

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

**Seventy-third Session  
April 12, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 8:04 a.m. on Tuesday, April 12, 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:**

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry  
Tami DeVries, Legal Administrative Officer, Real Estate Division, Department of Business and Industry  
Antinette Maestas, Nevada State Barbers Association  
Nathaniel K. LaShore, President, State Barbers' Health and Sanitation Board  
Vicky Sakach, Vice President, State Barbers' Health and Sanitation Board  
Chris Cooke, Field Inspector, State Board of Cosmetology  
William Buzz Harris, Nevada State Board of Cosmetology  
Keith Marcher, Supervising Senior Deputy Attorney General, Office of the Attorney General  
Susan Fisher, Chiropractic Physicians' Board of Nevada  
James T. Russell, Nevada State Board of Accountancy

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K. Neena Laxalt, Nevada Board of Veterinary Medical Examiners; Board of  
Examiners for Marriage and Family Therapists  
Noni Johnson, Executive Director, State Board of Professional Engineers and  
Land Surveyors  
James Wadhams, Nevada State Board of Architecture, Interior and Residential  
Design

CHAIR CARLTON:

I now open the meeting to Senate Bill (S.B.) 332.

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

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business  
and Industry):

We reviewed sections 2, 4 and 8 of the mock-up amendment. Sections 2 and  
4 are acceptable. Under section 4, subsection 4, paragraph (a) I have  
handwritten the language we would like to see added ([Exhibit C](#), original is on  
file at the Research Library).

CHAIR CARLTON:

Could you tell me the reason for the additional language in  
section 4, subsection 4, paragraph (a)?

MS. ANDERSON:

The reference is for the broker requirements in statute.

KEVIN POWERS (Committee Counsel):

... In the *Nevada Revised Statutes* (NRS), we don't refer to specific  
sections of the *Nevada Administrative Code* (NAC). ... That  
reference would in fact ... read NRS 645.310 ... and the  
regulations adopted by the administrator or the division. Whatever  
the appropriate term is, I'll find the appropriate term.

CHAIR CARLTON:

Committee, does that sound reasonable?

SENATOR TIFFANY:

What is the normal cost of an audit?

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MS. ANDERSON:

If we have to subpoena bank records and individual checks, that can sometimes run \$2,000 to \$3,000. The documents themselves vary and the amount could be less.

SENATOR TIFFANY:

What happens if someone cannot pay the cost of the audit?

MS. ANDERSON:

The proposed legislation gives them 90 days to pay, and if they do not fulfill that, they are subject to disciplinary action before the commission.

SENATOR TIFFANY:

Would the maximum be suspension of their license?

MS. ANDERSON:

Correct.

SENATOR TIFFANY:

Could you take them to court?

MS. ANDERSON:

No, we were speaking to the relationship of the real estate license and administrative proceedings.

SENATOR TIFFANY:

Is losing their license for the rest of their life the worst that could happen?

MS. ANDERSON:

It would be up to the commission to deal with that. They have a range of actions they can take. I suppose that could be the worst-case scenario.

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

In the past, when we have had similar circumstances, the commission would typically suspend their license until such time as they cooperated. We are only looking to achieve cooperation in obtaining the records.

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CHAIR CARLTON:

Does the subcommittee have a recommendation?

SENATOR TIFFANY MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 332.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:

I now open the meeting to S.B. 163. Senator Tiffany wanted to make an amendment to this bill. I reviewed the amendment eliminating section 4. I am in disagreement to eliminating that section.

SENATE BILL 163: Makes changes relating to certain regulatory bodies which administer occupational licensing. (BDR 54-22)

SENATOR TIFFANY MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 163.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

CHAIR CARLTON:

I now open the meeting to S.B. 335. I need to disclose that Antinette and Eloy Maestas have been family friends for many years.

SENATE BILL 335: Revises provisions governing practice of barbering, cosmetology and related professions. (BDR 54-1356)

ANTINETTE MAESTAS (Nevada State Barbers Association):

The Nevada State Barbers Association represents 844 barbers in this State. We are in total agreement with sections 1 through 6 of the proposed amendment to

S.B. 335 ([Exhibit D](#), original is on file at the Research Library). The State Barbers' Health and Sanitation Board (BHSB) requires jurisdiction relating to barber poles due to the current deception occurring with the public. This is a problem in both southern and northern Nevada. It is very important to keep the NRS 644.473. We went to school to be barbers and are not a dying breed. The problem is advertising, not only the barber pole, but advertising cutting men's hair as a barber shop.

NATHANIEL K. LASHORE (President, State Barbers' Health and Sanitation Board):  
I think the amendment language in [Exhibit D](#) clarifies barber poles. We are attempting to make it easier for the State Board of Cosmetology (BOC) to enforce regulations. Avoidance of public deception is very important to us. We urge that you consider the amendment language.

VICKY SAKACH (Vice President, State Barbers' Health and Sanitation Board):  
I am strongly opposed to the removal of the NRS 644.473. That text describes a barber shop. Licensed barbers have earned their right by working within the laws of the State of Nevada. There is no logical reason to remove that text, except to allow beauty shops to represent themselves as barber shops.

I am in favor of everything else presented in the rest of the bill. The barber-pole description is good and will protect us. Our main concern was the advertising of a barber shop. Our main purpose is to protect the public.

CHRIS COOKE (Field Inspector, State Board of Cosmetology):  
For the record, the BOC did sanction Barber Jon and his establishment when a complaint was brought forward by Ms. Sakach to remove the gentlemen's haircutting language. He was ordered by the BOC to remove the "gentlemen's" language and also the language of "certified barbers" on his business card and the cards of his licensees.

CHAIR CARLTON:  
Did he comply?

MR. COOKE:  
Yes. As to the barber pole, chapter 643 of the NRS does define a barber pole as a red and white cylindrical pole. At the time, because his barber pole was red, white and blue, the BOC could not enforce the statute and make him remove the pole.

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I think the BHSB is making an attempt to clarify their language. The BOC would fully support any barber regulations regarding chapter 643 of the NRS as BHSB business. Regarding the NRS 644.473, it has been in our statute for a long time and I think the BOC was just attempting to remove gender-specific language from our statute.

CHAIR CARLTON:

I have concerns regarding Mr. Potter's comment yesterday that he was instructing. I do not believe he is licensed with the BOC as an instructor. This speaks to the fact that there seem to be some loopholes that need to be addressed.

MR. COOKE:

Anyone can own a cosmetology establishment. That is the license he currently holds with the BOC.

Yesterday was the first time I heard that he was an instructor and it is possible the BOC will investigate.

CHAIR CARLTON:

I do not want people to think we are picking on Mr. Potter because he is not here. The views were made very clear yesterday while he was here.

I think the language in sections 1 through 6 and section 27 should stay in order to clarify the problems occurring for the boards. It seems there are statewide problems. The boards need to have the opportunity to identify and correct things. In section 25, the BOC recommended that language be deleted and that is fine. Section 24 was supposed to fit in with S.B. 333.

WILLIAM BUZZ HARRIS, (Nevada State Board of Cosmetology):

In the statements that begin at the top of section 1 through 6 and section 27 that were not agreed upon, I think the BOC and BHSB did agree, but we did have a dissenting vote. That is why that is stated at the top of the amendment, and I believe it has all been resolved.

CHAIR CARLTON:

To clarify, is the BHSB comfortable with sections 1 through 6 being deleted?

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MR. HARRIS:

No, not being deleted. The reason they were deleted from the proposed amendment is because when we met last week after the regular Committee meeting they were not agreed upon by all parties. They are agreed upon by all parties now.

CHAIR CARLTON:

Sections 1 through 6 are no longer an issue?

MR. HARRIS:

Correct, as well as section 27.

CHAIR CARLTON:

Sections 24 and 25 are fine. Is there actual change to the language in section 7?

MR. HARRIS:

There are no changes in that language.

CHAIR CARLTON:

Are there any changes to section 7?

MR. HARRIS:

None of the sections that are on this bill have been changed.

CHAIR CARLTON:

Were they agreed upon by the parties involved?

MR. HARRIS:

Yes.

CHAIR CARLTON:

Are there any deletions that were discussed in your working group?

MR. HARRIS:

No.

CHAIR CARLTON:

So, does the bill stay the same?

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MR. HARRIS:

Yes. Section 24 was altered, but that is clearly stated in the first part of it. That was just an update to the hours to coincide with S.B. 333.

CHAIR CARLTON:

Have the proposed fees been presented to your licensees so that there is an understanding and consensus that there will be an increase?

MR. COOKE:

All of this is posted in accordance with the Open Meeting Law and all of our licensees are welcome to attend our meetings where this is discussed. At this time, we have not experienced any public outcry on the issue. The board has always been responsive to these issues. There are multiple reasons for the increases in fees, and they will be implemented in future years, if necessary.

CHAIR CARLTON:

Whenever there are caps on fees is it nice to hear that the regulatory body does not plan on instituting the maximum fees immediately.

SENATOR HECK:

I think there is still a discrepancy on the section 27 language.

MR. POWERS:

Maybe I can provide some clarification. ... I think it is appropriate just for the record that the document prepared by Mr. Harris is no longer valid with regard to the discussion of the Committee. ... Just for the record, we will go through the bill real quickly so we all understand what is being changed. All sections through section 20 will remain the same. The first change will be on section ... 21, page 11. ... That is NRS 644.360. That will be amended to mirror the changes that are also in S.B. 333. That amends the same section. There is no change in section 22 and 23. Section 24 amends NRS 644.408. That will also be amended to mirror the changes in S.B. 333. As I understand it, section 25, we are not going to make any changes to existing law, so section 25 will be removed from the bill. ... Section 26, no change. ... Then section 27 on page 14, ... we will remove the brackets and will also keep the bolded new language so the result is that the existing prohibition will remain in place and then a new



prohibition will also be there to tie into the changes in sections 1 through 6. ... Essentially, there will be two separate subdivisions. It will be unlawful for the licensed cosmetology establishment to engage primarily in the business of cutting men's hair, et cetera, and it will be unlawful for any person licensed pursuant to chapter 644 to engage in those violations in subsection 6 and 7 of NRS 643.190. That as I understand it, is the amendment as proposed.

SENATOR HECK:

I still have a question on section 27 which would go back to the existing language. How do you define an establishment that is engaged primarily in the business of cutting men's hair?

MS. SAKACH:

That would be a barber shop. Any business that would advertise exclusively for men's haircuts should be a barber shop

SENATOR HECK:

I would agree with that, but I think that is covered on page 13, line 22, "to represent." I also have concerns with the language on line 20, "to engage primarily in the business of cutting men's hair." To me that means if a cosmetology establishment has 51-percent male clientele, even though they say they are a salon or they do not use the word barber shop, they are primarily cutting men's hair.

MS. SAKACH:

They are not advertising that.

SENATOR HECK:

I agree, but that is covered on page 13, line 22.

MR. POWERS:

I would agree with Senator Heck that the true essence that the barber board is trying to get out is representation to the public. That the cosmetology establishment primarily engages in cutting men's hair. ... In all honesty, looking at subsection 1, saying it is unlawful to engage primarily in the business of cutting men's hair, I believe this would be of questionable validity because it would be

difficult to enforce. There are issues of due process and vagueness here that trouble ... me from an enforcement standpoint.

MS. SAKACH:

We are just looking for clean language, without loopholes, that will clearly spell out that someone cannot advertise as a barber shop if they are not a barber shop.

SENATOR HECK:

I would agree with that and therefore I would like to amend out that subsection.

MR. POWERS:

I would agree with Senator Heck and if we amend out subsection 1, then the prohibition in NRS 644.473 would still have the subsection 2 prohibition, prohibiting the cosmetology establishment from representing itself primarily engaged in the business of cutting men's hair. ... In addition, we have the additional prohibitions with regard to the use of the barber pole and representing themselves as a licensed barber. That is referenced in subsection 6 and subsection 7 of NRS 643.190. ... I believe that should cover the gamut of conduct that the barber board is concerned with.

CHAIR CARLTON:

Are there any comments or concerns on Mr. Powers' explanation?

MR. LASHORE:

I think we can live with it and we appreciate the effort to clear up the language.

CHAIR CARLTON:

I would like assurance that both boards will be able to enforce regulations and that we have not created another problem for either board by eliminating the other language.

MR. POWERS:

I do not believe we have Senator Carlton. ... Again, one of the reasons removing subsection 1 from NRS 644.473, is because there is a questionable issue as to whether it is even constitutional

and can be constitutionally enforced. ... It could be vague and would therefore violate due process.

MS. MAESTAS:

I think this is a good resolution to the problem and I thank you for your efforts.

SENATOR HECK MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 332.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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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)

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

I delivered a letter a week ago to the subcommittee members and staff which was what I thought the direction that the Committee wanted to go in identifying the boards that did or did not want to participate in S.B. 276. As a result of contacting the boards and their responses, we are advocating eliminating half of the bill and leaving the other half intact.

CHAIR CARLTON:

Was it the hearings portion, not the discipline, that we were going to keep?

MR. MARCHER:

The hearings portion is the discipline portion.

CHAIR CARLTON:

I just wanted to clarify if the correct terms were being used. Was this discussed and brought up as being an opt-out provision so that any other board that would

like to opt out in the future would have to come back to this Committee or the Legislature to discuss why they should be allowed to opt out? Was that the intent of listing the ones allowed to opt out at this time?

MR. MARCHER:

Based on a conversation with Mr. Powers, that is the direction we took.

MR. POWERS:

What will happen if the Committee ... processes the amendment is there will be a general definition of a regulatory body in the chapter. ... That will be a very broad definition. Then there will be a definition in the chapter saying that the chapter does not apply to this list of boards that you see before you. The effect of that will be that as new boards are created, they will fall into the general definition of regulatory body for the chapter, and therefore be included in the chapter, unless the Legislature specifically puts them in the exclusion section of the chapter. ... That will create the effect that you are referring to Senator Carlton.

CHAIR CARLTON:

I would like to go through the list to make sure we understand which boards we are allowing to opt out. When the boards requested to opt out, did they give an indication why?

MR. POWERS:

I am not 100-percent sure. Some boards do not really have a lot of procedures in place and rely on NRS 233B when they conduct their hearings. Some do have procedures in place. In discussions, some boards decided it would be easier not to be included in this bill. The bigger boards were not in the original bill to begin with. We thought it would be easier to just leave them out anyway. Perhaps, Mr. Powers could craft a sentence that states: "The boards that are excluded, if they choose to participate, or desire to use these hearing procedures, they may."

CHAIR CARLTON:

I do not think we are putting anything in the bill that would prohibit them from doing it. We are just allowing them, as a particular group, to not have to do so. Hopefully, they already have these procedures in place.

I have some concerns about some of the boards listed that want to opt out. When I see "healing arts," what does that mean?

MR. MARCHER:

Generally, the chapter associated with healing arts does not involve a specific board. That is a chapter some boards rely on with regard to subpoenas, medical records and like things.

MR. POWERS:

Keith did a very thorough job of going through the entire title and specifying exactly what would not be included. When we are drafting the final amendment, we will only be referring to regulatory boards that have power over these chapters. Some of these chapters just contain general provisions and do not involve a regulatory board, like chapter 629, dealing with healing arts generally. We will make it clear that it does not affect those chapters ... not including chapter 629 in this new chapter. The bill will not have an adverse affect on the regulation because that chapter is not overseen by an occupational licensing board. It just establishes general principals of law for healing arts generally, where the individual practitioners are regulated by each of their individual licensing boards pursuant to separate chapters.

CHAIR CARLTON:

My concern is that there are some smaller boards that are having problems disciplining. Some of those boards fall within the healing arts. If they can opt out, it does not solve the problem of getting them to comply with the disciplinary process.

MR. POWERS:

This will not allow small boards to opt out because chapter 629 of NRS, healing arts generally, does not deal with the separate chapters for those individual regulatory boards. I will certainly craft the exclusion language so that we make it clear that if you are a board not listed in the exclusion, then you are subject to that chapter. ... All of those smaller boards will be subject to the chapter.

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CHAIR CARLTON:

That was the ultimate goal.

MR. POWERS:

The reason we are doing this, ... with a general definition of regulatory body and then an exclusionary provision, is so that if new boards are created, such as if the Legislature were to create the Massage Therapy Board this Session, then those boards would automatically be included unless the Legislature took the direct action of excluding them. ... The idea is for the chapter to be inclusive and then the Legislature would act to exclude. Otherwise, the reverse effect would occur. If we just included everyone, then no one else would be automatically included without action by the Legislature. It is just a different approach ... .

CHAIR CARLTON:

I think it is a good approach and like it.

MR. MARCHER:

For clarification, if you look at the exclusions, realistically there are only two small boards that wanted to opt out. That was the Nevada State Board of Optometry (BOO) and Board of Examiners for Marriage and Family Therapists (BEMFT).

CHAIR CARLTON:

The Board of Registered Environmental Health Specialists (BREHS) has been delinquent in reporting and complying with some requests we have had. Allowing them to opt out when they cannot comply with a simple task or request concerns me.

MR. MARCHER:

I did not speak to them, and I do not believe they were in the original bill draft.

CHAIR CARLTON:

It will be up to the full Committee to go through the entire list. I would like to see them removed from the opt-out list.

MR. MARCHER:

It is your prerogative as to who you include or exclude.

CHAIR CARLTON:

I wanted to make sure you know that, if they do communicate with you.

MR. MARCHER:

The last thing I want to point out is in section 29 of the bill. There is a reference to "commissioner" in the first part of the bill draft that will now probably be excluded. That would be something that we would have to clean up and remove the reference. Other than that, the procedures in sections 29 through 40 should essentially remain exactly the same.

SENATOR HECK:

I appreciate the well-intentioned work you have done. I have concern with allowing any board to opt out of the hearing provisions. I think the size of the board does not matter. I have had people call and state that going before a large board was like an inquisition; they did not feel they had their due process. As I understand it, it is ultimately the Office of the Attorney General (OAG) that ends up prosecuting or defending these cases.

MR. MARCHER:

That depends on if the boards have private counsel.

SENATOR HECK:

If we are going to allow large boards to opt out, then I am uncomfortable with it being an arbitrary process. Perhaps, there needs to be a definition of what constitutes a small board. For the record, I would like to see every licensing board follow identical hearing procedures.

SENATOR TIFFANY:

Did you remove the section that would have added staff to the OAG?

MR. MARCHER:

Yes.

SENATOR TIFFANY:

How will the OAG be paid for the increased workload?

MR. MARCHER:

Based upon the events of the last meeting, we eliminated that portion.

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SENATOR TIFFANY:  
How will the OAG be paid to do this?

MR. MARCHER:  
The same as we always have, an hourly rate. All the boards the OAG represents, whether as the primary attorney or sitting as board counsel at an administrative hearing for the boards with their own counsel, we charge those boards an hourly rate.

SENATOR TIFFANY:  
Did some of the smaller boards opt out due to financial considerations?

MR. MARCHER:  
I do not believe so; we charge them anyway. It was something about the procedure language to which they apparently took offense.

SENATOR TIFFANY:  
Did they not like being standardized with the procedures?

MR. MARCHER:  
That is my understanding.

SENATOR TIFFANY:  
It does not make sense to me why they would not do this. Did they say they had a different process they wanted to use?

MR. MARCHER:  
They wanted to follow the process they currently use. I did speak to the BOO, who has private counsel, and they were not comfortable with the provisions.

SENATOR TIFFANY:  
Did the BEMFT give you any justification for their opt-out request?

MR. MARCHER:  
Not specifics.

SENATOR TIFFANY:  
The larger boards seem to have their procedures in place that work. I am having a problem with determining how to define a small board versus a large board.



MR. MARCHER:

You are correct, and I think their procedures are fine. I borrowed some of the language from the State Board of Nursing for procedures that we crafted years ago. It is the smaller boards that struggle.

Realistically, as Senator Heck stated, if the larger boards were included in this, they could still operate fine. The provisions are not offensive, and they comply with constitutional and due process considerations.

SENATOR TIFFANY:

Are you comfortable with the list of boards that would opt out? Is there any gray zone between the smaller and larger boards?

MR. MARCHER:

Not really, most of the small boards would be included. There are a few "stragglers," if you will, with the medium- to small-size boards. It is up to you if you want to include them.

SENATOR TIFFANY:

Could you identify who those would be?

MR. MARCHER:

Possibly the Nevada State Board of Accountancy, Nevada State Board of Optometry and the Board of Examiners for Marriage and Family Therapists, as those boards specifically requested to not be included.

SENATOR TIFFANY:

In having worked with them, do you feel that their processes do work?

MR. MARCHER:

I have worked with almost every board in the State, but I have never had any business with those three.

SUSAN FISHER (Chiropractic Physicians' Board of Nevada):

After our last work session, we spoke with Mr. Marcher. We indicated that regardless of the direction the Committee takes, we request to opt out. We were told at that time there were letters being sent to all of the boards formally asking them if they want to opt in or out. We did not receive a letter or phone call from Mr. Marcher. If there is an opt-out provision, we would like to opt out.

MR. POWERS:

For the record ... we need to clarify our terms. This law would not create an opt in or opt out. It would exclude and include. The boards would have no choice in the matter except right now before this Committee to present their case or in the other side of the Legislature.

MS. FISHER:

In that case, we would like to be excluded.

SENATOR HECK:

Could you explain why you want to be excluded?

MS. FISHER:

At this time, we are operating well and seeking outside counsel. We are solvent and do not feel we need to fall under this legislation at this time.

We do not have a problem with the uniform disciplinary process. That makes sense.

SENATOR HECK:

That is all this bill is attempting to do. Everything else with complaints and investigations has been removed. If it goes to a hearing, this format would be used.

MS. FISHER:

We follow that anyway.

SENATOR HECK:

Would you then withdraw your exclusion?

MS. FISHER:

I want to let the record stand with exclusion.

MR. MARCHER:

I do not recall indicating that I was going to send correspondence. That is why I asked Dr. Miner in the hallway after the last meeting if we are speaking just to the disciplinary procedures; does the Chiropractic Physicians' Board of Nevada

(CPBN) want to be in or out? He stated that they would be in. That is why I did not contact them further.

CHAIR CARLTON:

There could have been a communication problem with the word "in." I was under that impression with some of the other boards until they realized what "in" meant.

MR. MARCHER:

"In" only means you follow the same hearing procedures. The CPBN does not have the same exact hearing procedures that are in the bill. No one does.

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

We did receive a call from Mr. Marcher. We expressed our desire to be excluded, because we have very extensive hearing procedures that have been in place for a long time. In 25 years, we have never had a due process challenge or anybody complain that they did not receive a fair, complete hearing. That is the reason we request to be excluded.

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

The Nevada Board of Veterinary Medical Examiners has chosen to be included. The BEMFT has chosen to be excluded because they are very comfortable with their process.

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

We have requested exclusion. I did speak with Mr. Marcher after the last hearing and as of today I really do not know if we are on the list. We have procedures in place, independent legal counsel, are solvent and have never had a case overturned in judicial review.

CHAIR CARLTON:

Mr. Marcher, did the BREHS respond to you or were they on the original list?

MR. MARCHER:

I did not contact them directly so I do not know their position.

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CHAIR CARLTON:

With all of the board work I have done, it has been difficult to get information from the BREHS. This concerns me. I would like to see them not included and have them come to us to explain their process before we allow them to do this.

I would like to read the boards into the record:

MR. POWERS:

... Because not all of these chapters actually have occupational licensing boards, it could create some confusion. I will put together a list for the full Committee and then that will be the list that will be part of the record. Again, Keith did an excellent job of covering all the chapters that wouldn't be subject to this bill. ... Title 54 regulates businesses without necessarily having the occupational licensing board regulating those businesses. ... I will put together a list of boards that will be excluded from the bill. ... That will be what we put into the record.

CHAIR CARLTON:

I recommend that the BREHS should not be on that list.

SENATOR HECK:

For the record, I prefer that all licensing boards are covered under one uniform set of hearing procedures.

SENATOR TIFFANY:

Are we going to exclude the Nevada State Board of Optometry, the Board of Examiners for Marriage and Family Therapists, the Nevada State Board of Accountancy and the State Board of Professional Engineers and Land Surveyors?

MR. POWERS:

... What we are building is list of exclusions. ... Those who came to the table want to be on this special list. This is the special list of exclusions.

SENATOR TIFFANY:

Are we going to include them on the exclusion list?

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MR. POWERS:  
Yes.

SENATOR TIFFANY MOVED TO RECOMMEND TO THE SENATE COMMITTEE ON COMMERCE AND LABOR TO AMEND AND DO PASS S.B. 276.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:

I now open the meeting to S.B. 135. In the previous hearing, they wanted to require a bachelor's degree from a program accredited by the Foundation for Interior Design Education Research (FIDER). As it is right now, a bachelor's degree is not required. You only need to be a graduate of an accredited program. Some of those programs are only two-year programs so this would be raising the bar. I have some concerns that we may be trying to make every profession require a bachelor's degree. Why do we need to require a bachelor's degree for interior design?

SENATE BILL 135: Revises provisions governing certification of registered interior designers. (BDR 54-744)

SENATOR HECK:

I thought, during the initial hearing, the representatives indicated that is the direction that FIDER was going, and they were going to be all bachelor-degree programs.

SCOTT YOUNG (Committee Policy Analyst):

I have the same recollection as Senator Heck. I will verify that for you.

CHAIR CARLTON:

The other language discussed was about green architects. The State Board of Architecture, Interior Design and Residential Design (SBAIDRD) had problems using the existing authority they had to facilitate a particular architect coming into the State.

MR. YOUNG:

As I recall, the architect had not obtained one of the national certifications that the SBAIDRD recognizes when they research a license from another state. He apparently graduated and received his licenses before this national certification was in place. When he came to Nevada, I believe, he assumed his licensure was okay and began work on the green home. When the SBAIDRD discovered this, he was disciplined and a fine was imposed. Ms. Johnson's concern was that there are no green architects per se in Nevada. I believe that was confirmed by the SBAIDRD. She simply wanted to make it easier for Nevadan's that wanted to build green houses to be able to work without a state architect since there were none presently in Nevada. The SBAIDRD indicated there is existing language that addresses that situation. The question came down to whether the SBAIDRD would liberally apply that existing language to work with out-of-state architects or not.

CHAIR CARLTON:

I would be happy to send a note to the SBAIDRD requesting they review the language and let them know they do have the existing authority to make this available to Nevada residents. The last thing we want to do is discourage someone from building green. The SBAIDRD needs to recognize building green will become more common. I do not believe we need to necessarily put anything into the bill.

SENATOR HECK:

I have quickly reviewed the accredited programs of FIDER on their Web site. There are some that offer just an associate's degree or just a certificate. I think, going back to the original language of the bill which says the FIDER program would be sufficient. Putting the bachelor's degree requirement in is rather onerous.

SENATOR TIFFANY:

I believe they are trying to distinguish a "pillow fluffer" from someone who would come in and actually look at the interior and make comments about electrical or plumbing design. I think certified, registered interior designers should have the FIDER requirements. I do not think a bachelor's degree is necessary for a pillow fluffer.

JAMES WADHAMS (Nevada State Board of Architecture, Interior and Residential Design):

This area and the professions can be complicated because there are words that are used to describe a whole range of activities, none of which requires a license. The registered interior designers are not interior designers, they are not interior decorators. You can be licensed in Clark County to be an interior designer without a problem.

The purpose of this bill was to accommodate certain people who want to be registered interior designers, which is really a space planner. These are the people who come in and open floors in office buildings and actually help design the ingress and egress; there is a fire-safety aspect to this. They are not the people who necessarily pick colors and fabrics. The issue is the fire-safety aspect of designing floor space on an open floor. That requires certain professional qualifications including a test. The purpose of this change was to allow the SBAIDRD to entertain applications from people who are qualified to do this but have not graduated from an accredited school because the accreditation process for this aspect of interior design is more recent than some people's education.

SENATOR TIFFANY:

Are you saying that the registered interior designers are space planners, and under those conditions you want them to have a degree?

MR. WADHAMS:

This is not a change in that regard. The current law requires that registered interior designers have an accredited degree and have passed an examination. This change is designed to accommodate people who have a degree from a registered interior design program but the degree predates the accreditation body.

On page 2, section 1, lines 14 through 17, we are trying to allow people who obtained a degree prior to the existence of FIDER to obtain this specialized license.

CHAIR CARLTON:

This is not actually a grandfather clause but are we trying to include those with degrees who had educational requirements prior to FIDER?

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MR. WADHAMS:

Yes.

CHAIR CARLTON:

Are we not raising the bar as far as a four-year program?

MR. WADHAMS:

No.

CHAIR CARLTON:

That makes me more comfortable.

SENATOR HECK:

I would respectfully disagree, because it is new language that is adding the requirement for a bachelor's degree. The current statute does not require a bachelor's degree and there are FIDER programs that do not issue bachelor's degrees. I am all for giving a parallel pathway, but this is raising the bar by requiring registered interior designers to now have a bachelor's degree.

MR. WADHAMS:

I appreciate the concern. This is an expansion of the program allowing other people who are qualified but not accredited into the program. There was no opposition to this bill.

MR. YOUNG:

I went to the FIDER Web site. Under the accredited program section, there is a small piece at the bottom that says, "A program seeking FIDER accreditation must demonstrate that it culminates in a minimum of a bachelor's degree. Currently, accredited programs that do not culminate in a minimum of a bachelor's degree have until January 1, 2010, to comply." That may be where some of the confusion comes in. It indicates there are currently accredited programs that do not require a bachelor's degree, but by 2010 all FIDER-accredited programs will have to culminate in a bachelor's degree.

SENATOR HECK:

That was my concern. My recollection from the initial testimony raises the question, what do you do for those people who still get their associates degree from a FIDER-approved program? That will prevent them from being a registered interior designer in this State.



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MR. WADHAMS:

I do not believe that was the intent.

CHAIR CARLTON:

We will not take any action at this time and give Mr. Wadhams time to review the issues and clarify some things for us. I will let the full Committee know that we are still working on this bill.

Seeing nothing more before the subcommittee this morning, I now adjourn the subcommittee on the Senate Committee on Commerce and Labor at 9:30 a.m.

RESPECTFULLY SUBMITTED:

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Jeanine M. Wittenberg,  
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

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