

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
March 31, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 7:35 a.m. on Thursday, March 31, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Sandra J. Tiffany
Senator Joe Heck

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

Renny Ashleman, Southern Nevada Home Builders Association
James F. Nadeau, Nevada Association of Realtors
Tami DeVries, Legal Administrative Officer, Real Estate Division, Department of Business and Industry
James Wadhams, Southern Nevada Home Builders Association
Keith Marcher, Supervising Senior Deputy Attorney General, Office of the Attorney General
Noni Johnson, Executive Director, State Board of Professional Engineers and Land Surveyors
K. Neena Laxalt, Nevada Board of Veterinary Medical Examiners; Board of Examiners for Marriage and Family Therapists
Denise Selleck Davis, Nevada Osteopathic Medical Association

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Charlotte Matanane Bible, Chief Deputy Attorney General, Civil Division, Office
of the Attorney General
Donald Miner, D.C., Secretary, Chiropractic Physicians' Board of Nevada
James T. Russell, Nevada State Board of Accountancy
Keith Lee, Board of Medical Examiners
Dorothy B. North, President, Board of Examiners for Alcohol, Drug Abuse, and
Gambling Counselors
Trey Delap, Deputy Executive Director, State Board of Osteopathic Medicine
Chris Cooke, Field Inspector, State Board of Cosmetology
Sharon Atkinson, Executive Director, Board of Examiners for Alcohol, Drug
Abuse, and Gambling Counselors

CHAIR CARLTON:

I will now open the meeting to Senate Bill (S.B.) 300.

SENATE BILL 300: Revises provisions governing regulation of contractors.
(BDR 54-1061)

RENNY ASHLEMAN (Southern Nevada Home Builders Association):

A group of us met yesterday to try to reach agreement on S.B. 300 and various
lien-law bills proposed this Legislative Session. We did reach agreement on
concept and language but were not able to prepare a draft in time for this
meeting.

CHAIR CARLTON:

We will try to find a convenient time to review that during a full Committee
hearing. Have you included all of the interested parties, including regulatory
bodies to work through the issues?

MR. ASHLEMAN:

The regulatory bodies will not be involved. We have eliminated the need for
reform this Legislative Session. The contractors, subcontractors, developers,
home builders and commercial entities were represented for the most part
during our discussions yesterday; those who were not represented were
consulted in advance.

SENATOR TIFFANY:

Could you provide particular information on the direction that you want to take
with the bill?

MR. ASHLEMAN:

We are just tightening up a lot of the technical aspects. The critical changes are primarily in the lien law. We intend to make it more difficult to use resistance to liens and the prompt pay to force settlements when there are disputes between the contractors, subcontractors and developers. I think we are succeeding, while being careful not to over-balance so that it does not take an opposite direction.

The existing language in prompt pay does not actually reflect past industry practice. Some judges, in some cases, have misinterpreted the law and have not allowed damages. All of us agree it would be appropriate to try to fix the language.

CHAIR CARLTON:

We will close the meeting on S.B. 300 and open the meeting to S.B. 152.

SENATE BILL 152: Revises provisions relating to physical therapists. (BDR 54-471)

Yesterday, I shared the mock-up amendment to S.B. 152 with the full Committee. The mock-up amendment was provided to Senator Mathews and she provided input to the proposed amendment.

Mr. Powers, could you provide us with a brief overview of the proposed amendment?

KEVIN POWERS (Committee Counsel):

Throughout the bill there is some technical minor changes that end up removing some of the amendments originally proposed in the bill The result is that sections 1, 8 and 9 come out of the bill The bulk of the changes focuses on section 3 of the bill, which amends *Nevada Revised Statute* (NRS) 640.120 ... also the focus of those amendments and the changes that were discussed in the last meeting involve subsection 3 This was to make clear the parameters and the conditions for a graduate of physical therapy to practice physical therapy without a license during the period between the person first applying for their license and the time they sit for the examination and find out the results The idea here was to tighten up the language ... make it clear that that

person had to practice under the supervision of a licensed physical therapist and to also make clear that that person is still subject to the regulatory and disciplinary authority of the board, even though they don't hold a license.

SENATOR TIFFANY MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 152.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:

We will now open the meeting to S.B. 315

[SENATE BILL 315](#): Provides for regulation of business brokers. (BDR 54-1135)

JAMES F. NADEAU (Nevada Association of Realtors):

We proposed an amendment yesterday that dealt with a change to the statute that would also coincide with a task force revision of the "duties owed form" specified in NRS 645.193 ([Exhibit C](#)).

CHAIR CARLTON:

I would like to let the subcommittee members know that I was mistaken yesterday when I asked the proponents of the bill about the fee structure. This fee structure is different than the self-funded boards. It goes through the General Fund and regulation allows for fees in this manner. This section is correct.

Would this take effect in 2007?

MR. NADEAU:

Page 6, line 4 indicates on or before January 1, 2007, for the appropriate training, continuing education, et cetera. Implementation of the regulations is July 1, 2006.

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I believe the Real Estate Division (RED), Department of Business and Industry, will be bringing forth some amendments that apply specifically to brokers and broker-salesmen. That was our original intent.

This is in conjunction with the sales property. In other words, it is not a business broker that would just go out and sell business. It would be in conjunction with those elements that are associated with chapter 645 of the NRS.

TAMI DEVRIES (Legal Administrative Officer, Real Estate Division, Department of Business and Industry):

We are in full support of this bill along with the amendment made yesterday ([Exhibit D](#)).

Mr. Powers indicated yesterday that he had some concerns with section 2 regarding the business-broker definition. We will support him if he feels an amendment is necessary for that definition. In NRS 645.030, the definition of a real estate broker does describe the fact that the business would be offered or conveyed with any interest in real estate. If Mr. Powers believes that language should be added to this definition, that would be fine.

CHAIR CARLTON:

Have you discussed this with the sponsor of the bill and is he aware of this?

MR. NADEAU:

Yes, and it was okay with him.

MS. DEVRIES:

I did send this information to Senator Nolan yesterday afternoon with a copy of this amendment. I have not heard back from him.

SENATOR TIFFANY:

Was reciprocity discussed on the July 1, 2007, date for someone coming from a different state?

MS. DEVRIES:

Yes. In S.B. 332, we are working on limited reciprocity for all of our licenses. In the instance of the business brokerage permit, only Arizona has this permit to

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my knowledge. I am really not sure that there are enough other states with which to even reciprocate.

SENATOR TIFFANY MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR AMEND AND DO PASS S.B. 315.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SCOTT YOUNG (Committee Policy Analyst):
Madam Chair, could you clarify whether we are adopting the RED amendment and the amendment proposed by the Nevada Association of Realtors (NAR)?

CHAIR CARLTON:
We are recommending both amendments for S.B. 315.

I will now open the meeting to S.B. 319.

SENATE BILL 319: Revises provisions governing certain disclosures required to be made by real estate brokers, real estate broker-salesmen and real estate salesmen. (BDR 54-95)

SENATOR HECK MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR NO FURTHER ACTION ON S.B. 319.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:
I will now open the hearing on S.B. 332.

SENATE BILL 332: Revises provisions relating to real estate. (BDR 54-230)

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Ms. DeVRIES:

Yesterday, after the meeting, we had discussions with a few different industry groups and have brought forward two amendments to S.B. 332 ([Exhibit E](#)).

CHAIR CARLTON:

Could you give me an example of what you are trying to accomplish with amendment No. 1 of [Exhibit E](#)?

Ms. DeVRIES:

Typically, in the course of an investigation and an audit of financial records, if we ask for bank statements dating back a few years and the broker is unable to produce all of those bank statements, the RED may have to subpoena those records from the broker's bank. After we have done that, if we believe that violations exist and we need to move forward with disciplinary action, we would then bill the broker for the cost involved in obtaining the bank records. The NAR requested that the RED only enforce section 4 if the licensee was unable to provide the bank records on their own and when the RED finds violations to move forward with disciplinary action.

MR. NADEAU:

The NAR supports this and appreciates the RED addressing our issues.

CHAIR CARLTON:

Are there any other questions on this amendment?

Ms. DeVRIES:

Amendment No. 2 of [Exhibit E](#) is an attempt to clear up some language that has become confusing over the years between the Real Estate Division and the Real Estate Commission.

The Southern Nevada Home Builders Association requested a clarification in section 8, where we are amending NRS 645.283. Our intent is to ensure that a licensed salesman working under an owner-developer is supervised by a licensed broker-salesman. The RED does not intend for this to preclude an owner-developer from entering into a contractual agreement with a broker through which the broker would have licensed salesmen associated with him selling the property of the owner-developer.

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CHAIR CARLTON:

Mr. Young, please make sure that this paragraph in [Exhibit E](#) is included in the intent when amending this bill.

SENATOR HECK:

In looking at the language of section 2, subsection 2, line 17, does the word "shall" compel the RED to issue a license regardless of whether the person may not be eligible for the license under the denial criteria that is in NRS 645.330?

MR. POWERS:

Without looking at this a little more closely, I believe that the "shall" language is essentially if the person meets the qualifications that are set forth in subsection 2; then, they are entitled to the license in the reciprocal-licensing provision.

SENATOR HECK:

That is my concern. There are specific criteria where a person could be denied a license, and that is not specifically addressed here. It says if they meet the criteria here having had a license in another jurisdiction, the RED "shall" grant them a license. I think we should look at that so we are not forcing someone to be licensed that would otherwise not be eligible.

MS. DEVRIES:

I believe that if we change "shall" to "may," that would allow the RED to consider any other eligibility criteria.

CHAIR CARLTON:

Senator Heck, would you like to change the "shall" to "may"?

SENATOR HECK:

Yes.

JAMES WADHAMS (Southern Nevada Home Builders Association):

I would like to draw your attention to section 8, subsection 2. We appreciate the statement of intent and think that statement certainly expresses the intent of this particular administration. As an attorney, I am a bit concerned about the use of the word "employee." If we employ a salesman, we must also employ a broker-salesman. That could be interpreted as a requirement to employ a broker-salesman as opposed to contract with a broker-salesman. I think that

language should be adjusted so we do not find ourselves in some enforcement action where we become obliged to employ a broker-salesman when we would prefer to contract with them. The statement of intent is fine, but I do think that should be reflected in the language itself.

MS. DEVRIES:

The RED has no problem with that and would yield to Mr. Powers for the change in the language.

MR. POWERS:

So that there is clarification or that I am not missing the point here. Essentially, what we are trying to achieve, as I understand it, is that a licensed real estate salesman may not provide services to an owner-developer unless that licensed real estate salesman is under the supervision of a broker-salesman. Is that it?

MS. DEVRIES:

Yes, that is correct.

MR. WADHAMS:

That is the subtlety with which we are troubled. If we happen to employ a salesman, this sentence would obligate us to also hire a broker-salesman as opposed to contract independently with a broker-salesman who would supervise that employee. It does not allow the flexibility on the arrangement. We do not object to the supervisory status of a broker-salesman over a salesman. We do not want to be trapped by a future administration in having to do that on an employment basis as opposed to a contract basis.

MR. POWERS:

Given the number of changes we are discussing, I will prepare the multi-colored mock-up and do my best on carrying out the intent that was expressed. Then, we can refine it after the parties have had the opportunity to see that language.

CHAIR CARLTON:

We will have Mr. Powers do the mock-up, make sure the language addresses all of the concerns expressed and will bring that back to subcommittee at a later date.

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MR. POWERS:

"Madam Chair, if you prefer, I could do the mock-up and present it to the full Committee to keep the process moving. That would be up to you."

CHAIR CARLTON:

The subcommittee will be meeting at least one more time, and I think we can accomplish this.

MR. POWERS:

"With that in mind, I think I will do a mock-up for S.B. 315 that had multiple changes on multiple sheets of paper, and that way everyone will be able to see the adjustments that were made."

CHAIR CARLTON:

I will now open the meeting to S.B. 276.

SENATE BILL 276: Establishes uniform disciplinary process for certain regulatory bodies which administer occupational licensing. (BDR 54-98)

SENATOR HECK:

I have concerns about trying to create a "licensing czar." I understand the intent is to provide services to the boards that require such support, particularly the smaller boards, but having initial complaints come to the newly created commissioner's office, bypassing the boards which may better understand the nuances, may not be the correct way to do this. I fully support the intent of offering support to the small licensing boards.

KEITH MARCHER (Supervising Senior Deputy Attorney General, Office of the Attorney General):

I know the most controversial part of this bill is the creation of the commissioner and that office. In speaking with some senior personnel in my office yesterday, it is clear we are not necessarily married to that concept. The intent is to get some help for the smaller boards with their investigations. We could accomplish that by having a few investigators in our office to do the work for the boards. When a complaint comes into a board they can assess it and then forward it to our office for further investigation. The Office of the Attorney General (OAG) could perform the initial investigation, and then get back to the board for collaboration about what to do with the complaint. The OAG does not have that resource right now. If we were to get a couple more investigators in

our office, perhaps one in northern Nevada and one in southern Nevada, that would probably solve the problem. In my current position, I could help facilitate complaints with those investigators. This would eliminate creating a new level of bureaucracy, and it would provide the boards with some help. The second and less controversial part of the bill, which is about the hearing procedures, could probably survive and stay in place.

SENATOR TIFFANY:

Did you go to the Senate Committee on Finance and request these two positions? Were these positions included in your budget?

MR. MARCHER:

As far as I know, no. We thought we would try to get this bill passed first. As a way of compromise, we could try the investigator route if this bill fails.

SENATOR TIFFANY:

If the creation of the office of the commissioner was removed, would you go to the Senate Committee on Finance or Assembly Committee on Ways and Means and ask for the two investigator positions?

MR. MARCHER:

If it is the wish of the subcommittee that we try to do something like that, it may help. Our chief financial officer is in attendance should you have any questions on finance issues.

SENATOR TIFFANY:

Normally, that is the process when the OAG recognizes a problem.

MR. MARCHER:

To clarify, the intent behind this bill was to create an entity that was not part of the OAG Office. The original commissioner, investigators and support staff were not intended to be part of the OAG. That is why we did not budget for them.

SENATOR TIFFANY:

In What office were you going to put them?

MR. MARCHER:

The original intent was to have a new separate entity.

SENATOR TIFFANY:

It appears that you want to keep uniformity for the process. Is that what you are requesting?

MR. MARCHER:

At a minimum, we would like to see the uniform-disciplinary hearing procedures stay intact. That would be helpful for all of the boards which participate in the disciplinary-hearing process.

SENATOR TIFFANY:

If I remember correctly, there was one board that had their own process. They wanted to use their process for the disciplinary action since it was intact and working well. Do you have any problems with someone doing that?

MR. MARCHER:

That would be up to you to determine if all the boards should be following uniform procedures or if some of boards could continue following procedures they have in place, because they feel their procedures work for them. I would personally prefer to see uniform procedures for all of the boards.

SENATOR TIFFANY:

Because it makes it easier for your office?

MR. MARCHER:

Yes, if we have to become involved in a prosecution or even sit as board counsel in a disciplinary case, it would be nice if the procedures were the same for everyone.

CHAIR CARLTON:

Senator Tiffany, I do remember Mr. Marcher coming to my office and stating that he had sent letters to a number of the different boards asking if they wanted to be included or excluded in this. A number of them responded that they did not feel they needed to be included.

MR. MARCHER:

Correct. After writing the initial bill draft, we approached the boards and attended their meetings to see if they were opposed or supported the bill draft. The boards that were in opposition were asked to put that in writing to us. We provided that information to the Committee yesterday.

CHAIR CARLTON:

Those boards wishing to be left out of this are the State Board of Architecture, Interior Design and Residential Design; Nevada State Board of Accountancy; Nevada State Board of Optometry; Nevada State Board of Veterinary Medical Examiners; State Board of Physical Therapy Examiners and the State Board of Cosmetology.

MR. MARCHER:

That is correct. There were also a few boards that opted out on the record in yesterday's Committee meeting.

SENATOR HECK:

Is the reason these boards want to opt out because of the new office being created, or would they still want to opt out of the uniform-hearing process? I think there are two separate issues that may have caused the boards to want to opt out. I would fully support the uniform-hearing process across all boards. I think it was the investigative issues that caused concern.

Is there some way for the cost of the two new positions to be offset by fees that are collected by the boards for which they will provide service?

MR. MARCHER:

I believe most of the boards that wanted to opt out were concerned about the investigative process with the commissioner.

Based on their budgets, it would be difficult for the boards to pay our office any more than they pay us now for the investigative piece. For a small board going to prosecution of a disciplinary matter, the money can then become a factor. The intent was to not assess any other costs to the boards for investigations.

CHAIR CARLTON:

Senator Heck, some of these boards cannot afford to pay their current fees to the OAG. It is not because they do not want to; it is because they cannot afford to do so. The OAG is already providing a service for which they are not necessarily being reimbursed.

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SENATOR TIFFANY:

If the board cannot afford an investigation, yet they get one out of the General Fund, and find some disciplinary action that requires a court hearing, who pays for the process of a trial?

MR. MARCHER:

Right now, the boards pay the OAG to prosecute disciplinary cases. That would still be intact.

SENATOR TIFFANY:

If they cannot afford an investigator, they probably cannot afford a court case.

MR. MARCHER:

It is difficult for them to always be able to fund for discipline, but we did not want to add another funding level for them to pay for the investigation.

SENATOR TIFFANY:

Are we opening a can of worms here? If they hire an investigator, find some wrongdoing and it requires a court case, they cannot afford that either.

MR. MARCHER:

That is happening somewhat now. We are currently dealing with that as best we can with the current structure. The boards are being billed for our services.

CHAIR CARLTON:

The OAG does not bill other agencies for their work. The boards do get a bill for services from the OAG.

MR. MARCHER:

The boards are billed on an hourly basis of \$98.41 per hour.

SENATOR TIFFANY:

I remember a case that went to the Interim Finance Committee where we had to supplement costs because everyone ran out of money for a court case that was much larger than anticipated. The fees had run up to a few million dollars.

CHAIR CARLTON:

We are already paying for this in a lot of different ways. We have boards not disciplining and not doing investigations because of the amount of money

associated with investigations. If we are already using positions now, we are already funding this in somewhat of a de facto way. If we are truly going to protect the public, maybe we should just fund this the way it is supposed to be funded.

Another option may be a per capita rate by which boards contribute to an investigative or disciplinary fund. That way, a small board of only 100 licensees would only pay so much, and a large board of other licensees would pay another amount. That does bring us to the discussion of the boards that do not want to be involved. Do they help fund this? That creates another discussion. I think it is very important that we do something to ensure the investigations and disciplines are carried out.

If we decide that we want to legislate a uniform investigation or discipline process, rather than incorporating it into each individual chapter, we can put it in the overlying chapter 622 of the NRS.

SENATOR TIFFANY:

If the intent is to cover the investigation by adding a few more positions, that really should be handled through the Senate Committee on Finance. I would suggest that they come back to us following discussions with someone to add those positions to the General Fund budget.

If you want the positions, but want them funded differently than the General Fund, that gets into cost allocation and that is a finance issue. The Finance Committee closes each one of those board's budgets and we have to have a line item that would impact what you are saying. I do not think we can arbitrarily pass a bill that says you can investigate without knowing how it will be funded.

If we have another meeting about this, I would like to see someone have a discussion with the budget people to see whether they want to include this into their budget.

Are there any boards present that have a problem with the uniform process, because they have their own process that works very well for them?

MR. YOUNG:

I believe that the occupational and professional licensing boards are not subject to budget supervision by the State any more. They are all self-funded. ... if there was a funding mechanism that took a few dollars per license from each board and put that into a fund, that would not necessarily have to be approved by Finance. Certainly, if there were two investigators hired and paid out of the General Fund, that would need to go to Finance.

CHAIR CARLTON:

If the OAG feels this is so important, would they be willing to provide this service for the next two years and try to fit this within their existing budget? Then, they can come back to us in two years and show us what has been accomplished and explain the fiscal impact.

MR. MARCHER:

Do you mean to try to accomplish the investigative piece with current staff?

CHAIR CARLTON:

Yes.

MR. MARCHER:

Based on my conversations with our chief investigator, that would be fairly difficult.

NONI JOHNSON (Executive Director, State Board of Professional Engineers and Land Surveyors):

I would like to address Senator Tiffany's question regarding uniform procedures. We do have something that works through our rules of practice. We certainly would not have any objection to the uniform disciplinary procedures, which I think could easily be addressed through the State administrative procedures chapter 233B of the NRS. We requested to be exempt from this bill, because we do have very good procedures. We also based that on the fact that our board has the land surveying and engineering expertise that is essential to review complaints, investigations and follow through with disciplinary hearings.

CHAIR CARLTON:

Mr. Powers, could you provide the difference between chapter 622 of the NRS and the administrative procedures?

MR. POWERS:

All regulatory boards now are subject to the Administrative Procedure Act unless they are expressly exempted from that Act and I don't believe any of the regulatory boards are. The difficulty with putting a uniform procedure, for regulatory bodies, in the Administrative Procedure Act, chapter 233B, is that ... Administrative Procedure Act applies to more than just regulatory boards. It applies to all Executive Branch agencies. ... You would be bringing in the Public Utilities Commission of Nevada; you would be bringing in all type of departments and divisions in the Executive Branch of government. The idea of putting uniform disciplinary procedures in the beginning of Title 54 and NRS 622 or a separate stand-alone chapter at the beginning of the Title, is that you are dealing with a particular type of entity ... that those procedures would be specific of those type of regulatory bodies, because if you put in the Administrative Procedure Act, then you have to consider a far broader group of Executive Branch agencies.

K. NEENA LAXALT (Nevada Board of Veterinary Medical Examiners; Board of Examiners for Marriage and Family Therapists):

I want to make it clear that we are in opposition to portions of this bill, not the concept of what is trying to be established. We made recommendations yesterday upon which both the Nevada Board of Veterinary Medical Examiners and the Nevada Association of Marriage and Family Therapists (NAMFT) agree. Those recommendations were intended to make this process enabling for the small boards that wanted to participate. The NAMFT board did not request exemption they were not approached by the OAG, and they were unaware of this bill. They have asked to be exempt from the mandatory portion of this bill. We also agree that the commissioner position would not be necessary. We would like to see that go away but agree with the uniform disciplinary procedures. We have provided a few specific changes in writing that we would like to see implemented ([Exhibit F](#)).

The bigger boards may not always use the investigators, but may want to have the option to utilize them and you may want to consider that option for them.

SENATOR TIFFANY:

You are talking about opting out of using the AG's Office? If you needed to go to court or follow the proceedings, are you saying you would want to use another attorney?

MS. LAXALT:

These boards currently have their own process. However, there may be times when they may want to utilize the OAG for the investigative and other services.

SENATOR TIFFANY:

Even if you have an internal staff to investigate, you may want the option to call on the OAG staff to utilize them?

MS. LAXALT:

Even though they may not utilize them on a regular basis, there may be times or situations when they would like to utilize them.

DENISE SELLECK DAVIS (Nevada Osteopathic Medical Association):

We have some concern about the State Board of Osteopathic Medicine (SBOM) remaining in this bill. This Board has a standard process that has a lot of peer review, which we think is very important for osteopathic physicians. The SBOM has also spoken on behalf of Assembly Bill (A.B.) 203, which is an increase in licensure fees for the physicians to continue to fund their Board. Although we understand that disciplinary actions are costing more money and requiring more investigation, we are not sure that being part of 26 boards added to one bill and bringing on two investigators will meet our needs. We think the increase in the fees and continuation of peer review is the most important portion of discipline for our doctors.

[ASSEMBLY BILL 203](#): Makes various changes concerning osteopathic medicine.
(BDR 54-1116)

SENATOR TIFFANY:

What about the uniform discipline process, do you agree with that?

MS. SELLECK DAVIS:

The SBOM has a process as specified in A.B. 203 that "makes use of hearing officers and panels as necessary" and allows a working model of discipline for

the boards. I would prefer to see the SBOM opt out of this bill altogether for that reason.

SENATOR TIFFANY:

You have your own process and do you not want to be in the uniform process?

MS. SELLECK DAVIS:

Yes.

CHARLOTTE MATANANE BIBLE (Chief Deputy Attorney General, Civil Division, Office of the Attorney General):

In addition to my supervisory duties, I also represent a number of occupational licensing boards. The provisions we have included in this bill are provisions that have worked very well in conducting prosecution. Some of these concepts were adopted by regulation and some because there were no regulations or statutes to address them. We implemented the concepts because they work. They are very similar to the manner in which you would conduct a trial. In court, you have the Rules of Civil Procedure, and they are very consistent rules about how a matter proceeds before a court. The provisions in this bill would be similar, but tailored for administrative agencies and the issues that come before them, which are less formal and a little less structured. This would help ensure that the boards are following and complying with due process, which has become an issue for licensees who are challenging our actions. As a result of discipline, we are getting court cases that are challenging language and conduct. If we had some uniformity with boards and commissions, then when one case is litigated it would be applicable to other cases because they would be following the same procedure. However, other lawsuits have been brought because a particular board has had its own special language that has deviated from other boards or national language. That creates problems that take time and money to litigate. I would support the uniformity that gives the flexibility for options that we currently do not have.

DONALD MINER, D.C. (Secretary, Chiropractic Physicians' Board of Nevada):

There are a few issues that bother us with this bill. Last summer, we were presented the preliminary bill by the OAG. Based on the verbal presentation, we liked what we heard because part of it was free. We then asked the OAG to follow up with us monthly with updates to this bill. That never happened until just recently. Yesterday, we took the position that we could not support the bill as written because the bill we heard about in August was different than the bill

that was written, which was different than the verbal presentations we have heard recently. The Chiropractic Physicians' Board of Nevada (CPBN) will likely not support this bill if passed and will request to be omitted from the bill. The proposed office of the commissioner is troubling. It lacks checks and balances and has heavy political overtones. It generates four to five more meetings of the small boards and elongates the overall process. This also escalates costs. We are a self-funded Board that pays deputy attorney general (DAG) fees and our own private investigation. Our problem is not the investigating cost; it is the DAG cost. When the OAG suggested some time ago that they were going to take care of the small boards, we interpreted that to mean legal costs, not investigative costs. We control our investigations and would not have the same participation with the OAG. Having all of the small boards compete for two investigators would be a real dilemma. The present problem for our Board is the legal costs. We had some expensive lawsuits that ran up a large bill with the OAG. We have paid that bill and currently do not have a full-time (DAG) at our meetings. We bring them in for only two hours to control costs. We have three DAGs assigned to the CPBN. In the last two years, we have had half-a-dozen different DAGs. The rotation is frightful because we have to train them to understand what we do. Once trained, the OAG rotates the DAG out of our Board. That is a heavy cost to us in terms of training. To be fair, a new DAG has been assigned to us "off the clock" so to speak. It has been a problem and I see it continuing to be a problem. Because of this, we are considering hiring a private law firm for more stability and continuity.

CHAIR CARLTON:

In those investigations, what would the billable hours be compared to the services of the OAG?

MR. MINER:

Ninety dollars an hour is a favorable rate for an attorney. I think we can probably meet that or even get something less than that.

The other thing we are working on to control legal costs is expedited settlements. Typically, most of the complaints we receive are minor. The doctor usually knows if he violated a provision and admits to it. Under the current program, it takes two to three years from the time a complaint is issued to the time we finally work it through the system.

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If the OAG wants to standardize the legal process and make it uniform, I support that. I think it would be a huge benefit to their office as well as in terms of training.

CHAIR CARLTON:
Do you support the uniformity clause for investigations?

MR. MINER:
We would prefer to handle our own investigations.

CHAIR CARLTON:
You reviewed the uniformity clause; do you not support it?

MR. MINER:
I do not support the bill.

CHAIR CARLTON:
And, do you not support the discipline clause?

MR. MINER:
That is correct.

SENATOR TIFFANY:
I thought Ms. Bible made a very good point on the discipline process. Do you agree that it makes sense with the discipline process to have it uniform so that if a case did go to trial, most of the steps would have been covered and this would give the OAG a better chance at winning the case?

MR. MINER:
Overall, yes. I think anytime you have predictability it is fair for both sides.

SENATOR TIFFANY:
In cases that did not appear to be civil or criminal, would you support the discipline process if expedited settlement language was included?

MR. MINER:
Yes.

JAMES T. RUSSELL (Nevada State Board of Accountancy):

We would request to opt out of this bill. Senator Heck made a great point; the boards have the expertise regarding to the issues that come before them. Given our situation on investigations, we have to use a certified public accountant. We are conducting investigations into things with acronyms that others do not understand. For that reason the OAG would not be helpful to our investigations. To assess our board on a per capita basis to pay for an investigator at the OAG would not be realistic or fair to us. Our licensees are already paying for that investigator through their fees, and that would not be a fair or equitable option.

The Nevada State Board of Accountancy has a hearing process that has been in place for many years; it works, and it is cost-efficient. The uniform procedure would be fine provided the procedure allows for certain modifications, and it would not necessarily be totally applicable to all boards per se. I have reviewed the language. I think there are things that are helpful that could be used by all boards that could be put into chapter 622 of the NRS. However, I think there will have to be some significant modifications to that uniform language so all boards could utilize it appropriately.

You may want to consider using the Investigation Division, Department of Public Safety, rather than creating an entirely new investigative body.

KEITH LEE (Board of Medical Examiners):

We are not included as a board or commission in this bill and wish to keep it that way. We oppose any uniformity of procedures. It does not make sense to us that uniformity for the sake of uniformity is a good practice. The Board of Medical Examiners (BME) is one of a few boards with a disciplinary proceeding set up that has three members of the nine-member board act as an investigative committee. They review complaints and work with the investigator assigned to that complaint. If those three members collectively decide there is an offense that raises itself to a disciplinary level, they direct staff to prepare a complaint that is then brought to a hearing before six of the board members. The three members involved in the investigative portion do not participate in the deliberations. This is one reason why we believe a uniform set of procedures would not be effective for the BME. We have adopted policies and procedures that would have to be changed to comply with uniformity of procedures.

DOROTHY B. NORTH (President, Board of Examiners for Alcohol, Drug Abuse, and Gambling Counselors):

We have lost the real intent of this bill. The smaller boards do not collect enough in fees to be able to carry out their duties, particularly if we have something that goes to trial. We do need additional investigators, because people complain to our board about the time it takes for something to be accomplished. They think our board is not addressing anything, because there are a lot of egregious complaints that need to be investigated and resolved. There is a big difference between a board with 1,200 people and a board with 10,000 people. We would be happy if we could just come out of this Session with an answer for how we can find more money. Do we increase the licensure application fee to be put into a pool? I fear that some of the boards do not perform as much due diligence as they would like, because they cannot afford it. We are just asking for a way to remedy this. If this is not the answer, then help us find a way to do this.

The reason for having occupational boards is to protect the public. Nevada is growing so fast that there are people coming into the State and are practicing who are not legitimate. We should be able to protect the public from that.

CHAIR CARLTON:

We want to help the small boards. Are you up against the cap with your licensure fees?

Ms. NORTH:

Ours is not a field that pays as well as others. We are close to the maximum that we can charge people. We would be willing to charge an extra two to three dollars per licensee.

TREY DELAP (Deputy Executive Director, State Board of Osteopathic Medicine):

We do not absolutely oppose the uniform process. We have incorporated a number of provisions that would be in this bill in our own bill, A.B. 203. If you look nationally, and I can only speak to medical boards, 80 percent of complaints received by the medical boards are dismissed without an investigation. There are people complaining about things that really do not rise to the level of action. Only 7 percent of cases actually need to be prosecuted. The concern is with 26 different boards and 26 different professions that are substantially different. This could be problematic for investigations. We do have a concern with going back to the OAG for investigative services. In the

71st Legislative Session, the State Board of Osteopathic Medicine (SBOM) asked the Legislature to be opted out of having the OAG conduct our investigations. This was due to an incident where a complaint was given to them; they investigated it very quickly; and the investigator put the file on the desk of his supervisor. It lingered there for four months without explanation. That is a concern that was brought up earlier by other testifiers. If we have the staff and they are unclassified, we can demand certain performance measures. If investigators are in a different agency beyond our control, then we are neglecting our duty to the public by sending complaints to a "cooling pond" where we have no control. We have spent \$170,000 over the last 18 months on investigating and prosecuting only three cases, of which a large amount of that money went to the OAG. There are some serious issues about how this will be funded. The small boards are financially strapped.

CHRIS COOKE (Field Inspector, State Board of Cosmetology):

I am here to answer any questions you may have of the State Board of Cosmetology (SBOC). The SBOC is a completely self-funded board. We have four inspectors and are in the process of hiring two more. We have a good hearing procedure and are dedicated to public health, safety and welfare. The SBOC does not support the bill in its current form.

CHAIR CARLTON:

Is there anything in the bill that you do support?

MR. COOKE:

I think the intent of the bill is good as far as the uniform disciplinary procedures. I think that would offer a protection not only to the licensees but also to the general public. As far as investigations and inspections, the SBOC is self-funded and does not require that support.

MS. BIBLE:

We currently have only three general investigators in our office to handle the general criminal jurisdiction, conflict cases assigned from different district attorneys' offices and also assist with the Open Meeting Law jurisdiction. In the past, those general investigators have assisted some of the occupational licensing boards with some of the more serious matters. Generally, their workload is consumed by criminal cases. We will go back and see if there is any data available to consider.

To address Senator Tiffany's question on why we did not put this in our budget, we were directed to provide a flat budget, and there are very few enhancements in our current budget.

We have had turnover in our office because people have moved on to better paying jobs. Even within the office, which is what happened to two of the attorneys assigned to the CPBN, attorneys were promoted and their promotion required them to represent different clients. We do not like the turnover and change in attorney assignments, but sometimes it is out of our control.

SENATOR TIFFANY:

When we put these boards together, one thing we asked for was a business plan that would establish appropriate funding. It appears that we have a problem with the smaller boards not meeting their overhead expenses. If policies and procedures were developed for the smaller boards for investigations and disciplinary actions, would that help as opposed to throwing human resources at this problem?

MS. BIBLE:

I think that would be helpful. Sometimes, it is the number of complaints for the small boards. Some of these boards only have an executive director or even a part-time executive director, and they also have licensing matters to handle. When it comes to the complaints, they are not really equipped or have the time to address them. Then, the complaint gets assigned to a board member who has their own practice or job; that makes it difficult and time-consuming to investigate, and they are not really equipped to do it. The procedures would help remove some of the uncertainties of the process.

SENATOR TIFFANY:

Could we handle this through some policies and procedures for investigation and discipline? Perhaps, we could use the expedited process that was mentioned earlier. It appears that some of the smaller boards are not able to meet overhead expenses. The question becomes, should they really be boards anymore? The large boards do not seem to have a problem. In the interest of public safety, we are trying to supplement and help the small boards. That is the dilemma we are facing.

Does the OAG have any openings right now?

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MS. BIBLE:

As far as I know, not for investigators.

SENATOR TIFFANY:

Please let me know if there are any for investigators.

MS. BIBLE:

I will provide that information to you.

CHAIR CARLTON:

What is the cost of an investigator?

MR. MARCHER:

I believe for salary and benefits it is approximately \$70,000 per investigator.

SHARON ATKINSON (Executive Director, Board of Examiners for Alcohol, Drug Abuse, and Gambling Counselors):

We are one of the small boards that has only been in existence since 1999. Since our inception, I have handled over 200 complaints and the majority of them were sent to an investigator. I have no problem paying for the investigator. The problem is finding competent investigators that are familiar with the NRS and the *Nevada Administrative Code* (NAC). That is why I presented this problem to Mr. Marcher. The lack of familiarity with the NRS and the NAC increases our expenses due to the additional time it takes for the investigators to complete their work. That is my dilemma. Our board members do not have time to do investigations and I am not a clinician and do not feel qualified to handle some of the investigations.

MR. MARCHER:

We have lost sight of the original intent of this bill. It was to simply give some investigative help to some of the smaller boards. Then, if you make it to a hearing, the boards should perform the hearing with uniform procedures. That not only helps government but, the licensee and licensee's attorney. There is nothing wrong with consistent hearing procedures.

I understand the investigative piece is controversial, but I think that the Committee understands the need for help to the smaller boards. We will do what we can to facilitate that. I would hope everyone would be in support of the second portion of the bill.

SENATOR HECK:

Mr. Marcher, I am sure you cannot wait to get back to the office and thank the individual who made you the point person for this project. I applaud and appreciate the intent of the OAG Office to help these boards. It seems that we are trying to address three areas, and I would like to summarize where I am on the issues.

The first is what do we do with a complaint that comes in? I think that was part of the issue that would be addressed by creating the office of the commissioner; I do not think that will happen. I think it is important that individual boards weigh the merits of a complaint based on the nuances and expertise of those boards.

The second issue is what happens once a complaint is deemed valid and how will it be investigated? I commend you for stepping to the plate to help the small boards. I would like to see the opt-out/opt-in provision implemented for the investigative help to those boards that need it.

The third area which I am most strongly in support of is the uniformity of hearings. I agree that in the long run it will save money for the boards and taxpayers if we have uniform hearings and procedures, even if it is just a minimum framework each board needs to abide by. If there is something to be salvaged from this bill this Legislative Session, it would be the uniformity; I am in full support of that.

SENATOR TIFFANY:

I agree with Senator Heck. If uniformity is the direction we are taking, then the large and small boards need to collaborate to identify the particular items in the process that can be applied uniformly for all of boards.

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CHAIR CARLTON:

That is a very good suggestion. I hope the boards will do that to accomplish something on this bill.

The meeting of the subcommittee of the Senate Commerce and Labor Committee is now adjourned at 9:15a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____