

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

**Seventy-Third Session  
May 16, 2005**

The Committee on Commerce and Labor was called to order at 2:09 p.m., on Monday, May 16, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Michael Schneider, Clark County Senatorial District No. 11  
Senator Dennis Nolan, Clark County Senatorial District No. 9  
Senator Dean Rhoads, Northern Nevada Senatorial District  
Senator Dina Titus, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Dino DiCianno, Deputy Director, Nevada Department of Taxation  
Bobbette Bond, M.P.H., Government and Community Affairs Manager,  
Culinary Workers Health Fund  
Jack Jeffrey, Legislative Advocate, representing Southern Nevada  
Building and Construction Trades Council  
Bob Ostrovsky, Legislative Advocate, representing Employers Insurance  
Company of Nevada  
Nancyann Leeder, Nevada Attorney for Injured Workers, Nevada  
Department of Business and Industry  
Valerie Rosalin, Director, Consumer Health Assistance, Office of the  
Governor  
Robin Drew, Private Citizen, Las Vegas, Nevada  
Jim Nadeau, Legislative Advocate, representing the Nevada Association  
of Realtors  
Charlie Mack, Owner and Broker, Mack Realty Commercial Specialists,  
Las Vegas, Nevada; and President, Nevada Real Estate Commission  
Buffy Dreiling, Legal Counsel, Nevada Association of Realtors, Reno,  
Nevada  
Gail Anderson, Administrator, Real Estate Division, Nevada Department of  
Business and Industry  
Joseph Johnson, Legislative Advocate, representing Independent Power  
Corporation, Reno, Nevada; and representing the Toiyabe Chapter  
of the Sierra Club  
Bill Bible, President, Nevada Resort Association, Las Vegas, Nevada  
Denis Neilander, Chairman, Nevada State Gaming Control Board  
Terry Graves, Legislative Advocate, representing The Beach Night Club,  
Las Vegas, Nevada  
Don Logan, President and General Manager, Las Vegas 51s Baseball Club,  
Las Vegas, Nevada  
Joe Brown, Legislative Advocate, representing Las Vegas Motor  
Speedway, Las Vegas, Nevada  
Chris Powell, General Manager, Las Vegas Motor Speedway, Las Vegas,  
Nevada

Scott Sherer, Legislative Advocate, representing Paramount Parks,  
Las Vegas, Nevada  
Taylor Dew, Magical Hula Girls, Las Vegas, Nevada  
Billy Johnson, Vice President and Chief Operating Officer, Las Vegas  
Wranglers, Las Vegas, Nevada  
Richard Clauser, Naturist Society and The Naturist Action Committee  
Sabra Smith-Newby, Legislative Advocate, representing The City of  
Las Vegas, Las Vegas, Nevada  
Allen Lichtenstein, General Counsel, American Civil Liberties Union,  
Nevada  
Don Soderberg, Chairman, Public Utilities Commission of Nevada  
Jon Wellinghoff, Legislative Advocate, representing MGM/Mirage, Power  
Light Corporation, and Freus Corporation, Las Vegas, Nevada  
Michael Yackira, Executive Vice President and Chief National Officer,  
Sierra Pacific Resources, Nevada Power, and Sierra Pacific Power  
Company, Nevada  
Adriana Escobar-Chanos, Consumer Advocate and Chief Deputy Attorney  
General, Bureau of Consumer Protection, Office of the Attorney  
General, State of Nevada  
Mark Russell, Chairman, Nevada Renewable Energy and Conservation  
Task Force  
Tim Carlson, Member, Renewable Energy Task Force  
Fred Schmidt, Legislative Advocate, representing ORMAT, Sparks,  
Nevada  
Dan Schochet, Vice President, ORMAT, Sparks, Nevada; and Geothermal  
Member, Nevada Renewable Energy Task Force  
Robert Tretiak, Business Development Officer, International Energy  
Conservation, Las Vegas, Nevada

**Chairwoman Buckley:**

[Called the meeting to order. Roll called.] I'll open the hearing on S.B. 483.

**Senate Bill 483: Establishes joint and severable liability for payment of certain taxes, interest and penalties administered by Department of Taxation. (BDR 32-394)**

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

Senate Bill 483 is brought to you on behalf of the Department of Taxation. The bill moves the provisions with respect to responsible party determinations from the sales tax provisions found in S.B. 372 and S.B. 374, and includes them into NRS [*Nevada Revised Statutes*] 360, which are the general administrative

provisions for the Department. It adds that responsible party determination with respect to all the different taxes that the Department administers.

**Assemblyman Hettrick:**

On page 1, line 14, speaks of a member or employee of a partnership or limited liability company. I'm concerned about the employee who could be the furthest person away from the liability for the tax you're collecting or paying. Is that what you intended?

**Dino DiCianno:**

It means a member employee of a partnership or limited liability company. That means it's possible that one of the partners could be an employee of that limited liability company and could be responsible for the tax.

**Chairwoman Buckley:**

That's the language currently used in existing law on the second page that is being repealed, so why are you moving this from NRS 372 to NRS 360? What's the import of that, and why is that necessary?

**Dino DiCianno:**

We want to put all the responsible party language into one specific statute, the general administrative statute, NRS 360. We want it to apply to all the other taxes that the Department currently collects.

**Chairwoman Buckley:**

Under NRS 372, it only applies to sales and use taxes and now it would apply to all taxes. Who it applies to would be fair to reexamine in light of those additional situations. Have there been any concerns with who's been assessed under NRS 372 with regard to partnerships or LLCs [limited liability company]?

**Dino DiCianno:**

No, not that I'm aware of.

**Chairwoman Buckley:**

We appreciate your testimony. We'll close the hearing on S.B. 483.

ASSEMBLYMAN ANDERSON MOVED TO DO PASS  
SENATE BILL 483.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Arberry, Ms. McClain, and Mr. Ocegüera were not present for the vote.)

**Chairwoman Buckley:**

We'll open the hearing on S.B. 126.

**Senate Bill 126 (1st Reprint): Requires Director of Office for Consumer Health Assistance in Office of Governor to employ persons with experience in field of industrial insurance. (BDR 18-246)**

**Senator Michael Schneider, Clark County Senatorial District No. 11:**

Senate Bill 126 helps get injured workers more assistance and helps them go through the workers' compensation process. There was money being appropriated for this but the money got trimmed over the last few years. The business communities said they would like these additional people in place to help the injured worker. It's good for business to get their workers the health care or retraining they need to get them back to work as soon as possible. Labor desires there be more people in position to help injured workers. The Culinary Union is the best organization in the state at helping injured workers, and they're lousy at it, so they do need some help.

**Chairwoman Buckley:**

I spoke with a couple of representatives from labor and they are very interested in the bill and want the Office of Consumer Health Assistance to become more involved. I have a meeting scheduled with those labor representatives and the Office of the Governor to talk about what the problems have been. Perhaps it's a matter of trying to hook these people up with the employers and the employees and have them visit labor halls and some employers to let folks know of the availability of the Office. We'd like you to join us at the meeting.

**Senator Schneider:**

If organized labor halls do a lousy job at it and they're organized, what about the small businesses and the small construction companies? When they have an injured employee those people are really lost.

**Chairwoman Buckley:**

That's a good point.

**Bobbette Bond, M.P.H., Government and Community Affairs Manager, Culinary Workers Health Fund, Las Vegas, Nevada:**

Not having any advocate to work on the workers' compensation process has had a negative impact. It's a complicated process and there's a language problem with a lot of our members. What was originally supposed to be three different advocates working on workers' comp information is now down to 20 percent of one person's time. That stimulated this bill into life, and we're looking forward to developing a complete, comprehensive advocacy program with the resources available from someone who has that expertise.

**Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council:**

We support this bill. It's a complicated system, and I've been fighting these battles for over 30 years now. The injured worker gets lost in the system. We anticipate these people will deal with the newly injured people and help them through the process, maybe up to the hearing level, until the attorney comes in.

**Bob Ostrovsky, Legislative Advocate, representing Employers Insurance Company of Nevada (EICON):**

Employers, through their insurers, have been assessed about \$200,000 a year to run the current program. When we found out only 18 percent of one person's time was actually being used to assist injured workers, we had two choices; we could either drop the assessment back, which is what the Division has proposed in the budget, or press ahead and say we're willing to spend that money as long as we know we're getting something for it, which is at least two people who will assist injured workers through the process.

When you get to the hearing at the appeal level, you need the assistance of the injured workers attorney. We're willing to pay money for anything that will help people better understand something. It's a question of where we want to put that money. Do we want to leave it where it is or find another home for it? We can work out these issues if we find enough time, because we have people who are willing to put the effort into it.

**Assemblyman Conklin:**

The original copy of the bill was quite extensive in terms of the types of people we're looking for to be the employee's advocate. Was there a reason it was scaled back other than just to allow the director the leeway to decide the most qualified candidate for the job?

**Bob Ostrovsky:**

The advocates representing the employees through unions all met after the original bill was printed. Some of these people were from the state and some

were from the employers. We wanted someone who had experience representing employees. It said "representing employees or employers." We took out the word "employers" because it's really an employee representative situation. We scaled it down to make it more reasonable to find someone to fill those jobs. The original three jobs were filled by transfer when the State Industrial Insurance System (SIIS) became the Employer's Insurance Company of Nevada and the three who worked for them were transferred to this office. Over time, this office has concentrated more on health issues and pharmaceutical issues rather than workers' comp, because it had a lot of other resources, like the Department of Industrial Relations or the State Industrial Insurance Attorney. We would be happy to get somebody with those qualifications. If you want us to be more specific, we could come up with a definition of what that person should be, but we're trying to get the process started again.

**Jack Jeffrey:**

We're looking for someone who's had experience helping people through the system. The people who were transferred originally had extensive experience, although it was all practical experience representing people. The original bill called for a director who was a doctor or a nurse. We don't need a new agency. We need some people who are intelligent and have experience representing workers. With some people it will be a learning experience, but we feel it's important that they have experience specifically representing injured workers.

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

This kind of assistance is necessary. When ombudspeople transferred from SIIS, they knew how the system worked, who to call, when to call, and to remind people of the way the system is supposed to work. They could short-circuit some of the delays that occurred within the system when there was a problem that could be easily resolved. We handled almost 3,800 phone calls asking for information and assistance. Many of those calls were not at the hearing stage already. They could have then tried to avoid litigation entirely, had someone been available to make phone calls to the proper people. Some of those we know, and some we don't know. If we know them and have time to do that, we make those calls ourselves. This kind of assistance could easily be handled, given this bill.

**Valerie Rosalin, Director, Consumer Health Assistance, Office of the Governor, State of Nevada:**

We have no opposition to increasing our workload. Our bind is getting our information out to the public. We recommended that our information be put on the C-3/C-4 forms and the DIR [Nevada Division of Industrial Relations] posters

that contain information for employees. We do a lot of outreach that initiates short-term calls to our office. We've tried to work collaboratively with DIR and NAIW [National Association of Insurance Women] to refer people over to us, which is increasing, but still, our caseloads are not as high as they could have been. Our specialist may not have the experience, but is very well versed. He worked in SIIS and came to our office.

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

I was injured working on the Yucca Mountain Project in 2001. In 2002, I was released at Maximum Medical Improvement by my physician and eligible for vocational rehabilitation retraining. It is 2005 and I have not received one day of retraining yet. I have provided documents ([Exhibit B](#)). I'm opposed to this bill. I have actually sought the help of the Office for Consumer Health Assistance on this matter. I've worked with two different people from that office, and I've found them to be spectacularly unhelpful. They are afraid to get involved, and I don't think injured workers need another state employee whose job is to waste their time. I don't understand the need to give the injured worker hope that someone's going to help them, and then to pay someone who won't help them.

I'll read from my letter ([Exhibit B](#)), which is what I'll file today. I have to file with the Hearings Division a few times a week. I'm starting at page 6 ([Exhibit B](#)) to give you some background.

The claimant's vigorous pursuit of claimant's rights and claimant's vigorous exercise of client's rights is not an appropriate rationale for rewarding insurer misconduct and officially blessing insurer's ongoing violation of the appeals officer's order. Further, the rationales raised by the insurer's termination of the claimant's benefits and the insurer's opposition to the claimant's motion reintroduce disturbing and apparent constitutional issues.

This is filed as a request for my benefits to be reinstated. Since 2001, they've only been suspended about 20 times so far. [Continued reading from [Exhibit B](#).]

Clearly, the insurer made a determination in 2002 that insurer would not under any circumstances comply with the codes and statutes which required insurer to provide vocational rehabilitation retraining to the claimant. The history of insurer's tactics include:

- Demanding a medical investigation after the permanent partial disability (PPD) examination.
- Incredibly winning the blessing of an appeals officer in continuing that demand, which it turns out is a violation of



the Americans with Disabilities Act and falls into the category of "harassment on the basis of a disability."

- Delaying for months the very medical examinations the insurer had demanded.
- Ignoring the medical findings of a neutral and ethical physician who was chosen by the State of Nevada Department of Employment, Training, and Rehabilitation, Bureau of Vocational Rehabilitation.
- Flying a hand-selected physician in from Reno to Las Vegas to conduct the so-called medical investigation, and terminating claimant's vocational rehabilitation on the basis of that physician's report and violating codes and statutes by failing to provide the report to anyone until they were ordered to do so by yet another appeals officer.
- Ultimately failing to deprive the claimant of vocational rehabilitation through that tactic and therefore having to resort to yet another tactic, this time hand selecting—once again to fly to Las Vegas from Reno—a vocational rehabilitation counselor who the insurer now claims in various courts was not a vocational rehabilitation counselor, but was an investigator who staged a walk-out as soon as the vocational objective of math teacher was agreed upon by all parties, a walk-out the insurer immediately seized upon to suspend the claimant's benefits yet again.

**Chairwoman Buckley:**

The Committee has your 26-page fax ([Exhibit B](#)) and we will each read it fully. Since this is the hearing on the bill before us and not on individual cases, I'm going to have to cut you off. Please feel free to communicate with any individual legislator as well.

**Robin Drew:**

This is relevant to the issue and it is not an individual matter. It's an individual matter that affects me individually, but none of this is new. This is affecting the injured workers in Nevada.

**Chairwoman Buckley:**

We appreciate you supplying this information ([Exhibit B](#)) because it's good for the Committee to be reminded of who we're trying to help. Thanks for taking the time to testify. We'll close the public hearing on S.B. 126 and open the hearing on S.B. 315.

**Senate Bill 315 (1st Reprint): Provides for regulation of certain business brokers and revises provisions governing disclosures in certain real estate transactions. (BDR 54-1135)**

**Senator Dennis Nolan, Clark County Senatorial District No. 9:**

Senate Bill 315 would create a new category of real estate broker. The category would be a business broker. This is a new designation which, over the past few years, has been taking hold in a number of states. I'll disclose that I'm a licensed real estate broker in Nevada, but the type of business affected by this bill is not the type of business I currently conduct. Right now, brokers are required to be involved in most business transactions that involve the sale of any real property, whether it's land or buildings, commercial or otherwise. In this case, those buildings are sometimes sold with the active business in place, and as part of the transaction, the buyer is buying the book of business for that particular establishment. Real estate brokers in their licensing process and in their training process really aren't trained to adequately sell a book of business. We can hire appraisers to appraise land values and get comparable market assessments of buildings or land sitting around them, but when it comes to being involved in negotiating or brokering the sale of a business, we're selling the good will of the business, book value, assets, receipts, and debts of that business.

Most brokers, including myself, with the exception of having sold my own business at one time, don't really have adequate background or knowledge in these. The way the current statutory structure is, they can put themselves in the middle of brokering one of those deals. It's usually in that role that some of these deals start to fall apart where a buyer wasn't getting what the buyer thought he was getting, or the seller wasn't receiving what they thought they were receiving during the selling of the business.

In a nutshell, this would be a new classification of real estate broker that would go along with the salesman broker, corporate broker, and commercial broker.

**Jim Nadeau, Legislative Advocate, representing The Nevada Association of Realtors:**

Section 1 of the bill deals with the business broker aspect and on page 6, the second aspect deals with some language clarification that coincides with changes in real estate regulations from the end of last year.

**Charlie Mack, Owner and Broker, Mack Realty Commercial Specialists,  
Las Vegas, Nevada; and President, Nevada Real Estate Commission:**

This bill is a permit added to existing real estate licenses; we're not creating a new license. It mirrors the legislation from several years ago in the property management permit. Business brokerage is a highly specialized field. I've been in commercial real estate for 23 years, and when I walked into a business opportunity transaction by accident, I'm thankful my client had an attorney who knew what they were doing. To think that we have 30,000 real estate licensees in this state and any one of them can sell a business without having the proper background is scary. This is a consumer protection bill.

**Assemblyman Hettrick:**

I have a question about the requirement that they have to be a licensed real estate broker. I once sold a business and I used a broker, but I didn't sell any of the assets; I sold just the business. Therefore, it wasn't a real estate transaction in any way. We're requiring that they be a real estate licensee first to be able to get the permit to broker a business, and I want to know why we need to do it that way.

**Jim Nadeau:**

Under this statute, anyone who is currently selling a business or anything of that nature today, other than someone licensed under NRS 645, will be able to continue selling. An individual, a CPA [certified public accountant], or an attorney can sell their own business. It's only if they're licensed under NRS 645 that they would be required to have a business brokerage license. This language only applies to those who are licensed under NRS 645.

**Assemblyman Hettrick:**

Okay, I'm comfortable with that.

**Assemblyman Seale:**

I've brokered a lot of businesses in the 40 years I've been a CPA. I'm curious to know how that would impact that group or other similar groups. Are they going to have to get a real estate license?

**Jim Nadeau:**

Anyone who can currently sell a business today will be able to after this bill is passed, other than those licensed under NRS 645. A CPA can sell the business.

**Assemblyman Seale:**

What if there's someone who's not yet a CPA and becomes a CPA next month?

**Jim Nadeau:**

If you have that ability today, then you will after this legislation is passed.

**Assemblywoman Gansert:**

Does this type of license exist in other states?

**Charlie Mack:**

In Arizona they have a new statute that requires a separate license for a business broker. We're just looking for a permit.

**Assemblywoman Gansert:**

It talks about 24 hours of classroom instruction. Where is that available? Is that just for business brokerage?

**Charlie Mack:**

The education is not yet available as it was not for the property management permit that was put into effect years ago. Once that permit became law, it was amazing how fast courses sprung up.

**Jim Nadeau:**

All the real estate licensing classes are approved by the Real Estate Commission. As necessary classes, they just went through a regulation change. There was a significant number of new classes required, and then the real estate schools and associations put together the approved classes. There will be a time delay before this is implemented to allow grandfathering, testing, and development of the curriculum.

**Assemblywoman Gansert:**

There would be grandfathering of what type of individuals?

**Jim Nadeau:**

The people who are doing this today would be required to take a challenge test, and if they pass that test, they meet the qualifications without the initial prerequisite education. Otherwise, they would have to take the education from that point on. They did it for property managers, and I think it will be January 1, 2007. In Section 11, page 7, line 5, it says when it would actually take effect.

**Assemblyman Seale:**

You mentioned 24 hours of education and this being a consumer protection bill, but that's not a lot of time to learn about business and how one might best broker that. Would it make more sense to say real estate agents couldn't broker businesses, if you wanted to protect the public? I can think of several deals I did

that were incredibly complex, and I couldn't have learned to do them in 24 hours.

**Charlie Mack:**

Currently, any one of Nevada's 30,000 licensees can broker a business transaction. The intent of this is to make those who want to continue to do it have the education, put in the time to do it, pay for courses, and pass an exam. When they renew their license every two years, they'd have to have an additional 3 hours of continuing education strictly in business brokerage.

The only other kind of status we have in Nevada for a real estate license that requires a permit is property management, which also has a considerable amount of specialized knowledge. That is 24 hours prior to an exam and 3 hours of continuing education every 2 years. We have no other status in Nevada to require more hours than that.

**Assemblyman Parks:**

I need to disclose that I'm a real estate salesperson licensed in Nevada, and this bill won't affect me any differently than anyone else. How would this directly affect a salesperson as opposed to someone who is a real estate broker?

**Jim Nadeau:**

Section 3, page 1, says a person who is licensed as a broker salesman or real estate salesman pursuant to this chapter may apply for a permit to engage in business as a business broker. It doesn't mean you're a broker only in the business aspect, but if a salesman applied for this and was issued the permit, it would not automatically give a perfunctory broker's certification, only the business brokerage element.

**Assemblyman Parks:**

If I had this designation but my broker did not, would he also have to have that designation?

**Buffy Dreiling, Legal Counsel, Nevada Association of Realtors, Reno, Nevada:**

As the bill is written, if your broker doesn't have his own business broker license, as with the property management license he would have to have a person in his office be the designated person for the office. The bill provides that a person has to at least have broker salesman status within the office so there is one person of a higher level in charge of those activities.

**Chairwoman Buckley:**

Aren't people required currently to be licensed as brokers? [Charlie Mack answered affirmatively.] So why do we need another class?

**Charlie Mack:**

Currently, any of the 30,000 licensees in Nevada can sell a business. We're trying to raise the bar of professionalism and protect consumers. To do so, people have to have a higher level of education and knowledge to sell a business through a permit, identical to what the Legislature passed several years ago regarding property managers. It mirrors that legislation.

**Chairwoman Buckley:**

Can you contrast for us what's higher than a regular broker?

**Buffy Dreiling:**

The way the law exists right now in the real estate area under NRS 645, a broker is the highest level, and under that person you can either have a broker salesman or a salesman. Currently, any one of those levels of licensing would be permitted to engage in the sale of a business. Likewise, they'd be permitted to engage in the sale of your house. With this bill, we're trying to take that license and add an additional permit requirement on there to ensure that anyone who's going to do the sale of a business component under NRS 645 has some additional education specific to sales of businesses. In many of these transactions, attorneys and accountants are involved. Outside of NRS 645, other types of professionals can also sell the business. Even with the permit, the real estate licensee would be required to refer a person to that specialized area if it's a legal or accounting issue, but they would have a better understanding of what they were doing.

**Chairwoman Buckley:**

What exactly is additional?

**Buffy Dreiling:**

With the permit requirement, they have to obtain 24 hours of pre-permit education and then the continuing education component. Regarding the designated broker or broker salesman in the office, that provides for a person with the higher level of license to have oversight of those activities.

**Chairwoman Buckley:**

What do the other existing licensees have in terms of classroom instruction? How many hours?

**Buffy Dreiling:**

To obtain your real estate license, you have to have your pre-licensing education, which is 90 hours. We just instituted a new post-licensing requirement, which requires an additional 30 hours, and continuing education, which is 24 hours every 2 years. A person who's doing business brokerage

under NRS 645 would have to have done all of those things, and in addition, they'll have to do the 24 hours, specific continuing education, and the test.

**Gail Anderson, Administrator, Real Estate Division, Nevada Department of Business and Industry:**

The Real Estate Division supports S.B. 315. My legal administrative staff and I have worked with the bill's sponsors on this legislation and we support it. This permit would be under the jurisdiction of the Nevada Real Estate Commission, the pre-licensing, continuing education, and examination would be overseen by the Education Section of the Real Estate Division. This would be part of the many programs we have jurisdiction over in terms of licensing, permitting, and certificate issuance.

**Vice Chairman Ocegüera:**

I'll close the hearing on S.B. 315.

**Chairwoman Buckley:**

We'll open the hearing on S.B. 398.

**Senate Bill 398: Delays prospective expiration of exemption from certain sales taxes for certain products and systems that use renewable energy. (BDR S-1299)**

**Jon Wellinöhoff, Legislative Advocate, representing Power Light Corporation, Las Vegas, Nevada:**

Power Light Corporation is a developer of renewable solar energy systems. S.B. 398 provides for an extension of the tax exemption for sales tax for renewable systems. It provides for an extension from June 2005 until December 2005. The reason this is limited to December is because Nevada has agreed to adopt the Streamlined Sales and Use Tax Agreement, which is much more complicated. By adopting that, it's not permissible for the state to have a difference in exemption between the state sales tax and the local sales tax portion. For there to be an exemption from the state sales tax portion, it requires a vote of the people. I would suggest this Committee consider the same thing is being done in A.B. 347, which is a sales tax exemption for farm machinery equipment. That is extending that sales tax exemption to December. In addition, it is proposing it be sent to the people for a vote for the 2006 election to extend this exemption beyond that period of time. Renewable energy systems deserve the same consideration as farm machinery equipment in Nevada. I ask you to consider amending this bill to make it consistent with the

provisions of A.B. 347. In so doing, you would extend renewable sales tax exemptions as well.

**Chairwoman Buckley:**

You're suggesting a further amendment? [Mr. Wellinghoff answered affirmatively.] Do you have it in writing?

**Jon Wellinghoff:**

I do not, but it would be identical to the amendment in A.B. 347, which is the provision for the exemption of farm machinery that would go to the vote of the people in 2006. I propose a similar amendment be developed to go to the vote of the people for renewable energy for a sales tax exemption.

**Chairwoman Buckley:**

Who's the sponsor of this bill?

**Joseph Johnson, Legislative Advocate, representing Independent Power Corporation, Reno, Nevada:**

This bill is a continuation of a program that's been in effect since the 2001 Legislative Session. In the drafting of the bill, we asked to extend the period from June 30, until the allowable time of December 31. We'd be in support of an amendment to this bill that would allow a vote of the people. It's an important part of promoting renewable energy. Independent Power Corporation is a small installer of solar systems and wind systems. We have looked at the language and can propose an amendment. I submitted a letter ([Exhibit C](#)) from Independent Power Corporation.

**Senator Dean Rhoads, Northern Nevada Senatorial District:**

S.B. 398 extends the date by six months after June. In the rural areas there is some development out there and a lot of planning going on with wind and geothermal energy, so this bill would help that. I have no problems with the amendment Mr. Wellinghoff suggested.

**Chairwoman Buckley:**

My concern about that amendment is on the farm equipment, which lost at the polls last time. Sometimes it's difficult for the public to absorb what's in these ballot questions, and whether that's the right way to go, or whether we should just extend it ourselves.

**Senator Rhoads:**

Either way, it's fine with me.



**Assemblyman Seale:**

Are there other states on the West Coast that have an exemption on this kind of equipment as well?

**Senator Rhoads:**

I'm sure there are, but LCB [Legislative Counsel Bureau] staff would have to tell you that.

**Chairwoman Buckley:**

Thanks for that. We'll close the public hearing on S.B. 398 and open the hearing on S.B. 247.

**Senate Bill 247 (1st Reprint): Revises provisions governing tax on live entertainment. (BDR 32-680)**

**Senator Dina Titus, Clark County Senatorial District No. 7:**

The tax package from the 2003 Legislative Session included the entertainment tax, which quickly proved a bookkeeping nightmare. It also failed to generate the revenue we had anticipated and it didn't adequately bring in a group some of us intended to be covered, which are the striptease clubs that have proliferated, primarily in southern Nevada. It did, however, introduce us to the touring hula girls who are constantly before us and were helpful in bringing some of the problems with the original bill to our attention. For those reasons, I've introduced S.B. 247 as a reform of the entertainment tax.

The amended bill sets up parallel entertainment taxes, a live entertainment tax, and an adult entertainment tax. The live entertainment tax applies only to non-restricted gaming facilities. It's administered by the Gaming Control Board and exempts sporting events that occur in non-restricted gaming facilities, keeping the same tax that was in place before, at 10 percent on admission, drinks, food, and souvenirs.

The adult entertainment tax in Section 11 provides a tax at 10 percent on everything in non-restricted gaming and non-gaming facilities that offer live adult entertainment, which is defined in Section 8 of the statute. It would be administered by the Department of Taxation and it does not include houses of prostitution.

This eliminates seating requirements, which were problematic in the original bill. It eliminates sporting events, which are family oriented. We believe those are attended by local families, and eliminating this would help to get a second

NASCAR race, an all-star basketball game, and a baseball team. It also eliminates taverns and restaurants that have occasional entertainment on weekends such as a piano player or a small band. It will do a better job of capturing adult live entertainment because it eliminates that 300 seating requirement. This is an industry that should pay its fair share because it does put additional burdens on society in terms of law enforcement and alcohol regulation. Because these people don't pay workers' comp or any benefits, their employees often become a burden on social services of the state, so it's only fair they should contribute.

[Senator Titus, continued.] An amendment ([Exhibit D](#)) is being brought forward by the Nevada Resort Association and others who would like us to put in statute the regulations that have worked over the last 18 months. The Tax Commission did a good job of working those out, so we don't want to start that process all over again. I support putting those regulations in the statute; it's a good amendment. There's also an amendment ([Exhibit E](#)) to clarify that mechanical rides like you find in the "*Star Trek* Experience" would not be considered live entertainment. I don't have any problem with that amendment, either.

There was some testimony on the Senate side by a group of naturists. I thought that meant people who hiked and picked flowers, but in the old days you called them nudist colonies. Certainly the intent of the live entertainment tax was not to get nudist colonies, but to get striptease clubs. If there's some way you can accommodate them, that is fine too.

If you are going to consider amendments to this bill, you might also consider amending the provision that's the severability clause. The clause says that if some part of this is found to be unconstitutional, it goes back to the old entertainment tax. We don't want that to happen, so it should be written to say if something is found unconstitutional the other part of the tax in this new bill would stand.

**Chairwoman Buckley:**

My biggest concern with the bill is its constitutionality. We already had an Assembly bill we passed that exempts the *Star Trek* ride. Now someone is claiming the free pens they give you at a convention should be taxed, so we put that in there. We clarified the strolling and the hula girls, and I don't think anyone opposes the Resort Association language ([Exhibit D](#)). We can clarify that wasn't the intent and everyone supports that. A lot of that was already in the Assembly bill that we sent to Ways and Means. I'm concerned that if we just put live adult entertainment, that might be held unconstitutional. I wonder if a better approach might be to pick out a few more things like the racetrack and

sporting events, but to delineate all those separate ones and leave it like that. We could fix and refine the language to make sure we're more careful and more able to describe things that might be caught up rather than to put into our statute the phrase "adult entertainment," which puts a big red flag on it for the courts. What are your thoughts on that?

**Senator Titus:**

At one time, the brothels were included, so that would be broader. You can make the argument that this is a special kind of business that poses special kinds of social problems and therefore you can attach them. It's worth doing, and if an elected court in the state wants to challenge it, that's fine. None of the parts of the *Constitution* are absolute and they're all subject to interpretation. They interpreted the property tax we recently passed as maybe constitutional, and we can see how flexible the *Constitution* is in Nevada. I think it's worth the chance to put it in there.

**Chairwoman Buckley:**

I wonder if we could do it in a way that's a little broader but gets at the problems so we would avoid losing the revenue. We're getting the most revenue from adult entertainment clubs, which is \$6 million dollars, the highest amount paid under the live entertainment tax. The next one is race tracks at \$1.5 million, but everything else pales in comparison to how much they're bringing in now, and I would hate to give them back their \$6 million. Perhaps with the severability clause, but I hate to bring back anything we might want to fix now in terms of getting them excluded from the bill. It sounds like the goals are pretty much the same.

**Senator Titus:**

I agree with that. The 300-seat requirement has kept a lot of those clubs from paying. If you decide to amend this and do something with it, be sure to keep that in mind because that's where a lot of the revenue is. The Fiscal Division in the Senate argued that if you eliminate some of the family-oriented businesses like NASCAR and you take out the 300-seat at the same time, that will more than make up for any lost revenue.

**Chairwoman Buckley:**

Could staff obtain the fiscal information on the live entertainment tax for the Committee members? It can't be by business, but it can be by group and you can distribute that to the entire Committee. Senator Titus, we thank you for your testimony. We don't have a problem with the *Star Trek* amendment ([Exhibit E](#)); we already approved codifying the definitions.

**Bill Bible, President, Nevada Resort Association [NRA], Las Vegas, Nevada:**

You've seen the proposed amendment ([Exhibit D](#)) which codifies some of the existing regulations resolved in a lot of work between the Department of Taxation, the Tax Commission, the Gaming Control Board, and the Nevada Gaming Commission to resolve the less-than-perfect bill that emerged from the 2003 Legislative Session. We had a concern if S.B. 247 included or excluded it from taxation, and it doesn't exclude them, but we have a problem in outdoor venues in Laughlin and northern Nevada. Clearly in an outdoor venue, if you have some type of entertainment function that would be subject to the live entertainment tax and you pay a live admission fee, that becomes a taxable event. You also have a number of activities that take place with a band where there's no admission charge. Typically, those events have been excluded from taxation through some of the regulatory structure, but it would be helpful if we had a specific amendment that indicated that in an outdoor venue there would be no applicability of tax unless there's actually an admission charge. This created a two-part threshold which is an admission charge, and the other being live entertainment present.

**Chairwoman Buckley:**

That's current law?

**Bill Bible:**

That's current law through interpretation. This was a very complicated bill and we spent a lot of time debating and refining the various points of the various regulatory bodies, which is why we want to codify some of those existing regulations. That would at least provide additional clarity, principally in northern Nevada, but to some extent in Laughlin, where we have outdoor events on a seasonal basis.

**Denis Neilander, Chairman, Nevada State Gaming Control Board:**

There are a number of exemptions we've created through the rule-making process, and if the Committee chooses to codify those, that would be appropriate. Mr. Bible mentioned the situation with outdoor venues, and most of them have been excluded from the tax because they fit under one of these other exemptions in the amendment. There is no one particular provision that just addresses outdoor venues and there could be an open question about whether or not it's a taxable event even if you don't have an admission charge. The intent has been to focus on venues where there are no admission charges, and that would be an appropriate amendment. There are amendments that are currently in S.B. 392, which hasn't come over yet, but if you choose to process this legislation, the Board would be able to provide you with those amendments.

[Denis Neilander, continued.] The original legislation housed the regulation authority with the Board instead of the Nevada Gaming Commission, and that was an oversight. While the Board adopted the regulations, we did it together with the Commission and the Nevada Tax Commission, so that would go back to the way we do rulemaking, which is to say the Nevada Gaming Commission does it.

There is a provision in the existing law that requires you to place funds in a certain trust account and you'll hear from the Department of Taxation and us. That's not necessary, we've never required it before, and it would be a simple repeal of that provision.

You can read certain provisions that require the taxes be paid on a cash basis within the month they're collected, but it's probably more appropriate to give licensees the option of paying on either an accrual or cash basis. Right now, we do allow licensees to pay some of those taxes on an accrual basis, so we give them the option.

**Assemblyman Anderson:**

I can think of several events that take place outside in my community because of the redevelopment agency. Are you saying within an outdoor area you have one part of it with a separate entry which requires an admission fee, compared to something that is provided free of charge to everyone who's at the event? If it's part of Reno's ArtTown and if you had to come into Idylwild Park to see the entertainment show, you'd have to pay for it, but if you stand on the river, you don't have to pay for it? So if you can stand outside and see it, you don't have to pay for it, but if you enter into a special area where you have designated seating, you do have to pay for it, and therefore it's subject to the entertainment tax?

**Bill Bible:**

That's correct. In outdoor venues, mostly in northern Nevada or Laughlin, there has been some difficulty in the interpretation of the statute. If you conceptualize with the Rib Cook-Off, you have a "village" sponsored by the Sparks Nugget, and maybe two other licensees. In order to get into that village, you have to go through a gate to control access and pay an admission fee. There is live entertainment present, so that is subject to tax. In a different situation in the parking lot of the Hilton during Hot August Nights, there are vending stands, a bandstand, and sales of food and beverages. There was an argument that this would be subject to an entertainment tax because you could hear and see the live entertainment even though you did not pay an admission fee. Because of the way the existing regulations were interpreted by the Nevada State Gaming Control Board, they did not choose to apply the tax, but it was their legal

construction of some of the language that was adopted through the rule-making process, so we want to codify it to make it clear that in an outdoor venue, unless there's restricted access and someone is charged an admission price, there is no applicability of the tax.

**Assemblyman Anderson:**

If we were to take the Candy Dance in Genoa and it had music and there was an admission charge, then it would—

**Bill Bible:**

Under this proposal, the Candy Dance will no longer be a valid example because that's not a licensed gaming premise. If that was a licensed gaming premise, if you had to pay an admission fee and there was live entertainment, everything from the food, beverages, merchandise, and the admission fee would be subject to the entertainment tax.

**Assemblyman Anderson:**

The Rib Cook-Off, because it's put on by the Nugget, fits into the scenario, as does the Big Easy, which is put on by the Silver Club. But Hot August Nights doesn't because it's not put on by a casino?

**Bill Bible:**

It's not necessarily who sponsors, but who has control of the property and what are considered the premises of the establishment. With the Rib Cook-Off, part of that is done within the property controlled by the City of Sparks, but they've agreed to allow the Nugget and the sponsoring entities control over that particular property. It becomes a technical issue as to the applicability of the tax. If you think about them within the parking lot of the Hilton, or the parking lot of the Atlantis across Virginia Street, those are considered part of the premises of licensed gaming establishments, even though they're not within the confines of the buildings.

**Assemblyman Anderson:**

This bill doesn't change when we are taxing those entertainments and when we aren't?

**Bill Bible:**

This will clarify the existing tax and make it abundantly clear that those outdoor venues, unless there is an admission charge and live entertainment, don't have applicability with the tax.

**Chairwoman Buckley:**

I'm going to ask our staff to do a comprehensive document combining these proposed amendments, the ones we already approved, the clarifications on further exempting some of the folks from the live entertainment tax, and prepare it for our Ways and Means staff. We should not just say only the adult entertainment tax, but look at all the ones we want to exempt and pass it out that way. We really get into constitutional trouble. I don't have a problem with any of these amendments, including the one from the nudist colony ([Exhibit D](#)). I don't think the current term was intended to sweep into this. If we could list all the exemptions, we can re-refer this to Ways and Means, which has our other live entertainment bill. The Chairman of Ways and Means can identify fiscal impact. Most of these things we've identified are de minimus and can be passed. At some point with the larger ticket items, there might be a concern, but we should list and price them all and re-refer it to Ways and Means and have all the bills in one Committee. Is this exempted, Brenda?

**Brenda Erdoes:**

I don't believe it is exempted at this time. We might need to ask Mark [Stevens, Fiscal Division] if he's going to declare this eligible for exemption.

**Chairwoman Buckley:**

What about the other bill that Mr. Parks presented testimony on? That's definitely exempted, so maybe we can exempt this one, too, if Mark is willing to look at it. The same issues are with the Assembly committee bill, so we could combine them all after we price them all and figure out which way we're going to go. Why don't we refer without recommendation, get the complete list, and then we'll see those members in Ways and Means or on the Floor as we put them all together so we don't delay it.

**Assemblywoman Giunchigliani:**

I'll email Mark to see if this will qualify for an exemption at the same time.

**Assemblyman Anderson:**

I appreciate the fact that we want to move with some speed and dispatch, but if we don't have it exempt ahead of time, we'll have a problem, and we need at least a couple of the amendments for clarity.

**Chairwoman Buckley:**

We'll hold it to Wednesday or Friday, but in the meantime I'd ask staff to go ahead and work on that list.

**Assemblyman Perkins:**

If there's a problem with an exemption, you can always refer it back to Committee, and if you hold onto it until Wednesday or Friday and you can't get the exemption, then we'll have other issues. As Ways and Means looks at the bills collectively to see what we want to do with the live entertainment tax in the state, it's best to remove that without recommendation. If it's not exemptible, then we can refer it back to Commerce and Labor and we'll deal with it here.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO RE-REFER  
SENATE BILL 247 TO THE ASSEMBLY COMMITTEE ON WAYS  
AND MEANS.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

**Senator Titus:**

There are a number of people who made a special trip up here to testify in favor of the bill. Would you let them come forward and put it on the record to make their trip worthwhile?

**Chairwoman Buckley:**

Of course.

**Terry Graves, Legislative Advocate, representing The Beach Night Club,  
Las Vegas, Nevada:**

We participated extensively during the interim hearings with the Tax Commission and the Gaming Commission on formulating the regulations. I did not have a chance to see what NRA [Nevada Resort Association] was proposing in that amendment ([Exhibit D](#)), but we certainly helped craft that. On the Senate side, we were supportive of Senator Titus's bill to try to clean up the live entertainment tax, and we appreciated her efforts.

**Don Logan, President and General Manager, Las Vegas 51s Baseball Club,  
Las Vegas, Nevada:**

We're the only professional team that's survived in Las Vegas for 23 years. We do provide the best fun, family-oriented entertainment in southern Nevada. The explosive growth and changes that have taken place down there make it more and more difficult each year, and the entertainment tax is one added burden that fell in our lap inadvertently last time. Unfortunately, we've had to pay the bill, and not having to do it would make it that much easier. Our margins



continue to shrink, and for us to provide entertainment with something real and wholesome in Las Vegas, it would help us.

**Joe Brown, Legislative Advocate, representing Las Vegas Motor Speedway, Las Vegas, Nevada:**

In my 40 years practicing law in Las Vegas, the term "entertainment capital" has been based on bringing tourists to Nevada and attracting them any way possible. We then get taxes from them by room taxes, sales taxes, gasoline taxes, gaming taxes, and every other way you can take money from their wallets. A few years ago, some people invested millions of dollars in a speedway and it's not the largest event in Nevada every year.

**Chris Powell, General Manager, Las Vegas Motor Speedway, Las Vegas, Nevada:**

I'm here in support of S.B. 247. The Las Vegas Motor Speedway provides an enormous contribution to Nevada's economy. The implementation of the live entertainment tax has proven to be unduly burdensome to our business. The passage of S.B. 247 not only will enhance our business, but it will put us back on an equal playing field with other speedways in an increasingly competitive environment. We've not yet received comparable numbers for the 2005 NASCAR Weekend; the 2004 Weekend put more than \$142 million into Nevada's economy. That's a one-time expenditure that did not just affect Las Vegas Motor Speedway, but also gaming, hotels, restaurants, taxicabs, and retail shops. Furthermore, we employ roughly 2,500 people during the course of the weekend in March.

NASCAR's growth over the years has been astounding. These events routinely draw 100,000 to 175,000 people at various events across the country. Several members of the Legislature were in attendance at our March event. In the past year, speedways in the Los Angeles and Phoenix markets have been awarded with a second annual NASCAR event, an event that has put millions of dollars into their communities. A second date in Las Vegas, possibly in the fall, would be worth hundreds of millions of dollars to our state each year and would yield much more to our economy than the current live entertainment tax.

Occasionally we have issues where an event might get rained out, yet we've already paid the tax on it. As we sit here right now, there are ticket agents at the speedway who are putting numbers into computers, selling tickets, and entering in renewals for next year's event. If one day gets rained out and we have to refund money, the tax we are paying for next March's event is being paid at the end of this quarter, so it gets unwieldy. A lot of our tickets are tied to food, so the food is not taxed, but the ticket is. Another issue is a ticket may say \$49, but because of our ticketing system, a \$49 ticket has to be advertised

at the total price of \$51.45, which is above that \$50 threshold that any retailer wants to be below.

**Chairwoman Buckley:**

Could you tell us if the other states where other tracks are have any sort of tax?

**Chris Powell:**

The two markets that in the last 12 months have been awarded second NASCAR dates per year are in California in Arizona. They don't have an admissions tax.

**Chairwoman Buckley:**

What about ones with the first race? How does it compare to any one? Are there other places?

**Chris Powell:**

I'm just speaking to states whose speedways have recently been given second dates.

**Chairwoman Buckley:**

What other states have speedways with a tax?

**Chris Powell:**

Texas has some type of tax, but it's not just an admissions tax, it's everything involved in that category.

**Chairwoman Buckley:**

So it's more extensive than ours. The most convincing thing is last year it raised \$1.5 million?

**Chris Powell:**

According to the Las Vegas Convention and Visitors Authority, which intercepts customers throughout the course of the event weekend, those three days in March pumped \$142.5 million into the economy.

**Chairwoman Buckley:**

I'm saying that last year, the tax only rose. What you paid was relatively small, which means it doesn't affect the budget much; so I'm trying to make a point for you.

**Scott Sherer, Legislative Advocate, representing Paramount Parks, Las Vegas, Nevada:**

I appreciate your comments regarding the *Star Trek* amendment ([Exhibit E](#)). If this bill is processed in this fashion with regard to the effective date, it might make sense to make these exemptions that are being added effective upon passage and approval so they would be part of the chapter as it exists on June 30, 2005, if in fact there is any ruling on the unconstitutionality.

**Chairwoman Buckley:**

Let's move to Las Vegas.

**Taylor Dew, Magical Hula Girls, Las Vegas, Nevada:**

Lines 21 through 24 state "this bill provides that if the provisions of this bill concerning the tax on adult entertainment are held to be unconstitutional, the tax and all forms of live entertainment will be reinstated as currently set forth in provisions in NRS 368A." If this is removed, I'm in favor of this bill.

**Billy Johnson, Vice President and Chief Operating Officer, Las Vegas Wranglers, Las Vegas, Nevada:**

If you think the Speedway had a relatively small total in tax, wait until you hear about ours. Don Logan of the 51s was right when he said that they are the only franchise in Las Vegas to make it in 20 years. We're relatively new at two years old, going into our third season. That's a factor that we looked at when we decided to put a minor league hockey team in Las Vegas. That history in Las Vegas has been very difficult.

Our business in minor league sports tends to be fragile. In hockey, we only have 36 dates, which means we're effectively closed 11 months out of the season, so we have to capture our revenues in order to survive in a brief period of time. We only have 36 three-hour opportunities to do that. Most of our customers are families who want affordable entertainment. That's how we thrive and that's why we're fragile as a business. The tax last year meant we had to charge and pass that tax on to our customers. Oftentimes, families buy four to six season tickets at \$144 for a family of four, and one season ticket holder told me last season when the tax was applied, "That's basically an electric bill for me for one month." We're here to represent our contingency of families in Las Vegas who are looking for something to do with quality time with their kids, friends, and families, to preserve that and increase our chances of surviving.

**Chairwoman Buckley:**

Thank you, and good luck with the Wranglers. For those of us with children who want more options, we do appreciate you, so thanks very much.

**Richard Clauser, Naturist Society and The Naturist Action Committee:**

We've changed the terms of what we call ourselves. "Colonies" doesn't fit anymore, so we call ourselves resorts and groups. We are not opposed to the adult entertainment tax. If you look at nudist people, probably 95 percent wouldn't go to an adult entertainment place. Our concern is that the definition of "adult entertainment" is so broad that it would encompass a lot of activities of a nudist group or resort. Our activities are family-oriented and are no different than if you went to a clothed resort; our patrons simply don't have clothes on. Our concern is that it's so broad that we need to better define what constitutes "adult entertainment." I realize there are constitutional issues if you narrow it down too much, but it's so broad it could be onerous on some of these small groups, and some are trying to help and doing good things. The Tahoe area naturists are always out there helping with causes around the Lake, and if they have a fundraiser this could conceivably apply, and that's what our concern is.

**Sabra Smith-Newby, Legislative Advocate, representing the City of Las Vegas, Nevada:**

I'm in support of this bill.

**Allen Lichtenstein, General Counsel, American Civil Liberties Union, Nevada:**

We're here to talk about the lack of constitutionality in this bill. This isn't a new issue for the courts. I dealt with an issue similar to this about 10 years ago as it related to a Clark County ordinance. The adult entertainment tax specifies a particular type of expressive content, and the courts have been very reluctant to allow that. It doesn't mean that adult entertainment venues are free from a general applicability tax, but taxing one particular type of content is not acceptable, and the courts have been clear about that. One possible exception in that is if taxes or fees can be specifically related to administrative costs for checking working cards, et cetera. This is not a revenue-neutral tax. It is not to relieve the state of certain burdens; the only exception might be to cover administrative costs. There is ample case law that proves this.

If this is passed in its current form, someone will challenge it. We at the ACLU [American Civil Liberties Union] don't involve ourselves in adult entertainment, but we would certainly lend our hand in opposing this. If it is dressed up differently, the impact is still to burden one particular type of business involving one type of content. That fact would weigh on the federal court, which would likely turn it down. The federal courts have dealt with these issues before, and we're sure this would fall as it has in other states.

**Chairwoman Buckley:**

I'll close the public hearing on S.B. 247. This bill is eligible for an exemption. I'd like to have the opportunity to work out the language of NRS 545, some more

exemptions, and have our Fiscal staff price it out. There are a lot of changes that will cost the state relatively little. Some changes will cost nothing at all, and that has to be part of the discussions of the money Committees.

ASSEMBLYMAN ANDERSON MOVED TO RE-REFER  
SENATE BILL 247 WITHOUT RECOMMENDATION TO THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Arberry and Mr. Perkins were not present for the vote.)

**Chairwoman Buckley:**

We'll open the hearing on S.B. 188.

**Senate Bill 188 (1st Reprint): Makes various changes relating to energy.  
(BDR 58-364)**

**Don Soderberg, Chairman, Public Utilities Commission of Nevada (PUC):**

Senate Bill 188 is a product of discussions that have gone on for 11 months, bringing together people involved in Nevada's energy business, energy regulation, and people with overall interest in how we are doing things. We weren't going to get together and talk about a number of regulatory issues, but we wanted to proactively address some of our bigger problems. One individual who participated in this group from the beginning was the late Richard Burdett, who was the Governor's Energy Advisor. Prior to that, he worked with us at the Commission. Mr. Burdett continually reminded us that we are spending about \$3 billion a year in fossil fuels. This \$3 billion for the most part is going out of the state. We kept asking ourselves what we can do about that, and we looked at the renewable portfolio standard, which was put together by the Legislature in past sessions, to reduce our dependence on fossil fuel to generate electricity. In Nevada, we're not doing a very good job of conservation.

We are called the Saudi Arabia of renewable energy in Nevada. Unfortunately, the Western United States, in which we are a leader when it comes to growth, is also the Saudi Arabia of energy waste, because over the last 25 years since the last oil crisis, we've lost the art of conserving. It's not something that is part of our daily lives and it's looked at from a dollar-and-cents point of view in

a short period of time. We didn't learn those lessons in the late 1970s and early 1980s when oil was skyrocketing. We actually had some periods of time when energy was cheap, and natural gas, which fueled a lot of our energy resources, was in the \$2 range, whereas now it's in the \$7 range, and we're all paying for that.

[Don Soderberg, continued.] How do we attack the problem? We've adopted a Renewable Portfolio Standard [RPS] ([Exhibit F](#)) and are trying to find ways to encourage the development of alternative forms of energy. The other end of this equation is to use less of that energy so we don't have to find an alternative to produce it. That's the gist of this bill. There are other aspects of this bill that deal with the temporary renewable energy development program, which was developed by a number of interested parties in order to spur development of some of the renewable projects that have been stalled.

**Jon Wellinghoff, Legislative Advocate, representing MGM/Mirage, Power Light Corporation, and Freus Corporation, Las Vegas, Nevada:**

We had a bill in the 2001 Legislative Session built on a base of the RPS, hailed as one of the outstanding standards in the country ([Exhibit F](#)). We have amendments to improve upon the RPS ([Exhibit F](#)). The area of energy efficiency is key to augmenting the reduction of fossil fuel use in the state and the stabilization of rates, but we're doing that in a very precise way, and that is with energy efficiency. When we say efficiency, we're not talking about conservation in the sense of just doing with less, nor are we talking about shifting peak or usage. We're not going to shift usage. That was specifically considered and rejected by the group that met over those 11 months. We're going to do it by energy savings through more efficient equipment which will be installed in the state. By putting in such equipment in the state and doing so through this bill, which includes energy efficiency in the portfolio for the utilities, you will increase participation by the residential and low-income consumers who could not otherwise effectively participate in a renewable portfolio. It will also provide our utilities with greater flexibility in the portfolio and give them more options to meet that portfolio. It puts Nevada in the category of other progressive states whose portfolios include energy efficiency. Pennsylvania and Colorado recently passed an amendment on the ballot to put a portfolio standard in place.

**Chairwoman Buckley:**

Does any state define renewable energy as energy conservation?

**Jon Wellinghoff:**

Pennsylvania and Colorado include energy conservation with their portfolio standard.

**Chairwoman Buckley:**

So it's defined as part of it, or do they define it as two things, conservation and renewable?

**Jon Wellinghoff:**

You have to define conservation separately so everybody understands that you're putting in efficient equipment and not just shifting use, because you can just shift use and people call that conservation. You have to define it very carefully to make sure you're talking about putting in more efficient equipment. In Colorado and Pennsylvania, they allow utilities to include it in the overall portfolio to meet their portfolio standard.

**Chairwoman Buckley:**

Nevada was a leader in creating a wonderful bill when we did it, and this is nothing more than watering that down. We have a standard now where we say we want to give incentives for renewable energy creation. We want to explore solar and other forms of energy to reduce our reliance on fossil fuels, and now we're taking that same goal that we already said was worthy and instead we're reducing it by a fourth, which is the wrong way to go. Energy conservation is essential, and we should create a goal for energy conservation, or perhaps do what Chairman Townsend of the Senate Commerce and Labor Committee suggested, which is to raise the goal of the RPS to include 25 percent for energy conservation. We certainly could explore that as well. It sends the wrong message to say we're going to water down what we already passed. If we need to create a separate goal for energy efficiency, that sounds great. If we can reduce peak and encourage conservation with the same enthusiasm as we're doing with water, that would be great. I would hate to water down what was a tremendous victory for renewable energies.

**Jon Wellinghoff:**

I don't believe what we are doing here is watering down the RPS ([Exhibit F](#)). We're giving more options to those entities that must implement and put them in place. If you have a fixed pie and you put something else into that pie, you can say something is going to get pushed out to some degree, and certainly you wouldn't get an argument from me with respect to increasing the portfolio standard on the back end. That's something this Committee could look at, and there's been discussion among many parties on that particular issue. Whether or not you decide to increase the portfolio standard percentage, it is important to put energy efficiency in with renewables. The utilities need the clear signal that supply-side measures are equal to demand-side measures.

They need to look at them equally in their portfolio. They need to look at reducing peak by putting in a peaking unit the same way they could supply peak

by putting in a peaking combustion turbine unit, the same way they could reduce peak by putting in efficient air conditioning units. Those things have to be equal in their portfolio. You wouldn't want to do this in a way that makes energy efficiency and renewables part of the same portfolio. Whether you want to make the pie bigger is something the Committee can consider. We've made sure there is not a complete substitution of energy efficiency. Limit the energy efficiency in the bill in Section 12 to only 25 percent. That is the cap that energy efficiency can take of the total portfolio. It must be from real savings that have been experienced and verified, not from simply shifting usage.

[Jon Wellinghoff, continued.] On the aspect of ensuring the residential customers can make maximum use of this energy efficiency, we've required in Section 12 that at least 50 percent of the energy efficiency that is in the portfolio come from the residential sector. This is a good bill for consumers and the implementers of utilities who have to live with this on a daily basis and ensure they meet their requirements. It's good for the environment because it will increase the flexibility and stability in rates and will also reduce the amount of fossil fuel that is used substantially. I can't disagree with you that maybe we want to look at increasing the back end of this and that might make room for everything, but I would urge you to keep it all onto one portfolio so they can stay on the level field with each other, the demand and supply sides. I've been trying to keep the demand size equal to the supply side since 1983, when we passed the Resource Planning Act in the state, and it's a fight I've had since 1983.

**Assemblywoman Giunchigliani:**

If I'm looking at both Sections 11 and 12, it uses the term "efficiency measures." How exactly are you defining that?

**Jon Wellinghoff:**

Energy efficiency measures would be anything that would save energy. It would have to be energy that could be verified to be saved by the utility. It also has to be measures the utility is contributing to. They have to pay some portion of those measures' costs. It can't be an efficient light bulb that goes in but the utility in no way contributes to it. It would not be part of their portfolio.

**Assemblywoman Giunchigliani:**

Where does Energy Star come in, then?



**Jon Wellinghoff:**

Energy Star measures are the lowest threshold now, so we don't want to limit there, but we want to be able to go way beyond Energy Star. To the extent that the measure was saving energy over current energy codes and the current energy base, it would qualify as part of the portfolio as long as the utility is also contributing to the costs of that measure in some way, the installation or the actual purchase costs of that measure. With respect to that, we have it defined fairly well in the bill. If it needs to be further refined, the Public Utilities Commission would put together regulations that would implement that and precisely define what energy efficiency measures would qualify.

**Assemblywoman Giunchigliani:**

The federal government defines certain efficiencies with some of the current commercial appliances, so is that anticipated in this bill? Are we dealing with other appliances and coming up with a higher standard?

**Jon Wellinghoff:**

We are not defining these standards in the bill. There's not any intent to set any standards for appliances. The intent is for the Public Utilities Commission to determine what it considers to be efficient measures that go beyond current practice, and the Public Utilities Commission does this now with respect to allowance of rebates the utility does provide in certain areas. This will certainly expand it way beyond that to actually have outside third parties bid in on energy efficiency and to also have the utility participate in a much-expanded manner. We need to look at the current practice with respect to measures and then go beyond that current practice to what would be considered energy savings or energy efficient practices.

**Assemblywoman Giunchigliani:**

We currently define energy systems, or is that a new definition that I find on page 3?

**Jon Wellinghoff:**

I believe that definition was taken from current definitions in the statutes.

**Assemblywoman Giunchigliani:**

It's referenced in Section 3 with the definition, so I'm trying to find out what's balancing what and how you're going to find a floor to compare whether someone actually had a savings. I'm seeing on Section 12, page 7, it does allow for residential, so this is not just commercial applications.

**Jon Wellinghoff:**

That's correct. In fact, it requires that at least 50 percent of it be from residential customers.

**Assemblywoman Giunchigliani:**

Is there a special tracking tool or something that has to be put on households in order to measure this, or does that current kilowatt hour clock take care of that?

**Jon Wellinghoff:**

The measurement and verification [M&V] would be established through protocols that the utility would most likely submit to the Public Utilities Commission for approval. Those protocols would designate, for certain types of measures for certain classes of customers how that M&V would be done. I know the utility now has M&V protocols for its existing rebate programs for energy efficiency measures, and those are submitted to the Public Utilities Commission. They become more sophisticated depending upon the customer and the equipment. For small residential light bulbs, you may not need very sophisticated M&V, versus a large chiller for a hotel/casino. It's going to vary as to the type of equipment and the type and class of customer, but it's going to be up to the Public Utilities Commission to set those protocols.

**Assemblywoman Giunchigliani:**

Was there any discussion in the Senate on Section 12, about the old language? We had an issue with getting some renewables and energy savings. Were there any suggested modifications to the 5, 7, 9, 11, and 13 percent? Was there discussion about making this an addition to, so it didn't look like it was eating into what we currently had as a standard?

**Jon Wellinghoff:**

I don't believe there was any public discussion in the hearings before the Senate on those numbers.

**Chairwoman Buckley:**

One of the problems with raising the portfolio standard is we don't want to scare the utility to death. They've worked hard enough trying to make the existing standards work when there are things out of their control. If someone doesn't produce, the Commission has rightly waived penalties. Things may go very well, there may be easily obtainable and affordable renewable energy, and that's certainly our hope, but maybe there's not, so that would be my concern about raising it. Would there be some sort of alternate way to reward the utility for energy conservation steps they could take if we chose not to water down the renewable portfolio standard?

**Don Soderberg:**

Currently, the Commission's regulations provide for an incentive in the return on equity that a utility would get for conservation measures. Because we're reinventing the conservation game after failing to do that in the 1980s and 1990s, we don't have a lot of programs in that. Our staff and the Consumer Advocate's Office would argue to make such programs trial programs and not to give that incentive because we're learning whether they're working or not. In the last 3 years, this utility has worked very hard in not only coming up with programs, but also developing the data so we know which ones are working and which ones are not working. We're pulling ourselves out of that era where we're reluctant to give the extra return on equity to the utility, because that comes out of rate payers' pockets.

**Michael Yackira, Executive Vice President and Chief National Officer, Sierra Pacific Resources, Nevada Power, and Sierra Pacific Power Company:**

I support S.B. 188. We have worked diligently along with the group that Chairman Soderberg mentioned to determine how best to meet the challenge of the RPS, one we have diligently approached. We have signed a significant number of contracts with developers who have not been able to deliver against those contracts. Some of those issues have been a result of the utilities' credit ratings. About a year ago, we came together as a precursor to this collaborative effort along with the Public Utility Commission staff, the Bureau for Consumer Protection, the Governor's Energy Office, and a few developers of renewable energy. We jointly developed the temporary renewable energy development trust, which is meant to separate funds for the benefit of the renewable developers so they may get financing for their projects and not have to worry about the financial condition of the utilities. This company is in far better financial shape than it was; however, we're still very supportive of the temporary renewable energy trust, just in case financiers are putting up the issue of our credit once again.

I echo Mr. Wellinghoff's statements about what we believe to be the marriage of energy efficiency and renewables, in that both have the effect of reducing the consumption of fossil fuels. Conservation and energy efficiency programs have the added benefit of being less costly than renewable energy and having less upward pressure on the price of the product to our customers. We're very supportive of that as well.

I understand Chairwoman Buckley's concerns. I can assure you we are committed to the RPS ([Exhibit F](#)), whether it is defined as it is currently or whether it's expanded to include energy efficiency. Perhaps there is a measurement time after this bill is passed when the Legislature could look at the

effects of the energy conservation inclusion in the renewable portfolio standard to determine whether or not it should be expanded at some point in time.

**Assemblyman Conklin:**

From an economics point of view, in Section 12 where we talk about the amount of electricity used in renewable energy sources, I know that Nevada is not the only state seeking renewable energies and the demand we are placing as a state, through regulation and this bill, for a guarantee on demand over time. What is happening in the renewable market? People have to make an investment that's expensive. Do they view this guarantee demand, which is not just Nevada, but other states as well, as opportunity to get in, or is the investment in renewables, as it is in other markets, still lagging behind?

**Michael Yackira:**

Nevada is one of 19 states, and if you include the District of Columbia, one of 20, that has a renewable portfolio standard. To the credit of Nevada, only seven states before 2001, when Nevada passed its legislation, had renewable energy in place. Renewable energy has been one form of expansion in states where there is significant demand. In Texas, green power has been prevalent since the late 1990s and the expansion of wind energy specifically has been the most prevalent. Florida Power and Light (FPL) and its subsidiary FPL Energy, of which I was president, was the largest producer of wind energy, and still is, in the United States, so I'm more familiar with that form than any. It certainly has spurred the development of renewable power, most certainly wind power.

Because of that expansion, technology has driven down the cost of wind power to a point where it's very close to competitive with other forms of production of electricity. When you couple that with the production tax credit, which is the federal tax credit that continues to be rolled over and is meant to be codified in the energy bill before Congress, if it is passed; I'm sure that will continue to spur the development of renewable energy, specifically, wind power and geothermal power. It possibly is because of our credit that some developers have had a problem here, but in other states, when renewable standards come out, the line is very long and people want to get in the door, get contracts cut, and it takes awhile for them to start up. We're facing those growing pains that other states did when they first put renewable portfolio standards in place.

**Assemblyman Conklin:**

I'm sure we have the capacity in electricity, not renewables, to buy from anywhere around the country, although, we prefer to purchase locally first. The example you give in Texas on wind energy is largely regionalized. It is wind energy being generated in Texas and spent in Texas much the same as in California in Tehachapi and the Bay Area, where they have large farms of wind

energy. What is being done in Nevada to spur the growth of renewables so that it remains competitive for the other general sources of energy?

**Michael Yackira:**

The spurring of the development comes about as a result of legislation. There is a lot of development activity with respect to wind energy in the state. There are a lot of developers who are putting up so-called met towers to determine where best to place the wind turbines. There are people who are looking at the expansion of transmission in order to move wind energy and other forms of renewable energy and other forms of traditional power plants. Companies like ORMAT in northern Nevada have been instrumental in expanding geothermal activity with the understanding of how that power has to move within the transmission system.

There are issues regarding wind energy that are specific to that kind of energy, and perhaps also with solar, in that wind energy is only available when the wind is blowing. It provides some issues regarding the stability of the transmission system, having to account for that form of energy, but assuring you have a backup for that energy if it isn't available to you because the wind isn't blowing. It does pose different issues, but ones that are surmountable, and it's a matter of transmission planning to move that. If the development occurs and continues to occur here, a lot of people see geothermal as being a very prevalent resource in Nevada, more so than in any other state except Hawaii. Nevada is far ahead in terms of getting the message out that renewables are important, and it's a matter of the developers catching up with that message.

**Assemblyman Conklin:**

Is it keeping pace with the guaranteed demand we've placed on it? Section 12 says over a 9- or 10-year period we're going to guarantee the demand for renewables triples.

**Michael Yackira:**

We have not been able to keep that percentage committed. When we contracted for renewable energy, we were more than ahead of the curve in terms of what the demand was on a biennial basis to grow the renewable portfolio amount for renewable energy to the amount required of 15 percent by 2013. We're not well behind that curve. We're better off in northern Nevada than we are in southern Nevada. We currently have no solar plants that are up and running. We do have recent geothermal activity, meaning contract activity. We have signed with ORMAT and will be before the Public Utilities Commission for its review. Certainly we are not anywhere near where we need to be in terms of meeting the standard, but not for lack of trying. One of the reasons for putting the TRED [Temporary Renewable Energy Development] Program forward

is to cure the issue of the company's credit until the utilities become investment grade again. If that is in any way deterring the developers from completing their projects, the TRED Program will prevent that from being a reason. We're still very committed to renewable energy and we're committed to looking for investment opportunities if they present themselves.

**Assemblyman Seale:**

In Section 12, subsection 7, on page 8, line 5, starting on 7(b), we're talking about regulations and imputing debt based on long-term renewable contracts. The language is somewhat convoluted.

**Michael Yackira:**

When the company signs contracts, it's really any long-term contracts, but the focus is on renewable contracts in this language. The rating agencies look at that long-term commitment as if it is debt of the company. At least a portion of the amount is attributable to the payments over time, or considered to be debt of the company, thereby increasing the debt-to-total-capitalization ratio of the company, thereby slowing its ability to reach the financial condition that it wants to be investment grade.

**Assemblyman Seale:**

Are they insisting that you book that debt without a corresponding asset?

**Michael Yackira:**

No, they are not suggesting we book the debt, but when they look at the capital structure of the company, no matter what it is, they do a black box calculation. It has to do with how long the contract is and whether or not it has been approved by the Public Utilities Commission. Any contract that is longer than three years must be approved by the Public Utilities Commission, so that's a positive. If it was something that had to come up for renewal or review every year, they would attribute more to it because it would be more risky for recovery. The question of recovery is not the issue, which is a good thing. Whatever your capital structure is, say 40 percent equity and 60 percent debt, they will take the terms of the contract, the length of the contract, and impute by formula and calculation a certain percentage of that contract amount and bring it back into its calculation of the company's capital structure, so it will be greater than 60 percent.

**Assemblyman Seale:**

So they're just using these calculations in order to form their own opinion on what your credit rating is going to be and none of this is getting booked? [Mr. Yackira responded affirmatively.] This is just for their own purposes, which impact you, but they make no consideration of the value of those contracts? I

understand how they look at the debt, but I don't understand how they couldn't look at the value of that.

**Michael Yackira:**

The company's strategy is to build generating plants in order to serve its customers. When you build a plant or add to your asset base and make an investment, over time the capital structure of the company has to move in order to retain its investment profile or its credit profile if it wants to retain a certain level of capital or credit rating. If the company is issuing debt to the market, ultimately it will not be able to retain its credit rating because equity has to be sold into the market in order to keep that capital structure in balance. That's exactly what this provision of the bill is supposed to account for. It's suggesting that if the rating agencies are attributing a part of these long-term contracts to the company as debt, there needs to be somewhat of an offset that would be on a contract-by-contract basis. We would bring the offset forward in a showing to the Public Utilities Commission when we ask for approval of a renewable contract. We need this added in order to account for the equity we would normally sell into the market for the benefit of the shareholders, so there needs to be that balance.

**Assemblyman Seale:**

I noticed in the language in the bill you talk about Moody's Investor Services and Standard & Poor's, but there's no mention of Fitch Ratings. Is there a particular reason for that? In my experience as the former Treasurer, Fitch is easier.

**Michael Yackira:**

Fitch does not rate us currently, and that's something we will determine. In July, all three rating agencies are considered in an index that's very important to the bonds we sell, so it's certainly possible we'll extend the credit rating to include Fitch.

**Assemblywoman Gansert:**

Are we meeting our portfolio standards right now?

**Don Soderberg:**

No, we are not, and I don't know that without some of the provisions in this bill, we will any time in the future.

**Assemblywoman Gansert:**

Where are we as far as percentages?

**Michael Yackira:**

In 2004, for both companies combined, we were just shy of 5 percent; it was 4 percent for non-solar renewables. We're higher for Sierra Pacific and much lower for Nevada Power. We're not close to that 4 percent versus the 5 percent required. For solar, we're at zero right now, and we're supposed to have 5 percent of the 5 percent, so although we have solar contracts, no solar developers have completed those contracts as of yet.

**Assemblywoman Gansert:**

How long does it take to get an organization online if you're looking for geothermal? Do those exist right now? Can you actually contract with entities right now?

**Michael Yackira:**

We are contracting. ORMAT is one of the larger developers of geothermal in the United States; they're international in scope. They have several projects that are online and one is a 20-megawatt contract we just signed. My former company was a developer of geothermal projects in the state, so it's certainly coming online when developers are doing the pre-work necessary. It really depends on what form you're talking about. Geothermal from the outset takes several years from the time the developer finds a field until they drill the holes to determine whether the steam is there in order to drive the turbine to produce electricity. That takes several years to do from the beginning to having it online. The holdup for a wind developer is two or three years of data to assure the wind turbine is placed in the right position to capture the most wind and make it most economically efficient. With solar, once the contract is there it's probably a 15- to 18-month period of time to put the infrastructure in place. It depends on the type of renewable development you're talking about.

**Assemblyman Conklin:**

I'm curious if the price of land in southern Nevada has had an impact on this, because solar requires a tremendous amount of space in order to capture the sun.

**Michael Yackira:**

That has not been an impediment so far. I could see it being an impediment going forward. In conjunction with the Southern Nevada Water Authority and the Las Vegas Valley Water District, we have been putting up solar panels on various buildings and where land is owned, to double up on the land use. That has been positive, but it's not as great of an amount as we would see with a separate development like a 20-, 30-, or 40-megawatt solar project, but certainly that could be a deterring factor. I don't think you'd see many of them



in Summerlin or in the downtown areas of Las Vegas, but certainly in the outskirts. I wouldn't be surprised if that's deterring some development of solar.

**Jon Wellinghoff:**

Power Light Corporation is currently developing a 3.1-megawatt project at the water district that Mr. Yackira referred to. That project is going to be put on the tops of parking structures at their Desert Springs reserve. We're also going to cover reservoirs, so land cost is really not a problem with respect to Power Light's projects, and there's virtually unlimited rooftop space in Las Vegas. On the convention center, we'd be able to put 10-megawatts of a PV [photovoltaic] system. There's quite a bit of space available that is unused, and by covering a rooftop or a parking structure, you actually have a dual use there because you can provide shade and cooling for the building.

**Adriana Escobar-Chanos, Consumer Advocate and Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada:**

I'm interested in renewables, and Nevada is prime for renewable energy. From a policy perspective, it's something very necessary and good for our state. Unfortunately, the utilities have not been able to meet their portfolio standards. Therefore, this bill logically follows as a way to resolve some of these issues and benefit consumers. The policy issue involves renewables and energy efficiency measures. Senate Bill 188 would allow 25 percent of the renewable portfolio standard to be met with energy efficiency measures, which would be taking a step away from your existing policy. The electric provider's portfolio ([Exhibit F](#)) would result in a total requirement of approximately 11 percent by 2015, instead of the 15 percent in existing law.

There are other ways to look at this bill from a consumer perspective. Nevada's energy policy also supports conservation in energy efficiency measures. Energy conservation addresses many of the same worthy goals as renewable energy resources, reduction of dependence on purchased power, especially expensive peak power, and deferring the need and the cost of building new plants to meet the state's growing clean energy needs. From a consumer perspective and not from a policy perspective, the bill is encouraging development of energy efficiency measures, although at the expense of developing renewable energy resources for now. Developing renewable energy resources that are lagging behind at this time, and providing other avenues, would be in the public interest and help the consumers because it would fill the gap that exists presently.

The bill provides a trust fund intended to address the problem of getting financing for renewable energy projects so that utilities can meet the remaining 75 percent of the renewable portfolio standard, which is very good.

[Adriana Escobar-Chanos, continued.] I do support this bill because it's very good for consumers. Section 12, subsection 2(b), on page 7, beginning on line 4 states: "The total amount of electricity saved from energy efficiency measures for which the provider seeks to obtain portfolio energy credits pursuant to this paragraph, at least 50 percent of that amount must be saved from energy efficiency measures installed at service locations of residential customers of the provider." It then says, "Unless a different percentage is approved by the Commission." I want to clarify that when we talked about this in the working group, that caveat dealt with only this part. Should the residential customers not be able to meet that amount in a given year, then the Commission would take a look at it so we wouldn't waste the ability to use that and decide where else the need is. Maybe you would want to clarify that language, and if not, that would be the way the Commission would then not address particular residential consumers. If for some reason in a given year the residential customers couldn't meet it, then the Commission would look at what areas it could be useful in.

Overall, S.B. 188 is in the public interest. My office would closely review the annual company reports enunciated in this bill on the status of this proposed direction. We would analyze all the data regarding the amount of energy savings achieved to ensure the correct percentage of the RPS [Renewable Portfolio Standards] attributed to these measures. The development of renewable energy resources and energy efficiency are both good public policies as long as 50 percent of the energy savings required by this bill is dedicated to the residential service locations.

**Assemblywoman Giunchigliani:**

On the suggested amendment of clarification, Mr. Soderberg nodded yes. I understand what we're trying to get here and I support it. I'm deeply disappointed that we haven't met the 2004/2005 renewable goal, and I have a feeling we aren't going to make the 2005/2006 either. Why have we not made those goals? Is this bill going to fix that?

**Michael Yackira:**

It's really not for lack of trying. Many times when renewable portfolio standards are put in place, it takes a while for some of the experienced developers to step up. Some of the issues have been as a result of our credit. When some developers have gone to Moody's Investor Services and Standard & Poor's, they have heard that the financial condition of the company might be in such a state that the financial community would not be supportive of these transactions. This was more than a year and a half ago, and the situation might be different today. However, to assure that those developers have the opportunity to complete their plants and don't have to worry about the credit with the

company and the TRED [Temporary Renewable Energy Development] Program would be very helpful. We had signed contracts to be 40 percent ahead of what the RPS would be by 2008.

**Assemblywoman Giunchigliani:**

So that's the goal you've established for yourselves?

**Michael Yackira:**

Not necessarily. We've just released a new Request For Proposal (RFP) for renewable projects. We completed the one we issued in 2003. Some of those developers had trouble finalizing their transactions. We've issued a new RFP to attempt to meet the portfolio standard. We signed 13 contracts, but two of them didn't get to a point where we could bring them forward because the developer dropped out. If all of those had been completed, we would have been well ahead of the curve. It's not something the company has failed to do, it's something that for various reasons developers have not been able to complete. The company is committed to renewables whether or not this bill is passed. If this bill is passed, it's not going to stop us from continuing to issue the RFPs to get new renewables developed. It's simply going to put on an equal basis the supply and demand sides so we're looking at them simultaneously. I hope we will meet the portfolio standard with or without this bill, but this bill will allow us to have a better shot at meeting it sooner.

**Assemblywoman Giunchigliani:**

On residential, we talk a lot about active solar rather than passive. Are there other ways to recapture any of those benefits? Because there are ways to construct things that actually save you money, but I don't know if it always relates to net metering or how many kilowatt hours you save. Everyone always assumes solar has to be active, but you can do passive as well. It's important to make sure those are recognized or at least promoted to some extent.

**Michael Yackira:**

We agree with you.

**Don Soderberg:**

I know the big picture of this bill that's had the most discussion today is the policy direction we're asking to take. The TRED program in Section 8 of this bill is an urgent provision. The TRED program is a very unique solution to a problem that was spearheaded by Governor Guinn, the Public Utilities Commission staff, renewable developers, and, more importantly, the financial community, which is having qualms about financing some of these renewable projects. The solution developed is a lock-box situation. While the utilities are not completely investment grade, the financing people will be assured they would get their

money back if a project they were involved with went forward and was providing electricity and renewable credits to the utility. Part of that structure was that it would be brought before the Public Utilities Commission to adopt regulations, which we did last year.

[Don Soderberg, continued.] The financial community has expressed a very strong desire that if they're going to put their money down to develop these renewable projects in Nevada for those who qualify for it, they don't want to adjust a regulatory agency's regulations. They want it in statute from the Legislature. My fear is we spent a lot of time talking about the big-picture policy, and if the TRED Program is not in statute, I believe some of the projects would be stopped in their tracks, and instead of making progress, we would be further back.

**Assemblyman Anderson:**

It troubles me that we might in any way be moving away from a committed position of support for solar or geothermal development. In Nevada, both of those offer such great opportunity, and it's troubling if we're lessening our standards and trying to achieve that from your agency's part. I'm concerned we're going to lose ground with the very faint steps I've seen us making in that direction. The wind is out there and blowing hard through the Washoe Valley. Clearly, geothermal and solar power offer us some great opportunities, and the people of this state don't understand why they haven't been developed. If not you, I don't know who can do it.

**Chairwoman Buckley:**

We thank you very much and we'll go to Las Vegas.

**Mark Russell, Chairman, Nevada Renewable Energy and Conservation Task Force:**

It's important to recall the name of our Task Force, which was set up by the Legislature four years ago. Renewable energy and energy conservation go hand-in-hand. On behalf of the Task Force, we made earlier recommendations, and we are pleased and in support of this bill. You have a wide array of representation before you suggesting this bill makes a lot of sense for renewables and energy conservation. There seems to be a belief that by adding the energy conservation allowance to the renewable portfolio standard it's a mandatory obligation, so the 25 percent of the development of the renewables falls by the wayside to meet an energy conservation standard. The act does not say that at all. It does say that up to 25 percent of the renewable standard, of which at least 50 percent must be in residential conservation, may be through energy conservations. It does not necessarily take away from the ability or the desire to see a fully mature renewable industry established in the state.

[Mark Russell, continued.] There was a question regarding reasons why we have not been able to meet the RPS. The Task Force was instrumental in sponsoring workshops in the past year, and we have distributed our annual report to the Legislature: Volume II, Appendix C, of the *Task Force Annual Report to the Legislature and the Governor of the State of Nevada*, which summarizes many of the reasons why we may have some short fall to this point. One of the reasons being addressed by other projects on the Boards is the lack of transmission connection between the north and the south, which can't be overemphasized. We have tremendous geothermal resources in the north; unfortunately, until there is a transmission between the north and the south of the state, the south is not going to be the beneficiary of those renewable resources.

The Task Force views both the development of renewals and energy conservation as important. The cheapest, longest-ranging, longest-lasting energy is the energy we never use. With the growth we are continuing to face in the state, we believe we should do everything we possibly can to encourage conservation while encouraging the development of renewables. Chairwoman Buckley rightfully pointed out the concern, even if it is discretionary and not mandatory, that we will in some fashion be denigrating our efforts to achieve the portfolio standard. Energy conservation can be put into place much more quickly and efficiently than the construction of long-term solar and wind facilities that take up to five years for financing, siting, and regulatory processes.

We're looking at a compatible mechanism that can offset the current shortfalls, so instead of going in front of the Public Utilities Commission on an annual basis for the next couple of years, we're debating whether or not penalties or sanctions should be assessed for the utilities' shortfall, and to have an alternative mechanism that provides as much benefit to the state and the residents of the state to meet the portfolio standard in the short term. In the long term, as projects continue to come online, it may make sense for this Body and the Senate to look at whether or not an alteration on how you calculate the credit for energy conservation should be undertaken and whether, three or four more years down the road, it should be used only as an offset against penalties rather than to meet the portfolio standard. As Chairwoman Buckley mentioned, should there be alternative legislation which identifies conservation alone, I'm not sure that's the best way to go, but it's certainly a way this Body could go, and it's open. The Task Force does not recommend specific terms in legislation, and through our efforts, we hope to provide a broad range of options for the Assembly and Senate to choose from.

[Mark Russell, continued.] We are supporters of the bill. It is consistent with the annual report we prepared and submitted to all the legislators, and we hope this Body will give it favorable consideration.

**Tim Carlson, Member, Renewable Energy Task Force:**

The language in this bill is positive. We're all here to try to help and develop a stronger utility process that will replace fossil fuels in a manner that is advantageous environmentally, economically, et cetera. Even though the 25 percent issue does cut into the portfolio standard, the Legislature will understand it might need to be increased. We might be able to meet some of these standards on a regular basis and increase them, but it will be based on economics and what's fair and equitable to the rate payers, as it has been and always will be.

I feel strongly about the wind industry. The wind industry is producing energy at a much lower cost than the fossil fuel business is today. Our contract is the only wind contract the power company has passed through the Public Utilities Commission [PUC] and has worked hard with the PUC and the Governor's Office on the TRED Program, because our \$250 million investment in a 50 megawatt plant was not going to be taken up easily by the financial community. We worked together as a unit to accomplish what was necessary to set aside and protect the investor as much as we possibly could. The utility is growing, is increasing in value, and has done a great job over the last two years in changing that trend and method through everybody's help and effort.

We're showing as Nevadans that we're working together to solve this problem. The consumer is certainly getting the benefit of this if we go in this direction because the consumer will have more incentives for participating in renewable energies. We are developing three other sites in eastern Nevada, and we're talking to two other utility companies who are very interested in taking this energy. We could have a total of 650 megawatts being generated in eastern Nevada within the next three to four years.

We've just signed a positive contract with a company in the East with a balance sheet of \$9.5 billion last year in earnings. They are interested in Nevada and what we can do to develop this energy. They would be our development partners and they will be the ones who will put those dollars into a project because the power company is showing its strength. The contracts that we're negotiating are real and viable and the sites are proving to be viable sites Nevada will benefit from. What does that mean to us as a state? In Lincoln County, we would develop a 200-megawatt project, and they would receive well over \$2 million in tax revenues from that one project annually. We all know what \$2 million in tax revenues to Lincoln County would mean. That's

why these programs are so important and why the portfolio standard makes so much sense to our citizens. I want to make sure we don't go backward and we do increase the standard. We must figure out how we're going to solve these problems initially by adding the issue before us today, and by expanding upon it in the future as we become more aggressive in our position.

[Tim Carlson, continued.] The issue of transmission is the vein we can use to get the energy out to the system. If we concentrate on delivering this renewable energy in these large amounts, we can certainly meet the portfolio standard placed before us.

**Chairwoman Buckley:**

We thank you for your testimony. Now let's come back up to Carson City.

**Fred Schmidt, Legislative Advocate, representing ORMAT, Sparks, Nevada:**

ORMAT is why you pass this law; we're the success story. The bill you passed four years ago is not all disappointment. I was a part of the group that was here on a prior panel supporting the legislation. My main role in that function was to make sure the 25 percent limit was placed on it so it wasn't a watering down of the portfolio standard beyond what we thought was acceptable at this point. ORMAT has been in Nevada since the mid 1980s. It has constructed numerous plants in the state. It has equipment in operation in most all the geothermal plants in the state. It's an international corporation with geothermal plants in 21 countries. In the last two years, after you passed the renewable bill in the 2001 Legislative Session, it has raised over \$195 million in new debt financing in the U.S. It has gone on the New York Stock Exchange and raised over another \$130 million, all the while its North American headquarters are here in Sparks, Nevada.

As you drive north on U.S. 395, those plants at the intersection of the Mount Rose Highway are owned and operated by ORMAT, one of which is the only new plant on a geothermal basis currently under construction since you passed the law in 2001. When that plant is brought online, adding another 20 megawatts of renewable to the state. ORMAT is a reason we're at 4 percent today, and ORMAT wants to help us get higher up the scale and is working to do that. We've signed two new contracts since the law passed in 2001. The plant now under construction at the Mount Rose Highway intersection will add 20 megawatts, and when that's combined with the other plants, we will nearly supply enough energy out of that complex to serve most of the residential population in Reno. We also have a plant 50 miles east of Reno, which has been operating for over a decade.

**Dan Schochet, Vice President, ORMAT, Sparks, Nevada; and Geothermal Member, Nevada Renewable Energy Task Force; and representing Caithness Energy, Beowawe, Nevada:**

We raised \$250 million in debt and \$100 million in equity in the past few years. We actually signed three power sales contracts with Sierra Pacific, and they've all been approved at the PUC level.

The existing RPS legislation is working. From 1991 to 2001, there were no new geothermal projects in Nevada. Although the RPS got off to a slow start, there are now six companies, including ORMAT and Caithness, who are operating geothermal plants in Nevada. There are ten companies, eight of which are not operators, conducting geothermal exploration in Nevada. The BLM [Bureau of Land Management] has either issued or has on their application 500,000 acres of BLM land for geothermal leasing. Based on a report prepared by one of the leading consultants in the country for the California Energy Commission to describe the geothermal potential of California and Nevada, approximately 2,000 additional megawatts of geothermal energy was identified in Nevada. We're looking at almost achieving the critical mass we need to begin to develop the level of geothermal power plants that have been projected for some time.

ORMAT is now developing three new projects. These would total at least 50 megawatts, and there are other developers working on several power sales agreements received from Sierra. They have an RFP on the street and we expect there will additional contracts issued. The inclusion of energy efficiency in the RPS is a useful goal. We don't oppose S.B. 188. As long as we've limited the energy efficiency portion to 25 percent of the RPS, this will maintain the impetus on developing new renewable generation projects.

**Chairwoman Buckley:**

We thank you for your testimony. We're glad you're doing so well because that's the reason we passed the bill in the first place. We applaud your efforts and are hopeful that perhaps the legislation helped encourage them.

**Joseph Johnson, representing the Toiyabe Chapter of the Sierra Club:**

We are supportive of this bill. I've provided testimony ([Exhibit G](#)) that identifies several issues of measurement verification. These set the basis in the rule development. It issues three connections between resource planning, load forecast, and efficiency requirements. This is a significant issue and item for distributive generation count as an efficiency measure. Should the RPS be increased to compensate for 25 percent in the year 2050, it would be a fairly easy proposed amendment to extend the portfolio requirements. It wouldn't be reasonable to increase the existing portfolio requirement for the period covered, but simply increase it the same 2 percent level from 2013 to 2015, up to a



maximum of 25 percent. Many of the more recent portfolio standards that have been adopted have not only the administrative fine, but they have an alternative means of compliance. This means administratively there could be a transfer of funds in lieu of meeting the portfolio requirement for a particular year into an energy trust or a fund we created that funds the task force. Assemblyman Hettrick's A.B. 429 of the 2003 Legislative Session had funding that was available for promoting net metering projects. This fund could be funded from the alternative means of compliance.

[Joseph Johnson, continued.] I have a handout of proposed amendments ([Exhibit H](#)). The policy statement promoting conservation of energy for residences and businesses should also include schools and public buildings. Presently, even though we hope the utility will meet its requirements, the present administrative fines go to the State General Fund. The proposed amendment would change that to the trust fund for renewable energy and energy conservation. I did not prepare a formal amendment on increasing portfolio because this is a subject for out-years and could be addressed.

**Assemblyman Anderson:**

I think about the solar energy project going on in a middle school in my district, which is a project on solar paneling. How will this change the policies by adding schools and public buildings?

**Joseph Johnson:**

The present demonstration program is addressed in A.B. 385, and to extend that is separate from this issue. Senate Bill 188 and the portion I'm proposing to amend ([Exhibit H](#)) is a policy statement on the basis of which the PUC will be adopting rules. The existing language wouldn't preclude them from having efficiency measures in public buildings or schools, but it would be helpful to include it in the language of the policy statement.

**Assemblyman Anderson:**

I am concerned if we include public buildings, they will carry the responsibility of developing an overall conservative energy policy whereby we just put that reliance upon the governmental buildings and not on the public as a whole. I recognize that plant has been there for some time and gone through several different generations of redevelopment. I am concerned that we are going to lessen rather than increase if we move it just to public buildings, rather than the access to the public as a whole.

**Joseph Johnson:**

I originally had some concern about the efficiency measures and how 25 percent applies. The policy of environmental organization is the greenest kilowatt hour is one that's not produced. We're supportive of efficiency being included in the portfolio definition. If we have the increase in the out-year portfolio standard, we'd actually have an overall increase if we went to a long-term 25 percent. I don't believe we'll affect the overall performance of a portfolio of schools and public buildings. It's optional and it's a rebate program that has to meet economic evaluations, so this is not forcing the public buildings or schools to participate. It would be a permissive allowance for them under the direction of the policy segment of the Legislature to the PUC.

**Robert Tretiak, Business Development Officer, International Energy Conservation, Las Vegas, Nevada:**

We do support the inclusion of the energy conservation component and the electrical utility portfolio standard. A Price Waterhouse Coopers report stated the biggest problem the U.S. has is stability of its power. We are in a very critical situation where the difference between supply and demand is razor thin. Renewables are inextricably wedded to conservation, and the State Task Force is for renewables and energy conservation. Chairwoman Buckley, your question about who ties in energy conservation to renewables was well put, and we are an Energy Star partner. The Energy Star Program is one of the most widely known and respected energy programs in the country which equates green energy to energy conservation and the determination of an energy star score. Energy conservation costs significantly less, and with solar power, it's often faster to implement, savings start sooner, it's less capital-intensive, and it contributes to a more robust and reliable electrical goods supply. It gives an additional tool to our state's major utility in being able to meet their portfolio standard.

On page 4 ([Exhibit I](#)), some of the major benefits in reduction of the use of fossil-fuel power generation are a reduction of carbon dioxide (CO<sub>2</sub>) and other greenhouse gases that have been shown to be harmful to the environment, reduction of reliance on foreign petrochemical resources, and reduction of demand on finite fossil fuels, exerting a deflationary pressure on fuel prices. We're shipping \$3 billion a year out of state to pay for the shortfall between what we generate and what we use. By doing more energy conservation instead of shipping that money out of the state, we will be creating jobs to install and commission energy conservation and green generation technology.

I've been asked by the Southwest Energy Efficiency Project to deliver a fact sheet ([Exhibit J](#)), which indicates that S.B. 188 could result in around 2.4 billion kilowatt hours per year in electrical savings, and 950 megawatts of peak power

demand by 2013. Consumers and businesses in Nevada could save over \$800 million as a result of utility energy-efficiency programs and energy efficient programs to stimulate the adoption of some of these products. They could save water as well as energy, and water is critically important in our state. Senate Bill 188 will lead to an increase in employment in Nevada due to jobs created in selling and installing energy efficiency measures.

[Robert Tretiak, continued.] Our Governor has stated that by increasing energy efficiency in the time of high energy prices, we protect Nevada's economic vitality. President Bush has stated high energy prices are a problem created by not having enough energy supplies to keep pace with demand. In President Clinton's autobiography, he referred to a PUC rate case when he was Attorney General in Arkansas. He said, "At the time, conventional wisdom among business and political leaders was that economic growth required constantly increasing electricity production. I thought we could meet the increased demand for electricity much less expensively through energy conservation and green energy." I second that.

**Chairwoman Buckley:**

Thank you for your testimony. I'll close the public hearing on S.B. 188. We'll hold this over to the work session. There are some very good provisions of the bill with regard to the financing of the renewable energy products. I can't imagine I would entertain a vote to water down our renewable energy standards. If you can think of something that wouldn't do that, we'll consider it at our work session, but I wouldn't be inclined to entertain a motion to reduce our standards. The rest of the bill looks good and has some support. With that, we are adjourned [at 5:26 p.m.].

RESPECTFULLY SUBMITTED:

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James S. Cassimus  
Transcribing Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairwoman

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

## EXHIBITS

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

**Date:** May 16, 2005

**Time of Meeting:** 2:09 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	<b>A</b>	Legislative Counsel Bureau	Agenda
SB 126	<b>B</b>	Robin Drew, Private Citizen, Las Vegas, Nevada	Claimant's Response to Insurer's Opposition to Claimant's Motion
SB 398	<b>C</b>	Joe Johnson, Legislative Advocate representing Independent Power Corporation, Reno Nevada	Letter from Grace Caldwell
SB 247	<b>D</b>	Richard Clauser, Naturist Society and The Naturist Action Committee	Recommended Definition of Adult Entertainment
SB 247	<b>E</b>	Diane Thornton, Committee Policy Analyst	<i>Star Trek</i> Amendment to SB 247.
SB 188	<b>F</b>	Michael Yackira, Executive Vice President and Chief National Officer, Sierra Pacific Resources, Nevada Power, and Sierra Pacific Power Company, Nevada	SB 188 Changes to the Portfolio Standard
SB 188	<b>G</b>	Joseph Johnson, Toiyabe Chapter, Sierra Club	Comments to SB 188.
SB 188	<b>H</b>	Joseph Johnson, Toiyabe Chapter, Sierra Club	Proposed Amendments to SB 188.
SB 188	<b>I</b>	Robert Tretiak, Business Development Officer, International Energy Conservation, Las Vegas, Nevada	IEC Mission Statement
SB 188	<b>J</b>	Robert Tretiak, Business Development Officer, International Energy Conservation, Las Vegas, Nevada	Fact Sheet for SB 188.