

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

**Seventy-Third Session
May 18, 2005**

The Committee on Commerce and Labor was called to order at 2:18 p.m., on Wednesday, May 18, 2005. Chairman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, 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, Chairman
Mr. John Ocegüera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Maggie Carlton, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Mary Garcia, Committee Attaché

Gwenavere Dally, Committee Assistant

OTHERS PRESENT:

Vicky Sakach, Vice President, Nevada Barbers' Health and Sanitation Board

Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders Association

Margi Grein, Executive Officer, Nevada State Contractors Board

Joe Vassallo, President and Owner, Paragon Pools, Las Vegas, Nevada

Michael Springer, Attorney, representing Timberline Pools & Spas, Carson City, Nevada

Vice Chairman Ocegüera:

[Meeting called to order. Roll called.] We have several bills on our work session today. Senator Carlton has a proposed amendment to one of those bills. We will begin with Senate Bill 335.

Senate Bill 335 (1st Reprint): Revises provisions governing practice of barbering, cosmetology and related professions. (BDR 54-1356)

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

I am here in regard to a concern raised after S.B. 335 had passed the Senate. After some investigation, I realized that there was a way to solve that concern.

The problem is that barbers, especially straight-edge types, are rare in this state. It was brought to my attention, with the opening of new resorts and day spas in southern Nevada, that there was a shortage of this type of barber. The Barbers' Board gives its test only a couple times a year, depending upon how many want to become licensed.

As a solution to this problem, I propose a short-term license for a barber coming from another state. They would have to meet certain criteria that we have used in other legislation and other boards to allow this. I am modeling this proposal after S.B. 152, which was the physical therapist bill allowing them to come into the state and practice before they were licensed here.

How would this work? Let's say we have a barber from Arizona that wants to move to Nevada. They would submit an application. It would be verified and the fingerprints done, but the test may not be given for 3 to 4 months. They would be allowed to come into the state and practice under the supervision of another

licensee in this state until they take the test. If they don't pass, then there is no more license and they head back to Arizona or wherever.

Vice Chairman Ocegüera:

That person would then be licensed in another state?

Senator Carlton:

They must be licensed in another state. The Barbers' Board would investigate if they had any discipline and have the option of accepting the application and do all the things they now do. This would allow the person to practice and not wait in their home state until they took the test. A lot of boards in the state are very uncomfortable with reciprocity because they want to understand who is being licensed in the state. They would be working under a licensee of the Barbers' Board and, thus, monitored and supervised until they took the test.

Vice Chairman Ocegüera:

Is there any discussion from the Committee regarding Senator Carlton's bill? Is there someone here from the Barbers' Board?

Senator Carlton:

I left a message for them, but in southern Nevada and not in the north. With this bill, I was hoping someone would be available. We had not discussed this; this was done of my own accord. It was a problem that was brought to me and I saw a solution. It all happened very quickly.

Vicky Sakach, Vice President, Nevada Barbers' Health and Sanitation Board:

We like her idea. We test only four times a year. We recently had a person who had to move here for health care reasons. He has to wait because he missed the deadline for the June examination. Our next examination will be in August. He needs to work till then. This is an excellent idea.

Senator Carlton:

Thank you.

Vice Chairman Ocegüera:

Any Committee discussion?

Assemblyman Hettrick:

I think it is a reasonable solution. I give the Senator credit for coming up with a way to help. It is a good idea. My suggestion to the Vice Chair is that we change the effective dates to help this person that Ms. Sakach just talked about. We can make this bill effective on passage and approval and he could have a license until he is tested.

Vice Chairman Ocegüera:

Any questions or concerns from the Committee? Diane [Thornton, Committee Policy Analyst], can we write that up conceptually with the two amendments? Is there a motion?

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS SENATE BILL 335 WITH THE LICENSING SUGGESTION FROM SENATOR CARLTON AND EFFECTIVE DATE CHANGES FROM ASSEMBLYMAN HETTRICK.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Parks, Assemblyman Perkins, and Assemblywoman Buckley were not present for the vote.)

Vice Chairman Ocegüera:

Let's talk about S.B. 29.

Senate Bill 29 (2nd Reprint): Requires policies of health insurance to provide coverage for certain treatments for cancer. (BDR 57-265)

Diane Thornton, Committee Policy Analyst:

Senate Bill 29 requires policies of health insurance to provide broad coverage for certain treatments for cancer. Coverage must be provided for Phase I studies or clinical trials for treatment of cancer. To qualify for coverage, the treatment must be conducted at a facility that meets certain requirements and standards. The bill also makes changes to the coverage that must be provided when an individual participates in a study or clinical trial for the treatment of cancer or chronic fatigue syndrome.

An amendment was proposed by Chairwoman Buckley. It is behind Tab A of your work session packet ([Exhibit B](#)). Testifying on behalf of the bill was Buffy Martin from the American Cancer Society and Dr. Sunil Sharma from the Nevada Cancer Institute.

The amendment (pages 13 to 32 of [Exhibit B](#)) limits the medical treatment covered for Phase I trials to the cost of any routine health care services that

would otherwise be covered under the policy health insurance for policyholders or subscribers. In addition, an authorized facility is defined to include an affiliate of an authorized facility.

Vice Chairman Ocegüera:

Are there any questions, comments, or concerns?

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS SENATE BILL 29.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Anderson, Assemblyman Parks, Assemblyman Perkins, and Assemblywoman Buckley were not present for the vote.)

Vice Chairman Ocegüera:

Let's move on to 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)

Diane Thornton, Committee Policy Analyst:

Senate Bill 126 requires the Director of the Office for Consumer Health Assistance in the Office of the Governor to employ persons with experience in the field of industrial insurance. It was sponsored by Senator Schneider and first heard on May 16, 2005.

Senate Bill 126 requires the Director, within the limits of available money, to employ at least two persons who have experience in workers' compensation, including claims administration, representing employees in contested claims, or advocating for the rights of injured employees.

The proposed amendment by Chairwoman Buckley (page 3 of [Exhibit B](#)) would require the Division of Industrial Relations to include on its website—and certain flyers, posters, or notices for injured workers—the contact information for the Office for Consumer Health Assistance.

Vice Chairman Ocegüera:

The amendment is conceptual. In talking with the sponsor and Ms. Buckley, the goal is to have the contact information accessible. The posters and flyers that are placed in workplaces would actually have a phone number for them to call. It is a reasonable request.

Assemblywoman Giunchigliani:

I spoke with Chairwoman Buckley this morning. We wanted to be sure that the funding would be available in the ombudsman account.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
SENATE BILL 126.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Arberry, Assemblyman Parks, Assemblyman Perkins, and Assemblywoman Buckley were not present for the vote.)

Vice Chairman Ocegüera:

We now have S.B. 163.

Senate Bill 163 (1st Reprint): Makes changes relating to certain regulatory bodies which administer occupational licensing. (BDR 54-22)

Diane Thornton, Committee Policy Analyst:

Senate Bill 163 makes changes relating to certain regulatory bodies that administer occupational licensing. It was sponsored by Senator Carlton and first heard on May 9, 2005.

The bill requires that meetings of occupational and professional licensing boards be held in the state of Nevada if the meeting is subject to the Open Meeting Law and business is conducted during the meeting. The bill also requires written notice of a meeting of a regulatory body to state whether it will be conducted by audio or video teleconference. Interested parties attending a meeting by teleconference must be allowed to participate in such a meeting. The bill also changes the effective dates of provisions for submitting required information.

[Diane Thornton, continued.] There are two proposed amendments. The first amendment (page 34 of [Exhibit B](#)) was proposed by Dr. Edward Fishman and concerns pharmacists. It requires the pharmacist to fill or refill a prescription under certain circumstances. If the pharmacist refuses to fill the prescription, he is required to consult with the practitioner who prescribed the drug. Testifying on behalf of this amendment was Pat Elzy from Planned Parenthood and Jan Gilbert from PLAN [Progressive Leadership Alliance of Nevada].

The second amendment (page 4 of [Exhibit B](#)) is from Chairwoman Buckley, who, during the hearing, proposed to amend the bill in regard to temporary licensing. She proposed that if a derogatory item was revealed from the background check that the boards be given the discretion to initiate a discipline hearing on a case-by-case basis. This amendment would mirror the amendment that the Committee voted on for S.B. 208, sponsored by Assemblyman Horne.

Assemblywoman Gansert:

I have a problem with the first amendment that Pat Elzy and Jan Gilbert testified to. It doesn't leave a pharmacist any room if they have objections via their moral or religious beliefs. We passed Debbie Smith's bill that allowed you to move your prescription to another pharmacy; they were required to do so. I cannot support that amendment.

Assemblyman Seale:

I too have concerns with the first amendment. As someone who is licensed to practice in a profession, I am reluctant having government tell me that I have to do things. For example, Joe Conforte [former owner of the Mustang Ranch brothel] asked me to do an audit of his company so he could list it on a stock exchange, and I refused to do it. I would not like to be in a position where I was required to do something I didn't want to. I too will be voting against this amendment.

Assemblywoman Giunchigliani:

I carried the legislation last session. People try to misrepresent what the debate really is. You have restrictions under HMOs [health maintenance organizations] and PPOs [preferred provider organizations] that you only have coverage for prescription drugs at certain sites, sometimes only one. You do not have the opportunity, which Ms. Smith's bill tried to accommodate, to move that prescription to another site because it is not paid for. Rural counties sometimes only have the one pharmacy.

Pharmacists are not doctors. They do not have the same conscience clause or oath that a doctor takes. They just have a job to do, which is to dispense; that is what they are hired to do.

[Assemblywoman Giunchigliani, continued.] If a drug is contraindicated, a pharmacist has every obligation and responsibility to contact the doctor that issued the prescription and tell them they had other prescriptions that could result in a health risk. The doctor is informed of what other drugs they are taking and makes a decision based on that.

For a pharmacist to decide what I should or should not take because of personal beliefs against them—like not dispensing Viagra or birth control pills—that is a secondary issue. They are charged with the duty to dispense. They are not doctors. They do not have the right to question a prescription written by a medical professional just because they don't believe in something.

That is the issue that the amendment is trying to get to. It is not an issue of access. They can stock whatever they chose to stock. The amendment simply says that any person who goes to their doctor and receives a prescription, no matter what it is for, the pharmacist has the duty to dispense. I support the amendment. We had a lot of discussion on this. Unfortunately, the spin that is put on this is not representative of the intent of the issue.

Assemblyman Anderson:

The argument over this bill that has been very well addressed by my colleague, Ms. Giunchigliani, says that we pick our pharmacist for convenience, either for proximity to where we live or convenience of our work schedule. It is not based on a conscious decision of what they provide or competency.

They received a license from the State to be a pharmacist; therefore, we believe they are practicing within the scope of service and have a duty to provide that service to us. We expect they will do that with a high level of prestige and integrity, like anyone who has a responsibility based on a licensed endeavor.

As a licensed teacher, I don't get to choose where or which children I wish to teach. It is not an individual choice as to the subject level or intensity. I follow a regimen that is pretty much set. We have the belief that when we go to a pharmacist, he is going to follow the doctor's prescription. The amendment clearly states what would happen if it is fraudulent, issued contrary to law, or in conflict with a prescription from another doctor they may have.

I am concerned with misrepresentation of the bill. I do not believe the limit here is contrary to what a licensed pharmacist should do. It reflects what my choices are. I chose my physician, and he knows what my medical needs are. Ms. Giunchigliani also addressed that in smaller communities, there are only one or two pharmacists available, and that some of our health insurance programs

provide you with only one choice. It would be an undue burden for them to find another. I therefore support the amendment.

Assemblyman Conklin:

I appreciate all the comments from my colleagues. We have talked about the consumer, the patient, the doctor, and the pharmacist. We haven't talked about the businessman and the stockholder who owns the pharmacy. They invested in a business to make a profit.

Since they cannot ask certain questions when they hire an employee, they hire someone to dispense the appropriate prescription that they are in business to dispense. As a businessperson, I have a problem with that. Either give me the right to ask questions needed to screen out people who may harm my business or support this amendment.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS SENATE BILL 163.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

THE MOTION CARRIED WITH ASSEMBLYWOMAN ALLEN,
ASSEMBLYWOMAN GANSERT, AND ASSEMBLYMAN SEALE
VOTING NO. (Assemblyman Parks and Assemblywoman Buckley
were not present for the vote.)

[[Exhibit C](#) and [Exhibit D](#) submitted in opposition but not heard in testimony.]

Vice Chairman Oceguela:

Let's go to S.B. 300.

Senate Bill 300 (1st Reprint): Revises provisions governing regulation of
contractors. (BDR 54-1061)

Diane Thornton, Committee Policy Analyst:

Senate Bill 300 revises provisions governing regulation of contractors. It was sponsored by Government Affairs and first heard on May 11, 2005. The bill provides that the rights and obligations of a prime contractor and an owner also apply between a prime contractor and lower-tiered contractors.

[Diane Thornton, continued.] Testifying on behalf of the bill were Steve Holloway of Associated General Contractors, Richard Peel from Peel Brimley LLP, Renny Ashleman of Southern Nevada Home Builders Association, and Margi Grein and Keith Lee from Nevada Contractors' Board.

There were two proposed amendments to the bill. The first is from Margi Grein of the Nevada State Contractors' Board (page 5 of [Exhibit B](#)). She proposed to move the definitions in Sections 2, 3, and 4 into NRS 624.606 [*Nevada Revised Statutes*]. The definitions are of "owner," "prime contractor," and "work of an improvement." NRS 624.606 deals with "prompt pay" and "right to stop work" provisions.

The second amendment offered (page 36 of [Exhibit B](#)) was from Mike Holmes from Holmes Construction. It is behind Tab C of your work session document. He recommended deleting two sections in NRS 624.620 and NRS 624.622. These deal with the residential contractor's "right to stop work."

Vice Chairman Oceguela:

There is a panel seated at the table to give testimony.

Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders Association:

We gave testimony in favor of Ms. Grein's amendment, which was not included in your work session document. That amendment is needed to make this bill technically correct. We have already testified on it and do not wish to testify again. We need this amendment. Ms. Grein's amendment, if you recall, rejects Mr. Holmes amendment.

Vice Chairman Oceguela:

Diane, have we seen this amendment before?

Diane Thornton:

This was presented during the Committee meeting on May 11, 2005 ([Exhibit E](#)).

Assemblyman Hettrick:

Can Mr. Ashleman explain why they rejected Mr. Holmes' amendment? Why is it that the residential contractor cannot stop his work if he is not getting paid?

Renny Ashleman:

The problem with his amendment is that we have always left out the individual residential owner. We are talking about the individual who has somebody work on his house rather than the people who build tract housing.

[Renny Ashleman, continued.] The "prompt pay" law is a very sophisticated bill. As a contractor, I can send you a change order. If you do not properly reply to that change order or if it is wrong, it automatically becomes an amendment contract. This is a dangerous proposition for an individual. That is what we are worried about. There are other similar provisions throughout the "prompt pay" law. The individual homeowner should be left out of the "prompt pay" mechanism.

His amendment would also put all public works under the "prompt pay" law. That was a battle that was raised in the Legislature in prior sessions. Simply put, on behalf of the public entities, they believe they don't need to be caught up in all of this bureaucracy. They may not pay as promptly as others, but they eventually do. Those are the reasons on the two parts of his amendment.

Vice Chairman Ocegüera:

Any further discussion on S.B. 300 and its amendments as presented in the work session document?

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS SENATE BILL 300 WITH THE AMENDMENT BY MS. GREIN IN THE WORK SESSION DOCUMENT, THE SUGGESTION MADE BY MR. ASHLEMAN, LEAVING OUT INDIVIDUAL HOMEOWNERS FROM "PROMPT PAY," AND OMITTING MR. HOLMES' AMENDMENT.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Arberry and Assemblywoman Buckley were not present for the vote.)

Vice Chairman Ocegüera:

Let's go to 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)

Diane Thornton, Committee Policy Analyst:

Senate Bill 315 provides for regulations of certain business brokers and revises provisions governing disclosures in certain real estate transactions. It was sponsored by Senator Nolan and first heard on May 16, 2005.

Testifying on behalf of the bill was Jim Nadeau of the Nevada Association of Realtors, Charles Mack from Mack Realty, and Gail Anderson of the Real Estate Division.

This bill establishes a permitting process for business brokers under the auspices of the Real Estate Commission. Additionally, the measure makes it unlawful to engage in the business of a business broker without first obtaining the appropriate license and permit. There were no proposed amendments to the bill and no opposition to the bill.

Vice Chairman Ocegüera:

Any discussion on S.B. 315?

Assemblyman Seale:

I held up this bill because I had a concern with a part of it. I now understand it and am comfortable with it.

Assemblyman Parks:

I want to make the same disclosure I made on May 16 that I am a licensed real estate salesperson, and this will not affect me any differently than anyone else.

ASSEMBLYMAN SEALE MOVED TO DO PASS SENATE BILL 315.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Arberry and Assemblywoman Buckley were not present for the vote.)

Vice Chairman Ocegüera:

Senate Bill 398 is next.

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

Diane Thornton, Committee Policy Analyst:

Senate Bill 398 delays prospective expiration of exemption from certain sales taxes for certain products and systems that use renewable energy. It was sponsored by Nature Resources and first heard on May 16, 2005.

This bill delays from June 30, 2005 to December 31, 2005, the expiration of the exemption from the Local School Support Tax and certain analogues taxes for certain products and systems that use renewable energy.

Testifying on behalf of the bill were Senator Rhoads, Joseph Johnson from Independent Power Corporation, and John Wellinghoff from Power Light Corporation. There was a proposed amendment from John Wellinghoff that would provide for the submission to the voters of the question whether the Sales and Use Tax of 1955 should be amended to provide an exemption from the tax for certain products and systems that use renewable energy.

Assemblywoman Giunchigliani:

We would not be able to entertain that in this bill if we wish to. It would have to be a request from the Elections Committee to pursue the idea of a ballot question to treat this as other measures.

Vice Chairman Oceguela:

Any other discussion?

ASSEMBLYMAN HETTRICK MOVED TO DO PASS
SENATE BILL 398.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Arberry and
Assemblywoman Buckley were not present for the vote.)

Vice Chairman Oceguela:

We'll move to S.B. 434.

Senate Bill 434 (1st Reprint): Revises provisions governing regulation of
contractors. (BDR 52-1103)

Diane Thornton, Committee Policy Analyst:

Senate Bill 434 revises provisions governing regulation of contractors. It was sponsored by Commerce and Labor and first heard on May 9, 2005. The bill prohibits a person, for a fee, from directly or indirectly performing or offering to perform work concerning residential swimming pool or spa, including acting as a consultant or supervisor, without holding an appropriate license, certificate, or permit. The bill also directs the State Contractors' Board to adopt regulations providing classifications of licensing that authorize a pool and spa contractor to perform potable water plumbing and gas line installations in connection with pools and spas.

The bill also authorizes the Board to relieve a pool or spa contractor of certain bonding requirements if the contractor has acted in that capacity in this state for not less than 5 consecutive years. The Board may require a contractor who has been relieved of the bonding requirements to again comply with them under certain circumstances.

Margi Grein from Nevada State Contractors' Board proposed the amendment behind Tab D in your work session document (page 39 of [Exhibit B](#)). It requires that pool contractors post two bonds: a surety or license bond and a consumer protection bond. It requires that all residential pool contractors be subject to the posting of a consumer protection bond. After 5 years, the Board may relieve the contractor of the consumer protection requirement under certain circumstances.

The bill (page 10 of [Exhibit B](#)) defines the terms "consumer," "contractor," "contract," and "work concerning residential pool or spa" and directs the Board to adopt regulations to carry out the provisions of this bill, including guidelines and procedures necessary to determine the amount of the bond required to be posted, the form of bond required pursuant to this section, the time required for an applicant or licensee to comply with the provisions of this section, and procedures to contest the amount of a bond required by the Board.

During the hearing, Committee members voiced concerns that provisions covering the bonds may be cumbersome, and they did not want to endanger the consumer protection aspects of the law. Chairwoman Buckley instructed the interested parties to work together to resolve their differences. Keith Lee from the Nevada Contractors' Board and Peter Krueger from the Association of Pool and Spa Professionals worked together on this amendment (page 39 of [Exhibit B](#)).

Assemblyman Hettrick:

I am concerned about the discussion we had about a contractor who might build only two pools a year. Looking at the cost and ability to switch over to a cash

deposit—which is \$50,000 to \$400,000—the contractor building two pools a year would have to post a cash deposit of \$50,000, the cost of the two pools. My concern is we are going to put this small contractor out of business because he cannot do the bonds. Is there a way we can make this work and still give us some consumer protection?

Margi Grein, Executive Officer, Nevada State Contractors' Board:

When we discussed this on May 9 with the pool industry, we proposed that it would be the same as our surety bond, which is \$1,000 to \$500,000. The industry wanted it to be \$50,000 to \$400,000. They would have to tell why they wanted that provision. The Board thought the \$1,000 to \$500,000 would address the small contractor that you mentioned.

Joe Vassallo, President and Owner, Paragon Pools, Las Vegas, Nevada:

I sit on the legislative committee of the APSP [Association of Pool and Spa Professionals], which is the national association for our industry. To make it short, we would have no objection to lowering the amount. It was an amount brought about by discussion. It would cost about \$2,000 to post a \$50,000 bond.

Assemblyman Hettrick:

The problem I have is that it says bond or a cash deposit. You are looking at someone who might want to put up the cash deposit, but it is \$50,000. That may be more than the cost of a small pool in a rural area like Elko. I would like to leave flexibility for the Board to determine what is fair. The larger contractor should pay more. I don't want to put a small contractor out of business. I would like to lower the amount to something more reasonable. We could do \$10,000 to \$400,000 and give the Board the flexibility to decide.

Joe Vassallo:

We are okay with whatever you and the Board agree on.

Vice Chairman Oceguela:

Is there any further discussion?

Assemblyman Conklin:

I have a concern with these requirements for bonds. These bills that have come before Committees have a stiffer requirement for new companies coming in. I recognize the need to protect the consumer; there is also damage to the consumer. When you charge a new company more than an older, established one, you limit the competition and that drives up the price of a pool. I do not want to hold up this bill, which might delay others.

[Assemblyman Conklin, continued.] However, I would like to know from Ms. Grein that when the Board considers how much for a bond, you are not doing it solely on the basis that the company is new, but rather on the basis that the company is financially sound and has the resources to backup what they are selling.

Margi Grein:

The Board does look at the financial ability of the contractor, past and future solvency. With pool contractors, it was a dramatic issue for many who testified in the past four sessions. With these changes, we are not adding an additional bond; we are simply changing from the payment performance bond to a consumer bond, which is easier for the pool contractor to obtain. The consumer protection bond was put in place in 2001 not as a mandatory provision, but as an additional provision. Now, we are switching that. It will be a mandatory consumer protection bond and a possible payment performance bond for those contractors who have violated the law.

Assemblyman Conklin:

I understand that. The issue is not whether the bond is necessary. It is whether, when you determine the amount for the bond, the Board is basing that on the fact that it is a new company who gets a higher bond and an older company gets a lower or no bond. The older company has a distinct advantage in the marketplace.

Margi Grein:

The Board is, with the bond, going to establish by regulation what those parameters are for setting the bond amount. Someone who is doing a few pools a year, their bond is going to be different than someone who is building 600 pools a year. That parameter will be developed by regulation. We will definitely consider what you mentioned about an equal playing field for all pool contractors.

Assemblywoman Giunchigliani:

When someone posts a bond, is it the whole dollar amount or a percentage?

Joe Vassallo:

The bonding companies will not allow you to put a partial payment. It would be the entire amount of the contract. That would be the extent of their liability.

Assemblywoman Giunchigliani:

I was thinking of other bills we've had where it is 5 percent that is required to be put down to obtain the bond.

Joe Vassallo:

The law, as it reads on the payment and performance bond, says you only have to put up 50 percent. There is no bonding company that will do 50 percent.

Assemblywoman Giunchigliani:

That is on pools.

Joe Vassallo:

That is correct. I can only speak about pools.

Assemblywoman Giunchigliani:

This is a payment and performance bond?

Joe Vassallo:

That is what is in the law now. Since those are not available, that is the reason why we are here.

Assemblywoman Giunchigliani:

We cannot make you get something if it does not exist.

Joe Vassallo:

What we are looking to do is replace the payment and performance bond with a consumer protection bond, which is essentially a blank bond. It is easier and more obtainable for most of the companies.

Assemblywoman Giunchigliani:

Those require a certain percentage of the amount. If the bond were \$1 million, the amount to put up is 5 or 10 percent of that.

Margi Grein:

The range is 1 to 5 percent. It is one bond that does not cover each specific project. It is the license surety bond.

Assemblywoman Giunchigliani:

It is the overall umbrella bond.

Margi Grein:

That is correct.

Assemblywoman Giunchigliani:

I would like a higher bond then to protect the consumers in the long run. If someone goes out of business, we have a problem. In southern Nevada, we had fly-by-night companies come in, take a certain percentage of the cost, dig the

hole, and then take off. The consumer was stuck with just a hole. I want to be sure the consumer is protected. We talked about an escrow account, and other things, to make certain the money was there to assure that the consumer was held whole under those circumstances. Are you now suggesting the Board, by regulation, establish a bond amount based on the financial solvency?

Margi Grein:

That is correct.

Assemblywoman Giunchigliani:

How do you determine their financial solvency?

Margi Grein:

The company provides a CPA [certified public accountant]-prepared financial statement. We look at their working capital, net worth, and their references. We are just now seeing a difference in the pool industry in southern Nevada. We don't want to see us going back to the way it was before.

Assemblywoman Giunchigliani:

I don't think the contractors or owners would want that either. Mr. Vassallo, are you in agreement with her new suggestion?

Joe Vassallo:

We are for the amendment. We worked hard together to get to this point. There are two additional reasons why this bill is important. If we don't make a change, we have 20 companies that will go out of business since they are unavailable to get the bonds the current law requires. Also, I wish to clarify the interpretation of the phrase that is used in the law as a standard to decide whether or not a contractor needs that performance bond. These would be for those contractors who show less than financial stability, possible major infractions, or a large number of complaints. We don't want this to come back onto our industry where every company is required to have a consumer protection bond.

Assemblyman Hettrick:

One the first page of the amendment (page 39 of [Exhibit B](#)), in Section 7(c), it says, "Has five valid complaints filed against him with the Board..." It would take something to get you there.

Margi Grein:

That is existing law. With those five valid complaints, it would be determined that it was a risk to the public. That would be a red flag.

Assemblyman Hettrick:

That is exactly my point. This applies to people who have had a problem or do not show financial stability.

Margi Grein:

That is correct.

Vice Chairman Ocegüera:

Further comments from the Committee?

Michael Springer, Attorney, representing Timberline Pools & Spa, Carson City, Nevada:

We have a lawsuit over the existing statute, which picks on the new company versus an older company. We worked carefully with the Contractors' Board on this concept, which is a mirror image of the current statute as it applies to license bonds that cover every contractor in the State of Nevada. After 5 years, those bonds are reviewed by the Board and can be waived, depending on financial stability, performance in the field, experience, and all the discretion that the Board has. That is the reason this bill is drafted the way it is. It mirrors a license bond and just addresses pool contractors to protect the public at one more level. After that 5 years, both bonds can be reviewed and reenacted if the 10-year-old contractor is having troubles.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
SENATE BILL 434 WITH THE AMENDMENT REDUCING THE BOND
AMOUNT TO \$10,000, INSTEAD OF \$50,000, WITH THE
DISCRETION TO GO UP TO \$400,000.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Arberry and
Assemblywoman Buckley were not present for the vote.)

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Vice Chairman Oceguela:

That is it for the work session. We are adjourned [at 3:09 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 18, 2005

Time of Meeting: 2:18 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		AGENDA
	B	Diane Thornton / Committee Policy Analyst, LCB	Work Session Packet for S.B. 29, 126, 163, 300, 315, 335, 398, and 434
SB 163	C	Patricia Glenn / President, Nevada Right-to-Life	Letter of opposition.
SB 163	D	Catholic Bishop Straling of Reno and Bishop Pepe of Las Vegas	Letter of opposition.
SB 300	E	Steve Holloway, Richard Peel, Renny Ashleman, and Margi Grein	Amendment to S.B. 300 (dated May 11, 2005)