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

Seventy-Fourth Session
April 13, 2007

The Committee on Commerce and Labor was called to order by Chair John Oceguera at 12:47 p.m., on Friday, April 13, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 Oceguera, 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 Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20
Assemblyman David Bobzien, Assembly District No. 24

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Earlene Miller, Committee Secretary

OTHERS PRESENT:

Keith Lee, representing State Board of Medical Examiners
James Jackson, representing Board of Homeopathic Medical Examiners
Jason Geddes, Private Citizen, Reno, Nevada
Larry Matheis, representing Nevada State Medical Association
Jack Kim, representing Sierra Health Services
Fred Hillerby, representing State Board of Nursing
Debra Scott, Executive Director, State Board of Nursing
Dan Reaser, representing AT&T
Eric Witkoski, Consumer Advocate
Dan Jacobsen, Executive Director, Regulatory, AT&T
Bob Ostrovsky, representing Cox Communications
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Mark Feest, representing Churchill County Communications
Marsha Berkbigler, Vice President, Government Relations, Charter Communications
Steve Schorr, Vice President, Public and Government Affairs, Cox Communications

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

Chair Oceguera:
We have a big work session ahead of us, so we may as well get started. We will start with the work session on Assembly Bill 101.

Assembly Bill 101: Revises provisions governing the Commission on Tourism. (BDR 18-772)

Dave Ziegler, Committee Policy Analyst:
This bill revises provisions governing the Commission on Tourism (Exhibit C). It was introduced by this Committee on behalf of the Las Vegas Convention and Visitors Authority and the Reno-Sparks Convention and Visitors Authority. It

changes the composition of Nevada's Commission on Tourism. It makes the chief administrative officers of the county fair and recreation boards of the three counties paying the highest transient occupancy taxes to the Fund for Promotion of Tourism voting members, thus increasing the size of the voting members from 9 to 12 members. It makes other related changes.

There was an amendment submitted on the day of the hearing from the Commission on Tourism, and it is attached.

Chair Oceguera:
I do not believe there is any problem with this bill and I will entertain a motion.

> ASSEMBLYMAN PARKS MOVED TO AMEND AND DO PASS ASSEMBLY BILL 101.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN CHRISTENSEN WAS ABSENT FOR THE VOTE.)

We will move on to Assembly Bill 144.

Assembly Bill 144: Establishes a formula for determining the maximum rate for interruptible service that a public utility may charge for electricity for irrigation pumps. (BDR 58-1017)

Dave Ziegler, Committee Policy Analyst:
(Exhibit D) This bill was introduced by Assemblyman Goicoechea and others and establishes a formula for determining the maximum rate for interruptible service that a public utility may charge for electricity for irrigation pumps. It establishes a new formula, setting the maximum rate at the average of the lowest per-kilowatt-hour-charge offered by each public utility and cooperative association under any of its rate schedules.

Chair Oceguera:
Is there discussion on this bill? I see none.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS ASSEMBLY BILL 144.
>
> ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CHRISTENSEN WAS ABSENT FOR THE VOTE.)

We will move on to Assembly Bill 207.

Assembly Bill 207: Provides for the payment of a cash benefit to certain injured workers unable to return to the positions that they held at the time of injury. (BDR 53-546)

Dave Ziegler, Committee Policy Analyst:
This bill was introduced by Assemblyman Oceguera (Exhibit E). It relates to industrial insurance. It eliminates vocational rehabilitation from the list of priorities an insurer must adhere to in returning an injured worker to work, and replaces it with a payment determined by formula. The provisions do not apply to a worker participating in vocational rehabilitation before July 1, 2007. On the day of the hearing the Chairman offered an amendment to the bill as a whole. On April 11, 2007, the Committee received a revised amendment and it is attached.

Assemblywoman Buckley:
I have a disclosure to make. Dean Hardy, one of the people who presented this bill, is the Chairman of the Board of Directors of Clark County Legal Services where I work. Clark County Legal Services does no workers compensation and there is no conflict, but I wanted to make the disclosure.

Chair Oceguera:
Are there questions on the bill? The original bill seemed draconian, but through negotiations and the final amendments, it seems acceptable. I would entertain a motion.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 207.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GANSERT, CHRISTENSEN, MABEY, AND SETTELMEYER VOTED NO)

Chair Oceguera:
We will move to Assembly Bill 234.

Assembly Bill 234: Makes various changes concerning homeopathy. (BDR 54-646)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with the practice of homeopathy (Exhibit F). It relates to Nevada's Board of Homeopathic Medical Examiners and the Institutional Review Board. There is a breakout of the provisions of the bill, section by section, in your notebook. Section 5 addresses complaints against a homeopathic physician who is dual licensed. Section 6 authorizes the Board of Homeopathic Medical Examiners to assess its licensees for their pro rata share of any budget shortfall. Section 9 amends the definition of homeopathic medicine. Sections 19 and 23 make amendments to educational requirements for those who graduated from a medical school outside of the United States or Canada. Section 25 revises the fees and the fee structure. Sections 7, 13, 30, 31, 32, 33, 36, 37, and 38 address the relationship between the Board of Homeopathic Medical Examiners and the Institutional Review Board. There are details provided in your notebook.

On the day of the hearing Mr. Lee, representing the Board of Medical Examiners, offered an amendment which is attached. On April 12, 2007, the Committee received a proposed amendment from Mr. Jackson representing the Board of Homeopathic Medical Examiners. Mr. Jackson's amendment deletes provisions in Sections 5 and 9.

Chair Oceguera:
Is there any discussion?

Assemblyman Mabey:
I have a number of concerns with this and I will start with Section 5. Homeopathic physicians can be allopathic physicians and if there are concerns about discipline, if you are an allopathic physician . . .

Chair Oceguera:
Dr. Mabey, just let me stop you for one second because in the second amendment by Mr. Jackson deletes Section 5 in its entirety.

Assemblyman Mabey:
Sorry. Can you help me? Section 5 is gone.

Chair Oceguera:
Well, that is just a suggestion.

Assemblyman Mabey:
I understand. How about Section 6 or Section 9?

Chair Oceguera:
The amendment would remove Section 9, as well.

Assemblyman Mabey:
The other concern I have is with the Institutional Review Board (IRB). These boards are set up to do studies. I am concerned that this Board would be supervising their own study. I do not think there is the appropriate supervision issue. This should be set up by independent groups and not by a group that is going to overview their own studies. I think anything to do with the IRB is inappropriate.

Assemblywoman Buckley:
I agree with Dr. Mabey. I think with this IRB we moved much too quickly last session. I think that is supported by the audit that our own Legislative Counsel Bureau (LCB) did; it has ended up being a disgrace if you examine everything that has happened. I would propose that we include in this motion, if the Committee would consider it, completely repealing the IRB.

Chair Oceguera:
I could agree to that. In light of that, Mr. Lee, would you be in support of Mr. Jackson's amendments at this point?

Keith Lee, representing State Board of Medical Examiners:
That is correct. Should the Committee move forward in adopting at least the provisions of Mr. Jackson's amendment deleting Section 5 and Section 9.2, the Board of Medical Examiners would withdraw its previously offered amendment.

Chair Oceguera:
Mr. Jackson, we also have an additional repeal of the IRB. How do you feel about that?

James Jackson, representing Board of Homeopathic Medical Examiners:
I was not expecting that, but I can tell you that there is a Board member here from the Homeopathic Board, and I was given a thumbs up when you said that.

Chair Oceguera:
Is there further discussion?

Assemblyman Horne:
I have concerns with Section 6 of the bill, authorizing them to make up shortfalls in revenues and assessing homeopathic physicians, and I think they would be the only board that does that. I apologize to the Speaker because I believe it was my bill last session that allowed them to put the IRB in.

Assemblyman Conklin:
Mr. Horne, what is your suggestion? I know that there are Senate bills on this issue and they have been rolled into one study. Obviously, we have some issues in this area.

Assemblywoman Gansert:
I had the same concern as Mr. Horne about Section 6 and also the fees in Section 25 of the original bill.

James Jackson:
The only other comment I wanted to make is the proposal on Section 9 which would be to delete Section 9.2 only, not the entire section.

Assemblywoman Buckley:
So what is left in the bill that we really need, besides repealing the IRB? We are deleting 5, and 6, is there anything else we really need?

James Jackson:
I am not sure what your intentions are with respect to the fees. The desire of the Board was to be able to get their budget balanced and to take care of fees that were owed to the Attorney General's office because of some extraordinary costs associated with that.

Assemblywoman Buckley:
Because the IRB caused this mess, I do not know that the burden should fall on every homeopath in the State. Perhaps we need to get on a payment plan with the Attorney General or something.

James Jackson:
I think we are working on that.

Assemblywoman Buckley:
We do not want the Governor to veto the bill. If we really want to repeal the IRB, this fee might be troubling.

James Jackson:
We will live with what you do.

Assemblyman Horne:
I also have questions on Sections 16, 17, and 22 through 26. They went to an annual renewal of the licenses and the change in committee members. I just had a question mark by that item because I do not know why they are doing that.

James Jackson:
I must apologize, I came to the table with just the work session document. I do not have a copy of the entire bill. I do not remember what those specific sections deal with.

[A copy of the bill was given to Mr. Jackson.]

Assemblyman Horne:
It seems you are changing everything from just a renewal of registration to annual. Perhaps you did that in order to get the fees.

James Jackson:
It obviously has changed the wording of what type of renewal they are doing or how they are describing it. I am not sure that is tied directly to the fee issue; I think they were looking at a more descriptive word of what they are trying to get the physicians to do. I know there is an increase in some of the fees.

Chair Oceguera:
I think we have problems, so I will accept a motion and see how it goes.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 234, WITH THE AMENDMENT BEING THE DELETION OF THE WHOLE BILL BUT INCLUSION OF THE REPEAL OF THE INSTITUTIONAL REVIEW BOARD.
>
> ASSEMBLYMAN SETTELMEYER SECONDED THE MOTION.

Chair Oceguera:
Is there discussion on the motion?

Assemblywoman Gansert:
I think in Section 30 there are some references to the IRB so perhaps we should remove that also.

> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 304.

Assembly Bill 304: Makes various changes to provisions relating to manufactured home parks. (BDR 10-1119)

Dave Ziegler, Committee Policy Analyst:
This bill makes various changes to provisions relating to manufactured home parks (Exhibit G). It was introduced by this Committee. Among its provisions it addresses providing copies of rental agreements, rules and regulations in advance, employing only licensed repair persons, paying costs associated with removing and disposing of the home in the event of a conversion of a park, and limiting landlord's liens for storage, maintenance, and repair to $5,000.

This bill removes the authority of a local government to prohibit installation of factory-built housing in a specific area if the housing is more than five years old. It provides that a local government may not prohibit installation of a manufactured home based on its date of manufacture if it otherwise complies with *Nevada Revised Statutes* (NRS) and *Nevada Administrative Code* (NAC).

On April 6, 2007, the Committee received three amendments and they are attached. One is from Joe Guild, representing the Nevada Manufactured Housing Community Owners Association, one from the Nevada Association of Realtors, and one from Ms. Diamond, the Administrator of the Division of Manufactured Housing, Department of Business and Industry.

Chair Oceguera:
Mr. Manendo?

> ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 304.
>
> ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 341.

Assembly Bill 341: Makes various changes relating to energy conservation. (BDR 58-389)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with energy conservation (Exhibit H). It was introduced by Assemblywoman Gansert. It places the Task Force for Renewable Energy and Energy Conservation in the State Office of Energy and adds members appointed by the Governor representing the transportation fuels industry and the natural gas industry. It expands the authorized uses of the Universal Energy Charge that is distributed to the Housing Division to include programs of solar hot water and hot air systems. It amends the net metering provisions raising the maximum capacity to 1 megawatt and the secondary cap from 30 kilowatts to 250 kilowatts. It extends the maximum term of a state purchasing performance contractor lease-purchase contract to 20 years. It requires a life-cycle analysis of a public building to consider energy conservation and efficiency over a 20-year period and consider ground-source heat pumps. It makes an appropriation to support integrated design laboratories.

On the day of the hearing, Assemblywoman Gansert offered certain amendments, and the Committee received updated amendments in the form of a mock-up on April 10, 2007, which are attached.

Assemblywoman Gansert:
We matched the language from Assemblywoman Kirkpatrick's bill for the Task Force, and the language from Assemblyman Bobzien's bill regarding the caps. Also, we took out the money for the integrated design laboratories. I think we matched up with the other bills that were outstanding and took out the money portion of it.

Chair Oceguera:
I am happy to move the bill, but I am not sure why we have to do duplicative things.

Assemblywoman Gansert:
There are new issues in here.

Chair Oceguera:
I know there are new things, but would it be amenable to you to move out the stuff that we already know we are going to do and leave the stuff that is new?

Assemblywoman Gansert:
That would be fine.

Assemblyman Conklin:
I think Sections 1 through 6 are relatively duplicative. There might be some minor changes. With the exception of the provision of adding solar hot water

systems and solar hot air systems to the Universal Energy Charge, I think it is intended to be for low-income homeowners and I am not sure, even with credits, that people would be able to use that provision. The items in the second half of the bill, starting with Sections 7, 8, 9, 10, 11, and 12, all appear to be good policy.

Assemblywoman Gansert:
I would like to address the solar portion of the bill. That just makes it available as an option. They have done a lot of weatherization and this is an option. For a home that is 1,500 square feet, the cost is about $1,500. Basically, they could supply their own energy with the solar system. That is why we added that.

Chair Oceguera:
So, do you agree that 1 through 6 is duplicative, we would maintain the solar, and Sections 7, 8, 9, and 10 are all your language?

Assemblywoman Gansert:
I do not know if Jason Geddes is here; he put the mock-up together.

Assemblyman Conklin:
I understand where Ms. Gansert is going with the solar hot water systems. My question is if, in fact, that fund is for low-income homeowners, will they take advantage of it and is it a worthwhile expenditure versus other weatherization pieces? I do not know the answer to that.

Assemblywoman Gansert:
I agree the provision is just for low-income homeowners and this would give them another option. It is up to the Committee whether you want to accept this. With weatherization you can cut down your bills, but with this solar hot water you could eliminate your bills in the future.

Assemblywoman Buckley:
I was wondering if the sponsor of the bill could explain to me about the third-party consultants.

Assemblywoman Gansert:
I believe this was in Marilyn Kirkpatrick's bill. Third-party consultants are organizations that come in to evaluate state buildings to see if there is anything they can do from an energy performance standpoint. I believe that the Purchasing Division added this amendment because they wanted to make sure there was a way they could pay these people by setting up a separate fund. I

am not sure if they are here or not, but it is the third-party consultants' fund. This was actually an amendment from the Purchasing Division.

Assemblywoman Kirkpatrick:
Actually, the third-party consultant was part of Dr. Hardy's bill. The Purchasing Division needed a middle person they could go to so there would be a guaranteed payment for the people who did the work. Ironically, my bill changed that provision. We reorganized the dollars and sent them to the Energy Task Force itself so that it was right there with the task force. It was Dr. Hardy's amendment that the Purchasing Division needed in order to make sure that the people who were coming in from the outside could do the evaluations of the buildings.

Assemblywoman Buckley:
I think we should be consistent. We should pick a mechanism, I do not care which one, and that should be the one we send over to the Senate.

Assemblywoman Gansert:
Dr. Geddes, we are talking about the third-party consultants and this bill is different from Ms. Kirkpatrick's. They are funding it through the Energy Task Force versus the Purchasing Division that asked us to add this amendment.

Jason Geddes, Private Citizen, Reno, Nevada:
I can speak to the purchasing, but I am not sure I can speak to Ms. Kirkpatrick's bill. The Purchasing Division's amendment covers when they do the lease-purchase performance contracting retrofits under *Nevada Revised Statutes* (NRS) 333A. The way the system is set up, the third-party energy auditor performs the energy audit. Then, based on the recommendations of that auditor, a bid is put out for the work. The fees for that third-party audit are paid after they accept a bid, and they do the retrofit. That could be six to nine months later. This creates the fund to pay for the first audit and the first energy auditor. Those fees would go back into the fund to replenish that fund after the bid was accepted and the retrofit done. We would get donations from the energy auditing and federal grants to create the fund to pay these people. It can be three, six, or nine months later before someone decides to do a project. If the agency decides not to go for the project, you need a mechanism to pay the person who did the audit. I hope that clarifies.

Assemblywoman Kirkpatrick:
Mr. Chairman, I redirected the funds, so it is a matter of which direction you want to go. I am more than happy to work with Ms. Gansert as we approach the Senate side.

Assemblywoman Gansert:
Either way works for me. If we need to amend and match Ms. Kirkpatrick's language, that would be fine.

Jason Geddes:
Are the funds that are being redirected the $250,000 to the Task Force in Assembly Bill 222? Those funds were directed to the Energy Office and those funds are currently not available. It would be a new appropriation to send it to the Office. For the past four years the task force has been paid out of the Public Utilities Commission (PUC) reserve.

Assemblywoman Kirkpatrick:
Not that I want to debate my own bill versus Ms. Gansert's bill, but we are talking about paying consultants. Why not give it to the state agency that actually can get the work done? Rather than paying consultants on this section, why not give it to our state employees who have the avenues to do that? That is why I believe it is conflicting with my bill.

Jason Geddes:
I think I have an understanding now. Right now there are consultants who are paid to support the task force and prepare the reports for the Legislature and the State Energy Office, but none do energy audits.

Assemblywoman Kirkpatrick:
Mr. Geddes, I am not going to debate my bill with you at this time. What I am telling you is in A.B. 222 I included this portion of my bill that is already out of work session. Once again, I would be happy to work with Ms. Gansert and we can take it to the Senate together, or not.

Assemblywoman Gansert:
If you like, we can just delete Section 8 from this right now so that we do not have anything conflicting and then we will just work it out, if that is what you prefer.

Chair Oceguera:
Let me make sure I have this straight. The duplicative language is in Sections 1 through 6. We would delete 8, keep 9 and 10, then decide on the solar energy issue. Is that right?

Assemblywoman Gansert:
That sounds correct to me. Section 11 has the use of ground-source geothermal heat pumps, and Section 12 is related to making the Integrated Design Laboratory so there are contributions versus funding it.

Chair Oceguera:
Does anyone have any ideas on the issue of solar energy low-income credit?

Assemblywoman Gansert:
If Mr. Geddes could respond to that, I would appreciate it. We were talking about whether we should add the solar hot water as a tool for the Universal Energy Charges (UEC).

Jason Geddes:
That section just provides an option to the UEC and the Office when they are doing energy conservation to look at solar thermal and solar hot water and see if that is a proper option to include. It is not a mandate to put it in, it does not require any percentages, and says if they find an application where that would work and make sense, they could use the funds towards that application.

Assemblywoman Kirkpatrick:
During the interim I served on an energy committee and we did talk about solar. A mobile home owner could get solar. There has been testimony showing people might be able to go further with the solar.

Assemblywoman Buckley:
I do not think it would hurt to have this as an option, but I think the most important thing is to preserve this fund. I think it helps a lot of people. I think, cost-wise, we might be better to take it out.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 341 RETAINING SECTIONS 7, 9, 10, 11, AND 12 AND DELETING THE REST OF THE BILL.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 385.

Assembly Bill 385: Makes various changes concerning the practice of medicine. (BDR 54-356)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with the practice of medicine (Exhibit I). It was sponsored by Assemblyman Mabey. It changes the provisions regarding the licensing of

physicians. It authorizes special restricted licenses for graduates of foreign medical schools to teach, research, or practice in an approved program. It clarifies who is allowed to perform laser surgery or intense pulsed light therapy, or inject a person with a cosmetic or chemotherapeutic substance. It allows a retired physician to have a special volunteer license. It grants civil immunity to peer reviewers, employees, and volunteers of a diversion program for licensees and physician assistants giving instructions in an emergency under certain circumstances, and it makes various other changes.

On the day of the hearing, representatives of the Board of Medical Examiners offered amendments which are attached. On April 9, 2007, the Committee received an additional amendment, also attached, from the Nevada State Medical Association. That amendment had been described conceptually on the day of the hearing.

Assemblyman Mabey:
It is my bill, but I just gave the bill draft request (BDR) to the Board, and they have taken care of everything. I support it.

Keith Lee, representing State Board of Medical Examiners:
The amendments before you are consistent, and we agreed with the State Medical Society's amendment and would answer any questions you might have. Mr. Matheis is here to confirm that if you so desire.

Chair Oceguera:
He confirmed it with a shake of the head. We are good. Is there any discussion?

Assemblyman Anderson:
Perhaps Mr. Matheis would be a better responder, given this blanket statement giving the Board the ability to define by regulation. Will we also be giving them the authority to give immunity to those individuals? Are we expanding the definition to whom the ability to grant immunity is to be given?

Keith Lee:
No, that would not be the case, Mr. Anderson. The immunity provisions are in Chapter 40, and we do not have authority to adopt regulations regarding Chapter 40. This amendment directs the Board to adopt a regulation to define the phrase "supervision of a physician."

Larry Matheis, representing Nevada State Medical Association:
This is the section defining that Botox and similar treatments need physician supervision and addresses what supervision is needed if the physician is not

doing the treatment himself. It seems best to require the Board to have workshops and hearings to flesh that out for all those doing those procedures to attend. It is really for the Board to clarify what it means by supervision in these new cases.

Chair Oceguera:
Is there further discussion? I see none.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 385.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 419.

Assembly Bill 419: Revises various provisions governing workers' compensation. (BDR 53-154)

Dave Ziegler, Committee Policy Analyst:
This bill was sponsored by Assemblyman Claborn. It addresses workers' compensation (Exhibit J). It requires an employee leasing company to maintain records for public inspection showing that it provides workers' compensation for its leased employees. It authorizes a hearing officer to order an independent medical examination and refer an employee to a physician whether or not the physician is on the insurer's panel of providers. It raises from 0.6 to 0.8 percent of the claimant's average monthly wage the compensation for each 1 percent of the impairment of the whole man for injuries sustained after July 1, 2007. It amends the administrative proceedings for appeals from the determination of the Administrator on benefit penalties.

No amendments were offered on the day of the hearing.

Chair Oceguera:
Is there any discussion on this bill?

Assemblywoman Gansert:
I was concerned about the change in the factors that were on page 7, Section 5.5, going from 0.6 to 0.8. Your wages are already increasing via inflation or raises but this number is actually a factor they use to calculate the benefit. I think there could be a substantial cost with this increase.

Chair Oceguera:
This bill and the next one are probably part of a bigger discussion that we are having on these issues, as we do every session. Hopefully, one session we will come and it will all be right.

Assemblyman Conklin:
If it would please the Chair, I would be willing to make a motion to rerefer the bill to Ways and Means with no recommendation.

Chair Oceguera:
I would accept that motion.

> ASSEMBLYMAN CONKLIN MOVED TO REREFER ASSEMBLY BILL 419 TO THE WAYS AND MEANS COMMITTEE WITH NO RECOMMENDATION.
>
> ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 420.

Assembly Bill 420: Makes various changes relating to workers' compensation. (BDR 53-155)

Dave Ziegler, Committee Policy Analyst:
This bill was also introduced by Assemblyman Claborn (Exhibit K). This bill also addresses workers' compensation. The bill allows an injured employee who is receiving compensation to request a hearing asking for recalculation of his average monthly wage and establishes the standard for such a determination and the effect of a decision to change the wage. The bill amends the vocational rehabilitation provisions establishing a minimum amount for a lump-sum payment to a person who resides outside Nevada. It requires the Commissioner of Insurance to withdraw the certificate or suspend the authorization for one year of an insurer or third-party administrator who is ordered to pay fines or penalties for any three violations occurring in a 180-day period.

No amendments were offered on the day of the hearing.

Assemblyman Conklin:
In light of the Chairman's comments on A. B. 419 and A. B. 420 being similar policy, I would make a similar motion.

> ASSEMBLYMAN CONKLIN MOVED TO REREFER ASSEMBLY BILL 420 TO THE WAYS AND MEANS COMMITTEE WITH NO RECOMMENDATION.
>
> ASSEMBLYMAN ARBERRY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 145.

Assembly Bill 145: Requiring certain services to be covered by policies of health insurance and health care plans. (BDR 57-1068)

Dave Ziegler, Committee Policy Analyst:
This bill was introduced by Assemblyman Hardy (Exhibit L). It relates to policies of health insurance and health care plans. I will not read the summary of the bill since on the day of the hearing Assemblyman Hardy proposed an amendment to the bill as a whole. There is an amendment attached to your packet; however, Dr. Hardy has provided us with a mock-up (Exhibit M). The first amendment, mock-up 3700, to A. B. 145 dated April 13, 2007, is the correct mock-up.

Assemblyman Joe Hardy, Assembly District No. 20:
The green mock-up created a problem with an important person and an affected constituency. In a discussion that took place earlier this afternoon, it became clear that the mock-up in your work session binder is more compatible and amenable to the parties involved, so the bill in toto would thus become the mock-up that you have in your work session binder as a stand-alone section amending *Nevada Revised Statutes* (NRS) Chapter 449.

This amendment is not as well tuned as I would like it. The powers that be have allowed the Chair to do what he will depending upon the agreements after the vote of this Committee. I would like to move the bill, but at the same time I recognize that we need to fix it.

Assemblywoman Buckley:
I would like a better understanding of what you are trying to say. What should this language be? Do you want it to say that the insurance company should not be making payments directly to an individual who is an insured if an assignment of benefits has been received by that insurance company.

Assemblyman Hardy:
That is correct.

Assemblywoman Buckley:
So, if the insurance company mistakenly pays the patient instead of the health care provider, then the insurance company would still be liable to the medical provider?

Assemblyman Hardy:
Sometimes it is not a mistake that the insurance company pays the patient. That patient has already signed over the benefit to be sent directly to the hospital, the doctor, or the provider of care. Insurance companies from outside of Nevada are given an opportunity in this bill to see our policy statement of how we do business in the State of Nevada. We expect that the patient, who has signed an assignment of benefit instructing his benefit be sent directly to the care provider, would want that assignment to be honored. When the insurance company ignores that and sends the money directly to the patient, the patient many times cashes the check and thinks he has received a refund from the insurance company and then the hospital pursues the patient, which aggravates the patient. This bill would be a policy statement to encourage the insurance companies to do business the way we would like them to in the State of Nevada.

Brenda Erdoes, Committee Counsel:
I would like to clarify what is in the mock-up. This provides that whether or not there is a non-assignment clause in the contract the insured has signed with the insurer; this provision would step in to say that you cannot make an effective assignment under these types of situations. You, the patient, cannot make an effective assignment and therefore the insurer has to pay only to the person to whom the money is owed. If they do not do that, they may have to pay again if the payment went to the patient. This rule would apply regardless of whether or not there was a non-assignment provision in the contract itself.

Assemblywoman Buckley:
But that is not what this says, right? Maybe that would be clarified in the drafting process, but I read this to say that where a person signs an assignment, but the insurer mails the check to the patient, the insurance company is not released from the liability to pay the provider, and it is not a defense of the insurance company.

Brenda Erdoes:
If you are looking at the mock-up, number 3700, I believe it states that even if you have assigned it, that assignment is not effective.

Assemblywoman Buckley:
So, even if a person does not sign an assignment, the public policy of the State of Nevada is whenever there is insurance, you have to mail the payment to the provider?

Brenda Erdoes:
That would be true if the insurer is obligated to pay the benefits for the service to the hospital or other provider. If there was a different arrangement, this would not change that. I believe the majority of arrangements are that the insurer is obligated to pay the benefits to the provider.

Chair Oceguera:
Are there any more questions?

Assemblyman Mabey:
This happens in my own office. A person comes to my office and she lives out-of-state, and I do not have a contract with her insurance company. What happens is I get an assignment of benefits, then we submit the claim, the patient receives the check instead of me, then two or three months later I contact the insurance company and they tell me they mailed it to the patient. Then I need to contact the patient and she is nowhere to be found, so I do not get paid. I support this. My only concern is I do not want the patient to be off the hook and I am not sure that this wording says that. I think the patient should be ultimately responsible. I do not want to be chasing XYZ Company in Rhode Island to get paid. I want to be sure it is clear that the patient is ultimately responsible.

Chair Oceguera:
How about an insurer's perspective?

Jack Kim, representing Sierra Health Services:
Currently in Nevada, we have an assignment of benefit provision which basically says if one of our members goes to a hospital or doctor, and they assign their benefits for payment, we have to honor that. We have had that in Nevada for a number of years and in discussing it with the parties bringing this bill, it is clear that they do not have any issues with the local insurers. We are regulated by the Division of Insurance who enforces those provisions. What this bill is trying to get to is Employment Retirement Income Security Act (ERISA) plans not governed by Nevada law and out-of-state insurance companies that may have no nexus to Nevada. If you have a patient who comes to Nevada, seeks treatment, signs an assignment of benefits clause, the insurance company does not have to honor that. They may send the payment to the member. They are trying to put this issue somewhere in statute, so that even though the insurance company may have no policies in the State, we can enforce Nevada law. That is what this bill is trying to do.

Chair Oceguera:
Ms. Erdoes, I recall emails between you and Dr. Hardy about how we could not tell out-of-state companies what they can and cannot do. Could you comment on that?

Brenda Erdoes:
You can regulate the business transacted in this State. I think that is why it would work.

Assemblywoman Buckley:
If we are really trying to get at the conduct of an out-of-state insurance company, Chapter 449 should cover the medical provider.

Brenda Erdoes:
That is the part of the mock-up that concerned me also. I think this provision was put in quickly, but if you reserve that legal right I think we can put it in the right place so that it would work.

Assemblywoman Buckley:
Okay, and could you repeat what you said about the assignment one more time?

Brenda Erdoes:
If you have an assignment that clearly states the right to those benefits has been assigned to the care provider, this provision would apply. Then, if the insurance company paid the patient instead of the care provider, they would still be liable and have to pay the provider. There is nothing in this bill about the patient ultimately being responsible for the cost; however, in other parts of the law, it is so stated.

Assemblywoman Buckley:
Okay, I am comfortable with that.

Chair Oceguera:
Is there any more discussion? I see none. I would entertain a motion.

> ASSEMBLYWOMAN GANSERT MOVED TO AMEND AND DO PASS ASSEMBLY BILL 145 WITH THE NEWEST AMENDMENTS.
>
> ASSEMBLYMAN MABEY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 422.

Assembly Bill 422: Requires disclosure of certain information by customer sales and service call centers. (BDR 52-1278)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with customer sales and service call centers (Exhibit N). This bill was introduced by Assemblyman Bobzien and requires employees of a call center to disclose the city, state, and country where they are located. Refusal to do so would constitute a deceptive trade practice.

Earlier this week the Communications Workers of America (CWA), Local No. 9413, proposed the amendment shown in the attached mock-up.

Chair Oceguera:
I think we have made improvements to this bill, Mr. Bobzien. Would you like to discuss that?

Assemblyman David Bobzien, Assembly District No. 24:
I do not have a copy of the mock-up in front of me, but I believe what you should see is the removal of "city" from the location requirements and then the information would be issued only upon request.

Assemblyman Conklin:
It seems pretty straightforward now: If you call and I ask, you need to tell me where you are located. Then the city will not be included to alleviate some concerns of smaller communities.

Assemblyman Settelmeyer:
I am concerned about the enforcement of this law. Do we really expect this to be enforced since there is no fiscal note? The fine is either a gross misdemeanor, a misdemeanor, or a felony. Are we expecting the law enforcement officers to travel to other states and countries in order to enforce this, and if so, why is there no fiscal note? I am concerned.

Assemblyman Bobzien:
As a deceptive trade practice, I envision the scenario in which someone who makes a request for a local disclosure and does not receive one, would communicate that information to the Consumer Advocate. I believe during the hearing there was some discussion about how that process works. Then, it would be up to that agency to do the investigation. I do not know if there would be a fiscal note as a result of that.

Chair Oceguera:
Are there other comments or concerns? I would entertain a motion.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 422.
>
> ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Settelmeyer:
I would like to reserve my right to change my vote on the Floor.

Chair Oceguera:
We will move on to Assembly Bill 424.

Assembly Bill 424: Revises provisions relating to the licensure of counselors. (BDR 54-1294)

Dave Ziegler, Committee Policy Analyst:
This bill relates to the licensing of counselors (Exhibit O). The bill defines the practice of professional counseling and establishes requirements for an applicant to be licensed to practice as a professional counselor. The bill also establishes criteria for licensing as an advanced alcohol and drug abuse counselor. The bill provides that if a health insurance policy covers treatment for an illness within the scope of practice of a professional counselor or advanced alcohol and drug abuse counselor, the insured is entitled to reimbursement for treatment by those persons.

The proposed amendments to this bill require some explanation. Each member should have a mock-up (Exhibit P) at your desk—mock-up 3612 to A.B. 424 dated April 10, 2007.

The mock-up expands the bill from a skeletal bill to a regular bill. The sponsor explained to staff that the bill, as introduced, was a skeleton bill that upon the process of it being developed was fleshed out, resulting in the mock-up. Staff has reviewed the mock-up, and I would offer that the mock-up truly does what the sponsor says, and does not seem to change the meaning of the bill.

The other amendments are in your work session notebook. The first one was submitted by Helen Foley on behalf of the Nevada Association for Marriage and Family Therapists, the Board of Examiners for Alcohol, Drug and Gambling Counselors, the Nevada Association of Social Workers, and the Board of Examiners for Social Workers. It is a two page document with the names of those organizations at the top.

The second proposed amendment is a single page with a yellow bar across the top. Those amendments came from Gerald Weeks, Ph.D., at the University of Nevada, Las Vegas. In reviewing these proposed amendments and discussing them with the sponsor of the bill, I would say that the Foley amendments make two global changes; they change the terminology from "professional counselor" to "clinical professional counselor" and from "advanced alcohol and drug abuse counselor" to "clinical advanced alcohol and drug abuse counselor." These amendments also make changes to the education and experience qualifications required. The sponsor is in approval of the amendments submitted by Ms. Foley.

The other amendments submitted by Dr. Weeks conflict to some degree with the Foley amendments, and they also conflict with the sponsor's desires.

Assemblywoman Buckley:
Would the Chair entertain a motion?

Chair Oceguera:
Yes, I would.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 424 WITH THE MOCK-UP AND THE INCLUSION OF MS. FOLEY'S AMENDMENTS.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Chair Oceguera:
Is there any discussion?

Assemblyman Settelmeyer:
I would request a few minutes to be able to digest some of this.

> THE MOTION WAS PASSED UNANIMOUSLY.

Assemblyman Settelmeyer:
I would like to reserve my right to change my vote on the Floor.

Chair Oceguera:
We will move on to Assembly Bill 477.

Assembly Bill 477: Revises certain provisions governing manufactured home parks. (BDR 10-428)

Dave Ziegler, Committee Policy Analyst:
This bill was sponsored by Assemblyman Manendo and others (Exhibit Q). It revises certain provisions governing manufactured home parks. It authorizes a person to bring action in court if he makes payment towards the purchase of a home or placement of a home in reasonable reliance on a written statement that proves to be false or misleading. It requires notification from landlords and escrow agents to the Manufactured Housing Division in various instances. It expands the types of disclosure and the amount of advance notice a park must provide to its applicants and tenants.

Several provisions apply when a tenant notifies a landlord of his decision to move when a landlord closes, converts, or changes a park. The landlord must pay the cost of the move to a new location within 100 miles or for the first 100 miles. If the landlord cannot move sheds because of their condition, he must pay a one-time $250 reimbursement. Upon request, the landlord must reimburse a tenant up to $1,500 for temporary moving costs. If the tenant decides not to move the home and it cannot be moved without structural damage, or there is no park within 100 miles that will accept it, the landlord may remove and dispose of it and must pay the tenant fair market value less the cost of the disposal or $5,000, whichever is greater.

On the day of the hearing there were no amendments offered.

Chair Oceguera:
Mr. Manendo?

Assemblyman Manendo:
I appreciate the Committee's indulgence. We have been working with the interested parties trying to come up with some agreement. I would ask this Committee to Do Pass the bill to buy us some more time to continue working. We have a few sticking points, but I am authorized by the Board of the Nevada Association of Manufactured Home Owners to speak on their behalf. With conversations with Mr. Guild, we are going to work on some things.

Chair Oceguera:
I would entertain a motion.

> ASSEMBLYWOMAN BUCKLEY MOVED TO DO PASS ASSEMBLY BILL 477.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblyman Mabey:
I appreciate what Mr. Manendo is trying to do and I hope to be able to change my vote from no to yes, but I will vote no now.

> THE MOTION PASSED. (ASSEMBLYMEN GANSERT, MABEY, SETTELMEYER, AND ALLEN VOTED NO).

Chair Oceguera:
We will move on to Assembly Bill 491.

Assembly Bill 491: Makes various changes concerning the clinical education of a student in a school of nursing. (BDR 54-1339)

Dave Ziegler, Committee Policy Analyst:
This bill makes various changes concerning the clinical education of a student in a school of nursing (Exhibit R). It requires a person to obtain a certificate of privilege to enroll in a course of clinical education at a school of nursing. To obtain such a certificate requires a fingerprint check and a report by the Federal Bureau of Investigation (FBI) that the applicant has not been convicted of a crime that would be grounds for initiating discipline under Chapter 632. The bill also establishes minimum and maximum fees for an application for a certificate and electronic submission of fingerprints.

On the day of the hearing, Debra Scott, Executive Director, Nevada State Board of Nursing offered certain amendments which are attached. I see we have received a communication today from Ms. Scott (Exhibit S) and that is a loose handout at your desk.

Dave Ziegler:
It addresses some of the questions that came up the day of the hearing having to do with some confusion about the fees in the bill and the proposed amendment.

Chair Oceguera:
Is there any discussion?

Assemblyman Settelmeyer:
I understand the fee related to the fingerprints. I still have a problem with the fee for the application for a certificate of privilege to enroll in a course of clinical education. After everything we have heard about the shortage of nurses, I have a problem with that particular portion. I will not vote for this bill because of the fee for an application.

Chair Oceguera:
Your opposition is that there is a shortage of nurses so we should not fingerprint them?

Assemblyman Settelmeyer:
I agree with the concept of fingerprinting; it is charging them for the application for the privilege to enroll that I am having problems with. I have no problem

charging the appropriate fee for the process of fingerprinting which is clearly stated as no more than $50. I do not agree with the previous portion of the application fee of $40 to $100.

Chair Oceguera:
Is there other discussion?

Assemblywoman Gansert:
I was wondering if Mr. Ziegler could clarify this. I also agree with the fingerprint fee, but why do these individuals have to apply multiple times at different facilities? I am not sure if we ever got that straight. Is this an effort to streamline the process?

Chair Oceguera:
I am a little confused as well. I had not previously seen this letter. I remember now I asked you to have this straightened out.

Fred Hillerby, representing State Board of Nursing:
I talked to you, Mr. Chairman, and also to Mr. Conklin. We are here to try to clarify for the members who were somewhat confused what the services provided by the fees are. This bill came forward because the deans and the nursing directors of the hospitals asked us if we could provide this service at one central point so the nursing students would not be put through this process at various hospitals as they moved during their clinical rotations. The Joint Commission on Accreditation of Health Care Facility requires that anyone taking care of patients has to be fingerprinted and undergo a background check. I will let Ms. Scott give you a little more information, if you would like.

Assemblywoman Buckley:
How did you derive the fee for the application part, not the fingerprint part—is that your staff processing time?

Debra Scott, Executive Director, State Board of Nursing:
Yes. That would be the processing fee. The fingerprint process results in a raw data report that comes directly to the Board of Nursing. This happens for people who are applying for licensure. We need to go through a process that includes possibly getting court documents to make sure that it truly is a criminal conviction. The nursing students get just a background check, not a report from fingerprinting, in many of the cases. This would give us extra information.

Assemblywoman Buckley:
Can you describe, briefly, what you would be doing to earn this fee? What is it composed of?

Debra Scott:
It would be sending out the initial application, receiving the application back, and then coordinating the processing of that application, which would include receiving the report. We are asking for the authority to receive the report from the Department of Public Safety and the FBI, and to analyze that report to gather the documents in conjunction with the nursing student, then issue the certificate.

Assemblyman Mabey:
Will this application fee for a certificate of privilege to enroll in a clinical education course be an impediment?

Debra Scott:
The cost already is being charged to the student and on multiple occasions. It has not been an impediment. One of the documents you have is a table. We looked at about 2,500 students who we would be looking at in the biennium. I do not think it would be an impediment.

Fred Hillerby:
The thing that needs to be made clear is how the process works now. The student enrolls in nursing school, has a semester of didactic, and then it is time to do their clinicals. If something is discovered in the background check that says they cannot do the clinical, then they are out of school. This process would be done right at the beginning, so they will not have the semester wasted if there is something in their background that would prohibit them from doing clinicals. The second thing I wanted to mention is that once this student has graduated and applies for his license to be a nurse, the background check has already been done. This takes care of it for the nurse, all the way through their clinical training and licensure.

Chair Oceguera:
Mr. Settelmeyer, is there anything these people can answer for you to make you more comfortable, or have you made up your mind?

Assemblyman Settelmeyer:
I have made up my mind.

Assemblywoman Gansert:
My only question is why you are charging it versus it being part of a registration fee for nursing school? Or if the hospital is doing it, why are they not paying a portion or all of that fee?

Fred Hillerby:
In some cases those fees are paid by the school and the hospitals. We would hope that would continue, but we must have the authority to charge it to whomever ends up paying it.

Chair Oceguera:
Are there other questions? I would entertain a motion.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 491.
>
> ASSEMBLYMAN ANDERSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN SETTELMEYER AND CHRISTENSEN VOTED NO.)

Chair Oceguera:
We will move on to Assembly Bill 494.

Assembly Bill 494: Makes various changes relating to unemployment compensation. (BDR 53-1199)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with unemployment compensation (Exhibit T). It was introduced by this Committee. The bill excludes a lockout from the types of active labor disputes that disqualify a person from receiving unemployment benefits.

On the day of the hearing, Danny Thompson, representing the Nevada State AFL-CIO, offered an amendment which is attached.

Chair Oceguera:
The proposed amendment also adds the retroactive provision. I did not really agree with that provision. In order to move on this bill, I would suggest that we take out the retroactivity. Is there any discussion? I would entertain a motion.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 494, TAKING OUT THE RETROACTIVITY.
>
> ASSEMBLYMAN PARKS SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN GANSERT, MABEY, SETTELMEYER, CHRISTENSEN, AND ALLEN VOTED NO.)

Chair Oceguera:
We will move on to Assembly Bill 440.

Assembly Bill 440: Makes various changes concerning loans secured by a mortgage or other lien on residential real property. (BDR 52-879)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with loans secured by a mortgage or other lien on residential real property (Exhibit U). This bill was sponsored by Assemblyman Conklin and others. There are two basic parts to the bill. The first part addresses mortgage lending:

- It amends the definition of home loan;
- It makes it an unfair lending practice to knowingly make a home loan without determining the borrower's ability to repay;
- It makes the offense of mortgage lending fraud a Category C felony;
- It makes a pattern of mortgage lending fraud a Category B felony; and
- It prohibits a person from receiving any principal, interest, or other charges or fees with respect to a loan made in violation of the *Nevada Revised Statutes*.

Sections 7 through 20 address foreclosures:

- They prohibit foreclosure consultants from doing certain acts, and authorize the Commission of Mortgage Lending to impose an administrative penalty up to $10,000 for violations;
- They authorize a home owner injured by a foreclosure consultant in violation of the act to bring an action for damages, fees, and costs, and authorize punitive damages;
- They make a foreclosure purchaser operating through fraud or deceit in violation of the act, guilty of a gross misdemeanor.

On the day of the hearing, the Nevada Association of Realtors offered an amendment which is attached.

Assemblyman Conklin:
After the hearing we had on this bill, I met with many of the concerned parties, primarily the banking industry. We have agreed to the following changes in the mock-up (Exhibit V). Section 1 intends to keep the Home Ownership and Equity Protection Act (HOEPA) of 1994 so there is consistency everyone understands. But, it will make clear that the provisions of this bill apply to all home loans, not just HOEPA loans.

The second change is on page 2, line 6 of the mock-up. Because the term "verifying" is used in definitions of certain types of loans, we took out the term "or verifying."

Sections 4 and 5 of the original bill have been deleted. I learned from the Legislative Counsel Bureau (LCB) that the sections are a penalty provision that were put into the wrong Chapters; they needed to be put into Chapter 205 because the banking industry was concerned about the secondary market should a loan be voided through no fault of the secondary borrower. We borrowed some language from New York which basically states if you are the originator of the loan, and you or your successor used fraud, that loan could be voided with due notice. However, if the loan is sold in the secondary market, all civil penalties apply, but the loan cannot be deemed void under the provisions of this bill.

This was something I put in this morning in an attempt to alleviate concerns. There may be concerns from the banking industry that this bill needs some additional tweaks, and I am willing to work with them in the other house. In addition, I do think the Committee should consider whether or not we should take out the felony provisions on page 3 in subsections 1 and 2 to make certain that the fiscal note is removed. We know that the cost is just over $21,000 to put them in prison under the felony provisions and that could add up substantially in this case.

Chair Oceguera:
Are there comments or questions? I see none. I would entertain a motion.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 440.
>
> ASSEMBLYMAN PARKS SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN ARBERRY ABSTAINED FROM THE VOTE. ASSEMBLYWOMAN KIRKPATRICK WAS ABSENT FOR THE VOTE.)

[There was a 30-minute recess.]

Chair Oceguera:
We will call the meeting back to order [The time was 2:59 p.m.]. We will continue with the work session on Assembly Bill 518.

Assembly Bill 518: Revises provisions governing the regulation of telecommunication service. (BDR 58-1128)

Dave Ziegler, Committee Policy Analyst:
This bill revises provisions governing the regulation of telecommunication service (Exhibit W). It is a lengthy bill. For your information, I have attached a section by section abstract which is an elaborate table of contents. Some of the important provisions appear in Sections 22, 23, and 24. The telecommunication provider, other than a small provider of last resort, is not subject to any review of earnings, monitoring of rate base or other regulation by the Public Utilities Commission, Nevada (PUCN) regarding net income or rate of return. Such providers are exempt from regulation of rates, pricing, terms, and conditions of telecommunication services. They are not required to maintain or file any tariff with the PUCN, but they must publish their rates, prices, terms, and conditions of basic network service.

There is a mock-up that has been provided (Exhibit X). I would point out that in an effort to save paper the mock-up just shows the affected sections, not the entire bill. Also, there is another handout (Exhibit Y) that has orange and yellow on the front sheet. It was submitted by Mr. Reaser, representing AT&T. There is another single page (Exhibit Z) that was added yesterday. It was submitted by the Consumer Advocate. I checked with him just now—that single page amendment is incorporated in the mock-up with the orange and yellow type.

The Subcommittee on this bill met on April 5, 2007; it voted to recommend passage with amendments that would cap basic service rates for providers of last resort through December 31, 2010, with a soft cap extending an additional year. It would make lifeline services available to all parties earning 175 percent or less of the poverty level. It would require a report to the Legislature from the PUCN by December 2010. Section 15 requires a developer or owner to give the provider of last resort 180-day notice if the provider of last resort is required to retrofit the development for service and post a bond or equivalent surety to cover the potential costs to the provider of last resort, and makes various other amendments.

Chair Oceguera:
So, after many hours of work on this, let me boil this down. We have a hard-rate cap until December 31, 2010, and a soft cap until December 31, 2011, with increases not to exceed $1. The baseline rate will be established on January 1, 2007. The PUCN will review market conditions and report those findings to the Legislature. We have provisions for lifeline and

consumer protection, and the lifeline eligibility will be set at 175 percent of the poverty level, statewide. There will be requirements to do more outreach and marketing efforts by way of a document called the Outreach Tool Kit. We have PUCN oversight reporting to the Legislative Commission with a final report of December 31, 2010, on market conditions. We have provider of last resort provisions, which include the 180-day notice, and the surety bond. We have some language that will be discussed in this hearing on Sections 15, 16, and 17. Finally, we have some miscellaneous technical issues that we need to discuss as well. Does that clearly run down what we have done with Assembly Bill 518?

Dave Ziegler:
Yes, Mr. Chairman, it does.

Chair Oceguera:
Actually, there is one more thing which is the grandfather clause. Mr. Conklin, you chaired the Subcommittee and since then you and I have worked on this quite a bit. Can you give more insight?

Assemblyman Conklin:
You have summed it up quite well. Ms. Kirkpatrick expressed a concern about making certain that, in the rare circumstance where it may exist, where the provider of last resort (POLR) has been relieved, and there is no one there to pick it up, the Commission could adopt regulations to make certain that the incumbent local exchange carrier cannot be excused from its obligations as provider of last resort in situations that were started or arose prior to the enactment of this bill. I believe this particular mock-up makes it very clear that under no circumstances will there ever not be a fall-back to a provider of last resort. No customer can be left behind in the odd chance that an exclusive provider falls by the wayside or has to leave for some reason.

Chair Oceguera:
Ms. Kirkpatrick, do you want to comment?

Assemblywoman Kirkpatrick:
I appreciate your indulgence and teaching me telecommunications. Everything I was concerned about has been addressed. I would like to clarify, however, that in Section 24 we are doing all three of those items. So, when you publish rates for those who do not have Internet, do they still get the information via another vehicle?

Assemblyman Conklin:
I read it as saying "or" and I am assuming you are talking about the "posting of rates, pricing, terms and conditions, maintaining for inspection by the public a copy of rates and delivering to the customer a copy of rates." Is that what you are talking about?

Assemblywoman Kirkpatrick:
Yes. The reason I ask is that last session Mr. Carpenter informed me that not everybody has Internet, so I wanted to make sure that they did all three. My point is that I would like it to say "and."

Chair Oceguera:
We will bring some people up to discuss this. I will mark that as question number one, page 7, line 8. Is there other discussion? I see none. So, we would like to hear testimony first about the technical amendments, Sections 26, 27, 28, 39, and 44.

Dan Reaser, representing AT&T:
If it pleases the Chair and the Committee, I can go through the yellow-and-orange-faced document, which contains recommended changes to the mock-up, and explain each of those.

Chair Oceguera:
You can explain them; however, it might work if you just spoke about how you all talked about it. They are technical amendments. We could be here for three days if you go through them word by word.

Dan Reaser:
I do not think we need to go through them word for word. The mock-up's recommended changes are the result of a number of interested parties meeting and discussing the relative issues—in particular, Mr. Schmidt, Mr. Witkoski, and me sitting down and crafting the language.

The first amendment to Section 15 is an amendment we worked out amongst ourselves and certain developers.

Chair Oceguera:
I would like to save that for the last part. I would like to go to the technical amendments first, Sections 26, 27, 28, et cetera. We actually have not heard that discussed.

Dan Reaser:
The first technical amendment is amendment 2 on the second page. This amends the new Section 20.5, which is the reporting requirement to the Commission and the Bureau of Consumer Protection (BCP) and ultimately the Legislative Commission. At the request of the BCP, we are adding pricing information to be included in those annual reports.

The next technical amendment is amendment 3. This relates to what the lawyers affectionately call the constitutional safety-valve provisions in Section 25, which is the highlighted section in Section (2) at the bottom of page 7, carried over to the top of page 8. We are making an additional amendment, which was requested and discussed with BCP, in the event that an incumbent local exchange carrier claims it has some unconstitutional taking because of the rate-cap provisions and they bring a general rate case. This amendment makes sure that the incumbent does not only have the ability to get a rate increase, but also would face a possible rate reduction if that is what the evidence indicates. So, the new language for (2) and the renumbering of (3) on amendment 3 ensures that there is risk to the incumbent if it brings one of those constitutional claims that it may have a rate reduction.

In amendment 4 we are striking the reference to "or Chapter 703 of *Nevada Revised Statutes* (NRS) at line 18 in Section 33 and the purpose of this is to preserve the Commission's authority under 703.025 to promulgate regulations for any public utility setting forth consumer complaint jurisdiction and proceedings. Again, this was worked out with the BCP.

Amendment 5 also relates back to amendment 3 on the constitutional safety valve, making clear that the language in Section 39 about the inability to have no rate decreases, that a rate decrease could be a risk that an incumbent could face if it brought a claim.

Those are the technical amendments.

Chair Oceguera:
Are there any questions on those amendments? I see none. We will move to the Section 15 amendment.

Dan Reaser:
What is recommended here from the interested parties is a streamlined Section 15. The objectives of the streamlined section are to send these issues to the PUCN for a rulemaking that would be completed by March 1, 2008. The view of the parties was that the language needed to be streamlined and also made more neutral so there were no arguments that the language as it is in the

mock-up might foretell a certain result. The language that we have worked out here provides that neutral forum. Additionally, in Subsection 3 we again reiterated the bonding requirement at the request of the Consumer Advocate. That bonding requirement extends not only to ensuring continuity of service but also the protection of consumers in relationship to continuity of service. With regard to the grandfather provision, we have renumbered that as subsection 4. We ask for two clarifying amendments; the first is when the statute uses the term "commitments"—we suggest "agreement." A commitment is a fairly ambiguous and possibly contentious term, and we do not want to argue about whether or not it was a commitment. We also ask that we qualify the word "ordered," changing it to "specifically ordered." The purpose for this is there is a regulation that generally orders who is a provider of last resort. We want to make it clear that we are not talking about a general regulation but a specific duty imposed. The regulatory duty is what would be fleshed out in Section 15.

Chair Oceguera:
Ms. Kirkpatrick, do you agree with the changes?

Assemblywoman Kirkpatrick:
I am in agreement with them.

Dan Reaser:
That is the balance of my comments on Section 15. Mr. Schmidt pointed out to me that I should respond to the question Mr. Conklin asked. Section 24, subsection 2, governs how prices, and terms and conditions will be made available to the public. Those are disjunctive. The carrier would only be required to do one of those forms of communication of its pricing, terms, and conditions, either by Internet, inspection of public copy at the location of its principal office, which is the standard practice of today, or delivering a copy of the rates, terms, and conditions with the first invoice. Most customers would not want to receive that large of a filing in their bill.

Assemblyman Conklin:
That question was posed by Ms. Kirkpatrick.

Assemblywoman Kirkpatrick:
I am comfortable with the amendments on page 1. My only concern is that at no given time would anyone be without service and the PUCN currently says there is no exclusive appeal, so I wanted to make sure we took care of the everyday customer. I think my questions have been answered.

Assemblywoman Buckley:
I was not on the Subcommittee so I did not have the opportunity to work on this as much as others. From the big picture point of view, we are setting up a scheme, new paradigm, or regulatory apparatus. Page 2 of the mock-up states the mechanism whereby we will be ensured that no one will go without service—that we will always have a provider of last resort—the PUCN will develop regulations to figure out how to do that among all the competitors. This stipulation is not subject to a sunset but will be in place so that we make sure no one is without service? Perhaps the Consumer Advocate could answer that.

Eric Witkoski, Consumer Advocate:
Section 4 requires that there be a provider of last resort.

Assemblywoman Buckley:
Perhaps you could "big picture" this point, if the Consumer Advocate would not mind. The Chairman very clearly went through some of the major components. We are allowing competition, but are making sure that the PUCN will always have jurisdiction. We need to make sure that someone is always there to serve the less profitable customers, the basic one-line family. We need a mechanism to make sure that the PUCN is notified if a company goes out of business so someone else can make sure that service is provided.

Eric Witkoski:
That is correct. You have basically captured the whole theme of what we are trying to do here. We are trying to transition from what we traditionally have as a monopoly service to a competitive market, and that is the reason for the rate caps. As far as those rate caps go, I think we are pretty good compared to other states. Other states have $1 every year. This arrangement gets us to the end of 2010 without a rate increase for basic service, then a soft cap until 2011, which can only be $1 and during this period. Not only would you have two legislative sessions to look at this, but you would also have the Commission doing the oversight and at least getting the reports. Both my office and the PUCN will get the reports. My office will look at those not only from the regulatory standpoint, but also as an antitrust point. For this to thrive we need to have good competition and we think that there is a chance for that. We have put in place some safeguards with the rate cap, we have oversight from the Commission, we have reports yearly going to the Commission and to the Legislative Commission, and then we will have an analysis of those reports on December 1, 2010, of what is going on in the marketplace.

Assemblywoman Buckley:
As the bill and the amendments stand, do you have any concerns that we are not protecting consumers? Is there anything more we need to add, or are you comfortable with the provisions in the bill?

Eric Witkoski:
Having gone through the electric deregulation and being part of the global settlement where we had to work around the deregulation, I always feel a little uneasy when faced with those situations and looking at something we are changing. Is there anything we have not thought of? As we go forward, there is competition in the market from cable companies and other providers and although I do not know if it is sufficient to open the market, I think time will tell. I think we have done a good job here of framing up. Compared to other states, this is a better package.

Chair Oceguera:
Are there further questions? I see none. Is there anyone who thinks there is an issue that we have not discussed? I see none.

Ms. Kirkpatrick were your concerns addressed regarding Section 24 on page 7 of the mock-up and the disjunctive "or"?

Assemblyman Settelmeyer:
I would just make a suggestion that you make it at the customer's request. I believe that Ms. Kirkpatrick wanted to make sure that people without Internet capacity might like it sent to them. In other words, if the customer would call up and request it specifically it would be mailed to them.

Assemblyman Conklin:
What if we said "post on the Internet and maintain. . . " Then, as a separate piece "deliver to the customer upon customer request."

Chair Oceguera:
I am looking at this language and the language does not make them do anything. The wording is "may."

Assemblyman Conklin:
Mr. Chairman, it says they "must" publish their own rates, but they "may" publish the rates, prices, terms, and conditions of other telecommunication service.

Kevin Powers:
Section 24, subsection 2 establishes two different components. The first component is that the competitive supplier that is an incumbent local exchange carrier must publish the rates for its basic service, but then it has discretion to publish its rates for any other service. If it does exercise that discretion, it may do so in one of the manners set forth in (a), (b), or (c).

Assemblywoman Kirkpatrick:
I am good with it; I just wanted to know how the rates will be published. "Ands" and "ors" are a big deal.

Kevin Powers:
Ms. Kirkpatrick, you raise a particular concern. The first component says they must publish the rates of the basic network service, but does not designate, in statute, how they must publish those rates. It may be necessary to designate how the basic rates must be published, then for the other types of telecommunication services, you could designate if they do publish them, a certain type or way of publishing.

Chair Oceguera:
Mr. Powers, what if we do the exact same scheme on their rates, use the same (a), (b), and (c) on the "must" side and also on the "may" side.

Kevin Powers:
I would agree that would be an effective way to address the concerns.

Assemblywoman Gansert:
How are they published now?

Dan Jacobsen, Executive Director, Regulatory, AT&T:
We have quite a bit of experience with this. We currently have all of our rates that continue to be regulated, in tariffs. In my seven years in Nevada, we have never once had an end-user residential customer come and say they want to look at the tariffs. We have put our prices for the competitive services on the Internet. We have a website and anyone can go to it from att.com. I have some evidence that customers have frequently gone to the website to see what our prices are and compare those with Charter, for example. We also keep a copy of our tariff in our public office on Vasser Road in Reno, Nevada. That has been readily available, but to my knowledge it is very rare for a customer to come in and want to see the physical tariff. The other thing is that in a competitive marketplace, we want customers to know what our prices are, so we do advertisements on television, radio, newspaper, et cetera. The final thing I would mention is every quarter we do send out information on lifeline to try to

make sure that low-income customers know about the availability of that heavily discounted service.

Dan Reaser:
Also, you need to read both in the mock-up and in the original bill, the final subsection of Section 25 which requires that the incumbent local exchange carrier must provide that reasonably detailed information in the manner of one of those three ways. The company has the alternative three ways of having their rates published, but incumbents do not have an option; they must do one of those three methods with regard to their basic network services.

Assemblywoman Kirkpatrick:
I am trying to clarify if a person wants to check—are they going to have an avenue?

Dan Jacobsen:
In my experience, customers are starting to go to the Internet more often because it is a very convenient place to compare prices, and we do have a very elegant website, as do our competitors. The more frequently-used method is calling our business office and asking for the prices. That will continue to be available.

Chair Oceguera:
I would entertain a motion.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 518 WITH SECTION 24 BEING AS MR. POWERS STATED EARLIER.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move on to Assembly Bill 526.

Assembly Bill 526: Revises provisions governing the regulation of community antenna television, cable television and other video service. (BDR 58-1129)

Dave Ziegler, Committee Policy Analyst:
This bill has to do with the regulation of community antenna television, cable television, and other video service (Exhibit AA). I have included, for your

information, a section-by-section abstract or, in other words, a detailed table of contents that is behind your cover sheet in your notebook. Some of the important provisions are contained in Sections 28 through 32. The bill is intended to occupy the entire field of franchising and regulating video service and preempts any local law or agreement with a local government. The Secretary of State is given exclusive authority to issue a certificate to a person to provide video service and operate a video service network. After the effective date, local government has no authority in this area. On the effective date, an incumbent cable operator providing service under a local franchise may elect to continue operations until the expiration date, or terminate the local franchise and apply for a certificate. Amendments are provided in the form of a mock-up (Exhibit BB) titled Amendment 3690 that was distributed earlier, it shows only the affected sections. There was a Subcommittee meeting on April 5, 2007.

The Subcommittee voted to recommend passage with the following amendments.

- Certain amendments were prepared by Mr. Reaser implementing the conceptual agreements between local governments and the industry members which you received on April 2, 2007;
- Amendments proposed by Mr. Reaser regarding inclusion of a funding source for the Secretary of State;
- Proposed conceptual amendments submitted by the Chairman; and
- Amendments proposed by representatives of the Communications Workers of America regarding the effect of transfers of certificates on collective bargaining agreements.

There are two mock-ups, the second one being Amendment 3597 (Exhibit CC). They are both in play. Perhaps Mr. Powers could explain.

Kevin Powers, Committee Counsel:
The mock-up, proposed amendment 3597, contains all of the amendments that the Subcommittee had considered and proposed. The second mock-up, proposed amendment 3690, contains additional components involving providers of Internet service that the Subcommittee also requested be prepared. If the Committee were to act on both mock-ups and approve them, they could be incorporated consistently.

Chair Oceguera:
Is there any discussion?

Assemblywoman Kirkpatrick:
I have a legal question. What does Section 44, lines 30 through 33 mean? What is the "purveyor of video service?" I tried to find the definition in the first part of the bill and could not.

Kevin Powers:
For that particular section, the term "purveyor of video service" is defined at the end of that section in the subsection. That section applies to more than video service providers who are regulated pursuant to the Chapter or who would have a certificate of authority under the Chapter. It applies to anyone who is attempting to provide video service to other individuals, and prohibits them from entering into exclusive contracts that attempt to exclude video service providers from providing service to a particular location. It is drafted more broadly because it applies beyond simply the video service provider to anyone who is providing video service to subscribers. What it probably intends to address is certain apartment complexes and other residential areas, which may have a provider of video services. In this case we are calling them a "purveyor of video service" that provides exclusive service to that apartment complex or that residential area. This phrasing is prohibiting exclusive arrangements like that in the future.

Assemblywoman Kirkpatrick:
What about preexisting exclusive arrangements? Is this just for newer arrangements?

Kevin Powers:
I think it might be appropriate to have the parties come up and address their intent with this section.

Dan Jacobsen, Executive Director, Regulatory, AT&T:
It is the intent of the bill that this would apply on or after the effective date. The intent is to make sure the customers have alternatives.

Kevin Powers:
That is in Section 44 on line 30 of the actual bill in the introductory clause.

Assemblyman Anderson:
If you are an exclusive provider and have had a long-standing arrangement in a certain area, then decide to abandon that area, do you still have the exclusive arrangement?

Dan Jacobsen:
I think the intent here is to not have exclusive providers. The intent would be that the cable companies, telephone companies, and satellite companies providing video, and perhaps in the future wireless companies, not be allowed to be exclusive.

Assemblyman Anderson:
I want to make sure I am drawing the right conclusion. If this is the effective date for new providers, those that are currently in place no longer have standing as exclusive because others can now come into those areas.

Dan Jacobsen:
I think this does not disrupt existing contractual arrangements, but applies on a going-forward basis with the effective date of this act. It would make it so that exclusive agreements could not be entered into if this bill is passed into law.

Assemblywoman Kirkpatrick:
I think the most important thing was making sure that we had some service. Would it mean just coming in with the application?

Dan Jacobsen:
The intent would be any contractual agreement already in place not be disrupted by this legislation, but you would not be able to enter into new contractual agreements that would be exclusive after passage of this bill. This bill is all about giving customers more choice for video. It will enable telephone companies and cable companies to provide customers with competitive choice.

Assemblywoman Kirkpatrick:
Does a contract mean to you that they already have their lines in place, or does the contract mean to you that they have made application and they are moving forward with their plans?

Dan Jacobsen:
I think it would be limiting if I were to say "when a contract is signed," compared with "when the facilities are in place." It is my experience that the facilities are already there and the contractual arrangements are entered into and renegotiated over time. The facilities are employed for an entire area and the contracts are negotiated over time.

Assemblywoman Buckley:
I want to make sure I understand. For instance, I am a developer with five acres of land and I am building 500 homes. I am setting it up for the very first time, so I call a "purveyor of video services," and ask what kind of great

deal can you get me, and they quote a price for a period of five years. The developer agrees to an exclusive deal for five years. The purveyor comes in. After the five years, the home owner would be able to do whatever he wanted. Could you address this in a more practical manner?

Dan Jacobsen:
The intent here is that a developer could go to the cable company and say I am doing a new subdivision, and I would like the residents to have the option to get cable television. That usually happens. The developer would not be able to have an arrangement that would be exclusive and no other video provider would be allowed to put his facilities in the trench. The intent is to allow customers to have choice. They could not negotiate a deal where only one entity could provide service.

Assemblywoman Buckley:
Right now, is the equipment able to be used by anyone? Is it universal or could it be different? Does that mean that the developer needs to let three potential products come in with the trenching?

Dan Jacobsen:
In general, the trenches that go to residential subdivisions will have conduit or pipe where the telephone facilities go through one separate conduit, perhaps in the same trench as the cable facilities. Now technology is to the point where video, Internet, and telephone are riding over the cable facilities, and in a very short period of time video, Internet, and telephone will be riding over the telephone facilities. The intent is that no developer could prevent any other provider from running facilities in that trench. I have used the example of the telephone and the cable company. In the future there may be other companies who want to put facilities in those trenches or run them through right-of-ways, and they would fall under the provisions of this bill.

Assemblywoman Buckley:
Under this bill is there some regulatory body to decide what goes into the pipe?

Dan Jacobsen:
The local governments retain their right-of-way control over the public right of way. In terms of dictating what types of facilities go in the trenches, I believe the idea is that the competitive marketplace will bring the new technology, whatever it is. In most cases it would be fiber. The industry is replacing copper with fiber. There is no one to control or dictate what kind of facilities go in; the idea is that the marketplace will encourage providers to provide the latest technology.

Assemblywoman Buckley:
I am still a little confused. What if a new purveyor comes along? He is somewhat fly-by-night, and he says to me, you have to let me on your property and install my facilities, even though that technology may not be proven. This seems so broad.

Bob Ostrovsky, representing Cox Communications:
If you are concerned about the opening of the trench, the local governments control how many street cuts you can make and there is notice to providers about when that cut will be made. When the trench is open, certain people go in at certain levels. Any provider that meets the standard has his certificate to serve, can come while that trench is open and put his pipe in that trench. Local governments specify how deep and how big a pipe you can put in, and so on. Once that trench is closed there are rules about reopening that trench so that someone could not just come along six months later and dig up the street again. They have to follow the local government standards about when you can open and close that pipe.

Dan Jacobsen:
Maybe I can clarify this. We tried to structure the law so that one developer could not say that only one provider could serve the development, possessing an exclusive deal. For example, if the telephone company were to go to a developer and say the only way I am going to provide video service to your neighborhood is if you give me an exclusive deal, we have tried to preclude that. However, in that scenario, if the telephone company ran facilities to provide video, high speed and voice, and the cable company did as well, then if a third company came along and said to the developer, I also would like to run fiber, the developer would have the latitude to say, I think I only need two. If it is private property, the developer would have the ability to say I am not interested in having your facilities run through my private property.

Assemblywoman Buckley:
Where is that in the bill? Are you saying this regulates the purveyor not the developer?

Dan Jacobsen:
That is right.

Chair Oceguera:
Are there further questions? I see none. There is one more issue I think we need to clear up. The sections with the Secretary of State's office, Section 110 and Section 29—apparently there is a new way to go on that?

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:
We received the language in the mock-up yesterday afternoon. It was substantially different from the language we had discussed with the industry at the time of the Subcommittee hearing. The concern is in Section 29 as to having a cost-based fee. Generally, the Secretary of State has a set fee, not based on any costs involved in the office. We also have concerns in Section 110. In determining the actual costs, we have a problem with setting a precedent where any type of filing coming into our office would have to pay upfront costs. We would have to determine what those costs are and charge them to those companies in the industry or needing a franchise at a certain period of time. What we have suggested to the industry is that we have a set fee of approximately $25,000 to get a franchise that would basically cover those costs but would also require any person wanting to enter the marketplace to also cover those same costs. I understand there was a concern about possibly taking care of this on the Senate side. We would be happy to work with the industry to come up with better language. I will leave that to your discretion.

Chair Oceguera:
Mr. Anderson, I just want to admonish you. Quite frankly, you know how to contact me. I am not hard to find, and if I had not heard through the grapevine that there was an issue I would not have known. Next time, you can just contact me. Had I not been informed, we would not know your opinion because I would not have called on you. I understand that there were some numbers that have been agreed upon?

Scott Anderson:
The numbers that have been agreed upon were in Section 29, the $1,000 per filing. We had discussed with the industry the possibility of them covering the initial start-up costs to develop the systems and to get this new service up and functioning in the Secretary of State's office. Since that time, we have discussed the possibility of having a set fee of $25,000 per franchisee. There were five industry members participating in this and that would bring us $100,000 or $125,000 to cover those costs. It would also require any new entrants into the marketplace to have to pay that same fee. There would not be any new entrants who would not have to pay this fee.

Chair Oceguera:
So, $25,000 was the number?

Scott Anderson:
That was the number that has been thrown out and we have not spoken to all of the industry, but we have discussed it with a couple of those entities.

Chair Oceguera:
Are there any industry people here who would be opposed to setting that number at this time?

Bob Ostrovsky:
We have met with the Secretary of State's office and we have agreed to that number.

Mark Feest, representing Churchill County Communications:
With the number of people we serve in our community, it would be unfair to have us pay the same price as somebody who serves Clark County. I think some consideration should be given to that.

Chair Oceguera:
Mr. Feest, we will continue to discuss it.

Marsha Berkbigler, Vice President, Government Relations, Charter Communications:
We are in line with that number.

Chair Oceguera:
I thought that this bill actually only affected the two urban populations. So, Mr. Feest, I am not sure this would affect you.

Kevin Powers:
CC Communications, which is owned by Churchill County, is affected by this bill. They are one of the few local governments allowed under existing law to provide video service, and this bill applies on a statewide basis, so they would be subjected to having to get a certificate of authority

Dan Jacobsen:
We are willing to pay the $25,000.

Chair Oceguera:
It seems that we should be able to craft an exception in that regard. Any comment, Mr. Powers?

Kevin Powers:
If it is the desire of the Committee, we certainly can exclude video service providers who are operated by a local government from having to pay the fee for filing a certificate of authority. That would be no different than local governments typically excluded from having to pay state taxes or other state fees. It also might be helpful in the Committee's deliberations to know that under existing law most cities and counties are prohibited from providing video service. All of the large cities and counties are already prohibited from providing video services, and only a few local governments actually provide it. Churchill County, through CC Communications, is one of those.

Chair Oceguera:
Maybe we could have our legal people look at that and see if we can come up with something. Are we all okay with an exception? I see acknowledgments.

Dan Jacobsen:
We are not opposed to exempting local governments from paying this fee.

Bob Ostrovsky:
Cox Communications has no problem exempting the local government from having to pay the fee. If there are costs involved, we will just have to divide them up among the other competitive providers.

Mark Feest:
I hate to be disagreeable, but I think in the past we have had many issues because the local government was not subjected to the same rules. Now we are subject to the same rules. My issue with this does not have to do with being a local government, it simply has to do with being small. It does not seem fair that when you have the potential market of two million customers you pay $25,000, and when you have the potential market of 25,000 customers, you pay $25,000. It does not seem reasonable. I would prefer an exception based on population.

Dan Jacobsen:
What we are talking about is funding the start-up costs the Secretary of State will incur, and I think what we are suggesting is that the larger companies not government owned would be willing to pay fees to cover that. Perhaps Churchill County might be comfortable paying the ongoing application fees that would apply as they make their initial amendment and any subsequent filings. That way, they would be making payments.

Steve Schorr, Vice President, Public and Government Affairs, Cox Communications:
I do not have a specific problem as long as Churchill County continues to serve the area they serve now. We are talking about a statewide franchise. Should they get that ability to get a statewide franchise and seek that, then they could indeed go into any other community within the State including Washoe County, Reno, Clark County, and any place else. If that is the case, I would think they would then have to do what everyone else does or they could keep what they currently have, which is their option.

Chair Oceguera:
Mr. Feest, are you planning to expand to Washoe County, Lyon, et cetera?

Mark Feest:
We offer our video service over our wire-line telephone infrastructure, which is within Churchill County. We do not have the right to go to Washoe County and provide wire-line phone, so I am not sure what facilities we would use in Washoe County.

Chair Oceguera:
Mr. Feest, I would give you the same admonishment: we have been working on this very hard. I am from Fallon, so I know you could find a way to contact me. I wish you had talked to me before; we could have discussed this and worked it out prior to the hearing. Please feel free to call my office at any time we have an issue with telecommunications and video franchising.

Assemblyman Settelmeyer:
What if you just say the $25,000 fee does not apply to a county between 10,000 and 25,000 if that company does not have service in another county?

Chair Oceguera:
Mr. Powers, do you think you could work something out?

Kevin Powers:
Yes, we can.

Chair Oceguera:
I think we can come up with something that will be agreeable to everyone. Are there any other issues? I see none. I would entertain a motion.

> ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 526.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Assemblyman Conklin:
I was under the impression that we would also work out the Churchill County issue with Legal.

Chair Oceguera:
Yes, the amendment should include that. Mr. Powers will work on the issue as discussed in this Committee.

THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
Thank you so much for sticking it out with us. We did a lot of bills in a limited amount of time. We had some long nights, and I appreciate your help.

[There being no further business before the Committee, the meeting was adjourned at 4:13 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman John Oceguera, Chair

DATE:

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 13, 2007 **Time of Meeting: 12:00 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 101	C	Dave Ziegler	Work session document
AB 144	D	Dave Ziegler	Work session document
AB 207	E	Dave Ziegler	Work session document
AB 234	F	Dave Ziegler	Work session document
AB 304	G	Dave Ziegler	Work session document
AB 341	H	Dave Ziegler	Work session document
AB 385	I	Dave Ziegler	Work session document
AB 419	J	Dave Ziegler	Work session document
AB 420	K	Dave Ziegler	Work session document
AB 145	L	Dave Ziegler	Work session document
AB 145	M	Dave Ziegler	Proposed Amendment
AB 422	N	Dave Ziegler	Work session document
AB 424	O	Dave Ziegler	Work session document
AB 424	P	Dave Ziegler	Proposed Amendment
AB 477	Q	Dave Ziegler	Work session document
AB 491	R	Dave Ziegler	Work session document
AB 491	S	Debra Scott	Proposed amendment
AB 494	T	Dave Ziegler	Work session document
AB 440	U	Dave Ziegler	Work session document
AB 440	V	Dave Ziegler	Proposed Amendment
AB 518	W	Dave Ziegler	Work session document
AB 518	X	Dave Ziegler	Proposed Amendment
AB 518	Y	Dan Reaser	Proposed Amendment
AB 518	Z	Eric Witkoski	Proposed Amendment
AB 526	AA	Dave Ziegler	Work session document
AB 526	BB	Dave Ziegler	Proposed Amendment
AB 526	CC	Dave Ziegler	Proposed Amendment