MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 11, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Wednesday, May 11, 2005, in Room 2135 of the Legislative Building, Carson City, 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 Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Jerry D. Claborn, Assembly District No. 19
Assemblyman John Oceguera, Assembly District No. 16
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Shirley Parks, Committee Secretary
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Donna Winter, Committee Secretary

OTHERS PRESENT:

Danny L. Thompson, Nevada State American Federation of Labor-Congress of Industrial Organizations
Ronald Havlick, Southern California Crane and Hoisting Certification Program
Phillip R. Kinser, Manager, Program Development, National Commission for the Certification of Crane Operators

Victor Slater, Bragg Crane Service
Raymond Bacon, Nevada Manufacturers Association
Matthew L. Frazer, Division Manager, Par Electrical Contractors, Incorporated
Ernie Adler, International Brotherhood of Electrical Workers 1245
Larry Hopkins, Southern California Operating Engineers
John F. Wiles, Division Counsel, Division of Industrial Relations, Department of Business and Industry
Andrew Diss, Intern to Assemblyman John Oceguera
Raymond McAllister, Professional Firefighters of Nevada
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company
Barbara Wall, Deputy Attorney for Injured Workers, Nevada Attorney for Injured Workers, Department of Business and Industry
Rose E. McKinney-James, Clark County School District
Don Jayne, Nevada Self Insurers Association
Barbara Gruenewald, Nevada Trial Lawyers Association
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Jeanette Belz, Property and Casualty Insurers Association of America
Randall C. Robison, Associated Builders and Contractors
Keith Lee, State Contractors' Board
Scott M. Craigie, Nevada State Medical Association

CHAIR TOWNSEND:
I will open the hearing on Assembly Bill (A.B.) 540.

ASSEMBLY BILL 540 (1st Reprint): Revises provisions governing certification of crane operators. (BDR 53-1341)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
I have written testimony (Exhibit C). As stated in my written testimony, I have letters of support for A.B. 540 (Exhibit D) and photographs of what can happen with crane operations (Exhibit E). There was originally a fiscal note on this bill, but that fiscal note has been withdrawn. A copy of the letter (Exhibit F) from the Division of Industrial Relations (DIR) states the fiscal note has been pulled.

DANNY L. THOMPSON (Nevada State American Federation of Labor-Congress of Industrial Organizations):
On behalf of the members of my organization, we are in support of A.B. 540. Early in my career, my job required me to be a certified rigger, and I worked

with a crane every day of my life. Anybody who works on a job around a crane knows the most dangerous piece of equipment on the job site is the crane. If you have a crane operator in that seat and they do not know what they are doing, he may not only kill himself, but he could kill you. I have rigged things that have turned the crane over, not because I did not know what I was doing, but because the guy in the seat did not know the limits of the equipment. I have rigged things that have broken the crane. One day I worked on a job with a hydraulic crane. The operator two-blocked the crane; this is when there is inadvertent physical contact between the load block and the upper block or other part of the trolley. There were some pieces of equipment broken on the crane. The two-blocking should have stopped it from doing that, but in effect we had built this half-million-gallon oil storage tank. It was Friday afternoon and we were walking to take our gages off of the welding equipment when the guy two-blocked the crane and a 15-ton headache ball literally was pulled right off the piece of equipment. It went in the ground one step in front of me and another welder. If it had hit us, it would have killed us both. The line went out the back of the crane, and there was an apprentice standing back there; it missed him. It would have cut him in two.

I sit on the growth task force in Las Vegas and as the Committee knows, the only way to build an affordable product now is to build up. Truly the tower crane has become the state bird. You think you are okay when you drive by one of these projects. You may not be okay if there is somebody operating the crane who does not know the limitations of their equipment. It is a very technical job, and A.B. 540 is a public-safety bill. Everyone who works on a job site with a crane keeps one eye on what they are doing and the other eye on the crane. It is very important for the crane operators to be certified.

SENATOR LEE:
I have a question on the January 1, 2007, date; is that because it takes a period of time to implement the program and people to pass the certification?

ASSEMBLYWOMAN SMITH:
Yes, the January 1, 2007, date allows enough time to actually develop the regulations and also give the employers adequate notice to make sure they have everyone certified. We moved out that date to accommodate concerns from the industry.

SENATOR LEE:
If a person fails the test the first time, they have time to take the test again before the effective date. I think that is great.

SENATOR TIFFANY:
Is it standard procedure across the United States to have crane operators certified?

MR. THOMPSON:
Increasingly it is. One of the issues you are going to hear about has to do with crane operators who work line in both Nevada and California. For these people to be portable back and forth across the line, you need to have the same certification.

SENATOR TIFFANY:
How many states have statewide certification for crane operators?

RONALD HAVLICK (Southern California Crane and Hoisting Certification Program):
Currently, there are approximately 13 states that require some form of crane certification. It varies from state to state. Some have a statewide test that the state administers. Some authorize other entities to administer certification. There are different requirements and testing for experience levels. Currently, there are only about four states with certification similar to that in the proposed A.B. 540 in requiring the National Commission for Certifying Agencies (NCCA) accredited or equivalent certification programs.

SENATOR TIFFANY:
The state certification after which you are modeling the proposed legislation currently has only four states implementing such a model. What four states are they?

MR. HAVLICK:
They are California, Hawaii, West Virginia and New Jersey.

SENATOR TIFFANY:
Did that come about because there are strong unions in those states? Did it come about because there is so much growth and there is so much construction? Do you know what was driving this?

MR. HAVLICK:
I can speak about California. California's certification program, much like Nevada with the current *Nevada Administrative Code* (NAC) regulations regarding crane certification, came about as a result of an accident. In California, approximately five years ago, a tower crane tumbled and fell in San Francisco. The crane landed on a school bus and killed several members of the general public. The quality and caliber of the certification program in California needed improvement. Previously, certification was left to the employer, but there are several flaws with this method. There is a feeling that the current NAC regarding crane-operator certification in Nevada has several flaws. This is especially true when determination of what is certification is left to the employer.

SENATOR TIFFANY:
When somebody becomes certified, does that do anything to their pay scale or pay rating?

MR. HAVLICK:
No, we have not seen that in California. California's program becomes effective June 1 of this year. The law was issued in July 2002 which gave people approximately three years to get themselves up to speed. Due to liability issues there are companies in California that are notifying their employees that if they are not certified by that date, they will not have a job. Companies are not willing to risk the liability of putting an unqualified person in the seat of a crane anymore.

SENATOR TIFFANY:
California just passed this, and it is not even implemented yet?

MR. HAVLICK:
Correct, it was passed in 2002. It becomes effective as of June of this year.

SENATOR TIFFANY:
Would you expect this to impact insurance rates?

MR. HAVLICK:
Organizations in Nevada are using our program because their insurance companies are requiring them to have a certification for their operators from an accredited organization.

SENATOR TIFFANY:
What do you mean when you say our program?

MR. HAVLICK:
I represent the Southern California Crane and Hoisting Certification Program which is a certifying organization. We also service southern Nevada with our program.

SENATOR TIFFANY:
Would your program be the school that we would implement here?

MR. HAVLICK:
It is important to understand that certification is not training or schooling. It is only a test. It is only a measure of whether a person is qualified or unqualified to get in the seat of a crane.

SENATOR TIFFANY:
Then your test is what we would bring in.

MR. HAVLICK:
Correct.

SENATOR TIFFANY:
Is there a course you can take prior to this test?

MR. HAVLICK:
An accredited certification organization cannot provide training. The one thing you do not want to do is train to the test. You want to know what it takes to be a qualified crane operator. How do you know that? That is called validity. The other thing you have to prove is, if you know what it takes, what kind of assessment instruments are you using to separate qualified from unqualified personnel? How do you know they work? There are a lot of statistics involved with that. The point of it is that you are not interested in training anybody. You are interested in sampling their knowledge. From the results of the sample you are able to make interpretations. You can extrapolate; if I sample this and I did a correct sample, therefore I now know this person with some probability knows all of the rest of the things he is supposed to know. In terms of crane operation, there are a lot of things someone has to know. An hour or an hour and a half test cannot cover everything a crane operator must know.

SENATOR TIFFANY:
You anticipate that these people would all be working in the field today. Is there a crane-operator school?

MR. HAVLICK:
Yes, there are many schools that can provide training in the private, nonunion or union sector.

SENATOR TIFFANY:
My grandfather was a crane operator. We would go to the construction site where he worked, because there were always cranes with huge booms. One of the problems was tipping over. They had to be careful about the extension of the boom, the weight on the end, the swinging and the velocity. It is mathematical, and he operated the crane by sense and feel from experience.

MR. HAVLICK:
There is not really a standardized training program. It is more a case of osmosis; get in the crane and if you do not tip it over, you can keep running it. An accredited certification program is designed to ensure that operators understand all the principles of the crane. We have tested over 1,000 people with our certification program. We test new crane operators. We test people with 35 to 40 years of experience. Many times we find the people with 35 to 40 years of operating experience, which you might classify as a lever puller, understand if they pull this lever, the crane goes up or turns. What they do not understand is the physics behind the operation of the crane, particularly when it comes to manufacturers' operating directions including load charts. An accredited testing program attempts to measure their understanding all of this technical information.

CHAIR TOWNSEND:
The current law states: "... establishing standards and procedures for the operation of cranes, including without limitation, regulations requiring the ... establishment and implementation of programs for the training and certification of crane operators." Why we would take "training" out of line 15 on page 1 of the bill? Are we just going to create a certification now?

MR. HAVLICK:
Correct. The NAC regulations state in order to be certified in Nevada, an employer needs to submit a two-page form to the DIR. This two-page form must

state that the employer wants to get a particular person qualified or approved by the DIR as a trainer. Once that person is approved as a trainer, he is required to give a training class, a written or oral test and a practical test to an individual he wants to certify. Most experts in testing and assessment would find a major flaw in this methodology, because the person giving the training is also conducting the testing.

It is critically important for an accredited certification program to have been looked at by a third-party independent organization with psychometric experts who understand everything about what it takes to really be able to certify somebody. Certification has to do with differentiating between qualified and unqualified personnel. The concern is not about the training aspect; the concern is about whether or not they can pass the test. If a test is designed correctly, all due diligence in terms of determining the assessment program validity has been completed and the reliability and the integrity of the program is such that nobody can circumvent the systems, then there is greater assurance that when somebody completes the test successfully they are a qualified crane operator. It takes the burden off of the State to stipulate that you need to train them right now. In reviewing the current regulations, there is very little direction about acceptable training curriculum or test content.

CHAIR TOWNSEND:
It is a good answer, but I am not sure it is the one for which I was looking. It is like having people take the bar exam without the requirement of going to law school. That is why I asked the question. There are reasons to train and give these people some experience. I do not disagree that the training group should be different than the certification group; this avoids teaching to the test.

SENATOR LEE:
When a company buys a forklift, if they are putting that kind of money into a forklift, they figure out how to train people to get ready for operating that forklift. The same would be true for a crane. The company would make sure those people were trained well with that piece of equipment. A lot of times insurance companies will make sure people are certified and trained; they will do a lot of those things for you. The training responsibility is with the owner of the company. The owner must make sure if he puts a $2 million piece of equipment on a piece of property that he has figured out how to train the person who will operate it. It is incumbent upon the owner of the company to make sure he does not mess up his investment.

CHAIR TOWNSEND:
Page 2, line 2 of the bill states, "mobile cranes having a usable boom length of 25 feet or greater or a maximum machine rated capacity of 15,000 pounds or greater… ." Can you give us a perspective on what a mobile crane is, relative to something that is being built either here in Carson City or in southern Nevada?

PHILLIP R. KINSER (Manager, Program Development, National Commission for the Certification of Crane Operators):
The reason the language is stated as such in A.B. 540 is that there are many cranes that vary in their capacity and boom lengths. They vary from 3 ton, which is governed by the American Society of Mechanical Engineers (ASME) B30.5 for mobile cranes, all the way up to 1.4 million pounds of capacity at a given radius. In one sense, you delimit the types of cranes that are going to be governed under the bill, because at some point many cranes are rarely used or they are only used inside an industry that does not feel the need for qualification criteria. A range of 15,000 pounds or greater would include a 7.5-ton crane, which can be a very small boom truck, all the way up to a 300- to 400-ton crawler crane. Twenty-five feet or more of useable boom means the greater your boom length, the greater the tendency is to be able to tip it over. The manner in which a lever system operates is, when you put a little bit of weight on a very long boom and you extend the boom out, there is a tendency to be able to tip it over. Those limits currently in the bill were put in place to incorporate those cranes that are used most often in construction activities and to cover the wide range of cranes normally seen on a construction site.

CHAIR TOWNSEND:
I am trying to relate to your answer. If I had two mobile cranes side by side and one of them does not meet the standard and one does, what am I looking at?

MR. KINSER:
You are generally looking at the size of the crane.

CHAIR TOWNSEND:
Is it on the back of a half-ton or three-quarter-ton truck?

MR. KINSER:
Anything less than a 15,000-pound crane, for example a mechanic's truck that has a little 3-ton hoist on it that they use to lift right off of their tailgate, would not be included in the bill. Conversely, a boom truck that has a 16- to 20-foot

bed length and has a boom that can reach out to 40 or 100 feet and can lift 15,000 pounds are examples of the two smallest types of cranes that may be in question. They are both governed under the ASME 30.5 standard. However, mechanic's trucks are limited in what they can pick up and they have a very short boom. So, that type of crane should not be included.

CHAIR TOWNSEND:
The purpose of the question is to find out. Are we going to sweep in 10,000 little guys who are independent truck owners wandering around doing work? Then, all of a sudden they are going to get cited, because they are not certified and they did not know anything about it?

MR. KINSER:
You certainly do have that case. You have many people running around operating cranes, particularly boom trucks, who are not certified. They have not been qualified in any sense of the word by having independent assessment methods to determine whether they have the necessary knowledge to operate a crane safely.

CHAIR TOWNSEND:
Safety is crucial in this Committee. We also know the reality of when we pass a law, who do we impact? We have to craft this correctly. I understand you are trying to get people who work construction. However, since I do not know much about the size of these cranes, you understand the point I am trying to make. Are we going to have 10,000 Chevy and Ford truck owners screaming and yelling, because we made them get certified?

VICTOR SLATER (Bragg Crane Service):
Most of these machines we are talking about are going to be mounted on a flat-bed truck. If someone has a boom truck with a rotating boom, whether he is a farmer or whether he is someone in operation on a construction site, he still has the potential of laying that machine over and creating a great deal of damage and harm.

CHAIR TOWNSEND:
We understand that, but we also have a rural caucus here. A person who has a boom on the back of his truck, who lives out in the middle of nowhere and nobody has seen for 30 years, are you going to sweep him in with this legislation? If you are the only person, you are only a threat to yourself. I am

not saying we should not do it. I am trying to narrow it down to who is going to be in this and who is not. Are you telling me that most of the things that are in section 1, subsection 2 of the bill are flat-bed trucks?

MR. SLATER:
Generally the boom trucks are mounted on a flat-bed-type truck. It has a rotating assembly so that the boom rotates, as opposed to what you might find in the rural areas. Typically in a rural area, you might find an A-frame that is built on the back of a truck that the operator will back up and pick up a motor.

CHAIR TOWNSEND:
Let us talk about the outdoor board industry, all of those people who have signs and sign companies. Are you going to sweep in all of those guys?

MR. SLATER:
I would say based on tonnage, we would take in most of the sign trucks. The sign trucks we would be referring to would have a lifting capacity in excess of 30 tons. They would have a boom length extended to 100 feet; the jib that goes on the end of the boom would extend the reach another 56 feet. That sign truck has a potential of having 156 feet of boom and a 360 degree rotation capability.

CHAIR TOWNSEND:
You sweep in everybody who meets that standard. Have you talked to any of the sign companies?

MR. HAVLICK:
The criteria of the 25 feet of boom or the 15,000 pound machine-rate capacity are not a beta test for Nevada. Those are the requirements in California and there has not been a strong resistance from a lot of folks who would complain. The other point you mentioned is the sign companies. Those are precisely the people who you want to be able to ensure are qualified. They do operate in the general public area. We have some examples in Exhibit E that we have passed out. One example shows a particular sign-company boom truck that has tipped over in the vicinity of the public.

CHAIR TOWNSEND:
I do not disagree. You just have to understand we are a little bit closer to the people who elect us than those in California. When we all go back to work, the

public knows where we work and what we do. They come see us. They call us. They e-mail us and they fax us. We have to know who we are affecting.

MR. SLATER:
Bragg Crane Service supports the bill, because it provides us an opportunity to get an operator who is qualified, trained and has the certifications. We find it more common as we go on job sites, particularly when we deal with contractors out of the area, to be asked for certified crane operators. Whenever we do work on any federal projects, federal jobs or at the Naval Air Station in Fallon we are asked for a certified crane operator. Obviously, when California's law takes effect on June 1, 2005, we will not be able to cross the state line and work in California without that operator being certified. It gives us a better competitive advantage. Currently, with the exception of one man, all of our people are certified. We are in support of A.B. 540 based on safety and the requirements that are being forced on us from other areas.

MR. KINSER:
I have some information based on the earlier questions about participating states. As Mr. Havlick noted, there are well over a dozen states that require licensing or certification for operators. Currently, there are four states that have that requirement for operation within their boundaries. There are six states that have it pending in their legislation right now. Probably three more states will pass such legislation within this Legislative Session. Federal guidelines in three or four years will require it regardless of what a state does. There will be requirements for all types of cranes and their attachments in about three or four years.

One question that may arise is why should Nevada proceed with this prior to federal regulation? I would ask, are you willing to accept the risk of operating a crane without qualified people during a three- or four-year period before the federal requirement goes into effect as well as the consequences of those risks? The National Commission for the Certification of Crane Operators (NCCCO) has been providing the third-party independent assessment for over ten years. We have certified well over 25,000 people and provided well over 100,000 exams across the United States. We are as well recognized as any NCCA-accredited entities such as Mr. Havlick represents by federal Occupational Safety and Health Administration (OSHA), the Department of Energy, Department of Veteran Affairs and Department of Education. The Nevada Test Site requires certified crane operators (CCO) or equivalent to operate on their site. There is a

lot of work that goes into the identification and verification of the qualification criteria for a crane operator. We believe third-party assessment is the way to go. We do not have personal interest in whether we charge you for training and then certify you immediately afterwards. We would not do one or the other. This is key to Mr. Havlick's statement about not providing training. We do not have an interest in it. We are actually not permitted to do so under our accreditation requirements by the NCCA. We are under constant supervision of another entity that is independent and monitors our methodology. Certification in itself may seem somewhat simple, but there are many years that go into actually determining those qualifications. It is not just a commission or a group of people who do it. It is generally supported by an industry job task analyst who we send out to all of the operators. We get the operators to verify that the qualification criteria based on performance in criticality are indeed those issues that they believe are important in their own day-to-day crane-operation activities.

SENATOR HECK:
Would a fire department ladder truck or cherry picker be included in this? It is not included in the definition of a crane?

MR. KINSER:
No, a fire department ladder truck or cherry picker would not be included. The definition of a crane is well-defined under the three standards that are listed in A.B. 540. The ASME B30.3 covers tower cranes, the B30.3 and B30.4 cover tower portal construction cranes and B30.5 covers mobile cranes. Anything that does not meet their definition of a crane would not be covered under the bill. This also excludes your farmers, because their cranes are not defined under the B30.5 standard.

SENATOR CARLTON:
This is very enlightening for me. The past couple of years I have driven by the Wynn Resort job site numerous times looking at the cranes and the structure. I did not realize these crane operators might not be certified. If we pass this bill, then we will not be reacting to an accident as did California. We will be proactive. If we do not have the right people operating cranes with all the towers being built in Las Vegas, something is bound to happen. When we have builders here in front of us, they are always talking about the prohibitive cost of insurance on a job site. If these operators are not trained, will it be possible to even get insurance on a job site in the future?

MR. KINSER:
Mr. Havlick spoke to that briefly and I have to reassert his same answer. I am hearing from many companies within the jurisdiction of the CCO which covers all the way across the country. They call and ask about it because they have been informed by their insurance carrier that if they do not have their operator CCO certified they will drop them. They will no longer cover them.

There is a drive in the industry by the insurance. As you all well know, no matter what insurance we have, it is all going up. We have a hard time controlling those costs. Insurance carriers and brokers who have learned of the CCO process have gone to constructors and indicated that they want their people CCO certified or certified by a NCCA-accredited entity. They know that the independent assessment process guarantees the qualification criteria is based on the job type, the skills and the knowledge necessary to operate the crane safely. There are two insurance carriers that provide a discount for companies that use NCCA-accredited operators.

CHAIR TOWNSEND:
What percent of the accidents occur with tower cranes versus mobile cranes in your experience in California?

MR. HAVLICK:
The vast majority of accidents are related to mobile cranes in the operation or the performance of mobile-crane work. In Nevada, the requirement for certification currently is only for tower-crane operators or mobile-crane operators who assemble or disassemble tower cranes. You are leaving out a big portion of the industry where most of the accidents are occurring.

CHAIR TOWNSEND:
Based on the definition of the mobile crane, does this sweep in all of our friends in the electric, gas, cable and telephone industries?

MR. KINSER:
The utility industries are swept into it, because they do not just operate line trucks or digger derricks which are their primary vehicles with hoisting mechanisms. However, they do possess and frequently operate boom trucks and small telescopics from the 18- to 50-ton range. We have many instances across the nation where electric utilities have gone through the certification process, because they operate all types of cranes. Pacific Gas and Electric

(PG&E) of California actually considered doing their own certification. They decided they did not have the expertise and that it would have taken a long time to do it. They also operate all of those cranes. Although electric line trucks are exempt, they operate boom trucks and hydraulic cranes that are in a swing-cab version. They are going ahead and getting their certification in those machines.

CHAIR TOWNSEND:
I have a copy of an e-mail from Edward Suiter (Exhibit G) who could not attend today's meeting in support of A.B. 540. I have a copy of a faxed letter in opposition to A.B. 540 from Jack Harker (Exhibit H) who could not attend today's meeting.

RAYMOND BACON (Nevada Manufacturers Association):
We are neutral on this bill. It is appropriate to get some clarification on the record as to what the bill includes and what it does not include. There is separate licensing required for forklifts. We are making the assumption and would like that assumption confirmed by the DIR that forklifts are not specifically included in this bill, even if they are used in some aspects where they are effectively lifting like a crane with a hook.

There is some interior equipment that is used at conventions to lift displays. That is mobile equipment which is usually used internally. I do not believe this equipment falls under the definition of a crane but I would like that confirmed.

The businesses that clearly have equipment that will fall under the definition under this bill are all the truss companies, precast-concrete operations, some roofing companies and certainly all of the sign companies. A questionable one would be tire-changing companies that lift the large commercial vehicles; they may actually qualify under the bill.

Nevada has not done a good job notifying people when rules are changed. The division will have a significant task notifying people that the rules have changed and what is going to be required of them to comply with the new rules.

One industry that I do not believe will be covered by this bill is well-drilling operations but it may be prudent for the Division to put on record that it will not be covered. They are clearly in the category where they are lifting more than enough weight, and they are clearly in the height category. I do not believe it

meets the definition of a crane, but it should be clarified on the legislative record in case we need to revisit this at some future date.

SENATOR LEE:
You bring up a good point. We use backhoes all the time. We use the boom to rig something and drop it over. Other appliances can be used in the form of moving things. It does not really make them a crane, but they could be classified as doing crane work in those circumstances.

MATTHEW L. FRAZER (Division Manager, Par Electrical Contractors, Incorporated):
We are opposed to this bill. We are not opposed to certification; we are opposed to the bill because of the problems that come with it. As was testified here earlier, there is a difference between certification and qualification. I am not certain that distinction was made clear this morning.

We currently certify our people through a program that is put on by Texas A & M University. We do this nationwide. We move people from state to state in response to the emergency location. We use the boom trucks that are being discussed here. There is a problem in California with the new NCCCO-certification process. It is like California's electric deregulation fiasco. It is being put in place, and it is covering people who can do their job well, but they may not be able to take a test well. Our boom trucks go up to 30 to 35 tons, but we do not use tower cranes or the 200-ton big sticks. When we need to use a large crane, we call Bragg Crane Service because we know they have qualified people for that kind of equipment. When we rent a crane like that, we rent it operated. We certify our people to operate our boom trucks.

In northern Nevada, we do virtually 95 percent of the traffic signals. The very boom trucks that are lifting those traffic signals are the ones that are going to be covered under this bill. Our mechanics truck only lifts 6,000 pounds, because of the crane that is on it; however, the boom could go out to 27 feet. It is qualified for what the bill stipulates so our mechanic would need to be certified. We would have to spend the money to replace the truck or send it to a state that is not covered.

The federal regulations that we talked about earlier that will be out in two or three years have gone through a lengthy rule-making committee. The committee is made up of both safety people and industry representatives; the OSHA and organized labor have participated. They have spent a long time trying to come

up with a reasonable solution to this. We are going to implement something in Nevada that in two or three years is going to be in conflict with the federal regulation. I say it is going to be in conflict, because it would be sheer coincidence if our regulation matched the federal regulation. It is hardly possible. If Nevada regulation were less than that required by the federal regulation, then Nevada would have to comply with the federal regulation. If Nevada regulation were a higher standard than federal regulation, then we are going to have a wall on the eastern side of this state preventing us from bringing people in when we need to respond to either emergencies or the current labor shortage.

MR. FRAZER:
I do not disagree with certification of tower cranes. I have a real problem with what we are doing here. We are bringing too many people in here; let us focus on the problem. The problem is not our boom-truck people. The problem is not the people building the traffic signals or the power lines. That is for what we use boom trucks. We feel we have a good certification process, because we certify our people through Texas A & M University. We do not need the problem we are seeing in California. We have over 600 people in California who are covered by this. Currently, we have a 17-percent pass rate on the NCCCO program. They may not train, but they certainly make a lot of money testing and retesting. We are having a real problem getting our people qualified through this process. We do not feel they are unqualified to do the work, but they just cannot get certified with this process. Part of this process requires personnel who only operate our boom trucks to also take a test that includes power cranes. Part of the test for everybody includes testing on power cranes. Our linemen who operate those cranes do not use power cranes. That is not what they do; they build power lines. We feel we do not need this. We should wait for the federal regulation to come through.

ERNIE ADLER (International Brotherhood of Electrical Workers 1245):
We support A.B. 540 as it was amended in the Assembly, because it does have an exception for electrical and utility trucks. That is because the training for those types of applications is different than other uses of boom trucks. Actually, they engage high-voltage lines with their booms, which requires a totally different type of training. This bill does acknowledge that there is a different training involved.

LARRY HOPKINS (Southern California Operating Engineers):
I have been involved in the training and certification process for many years. I am a subject-matter expert in all aspects of training, from tower cranes to mobile cranes, and follow statistics along with that. I wanted to rebut a couple of the issues that were made.

First, the NCCCO and the Southern California Crane and Hoisting Certification Program are both nonprofits. Earlier, Senator Townsend had asked whether we could separate the percentage of tower-crane versus mobile-crane accidents. Though we cannot do it specifically, we know in California that the number of tower-crane accidents is quite small compared to mobile-crane accidents, simply because of the number of units. Nevada runs a lot more tower cranes and heavy lift-type configurations. One specific operation that draws our attention is the one that went down in Laughlin. The crane fell on a parking lot and three people were killed. It was referred to as a tower-crane accident in the news, but truly it was a mobile-crane accident. It was a mobile crane taking down a tower crane.

The other issue is with the smaller boom trucks being exempted from this certification process. It would completely defeat the process, because the vast majority of mobile-crane accidents involves cranes usually less than 50 tons in capacity. The reason is that smaller cranes are typically operated at or near their capacity simply because of their limited capacity. Industry standards require when a crane operates within 75 percent of its charted capacity that a critical lift plan be made prior to doing so. In most cases, the people in these cranes are not qualified, because that is typically where we get our start. A crane operator does not typically start in a 600-ton d-mag. We typically start in a 15-ton boom truck. We have limited experience and limited training.

MR. HOPKINS:
Another issue to consider is when we typically refer to boom trucks and their operators, many times the boom is thought of as an apparatus for loading and unloading the truck. The boom truck is often involved with delivery of concrete products or large trees for landscaping. This brings forward the issue of several stops a day. Several stops a day means that person has to be qualified to evaluate each site where he lifts. An example would be power-line restrictions. A majority of the boom-truck accidents are power-line strikes. Nationwide, 44 percent of all the fatalities are from power-line strikes. The victims are not always the operators. It is usually the public or whoever is standing on the ground near the particular machine when it strikes a power line. During the

construction of the Alameda corridor in southern California, a boom truck struck a power line as the members of the public leaned on the chain-link fence watching the operation. There were three electrocutions because they were leaning on the fence. The operator was unscathed. This was obviously in violation of the guidelines for minimum clearance for power lines.

The last issue is when we fill the seat of a boom truck, many times we are looking for a commercial driver. Usually trucks of this capacity that carry a boom require a commercial driver to drive them. Many times in the industry when people are hired to run a boom truck, we ask if they have a commercial license. The person will respond, "yes," and then the employer will say," here is this boom on the back of the truck, here is the load capacity, be careful and good luck." I will leave it at that.

ASSEMBLYMAN JERRY D. CLABORN (Assembly District 19):
I wanted to address the Committee today regarding how important this crane-operating certification is to the construction industry. Previously in my career as an operating engineer and business representative, I came across many crane accidents. The crane accident Mr. Hopkins just spoke about happened in Laughlin and that was my territory. I was there when the accident actually happened. This accident killed three people walking down the street. The bill we are trying to get passed here and the certification is for the public's safety as well.

As you have heard today, 90 percent of all crane accidents were preventable with a properly trained operator. This bill will help correct some of the problems we face today in the crane industry. This piece of legislation could save many lives as well as prevent many injuries and not just for construction workers. This bill will also protect members of the general public who stand on the edge of construction projects to watch the daily progress. When one of these cranes comes down, they are so large they take out a city block and everything that is in it. It not only hurts the people on the job site, but it kills the people walking on the streets as well as the sidewalks. This legislation will help protect the workers on the project as well as the public on or around these projects. I urge you to support the bill.

CHAIR TOWNSEND:
Mr. Bacon, did you get your questions answered with regard to Mr. Wiles? Are you going to put those on the record?

JOHN F. WILES (Division Counsel, Division of Industrial Relations, Department of Business and Industry):
I spoke to Mr. Bacon regarding a forklift which is different than a crane. Of course, there are separate standards for those. There is also a specific reference on page 2, line 8 of the bill to ASME standards B30.3, B30.4 and B30.5 which are specific types of cranes that are identified in this bill. Under those circumstances, the bill is limited to those cranes and those standards. You have heard testimony of about what those standards cover.

CHAIR TOWNSEND:
There was reference made to something going on inside, probably a convention authority, where they own the crane and they operate the crane to either build or take down various exhibits or fix the roof.

MR. WILES:
I am not specifically familiar with those types of cranes. The extent to which they might be considered another type of crane would be, for example, a gantry crane and they move along an I-beam. Those are a different standard and are not necessarily covered by this bill as I read it.

CHAIR TOWNSEND:
The front of the bill states that there is in effect on the State under the fiscal note. Did that get resolved?

MR. WILES:
That fiscal note was put on the prior version of the bill. The bill has been amended. We have removed the fiscal note based upon the amendment.

CHAIR TOWNSEND:
I will close the hearing on A.B. 540 and I will open up the hearing on A.B. 186.

ASSEMBLY BILL 186 (2nd Reprint): Authorizes payment of additional compensation for permanent total disability to certain injured employees and their dependents. (BDR S-251)

ANDREW DISS (Intern to Assemblyman John Oceguera):
I have written testimony (Exhibit I).

RAYMOND MCALLISTER (Professional Firefighters of Nevada):
I have been working on this for quite some time with members of the insurance industry, trying to address this problem. Initially as A.B. 186 was amended in the Assembly, the idea was to take the interest that is earned from the uninsured employers account (Exhibit J), allow the director of the DIR to reduce the amount of assessment for the uninsured-employers account and therefore he could assess if there was not enough to create a pool of $500,000 per year. It is our understanding in conversation with representatives of the Office of the Governor that he may consider this a new assessment and therefore would have a problem with this bill in its currently drafted form. The insurance-industry representatives and I would work with the Governor's Office to try to alleviate that concern, and we may need some additional amendment to this bill to do that. Therefore, with your indulgence, I would ask that we would be able to bring back this bill and maybe with an amendment help clarify to the satisfaction of the Governor's Office that this would not be a new assessment.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):
Mr. McAllister is correct; we have visited this issue for the last ten years in this Committee. We were hoping to devise a solution that would permanently solve this issue. We have achieved that by creating this pool. If you turn to page 4 starting on line 3, "If there is not sufficient income realized ... " and proceed all the way down to the end of the section that ends on line 24, there is language relative to an assessment process and that has raised the concerns of the Governor's Office. I have met with Mr. McAllister; we can work out some language and bring it back to this Committee which will suit the Governor's needs. This assumes the Committee agrees with the policy decision to continue to pay these increased benefits and try to work around this. The original assumption is that we would pay it out of the interest. This fund has $13 million in it and the current interest environment produces $250,000. In an increasing interest environment, we think the interest will be generated and will probably pay the whole amount without an assessment. If the interest rate goes up to 3.5 or 4 percent, we will generate the kind of money we need to operate this program. We need to get over a temporary hump. We can work on some amendments and run them by the Governor's staff to make sure when it comes before this Committee in work session that there is a solution to which all parties have agreed. Is that agreeable to the members?

SENATOR HECK:
How many people are caught in that loophole?

MR. MCALLISTER:
When the Legislature authorized the assessment in 2004, there were approximately 830 to 840 people that it caught. It left out a group between 1996 and 2004. We are estimating 1,100 to 1,200 people would be splitting that $500,000.

SENATOR HECK:
Would that pool never grow at this point? That is, addressing those people?

MR. MCALLISTER:
The pool of people would never grow. It would stay the same. Actually, it would get smaller every year as people pass away. Ultimately, when the pool of people goes away, this legislation will be gone.

SENATOR HECK:
If you are planning to use the interest off the uninsured account to pay this, where does the interest go currently?

MR. OSTROVSKY:
The interest has been accruing the account. The trade-off is the account has not been accessed much. If for some reason the amount of money in that fund goes down, say they have to pay out $3 million and it drops to $10,000, the DIR would do an assessment to increase the fund to what they think is actuarially appropriate. This is the risk. We have looked for a solution for this problem for years. Short of having a pure assessment on employers to pay for this, this was a convenient fund that for some reason has grown to a substantial size. If the DIR were here, they could testify that they do not need to assess any more money in today's environment. Five years from now, they might find it is inadequate as the number of businesses and insurers grow. They might think they need to increase this fund. It would go into their assessment pool which is around $29 million; this is the pool of assessments for the operation of the DIR, OSHA and a whole series of elements which go into that. This department is all funded by the assessment process. The General Fund is not involved in the way this works.

If I may add one more thing about the number of employees in the pool, we are not exactly sure how many employees are permanently totaled out there after that little notch period we talked about. This is because there are so many insurers now. There are less permanent totals today being granted than there were years ago. There is better medicine, better vocational rehabilitation and lots of things happen today that return employees to the work force. When talking about claims that date back to 1942, it was easier for the insurance companies to permanently total (PT) people than it was to go through all the things that we do today to make injured workers productive again. During the process of preparing last year's assessments, we had a number of these individuals pass on. So, the pool shrunk just as we were trying to do the calculations. The pool will be around for 30 to 40 years, but it will be a declining amount. The $500,000 cap will get smaller, because we can give no one more than $1,200 under this bill. The last person in line will not get a check for $500,000.

SENATOR TIFFANY:
It looks like we have two policy decisions to make. First, should we use the interest on this fund? The second decision is on the assessment. It looks like it could be up to $500,000 even though there is $250 million in the fund. If that assessment goes over the $250 million, then would you have to add an assessment back to the insurance policyholder?

MR. OSTROVSKY:
There are two pieces to this puzzle. One is the interest that is generated from the fund; it creates "x" amount of dollars.

SENATOR TIFFANY:
You said approximately $250 million?

MR. OSTROVSKY:
No, I said $250,000. The fund is only about $13 million. In today's interest-rate environment, this would yield about $250,000. Now the question becomes, how do we achieve the shortfall between the $250,000 and the $500,000 it still calls for? This bill as drafted and as amended states there will be an assessment. That is a problem with the Governor's Office. An alternative would be to use some of the monies that are already in the fund, which in the year 2005 was $12,823,000. Another alternative would be to just use the interest and some years it would be less than $500,000. We are hoping that does not

happen. We are asking current-day employers to pay for a benefit because of the way the law was drafted years ago without some inflation factor in it. We have people out there earning $800 a month as a PT.

SENATOR TIFFANY:
What are you going to propose to the Governor?

MR. OSTROVSKY:
Mr. McAllister and I are going to talk to the Governor about using a portion of the uninsured employer's fund to make up the difference.

SENATOR TIFFANY:
Would they not get assessed anyway, because you have to have a certain amount sitting in there to guarantee your liability?

MR. OSTROVSKY:
The DIR will have to discuss that, but that risk is there.

SENATOR TIFFANY:
I now understand where you are presenting and the policy questions.

BARBARA WALL (Deputy Attorney for Injured Workers, Nevada Attorney for Injured Workers, Department of Business and Industry):
We do support cost-of-living increases for permanently totally disabled and injured workers. We take no position on how that is going to be funded.

CHAIR TOWNSEND:
When this was brought to my attention, Mr. Ostrovsky, Mr. Jeffrey, Mr. Thompson and I were working on this in 1983. We went back and looked at a pensioner. The death of her husband occurred in 1931. The amount of money she was receiving was laughable in the context that anybody could actually contemplate the possibility of getting by living like that. We are glad you are involved, and we will find some resolution.

ROSE E. MCKINNEY-JAMES (Clark County School District):
We do support the bill as amended. We recognize now that there is a challenge with respect to how we will address the issue that Mr. Ostrovsky has raised. I would like to indicate our willingness to work with the sponsor of the bill. We

probably will not be able to bring much to the table, but indicate our willingness to help for the record.

DON JAYNE (Nevada Self Insurers Association):
We do share the desire to find a way to fix the problem. When the bill came out last Session, we were only able to do it on a carry-forward basis with the real problem being the impact of retroactive benefits. When this bill came through the Assembly, our concern when testifying was to make sure we segregated and allocated separate line items to track these payments, because they would be payments for retrospective benefit payments as opposed to uninsured claim payments. That was our key concern and the sponsors of the bill worked with us to make sure that was recognized. Since the bill is coming back, we will continue to work with them to make sure those concerns are recognized, because that was the one thing I wanted to get on the record today. The real problem here and possibly in the future is what do we do with retroactive benefit decisions that are good public-policy decisions to take care of older claimants and how do we fund those? What is the proper source of funding and how do we account for it? The exact representation in that mix of self-insured injured workers is relatively small. We will participate via the assessment process to our shares based on the assessment process. This is good public policy to get to those folks who were left behind. We are concerned how we handle retroactive benefits as we continue to deal with this issue Session after Session.

MR. BACON:
I am representing employers since most of the people who have come forward have represented insurance companies and things like that. We recognize at this stage of the game that we have to support the Governor's position. We are dealing with a retroactive benefit with which the current employer base was not involved in many of these claims but in some cases they were. We are dealing with a benefit for which the premium was never collected.

SENATOR CARLTON:
Did you testify in the Assembly on this bill?

MR. BACON:
We did testify in the Assembly. We made our points known and we knew Mr. Ostrovsky was watching out for us and understood the issue.

CHAIR TOWNSEND:
I will close the hearing on A.B. 186 and I will open up the hearing on A.B. 364.

ASSEMBLY BILL 364 (1st Reprint): Makes various changes relating to industrial insurance. (BDR 53-249)

MR. DISS:
I have written testimony (Exhibit K).

SENATOR HECK:
Is there a reason why the accounting provided to the injured employee is quarterly?

BARBARA GRUENEWALD (Nevada Trial Lawyers Association):
We helped sponsor this bill and helped move it through the interim committee so I would like to address Senator Heck's question. When a person is permanently totally disabled (PT), they receive checks once a month. If they have already taken a permanent partial disability (PPD), then before becoming PT a portion of that PPD is subtracted from their check. Many times they do not understand what is being subtracted and why it is being subtracted from their check. So, there are numerous calls to the claims adjustor, the Nevada Attorney for Injured Workers, as well as workers' compensation. In order to prevent all that, we asked the interim committee if we could have a provision that the amount being subtracted would be explained to them and put on each individual check. That is how it came out of interim committee. When over on the Assembly side and negotiating the terms of this bill, we agreed to change it from being on every check every month to a quarterly statement in a letter. From the insurer's point of view, it is a lot more expensive to put it on the check each month; that is why we compromised our original position.

MR. OSTROVSKY:
I would also like to respond to Senator Heck's question. This language was developed as part of the interim study on workers' compensation. I have a different view of how we got to where we are today. We have a claimant who testified she had a problem understanding why a deduction was being made pursuant to *Nevada Revised Statutes* (NRS) 616C.440. The statute provides the language regarding the limitations on awards and the fact that you can recover prior awards if the total amount exceeds what they would have gotten as a PT. When it came out of that committee it required a check-stub analysis to be

done. I requested the Assembly committee to do an annual statement. I thought this was adequate, because under NRS 616C.445 each employee receiving benefits for PT shall annually on the anniversary date of the award of the insurer report back to the insurer about his employment. The insurance industry goes back on an annual basis to look at every PT case. The Assembly committee decided quarterly was better than annually. This means we now have to create a document based on this policy decision. I do not think anyone here disagrees that people should be notified and told what the deductions are and the total amount of the remaining portion. They receive notice at the time it is originally calculated so they know why their check is for $1,200 instead of $1,350 because they are making these $150 payments and so on.

CHAIR TOWNSEND:
Are we going to move to section 5 of A.B. 364 and discuss that? Is this about reopening?

MS. GRUENEWALD:
The reason section 5 of the bill came out of the interim committee this way is because the purpose of workers' compensation is to compensate those people who have a permanent impairment caused by industrial injury. In 1913, when workers' compensation was started, the employee gave up their right to sue the employer for the personal injury, and in place of that the employer agreed to provide workers' compensation insurance. The reason is that the employee would get fixed, get back to work, get paid if they were off for their injury and eventually get paid for a permanent impairment. This is the way the law is now. If that is the purpose of workers' compensation, then we should allow that PPD evaluation to occur even after the claim closed. The blame should not be assessed to an adjustor for not sending the claimant for a PPD. It should not be assessed to the claimant, because the claimant did not do something to ask the adjustor for a PPD. Many of the claimants do not know that they are entitled to a permanent impairment. Since workers' compensation is a no-fault system, we are asking that we wipe any blame here. If someone forgot to give a claimant a rating for a PPD, then they should be allowed to come back. If they can prove that they should have had a PPD, then their claim should be allowed to be reopened for a PPD. That is the purpose of section 5 of the bill and how it came out of the interim committee.

SENATOR HECK:
In section 5, subsection 1 of the bill where the claim was closed and the individual did not receive an evaluation, it is the employer's responsibility to make sure the patient is scheduled for the evaluation. If the employee or the injured party decides not to go for the evaluation or never follows up with the scheduled evaluations, then that is the fault of the claimant. If the employer holds up their end, which is to make sure the individual is scheduled, that is as far as that should go. If the individual never goes for the evaluation that has been scheduled, there needs to be some recourse. They should not be able to come back and reopen their claim. If they went through the process and were scheduled but did not follow up, then that is on them.

MS. GRUENEWALD:
I agree with Senator Heck that it is a legitimate concern. Our purpose was to correct the situation where a letter was sent to notify the claimant that their claim was closed. Nobody ever mentioned that there was no PPD or the issue was never addressed. That was our purpose.

SENATOR CARLTON:
I received a possible amendment from Don Jayne (Exhibit L) yesterday. I wanted to know if Ms. Gruenewald had received it and if we were going to discuss it.

MS. GRUENEWALD:
I did receive that amendment and we had a couple of changes to that amendment. One of the changes was in section 5, subsection 2 of the amendment that "The claimant demonstrates" they wanted to add "with documentation that existed in the file." We would agree that the claimant should show that there was some documentation but, not that the documentation existed in the file at the time. We would prefer the claimant show that they did have a PPD and then go back to get a new report. That report logically could not have existed in the file at the time. Assemblyman John Oceguera just pointed out to me in section 5, subsection 2 of the bill it states: "The claimant demonstrates by a preponderance of the evidence that, at the time that the case was closed, the claimant was, because of the injury, eligible to receive compensation for a permanent partial disability." The point here is that the claimant has the burden of showing that they have a PPD.

SENATOR CARLTON:
You just got ahead of me. That was going to be my next question, the proposed amendment. Secondly, how would they fit together? We are changing it, varying it and laying a burden and blame again, rather than looking at the actual incident. We need to look at things that happened at that time in order to be allowed to have the claimant reopen the claim.

MR. JAYNE:
I did provide this amendment to the representatives of the Nevada Trial Lawyers Association. Ms. Gruenewald's key concern with our amendment is some of the language about "existing in the file." If something did not end up in the file, but existed at the time, it would be relevant. There might have been an error of not including it in the file by a claims examiner or someone. I have not talked to my client about that, but it certainly raises some reasonable questions. We can find some language that we can agree on for that.

The specific reason for this amendment is that we want to recognize the request and the impact as presented by the Nevada trial bar in the interim about a claim that clearly was closed without recognizing the need to have a PPD. We do agree that circumstance may happen. In the event that this would happen, we think the amended language we offer here could mitigate that.

Section 7 of the bill addresses NRS 616C.390 and Senator Carlton was beginning to ask some questions about the existing provisions for reopening a claim. In Nevada, we have lifetime reopening; that is, if the claim was severe enough to trigger a couple of criteria such as having a PPD with a written request, that claim could be reopened. What we are dealing with in this bill are circumstances relating to a claim that did not have a PPD. Section 7, subsection 5 of the bill addresses this issue. This section establishes criteria for the reopening of claims that did not have a PPD in it through some form of omission. We are trying to facilitate that without weakening the existing claim-reopening statutes in Nevada.

MR. OSTROVSKY:
In section 5, subsection 2 of the bill, the language "preponderance of the evidence" was put in at my request in the Assembly. I want to point out that section 5, subsection 3 requires that in order to get to this reopening process that "The insurer has violated a provision of NRS 616D.120 with regard to the claim." Not only is there some question about whether they should have

received an award, the DIR has determined that the insurer took some actions which violated NRS 616D.120. The language in section 5 is narrowly focused and we supported it with the amendments in the Assembly.

MS. WALL:
I support A.B. 364. Regarding section 4 of the bill which addresses the payments for compensation for permanent total disability, it is important for the injured workers to know where they stand. We do get numerous calls about the deduction, and there is a lot of confusion on the part of the claimants. When that PPD lump sum is repaid, the deduction must stop; if it must stop within the year, then the claimant would not be adequately notified. It is important they get this additional notification. The change in claims adjustors can be problematic. One claimant had eight different claims adjustors in two years. The claims adjustors frequently change. If the claims adjuster is not familiar with the file, they might not know if they do not have this additional calculation in accounting when the PPD deduction should stop.

Section 5 of the bill is an important addition for people. We frequently do not see people trying to reopen claims, because the current language of NRS 616C.390 does not actually permit somebody to reopen because they did not get a PPD award. The language about rearrangement of compensation and change of circumstances would preclude that. The language in section 5, subsection 2 of the bill regarding the "preponderance of the evidence" is a satisfactory standard, and we support it.

The actual language in NRS 616C.490 allows a claimant to receive an evaluation if they may have an impairment. There is a lot of confusion with the doctors, because they may say a patient is at maximum medical improvement, but they are going back to work with restrictions. For example, a ten-pound lifting restriction, which is fine for a person in a sedentary job, could still be an impairment that would allow them to receive a PPD award. This is where the confusion arises as to whether they should actually go for that evaluation or not. One individual reopened a claim after more than ten years for an impairment that he received. He had not received a rating. He lost his family and his home. The insurance company sent out the letter that he was to go for the impairment rating. It was his fault because the burden was on him to notify them of his address, but he did not have an address. In that instance the case was reopened for a worsening condition and he would be able to get a PPD from that prior injury. Since he was with the same insurer, it would be in the

same source of funds. However, if an individual did not receive the impairment PPD award, has a subsequent employer or a subsequent insurer, because of the apportionment rules they may have a subsequent PPD that is apportioned and thereby reduced for a PPD award that the individual never received due to the claim closure.

MS. WALL:
We support the vocational counselor being distinct from the insurance company. It is a good change where the injured worker may request a vocational rehabilitation in section 9 of the bill. This gives the vocational counselors and the insurers the flexibility they need. We also support the preparation of a written assessment in 30 days.

CHAIR TOWNSEND:
Have we not dealt with that issue in another bill?

MR. OSTROVSKY:
Yes, the vocational language is a duplicate of language that appeared in another bill. I do not think there is disagreement amongst the parties that this is an improvement over the current situation.

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades):
We support A.B. 364 as drafted.

JEANETTE BELZ (Property and Casualty Insurers Association of America):
I did not take the opportunity to testify in the Assembly on this bill because I was not aware. I have an amendment (Exhibit M) that is being passed out. My issue is not with the bill in its entirety but, with section 6 of the bill. Property and Casualty Insurers Association has a member that has within its family of companies a company that administers claims and a company that provides vocational-rehabilitation service. The vocational-rehabilitation service company is an indirect, wholly owned subsidiary company of Liberty Mutual Insurance Group. The vocational rehabilitation company is called Cascade. It has a separate management staff, separate president and operations manager. From a practical standpoint, they are managed separately and function separately from the company that administers the claims. They not only do vocational-rehabilitation services for Liberty Mutual patients, but they also provide such services for other insurance companies. The vocational-rehabilitation counselors have no access to claims files or the claim

system at Liberty Mutual. We are asking for an amendment in section 6 to make the distinction between situations where an employer who administers the claims and who does the vocational rehabilitation are under common management and control and those situations where they are not under common management control, which is the situation I am describing.

MS. MCKINNEY-JAMES:
We have ongoing concerns with A.B. 364, specifically with section 4 and section 5 of the bill as amended. The concern in section 4 is that this will establish a fairly substantial expansion of the administrative duties regarding these claims. It is also likely to increase our cost as we are required to calculate these payments. As a result, we have some concerns about these additional duties. Regarding section 5, we have an ongoing concern about the potential for fraud when claims are allowed to be reopened. Our general counsel has expressed strong opposition to this section, and I want to indicate that now.

In fairness, the others who testified on this bill were active participants in the interim committee; the school district was not. We run the risk of not having the benefit of some of the discussion nuances during the interim discussions. However, the school district felt very strongly that I needed to put these concerns on the record, and I am doing so.

MS. GRUENEWALD:
I want to speak to the testimony of Ms. Belz. I have not seen her amendment, but I would like to speak to the concept of her amendment. I have spoken with Dean Hardy, a lawyer who represents workers' compensation claimants in Las Vegas. He explained to me that this is what we are trying to prevent with this bill. This bill states in section 6, if the employer of a vocational-rehabilitation counselor administers the injured employee's case then they shall not be allowed to be the vocational counselor on that case. What is happening in Las Vegas with one insurance company is they own the vocational-rehabilitation counseling company that then counsels the injured worker and presents the program. This is an ethical violation. We oppose conceptually the amendment, Exhibit M.

MS. BELZ:
This actually brings up a whole host of issues that were brought up in the Assembly committee as well. Assume there is a company that uses another company to do its vocational rehabilitation, and the two companies are

unrelated. If the company that does the vocational rehabilitation does not provide the kind of outcomes that the person employing them wants, then they have the opportunity not to use that company anymore. It goes far beyond whether there is an employer relationship or not. As far as what Ms. Gruenewald was referring to, this was not a situation where there are people in the same office setting or in the same cubicles; there is no access. They have separate responsibility for the profits and the operations of their own company. As I stated earlier, the vocational-rehabilitation counselors do not have access to claim files. The close relationship that Ms. Gruenewald is describing does not exist in this setting.

MR. JEFFREY:
We did go through this in the Assembly. We do not have a lot of experience with private insurance at this point. In the old days, the state system had everything in-house, but there was also no profit motive. The question is control and who may have control over the vocation-rehabilitation counselors. According to Assembly testimony, some counselors who recommended educational classes for someone to get into a decent-paying job were told they would not be used if they continued using that statement. In the case of Liberty Mutual, they have one vocational-rehabilitation counselor on staff. About one-third of the counselor's work is with people who are not tied to the company and about two-thirds who are tied to the company. If vocational-rehabilitation counselors cannot work for the insurer that is administrating the claim, that would tend to open the market and level that out. We are not talking about doing away with an industry here. We are talking about one counselor.

SENATOR SCHNEIDER:
I referred Assemblywoman Buckley to you on S.B. 126 because she had some questions. Are you going to be meeting with her?

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)

MR. JEFFREY:
Yes, we will be meeting with her tomorrow afternoon.

MR. OSTROVSKY:
I have also been invited to attend the meeting with Assemblywoman Buckley.

MR. JAYNE:
The key concern in section 5, subsection 2 of the proposed amendment was the three words, "in the file." We would be willing to remove those three words to make this amendment more agreeable to those sponsors. We have the agreement to go ahead and strike that from this amendment.

MS. GRUENEWALD:
We agree.

CHAIR TOWNSEND:
Are we talking about the bill or the proposed amendment, Exhibit L? What are you striking?

MR. JAYNE:
I was referring to the proposed amendment, Exhibit L. I drew your attention back to the bill to show you where those terms exist. In the proposed amendment, we had recommended putting in the language, "with documentation that existed in the file." The Nevada trial bar has asked us to remove the words "in the file" in the event an error was made by a claims examiner or others resulting in the information not making it to the file.

CHAIR TOWNSEND:
Has the rest of the amendment been agreed to or not?

MS. GRUENEWALD:
Yes, with the deletion of those words "in the file," we would agree to the rest of the amendment.

CHAIR TOWNSEND:
We have the amendment, Exhibit M, presented by Ms. Belz. Do you agree to that amendment?

MS. GRUENEWALD:
We do not agree to that amendment. That amendment does away with the entire concept of the reason why we proposed this issue.

MR. OSTROVSKY:
I have an unrelated amendment (Exhibit N). I have had some minor discussions with Assemblyman John Oceguera regarding the amendment and I have discussed it with the DIR. *Nevada Revised Statutes* (NRS) 616B.630 has existed in the law in some form since 1983. The insurer back in 1983 was the State Industrial Insurance System (SIIS). They have to notify the State Contractors' Board whenever a contractor's insurance coverage lapses. This was simple when there was one insurance company. If a contractor lapsed their insurance with SIIS, they were either self-insured at the time, which was relatively new, or it was easy to notify the Contractors' Board.

What happens now is when an insurance policy lapses, it does not mean the company does not have insurance; they may have changed insurance carriers. The only entity that knows whether or not any company is covered is the National Council on Compensation Insurance (NCCI). The NCCI is the advisory organization that is hired by the State pursuant to NRS 616A.045. They collect information on policies that expire and new policies that are issued; all of that information then flows to the DIR.

My recommendation is to change this statute. I do not believe insurers are following it in some cases, and I do not believe that the data is going to the Contractors' Board. I am suggesting that the administrator of the DIR have the responsibility to notify the Contractors' Board, because they will know when insurance actually lapses. The amendment states within ten days after the Division received notice from the NCCI. However, it was pointed out to me that the NCCI is not recognized in the statute. What is recognized in the statute is "an advisory organization." Therefore, I suggest the language be the Division receives notice from an advisory organization selected pursuant to NRS 616A.045, which is the language that talks about the selection of an agency. It will serve the Contractors' Board better. It will serve the insurers better. The Contractors' Board is interested in finding contractors who are uninsured; this is the best way to do that. The Division is here and I spoke to them this morning. They believe they can perform this function. It is a problem we identified and it would be helpful to the Contractors' Board to get good information from a central source which exists today. That is the purpose of this amendment.

RANDALL C. ROBISON (Associated Builders and Contractors):
There was an issue brought to Senator Hardy's attention a short time ago. He asked the Legislative Counsel Bureau (LCB) to do some research on it and identify a bill to which it might be applicable. We received the amendment (Exhibit O) late yesterday evening.

CHAIR TOWNSEND:
Before we get too deep into Senator Hardy's amendment, let us go to Assemblyman John Oceguera since this is his bill. Let us talk specifically to Mr. Ostrovsky's amendment which is unrelated but, does have a home here.

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
I did speak with Mr. Ostrovsky briefly, and he showed me the amendment. The only question I would have is whether or not we talked with the Contractors' Board. I want to make sure that it works for them. If we can get that question answered, I do not think I have a problem with it.

CHAIR TOWNSEND:
Do we have anyone here from the Contractors' Board?

KEITH LEE (State Contractors' Board):
I have not seen the amendment but conceptually it would work. Clearly if uninsured contractors' information which is supposed to be provided to the Contractors' Board is not getting there and Mr. Ostrovsky's amendment fixes it, I am sure the State Contractors' Board will have no problem with this.

MR. ROBISON:
This proposed amendment deals with reciprocity for out-of-state contractors. The issue was brought by a contractor from Minden who does work in California on a project basis. They were advised that they could use their Nevada industrial insurance while they were temporarily working in California, because California has a reciprocal agreement. Nevada had deleted a reciprocal agreement out of the statutes several years ago; so, in effect there was no reciprocal agreement. They were assessed under California's workers' compensation insurance at a much higher rate. The difference for their policy that they carry in Nevada it is a little over $7.60 per $100 of payroll. The same policy in California would have cost them $52 per $100 per payroll. There is a significant difference, because there was no reciprocal agreement.

The amendment would simply reinstate a reciprocal agreement with California or any other state that has a reciprocal agreement for contractors who were doing temporary work in that state. They would be covered under their existing industrial insurance. A Nevada contractor temporarily working in California could be covered under their Nevada industrial insurance policy.

MR. JEFFREY:
I have to oppose that amendment. I recall when reciprocity was repealed in Nevada, because I was responsible for it. In those days, it was a similar situation, although the roles were reversed. There was a steel contractor in Las Vegas who was paying $32 per $100 to work in Nevada. He was bidding against Utah contractors who were paying about $6 per $100. The Utah contractor was able to do that because of reciprocity. This particular steel contractor left Las Vegas and relocated in St. George, Utah, so he could bid jobs in Las Vegas against Utah contractors. This was the reason that we eliminated reciprocity.

The contractor needs to know when he bids a job in the state what his costs will be. When a Utah contractor comes to Nevada now, he knows he has to pay our rates. When a Nevada contractor goes to California he knows he has to pay their rates. One of the most important provisions in the bidding process is a level playing field. Nevada contractors have to compete equally in California and Utah contractors have to compete equally in Nevada. Workers' compensation rates are a big part of that bid.

MR. WILES:
We no longer have agreements in place. That terminology stems from the day when we had a state system. We essentially go by the statute, and it is on a case-by-case basis in terms of the provision of the statute. In reference to subsection 3 of NRS 616B.600, I remember some discussion related to this type of provision based upon the fact that Nevada has a unique provision in its statutes; the provision provides that the general contractor becomes the statutory employer of the subcontractor employees. It may different substantially from other states. If a NRS 624 contractor would come to the State with out-of-state coverage, the out-of-state coverage may not have adjusted or based their rate structure on that eventuality.

CHAIR TOWNSEND:
We are all trying to keep down our cost. The bottom line is that I want to make sure people are covered no matter where they are working. When Vice Chair Hardy gets back, we will let him try to make his own case, because we are going to move to another bill. I will close the hearing for now on A.B. 364 and take it up again in a few minutes.

I will open up the hearing on A.B. 208.

ASSEMBLY BILL 208 (2nd Reprint): Revises provisions governing physicians and osteopathic physicians. (BDR 54-1108)

I have written testimony (Exhibit P) from Dr. Frank Nemec.

SENATOR HECK:
This is the bill that would require background checks of all new licensure applicants as a physician or osteopathic physician. It would also require background checks for currently licensed physicians. The initial concern was with the retroactivity. In discussions with Assemblyman William C. Horne, he has agreed not to have the retroactivity, but in compromise both Boards will run a background check should any physician be brought before them on a complaint hearing. Any physician who is brought before their respective board for the investigation of a complaint will be required to undergo the background check. That is how we will start picking up some of the currently licensed physicians.

The proposed amendment (Exhibit Q) has one change in section 2, subsection 9 of the bill that added reference of "a national code of ethics adopted by the Board by regulation." The concern is that there are many codes of ethics depending upon the specialty to which you belong. So, this would allow the Board to decide what code of ethics they are going to use to judge the physicians.

SENATOR CARLTON:
In conversation with Assemblyman Horne, the question arose, did the legal profession have to go back and do this? We realized the difficulty in the retroactivity. In a discussion I had with a couple of different folks who were interested in this bill, other questions arose. Where do we go? How do we accomplish part of this? It came up in our discussion that if there is a problem

with a particular licensee and they come before the Board for disciplinary procedures, that might be the opportunity for the Board to do the investigation into their background. This might be a good middle ground to allow the boards to just tap on the shoulder of the people they were going to investigate and possibly discipline to look into their backgrounds. Those are the people we are trying to get to and the people with whom we may be having problems. That is the compromise proposal that was discussed.

SENATOR HECK:
There was one other change on page 7 of the proposed amendment. It adds "The Board of Medical Examiners" and "The State Board of Osteopathic Medicine" to the list of governmental agencies that can get reports of criminal history.

CHAIR TOWNSEND:
We have another amendment (Exhibit R) that was brought to the Committee, but it is really not to this bill. It has to do with Senator Schneider's bill, S.B. 231, in trying to find a way to create a clinic.

SENATE BILL 231: Revises provisions governing authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs. (BDR 40-783)

Mr. Craigie we are talking about A.B. 208. I wanted to make sure that you are aware of the position that the subcommittee took on it with regard to the prospective nature of licensees and anyone who is called in for a disciplinary hearing. Mr. Lee, the code of ethics would be adopted by the Board by a regulation and also a small technical change in order to allow the Board of Medical Examiners and the State Board of Osteopathic Medicine to receive those things.

SCOTT M. CRAIGIE (Nevada State Medical Association):
I was apprised of this amendment this morning. I do understand the change, and I think it is appropriate. We are pleased to see that this replaced all physicians going through the basic review and to the extent that there is disciplinary action being considered, it is an appropriate part of the investigative activity. We are comfortable.

CHAIR TOWNSEND:
It would be my intention to process the bill with these proposed amendments. This separate issue is one of which I want to make you aware. A number of people, starting with Senator Schneider's effort to look at some of these different therapies, triggered an interest in a lot of areas of the medical community. There was a proposal that came back and has been discussed at some length amongst the medical community. There is some additional concern regarding the location. My recommendation is to not worry about it being in anybody's board. It should be in either the Health Division or some executive agency. The Governor, based on a recommendation from all the licensee organizations, Exhibit R, can set up a Nevada Institutional Review Board and take the individuals as follows: "a commission consisting of members or representatives from the Nevada State Boards of Pharmacy, Allopathy, Osteopathy, Homeopathy and Nevada citizens." The Governor can then pick the members of the board from each group. They would be the ones who could apply to the federal government for various grants. They could try to develop a clinical approach using all kinds of methods as opposed to putting it under one group. We would try to make it more objective by taking advantage of all the different disciplines.

Mr. Powers has been trying to find a location. We are working with the administration to find out where the best house for this would be. Would it be in the Health Division or the Department of Human Resources? Where would it be? Based on Senator Schneider's original bill, we have tried to pursue the concept in a way that brought everybody together. I bring it up in this context, because I do not know. I am not sure if Mr. Powers knows yet depending on the changes we might make whether it could fit in this bill on the floor or not.

MR. LEE:
Senate Concurrent Resolution (S.C.R.) 17 is presently residing in Senator Cegavske's committee.

SENATE CONCURRENT RESOLUTION 17: Requires Legislative Committee on Health Care to conduct interim study of policies related to pain management. (BDR R-255)

MR. LEE:
It is a resolution that refers to the Legislative Committee on Health. It involves the whole notion of the study of pain management. I am working with

Senator Schneider and have suggested some language that may be considered to address Senator Schneider's specific concern about a trial clinic or some kind of a trial program. This would be part of the discussion during the interim as well. Perhaps, this notion might be included in that. Senator Cegavske heard her bill on April 19 and it is just residing there. If I may suggest, it might be appropriate for you as Chairman of this Committee to discuss it with Chairman Cegavske to see where she might want to go with S.C.R. 17.

CHAIR TOWNSEND:
Since we have a small house and we all sit pretty close together, we can all chat with Senator Cegavske and find out if she would entertain some additions to that bill. We can have the subcommittee draw up the various components they would like to see in it and then move forward. Senator Schneider is attempting to do something that I think is beneficial to the public.

SENATOR HECK MOVED TO AMEND AND DO PASS A.B. 208.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
I recommend we process A.B. 364 with Mr. Jayne's amendment, Exhibit L, with the deletion Ms. Gruenewald requested of "in the file" in section 5, subsection 2 of the amendment. Also, add Mr. Ostrovsky's nonrelated topic amendment, Exhibit N, that the administrator shall contact the State Contractors' Board. When Senator Hardy returns, I will let him know what we accomplished and we can either take it up tomorrow morning or he can bring an amendment on the floor.

SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 364.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:37 a.m.

RESPECTFULLY SUBMITTED:

Donna Winter,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: