

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

**Seventy-Fourth Session
April 30, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:35 p.m., on Monday, April 30, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settlemeyer

GUEST LEGISLATORS PRESENT:

Senator Maggie Carlton, Clark County Senatorial District No. 2
Senator Barbara Cegavske, Clark County Senatorial District No. 8



STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Todd Butterworth, Social Services Chief III, Office of Disability Services,
Department of Health and Human Services
Betty Hammond, Social Services Specialist, Office of Disability Services,
Department of Health and Human Services
Anne Loring, representing Washoe County School District
Joyce Haldeman, Executive Director, Clark County School District
David Gordon, Staff Member, Administrative Office of the Courts
Tony Guillen, DDS, President, Board of Dental Examiners of Nevada
Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada
Keith Lee, representing State Contractors Board
Jesse Wadhams, representing Nevada Development Authority and
Southern Nevada Home Builders
Mandi Lindsay, Government Affairs Specialist, Associated General
Contractors
Dylan Shaver, representing Construction Industry Coalition
Berlyn Miller, representing Nevada Contractors Association
Pat Sanderson, representing Laborers Union Local No. 872
Gail Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Scott Scherer, representing American Resort Development Association
Teresa McKee, General Counsel, Nevada Association of Realtors

[The roll was called and a quorum was present.]

Chair Ocegüera:

We will open the hearing on Senate Bill 473 (1st Reprint).

Senate Bill 473 (1st Reprint): Makes various changes concerning the practice of interpreting and the practice of realtime captioning. (BDR 54-295)

Senator Barbara Cegavske, Clark County Senatorial District No. 8:

This bill was requested by the Legislative Committee on Persons With Disabilities and it was a committee that I chaired during the last interim. The Disability Committee is authorized to appoint an advisory committee to assist it

with studies and inquiries. One new issue that the disability committee had to study this last interim was the manner by which school districts can meet the needs of pupils who are deaf or hard of hearing and the manner by which accessible communication can be provided and improved for all residents of the State who are deaf or hard of hearing.

Because this new issue was so vast and important, we appointed members to the advisory committee who had knowledge of this issue and asked them to study education issues and interpret certain certification issues as they related to deaf and hard of hearing residents in Nevada. Senate Bill 473 (R1) is the major piece of legislation that was brought forward by the Legislative Committee on Persons With Disabilities. The bill was amended in the Senate to provide greater detail on the various certification levels that the Office of Disability Services provided in regulation. I will briefly highlight the major provisions in the bill and then I will let the staff from the Office of Disability Services provide the Committee with more details on this legislation. I might add that Senator Carlton is here and with her guidance the bill was amended in the Senate Committee on Commerce and Labor. She is here if there are any questions on the amendments.

In brief, this bill does the following: it requires the Office of Disability Services, Department of Health and Human Services, to regulate the practice of interpreting and the practice of real-time captioning. The Office must establish a registry of persons providing such service and make the registry available to the general public. It changes the name of the Advisory Committee on Deaf and Hard of Hearing Persons to the Committee On Communications Services for Deaf and Hard of Hearing Persons and Persons With Speech Disabilities, revises its composition and duties, and authorizes certain judicial officers to appoint an interpreter who is not registered if specific conditions are met.

The bill is effective upon passage and approval for the purpose of adopting regulations, appointing members to the Committee, and performing other preparatory administrative tasks, and effective on October 1, 2008, for all other purposes. Before I conclude my remarks, I would like to extend my sincere appreciation and thanks to Karen Taycher for chairing the Advisory Committee that proposed this legislation. The members of the Advisory Committee are to be commended for their dedication and hard work in preparing this proposal. I want to thank you, Chairman Ocegüera, and Committee members for your time and attention on this matter and if you have any questions, I will be happy to answer them or I would like to also have you talk to Betty Hammond and Todd Butterworth from the Office of Disability Services. There are also members of the Advisory Committee who may provide you with testimony and additional information.

Chair Ocegüera:

Are there any questions from the Committee? I see none.

**Todd Butterworth, Social Services Chief III, Office of Disability Services,
Department of Health and Human Services:**

I would like Ms. Hammond to give you a quick bullet point rundown of the bill and then we would be happy to answer any technical questions you might have.

**Betty Hammond, Social Services Specialist, Office of Disability Services,
Department of Health and Human Services:**

I am a certified interpreter. Our office is in support of this bill which came out of the Interim Legislative Committee on Persons with Disabilities and has broad-based support from the deaf community and the interpreting and captioning professions. The bill will accomplish three things.

First, it will establish an online registry of interpreters for the deaf and real-time captioning professionals, also known as CART providers. The registry will make it easier for agencies, businesses, and citizens to find interpreters and captioners and also to know at what level they are qualified.

Second, the bill will change the makeup of the existing Communications Access Council. The size of the council will not change, but the membership will better represent users and providers of interpreting and captioning.

Finally, the bill will enable our office to work with the community to develop appropriate regulations for the interpreting and captioning professions. You should also know that the cost to implement this bill is included in the Executive Budget and will not require additional appropriation. We appreciate the opportunity to be involved with this initiative and I would be happy to answer any questions you may have.

Chair Ocegüera:

Are there any questions from the Committee?

Assemblyman Anderson:

I am particularly interested in this area because I have a niece who signs. I am curious, how is this going to change the current behavior of what is currently going on? How will it make it easier for people who are hearing impaired and how is it going to change the current practices, both for the practitioner and the hearing impaired?

Betty Hammond:

I do not know if this will change any behavior, but it is going to be a mechanism to educate people on what to expect from professionals based on the tier system, if a person is interpreting in court versus in a medical office versus a job interview. What are their levels of skill and what should you expect? The other nice thing for me, personally, is there will be a way for agencies and individuals, or whoever needs an interpreter or captioner, to have a place to go to find them. I receive three to five calls a week from people looking for interpreters and I have a small list that I send out, but it is very limited. This will help in times of emergencies with the State Evacuation Emergency Plan, when something of a large nature occurs. There will be one place on this website where people can go to find interpreters to help the deaf community. I hope that answers your question.

Assemblyman Anderson:

In part it does. So, if I get myself on this list as a signer or someone helping with the hearing impaired in some way, then if I do not meet your criteria, a complaint can be filed within two years, based upon the fact that I did not meet the standard that you had anticipated. The complaint needs to be based upon my lack of meeting that standard?

Betty Hammond:

I think I know what you are saying. We are hoping to set regulations for the profession through the regulatory process and also build within that a mechanism for grievance if someone does not perform their duties as expected by law and by the standards of the profession. In addition, not just anyone can get on the list. There will be a process for people to show what level of skill they have via their certifications. They do not necessarily have to be certified. There is going to be a place for people who, for example, may graduate from an interpreter training program, but do not yet have an internship; and there is not a set internship, it is just experience out in the community. There will be provisions to bring those individuals into the professional community, as well.

Todd Butterworth:

We envision this registry as being a "sunshine law." There are people in the community, for instance hearing children whose parents are deaf, who are excellent interpreters, but may have no certification. Because of the dearth of interpreters in Nevada, we thought it would be helpful for these individuals to be available to people who need them. If it is a situation in a courtroom setting, this person would not be appropriate, because they are not certified. But, if it is just a run-of-the-mill interpreter setting, there is no reason why this person could not interpret even though they are not professionally certified. We would

allow them to be registered on this site and make their services available. The buyer of services, however, would then know that they are not certified.

Assemblyman Anderson:

Am I to understand that by regulation you are going to set up what you have in statute, in place of the Master of Comprehensive Skill Certifications, Comprehensive Oral Interpretive Certificates and Legal Specialists Certificates? Do you see this all moving over to your regulatory process and out of the statutes?

Todd Butterworth:

Yes, exactly. We thought it was important to have that flexibility because as new certification bodies come along and standards change, we need to be responsive to that. We also need to be responsive to the needs of the community. It is also important to note that with regard to the regulatory process, we are really going to be focusing our efforts on the educational and legal settings because their level of expertise is important. When it comes to community interpreting, we want to leave it open and let interpreters and purchasers of interpretive services get together and make a contract if it is appropriate for both parties.

Chair Ocegueda:

Are there further questions from the Committee? I see none.

Senator Cegavske:

I believe Karen Taycher is in Las Vegas and if she is, would she please come forward? If not, I believe there are a few people here who just want to show their support.

Chair Ocegueda:

Is there anyone who would like to come forward and testify in favor of the bill?

Anne Loring, representing Washoe County School District:

We are in support of this bill. We would like to thank Senator Cegavske for her extraordinary leadership in the Interim Committee that has led to this bill being brought forward today. Also, we would like to thank Senator Carlton for the foresight to put a framework for the tiered system of certification into the statute. We talked with Senator Cegavske and the staff about one issue, and I believe it has already been commented on, that is the concern that the Office of Disability Services does have the authority to establish additional regulations for this tiered system. I would like to point out the particular issue that is of concern to the school district. It is not uncommon for interpreters to complete a two-year or Associate of Arts (AA) degree program in interpreting, and to take

the exam for the Educational Interpreter Performance Assessment (EIPA) and get a score of about 2.5. As was commented, there is no formal internship program beyond that. To get the experience and expertise to get to a 3.0 level, which is described as the minimum for the apprenticeship level, an individual interpreter needs to get actual experience interpreting. The Advisory Committee originally came up with the concept of the tiered system and had recommended an entry level for people who scored between 2.5 and 3.0 on the examination. They would not be able to interpret alone, or even with a mentor, but would have to have direct supervision for their interpreting.

It is our hope and certainly our staff would be glad to work with the Office of Disability Services to develop, by regulation, provisions for some kind of an entry-level position. Nevada is a very small state and we do not have very many interpreters, and the best way to have more is to "grow our own." We do have programs at the Community College of Southern Nevada and at Western Nevada Community College for training interpreters, but it is getting them from that stage to the 3.0 level that is going to be problematic for our State. We look forward to the implementation of this legislation.

Chair Oceguela:

I have not found this in the bill.

Anne Loring:

No. The tier for education is on pages 9 and 10 of the bill. For educational interpreters the tiered system is conceived of as an apprenticeship, intermediate, and experienced level. The apprentice interpreter would score at least 3.0 and would need a mentor, as well as a plan for professional development. The intermediate interpreter needs to have at least a 3.1 grade and that could be fleshed out in regulation and then a professional development plan. A master advanced interpreter would have a score of 4.0. Our concern is that group of people who are between 2.5 and 3.0, and our understanding is that the way the bill is written, the Office of Disability Services could deal with that portion in regulation. We are fine with that, if you are fine with that.

Chair Oceguela:

Okay. Are there further questions? I see none.

Joyce Haldeman, Executive Director, Clark County School District:

Meeting the needs of the deaf and hearing impaired is one of the greatest challenges we have in Clark County. We think this bill will go a long way in helping us to meet those needs. We applaud the makers of the bill and offer our strong support.

Assemblyman Anderson:

Do you perceive that this will drop the qualification standards in some meaningful way so that it is easier to find people who are qualified to teach in this particular area?

Joyce Haldeman:

I would hate to use the term dropping qualifications.

Assemblyman Anderson:

I know, and as soon as I said it I knew the answer to that question.

Joyce Haldeman:

We think this helps us. We think this gives us an opportunity to get more people prepared and into the system so that we can provide the services that are needed.

Chair Ocegüera:

Are there further questions? I see none. Are there others wishing to testify in favor of the bill?

David Gordon, Staff Member, Administrative Office of the Courts:

We had the opportunity to work with the Legislative Committee for Persons With Disabilities on this particular bill and we are strongly in favor of this bill. It does allow the courts some relief if a certified interpreter is not available, making it possible in our rural courts to have justice served in a timely manner.

Chair Ocegüera:

Are there any questions? I see none. Are there others wishing to testify in favor of S.B. 473 (R1)? Senator Carlton, do you have anything to add?

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

Not at this time.

Chair Ocegüera:

Are there others wishing to oppose this bill? I see none. Anyone wishing to speak in the neutral? I see none. I would entertain a motion.

ASSEMBLYMAN SETTELMAYER MOVED TO DO PASS
SENATE BILL 473 (1st REPRINT).

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ANDERSON VOTED NO.)

Chair Oceguera:

We will close the hearing on S.B. 473 (R1). We will open the hearing on Senate Bill 265 (1st Reprint).

Senate Bill 265 (1st Reprint): Revises provisions relating to dentistry and dental hygiene. (BDR 54-1184)

Tony Guillen, DDS, President, Board of Dental Examiners of Nevada:

[Spoke from written testimony ([Exhibit C](#)).]

Chair Oceguera:

Are there any questions from the Committee? I see none. I am curious, how many times have you come across someone practicing dentistry without a license? Would it be someone who has been suspended or something like that? Or, is it just setting up shop?

Tony Guillen:

It could be both. Actually, we have many who just set up shop in a neighborhood and work out of a garage or their house. We actually have one who is a repeat offender.

Chair Oceguera:

That is interesting. Are there questions from the Committee?

Assemblyman Mabey:

What were the reasons for the changes in Section 4, at the top of page 3, lines 1-5?

Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada:

Are you referring to the change in the clinical examination acceptance? The Board has been looking at this issue for the past three years. There has been a national dental licensing exam being developed by the American Board of Dental Examiners. The Board has been following that development. Similar to medical licensing, there would be a national examination and the candidates passing that examination would then obtain licensure in each state. Eventually, that may be the outcome. Currently, in the dental profession there are several different regional testing agencies administering various exams; but primarily the American Board of Dental Examiners, through the Northeast Regional Board and the Central Regional Board is administering one exam. The Western Regional administers their exam and the Southeast Regional administers their exam.

We would be joining 40 other states that are accepting what is likely to become the national dental licensing examination.

Chair Ocegüera:

Are there further questions?

Assemblyman Parks:

I am looking at Section 7 and I am wondering about your requested change in the subpoenas. Could you comment further on that point?

Kathleen Kelly:

The Board had sought to give authorization to the Executive Director to issue subpoenas. It was through passing a regulation and going before the Legislative Commission that it was strongly recommended that the Board should make that change in statute, giving authorization to the Board to give authorization to the Executive Director to issue those subpoenas. While our Board does meet fairly regularly, there are instances through our investigative process that do require the issuance of subpoenas to gather dental records. To do that by statute, would authorize the Board, through regulation, to again address that issue and allow the Executive Director to sign subpoenas to obtain those records.

Assemblyman Parks:

It states "any member thereof." My concern is that any member of the Board could become "subpoena happy," for lack of a better term. Would that create problems?

Kathleen Kelly:

The Board still does intend to address, through regulations, the manner in which those subpoenas would be issued. There were some criteria we got from other Boards to look at how they issued their subpoenas. We were initially thinking of the Secretary or President of the Board having that authority, but we did leave it as any Board member having the authority to sign those subpoenas.

Chair Ocegüera:

What if we changed that? What if we said the Board may adopt regulations which would then have to come back before the Legislature, as opposed to putting it in statute that any member could sign subpoenas?

Kathleen Kelly:

That certainly is fine.

Chair Ocegüera:

Senator Carlton, what do you think about that?

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

It would be okay with me.

Assemblyman Horne:

I have questions on Sections 5 and 6. What is the rationale for removing the provision on the disciplinary action? This person has a temporary license and you allow them to practice and apply for a permanent license without taking an examination. Then you have deleted the part that states "if...the person has not been involved in any disciplinary action...."

Kathleen Kelly:

That was changed to allow the Board latitude. There are currently two temporary licensees who have had minor disciplinary actions with the Board. The Board members are aware that those individuals, in trying to convert their licenses to permanent licenses, would be withheld from doing so because there was an action. The disciplinary actions in these particular cases were not egregious enough to prevent them from obtaining a permanent license. Individuals with permanent licenses have committed those same infractions and have not lost their licenses. The issues were not severe enough to warrant the loss of licensure, but they were of enough importance to take some kind of stipulation agreement, or action for remediation, or changes to their behavior. The provision to address a temporary licensee's disciplinary action or history can still be addressed in subsection 6, which allows the Board to revoke a temporary license at any time upon submission of substantial evidence to the Board that the holder of the license has violated any provision of the regulation. The Board still has the ability to not convert a license and to revoke a temporary license for an egregious action that warrants that action. The way the statute had been written, it did not give enough discretion to the Board with respect to disciplinary actions. There is a range of discipline for practitioners.

Assemblyman Horne:

So, you believe that subsection 6 still allows the Board to review various applicants and their particular conduct to see if it may have risen to a level to have disciplinary intervention?

Kathleen Kelly:

Yes. We have been assured in talking to the bill drafter that the Board's concerns about a licensee, holding a temporary license, who had become involved in severe disciplinary issues, malpractice or professional incompetence, to the degree that they would be an unsafe practitioner in our State. The Board could address that temporary licensee through subsection 6, as well as other disciplinary statutes within *Nevada Administrative Code* (NAC) Chapter 631.

Assemblyman Horne:

Section 5 seems to say it is just revoking that license, but it does not provide for the denial of getting a permanent license without a clinical examination. I would like clarity on that.

Chair Ocegueda:

We should go to Brenda Erdoes for a legal explanation.

Brenda Erdoes, Committee Counsel:

I agree that this section does not go on to say what they would have to do after they revoked the temporary license. If you want that in there, it should be amended. It would allow them to go further and deny the license because in the licensure qualifications there are provisions that say they have to consider things like this. That would be discretionary, so if you are looking for absolute authority you would have to put it into the statute.

Assemblywoman Gansert:

I think that answers my question. I had the same concerns.

Assemblyman Anderson:

My question goes back to the earlier discussion about Section 7, "any member thereof." Do you envision that is going to be done by the Board, so if you are a Board member you would just call up the Executive Director and say you wanted a subpoena, and then the Executive Director would be able to do it? Or, do you see the regulation as being one that is going to allow individual members to subpoena on their own?

Kathleen Kelly:

I apologize, I do not have my NAC Chapter 631 book that I normally carry. The provision regarding the authority of the Board to issue subpoenas is addressed in NAC Chapter 631. The conditions that the Board would be addressing through subpoenas are our hearing and investigatory processes. This would allow us to do what we had addressed in regulations, how the Executive Director would accept application from the Board's legal counsel for the State Dental Board, as well as application from the practitioner's legal counsel, for the issuance of subpoenas in the case of a hearing. This has arisen because of the number of hearings that the Board has had. It gives equal protection to both sides to have witnesses and/or documents. What we have tried to do is to put into statute the authorization that the Board can have to give the Executive Director the ability to sign a subpoena. We looked at other Boards and they, in many cases, also included a member of the Board as well as the Executive Director.

The duties of the Executive Director are also defined in regulation, in NAC Chapter 631. The regulation regarding the issuance of subpoenas would tell the Executive Director how that process is to be carried forward in signing subpoenas for both counsels. That is the original intent and this will put the authorization in statute so that there would be no question that the Board could then authorize the Director to do that. Normally, in our disciplinary process, the Board members do not see a case until it is actually presented to them at hearing. I cannot foresee an instance where they would have the ability to subpoena someone, because they would not see the complaint until it was actually noticed and they were going to have a hearing.

Assemblyman Anderson:

To what other Boards have we given the members of the Board, rather than the Executive Director or the Board acting collectively, that particular power?

Chair Ocegüera:

We could put this in by regulation, but with the inference that the Executive Director would be given the ability to subpoena, and not the individual Board member.

Kathleen Kelly:

That is certainly fine with me.

Assemblyman Anderson:

I just wanted to make sure that the Executive Director, not a regular member, would have the ability to issue subpoenas.

Tony Guillen:

I think the main reason for this is to expedite the process. Sometimes we need to do an investigation, and we need to get those records from the dentist so that we can proceed with our investigation. Probably a Board member would not do this; they are not allowed to see the case because that might taint their decision later on. It is more expeditious when we do not have to go to the Board counsel to write the subpoena and then have it sent out.

Chair Ocegüera:

The Executive Director, though, is going to be the person who is there every day and you, as a member, would be practicing dentistry somewhere.

Are there further questions from the Committee? Mr. Horne, are you comfortable with this or do you have some suggestions?

Assemblyman Horne:

If we amend it I would like to see the language and see how it reads. I am concerned about allowing any member to have this authority. Other than that, I have no problems with the bill.

Chair Ocegueda:

So, if we change that a little bit, would that be okay with the Board?

Kathleen Kelly:

If that makes the Assemblyman more comfortable, it would be okay with me. I do want to make one other comment. The temporary licensees have to convert their licenses by December 31, 2008. They cannot stay out there on a temporary license. If someone were to have a license revoked, the loss of the license would force them to reapply, and to do that the provision of our statute and regulations would require that we would have to look at the license history, revocation, suspension, denial, et cetera. We would certainly look at our own revocation of a license with equal, if not more, appreciation for the revocation than that of any other state. If his temporary license was revoked, that person would have to reapply and that history would definitely be a consideration for denial of licensure in our State.

No one can apply for a temporary license any longer. That provision expired June 30, 2006. Temporary licensing is no longer available.

Chair Ocegueda:

Are there further questions from the Committee? I see none. Is there anyone else wishing to testify in favor of S.B. 265 (R1)? Senator Carlton, are you good with the testimony?

Senator Carlton:

This bill was a collaborative effort between the Dental Board and myself. Those of you who survived the "dental wars" of 2001, I wanted you to know that a peace treaty has been signed and we are moving forward. Also, you will notice in the bill that there is a deletion on the salary provisions for the Board members. It was taken out of this bill and it was put in the big Board bill that is coming to you later this week or next week. That bill is Senate Bill 310 (1st Reprint).

Assemblyman Anderson:

Senator Carlton, I know this is an area that you have spent a great deal of time on and you have enormous knowledge of. Are you familiar with any other Boards that have given themselves the power to subpoena?

Senator Carlton:

I believe there are a number of Boards that do that, basically so they can get the medical records and look at what is really going on. I would not want to answer that question definitively right now. I would have to do some research.

Assemblyman Anderson:

I am familiar with the Executive Director having that authority. I am asking about individual members having subpoena power.

Senator Carlton:

And I cannot answer that, without actually going back and looking it up.

Chair Ocegueda:

My memory is foggy, but I seem to remember that at sometime that had been addressed. I do not recall when it was.

Are there any questions? I see none. Are there others wishing to speak in opposition to this bill? I see none. Are there any others wishing to speak in the neutral? I see none.

Mr. Horne, are your questions answered?

Assemblyman Horne:

Yes.

Chair Ocegueda:

So, Mr. Parks, if we change Section 7, subsection 4, with an amendment to require the regulations to come back to the Committee to review, or something like that, would you be agreeable to that? Or, do you think we should be more specific?

Assemblyman Parks:

I would be perfectly happy with any regulations that would be reviewed by the Legislative Commission.

Assemblyman Anderson:

Are you retaining the language "any member thereof"? Or, are you striking that language?

Chair Ocegueda:

I would propose that we strike that language. Just leave Executive Director and the regulations would have to come back. I would entertain a motion.

ASSEMBLYMAN PARKS MOVED TO AMEND AND DO PASS
SENATE BILL 265 (1st REPRINT) WITH THE AMENDMENT BEING
TO STRIKE THE WORDS "ANY MEMBER THEREOF".

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

Brenda Erdoes:

I just want to make sure that you want the regulation concept in there. I think you might have to require that. Otherwise this is just the authority to issue subpoenas. I think the only reason they were coming for a regulation before was because the Executive Director was not in the statute. Do you want it to say "the Board may, by regulation, allow the Executive Director"? Would that work?

Chair Oceguera:

Yes, that would be fine.

THE MOTION PASSED. (ASSEMBLYWOMAN BUCKLEY WAS
ABSENT FOR THE VOTE.)

Chair Oceguera:

We will open the hearing on Senate Bill 279 (1st Reprint).

**Senate Bill 279 (1st Reprint): Makes various changes concerning contractors
and the State Contractors' Board. (BDR 54-624)**

Keith Lee, representing State Contractors Board:

With your permission, I will briefly walk you through the provisions of this bill, except for any comment on Section 4 for which I have offered an amendment ([Exhibit D](#)). I believe there is some controversy regarding that section.

Section 1 expands the exemption from licensure in *Nevada Revised Statutes* (NRS) Chapter 624 which governs State Contractors. It is proposing to exempt from licensure any work to repair or maintain property, the value of which is less than \$1,000. That would include labor and material. The exceptions are:

- a building permit is required
- the work is a type performed by a plumbing, electrical, refrigeration, heating or air-conditioning contractor.

As you can see from the language in the statute, there was an exemption for an owner of a complex containing not more than four condominium townhouses, apartments, et cetera, who performs work of a value less than \$500. The

Contractors Board hired Newpoint Consulting Group in December 2006 to review our statutes to determine if there were some changes that could be made to streamline the licensing process from the administrative standpoint and lessen the licensing burden to the contractor. This is what we have come up with. The language in this section is to provide for the handyman exception to the licensure of contractors, where you need to call in a handyman who can do the job and he would not be in violation of the law. We think the provisions provide adequate protection to the homeowner for those repairs that indeed, someone other than a handyman should be doing.

Section 2 combines the criminal investigators and the compliance investigators with respect to most of the responsibilities. Right now we have two units within the investigation office and, as you can see from the language, we are proposing that we do away with the units, continue the criminal investigators and compliance investigators with additional language on page 5, beginning at line 12, and give additional responsibilities to the compliance investigators. We think this will help. We have circumstances where a criminal investigator will be doing something and a compliance investigator will be doing a different thing on the same matter and this allows us to combine both of those. The only exception would be a compliance investigator still may not issue a misdemeanor citation that could only be issued by a criminal investigator.

Section 4 is the section that I would like to reserve comment on until I have presented the rest of the bill.

Section 5 lessens the burden to the licensee. It applies only if there is a change in the officers, directors, general partners, members or managers of corporations, partnerships, and entities. We have focused on only those individuals in those particular entities that have direct responsibility contracting the business of the licensee. This will lessen the administrative burden to the Board and lessen the burden to the contractor having to advise us of those particular changes.

Section 6, on page 7, adds a new paragraph 3. Present law requires a licensee to have industrial insurance, but not to maintain it. This fills that gap by requiring that person to not only have it upon licensure, but to maintain it at all times.

Section 7 changes the information that is necessary for a licensee to submit to us to determine the financial ability of that person to conduct business in Nevada. We think this more accurately reflects modern accounting principles, and also gives us some additional information that we think will be helpful in our

initial determination of the ability of the contractor to financially meet his or her burdens.

In Sections 9 and 10 of the bill, we are proposing to lessen the administrative burden to go from an annual to a biannual licensure procedure. You will see in other provisions of the bill that we are doubling the fee, but that is because it will be a biannual fee as opposed to an annual fee. We will set up a system so that there will be continued renewals of licensees, but it will spread the burden over a two-year period for both the Contractors Board and for the licensees.

We think that Sections 12, 13, 14, and 15 are very important. Right now, we have no jurisdiction over disciplining or otherwise dealing with an unlicensed contractor. If we are in the field investigating a situation and find that there are circumstances that lead us to believe that someone is acting as a contractor but is not licensed, we can only call law enforcement officials and the District Attorney in a particular county and suggest that they come out and do further investigation and issue a citation, if appropriate. Since our investigators are the ones in the field and have direct contact with those people on a regular basis, it makes sense to us that we be given the authority to investigate unlicensed contractors and to issue citations and the action would come if they failed to respond. The citation would require them to appear before our Board and show cause as to why disciplinary action should not be taken because they are an unlicensed contractor. There is an additional provision that if they fail to respond to that administrative citation, it is a misdemeanor and we can refer that to the District Attorney and to local law enforcement.

The balance of the bill, Sections 17, 18, and 19, simply cleans up some of the language in statute. Section 17 allows the Board to discipline by imposing fines against an unlicensed contractor for unlawful advertising. Since we have no jurisdiction over an unlicensed contractor, we cannot currently discipline him or impose a fine for his unlawful advertising. Sections 18 and 19 merely change words from annual to biannual to provide for the licensure on a biannual basis rather than an annual basis.

Perhaps I should see if there are any questions before I talk about Section 4 and the amendment to that section that I wish to propose.

Chair Ocegueda:

Are there any questions?

Assemblyman Horne:

Do you know of any other boards that issue fines to non-licensed contractors? How would you enforce that?

Keith Lee:

I am not sure. The only other board I represent is the Board of Medical Examiners and we have jurisdiction over unlicensed practitioners. I believe we can impose a fine. That is what we are proposing here, as well. In terms of the collection process, it would be the same whether it is an unlicensed individual or a licensed individual. If the fine is not paid voluntarily, we have to get a judgment and execute on that judgment. I could find an answer for you, but I do not know the answer right now.

Assemblywoman Allen:

I have a question on your proposed amendment.

Chair Oceguera:

Excuse me, but he has not had a chance to explain that section or his amendment.

Assemblywoman Kirkpatrick:

I have a question on Section 17. Concerning advertising, it says the fine will be not less than \$1,000 and not more than \$50,000. How would you determine how much the fine would be?

Keith Lee:

Right now, for disciplinary proceedings against a licensed contractor, the Board can fine up to \$50,000. I hesitate to say, definitively, that there are regulations in place, but I do believe there are. Generally speaking, when deciding the amount of a fine, it depends upon whether there have been previous violations, how egregious the violation is, and other circumstances, including listening to mitigating circumstances from the violator, as well. I can find out for you and will get back to you.

Assemblywoman Kirkpatrick:

Line 8, deals with *Nevada Revised Statutes* (NRS) 624.700 regarding bidding without a license. That is much different than 624.720 and 624.740 which talk about unlawful advertising. I would like to know what the difference would be.

Assemblyman Settlemeyer:

My concern is whether this bill will prevent an individual from building his own home. In other words, you are not going to go after an individual who is not licensed but is doing his own work, are you? In that same vein, what if an owner of a home decides to have his brother-in-law, who is a good handyman,

do a job in his home? The owner understands, up front, that this individual is not licensed. Are they still guilty?

Keith Lee:

In that situation, the individual who is doing the work would probably not fall within the \$1,000 exemption that we are suggesting be made in Section 1 of the bill. I will have to think about that. I do not have an answer for you right now, Mr. Settlemeyer.

Chair Ocegüera:

Are there further questions from the Committee? I see none. Mr. Lee, why not go on to your amendment.

Keith Lee:

In looking at this amendment very quickly, as I was preparing this from an email I received from the State Contractors Board, Section (c) in the first part is already part of the bill that you have in front of you, as is paragraph 4. I apologize to the Committee for not having caught that and deleting that. We are suggesting that the other language be included in this amendment. This is a point of controversy between the Contractors Board as the regulating authority, some of the contractors, and some of the associations representing contractors. It is where the line should be drawn regarding what information should be divulged to the public upon inquiry about complaints that have been received, at what point in time that information should be made public, and when it should still remain private to protect the privacy of the contractor.

We are trying to figure out a balance between the public's right to know, consumer protection, and giving the consumer a sufficient amount of information so that he or she can make an informed decision about hiring a particular contractor; but at the same time, we need to protect a contractor from a specious complaint that may be filed by a competitor or someone who does not like that person, but has no legitimate complaint. What we are suggesting in this amendment is that we maintain a complaint history on a contractor, and if someone makes a written request for that complaint history, we give it to them. Paragraph 5 of this amendment creates what we have always observed in this situation, what we call the allegation period. When a complaint is received at the State Contractors Board about a licensee, we send that complaint to the licensee and give that licensee 15 days in which to try to resolve the complaint with the complaining witness. This formalizes that particular procedure and says that is not information that would be disclosed upon an inquiry. What we are suggesting with this amendment is to disclose all of the complaints that have been received, even during the investigative period, before a formal complaint has been filed, or before any adjudication. Again, it is

a question of where the line should be drawn. The contractor associations are not comfortable with this language. Senator Hardy has also been working with us on this. We continue to work with him and the industry in trying to find a resolution that will get us closer to where that line should be drawn.

Assemblyman Settlemeyer:

I am very bothered by the concept of publishing and disseminating to the public, unsubstantiated and unproven complaints regarding the history of the contractor. Some contractors may be great work-wise, but they may not be the best employer, so every one of his ex-employees might be disgruntled. They may have filed complaints against him. I would feel much more comfortable under Section (d) in disclosing and disseminating only the known, substantiated violations.

Keith Lee:

Clearly, Mr. Settlemeyer, that is one of the areas of difference between the Board and a number of the contractors and their associations. We are still willing to work with them in trying to find a common ground. One of the things that we have just discussed is moving toward some sort of investigative period beyond the allegation period. I can explain how the Board of Medical Examiners does it, and the State Nursing Board follows a similar situation. Essentially, there is a period, after the complaint is filed and before it is made public, in which an investigation occurs and then there is a higher review. There may be a common ground we can work toward where there will be an investigative period during which there will be further review and a determination of whether there is a potential or probable violation of the law that would result in disciplinary action. We are sensitive to that concern, Mr. Settlemeyer, and we are prepared to try to work toward some common ground that may satisfy some of those concerns.

Assemblywoman Allen:

My concerns were along the same lines as Mr. Settlemeyer's. I am concerned about due process. Potential complaints might come from disgruntled employees, as well as competing contractors. We should not release complaints that are unproven.

Keith Lee:

The Contractors Board is a licensing agency that has a responsibility to the general public, as well as to our licensees. We feel it is better to err more on the side of disclosure as opposed to nondisclosure. I was remiss in not referring to the last two paragraphs of our proposed amendment. We are suggesting that we make it a misdemeanor for anyone who knowingly files a false complaint

with the Contractors Board. Whether that would satisfy everyone's concerns, I do not know.

Chair Ocegueda:

Are there further questions from the Committee? I see none. Are there others wishing to testify in favor of this bill? I see none. Is there anyone wishing to testify in opposition?

Jesse Wadhams, representing Nevada Development Authority and Southern Nevada Home Builders:

Our colleague from the State Contractors Board has addressed our concerns. We do think there is an issue with having a database and giving out complaint information prior to those complaints being adjudicated. Also, we have a concern with Section 5 of the amendment that says "the homeowner reserves the right to deny access to the contractor." We think this reverses the right to repair that came up in the 2003 Session.

Chair Ocegueda:

Are there any questions from the Committee? Mr. Anderson?

Assemblyman Anderson:

Actually, I was under the impression that there would be several amendments coming forward and I will reserve my questions for later.

Mandi Lindsay, Government Affairs Specialist, Associated General Contractors:

I would like to premise my testimony on the fact that Associated General Contractors does not oppose this bill as written; however, we are opposed to the written amendments submitted to you by Mr. Lee, representing the State Contractors Board. We oppose the amendment because it allows the Board to publicize unsubstantiated complaints. If you are a contractor, you are guilty even if you have not been proven guilty. Second, if this amendment is passed, the State Contractors Board would be the only licensing board in Nevada allowed to disclose complaints that have not been adjudicated. That is our concern. Finally, we would note that the State Contractors Board is currently being sued over the very issues created by this amendment.

Chair Ocegueda:

Are there any questions from the Committee? I see none. Are there others wishing to oppose this bill?

Dylan Shaver, representing Construction Industry Coalition:

We agree with the concerns of Mr. Settelmeyer and Ms. Allen. We would hate to see this turn into a bigger issue with a flood of complaints that have no basis in fact.

Chair Ocegüera:

Are there any questions? I see none.

Berlyn Miller, representing Nevada Contractors Association:

As the previous speakers have indicated, we are in support of S.B. 279 (R1). We want to give the Contractors Board all of the authority they need in keeping the industry clean. Our only concern is the one stated by Mr. Lee, that complaints not be released unless contractors are found to be in violation of the State Contractors Board's rules and regulations or state laws. As Mr. Wadhams indicated, we also have concerns about if there is a complaint filed and the contractor is notified, that the homeowner might be able to deny him access to come back and correct the complaint. We feel that the contractor should be able to come in and correct something if the owner has a problem.

Chair Ocegüera:

Are there any questions for Mr. Miller?

Assemblywoman Allen:

Mr. Miller, are you in support of the original bill, without the amendment?

Berlyn Miller:

We are in support of the bill with the one exception of how that information is released on complaints. It is my recollection that in the original bill there was a section that referred to "on inquiry." That was amended out in the Senate, but now we are concerned that the Board may have the ability to make that decision and to do that.

Assemblywoman Allen:

Do you know why the Senate went that way?

Berlyn Miller:

Because they felt as we do, that it should not be released unless there was an actual violation of regulations or law.

Chair Ocegüera:

Are there further questions from the Committee? I see none. Are there others opposing this bill? I see none. Is there anyone wishing to speak in the neutral on this bill?

Pat Sanderson, representing Laborers Union Local No. 872:

There has been enough said on the rest of the bill, but one thing that I would like to bring up is our belief that the Contractors Board should research past Occupational and Safety Health Association (OSHA) violations when new contractors are moving to Nevada. Presently, they do not do that.

Chair Ocegüera:

Are there questions from the Committee? I see none. Mr. Lee, do you have a rebuttal?

Keith Lee:

Not really a rebuttal, as such. It was not the Contractors Board's intention to, in any way, affect the right to repair by the language that is suggested in paragraph 5. That clearly needs to be cleaned up. Another thing I want to make clear for the record, insofar as the State Board of Medical Examiners and the Nursing Board are concerned, those two boards reveal to the public, upon inquiry, and prior to a final adjudication, that complaints have been filed. The peer review process is where people review the investigative information and make a determination to go forward by way of filing a formal complaint against the licensee. Then that information is a matter of public record, before there is a final adjudication. At least with those two boards, information is made available to the consumer upon inquiry, before there is a final adjudication but after there has been this intermediate process where there has been a determination of probability or likelihood, or whatever that language is in that case.

Chair Ocegüera:

Are there any final questions for Mr. Lee? I see none. As there seem to be a few issues outstanding, I am going to assign a Subcommittee which will have one week to return to the full Committee with their recommendation. The Subcommittee will consist of Mr. Anderson, as chair, Mr. Horne, and Ms. Allen. We will close the hearing on S.B. 279 (R1).

We will open the hearing on Senate Bill 477 (1st Reprint).

Senate Bill 477 (1st Reprint): Makes various changes relating to the licensing and regulation of time-share sales agents. (BDR 10-1327)

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

Is there no one in Carson City to present this bill?

Chair Ocegüera:

Mr. Scherer is here, but he pointed to you to start.

Scott Scherer, representing American Resort Development Association:

This bill was introduced by the Senate Commerce and Labor Committee. We appreciate the support of Senator Townsend in helping us get the bill introduced, and especially Senator Carlton in helping us work through the language of the bill and putting the provisions together. This bill clarifies the authority of the Real Estate Division to authorize provisional licenses for time-share sales agents and sets forth conditions for issuing and the limitations on provisional licenses. As many of you know, the industry is growing rapidly. There are many major new developments. We have had difficulty in being able to get time-share sales agents hired and licensed in a timely manner. The problem is that if they are not licensed they cannot share in the commission for any sale that they might have. It makes it difficult for someone who wants to come to work and meets all of the other qualifications, has been through the education and any required testing, but then has to wait to work or has to work for minimum wage and be limited in what they can do for a period of months while they await the licensing process.

This bill would allow for the issuance of a provisional license. Section 2 of the bill sets forth the requirements for a provisional license, and specifically that there has to be a written agreement between the project broker and the time-share sales agent. Section 3 sets forth the grounds on which a provisional license expires automatically, which is whether a full license is issued or a full license is denied, either one of those will result in the automatic expiration of the provisional license.

The meat of the bill is in Section 4, which is the limitations on what a provisional licensee can do. The provisional licensee has to be under the direct supervision of a project broker, or cooperating real estate broker, and they have to be at the principal place of business; in other words, at the time-share project or branch office. They cannot be in someone's private residence or individual residence, they cannot have access to a lock box until they have been through the full licensing process, and they cannot approve or sign contracts. Those have to be approved and signed by the project broker or someone that does have a full license. Further, they cannot take any private, confidential information from a prospective customer. We think the limitations that are here provide a good balance and still allow someone to show a model unit to a prospective customer and provide services; and they would be allowed to share in a commission that they might earn through those activities, but Section 4 requires them to do it under fairly strict limitations and supervision.

Chair Ocegüera:

Are there any questions for Mr. Scherer? I see none. Ms. Anderson, anything to add to the description of the bill?

Gail Anderson:

The Real Estate Division is in support of this bill. As Mr. Scherer has indicated, this has been an issue that the industry has approached me with and worked on for a considerable amount of time. This particular program has a very high turnover in the licensing base. It has a very high non-renewal rate. The license period is two years. There is a fairly continuous inflow of applicants and licensees wishing to work. Mr. Scherer referenced the background investigation that has seen significant improvement since mid-December. We have been running about six weeks to receive both the state and the Federal Bureau of Investigation (FBI) background investigation reports. However, the individuals seeking to work in this industry are looking for fairly immediate work. The licensure requirement is for 14 hours of pre-licensing education, the state examination, and then the background investigation report. This is a very good accommodation for a provisional license, with the very clear understanding and limitations on what that licensee may perform and do, that protects the public, but also, under supervision, allows these major projects to have the workforce that they need to perform their business in our State.

Chair Ocegüera:

Are there any questions? I see none. Are there others wishing to testify in support of this bill? I see none. Is there anyone wishing to testify in opposition? I see none.

Assemblyman Parks:

I want to disclose that I am a licensed real estate agent. I do have a philosophical question. If we start providing a provisional sales agent license for time-shares, is it just a matter of time before there is going to be a similar request for those persons selling real estate?

Gail Anderson:

Believe me, that was my greatest concern in being approached with this. In discussions with the industry and with some of the project brokers, in particular, the time-share sales agent license has much more limited access to information. My concern of issuing a provisional license before having the criminal background investigation completed is that very reason. However, with this license we are limiting their access to personal information. That would include financial information. They can do a sales presentation, but to actually take a financing application, they would not be allowed to take private and personal

information, that is Social Security numbers, banking information, et cetera. That was one of the safeguards that I was concerned about.

The other concern is that these individuals must work in the actual sales office or the project. They do not have unlimited access through a key box to any home that is listed, for example, in the Multiple Listing Service. I felt the limitations were a safeguard. This particular industry with high turnover and limited education requirements needs the provisional license and I felt there were distinctions there that could be supported.

Chair Oceguela:

Are there further questions? I see none. Ms. McKee, I see you in the back of the room. Do the realtors have any position on this bill?

Teresa McKee, General Counsel, Nevada Association of Realtors:

I am just monitoring the hearing. We have no stand opposing or supporting this bill. We are interested in the provisional licensing and making sure that it is handled in a safe manner for consumers and for other types of agents, as well.

Chair Oceguela:

What about Mr. Parks' question?

Teresa McKee:

In the past year or two, we were addressed by members of the Association who are real estate agents when licensing was taking a particularly long time for real estate agents; it was taking up to several months. At that time the discussion was much more on the table. Since licensing times have been reduced substantially over the past year or so, that discussion is not on the table at this time. There was definitely a concern when it was taking a long time, but as Ms. Anderson discussed, there are a number of reasons why provisional licenses must be kept closely guarded. There is a large area of individual information that you would receive from the consumer that needs to be protected for the benefit of the consumer and the benefit of the profession. So, if we choose to go forward with provisional licensing, it will be done carefully and in a well-thought-out manner.

Chair Oceguela:

Are there any questions? I see none. Are there others wishing to testify on S.B. 477 (R1)? We will close the hearing.

[There being nothing more to come before the Committee, the meeting was adjourned at 3:10 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman John Oceguela, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 30, 2007

Time of Meeting: 1:35 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|-------------------------|--------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| SB 265 (R1) | C | Tony Guillen | Written testimony |
| SB 279 (R1) | D | Keith Lee | Proposed Amendment |