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

Seventy-Third Session
May 4, 2005

The Committee on Commerce and Labor was called to order at 2:03 p.m., on Wednesday, May 4, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 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 Oceguera, 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 Bernice Mathews, Washoe County Senatorial District No. 1
Senator Maggie Carlton, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Vanessa Brown, Committee Attaché

OTHERS PRESENT:

Brian Krolicki, Treasurer, State of Nevada
Karen Yates, Nevada Certified Court Reporter; Captioner, Communications Access Realtime Translation (CART), Minden, Nevada
Connie Anderson, Private Citizen, Carson City, Nevada
Dotty Merrill, Assistant Superintendent, Washoe County School District; representing Nevada Association of School Boards
Mary Pierczynski, Superintendent, Carson City School District; Vice President, Nevada Association of School Superintendents
Danell Fanning, Private Citizen and Community Interpreter
Gary Olsen, Private Citizen, Carson City, Nevada
Evelyn Preston, Private Citizen, Las Vegas, Nevada
John Sande III, Legislative Advocate, representing Nevada Franchised Automobile Dealers Association, Reno, Nevada
Alfredo Alonso, Legislative Advocate, representing Alliance of Automobile Manufacturers, Reno, Nevada
Ray Badger, Legislative Advocate, representing Nevada Trial Lawyers Association, Carson City, Nevada
Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council, Henderson, Nevada
Ira Spector, Certified Rehabilitation Counselor; Member, International Association of Rehabilitation Professionals; Las Vegas, Nevada
Jeanette Belz, Legislative Advocate, representing Property and Casualty Insurance Association of America, Reno, Nevada
Bobbette Bond, Participant Services Manager, Culinary Health Fund, Las Vegas, Nevada
Nancyann Leeder, Nevada Attorney for Injured Workers, Nevada Department of Business and Industry
Raymond "Rusty" McAllister, President, Professional Fire Fighters of Nevada, Las Vegas, Nevada
David Kallas, President, Las Vegas Police Protective Association; Trustee, Las Vegas Metropolitan Police Department Health and Welfare Trust

Fred Hillerby, Legislative Advocate, representing Nevada State Board of Dental Examiners
Robin Keith, President, Nevada Rural Hospital Partners, Reno, Nevada
Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation, Las Vegas, Nevada
Donald Soderberg, Chairman, Public Utilities Commission of Nevada
Adriana Escobar Chanos, Chief, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada
Judy Stokey, Legislative Advocate, representing Sierra Pacific Power Company, Las Vegas, Nevada

Chairwoman Buckley:
[Meeting called to order. Roll called.] We'll open the hearing on S.B. 134. We can have Senator Mathews give her remarks when she arrives. About a dozen people have signed in in favor of S.B. 134, and no one has signed in against it. Since there is no opposition, we really don't need all dozen people to testify, so if you want to choose spokespeople, we would appreciate that.

Senate Bill 134: Requires providers of Communication Access Realtime Translation to be qualified. (BDR 54-142)

Karen Yates, Nevada Certified Court Reporter; Captioner, Communications Access Realtime Translation (CART):
Senate Bill 134 addresses standards for real-time captioners. We have two sign language interpreters with us here in the room, Kelley DeRiemer and Gerianne Hummel, and we have a real-time captioner, Denise Phipps. In the south, we have an interpreter, Caroline Preston Bass, and a real-time captioner, Lori Judd.

I submitted my written comments, as well as a letter in support from a deaf student from UNR who testified at the Senate hearing and was unable to be here today. We also have a letter in support from the Nevada Court Reporters Association and a policy statement from the National Court Reporters Association (Exhibit B) on this same topic.

There is a problem in Nevada with unqualified people attempting to provide this service. Senate Bill 134 would attempt to correct that.

Assemblyman Anderson:
I remain concerned about two factors concerning real-time captioning: the security of the information given and the accuracy question. In terms of this new technology, will the standards be met, and is that the whole purpose of the bill?

Karen Yates:
Yes, I believe this bill does address that. The technology is not really new. Court reporters have been doing this for a long time. This bill will not bring us under the Certified Court Reporters Board, but under the interpreters' statute. What we do does not, like a courtroom setting, have to be stored for eight years. We are acting as real-time interpreters and not the maker of the record, as the court reporters are.

Assemblyman Anderson:
Will the accuracy standard that is set be maintained?

Karen Yates:
Yes, and the accuracy will be ensured by applying any of the certifications listed in the bill.

Chairwoman Buckley:
I don't see any other questions. Thank you for your testimony. Senator Mathews, we would be happy to take any testimony you would like to add.

Senator Bernice Mathews, Washoe County Senatorial District 1:
I thought this a very meritorious bill. I understand there is a friendly amendment. It appears to be just an extension of the time.

Connie Anderson, Private Citizen, Carson City, Nevada:
[Submitted Exhibit C.] As a member of Nevada's deaf community, S.B. 134 is critically important to me and to every deaf Nevadan.

I was born hearing; I became deaf at the age of three. I learned to read lips, and I depend entirely upon lip-reading for all of my communication. I do not use sign language, as do so many of my colleagues. Most of my education was completed well before the passage of the Americans with Disabilities Act (ADA) [of 1990, 42 USC 126 §12101] and its requirements for reasonable accommodation. For many years, I used oral interpreters—a learned profession that is now practiced by very few interpreters in the nation. I was fortunate to have that accommodation available when I obtained my master's degree from the University of San Francisco in 1997.

[Connie Anderson, continued.] Accommodations are not reasonable if they are provided by unqualified people, no matter how well-meaning these people may be. My current position is Chief of Nevada Check Up and Medicaid Services for the Division of Health Care Financing and Policy, Nevada Department of Human Resources. I supervise five district offices, the Nevada Check Up Program, the Health Insurance for Work Advancement Program, and the Covering Kids and Families program. I have 100 staff.

I'm grateful that technology has progressed to the point where CART is an effective, accurate, and reliable means of communication to facilitate clear understanding and full participation by a deaf person, but, as the bill states, this is a learned profession requiring that providers of CART be subject to regulation. For example, I mentioned that I supervise 100 staff statewide. I frequently attend meetings where 20 or more people are in attendance. I also participate in statewide teleconferences and videoconferences, and those have their limitations as well. You can imagine the difficulties inherent in lip-reading meetings of that size.

Meeting size is one issue. Another is the speed at which people talk and the way people talk over one another. A qualified CART provider can not only keep up with the pace of the meeting, but can quickly sort out who the players are, what is important, and what issues target my program areas of responsibility. A qualified CART provider can also readily remember many names and voices, which is absolutely critical when CART is provided remotely over the Internet.

I have yet to miss a critical assignment or deadline because I have had the good fortune to use only qualified CART providers in my time here in Nevada. You can imagine the scenarios that might result from using an unqualified provider. My professional reputation could be tarnished.

Because of the complexity of my position duties, the vocabulary used is critical to my job performance. For example, the CART provider must know and understand the differences between HCFA, HIFA, and HIPAA. The set of acronyms used in Medicaid is daunting. We have a list 44 pages long. An unqualified provider can potentially confuse the issue at hand if they're not using the right acronyms or the right words.

Again, the provision of CART services must always be done by a qualified provider. I hold myself to high standards. I applaud the efforts of this State to ensure that those providing my reasonable accommodation in the workplace value high standards as well. I commend Senator Mathews for sponsoring this bill, and I urge the Committee to support S.B. 134 as written.

Chairwoman Buckley:
Thank you very much for your testimony. I don't see any questions. What a treat it is to have this [real-time captioning] going on real-time to show us how well this works (Exhibit D). Does anyone in the audience have the proposed amendment discussed by Senator Mathews?

Dotty Merrill, Assistant Superintendent, Washoe County School District; representing Nevada Association of School Boards:
We have provided a friendly amendment for S.B. 134 (Exhibit E). One of the issues that has been very challenging to school districts in regard to *Nevada Revised Statutes* (NRS) 656A.100 has been the requirement that our interpreters for students pass the Educational Interpreter Performance Assessment (EIPA) at a level of 4 or 5. Since the legislation was passed, we have been working with our staff to provide the training needed to move our interpreters to that level. In the Washoe County School District, we have 116 hearing-impaired students. We have 23 deaf students in need of interpreters, and we currently employ 11 interpreters. Nevada school districts currently employ approximately 77 educational interpreters. Across the state, only 10 of those 77 have achieved a 4 or higher on the mandatory assessment. In the letter we provided (Exhibit E), we describe the statewide efforts we have made to comply with this legislation by providing training and support. We have been working diligently to do that.

That brings me to the heart of our friendly amendment, on the bottom of page 3 (Exhibit E). This amendment would extend the date by which all of our interpreters must reach the 4 or 5 level to June 30, 2008. The reason we put forward this friendly amendment is that, under the current statutory requirement, on July 1, 2006, all educational interpreters across the state must be at the 4 or 5 level. This has been very challenging. Without this extension, on July 1, 2005, we anticipate receiving a number of requests for due process from the parents or legal guardians of students with disabilities.

We want to continue providing services for our students, but the current law indicates that, effective July 1, 2005, it will be a misdemeanor, carrying a $5,000 fine, for any of our interpreters to continue to provide services if they have not scored at the 4 level or higher on the Educational Interpreter Performance Assessment. This places all of the state's school districts between the proverbial rock and a hard place. We have endeavored to meet these requirements, and we would ask for your approval of the amendment in order to allow us this extension.

Mary Pierczynski, Superintendent, Carson City School District; Vice President, Nevada Association of School Superintendents:
We, too, are in support of the proposed friendly amendment to S.B. 134 that the Washoe County School District has presented.

Danell Fanning, Private Citizen and Community Interpreter:
I am a major proponent of S.B. 134 as it is written for the CART reporters, and I will stand behind it one hundred percent for the services it provides to the deaf and hard-of-hearing community. Although this new amendment has been proposed as a friendly amendment, I am sure that, under NRS 656A, if the deaf community were here today to hear this amendment, they would call it anything but friendly. Unfortunately, they were not informed of this. Had I known, I would have made sure you could have heard the people speak who would be directly affected by this. Several students were willing to speak. I'm sure if the teachers of the deaf, who are deaf themselves, had known, they would also have come. However, this was done without their knowledge.

I'm going to speak to the points in the letter from the Washoe County School District that I know to be in contradiction. I can't speak directly to the numbers of interpreters that are hired by the Washoe County School District, nor can I speak to the number of deaf students there are, but I will tell you that NRS 656A has been on the books since July 1, 2001, when it was a hotly contested bill. At that time, it was proposed that the school districts would have until July 1, 2007. However, the Legislature decided that four years, until 2005, was enough time. When they had proposed six, the comment was, "Six years? I can get a master's degree in six years."

In response to the comment that the district has no substitute interpreters available, I am a triple-qualified, certified interpreter. I hold both the RID CI [Registry of Interpreters for the Deaf, Inc., Certificate of Interpretation] and certificate of transliteration. I hold the National Association of the Deaf, level 4 advanced certification. I also hold the EIPA at a level 4.8. My application to the Washoe County School District has been since January of this year. I have yet to receive a courtesy call recognizing my efforts to provide services to the deaf and hard-of-hearing students who attend Washoe County schools.

As an instructor at Western Nevada Community College, I have provided interpreter training programs and ASL [American Sign Language] classes since 1999, and they have been open to every person in northern Nevada. We currently offer workshops for interpreters, and, until the last three months, we had had no Washoe County interpreters decide it was worth their time or effort to drive 35 miles for the training necessary to receive a 4.0 on the EIPA.

[Danell Fanning, continued.] The Washoe County School District mentions, in paragraph 6a (of Exhibit E), the In Group Ed organization. We have no idea who runs that organization, nor is any outside interpreter allowed information about that organization. We have no knowledge of who they are, what they support, what they represent, or how they're supposed to be helping interpreters. I ask that you take the time to hear, from one deaf individual who is here today, the deaf community's feelings about having statutory requirements for educational interpreters extended.

I understand the school districts are between a rock and a hard place, but they've been between a rock and a hard place since July 1, 2001, and have chosen to do nothing during that time. Although they may feel they have provided appropriate training or opportunities, I can think of three people who have gone on to Front Range Community College [in Denver, Colorado] and, through the Board of Education, have been provided money to receive the Educational Interpreter Certificate. Most of those people are expected, by the completion of their date, to receive a 4.0.

Proper training does make the difference, but you cannot blame the interpreters, and you cannot allow the school districts to postpone the date any longer. It's not about whether the adults are comfortable in the situation or can meet the standards. There are children out there right now who do not have interpreters.

The requirement for a 4.0 rating is 80 percent. How many of you think 80 percent is sufficient? How many of you will take 80 percent of your house, 80 percent of your car, or your wage, or your education? That's what we're asking for with a 4.0. Please, do not extend the time. Please hold people accountable and stop allowing the deaf to be put aside and practiced upon.

Assemblyman Anderson:
I support the initial bill in its entirety. I want to make sure this amendment only applies in education and is not going to apply in the courts or other areas where interpreters are required. I'm concerned with making sure the deaf community has the best people we can have reaching them, regardless of whether they're in our classrooms or in the courts, where their rights are about to be taken away from them. I'm not sure backing away from a standard we've set for both the courts and the schools is in the best public interest, where we believe in due process and equal rights. If you can reassure me that the court system will be left out of this, it might raise my comfort level a little bit.

Dotty Merrill:
The suggested language we have provided in Section 10 specifies, "A person who engages in the practice of interpreting in a public school, including, without

limitation, a charter school or a private school, may continue to engage until July 30, 2008." We are clearly focusing on education.

[Dotty Merrill, continued.] In response to the second part of the question, certainly the Washoe County School District has been, contrary to statements provided, working on this. We have not waited until the last three months to address this issue. Although I cannot speak to the personnel issue or the matter of Ms. Fanning's application, the District has, since 2001, steadily been raising its pay scale for educational interpreters in an effort to attract and retain interpreters who can meet these requirements.

We have a graduated pay scale, as do the other districts, based on the score the individual has earned on the EIPA. We have one range for the 2 to 3.9 level and another range for the 4.0 and higher level. At the highest level, the interpreters currently make $22.08 an hour to $27.59 an hour, as well as benefits. We have other statewide information we could provide regarding salaries, if that's of interest to the Committee. It's my understanding that, across the state, each school district has done a variety of things to provide training.

Mary Pierczynski:
We conducted a survey of all 17 school districts to determine the status of the interpreters and what had been done. Eleven of our 17 districts have deaf students. We have over 550 deaf students in the state. All of our districts have been working on the requirements, with most of us paying for the classes and tests for our interpreters to take to improve their skills.

The Carson City School District's interpreters are attending classes and working on skills. They are doing better, but have not yet reached the 4.0 that they need. We have two deaf teachers who have taken this test as well. One was able to reach the mark, and the other was not. This is not a simple test.

Assemblyman Anderson:
I appreciate the difficulty. My niece is a deaf interpreter and speaks sign language much better than I, although she keeps working with me. Do you believe, from your experience here in Carson City, that the families of impaired children are sending their children out of state so they can receive proper education, rather than keeping them here? What are they doing to meet the needs of their children who need to integrate into society?

Mary Pierczynski:
We have 30 students in Carson City School District who are hearing impaired, and we have 10 interpreters and 3 note takers. To my knowledge, we have not

lost any students out of state because of problems with interpreters. Our interpreters work very hard. There's a close relationship between the interpreters and the students. I personally have not received complaints about the quality of service.

[Mary Pierczynski, continued.] Our people are going back to school. We appreciate what's being offered at Western Nevada Community College. They have taken advantage of that, as well as other courses that we have offered in the school district.

Dotty Merrill:
The Washoe County School District, in the class of 2004, has six seniors who qualified under the eligibility of aurally impaired. All six of those seniors graduated with diplomas. I believe this goes to the heart of Assemblyman Anderson's question about preparation for the real world, three with regular diplomas and three with adjusted diplomas. Those seniors who are aurally impaired received a certificate of attendance.

Vice Chairman Oceguera:
Senator Mathews, I was caught by surprise by this amendment.

Senator Mathews:
So was I taken by surprise. I had been told it was coming, and I have talked to some people about this. Since it was my bill, it would have been nice if they had come to me with this amendment instead of going through the back door.

I said I had no problem with some extension, but I had no clue what the extension was. I was thinking about a year or two, but when I got this, it said 2008. I'm not sure how that came about. All this amendment was supposed to do was to extend the time to allow all those persons already employed to get certified. It's a minimum standard.

I'm as concerned as everybody else. I don't want any group discriminated against because they have poorly qualified people in the classrooms with them. Because of that, I had told people that I was not willing to give anything on it, except to extend a reasonable time to allow those people to be certified. I know there are some good interpreters in the classroom who may have some difficulty taking an exam, but we do need to make sure they are minimally qualified to teach those persons who need it the most.

One other person here from the deaf community wishes to testify. We're going to have somebody sign for him while he talks.

Gary Olsen, Private Citizen, Carson City, Nevada:
[Submitted Exhibit F.] I am an advocate for the deaf and all the causes they face in Nevada. I used to be a school superintendent in the Mississippi schools. I've been a principal and a teacher. I've worked with deaf and hearing students mixed together.

My original intent in being here today was to testify for S.B. 134 in its original form. I still support that. I believe very firmly that we have a great impact on the schools and their programs. I have never seen such an amendment that pops up at the last minute after we've had a grace period to enhance their skills. That amendment shocked me because, as a deaf advocate, I've been in this state for three and a half years. I've been out working within the schools. I've been with Washoe County School District. I'm continuing to work with the current superintendent of Washoe County School District, and prior to his time, I had a great struggle with them trying to get qualified interpreters within that school district, encouraging them strongly to get involved with the training programs we have sponsored.

Last summer we sponsored a rather large northern Nevada interpreter training program with Churchill School District and Lyon County School District. We encouraged Washoe County to join us. They were quite reluctant to do it. We've made many different efforts to enhance the quality of interpreters because, to us as deaf people, the only concern we have is for the deaf children. They are not getting the education they deserve. There is no quality in any of the interpreters. Yes, some are good, but they are not providing accurate education for deaf children.

I've been working with some of the parents. I work with some of the schools dealing in communicating with all of them, interacting with all of them and their students. We've sponsored summer camps. They do not have language, and it's because they are not getting it. We talk about the aural education. That is a completely separate thing. It is not the same as an interpreter using sign language. That is an entirely different program.

I suggest you not even consider the amendment. It is not going to do the deaf children any good. It's not doing the deaf community any good, either. We need to maintain our efforts to see that the standard requirements are left as they are. I know the deaf people throughout the state support level 5 as the level people should be performing at. We have federal laws that support this as well.

The children are entitled to a good education, and, unfortunately, they have been deprived of this for so long. I have witnessed it myself. That's one of the reasons we set up a camp just to help kids catch up with basic language skills.

We have poor-quality interpreters, and that impacts the deaf children. They will not get educated. If this interpreter wasn't here today, I would not be able to get my message across to you, nor would I be able to get feedback from you. Quality interpreting is what makes the difference. It's also one of the reasons I support the CART system. It provides language we can learn from, and it's a more fashionable way. However, if you can't read, CART is not going to be available to you.

[Gary Olsen, continued.] Throughout the country, deaf children's average reading skills are very low. They're not getting adequate teaching, and they're not getting adequate language. We have a situation where a teacher relinquished her responsibility for the education of the deaf children in the classroom by putting them in a corner with the interpreters and giving them remedial work to do. It's just rote work. That's not education directly from a teacher. School districts need to be looked at, and they need to be held accountable.

I'm quite upset about this last-minute amendment. Deaf children in the schools deserve to have no less than what was provided in the original bill, and, with your help, they should get no less.

A one-year extension does more damage than good, and I hope you do not permit this to happen. We need to make sure we can get action now. There are interpreters available. They don't want to work for the school districts because the pay is terrible. They are not treated as professionals; they are treated as aides. To me, an aide, compared to a professional, is not on the same line. I've been in the school system long enough to know that. I'm quite upset, and I'm sure it will upset the deaf community when they hear about what has happened. I'm begging you not to support this amendment.

Danell Fanning:
When A.B. 374, which was basically the same as the amendment proposed here today, was before the Legislature, Assemblywoman Parnell allowed it to die in committee. I have no idea why, but I do know that the deaf community was prepared to come and testify, and there was quite a long line. I'm shocked that it has happened this way, and I'm saddened that the people who are most affected by this do not even have the opportunity to be heard.

Assemblyman Sherer:
The amendment has an effective date, but I don't see an effective date on the bill. When was the original effective date?

Diane Thornton, Committee Policy Analyst:
On the bill, the date is October 1.

Assemblywoman Giunchigliani:
Just for clarification, the original bill is simply to create the Communication Access Realtime Translation and put that into statute. An amendment has been brought forward to allow an extension for highly qualified interpreters to be given more time under what? Is it No Child Left Behind?

Senator Mathews:
The amendment is new to me. I'm just reading it, too, and I've never seen the letter before. I saw the amendment this morning, but I had not seen the letter with all the points laid out. You can see I was not sent a carbon copy of that. That disappoints me. If a person is carrying a bill and you want to put something on it, the proper courtesy is to at least copy them on anything you are going to attach to it. However, that didn't happen, but it's water under the bridge.

No, it is not one of the requirements under No Child Left Behind [Act of 2001, 20 USC 70 §6383]. What is under No Child Left Behind is that every child has the right to a quality education by highly qualified teachers, and we don't think the deaf community deserves anything less than highly qualified interpreters.

Assemblyman Arberry:
Thank you, Senator. Normally I don't say anything, but I want to congratulate you on bringing this bill forward. I know most of this Body doesn't realize that my youngest sister is deaf. I watched her grow up, and the teachers she had followed her from kindergarten all the way until she graduated from high school. That was a big accomplishment for our family. There were eight of us, and none of us took the time to learn sign language. She used to beg us daily to learn sign language, but it was a no-no back in those days.

Senator Mathews:
The original bill that the amendment speaks to is Senate Bill 245 of the 71st Legislative Session. It has nothing to do with this bill, but I guess they were looking for a place to put it. In fairness to Washoe County, they came by and asked. I thought they should amend Ms. Parnell's bill, and I understand that bill died, but I did tell Washoe County School District that this was not the place to put it, because it has nothing to do with what they were doing in the schools. This was totally about courtrooms. So I thought Ms. Parnell's bill was going to get this, and I said I would support extending it. I thought they were talking about a year, but when we're talking about until 2008, I was surprised that they wanted that much more time. I think if there's a school available in

the area, everybody should make an effort to make sure those people get qualified right away.

Evelyn Preston, Private Citizen, Las Vegas, Nevada:
I have been deaf since the age of 3, and I am currently going on 85. I support qualified interpreters for deaf children. They need interpreters so badly. If they didn't have qualified interpreters, there would be a lot more headaches for everyone, more complaints, and more trouble. Do it now. Get them qualified interpreters. Don't delay this, please.

I grew up without sign language. I wish I had learned. I finally learned when I was older, became a sign language teacher, and taught for 44 years in California. Coming to Nevada has been a shock to me. The interpreters here are not as qualified. We enjoy having wonderful, qualified interpreters, and the deaf children need this.

Vice Chairman Oceguera:
I'm going to close the hearing on S.B. 134 and open the hearing on S.B. 189.

Senate Bill 189: Makes various changes relating to franchises for sales of vehicles. (BDR 43-1076)

John Sande III, Legislative Advocate, representing Nevada Franchised Automobile Dealers Association:
Senate Bill 189 would be a revision of our franchise law that regulates the relationships between manufacturers of automobiles and dealers of automobiles. In Section 1, we're addressing three areas. Section 1, which is probably the most important, is what we call "area of primary responsibility." That is defined on page 2, lines 31–35. The area of primary responsibility that is usually included in a franchise agreement between a manufacturer and a dealer means the geographic area in which the dealer, pursuant to a franchise agreement, is responsible for selling, servicing, and otherwise representing the products of the manufacturer or distributor.

The reason this bill came about was that a manufacturer—and this dealt with a dealer in Reno, although it has also come up in Las Vegas—unilaterally took away the area of primary responsibility from a Reno car dealer that was the Mount Rose Highway. They took it away from the dealer arbitrarily under the agreement, saying that was what the agreement allowed them to do.

[John Sande, continued.] Nevada law says that if you try to modify a franchise, and if the dealer objects, you must go to the Department of Motor Vehicles, who will consider various factors as to whether or not it is in the best interests of the citizens and the dealer to allow the modification. We ended up having to go to court. We did prevail in court, and it is now pending before the Nevada State Supreme Court to clarify that the taking away or revision of the area of primary responsibility without a hearing would violate Nevada law. This clarifies it. If you want me to go into more detail about the issue of the ten-mile radius, I can.

A lot of manufacturers will have standard form agreements, and they'll have a lot of provisions in the agreement that violate Nevada law. What they'll put—I'll read from one of the agreements—"This agreement is governed by the laws of the State of Michigan. However, if performance under this agreement is illegal under the valid law of any jurisdiction where such performance is to take place, performance will be modified to the minimum extent necessary to comply with such law if it was effective as of the effective date of this agreement."

They have provisions that violate Nevada law, and you could never tell, unless you went through the whole statute, what they could and could not do. A lot of dealers don't have the luxury of hiring a lawyer to consider the law every time they have a dispute under the agreement. This bill says it would be an unfair trade practice to require a dealer to agree to a term or condition of a franchise agreement that violates any provisions of Nevada's franchise law.

The final amendment is on page 5 and is very simple. It deals with audits. They have warranty, sales incentive, or rebate audits that are conducted by the manufacturer. This would prohibit the manufacturer from refusing to allow the dealer to appeal the results of any audit, and, if there was an appeal, it would have to be conducted at the dealer's business rather than going back to Michigan, which might be very difficult, especially for some of the smaller dealers in places like Elko.

I told the Chair of this Committee I had recently heard from the Alliance of Automobile Manufacturers, and I may be meeting with them to talk about a potential revision to the bill. She said she would hold the bill for a few days if they come out here.

Alfredo Alonso, Legislative Advocate, representing Alliance of Automobile Manufacturers:

We are currently neutral on the bill simply because we are working out some amendments with Mr. Sande, and I think we are close. I think we can come to an agreement. We have folks flying out from Michigan in the next couple days.

Our hope is to come back to you with a friendly amendment that works for everybody.

Vice Chairman Oceguera:
I'll close the hearing on S.B. 189 and open the hearing on S.B. 225.

Senate Bill 225 (1st Reprint): Makes various changes relating to vocational rehabilitation counselors. (BDR 53-975)

Ray Badger, Legislative Advocate, representing Nevada Trial Lawyers Association, Carson City, Nevada:
This bill involves vocational rehabilitation. The two members of the committee who were on the interim legislative committee will recognize at least part of the bill. This is a very valuable benefit to an injured worker. This benefit comes about when you have an injury that renders you permanently unable to do your chosen occupation and your employer has no alternative job for you. Then you are entitled to some assistance in trying to find a new line of work that you can physically do. Our law has long required that you have a counselor in this field.

A vocational counselor is someone who has training in helping someone through the difficult course of finding a new occupation, especially if that person has a physical impairment. There are no requirements at all in Nevada law to be a vocational counselor. We don't have any licensing requirements. Anybody can be hired to do that. There is a national certification that certain counselors with education as well as training go through, and this bill adds one item that would require their supervision. Generally, though, our law does not require that most activities in that field be done by a certified counselor.

Insurance companies hire counselors. Injured workers have no say in who is retained to assist them in finding new employment. That can lead to a problem that my group has seen, that counselors have a potential conflict of interest. If they recommend something that will truly give bona fide employment skills, it might be more expensive than another idea, and the insurance company may be angry with that recommendation. The counselors face the problem of whether to recommend a more expensive yet more quality program, realizing that, if they upset the person who hired them, they may never be hired again to provide services. That is an issue that a counselor probably struggles with daily.

The original bill suggested the injured worker would have some say in choosing their counselor, and that has been withdrawn based on opposition we faced in the Senate. I would like to go through what is left that we feel is laudatory.

[Ray Badger, continued.] Section 1, subsection 1, line 3, says simply that the primary obligation of a vocational rehabilitation counselor is owed to the injured employee. That is taken verbatim from the code of ethics for the National Certified Counselors. Someone asked why we would put it in the law. The reason is that a number of counselors in this state are not certified, and we wanted it clear that the legislature's intent, which is a major tenet in this field, is that, no matter who hires the counselor, once they are hired, their paramount obligation is to that injured employee. Do they have to do everything that injured employee asks? No, but that is the reason we stated that in Section 1.

Subsection 2 goes to the potential of bias. It says that an insurance company cannot hire its own employee to provide vocational services. The intent of that—and I believe it was passed through the interim legislative committee—is the potential bias issue again. If you recommend a program that a supervisor feels is expensive, and if you're an independent counselor, you may not see business any more. If you're an employee, you may face choosing between your job and what you feel is your legitimate recommendation.

The third change is in Section 2, lines 15 and 17. It states that insurers should employ vocational counselors who have knowledge of the labor market within the geographical area where the injured employee resides. That probably sounds like common sense, but after we had private insurance come in in about 1999, a lot of Nevada claims were being adjusted out of Las Vegas. The Las Vegas insurance companies are starting to hire local Las Vegas counselors because they know that area. The problem is when they come up here to give services to somebody in Lovelock or Ely, they don't know that job market, and their knowledge of the Las Vegas job market does not help an Ely or Elko resident.

I've been told that there is a point where a vocational counselor won't accept a case if he doesn't have the knowledge he needs to help that person. This just gives guidance to those insurers that they ought to use counselors who have some knowledge and experience. In northern Nevada, there are certain firms that have shown the willingness to go out to the counties east of us, and I can tell you that if there's a counselor with five years experience helping people in Fallon, that is invaluable to the next Fallon injured worker versus a counselor who has no experience in that geographical area. We hope insurers would hire people with that prior experience and knowledge.

Section 3 of the bill is a reiteration of something that was in A.B. 364 that passed through this Committee and which also came out of the interim legislative committee. It makes the presently mandatory vocational assessment optional. Back in 1993, when we had a monopoly, and SIIS [State Industrial Insurance System] was the fund that almost every employer except the large

ones had to buy from, we found that there were people on vocational monies for three years. Nobody would talk to them. It was called "runaway rehab," and the Legislature had to step in and manage what that insurance company wasn't managing.

[Ray Badger, continued.] The Legislature mandated that if an employee was off work for 90 days, the employer had to hire a counselor and at least meet with them with the assumption that somebody had better look at this issue sooner rather than later. It is now the year 2005, and we no longer think that needs to be mandated. However, under this bill, an insurance company can hire a counselor whenever they feel it's appropriate. An injured worker can get a counselor if they so request. That's the amendment that is embodied in Section 3 of the bill.

The last item in the bill is on page 4, lines 1 and 2. This assessment is, basically, you'd go early on to an injured worker. If he's a painter, and he has a fused ankle, there is an assumption he may not be able to do that work because of an inability to climb ladders. You meet with him early and go over his education and work experience and explain, if he can no longer work at his occupation, the benefits that workers' compensation law provides. We believe the assessment need not be performed by a certified counselor, but at least supervised by them signing off on it. Those are the only counselors in this state that are certified, so if we have a problem with the work product from that counselor, we at least have somebody with accountability.

Assemblyman Conklin:
Regarding Section 1 of the bill, subsection 2, it appears that you are really asking to have some separation so that, for example, a third-party administrator who administers the workers' compensation for an employer and who, in the interest of saving money, does not have his own counselor on staff recommending possibly less than what is necessary to help an injured worker. Obviously, most third-party administrators get paid on the money they save.

Ray Badger:
You said it better than I did.

Assemblyman Conklin:
What about the case of big insurance companies that are integrated and dabble in multiple markets? For example, you have XYZ Company, and they own five different companies, including an insurance company, but each of them operates on a profit basis, which keeps them separate. Do they get caught up in this section?

Ray Badger:
A representative of Liberty Mutual Insurance told us she is going to recommend an amendment. Liberty Mutual is a nationwide workers' compensation insurer. The representative told me they have a subsidiary corporation called Cascade, which employs vocational counselors. When Liberty Mutual is handling an injured worker's claim, they refer it to the counselors of their subsidiary. She has an amendment to allow that because she thinks it is appropriate. So that happens, but that's the only one I know of. In years past, SIIS employed its own counselors. EICON does not now; I don't want to speak for the audits, but there's an example that Liberty does.

The fear is that the insurance company owes a duty to that employer but is trying to get a cheaper solution. Cheaper may not be better. If you follow item 1, which says the primary duty is to the employee, that would be hard if your boss threatened your job over that obligation. I doubt that happens in every case, but we just think it is a conflict of interest.

Assemblyman Conklin:
I understand why you have that section in there, and I agree with you. If a third-party administrator has its own people on staff, the profitability of that company and the interest of that company serve only one purpose. However, in the case where you have a large company with multiple divisions, every division is responsible for its own profitability and has a different customer base than the situation you cited.

Assemblyman Hettrick:
I understand there might be a concern, but I wonder if there is any demonstrated case where that occurred. If they have separate management and one happens to be a wholly owned subsidiary, I find the likelihood of the parent company calling up on an individual workers' compensation case and saying they have to modify the vocational rehabilitation program to be pretty remote. I'm wondering if we can even demonstrate that this has occurred. It says, "Under separate management and control." I would think that is sufficient separation unless somebody could demonstrate that some conflict actually occurred.

Ray Badger:
I'll give you an example of a case that is not in this factual setting. I called a private counselor on the case of a client for whom they recommended an eight-month school, and the insurance company told me they never paid for schooling. They didn't care what the law said, it wasn't going to happen. I wanted to see what the counselor recommended, pro or con, in this case, and they continued to recommend school, because they didn't think they had heard

a valid objection, except that the insurance company didn't like it because it cost. They no longer got their business because of that case and their recommendation.

[Ray Badger, continued.] So I think it happens. Do I have a specific case involving a subsidiary? No, I don't, and I'm not claiming it's a rampant problem. Separation of corporations is a legitimate difference; I would agree with that.

Assemblyman Hettrick:
I don't disagree with what you just said, but my point would then be, if that was a private counselor who had no subsidiary relationship to the insurance company, how is this going to prevent that from occurring over and over again? I don't know of any insurance company that, when given a recommendation they consider excessive, isn't going to call the vocational rehabilitation counselor, whether he works for a subsidiary or anybody else, and ask if that's what they really ought to do. If the vocational rehab counselor is willing to stick to his guns, I think they would do that.

I know where you're going; I don't disagree with the fear that this may occur. My problem, however, is that I think we may be going a bit too far here. We're actually, in effect, talking about putting a business out of business in this state if we put this law into effect without proof that they've ever done anything inappropriate.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council:
We support this bill. The concern I have, as far as the corporations are concerned, is that it depends on how much control there is and where it is and what the perception of the vocational rehabilitation counselor is going to be when he gets a complaint from somebody inside the corporation. If it's not going to have any effect on his decision, then that's fine. I don't think we can say that. I think in the normal course of events, if I get a call from somebody in a sister corporation, I'm going to weight that more than a call from somebody outside. You folks have to make the decision of who has control and where the control should be.

I don't think you're going to find a lot of experience here because we're plowing new ground. We haven't been under totally private insurance long enough to have a lot of experience, but I can tell you the experience the injured workers are having, especially in the area of vocational rehabilitation. I've been here for a long time. I was here when, if a permanent disability was awarded, they took into consideration what they called other factors. For example, if a piano player lost a couple fingers, he was out of business. He received a higher award than a

carpenter who lost a couple fingers. Those things were taken into consideration. It cost money.

[Jack Jeffrey, continued.] Management and labor got together and sold vocational rehabilitation for doing away with other factors. It was sold on the basis that whatever it took, within reason, the employer was willing to pay for it to get these guys back on the job, and the cost was supposed to be nearly the same. That lasted for a while. They built a big rehabilitation center in Las Vegas that has now been sold. Vocational rehabilitation has gone practically to nothing. I don't think it would be too unusual to find insurers who wouldn't go for a six-month training program.

In the beginning, some cases went into two or three years of college to get someone back into a meaningful occupation. Those days are gone forever. What's happening now is the insurers, to save money, want to go to rehabilitation counselors who, in some cases, say, "Read the want ads."

An attorney in Las Vegas had one case where a woman who had worked in a booth selling show tickets took a job as a bus driver. She can't drive a bus any more, and her counselor said she didn't need a rehab program because she could go back to the booth selling show tickets, which is a very low-paying job. That is not vocational rehabilitation, but that's what's happening out there today.

Assemblyman Hettrick:
I'm saying this as a joke—don't misunderstand me—but when I lost this arm, I went in for vocational rehabilitation in California. After I took the test, they told me I should become a brain surgeon. I thought, "How am I going to get patients as a one-handed brain surgeon?"

I'm certainly not siding here with the vocational rehab counselors. I am simply concerned that I don't want to see us put a business out of business that we have no actual complaint against. I'm just asking if there isn't a way we could amend this so we could allow these folks to continue unless we can prove they've done something wrong. I don't think every one of these programs is perfect, and I think they do get bent by the insurance companies. At the same time, I don't want to see us condemn someone whom we can't show has done anything inappropriate.

Jack Jeffrey:
I don't disagree with you, but the question comes back to control. We want to be assured that the injured worker has some say in and some control over what's going to happen in the vocational rehab program. They have very little

say in it now. We're trying to prevent there being any way the counselor can be influenced to make a decision for the sake of saving money. If there's a way to see to it that the corporation doesn't have that kind of control, I'm sure we'd be more amenable to the change.

Vice Chairman Oceguera:
Mr. Badger, in comparing this bill, S.B. 225, with A.B. 364 that came out of the Interim Committee, I can see three differences: The primary obligation that we were just talking about, the geographical area, and the counselor's sign-off. Is that right?

Ray Badger:
Yes. Some of this bill was taken almost verbatim from A.B. 364. Lines 3 and 4 of Section 1 are new. Lines 5 through 7 on page 1 and lines 1 and 2 on page 2 were in A.B. 364. Language on page 2, lines 15 through 17, about knowledge of the geographical area where the claimant resides, is new. Section 3 is the same as in A.B. 364 with one change, and that is on page 4, lines 1 and 2, where new language does not require that certified counselors do the assessments, but requires them to sign off on the final reports. I believe those are the differences between A.B. 364 and S.B. 225. I know nothing conflicts with it.

Assemblyman Conklin:
Third-party administration is a big business. Is there anything in statute that penalizes a third-party administrator for sacrificing the rights of the worker? There has to be some regulation of third-party administrators. I'm curious as to whether there is already something in statute that protects the worker or if this is just an area that is never discussed.

Ray Badger:
The Division of Industrial Relations (DIR) regulates insurers and third-party administrators. We set forth certain things in NRS 616D that I would call "unfair claims practices." If you lie to somebody about what the benefits are, if you intentionally deprive them, it used to be you could have a court action. Now, an injured worker can ask the DIR to review the case and penalize them. We had a bill out of this Committee this session that upped the penalty. In NRS 616D.120 is an itemization of the crimes an insurer might commit. Those are the no-nos. Other than that, there are a few regulations, but I don't know if that directly addresses your comment. As far as I'm aware, that is the regulatory function regarding claim actions.

Ira Spector, Certified Rehabilitation Counselor; Member, International Association of Rehabilitation Professionals, Las Vegas, Nevada (IARP):
In representing IARP, we have no problem with most of this bill. I would, however, like to speak to Section 3, line 22. The 90-day vocational assessment has been altered to suggest that an insurer "may request a vocational assessment" instead of "shall request a vocational assessment." It is the very strong conviction of the rehabilitation professionals in both southern and northern Nevada that this is a great harm to the injured workers of the state. We feel very strongly that this suggestion of "may" provide by an insurer only detracts from the vocational rehabilitation process.

We feel that that assessment is a foundation of the vocational process, and it promotes the effective movement of the claim by providing the injured worker the information he has never received before. It also allows the injured workers someone to contact, receive additional information from, and be able to be informed instead of staying home developing anxiety and depression over the events surrounding their injuries.

Jeanette Belz, Legislative Advocate, representing Property and Casualty Insurance Association of America:
We are not opposing this bill, but, rather, submitting an amendment to Section 1, subsection 2 (Exhibit G). One of the companies referred to earlier, Liberty Mutual Insurance Group, is a member of Property and Casualty Insurance Association (PCI). They do have a wholly owned subsidiary that operates in Las Vegas. At the present time, they have only 1 employee in Las Vegas, but that employee has an active caseload of 38 open cases, 21 of which are Liberty Mutual cases and 17 of which are from other insurers.

The management of Cascade Disability Management, Inc. is entirely separate from the management of Liberty Mutual. They have their own president and operations manager. They do have their own profit goals that are entirely separate from those of Liberty Mutual. One other important thing is that they do not have access to any of the claims files that Liberty has, or any of the claims reporting system at the Liberty office.

The amendment I submitted basically deals with Mr. Hettrick's comments about common management and control. If there is common management and control between the employer who administers the claims and the employer who does the vocational rehab, then the vocational rehab would not be allowed under that situation. In the situation we were referring to earlier, there is no common management and control, and this would help keep that situation clean and clear in Las Vegas.

[Jeanette Belz, continued.] I ask that you consider this amendment (Exhibit G). I shared it with Mr. Jeffrey last night, who forwarded it on to members of the Nevada Trial Lawyers Association, and you have already heard their opposition. We did submit it to Senator Carlton and Assemblywoman Buckley earlier today, and I did share it with Mr. Hettrick.

Assemblywoman Giunchigliani:
If you're working for the same company that's controlling, there's a problem that could affect the injured worker. We spent many years in a lot of medical areas eliminating self-referrals because they lost sight of whom they were really supposed to be treating. I'm not sure this gives the protection to the injured worker that the bill was contemplating, at least in the original testimony.

Jeanette Belz:
Right. They are entirely separate companies, and I would argue that in some ways I don't know how you wrap your arms around that problem to begin with. If you're an independent vocational rehabilitation counselor and you don't provide service that's acceptable, then you're not going to get further business. There is always this underlying phenomenon.

Again, we haven't heard any specific complaints about Cascade Disability or their operations. They will close down in Nevada. They were actually considering hiring another employee, and, obviously, the current employee would be out of a job. They presently operate in 32 states, and they are a wholly owned subsidiary.

Vice Chairman Oceguera:
We'll close the hearing on S.B. 225 and open the hearing on S.B. 226.

Senate Bill 226 (2nd Reprint): Makes various changes to provisions governing payment of certain workers' compensation claims. (BDR 53-891)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
Senate Bill 226 is designed to get the worker out of the middle of the workers' compensation payment schedule. Now, if a worker gets injured at work, he is sent to a provider. Most of the time, the worker doesn't have a choice of provider; he's just sent there. When he shows up, the doctor or provider knows when he walks in the door that it's a workers' comp case. The worker goes in, gets evaluated, and gets taken care of. Later on, if there's a denial in the workers' comp case, then it's no longer workers' comp, and the doctor he went to can turn around and charge him billable charges.

[Senator Carlton, continued.] Billable charges could be anything—another 100 percent, 200 percent, 300 percent on top of what the charge for the original visit might have been, through no fault of the worker. He went to the doctor he was supposed to, and he's being denied his workers' comp claim. Naturally, he is going to appeal it.

We would like to protect the worker in the situation where he gets denied, so that he will pay the worker's comp rate. To be fair, if that same doctor or provider happens to be on the PPO list of that particular health care plan, and we have an agreement with them, we'll pay them at that rate. We're going to make sure they get paid. We just don't want to see the worker end up with a huge bill, through no fault of his own, that he cannot possibly afford to pay. Then he comes to his provider, and the provider has to help unwind the mess he's in because of the denial of a workers' comp claim.

Not long ago, you heard S.B. 121, which deals with similar issues when someone's claim has been denied, who pays, how we reimburse, et cetera. This is another piece of the puzzle of trying to help the worker make his way through the workers' comp system.

As far as I know, we did not have any opposition to this from the Senate side. We had some concerns. You will notice that this bill has gone through a number of iterations.

We did amend the bill in the Senate to deal with some hospital concerns. They have people just walk in the door, and they don't know if it's workers' comp, how they got hurt, or what was going on. We didn't feel hospitals were that big a component in this, so we did amend it on the Floor to take hospitals out. We're going to be looking at that in the future, and if it does become a problem, we'll come back to you. If it doesn't, this will rest.

Bobbette Bond, Participant Services Manager, Culinary Health Fund, Las Vegas, Nevada:

Also, this bill is supported by the Health Purchasing Coalition that has been doing all the negotiating in Las Vegas on our hospital and provider contracts. I'm here only because I've been involved in appeals with this for several years and have seen what happens to workers in the plans.

Nancyann Leeder, Nevada Attorney for Injured Workers, Nevada Department of Business and Industry:

We are in favor of the bill. I just wanted to point out that many times the worker may not have gone to the provider at all, absent his employer telling him he needed to. All of a sudden he gets a big bill, perhaps, because his claim

ultimately is denied when he would not have incurred it at all. We think it's fair and just that the provider be paid the amount of money he assumed he would be paid when he took the person in as a possible workers' comp claim.

Assemblywoman McClain:
The hospitals were amended out, so that includes emergency rooms, right?

Nancyann Leeder:
Yes. The instances we were aiming at were industrial accidents where they were sent to a provider. Normally, they are not sent to an emergency room. That is very expensive care. Most employers contract with clinics and will send an employee to a particular clinic. If a workers' comp case is serious enough to go to the emergency room, I don't think there's going to be a denial involved. The hospitals did have some concerns about this, and we thought it would not be as big an issue with them. It was more of an issue when a worker was sent to the clinic and then was denied. If a worker—perhaps a policeman or firefighter—is hurt so drastically that he's in the emergency room, I don't think we're going to have to worry about a denial.

Vice Chairman Oceguera:
I can think of some where they'd be denied. Since you brought up firefighter, we had a guy have a heart attack while driving a fire truck. Obviously, we took him to the emergency room, and that was denied all the way through the process.

Nancyann Leeder:
We can work on that.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council:
We're in favor of the bill.

Raymond "Rusty" McAllister, President, Professional Firefighters of Nevada:
We are also in favor of the bill.

David Kallas, President, Las Vegas Police Protective Association; Trustee, Las Vegas Metropolitan Police Department Health and Welfare Trust:
We also support S.B. 226. Our concern is that when people go in for a workers' comp issue, no one is unjustly enriched by an employee's injury.

Vice Chairman Oceguera:
We'll close the hearing on S.B. 226 and open the hearing on S.B. 250.

Senate Bill 250 (1st Reprint): Revises provisions governing practice of dentistry and dental hygiene. (BDR 54-1257)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
Senate Bill 250 is the bill I requested on behalf of the Nevada State Board of Dental Examiners in the spirit of camaraderie and reaching out to the Board over many years of discussing many contentious issues. It was amended in the Senate. It's a good, clean bill, and I do support it as it came out of the Senate.

Fred Hillerby, Legislative Advocate, representing Nevada State Board of Dental Examiners:
Section 1 of this bill allows dental hygienists, members of the Board, to participate in the clinical exams we do for dentists. They cannot grade, but they can participate. Section 2 updates the scope of the practice for dentists. Sections 3 and 4 bring the bill into conformation with S.B. 85, heard earlier in the session. Senate Bill 85 brings in the Western Regional Board Examination and phases out the licensure by credential, initiated 4 years ago, which allowed someone who had a license in another state for at least 5 years to come in without examination. This bill indicates that the Certificates of Registration for dentists and others will be signed by all the Board members, including our hygienists, who did not previously sign those certificates. This change shows what an important role they play on our Board.

The bill clarifies that all license categories satisfy NRS 631.230, which talks about the general eligibility requirement to apply as a dentist. We thought this was applicable in all cases, but when we talked with the Legislative Counsel Bureau staff, they felt it would be better to put it in those sections where that happens, and that is in Sections 5, 6, 7, 8, 9, 12, 13, and 14. Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, and 20 also bring our evidentiary evidence standard into conformation with a recent Supreme Court ruling.

During the Senate hearing, the Senate recommended an amendment that basically changes the licensing standards in Section 7 for those who are hired by the dental school. Senator Heck was uncomfortable with the fact that they currently would not have to be licensed anywhere else or necessarily have passed any examination. That section of our law was never one that the Board had proposed, but had been brought by another Senator involved with the dental school. The Senator recommended that, and we certainly had no objection to that being added to our section.

[Fred Hillerby, continued.] In Sections 17 and 18 of the bill, we're moving to biennial, rather than annual, licensing. A number of our other professional licensing boards do that, and we are moving that way with the exception of two: NRS 631.271, which references the dental school employees, and NRS 631.275, employees of the Health Division. Those are going to remain annual because generally those dentists are only given an annual contract, and the license is good only as long as they either work for the Health Division or work for the dental school.

There's a lot of repetition. We have to repeat sections because of the federal law regarding child support. Sections 8 and 9, Sections 10 and 11, and Sections 12 and 13 are basically the same. We have made some amendments to the restrictive geographical license. This was at the recommendation of Caroline Ford, the director of the Nevada State Office of Rural Health, who is with the rural division of the medical school. They were trying to allow the people who get these geographical licenses to practice in more than one county and to satisfy the requirements in more than one county. We were certainly fine with that.

This bill also conforms the dental hygienists' licensing by credential to the provisions for dentists that were in S.B. 85. Basically, that credential licensing will expire in one more year, and the dental hygienists, as well as dentists, will have the option of either having a clinical examination by the Board or having that examination done by the Western Regional Examining Board.

Section 19 updates the fee schedule. We are going from annual to biennial licensing, except for those two specific exceptions, and the Board had not come to this Body asking for an increase. These are ranges. These fees are not going to go to the top; that's as high as they could go when we adopt regulations to adopt these fees, and we had not changed those ranges since 1984, and then some of them in 1990.

The fee increases for both the hygienists and the dentists not only have to have your approval, but the Governor will veto fees that don't have concurrence by those parties upon whom the fees are being assessed. We have a letter from Dr. Peter DiGrazia, president of the Nevada Dental Association, and Neena Laxalt, who represents the hygienists and testified in the Senate, stating that they are in support of this bill, including the fees.

Sections 21 and 22 deal with the child support effective dates and repeal some of the transitory language in the statutes of Nevada. Finally, Section 24 talks about the effective dates. The biennial licensing and fees will be effective upon

passage and approval. The rest of the provisions in this section will be effective July 1, 2005.

Vice Chairman Oceguera:
Thank you, Mr. Hillerby. I see Mr. Krolicki, the State Treasurer, in the room with his daughter. Anyone else wishing to testify in favor of S.B. 250?

Robin Keith, President, Nevada Rural Hospital Partners:
I am here representing Caroline Ford, director of the Nevada State Office of Rural Health, as being in favor, particularly of Section 13 of this proposed legislation. That's the section that deals with geographic licensure for dentists and helps improve access to these professionals in underserved areas. The Office of Rural Health would like to thank Senator Carlton and the Dental Board for working with her to address the issue of dentists with this particular kind of license being able to work across county lines.

Vice Chairman Oceguera:
Any others wishing to testify in favor of S.B. 250? Those neutral? Anyone wishing to testify? We'll close the hearing on S.B. 250 and open the hearing on S.B. 238.

Senate Bill 238 (1st Reprint): Revises provisions governing regulation of certain public utilities. (BDR 58-1156)

Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:
Senate Bill 238 was the result of discussions that Southwest Gas began with the Public Utilities Commission (PUC) staff in the last year trying to deal with some issues and situations we were facing. The bill before you today is completely different from the bill that was introduced, and it is the result of a consensus agreement and negotiations between my company, Sierra Pacific's Gas Division, the Bureau of Consumer Protection, and the Public Utilities Commission.

The bill does three things. First, it deals with general rate case changes. For utility rates, general rate cases for natural gas companies are the portion of our rates where all of our expenses except for the natural gas costs are dealt with. We provide this information to the Commission on an historical basis. You use a 12-month test period, and a lot of investigation goes on. In the end, the decision is made by the Commission on how much the company will be

authorized to earn. Rates are designed to give the company the opportunity to earn this amount.

[Debra Jacobson, continued.] What happens is, if you pick a 12-month historical period, it takes 3 or 4 months to put the information together. Currently, in statute, it's a 6-month time window in which a decision is made. The data on which you're setting rates is usually 22 to 24 months old. The bill allows the natural gas utilities to provide, along with everything we already provide, an additional statement that would show known and measurable costs that the company has incurred after the closure of the test period but before the decision is issued. An example would be a wage increase for our employees. It's known, it's measurable, it happens after the test period closure, everyone knows it, and it happens before the decision is issued by the Commission.

The second thing the bill addresses is the gas cost, called the "purchase gas adjustment" portion of our rates. This is different from the general rates because, on the gas costs, the company makes no margin. It is a dollar-for-dollar recovery of the cost to procure and transport the gas supply. The bill would allow for quarterly filings to be provided to the Public Utilities Commission and the Bureau of Consumer Protection that would deal with the recorded costs of natural gas that are paid by the utility.

The bill details some very specific requirements for noticing customers. It also makes it clear that there is no presumption of prudence of these costs. Each month, the customer pays a certain rate for natural gas, and the company is usually paying a different rate to procure the natural gas. The difference in those two amounts each month is deferred to an account we call a "balancing account," which is an interest-bearing account, and which is not affected by the bill. Annual filing would be done of purchase gas adjustment cases, where the deferred balance would be reviewed.

Additionally, each of the quarterly adjustments would be reviewed, and prudence of those costs in our purchases would be decided at that time. That is basically what we have right now. There would be all the consumer sessions, complete hearings, and a six-month time frame for the decisions. Any Commission decisions on the prudence of our purchases that we had in quarterly adjustments would be made to the deferred balancing account, just as we currently do.

We believe this has great benefits for our customers because, obviously, if the cost the customers pay more closely reflects the cost the company is paying for natural gas, the deferral to the balancing account each month will be smaller. Therefore, they will pay less in interest charges. Also, it allows customers to

make more informed decisions on their usage because they'll have a better idea of exactly what the cost of natural gas is. It will also minimize large price increases or decreases by making smaller, more frequent adjustments.

[Debra Jacobson, continued.] The third part of the bill requires the Public Utilities Commission to open an investigatory docket to look at all types of utility rate-making methodologies that are used nationwide, including what is called a "future test year." It will be open to any and all interested parties, and the Commission will be required to issue a report back to the Legislative Counsel Bureau by October 1, 2006, which will then be provided to the Legislature.

Assemblywoman McClain:
There's no fiscal note on this, right?

Donald Soderberg, Chairman, Public Utilities Commission of Nevada (PUC):
No, there is no fiscal note on this.

Assemblyman Conklin:
On page 4, paragraph (c), are we talking about the utility being authorized to adjust its rates on a quarterly basis between annual rate adjustment applications pursuant to subsection 8, based on changes in the public utilities' recorded costs of natural gas purchases? I realize there is reconciliation somewhere in this process, but I think this is a good thing. It allows the price of gas to adjust with the market as we purchase it. What I'm concerned with is that we're authorized; we are not obligated. Therefore, it is left up to someone to decide when they want to do it, and what is the incentive to do it when the price of gas goes down, as opposed to when the price of gas goes up? If, in fact, that is assumed, could we put it into the bill rather than assuming?

Debra Jacobson:
Yes, it is my understanding, although it is not specific in the bill, that once a natural gas utility opted to submit an application to make these quarterly adjustments, it would continue to do that unless it made a filing with the Commission to not do it anymore. You brought up a very good point, because everyone is focused on the cost of natural gas going up, but the cost of natural gas does go down, also. So we also would give that benefit back to customers faster than we currently can. I'm not sure how we could address that in the bill. I would be willing to do that, but I defer to the Commission.

Adriana Escobar Chanos, Chief, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada:
If you look at S.B. 238, toward the bottom of page 7, subsection 8.(b).2.(i), it looks to me like the utility would have to go to the Public Utilities Commission and ask permission to go on a quarterly schedule. Once they are on quarterly, it says about notice: "The total amount of increase or decrease in the public utility's revenues from the rate adjustment stated in dollars as a percentage." That deals with notice. Once you go quarterly, do you also report decreases as well as increases, or is that just in the notice section?

Debra Jacobson:
Absolutely, both ways, increases or decreases. It would be on a quarterly basis. Maybe Mr. Soderberg could say what would be required if you started on a quarterly basis to go back to another way, but it would be our plan, obviously, since this is what we're asking for, to remain on quarterly.

Donald Soderberg:
The original language that was proposed in the Senate made provision for periodic changes. At that time, our staff and the utilities envisioned that they would change it as they felt they needed, and we didn't know how many there would be. When the amendment went to a quarterly provision, we had been operating under the assumption that it would be quarterly. They would come in at the beginning of a 12-month period, make their application, then, within that 12 months, every quarter there would be a change up or down. With the reprint that is before you, it is implicit that there will be a change every quarter unless the utility can demonstrate that there's not a need for a change.

Assemblyman Conklin:
I would rather see it clearly written that, if we're on a quarterly basis, the rate needs to be adjusted quarterly unless there is no adjustment. I would anticipate, at least in current times, that that rate would have gone up each quarter. However, that still saves the consumer money because there's no reconciliation at the end paying for money the utility has had to pay in advance because they couldn't collect, plus interest. I think it's good all the way around if, rather than it being implied, we put it in statute.

Vice Chairman Oceguera:
There would be the possibility they wouldn't raise the rate, but if we made it explicit and said they must adjust it, then they might adjust it upwardly every time.

Assemblyman Conklin:
I think what we're talking about here is if, in the first quarter, the cost goes down $0.10 a unit, in that report it should go down $0.10 a unit. Then, in the second quarter, if it's flat, then it's flat. If it goes up in the final quarter, then it goes up. There's nothing in here that says they absolutely have to file in each quarter, so they could choose not to file when it goes down, but do file when it goes up. I think it's better if we put it specifically in there so that, when they come to file, they give the current rate for gas.

Vice Chairman Oceguera:
Might there be a circumstance, though, where the current rate of gas went up, and they're not going to charge for that?

Assemblyman Conklin:
It is possible. However, they will collect on that money the way the law, as I understand it, currently reads. This is the problem they have now. Say they set their rate on January 1 and, on February 1, the price of purchased gas goes up $0.10 a unit. They currently cannot raise their rate without going through a complete filing, so they wait. The customer pays the current rate for the rest of the year, but that $0.10 on every unit across every customer goes into a deferred account. It's not actually there; it's money the gas company has spent but has not yet recouped.

At the end of the year, they charge on the next rate filing that $0.10 on every customer, plus interest. So it's to the benefit of the customer to pay it when it's due as opposed to paying it later and paying interest. I think that's why the utility companies have come forth with this. Everybody says the utility companies benefit. The utility company isn't making any more money on this proposal than they would be the way they do it now. It's just beneficial to the customer. Even in a rate increase, it's beneficial in the long run. The increase will be less than it would be under the current system.

Assemblyman Hettrick:
I agree totally with Mr. Conklin. On page 4, line 4 of S.B. 238, it says, "is authorized to." If you change that to "must," it goes on to read in line 6, "based on the changes in the public utility's recorded cost of natural gas purchased." Therefore, if it went up, they would go up. If it went down, they would go down. If it stayed flat, they would stay flat. I think the word "must" would satisfy the issue.

Donald Soderberg:
Mr. Hettrick's solution is a pretty good one. There is always the concern that things that are implicit somehow get forgotten later on. I think that would hold

future Commissions and future utility management to actually lowering the rate when things went down, to the benefit of the consumers.

Assemblyman Conklin:
With respect to subsection 3 on page 5, and subsection 4 on page 6, I recognize there are a couple of issues here, one dealing with time and the way you forecast rates. As I read subsection 3, lines 25 through 36 and 42 through 45, and the next page, lines 1 and 2, all the language is in here. The big change is from 6 months to 240 days, plus, instead of the 12-month historical data period, you're changing from the 6 months to 240 days beyond the date of the actual filing to do forecasting in your rate. That works out to a year or more beyond the historical filing, because it takes probably 4 months or more to get something back from the Public Utilities Commission. Nothing ever happens quickly.

On top of that, it would appear that, in subsection 4, there is no requirement to give all of the circumstances that might impact your business. As a gas company customer, I would want to know the whole story, not just the part the company has given me.

Debra Jacobson:
You're correct about page 5, subsection 3. That is current language that details how utilities file general rate cases with the 12-month historical data. What subsection 4 does is not in lieu of filing that data. It is in addition to filing what we currently file. You could submit a statement that shows effects, on an annual basis, of expected changes in circumstances which may occur within 240 days—and you're right; that is a difference in time—after the date on which the application is filed. That 240 days is the time the Commission would take to make their decision.

That is a little different from the 180 days it is right now. However, there is another bill coming, which you have not heard yet, that changes that time from 180 days to 240 days. This bill says it is 240 days so it will match the other one. They are not talking about forecasted changes; these would be known and measurable changes. It would be all the historical data plus known and measurable changes that are going to happen from the time we file the rate case until the Commission makes the decision. That's the time when they're doing all their investigations, the hearings are taking place, and all the parties are involved in looking at that information.

Assemblyman Conklin:
What if, under Section 3, instead of 6 months, I put 12? Then, under subsection 3, when you file your rate case, you're saying that within the next

6 months we know these things are going to happen, and so forth. Then, down on the bottom of the page, on line 42, we tightened up the amount of time it takes for filing.

[Assemblyman Conklin, continued.] There's a gap in history under the proposed amendment that's not necessarily dealt with. What I'd rather see is, here's the 12 months of history, and here's the first 3 months that we know are now history, plus an additional 9 months that we're forecasting. Subsection 4 is very wordy. Why are we adding it, unless there's an unfixable problem with subsection 3?

Debra Jacobson:
I believe that's what we're trying to do with the language in subsection 4. The initial bill actually did talk about allowing the Commission to use a future test year, which is forecasted data, in negotiations, but we decided that was not the way to go. There was not enough known about that methodology and how it would affect processes here in Nevada. That's why the investigatory docket is being opened.

I believe you're talking about costs that happen between the time the company closes its books and the time the decision is made on what it will be authorized to earn and what the authorized rate increase would be. This language is in here to address that situation. It would allow for known and measurable changes in the company's cost. A good example is a wage increase. We increase wages for our employees on June 1, but we closed our books back in December. That, obviously, is not going to be included, but everyone, including the Commission, knows the wage increase has occurred. It just puts into statute that that's one of the things they will take into account when they're setting our rate. It's during the time the parties are discussing the application.

Assemblyman Conklin:
I understand that. Under subsection 4, there's no time certain as to when you can start charging for that wage increase for employees. Under subsection 3, it clearly states that if you have an employee, then that rate starts upon approval of the PUC at some time certain thereof, and there's no statement to that, as such, in Section 4. I guess it leaves it open again if we're back to that implied scenario.

Debra Jacobson:
No, actually, the way utility rates are set, we spend the money, so we're going to have that wage increase, and there will be some set of expenses for wages, salaries, and benefits in the costs that we file in our rate case. All this would do is allow the Commission to actually update and take into account a known and

measurable change that we provide in a statement when they're setting our rates. So when they issue the decision, they would take those changes that are known and measurable into account when they set our rates that go forward. The 240 days is how long it will take the Commission, from the time we file a case until they make a decision. During that time is when all the parties issue data requests and investigation, and there are hearings and consumer sessions. Those rates wouldn't go into effect until 240 days after.

Assemblyman Hettrick:
I think Mr. Conklin is trying to make sure the process works as intended. What we've said is you file a rate change, and it's very costly, and, in the end, the public is paying for that. During the time that change is being considered, something else changes, too. Currently, you can't go in and amend your file, so what happens is, in the middle of what's happening now, you have a cost incurred, or maybe a savings, but you can't even consider that. Currently it says the Commission "shall consider"; it doesn't say they "must" do it. They may not agree that the cost you say is incurred needs to go in the rate, but at least it allows them to consider it without you having to file another complete filing and then wait another 180 days, which is extremely costly, and ends up being borne by your customer. The intent of this, as I understand it, is after you file, and they're in the middle of consideration, you can come up with something that's measurable, hand it to them, and say, "Please consider this as well so we don't have to file another rate case."

I think this saves the customer money and saves time for the Commission. Why would they want to rehear an entire filing for one item that could have been considered, because it's essentially an amendment? I think it's good for the customer, good for the Commission, and good for Southwest Gas in the long run as well. I think that's where Mr. Conklin is going, and I'm just trying to explain it differently from what has been explained.

Debra Jacobson:
That's exactly right. It allows those known and measurable changes to be filed with the Commission without having to file another rate case, because we do not like to file general rate cases.

Donald Soderberg:
Assemblyman Conklin said early in his question that he would want to know, as a rate payer, if there was a known and measurable event that would actually lower rates. He wanted to know if that would be brought up. The answer is yes. In the past, we have taken liberties with statute and used that against utilities. They have not, at this point, appealed that.

[Donald Soderberg, continued.] As recently as a year ago, we knew that, past a certain certification period, a utility had a contract to sell some land. It was known and measurable. When the sale closed, we could calculate how much gain they made on that land, and therefore we were able to roll that into rates and actually lower the entire burden on their rate payers by taking that profit, which normally would have been attached to a future rate case, and use that for the consumers and against the utility.

That's something both our staff and the Consumer Advocate staff are supposed to be looking for. We do have that balance, and if we have the legal ability to look at all things forward without worrying about whether somebody is going to appeal it, I think we're going to find a lot of cost-saving things, as well as things we might have to put on to increase the rate.

Assemblyman Conklin:
Then, in subsection 4, I would assume you'd be open to some sort of amendment that clarifies that, of all suspected changes and circumstances that may occur, both to revenue and expenses. You may have it in regulation, but if we put it in the statute, I'd certainly feel better about it.

Donald Soderberg:
It's not our bill, but I think that language is what would give us a very finite direction that would probably be helpful.

Vice Chairman Oceguera:
We'll write it down. Any further questions or comments?

Adriana Escobar Chanos:
I just want to clarify that would mean expenses and revenues and so forth. Is that your expectation, Ms. Jacobson?

Debra Jacobson:
I believe it's whatever the Commission's rules or regulations are when we file something like this. This is the statute that would allow this, and I assume there will be some regulation changes at the Commission that would detail exactly what the statement would look like.

Judy Stokey, Legislative Advocate, representing Sierra Pacific Power Company:
We do have a gas company, and we are here in support of S.B. 238 as it is written and the comments that have been made.

Vice Chairman Oceguera:
Any others wishing to testify on S.B. 238? We'll close the hearing on S.B. 238, and then we're going to start a quick work session.

There are no amendments on any of the bills in the Work Session Document (Exhibit H). Does anybody want specifically to go over any of the bills individually?

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS SENATE BILL 80.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

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ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS SENATE BILL 174.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

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ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS SENATE BILL 257.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

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ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS SENATE BILL 278.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

Vice Chairman Oceguera:
I think we could use the same theory on S.B. 250. I don't think there was any concern.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS SENATE BILL 250.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

Vice Chairman Oceguera:
I'll hold S.B. 226 for today. With that, we are adjourned [at 4:40 p.m.].

RESPECTFULLY SUBMITTED:

_____
Vanessa Brown
Recording Attaché

_____
Mary Garcia
Transcribing Attaché

APPROVED BY:

_____
Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 4, 2005 **Time of Meeting: 2:00 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 134	B	Karen Yates/CART	Prepared testimony; Letter from Lori Unruh, NVCRA; Letter from Lindsey Nunn; Policy Statement of NCRA
S.B. 134	C	Connie Anderson/Self	Prepared testimony
S.B. 134	D	Denise Phipps/CART	Real-time captioning of portion of meeting covering S.B. 134
S.B. 134	E	Dotty Merrill/Washoe County School District	Prepared testimony; proposed amendment; message confirmation
S.B. 134	F	Gary Olsen/Self	Prepared testimony
S.B. 225	G	Jeanette Belz/Property Casualty Insurers Assoc. of America	Proposed amendment
	H	Diane Thornton/LCB	Work Session Document