education and creating an education advisory board with certain powers and duties and requiring the State superintendent of public instruction to be appointed by and report to the Governor;

6. Revising Title 34 of NRS, specifically, NRS 389.500-389.570 by eliminating the Council to Establish Academic Standards for Public Schools and transfer its duties to the State Board of Education and Department of Education; NRS 388.780-388.805 by eliminating the Commission on Educational Technology and transfer its duties to the State Board of Education and Department of Education; NRS 385.3781-385.379 by eliminating the Commission on Educational Excellence and transfer its duties to the State Board of Education and Department of Education; NRS 385.600-385.620 by eliminating the Advisory Council on Parental Involvement and transfer its duties to the State Board of Education and Department of Education; NRS 218.5356 and NRS 385.359 by eliminating the Legislative Bureau of Educational Accountability and Program Evaluation;

7. Revising provisions in Assembly Bill 522 considered in the Seventy-Fifth Session of the Legislature to allow energy efficiency projects to be eligible for the ARRA revolving loan program; and

8. Revising NRS 533.370 concerning the time in which the State Engineer must act upon a water rights application so that subsection 4 applies retroactively to all applications filed with the State Engineer between July 1, 1947 and July 1, 2003 and so that provisions of subsection 8(d) apply retroactively to pending applications and applications/permits under appeal involving certain transfers of groundwater.

The Special Session shall end no later than 11:59 P.M. Pacific Standard Time on Sunday, February 28, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 24th day of February, in the year two thousand ten.

JIM GIBBONS

GOVERNOR

ROSS MILLER

SECRETARY OF STATE

#### INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Senate Bill No. 2—AN ACT relating to education; eliminating the prohibition on the use of certain accountability information concerning pupils for the evaluation of teachers and paraprofessionals; revising provisions governing the use of such information for the evaluation and discipline of teachers, paraprofessionals and other employees; and providing other matters properly relating thereto.

Senator Horsford moved that the bill be referred to the Committee of the Whole.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee of the Whole, to which was referred Senate Bill No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

STEVEN A. HORSFORD, *Chair*

GENERAL FILE AND THIRD READING

Senate Bill No. 2.

Bill read third time.

Remarks by Senators Raggio, Nolan, Amodei, Washington, Woodhouse, Cegavske and Carlton.

Senator Raggio requested that the following remarks be entered in the Journal.

SENATOR RAGGIO:

In the Committee of the Whole, I offered an amendment which would have removed the language contained in NRS 386.650 that prevents the State from qualifying to submit an application for "Race to the Top" funding. The amendment I proposed would simply remove the phrase, "... but must not be used for the purpose of evaluating an individual teacher or paraprofessional," in section 1, subsection (h). That motion was not passed. I want the record to indicate that the motion was made.

As to the bill before us, I will reluctantly vote in favor because it is essential if we are to qualify to be able to submit an application in which the language has been removed. I believe there may be a risk in the qualifying language in the bill before us; I hope that will not be the case.

SENATOR NOLAN:

I voted against the motion in the Committee of the Whole. My concerns about this bill are similar to those of Senator Raggio. By including some of the discretionary language in this bill, we actually create more of a hurdle for ourselves to be approved for this program the first time around in what has been described as an extremely competitive bidding process against other states. I felt we should not include any language other than the absolute necessary language we need to have.

Having said that, I also concur with Senator Raggio that the funding for this is essential, and therefore I will be voting for the motion.

SENATOR AMODEI:

I want to echo these concerns. When Senator Raggio talks about risk and including additional language and other members talk about creating hurdles and competition from other states, the objective here is to provide some eligibility to apply in a highly competitive environment for federal funds. The testimony in the Committee of the Whole was clear: If we do the redaction that was in the original bill, we comply with that. I did not hear any testimony from the Legislative Counsel or anyone else to say that the language that was added will not hurt us in that competition, that it will be fine for the purposes of those evaluations.

I ask you, in a time when we are facing a budget shortfall like this, why we are creating problems for the application for as much as nine figures of federal funding to help with education. It seems to me to be an awfully dangerous thing to do when you are trying to access money and be competitive with dozens of other states. I cannot conceive of a reason why, with the state's money situation, we ought to countenance this. You can probably guess how I am going to vote.

SENATOR WASHINGTON:

I stand in opposition to this bill as well, not so much for the added language but on the overall merits of the bill as a whole. These priorities are listed in the application process for the "Race to the Top" program: a comprehensive approach to education reform; an emphasis on math, science, engineering and technology; innovation in improving early learning outcomes; the expansion of statewide longitudinal data systems and alignments; and school-level coordination for reform and innovation in learning.

As a whole, the State of Nevada has done a remarkable job in trying to achieve these objectives. We have gone through several sessions to make sure our standards were adequate,



that we would try to close the achievement gap, that we would put assessments in place, that we would provide the best teachers possible with incentives, that we would evaluate our students in their learning.

I believe we are abdicating our responsibility to the federal government. I am not one to stand up and say I am a states' rights person; but under the Nevada constitution, it is the responsibility of the Legislature to provide an adequate education for every student in our domain. This "Race to the Top" grant usurps the responsibility given to us by that constitution. I look at it as being another bait-and-switch. The inability to meet some of the sustainability requirements puts an undue burden upon our budget process.

I believe it is the wrong avenue we are travelling down. It puts the State in the wrong position, and it gives more control and more leverage to the U.S. Department of Education to dictate the terms by which Nevada is going to administer its education priorities. I will vote against this bill on those philosophical bases. I believe it is the wrong measure.

SENATOR WOODHOUSE:

I will be brief, because I know you all heard a very long presentation by myself and staff members on S.B. 2 in its original form and the questions that were asked. I would just remind the body that in the question period at the end of the presentation, Dr. Rheault and the superintendent from Washoe County School District did a very fine job indicating that many people, the stakeholders, have been working together on this. That makes this opportunity for us even stronger because we have been working together.

The bottom line is that S.B. 2 will allow the State of Nevada to remove the barrier that keeps us from applying for the "Race to the Top" funds. It allows us to put in place the mechanism for the state superintendent and the school districts to move forward in completing that application so we have an opportunity to be competitive along with the other states in pursuing the available funds: somewhere in the area of \$60 million to \$175 million. Nevada definitely needs this kind of money. More importantly, the children in our schools definitely need this kind of money. We must open the door so the state can move forward.

SENATOR CEGAVSKE:

I rise in opposition to the amendment put into Senate Bill 2.

There is no debate that the current law disqualifies Nevada from receiving "Race to the Top" funds because the statute specifically prevents us from holding teachers accountable for the performance of their students. Fortunately, there is a remedy. We could have simply removed 15 words from existing law that would have allowed us to measure a teacher's performance by how well students perform in the classroom.

But that is not what we did. This amendment adds additional words that will continue to prevent us from judging a teacher's performance based on student achievement. In reviewing the testimony, I could not find a good explanation for adding this additional language that, in my view, diminishes the likelihood that Nevada will ever receive "Race to the Top" funds.

We knew coming into this Special Session that qualification for "Race to the Top" funds requires us to hold teachers accountable. And we had a simple remedy. Unfortunately, teacher union bosses opposed the simple remedy and insisted on adding language that waters down teacher accountability and jeopardizes Nevada's chance to receive "Race to the Top" funds.

The amendment clearly puts the interests of union bosses over the interests of our children.

I am not going to accept less than our children deserve. I will be voting no.

SENATOR CARLTON:

I rise in disagreement with the previous speaker. This is the way we are supposed to do things: the committee met, they held hearings, they talked to each other and they came up with a compromise they thought was the best thing for the children of this state. This was not rammed through; this has been thoroughly vetted in legislative hearings, in the newspapers and here today. Everyone has been very well aware of how important this money is to the State right now. I think the committee did a good job, and I congratulate the committee's chair on the work she has done and the compromise to get these very diverse groups together to work towards what is good for our kids.

I support the measure, and I think we are doing the right thing.

Roll call on Senate Bill No. 2:

YEAS—16.

NAYS—Amodei, Cegavske, McGinness, Olsen, Washington—5.

Senate Bill No. 2 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS  
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bill No. 1; Senate Resolutions Nos. 1, 2, 3; Assembly Concurrent Resolution No. 1.

REMARKS FROM THE FLOOR

Senator Care requested that his remarks be entered in the Journal.

I think this is the fourth time I have done this in my legislative career going back to the previous administration. The first amended proclamation contains the language, "The Special Session shall end no later than 11:59 p.m., Pacific Standard Time, on Sunday, February 28, 2010." My remarks should not be any kind of an indication of how long I want to stay here, but as I have pointed out before, it has been the position of this body and our legal staff that the Executive Branch cannot tell us when we are going to adjourn a Special Session. I just want that in the record for legislative history.

Senator Horsford moved that the Senate adjourn until Thursday, February 25, 2010, at 9 a.m.

Motion carried.

Senate adjourned at 5:54 p.m.

Approved:

BRIAN K. KROLICKI  
*President of the Senate*

Attest: CLAIRE J. CLIFT  
*Secretary of the Senate*

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