

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session  
March 21, 2005**

The Committee on Commerce and Labor was called to order at 2:02 p.m., on Monday, March 21, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Ms. Barbara Buckley, Chairwoman  
Mr. John Ocegüera, Vice Chairman  
Ms. Francis Allen  
Mr. Bernie Anderson  
Mr. Morse Arberry Jr.  
Mr. Marcus Conklin  
Mrs. Heidi S. Gansert  
Ms. Chris Giunchigliani  
Mr. Lynn Hettrick  
Ms. Kathy McClain  
Mr. David Parks  
Mr. Richard Perkins  
Mr. Bob Seale  
Mr. Rod Sherer

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Maggie Carlton, Clark County Senatorial District No. 2  
Senator Joe Heck, Clark County Senatorial District No. 5

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Diane Thornton, Committee Policy Analyst  
Russell Guindon, Deputy Fiscal Analyst  
Keith Norberg, Deputy Fiscal Analyst  
Sarah Gibson, Committee Secretary

**OTHERS PRESENT:**

Maury Astley, Executive Director, Nevada Dental Association  
Peter M. DiGrazia, D.M.D., President, Nevada Dental Association  
Michael Sanders, M.D., Director of Patient Care Services, School of  
Dental Medicine, University of Nevada, Las Vegas; and Examiner,  
Northeast Regional Board of Examiners  
Fred Hillerby, Legislative Advocate, representing State Board of Dental  
Examiners and Verizon Wireless  
Tony Guillen, D.D.S., President, Nevada State Board of Dental  
Examiners  
Bobbette Bond, Community Affairs Manager, Culinary Workers  
Health Fund, Las Vegas, Nevada  
Gerald Ackerman, Associate Director, Rural Programs, Center for  
Educations and Health Services  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
Ryan Beaman, President, International Association of Fire Fighters, Clark  
County, Local 1908; Vice President, Professional Fire Fighters of  
Nevada, Southern District  
David Kallas, Member, Nevada Conference of Police and Sheriffs, Las  
Vegas Police Protective Association, and Las Vegas Police  
Managers and Supervisors Association  
Robin A. Drew, Private Citizen, Las Vegas, Nevada  
Stan Olsen, Lieutenant, Director, Intergovernmental Affairs, Las Vegas  
Metropolitan Police Department; and Nevada Sheriffs' and Chiefs'  
Association  
Al Gillespie, Fire Chief, North Las Vegas Fire Department  
Stacey Giomi, Fire Chief and Emergency Manager, Carson City Fire  
Department  
Neil Harris, Sheriff, Elko County, Nevada  
Kimberly McDonald, Special Projects Manager and Lead Lobbyist,  
City of North Las Vegas  
Bob Ostrovsky, Legislative Advocate, representing Cox  
Communications

Steve Schorr, Vice President, Public and Government Affairs, Cox Communications

Marsha Berkgigler, Vice President, Charter Communications

Gardner Gillespie, Partner, Hogan and Hartson LLP, Washington, D.C.

Brian Smith, Director, Sales and Use Tax, DIRECTV

Ann C. Pongracz, General Attorney, Sprint

Eric Sahl, Vice President, Programming, EchoStar Satellite L.L.C.

Dan Jacobsen, Executive Director, SBC Nevada

Andrew List, Executive Director, Nevada Association of Counties (NACO)

David Frasier, Executive Director, Nevada League of Cities and Municipalities

Gerald Ackerman, M.S., Associate Director, Rural Programs, Center for Education and Health Services Outreach

Fred Hillerby, Legislative Advocate, representing Verizon Wireless

Dino DiCianno, Deputy Director, Compliance Division, Nevada Department of Taxation

**Chairwoman Buckley:**

[Meeting called to order and roll called.] We will start the hearing with S.B. 85. We have Senator Carlton with us.

**Senate Bill 85 (1st Reprint): Revises provisions governing practice of dentistry. (BDR 54-179)**

**Senator Maggie Carlton, Clark County Senatorial District No. 2:**

[Submitted [Exhibit B](#) and [Exhibit C](#).] Just a brief historical perspective on how we got to today. I would never have thought that dental access could be so hotly debated, but in 2001 it was, and S.B. 133 of the 71st Legislative Session did pass. What brings us here today is the credentialing provision of that bill will be sunsetting. So we put the same group of people together, the Board, the Association, some private dentists, and some other interested parties like the Culinary Union, to discuss where we want to go from here.

In those discussions it was apparent that credentialing was something we did not want to go forward with anymore. We started talking about Western Regional Exam Boards. Through that discussion, people were made very comfortable in how the exam is given now. We got into some of the details and did a little more research on the Board. We did a lot of work in the rural areas also. There was a geographically restricted part of the bill, so there was a lot of

work done as far as statewide access. I am very proud to say that in the last four years when we originally debated this bill, we were ranked fiftieth in the nation, and we are now ranked in the top ten. We can see that a lot of the hard work that we have done has made a difference in dental access here in the state. In putting together this group of folks, we really worked on the Western Regional Exam Board and I think we have made everyone comfortable with it.

[Senator Carlton, continued.] This is a consensus piece of legislation; it is not unanimous. There is not abounding support, but there isn't a huge amount of dissension. Everyone has a few concerns about little different pieces of the bill. This bill is the first reprint. The Board had some concerns about a few provisions in the first one that came out, so we took them out. The Association had concerns about another provision and we took it out because we truly wanted to make this a consensus piece of legislation to accomplish the goal of dental access in this state.

The Legislative Counsel's Digest has been a wonderful thing for us in these last couple of weeks because it truly does give the breakdown of what this bill does. One of the main parts is that the Board will still have the option to give the clinical examination, but it is not mandatory, and they will accept the regional exam boards also.

I will talk a little bit about the exams. There are only three states in the United States left that only give the clinical [referred to [Exhibit B](#)]: Florida, Delaware, and Hawaii. The largest is the Western Regional Exam Board; it is accepted by 30 states and administered by 11 states.

One of the things that was taken out of the first print of S.B. 85 was the national test. I believe eventually we are going to get to a national exam, but it is so far in the future that I don't believe we need to address it right now. I think we need to focus on the next step, the regional exams. The National Association of Associations and the national group of boards are all getting together and talking about where the national exam is going to go, how it is going to be graded, how it will be administered, and what is going to be part of the test. That is all discussion with them right now, and I don't think we are quite ready to make those types of decisions as far as the national test goes. As that evolves, we hope to watch and discuss that in the future.

I will go over some of the rural components we have accomplished. We have seen expansions of a lot of different programs in the rurals. I believe now we have eight dentists licensed under the geographically restricted license, huge for the rurals. People would say that it is only eight, but for a town that hasn't had a dentist for a long time, being able to put a clinic in Yerington, Ely, or Tonopah

is significant. We have been very proud to be able to get these clinics going and get access taken care of in the rurals. The geographically restricted section of S.B. 133 of the 71st Legislative Session did not have a sunset. It will stay in effect, and we are looking at ways to allow counties to work together to get people into those counties to provide access.

[Senator Carlton, continued.] The credentialing will sunset to align with the Western Regional Board exam being given in Nevada. We tried to make this a very seamless process. One will fade out as the other is implemented so no one will be caught in the middle, and there are actual dates as to when temporary licensure will no longer be allowed and temporary licensure will be rolled over into permanent licensure. We believe we have addressed all of the technical concerns to ensure that no one gets caught in between the two systems.

**Assemblyman Bob Seale:**

In your testimony you said that there is a consensus, but it wasn't clear. Are the Dental Board and the Association both in favor?

**Senator Carlton:**

They are not in support, but they are not in opposition. I think you will need to ask them to clarify. A couple of members of the Board and the association are still uncomfortable with where we are going, but in general, they are not opposed.

**Assemblyman Sherer:**

I have a question. You said that the national test was one of the things that was a heartburn. What was the other item?

**Senator Carlton:**

We were going to have a trigger mechanism in getting rid of credentialing by having the numbers presented to the Legislative Commission during the Interim to look to make sure that we were still on par with the access that we wanted to have. In discussion with the particulars, the Board and the Association were uncomfortable with that. They were not sure how it was going to work or how to quantify access. I called bill drafting and said that I would like those amended out of the bill, rather than argue over something I didn't feel was a key piece of it. To me, it was more of a safeguard to help provide this seamless mechanism, and I believe we have done that in the legislation with the one-year extension on the sunset.

**Assemblywoman Giunchigliani:**

Is it safe to say that the sunset goes away in lieu of the creation of this regional exam?

**Senator Carlton:**

There is a sunset date on the credentialing portion, which is June 2006, and in that same month the Western Regional Exam Board tests will be given here in this state. We hope to make it as seamless as possible.

**Assemblywoman Giunchigliani:**

I see. Then could you tell me why on page 2, Section 1, subsection 3, the clinical demonstrations were eliminated?

**Senator Carlton:**

The way Legal did the drafting, that section is actually addressed above it, as far as the Board may still give the examination or present to the Board a certificate granted by the Western Regional Exam Board. Our Dental Board here in the state has the option of still giving the clinical examination if the dentist decides to come to this state and take it. Keep in mind that the Western Regional Exam Board portion of this bill only goes back to folks who have taken the test for the last five years. So if they took the Western Regional Board exam ten years ago and didn't want to go back and take that test, they could come to this state and ask the Board here to give them the clinical examination to become licensed in this state. We will still have a dual licensure scheme and both will require examination.

**Assemblywoman Giunchigliani:**

I just want to make sure I understand how this flows. They must present to the Board a certificate granted by the joint commission and either successfully complete a clinical exam, which may include a demonstration, or present to the Board a certificate granted from the Western Regional Examining Board.

**Senator Carlton:**

Yes, that is how it works.

**Assemblywoman Giunchigliani:**

Does the Western Regional Examining Board contain the format of demonstration?

**Senator Carlton:**

Yes, it does. It is a clinical examination. They will actually present themselves with patients and take a clinical examination. It will be graded by the Western Regional Exam Board.

**Assemblywoman Giunchigliani:**

Could you tell us the geographic regions where the eight rural dentists that we picked up under the 2001 Legislative Session are now practicing?

**Senator Carlton:**

I know they are in Yerington and at the Hawk Clinic. I believe we also got a specialist out in Elko that was coming from Salt Lake City, but I don't have a comprehensive list of each one of them. I am sure if you want that information I can have the Board provide that to you because they track this form of licensure.

**Maury Astley, CAE, Executive Director, Nevada Dental Association:**

I am here to support my president, who would like to make a few remarks.

**Peter M. DiGrazia, D.M.D., President, Nevada Dental Association:**

I have served as President of the Nevada State Dental Board and President of the American Association of Dental Examiners. We represent about 800 of 1,200 dentists in the state of Nevada. The Nevada Dental Association has voted to support S.B. 85 as you have it before you.

**Assemblywoman Giunchigliani:**

Can you explain to me what the difference is between a clinical examination and what used to be a clinical demonstration examination? Because now the word "demonstration" is taken out. Is it just more of a nuance?

**Peter M. DiGrazia:**

I think it's just wording. There will still be a clinical examination through the Western Regional or through the Board.

**Assemblywoman Giunchigliani:**

Through demonstration? Maybe it is just Legal's drafting.

**Peter M. DiGrazia:**

Through demonstration. Perhaps when the Board is up here they may want to elaborate on it, but I can tell you it is just semantics.

**Michael Sanders, D.D.S., Director of Patient Care Services, School of Dental Medicine, University of Nevada, Las Vegas; and Examiner, Northeast Regional Board of Examiners:**

I have had the opportunity to witness the evolution and growth of the Western Regional as they have striven to improve their product considerably. The dental school certainly is not one to take a position of advocacy one way or the other but to comply with whatever regulatory requirements are placed upon us. We do believe, however, that in good faith all of our colleagues on the Board of Dental Examiners, the majority of people in the practicing community, and the education community would stand in support of S.B. 85.

**Fred Hillerby, Legislative Advocate, representing Nevada State Board of Dental Examiners:**

This has been a very trying time for the Board. The Board went from four years ago administering what they thought was a very good examination. It was a true test of a dentist's ability to get inside your mouth and do the work that he does. There were a variety of other issues, some political and some not, some true concerns about access, and the decision was made four years ago to make a dramatic departure from that. We went to what was called licensing by credential, where a dentist with a license in good standing from another state who had practiced at least five years had the opportunity to come here and get a temporary license and practice here for two years without any dings on his record and then be given a permanent license. That was all until the sunset, as Senator Carlton mentioned.

In light of the sunset, it was a decision of what's next. I think politically a lot of us realize that we were not going to go back to pre-S.B.133 of the 71st Legislative Session. It became an issue for the Board, as some had one view and some had another. Dr. Guillen will be able to better articulate it in his presentation, the bottom line is that the Board is willing to accept the Western Regional Board. This has been difficult for this Board, but they stand ready to do whatever good public policy this group decides for our citizens.

**Tony Guillen, D.D.S., President, Nevada State Board of Dental Examiners:**

It is important to first understand the role of the Board as an executive agency empowered by the Nevada Legislature. Our responsibility as members of the Board is to institute regulations that protect the health, safety, and confidence of the public in dental services while maintaining the integrity of our licensing and disciplinary processes. While we as practitioners are concerned about ensuring the integrity of our respective professions as dentists and dental hygienists, our role as Board members is clear.

We have accepted our role on this Board to implement and mandate the protection of the public from harm and to unrelentingly promote quality care for all who live in Nevada. Further, the Board cannot support compromising the quality of dental care and public welfare by lowering the minimum standards for licensed dental professionals. We believe the cost to the public will be too high.

As a Board, we may occasionally differ philosophically in the manner by which we achieve these protections, but never in the advocacy and the implementation of those practices. As the examining and licensing entity, we employ consistent and accepted national methods. Nearly all states have licensing criteria or prerequisites like graduation from an ADA CODA [American



Dental Associations, Commission on Dental Accreditation] accredited dental school, successful completion of the National Board of Dental and Dental Hygiene Examinations, and successfully passing a clinical examination. The clinical examination is perhaps the most important practical tool for licensing boards to determine a candidate's minimal competency in critical skill areas of dentistry.

[Tony Guillen, continued.] Historically, Nevada has been an independent testing state. We have developed our own clinical examination with acceptable examination practices for reliability, validity, and fairness in mind. The components of our examination have been designed to test a candidate's minimal competency in specific critical skill sets of dentistry that meet the needs of our community. Our intent and responsibility as examiners has been to identify those candidates who demonstrate a lack of basic knowledge or skill in a procedure, or who demonstrate critical substandard or deficient skills, and refuse them official licensure in Nevada. Retaking the examination is an option and remediation is required when failing the examination more than one time. Examiners identify the "safe beginner," and candidates must pass all sections of our examination in order to obtain licensure.

At this time, we find ourselves addressing the temporary license provision of S.B. 133 of the 71st Legislative Session, due to sunset September 30, 2005, and the additional acceptance of examination results administered by the Western Regional Examining Board (WREB). WREB is one of five regional testing agencies in the nation. Nevada is currently a member of the Coalition of Independent Testing Agencies.

The Board has not taken a public position regarding the current exchange of accepting examination scores administered by WREB and the issue of temporary dental licensure by credential as defined in S.B. 133 of the 71st Legislative Session because the members of the Board have differing views regarding each. Because we did not have a consensus, we refrained from endorsing this legislation. However, it has come to our attention that others have perhaps misrepresented our public silence on the issues as full acceptance or endorsement.

There are members who do not support the abdication of Nevada's independent clinical examination procedure for licensure. Those same members do not support reauthorization of temporary licensure to practice dentistry. The total number of dental practitioners has significantly increased in the past four years, particularly in the Las Vegas area, to such a degree that nearly all members find no reasonable argument for maintaining the licensure by credential method, which had been identified to us as a remedy to the access to care and

practitioner shortage issue identified by some in Nevada. As practitioners are free to locate practice where they desire, many of the newest licensees went to areas already served but desirable for a number of reasons, and thus were not necessarily addressing access to care nor practitioner shortage area needs. This is an issue others may wish to debate further.

[Tony Guillen, continued.]Conversely, there are a majority of members of the Board who, while supportive of our independent clinical examination responsibility, would be amenable to accepting the examination scores administered by the Western Regional Examining Board. All members are interested in reviewing the development and implementation of the national uniform examination currently offered by the American Board of Dental Examiners, Inc., called ADEX. ADEX is a national not-for-profit organization developed to implement the administration of the national uniform licensure examination for dental and dental hygiene in our country. ADEX has been established as a membership organization and has received initial support from nearly 40 states, including financial commitments from 8 states, 2 regional testing agencies, and the American Association of Dental Examiners. The Board has already expressed initial support for ADEX and the development of the national uniform licensure examination, a clinical process similar to that used by medical professionals.

Without exception, all members of the Board support the clinical examination process for reliability determining minimal competency of candidates intending to practice dentistry and dental hygiene in Nevada. With perhaps one exception, all members support the sunset date contained in S.B. 133 of the 71st Legislative Session regarding temporary licensure to practice dentistry. Finally, all members support real efforts to address access to care for those economically challenged without pressure to reduce acceptable licensing standards for maintaining quality of care and public safety.

The issue of access to dental health care remains one of the Board's primary concerns. While significant strides in supporting the dramatic improvements in oral health in this country have been made, disparities continue to challenge us. Cultural, educational, geographic, and primarily economic factors continue to contribute to incidents of oral disease and poor oral health, leading to poor overall health, particularly for our nation's very young and elderly. The Board members intend to actively participate in addressing these challenges where we can to effectively improve access to care without sacrificing quality of care and public safety.

Historically, the State Dental Board has had a cooperative and mutually respectful relationship with legislators. There has been support for our role as

examiners and regulators of the dental and dental hygiene professions. In the past, our testimony and counsel on dental matters, including methods of licensure and examination, were well received and accepted. It is my hope, as it is of my fellow members, that this respect and counsel will once again be established with this issue and future dental matters.

**Chairwoman Buckley:**

The Committee appreciates the difficulty you have had with this issue and trying to reach a consensus within your membership and within the profession. It sounds like it has been very difficult.

**Assemblyman Ocegueda:**

Can you tell me what are the major differences between this Western Regional Examination Board and what we do currently?

**Tony Guillen:**

We have four sections and they have seven sections. In their board, you can actually fail a section and still pass their exam. It contains everything that ours does, except we do a clinical exam for an upper denture on a patient; theirs is just a lab mark yes or no type of answer.

**Assemblyman Ocegueda:**

There was a comment that there are more dentists in Clark County through this licensure by credential, and some indication that it has increased in the rurals. Could you comment on that?

**Tony Guillen:**

In Clark County, most of the people have gotten a licensure by credential. If you go by the one dentist to 3,000 people, the total number of dentists to 3,000 exceeds what that per portion is. As far as the rurals, we still have a difficulty obtaining dentists to go out there because there are a lot of problems. There are issues of where to practice, money made, and Medicaid. Even if we are giving them a license, which basically we are, to go practice, they can go out there on a geographically restricted license and practice three years and then we will give them a license. They do have to be licensed from any other state.

**Assemblyman Ocegueda:**

If this bill was enacted tomorrow, if you passed this WREB test, you could go practice?

**Tony Guillen:**

As it is in this bill right now, I think it is going to start at the new date for credentialing to end, which would be July 2006, I believe. On that date,

anybody who has taken WREB five years prior or has a license could also come to Nevada. The numbers are there as far as people coming in who have taken WREB or the access of the people who have taken WREB who want to come to Nevada.

**Fred Hillerby:**

I want to make it clear because there has been some confusion; we are actually going to have an overlap. The way the bill reads in Sections 5 and 6 is the same because this is that part we have to repeat because of the child support provisions we find in all of these bills. Basically, the credentialing piece does not expire until July 1, 2006. Rather than expiring the latter part of this year, it will be extended through that time. However, Section 1 of the bill, the provision that allows the Board to accept a candidate who has passed the Western Regional Examining Board within five years, becomes effective on October 1. July 1, 2006 is not when the credentialing expires and the acceptance of WREB begins. It is a little confusing. There will be an overlap wherein you can either take WREB or be credentialed for that period of time. I just wanted to clarify that.

Speaking of the concern on the part of the Board with the geographic issue, particularly the rurals, we have a subsequent bill that will be introduced this afternoon. We have agreed to put into that bill some additional issues that may help with the geographic. Caroline Ford from the medical school's rural health outreach program has presented us with language that we agreed to put in our bill to try to help, so there will be some more coming in a subsequent bill on the issue of the geographic license.

**Peter M. DiGrazia:**

There was one thing that I wanted to add as far as the rurals. We just finished an oral health summit with the Health Department. There are now 27 WICHE [Western Interstate Commission for Higher Education] students in the pipeline who will be coming out, and hopefully they will help with the rurals. They are pretty much going to go there, assuming that they do not want to pay their loan back.

**Bobbette Bond, Community Affairs Manager, Culinary Workers Health Fund,  
Las Vegas, Nevada:**

I wanted to clarify a couple of questions that Assemblyman Ocegüera was asking related to the timelines and the sunset and the kick-in date. We were part of a coalition that tried to come up with the compromise because Culinary was one of the groups that was really involved in the initial legislation four years ago. The reason that the dates exist the way they do was that while the Western Regional Exam Board will start to be accepted whenever the State

Exam Board is ready to take it, it will not be administered until June 2006 to give the Board a chance to set any NAC guidelines it needed. It took quite a while to set the new NAC guidelines for a change in licensing last time. Then the new Board would administer the Western Regional Board in June and then the five-two at sunset. That was the timeline we were working towards instead of the acceptance date. There are two stages of the Western Regional, when they start accepting it and when they start administering it. When we found out that the earliest that the Board could administer the exam was going to be June 2006, that is when and what we tied the timelines to.

**Gerald Ackerman, M.S., Associate Director, Rural Programs, Center for Educations and Health Services:**

I wanted to address a couple of rural questions that came up. There are some maps there that talk about the access issues ([Exhibit D](#)). There are still some significant problems with financially accessible dental care in rural areas of Nevada, as there is a limited number of dentists willing to accept a panel of Medicaid patients and serve other underserved populations.

There is not a provision in the geographic license to direct acceptance and treatments of underserved patients, nor should there be. The Office of Rural Health will likely incorporate dental underserved population groups as an adjunct to the current dental underserved area definition. There is a lack of dental clinic facilities in rural Nevada to accommodate dental practitioners. There are significant recruitment barriers and lack of incentives to attract dental practitioners to treat underserved populations, and some rural and frontier counties may not be able to support full-time dental practitioners, thus necessitating visiting dentist or mobile services. The geographic restricted license provision contained in NRS [*Nevada Revised Statutes*] should remain in statute.

There are five recommendations to address dental under-serviced in rural Nevada.

1. Early exposure of dental students to rural clinical experiences and practice opportunities is a key to incentive for students to consider rural Nevada.
2. The Nevada Health Service Core to provide loan repayment to practitioners and providing incentives for them to come to rural Nevada.
3. Documenting supply and need is important for tracking need.
4. Funds to build rural infrastructure to support dental services, recruit professionals, and assist with salary. S.B. 85 would greatly enhance the ability of rural areas to do this.

5. Incentive funding to increase access for Medicaid-eligible populations could be addressed through geographic adjustment in the reimbursement for rural dental practitioners.

[Gerald Ackerman, continued.]I just wanted to address those things with rural Nevada and the specific issues we face.

**Chairwoman Buckley:**

I want to close the public hearing on S.B. 85. I have a Committee introduction that I would like to do right now so we can get it to the Floor.

- BDR 57-1058—revises provisions governing changes in rates for certain insurance. (A.B. 326)

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED FOR COMMITTEE INTRODUCTION OF BDR 57-1058.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

We will get that down to the Floor. We will go ahead and open the hearing on Senate Bill 121; I believe Senator Heck is with us.

**Senate Bill 121 (1st Reprint): Revises provisions governing payment of certain workers' compensation claims. (BDR 53-1021)**

**Senator Joe Heck, Clark County Senatorial District No. 5:**

I appreciate the opportunity to present S.B. 121. This bill is submitted on behalf of the Professional Fire Fighters of Nevada. I would like to offer a few opening remarks before turning the presentation over to Rusty McAllister and Ryan Beaman of the Professional Fire Fighters.

Every employer has the responsibility of ensuring an injured worker timely access to appropriate medical care. However, while this care is often provided without delay, the payment to the health care provider for services rendered is sometimes caught in bureaucratic red tape associated with the inappropriate

denial of the claim by a third-party administrator. In these cases, the injured worker will often pay for services out of his or her own pocket or use the benefits of private health insurance. Subsequently, when the claim is adjudicated and accepted by the third-party administrator, current law requires the workers' compensation carrier to pay the health care provider, who in turn is to reimburse the worker for any out-of-pocket expenses. The law does not explicitly require, however, that the private insurance company be reimbursed for expenses paid on behalf of the injured worker; hence the reason for this bill.

[Senator Heck, continued.] S.B. 121 will require workers' compensation carriers to directly reimburse the private carrier for health care costs occurred on behalf of the injured employee.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

S.B. 121 is a result of a situation we have occurring in many parts of the state. As you know, when a worker is injured on the job and files a workers' compensation claim, he has the right to appeal it if it is denied. Currently, under our system, if a workers' compensation claim was denied, several of our trust funds were paying the claims for these injured workers until the claim could be adjudicated through the appeals process.

Our problem with regard to this bill is that, once the claim is adjudicated through the appeals process and the appeals officer says to accept and repay the claim, current statute states that the provider of health care, the physician, needs to re-bill the workers' compensation administrator, then they need to pay the provider again, then they will refund the money to our health insurance trusts. In other words, there is a middle man. Most providers are reticent to re-bill because they have already been paid at a higher contracted rate than the workers' compensation rate, so they are not anxious to re-bill the third-party administrator.

It has gotten so bad that our trust funds now have decided to stop paying those claims on behalf of our injured workers while the claim is adjudicated because it takes so long to get the provider to re-bill the third-party administrator and the third-party administrator to pay the claim after it has been finally accepted and adjudicated. S.B. 121 essentially gets rid of the middle man. Instead of having the providers re-bill the third-party administrator, having them pay back the provider, and then having him get our money to us after we have researched how much they have paid on our behalf, this just cuts out the provider part of it.

If we file an appeal and it is deemed to be a claim for workers' compensation, we would be reimbursed directly from the third-party administrator to our health

insurance trust at the rate that is accepted for workers' compensation. That may not be the full amount, but at least it will provide us with an opportunity. Currently, we are expending legal funds to go back and get money. There are times where we will spend \$500 in legal fees to go back and get \$250. This way, we would be assured of getting some of our money back right away and we could make a decision about whether or not we wanted to pursue the balance—the difference between the workers' comp rates and contracted rates with health insurance.

[Rusty McAllister, continued.] I brought Mr. Beaman from the Clark County firefighters with me. He has had a number of these claims to the tunes of tens of thousands of dollars that have been delayed in the system. Our hope is that with the passage of this bill, we will speed up the process, we will get rid of the middle man, and we will streamline it so that we can get our health insurance trust reimbursed more quickly. If we can do that, we will go ahead and start picking up the claims again and paying for them while the claims are being adjudicated.

**Ryan Beaman, President, International Association of Fire Fighters, Clark County, Local 1908; Vice President, Professional Fire Fighters of Nevada, Southern District:**

I am here today to express support of S.B. 121 on behalf of Local 1908 and the health plan. The fund is a nonprofit employee health plan covered by Clark County firefighters and their families. The fund is not insurance; it is actually self-funded through contributions negotiated in Local 1908's labor agreement.

Sometimes it seems like workers' compensation denies everything to start with, at least for occupational diseases. I don't know why that is, especially heart and lung cancer, which are conclusively presumed under NRS [*Nevada Revised Statutes*] to be work-related for firefighters. We help the employee appeal most of these denials and get most of them reversed, but during the appeals process, workers' compensation does not pay the employee's healthcare bills. Our health plan doesn't cover on-the-job illnesses, so the employee is stuck either paying the bills or being sent to collection by the doctors. The firefighters' health plan tried to help the employees out by paying the health bills while they appealed the workman's compensation denial, but we had so much trouble getting reimbursed when there was a reversal that we had to stop doing that.

The main problem is that the workers' compensation carriers cannot under current law reimburse another health plan for bills that should have been paid by the workers' compensation carrier, who can only pay the doctors directly, but the doctors have already been paid by the firefighters' health plan. I will give some examples.



- There has been a determination that the workers' compensation should cover the expenses the firefighters' plan has already paid.
- The firefighters' plan has already paid out the expenses.
- The workers' compensation carrier will not reimburse the firefighters' plan, only the provider who has already been paid.
- Workers' compensation will not pay a provider until a provider bills workers' compensation.
- The provider re-sends billing a second time for items that have already been paid.
- The firefighters' plan must convince the provider to refund payment for the service that it has already rendered and for which it has been paid and re-bill the same charges again to the workers' compensation carrier.

[Ryan Beaman, continued.] A lot of the times we could never get reimbursed or it would take years. A lot of times we just got stuck with the bills even though it turned out that workers' compensation should have paid. We finally just had to stop paying the bills and leave the employees to fend for themselves because it was just costing the plan too much.

What we would like to do in this situation is to be able to cover these bills while the employee appeals the workers' compensation denial. Then, if it is reversed, we would submit the bills directly to workers' compensation and get reimbursed up to the amounts the workers' compensation would have paid in the first place. If our plan has paid more than what is allowed by the county's PPO [paid provider option], we can decide whether to go back to the doctors. For the most part, we wouldn't be suffering the entire loss as a penalty for trying to help a sick firefighter. That is all S.B. 121 does. It allows the workers' compensation carrier to settle directly with us instead of spending years trying to get a doctor to refund money and bill workers' compensation a second time. We are not trying to get workers' compensation to pay bills while denial is up on appeal. We also understand workers' compensation carriers are stuck with the current law that does not allow them to do what S.B. 121 does. That is why we need S.B. 121. We just want to be able to step in and do what is right and not get burned.

**Vice Chairman Ocegüera:**

I would just like to disclose that I am a professional firefighter in Nevada; however, this bill would not affect me any differently from any other firefighter in the state of Nevada, and I will be participating in the discussion.

**Assemblywoman Giunchigliani:**

Does this only pertain to fire fighters' health insurance reimbursement? It looks like it is everybody, but the conversation seems to have been focused on how it has been impacting you.

**Rusty McAllister:**

This does apply to everyone. Different trust funds out there are under the same circumstances we are. We are just the first ones to bring this forward. Many of the other trusts, I believe, also do not pay the cost now for workers' compensation to carry on the claim until it is adjudicated because it takes them so long to get reimbursed.

**Assemblywoman Giunchigliani:**

That was the fear that I had when we first privatized it, and I opposed it because a lot of them just went to health care coverage anyway, which is why your costs have gone up. So "health insurer" includes self-insurers as well on page 3, Section 2, subsection 3, correct?

**Rusty McAllister:**

That is why we put in any health insurance plan established under state or federal law. That would cover ERISA [Employee Retirement Income Security Act] plans, Taft-Hartley [Labor Act of 1947] plans, or plans that are simply negotiated through collective bargaining.

**Chairwoman Buckley:**

I will also confirm with Legal the scope of that before our work session so that the Committee is clear.

**Assemblyman Seale:**

Do I understand it correctly that if there is a workers' comp claim and it has been denied, if it had been accepted, the amount of money the health care provider would have paid would have been less than what you are paying directly?

**Rusty McAllister:**

That is correct. Our health insurance trusts have gone out and negotiated contracts with preferred provider networks. Also, different local governmental entities have gone out and worked out contracted rates for workers' compensation at a lower rate.

**Assemblyman Seale:**

They would have been paid \$80 and you are going in and paying \$100. Then the claim is approved, they pay it, and you want that \$80 to come to you, so

that \$20 is still sitting on the table. Wouldn't the health care provider return that \$20 to you because the claim was approved?

**Rusty McAllister:**

That is the theory, but we may expend \$500 in legal fees to go back and get that \$20. At least this way we would get the vast majority of our money back, but we would be able to make an educated decision about whether it was financially reasonable to expend legal fees to go get that extra \$20 back.

**Assemblyman Seale:**

Do you get resistance?

**Rusty McAllister:**

Absolutely.

**David Kallas, Member, Nevada Conference of Police and Sheriffs, Las Vegas Police Protective Association, and Las Vegas Police Managers and Supervisors Association:**

I am here today in my capacity not only as a representative of those groups but also as a trustee for the Las Vegas Metropolitan Police Department Health and Welfare Trust to support S.B. 121. As my colleagues the firefighters have stated, the workers' comp issue is not just reflective on their health and welfare plans, but also on ours. We experience the same problems they do. When we have a workers' comp issue and it is denied, the employee is generally the one caught in the abyss of the workers' comp issue. They try to get the incident resolved and then they are not sure who is going to pay the bill. When it comes time for that bill to be reimbursed, we certainly experience the same types of problems as the firefighters and the other groups who pay the workers' comp claims on behalf of their participants. We are in support of S.B. 121.

**Robin A. Drew, Private Citizen, Las Vegas, Nevada:**

I am not testifying as either for or against but as neutral because I haven't had an opportunity to study the bill. Mr. Beaman made his statement that for some reason the insurers, the third-party administrators, seem to automatically deny a claim. In support of that statement, I am an injured worker. I was injured working on the Yucca Mountain Project in 2001. My claim remains in hearings, appeals, district court, possibly Supreme Court. I have still not been given the vocational rehabilitation that I should have completed by now. When I first was injured, automatically my claim was denied. It was clearly just automatically denied because as soon as I got an attorney and a hearing was filed, it was automatically accepted.

[Robin Drew, continued.] When I was at the hearings division, another injured worker was there and I had to help her to receive medical care. She had pins sticking out of her back, and Nevada Comp First, the third-party administrator, which was also the same third-party administrator that is making my life so wonderful, simply would not let her get to a doctor so that she could get the medical care that she needed. I had to phone around town because English is not her first language. This is someone I just met in the elevator. I was able to treat her with more respect than Nevada Comp First was because she was a stranger to me and not a dollar sign. I had to call around town for physicians who were willing to treat this woman who had medical insurance, but the medical insurers said if you have a work-related injury, we are not going to pay for the doctor. The workers' comp third-party administrator said until you get a doctor's report, we are not going to pay for the doctor. I found a doctor who was willing to go ahead and see her and decide after the examination who to bill.

**Chairwoman Buckley:**

We will close the public hearing on S.B. 121 and we will open the hearing on A.B. 151. Assemblyman Ocegüera is the prime sponsor of this bill.

**Assembly Bill 151: Imposes fee on residential subscription television service and dedicates proceeds from fee to assist certain governmental entities in acquiring, improving and maintaining communications technology for first responders. (BDR 58-268)**

**Assemblyman John Ocegüera, Assembly District No. 16, Clark County:**

This essential piece of legislation provides funds for the acquisition of communication technology for first responders in Nevada's local and tribal governments. This bill is urgently needed to assist Nevada's first responders to effectively communicate with each other during emergency situations, particularly those involving homeland security.

None of us will ever forget September 11, 2001, a day of both horror and heroism, a day on which the most destructive attack of terrorism ever was launched against the United States. More than 2,700 lives were lost that day in spite of the heroic efforts of police officers, fire fighters, and other first responders, including 343 fire fighters and 72 police officers.

Last year, after several years of study, the 9/11 Commission released its final report on the terrorist attacks. The Commission found that the first responders to the disaster lacked fundamental information available even to television

viewers due to communication problems on the ground. Emergency crews were unable to radio orders to each other because they operated on different frequencies. Emergency services operators were not prepared to give proper advice to callers from the World Trade Center, and occupants were given mixed signals as to whether they should stay in the buildings or evacuate. These mistakes caused by communication failures undoubtedly contributed to the death toll.

[Assemblyman Ocegüera, continued.] As a result of the deficiencies in America's emergency communications backbone, the federal Department of Homeland Security has made interoperability between the communication networks of local, state, and federal government a top priority. Since 2002, the Department of Homeland Security has awarded several billion dollars to state and local governments to help first responders in their communities. However, according to a July 2004 survey to the United States Conference of Mayors, most cities had yet to receive federal funding for communications equipment for first responders. Most local law enforcement agencies could not communicate by radio with federal law enforcement agencies.

There is also an effort by current administrations to reduce the funding for first responders. In a statement issued just this February, Senator Joseph Lieberman, the ranking minority member on the [U.S.] Senate Committee on Homeland Security and Governmental Affairs, derided President Bush's Homeland Security budget proposals for the upcoming fiscal year. He said, "I am shocked and troubled that once again the Administration is seeking to slash vital funds to equip and empower our nation's first responders, reducing them to second-rate status." In particular, the key state homeland security grant programs could be cut by almost \$480 million, or more than 30 percent. This is the second straight year the Administration has sought large cuts in this assistance, which forms the backbone of most of the state's homeland security efforts. Worse, this cut comes on top of proposed cuts in other vital programs for first responders. This funding must be continued to allow local and tribal governments to buy newer and better equipment for their first responders.

The following are a few of the exciting new technologies that may be available to assist emergency crews in the future. Motorola, Inc., has recently developed software that allows first responders to communicate with each other regardless of whether they are on same radio system. Cisco Systems, Inc., has developed a prototype police car equipped with wireless technology that allows information to be shared with mobile responders. This technology would enable first responders to send video to a command center, ensuring that additional forces, protective gear, or ambulances were provided. The National Institute of Standards and Technology is researching ways to devise radio antennas made

of metal found in debris. If proven successful, this technology will allow emergency personnel to locate and possibly communicate with survivors trapped inside a collapsed building. These are just a few of the emergency technologies that might be funded with the grants established by A.B. 151.

[Assemblyman Ocegueda, continued.] I will give you an example. I was working last night on the job and we had a suicide attempt. The address that came in was bad; we had two apartments within 200 number blocks of each other. Police and ambulance went to the first apartment. Fire went to the next apartment. The whole situation was delayed because we couldn't communicate.

Last year in Carson City, we had devastating fires. I am sure there are some Carson City firefighters who will tell you they had extreme difficulty communicating with all the agencies that were here to deal with that serious situation. Ralph Waldo Emerson said, "Heroism feels and never reasons and therefore is always right." I urge your support of A.B. 151, which will allow our state's first responders to be equipped with the tools to engage in future acts of heroism.

**Assemblywoman Giunchigliani:**

Has there been any allocation from Homeland Security for communications purchases?

**Assemblyman Ocegueda:**

I think there are some folks in the crowd that can answer that with more specificity.

**Assemblywoman Giunchigliani:**

I think that has to be a part of the threshold no matter what we do with this. We have to make sure the people can talk to each other in the safety area. We dealt with the whole issue of how we patrol the radios last session. I guess my concern would be if there are millions and millions of dollars that went to the Commission and then it was dispensed and disbursed, but it didn't go to where we needed it. There may be some individuals who can explain where the money went initially.

**Assemblyman Seale:**

Why are we setting up a separate trust fund for this?

**Assemblyman Ocegueda:**

So that we can deal with this problem. Since I have been here and I am sure prior to then, the interoperability problem repeatedly has come up, even before September 11. Generally, the issue is that we would love to do that, but we

can't pay for it. This would be earmarked specifically to pay for this specific problem.

**Assemblyman Seale:**

Why wouldn't it be a line item in some budget somewhere? I was just wondering if there was a specific reason for that. I understand what you are trying to do and I have no gripe with that, but I find that a trust fund for it to be odd.

**Assemblyman Ocegüera:**

I am just trying to solve a problem, Mr. Seale.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

We are in strong support of this legislation. Currently in the State of Nevada, we represent about 2,300 paid professional firefighters. There are another 2,500 to 3,000 volunteer firefighters across this state. I don't speak for them, but I am certain that they wouldn't have a problem with me saying that they would be more than happy to apply for the grants. They are lacking funds on a regular basis. We represent 15 professional fire departments throughout this state, many of which would qualify to apply for grant funding under this bill. Some areas have very large contingencies of volunteer fire departments that intermingle with the paid professional fire departments. They all have to communicate with each other; they also work hand in hand on a daily basis with fire departments in neighboring communities and with the state and federal firefighters. Therefore, we certainly support this. There is not enough grant money to apply for. There are Fire Act Grants provided through the federal government, but you have to apply for them. In the first year of the last four years, Nevada received about \$238,000; the second year, \$1.4 million; the third year, \$3.2 million; and in forth year, \$1.4 million through these Fire Act Grants.

The current Administration has looked at reducing the amount of that federal grant money by about 35 percent for Fire Act Grants. From what I have been told about this bill and the possibility of the amount of funding that could be generated, they could almost generate more in one year than has been awarded to the State of Nevada through the federal government for Fire Act Grants in all four years that program has been in existence. We certainly are in support of this bill.

**Stan Olsen, Lieutenant, Director, Intergovernmental Affairs, Las Vegas Metropolitan Police Department; and Nevada Sheriffs' and Chiefs' Association:**

We also stand in support of this piece of legislation. We believe that it is an excellent way to move forward and help fund particularly the rurals in getting the much-needed, upgraded equipment to enable them to be able to communicate with themselves and other officers within their agency and other entities in the region.

**Al Gillespie, Fire Chief, North Las Vegas Fire Department:**

[Read from [Exhibit E](#).] We in the fire service appreciate the support we have received from you in the past, helping us provide emergency services to our citizens. The issue of communications and communication technology has become a priority for the safety of emergency responders and for the safety of the citizens we protect.

I started in the fire service over 28 years ago. Every year, on average, 100 firefighters die in the line of duty across this nation. That would be approximately 2,800 firefighters, except in 2001 we lost over four times that yearly average, with the City of New York losing 343 fire fighters during the attack in September alone. The 9/11 Commission sited lack of communication as the major factor in the failure of the fire department to recognize the potential for building collapse and accounting for the members of the department on the scene that morning. We cannot accept the loss of one firefighter, let alone 100 a year any longer.

We don't want our firefighters going into an emergency without the best communications and technology we can supply. This bill will provide the funding for the necessary tools of today's fire service—modern, up-to-date radios, computer programs, battery response information, and system-wide plans and communication that are so necessary in times of emergency and preparation for response to future emergencies.

I have here two pieces of equipment and one prop. One of these radios has the necessary component to help locate a firefighter in distress, the other does not. This prop represents the radio that isn't funded and therefore is not in the hands of a firefighter who may be in trouble. In the North Las Vegas Fire Department, we have some of each of these. We are more fortunate than many other fire departments, particularly the small volunteer departments, which provide protection for much of the state. Sixty percent of the funding provided by this bill would go to helping those types of organizations.



[Al Gillespie, continued.] Planning for the best response to emergencies in our communities requires the latest technology to determine where to build fire stations, the type and number of response units assigned to those stations, and the number of emergency responders necessary to provide timely and quality response for our citizens. In the event of an emergency, the rapid notification of our citizens in danger zones, by a system that automatically calls all the phone numbers in those areas almost simultaneously, is imperative. This system was used in the Graniteville train derailment recently in South Carolina, for which the department I served at that time responded as the hazardous materials team. We were able to notify the citizens of that town immediately to shelter in place. Nine citizens lost their lives in that incident, but using this technology saved hundreds, perhaps even thousands, of lives.

Finally, a statewide communications analysis and plan to help common communications and adequate radio tower coverage is essential to helping this protect our citizens. I would like to address Assemblywoman Giunchigliani's question concerning the funding. The national fire organization did a needs assessment. They found that, even with the monies that have been available, the needs in the fire service had been neglected for so long that particularly the small organizations throughout the country didn't even have the fire clothes necessary for people to respond to an emergency safely. They didn't have radios, they didn't have the fire engines, they didn't have hoses, and that is where the money has been going. That doesn't negate that this is an important piece of what we do and what we need, but I think that may answer some of your questions.

**Assemblywoman Giunchigliani:**

I think it is shameful that our local governments haven't been bothering to pay for necessities for individuals to be able to do their jobs. We are faced with an issue on property taxes, and windfall profits have gone to the local governments, but it appears that they haven't committed their money to their fire personnel. Do you present your budget to your commissioners, and did they reject communications as requests?

**Al Gillespie:**

I am in my first budget process here. I recently came from Augusta, Georgia, which is why we responded to the Graniteville incident. My experience with the governments has been that they have the same issues that everyone has, trying to fill the important needs of their communities. In this fire department, we have done fairly well in catching up with some technology issues. They just couldn't fund all of the things that we needed all at once.

**Assemblywoman Giunchigliani:**

Part of the discussion is that we make sure our first responders are properly equipped for being in the field. I would just like to know what has happened in the past and why this is an apparently overwhelming problem. It is frustrating to hear that we have not made any strides in providing communication equipment for these individuals.

**Stacey Giomi, Fire Chief and Emergency Manager, Carson City Fire Department:**

I have been fighting fires in Nevada since 1980, and since then there have been communications issues largely because local governments aren't able to fund the technology changes that happen so quickly in the communications field. This bill provides a dedicated stream of funding to be able to continue to expand that. If we can't do that on a regional basis, if the adjoining counties that we work with every day can't come along with that process, then they fall behind. We rely nearly daily on the assistance of some of our neighboring counties. Those counties' local governments don't necessarily help them; some of those are volunteer organizations. Then we can't regionally communicate.

In the Waterfall Fire we had last year, just like every other wild land fire every year, communications is an issue because there are so many different systems. Reno is on 800 megahertz, Carson City is on 150 megahertz here, and Las Vegas is on 400 megahertz and 800 megahertz. So a lot of it is not only the fact that each local government has to supply that funding, but it has to be in such a fashion that the local governments can communicate with each other on a regional basis. We are presently trying at our level to form a four-county cooperative to develop a regional radio system in Lyon, Douglas, Storey, and Carson that would allow those four counties to work together and still communicate with Washoe County, which is on a completely separate frequency.

The dedicated stream of funding is certainly helpful. Every local government struggles with the funding that they do have, but some local governments don't fund those volunteer organizations in any way. Their funding is through a variety of sources or private events. The Nevada Homeland Security Commission has had some funding as well, but each of the counties that have applied for it through the state or through the Commission have had various priorities. As Chief Gillespie mentioned, we are looking at some of the basic things in terms of turn-outs and protective equipment. Some of those things had to be funded first before we could get into this. I think we all realize that communications is a critical issue. A lot of communications, both radio and computer systems, have been funded through that Department of Homeland Security grant process.

**Assemblywoman Giunchigliani:**

We are not going to decide on this today, so the funding part is a separate thing. Is there someplace in here where it does require the coordination and cohesiveness from all the jurisdictions to actually talk to each other?

**Stacey Giomi:**

I don't believe that is in the bill. I certainly believe that is something that I would hope the Oversight Committee would require or at least examine in some fashion. The Homeland Security Commission has also instituted a study through the State Department of Technology to develop a statewide comprehensive communications plan. That will dictate a system that would allow for interoperability statewide. That report is a little bit delayed right now, but I suspect that when it comes out, it will have exactly what you are looking for.

**Assemblywoman Giunchigliani:**

I knew that we were a little delayed, but to me, that is the threshold question. Otherwise, we're never going to get everybody on the same page. That is an issue, not only to the men and women in the field, but to the constituents that you are supposed to serve. I will keep an open mind to this, but I am not sure I care for the fee source necessarily, at least for how it is worded in here.

**Stacey Giomi:**

The important issue for us is that there is a dedicated funding source. I think that is the most critical issue. That is the most critical issue that I deal with in terms of being able to get this funded, because radio systems and communication systems are very expensive. If you have to rely on applying for a little bit of it this grant cycle and a little bit of it next grant cycle without any thought that the revenue stream will continue, you'll end up with a system that is halfway completed, and that system does not benefit anybody.

**Chairwoman Buckley:**

That makes sense.

**Assemblyman Perkins:**

In A.B. 441 of the 72nd Legislative Session, we required local governments to hold off until there was a statewide plan so the Project 25 standards set by the Department of Justice could be met and everybody would be talking to each other. Obviously, there was no amount of funding there, but it at least forced local governments to have that conversation and not go out and spend the resources they did have on something that wasn't going to be interoperable with the other agencies. I think that partially answers Ms. Giunchigliani's question. I think we will be reviewing that in a cleanup bill this session.

**Neil Harris, Sheriff, Elko County, Nevada:**

I have been the Elko County sheriff since 1990. I also sit on the statewide Steering Committee for Interoperability, and there will be a report finalized and presented to the Legislature with regard to interoperability. I am testifying in support of A.B. 151. Funding is a critical issue, especially with budgets the way they are right now.

A week ago I chaired a meeting with the four local sheriffs of the northern part of the state. These five counties cover over one-third of the state. At that meeting, we were able to determine the dispatch capabilities that are handled by the sheriff's department of every one of those counties for first responders and any other response that is out there. I found it quite disconcerting that a couple of the counties, Lander County and Eureka, were even further behind and really in trouble with their communications process. Our attempt at this is to put together a group made up of those five counties, and we could add on two other counties if it looks like it is feasible, similar to what they have done in southern Nevada with the SNACC group [Southern Nevada Area Communications Council]. They dispatch for eight different entities.

If we put together a group called Northern Nevada Communications, interoperability would be possible. We had two communications experts from two different companies at this meeting along with the Nevada Division of Forestry and some ambulance responders that have to handle the emergency response for ambulances in our area. There is equipment that is capable of allowing interoperability regardless of the frequencies that we are talking on, whether they be VHF [very high frequency], UHF [ultra high frequency], or 800.

Prior to this, I had also conducted a study of the counties that border Elko County in Idaho and Utah. VHF is a critical issue for them. We had a sheriff up in Tooele County [Utah] who was able to sit in his parking lot and put the frequency in necessary to communicate with the dispatch of Elko when an officer who was shot and the suspect was fleeing down through Elko County. Our hope is that we can find funding sources to put together the equipment necessary to accomplish interoperability with the five counties in the north and if we can add other counties. This can be put into place statewide. We can tie into any of the southern counties with this capability and putting a switch or switches in to accomplish this. Funding is a critical issue. I know that local budgets have a tough time for themselves without having to tie in other entities. If there are funding sources out there, then one of the tasks that we put on this Committee is to attempt to locate funding sources, whether they are federal or state. I ask for your support on A.B. 151.

**Kimberly McDonald, Special Projects Analyst and Lead Lobbyist, City of North Las Vegas:**

We definitely see this as a supplemental grant source for us to ensure maintenance and communications interoperability, particularly in light of homeland security. I wanted to clarify some information that had been stated earlier or maybe answer some questions that had been posed earlier by Assemblywoman Giunchigliani. I also sit on the Nevada Commission on Homeland Security. She wanted to know how many funds had been disbursed. In fiscal years 1999 through 2004, approximately \$67 million has been disbursed, and we are projecting another \$28 million to go out. This is going to all the local governments, the counties, the tribal nations, for training, equipment, exercises, and all of those things. It takes a lot of money to meet our homeland security needs. The interoperability communications issue is one of the most paramount initiatives that we have in addition to performing a needs assessment.

We are experiencing about an \$11 million deficit in homeland security funding. That is why this particular bill is so critical to help us supplement those lost funds. Any source that we can use to meet those initiatives would be greatly appreciated. That is why we are definitely in support of this measure.

**Chairwoman Buckley:**

I will have Diane Thornton get for us the full accounting of where everything is going. Obviously, I think we all agree with the sponsor of the bill that communication system for our first responders is at the top of all of our lists in terms of making sure it is funded.

**Kimberly McDonald:**

In May of last year, the Commission did vote on the concept for the interoperability of the communication system. It would be a four-pronged component system. Again, this is paramount and it is definitely a priority for us.

**Bob Ostrovsky, Legislative Advocate, representing Cox Communications:**

I would just like to make sure you understand the elements of this bill because it has two pieces. It establishes the fund, but it also establishes a dedicated funding stream for the fund that has been created. We, the cable companies, continue to pay a franchise fee at the local level. Because of the way federal law is written, local governments cannot impose the same fee on other providers providing the same service. This bill addresses that fee at the state level. It is as if I could buy a product at two different stores and I paid sales tax at one and didn't pay it at the other. We are trying to find parity in that operation. We think this is a fair way to address that issue. We think the money is coming from the high-tech communications industry and that what is going

on today in cable, satellite broadcasting, microwave televisions, or other residential subscription services should go right back into the technical funds to support these kinds of communications efforts.

[Bob Ostrovsky, continued.] The first 15 sections of the bill itself are definitional. You might take a look at Section 14 to find residential subscription television service. We are not trying to propose a fee structure on streaming videos, cell phones, or downloads on your computer systems. This only applies to residential subscription television service, which includes cable, satellite broadcasting, and whole host of other providers like microwave television transmission services and similar multi-channel video programmers.

Section 16 of the bill sets this fee at 5 percent for the privilege of providing that service. That fee applies to all providers, including cable operators. It limits the fee to income related to residential subscription television service. It applies the same rules that apply to the fee as it is imposed at the local government level. That is Chapter 711 of NRS, which allows you to deduct the cost of providing the service. That section is also in Section 16 and makes sure there is no double taxation. If someone re-sells the service, it is not taxed, or the fee is not applied twice.

Section 17 is an authorization for the Department of Taxation to collect the fee. Section 18 creates the First Responders Communications Technology Trust Fund. It provides a \$0.75 collection fee for the Department of Taxation. It also indicates that the funds will not revert back to the General Fund but stay in here. The Director of Public Safety may deduct up to 2 percent of the funds. We estimate the funds at a minimum of \$5 million a year. That would be about a \$100,000 fee to run that. I have some minor amendments ([Exhibit F](#)) to these when I am done.

Section 20 creates the advisory board of three members. We recommend it be chaired by the Director of the Department of Public Safety and the others be appointed by the Governor. Section 21 establishes the grant procedure. Section 22 specifies that the funds will be spent 60 percent in the rural areas and 40 percent in the urban areas for the first five years. In talking to the professionals in this area while creating this bill, it was determined that the rural areas are the ones furthest behind. They have the least amount of funds available to buy this kind of equipment. Because the technology changes rather rapidly, you buy new computers every year or two to three years. The communications equipment also needs to be changed and upgraded. It was the feeling of a lot of folks that the rural areas needed that infusion of money before some of the urban areas, which have more resources. At the end of five years,

then of course 100 percent of the money can be spent wherever the Commission believes it is most appropriate through the grant process.

[Bob Ostrovsky, continued.] Section 23 is technical. Section 24 provides for this fee collection to start October 1. There are two quick amendments ([Exhibit F](#)). First, the advisory board, proposed to be three, goes to four, which we are proposing. We have done this in response to law enforcement's request. The four members of the Board would be Director of the Department of Public Safety; one member of the Homeland Security Commission with experience in Commission activities related to interoperability; one member representing local law enforcement; and one representing fire services.

The last amendment is in Section 22. Right now we have a qualifying political subdivision of 400,000 or less for the purposes of determining what "rural" means. We would like to substitute in there "75,000 population jurisdiction" because we recognize that we have some rural type problems in Clark and Washoe Counties. We want to try to reach out and cover all of those rural areas. That is my rundown of the bill.

**Steve Schorr, Vice President, Public and Government Affairs,  
Cox Communications, Las Vegas, Nevada:**

You have in front of you a list of taxes, fees, and community-oriented contributions on behalf of Cox Communications ([Exhibit F](#)). We serve five jurisdictions in southern Nevada. Some of those would be classified as rural under the definition put forth by Bob Ostrovsky.

What Cox Communications does within southern Nevada is a point of pride for us as a company. We not only pay local taxes, but we pay fees and state taxes. We do a lot more than that within the community. We are proud of the programs we put forth.

Our customers have paid fees for a long time in southern Nevada. They are not necessarily franchise fees. In the past year alone, they were nearly \$14 million. It is a competitive world out there. We are competing on a daily basis with the same companies who seek to take our customers away. Joe Smith who lives at 1 Main Street gets his system through Cox Communications and pays a fee. Bill Jones who lives at 2 Main Street gets it from a satellite dish network and pays no fees, yet they get the same exact service. You will hear those saying that we are paying the fees for right-of-way. That is not true, because we pay the same right-of-way fees as all the other utilities providers use. We pay the same fees, the same trenching cost. If it were just for that I would say okay, but it is not. It is money that goes into the General Fund.

[Steve Schorr, continued.] That brings me to the point of how this first responder's bill was developed. It has been a long involved process. I was a fire fighter for 15 years of my life. I was also the first broadcaster to be on the scene of the MGM Grand fire 27 years ago. I found out at that time that the firefighters could not talk to the police officers. That became a disaster. The unfortunate thing is, it happens today, each and every day, in southern Nevada, in rural Nevada, in cities large and small around our state.

The situation regarding communications is intolerable. The funds need to be brought forth. It is a competitive marketplace now, not what it used to be five years ago. Companies that do the same business we do should be paying the same fees. If they can't pay locally, then they should pay it statewide. It should go to help our first responders. To think that today, in Las Vegas, in Clark County, firefighters still cannot talk to the Metro Police Department across the street makes no sense to me.

This is not something that just came about today because I wanted to find someplace for the funds. It is something that needs to be done for the benefit of our first responders.

**Marsha Berkbiger, Vice President, Charter Communications, Reno, Nevada:**

I am here today to support A.B. 151 also. We are currently providing cable services throughout most of the northern Nevada market. We provide in Wells, Elko, all the way down the Interstate 80 corridor back towards Reno, with the exception of Winnemucca and Lovelock. They are the only two communities in northern Nevada that we currently don't provide cable services in. We pay this fee in every single one of those markets. We believe that we have competition in every one of those markets. We see the satellite dish competition, and there is a lot of talk going on about ILET [International Leadership for Educational Technology] competition. SBC has already announced that it is going to be rolling out this type of cable service in the Reno, Sparks, and Washoe County market, and possibly throughout some of the rest of the market. Currently, the way the structure is set up, the satellite dish groups that provide this service do not pay this fee.

When a consumer turns on a television set, we are targeting that service that comes down the line. It isn't the video streaming that you are going to see on telephones, but it is the end product that we are looking at.

This state has a level playing field statute. The purpose was so that true competition could exist. Under the current scenario, only one provider is paying a fee. That is not true competition. It will have a direct impact on our local governments. You also have in your packets ([Exhibit F](#)) lists of the community



donations and the franchise fees that Charter puts into the northern Nevada market. It is really reflective of what we do in Reno, Sparks, Washoe County, and Carson City.

[Marsha Berkgigler, continued.] In addition to paying this fee, we also provide free air channels for the local governments to run access programming. That is an additional cost to our company that we pay willingly without any concerns because it benefits the communities we are located in. We are concerned about competition. We are concerned about the damage that will happen to the local governments if competition is allowed to continue without a level playing field.

**Gardner Gillespie, Partner, Hogan and Hartson LLP, Washington, D.C.:**

I would like to address three arguments that I think you will face from the opponents of this bill. First of all, I think you will hear that the franchise fees we pay are compensation for use of the streets. I first heard that theory a number of years ago and it struck me as something that couldn't be right because it seemed to me that streets were held in trusts for the public. I got sufficiently interested in this to do a lot of research and I wrote an article that was published in the *Dickinson Law Review* a couple of years ago. That article reflects the research that shows there are 200 years of cases indicating that municipalities do not have the authority to rent their streets.

I found that the streets are held in trust for the public. There is some loose language in a couple of cases about street rentals. That is what caused me to get into this. I found that this language did not represent holdings in the cases and that the cases are clear: municipalities do not have that authority. In fact, the franchise fees Cox and other cable operators pay in Nevada are provided for in state and federal statutes, they are provided for in the Federal Cable Act [of 1992, 47 USC 521], and they are also provided for in NRS 354.59883. These fees are imposed on cable operators, telecommunications providers, and wireless providers.

I would submit that if these fees were compensation for the use of the streets, they would never be imposed on wireless providers, which do not use the streets any more than the satellite broadcasters do. Also, Cox and other cable companies pay permits to access the streets. The information that you have before you ([Exhibit E](#)) indicates that Cox, for example, pays about \$85,000 a year in permit fees to access the streets. DBS [direct broadcast satellite], however, is exempted by federal law from having to pay local fees. The reason that Congress exempted DBS from those fees was a concern about the administrative costs to the DBS companies for having to deal with thousands of municipalities across the country which might have fees. Congress made it clear that states could, in fact, impose these fees, although municipalities couldn't.

That is what this legislation does today. Dozens of states across the country impose fees on DBS, and at least four states now have a tax or fee equalization policy in their statutes similar to what would be provided by A.B. 151.

[Gardner Gillespie, continued.] The second matter that I would like to address is the theory that DBS pays fees to the federal government and therefore should be exempted from having to pay the same kind of fees in the state of Nevada. The fees DBS pays to the federal government are very minor in comparison to the fees that cable operators pay in Nevada and elsewhere. The two primary national DBS companies, EchoStar and DIRECTV, have a total of 17 satellites orbiting the earth, and they have paid federal fees for orbital slots for two of these. The amount that they have paid for those orbital slots represent a one-time payment of about \$2.35 for each of their customers today, compared to a monthly payment that is greater than that for the cable operators. The DBS companies also pay FCC fees. They pay about \$0.08 a subscriber annually to the FCC. Cable operators pay \$0.70 a year per subscriber. So even though DBS does pay some national fees, they pale in comparison to what cable pays.

Lastly, you may hear that the fees that are proposed in this legislation would interfere with the growth of technology and use of the Internet. That is clearly not true. A.B. 151 is intended to be technologically neutral; that is the whole point. When a customer uses his television to access programming, he is going to be doing it the exactly the same way for DBS or the new service proposed by SBC nationally as they do for cable. Let me address SBC's proposed national service because they have given it a lot of publicity over the last month or two. They propose something called IPTV, Internet Protocol Television, which uses the same type of packet-switching technology that is used by the Internet. That is the same technology used by Cox Cable in the provision of services over its cable modems.

SBC proposes that type of technology, which would allow a remote control in the home to access the same type of programming that Cox accesses. It would simply be from a source farther away. The services covered by the bill here would not include streaming video over your computer from the Internet. It would not include streaming video for cell phones. It would cover SBC's proposed service, and I think that because that service would compete directly with the service provided by Cox and Charter, that should be covered and that is one of the points of the legislation. I also understand that SBC would bundle a video service with a data/email service. That is the same technology that cable is working toward as well.

[Gardner Gillespie, continued.] Today, when the opponents speak, I would ask you to look at who they are. I think you will find that they are representing companies that don't want to pay a fee comparable to the fee paid by their competitors. It is not surprising that they would oppose legislation like this, but that doesn't make it right.

**Assemblyman Anderson:**

The amendment changes the makeup of the Homeland Security Commission on page 6, in Section 2 of the bill. You're going to four members, so you are going to have the Director of Public Safety and the head of Homeland Security, one local law, and one fire. Does it not appear to be loaded?

**Bob Ostrovsky:**

There are four members, two of whom would be state-level people. The other two were foreseen to be local law enforcement and fire services. This was in response to what people in the law enforcement and fire service areas were telling us. These are the kind of people who should be on that commission. If another structure works better and this Committee and Mr. Ocegüera feel that way, we would take that into consideration.

**Assemblyman Anderson:**

I am trying to figure out why you dropped your technical person.

**Steve Schorr:**

That is why the key line to this is in the single member from Homeland Security. The next line says, "with experience in the Commission's activities related to interoperability." They would have the expertise. I think that the individuals who were put on this Commission are those who see these problems on a daily basis.

**Assemblyman Anderson:**

Relative to the number change from 400,000 to 75,000 population to try to reach the subdivisions of Indian tribes, is that 75,000 on the tribal roll as a whole or in the geographical area?

**Bob Ostrovsky:**

Fewer than 75,000 individuals in the political subdivision. We tried to capture the communities that were within Clark and Washoe that might also qualify as rural. If 75,000 is the wrong number, LCB has some designator categories that they use. That is the intent of this amendment.

**Assemblywoman Giunchigliani:**

In Section 14, on page 3, who exactly is that? Residential subscription, community antennae television service, and direct broadcast?

**Gardner Gillespie:**

The intention is to bring into the fold all of those entities that compete for the subscription television residential subscriber. It includes satellite master antennae television systems. There are many private operators that provide video services within multi-dwelling unit apartment houses. They receive the signals from a rooftop dish. They do not have local franchises. They do not pay local franchise fees, currently. It would also include services that may be provided in the future by the local phone company through fiber to the home, which Verizon is in the process of building in a number of its communities across the country. It would include Internet Protocol TV.

**Assemblywoman Giunchigliani:**

Currently, local franchise fees that are assessed and \$14 million.

**Steve Schorr:**

In southern Nevada it was \$14 million and those fees go directly into the general funds of the various communities that are served.

**Assemblywoman Giunchigliani:**

So we could divert that money that is collected now into this fund, could we not?

**Marsha Berkbigler:**

Not without a fight from the local governments. They actually use those funds for specific designated projects and programs within their general funds. In some cases, they use them for local access programming; it depends on the market you are in.

**Assemblywoman Giunchigliani:**

Do we have a projection of what this 5 percent could raise?

**Steve Schorr:**

Anywhere between \$5 million and \$7 million in the first year. If you look at their own figures in the news report released this past Wednesday by EchoStar, they grew by 1.5 million new subscribers in the last year. Their revenue is now over \$193 billion dollars, so their numbers are growing exponentially. We believe that \$5 million to \$7 million will go quickly to \$10 million to \$12 million.

**Assemblywoman Giunchigliani:**

In the current collection of the franchise, are you prohibited from passing that on to the consumer?

**Steve Schorr:**

No.

**Assemblywoman Giunchigliani:**

So we are really being asked to tax our consumers, in the long run.

**Steve Schorr:**

I don't believe so. All that has happened in the past is these companies have been in competition with the cable companies and have escaped the equivalent fees that are paid by individuals in a community. It is not a new tax, it is just that they will no longer be exempted from paying the same fees that all the other customers are paying.

**Assemblywoman Giunchigliani:**

The need is there. It appears, though, that \$67 million went someplace and didn't get to help the people that we wanted. I think we will have to pursue that part of it. I am trying to get a handle on how the fund would work. As we look through the bill and the amendments that have been proposed, there is some discussion as far as how that could occur.

**Steve Schorr:**

The \$14 million that we pay into local governments goes into the General Fund. That same amount of money goes to pay for the additional firefighters and the additional police officers. All of that money that we pay into the General Fund goes towards those things. I also have to say that I understand \$67 million from Homeland Security has been paid, but a lot of it has gone to the necessities that local firefighters and police officers have not had, above and beyond communications.

**Assemblywoman Giunchigliani:**

I appreciate that and the work that they do. Our job is sometimes to make sure that we know where the money comes from and where it is going to go. Out of the \$14 million that is paid currently, you don't object to 60 percent being diverted from southern Nevada to go to rural counties? Because it is an exportation.

**Steve Schorr:**

That is up to this Legislature and local government.

**Assemblyman Seale:**

I am most appreciative of what this does, but there are a couple of things that I think are somewhat bothersome, like the funding source. Is that not a tax that is going to be paid by what we just described in Section 14, the individual people subscribing?

**Steve Schorr:**

Only if you call the fee that every single subscriber that we have pays to local government a tax. If you are calling that a tax, then there...

**Assemblyman Seale:**

We can call it a franchise fee; the same people are going to pay it either way. You can call it anything that you want.

**Steve Schorr:**

A lot of people have been paying that for a number of years while others who have equivalent service have not been paying it.

**Assemblyman Seale:**

The equipment I think is separate and should remain separate from the funding. If we are lacking this equipment, why can't we do a one-shot with General Fund money and take care of it that way? I think Ms. Giunchigliani had a good point about the local governments' need to participate as well in this upkeep.

**Chairwoman Buckley:**

Mr. Seale, you would have to talk to Chairman Arberry [of the Ways and Means Committee] about that, not this panel.

**Assemblyman Parks:**

I am reading the words "impose fees on residential subscription." When I go to my neighborhood bar, they also have the same dish that I could put onto my house. Would that establishment be required to also pay the fee? I know that there are a number of other commercial applications of subscription type television service. Could you address that?

**Steve Schorr:**

That would not be residential service. Establishments like bars, taverns, or any type of public facility has a completely separate fee structure.

**Chairwoman Buckley:**

I am going to switch to the opposition now, but before I do so, I have a couple of BDRs that I would like to get out of the way.

- BDR 40-375—Requires licensures of agencies which provide personal care services in homes of elderly persons and persons with disabilities. (A.B. 337)

ASSEMBLYWOMAN McCLAIN MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 40-375. (Assembly Bill 337)

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\*\*\*\*\*

- BDR 57-232—Makes various changes relating to insurance.

ASSEMBLYMAN PARKS MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 57-232. (Assembly Bill 338)

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.  
THE MOTION CARRIED UNANIMOUSLY.

**Brian Smith, Director, Sales and Use Tax, DIRECTV:**

[Read from [Exhibit G](#).] DIRECTV is the nation's leading digital satellite television provider. We provide service to over 147,000 Nevada customers, both urban and rural. I would like to take this time to explain our positions on the issue of competitive parity because this is a complex issue that not only your state but other states have faced. I also want to acknowledge the importance of the problem that you are trying to solve with first responders. We appreciate your efforts and we do think it is important.

**Chairwoman Buckley:**

We were planning on going late tonight and doing a work session after this hearing, but with the 5 o'clock Floor, in order to give the opposition the same amount of time as the proponents, I don't think we are going to get to the work session.

**Brian Smith:**

Clearly there is another side to this story I think has some far-ranging beneficial implications to the first responder's fund.

I have worked in the area of taxes, specifically satellite taxes and the 1996 Telecommunications Act [47 USC 153]. On a state-by-state basis, I have become very familiar with the franchise agreements and the taxes and fees that cable companies are subject to. Here are two franchise agreements, one for Cox Communications in Las Vegas and the other between Charter and the City of Reno. The companies sat down with the cities and willingly negotiated an agreement, part of which was a franchise fee. They are identical across the country from franchise to franchise. They represent such value to the cable company that if you look at their published 10 Q [quarterly financial report submitted by all public companies to the Securities and Exchange Commission] from Cox Communication, the intangible asset value of franchise fees is over 55 percent of their asset value. They are not buying a right to cut a street; they are buying a right to a de facto monopoly. They serve a market exclusively and they pay a fee to do that. Just as a point of fact, there are no over-builders in the state of Nevada.

Even though they say that there are no rental payments, because of the wording in the agreements, which is in essence what they turn out to be. Contrary to what you have been told, satellite providers do not need to enter into an agreement for rights-of-way, whether we are going to cut the street, hang wires, or go underground, because of the way we have designed our business. We don't feel that we should be penalized because of the way that we designed our business. I don't want to infer that we are getting a free ride; we do pay fees, we do have costs that were not enumerated earlier, and that is billions of dollars that we invest in the satellites, in the ground stations, and that will be addressed.

We also have 150 retailers in the state of Nevada, many of whom are local small business people who pay property taxes, payroll taxes, and they employ citizens of Nevada. We are not a ghost company from another state. Franchise fees paid by cable operators should not be equated to a tax on satellite subscribers. Franchise fees are accepted in an agreement, and if cable companies want to get from a 5 percent franchise fee, then on April 23 when they sat down with the City of Reno and signed that agreement, they should have reduced the franchise fee. They should have taken language out about cutting the streets and using rights-of-way.

Let's address the real issue. How do you get money for the First Responders Communication Fund? If the bill as proposed is passed, you would enact a



5 percent tax on about 147,000 satellite customers of EchoStar and DIRECTV. That would generate about \$5.3 million. We agree that this is a very important issue that has not been addressed by local government. With that in mind, how do you leave on the table the amount of money that you would collect from 549,000 cable customers? That equates to \$20.8 million. If you turn to the bill at Section 16, subsection 4 (b), that section gives cable companies a credit for franchise fees that they pay to the local governments, which means you are only going to be taxing the satellite providers, and \$20.8 million that could be going to this fund is being left on the table.

[Brian Smith, continued.] With the significant issue in front of you, we acknowledge that there is a need; we think that the bill as written has legal flaws. We want you to succeed in your efforts and we want to work with you for something that does create equality among all providers of television services.

**Assemblyman Arberry:**

You don't pay a fee, is that correct?

**Brian Smith:**

Satellite providers are not subject to negotiate franchise agreements. That is correct.

**Assemblyman Arberry:**

What I am hearing is that the firefighters need these telecommunications so they can talk to each other. Why don't you guys figure out how to make this work, because it seems like it is just about you guys having to pay a fee and they have to pay a fee and you don't have to pay a fee.

**Brian Smith:**

This is not the first time that I have addressed this issue of first responder funds. I think we have to look at it like good tax policy. You can't single out a particular company in a particular market sector and ask them to carry the burden. If this is such an important issue to all of the residents of Nevada, then you have to look at a more generalized tax base to apply this to, because right now we are carrying an undue portion of the burden as the bill is written. A solution would be a tax rate across a very broad tax base to generate significantly more than the \$26 million if you were to tax pay television services.

**Assemblyman Arberry:**

The problem I have with this is that I don't like the idea that we are being placed as a Legislature into a fight between satellite and cable, and then the fire

folks are coming in and they are being promised something. I don't agree that we use General Funds, but I think the real issue is that we need to know what the costs are, deal with interoperability, then let you two deal with the issue of paying a fee or not paying a fee and not a tax, however you want to phrase it, on the burden of the taxpayers or the people that are buying your service or the cable service. I don't like this.

**Brian Smith:**

We don't like it either, and we don't like being put into a position to look like the bad guy sitting here explaining some of the technical and legal pitfalls of this bill. We are willing to participate in study committees to help you come up with an equitable solution, but this is not equitable. I can't speak for cable customers, but why should paid television subscribers bear the sole burden for funding this when it benefits the general population?

**Assemblyman Arberry:**

Hopefully that is something that can be done, because I don't like the idea that I am being put into a position to go tell my constituents that I want to have them charged for something.

**Assemblyman Anderson:**

The cable people's dollars go to the city and county local governments' general funds, to be expended by the city and county potentially for fixing the road that they have had to break and also for first responders and other things. What fund are you paying to the city and county?

**Brian Smith:**

We are not subject to taxation at the local level. The federal law says that the state has the right to tax satellite providers.

**Assemblyman Anderson:**

That is why you are here. [Mr. Smith answered in the affirmative.]

**Ann C. Pongracz, General Attorney, Sprint:**

[Submitted [Exhibit H](#).] Like all the other speakers today, Sprint supports the primary goal of A.B. 151—ensuring that Nevada's first responders get access to necessary telecommunications technologies. We would love to help provide the services and equipment that our first responders need. However, we strongly oppose the funding mechanism. First of all, we think it is totally inappropriate to impose a new tax on anyone for this purpose in a surplus year. Secondly, we think that it is very bad tax policy. For example, the Nevada Taxpayers Association recommends that earmarked taxes and fees such as this one

proposed in A.B. 151 should be reviewed as part of the budget process. That will not happen if A.B. 151 is approved in its current form.

This tax really is an end run around the legislative budget process and around the established procurement rules that apply to purchases of all types of equipment. There is simply no reason why the need for telecommunications equipment cannot be handled by the same budget process in the Legislature and procurement rules that are applied for acquisition of all other types of assets.

[Ann Pongracz, continued.] Also, this doesn't seem to be very practical solution to the problem. We have heard some estimates of the amount of funding that would be generated by the bill. The counsel for DIRECTV just explained the tricky business in Section 16, which would allow the cable companies to now pay into the fund. In effect, the cable companies would be able to take a credit for their franchise fee payments against what they would otherwise pay into the fund. So, the fund will end up garnering much less than what it would otherwise be. If the funding needs are anywhere near as great as what has been suggested here today, the proposed tax simply won't raise enough money while creating additional government costs. We don't need new government entities to handle these problems; we have a director of Public Safety, we have a Department of Taxation, we have procurement staff. The need for first responders' communication equipment should simply be handled through those procedures.

Cable TV is correct in that they do pay franchise fees that do not apply to the wireless and satellite television providers. We know cable pays these franchise fees, because we at Sprint's incumbent local phone company also pay franchise fees to the local government. We would all like to reduce this cost burden, but A.B. 151 is not a sensible way to do this. The A.B. 151 tax won't solve the funding needs and it won't solve the franchise fee problem.

Assemblyman Arberry expressed some frustration with the tying together of the first responders' communications needs and how the franchise fee is handled. I agree that these two issues really do not belong in the same bill. Resolving the competitive issues in terms of how television and telecommunications companies do or do not pay franchise fees is an issue that we all are very concerned about, but it is not related to first responders' needs and it has no place in this piece of legislation.

**Eric Sahl, Vice President, Programming, EchoStar Satellite LLC:**

[Submitted [Exhibit I](#).] First, I want to reiterate what I believe every other speaker has said: I acknowledge the importance of this cause. Interoperability is something that is very important, and I want to work with the Legislature to

create sound public policy that could support that goal. I don't think what we have here is sound public policy. I compete against my counterpart throughout every square inch of this country without the benefit of a franchise. We are not the only game in town with respect to DBS in any part of the country. When a cable company pays for a public franchise, they are paying for the right to be the only game in town. If you do business as a franchisee and the sole public franchise company, you pay that amount for that benefit.

**Chairwoman Buckley:**

What really happened with the technology in the old days was that they got a franchise, but now there are so many more technologies that the whole taxation scheme is unequal now, we should just throw it all out and have it be lower and fairer and everybody pays. Isn't that true?

**Eric Sahl:**

I don't think so. We deliver video services from satellites along the equator that are 22,000 miles up in the air. We cover every square inch of this state. We are now able to provide local broadcast service into Reno, Las Vegas, and the counties assigned to the Salt Lake City DMA [designated marketing area] so we provide local weather and local news. We have done that without digging up a road or a backyard because of our technology. In order to do that, we have paid at least \$700 million for spectrum to the federal government, and hopefully some of this is allocated to homeland security. I think that Assemblywoman Giunchigliani raises a lot of important issues. Where is the money from the General Fund for homeland security? If there has been a windfall from the state to local governments, how can we use that to resolve this?

To pass a proposed tax on just one segment of a market is unfair and I believe it is also unconstitutional. I have gone to various jurisdictions and I have seen this exact language almost verbatim. Sometimes it is enshrouded with the fire department or the police department interoperability, and sometimes it is just a tax to raise revenue for the General Fund. The bottom line is that cable has not had to compete, and now they have to compete and they don't want to compete fairly. They simply want to charge us a tax that we don't have to pay today. With respect to our business in Nevada, we do have affiliation with SBC and with Sprint to collect the local broadcast signals. Retailers just like SBC are selling dish network services that are packaged as Dish Network, so to propose this tax will also implicate SBC and Sprint as well.

**Dan Jacobsen, Executive Director, SBC Nevada:**

The comment that Chairwoman Buckley made was right on. The franchise fee system is antiquated. It really needs to be restructured, but this bill is not the

solution. This bill ignores the fact that technology is changing. In effect, this bill would allow the cable industry to define who their competitors are that they want to have taxed and place a tax on them with little regard to whether it is really video entertainment or not. We would urge you to do what some other states have done—Arizona, Arkansas, Virginia, and California have seen bills similar to this, and they have rejected them. Some states have undertaken the process of overhauling the franchise fees, and we certainly think that would be a better approach than this approach.

**Andrew List, Executive Director, Nevada Association of Counties (NACO):**

A lot of folks have testified as to the need for first responder equipment, especially in some of the rural areas. In a project that NACO did with the Bureau of Land Management, we were actually able to fit some of the rural fire departments with personal protective equipment, some surplus fire engines from the federal government, and some communications equipment. At this point, that has not been enough for a lot of those rural folks. We do support this bill and urge its passage.

**David Frasier, Executive Director, Nevada League of Cities and Municipalities:**

We also see that this bill would be a great benefit to the first responders in all areas of the state but particularly in rural Nevada, where the help is desperately needed. Without being redundant, I would just indicate that the Nevada League of Cities and Municipalities does support this bill.

**Gerald Ackerman, M.S., Associate Director, Rural Programs, Center for Education and Health Services Outreach, Reno, Nevada:**

Regarding Section 9, we have had some calls from volunteer ambulance services asking if the definition that you have there would include volunteers. Many of our EMS services are volunteers and it was just a point of clarification.

**Chairwoman Buckley:**

You can check with the sponsor.

**Assemblywoman Giunchigliani:**

To NACO and the League of Cities, would you be able to get me your budgets as to what you have expended on actual communication equipment?

**David Frasier:**

I believe that a lot of that data would be available from the Department of Taxation. I can see what I can get for you. As to the budgets for the volunteer fire departments, I don't believe I can do that.

**Assemblywoman Giunchigliani:**

You may not have the volunteer and that is fine. I would think that the intent would be to include them, but from the cities and counties I want to see where your money has gone.

**Fred Hillerby, Legislative Advocate, representing Verizon Wireless:**

I think the bottom line for Verizon is that this is a very important issue but a very narrow tax base. I think there must be much more consideration given into how one would fund these activities and this equipment. The interoperability goal is certainly one that we have to meet to be able to allow our first responders to do the jobs that they have been trained to do. Unfortunately, Mr. Arberry, I share your frustration that some big companies have dragged us into an issue around this first responder instead of talking about a broader way to finance the needs that are there.

**Dino DiCianno, Deputy Director, Compliance Division, Nevada Department of Taxation:**

The Department would like to request the ability to file a fiscal note because we believe it does have a budgetary impact to the Department.

**Chairwoman Buckley:**

You can file a fiscal note anytime you want. It hasn't stopped you before from filing them. I will close the public hearing. With that, we are adjourned [at 4:54 p.m.].

RESPECTFULLY SUBMITTED:

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James S. Cassimus  
Transcribing Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairwoman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** March 21, 2005

**Time of Meeting:** 2:02 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		AGENDA
S.B. 85	B	Senator Maggie Carlton	Clinical Exams Accepted for Dental Licensure
85	C	Senator Maggie Carlton	Keep America Smiling
85	D	Gerald Ackerman, Center for Education and Health Services	Comments Submitted and statistics
A.B. 151	E	Al Gillespie, North Las Vegas Fire Department	Testimony
151	F	Steve Schorr on behalf of Cox Communications	Proposed Amendment
151	G	Brian Smith, DIRECTV	Testimony Outline
151	H	Ann C. Pongracz, Sprint	Testimony of Sprint
151	I	Eric Sahl , EchoStar; Satellite L.L.C.	Testimony of Eric Sahl