

NEVADA LEGISLATURE

Twenty-sixth Special Session, 2010

SENATE DAILY JOURNAL

THE THIRD DAY

CARSON CITY (Thursday), February 25, 2010

Senate called to order at 9:48 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Dear God in heaven. Today we pray for Your gift of contentment, that we may not waste our time desiring more, but learn to use and enjoy what we have.

We may not know everything, but we may know You and Your will. We need not be rich to be generous, nor have all wisdom to be understanding. Our influence may not be great, but it can be good. Our speech may not be eloquent, but it can be truthful and sincere. We cannot all have good looks, but we can have good conscience, and having that, we shall have peace of mind and need fear no man.

May we be kind one to another, tender-hearted, forgiving one another, even as You, for Christ's sake, has forgiven us.

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.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 24, 2010

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 2.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 1.

LUCINDA BENJAMIN
Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 1.

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

Motion carried.

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 9:52 a.m.

IN COMMITTEE OF THE WHOLE

At 9:53 a.m.

Senator Horsford presiding.

Considering issues relating to the State's budget shortfall.

The Committee of the Whole was addressed by Senator Horsford; Brenda Erdoes, Legislative Counsel; Senator Raggio; Andrew Clinger, Director, Department of Administration; Senator Care; Senator Carlton; Teresa Thienhaus, Director, Department of Personnel; Senator Lee; Aldo Vennettilli, AFSCME; Mark Murphy, AFSCME; Senator McGinness; Senator Washington; Senator Coffin; Senator Wiener; Mike Wilden, Director, Department of Health and Human Services; Romaine Gilliland, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services and Senator Breeden.

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

SENATOR HORSFORD:

We are going to take up the furlough bill draft request, BDR S-16.. We will start with the overview of the proposed language by Legal Counsel and the Director of the Budget Office as well as Mark Krmpotic from the Fiscal Division.. They will discuss the sections of the bill draft. We can ask questions as they go through the sections or on the bill draft as a whole.

BRENDA ERDOES (Legislative Counsel):

I will discuss the provisions beginning with section 1. In this provision as well as the next section, the underlined text that you see in the bill draft is not in NRS but is instead these sections from the appropriations bill from last session, which was Chapter 391. Sections 3, 4 and 5 actually set up the furlough program for state employees. This bill draft amends those sections. Because this bill will not become effective until July 1, 2010, that first date change is there.

The first change that is actually made is to switch the employees of the legislature, the LCB and the Budget Division of the Department of Administration to a more flexible manner of using the furlough days. Currently they are under the plan with the bulk of the executive branch employees which uses one furlough day in its entirety each month. With the people just named here being included in the portion of the bill, like the classified employees, they can use separate hours of the furlough leave to make up the total day each month. They can also use them in the same month and they can be aggregated. The reason for this change is that both the employees of the budget division and the employees of the legislature (LCB) are impacted by the legislative session in the second year (2011 of the fiscal year). It would be difficult for all these employees to take a furlough day during session. What we are going to do is to take the furlough days and bunch them before and after session. Those employees would not be gone during session, and the same for the budget division.

The next change starting with subsection 2 is the change from eight hours to ten hours. Currently the furlough plan is that all state employees are required to take eight hours of furlough leave. This changes to ten hours of furlough leave per month.

These are the same basic changes being carried forward. The 120 hours is 12 months times 10 hours where formerly it was 96 hours, or 12 months times 8 hours. The rest of the changes are carrying forward the same two changes I just described to you: from eight to ten hours and including the legislature, LCB and budget division in the provisions that go with the classified employees.

Subsection 4 is authority for local government employers to require their employees to take unpaid furlough leave. None of the specifics of this bill are carried forward to the local government employers. This is just the authority for the local government employers to require unpaid furlough leave of their employees. Subsection 8 provides that the provisions of subsection 4 do not apply to the extent that those provisions would conflict with the provisions of collective bargaining agreements. That is just to avoid potential impairment of contract issues. That is the three things that section 3 does.

In section 2, these are just reference changes we had to go back and make. Paragraph (b) also makes the change that if an employee takes furlough leave, their pay is docked by that amount. Those employees who had been granted an exemption from the furlough plan and did not have a pay cut previously, starting July 10, 2010, if you are working for an agency for which a furlough exemption was granted, your salary will be cut by the 5.75 percent which is the same percentage as if you had a furlough. The rest of these provisions provide that pay cut would be treated in the same manner the furlough days are treated so the employees are held harmless for the purposes of PERS concerning annual leave and all the other things that look at the total number of hours you work. The only thing being reduced is the actual salary itself.

In the back of the bill, we voided all of the current exemptions, approximately 2,600. Total exemptions from furloughs granted currently voided all of those furloughs and exemptions in this bill and provided that the agencies would need to reapply. Those furloughs were granted by the specific entities as the state employees are broken down, like the Board of Regents would grant those exemptions for the Nevada System of Higher Education (NSHE), the Board of Examiners for the Executive Branch and the Legislative Commission for the Legislative Branch. It is not that you could not have these exemptions any more, but you would have to reapply for an exemption starting July 2, 2010.

Section 3 basically contains conforming changes to the substantive changes that I just indicated. For example, section 5 subsection 1, paragraph (d) is being stricken because now when someone is exempted from the furloughs, the agency will not experience additional money cut. Instead, the pay cut will come in, so this language was no longer appropriate.

Section 4 is a new section that is being added. It is not being added to NRS. This provision specifically applies to subsection 1. It applies to the employees of the Senate and Assembly. You may be aware that there is an NRS section which provides for the pay of those employees, and it does not provide for the reduction for the furlough program. This is changing that as of July 1, 2010. It has the same provisions to make it match with the rest of the furlough bill.

Section 5 of this act is the provision requiring state offices to be closed on Friday and the office hours to be 4 ten hour days, Monday through Thursday. As you go through this section, there are a number of set exceptions to that. There is an exception for legal holidays. This bill is

currently set up to deal with legal holidays is when there is one or more legal holidays in a week, that week would switch back to being 8-hour days. So, it would switch back to being five 8-hour days. The holiday would be taken the same number of 8 hours rather than the 10 hours. The issue if you had four 10-hour days worked and then a holiday day, there is no way to account for that.

Subsection 3 says that if there is an issue with the office not being able to be to be closed, then there can be a determination made by those same entities that made the determination for exemptions. For example, the Board of Regents for NSHE can vary that schedule. There are some specific exceptions listed out. That is the general exception for anybody else that is not already provided for in this bill. There are other exemptions specified as well; for example, setting out how employees of an agency that is exempted would be able to work the hours for holidays and other situations.

Section 6 contains those specific exemptions I was mentioning. The first one is for the Department of Corrections. It provides for the portion of the Department of Corrections where they are required to provide 24-hour services, that those 24-hour services would be provided in two 12-hour shifts and the flexible hours would be worked in that way to take care of the furlough issue.

Subsection 2 is the Board of Regents provision for the rolling tens to allow them to be open five days a week.

ANDREW CLINGER (Director, Department of Administration):

On section 6, subsection 1, which talks about the Department of Corrections establishing a 12-hour shift for their employees, I did have a chance to speak to Director Skolnik about this. He felt that under the 12-hour shift provision with the current overtime rules, he did not have enough staff to do the two-12 hour shifts. He indicated that if the Legislature was able to change the overtime requirement in statute so that you do not receive overtime until you exceed 84 hours, which Mr. Skolnik indicated to me was allowable under the Fair Labor Standards Act (FLSA), he thought he could make this work. Otherwise, he would have to apply for exception.

SENATOR HORSFORD:

We will have to take up the whole corrections issue separately because there are still a number of outstanding questions. I appreciate that information.

MRS. ERDOES:

Section 7 addresses additional overtime that might be required in trying to carry out the furlough plan. This section provides that if there is any additional overtime past what the agency had worked before this plan came into effect, the agency would have to put together a plan that explained the additional overtime. This plan would have to be approved before the overtime would be worked.

Section 8 of the bill is a provision which essentially is a cleanup change. We are just taking out the one and one-quarter working days which is how we had defined annual and sick leave in the past. Now a working day is ten hours, so that would have changed that and had a fiscal impact. We just translated one and one-quarter days as ten hours, so that does not have an effect; but it is an important change to make sure there is no fiscal impact.

The change made in section 9 is similarly correcting a reference because NRS 284.180 provided that the definition of overtime is time worked in excess of 8 hours in a calendar day and 8 hours in a 16-hour period. Instead of adjusting that to the 10-hour day because some of the employees will actually be working 8-hour days, we just took those figures out and left the overtime as time worked in excess of 40 hours, which is the basic rule used in a flexible hour week anyway. The rest of the changes are also similar cleanup changes having to do with taking out references to working days being only 8 hours long.

Section 10 is the provision that is parallel for the other entities that also have in the statute how many hours equal a working day. These changes are not intended to make a substantive change as to how much leave you get. It is instead just made to deal with the issue that the working day changes from 8 hours to 10 hours.

Section 11 deals with translations going back to taking out days and going with hours so it will be accurate as to whether you have a 10- hour day or an 8-hour day. These changes would be continuing after the furlough program is over, simply because the translation is direct and would be easier because there are flexible hours.

Section 12 takes care of an issue in the regulations of the Personnel Commission where they have the same problem. They have a reference to working day. To avoid causing the commission to have to go hearings to change the regulation, we are making that translation to let everyone know that "working day" here would be similarly calculated.

Section 13 voids the current exemptions from furlough and provides that the agencies can reapply for those furloughs.

Section 14 makes the bill become effective on July 1, 2010 which is the first day of the next fiscal year. We provide that both those new sections of this bill and the changes to the 2009 Session bill that created the furloughs, so the whole furlough program will expire by limitation. Currently what we have there is June 30, 2011.

I will be happy to answer any questions you have about the bill.

SENATOR RAGGIO:

I wanted to note that we are exempting the Department of Cultural Affairs from the reduced work week because our action in the last session had already reduced that to most of the other state agencies. They are already on a 32-hour week. Do they still remain at that?

MRS. ERDOES:

Yes. They were exempted from the furlough program before and that continues with the new furlough program.

SENATOR RAGGIO:

The language in section 1, subsection 4 says that "except as otherwise provided and not withstanding any specific statutes, a local government employer may require each employee to take unpaid furlough leave in the amount and manner determined by the employer." As I read that, they are given flexibility but are not mandated to do the same as the State. Is that what I understand that language to mean?

MRS. ERDOES:

Yes. You are reading it correctly. I would point out it is completely discretionary as to whether they would do furloughs at all.

SENATOR RAGGIO:

They are not committed to a four day week or necessarily a 10-hour day of furlough.

MRS. ERDOES:

Yes. There are two ways you have discretion, whether to even do the furloughs and how they carry it out. It is entirely up to them.

SENATOR RAGGIO:

What this bill does overall as far as local government employers gives them the flexibility to do whatever they feel is reasonable.

MRS. ERDOES:

Yes. The other thing that ties into and was in the previous furlough program as well, is where we provide for the hold harmless for the employees with PERS that is included here for the local governments as well. You have to do that in order to qualify for the PERS plan requirements. That is the other part of this. If they do furloughs, they would also have the hold harmless for the employees for PERS.

SENATOR RAGGIO:

Does that term "local government employer" include school districts?

MRS. ERDOES:
Yes.

SENATOR RAGGIO:
Does that apply only to classified employees within the school district, or would that apply with respect to professional personnel as well?

MRS. ERDOES:
The way this is written currently, it would apply to all employees of the school district.

SENATOR RAGGIO:
Subsection 8 of section 1 states " the provisions do not apply to the extent that those provisions conflicting with the provisions of a collective bargaining agreement that is entered into pursuant to Chapter 288 of NRS." That has been an issue that has been debated. Does that mean unless there is an agreement, which has been otherwise covered by a collective bargaining agreement or a modification, that these requested or directed cuts in hours per week, for example the 40-hour week or number of furloughs hours or reduction in pay, would not be authorized? That is all subject to the terms of existing collective bargaining agreements.

MRS. ERDOES:
Yes. This authority is limited by any conflicts that would occur. If it was allowed under that agreement, fine. It is likely that we are just codifying what is the case under impairment of contract law. It is actually now the employer and the employee under collective bargaining setting. This would probably be the case for impairment. Placing this in the bill might make it easier for local governments.

SENATOR RAGGIO:
The reason I am asking is because the major school districts have requested that we consider flexibility to be granted to those districts in dealing with these negotiated contracts. That does not appear in this bill. What this does is to indicate that if there are restrictions, this cannot apply.

MRS. ERDOES:
That is absolutely correct.

SENATOR RAGGIO:
Otherwise, this bill would attempt to indicate that there is a fairness across all employees at the state level. So, if a person is directed to take a furlough or because of classification, public safety, for instance, is otherwise exempted they will be exempt from furlough. There will be an equivalent reduction calculated at 5.75 percent of salary to compensate.

MRS. ERDOES:
Yes. That is the effect of these provisions we have provided.

SENATOR RAGGIO:
There is a provision in the bill draft for regulating overtime pursuant to a plan that must be approved prior to the granting of any overtime. Would the 5.75 percent apply as well to the pay for overtime?

MRS. ERDOES:
Yes.

SENATOR RAGGIO:
Is overtime calculated at a different percentage even under this bill as it exists today?

MRS. ERDOES.

No. This bill would not change any of that. That is actually for most of the employees required by FLSA. The underlying rate is reduced and that rate is paid at time and a half.

SENATOR RAGGIO:

Time and a half applies to the reduced salary. How would that be equated if the salary was not reduced and the person was on a furlough? I just want to make sure that it is a consistent application.

MRS. ERDOES.

That is something that I would like to look into for you.

SENATOR RAGGIO:

The overtime issue also dealt with calculating the compensation due that we are not authorizing additional step increases for those that are not at the top tier and are below during this period of application of this statute, there would be no step increases for State employees. Is that what that means?

MRS. ERDOES.

These provisions are unique. This is NRS 218, the chapter for legislative employees. What those provisions currently say is there is a daily rate, and there is an allowance that the Chief Clerk and Secretary of the Senate may apply step increases where there is longevity in the position. This is saying that those step increases cannot occur during this biennium.

SENATOR RAGGIO:

That happens to be the Senate and Assembly people. Does not that apply otherwise than just to the legislative people here?

MRS. ERDOES.

No. Those employees were covered in the first bill, and those cuts were already made. We just overlooked these employees, so we put them in here. This only applies during the legislative session.

SENATOR RAGGIO:

We are talking about the period between now and the end of this biennium. Could you or Mr. Clinger answer this question? Will step increases be authorized during this period for State employees at any level?

MR. CLINGER:

No. Those were taken out in the original bill, the step increases for State employees.

SENATOR RAGGIO:

In the section where we talk about a week in which there are legal holidays, I am not clear on just how that applies. If there is one or more holidays within that week, what happens?

MRS. ERDOES.

What this is describing is providing an exception to the 4-10 work week. In a week when there are one or more holidays, you switch back to 4 days with 8 hours. This is saying that the office hours would be back to an 8-hour day which is the traditional 8-5 hours. For the whole week, if there is a one or two holiday in that week, then you go back and the hours are 8-hour days and the employees would take the holiday as an 8-hour holiday.

SENATOR RAGGIO:

Would you still have a four-day week?

MRS. ERDOES.

No, not in the holiday weeks. You are switching to five 8-hour days. If there is a holiday, one of those 8-hour days would be taken as a holiday.

SENATOR RAGGIO:

I understand that there may be some issues with the prison. The Majority Leader indicated that we will look at this separately when we talk about the Corrections issue. We need to be aware if we are running afoul of any of the FLSA provisions with respect to all classifications of employees, whether they be classified, unclassified or whatever. I would appreciate that information. I understand the remainder of the bill. I would ask about the sunset provisions which I think apply across the bill. In section 12, does that pertain to the Personnel Commission? The working day definition still means a period of 8 hours. Should that be amended to 10 hours?

MRS. ERDOES.

Yes. Until the Personnel Commission has a chance to change that regulation, the working day, the intent would be for them to change that to 10 hours.

SENATOR HORSFORD:

Mrs. Erdoes, can you clarify the 5.75 percent that is in addition to what was already approved? The net effect of the additional 2 hours is less than the 5.75 percent.

MRS. ERDOES.

Yes. The 5.75 percent is for the 10 hours.

SENATOR HORSFORD:

Could someone just say it on the record? I do not want the perception to be that this is an additional 5.75 percent from what was previously approved by the last Legislature.

MR. CLINGER:

The furlough bill that was approved by the 2009 Legislature required 8 hours per month which equated to a 4.6 percent salary reduction. With moving to a 10 hour per month furlough, you are adding 1.15 percent to that.

SENATOR HORSFORD:

Those employees who were not covered by the furlough would be covered in either the furlough or in the cut going forward.

MR. CLINGER:

That is correct.

SENATOR CARE:

I would like to refer to the provisions referring to the exemptions. For example, the Board of Regents shall determine exemptions and various other boards determining exemptions. What would be the standard that any of these entities would have to use in making that determination? Could the Board of Regents say that it is up to each institution to determine whether it needs to have exemptions? Could they just enact a policy saying that we are going to leave it up to presidents or department heads? Is there a scenario pursuant to which some members of a department could be granted an exemption where others would not?

MRS. ERDOES:

To answer the first part of your question, that authority to approve the exemption cannot be delegated. They can ask those separate entities to make recommendations but the actual exemption according to the bill would have to be granted by the Board of Regents. As to your second question, yes, some groups of employees get exemptions and some not get exemptions. There is not a requirement in here that they have to grant an exemption for the entire body. This can be done by groups of employees. That flexibility is in the bill.

SENATOR CARE:

Would that flexibility include a determination that some employees of a particular department, but not others, could ask for an exemption?

MRS. ERDOES:

Yes. They have the complete authority as to how to grant these exemptions.

SENATOR CARLTON:

We were talking earlier about whole groups of employees, departments and divisions and exemptions. Now we are talking about some employees in a division and not other employees, so I am a little concerned about the application. I was under the impression that if they appeared and said that this department wants to take a pay cut instead of the furlough, that would be everyone. We cannot start dividing off classifications of employees I just want to make sure that is clear.

MRS. ERDOES:

The way this was written, before the switch from eight to ten, the exemption from furlough was already included. The way it is written is that they can grant it. It is by employee group. For example in the Department of Corrections, they have some employees who cover 24-hour shifts and others who work in the office from 8 to 5. I would not see these exemptions being made for an individual employee. Employee groups are required to show how it works for that entire group and grant them in that manner.

SENATOR CARLTON:

That is what I wanted you to say, because earlier it sounded as if they could pick, and I just wanted to make sure that everyone understood that. This bill sunsets July 1, 2011. As this bill sunsets, all of this goes away, so everyone is going in at the same time and coming out at the same time. Unless we do it legislatively, we are not going to pick and choose what departments or divisions will come back to the regular status over others. Am I correct?

MRS. ERDOES:

Yes.

SENATOR HORSFORD:

We are opening for public comment. If there are any individuals who would like to speak on this draft, we are going to allow you to do that.

TERESA THIENHAUS (Director, Department of Personnel):

I appreciate being given the opportunity to speak on this bill. The administration is in favor of this bill. We support the 4 ten-hour concept. We support additional furlough leave from a management standpoint. I know that every director will do his or her best to make sure that all employees are taking furlough leave and will try not to have to go through an exception or exemption process.

I am concerned about the pay cut in lieu of furlough. It makes for a true inequity in the pay status of those employees. There is a difference between docking someone a day's pay and cutting their hourly salary. It may not look on paychecks as though it is different but it is, under the FLSA.

From the perspective of paying people overtime which was brought up by Senator Raggio, once you cut an employees' pay that is their new rate of pay for all purposes. That is not the case for someone taking furlough leave. Someone taking furlough leave continues to earn their original hourly salary. Any overtime they have to accrue because of need, they will be paid at their original salary time and one-half. There is an inequity created. I am very concerned about that.

We are working with state agencies on how to implement this. This has been brought to our attention by administration for some time. We have been discussing it at the cabinet level. We are fully prepared to go forward and make it work. From the perspective of 4-10 and additional

two hours of furlough time a month, we are prepared to make that work. We will do everything in our power to do that.

SENATOR CARLTON:

Could you expand on the difference between taking furlough leave versus the pay cut and the overtime? I have gotten confused on that issue.

MS. THIENHAUS:

What I said was that there is a difference between cutting someone's hourly salary and docking them a day's pay. Furlough requires a person's pay for that day to be eliminated, so their hourly rate of pay remains the same. With furlough, my hourly rate is exactly the same, but one day a month, I am docked a day's pay. That is not the case if you cut my pay by 5.75 percent. Then, every hour I work I earn 5.75 percent less. That would go for overtime as well. I do not believe we can pay one employee two different rates of pay. In other words, you cannot; for the purposes of overtime on these people who have their pay cut by 5.75 percent, pay them their regular rate of pay for time and one-half for their overtime. I do not think we can do that in the system. I am having my staff check on that.

SENATOR CARLTON:

That was one of the concerns I was trying to figure out between the two and narrowing it down. Literally, you could have two different rates of pay for someone and that is going to cause a world of headaches.

SENATOR HORSFORD:

Director, when will you have that information available, and what is the proposed solution on that, since that was part of the administration's recommendation?

MS. THIENHAUS:

I do not believe the cut for 5.75 percent was part of the administration's recommendation. I think that the administration intends to follow through furlough leave across the board. Even Director Skolnik has come up with a plan for having correctional officers furlough. I can get the information about the difference and how that works out.

SENATOR HORSFORD:

If the net effect of not taking a furlough, which is permissive in some cases, the Governor as a member of the Board of Examiners has approved waivers to the exemptions. This bill would require that the pay cut be taken in lieu of a furlough if that waiver is granted or an exemption is provided. Therefore, there has to be some recognition of that inequity that is being brought. I would ask what the administration's solution is to it.

MR. CLINGER:

Our recommendation would be to eliminate the exceptions. Eliminate the ability for agencies to apply for exceptions, which would mean that every agency would have to take the furlough regardless.

SENATOR HORSFORD:

The question is in the case where the furlough does not happen, you are going to have this cut. If the cuts are inequitable based on employee group, how do you administer it, and what is the solution to that for the purpose of the bill that we are considering today?

MR. CLINGER:

Our recommendation would be that there is not a difference, that everyone has to take a furlough regardless. The bill that was passed by the 2009 legislature outlined criteria for public safety, health and welfare that was allowed for departments to come forward and get their employees exempted from the furlough process. Our recommendation would take that exception process out, and the bill would require all employees take a furlough. There is no allowance for

exceptions. The biggest agency that had requested exemptions from the furlough was the Department of Corrections. As Director Thienhaus indicated, they have told us that they can make the furloughs work. There were some other agencies that had applied as well: Disability Adjudication within the Department of Employment Training and Rehabilitation, some fire suppression positions within the Division of Forestry, positions within the Bureau of Consumer Protection that had applied for exceptions. Our recommendation is that no one be allowed to make exceptions to this.

SENATOR HORSFORD:

I appreciate that position today, but over the last year, the administration has voted to approve waivers to the furlough process, which has created an imbalance in how it was implemented. My concern and those of other members is that we are trying to strike a level of fairness going forward to ensure that for whatever reason the furlough is exempted, those employees take a proportional reduction in their pay. Without some flexibility to do that we do not know what the next year may hold. I understand that is the position today but as we found out over the last year, there have been certain times when the necessity has been brought forward and with approval by the Board of Examiners or other groups that it was granted.

SENATOR LEE:

I was in Esmeralda County recently talking to the County Commission. One of their concerns the sheriff had was if a highway patrolman takes a furlough day that week and somebody is broken down, calls for help, there is no one they can send. There is no way you can get overtime in the same week that you had a furlough day in the same pay period. That puts an added burden on the local government to call their people out because they cannot just leave people out there in the middle of the desert at 10 degrees below zero. As it is now, that is basically against the law for them to do that. If someone is sick or on another accident or a challenge somewhere, we are shifting this burden to the local governments, which I do not think is the intent of this bill. I think it is our responsibility to maintain our own roads. I would like to get a clarification.

MR. CLINGER:

The policy that employees are not allowed to work overtime within a pay period is an administrative policy. It was not included in the original bill that was passed by the 2009 Legislature. That was a policy we made administratively. We have a process for applying for exceptions to that policy. That process goes through Director Thienhaus and to myself. In the example that you used with the Nevada Highway Patrol, they have applied for those exceptions. They are allowed to work overtime in the same pay period that they have had a furlough. We do maintain a list of all of the exceptions that we have approved for overtime for that purpose. We would be happy to provide you with that information.

SENATOR LEE:

I will contact the sheriff of that community and the highway patrol and make sure that they understood that. The way I interpreted to you is how they felt they had to interpret that.

ALDO VENNETILLI (American Federation of State, County and Municipal Employees):

I am looking at the bill from the standpoint of the State employees. In concept, the provisions are acceptable. However, nobody wants cuts. From the State employees standpoint they took eleven percent. Their workloads have doubled and tripled. They are going to look at this as another cut. Yes, the State is in trouble. I think, overall, they agreed to it.

There are some provisions in the bill that I have problems with. It is the enforcement procedure and the exemption procedure. Who has full control of that? If it is administration, they know they are going to get hurt again. Is this going to be the only cut? We have already been told that bilingual pay and hazardous pay is going to be removed. That is a five-to ten-percent reduction in addition to the other cuts. We would like to know if there are more cuts on top of this that we are not talking about.

In concept, we can agree to this. Some provisions should be included, such as who is the enforcement party? When you want an exemption, who do you go to? In the last legislative

session on furlough days it was passed. Some departments gave you a furlough day and then hired an outside agency to replace the employee. Where is the savings? Some agencies gave you the furlough day, and then the following day they gave you overtime. So where is the savings? We are talking about the overtime being adjusted based on what was already used. That is already up there from the past furlough days. We need to take a look at the whole picture.

MARK MURPHY (AFSCME):

I would like to add a few things to what Aldo has already said. I appreciate hearing that this is not the last opportunity to weigh in. We did just see this language today, and we are still looking through it. We noticed the issue of how to deal with a holiday when it falls during the week and how it affects the 4-10 schedules. There are several issues like that, and we would appreciate the chance to take a closer look.

SENATOR HORSFORD:

Thanks for being here. You will have an additional opportunity. Because of the process here in the Special Session and because these are very important issues, we want to be able to bring the issue to the Committee and make sure that there is a general understanding of the proposal. The Committee of the Whole then needs to introduce the bill. That is when it becomes available to the public. We know that this is important, and we need to give some time for the public to digest it. When we then bring it back to the Committee for discussion, we will have the input from the public before we make any final decisions. To the best of our ability we will do that throughout the rest of these proceedings.

MRS. ERDOES:

A question was asked earlier concerning time and a half for furloughed employees. Because of the way the provisions in this bill are written, there is nothing that says that for time and a half, you would reduce the pay 5.75 percent. It is my suggestion if that would be consistent with the rest of the bill, we be able to add that as a specific provision which says that, and there would be no question about it. The way the bill is structured currently, it just says that employee would not be paid for that 10-hour day. It does not address the issue. If that is your intent that overtime would be paid at the reduced rate, I would suggest that you add that provision.

SENATOR RAGGIO:

When I asked the question, I was not expressing an intent. I was asking for some clarification. The way it is written now, would the time and a half apply upon the reduced amount of compensation or not?

MRS. ERDOES:

No. That is what I am trying to say, that provision is not in here. That is an oversight.

SENATOR RAGGIO:

That would seem to be equitable rather than basing it upon the actual compensation that occurred before, if you are going to be consistent.

MRS. ERDOES:

When you cut the equivalent employees not taking a furlough day, that would apply to them in that manner already. If you want to make it equivalent between the two, you probably need this specific provision.

SENATOR RAGGIO:

It seemed to be inconsistent. I was just concerned. Thank you.

Senator Mathews moved to introduce BDR S-16.

Senator Schneider seconded the motion.

The motion passed unanimously.

SENATOR HORSFORD:

We will now move to Assembly Bill No. 1. Mike Wilden will explain the provisions of the bill.

MIKE WILDEN (Director, Department of Health and Human Services):

This bill would require employers in Nevada who employ more than 50 people to send their child support transactions into our State Collections and Disbursements Unit in electronic format rather than paper format. The effective date would be July 1, 2010. Employers are required now, when there is a wage withholding, to send child support checks to the State Collections and Disbursement Unit. By federal rules, we are to turn those child support collections back to the custodial parents within 48 hours. Those payments come in two forms, electronic and paper. About half of the transactions come in electronic. A single person is able to handle all of those transactions. The paper transactions that come in require us to employ about eight staff in order to process all the paper transactions. We are trying to legislate and encourage more employers to send in electronic payments so that we can be timelier and more efficient in the turnaround process.

This bill is not specifically related to any one of the reduction cuts we are making in this \$881 million process we are going through. This is more of a long term process going into the next biennium and beyond that. The more employers we can get submitting child support checks electronically, the less staff we have to employ, and the quicker we can turn child support collections around to the custodial parents.

ROMAINE GILLILAND (Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services):

I would like to add that as we approach 100 percent of electronic payments versus check payments, we have the opportunity to save approximately \$250,000 per year in payroll expenses. In addition to that, by having electronic payments received, we are able to more timely turn-around the payments to the custodial parent and thereby better serve the citizens of Nevada.

SENATOR CARLTON:

Do you have an estimate of how many employers this will apply to?

MR. GILLILAND:

We believe that this will apply to slightly under 250 employers. We do not have an exact number.

SENATOR CARLTON:

How many other employers will not comply with this? Do you envision the next step and going to another level to get more employers to do this after you get done with this group?

MR. GILLILAND:

Today there are eleven states that require employers above a threshold to submit their payments electronically. Eight states have a threshold of 50, and three states have a threshold that is between 15 and as low as 5. We would encourage all employers that have the ability to make the payments electronically. Today, we have approximately 3,000 employers in Nevada who make payments electronically. We believe it is more efficient for the employer and the State as well as the custodial parents.

SENATOR CARE:

I am not concerned about the merits of the bill. It is just that for purposes of legislation history, I can foresee this question coming up later in the special session. Normally, a special session is called where there are extraordinary circumstances. Your handout states that the purpose of this bill is in alignment with the purpose of the special session. I am wondering if you can elaborate. That is to say, why do this now as opposed to waiting for a regular legislative session?

MR. GILLILAND:

In the cost savings that have been presented, there are certain facility consolidations that are occurring within the Division of Welfare and Supportive Services. In order to allow those facility consolidations to occur, it is important that we further consolidate certain operations within our division. Those operations are the State Collection and Disbursement Unit. In order to accomplish those consolidations, we need to encourage more people to be paying by electronic fund transfers (EFTs) and thereby freeing up space to allow other reductions that are in this plan to occur.

SENATOR MCGINNESS:

Has anyone indicated that they are going to experience some problem that they would not be able to comply with this electronic payment system? Is there a way they can get around that?

MR. GILLILAND:

We have consulted with the three largest counties, Clark, Washoe and Elko, to determine if they felt that there would be any burden to the employers, and they did not. We have not contemplated an exemption, but we did in the original proposal have a threshold of 25. We increased that threshold to 50 to be sure that the larger employers would be the ones that would be requested to make the EFT.

SENATOR MCGINNESS:

Actually, I was not worried about the three larger counties.

SENATOR WASHINGTON:

If those employers are unable to comply with the proposed statute, will there be a penalty or a fee that they have to submit to?

MR. GILLILAND:

There is no penalty contemplated for an employer who was not in compliance. However, we would encourage employers to be in compliance. One of the other concerns we have with any employer who is currently making payments by check rather than EFT is that, on occasion, those checks have been returned for nonsufficient funds. When we receive EFTs, those always have funds available. We have never run into a situation where we have had an EFT that has not been supported with adequate funding. Again, there is no specific penalty for an employer that is not in compliance.

SENATOR MCGINNESS:

Currently, the District Attorney's office administers child support payments. Is the division itself going to administer the program, or would that be contracted out?

MR. GILLILAND:

The Child Support Enforcement Program is a state-administered and both county and state operated program. There are several counties that operate the child support program through their district attorneys. It is not contemplated that will change. It will continue to be operated through the district attorneys. Today, all child support remittances come in through our State Collection and Disbursement Unit either directly to that unit or through the district attorneys.

SENATOR LEE:

Just a point of clarification as I might have misunderstood this. If I have 51 employees and I do not comply with this statute, there is no penalty. Is that correct?

MR. GILLILAND:

The statute would require you to comply. However, today if you were not in compliance there would not be a penalty. We would come to you and remind you that there is a statute asking you to provide your payments electronically.

SENATOR LEE:

I might say, "Thank you very much for the information. I will see you next month." I could do that by law without a penalty. So, what we have really done is hope people will follow the spirit of the law. But they do not have to follow the letter of the law. Is that correct?

MR. GILLILAND:

That is correct.

SENATOR COFFIN:

What we can do to make this easy for employers of all sizes? Do we have a provision to go out and help employers? It may not be very difficult at all to make EFT. If you have never used that method, it may be a little scary

MR. GILLILAND:

Most employers do use payroll services and find that making EFT is relatively easy. We are contemplating adding additional payment options to the Child Support Collections Unit both for employers and individuals to address the smaller employers. That has not yet been finalized. We are working on a program to enhance that.

SENATOR COFFIN:

How does a person prove that he made his child support payment to the recipient of his funds?

MR. GILLILAND:

Today, all child support payments are routed through the State Collection and Disbursement Unit from the non-custodial parent to the custodial parent. Any individual who is making a child support payment should be routing that payment through our State Collection and Disbursements Unit.

SENATOR WASHINGTON:

Do you foresee any regulations coming from the division that would enforce those employers to comply with the statute?

MR. GILLILAND:

We do not anticipate any regulations, but we are going to be utilizing the statute to encourage employers to be in compliance and go through an outreach program to assist employers to be in compliance. We will be working with these smaller employers again to help them where they have difficulty in providing EFT.

MR. WILDEN:

When we owe benefits to a recipient, we send them out through an EFT process. The outgoing process is all electronic. We put them out on cards or direct deposits to bank accounts. What we are trying to do in this process is to get the payment side of things in EFT so we can speed the process and improve the efficiency. Our intent is not to be out there trying to find ways to force employers to do this, it is an encouragement process. We are about 50 percent now and the higher percentage we can get, the more efficient we are, the less staff we have to employ and the quicker we can get benefits to the people that need them.

SENATOR WIENER:

You had said originally that you had considered 25 employees as the threshold and then bumped it up. If you are attempting to increase the compliance and want more employers to use the EFT, I am curious as to why you increased it. In changing that number, do you know how many non-compliant employers there currently are and how that would change from 25 employees to 50 employees?

MR. GILLILAND:

We had proposed the bill with 25 because we thought that was an appropriate threshold. We had looked at other states that were enforcing this. Our objective is to try and increase the number of EFT coming into us to get as close to 100 percent as possible. In presenting this to the Assembly, it was felt that a threshold of 50 might be more appropriate. In discussions, we agreed that an increase to 50 at this time would be the best move.

MR. WILDEN:

If I might add to that, when we surveyed the other 11 states, only three had a lesser threshold than 50. Fifty seemed to be the threshold that the other states were utilizing.

SENATOR BREEDEN:

If this process is implemented, would there be any loss of current staff positions?

MR. GILLILAND:

No. We would not anticipate any loss of staff. We would be accommodating this through vacancies as they occurred. We do not expect that there will be a dramatic increase of EFT on the first day, but will continue to approach a number higher than the current 50 percent of EFT.

SENATOR HORSFORD:

What is the percentage of the enforcement rate of non-custodial parents paying their child support?

MR. GILLILAND:

I do not know but will be happy to provide you with that number. I will be sure that is forwarded.

SENATOR HORSFORD:

Do you have any information as to how that compares to similar situated states?

MR. GILLILAND:

I cannot answer from that perspective. As a state, Nevada ranks relatively high from a performance standpoint. We have been adding several enhancements during this last 12 months and are going forward in the next 12 to 18 months to improve our performance from a state perspective. We believe that this particular enhancement will also help to improve from a collection standpoint. Each time we make it transactionally easier for someone to comply, they tend to be more in compliance.

MR. WILDEN:

Senator Horsford, we can have that information you requested very shortly. We have tracked that on the percent collections, the percent of paternity established, all those types of things. Those can all be handled quickly.

SENATOR HORSFORD:

In your opinion, passing this bill will have some improvement based on where we are, not with a better efficiency of performance.

MR. GILLILAND:

Yes. I do believe that this will improve our performance. I think it is a combination of several pieces coming together that is going to overall improve the collection of payments for the benefit of the child and as well improve our rankings as compared with other jurisdictions.

Senator Wiener moved to do pass Assembly Bill No. 1.

Senator Parks seconded the motion.

The motion passed unanimously.

On the motion of Senator Wiener and second by Senator Raggio, the Committee did rise, return and report back to the Senate.

SENATE IN SESSION

At 11:48 a.m.
President Krolicki presiding.
Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Senate Bill No. 3—AN ACT relating to state employees; revising the amount of unpaid furlough leave that certain state employees are required to take during the 2010-2011 Fiscal Year; providing for a temporary reduction in salary in lieu of furlough leave for state employees who are exempt from taking unpaid furlough leave; requiring the approval of a plan for additional overtime to be approved before the overtime worked; providing for a temporary reduction in compensation for employees of the Senate and Assembly; providing for the closing of state offices on certain days and the revision of the workweek of state employees with certain exceptions and exemptions; temporarily authorizing local governments to require employees to take unpaid furlough leave; and providing other matters properly relating thereto.

Senator Care 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 Assembly Bill No. 1, 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

Assembly Bill No. 1.
Bill read third time.
Roll call on Assembly Bill No. 1:
YEAS—21.
NAYS—None.

Assembly Bill No. 1 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

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 11:49 a.m.

IN COMMITTEE OF THE WHOLE

At 2:57 p.m.

Senator Horsford presiding.

The Committee of the Whole was addressed by Senator Horsford; Mark Krmpotic, Senate Fiscal Analyst; Senator Raggio; Senator Amodei; Senator Carlton; Senator Schneider; Senator Parks; Senator McGinness; Senator Cegavske; Brenda Erdoes, Legislative Counsel; Senator Care; Charles Duarte, Administrator of Health Care, Finance and Policy, Department of Health and Human Services and Senator Mathews.

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

SENATOR HORSFORD:

We will consider Assembly Bill (A.B.) 3, which deals with sweeping funds from non-General Funds accounts.

MARK KRMPOTIC (Senate Fiscal Analyst):

I have handed out a document titled "State of Nevada Fund Sweeps Fiscal Year 2010 & 2011" that summarizes the proposed sweeps in A.B. 3. This document includes some changes from what was presented yesterday, and I will go through them.

Under Health and Human Services, please note the addition of the sweep from the fund for the Prevention and Treatment of Problem Gambling. This account is funded through a portion of the slot tax. The Governor's proposal is for \$1,842,082. The sweep calls for a sweep of \$850,000 in FY 2011. When we looked at this more closely, we determined that a total of \$1.7 million could be swept from this account, which is slightly less than that recommended by the Governor. That was based on funding availability.

The next item is the Radioactive Material Disposal account. The Governor's recommendation was to sweep \$8,990,050 from this account.

The next item is the alcohol tax program. The Governor's recommendation was to sweep \$311,493 from this account. This bill does not propose a sweep of this account.

The last change is to the Athletic Commission account. A sweep of \$29,500 is proposed in A.B. 3, and this was not mentioned yesterday.

For the Committee's information, I noted that a couple of accounts the Governor recommended be swept could not be because of a conflict with the Constitution. The Silicosis and Disabled Pensions fund was removed from the list of accounts to be swept.

Those are the major changes from what was discussed yesterday in Committee.

SENATOR RAGGIO:

Did you say the Radioactive Material Disposal Account had been removed from the list of accounts to be swept?

MR. KRMPOTIC:

It has not been removed. That account is recommended to be swept.

SENATOR RAGGIO:

Is that also true for the Athletic Commission, the Trust Fund for a Healthy Nevada and the Trust Fund for Public Health? Are they still being swept?

MR. KRMPOTIC:

That is correct. They are still recommended to be swept.

SENATOR HORSFORD:

If there are no further questions, we will turn now to A.B. 3.

MR. KRMPOTIC:

A number of the sections of A.B. 3 provide the statutory authority, where it exists, to enable the transfer of funds to the General Fund over the biennium.

Section 1 lists the Abandoned Property Trust Account, also known as the Unclaimed Property Account. Subsection 5 of A.B. 3 basically turns off the transfer of funds from this account to the Millennium Scholarship Trust Fund, which totals \$3.8 million each year. That transfer is not in the fund sweeps list I just covered, but it is on the Governor's list of potential savings. As mentioned yesterday, there is also a sweep of \$5 million from the Millennium Scholarship Trust Fund. In total, \$12.6 million will be taken from the Unclaimed Property Account and the Millennium Scholarship Trust Fund.

Section 2 provides the ability to sweep the Graffiti Reward Fund.

Section 3 addresses the Fund for New Construction of Facilities for Prison Industries. This was recommended to be swept in the amount of \$948,000.

Section 4 covers the Office of the Consumer's Advocate.

Section 5 covers notary training contained in the budget of the Secretary of State.

Section 6 addresses the Retired Employee Group Insurance (REGI) Assessment. You may recall that the Governor recommended two measures with respect to the Public Employees Benefit Program. One was to implement a premium holiday that would have saved approximately \$11 million in the first year of the biennium. The second was to redirect a portion of the REGI assessment totaling approximately \$14 million over the biennium. This section of A.B. 3 provides the enabling legislation to transfer a portion of the REGI assessment to the General Fund each year. That was on the Governor's master list of recommended reductions; it is not on the sweeps list.

Section 7 provides for the sweep of the cash bonds in the Department of Taxation.

Section 8 addresses the Emergency Account. That is on the sweep list.

Section 9 addresses the Contingency Fund. The Committee will recall that \$15 million is identified in the Contingency Fund each year for repaying the line of credit, which will not be necessary this biennium. Also identified on the list is \$5 million in unrestricted contingency funds. The \$5 million sweep would leave a balance in the contingency fund of approximately \$12 million. Included in the Contingency Fund sweep is the money set aside to pay increased utility costs for various State agencies.

Section 10 deals with the Disaster Relief Account.

Section 11 describes the Fund to Stabilize the Operation of the State Government, also known as the Rainy Day fund. Approximately \$632,000 remaining in that account is proposed to be transferred to the General Fund.

Section 12 deals with the Financial Emergency Fund.

Section 13 is the section dealing with redirected transfers of the REGI assessments to the General Fund. This section would allow for current expenses for retirees' health claims to be paid from the Retirees' Health and Welfare Benefits Fund. This fund was created by the 2007 Legislature as a way to address the Government Accounting Standards Board liability that exists with respect to this fund. This would make approximately \$24 million available to be used to pay for retirees' health insurance claims in lieu of the REGI fund transfer.

Section 14 deals with the Millennium Scholarship Fund and provides the ability to sweep \$5 million from that fund.

Section 15 addresses the Disaster Relief Account. This provides the enabling legislation to transfer \$4 million to the General Fund.

Section 16 deals with the Trust Fund for Public Health, which is funded by the tobacco settlement funds.

Section 17 deals with the Fund for a Healthy Nevada. This represents tobacco settlement proceeds.

Section 18 addresses the Management of Air Quality account, which I believe is in the Division of Environmental Protection.

Section 19 deals with the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gambling.

Section 20 deals with the Fund for the Care of Sites for the Disposal of Radioactive Waste.

Sections 21 and 22 deal with an amount being proposed for transfer from the Account for the Management of Hazardous Waste and the Contingency Account for Hazardous Materials within the Department of Public Safety.

Section 23 deals with the Special Capital Construction Fund for Higher Education, which I believe is proposed to be swept in the amount of \$2.5 million in the second year of the biennium.

Section 24 deals with the Motorcycle Safety Account within the Department of Public Safety.

Section 25 addresses the Agriculture Registration and Enforcement Account.

Section 26 deals with the Dairy Commission Fund.

Section 27 deals with the Employment Security Fund.

Section 28 addresses the Construction Education Account.

Section 29 deals with the Real Estate Education, Research and Recovery Fund.

Section 30 deals with the Account for Auditing Financial Institutions.

Section 31 addresses the Insurance Examination Fund.

Section 32 covers the Insurance Recovery Account.

Section 33 addresses the Account for the Regulation and Supervision of Captive Insurers.

Section 34 addresses the Public Utilities Commission Regulatory Fund.

Section 35 revises legislation that was passed in the 2005 Legislative Session. The Committee members will recall that during that session, there was a rebate for the citizens of Nevada. There was also language in that legislation that if any monies remain available, up to \$5 million, it would be available to assist homeowners with disaster assistance issues, since if it is a declared disaster, FEMA funds are not used for private residences. This section provides for a change to allow this money to be redirected to the General Fund. Originally, the source of funds was a General Fund appropriation. It is also known as the Homeowners Disaster Assistance Program.

Section 36 addresses an issue identified in the Governor's proclamation. This section would provide the Department of Health and Human Services the authority to transfer General Funds between their various budget accounts, subject to NRS 353.220. This is authority that is also currently provided to the Department of Corrections. I would note for the Committee that the transfers proposed by the Department of Health and Human Services would be subject to IFC approval. This is similar to the authority provided to that department by the 24th Special Session. It gives the director the flexibility to address certain shortfalls within the various budget accounts in his agency short of having to come back for a supplemental appropriation or a contingency fund allocation. One issue the director may need to address over the course of the biennium deals with an identified shortfall in the Medicaid account due to increased caseloads.

In section 37, these amounts are the actual sweeps into the General Fund. I will not go through all of them, since the information was provided to the Committee members previously and I have discussed a number of them.

Sections 38 through 67 provide for transfers from the various funds in the first year of the biennium. Let me distinguish between these two sections. In section 37, the action being taken is to move monies from each of these accounts into Category 93 reserve for reversion. In sections 38 through 67, the language actually transfers funds from each account or fund into the General Fund. The distinction has to do with the fact that a number of the funds in section 38 forward

were established by statute. They therefore need to be transferred to the General Fund rather than being transferred to reserve for reversion.

Sections 68-79 cover those transfers and reversions that will take place in FY 2011.

I failed to note one other change that has occurred since yesterday. A number of these fund sweeps were split between the two fiscal years, as proposed by the Governor. Where that money is available now without impairing program operations, we are recommending that the transfer take effect in FY 2010 and not 2011.

Section 80 addresses some of the concerns surrounding the transfer of the cash bonds from the Department of Taxation and addresses the rights of bondholders. If they were to request a refund of those bonds, which they would be eligible to do if they demonstrate three years of good paying status with the State.

Those are the major portions of the bill.

Section 88 is a repeal of section 60 of the Appropriations Act, which provided for the transfer of \$3.8 million each year from the Unclaimed Property Account to the Millennium Scholarship Fund. This repeal is required to transfer the money to the General Fund.

SENATOR AMODEI:

With regard to the money being swept from the Financial Institutions Audit account in section 30, is this money generated by assessments? I would assume that money is from credit unions and banks.

MR. KRMPOTIC:

It does appear to be assessment generated, yes, because we are taking amounts in each year of the biennium. I am not certain of the source of that revenue offhand.

SENATOR AMODEI:

At a special time in history for financial institutions, I am concerned that we are taking money away from audit services for the sake of a mere \$500,000 over the biennium. This is the wrong time to reduce the resources available to do the appropriate audits and examinations of financial institutions, especially if they were paid for by fees generated by the services those institutions provide. In the light of what is going on nationally, this sends a curious message to the people of Nevada regarding financial institution compliance.

I would appreciate if the Legal Division could take a look at the source of this account and give us some sort of reading as to whether this an appropriate sweep from a legal standpoint.

SENATOR HORSFORD:

The spreadsheet shows a balance of \$2,702,550 in the Financial Institutions account and \$380,789 in the Financial Institutions Audit account, and we are taking \$250,000 from each of those reserve accounts over the biennium. There is still a balance left in each account. We have asked Legal staff to answer your question about the legality of it.

SENATOR AMODEI:

I appreciate that, but the policy question remains. We are taking approximately 40 percent of one account and 10 percent of another during an unprecedented fiscal time for financial institutions. The value judgment we have to make is whether it is the right time to do this for an amount that is insignificant compared to the \$900 million budget gap we are trying to close.

SENATOR CARLTON:

I have the same concerns. When the Financial Institutions Division has to go in and take over an institution, we want to make sure they have the resources to do that. That has an impact on every family doing business with that institution. All these numbers are blurring together, and I am not sure which budget account it is we want to take a closer look at.

SENATOR SCHNEIDER:

I too had the same concern. Perhaps we just need to put this concern on the record. I do not know if we are going to replace this money so they will have money to perform audits. The

federal government is writing off Nevada and coming in on our banks, and now they are coming in on our credit unions. They have forced mergers with out-of-state credit unions, which means Nevada members no longer have a voice in their credit union. These big, multi-state, billion-dollar credit unions are coming in here, and we are not auditing them. For the record, I think we need to be in a position to replace that money next session so we can take steps to audit these large multi-state credit unions and banks that are coming in and thus protect the citizens of Nevada.

SENATOR PARKS:

I would like to echo the comments of the three previous speakers. I have been informed that typically, if a financial institution needs to be taken over, we need roughly \$1 million in reserves to handle each institution. We do not know how many there might be, but it is certainly a concern.

I also have a concern about section 3, which has to do with the Fund for New Construction of Facilities for Prison Industries. We are leaving them with a balance of roughly \$100,000. There has been discussion with regard to closing the Nevada State Prison. There are two industries there, the license plate plant and the book bindery. Were this facility to close, we would need resources to relocate those two industries. I would like to know if there has been any discussion about that.

MR. KRMPOTIC:

We originally identified a larger amount to be transferred to the General Fund. After consultation with the Department of Corrections, the transfer was reduced to leave sufficient money in the account to build a gate between Warm Springs and Nevada State Prisons so the Warm Springs inmates would be able to work in the industry programs of the Nevada State Prison if it were closed.

SENATOR MCGINNIS:

With regard to the Dairy Commission, I see we are sweeping \$350,000 from that account. It looks like the remaining \$224,000 is probably adequate for a 63-day reserve. I received an e-mail from a dairy farmer who has 2,000 cows and ships 14,000 pounds of milk every day. His letter states, "We could debate that some functions of the Commission are of questionable value, where other functions are absolutely necessary in order to maintain federal consumer health regulations. We must comply with the pasteurized milk ordinance or we lose our license to ship milk interstate, and the Dairy Commission provides that function at no cost to the state General Fund." I wanted to make note that it is a lot easier to take over a bank than to take over a dairy because there is a great deal of work to be done every day when those cows come back to the barn.

SENATOR CEGAVSKE:

I had similar concerns about the banking industry, so I appreciate all the comments that were made on that issue. I am also curious about the Dairy Commission, since the dairy farmers and producers are the ones who pay into this fund.

Does this bill have a sunset provision? There are a lot of places in the bill where we are adding the clause that the money in these funds can be used "for any other purpose authorized by the Legislature." We are putting language in that says we can do whatever we want. Are there any sunsets for that language or any pay-back provisions for any of these funds? Section 89 refers to a few sections that expire in 2011, but I would like that clarified.

BRENDA ERDOES (Legislative Counsel):

Addressing Senator Cegavske's question, the bill does not currently include an expiration clause of the "for any other purpose authorized by the Legislature" provisions. We included that language so that if the Legislature chooses to do a similar sweep in the future, you would not have to have all these sections in your bill. If you do not want to do that, we can add a simple amendment to expire all these by limitation. Our thought was that since this has happened a couple of times, it might happen in the future. This language also gives notice for the future that

this is a possibility. However, that is a policy choice for you to make. The sections that are temporary are the actual transfers listed in the back of the bill. As it is currently set up, the revisions to the NRS do not expire by limitation. Those changes would continue on.

SENATOR CEGAVSKE:

Do we have any provisions to pay back any of this?

SENATOR HORSFORD:

No.

MS. ERDOES:

To address Senator Amodei's question, I believe you were asking about the fiscal authority to make these sweeps. The basic authority for all of these is that the Legislature has the power to impose taxes and fees and to enact legislation to do so. In fact, the Constitution requires them to do so in order to balance the budget. Article 9, section 2, is very clear that this is the duty of the Legislature. The Legislature can impose a tax or fee at any point on these agencies and provide that the money goes directly into the General Fund. There is plenty of case law saying the Legislature can change these kinds of laws, and they will be carried out. We looked at cases from other states and drafted the bill accordingly.

SENATOR AMODEI:

I do not dispute anything you said. My concern is that when an assessment-based fund has been assessed and collected under a preexisting statute, is there authority for retroactive collections? That is my concern. I have some apprehension about changing the rules after the money has already been deposited in an account that was statutorily prescribed.

MS. ERDOES:

That is something we looked at for all of these sweeps. The basic authority is the Legislature's authority to change the statutes as they go along. We did not find anything that would tell us you cannot do this. Our answer would be that the Legislature can take that money as long as it still exists in that fund, even though it was assessed under a different statute. I am happy to look at any cases that are brought forward, if there is something we are missing. As far as we can tell, we are on solid ground here.

SENATOR CARLTON:

I had a concern about financial institutions going into receivership so that the Financial Institutions Division has to take it over. I would hate to see us take money from that account and not leave them enough money to do what they need to do if a bank or credit union fails.

MS. ERDOES:

That is more of a question for the Fiscal Division. Determining the amount taken is based on the work they do to decide what can be taken and still allow the agency to function.

SENATOR CARLTON:

My concern is if the Financial Institutions Division does not have enough money to do its job and something goes wrong, we could all be on the hook for it.

SENATOR HORSFORD:

What exactly is the function of the Financial Institutions Division? It is my understanding that it is not all-encompassing. There is a federal role and process as well.

MR. KRMPOTIC:

I could describe it in general terms, though I am not intimately familiar with the Financial Institutions Division.

Before I get to that, I should address the funding source. With respect to the Financial Institutions account, Budget Account 3835, there is an identified balance of \$2,702,550.

Sweeping \$250,000 from that account will leave \$2,452,550. With respect to the Financial Institutions Audit account, it appears we are sweeping the assessments. There is, however, a balance of \$380,000 remaining in that account that could be used in each year of the biennium.

I should also explain that staff reviewed the proposed sweeps for a number of these budget accounts. Our main concern was whether the agencies would be able to continue to maintain their statutory mission. Based on the analyses we either received from the agencies or conducted on our own, the sweeps were determined to allow the agencies to continue to operate over the remainder of the biennium. There were some exceptions. For example, I looked at the Criminal History Repository, from which the EBO proposed that \$1.6 million be swept. I talked to that agency and decided it should be reduced to \$1 million, based on their needs.

I do not have a lot of information to offer regarding the Financial Institutions account, other than to say they perform the critical function of reviewing banks and credit unions. I apologize that I do not have specifics.

SENATOR CARE:

One of the accounts to be swept, the Discretionary Grants-Unrestricted account in the Department of Education, is referenced in two places in A.B. 3: section 37, subsection 6, and section 68, subsection 2. My understanding is that some of those funds may come from federal grants, but the rest come from charter schools.

I will disclose that I represent a charter school and have for a number of years. There are about two dozen charter schools, both brick-and-mortar and distance education, in Nevada. I have learned quite a bit about them while I have been involved with them. I can attest that there is a growing demand by parents for charter schools. Under State law, charter schools are also public schools.

I would suggest that sweeping this account is misguided. If we are going to see a continued growth of charter schools in Nevada or people are looking at governing boards forming charter schools, this might send the wrong message.

SENATOR HORSFORD:

Are there any further questions?

While this is a difficult list to accept, the reality is that due to the overall budget shortfall, we have few choices. These are non-General Fund accounts that will help us balance the budget.

Senator Schneider moved to do pass A.B. 3.

Senator Parks seconded the motion.

Senator Care moved to amend the motion to amend and do pass, amending A.B. 3 by removing the sweep to the Discretionary Grants-Unrestricted Account from the Department of Education in section 37, subsection 6, and section 68, subsection 2 of the bill.

Senator Raggio seconded the motion.

Motion carried.

Senator Schneider withdrew his motion and moved to amend and do pass A.B. 3.

Senator Parks seconded the motion.

SENATOR CARLTON:

I am sure there is something every single one of us would like to take off this list. This is not fun; this is not what we got elected to do, taking the State apart rather than building it up. Each one of us would like to choose something we think is important and should not be on this list. To

start picking and choosing right now after the work that has been done, I cannot support that. I voted against it. This is not the right way to do this, and I feel it is inappropriate.

SENATOR AMODEI:

I appreciate the comments of my colleague. I will not offer an amendment regarding the Financial Institutions account, but I will say that one of the things we were elected to do was lead. To sweep funds for examination and audit from that State agency during the most fiscally challenged time in modern history is a phenomenally curious message to send. It is the wrong message at the wrong time on the wrong subject matter.

Motion carried.

SENATOR HORSFORD:

We will take up BDR 38-11 dealing with the preferred drug list.

CHARLES DUARTE (Administrator, Division of Health Care Finance and Policy, Department of Health and Human Services):

This bill draft seeks to remove restrictions that prohibit the Division from appropriately managing the pharmacy program in the Medicaid agency. The estimated savings associated with this proposed legislation are \$766,741 in General Funds for the current biennium.

The Division has managed a preferred drug list (PDL) since 2004 to provide recipients with therapeutically equivalent pharmaceuticals. It has reduced the trend in pharmacy expenditures by allowing the Division to save money and get the best net price on prescription medications without endangering the safety of patients. Since 2004, the preferred drug list has saved the State over \$13 million. Currently, NRS 422.4025 limits our ability to manage six of the most costly drug classes. The class that stands out the most is antipsychotic medications, which in terms of expenditure is triple what we spend on the next most costly class. Other classes that cannot be put on the preferred drug list are HIV and AIDS medications, anticonvulsant drugs, antirejection medications for organ transplants, medications for diabetes and antihemophilic drugs.

This bill draft was negotiated with representatives of the pharmaceutical industry, although they take exception to a number of the provisions.

Before I go through the bill draft, I would like to give a little background. The medications on PDLs are covered without prior authorization. When prescribed, these drugs allow the State to receive supplemental rebates from the drug manufacturers. This lowers their net cost. We further lower the net cost by shifting market share to the preferred product. It is a combination of obtaining supplemental rebates from manufacturers and shifting market share to that low-net-cost product. All of these products are therapeutically equivalent to the more expensive brands, as determined by the Pharmacy and Therapeutics (P&T) Committee, a group of physicians and pharmacists licensed in the State of Nevada who make these decisions without consideration of the cost or the savings to the State.

One of the most frequent complaints we hear about the PDL is that we are denying medications to patients. This is not true. Commercial health insurance plans, self-insured employer plans and government health insurance plans like Medicaid can limit drugs using hard formularies. Under federal Medicaid law, we cannot use a hard formulary. We must cover all FDA-approved drugs for their approved use. We can establish medical criteria for certain drugs as a way of controlling utilization, and that is the function of our P&T Committee and our Drug Use Review Board. Prior authorization is the tool state Medicaid programs use to do this. Prior authorization is a common requirement by which the prescribing practitioner must get approval from the payer before the drug is dispensed and paid for. Preferred drugs do not need prior authorization.

We also have a list of clinical criteria established by our P&T Committee and Drug Use Review Board that provides exceptions for which people can get access to non-preferred drugs immediately. An allergy to preferred medications, interaction with other medications a patient may be taking, a history of unacceptable or toxic side effects to a preferred medication, a failure of a preferred drug for a patient, an indication unique to a non-preferred drug that is supported

by peer review literature and FDA-approved—all of these situations and others are criteria a physician or prescriber can use to request a non-preferred product. All it requires is for them to contact our fiscal agent and request approval.

A survey was taken in 2008 by the California Medicaid program, Medi-Cal. Of the 40 respondents, 37 had PDLs. Of those 37, 25 did not exclude antipsychotic drugs from their PDLs.

We are including a number of safety measures in this bill draft. They include keeping people on their current medications.

I will go through the bill draft. Section 1, subsection 2, takes out the limitations that prohibit us from managing specific drug classes through the PDL process. Those drug classes are atypical and typical antipsychotic medications, anticonvulsant medications, antirejection medications for organ transplants and antidiabetic medications.

Subsection 3, paragraph (d), describes some of the clinical criteria the P&T Committee must develop.

SENATOR HORSFORD:

When you refer to antidiabetic medications, are you referring to medications that prevent diabetes?

MR. DUARTE:

No. These are medications that are used to treat diabetes, including insulin and other medications.

SENATOR HORSFORD:

Would these medications not be covered?

MR. DUARTE:

We are covering all these medications. Some would be designated as preferred and others as non-preferred. If necessary, a patient can get a non-preferred drug by means of prior authorization, which their physician can get readily.

SENATOR HORSFORD:

In a case where someone is diabetic or at risk of diabetes, how would this bill draft affect them?

MR. DUARTE:

I frankly do not see how it would affect patients. The PDL is characterized as denying medications, but under federal law we cannot. The Medicaid programs is one of the only health plans in the nation that cannot deny medications that are appropriate for a patient. We can require prior authorization, and that is all we are asking here. We want the ability to require prior authorization for some of these drugs. This particular class of drugs has further protections in terms of physicians and other prescribers not having to get prior authorization. Those protections are in place in this bill draft.

SENATOR MATHEWS:

With regard to the antirejection drugs, is that one of the classes you want to substitute generic drugs for the ones physicians prescribe?

MR. DUARTE:

There is actually one class of drugs for which we do not want to designate all drugs as preferred, and that is atypical and typical antipsychotics. For anticonvulsant, antirejection and antidiabetic medications, we are going to designate all current medications in those classes as preferred. People who are taking any of those medications in that class that are currently available and approved by the FDA can continue using them.

SENATOR MATHEWS:

Thank you for clearing that up. You do not want to mess with antirejection drugs. I have a friend who was stabilized on a specific medication for nine years, and when they changed the drug for a month, she was back into rejection.

SENATOR CEGAVSKE:

We have gone through this PDL for many years with you. There is a lot of history and background that some of the new members do not have. The biggest concern has always been that the doctor knows the drugs and knows the patient and what to give them. The fear is that you will force them to start with the cheapest drug and then put the patient through a series of experiments to see which one works the best.

I have heard that a lot of drug patents have expired recently, so more drugs are now available in generic form. Can you confirm that? Also, what is in this bill that will save money, and how much will it save?

I too am concerned about the antirejection medications, which I know are expensive. I am also not clear on your answer regarding antidiabetic medications.

Finally, can a physician, if they know there is a name-brand medication that works best for their patient, still get that drug? Do they again have to go through the process of starting with the cheapest drug and working their way up?

MR. DUARTE:

I am not familiar with the timing of patent expiration on all classes, but there are a number of drugs for which patents are expiring. One class in particular where this is true is the anticonvulsant medications. In general, however, I cannot speak definitively on patent expiration.

Regarding cost savings, we are estimating savings of \$766,741 in the current biennium.

With respect to antirejection, anticonvulsant and antidiabetic medications, we are doing two things with those three classes. First, we are grandfathering patients who are currently receiving any medications in these classes so they can continue on those medications until their physician decides to change them. We are also grandfathering patients receiving typical and atypical antipsychotic medications. Second, for antirejection, anticonvulsant and antidiabetic medications, we are designating as preferred all drugs in those classes that are currently approved by the FDA.

Regarding whether physicians can get access to a medication without having to go through the whole process, yes, they can. The P&T Committee established a list of criteria that allow a physician to request a non-preferred product via the prior authorization process. Non-preferred products are not always brand-name drugs, and preferred products are not always generic drugs. Quite often, we get lower pricing on brand names than generics. It depends on the contract arrangement the manufacturer has with us. What we are requesting is that if a patient is changing medication, they try a preferred product first unless there is a specific indication for a specific drug. Bear in mind that all these drugs have been designated as therapeutically equal by Nevada-licensed physicians and pharmacists. They do the same things as the non-preferred drugs. I do not see this as starting the process all over, though I know some have said that is what it is. We simply ask that rather than immediately jumping to a non-preferred product, they try a preferred product that is therapeutically equal.

SENATOR CEGAVSKE:

How are you going to handle new drugs?

MR. DUARTE:

We have an annual review process that the P&T Committee utilizes to review all drugs in all classes. Manufacturers can request an interim review, and we have agreed with PhRMA that we would notify the P&T Committee of new drugs coming on the market with a letter of intent every six months. Those new products are going to be made available to patients, but they will need a prior authorization for them. The prescriber can get them; they just have to request them and have a clinical reason for asking for them.

SENATOR MATHEWS:

I would like to ask you about the antidiabetic drug that is under discussion now for causing heart attacks. Is that on the PDL? The studies are saying they have known about this risk for years. How do you get a drug off the PDL if it is discovered to be problematic?

MR. DUARTE:

The P&T Committee is very much aware of contraindications and new clinical findings that suggest a drug is harmful. If a particular drug is found to be harmful through research and published studies, it is immediately taken off the PDL. We will put severe restrictions on such a drug whether it is preferred or not. I do not know which specific drug you are referring to.

SENATOR MATHEWS:

I will get the name for you. Secondly, I thought I heard you say those on antirejection medications, if they come on brand new, you can give them anything you want off that list. If they are not grandfathered in, they have to take what you suggest.

MR. DUARTE:

All the drugs in that class that are approved by the FDA are considered preferred and are on the list.

SENATOR MATHEWS:

I have lost a lot of sleep over these drugs. I do not want to have any more heartaches about this.

SENATOR HORSFORD:

You said patients will have to take the preferred drug first to determine if it works before they can be granted flexibility. That interferes with a doctor-patient relationship. How is that managed in the legislation?

MR. DUARTE:

If the physician has a clinical history for the patient not available to us that shows they have had a problem with a preferred product, they can immediately request a prior authorization for a non-preferred product.

SENATOR HORSFORD:

If I am having a problem with a preferred drug and I have to wait for prior authorization, what do I do in the meantime?

MR. DUARTE:

It is a one-day process.

SENATOR HORSFORD:

If I need it today, do I still have to wait a day to get authorization for a drug my doctor could otherwise prescribe?

MR. DUARTE:

There are emergency procedures. In general, people usually ask for a new prescription while they still have a few pills left in the bottle they can continue taking. A one-day process will not harm patients. However, if someone runs out of their medication because they forgot to monitor what they had left in the bottle, that could be a problem. We do have provisions where they can get emergency prescriptions filled, and that can be requested by the pharmacist so they can get a 72-hour extension on their prescription if there is some reason we cannot authorize the drug. We have no intent of harming people by making them wait to get a medication, and our processes protect against that.

SENATOR HORSFORD:

Where is that process in this legislation?

MR. DUARTE:

It is not in this legislation; it is in our regulations. There are also federal regulations that require us to provide those types of medications on an emergency basis. We use that practice not only for these drugs, but for all medications.

SENATOR HORSFORD:

Why are these six medications specifically being called out? How much will we save from this proposal?

MR. DUARTE:

We are only asking for authority to manage four of the six drug classes: antipsychotic, anticonvulsant, antirejection and antidiabetic medications. We are leaving out HIV and AIDS medications and antihemophilic medications off the PDL.

This legislation will save \$776,000. I have a list of the amount we expect will be saved by each drug class, though I do not have it right in front of me. The bulk of the savings will come from the management of antipsychotic medications.

SENATOR HORSFORD:

Is that savings from the General Fund or from a match?

MR. DUARTE:

It is from the General Fund. The bulk of that savings comes from atypical antipsychotic drugs; the next most is from antidiabetic medications, followed by anticonvulsant and antirejection medications. The savings from that last class is far behind what we would save from the antipsychotic medications.

SENATOR MATHEWS:

I would suggest, if I was making an amendment, that we leave the antirejection and antidiabetic medications off the PDL. As a nurse, I find that those are the most sensitive ones, and I would suggest we treat them the same as we treat the AIDS and antihemophilic medications. Those who take antirejection medications take so many blood thinners they often mimic hemophilia in any case.

MR. DUARTE:

The savings from the antirejection medications is nominal, only \$13,000.

SENATOR MATHEWS:

That is why I am asking you to leave them off the PDL.

MR. DUARTE:

On the other hand, the savings from the antidiabetic medications is \$186,000, so that would have to be dealt with.

SENATOR MATHEWS:

We are all going to need these medications if we just keep living. Everyone gets diabetes eventually.

MR. DUARTE:

But again, Senator, we are not denying anyone access to these medications, nor changing them out from what they are currently getting.

SENATOR MATHEWS:

I understand that. I am just suggesting you leave those two categories the way they are and treat them the same as you treat AIDS and antihemophilic medications.

SENATOR CEGAVSKE:

I still have concerns about this and have over the years. With the recommendations that have been set forth, I would like to ask this body to include a sunset clause and a requirement that the Legislative Committee on Health Care be given a quarterly report on this.

SENATOR HORSFORD:

It currently sunsets on June 30, 2013. There is a report provision in section 3 of the bill draft.

MR. DUARTE:

The provisions in section 3 require a report to the Legislature on April 1, 2011, reports to the Interim Finance Committee and the Legislative Committee on Health Care on April 1, 2012, and another report to the Legislature on or before April 1, 2013.

SENATOR CEGAVSKE:

I would request the reports be more frequent than that. Every six months would be fine, but it should be more frequent than yearly.

SENATOR MATHEWS:

If nothing else, the antirejection drugs should be left off the PDL, even if you do put the antidiabetic drugs on the list, because the savings are so small. I would suggest we do that without having to go through a motion.

On the motion of Senator Wiener and second by Senator Rhoads, the Committee did rise, return and report back to the Senate.

SENATE IN SESSION

At 5:17 p.m.

President Krolicki presiding.

Quorum present.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 25, 2010

To the Honorable the Senate:

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

LUCINDA BENJAMIN

Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 3.

Senator Care 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 Assembly Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVEN A. HORSFORD, *Chair*

MOTIONS, RESOLUTIONS AND NOTICE

Senator Horsford withdrew Amendment No. 2 to Assembly Bill No. 3.

GENERAL FILE AND THIRD READING

Assembly Bill No. 3.

Bill read third time.

Remarks by Senators Amodei and Coffin.

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

SENATOR AMODEI:

I know time is sensitive, so I will be brief. There are provisions of this bill I think are appropriate, but I am mindful of what many of you are going to be doing in 2011, and I see many of the major provisions of this as mortgaging the future, digging the hole deeper for those of you who will be here in 2011. We are funding ongoing operations to a phenomenal degree with one-shot solutions and borrowing money to fund ongoing operations, which not that long ago was something you were not supposed to do. I will oppose A.B. 3.

SENATOR COFFIN:

I will be opposing this bill. I do not suppose I have any choice. This is one of the major cuts of this session. It is one that contains some serious reductions in programs. There are at least a dozen items on here that are inappropriate to reduce. I am going to look at section 19 regarding the fund to Support Programs for the Prevention and Treatment of Problem Gambling; it sweeps out half the money in that account, which is provided by a \$2 tax on slot machines. The slot tax will stay, but the program virtually goes away. It did not totally go away, thanks to leadership intervention that tried to reduce that. In the health division, the radioactive material disposal account has been 90 percent wiped out. There is a reason for that money to be there. We have a problem that does not go away, a perpetual fund.

Let us make sure we think about what we are doing here. This kind of action is for future generations. If you take it away now, sure, it satisfies you; maybe it keeps you out of the hot spot and you do not have to find the money. But in the meantime, the next generation will, or the next session. Who knows?

What is going on in mental health and disability services? Did we not take any money out of the alcohol tax? I cannot tell. It looks to me like we did save that. It is not viable.

I have no objection to taking money from the Athletic Commission.

We are taking most of the money from the Trust Fund for a Healthy Nevada, and the Trust Fund for Public Health. In fact, we are taking out what the Governor wanted. We are just changing the timing on it. There goes all your tobacco money for cessation of smoking.

We are taking \$5 million from the Millennium Scholarship fund. We are killing the Millennium Scholarship fund, taking it down to expire in the year 2013 or 2014, borrowing from the kids' future to pay some bills that are maybe doubtful.

I could go on and on. With all the millions we are taking out of essential accounts, I wonder why we have added \$5.5 million back into the Wildlife Heritage account. It seemed like everybody changed their mind on that one. We are taking a million out of the Criminal History Repository, the sex offender registry. That is not a good place to start.

I am going to be a common scold if I go too far on these things, but I feel like this is just the beginning of what is going to be done in this short session. It is an indication of the mindset here

that we cannot face the fact that we need money. I could support some of these cuts if we had the nerve to raise some money to pay the bills. If these are worthy of keeping, the public goes along with paying for them. But borrowing from these accounts, or in some cases just plain stealing it, is wrong. It sends a bad signal.

I am sure we will have other opportunities to debate these issues. You have heard enough from me for now, but I will be back.

Roll call on Assembly Bill No. 3:

YEAS—17.

NAYS—Amodei, Cegavske, Coffin—3.

EXCUSED—Washington.

Assembly Bill No. 3 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

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 5:26 p.m.

IN COMMITTEE OF THE WHOLE

At 8:30 p.m.

Senator Horsford presiding.

Considering issues relating to the State's budget shortfall.

The Committee of the Whole was addressed by Senator Horsford; Senator Carlton; Senator Washington; Senator Raggio; Brenda Erdoes, Legislative Counsel; Senator Townsend; Mark Krmpotic, Senate Fiscal Analyst; Senator Cegavske; Ron Dreher, Peace Officers Research Association; Ron Larson, Nevada Department of Public Safety Association; Senator Lee; Senator Care; David Kallas, Las Vegas Police Protective Assn., Southern Nevada Conference of Police and Sheriffs; Kevin R. Ranft, AFSCME Local 4041; Edward Neidert, Senior Corrections Officer, Department of Corrections; Senator Olsen; Teresa Thienhaus, Director of State of Nevada Personnel; Greg Weyland, Division Administration, Department of Personnel; Rusty McAllister, President: Professional Fire Fighters of Nevada and Mark Murphy, AFSCME.

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

SENATOR HORSFORD:

We need to formally request an amendment to Senate Bill No. 3, after which it will be distributed.

SENATOR CARLTON:

I have attempted to address a number of the concerns that were brought forward. As the esteemed Minority Leader mentioned the other day, success has many fathers and failure is an orphan. With this bill, I feel like a foster mother.

A number of concerns were brought up with regard to the Fair Labor Standards Act (FLSA). In discussion with Legal Counsel, it seems that is not something we need to address within the amendment.

Another concern brought up was in regard to the 12-hour shifts for Corrections officers. We have received hundreds of e-mails on this, so we would like to request that the amendment include 12-hour shifts for Corrections officers. We would also like to revise the calculation of overtime to account for workweeks consisting of 8-hour and 10-hour days, as they will be two separate calculations.

In section 2, I would like to ask that the amendment provide local governments with discretion as to whether to add hold-harmless provisions concerning the accumulation of the retirement service credit and reported salary for the purposes of PERS. That will give them the flexibility to deal with the hold-harmless clause within all of their collective bargaining agreements (CBAs).

Finally, with regard to overtime, I would recommend it be calculated as 1 1/2 times regular pay for all staff, both those on the furlough program and those receiving a pay reduction. This makes it equitable across all classes. If you have two employees working overtime, one on a furlough schedule and one on a reduced salary, they will get paid the same.

SENATOR HORSFORD:

You are requesting an amendment to Senate Bill No. 3 with those changes.

SENATOR CARLTON:

Yes.

Senator Carlton moved to request an amendment to Senate Bill No. 3 to address the issues noted.

Senator Parks seconded the motion.

Motion carried.

Committee in recess at 8:33 p.m.

Committee called to order at 8:52 p.m.

SENATOR HORSFORD:

Amendment No. 3 to Senate Bill No. 3 has been distributed to the Committee.

SENATOR CARLTON:

I will work through the new language in the amendment.

Section 3 of the bill provides that certain exemptions from the furlough requirement must be approved by the Interim Finance Committee. There were a number of concerns about inequities in how exemptions from the furlough program were being handled. There had been a request by one of the employee group representatives during testimony this morning that the IFC review all exemptions to make sure they are fair and equitable.

Section 2 of the bill gives local governments discretion as to whether to provide their employees hold-harmless clauses regarding retirement service credit and reported salary for PERS.

Section 9 of the bill revises the calculation of overtime to account for workweeks consisting of 8-hour or 10-hour days. It also adds 12-hour shifts requested by Corrections.

SENATOR HORSFORD:

Could you go into more specific explanation regarding the change to section 2 of the bill?

SENATOR CARLTON:

Section 2 of the bill provides for a pay reduction of 5.75 percent in lieu of furlough. It was suggested that rather than stating employees "may be held harmless," it would be better to include this language: "... except that, in the case of an employee of a local government, the local government shall determine whether the employee will be so held harmless." In PERS, everyone has to be treated the same and offered the same benefits. This allows the choice, within the collective bargaining unit, as to how these benefits will be dealt with.

SENATOR WASHINGTON:

Is this primarily dealing with local public employees' benefit packages under the auspices of their negotiated agreements?

SENATOR CARLTON:

It applies to all local government employees, but allows flexibility if there is a CBA in place.

SENATOR WASHINGTON:

Are they subject to the pay reduction of 5.75 percent or the 4-10 workweek? Does it apply only to State employees?

SENATOR CARLTON:

No. This applies to public employees, and it is permissive.

SENATOR WASHINGTON:

It is permissive for local government employees.

SENATOR CARLTON:

Correct.

SENATOR HORSFORD:

There was a concern raised by one of the municipalities that with this language, in the event they took a furlough, whether they contribute towards PERS would be permissive, and that would be worked out between the employee group and the employer in this case.

SENATOR CARLTON:

Yes, that is the way I interpret it.

MS. ERDOES:

That is correct.

SENATOR HORSFORD:

We will be hearing from the municipalities on that, then.

SENATOR CARLTON:

This is the language we felt best addressed that concern.

SENATOR RAGGIO:

Thank you for considering this change. It was the City of Reno that brought to our attention the fact that the original language could have cost the city something in excess of \$3 million, and it would have had a similar effect on other local governments. You suggested that this would be subject to collective bargaining; however, this is not in the bill. What I am reading is that the

local government shall determine whether employees will be held harmless. How does that become an issue for collective bargaining?

MS. ERDOES:

This provision applies to all local governments, whether decisions for employment are being made within a CBA or not. If the decision as to whether furloughs will happen is subject to collective bargaining for a particular local government, then this hold-harmless clause could be something they decide under collective bargaining. The section is written broadly because not all the local governments have that as a subject of collective bargaining.

SENATOR RAGGIO:

I just want to make sure we understand this revision is not mandating that. If the reduction of salaries and so forth is subject to collective bargaining, by implication this would be also. Is that what you are saying?

MS. ERDOES:

That is correct.

SENATOR HORSFORD:

As I read the amendment to section 3, it requires that exemptions from the furlough policy must be approved by the IFC in addition to the State Board of Examiners or the Board of Regents. Is that correct?

SENATOR CARLTON:

Yes.

SENATOR RAGGIO:

As I understand this, then, whether it is the Executive Branch or the NSHE, exemptions, if granted, would not become effective until approved by the IFC. There could be a determination and then some period of time before the IFC would meet. Is that correct?

MS. ERDOES:

Yes, except that only two of the five groups, the Executive Branch and the NSHE, would be subject to this IFC approval. The Supreme Court, the Legislative Branch and PERS are not.

SENATOR CARLTON:

The language regarding the calculation of overtime is at the end of section 3. The best way to explain this is to reiterate the example I used earlier. If you have two employees, one on the furlough program and the other on the pay reduction program, the furloughed employee would receive time and a half for overtime based on their regular hourly pay, because that pay has not changed. For the employee with reduced pay, time and a half would not be calculated on their reduced pay; it would be calculated on their regular pay. All classes of employees would receive equal treatment for overtime.

SENATOR TOWNSEND:

Do we have a spreadsheet showing the effect of that particular change on the projected overall budget reductions?

SENATOR CARLTON:

I am not sure we could do a projection like that. We do not know what agencies will ask to be exempt. They may all opt for furloughs. We could pull probably pull an officer and come up with a basic example of an employee making \$30 an hour, dropped down to \$28 an hour, and do basic math from there. Other than that, it would be too hard to project.

SENATOR HORSFORD:

Mr. Krmpotic, do you have anything to add from a fiscal perspective? Overtime is covered broadly in the budget process.

MR. KRMPOTIC:

In certain cases, overtime is funded in the budgets. The Nevada Highway Patrol is one example of an agency that is funded for overtime at the level of their current pay. Other agencies are not. Generally, agencies have tried to implement controls with respect to overtime, like the Department of Corrections. They are not budgeted for overtime and would therefore experience severe budgetary shortfalls if incurred. I agree with Senator Carlton that it would be quite difficult to calculate overtime in this case, not knowing the number of employees who would opt for the pay reduction in lieu of the furlough. I believe current language requires an exception for employees working overtime during a furlough period.

SENATOR HORSFORD:

If there are no more questions on that section, we will move to section 9 of the amendment.

SENATOR RAGGIO:

Before we get to that, could we have an explanation of the purpose and impact of removing the language in section 6 referring to the Department of Corrections?

MS. ERDOES:

This language has to do with the 12-hour shifts requested by the Department of Corrections and is still in the bill. It was moved from section 6 to section 9 because there was no parallel to the Board of Regents provision in section 6. It is now in section 9, subsection 6.

SENATOR RAGGIO:

So the language in section 9 replaces the language that was in section 6 and makes some modifications.

MS. ERDOES:

Yes.

SENATOR HORSFORD:

Senator Carlton, could you walk us through section 9?

SENATOR CARLTON:

Certainly. In subsection 3, the language defines overtime for a workweek consisting of 10-hour days as time worked in excess of 10 hours in 1 calendar day, 10 hours in any 18-hour period or a 40-hour week. Overtime during a workweek consisting of 8-hour days would be work in excess of 8 hours in 1 calendar day, 8 hours in any 16-hour period or a 40-hour week. In subsection 6, it defines overtime for the 12-hour shifts for the Department of Corrections as work in excess of 12 hours in one shift or 84 hours in any 14-day pay period. If you remember the discussion, Corrections has an exemption for overtime on the 84 hours. They have had this in the past, and the officers requested we return to this.

SENATOR CEGAVSKE:

I know this is a special session and we are making some major adjustments here. Have we had input from these entities? I have gotten e-mails, but I am curious if the entities affected by this have had been noticed and in on the discussion.

SENATOR HORSFORD:

The 12-hour shifts were part of the recommendation in the budget process presented by Mr. Skolnik to the IFC and also this week. The 10-hour provision is based on the proposal by the administration and some in the Legislature. This amendment just clarifies how overtime would work because that was not fleshed out in the original bill draft.

SENATOR CARLTON:

I cannot guarantee the Department of Corrections has seen this amendment. We have asked for information from them a number of times, and we have not heard anything. As we were working through this, we took what they have used in the past with 12-hour shifts, since it worked for them before.

SENATOR CEGAUSKE:

I appreciate that, but that is why I asked if they have seen it since the language has been changed.

SENATOR HORSFORD:

We will open the discussion for public comment in a moment. Ms. Erdoes, could you explain the reason for including the language in section 9, subsection 7, regarding the FLSA?

MS. ERDOES:

The director of the Department of Personnel, Teresa Thienhaus, asked us to make that change, and I believe it is absolutely necessary. This section of the NRS was basically designed to cover voluntary flexible work time, and these changes make it fit both voluntary flexible work time and the changes this bill is making. The current section refers to a variable workweek of 80 hours; since we will now have an 84-hour variable workweek, we took out the hour reference so it just speaks to a variable workweek. We took out the phrase "and who choose and are approved for such a work schedule" because some of these employees will not be given a choice in terms of what that workweek will be. We took out the phrase "only after working 80 hours biweekly" because for the 12-hour shift this will be 84 hours. Ms. Thienhaus helped us with the application of the FLSA and how this would all work. We basically used her language verbatim, and it seems to work very well.

SENATOR HORSFORD:

Could you explain the change from days to hours in sections 10 and 11?

MS. ERDOES:

Those provisions are being changed to avoid a fiscal impact. They are based on an 8-hour day rather than a 10-hour day and state that employees are awarded annual leave of 1 1/4 days for each month of service. With an 8-hour work day, this is 10 hours of annual leave a month; with a 10-hour work day, this is 12.5 hours of annual leave a month. For this reason, we have changed all the references to hours rather than working days to avoid the negative fiscal impact.

SENATOR RAGGIO:

Section 14 is a sunset provision. Under this bill, sections 8 and 9, which deal with overtime calculations for a 10-hour day, would not sunset. Is that correct?

MS. ERDOES:

Yes, that is correct.

SENATOR RAGGIO:

Why would those sections not sunset along with the other provisions?

MS. ERDOES:

There are two things here. The overtime change in section 9, subsection 3, makes the overtime rules work with an 8-hour or a 10-hour day. Since there could be 8-hour or 10-hour days after this furlough program ends, we decided to leave this section in. It does not change the 8-hour day rules, but it provides an additional rule for 10-hour days if that were to come about. The same is true with the other changes regarding the 1 1/4 days. We thought this was a better way to state it from now on, in case the problem came up again. Leaving the language in section 9, subsection 6, would make it so the changes to the 12-hour shift in the Department of

Corrections would not expire. That is a substantive decision you are making, that you want to keep this 12-hour 14-day pay period.

SENATOR RAGGIO:

Any of these issues can be revisited during the next regular Session. However, unless it is changed at that time, those provisions in sections 8 and 9 would continue. Correct?

MS. ERDOES:

Yes.

SENATOR HORSFORD:

If there are no other questions, I will open up the discussion for public comment.

RON DREHER (Peace Officers Research Association):

I have heard most of today's discussion of this bill. I have some issues with the bill, though we support most of what Senator Carlton proposes. You will hear from AFSCME tonight, and we also support their amendments to the bill. My comments will be based on the original version of Senate Bill No. 3, since I did not have access to the amendment.

Section 1, subsection 4, gives local government the ability to require employees to take unpaid furlough leave, "except as otherwise provided in subsection 8." Subsection 8 states that this will not apply if it conflicts "with the provisions of a collective bargaining agreement." The concern we have is that we believe this section has an impact on NRS 288 to a degree. That is the section dealing with collective bargaining. The language of section 4 of the bill does not have any emergency procedures. It basically says if you do not have a CBA in place, the local government employer could implement a furlough program. I am negotiating right now where there is not a contract and has never been a contract. Would this language allow the local government employer to come to us and say, "Between July 1, 2010, and June 30, 2011, we are going to lay off employees, even though we are negotiating"? This conflicts with NRS 288.150, which covers mandatory topics of bargaining. It conflicts with NRS 288.200, the resolution techniques we have. We do not see the reason for this. Currently, local government employers have the right to do this for unclassified people and people without CBAs. Why are we trying to mix this in with the concerns we have for state employees, whom I also represent? We respectfully request that this section, and every section dealing with CBAs as it pertains to local government employers, be deleted. We feel that these provisions take the air out of our sails and give it to local government to continue doing what they have been doing.

Section 2 deals with the 5.75-percent salary cut in lieu of furlough. Our only concern with that section was the discrepancy in the way overtime was calculated, and it sounds like Senator Carlton's amendment took care of that. We certainly appreciate that; it was a major concern to a lot of people in State employment.

I will let AFSCME representatives cover their concerns about the 12-hour shift issue. We support their amendment on this.

The other part we have a concern about is section 7, and I will let Mr. Larson from the Highway Patrol Association address it. That is the only part of the bill I could find that dealt with overtime when Highway Patrol officers are called out in the middle of the night. Our amendment would be that any overtime that occurs during a furlough period shall count as overtime for this people. I will let him explain that.

We are in support of the rest of the bill.

SENATOR HORSFORD:

You said you are in the process of negotiating a CBA. The provision in this bill says it cannot conflict with NRS 288, but if you do not yet have a contract, you are not covered by NRS 288.

MR. DREHER:

That is exactly the point I was trying to make.

SENATOR HORSFORD:

You are not covered now. What does this bill do that is different from how you would handle that process now? If you have no contract, can they not determine the rules of engagement, so to speak?

MR. DREHER:

No. Under the provisions of NRS 288.180, once the negotiation process is ongoing, neither side can make unilateral changes. This bill says it will give the unilateral right to impose furloughs to the employer in May. That is our concern. We are in the process of negotiation and have followed the procedures in the law. Our only recourse would be to file a complaint with the MRB under NRS 288.270, which covers prohibited practices. By deleting this section, we avoid that. Secondly, at the end of this year, June 30, 2010, a number of CBAs will be open in Nevada. Most of them have rollover language stating basically that if you are in contract negotiations, the current contract stays in effect until you negotiate a new one. If the current contract expires on June 30, 2010, and there is no rollover language, this bill will take effect, and the employer could unilaterally change it. That is why we recommend you eliminate this provision and take local government out of this particular fight.

SENATOR HORSFORD:

I appreciate that. However, from a legislative perspective, the issue is that we have been having inequities in how implementation occurs. This is permissive. If it does occur, it should be done in a uniform manner. That is part of the policy we are trying to achieve.

RON LARSON (Nevada Department of Public Safety Association):

We agree with the furlough part of the bill, but the issue that comes up for us has to do with callouts, not only being called out in the middle of the night in the rural posts, but also callouts during an overtime situation for court and those types of situations. Under the current policy, if we get called out in the middle of the night and we are on a furlough day or a furlough week, we will get compensated for 2 hours of callout. However, any time we incur after that is paid at straight time. We have to make up the furlough time we have already incurred during that time period. This is turning into a safety issue. In the rural areas, our officers are getting called out in the middle of the night, and if they are on their furlough day or furlough week they are not able to respond and be paid in a proper manner.

SENATOR HORSFORD:

Senator Lee expressed this concern earlier. It is my understanding that the way this bill is written, because we are moving from a furlough day to a number of hours, there is better discretion and flexibility, so the departments and agencies can schedule more appropriately than they might have been under the previous program. Do you feel this language achieves that objective?

MR. LARSON:

No. It does not matter if it changes from 8 hours to 10 hours. We are still going to be under a 40-hour variable or an 80-hour variable workweek. Once we have done our furlough for that time period, if we incur any overtime during that period, we are still going to be in the same situation. The only difference will be that we are subtracting from a 10-hour block instead of an 8-hour block.

SENATOR HORSFORD:

I understand that from one officer's perspective. What I am saying is because we are not requiring every employee to take 8 or 10 hours of furlough per month, but rather a bank of hours throughout the year, that provides a greater level of flexibility for scheduling than under the current policy.

MR. LARSON:

What we are doing right now is we are only doing it on a month-to-month basis. If we all take our furloughs in a one-week period for the rest of the year, if you come back at some certain time and we get it back, we are going to lose that time we had already incurred.

SENATOR LEE:

Could you explain what you mean about callouts for court?

MR. LARSON:

Currently, when officers who work the graveyard shift are required to go to court on a furlough day or furlough week, they are only allowed to have 2 hours of call, especially in the Las Vegas area where they are in court a lot. You may spend all day in court, 8 hours on your day off, but you are going to have to either use that other 6 hours against your furlough time to make up that time, or just donate it to the State.

SENATOR CARLTON:

This concern was brought to me earlier today. It seems to me to be more of a policy issue within one department. I was not sure how we could address it in statute. I am hoping we can work with the department and figure out a better way to address this for the officers. I could not figure out a way to put it in this bill, but if someone has an idea, I am ready to hear it.

SENATOR CARE:

Mr. Dreher, I want to be sure I understand. With regard to section 1, subsections 4 and 8, I have never sat on a committee hearing anything that comes under NRS 288. What provisions are there in contracts you are familiar with, State law or federal law that address the applicability of contractual terms in a CBA during the period after the contract has expired but before the parties have reached agreement on the terms of a new contract? Apparently, you think there is a period in there where there is nothing applicable, where there is in effect no bargaining agreement in place. Did I misunderstand what you were saying?

MR. DREHER:

That is our feeling, yes. We believe there is a void there, that the language being proposed would impact collective bargaining, or at least provide a unilateral right to the employer to do something while we are negotiating. That is the way we are reading this, and that is the confusion. We read that section and wondered what we were doing to local government when we already have a provision in place to take care of the issues this bill is addressing. That is our concern.

From the contract standpoint, I believe, based on what I have been through, that management would have a unilateral right to do whatever they wanted on June 30 if we do not have rollover language in place. I am not saying they would, but I believe we need language in here that covers emergencies, credibility and the fiscal problem. Those are the things we see lacking in this section, and that is why I would like to see it deleted.

SENATOR CARE:

Even if you did not have this provision in here, you would still have existing law. If there is no contract in force during that period, why would this bill change the current situation?

MR. DREHER:

It would memorialize the current situation that we both negotiated and deal with at the local government level. That is the draw we believe collective bargaining, NRS 288, currently gives us. It would memorialize what local government does anyway, but local government does not have a unilateral right to do that anyway. We would negotiate that, go back through our ground rules or use some other mechanism to assure us that we could continue negotiating a successor agreement or an original agreement.

DAVE KALLAS (Las Vegas Police Protective Association, Southern Nevada Conference of Police and Sheriffs):

I am here to speak about one specific provision of Senate Bill No. 3, and I will try not to be redundant. Section 1, subsection 4, has to do with the local government employer being able to require employees to take furlough days. I echo some of Mr. Dreher's comments regarding the implications of the permissive nature of this language as it relates to NRS 288. For the 30 years I was an officer with the Las Vegas Metropolitan Police Department, we were always covered under a CBA. But there were times when agreement on that CBA was not reached prior to the expiration of the existing one. This language could create confusion between local government employers and employee organizations during the course of negotiations. I would hate to see a local government employer, though I do not believe they would do this, threaten to use the furlough program in order to get the employee organization to comply with their demands during the course of the negotiations. It creates a problem.

Most of you know that we spent months less than eight months ago working on a comprehensive bill that included some changes to NRS 288. All the groups affected by that were involved with those discussions. It took a long time, but at the end we came out with something we were all equally happy or unhappy with. I understand that this body has been convened for less than 72 hours. This is a complicated matter, a policy issue. You have a big obligation in front of you to close a \$900 million budget deficit. All the same, I do not think it is fair to the local government employees to try to pass a policy issue without enough time to properly vet it. I just saw this portion of the bill probably an hour ago, and I believe I know almost as much about the provisions of NRS 288 as anybody else. Still, I am confused about the implications of section 1, subsection 4, on local government employers and employee groups as they negotiate existing and future contracts.

I ask this body, before it moves forward with something that could have significant unintended consequences, to reevaluate whether this is truly necessary and part of the purpose of this special session.

SENATOR HORSFORD:

Section 1, subsection 8, states, "The provisions of subsection 4 do not apply to the extent that those provisions conflict with the provisions of a collective bargaining agreement entered into pursuant to chapter 288 of NRS." Do you not feel that language protects the collective bargaining process effectively? In my reading of the bill, subsections 4 and 8 go together.

MR. KALLAS:

Unfortunately, I would disagree. This talks specifically about a CBA, and I do not believe discussions or negotiations could be considered an agreement. If there was no agreement in place during the interim period, even though one may have been in place for three decades continuously, this language could create confusion during the course of the collective bargaining discussion. I do not want to see it used as a tool to get an employee group to agree to something they otherwise would not because they are trying to avoid furloughs.

SENATOR HORSFORD:

Is it not true that in most CBAs, if a new agreement is not reached by a certain date, there is an automatic extension of the existing agreement? Why would that extension not protect you?

MR. KALLAS:

Not every CBA has a rollover clause. Those that do not may have problems, even though they may be negotiating in good faith. Hours, wages and working conditions are mandatory subjects of collective bargaining, and furloughs have to do with hours. If I spend four months discussing hours, wages and working conditions, and all of a sudden my current CBA expires, the concern is that this language could be used to try to make me do something I otherwise would not because of the threat of furloughs. We might be able to support the bill if the language was more specific about exactly who it would cover, or if it was to address a local government employer's right to furlough contracted employees who are not covered by a CBA. However, because of the

vagueness and what the confusion may do to the collective bargaining process, I do not think it is something we need to rush through without getting it vetted by the affected parties.

KEVIN RANFT (American Federation of State, County and Municipal Employees):

I would like to touch on section 6 of the bill regarding 12-hour shifts. These 12-hour shifts are a vital asset to Department of Corrections employees. We have had them in the past. They boost morale, camaraderie and family values of the correctional officers throughout the State. A couple of correctional facilities are currently on a 12-hour shift, but most of them are not. This will reduce massive overtime. People ask if working a 12-hour shift causes stress. It does not. It causes less stress than working five 8-hour days without seeing your family or coworkers. The opportunity to have this 12-hour shift will benefit the state as a whole by increasing the safety and security of the institutions. These officers are giving 110 percent, and this makes them feel that they are actually a part of a team and not just under a dictatorship. Over 80 percent of the correctional officers feel this will help them do what they were sworn to do: maintain the safety and security of the public, the staff and the inmates.

EDWARD NEIDERT (Senior Corrections Officer, Department of Corrections):

I have 29 years of on-the-job experience, so you might say I am the collective memory of the Department. As far as I have been able to determine, the idea of 12-hour shifts is overwhelmingly popular throughout the Department. Mr. Ranft said 80 percent of officers are in favor of them, though this figure could be low. I personally know of no officer who is opposed to 12-hour shifts. We have used 12-hour shifts in the past, and they have worked extremely well. They promote camaraderie because with 12-hour shifts, you have an A team and a B team, working day shift and graveyard shift. Officers on a team develop an esprit de corps, a bonding. Their families get together for picnics and camp-outs. They travel to and from work together, some from as far as Stead, 50 miles one way. Officers who work a 12-hour shift only work 3 or 4 days a week. Putting on this uniform and getting ready to go to work takes a full 60 to 90 minutes before I am ready to leave the house.

Twelve-hour shifts could not possibly be more popular. They lower overtime and sick leave because of the bonding through the team. If officers call in sick, they are affecting their fellow officers and friends, and it is no longer a casual decision. The 12-hour shift was originated by officers. We determined that it would save the Department money, and we crunched the numbers for a workweek consisting of 7 12-hour days over two calendar weeks for a total of 84 hours. We determined the legality of it, finding that there is an exemption in FLSA allowing us to do this. We brought it as a complete package to the director of the Department. We support this.

MR. RANFT:

I have not seen the amendment, but I have been told there will be zero exemptions to the furlough program for corrections officers. This raises safety and security concerns, and I personally can attest to that. It will be extremely difficult for corrections officers to take a furlough. You would have to shut the prison down for a whole day for officers to take furloughs. Cutting 5.75 percent off the base pay is something we do not want to accept. We have already taken many cuts, but we are willing to help the State out in these hard times. We understand it will take away from our families, but it will help the State. There will have to be an exemption to the furlough for Corrections, however. The alternative is serious problems for the prisons, and it is not going to be pretty.

SENATOR OLSEN:

How many training officers do you have?

MR. RANFT:

Are you talking about just training officers, or all officers together?

SENATOR OLSEN:

Training officers.

MR. RANFT:

We do not have the Field Training Officer (FTO) program in our department. Every year we go through a 24-hour refresher course, and that is all.

SENATOR OLSEN:

I am trying to get to the point of the differential pay. Do you get differential pay for shift work?

MR. RANFT:

Yes. On the 8-hour shifts, we have the day shift, the swing shift, and the graveyard shift. The swing shift and the graveyard shift are currently allowed a 5-percent pay shift differential. Those shifts are typically harder to fill, which is why the differential is there. Under the 12-hour shifts, there are substantial savings because only the graveyard shift receives the differential pay.

SENATOR OLSEN:

I bring this up because we have heard the Governor intends to cut differential pay. If we cut officers' pay by 5.75 percent, and then the Governor cuts both the 5-percent shift differential and the 5-percent language differential, some state employees will be getting a pay cut between 15 and 20 percent. That is not an equitable thing, and I would like this body to consider that.

TERESA THIENHAUS (Director, Department of Personnel):

The shift differential is not included in the adjustments the Governor has recommended to rescind. Only the adjustments pursuant to NAC 284.206 are included in that rescission, and the shift differential is in NAC 284.210.

With regard to the amendment to Senate Bill No. 3, I would like to bring a couple of things to the Committee's attention. First, section 3, subsection 4 states: "... the payment of any overtime that is worked by an employee [who fills a position that is cut by 5.75-percent] must be calculated based on the employee's unreduced salary." We do not currently have the ability to do this. Payroll is currently managed by a computer program that was purchased off the shelf in 1999 that has gone through lots of adjustments and revisions to get it to where it is now. In order to reprogram the system to do this, we would have to do it on a case-by-case basis, and that would require a huge amount of staff time. If this bill passes and we are faced with having to do this, we would have to consult with the Department of Information Technology to see what kind of time factor and money we are talking about to implement the change. To explain exactly how payroll works and why this is not possible, I have brought my administrative services director, Greg Weyland.

GREG T. WEYLAND (Division Administrator, Department of Personnel):

I am not sure I can explain how the payroll system works. It is an extremely complicated system that is driven off of many tables. What we did last year to make the furloughs work was to work through the leave system outside of the main system of Advantage to do the calculations to allow us to do the reduction and also maintain the full salary for PERS. When we start talking about making adjustments and doing different rates for overtime, that can cause substantial work in trying to figure out how that is going to work out. I cannot be sure what it will take until we get into it.

Another part of this is in the amendment. When you set two standards for overtime, one for 8-hour days and one for 10-hour days, that introduces another complication. Our recommendation was to follow FLSA and set overtime as over 40 hours a week.

MS. THIENHAUS:

That was our other concern, the provisions in section 9 of the amendment. To calculate different amounts for overtime for a single employee, depending on how many hours were worked that week, presents a problem. Our suggestion to Legislative Counsel was that overtime be based on a 40-hour week.

In section 9, subsection 6 applies to Corrections Officers working a 12-hour shift. Subsection 7 is our recommendation to change that to FLSA standards. The variable biweekly

pay period is what applies to Corrections Officers, so subsection 6 is inconsistent with subsection 7.

SENATOR RAGGIO:

Your objections are to the amendment. Is that right? You are saying that these provisions are either difficult or impractical in some instances.

MS. THIENHAUS:

That is correct.

SENATOR RAGGIO:

Do you have a proposal to further amend that you would suggest?

MS. THIENHAUS:

The recommendation I would make is what Mr. Clinger testified to this morning: not to allow exemptions at all. That would take care of the problem of having different types of pay for different types of employees.

SENATOR RAGGIO:

I understand that. If it is the decision of the Legislature to allow exemptions, do you have some change to propose that would accommodate that or make it practical to implement?

MS. THIENHAUS:

My only recommendation would be, as I said before, to strictly calculate overtime according to the FLSA. That would mean overtime would be work in excess of 40 hours a week for most employees.

SENATOR RAGGIO:

That defeats the concept we are trying to implement on a fairness basis across the whole personnel system. We would have no purpose in doing the bill, would we?

MS. THIENHAUS:

You would still have a purpose in doing the bill. If overtime in excess of 40 hours in one week is allowed, that is what the FLSA requires.

SENATOR RAGGIO:

I am not trying to be argumentative; I am trying to understand why it cannot be done.

SENATOR HORSFORD:

I have the same questions. Based on the number of issues that have been raised, I will not take a vote on this bill tonight. There are a number of legitimate questions, but some are just being raised by the administration around operationalizing this that I would hope would have been worked out prior to this. The position Mr. Clinger and Ms. Thienhaus are representing, that we not allow exemptions, is too rigid. We need to work out something beyond that. I do not think you have the answers we need. Without some specific solutions on how to approach it, I am not going to put the members in a position to vote for that tonight. Unless you want to finish your testimony tonight, we can get something in writing from you on proposed changes and take it up first thing tomorrow morning.

RUSTY MCALLISTER (Professional Fire Fighters of Nevada):

My question about this bill falls in a different area. Section 8, subsection 2, paragraph (a) states that the board of county commissioners can give no more than 10 hours of annual leave for each month of service, not to exceed 240 hours total in a calendar year. Paragraph (g) in this same subsection limits sick leave to 10 hours for each month of service. Firefighters work 24-hour shifts, and thus we accrue at a higher rate than 8-hour and 10-hour employees. When we take one shift off on sick leave or annual leave, it is 24 hours of leave time, not 8 hours. I am

asking for clarification as to whether this would affect us. Would it reduce what we currently accrue from 24 hours a month to 10 hours a month?

SENATOR HORSFORD:
We will follow up on that.

MARK MURPHY (American Federation of State, County and Municipal Employees):

The only issue I wanted to address tonight is Ms. Thienhaus's remarks on overtime. I know you are going to come back to this issue, but I want to make sure everybody understands that current law in Nevada pays overtime for time worked longer than a normal shift of an employee's workday. If you work an 8-hour shift and you are asked to work longer than 8 hours, you get overtime for that. If you work a 10-hour shift under this bill, employees would work at regular pay for 10 hours, and if you are asked to work longer than 10 hours, you would get overtime pay for that extraordinary effort. The same goes for 12 hours for corrections officers.

I am troubled by the fact that the personnel director stated she wanted to go to the FLSA standard. The FLSA is not a standard. It is a minimum requirement by federal law. There is no prohibition to paying overtime at a standard greater than the FLSA minimum, which is what Nevada does today. I was also troubled because we were told that that language was put in by the Legislative Counsel Bureau and not by the department director. Subsequent testimony here today seems to indicate it was her intention to put that language in there to remove 8-hour and 10-hour overtime.

As we look at this issue further, I would like to make sure everyone knows what is at stake.

SENATOR HORSFORD:

Obviously, this is a comprehensive bill with a number of implications. We want to ensure we take every caution to do this right and receive all the input. The amendments helped to address a number of concerns we heard earlier today, and we will take the additional public comment into consideration as well. I would like to request those who offered comment to offer proposed amendments. Please get those to my office no later than 8:30 tomorrow morning so we can make them available for the Committee to consider when we come back into session.

If there are no more questions or comments, I will close the hearing on Senate Bill No. 3.

On the motion of Senator Wiener and second by Senator Mathews, the Committee did rise, return and report back to the Senate.

SENATE IN SESSION

At 10:09 p.m.
President Krolicki presiding.
Quorum present.

UNFINISHED BUSINESS SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bill No. 2; Assembly Bill No. 1.

Senator Horsford moved that the Senate adjourn until Friday, February 26, 2010, at 9:30 a.m.
Motion carried.

Senate adjourned at 10:11 p.m.

Approved:

BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

UNION LABEL