

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

**Seventy-fourth Session
April 13, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:37 a.m. on Friday, April 13, 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

GUEST LEGISLATORS PRESENT:

Senator Bob Beers, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Gloria Galliard-Powell, Committee Secretary
Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Lori Johnson, Committee Secretary

OTHERS PRESENT:

Pamela Scott, The Howard Hughes Corporation
Karen Dennison, Lake at Las Vegas Joint Venture; American Resort
Development Association
Marilyn Brainard, Commissioner, Commission for Common-Interest
Communities, Real Estate Division, Department of Business and Industry
Randy Ecklund, The Howard Hughes Corporation

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Erik Schoen, American Counseling Association
Louise Sutherland, American Counseling Association
Helen Foley, Marriage and Family Therapists
K. Neena Laxalt, Nevada Marriage and Family Therapists Board
Larry Ashley
Fred Schmidt, Southern Nevada Water Authority
Michael Yackira, Nevada Power Company
Don Soderberg, Chairman, Public Utilities Commission of Nevada
Rose McKinney-James, Clark County School District
Eric Witkoski, Chief Deputy Attorney General, Bureau of Consumer Protection,
Office of the Attorney General
Rocky Finseth, Nevada Association of Realtors
Ray Bacon, Nevada Manufacturers Association
Keith Lee, State Contractors' Board; Board of Medical Examiners
Dean Frisen, Pharm. D.
Scott Craigie, Nevada State Medical Association
Fred Hillerby, Index Managers
James Jackson, American Health Insurance Plans
Cyrus Pourzan, M.D., H.M.D., Board of Homeopathic Medical Examiners

CHAIR TOWNSEND:

Let us open the work session with Senate Bill (S.B.) 235, as all of you know we are not going to take testimony in a work session.

SENATE BILL 235: Revises certain provisions pertaining to voting by units' owners in a homeowners' association. (BDR 10-681)

CHAIR TOWNSEND:

I understand there is a proposed amendment 3688 from Senator Beers, in which sections 1, 2 and 3 have been deleted. Sections 4, 5 and 6 are new and worded as shown ([Exhibit C](#)). Section 8 talks specifically about a "single-class voting structure at least 35 percent of ... received." Subsection 4, paragraph (d) changes are shown. Moving over to section 9, subsections 6 and 7 are new.

PAMELA SCOTT (The Howard Hughes Corporation):

The Howard Hughes Corporation has seen the amendment, Randy Ecklund is here with me and we are in support of this bill. There are some questions in regard to section 8, since it does not reflect what we had previously discussed.

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KAREN DENNISON (Lake at Las Vegas Joint Venture; American Resort Development Association):

The way this section is written, a total of 17.5 percent could force a court action which could determine whether something in the homeowners' association can be changed or not. It was my understanding from reading the conceptual idea of the bill was that it should be 35 percent of the total voting power of the association, not just those who actually cast a vote. Section 8, refers to a situation if only 35 percent of the voters cast a ballot then only 17.5 percent or a majority of those who actually voted, could force the issue into court. This was not my understanding from yesterday.

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
That is how I interpret it also which was not what we all agreed to yesterday. The current law now requires 50 percent of all unit owners and all we were going to do is reduce that to 35 percent of the total unit owners.

CHAIR TOWNSEND:

I agree with you that it reads only 35 percent of the people casting votes rather than unit owners. I think that this is a misunderstanding between the conceptual idea and what was actually given to legal counsel.

MS. BRAINARD:

Section 5, subsection 1, "notwithstanding ... may provide for the ... section" It is imperative that the "may" stays in this statute because some associations do not use delegate or district voting, only if it is in your declaration. We need that ability to be flexible.

SENATOR SCHNEIDER:

I have a question for Mr. Ecklund from The Howard Hughes Corporation. Will it really take two years to phase out delegate voting and implement the one-unit, one-vote?

RANDY ECKLUND (The Howard Hughes Corporation):

Yes, I believe that will be needed to give the people time to modify and adjust their documents.

SENATOR SCHNEIDER:

The Commission did not support delegate voting regarding electing board of directors.

MS. BRAINARD:

We went over the proposed changes very carefully last night. We support the one-unit, one-vote to elect the board of directors of the association. That is to say that all unit owners should have the opportunity to vote for the master board of directors of their associations. We do not support that type of voting for issues of operations conducted by the elected board of directors.

SENATOR SCHNEIDER:

How often would these be associations be redistricting? Are we allowing redistricting or gerrymandering?

MS. SCOTT:

It is a legitimate concern, which is why they need the time frame of two years to put all of this in place. For associations that already have delegate voting, it is going to be up to the board of directors, just as Legislators do, to vote on reapportionment. The boards of directors in these associations need to apportion their districts. As you know, the districts have to be contiguous. You cannot take one side of the community and get together with a community on the other side of the development. The U.S. Supreme Court has already ruled that you cannot have more than a 10-percent difference in the numbers within a district. Once you have achieved build-out and the lines have been drawn, the population or numbers of units are not going to change in those districts. After establishing those areas in an existing community, there would be no reason to continue to reapportion.

You need to have this reapportionment happen following developer control. As they move forward into the new communities, you are giving the declarant an opportunity to draft their documents and set out these districts knowing what the density will be in future villages, since 75 percent of the current units are sold. At the same time you are still going to have 25 percent of the declarant units unsold out there. When the time comes for the developer to turn that board over to total homeowner control, it should be reasonably simple to apportion those districts.

SENATOR SCHNEIDER:

I want to be on record that this proposed bill with apportionment will cause political infighting.

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

The only other proposition is to keep letting one person cast a ballot supposedly representing many people. When the community reaches this level of maturity, a new set of rules is required. This is not the same as with our Senate reapportionment. There is not going to be growth once the community is finished. Continual growth is what causes our Senate reapportionment, and a sometimes out-of-balance situation.

CHAIR TOWNSEND:

Senator, the way the amendment was drafted in section 8, it talks specifically about at least 35 percent of the total number of votes allocated to a single class cast in an election. That is different than what the committee understood. We agreed for the figure to be 35 percent of the total number of homeowners, as opposed to the total number of votes cast. The law currently states that 50 percent of the unit owners must agree to go to court to change the controlling document. What we proposed and agreed to last week was to change it from 50 to 35 percent of the total unit owners.

SENATOR BEERS:

That is what was understood. I may have misdirected the legal counsel on the wording. It should be 35 percent of the total unit owners.

SENATOR HARDY:

I do not live in a homeowners' association that would fall under this mandate of 1,000 homes or more. Are we requiring that redistricting be done for all of these associations?

SENATOR BEERS:

It would only affect the associations which are created or declared with a delegate voting structure. In addition, the community would be 75-percent built and have reached two years past the point of majority. If you want to process the amendment as requiring that initial districts be drawn with the documents and remain static, I would be happy with that. These communities are governments and I can foresee in the future some homeowners may want to

change those districts, but it would still be hard to get approval, even with the change from 50 to 35 percent.

MS. BRAINARD:

I would just like to make a comment. Since I am the sole member on the Commission who represents homeowners, I take great exception to the term of associations being mini-governments, I object to that term.

CHAIR TOWNSEND:

I would respectfully disagree with your opinion.

SENATOR SCHNEIDER:

I cannot let this pass, especially as Ms. Brainard is a Commission member. This Committee and the Legislature has stated on the record since 1997 that these associations are governments. We have debated this on the floor and the Nevada Supreme Court has agreed.

SENATOR BEERS:

As a brief anecdote, my mom and dad moved into Sun City 15 years ago. You have heard my dad talk about his frustration with regard to *Nevada Revised Statutes* (NRS) 116. They got upset and started looking around for another home in that area but they found that there are no homes in Las Vegas that do not have a homeowners' association (HOA) situation. They are ubiquitous in the south and the local governments promoted them as an opportunity for these communities to be self-governed. It was good for them since they could give away their duties and keep the tax revenue. So they stayed where there were and my dad attempted, in a foolhardy endeavor, to serve on the board to try to fix things, and it obviously did not change anything.

CHAIR TOWNSEND:

Mr. Keane will adjust that language of section 8 to 35 percent of the unit owners and make it consistent throughout S.B. 235. The district language seems to be adequate for now.

MR. ECKLUND:

I would just say that we support the bill with those modifications.

SENATOR CARLTON:

Could you go over those changes again?

CHAIR TOWNSEND:

The amendment that has been proposed for S.B. 235 would deal with the voting structure in these larger HOAs; if there is delegate voting, they must be broken into these districts. Also, if there was a need to go to court to change these ruling documents, we are reducing the number needed from 50 percent of the total units to 35 percent of the total units. The effective date for the bill would be October. The time frame for the new changes above would be March 31, 2009, allowing those developments to put the voting system in place.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 235.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

One more time, for the record, my wife does practice in this area and is a licensed property manger, but not in these types of larger HOAs. Let us open the hearing on S.B. 382.

SENATE BILL 382: Provides for the licensure and regulation of perfusionists.
(BDR 54-941)

SENATOR HECK:

I think that with only 22 perfusionists operating in Nevada it would not be economical to put together a board just to monitor those few people. I think the hospitals that employ or contract with them will check on their credentials to make sure that they are hiring certified professionals for these complicated and delicate procedures.

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SENATOR HARDY:

The fact that none of us knew about this profession indicates to me there have not been any problems. I spoke with Senator Cegavske who sponsored the bill and she concurred that a board is not needed at this time.

CHAIR TOWNSEND:

Let us close the hearing on S.B. 382 and open the hearing on S.B. 543.

SENATE BILL 543: Establishes the practice of behavioral health counseling.
(BDR 54-308)

SENATOR HECK:

As I said when I first presented this bill, my primary goal and that of the interim Legislative Committee on Health Care, was to have the licensed professional counselor (LPC) credential recognized in Nevada. It is still my opinion there is a lot of benefit to having similar disciplines under one board; however, I was unsuccessful in my attempt to combine the boards. We have now amended this bill to provide for a stand-alone board. In the mock-up, amendment 3645, we have removed any reference to the any other disciplines ([Exhibit D](#), original is on file in the Research Library). All the provisions of the original bill regarding testing and education have been unchanged.

CHAIR TOWNSEND:

So this is a small step towards trying to organize the whole group that provides mental health, alcohol and drug counseling, and marriage and family therapy, etc.

ERIK SCHOEN (American Counsel Association):

As a representative of professional counselors in Nevada that are currently unable to practice, we support this bill with a few changes.

LOUISE SUTHERLAND (American Counsel Association):

I represent the National Board for Certified Counselors for the American Mental Health Counselors Association. We would like to reinforce our support for this bill with a few minor corrections. In section 15, subsection 6, we would like to add the statement "except where specifically trained." There are a number of dually-trained LPCs, who are also trained to specialize in the area of testing and

assessment. We advocate adding this additional statement to the text. There is precedent in other states' legislation.

CHAIR TOWNSEND:

You made reference to section 15, subsection 6. I think subsection 7 addresses the same issue.

MR. SCHOEN:

We would like to add "except where specifically trained" to the end of line 20 on page 3.

SENATOR CARLTON:

Could you please explain?

CHAIR TOWNSEND:

Since these lines refer to what an individual is not allowed to do, is it your intention to add that statement so that an exemption will be made for those individuals specifically trained to perform this testing?

MS. SUTHERLAND:

Yes, that is exactly what we are requesting. There are a number of professional counselors who have been trained specifically in the field of testing and assessment.

The other issue is the designated title. In the text of the bill, the title is licensed clinical counselor. If you use that title, Nevada would be setting a precedent in regard to the use of this title. The majority of the states that license professional counselors utilize the title LPC; some use licensed mental health counselor and a smaller number use licensed clinical professional counselor. We would prefer that one of these three titles be utilized, but we defer to the Committee on making this identification.

CHAIR TOWNSEND:

Why did we not use LPC in the bill?

HELEN FOLEY (Marriage and Family Therapists):

There are many professionals who counsel, they could be career-related or school-related, but they certainly have not taken a path of mental health core curriculum. It gets confusing, so we want to clearly delineate those who have

that background. As an example, for licensed social workers or licensed clinical social workers, clinical refers to those who have the mental health background.

There are states such as Illinois, Maryland, Maine and New Mexico that all refer to licensed clinical professionals, so there is precedent.

SENATOR HECK:

To Ms. Foley, regarding those states you specifically referred to, do they use licensed clinical professional counselor? So professional counselor is okay if preceded by clinical?

Ms. FOLEY:

Yes, that would be correct.

K. NEENA LAXALT (Nevada Marriage and Family Therapists Board):

I am assuming that this bill is basically to create a new board. I am in agreement with Ms. Foley that "clinical" further clarifies that issue.

SENATOR HARDY:

I have been reading the definition of the practice of clinical counseling. In the proposed amendment, section 15 deals with the "practice of clinical counseling ... to a person or groups ... emotional, physical, social, moral ... spiritual ... through the lifespan." I want to make sure that we are not inviting ministers, lay ministers, or bartenders to be included in this bill.

CHAIR TOWNSEND:

There is an exemption in the bill for those professions.

SENATOR HARDY:

I just want it on the record that this is not we intended.

SENATOR HECK:

There is a specific exclusion that directly exempts ordained ministers or clergy from being swept up into this bill. See section 65, subsection 2 and paragraph (c), where we used the same language that appears in the NRS for other mental health disciplines.

MR. SCHOEN:

Our third point is, on page 3, line 13, where we encourage you to delete the use of "psychology." The reason is that NRS 641.025, which defines the practice of psychology to include counseling, diagnosis and treatment of mental and emotional disorders, is within the scope of practice for LPCs. We think that might confuse the intent of the bill. We researched similar statutes regarding marriage and family therapists within the NRS and that language is not in there.

CHAIR TOWNSEND:

I think you are reading the statute incorrectly, it says "does not include the practice of psychology" which is already defined in statutes specifically regarding the practice of medicine. Senator Heck, what term did we end up with?

SENATOR HECK:

We are in agreement on Licensed Clinical Professional Counselor (LCPC).

MS. FOLEY:

I just received this 65-page amendment, a lot of which deals with scope of practice. They are crafted to make sure it does not interfere in someone else's scope. It concerns me that it gives the counselors an opportunity to do clinical or psychological or neuropsychological tests. I would feel more comfortable with the statute as it is, rather than amending it out. If we do want to amend things out, I would like the opportunity to consult with my peers and Mr. Gresh, representing the Nevada State Psychological Association. We would object to Mr. Schoen and Ms. Sutherland's recommendation to add "except where specifically trained" as being unsubstantiated; that would be outside their scope of practice.

MR. SCHOEN:

Our code of ethics specifically prohibits us from performing outside the scope of practice. Most counselors would not be involved in testing if they are not trained in such. The counselors who are trained in testing would like the opportunity to practice what they have been taught.

MS. FOLEY:

All of the mental health professions would love to do psychological testing and this has been an ongoing bugaboo that we just have not been able to solve. If you could add that to the other statutes regarding marriage and family

therapists, then it would be great. It should be consistent with all the statutes regarding these professions.

SENATOR HECK:

To be honest, I have not looked at that particular wording. The issue for us was to define what the LPC could not do. It would seem odd to me, if they are specifically trained, they would not be allowed to use their skills. Perhaps we could wait and let Mr. Gresh take a quick look.

CHAIR TOWNSEND:

I will go ahead and give you an hour to get with those people.

LARRY ASHLEY:

I am a therapist for combat trauma victims and their families. I am not licensed in Nevada but if someone was seeing me in a crisis, I cannot stop and refer someone to a family therapist. I have to treat them right then and there and not wait for them to get another appointment. The LPCs should be able to diagnose according to the Diagnostic and Statistical Manual of Mental Disorders.

CHAIR TOWNSEND:

We will close the hearing on S.B. 543 and open the hearing with S.B. 437.

SENATE BILL 437: Revises provisions concerning generation and consumption of energy. (BDR 58-232)

CHAIR TOWNSEND:

There is a mock-up available of the proposed amendment (Exhibit E, original is on file in the Research Library). First, section 26, subsection 2, proposes to carry over the Leadership in Energy and Environment Design (LEED) standard to residential customers. This would give residential customers the same abatement or rebate that was extended to commercial projects last year. We are seeing a tremendous downward pressure in our revenue stream from consolidated taxes as well as ad valorem taxes. I have great concern regarding the impact of ad valorem taxes for our school districts. If you look at subsection 2, it states, "The partial abatement must be for the duration ... pursuant to this chapter." After that statement, I want to add the following, "in excess of the levy for school districts as provided in NRS 387.190." That would mean, as a residential homeowner, you would still be able to get your tax break at the same level everyone else does, except for that portion that is levied for the school

districts. This way the schools are held whole under the residential component of this bill. It is good to add the residential people, but we still need to protect the school district monies.

SENATOR CARLTON:

In regard to page 3, starting at line 18 in the proposed amendment, [Exhibit E](#), I am glad you got rid of the 150 percent of federally designated level, because at that level no one could afford to buy a house. On line 19, regarding the household income level of 80 percent, what is the median gross family income; what does that translate to?

CHAIR TOWNSEND:

Our intent was to increase the number to capture more individuals that would qualify. Mr. Young, do you remember where we got that?

SCOTT YOUNG (Committee Policy Analyst):

That figure was actually suggested by Ernie Nielsen. He said that amount should include people with low incomes. If they were in a position to buy a house, they would qualify for those surplus funds.

CHAIR TOWNSEND:

Ernie Nielsen is the representative in the north for the Washoe County Senior Law Project.

KELLY S. GREGORY (Committee Policy Analyst):

I believe that the area median income for the Las Vegas Valley was \$59,000 last year. So 80 percent of that would be approximately \$47,000 of income.

SENATOR CARLTON:

Since this is based on federal levels, it is based on a family of four or six, and is that based on a single income or a dual income?

CHAIR TOWNSEND:

That is gross family income.

FRED SCHMIDT (Southern Nevada Water Authority):

I need to explain that we proposed amendments, [Exhibit E](#), with regard to net metering in [S.B. 437](#) and also to Senator Titus's [S.B. 427](#) to make them consistent so they can be blended into one bill, [S.B. 437](#). I would include the

sections that contain changes to the solar portions of the proposed amendment, [Exhibit F](#). These modifications were made to ensure that solar energy is defined as that which generates electricity and counts toward renewable portfolio standards (RPS). On the other hand, solar thermal projects that generate heat through the heating of water, which displaces the need or use of electricity or natural gas, will be moved into the definition of energy efficiency.

[SENATE BILL 427](#): Makes various changes relating to energy, net metering and the portfolio standards. (BDR 58-677)

The second change would strike the reference to solar thermal energy in the definition that applies to RPS in [Exhibit F](#), section 16. The only sources that qualify are photovoltaic (PV) and solar power plants that generate electricity.

Section 33, [Exhibit F](#), when blended into S.B. 437, ensures that the commission has to adopt a regulation for an incentive for participation. I would not fix the minimum amount because the price is in flux, so the rebate should remain flexible based on future indications.

Another change removes the \$1 additional rebate for the manufacturers of PV cells in Nevada because of constitutionality concerns.

The final change, in section 35 of [Exhibit F](#), would change the reference in law that applies to the 2.4 multiplier. The original reference in Senator Titus's bill would have made the 2.4 multiplier apply to solar thermal plants which would have actually reduced the number of solar projects that could be built to meet the credit. All of the other changes are net-metering changes and they are in the mock-up, sections 15, 16 and 17.

In addition to those changes, I have talked with Senator Titus about other provisions in her bill, which the working group agreed to unanimously. Strike section 53 of the bill, which is the section that would have expanded the RPS in the years 2017-2019. We do not need to address that issue at this point.

Senator Titus would like to expand the solar portion of the portfolio from 5 percent to 6 percent, which we all agreed to. This measure will ensure there will be some additional solar projects in the next few years. With the contracting project at Nellis Air Force Base with PowerLight Corporation and the Solar One project being completed at Boulder City, the 5 percent is spoken for,

so the additional one percent helps if there is an opportunity for new projects. This is a modest increase that will not significantly burden the ratepayer.

MR. SCHMIDT:

Senator Titus, the utility companies and the Public Utilities Commission of Nevada (PUCN) would like to see the demonstration programs that were in S.B. 427 converted into incentive programs using the new approach to solar, water and wind energy. This additional language still needs to be drafted. Converting to a different approach will allow the PUCN to determine applicants in bulk, without creating a significant administrative burden plus the cost of having to process every person with a one kilowatt project. There is a bill in the Assembly which the utilities and interested parties have agreed to and voted out of committee regarding a wind energy program. I would suggest that the solar, water and wind incentive/pilot programs mirror that program.

Additionally, we should bring in section 42, and modify subsections 2 through 4 of section 49 and subsections 3, 4, and 5 of section 35 in S.B. 427. These address who owns or controls the RPS credits. If you qualify or come in under a net-metering system or you get a rebate that the Commission establishes, that is your financial incentive to participate and offset the high cost of these programs. On the other hand, if the utility gets the credit that helps them meet the RPS, they do not have to renegotiate with you to buy those credits or worry that you might sell those credits to another state, since green-trading may be available in the near future.

One other suggestion I think would be appropriate, since we are not addressing the Clark County School District (CCSD) proposal, though their ideas had merit, is to include a provision that would authorize a pilot program for the CCSD. That would give them an opportunity to try out their system in a couple of their schools between now and the next session.

MR. SCHMIDT:

The net-metering provisions proposed in the mock-up of the amendment increased the current total from 150 to 1,000 kilowatts (KW). The net-metering program is not limited to 1,000KW. I do not know how it would affect the wind demonstration program; we have not discussed that yet, but I suspect we would carve it out separately and add a provision.

CHAIR TOWNSEND:

I would like to recognize Chairman Soderberg from the PUCN and Chairman Shaw from Southwest Gas in Las Vegas. Here in Carson City, we have our panel of Mr. Schmidt, representing Southern Nevada Water Authority and his clients Ormat and PowerLight; Mr. Yackira, Chief Executive Officer, Sierra Pacific Resources and Nevada Power Company; Dr. Gecol from the Nevada State Office of Energy; plus Mr. Witkoski, Chief Deputy Attorney General, Bureau of Consumer Protection. All of these people have worked for 12 solid months on what is now called the mock-up, [Exhibit E](#). We are attempting to merge Senator Titus's bill into S.B. 437.

The CCSD deserves a huge amount of credit. Paul Gerner, their architect, gave a remarkable presentation on their programs; he is thinking 10 to 15 years into the future, in terms of growth. I think it is well deserved for the CCSD to have this pilot project.

MICHAEL YACKIRA (Nevada Power Company):

We discussed a wind demonstration project with the CCSD.

DON SODERBERG (Chairman, Public Utilities Commission of Nevada):

We think that a demonstration project is the way to go, as opposed to statutorily letting things happen. It was clear from the CCSD presentation that there are a lot of unknowns here. If we are given the charge to create such demonstration projects for school districts in general, or districts within Clark County, we can do the detail work that is necessary to put parameters on this and not create an undue burden on the ratepayers.

MR. SCHMIDT:

I would not limit or describe the technology in the bill, other than it would be a pilot program to create electricity.

ROSE MCKINNEY-JAMES (Clark County School District):

We are very pleased with the opportunity to move forward with a pilot program. We believe this will give us an opportunity to demonstrate what is possible and that is what Mr. Gerner was looking for. Working with the PUCN is certainly acceptable and we appreciate the opportunity.

CHAIR TOWNSEND:

We hope to continue to monitor the schools' progress.

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ERIC WITKOSKI (Chief Deputy Attorney General, Bureau of Consumer Protection,
Office of the Attorney General):
We have had discussions over the proposed changes and we support those.

ROCKY FINSETH (Nevada Association of Realtors):
We wanted to thank you and Senator Schneider for working out our initial concerns.

MR. SCHMIDT:
The rest of the changes are not drafted yet, but will be added.

CHAIR TOWNSEND:
Mr. Schmidt has brought forward some changes to S.B. 427, Senator Titus's bill. It is the Chair's intent to merge these two documents, [Exhibit E](#) and [Exhibit F](#), plus some other changes which Mr. Schmidt will elaborate.

MR. SCHMIDT:
To recap, since some of the language has yet to be drafted, the demonstration programs that Senator Titus had which would expand wind, water and solar will be rolled into S.B. 437. Those programs would be modified such that portfolio energy credits language is consistent with the A.B. 178 approach on the control and ownership of the portfolio credits. Section 53 of S.B. 427 which would have expanded the RPS in the outlying years will be stricken. Included in the new S.B. 437 would be Senator Titus's proposal to expand the solar component of the current RPS from a 5-percent level to 6 percent and the CCSD would be authorized to do a pilot demonstration for renewable energy to be determined by the PUCN. These items need to be drafted and I will get them to you before this bill gets to the floor.

[ASSEMBLY BILL 178 \(1st Reprint\)](#): Revises provisions relating to net metering and energy. (BDR 58-1054)

CHAIR TOWNSEND:
On page 10, lines 17 and 18 of the proposed amendment, [Exhibit E](#), I am concerned about a couple of items; "Less densely populated counties" versus line 20, "densely populated counties." Further down on line 25, I thought we were going to put "or an electric utility" after the words "natural gas for resale." That may have been in A.B. 103.

ASSEMBLY BILL 103: Revises provisions regarding general rate applications filed by public utilities. (BDR 58-564)

MR. YACKIRA:

A fix for line 25 is to simply strike "which purchases natural gas" since the definition of a public utility is already described as either an electric utility or one which purchases natural gas.

CHAIR TOWNSEND:

We will leave that up to the Legislative Counsel Bureau to make that distinction.

MR. YACKIRA:

About your other concern, I believe that Washoe County has grown so much that the description of "less densely populated" is not accurate. Perhaps using the description of less or more than 500,000 population, as a cutoff to describe the counties would be more accurate. If you look at page 15, they have utilized that defining point rather than "less densely populated."

MR. SCHMIDT:

It is my understanding that the Legislative Counsel Bureau attorneys correct all references to population contained within a bill when it becomes a statute. The same number is used for the breakoff between Washoe County and Clark County universally throughout all legislation during the session.

WILL KEANE (Committee Counsel):

That is correct; it is done on a periodic basis. The Legislative Counsel Bureau updates all the population cutoffs.

CHAIR TOWNSEND:

Could you verify that since this is a Clark County provision and could be important?

MR. KEANE:

I can find out when that takes place and let you know.

MR. SODERBERG:

I need to bring up the proposed edit of section 12, subsection 4, [Exhibit E](#), limiting that to only natural gas utilities. Mr. Yackira is correct, if you take that term out you would then encompass the electric companies which are public

utilities but then you would also encompass the small water companies and any other entity considered a public utility. I do not think that is necessarily a bad idea, it might be advantageous to have everybody on the same type of rate-case methodology, but I want everyone to be aware that while the big power and gas companies are well-known we also represent a number of much smaller utilities.

CHAIR TOWNSEND:

Mr. Witkoski, since this would be adding to your workload, what is your preference? Should we use the term public utilities or "natural gas"?

MR. WITKOSKI

I would prefer leaving it as natural gas and electric utilities since that is what our deliberations have been based on. By making it broader, we may be doing something we do not intend.

RAY BACON (Nevada Manufacturers Association):

Regarding section 26 in S.B. 437, I would like to make sure you clarify the size of a land parcel that qualifies for the LEED-based 50-percent abatement. I do not see in that section where the size of the parcel is defined and it does include real property. There is a possibility that a commercial developer might decide to put a residential building on their property that is contiguous and make the whole parcel of real property exempt.

CHAIR TOWNSEND:

The intent of this section is to encourage developers, commercial or residential, to build facilities that meet LEED standards.

MR. BACON:

In order to close that possible loophole, you might designate that the parcel is limited in size or designate that the abatement applies to the improvement only and not to the real property value.

CHAIR TOWNSEND:

I think that it is a good point. We should add a tag line to section 26, subsection 3, specifying property size, to narrow the scope of the abatement.

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MR. KEANE:

I can add instruction to the Nevada Tax Commission to adopt regulations regarding the size of the parcels that would be acceptable.

CHAIR TOWNSEND:

To recap, in section 26, subsection 2; add the term, "in excess of the school levy as pertains to NRS 387." Next, on page 10, line 25, after "natural gas for resale" we add "or electric utilities" mirroring A.B. 103. And finally, blend Senator Titus's S.B. 427 into S.B. 437 with the proposed amendments, including the pilot project for CCSD.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 437.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATE BILL 543: Establishes the practice of clinical professional counseling.
(BDR 54-308)

SENATOR HECK:

The only change to this bill is that LPC has been changed to Licensed Clinical Professional Counselor (LCPC). Any other requests have been withdrawn.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 543.

SENATOR HECK SECONDED THE MOTION.

SENATOR CARLTON:

Senator Heck has done a lot of work on this. I just cannot vote for another new board. I believe this professional group needs to be monitored but that it should be incorporated into an existing board.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

* * * * *

SENATE BILL 358: Revises provisions governing the fiduciary duties of contractors. (BDR 54-995)

SENATOR SCHNEIDER:

I proposed this bill from a request by my brother. We have an amendment to S.B. 358 ([Exhibit G](#)).

SENATOR HARDY:

I appreciate what Senator Schneider is attempting, but we should work with the contractors' board. I need to disclose that I am president of the Associated Builders and Contractors of Las Vegas though I do not think this legislation would affect any of my members. Knowing how construction contracts work, I am leery of any unintended consequence by imposing a time certain for completion of the work in a matter that meets the specifications of the owner. I do not think anyone would sign that kind of a contract. There is always a general agreement on when the project should be done, but there are always holdups that cannot be foreseen, such as materials or labor.

SENATOR SCHNEIDER:

I think contractors already allow for those kinds of situations. What we want is a completion date that is certain.

SENATOR HARDY:

A contract already establishes a date. I am not sure I know what is meant "in a manner that meets the specifications of the owner"?

KEITH LEE (State Contractors' Board):

First of all, in the second paragraph of the proposed amendment, we should change "licensing action" to "disciplinary action" since the contractor is already licensed. Secondly, what does "prima facie conduct" mean? Does that create a rebuttable presumption?

CHAIR TOWNSEND:

I think it should read "prima facie evidence"; that there is conduct that is actionable, for discipline by the State Contractors' Board.

MR. LEE:

To whom does the burden shift, once it is shown that he did not meet the time frame?

SENATOR HARDY:

This is something the State Contractors' Board would review or regulate. Possibly they need to adopt some regulations or a complaint procedure.

SENATOR SCHNEIDER:

I would just like to get this out of committee today and then look at amending the language.

SENATOR HARDY:

I would agree with that, if we take out that last paragraph. Then we can work towards the other issues.

SENATOR CARLTON:

Mr. Lee, does the Contractors' Board have a provision for this type of situation?

MR. LEE:

I am not sure whether there is a disciplinary provision for the untimely completion of a job. I do not know if we have had those types of complaints. If we did, I am not aware of them or how they were solved. I would have to ask my clients.

SENATOR HARDY:

I think that the industry uses liquidated damages contractually. I would encourage anyone signing a contract to have some type of recourse included.

SENATOR SCHNEIDER:

I am just worried about our time frame to get this bill out of committee and letting this type of situation continue.

SENATOR HARDY:

There is a dynamic in the construction industry that the Committee should realize. We have a significant labor shortage in this industry. It is almost fortunate that there has been a slowdown in residential homebuilding that has allowed craftsmen to move to the commercial side. If that had not happened, we would be in an absolute crisis in southern Nevada. There is a lot of pressure

on these kinds of contractors to go to work on the commercial side and the good ones will, if we adopt contractual regulations that become burdensome. Unfortunately, this renovation area attracts workers that perform low-quality work. We need to deal with it, but I do not want to push out the last remaining good contractors from this sector of the construction industry.

The first paragraph is okay as long as we strike, "that meets the specifications of the owner." I also want to strike that second paragraph until we find out the actual penalty that exists in current law.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 358.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
We will open the discussion on S.B. 361.

SENATE BILL 361: Authorizes the Nevada Institutional Review Board to engage in various activities related to nonembryonic stem cells. (BDR 54-710)

CHAIR TOWNSEND:
We have a proposed amendment ([Exhibit H](#)).

KELLY GREGORY:
The amendment was written by Dr. Frisen to add two further explanations of cells to section 1.

SENATOR SCHNEIDER:
We wanted to explain the nonembryonic cell in order to take the controversy out of the term.

DEAN FRISEN, PHARM. D.
The amendment is just to provide definitive terms that mean the same as "nonembryonic" cell research.

CHAIR TOWNSEND:

This bill is fairly narrow on what can occur. Senate Bill 361 calls for the Nevada Institutional Review Board (NIRB) to evaluate and determine research applications for such cells. Is the federal government going to create law regarding this issue?

DR. FRISEN:

We have gone back to Washington D.C., with the U.S. Department of Health and Human Services (HHS) and the National Institutes of Health to talk about this topic. In this country we do have blood laboratories that are responsible to check for cross-infection and for efficacy of the product, but we do not have those same procedures for cell fragments or cell participants. The HHS suggested that we apply a simple procedure, the same type of procedure that is used in a blood transfusion. I agree with you, Senator, it is frustrating that politics are such that there can be no agreement on federal standards.

SENATOR HARDY:

You testified that this amendment is just a further explanation of the term "nonembryonic cell" but I do not think it is necessary. This is a very sensitive issue. While I support study and research on nonembryonic stem cells, I would rather let the definition that is evolving of nonembryonic cell to stand for itself with no additional language.

DR. FRISEN:

This language was requested by people in the industry because those terms are related to transitioning from research application to clinical application. They felt it would be an advantage to have those relative terms.

SENATOR HARDY:

I want the debate about stem cell research to stand independent of this law.

SENATOR SCHNEIDER:

What we were attempting to do here, is make it clear that there is a difference between nonembryonic and embryonic stem cells.

CHAIR TOWNSEND:

I think the bill is fine the way it is without the amendment. If there is a reason to make that change, maybe they can look at it when it goes to the other House. Senate Bill 361 is clear on its face.

SENATOR HECK:

I just want to put on the record that the bill does not give the NIRB the sole ability to do this kind of research. Anyone else who wants to do this type of research can and does have the right, and they do not have to get permission from the NIRB to do so.

CHAIR TOWNSEND:

Mr. Keane, is that covered in section 1, sentence 1? Does this bill preclude our two medical schools from participating in any way?

Mr. KEANE:

This language simply authorizes the NIRB to take these actions. We added the language in section 1, so new law pursuant to this bill would supersede any older law. Even without that language, there is nothing in here that would prevent any other body from taking any of these actions, if that body is so authorized.

CHAIR TOWNSEND:

Senator Schneider, as the sponsor of this bill, is there a requirement to have the NIRB report back to the Legislature? We require all the other boards to report back on the current status of their projects. Should we entertain that?

SENATOR SCHNEIDER:

Yes, I would entertain that. I would suggest that they should report back to the Legislative Commission or come back here to the Committee on opening day of each session, whatever the Chair finds comfortable.

CHAIR TOWNSEND:

There is a standard way that we ask these committees to report back to us.

SENATOR CARLTON

I was going to bring that up when we discuss S.B. 414, which proposes to have the NIRB as a freestanding commission and held at arm's length from its regulatory body. I would ask that, along with the quarterly reporting, we also put in an audit provision. We should do that as well with S.B. 432.

SENATE BILL 414: Revises provisions relating to the Nevada Institutional Review Board. (BDR 54-709)

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SENATE BILL 432: Enacts provisions governing complementary integrative medicine. (BDR 54-694)

CHAIR TOWNSEND:

We do not have to put that into this bill, just ask the NIRB to come back and report to us.

SENATOR HARDY:

I agree with leaving out the proposed amendment. Let us leave that embryonic debate to others.

SENATOR CARLTON MOVED TO DO PASS S.B. 361.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SCOTT CRAIGIE (Nevada State Medical Association):

I have a statement to make in regard to the bills relating to Complementary Integrative Medicine S.B. 361, S.B. 432, S.B. 414 and S.B. 413, on behalf of my client the Nevada State Medical Association. They are concerned about this venture with the NIRB. I have voiced this concern to both Senator Schneider and Dr. Frisen. We would like to see that the administrative code and regulations that develop from these bills be monitored very closely. As we go forward with this, the new body should be scrutinized and oversight should be aggressive. We have some history with the NIRB, and our association will be watching them closely and we would recommend that of the state as well.

SENATE BILL 413: Revises provisions relating to health care (BDR 57-1004)

CHAIR TOWNSEND:

Let us close the hearing on S.B. 361 and open the hearing on S.B. 432.

SENATOR SCHNEIDER:

Senator Carlton and Senator Heck spent a considerable amount of time last night with Dr. Frisen working diligently to iron out some of the provisions. Since this is basically a board bill, I will defer to Senator Carlton.

SENATOR CARLTON:

I want to thank Senator Heck for his help on the medical issues. What we attempted to do with this bill was to repeat a lot of what is in the Board of Homeopathic Medical Examiners. We will add in a basic audit provision; this bill will include the same regulatory procedures and regulations that are applicable for any other board.

There was concern about section 9, subsection 2, S.B. 432, which is duplicative, so we removed that subsection. Section 10 delineates malpractice which is already in statute, so that section should be deleted. In section 11, subsection 2, paragraph (h), and (i), concerning who can prescribe controlled prescriptions, I think we wanted to take that out.

SENATOR HECK:

The issue was individuals licensed only by the complementary integrative medicine (CIM) board, but not licensed under NRS 630 and NRS 633 actually prescribing pharmaceuticals, which would be illegal. They must be licensed to handle dangerous drugs. I am not sure how to clean this up but the prescribing doctors must be dually licensed.

SENATOR CARLTON:

The intent is to be dually licensed and to follow the law.

CHAIR TOWNSEND:

Section 9, subsection 2 is to be stricken? Section 9, subsection 1, is the only section that provides a definition of CIM.

SENATOR CARLTON:

Section 4, subsection 1, already defines CIM.

SENATOR CARLTON:

We listed the scope of practice under section 9, subsection 1, so subsection 2 is duplicative. If it not listed, the board will deal with that in their regulatory process.

CHAIR TOWNSEND:

My concern is on, section 9, subsection 3, paragraph (g), naturopathy. We had that practice in the law as a possible licensed field. We had so many problems we had to unlicense them and get rid of the whole practice.

SENATOR CARLTON:

We can make sure that the board is aware of the past history.

SENATOR HECK:

Part of the reason for the many problems with this bill is that it was pulling in a lot of entities that did not need to be included. It was too encompassing, including herbalists and people who perform colonic hydrotherapy; you can go to any spa in the country to have that done. We needed to narrow it down with just subsection 1.

SENATOR CARLTON:

In section 45, subsection 5, add NRS 630, 632 and 633. In section 45 delete lines 17-19. Section 47 should be removed.

SENATOR HECK:

The issue here was that even though an individual graduates from a medical school with a degree, in common practice you normally do not use the initials after your name until you are licensed by the medical board. For instance, if a medical graduate of University of Nevada School of Medicine uses the initials of D.O. or M.D. after their name it would not be acceptable until actually licensed. It is a consumer protection issue. Consumers looking at the initials would assume that you are licensed.

SENATOR CARLTON:

In section 48, subsection 1, paragraph (a), remove that language. In subsection 2, lines 12-18 are not needed. Section 50 was boilerplate grandfathering language which is not needed. Section 53 about the residency procedure does not need to be addressed in this bill, so that will be stricken. Section 118, regarding ABC coding, should be stricken along with section 119 which is a mandate. Lastly, section 124 should also be removed.

DR. FRISEN:

We need to include the amendment ([Exhibit I](#)) regarding section 133 and the transition of boards.

SENATOR SCHNEIDER:

I think we have solved the issues that were mentioned yesterday.

FRED HILLERBY (Index Managers):

I am speaking on the behalf of the Independent Nevada Doctors Insurance Exchange malpractice company. I appreciate your taking section 10 out. It may be an oversight, but section 13 regarding definition of malpractice is also a duplication of NRS 41A.

JAMES JACKSON (Nevada Homeopathic and Integrated Medicine Association):

We appreciate all of the hard work that has been done on this bill since yesterday. The Nevada Homeopathic and Integrated Medicine Association had some concerns in addition to the ones Senator Carlton has addressed. I had commented previously about sections 35 and 37 with respect to the 3 years of postgraduate training. Dr. Gerber has stated that there is currently no program in CIM so perhaps it should read, "when such a program becomes available."

SENATOR CARLTON:

Those are referring to allopathic or osteopathic physicians only.

CYRUS POURZAN, M.D., H.M.D. (Board of Homeopathic Medical Examiners):

If I can clarify, the concern is that certain individuals who are not grandfathered in will not qualify under the new regulations, even though they have been practicing in Nevada for years.

SENATOR CARLTON:

There is a grandfathering provision listed in this amendment. Are you talking about singly licensed individuals?

DR. POURZAN:

You may need a start date for that requirement, such as three years' postgraduate study. The problem is that some of these amendments will allow people to escape disciplinary action due to changeover in the board. That has been a continuing source of disagreement between our board and the allopathic board, how disciplinary procedures are handled.

SENATOR HECK:

Section 35 applies to new applicants only. The applicants must have three years of postgraduate study in order to be dually licensed and that is already in statute and was carried over to this bill to be consistent. I do not believe that it applies to currently licensed medical doctors.

KEITH LEE (Board of Medical Examiners):

I believe that most of the Board of Medical Examiners' issues have been addressed. If I may recommend, the best way to deal with writing prescriptions for controlled substances discussed on page 7, would be to strike lines 21, 22 and 23, because it is already covered under the NRS.

MR. JACKSON:

On page 57, there is a reference to Medicaid. It is our understanding that the federal government will not fund alternative medicine through Medicaid. The Association also supports the suggestion of oversight of the NIRB on an ongoing basis, by either the homeopathic or the CIM board. It is a good idea to have the NIRB come before the Legislative Committee, although once every two years seems to be too long a wait. We have some grave concerns about the confidentiality of patient records and information which is one thing we would request be looked at on a continual basis.

DR. POURZAN:

My most pressing concern was with the proposed amendment, [Exhibit I](#), that was handed out. If you are going to consider the exchange of records and specifically exclude any disciplinary action, which will be the cause of much contention.

SENATOR HARDY:

With all due respect to Senator Schneider and Senator Carlton, I am not comfortable with this substantial of a move on this issue. Is there anything coming over from the other House?

MR. JACKSON:

There is A.B. 234, which is a homeopathic board bill. Whether it has been voted out of committee, I do not know.

ASSEMBLY BILL 234: Makes various changes concerning homeopathy.
(BDR 54-646)

SENATOR HARDY:

I am uncomfortable with this and there are too many people that still have objections, and with four minutes left in the meeting, and the deadline is today, I would have to abstain. I would propose that we send this to the Senate

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Committee on Legislative Operations and Elections on which I serve, to direct an interim study until the next session.

CHAIR TOWNSEND:

First, thanks go to Senator Carlton to turn this into a board and something we could understand. The current makeup of the structure of this board is a problem. We also do not know how to fund this. I am uncertain on some of these issues that have been raised. I would like to see the NIRB become more stable and become productive in the next two years. We will create a commission to study these three bills. I would also like to see more participants involved in further study.

SENATOR SCHNEIDER:

I would support an interim study, but what are we going to do about the current board?

SENATOR TOWNSEND:

I think we need to meet with them and try to get some consensus. Possibly we need to find some new people with fresh ideas.

SENATOR HECK:

I would include in the study a comprehensive review of the homeopathic board so when we come back next session we have a tight package. I agree with Senator Schneider, this is an area of medicine that is fast becoming important to the people of Nevada. There are also a lot of people that hoped this issue would fail, and I do not want to give anyone the opportunity to say, "I told you so."

SENATOR CARLTON:

As one of the people who monitor the board's quarterly reviews, I have to say that the homeopathic board has been quite delinquent on their reporting. I agree that no one should be proud and victorious of stopping progress.

CHAIR TOWNSEND:

Let us amend and do pass S.B. 432. The amendment would make it an interim study with the normal parameters. That would include three members from the Senate and three members from the Assembly. The study should also include a review of the NIRB, a substantial review of the homeopathic board and appoint the board to which the NIRB would report. The study should contain all information contained in bills, S.B. 413 and S.B. 414.

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SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 432 AS
AMENDED.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

There being no further business before the Senate Committee on Commerce and Labor, this meeting is adjourned at 10:34 a.m.

RESPECTFULLY SUBMITTED:

Lori Johnson,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____