

THE FORTY-FOURTH DAY

CARSON CITY (Tuesday), March 20, 2007

Assembly called to order at 11:04 a.m. in the Old Assembly Chamber at the historic Capitol Building

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Donald Thayer.

O my God, O my God. Unite the hearts of Thy servants, and reveal to them Thy great purpose. May they follow Thy commandments and abide in Thy law. Help them, O God, in their endeavor and grant them strength to serve Thee. O God, leave them not to themselves but guide their steps by the light of Thy knowledge and cheer their hearts by Thy love. Verily, Thou art their helper and their Lord.

BAHA'U'LLAH

Pledge of allegiance to the Flag.

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

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 27, 35, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN OCEGUERA, *Chair*

Madam Speaker:

Your Committee on Government Affairs, to which was referred Assembly Bill No. 134, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARILYN K. KIRKPATRICK, *Chair*

Madam Speaker:

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 152, 192, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BERNIE ANDERSON, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, March 19, 2007

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Bill No. 147.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that COVEREDGE TELEVISION NEWS SERVICES: Richard Travis; COX COMMUNICATIONS: Steve Schorr, Richard Travis; KLAS: Richard Travis; LAS VEGAS SUN: Joe Shoemann be accepted as accredited press representatives, that they be assigned space at the press table in the Assembly Chambers and that they be allowed use of appropriate broadcasting facilities.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Judiciary:

Assembly Bill No. 482—AN ACT relating to criminal procedure; prohibiting certain governmental officers from requesting or requiring a victim of an alleged sexual offense to submit to a polygraphic or similar examination as a condition of investigating the offense; requiring judicial notification to persons convicted of a misdemeanor or felony that constitutes domestic violence that certain acts by such persons concerning a firearm or ammunition may be a felony under federal or state law; and providing other matters properly relating thereto.

Assemblyman Anderson moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By the Committee on Judiciary:

Assembly Bill No. 483—AN ACT relating to property; providing that certain property of a judgment debtor is exempt from execution; and providing other matters properly relating thereto.

Assemblyman Anderson moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By the Committee on Education:

Assembly Bill No. 484—AN ACT relating to education; requiring the Legislative Committee on Education to study the issue of testing in the public schools during the 2007-2009 interim; and providing other matters properly relating thereto.

Assemblywoman Parnell moved that the bill be referred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

By the Committee on Education:

Assembly Bill No. 485—AN ACT relating to education; revising provisions relating to reports of accountability to include information relating to pupils who drop out of school in grade 8; revising provisions governing the attendance and truancy of pupils; authorizing a juvenile court to order a parent or guardian of a child to pay a fine if the child is a habitual truant;

authorizing a juvenile court to waive certain fines ordered against a child if the parent is ordered to pay fines in a court of competent jurisdiction; requiring the Legislative Committee on Education to study issues relating to truancy; and providing other matters properly relating thereto.

Assemblywoman Parnell moved that the bill be referred to the Committee on Education.

Motion carried.

By the Committee on Government Affairs:

Assembly Bill No. 486—AN ACT relating to veterans; providing a definition of “veteran” for general application to Nevada Revised Statutes; revising certain obsolete and inaccurate terms; expanding the eligibility of certain veterans for certain tax exemptions and governmental programs; and providing other matters properly relating thereto.

Assemblywoman Kirkpatrick moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senate Bill No. 147.

Assemblyman Ocegüera moved that the bill be referred to the Committee on Taxation.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 5.

Resolution read third time.

Remarks by Assemblymen Mortenson, Mabey, Gansert, Kihuen, Settlemeyer, Anderson, and Conklin.

Assemblyman Ocegüera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN MORTENSON:

Assembly Joint Resolution 5 relates to a statewide lottery. Assembly Joint Resolution 5 proposes to amend the *Nevada Constitution* to authorize the Legislature to provide for a statewide lottery. The net proceeds from the lottery must be dispersed to school districts to supplement—supplement, not supplant or replace—the money that the school districts already receive from the state for instructional equipment, materials, and supplies including textbooks, computers, software, and other educational media. If approved in identical form by both the 2007 and 2009 Sessions of the Legislature, the proposal will be submitted to the voters in the 2010 election.

ASSEMBLYMAN MABEY:

I rise in opposition to AJR 5. I recognize that the lottery, if it passes and becomes a part of our Constitution, would fund a part of Nevada’s education system, but I feel it is a bad idea to promote something like the lottery, which takes a toll on our society. People play the lottery because they hope to win a large amount of money.

According to Savings Advice.com, the odds of winning the Powerball Lottery are 1 in 146.1 million. Those who play the lottery are often those who can least afford it. Since the odds are so poor, perhaps the state should set up a voluntary fund where Nevadans who would

have played the lottery could donate those monies to the education fund. Thank you for this opportunity to speak against AJR 5.

ASSEMBLYWOMAN GANSERT:

I, too, rise in opposition to AJR 5. During testimony, material was provided to me that told us what other states had done. Pretty much all of the states on the list brought the lottery to their state through an initiative process. Also, we heard testimony about the limited scope of this bill. Last session we had another bill that was much broader as far as what was going to go towards education. When we change the *Nevada Constitution*—because it is so significant—we should have broader terms versus a very narrow scope. Given that it is a change to our Constitution and the narrowness of its scope, I will oppose this bill. Thank you.

ASSEMBLYMAN KIHUEN:

I stand in support of AJR 5. I stand here representing not only myself and District 11, but I stand here representing 73 percent of the population that support a lottery. For those of you who do not know, this lottery would generate anywhere from \$50 million to \$200 million for education for our kids.

While touring the schools in my district, I came to realize how badly we need this money. I saw a lot of books that were torn apart, pages that were missing, and books that were tagged on. So ask yourselves this, dear colleagues: How is a child supposed to learn when he can't even read a whole book or a whole chapter? I know there are people saying that this takes a toll on poor people, but there was a study that said that 60 percent of the people who play the lottery have an income of \$35,000 to \$75,000. These are not poor people to me. Madam Speaker and dear colleagues, I urge your support for this bill, AJR 5. Thank you, Madam Speaker.

ASSEMBLYMAN SETTELMEYER:

I urge opposition of this bill. To me, it is a question of choice of vices. My dad always told me, "Whether a person decides to gamble, smoke, drink, whatever it may be, it's their choice, but whatever you do, son, don't enable them." In that respect, I look at the constitutional amendment as something that has stood for 20 years, and I don't believe in enabling people to do something that could be a detriment to them such as a vice. That was echoed to me by an individual by the name of Janet who is one of my constituents, who is a member of Gamblers Anonymous and who agreed that this is not a good way because it will encourage a bad habit. Therefore, I urge opposition to this bill, and I hope we look for other ways to fund education.

ASSEMBLYMAN ANDERSON:

The question is should we place in front of the population the need for this lottery? For those of us who believe in the people, who will trust in the people, who believe this is a fair question for them to decide, their dedication to public education has to be tested in some meaningful way. This is a meaningful question. Books and those very tools of education are at stake. Should we do this? Gambling, to be sure, is a question we will long debate as to the right or wrongness of it—its moral obligation and how it does put the fortunes of some at risk who cannot control that habit. We have put legislation in place to try to help them. We have tried numerous times to make the public aware. We need additional dollars. We need to ask the public, "Should we move in this direction?" They are the best judge of the standards to be placed. Thank you, Madam Speaker.

ASSEMBLYMAN CONKLIN:

I rise in support of this bill. It is only fitting today, when we sit in the house that has had a great many debates, that we look upon the lottery, and I submit to you, are we or are we not the Battleborn State? Our people are smart. They have been dealing with gambling for many years. They understand the odds. They know the odds. They participate every day, and whether the odds are 1,000 to 1 or 100 million to 1, it is a choice that every citizen makes. Our people are smart, they know, and this is their choice. It is truly voluntary. Your vote for this bill allows the public to decide if they want a lottery for education. I urge support.

Assemblymen Ocegüera, Arberry, and Leslie moved the previous question.
Motion carried.

The question being the passage of Assembly Joint Resolution No. 5.

Roll call on Assembly Joint Resolution No. 5:

Yeas—29.

Nays—Beers, Christensen, Cobb, Denis, Gansert, Goedhart, Grady, Hardy, Mabey, Marvel, Settlemeyer, Stewart, Weber—13.

Assembly Joint Resolution No. 5 having received a constitutional majority,
Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

REMARKS FROM THE FLOOR

Assemblyman Ocegüera requested that the following remarks be entered in
the Journal:

NEVADA STATE ARCHIVIST GUY ROCHA:

Thank you, Madam Speaker, for your invitation to have me back for a second encore performance. I know of no other State Archivist in the nation that has been extended the courtesy to speak at a legislative floor session. Madam Speaker, you also know what it feels like to be the first. Congratulations; it's been a long time coming.

I am dedicating this presentation in tribute to Nevada historian Mary Ellen Glass, Reno native and founder of the University of Nevada Oral History Program in 1964. She died last Thursday, March 15, at the age of 79. Part of the story I will share with you today comes from Mary Ellen's pioneering history of Nevada's Silver Party.

In 2003, I regaled the Assembly with a story of how a law was passed in 1895 at the behest of the Women's Christian Temperance Union to prohibit the sale, gift, or disposal of liquor in the State Capitol building. After years of effort, the reformers were finally able to ban the Capitol's alcohol concession known as "The Well." This was to reduce the prodigious amount of alcohol consumption while legislating and presumably enhance the legislative process.

In 2005, I told you of the last day in the 1875 session when guns and knives were displayed in the Assembly chamber, angry words exchanged, and objects were thrown by Assemblymen at each other. I suggested that March 4, 1875, despite the rancor displayed in the 2003 legislative session, had the dubious distinction of being the worst legislative day in Nevada history.

In 2005, I also briefly mentioned the 1899 session. A long-time Nevada U.S. Senator, William M. Stewart, vying for the votes of legislators—when legislators chose our U.S. Senators—had hired a notorious gunman and another colorful character skilled in the use of a Bowie knife as his bodyguards. I want to share this story in greater detail because it is one of many glaring examples of why Congress proposed the *17th Amendment* providing for the direct election of U.S. Senators, which the states ratified in 1913.

William Stewart was Nevada's first U.S. Senator. He had served in Congress from 1864 until 1875 and again beginning in 1887. Biographer and Nevada historian, the late Professor Russell Elliott, called him a "Servant of Power." Stewart was indeed a powerful politician, serving mining and railroad interests in Nevada. Perhaps his greatest political legacy is the National Mining Law. Stewart had a major challenger for his office in 1898-1899, Congressman Francis G. Newlands. Newlands, the son-in-law of former Nevada U.S. Senator William Sharon, was considered a political upstart who was no friend to the Southern Pacific Railroad, Stewart's principal supporter. The costly campaign to elect legislators partial to Stewart or Newlands was an ugly one laced with character assassination. The newspapers were full of vitriol and demeaning cartoons. The Stewart forces easily outspent the Newlands supporters and the assumption was the Senator had "fixed things" on the State Senate side. However, Stewart needed a majority of votes in the State Assembly, and that had not been assured.

Stewart's headquarters was the Ormsby House, catty-corner to the State Capitol, while Newlands' headquarters was the Arlington House, just south of the U.S. Mint. Stewart's entourage included controversial lobbyists, Southern Pacific Railroad employees, and two

strong-arm men named Colonel Jack Chinn and David Neagle. Mr. Neagle was famous, or infamous, as a deputy U.S. Marshal. He acquired his reputation when he shot and killed former California Supreme Court Chief Justice David S. Terry, while defending U.S. Supreme Court Justice Stephen J. Field. The matter—*In re Neagle*—went before the U.S. Supreme Court. The hot-tempered former Justice Terry was well known for having previously killed California U.S. Senator David C. Broderick in a duel.

Beautiful Sarah Althea Hall, scorned by her lover, former U.S. Senator William Sharon, who she claimed was her husband (remember that Sharon was Francis Newlands' father-in-law) played a major role in instigating the events that led to Neagle's reputation. Sarah's lawyer, former California Justice David Terry—whom she married following Sharon's death during the litigation—claimed that Sarah had been William Sharon's lawful wife. Sarah went berserk upon hearing the adverse ruling, and Terry attacked a court officer and brandished a Bowie knife following efforts to escort his wife out of the court room. Shortly thereafter, the U.S. Attorney assigned Deputy U.S. Marshal David Neagle to protect the presiding federal circuit judge, Supreme Court Justice Stephen Field. Subsequent to the wild courtroom outburst, Sarah, who had been pregnant with Justice Terry's child, had a miscarriage.

Sarah and David Terry and Justice Field and his court-appointed bodyguard, Deputy Marshal Neagle, came together in an explosive confrontation on August 14, 1889, in the Lathrop railway station outside Stockton. Having served their sentence for contempt, Sarah and former justice Terry boarded the train in Fresno on which Justice Field and Deputy Neagle were returning to San Francisco. The next morning at Lathrop Station, the passengers detained to take breakfast. Ignoring Neagle's protest, Field went to the dining room. The result was a dead husband, a wife committed to the Stockton Insane Asylum, a deputy marshal charged with murder, and a landmark U.S. Supreme Court decision—Justice Field abstaining—that substantially expanded the powers of the federal government and affirmed the authority for U.S. marshals and their deputies to use force in the performance of their lawful duties.

Some ten years later, the notorious former U.S. Deputy Marshal David Neagle walked the halls of the Nevada State Capitol in the interests of U.S. Senator William Stewart and the Southern Pacific Railroad. In addition, although both Stewart and Newlands belonged to the Silver Party, the Stewart backers were able to get Newlands kicked out of the party in time for the 1899 Session. Everything looked like a done deal, and Newlands did not allow his name to be submitted to the Legislature. On January 24, the State Senate chose Stewart over three other candidates by a vote of 9 to 6. However, the State Assembly was confronted with a missing member for the afternoon U.S. Senate vote who had been present in the morning session. Prior to the vote, 15 Assemblyman were pledged for Stewart and 15 for other candidates. With Storey County Assemblyman William A. Gillespie nowhere to be found by the Sergeant of Arms, the vote ended up 15 for Stewart, 14 for the others. Stewart, with a majority of the Assembly vote, was reelected to the U.S. Senate.

According to Newlands biographer, UNR Professor Bill Rowley, "The absence of Assemblyman Gillespie was no accident since his vote against Stewart could have tied the Assembly. He was spirited away either voluntarily or involuntarily to a home in Carson Valley for two days. Many speculated on how much he received for his absence, but within two months he held an office job with the Southern Pacific Railroad in Oakland."

A newspaper wire service story after the legislative session noted Jack Chinn and David Neagle's role in the 1899 Legislative Session: "Chinn's most dramatic use of his big Bowie knife was a short time ago when he sharpened it up and started for Nevada to help re-elect Senator Stewart, whom he admired. Chinn claimed that he was quicker with the knife than anyone else engaged in the campaign. David Neagle, the man who killed ex-Judge David S. Terry, went there as the man who used his revolver most rapidly, and as he was for Stewart, too, the combination looked irresistible."

Chinn and Neagle were perhaps much too irresistible for Assemblyman William Gillespie. Historian Mary Ellen Glass candidly summed up one of the state's most controversial legislative sessions: "The Nevada legislature was bought and paid for in 1899 by the railroad forces to assure William Stewart's election. Thus it was demonstrated again that the Southern Pacific Corporation would use any means, including bribery and intimidation to elect a man who would be compliant to its needs. Only the strongest could have stood against the pressure. As the

legislators prepared to settle other questions of state importance, they might have observed that other states had had similar experiences in electing United States senators. Many displayed in greater or lesser intensity the graft, bribery, and corruption that led to the increasing demands for direct, popular election of senators.”

Forty-five deadlocks occurred in 22 states between 1891 and 1905, resulting in numerous delays in seating senators. Beginning in 1899, Delaware did not send a senator to Washington, D.C. for four years.

And you thought political campaigns today are dirty and low-down.

Thank you for letting me remind you that politics has not changed all that much in the last 100 years.

And remember, “The truth does matter.”

Assemblyman Ocegüera requested that the following proclamation be entered in the Journal:

PROCLAMATION OF THE NEVADA STATE ASSEMBLY

WHEREAS, On March 20, 2007, the 74th Session of the Nevada Assembly reaffirms its historical identity by holding its floor session in the former Assembly Chamber of Nevada’s monument to democracy, the State Capitol; and

WHEREAS, The State Capitol Fund was created during the 4th Legislative Session by Assembly Bill 36 (Chapter XXXIII, *Statutes of Nevada 1869*), which called for “the erection of a State Capitol at Carson City” at a cost not to exceed \$100,000, with sandstone to be provided by the State Prison quarry; and

WHEREAS, Construction on the State Capitol began on April 21, 1870, and the building was ready for the Legislature on January 1, 1871, with Robert E. Lowery presiding as the first Speaker of the Assembly to officiate in the new Chamber; and

WHEREAS, Nevada’s government evolved in this historic edifice, where state officials were housed and the Senate and Assembly convened until April 24, 1969, when Assembly Speaker Howard F. McKissick, Jr., adjourned sine die, ending nearly a hundred years of tradition of the Nevada Legislature meeting in the State Capitol; and

WHEREAS, Over that century, the Capitol and the State of Nevada experienced many challenges and changes, with cycles of boom-and-bust *in* both population and economy, from early statehood when the State was dependent on mining and its population was approximately 42,000 in 1871, to 1969, when the State’s population had grown to 473,767; and

WHEREAS, Nearing the end of the 1969 Legislative Session, Assembly Speaker McKissick noted that the Legislature had outgrown the facilities encompassed by the Capitol, and an appropriation of \$3.4 million was approved for the construction of a new Legislative Building; and

WHEREAS, In 1977, the Legislature appropriated \$6 million for remodeling the State Capitol to ensure its history and tradition and to cement the structure, with its prominent silver-painted dome, as one of Carson City’s and the State’s most visible landmarks and a symbol of Nevada government; and

WHEREAS, The rich political history and heritage of the State were graced by the presence of the first woman legislator with the election of Mrs. Sadie D. Hurst to the Assembly in 1918, who served with distinction in the 1919 Session, and the presence of women in the Nevada Legislature has increased dramatically since 1918; with a total of 6 women currently serving in the Senate and 13 in the Assembly; and

WHEREAS, With the election of the first woman Speaker of the Nevada Assembly for the 2007 Legislative Session, Barbara E. Buckley, one of only five women Assembly Speakers nationwide, has entered into the historical lineage of Assembly Speakers who have shaped the destiny of the State of Nevada; now, therefore, be it

PROCLAIMED, That the members of the 74th Session of the Nevada Assembly hold steadfast to the memory of all those whose hard work, courage, vision, and dedication to serve the people of the State of Nevada have endured throughout the State’s 144-year history; and be it further

PROCLAIMED, That by observing today's Assembly Floor Session in the historic former Chamber in the State Capitol, the members of the Assembly honor the Capitol and its role as the seat of government and a symbol of the Silver State and its people, and recognize this heritage must be treasured and preserved to honor past and future generations.

Dated this 20th Day of March, 2007.

BARBARA E. BUCKLEY,
Speaker of the Assembly

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblywoman Allen, the privilege of the floor of the Assembly Chamber for this day was extended to Donna Fettig and Deena McKenzie.

On request of Assemblywoman Buckley, the privilege of the floor of the Assembly Chamber for this day was extended to Governor Jim Gibbons, Secretary of State Ross Miller, Nevada State Treasurer Kate Marshall, Karen Baggett, Sheena Beaver, Stephanie Colbert, Allen Coleman, Sharol Damberger, Mike Dayton, Carolyn Emr, Vicky Galloway, Laura Lau, Steve Lewis, Linda Lilleboe, Dennis Longhofer, Nicole Lovec, Robert "Carl" Malkmus, John Rutledge, John Shrum, Debbie Silveira, Bill Sweeney, Lisa Voss, Don Williams, Audrey Wilson, Brooke Woellner, and Madilyn Zike.

On request of Assemblyman Christensen, the privilege of the floor of the Assembly Chamber for this day was extended to Race Christensen, Christopher Dahir, and Robin Joyce.

On request of Assemblyman Goedhart, the privilege of the floor of the Assembly Chamber for this day was extended to Art Jones and Opal Jones.

On request of Assemblyman Goicoechea, the privilege of the floor of the Assembly Chamber for this day was extended to the following students of Churchill High School: Sarah Burton, Josh Elliott, Chelsea Hejny, Nate Helton, Chase Kaiser, Lauren MacLean, Franny Myers, Jesse Riehm, Corrie Robinson, Jenni Souba, Richard Summers, Michelle Tiscareno, and Linze Wilky; teacher Paul Davidson.

On request of Assemblyman Manendo, the privilege of the floor of the Assembly Chamber for this day was extended to Lisa Her.

On request of Assemblyman Ohrenschaal, the privilege of the floor of the Assembly Chamber for this day was extended to Erin Schweber.

On request of Assemblywoman Parnell, the privilege of the floor of the Assembly Chamber for this day was extended to the following students from Bordewich-Bray Elementary School: Thomas Bradbury, Gladiz Casillas Bracamontes, Dominic Cerniglia, Jayden DeJoseph, Nicholas Grosse, Donald Hurst, Jace Keema, Kacey Kendall, Kerly Lopez Zaragoza, Cole McDannald, Benjamin Miller, Carly Peckham, Geraet Rauh, Ricardo Romero Vargas, Amanda Streeter, Ashley Tibbets, Elyssa Zuniga,

Virginia Adams, Jacob Bauman, Kierra Bell, Abigail Drown, Kennedy Evins, Kasey Faur, Baden Fitzgerald, Joceln Gill, Joseph Glahn, Gissell Henriquez, Sydney Mills, Jose Moreno, Maria Ruiz, Colton Schaum, Hunter Singleton, and Ian Van Rensselaer; teachers Mary Jolly and Nicole Medeiros; chaperones: Sean Bauman, Jacqueline Bennett, Kelli Bradbury, Heather Cerniglia, Natasha Grosse, Kyle Hurst, Maria Hurst, Katy Kendall, James Pecham, and H.L. Van Rensselaer.

Assemblyman Oceguela moved that the Assembly adjourn until Wednesday, March 21, 2007, at 11 a.m.

Motion carried.

Assembly adjourned at 11:45 a.m.

Approved:

BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL

Chief Clerk of the Assembly