

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session
March 9, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:08 a.m. on Monday, March 9, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Bernice Mathews, Cochair
Senator Steven A. Horsford, Cochair
Senator Bob Coffin
Senator Joyce Woodhouse
Senator William J. Raggio
Senator Dean A. Rhoads
Senator Warren B. Hardy II

STAFF MEMBERS PRESENT:

Brian Burke, Principal Deputy Fiscal Analyst
Gary L. Ghiggeri, Senate Fiscal Analyst
Eric King, Program Analyst
Cynthia Clampitt, Committee Secretary

OTHERS PRESENT:

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Catherine Cortez Masto, Attorney General, Office of the Attorney General
Estelle Murphy, Executive Director, Safe Nest, Las Vegas
Julie Proctor, Executive Director, S.A.F.E. House, Henderson
Joni Kaiser, Executive Director, Committee to Aid Abused Women
Betty Raser, Nevada Nurses' Association
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Jon Sasser, Washoe Legal Services
Margaret Flint, Arch of Reno Wedding Chapel, Antique Angel Wedding Chapel, Silver Bells Wedding Chapel, Vegas Adventure Wedding Chapel and Reno Chapel of the Bells
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Randy Robison, Nevada Association of School Superintendents
Donna Hoffman-Anspach, Nevadans for Quality Education
James Wells, CPA, Deputy Superintendent, Fiscal and Administrative Services, Department of Education
Nathan Sosa, Student, William S. Boyd School of Law
Joyce Haldeman, Clark County School District
Yvette Williams, Chair, Clark County Democratic Black Caucus
Anne Loring, Washoe County School District

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Julie Whittaker, Nevada State Education Association
Carole Vilaro, President, Nevada Taxpayers Association
Greg Ferraro, Chair, Commission on Judicial Discipline
David F. Sarnowski, Executive Director, Commission on Judicial Discipline and
Standing Committee on Judicial Ethics and Election Practices
Lorne J. Malkiewich, Director, Legislative Counsel Bureau
Claire Clift, Secretary of the Nevada Senate, Legislative Counsel Bureau

COCHAIR MATHEWS:

We will open the hearing with consideration of a bill draft request (BDR). I have provided copies of the request for introduction ([Exhibit C](#)).

BILL DRAFT REQUEST S-629: Makes an appropriation to Ridge House, Inc., for reintegration services and counseling for persons released from facilities of the Department of Corrections. (Later introduced as [Senate Bill 187](#).)

GARY GHIGGERI (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

This BDR makes an appropriation to Ridge House, Incorporated, for reintegration services and counseling. It provides a General Fund appropriation of \$813,750 in fiscal year (FY) 2009-2010 and FY 2010-2011.

SENATOR HORSFORD MOVED FOR INTRODUCTION OF BDR S-629.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

COCHAIR MATHEWS:

We will now open the hearing on Senate Bill (S.B.) 14. Senator Horsford will chair the meeting for this bill.

SENATE BILL 14: Increases the portion of the fee for a marriage license that funds the Account for Aid for Victims of Domestic Violence. (BDR 11-117)

SENATOR BERNICE MATHEWS (Washoe Senate District No. 1):

This is a simple bill with only a few revisions. It will increase a portion of the marriage license fee from \$20 to \$25. The additional revenue will be allocated to aid domestic violence agencies throughout the State. If an additional \$5 will keep someone from getting married, they should not get married anyway.

SUSAN MEUSCHKE (Executive Director, Nevada Network Against Domestic Violence):

The Nevada Network Against Domestic Violence (NNADV) supports S.B. 14, which adds \$5 to benefit domestic violence programs to the fee charged for each marriage license sold in the State. I have provided a packet of information ([Exhibit D](#), original is on file in the Research Library) that includes my testimony, copies of letters of support, a copy of the budget sheet line item, information from a telephone survey we conducted concerning the impacts of current shortfalls, a list of all domestic violence programs in the State, charts indicating the history of increases in marriage license fees and the number of services

provided. The most recent fiscal year statistics are included in [Exhibit D](#) to help the Committee understand why S.B. 14 is important.

In 1981, former Senator Sue Wagner sponsored a bill that created a marriage license surcharge. She was supported by a volunteer lobbyist for the NNADV, Mrs. Jan Evans. The fee was chosen because it provided a stable funding source, funded no other services and was preferred to a General Fund appropriation for which we would compete in each Legislative Session. Over the intervening 28 years, domestic violence programs have grown from 4 to 15, serving all 17 counties. These fees have enabled domestic violence programs to provide life-saving services throughout the State.

Today, due to decreasing revenues, domestic violence programs are at risk of closing or drastically reducing services although the need for services continues to increase. The funding from marriage license fees is deposited into a State fund administered by the Division of Child and Family Services (DCFS), Department of Health and Human Services. The funds are distributed through a formula contained in the *Nevada Revised Statutes* (NRS).

On May 31, 2007, the DCFS sent a memo to all programs receiving funding that effective July 1, 2007, their budgets would be reduced by 25 percent. A combination of decreasing sales of marriage licenses in Nevada and an error in the percentage increase in grant awards in 2007 combined to produce the 25-percent shortfall. With three days left in the 2007 Legislative Session, bipartisan efforts resulted in four months of funding, allowing time to determine the causes of the shortfall and locate other funding sources to remain open. The Department of Health and Human Services Director, Mr. Michael J. Willden, recognizing there would be no one to provide critical services, should these programs fail, found funding sources to keep our services alive during the Legislative interim. Our grants, prior to the bad news, equaled \$3,254,587. Since that time, the numbers of marriages in Nevada and the nation have continued to decline. The projection for FY 2009-2010 would be a devastating decrease in funding of 42 percent, or \$1,223,899.

The chart included with my testimony ([Exhibit D](#)) reflects the decreases in marriage license revenues, the total grant decreases and the percentage of decrease.

Funding from the Domestic Violence Fund has never provided 100 percent of the funding needed to provide services. We are experiencing funding reductions in all grants and revenue resources. The passage of S.B. 14 would result in additional revenue of approximately \$615,000.

We had planned to propose an amendment today making the total increase \$10 for each marriage license issued. Senator Maurice E. Washington, Washoe Senate District No. 2, and the wedding chapel industry brought forward another proposal. They propose an increase to the fee for certified copies of marriage licenses which would not affect the wedding chapel industry. The fee is currently \$10 and their plan would increase the fee by \$5 to benefit the State Domestic Violence Fund and another \$2 to benefit county clerk offices. We agreed to entertain their proposal, providing the new funding stream was stable and sufficient.

We received approximate numbers of certified marriage license copies requested from Senator Washington for Washoe and Clark Counties. Unfortunately, the numbers do not match. Using the larger number provided by Senator Washington, a \$5 increase in the certified copy fee cost should generate more than \$900,000. That would leave a shortfall of approximately \$237,000. If those figures hold true, we would propose raising the marriage license fee by only \$2 to cover the remaining shortfall.

We are willing to consider the amendment proposed by Senator Washington and the wedding chapel industry if it will provide a sufficient and steady stream of revenue.

We understand the wedding chapel industry's concerns that a marriage license fee increase may negatively impact their industry. However, this request should not be seen as an increase in funding but rather will make up for an enormous shortfall which threatens the survival of domestic violence programs in Nevada.

The last page of [Exhibit D](#) provides each of the funding scenarios proposed today.

SENATOR COFFIN:

Is there a revenue stream from the administrative fines imposed in cases of domestic violence altercations?

MS. MEUSCHKE:

There is a \$35 administrative assessment on cases of domestic violence. Those funds are allocated to the Office of the Attorney General to fund the Committee on Domestic Violence which regulates batterers' treatment, the Nevada Council for the Prevention of Domestic Violence and the Office of the Ombudsman for Victims of Domestic Violence.

SENATOR COFFIN:

I suggest the Committee consider an increase in the administrative assessment to assist the domestic violence programs and perhaps an increase for the batterers' program.

COCHAIR HORSFORD:

We will now hear testimony from those present in Las Vegas.

CATHERINE CORTEZ MASTO (Attorney General, Office of the Attorney General):

I am present to support S.B. 14. When I ran for Attorney General, domestic violence was one of my priorities and it is still. We work actively with local programs that would receive these funds to raise awareness, to ensure victim safety and to improve offender accountability.

As the State's leading law enforcement agency, we have been instrumental in development of law enforcement protocols and training curriculum and have worked with prosecutors and courts to identify barriers. There are many barriers to be addressed. They include safety for domestic violence victims and accountability for their offenders. Safety is enhanced when individuals have access to hotlines, shelters, support groups and the variety of services available through local programs.

Nevada ranks No. 1 in the nation for homicide rates of female victims killed by male offenders. We heard testimony last week by the Las Vegas Metropolitan Police Department that more than half the homicides committed in Clark County are a result of domestic violence. The criminal justice system relies on community-based domestic violence programs to provide support, advocacy and safety services to victims. The criminal justice system cannot, and should not, provide these services. Many victims never reach out to law enforcement for help. They call crisis hotlines or contact a shelter program for assistance. Without these kinds of safety services, the criminal justice system would not be as effective in such cases. These grassroots organizations provide cost-effective services that no government agency can match.

Last year alone, volunteers provided over 115,000 hours of services in hotlines, shelters and advocacy. All funding provided to these agencies will be leveraged within communities to assist victims.

SENATOR COFFIN:

The Office of the Attorney General receives funding from administrative fees for its domestic violence efforts. Is there opposition to increasing the fee to benefit your programs?

ATTORNEY GENERAL CORTEZ MASTO:

The administrative assessment could be increased. The current challenge is the decrease in funding derived from the administrative assessments. The decreased funding has affected the ability to fully fund the Office of Ombudsman for Victims of Domestic Violence. Because of the funding challenge, my office requested the budget for that position to be derived from the General Fund. The Governor's budget requests the position be funded through administrative assessments of the district courts. There will be a bill presented by the Office of the Governor to support that funding change. Administrative assessments can be increased whether they are from the justice courts or the district courts. For whatever reason, those funding streams are decreasing. It may be due to lack of court cases completed or a diminished ability to obtain the money from the defendants.

SENATOR COFFIN:

I will defer to the Chair as to what is needed. I do not approve of administrative assessments in general, but this speaks to a specific application.

ESTELLE MURPHY (Executive Director, Safe Nest, Las Vegas):

I have provided my written testimony to the Committee ([Exhibit E](#)). Last year, Safe Nest and S.A.F.E. House together provided a total of 39,000 bed nights of service for battered women and their children. We serve nearly 25,000 primary victims. These numbers do not include the children who are secondary victims nor the perpetrators ordered into our batterers' treatment programs. The volume of cases is increasing over previous years. It is frightening to watch the needs grow as revenues decline.

In FY 2006-2007, nearly \$1.7 million was available for services to domestic violence victims in Clark County. At the beginning of FY 2008-2009, grant revenues had declined to \$1.2 million, a 30-percent reduction to Clark County services.

I was asked to relay a story about domestic violence and how our advocate was able to provide help. This story is about Gloria, Sam, their eight-year-old daughter, Tricia, and how they received the help they needed. Details can be found in [Exhibit E](#).

Many people were involved in helping this family. Due to funding cuts, some of those positions no longer exist. If Gloria were to call today, there would not be an advocate to meet with police at the home. If she called the hotline, there would be fewer staff members available to take her call or provide a temporary restraining order for her. If she could not reach someone on her first attempt, she most likely would not have called again. If she entered a shelter today, she would no longer have the assistance of someone dedicated to provide housing and employment assistance. Fewer therapists are available to provide counseling. If proposed funding cuts for next year occur, more positions will be lost. The next Gloria may find herself a victim of homicide, the next Sam a victim of suicide and the next Tricia an orphan with a scarred future.

JULIE PROCTOR (Executive Director, S.A.F.E. House, Henderson):

We provide domestic violence services in Clark County. I am testifying in support of [S.B. 14](#). Domestic violence directly affects at least one in four women in the United States and touches the lives of nearly all individuals. The State Domestic Violence Fund, funded by a surcharge on every marriage license sold in the State, provides basic support for services to victims of domestic violence. Each year we see more victims come forward for help. Declining revenues in the Fund are hampering our ability to respond and may destroy services for victims in our community. I have provided a letter to the sponsor of [S.B. 14](#) from Allan J. Ebbin, M.D., ([Exhibit F](#)) that provides similar testimony.

Adjustments have been made to accommodate decreased funding including staff assigned dual roles to cover gaps; nonrenewal of three contract employees; leaving vacant the advocate's position to work with senior citizen victims and one facilitator position at the shelter. We have also reduced expenses by eliminating the alarm system at the administrative office, returned certain leased equipment, discontinued payment of employee dental and disability insurance benefits and placed a freeze on all employee increases and hiring.

Waiting lists for the counselor and batterers' program were instituted due to the increase in domestic violence. The current wait time is approximately eight weeks. These adjustments were made because of the 30-percent decrease in funding from marriage license fee grants for FY 2007-2008. Sixty-five percent of marriage license fees received go to support emergency shelter operations and 40 percent support our staff. If the marriage license fee increase is not approved, S.A.F.E. House will be forced to eliminate four more staff positions at the emergency shelter. The elimination of those positions would greatly affect the safety of women and children residing in the shelter. Safe shelter is one of the most important components of moving women and children to a life free of violence.

In addition, the marriage license grant funds have been used as a match for other funding streams and will affect our ability to access those other funding sources.

In 2008, S.A.F.E. House staff responded to 1,084 crisis calls; provided emergency shelter to 326 adults and children for a total of 13,118 bed nights; provided legal and personal advocacy to 764 adults; provided counseling to 458 victims and their children; and supported 107 children and women with housing, employment and child care services. We expect those numbers to rise during the current fiscal year.

COCHAIR HORSFORD:

These services are an important safety net, and the fact people are already waiting eight weeks to receive services speaks to the problem. Thank you for being the voice for the voiceless.

JONI KAISER (Executive Director, Committee to Aid Abused Women):

We are an organization in Washoe County to aid abused women and rise today in support of S.B. 14. I have provided my written testimony to the Committee ([Exhibit G](#)).

This innovative funding mechanism has worked well for over 28 years, ensuring stability for rural and urban programs throughout the State. The recent declining numbers of marriage license sales, coupled with the worst economic situation in America since the Great Depression, has led us to today.

The loss of funding for the Committee to Aid Abused Women (CAAW) will mean a loss of \$154,655 over our current year allocations. The type of services affected makes this a critical issue. In the CAAW, marriage license grants have been used to pay for line items not allowed through other funding. For example, our financial coordinator, the director of development and community relations, the grant writer, the secretary and the community outreach manager would be affected. My position, as executive director, would still be funded. We cannot function efficiently or effectively without these positions.

Victims would have to wait longer for services, waiting lists would be limited and lives would be lost. Senate Bill 14 will give the Nevada domestic violence programs a brief respite from the financial firestorm.

BETTY RASER (Nevada Nurses' Association):

We wholeheartedly support S.B. 14. We request the marriage license fee increase be raised to a \$10 surcharge. Nevada has the highest rate of domestic violence and it mainly affects women. The nursing profession is made up primarily of women. Therefore, we are strongly affected by horrific events that occur. Hopefully, other avenues of revenue can be found to support these programs.

JAN GILBERT (Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada):

We support S.B. 14. There are many in the audience who would like to raise their hands in support of this legislation rather than speak today.

COCHAIR HORSFORD:

We see the level of support in this room and also in Room 2135 of the Legislative Building, Carson City, Nevada.

Ms. GILBERT:

These individuals represent a wide array of groups.

JON SASSER (Washoe Legal Services):

Washoe Legal Services is a nonprofit law firm in Reno. It provides assistance to low-income Nevadans. A high priority is assistance to victims of domestic violence. We dedicate two attorneys, one paralegal and two support staff to this work. We represent victims in divorce, child support and custody cases arising out of such situations. We assist with extended protection orders.

We work in close cooperation with the CAAW, Safe Embrace and the Tahoe Women's Services in assisting common clients. Those organizations provide the shelter and supporting services; we provide the attorney services. I have presented a letter from Ms. Karen S. Casey, Executive Director, Tahoe Women's Services ([Exhibit H](#)).

Without these services, our clients would not survive. Often, these groups are the sole reason the victims can survive without returning to their batterers. They save lives. We support S.B. 14.

COCHAIR HORSFORD:

Is there information available that describes the correlation between the economic downturn and the impact on domestic violence?

MR. SASSER:

We see it anecdotally. I assume the other witnesses would be better able to provide those statistics.

MS. MEUSCHKE:

Studies suggest there is a correlation, not a causal effect. If violence is occurring in the household, economic issues can make it worse. We are hearing the needs of victims seeking our services are much greater than they were before. The victims are unable to find affordable housing, new jobs and affordable child care. When victims come forward, they bring greater needs than they brought before. People are staying longer in abusive relationships because of the fear of job and home loss. They will sometimes wait until they are hospitalized or worse.

SENATOR MATHEWS:

We often think it is only women and children who are victims of crime. Can you elaborate on the number of men who are victims of domestic violence?

MS. MEUSCHKE:

The vast majority of domestic violence victims are women. However, we are seeing a growing number of men coming forward for services. We do not know if it is because of the increased awareness of domestic violence issues or results from same-sex relationships. Approximately 5 to 10 percent of those requesting services are men. A higher percentage of men are coming from law enforcement. We know domestic violence crosses all lines. The services we provide are available to anyone, regardless of race, age, religious background or gender.

MARGARET FLINT (Arch of Reno Wedding Chapel, Antique Angel Wedding Chapel, Silver Bells Wedding Chapel, Vegas Adventure Wedding Chapel and Reno Chapel of the Bells):

My family has owned and operated the Reno Chapel of the Bells since 1962. There is no doubt the wedding business has decreased dramatically. We are

providing wedding services for as little as \$20. If there are \$3,200 weddings in Reno, I would like to know where they are.

I have provided the Committee with two pages depicting the reasons we are opposed to S.B. 14 ([Exhibit I](#)). The good news is we have an alternative proposal to present to the Committee as spoken about earlier.

In two years, Clark County marriage license sales have dropped by 17,500. Washoe County has decreased by 3,507 marriage licenses. The revenue lost in Clark County is \$962,500 and for Washoe County, \$192,885.

I see two reasons the revenues have decreased. One, of course, is the economy. The wedding industry was hit hard in the 2007 Legislative Session with restrictive identification requirements for a couple to obtain a marriage license in Nevada. We thought this issue had been negotiated with the Department of Motor Vehicles (DMV) and the county clerks into areas we thought we could live with. In Washoe County, the agencies not only implemented the legislation, they established a policy for following the legislation six months prior to its effective date of January 2008. The legislative provisions were implemented within two days of passage and approval, and couples were being denied marriage licenses. This not only affected the wedding chapels, it affected the entire tourist industry. The couples take their 10, 12 or 30 people they brought with them to Nevada and leave to be married elsewhere.

There is pending legislation in the Nevada Assembly to address parts of these issues. Five areas of the proposed legislation should produce revenue. These are baby steps, but every baby step is important to our industry. We could probably live with a \$5 increase if necessary. However, we would completely oppose a \$10 increase.

Historically, 75 to 95 percent of weddings in Nevada are tourist-oriented weddings. Couples look at the current \$55 fee and may bring their wedding to Nevada. With the fee increases, the fee will feel like \$100 and the couples will decide they may as well be married where they live for less.

I have a copy of the amendment Senator Washington was to propose this morning ([Exhibit J](#)).

COCHAIR HORSFORD:

We have copies of [Exhibit J](#) containing the proposed amendment and a Memorandum dated March 3, 2009, with updated figures from staff for the revenue and number of marriage licenses sold and the revenue and number of certified copies of marriage certificates requested.

Ms. FLINT:

The amendment would delete section 1 of S.B. 14 and add a new section to the bill amending the NRS 247.305 to charge an additional \$7 for a copy of a certified copy of a certificate of marriage, currently a \$10 fee. The additional \$7 would be allocated as follows: \$5 would be deposited in the Account for Aid for Victims of Domestic Violence and \$2 would go toward the administrative costs of the county recorder providing the certified copy.

In 2008, Clark County sold 96,825 marriage licenses and 168,944 certified copies of the marriage certificate. Washoe County sold 12,031 marriage licenses and 28,366 certified copies of marriage licenses.

The certified copies of marriage certificates are purchased, through the county recorder offices, after the fact. It has become an important document required by the Social Security Administration and the DMV for changes of name. The U.S. Citizenship and Immigration Service requires certified marriage certificates in certain situations. The military services require a certified marriage certificate for their members. Although the increased certified copy fee will leave the domestic violence programs approximately \$200,000 short, this is a viable and generous offer.

We are all making budget cuts at this time. I work full time and also come to the Legislature three or four times each week. I have eliminated employees. I serve as hostess, minister and driver.

We oppose S.B. 14 as written, but support a viable alternative. More will be proposed in the pending legislation. Wedding chapels are closing their doors in Reno and Las Vegas.

COCHAIR HORSFORD:

Is there anyone present to discuss the \$2 increase in the administrative fee to benefit the county clerk offices? Why is that amount being requested?

MS. FLINT:

No one is present representing the county recorders. My father, Mr. George Flint, spoke briefly with Ms. Kathy Burke. The recorder's concerns centered around the fact it would cause more work for their offices. We agreed to add funding in the proposal to compensate for their time and effort.

COCHAIR HORSFORD:

What increased work is required if the certified copies are already being requested?

MS. FLINT:

I cannot answer for the county recorders' offices.

COCHAIR HORSFORD:

We will need to identify the justification for the \$2 increase. Perhaps the total funding can be allocated to aid domestic violence.

TRAY ABNEY (Director, Government Relations, Reno-Sparks Chamber of Commerce):

I signed in as neutral on this bill. I have not spoken with the sponsor. Ms. Flint approached me recently concerning amendment language to S.B. 14. I urge the Committee to consider the amendment.

SENATOR MATHEWS:

I want to thank everyone who came forward, both for and against this measure.

COCHAIR HORSFORD:

We will close the hearing on S.B. 14 and return the gavel to Cochair Mathews.

COCHAIR MATHEWS:

We will now open the hearing on S.B. 150.

SENATE BILL 150: Creates the Public Education Stabilization Fund.
(BDR 34-664)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

A superintendent of one of the rural counties approached me earlier in this Legislative Session expressing issues with the Distributive School Account (DSA). Senate Bill 150 creates a Public Education Stabilization Fund. If the DSA has surplus funding, the funds would not revert to the General Fund. The funds could be placed in the Public Education Stabilization Fund.

RANDY ROBISON (Nevada Association of School Superintendents):

We were pleased Senators Rhoads, Amodei and McGinness introduced this legislation. The provisions of S.B. 150 are one of the pieces of *iNVEST '09* (Exhibit K, original is on file in the Research Library). There is a companion bill, Assembly Bill (A.B.) 55, in the Nevada Assembly with identical language.

ASSEMBLY BILL 55: Creates the Public Education Stabilization Fund.
(BDR 34-634)

The bills will establish a stabilization fund modeled on the Fund to Stabilize the Operation of State Government (otherwise known as the Rainy Day Fund).

With the economic downturns since the last Legislative Session, the State has had to make several cuts in many budgets. At this point, education funding has been reduced \$160 million which has had an effect on the way school districts operate. As a general rule, districts stay as far away from classrooms and programs as possible when reducing budgets. As further reductions in education budgets are contemplated, that policy becomes more difficult to address.

The benefit of a Rainy Day Fund for public education would allow us to "soften the landing" when forced to make cuts to the education budgets.

Page 2, section 3, subsection 2, of S.B. 150 states the Office of the State Controller shall, on or before September 1 of each odd-numbered year, deposit to the credit of the Fund, the surplus in the State Distributive School Account. Surplus is later defined in section 3, subsection 7, beginning on line 24.

As used in this section, "surplus" means any unexpended balance of the appropriations made from the State General Fund to the State Distributive School Account or any unexpended balance of the authorized expenditures from the State Distributive School Account that would otherwise revert by operation of law to the State General Fund after the end of the biennium for which the appropriations are made or the expenditures are authorized.

If that seems like a confusing definition, it is to us as well. The essence of the legislation would allow any excess revenue currently reverted to the General Fund to be placed in the Rainy Day Fund for public education. It would be used specifically to mitigate the effects of budget reductions in lean economic years such as the current situation.

Section 4 of S.B. 150 discusses the mechanism for if, and when, a request from the Fund could be made.

Section 6 lists an important qualifier. "An allocation made pursuant to section 4 or 5 of this act must not exceed the difference between the projection of the actual revenue and the revenue anticipated at the time the basic support guarantees are established for the fiscal year pursuant to NRS 387.122." This is not a Fund that can be used at will. The manner of use and allocation are specific. It can only be used in times when we have been asked to cut the budgets and actual revenue does not meet the projections.

Another important criterion for the Fund is found in section 3, subsection, 5, line 16. "The money in the Fund must not be used to replace or supplant money otherwise available from other sources in support of the system of public education in this State." Once funding is reverted to the proposed Rainy Day Fund, it cannot be used as part of the calculation when the basic support funding is being set.

The funds cannot be used as a credit toward the State's basic support guarantee. These funds can only be used during times of budget reductions when actual revenue does not meet projections.

I will close by quoting from pages 10 and 11 of [Exhibit K](#).

The Legislature can take action to ensure that all of the tax revenue collected from revenue collected from education-specific taxes is used only to fund education. If it is collected in the name of education, it should stay in education. ... An Education Stabilization Fund must be established to protect schools from budget cuts in lean times. Any and all revenues collected beyond the level of per-pupil funding will be held in reserve in the Fund and must be used only for educational programs.

Approximately \$164 million specifically designated to fund education was reverted to the general fund and used for non-education purposes during the 2007 Session. Had those dollars been deposited in a "rainy day" fund for K-12 education, students would have been protected from the recent round of budget cuts.

I have provided information developed for the 2007 Legislative Session detailing more than 50 years of Nevada's tax policy history ([Exhibit L](#)). It lists the major points along the way where major changes or additions were made to the State tax system and the role Kindergarten through Grade 12 (K-12) education funding played in those debates, whether in the ballot box or in Legislative deliberations.

Each time, public education funding was used as the primary reason for a tax increase. Yet, over the years, those increased funds, enacted in the name of education, have not gone to the total benefit of education. At the end of the year, the surplus revenue in the DSA would be deposited in the proposed Rainy Day Fund for public education to help in years when funding is short. It will protect students in the classroom and the fundamental operations in each school district throughout the State.

SENATOR COFFIN:

I understand your statement that education is used as a front for raising money for all types of purposes including education. That is due to the inflexible tax system currently in place.

The Local School Support Tax (LSST) funds would not be eligible for this use, leaving business taxes or assorted other fees to support general government. Is it your opinion we should create a new layer of sales tax to address the need? I am in favor of such a move to provide transparency in funding measures.

MR. ROBINSON:

You raise a primary concern. Over the years, the Nevada Association of School Superintendents has taken a firm stance, advocating neither for nor against any specific taxes. Our position is that taxes enacted in the name of public education should be used to support public education.

We have been surprised, during discussions in our communities, that not all taxes individuals see on their tax bills for public education ultimately become a part of the public education budget. Once that point is made, the public becomes somewhat frustrated, as all of us do. We are not unsympathetic to State and local government funding needs.

SENATOR COFFIN:

The LSST is not mentioned by name in S.B. 150. The Committee needs to know if my observation is accurate.

MR. GHIGGERI:

The intent is unclear. However, if the LSST revenues do not meet projections, the Rainy Day Fund for public education would be accessible to fill that void. It would be similar to the Governor's recommendation for the 2009 Legislature to review. It is a supplemental appropriation from the General Fund. I cannot speak for the sponsors of S.B. 150, but the intent seems to be to utilize the proposed Rainy Day Fund for that purpose instead of the General Fund.

SENATOR HARDY:

I wish to provide information in a disclosure statement. Mr. Randy Robison is the lobbyist for the Associated Builders and Contractors, of which I am president. This is not a Rule 23 disclosure.

DONNA HOFFMAN-ANSPACH (Nevadans for Quality Education):

The Nevadans for Quality Education (NQE) strongly support S.B. 150. I have provided my testimony for the Committee ([Exhibit M](#)). For too many years, the K-12 education system has seen the reversion of more than \$800 million to the General Fund.

The Rainy Day Fund for public education, if in place now, would stop the financial hemorrhaging of the K-12 system. The NQE is thankful for this bill and will do its best to see this legislation passes.

SENATOR RAGGIO:

I am familiar with section 6 of S.B. 150 which seems to indicate the money is available for times when there is a gap between the projection and what is received.

Under the Nevada Plan, the State is a guarantor so in the event the local sales tax does not reach a certain level, the State must guarantee the funding. Will the Rainy Day Fund for public education be available to fill that gap? Will the State still be required to fill the gap under the Nevada Plan?

JAMES WELLS, CPA (Deputy Superintendent, Fiscal and Administrative Services, Department of Education):

That is one question for which I need an answer. It is my opinion the Rainy Day Fund for public education would be accessible if the LSST funding comes in short.

SENATOR RAGGIO:

The language is not clear on that point. If the bill is passed, it must be clear on this point. Will this set a precedent for every other agency or sector of the budget where General Fund reversions occur? The reversions become a large part of the budget for the next biennium. Is the Nevada System of Higher Education going to approach the Legislature for such a fund? We need to exert caution.

COCHAIR HORSFORD:

I appreciate Senator Raggio's comments concerning the logistics of implementation. Will the Nevada Department of Education (NDE) provide more information on this issue and any recommended changes? I fully support the concept. It is the type of approach needed. Please provide the details and recommendations so the public policy can be moved forward.

MR. WELLS:

I have questions and concerns about the level of detail in S.B. 150.

COCHAIR HORSFORD:

Beyond questions and concerns, the NDE should be bringing forward proposed amendment language.

MR. WELLS:

We will work on amendment language.

NATHAN SOSA (Student, William S. Boyd School of Law):

I am an 18-year resident of Nevada. I have attended elementary, middle school and high school in Nevada. I received my undergraduate degree at the University of Nevada, Las Vegas, thanks to the Millennium Scholarship Program. I would not be here without the previous and current actions taken by the Legislature. I have received guidance from professors, teachers and administrators along the way.

I have tried to repay some of the debt I owe by volunteering in the public school system. I volunteered for four years at an elementary school. I have served as a guest lecturer for legal courses at Valley High School. Many of my family and friends are also a part of the Clark County School District. I have seen our school system at nearly every level.

As the school system stands now, it is staring into the abyss. Teachers are terrified their salaries will be reduced or stagnated, or they may be laid off if their particular program is cut.

The teachers have been told the extracurricular activities, whether a science or chess club after school, will no longer be funded. They have also been told their continuing education courses, to update their abilities to teach, will no longer receive a partial refund as they received in the past.

There are administrators who spend a part of each day trying to find a way to rub two nickels together to make a quarter. Their decisions include whether to lay off a good teacher or cut a valuable program.

At the end of the line are the students at every level. They are so overcrowded in some schools they are forced to share desks. There are not enough textbooks to allow students to take their books home when assigned homework.

The schools use technology, if they have it, which is perhaps a decade old. When I went to Valley High School to teach a course, I called ahead and told them I would be bringing a PowerPoint presentation and the staff told me that was all right. When I arrived, I asked the teacher where the PowerPoint equipment was. The teacher called the technology staff who said, "The only PowerPoint projector we have is occupied today. It will be occupied for the next few days. You will have to make do."

The result of all this is fairly evident. Nevada has a dropout rate of 33 percent, the highest in the country. Students are graduating who are not able to compete, not only with their colleagues in the United States, but with the thousands, if not millions, of students graduating around the world in places such as India, China and Japan, with whom they will compete for jobs in a global economy.

The most terrifying thing of all is our entire system is a hostage to chance. A recession; another terrorist attack that prevents or discourages people from flying; a rise in fuel prices similar to the one last year which discouraged tourism; anything that affects gaming and sales leaves the education system on the brink.

The public education Rainy Day Fund is an excellent idea. Senate Bill 150 is an excellent first step to ensure if those emergencies happen, and if revenues are drastically decreased, we will have the ability to weather the storm. There is more to be done.

We must ensure teachers are adequately paid, that they want to come to Nevada to teach and that we graduate students who are able to compete on a global scale. Students need textbooks they can take home. They need to have newer computers and have the extracurricular programs that will keep them in school, motivated and dedicated to their education.

If that does not happen, we are depriving students of their education, limiting their opportunities and taking away their hope for the future. We all know what happens over the long term in those circumstances. When those deprived students grow up, the lack of education manifests itself in other ways such as crime and poverty. It costs the State more in the end to address those problems than to provide an education. I am asking the Legislature not to sacrifice the future of these students on the altar of expediency. It is tempting to do so in times when there are no good choices.

If we pass S.B. 150 and similar bills in the future, we will give these students a chance and, more than anything else, will attract business to this State because we have an educated workforce. It will create jobs in industries that have not previously been in this State. It will expand the tax base and it will turn our State into the Land of Opportunity that each of us here wants our State to be.

COCHAIR HORSFORD:

I commend you for your comments. It is good to have a product of the Nevada school system present. You are articulate and your comments are compelling.

SENATOR COFFIN:

Senate Bill 150 seems to need a twin bill to be heard in the Senate Committee on Taxation. There needs to be a funding mechanism to create the public education Rainy Day Fund. That funding stream is not clear in the bill.

MR. WELLS:

This Legislative Session, more than any in recent history, identifies the need for a reserve fund for K-12 education. Sales tax projections for the current biennium are down over \$250 million. The one-third of property taxes guaranteed as part of the basic support guarantee is down nearly another \$50 million. While some needs have been offset by lower than anticipated enrollment, school district budgets have been reduced and schools have had to cut programs which educate our children.

Setting aside excess funds in good times to get public education through lean times is prudent fiscal policy. The NDE supports the creation of a public education Rainy Day Fund, but would hope it would have enough details for the NDE to easily determine the existence of a financial emergency, the method for accessing the funds, and exactly what the funds are anticipated to cover.

Are they anticipated to cover only the LSST funds and Public Schools Operating Property Tax that are part of the basic support guarantee? Are they supposed to cover only funds in the DSA, or are they supposed to cover all programs?

The NDE would like to see a percentage cap placed on this fund similar to that of the Fund to Stabilize State Government.

COCHAIR HORSFORD:

Do you have proposed amendment language?

MR. WELLS:

We will work with the fiscal staff to prepare an amendment proposal.

JOYCE HALDEMAN (Clark County School District):

We are in firm support of S.B. 150. This bill does not seek to increase the taxes that support education nor does it seek to identify new sources of funding for education. The bill ensures the money, already collected to fund education, stays in education budgets. We see it as an accountability issue.

The methodology used in the distribution of funds collected specifically for education allows the excess funds to be used for other needs in the State. These reversion funds return to the General Fund. During the 2007 Legislature, the reversions from taxes earmarked for education were in the range of \$160 million. Had those funds been set aside in a Rainy Day Fund for public

education, the budget cuts of approximately \$140 million would have been largely mitigated.

This bill requires funds collected from taxes and earmarked for education to stay in education budgets. The second tenet of *iNVEST '09* ([Exhibit K](#)) is that very fact.

Any measurement used to evaluate education in Nevada places us into the lowest 10 percent of the nation. Even if school construction dollars were included, Nevada is still woefully well below average. This bill is an attempt to ensure the funds that belong in education, stay in education.

We see the public education Rainy Day Fund used for the guaranteed per-pupil funding. The guaranteed per-pupil funding would have been made whole with those otherwise reverted funds.

SENATOR RAGGIO:

Do you see the public education Rainy Day Fund as a fund to cover all programs outside of the basic support guarantees that are included in the education budget?

MS. HALDEMAN:

I would like to have more time to discuss that intent with my colleagues. The true intent of the bill comes from discussions we have had with parent groups. The parents present their tax collection bill to educators and ask why all those funds are not being spent on education.

The bill is an attempt, whether it is sales or property-tax revenues, to ensure funds stay in education in whichever category they are directed.

SENATOR RAGGIO:

There are the issues Mr. Wells has raised which need to be addressed.

YVETTE WILLIAMS (Chair, Clark County Democratic Black Caucus):

The word "stabilization" in S.B. 150 says it all. We need stabilization in the school budgets. The Clark County Democratic Black Caucus strongly supports S.B. 150. If any amendments are required, we ask our Legislators to pursue them diligently.

As taxpayers, we have no problem paying more taxes if the money will really be used for education. In the low-income communities and low-income schools, our children are disproportionately affected when there is no money to pay for their classroom resources. Please support this safety net for the growing school district in Clark County. The public education Rainy Day Fund will likely be needed more often than not.

We must think outside the box. Our children deserve this support. With the current rating of the Nevada public school system, this is an opportunity to move forward and change the destiny of our children

COCHAIR HORSFORD:

I want to thank everyone who is participating this week in the Grassroots Lobby Days. It is good to see constituents in the building and we look forward to hearing from you throughout the week.

ANNE LORING (Washoe County School District):

We are present in firm support of S.B. 150. The Nevada Plan provides a guarantee of K-12 basic support funding. This policy has been invaluable to the school districts. In times of severe economic downturns such as have been experienced since December 2007, the State has had to implement extreme cuts in K-12 education. We see the bill as helping the State to provide a cushion in these challenging times.

We understand the questions concerning specificity of language and the Washoe County School District representatives will be happy to assist with the proposed amendment language.

JULIE WHITTAKER (Nevada State Education Association):

The Nevada State Education Association (NSEA) agrees with the concept of S.B.150 for all the reasons stated by previous speakers. We also see the need for the clarifying issues spoken to by Mr. Wells. During the 2007 Legislative Session, the NSEA worked with the Nevada Taxpayers Association (NTA) on language that proposed a similar concept. The language of the 2007 proposal may address some of the issues spoken to today.

CAROLE VILARDO (President, Nevada Taxpayers Association):

The NTA has been supportive of this concept since the first discussions in 1995. It came before the Committee previously and one concern identified in 2007 was the capping issue. The language proposed phased in provisions for a cap on the funds.

I agree with Senator Raggio, that the provisions of S.B. 150 would occur during the August 15 true-up actions, whenever sufficient funding was available. Obviously, there is transitory language needed. Where sufficient funds existed, they would be used during the true-up actions. Anything over and above that amount would still be allocated from the General Fund.

To Senator Raggio's point regarding other agencies and individuals seeking funding, this is one of the only accounts for which we have dedicated funds for schools. Seventy-five cents of taxpayers' bills is specified for K-12 education. There is a 2.25-percent sales tax component known as the LSST. In 1975, this body recognized voter expectations when there is a tax dedicated to a specific entity such as education. They passed a bill, that if the voters approved a specific levy in support of a specific function, it would not accrue to redevelopment districts because that was not the expectation of the voters.

We agree with the concept of this legislation. However, substantial changes are needed to ensure the intent is clear.

I would bow to fiscal staff and those Legislators who have been on this Committee a long time for the language preparation. There may need to be a subaccount within the public education Rainy Day Fund, similar to the Disaster Relief Fund, because that is a better investment pool. We will work with all individuals to amend this measure.

SENATOR RAGGIO:

If this fund is established, would you suggest there should be a limit on the amount to be retained? The fund could continue to increase in good financial

years. The more placed in a stabilization fund, the fewer funds are available for other General Fund purposes.

Ms. VILARDO:

In 2007, the language proposed a cap. There was no cap on accrual; the cap was placed on the percentage to be reverted. Because the State was not in the best financial health in 2007 either, we had proposed a phased-in cap, beginning this biennium. Ten percent would phase in for the first year of the biennium and there would be a 10-percent phase in the second year for a total cap of 20 percent. I will e-mail the last session bill to Committee members. That bill was conservative. The cap should probably be closer to 25 or 30 percent. It is at the Committee's discretion to determine whether the cap should be a percentage or a dual cap.

SENATOR RAGGIO:

I see no provision in S.B. 150 that addresses a cap. You mentioned the dedicated amounts in both sales and property taxes. Do you see this also as a fund to cover any and all programs under the umbrella of K-12 education or only those that are part of the Nevada Plan for basic support?

Ms. VILARDO:

No, we do not see it funding all programs. We view its purpose to fund only the basic support, normally allocated from the DSA. That fits with the August 15 true-up requirements if revenues are short.

SENATOR COFFIN:

Ms. Vilardo knows the Nevada Plan as well as anyone in this building. It has been in effect for slightly more than 40 years. This bill is sponsored by the three Senators who represent rural Nevada. I am worried something has gone wrong in the tax formula in rural county allocations. The urban counties guarantee the funding and the rural counties receive slightly more per student than the urban counties. Is there a problem in the rural county funding?

SENATOR RHOADS:

One of the representatives of a rural school district approached me. Because of a situation where one gold mine bought another gold mine, the purchaser was exempt from tax on net proceeds for three years. It cost this one small county school district \$1.2 million for one year. There was no provision for other funding so they proposed this idea for legislation.

Ms. VILARDO:

Different issues are raised in different areas of the State. Nevada is a large State with three specific economies. We try to make most measures fit beneath one umbrella, which is fine for the most part. Unfortunately, some rural school districts have not adequately established the allowed mitigation funds.

Apart from that, an economic downturn usually does not miss anyone, either on expenses or as individuals. I have seen five economic downturns during my time in Nevada. An economic downturn hit when I had a business and it nearly closed, as we see happening today. It is not a function that can be controlled by saying we will not be a part of the economic downturn. We can take the necessary steps to have a savings account to allow the payment of basic level needs for existence. That is what the bill proposes.

There is a difference between rural and urban school districts. But an economic downturn will hit everyone the same way. It may be isolated, because of a particular economic situation in a certain county, or it may be global such as we are currently experiencing.

This bill is good policy, assuming the necessary amendments are made. I sense the intent is to require a cap to address the true ups that it is not overly generous in good economic times.

If this measure passes, the NTA will probably return in one or two sessions to request a split in the public education Rainy Day Fund. The 2007 bill would have established a stabilization fund as well as a building fund. There are a number of rural counties where funding is at the cap and they cannot build a new facility. If funds were set aside for capital expenditures, they could be used as a revolving loan fund for those areas with problem funding.

COCHAIR HORSFORD:

What was the rationale behind the 20-percent cap proposed in 2007? Why were 20 percentage points chosen? We need to determine what measures represent a slush fund versus what is really needed.

The current economic downturn is far greater than anyone expected. How do we set the cap at a reasonable level to care for the cyclical recessions that occur?

MS. VILARDO:

In 2007, the cap was first considered at a 50-percent cap. Political reality got in the way so the final cap was established more conservatively. Ms. Whittaker and I held discussions. That is why the cap phase-in was proposed. My preference would be for the cap to be established in the 30- to 50-percent range. I would propose a cap such as the one in place for the State Rainy Day Fund. One advantage is the proposal is statutory.

When the original State Rainy Day Fund was created in 1991, it was capped at \$100 million. By 1995, the Legislature realized the \$100 million was an artificial dollar amount tied to a budget that was escalating. Because it was statutory, the cap was changed to 10 percent.

Nevada Assembly Speaker Barbara Buckley has proposed a bill this Session that would raise the cap on the State Rainy Day Fund to 15 percent. The decision is flexible because it is a statutory decision rather than a constitutional issue.

I do not think I will be alive to see the day when the proposed public education Rainy Day Fund would see enough revenue to be called a slush fund. Even if the legislation passes in this Legislative Session, no funds will revert to the account in this biennium. It will take a while for this account to be established.

SENATOR RAGGIO:

I am considering the concept of S.B. 150, understanding the needs and how it would serve K-12 education. Where do we go from here in establishing the State budgets? Is such a concept also recommended for higher education and other sensitive areas such as mental health and mental retardation budgets or autism? Where do we draw the line?

The budget process requires the Legislature to look at available resources. I was responsible for the proposal to create the Economic Forum. The intent was to allow no manipulation of revenues during the construction of budgets. The accuracy is somewhat uncertain, but it is better than all entities massaging revenues to cover their pet projects.

Reversions become a large part of the available revenue when a new budget is being crafted. Where, if at all, do we draw a line? Do we just say reversions in all critical budget areas will not be reverted? Do we eliminate all reversions?

Ms. VILARDO:

The NTA supported the creation of the Economic Forum. Forecasting is an imperfect science. The higher education system could be considered, but only \$5 million of slot machine taxes are available for reversion in that budget.

Nearly every program could claim criticality. However, K-12 education is the only one, beyond the \$5 million slot machine tax and tuition fees, for which there are specifically dedicated revenue sources.

SENATOR RAGGIO:

There are dedicated revenues for the Alcohol and Drug Abuse Program.

Ms. VILARDO:

There are other smaller earmarks in existence. However, they would not create sufficient revenue to establish a stabilization fund; therefore, it is not likely a program would request stabilization funds in those areas.

The intent and import of this proposal needs to be clarified with "whereas" statements. It would establish the intent of the Legislature, if S.B. 150 were passed, was not to allow stabilization funds in other budget areas. It would allow specificity of revenue sources and the rationale behind the legislation. While I am not a proponent of "whereas" statements, they provide a statement of intent. Another amendment to this bill may be required.

The revenue generated by the 2.25-percent sales tax and 75 cents in property taxes is earmarked for education, versus 10 cents for a low-income housing trust fund or 50 cents from all alcoholic beverages with over 22-percent alcoholic content dedicated to alcohol and drug abuse programs. I do not see a comparison. A statement of intent in this bill will help diffuse future considerations outside this intent.

MR. ABNEY:

The Chamber of Commerce strongly supports the concept of S.B. 150. We echo the concerns of Senators Raggio and Horsford and Ms. Vilardo. The policy must be established correctly. One of the long-term spending reforms in the Chamber's outline is the creation of a stable reserve accounts. Senate Bill 150 addresses that goal with the potential for extra protection for education.

COCHAIR HORSFORD:

It is great to see the teachers, the Chamber and the taxpayers in one accord.

COCHAIR MATHEWS:

We will close the hearing on S.B. 150 and open the hearing on budget account (B/A) 101-1497, the Commission on Judicial Discipline.

LEGISLATIVE JUDICIAL

JUDICIAL BRANCH

Judicial Discipline – Budget Page COURTS-67 (Volume I)
Budget Account 101-1497

GREG FERRARO (Chair, Commission on Judicial Discipline):
We are present to answer any questions you may have on our budget.

DAVID F. SARNOWSKI (Executive Director, Commission on Judicial Discipline and Standing Committee on Judicial Ethics and Election Practices):
The Commission is established by a provision in the *Constitution of the State of Nevada*, under the Judicial Branch article. The Standing Committee is an entity established by rule of the Supreme Court of Nevada.

Both are administered through B/A 101-1497. I have provided your Committee with the Nevada Commission on Judicial Discipline Statistics ([Exhibit N](#)).

The Commission and the Standing Committee oversee the judicial ethics issues of judicial operations. There are over 200 elected judges in Nevada in Municipal Courts, Justice Courts, District Courts and the Supreme Court of Nevada. That includes appointive senior judges, those judges commissioned by the Nevada Supreme Court after they have served for a time in elected judicial office. They serve at the pleasure of the Nevada Supreme Court. Additionally, complaints and advisory requests are received for guidance from pro tempore judges. The counties and cities maintain the lists of the pro tempore judges appointed by city fathers and county commissioners. The number varies, but my best estimate is there are approximately 100 individuals in that category who are subject to our jurisdiction.

The Standing Committee gives both formal and informal advice. The formal process is for a judge to request an advisory opinion. The members of the Standing Committee meet by telephone conference and the advisory opinions are routed electronically to every judge in the State on the day they are filed in the Nevada Supreme Court.

The Commission is more well known. It accepts complaints from anyone who is authorized to file them. The complaints come from litigants, other judges, lawyers, people watching court television and people watching court in person. The majority of complaints are summarily dismissed for one reason. People complain to the Commission about the wrong issue. The Commission does not have the authority to decide whether a judge correctly decided points of law, admitted evidence that should not have been admitted or believed one witness over another. Those fine points of the law are to be decided by judges and only reviewed upon appeal. We have to process the complaints, costing staff time, but they are summarily disposed. The Commission considers them but dismisses them without a hearing.

The cases that cost money are those cases the Commission orders for investigation. There are no investigators on staff. The budget includes funding to hire private investigators. The current rate is \$65 an hour. We have had a few high-profile matters that can be considered "budget busters." During this biennium, there were matters involving two District Judges in Clark County.

Those cases incur costs for both investigators and special prosecutors. I oversee the investigation of a case, but I cannot formally present the case to the Commission. The rate for special prosecutors is \$150 an hour, a fairly good rate. I hire individuals with prosecutorial experience.

A large portion of our budget is allocated for defense of the Commission. I have appeared on behalf of the Commission. However, I cannot be both a witness and a lawyer in the same case. In civil lawsuits, I may well be called as a witness to what has transpired within the Commission. In those cases a special prosecutor contract must be sought.

We are requesting one additional position for the first time since the Commission was formed under the new constitutional provisions in 1995. I understand the budget constraints the Legislature is facing. The Commission will do its best to husband its current resources. If the position is approved, it will be utilized in the investigative arena and handling lesser cases that consume large amounts of my time.

Additional funding for meetings has been requested. The intent is for the Commission to meet more often. The membership of the Commission is required, by the *Constitution of the State of Nevada*, to be from different places in the State. When meetings are held, the Commissioners must be paid to travel to Reno or Las Vegas. Judges receive their regular salary allocations and the other members are volunteers. Housing expenses are included when situations arise similar to the August 2008 hearing which lasted seven days. That hearing resulted in the removal of a judge.

Funding for training is being requested in this budget. I have missed training during the current biennium due to budget circumstances. In 2009, the training session is scheduled to take place in Las Vegas.

COCHAIR MATHEWS:

Please elaborate on the request for a legal research assistant position in decision unit E-250. Do the numbers of cases warrant the request, especially since private counsel is contracted?

E-250 Working Environment and Wage – Page COURTS-69

MR. SARNOWSKI:

The private counsel is only contracted as a special prosecutor at the point of presentation of a case to the Commission. For instance, if someone I had worked closely with found themselves before the Commission, I could not participate.

The position requested would have a number of duties. A records retention project is desperately needed. You are looking at the Commission staff sitting at this table; myself and Ms. Kathy Schultz, management analyst. The additional position would provide research assistance in analysis of certain cases that do not warrant my involvement.

If the position is not approved, we will do the best we can for the people of Nevada.

COCHAIR HORSFORD:

Perhaps if the voters agree with the Senate Minority Leader on Senate Joint Resolution (S.J.R.) 2 of the 74th Session concerning the appointment of judges, it will help your situation.

SENATE JOINT RESOLUTION 2 of the 74th Session: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

MR. SARNOWSKI:

A question was asked in the other Committee that I will address here. The question was, "If we were to go to such a system, is there any data out there to suggest appointed judges do not get complained against as much?" I know of no such data. I have not seen such data compiled in states that have appointive systems.

There would likely be fewer complaints made. Make no mistake; people will continue to complain. Federal judges are appointed through an arduous process. They have a separate system for complaints that appears to be utilized more than it ever has been. There will be no election-related complaints; there will not be complaints regarding the manner in which campaign donations were solicited, but, there will likely be other complaints.

SENATOR RAGGIO:

I commend the Commission for the time, effort and detail spent on the two protracted cases, as well as the dedication and diligence I have observed in assuring due process is served. The individuals in those cases could serve as exhibits 1 and 2, to support the need of S.J.R. 2 of the 74th Session.

The Article 6 Commission has made recommendations with respect to transparency. Those of us who serve in the legal profession have observed, more often than not, initial complaints against judges come from people who are dissatisfied with a decision. That is troublesome. There are other remedies such as appeals.

One recommendation of the Article 6 Commission would open the initial complaints to the public. There are currently restrictions against those complaints being made public, even by the person making the complaint. What is your stance on the recommendation?

MR. SARNOWSKI:

Good arguments can be made on both sides of the question. The general rule regarding most Commissions around the country is the complaints are not open until after the disposition process. Nevada's procedure is to open a complaint after the Commission has made a disposition.

Under BDR 1-1110, the final determination will be whether to allow the complaints to be opened fully or on a limited basis. The Commission can operate under either precept. The Legislature will need to determine if it is worthy to open the process enough in cases where the point about people from the losing side in a lawsuit making a complaint.

BILL DRAFT REQUEST 1-1110: Revises provisions governing judicial discipline. (Later introduced as [Assembly Bill 496](#).)

SENATOR RAGGIO:

I question the timing of this issue. As long as there are judicial elections and those complaints have not been open, they will now be subject to a hearing and may have an effect on elections. I am searching for a compromise.

MR. SARNOWSKI:

It will be a matter of great interest to the public. The judges will have their own opinions on the topic. The Commission cooperated with the Article 6 Commission which produced the report. Hopefully, the bill will condense the information. There will be recommendations for the Commission, dependent on the depth and timeliness requirements that will increase our need to hold additional meetings.

We will support the excision of the statute that currently makes it a misdemeanor if someone reveals the existence of a complaint. Nevada is the only State with such a provision. The provision has never been invoked. There are some First Amendment arguments why it should not exist, although no court has ever held it to be a violation of the First Amendment.

If you tell us to work harder and produce investigative results more quickly, we will make every effort to do so. Keep in mind the Commission is restricted by the assets received.

MR. FERRARO:

The Commission has been criticized by some for lack of rapidity. This Commission works extremely hard with limited resources. We are, by and large, a volunteer statewide commission. Meetings are held in Reno or Las Vegas at least four or five times a year. If the Article 6 Commission's recommendations are adopted, we will need greater resources.

COCHAIR MATHEWS:

How many requests for opinions have been received to date in 2009?

MR. SARNOWSKI:

From January 1, 2009, the Advisory Committee has received three requests. One has been processed, the second is being written and the third will be the topic of a meeting later this week. In a nonelection year, we receive between 10 and 15 such requests.

In election years, we receive requests in advance from judges. We encourage them to ask for guidance. They do not want to run afoul of campaign requirements in the Code of Judicial Ethics. We provide service to all judicial candidates. If they ask for an advisory opinion on an election-related ethics issue, we will try to render it.

The number of complaints on the judicial discipline side varies in any given fiscal year. There were 130 in FY 2007-2008, but there were 170 in FY 2006-2007. We are aware of the amount of time required to process a complaint and the cost for a routine investigation. Accountability is skewed when an intensive, expansive, heavily litigated case such as the two cases heard two years ago occur.

COCHAIR HORSFORD:

Is there a separation of powers question when a judge, running for election, requests an advisory opinion? That is another reason voters may support the resolution for appointment of judges. What branch of government is your agency?

MR. SARNOWSKI:

Both the Commission on Judicial Discipline and the Standing Committee are part of the Judicial Branch. The Commission is created in Article 6, section 21 of the Nevada Constitution. The Nevada Supreme Court has ruled we are a part of the Judicial Branch.

The Standing Committee was created by the Commission through its rule-making authority in 1998. For clarification, the Standing Committee is a totally separate group of individuals than the individuals appointed to address disciplinary actions.

COCHAIR HORSFORD:

Are the functions of both entities created within the Judicial Branch of government?

MR. SARNOWSKI:

That is correct. My intent is to attend training in Las Vegas with the national association. The conference is scheduled for July 2009 in Las Vegas when room rates are at their lowest. A query was received recently by all members asking if members' states were having such significant budget problems individuals are unable to attend. The second question was, "Are you having problems with the people who authorize your expenditures based on a possible appearance of impropriety for attending such a conference in Las Vegas?" I do not know if that is a result of recent publicity.

COCHAIR MATHEWS:

Did you respond you live in Nevada and approve of the location?

MR. SARNOWSKI:

I am going to respond that Nevada is a good and cheap location in which to meet. While there is a social event one night, the remainder of the two and a half-day endeavor is spent in class. The training is excellent. The cost will be approximately one-third as much as when I go to Washington, D.C.

COCHAIR MATHEWS:

What portion of the \$97,636 in remaining contingency funds has been spent during FY 2008-2009?

MR. SARNOWSKI:

We received the funding. We spent the funds for the seven-day hearing in August 2008. There were some funds remaining. In conference with the Legislative fiscal support staff, we retained the remainder as a part of our recommended budget. Total funding over the two-year period and through the Interim Finance Committee (IFC) was approximately \$170,000. I spoke with Mr. Eric King who could provide further clarification. The funds have been spent or will be spent before the end of FY 2008-2009.

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COCHAIR MATHEWS:

We will close the hearing on B/A 101-1497 and open the hearing on B/A 327-2626, the Legislative Counsel Bureau.

LEGISLATIVE BRANCH

LORNE J. MALKIEWICH (Director, Legislative Counsel Bureau):

I have provided copies from the *Executive Budget* ([Exhibit O](#), original is on file in the Research Library) for your convenience.

Nevada Legislature Interim – Budget Page LCB-6 (Volume I)
Budget Account 327-2626

CLAIRE CLIFT (Secretary of the Nevada Senate, Legislative Counsel Bureau):

With me today is Mrs. Susan Furlong Reil, Chief Clerk of the Nevada Assembly. I have provided my written testimony for the record ([Exhibit P](#)).

My testimony explains the composition of the interim staff and some of the publications for which each House is responsible.

Other responsibilities include staff training and implementation of new technologies. One new technology this Legislative Session is in the Chamber video screens. When a Legislator speaks, they can be seen in the gallery on the screens.

Anymore, we are ready to provide for needs of a special session at a moment's notice. It is always interesting to locate and bring in our staffs. The Chief Clerk and I, with our staffs, are members of the American Society of Legislative Clerks and Secretaries (ASLCS). The ASLCS held their annual meeting in Reno in October 2008 where we hosted more than 325 attendees. This is the only venue we have to receive professional training because ours is a unique profession. It was a huge success.

The Budget Division made an entry error in the total base amount on page LCB-6 of the *Executive Budget*. The amount should be \$636,638 instead of \$608,286; a difference of \$28,352.

Decision unit M-300 reflects the reduction in employee fringe benefits.

M-300 Fringe Benefit Rate Adjustment – Page LCB-6

Decision unit E-606 reflects the amount necessary to meet our 14.12-percent budget reduction target. Most reductions in this account are in personnel costs. Personnel costs comprise 93 percent of our budget.

E-606 Staffing and Operating Reductions – Page LCB-6

Although the operational budget is small, those items have been reduced by 22 percent included in this amount.

Decision unit E-670 is the Governor's recommended additional personnel salary reductions.

E-670 Temporary 6% Salary Reduction – Page LCB-7

Decision E-672 is the elimination of staffs' longevity payments.

E-672 Suspend Longevity for FY10 & FY11 – Page LCB-7

Decision unit E-673 is the amount necessary to implement the recommendations of the Spending and Government Efficiency Commission (SAGE).

E-673 Implement SAGE Commission Recommendation – Page LCB-8

The figure in the budget summary on page LCB-8 of the *Executive Budget* should be \$522,504 when the error is computed correctly. It would reduce the percentage in this category from a -24.13 percent to a -19.79 percent reduction. It is still a large reduction.

We are a small staff and any reduction in staffing will have a negative effect on our ability to perform our duties as well as provide the necessary training services to meet the needs each biennium.

SENATOR COFFIN:

When Legislative budget recommendations mimic the budget proposal for the Executive Branch, I worry about copying what they do. Did the Legislative Commission recommend these budget targets?

These budgets cripple the Legislature's ability to monitor the Executive Branch. The Audit Division of the Legislative Counsel Bureau (LCB) is the public's eye on how the Executive Branch operates. They will also be cut.

The SAGE Commission recommendations are those of a privately funded group who are not elected. I do not understand why we would give credence to the SAGE Commission within the Legislative Branch.

MR. MALKIEWICH:

When we closed our budget, it contained the requested 14.12-percent reduction. By the end of the year, it was clear that would not be sufficient. When I appeared before the Legislative Commission, I did not take a final budget. I stated, "If there were other across-the-board reductions required, we would incorporate them." I assumed we would receive instructions for additional percentage reductions. We indicated, at that time, if an across-the-board reduction was proposed for all State agencies, similar entries would be included in our budget.

Instead of being given a new percentage target, the decision units in the E-670 series were proposed. My interpretation of the directions was to include those in our budgets. The supposed intent is our staff. As State employees, when changes for other State employees are made, they would apply to our staff as well. If the E-670 series are amended, any changes made to all State employees would be applied to our budget as well.

I am comfortable that whatever happens with State employees should be applied to the LCB employees. If that policy were not adhered to, the Legislature would likely be questioned concerning its practices. I am more concerned with the 14.12-percent reductions in these small budgets.

SENATOR COFFIN:

We are the public watchdog of the Executive Branch. Even if the LCB is questioned about salary policies, there is an answer for that. The Executive Branch has, in the last 18 months, marched all over the Legislative Branch in the observance of the provisions of the final budget of the 2007 Legislative Session. The Legislative Commission did not stand its ground on these matters.

MR. MALKIEWICH:

In fairness to the Commission, their budget decisions were based on my recommendations. One of my statements, when I take a proposed budget to the Commission is, "This is not saying you support it." Many Commission members voiced concerns similar to those raised by Senator Coffin.

My feeling is our proposed budget should be in line with what is proposed by the Executive Branch. During the course of budget hearings, the Committee can make determinations for the final budget.

I will now present B/A 327-2631, the Legislative Counsel Bureau.

Legislative Counsel Bureau – Budget Page LCB-1 (Volume I)
Budget Account 327-2631

I will present the budget from the handout in [Exhibit O](#). There are no new positions or upgrades requested in this budget. The columns in the *Executive Budget* are built differently than the Executive Branch. The Executive Branch begins input of information into the Nevada Executive Budget System (NEBS) as early as spring 2008. The Budget Division places the information provided by the Legislative Branch into the NEBS late in the year.

Please look at the third from the right and far right columns of [Exhibit O](#), the Governor's recommendations. Those represent our submitted budget. We were asked to include a 14.12-percent reduction from the FY 2008-2009 appropriation. The Legislative Branch appropriation for FY 2008-2009 was approximately \$34.6 million leaving a target of \$29,723,404.

The LCB proposed budget is \$33,959,334. That figure is found under the FY 2008-2009 work program. It represents a required reduction of \$4.8 million. Before amending the budgets of the LCB and the various divisions, I consulted with the Commission and asked if we could reduce the statutory committee budgets.

The Legislative Commission approved the removal of dues payments to national organizations from the budget, saving approximately \$350,000 annually. We reduced the budgets of statutory committees, eliminated contract funding and out-of-state travel in the statutory committee budgets.

We amended the rule concerning Legislators' travel to limit it to one out-of-state trip annually. This allowed us to reduce the budget for the Legislative Commission. The total savings is \$600,000 in the first year and \$400,000 in the second year of the biennium.

After reviewing the budgets of the various divisions, we reduced travel, training and equipment generating approximately \$3 million in savings over the biennium.

Decision unit M-100 contains formula-driven changes across the entire budget. They include internal service funds for the Motor Pool and State-owned building rents. We will work with the Budget Division for approximately \$31,000 in reductions, approximately one-tenth of our budget.

M-100 Inflation - Statewide – Page LCB-1

Decision M-300 includes adjustments in retired and active employee group insurance rates and workers' compensation. The rates changed after our initial proposal so additional changes were needed. Minor adjustments of one-sixth of one percent were needed.

M-300 Fringe Benefit Rate Adjustment – Page LCB-2

Decision unit E-606 is the meat of the reductions in this budget. We were told to cut \$4.8 million from our budget. We were able to reduce nonpersonnel costs by \$2.1 million. Another \$2.66 million was reduced in personnel categories.

E-606 Staffing and Operating Reductions – Page LCB-2

Page 5 of [Exhibit O](#) lists the recommendations made by the Governor in all Executive Branch agencies. Those are the enhancement unit E-670 series employee budget reductions. For all of these matters, the final budget produced by the Legislature for State employees will be addressed in the LCB budgets as well.

E-670 Temporary 6% Salary Reduction – Page LCB-3

E-671 Suspend Merit Salary Inc for FY10 & FY11 – Page LCB-3

E-672 Suspend Longevity for FY10 & FY11 – Page LCB-3

E-673 Implement SAGE Commission Recommendation – Page LCB-4

Page 4 of [Exhibit O](#) contains decision unit E-888, the only increase requested in this budget. This is listed as an enhancement of \$436,602 in a one-shot appropriation for information technology projects. During the last Legislative Session, these one-shot needs were allocated under S.B. No. 461 of the 74th Session. That appropriation was \$1,531,000 which is a reduction of 70 percent from the 2007 appropriation. It is built into the budget because there are no funds available this Session for one-shot appropriations. The last page of [Exhibit O](#) summarizes the proposed projects. The Committee will note the primary requests are for licenses and maintenance of equipment. There is only a small amount for new projects.

E-888 One Shot Appropriations – Page LCB-4

The summary at the bottom of page LCB-4 of the *Executive Budget* reflects the FY 2009-2010 recommendations of \$26,983,603 for the first year. That is reduced 20.54 percent from FY 2008-2009. The one-shot request is removed

for a reduction of 21.83 percent. If the amount appropriated in 2007 plus the amount appropriated in FY 2008-2009 were compared to this appropriation request, there would be a reduction of 23.97 percent. The appropriation of \$26,192,876 in FY 2009-2010 and the second year reductions are comparable at 22.87 percent.

The total resources, shown on page LCB-5 of the *Executive Budget*, include the authorized expenditures and the appropriation, flattening the budget numbers. The reduction in total expenditures in FY 2009-2010 is 18.54 percent. If the one-shot request is removed, it would be 19.81 percent. The second year shows an additional 4.78-percentage reduction. The total reduction from FY 2008-2009 to FY 2010-2011 is 22.44 percent.

I will now cover B/A 741-1330, the State Printing Office.

Printing Office – Budget Page LCB-9 (Volume I)
Budget Account 741-1330

There is no General Fund in this budget which is funded entirely by fee revenues. If the number of printing jobs requested decreases, the expenditures will decrease as well. This budget requests authorization for the Printing Office to expend up to what was spent in the past biennium in the 2009-2011 biennium. This is a flat budget.

SENATOR COFFIN:

Given the budget reductions, will the Audit Division have the ability to conduct as many audits of the Executive Branch as have been conducted previously?

MR. MALKIEWICH:

If there are fewer auditors, fewer audits will be conducted. As seen in other budgets, if a little funding is spent, much can be saved. However, there is no money available to spend. The amounts the auditors identify in savings far exceed the cost of an auditor position. If positions must be held open, that is what will be done.

SENATOR COFFIN:

The discoveries made by the Legislative Auditors over the years, especially during the last two years, have been critical. I pledge to increase this budget regardless of what is done in the *Executive Budget*.

MR. GHIGGERI:

I have provided the Committee with the Senate Committee on Finance Progress Report as of March 9, 2009 ([Exhibit Q](#)). I have provided a letter dated March 5, 2009, from the Nevada SAGE Commission in response to earlier questions ([Exhibit R](#)). An e-mail dated March 9, 2009, from Dotty Merrill, Executive Director of the Nevada Association of School Boards ([Exhibit S](#)), is attached in support of S.B. 150.

Senate Committee on Finance
March 9, 2009
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CHAIR MATHEWS:

Seeing no further business before the Committee, the meeting is adjourned at 10:55 a.m.

RESPECTFULLY SUBMITTED:

Cynthia Clampitt,
Committee Secretary

APPROVED BY:

Senator Bernice Mathews, Cochair

DATE: _____