

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

**Seventy-fourth Session
February 15, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:04 a.m. on Thursday, February 15, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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

GUEST LEGISLATORS PRESENT:

Senator Bob Beers, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary
Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Gloria Gaillard-Powell, Committee Secretary

OTHERS PRESENT:

Annette V. James, Actuary, Life and Health Section, Division of Insurance,
Department of Business and Industry
Ronald E. Stoller, Clark County Senatorial District No. 6, Nevada Silver-Haired
Legislative Forum
Dino DiCianno, Executive Director, Department of Taxation

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Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance,
Department of Business and Industry
David S. Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada
Shawn M. Elicegui, Utilities, Incorporated
Robert V. Taylor, Greater Nevada Mortgage Services

CHAIR TOWNSEND:

We will now hear discussions on Senate Bill (S.B.) 12.

SENATE BILL 12: Revises applicability of the general tax on insurance premiums. (BDR 57-682)

SENATOR BOB BEERS (Clark County Senatorial District No. 6):

The issue is tax on insurance premiums and the impact on retirees who have decided to invest in annuity contracts. In return for contributions to a company, you start to receive monthly income at retirement. This is an insurance contract which charges a premium tax of 3.5 percent. The investments earn 1 to 3 percent. This is a losing proposition for people who invest, not knowing the back end is going to be taxed heavily. Companies who offer these contracts do have the option of paying the tax up-front when they receive the lump sum, or at the back end. We would like to limit this bill to people of retirement age.

SENATOR HECK:

Is this for people who start collecting after the age of 60, or do they have to purchase the annuity after the age of 60?

SENATOR BEERS:

The bill language needs to be made clear.

CHAIR TOWNSEND:

Does the provider have a choice to pay the tax on the principal when they receive it or on the premium when it is paid back to the investor? Is this a choice of the company or the purchaser of the annuity?

SENATOR BEERS:

It is the choice of the company.

ANNETTE V. JAMES (Actuary, Life and Health Section, Division of Insurance, Department of Business and Industry):

The Division of Insurance is neutral on this bill. The comments are related to language that is unclear and needs to be clarified. The language eliminating tax on annuity contracts with persons who are 60 years or older is not clear. The language needs to clarify if it is the owner of the contract that receives the annuity payment. The bill has been clarified by Senator Beers that the tax would be eliminated if the person is over 60 years old when they start receiving the payments. The owner of the contract could be a person or a trust. If distributions from annuities are received prior to age 59 and a half, there is a 10-percent penalty. The penalty is federally imposed and most people wait until after age 60 to avoid a penalty.

CHAIR TOWNSEND:

Do you want the premium eliminated regardless of when it is purchased?

SENATOR BEERS:

If the tax is greater than the investment return, it discourages savings and is a bad public policy. Nevada is one of only seven states where the investments are taxed.

CHAIR TOWNSEND:

What is the premium tax today?

MS. JAMES:

It is 3.5 percent. There are different annuity products and the return depends on how the product is set up. Different annuity products can produce at a higher or lower return than the 3.5 percent.

CHAIR TOWNSEND:

It would be really important that we work with Mr. DiCianno on the clarity of this bill.

SENATOR HECK:

How much money is generated annually on the annuity tax?

MS. JAMES:

The total premium tax due in 2006 was \$41.7 million.

RONALD E. STOLLER Clark County Senatorial District No. 6, (Nevada Silver-Haired Legislative Forum):

I am concerned about the 3.5-percent premium tax the State of Nevada collects from annuity savings as outlined in my prepared testimony ([Exhibit C](#)). Qualified annuities are called tax-sheltered annuities. There is no premium tax on tax-sheltered annuities. Nonqualified annuities are taxed at 3.5 percent. Agents generally do not disclose there is a 3.5-percent tax, as the tax is taken out of the buyer's portion and not the insurance agent's commission.

As a member of the Silver-Haired Legislative Forum, I feel I have a responsibility to ask you to eliminate the 3.5 percent tax on nonqualified annuity investments. The State of Nevada is the only state that takes 3.5 percent premium tax on annuities. Of the 5 or 6 states that have this premium tax, only 1 percent tax is taken. Senior citizens invest in this type of saving because of the guaranteed income for life. Many senior citizens are taking their money out of annuities because the premium tax is more than they earn.

MS. JAMES:

The 3.5-percent premium tax is due whether or not you take an annuity monthly or in one lump sum.

CHAIR TOWNSEND:

Mr. DiCianno, do we separate out the two kinds of annuities?

DINO DICIANNO (Executive Director, Department of Taxation):

No, it makes no difference. We need further clarification on how the fiscal note was presented and we may need to rewrite the fiscal note.

CHAIR TOWNSEND:

How is the size of the lump sum determined? Is it 3.5 percent up front, or is it less?

MS. JAMES:

If it is an up-front tax, it is due upon payment of the premium. Premium tax is due only on the nonqualified annuities. The companies report on the nonqualified annuities only.

CHAIR TOWNSEND:

What is the benefit for those 60 and older? We want to give a policy break to individuals with the least amount of impact on their budget.

SENATOR HARDY:

Are we talking about not paying taxes for people 60 and over when they receive the premium? If we enact this law, people are going to put into the annuity and not withdraw until they are 60.

MS. JAMES:

We do not keep records on the age of the contract owner.

ALICE M. MOLASKY-ARMAN, (Commissioner of Insurance, Insurance Division, Department of Business and Industry):

Nevada's premium tax is one of the highest in the nation. Hawaii has a 4-percent tax. We are the second highest in the nation.

CHAIR TOWNSEND:

We will close the hearing on S.B. 12 and open up the hearing on S.B. 86.

SENATE BILL 86: Revises provisions regulating utilities that furnish water or provide sewage disposal services. (BDR 58-554)

DAVID S. NOBLE (Assistant Staff Counsel, Public Utilities Commission of Nevada): We are proposing changes to the *Nevada Revised Statute* (NRS) chapter 704 that affects both water and sewer utilities. The Public Utilities Commission regulates 18 water and 7 sewer utilities. They range from 19 to 4,000 plus customers with annual gross operating revenues of between \$7,000 and \$1.4 million. The utilities are faced with major hurdles. The Commission has been able to address these problems on a case-by-case basis. We believe S.B. 86 standardizes the procedures that the Commission has found to be most effective.

Section 2 of S.B. 86 allows the Commission to determine whether there is an existing public utility or municipality in the area that can supply service. This will prevent the proliferation of small water and sewer utilities. Those business plans do not work for the long run. They do not have technical, managerial and financial capabilities to address the problems.

Section 3 requires any utilities that we regulate with gross operating revenues of \$1 million or more to file a resource plan with the Commission every 3 years. The resource plan is the master plan of the utility.

SENATOR HECK:

How many of the entities that you currently regulate have revenues of greater than \$1 million dollars?

MR. NOBLE:

There are three; Edgewood Water Company, Utilities Incorporated of Central Nevada in Pahrump and Spring Creek Utilities Company in Elko.

Section 4 raises the monetary threshold of what a water or sewer utility would be for purposes of Commission regulation from \$5,000 to \$25,000. The \$5,000 threshold has been in place since 1979. Rate regulation of utilities with little annual revenue does not work. Another layer of oversight is cost prohibitive for the customers. We believe the current oversight by the Nevada Division of Environmental Protection provides the necessary backstop.

Section 5 provides utilities with gross operating revenues of \$500,000 or more to file a general rate case every 3 years. The Commission reviews the utility's operating costs and does a full overview of the practices and procedures. This establishes the rates.

SENATOR HECK:

Are these utilities required to file the rate cases?

MR. NOBLE:

Yes.

SENATOR HECK:

Has there been a problem where we feel the water utilities need to be brought under this umbrella?

MR. NOBLE:

An example would be Spring Creek Utilities. The general rate case was approved by the Commission. There was a tremendous amount of growth since 1990 with lots of issues on water quality and water transmission that caused problems. They have made a complete turnaround and are on the right track.

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CHAIR TOWNSEND:

What do you think will be the total cost to rebuild and maintain the system?

MR. NOBLE:

In the next 18 months, they will spend \$2.5 million for infrastructure. Another \$5.5 million will be spent by 2010. We consider those costs necessary to keep the system running and improve the quality of service.

CHAIR TOWNSEND:

What are the expected utility rates in Spring Creek?

SHAWN M. ELICEGUI (Utilities, Incorporated):

The rates in Spring Creek for sewer usage went from \$2 to \$63 a month for a single-family residence. The water rates are tiered, making it difficult to accurately assess. We know there was a 150-percent increase in the average monthly bill for a single-family residential customer.

SENATOR SCHNEIDER:

Is Spring Creek a private homeowners association? Did the homeowners association not reserve the proper funds?

MR. ELICEGUI:

The homeowners association did not own the utility; my client acquired the utility in 1997 from the developer who constructed the utility. The deficit was not created by the homeowners association.

MR. NOBLE:

Section 8 of S.B. 86 makes water utilities responsible for fire-hydrant maintenance. The amendment is unclear about who is responsible for fire-hydrant maintenance. We regulate 18 water utilities; 10 of those are maintained by the local fire department; 7 by the utilities, and 1 is unclear. We would like to see the utilities be responsible for fire-hydrant maintenance. The cost for fire-hydrant maintenance can be implemented into rates for those who benefit from their use.

CHAIR TOWNSEND:

Are fire hydrants usually managed by the water provider?

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MR. NOBLE:

With the public utilities we regulate, they are part of the utility system. This has never been clear.

SENATOR CARLTON:

I think the water company needs to do maintenance, but the fire department could check if there is a problem.

MR. NOBLE:

When fire departments are out doing tests on the hydrants, they could report problems to the operator of the system.

MR. ELICEGUI:

I have provided written testimony ([Exhibit D](#)) which explains the purpose of the proposed amendments on S.B. 86.

The first proposal is comprised of 3 additions to subsection 3. The proposed amendment provides the same type of deadline for action on the master plan. This is important for the public utility so it can implement the master plan.

The second provides for a means of recovering the costs in facilities identified in the master plan. This is the same type of protection that electric and gas companies have.

Thirdly, the proposed amendment provides for recovery to costs of gas and electric companies for preparing the master plan.

Proposed amendments 2, 3, and 4 are a package driven by the cost of preparing and prosecuting a rate case.

Proposed amendment 4 provides for recovering the cost to the utilities. Amendments 2 and 3 allow the commission to waive the requirements for a rate case every 3 years.

Proposed amendment 5 addresses the obligation of utilities to maintain fire hydrants which they own.

CHAIR TOWNSEND:

We will close the hearing on S.B. 86.

ROBERT V. TAYLOR (Greater Nevada Mortgage Services):

There have been some changes within the credit-reporting agencies. All of us have received in the mail a credit-card offer in which you are preapproved for a loan. The lending institutions have a prescreened credit amount they are willing to loan a person. If you fit the criteria, they have to honor the loan, unless something has changed from the time the information was requested to the time you receive the offer.

The credit bureaus are looking for ways to enhance their revenue and have looked to "triggers" outlined in my handout ([Exhibit E](#)). If you go to a mortgage lender and you authorize a credit check, within 24 hours that information is resold to 6 or more other mortgage brokers. You will then start receiving offers in the mail. The consumer wins as he has several brokers competing for his business. The application process becomes a piece of information for sale and this does not sit well when borrowers believe we have sold their information or shared it with others. This becomes a privacy issue. Brokers can pay \$15,000 a month to sign up and \$10,000 a month to receive credit reports. The company would give the brokers about 10,000 leads a month just from one person who applied for a mortgage. This pushes the borders of the law of prescreening under the Fair Credit Reporting Act.

SENATOR SCHNEIDER:

Any one of our committee members trying to get a loan for a house or investment property could find their information on the Internet and being sold for a profit.

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CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 9:28 a.m.

RESPECTFULLY SUBMITTED:

Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____