MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 11, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:01 a.m. on Friday, May 11, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Carol Sala, Administrator, Aging Services Division, Department of Health and Human Services
Barry Gold, AARP, Nevada
Patrick T. C. Smith, International Association of Rehabilitation Professionals
Dean A. Hardy
Charles J. Verre, Division of Industrial Relations, Department of Business and Industry
Robert A. Ostrovsky, Employers Insurance; Nevada Resort Association
George Ross, Nevada Self-Insured Association; Las Vegas Chamber of Commerce

Gary E. Milliken, Associated General Contractors, Las Vegas Chapter; Builders Insurance Company
Jeanette K. Belz, Property Casualty Insurers Association of America
Danny Thompson, Nevada State AFL-CIO
John E. Jeffrey, Southern Nevada Building and Construction Trades
Patrick T. Sanderson, Laborers' International Union Local No. 872
Rusty McAllister, Professional Firefighters of Nevada
Barbara Gruenewald, Nevada Trial Lawyers Association
Nancyann Leeder, Nevada Attorney for Injured Workers, Department of Business and Industry
Rose E. McKinney-James, Clark County School District
Jim Fry, Risk Management Division, Department of Administration
Dan R. Reaser, AT&T — Reno
Nicole Lamboley, Chief Deputy, Office of the Secretary of State
Michael D. Hillerby, Coyote Springs Investments, LLC

CHAIR TOWNSEND:
I will open the hearing on Assembly Bill (A.B.) 53.

ASSEMBLY BILL 53 (1st Reprint): Makes various changes regarding licenses for and disciplinary action against administrators of facilities for long-term care. (BDR 54-570)

CAROL SALA (Administrator, Aging Services Division, Department of Health and Human Services):
I have written testimony explaining the bill (Exhibit C) and our amendment to it (Exhibit D).

SENATOR HECK:
Could you explain the need for the increase in the administrative fine?

MS. SALA:
Currently, the maximum fine that can be levied is $2,500. The Office of the Attorney General and the Nevada State Board of Examiners for Administrators of Facilities for Long-Term Care felt the ability to assess a higher fine is warranted, considering the severity of some of the violations committed. This would be the maximum fine, and it would be up to the Board to determine the amount of each fine.

SENATOR HECK:
Are you saying that a fine of $2,500 is not a big enough hammer?

MS. SALA:
Correct.

SENATOR HECK:
In section 3, subsection 1, paragraph (e), the bill refers to violations of "a code of ethics." Whose code of ethics is this? It is not defined in the bill.

MS. SALA:
That would be a code of ethics outlined within BELTCA regulations for the long-term care administrators or administrators of residential facilities for groups. It would be similar to the codes of ethics for licensed social workers and nurses.

BARRY GOLD (AARP Nevada):
We support this bill, which increases the oversight in nursing facilities and residential-care homes. When people go to live or place a relative in a facility like this, there is an expectation of trust. They expect people to be taken care of, and this will increase the oversight to help that process.

CHAIR TOWNSEND:
I will close the hearing on A.B. 53 and open the hearing on A.B. 207.

ASSEMBLY BILL 207 (1st Reprint): Revises provisions governing vocational rehabilitation services. (BDR 53-546)

PATRICK T. C. SMITH (International Association of Rehabilitation Professionals):
We had concerns about this bill when it first came up. Mr. Hardy, Mr. Verre and I have spent many hours working on the problems. As the bill now sits, we have come to agreement on language that will alleviate some of the problems. We have also started some non-legislative processes that will help.

DEAN A. HARDY:
There are some things we have agreed on, as well as some things we are trying to agree on. We anticipate that we could resolve the remaining problems with another week of discussion.

MR. SMITH:
I agree.

CHARLES J. VERRE (Division of Industrial Relations, Department of Business and Industry):
I agree.

ROBERT A. OSTROVSKY (Employers Insurance):
Unfortunately, we have not been party to these discussions. We have concerns about sections not currently under discussion. We have particular problems with section 5 of the bill, which calls for out-of-state rehabilitation services for adjoining states. In the last Legislative Session, this body determined it would add in a new section of the law to permit people who live in bordering areas to have certain services and rights they previously did not have. This bill would extend those rights to provide rehabilitation services which were permitted to be performed in border states.

Vocational rehabilitation was one of those service areas that was out of control in the 1990s. We were spending $80 million on these services, and it was projected to climb to $120 million. We made substantial policy changes, and one of them was to bring those services back into the borders of Nevada and provide specific language for individuals who live out of the state to receive lump-sum payments and/or return to the state for vocational rehabilitation.

We oppose section 5 of the bill. We believe it is hard, if not impossible, to manage the cost of these claims once they get outside the borders of Nevada and beyond both the regulations of the State and the arm of the insurer. However, we do not oppose the effort of these parties to try to regulate vocational rehabilitation counselors (VRC). I know there are some concerns about that language and whether or not the bad acts of a VRC would fall upon the insurance company to pay fines or benefit penalties. We want to be clear on the record that the purpose of this is to penalize VRCs that do bad acts. There is no regulatory agency for VRCs in this state.

GEORGE ROSS (Nevada Self-Insured Association; Las Vegas Chamber of Commerce):
We echo everything Mr. Ostrovsky said. We have prepared a couple of amendments (Exhibit E). In section 4, we recommend adding a new subsection 3 requiring the injured employee to continue working with his VRC

during the 30 days he considers the offer. In section 5, subsection 4, paragraph (b), we recommend returning to the existing language in current law.

GARY E. MILLIKEN (Associated General Contractors; Builders Insurance Company):
We have the same concerns as Mr. Ostrovsky. Section 5 is our main concern. Some type of regulation is needed here.

JEANETTE K. BELZ (Property Casualty Insurers Association of America):
We have similar concerns, and they are detailed in a letter that I will hand out (Exhibit F). I also wanted to point out that in section 1, VRCs would be the only provider group who would have benefit penalties based on their conduct. We do not feel that is appropriate. With regard to section 5, we do not feel we can guarantee quality of care when the jurisdiction is in another state.

CHAIR TOWNSEND:
I will close the hearing on A.B. 207. We will take this bill up again in the work session on Friday to give the parties time to debate their differences to see if reconciliation is possible. I will open the hearing on A.B. 494.

ASSEMBLY BILL 494 (1st Reprint): Makes various changes relating to unemployment compensation. (BDR 53-1199)

DANNY THOMPSON (Nevada State AFL-CIO):
This bill is the result of an incident in southern Nevada last year in which a large company was in negotiations with their union workers. During the negotiations, a letter was sent to employees' homes saying that if they did not accept the company's offer, they would be locked out of their jobs. When the offer was rejected, selected employees were locked out. Those people subsequently filed for unemployment, and there was a ruling saying this was a labor dispute and thus they were not eligible for unemployment benefits. Clearly, these people were not involved in a labor dispute; they were in ongoing negotiations, and the parties were willing and able to meet. This bill simply corrects the situation by declaring that a lockout is not a labor dispute.

JOHN E. JEFFREY (Southern Nevada Building and Construction Trades):
We support this bill. There is quite a difference between a strike and a lockout. If workers go on strike, it is because they have taken a strike vote at a union meeting and made the decision to strike. In a lockout, the workers have no voice, no vote and no control over what happens; it is strictly a management

decision. In this case, it was a negotiating ploy. You have not heard much about lockouts lately because they are seldom used. Generally, when an agreement is not reached, the workers work under the existing contract or without a contract until they reach a settlement.

ROBERT A. OSTROVSKY (Nevada Resort Association):
The Nevada Resort Association (NRA) did not take a position on this bill, but they wanted the Committee to understand its implications. I have been involved in both strikes and lockouts on the Las Vegas Strip over the last 35 years. Lockouts occur when a collective bargaining agreement has expired and there is no agreement between the parties to continue to work without a contract, although frequently negotiations continue beyond the date a legal strike is possible. In one situation I was involved in on the Strip in the 1970s, there was an agreement among the hotels that if one hotel was struck, the other hotels would lock employees out. I remember being called by the president of the hotel I worked for and being told to lock the doors. These are terrible decisions that have to be made on the part of the union and the employer, and they have huge implications for employers, customers, investors and businesses.

The National Labor Relations Board and the National Labor Relations Act recognize the right to lock employees out. There is a huge difference between that and a strike in terms of the law. If an employer is legally struck by a union, the employer has the right to replace the striking employees permanently. In the case of a lockout, employers are not permitted to replace employees permanently, though they can hire temporary replacements.

The question you are being asked is how to handle unemployment compensation rights once a lockout occurs. There are states that do pay in case of a lockout, and there are states that do not pay. There is a delicate balance between employers and unions all the time. No one likes to strike; they are not in the best interest of either party. I do not know a union or employer who thinks a strike is a good thing, unless you are trying to bust the union. Neither party wants to resort to economic warfare.

One question I have of the Employment Security Division, Department of Employment, Training and Rehabilitation, is what the cost of this benefit would be. I have no idea what the impact on the fund would be if there were a general strike.

SENATOR CARLTON:
I view lockouts as part of that economic warfare. I make a choice to go on strike and have been part of a couple of strike votes. When the employer uses lockouts as a tool in negotiation, I consider that wrong. We pay into the unemployment system; if we do not do something for these workers, we will pay for them in some other way, and it may be a lot more expensive in the long run. Without a wage, they can apply for a lot of other aid in Nevada. I would like to weigh that against the cost of unemployment insurance.

MR. OSTROVSKY:
I agree. Both strikes and lockouts put people on the street. People on strike are generally turned down for public benefits. Some consider lockouts an abuse of power because the employer usually has more money than the union. It is a tough decision, which is why the NRA did not want to take a position on this bill. They wanted to be sure you understood the policy implications, but they are not sure what the right answer is in terms of the balance of power between represented workers and the companies that hold their contracts.

SENATOR CARLTON:
I believe if employees are locked out and there has not been a strike vote, they cannot access the strike fund.

MR. OSTROVSKY:
I believe that is a case, though the distribution of strike funds is the business of the union. I sit as a trustee on a number of union pension funds and other kinds of funds, and the union usually has limited resources to help striking employees.

GEORGE ROSS (Las Vegas Chamber of Commerce):
I agree with Mr. Ostrovsky. The Las Vegas Chamber of Commerce is opposed to this bill. We have an interesting situation in Nevada right now, with one of the most thriving economies in the country and one of the strongest, most effective labor movements in the country. These two factors are in part the result of the balance of power between labor and management. You need to consider whether you want to change that balance of power. Labor law and unemployment law need to be kept apart.

SENATOR CARLTON:
Mr. Ross, whom do you represent who has employees in a bargaining unit? Which of your members is impacted by this bill?

MR. ROSS:
We have a mix of companies from every industry in the state, including gaming. In this particular case, we are more interested in the philosophical basis of the bill. This is about public policy, rather than in response to issues raised by one member.

PATRICK T. SANDERSON (Laborers' International Union Local No. 872):
Federal law says where the union can spend its money. We are not allowed to use strike funds in the case of a lockout. I would also ask you to think about the repercussions of lockouts on the families, who do not have an opportunity to influence either a strike or a lockout. Since the money for unemployment insurance comes from employers, this bill would serve as a check-and-balance system; employers would have to decide whether it was worth it to do a lockout. If employees are locked out for a long time, they end up losing their homes and vehicles. I ask you to vote for this bill.

CHAIR TOWNSEND:
Mr. Young, I do not see a fiscal note in connection with this bill. Please contact the Fiscal Division and find out if anyone has asked for a fiscal note for this bill.

I will close the hearing on A.B. 494 and open the hearing on A.B. 496.

ASSEMBLY BILL 496 (1st Reprint): Makes various changes concerning workers' compensation. (BDR 53-897)

RUSTY MCALLISTER (Professional Firefighters of Nevada):
This bill, A.B. 496, was sponsored by the Assembly Committee on Commerce and Labor on our behalf. We do not feel all insurers fall into the same category as the bad actors this bill is designed to catch. Unfortunately, we have seen time and time again that insurers find loopholes within the workers' compensation system. This bill is an effort to try to close some loopholes that one insurer has found and exploited repeatedly.

I will walk you through the bill. Current law states that employers must provide a list of one or more preferred physicians to injured employees. Section 1 of the bill changes this to two or more physicians. We have increasingly found that one insurer is providing a list of doctors in which all but one of the names is crossed off. What we have found is that if a doctor does not agree with this

insurer, that doctor's name is crossed off the list, leaving our members with only one doctor to see.

Section 1, subsection 2, refers to the amount of medical history insurers can get on an employee. Under existing law, there is provision to seek information about an employee's injury. However, this history should be in line with the actual injury. We have found that the one insurer is going back 40 years in the employee's history to investigate a heart-lung claim, for example, in an effort to find something to allow them to deny the claim. The addition here on page 2, line 23, refers back to existing law. This does not change anything; it simply makes it known how much history insurers can ask for.

Sections 1.5 and 3 cover another problem we have encountered with the one insurer. Current law states that when an employee files a workers' compensation claim, the insurer has 30 days to accept or deny the claim. If they do not respond, the claim is automatically denied. The employee is depending on getting a letter informing them of the denial, but the insurer does not necessarily have to send it within 30 days. Again, what we have found is that one insurer has been writing a letter denying the claim and putting it in the file without mailing it. If challenged, the insurer claims the letter was mailed, and there is no way to prove or disprove it. This means the employee does not know his claim has been denied until the deadline for appealing the denial has passed. Section 1.5 of the bill would require the insurer to purchase a Certificate of Mailing, which costs 95 cents, from the U.S. Postal Service when mailing a claim denial. This proves the letter of denial was mailed and when.

I have been working with representatives from the insurance industry to craft language they can accept. I have since become aware that there may be problems for the rural counties in the provision in section 1, since in some areas there may only be one physician available. I am certainly willing to try to fix this language if they would like. In Clark and Washoe Counties, there are at least two doctors in most aspects of medicine we would need.

CHAIR TOWNSEND:
I do not want to know the name of the insurer you are referring to, but I would like to know if the entity that employs the injured workers involved is self-insured and a municipality.

MR. MCALLISTER:
Yes, and yes.

MR. OSTROVSKY:
We worked with Mr. McAllister on the language, and it is agreeable to us. We had raised the issue of possible problems with section 1 for the rural areas. I will work with the parties to find some language to solve that.

MR. ROSS:
We have some problems with this bill. First, the question is whether an issue that is confined to one offender should result in a law that affects all insurers. One might wonder why this problem is not being taken care of by the governing body for whom the affected employees work, particularly given that it is a major problem for some of the most valued and important employees of that community. Second, if this were a case of an environmental violation, a public-interest law group would go to court and get an injunction; the judge would tell the insurer to do what it was supposed to do or be sanctioned severely. I wonder why all the industry needs to be hit with a law because of one narrow problem.

I compliment the advocate of this bill; he has worked hard to accommodate everyone's concerns while still accomplishing his goals. But there is still one problem, and that has to do with the Certified Mail requirement. We understand why he wants that, but let me give you an example of why it is a problem. One of our members can send out 75 or 100 acceptances a day. If this bill is enacted, someone will have to go to the post office every day and fill out 75 or 100 forms, and they will have to pay 95 cents for each one of them. It is not the end of the world, I grant you, but it is an expenditure of several hours and close to $100 every day. It is an example of the kind of unintended consequence of a legislative solution to a narrow problem that brings in everybody else who is not a party to the original problem.

CHAIR TOWNSEND:
Is the bad actor in this case under the jurisdiction of the Division of Industrial Relations, Department of Business and Industry? If so, was the Division not responsive to your concerns?

MR. MCALLISTER:
After the Assembly hearings on this bill, I spoke with Mr. Verre and was told that this is a loophole in the law. I asked representatives of the insurance industry if they had another solution. This was the cheapest way we could find to close that loophole. The 95-cent Certificate of Mailing is not the same as Certified Mail, and we limited it only to the initial acceptance or denial of a claim.

CHAIR TOWNSEND:
That is certainly a violation of the spirit of the law, if not of the letter of the law. I just want to make sure all the processes have been vetted so we have the correct answer to the problem.

MR. MCALLISTER:
We did that. Our original solution to the problem was to say that if a letter of acceptance or denial was not received within 30 days, the claim was automatically accepted. The Certificate of Mailing was a compromise.

CHAIR TOWNSEND:
Mr. Verre, are you saying the law is written so that the Division does not have the authority to sanction someone who does not follow these simple rules?

MR. VERRE:
If we would get a complaint in a situation like that, we would look at the claim file and find a letter telling the claimant his claim was denied or accepted. Without a receipt, we would have no way of telling if the letter was actually sent. We would then respond to the complaint with the finding that the law had been complied with. Some insurers start payment without sending a letter, and we have had a few complaints in that regard.

MR. MCALLISTER:
Perhaps if we required the Certificate of Mailing only when a claim is denied, that would make this a more livable requirement. The vast majority of claims are accepted. It is only the denials that are a problem, since a person has to start the appeal process within a certain time.

BARBARA GRUENEWALD (Nevada Trial Lawyers Association):
To answer your question about whether the law allows this insurer to behave in this manner, yes, it does. This is truly a loophole. There is a general section of

the law that says when you have a copy of a letter and say that it has been mailed, it is presumed that it was mailed. There is no way for me as an attorney to get around that other than my client saying the letter was not received, and there is nothing in the law right now providing for that defense. As Mr. Verre said, everyone is at a loss to prove whether the claimant actually received the letter.

I also wanted to address Mr. Ross's comment about punishing everyone for one insurer's acts. I am hearing from colleagues in Las Vegas who handle workers' compensation cases that this is happening a lot, and not just with one insurer. If this insurer is allowed to do this and get away with it, it will spread and become an industry-wide standard, particularly involving claimants without attorneys.

CHAIR TOWNSEND:
What percentage of those cases you have heard of are self-insured, and what percentage are municipalities?

MS. GRUENEWALD:
I do not know.

NANCYANN LEEDER (Nevada Attorney for Injured Workers, Department of Business and Industry):
We support this bill. Our experience is that it is not a one-entity problem. This provision would avoid the "he-said-she-said" situation that takes litigation forward. It would also correct the problem of simple negligence; you would know if the letter was actually sent, as opposed to it should have been sent and was not.

MR. THOMPSON:
We support this bill. I do not think it is too much to ask that there be some mechanism that verifies that these letters were mailed. We heard stories in the Assembly of letters repeatedly sent to the wrong zip code and so on. This is a simple fix. It might be a slight inconvenience, but it is not too much to ask to ensure injured workers get their rights under the law.

MS. BELZ:
We worked with Mr. McAllister and Ms. Gruenewald on this bill. We agree that section 1 might be too restrictive for the rural counties. With regard to the

Certificate of Mailing, if this is more widespread than just one insurer, we might want to add a provision that the Division do some kind of reporting on who is not complying and report back to you. It is frustrating when the good actors are at the table and the bad actors are still continuing to do what they do.

CHAIR TOWNSEND:
Mr. Verre, do you have any statistics on this?

MR. VERRE:
I have no specific statistics, no. I can say anecdotally that we have received more complaints on self-insured employers than on others. I do not know exactly how we would keep track of someone who was behaving in this matter.

ROSE E. MCKINNEY-JAMES (Clark County School District):
In its original form, this measure created some significant issues for us. We are pleased with the efforts of the proponents of the bill to adjust it so it is more acceptable to us. We are a self-insured entity representing over 17,000 employees. We believe this is a reasonable accommodation. We support this bill in its amended form.

MR. MILLIKEN:
We agree with the comments made by Mr. Ross.

JIM FRY (Risk Management Division, Department of Administration):
Section 4, subsection 5, lists certain statutes, and you might think they are all conclusively presumed, but they are not. *Nevada Revised Statute* (NRS) 617.453 refers to cancer and is a rebuttable presumption; NRS 617.481 refers to contagious disease and is not even a presumption; NRS 617.485 refers to hepatitis and applies to firefighters and all peace officers except state peace officers. This makes me ask why NRS 617.487 is not in this list.

CHAIR TOWNSEND:
I will close the hearing on A.B. 496 and open the work session on A.B. 207.

ASSEMBLY BILL 207: Revises provisions governing vocational rehabilitation services. (BDR 53-546)

CHAIR TOWNSEND:
Ms. McKinney-James, in glancing through the fiscal note on A.B. 207, our books reflect that the Clark County School District originally estimated costs of $550,000 in the first biennium, $625,000 in the second biennium and approximately $700,000 in future biennia. Are you familiar with this?

MS. MCKINNEY-JAMES:
Yes, I am. Those figures were based on the bill's original form. In its current form, we are neutral on the bill and will withdraw the fiscal note.

CHAIR TOWNSEND:
We will go to work session on A.B. 518.

ASSEMBLY BILL 518 (2nd Reprint): Revises provisions governing the regulation of telecommunication service. (BDR 58-1128)

CHAIR TOWNSEND:
The proponents have amendment 3682 for us to consider (Exhibit G, original is on file in the Research Library). My notes show that there was a concern on section 26 regarding access to emergency 911 service, among other things.

DAN R. REASER (AT&T — Reno):
Yes. We have made changes to that section, which is on page 8 of Exhibit G, to ensure the service remains available to Nevadans and cannot be discontinued.

CHAIR TOWNSEND:
In section 20.5, you have removed the phrase " ... and video services ... ."

MR. REASER:
This is the new reporting requirement on incumbent local exchange carriers who may or may not be a video service provider; this is a report regarding telecommunication service, not video service.

CHAIR TOWNSEND:
In section 23, you have added the phrase " ... switched or ... " to subsections 2 and 3.

MR. REASER:
Its inclusion in the bill is important because it retains the jurisdiction of the Public Utilities Commission of Nevada (PUCN) to tariff this important wholesale service.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED A.B. 518 WITH PROPOSED AMENDMENT 3862.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will open the work session on and A.B. 526.

ASSEMBLY BILL 526 (1st Reprint): Revises provisions relating to community antenna television, cable television, video service, Internet service and other information technology. (BDR 58-1129)

CHAIR TOWNSEND:
We have a mock-up of proposed amendment 3863 (Exhibit H, original is on file in the Research Library). On page 3, we refine the definition of gross revenues by adding the phrase " ... from its subscribers ... " to section 11, subsection 1, paragraph (b).

MR. REASER:
This is a technical amendment to make the language parallel to paragraph (a) of this same subsection. The next change I am aware of is to section 29.5, which has been rewritten to provide a funding mechanism for the Secretary of State to perform the new functions required by the bill. We have also provided a new amendment to this section (Exhibit I) that would replace the language in the mock-up. The Secretary has two funding requirements here. One is fairly significant, $50,000 to $60,000 of upfront costs for a computer program and other set-up, and then there are ongoing labor costs. We are providing here a filing fee for the filing of documents and a certification fee that helps pay for the long-term costs. We have tried to create gradations for some of the small counties and municipalities that might have a 40-person provider. The level of

granularity is too cumbersome for the Secretary and was not necessary to achieve the objective of helping the small provider in the rural location, so we have made changes to the new provision that reduces the number of gradations but still achieves the revenue requirements for the Secretary.

The bill provides that this fee will not be passed through to subscribers. It also provides that a database that already exists today and is prepared by the Department of Taxation for the Secretary be used as the database for determining the population, so there will be no new cost to create that database.

SENATOR HARDY:
Is this a new tax or fee we are creating?

MR. REASER:
It is a new fee, yes. My understanding is that this is a fee the industry is willing to assume because it provides a regulatory scheme for their purposes. It will not be passed on to taxpayers, as provided in section 29.5, subsection 7.

NICOLE LAMBOLEY (Chief Deputy, Office of the Secretary of State):
We worked with the industry to meet the needs of our agency's ability to process and issue such certificates. We support the amendment in Exhibit I.

CHAIR TOWNSEND:
Are you prepared to meet the dates specified in the bill?

MS. LAMBOLEY:
Yes.

SENATOR HARDY:
Just to provide a record, I will restate that if we process this bill, it is with the assumption that the fee has been accepted by the industry; it is not a new tax on the general public.

MR. REASER:
That is the state of affairs. In addition, section 29.5, subsection 7, says the fee is not a pass-through cost.

SENATOR CARLTON:
How are you going to do that?

MR. REASER:
It is well known to communications companies that you have pass-through fees and you have non-pass-through fees. Fees that are not passed through go to the bottom line of the company without the ability to recover them directly from consumers, so they come out of the profits. Also, if you recall, the video bill preserves an existing franchise fee that goes to local governments. That is where the dollars are in this bill. The money generated by section 29.5 is not a make-or-break amount for any of the large companies, and the gradation of fees takes care of the small companies. For example, a small provider in Bunkerville would otherwise have to pay a fee of $25,000. With the gradation in section 29.5, subsection 5, they will pay $1,250, which is a reasonable rate given the small service territory and number of customers they have. A small rural telephone company in the Red Rock area of Washoe County can enter the market as a video provider for much less than $25,000 because they are in a township. The highest level is $26,000, which is not a huge barrier to entry when you have hundreds or thousands of customers, as the larger companies do.

We also have a proposed change to section 32 (Exhibit J). This is a small-provider issue that arose. There are some small video service providers today who operate in small rural areas under a franchise agreement; they are happy with their current situation and do not want to change it. Exhibit J adds to section 32, subsection 2, paragraph (b), a provision that allows them to stay as local franchise operations. They do not have to come into the state scheme if they want to stay.

CHAIR TOWNSEND:
Who are they?

MR. REASER:
As an example, there is a service territory in Pershing County with 40 customers. It is physically impossible for them to expand or go anywhere else. They want to stay with their franchise; they do not want to come into the state scheme and have all these expenses. This provision allows them to freeze in time, essentially.

CHAIR TOWNSEND:
If the bill passes, it will be important over the next two years to get those small ones together and try to find a way to have them comply without a lot of cost, so everybody is doing the same thing. We do not want to take anything away from them; we just want to talk to them, see what their problems are and see if we can get them into the process.

MR. REASER:
I will be happy to take that as a task.

SENATOR CARLTON:
I note that you have removed section 42, subsection 4, which allowed local government to impose fines against video service providers as a result of a complaint from a subscriber. One of the things that made me comfortable with this bill was the fact that if a customer had a problem, they could go to their county or local government and get the problem dealt with. To remove this and put it into a realm of where the government will be filing the complaint for the consumer through the Bureau of Consumer Protection is to skip the whole first phase, where the consumer has an opportunity to have their complaint heard and have a hammer associated with that complaint.

MR. REASER:
The language was removed primarily because local governments do not want an unfunded mandate to hire hearing officers, have hearing rooms, hire stenographers and so on in order to establish the required hearing mechanism. We appreciate the need for consumer protection provisions, and they do exist even with the removal of this language.

SENATOR CARLTON:
That surprises me, since I have heard nothing from the counties on this.

MR. REASER:
There is a process in place that involves local government. This bill requires the provider to set up a customer service department and tell every customer about that department and its ability to take and process complaints. It must also tell the customer that they have the right to go to the local government if they are not satisfied with the way complaints are resolved. The local government can then go to the State, either the Consumer's Advocate or the Consumer Affairs Division, Department of Business and Industry, and file a complaint if they are

not satisfied that the provider is taking care of customers. The local government is involved and has the ability to bring its authority to bear with the Consumer's Advocate and Consumer Protection. However, it does not have to set up a whole regulatory apparatus for conducting hearings. Under current Nevada law, there are no service quality standards for a cable television company and no mechanisms for consumers to have their problems resolved. This bill does that even without the language stricken in section 42, subsection 4. In subsection 1, paragraph (a), for the first time Nevada adopts the federal quality of service standards. This means that under the Deceptive Trade Practices Act, the failure to comply with that standard becomes a deceptive trade practice, which gives the customer much more robust remedies, much bigger hammers, than provided by the deleted language.

SENATOR CARLTON:
From my perspective, I do not see that. This was one of the key parts of this bill; it would have been actual consumer protection. Someone would have had an arm's reach on this industry while it was changing and while customers were at risk for the first couple of years. I understand this is a consensus bill. There were a lot of people at the table, and everybody has their own little piece of this bill; you have all locked hands and are moving forward with it. But taking out this particular provision truly bothers me.

MR. REASER:
What is being removed is less of a remedy than the remedy that exists in current law.

SENATOR CARLTON:
But in this amended version of the bill, I do not get to complain; the government gets to complain. That is the problem. When the complaint is filed at the upper level, it will not be filed by the consumer but by the local government.

MR. REASER:
That is one mechanism the bill provides, that the local government can be the complainant. But because this act adopts quality service standards and comes within the Deceptive Trade Practices Act, any Nevadan can walk into the State offices and file a complaint. Those offices can enjoin the business, take its license away, fine it $10,000 and even put the owners in jail. Speaking as a lawyer, if the City of Reno were to call me and threaten me with action under the deleted language in section 42, I would not take it as nearly as much of a

threat as a call from Eric Witkoski, Chief Deputy Attorney General, Bureau of Consumer Protection, saying he will see me in front of Judge Adams because he is going to enjoin my company from doing business. That gets people's attention. Some companies might view a $250 fine as a cost of doing business.

CHAIR TOWNSEND:
The ultimate consumer advantage is to walk across the street and sign up with somebody else.

MR. REASER:
Yes, and this is not a monopoly industry. Consumers will have the choice of using their feet to complain.

CHAIR TOWNSEND:
Section 60 also deals with consumer complaints.

MR. REASER:
Importantly, section 60, subsection 5, paragraph (b) provides that complaints under NRS 598 are not changed by this act.

CHAIR TOWNSEND:
There is cleanup of section 76.

MR. REASER:
There are two clarification changes in section 106. What this language does is make sure that this obligation is one that is commercially plausible. There may be some technologies that cannot do all the things. For example, my Blackberry cannot restrict specific Websites, but I can make it so specific people cannot use it at all. Some technologies only have on and off.

CHAIR TOWNSEND:
Regarding section 44, this Committee has a policy decision to make. Section 44 has to do with exclusive rights, and the language is specific to one location. I have never been comfortable with going into a competitive market and not allowing people to compete.

SENATOR HARDY:
I agree with you on that point. However, there are circumstances in which people go to great expense to put in infrastructure and other things. There

should be some ability for them to recoup the cost of their initial investment. That is what the amendment to section 44 does. That is an appropriate carve-out for those circumstances. If businesses do not have the ability to recoup costs, they will stop providing the services.

SENATOR HECK:
This would only apply to entities that are already on the drawing board on the effective date. Is that correct?

MR. REASER:
This is Mr. Hillerby's amendment, so I will let him speak to it.

CHAIR TOWNSEND:
As I read it, section 44 in general forbids exclusive agreements for video service except for the situation defined in subsection 3, the amendment offered by Mr. Hillerby. Is that correct?

MICHAEL D. HILLERBY (Coyote Springs Investments, LLC):
That is correct. This amendment as proposed would take care of the specific concerns of our development at Coyote Springs, which sits across two county lines, Lincoln County and Clark County. We are served by a telecommunications provider of last resort.

This section, for the only time in this bill, refers to a "purveyor" of video service rather than a "provider" of video service. A provider of video service, as defined under federal law, is one who crosses a public right-of-way. By using the word "purveyor," this section takes out any provision that the company crossed a public right-of-way. It is exclusively on private land between a willing buyer and a willing seller wanting to set up an agreement.

Coyote Springs is a unique development. We are talking about spending literally hundreds of millions of dollars to put in a fiber-optic communication system that would provide telephone, broadband high-speed Internet access and television service to an area that is fairly far outside of Las Vegas. It may not be an interest to a lot of companies to come out and invest in that infrastructure right now. Our ability to do that is based on our ability to use exclusive arrangements to give investors the opportunity to recoup their up-front investment.

We understand that once you cross a public right-of-way, all bets are off; we go back into the traditional scheme of regulation that has existed for well over a decade. But we are talking about an arrangement on private property between a willing buyer and a willing seller that does not cross a public right-of-way.

CHAIR TOWNSEND:
What are your responsibilities with regard to telephony?

MR. HILLERBY:
We have an agreement with Lincoln County Telephone, who is a provider of last resort and a regulated telecommunications company. They will be putting in and managing the fiber-optic system that will provide phone service in that area. That is separate and distinct from the broadband and video service provision. It will be provided over the same fiber, but the telephone piece is separately provided.

CHAIR TOWNSEND:
Are you required to use them?

MR. HILLERBY:
I would have to research that. They are the group we are using because that is their service territory, but I do not know if we are required to use them.

CHAIR TOWNSEND:
We understand your development is deep into its development stage. The concern I have is if it is good enough for your development, why would it not be good enough for someone else doing the same type of thing? The next question is why is this provision in here at all?

MR. REASER:
I would like to make it clear that AT&T Nevada has no objective to this amendment.

SENATOR HECK:
I am still waiting for an answer to my question. By my reading, this bill only applies to planned unit developments that are currently under way or on the drawing board now; it does not apply to any future planned unit developments. Is that correct?

MR. HILLERBY:
That is correct. This would be grandfathering those that were at a specific stage in the development process and met all of these requirements. We know it applies to us, and it may apply to one other development. It does not address any future developments by us or any other company, and it does not address the concerns of other developers who have planned developments.

SENATOR HECK:
Would it be safe to say your development was planned with the ability to do the kinds of things this exception would allow?

MR. HILLERBY:
Yes. This is a critical part of our business plan, and one that has been a part of it for some time.

SENATOR HECK:
If this bill is not enacted, will you be able to proceed in the manner you had planned?

MR. HILLERBY:
Yes. We can continue to talk with any number of other companies in Nevada and other places to find the right partner as the development progresses.

SENATOR HECK:
If I may make a philosophical comment, we find ourselves in a situation that is analogous to the green building standard, in which an entity has moved forward and started to develop something based on current law, and now we are coming in and making changes midstream that may affect them negatively.

SENATOR HARDY:
There has been a lot of discussion about competition, and we want to encourage competition. But I assume everybody had an opportunity to approach you and say they were interested in providing this service. The issue of whether it is an exclusive agreement comes after that.

MR. HILLERBY:
Exactly, and those companies continue to come to us to talk about that. We have an agreement in place right now to begin to put in that infrastructure. When you talk about competition, our customers will know what is available to

them. We have done that in response to market demands. As was said earlier, they will vote with their feet: they will not buy a house in our development if we do not have what they want. We believe we have made a competitive choice.

SENATOR HARDY:
The only discomfort I would have is the carve-out, the limiting. I am willing to accept that as we move forward, but I do not see why we need to do it at all. The market can take care of this. Competition exists; it is just a matter of contractual obligations.

CHAIR TOWNSEND:
Removing section 44 altogether eliminates the prohibition against exclusive agreements. Then it has nothing to do with what developments are in because they do whatever they want.

SENATOR SCHNEIDER:
Maybe I am not understanding this properly. Mr. Hillerby, what you are saying is your development will spend a lot on the infrastructure, and somebody else can come in and use it and you will not get reimbursed. Is that accurate?

MR. HILLERBY:
No. The bill as written would provide that you could not have an exclusive arrangement that barred someone else from coming in at different terms than you offered the original provider. It also says you cannot have an exclusive agreement for the content, and there are some issues with that. You would have to allow any other provider who chose to come in later to come in at the same "most favored nation" status as your original partner. We are talking about spending literally hundreds of millions of dollars over the build-out of this community on this fiber-optic installation for every home and business in the community. It is important for us to have an opportunity to engage in those contracts that give some ability to pay back that investment. This bill would allow any company to come in later and say, "Now that you have done the work and proven the community successful, we want in. But when you were 50 miles away and there was a substantial amount of risk, we were not interested." The ability to offer exclusive arrangements on private property remains crucial to our development and many others.

SENATOR SCHNEIDER:
Are you saying that they could kick somebody out and come in?

MR. HILLERBY:
It does not kick the original provider out, no, but it fundamentally changes the payback potential. The original provider was the one who was willing to come into a development at the high-risk stage. They deserve to have the chance to recoup the investment if the development is successful.

SENATOR SCHNEIDER:
I believe MGM Mirage is doing something like this down in Jean. I understand that the banks want an iron-clad guarantee of payback potential. I want to hear from some of the other developers like MGM to see how they feel about this. We do not want to stop development.

> SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 526 WITH PROPOSED AMENDMENT 3863, REMOVING SECTION 44 AND ADDING THE AMENDMENTS SUGGESTED IN EXHIBIT I AND EXHIBIT J.
>
> SENATOR HECK SECONDED THE MOTION.
>
> THE MOTION PASSED. (SENATORS CARLTON AND SCHNEIDER VOTED NO.)

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CHAIR TOWNSEND:
Is there any further business to come before this Committee? Hearing none, I will adjourn the meeting at 10:14 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE: _____