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

Seventy-Fifth Session
April 6, 2009

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:47 p.m. on Monday, April 6, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Karen Fox, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Rusty McAllister, representing Professional Firefighters of Nevada, Las Vegas, Nevada
Dr. Matthew Schwartz, MD, Radiation Oncologist, Comprehensive Cancer Centers, Henderson, Nevada
Danny L. Thompson, representing Nevada State AFL-CIO, Henderson, Nevada
Robert Ostrovsky, representing the City of Las Vegas, Nevada Resort Association, and Employers Insurance Group, Las Vegas, Nevada
Randall Waterman, representing the Public Agency Compensation Trust, Carson City, Nevada
Renny Ashleman, Las Vegas, Nevada, representing the City of Henderson, Nevada
Victoria J. Robinson, Manager, Insurance Services, City of Las Vegas, Las Vegas, Nevada
Ed Finger, Comptroller and Director of Risk Management, Clark County, Nevada
Gregory T. Hafen, Sr., Co-owner, Pahrump Utility Company, Inc., Pahrump, Nevada
M. Kent Hafen, President, Pahrump Utility Company, Inc., Pahrump, Nevada
Vicki Hafen Scott, Treasurer, Pahrump Utility Company, Inc., Pahrump, Nevada
Rebecca Willis, Steamboat Springs Waterworks Inc., Reno, Nevada
David S. Noble, Assistant General Counsel/Utilities Hearings Officer, Public Utilities Commission of Nevada, Carson City, Nevada
Bill Bradley, representing Nevada Justice Association, Reno, Nevada
Fred Hillerby, representing Nevada Association of Health Plans and Renown Health, Reno, Nevada

Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry, Carson City, Nevada
George Ross, representing Nevada Self-Insurers Association, Nevada Restaurant Association, and the Las Vegas Chamber of Commerce, Las Vegas, Nevada
Bryan Wachter, representing Retail Association of Nevada, Carson City, Nevada
Dean Hardy, representing Nevada Justice Association, Las Vegas, Nevada
Barbara Gruenewald, representing Nevada Justice Association, Reno, Nevada
John Jeffrey, representing Laborers International Union of North America, Local #872, Las Vegas, Nevada, and International Union of Operating Engineers, Local #15, Henderson, Nevada
Tray Abney, representing the Reno-Sparks Chamber of Commerce, Reno, Nevada
Vance Christiaens, representing Nevada Motor Transport Association, Reno, Nevada
Christopher B. Reich, General Counsel, Washoe County School District, Reno, Nevada
Nicole Rourke, representing Clark County School District, Las Vegas, Nevada
Daniel Markels, representing National Federation of Independent Businesses, San Carlos, California

Chairman Conklin:
[Roll called.]

We will open the hearing on Assembly Bill 521.

Assembly Bill 521: Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

Rusty McAllister, representing Professional Firefighters of Nevada, Las Vegas, Nevada:
During the 73rd Session of the Nevada Legislature we came before you and asked for an amendment to change our cancer statutes. At the time, we were having problems getting claims accepted because insurers stated we could not show a causal relationship. So we tied the causal relationship back into the statute and were able to list only seven different cancers that documentation and research showed firefighters were at a greater risk for. We knew as time

progressed and we got more information and studies were completed, we would be able to present more evidence to you of other risks.

I have provided to you a group of articles (Exhibit C) that summarizes a study performed recently by the University of Cincinnati, Department of Environmental Health. They analyzed 20 studies of firefighters' risks for cancer to determine what forms of cancer for which firefighters were at greater risk. I can provide you with a copy of the study if you would like. The sections of the summary I have highlighted for you talk about different types of cancer and exposures. The biggest key for us is that the study shows there are greater incidences of certain cancers in firefighters. Page 2 shows the risk of testicular cancer is 102 percent greater than the average population, skin cancer is 39 percent greater, and prostate cancer is 28 percent higher. On page 3, in paragraphs (h), (i), (j), and (k) of this bill, we have added four new types of cancer. Based on the research gathered in these studies and the correlating association with certain types of chemicals to which firefighters are at a greater risk, we have added testicular, prostate, skin, and thyroid cancer to the bill for your consideration. The first three cancers I mentioned were listed in the study.

Thyroid cancer is much more difficult for us to pin down to a cause. We know that we are exposed to soot, benzene, and numerous unknown chemicals. Depending upon which survey you look at, statistics show the incidence of thyroid cancer in males in the general population is 4.3 to 8 per 100,000 people. The article I have provided you from the New York City Fire Department states that they have had eight diagnosed cases of thyroid cancer amongst their firefighters since September 11, 2001. These were the firefighters who were working on the rubble pile, searching for people for extended periods of time. The New York City Fire Department has over 11,000 firefighters, and they have eight confirmed thyroid cases.

Since we started doing thyroid screening two years ago in my fire department of 501 suppression firefighters, I have 9 confirmed cases of thyroid cancer. That is 100 times the national average. Most of those cases have required surgery. There is additional information in the handout that states what we are exposed to and the methods by which we are exposed. One of the ways we are exposed is absorption through the skin because pores dilate when we sweat.

There are a few more provisions we have added and ask that you consider. Under *Nevada Revised Statutes* (NRS) Chapter 617.453, section 1, subsection 2, it states that if a firefighter with five years or more of service gets one of the cancers listed, the cause of his illness will be considered a result of his employment. We would like you to reconsider the amount of time you have

to be a firefighter in order to have medical coverage for these types of cancers. Essentially you do not have to be a firefighter for five years, because it does not take five years of exposure to trigger these cancers. We have living proof of firefighters with less than five years on the job who have these cancers. One of our firefighters who was on the job for four years, eleven months, and two weeks, had a needle biopsy and was diagnosed with thyroid cancer. His claim has been denied because he had less than five years of service.

We have two firefighters who have brain cancer. One had four years and six months on the job and has been denied insurance coverage. The other firefighter had more than five years on the job but has also been denied because the insurance company is claiming that it metastasized from another type of cancer and that is how he got the tumor on his pituitary gland.

The last part of the bill I would like to examine is adding a thyroid ultrasound scan along with a prostate-specific antigen (PSA) test to our annual physical examinations. Early detection and treatment for any cancer is the best way to take care of these problems. There is a 90-plus percent chance of survival if you diagnose thyroid cancer in the first five years. We are requesting that these two tests be a part of our annual physicals.

Dr. Matthew Schwartz, MD, Radiation Oncologist, Comprehensive Cancer Centers, Henderson, Nevada:

The reason I am testifying today is I have had several firefighters with cancer who are patients of mine. It has come to my attention that young men who are firefighters are getting cancer from unknown exposures. Mr. McAllister discussed that it could be soot, benzene, or radiation. It is not exactly clear, but I feel from the literature I have reviewed there is definitely a higher risk of multiple types of cancer if you are a firefighter.

I would like to discuss the latency period. The development of cancer or carcinogenesis is a multistep process. Typically what we think happens is there is an initial process, or deoxyribonucleic acid (DNA) damage, which is referred to as initiation and which could be from various things. In this case we are assuming it is a carcinogen like soot, benzene, or radiation. There are other steps that have to happen for the cancer to grow and sometimes spread.

From the time of the initial step to the time a physician diagnoses the cancer is called the latency period. Typically the latency time period is years. In reviewing the literature it is hard to come up with a specific cutoff. I have looked at the latency period for thyroid cancer, and it ranges anywhere from a year to sixty-nine years. Where do you make the cutoff of when that exposure occurred to when the cancer develops? When would be the correct time to

make the cutoff? To arbitrarily say that the insurance coverage cutoff is five years is not correct, because obviously there have been other firefighters in their 20s and 30s who have been diagnosed with thyroid cancer in less than five years. It is a disservice to these men to not allow them medical coverage. I am not sure what the reasonable cutoff should be, but I think five years is too long. A year or two is more reasonable than five years in my opinion.

The number of thyroid cancer cases in firefighters in Las Vegas is very alarming. The number of new cases for thyroid cancer in the United States per 100,000 people is between 3 to 8.7 cases. So if 8 to 9 cases of thyroid cancer have been diagnosed in 1,000 firefighters, that is 100 times higher than what you would expect. I think this is alarming and should be investigated to determine the cause.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Rusty McAllister:
I did some research to find out how we got five years for the time frame of insurance coverage. When the cancer bill was first presented to the Legislative Counsel Bureau in 1985 they were using a carcinogen report from 1984. There is nothing in the minutes that talks about five years of exposure time. Certainly cancer research has increased 100-fold since 1985. My suspicion is that the law at that point in time for heart and lung benefits for firefighters and police officers said that you had to be a firefighter or police officer for five years. So probably to mirror that language they put in five years, since there is nothing in the minutes that talks about why a firefighter is only covered after five years of service. I believe it is an arbitrary number that was pulled from previous legislation that was already in place. Currently there is no requirement with our physical exams for a thyroid ultrasound or PSA test. These are not required or mandated by state law for what is to be covered in our physical exams. Because firefighters are at a greater risk for cancer, we ask that these two tests be required in our physical exams.

Chairman Conklin:
Are there any questions?

Assemblywoman Gansert:
Do you document different types of exposures that you receive?

Rusty McAllister:
Every fire I go into is an exposure. Although I use an air pack and am not inhaling fumes, when I am sweating, the pores in my skin dilate, and the

toxic fumes are absorbed through my skin. If I go on a significant fire, there is a lot of thick, black smoke, and along with my bunker gear, I will be covered with soot from head to toe when I am done with that assignment. When I take all of the gear off, and then shower, for the next two days when I am working out at the gym and sweating, I can smell smoke.

Our local union has paid for a service through California that allows us to log on to a website to enter information about the fire we were just on. We enter the date of the fire, the incident number, what type of fire it was, and what was burning. This allows us to have historical records of the exposures we have had. Many departments have statistics about the fires but not who was there and what type of fire it was.

Assemblywoman Gansert:
Are there different levels of protective gear that you wear? I think that would be key to minimize your exposure.

Rusty McAllister:
We wear a helmet, gloves, a bunker coat, and bunker pants. Those pants are made of a thermal barrier on the outside, usually made of a fire resistant material and a vapor barrier that keeps moisture from coming in and going out. The moisture and thermal barrier is made up of batting to help protect us from the heat, but it does not stop the gases that come in around our neck. The materials are not completely resistant to the vapors. They are not barrier suits like what is worn on a hazardous material call. We do wear air packs, or a self-contained breathing apparatus that seals off our face, and breathe air from a confined bottle of clean air. If we take that off and are working around the structure in the overhaul phase, after the fire is out, everything is still off-gassing. We require our firefighters to wear their air packs during that phase also, since it is one of the most dangerous stages of the fire. So, we do not just breathe toxins; we also absorb them through our skin.

Assemblyman Oceguera:
A lot of departments wash the person down after they come out of the fire and then put the turnout gear in a bag and have it professionally cleaned, which is costly. We use our second set of gear until the other set comes back from the cleaners to minimize the exposure. It is a dangerous job. When Mr. McAllister and I first started fighting fires, it was very different. We did not wear hoods and were exposed to much more. We now do everything possible to have the least amount of exposure possible, but unfortunately there is still exposure no matter what we do.

Rusty McAllister:
Our department now has a policy that you are not allowed to have your rubber boots and your bunker pants near our living quarters at the fire station. We have found that once those items have been exposed to all the chemicals there is an off-gassing. If you are sleeping next to those items it increases your exposure. Therefore, years ago we changed the policy so that these items are not allowed in the building.

Assemblyman Settelmeyer:
I agree with the whole bill. Can you think of any other time period that would be more appropriate? If someone has been employed for three days, gets a test done, and is diagnosed with cancer, it is clearly not from the job. If a person has a large tumor, that did not start in three days.

Rusty McAllister:
Dr. Schwartz suggested one to two years. That is better than five years. From the time a firefighter starts rookie school he is starting to work in live drill burns. Most of those drill burns are wood and furniture with certain fabrics that give off gases. A scenario that was brought to my attention prior to this hearing was about a probationary firefighter who gets out of rookie school and does not make probation. What happens when he is gone and then later is diagnosed with cancer? The law already provides that you only have coverage for three months for every year of service after you leave the job up to a maximum of sixty months. The maximum you can be covered is five years, and that is if you have been a firefighter for 20 years. A new hire would not be able to make a claim for minimal exposure. If there is room to work down from that five-year time frame, I would be more than happy to entertain anything. As I mentioned before, five years seems to be an arbitrary number that was picked because of previous legislation.

Assemblyman Oceguera:
We have a diesel exhaust system that hooks up to the fire truck as you pull in and as you pull out, because the diesel smoke was going into our living area. Obviously we have seen a correlation between cancer and the diesel exhaust. We have tried to develop and implement the preventative measures for that issue.

Assemblywoman McClain:
I am less concerned about the insurance claim time limit than I am about getting the cancer diagnosed early with an annual exam. When a rookie starts, does he go through any kind of screening to set a baseline for any cancer?

Rusty McAllister:
Before every firefighter comes on a job they have an extensive physical examination. My understanding is that in the past other departments did not perform a thyroid ultrasound or a PSA test as part of the physical, since it is not required. Our department makes these tests a part of the annual exam. We typically hire the person who is healthier than the norm. If you do not meet certain physical standards you are not hired.

Assemblywoman McClain:
I would think there would be certain screenings that make sense for somebody who wants to be a firefighter so you have a beginning baseline to determine if something comes up later. If he did not have cancer when he was hired, has been in several fires, and now has cancer, you have a record of evidence.

Rusty McAllister:
I agree.

Assemblywoman McClain:
How do we fix that? Is cost the problem?

Rusty McAllister:
I am sure the people who are going to testify after I conclude my testimony are going to talk about cost. The firefighters who they currently do not have to provide coverage for up to five years are going to be an expense. As an example, of the 501 suppression personnel in my department, in the last five years 3 people have died from brain cancer and 2 are currently being treated for brain cancer. One of the firefighters being treated for brain cancer had his claim denied because he was employed less than five years, and the other firefighter has been denied coverage because they said it metastasized from bone cancer which is not covered. There have been nine thyroid cancer cases. One employee was diagnosed with breast cancer and one person was diagnosed with colon cancer. We have won the appeals for three years, and it is now going to the Nevada Supreme Court.

Regarding the diesel exhaust systems that Assemblyman Oceguera mentioned earlier, in our department all of our stations have the recovery systems. Out of the 20 stations in the largest fire department in the State of Nevada, only 3 have it. It costs an average of $10,000 to $15,000 per station to put the recovery systems in.

Assemblywoman McClain:
I would think the cost of prescreening and the cost of annual physicals would save more money in the long run. I think it is shortsighted to wait until someone is dying from cancer and then fight it.

Rusty McAllister:
I agree 100 percent.

Chairman Conklin:
Are there any additional questions from the Committee? There are none.

Danny L. Thompson, representing Nevada State AFL-CIO, Henderson, Nevada:
I think that Mr. McAllister did a wonderful job. We are 100 percent in support of this bill.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone wishing to get on record in support of A.B. 521? Is there anyone in opposition?

Robert Ostrovsky, representing the City of Las Vegas, Nevada:
I want to make sure you received a letter (Exhibit D) from Victoria Robinson, the Manager of Insurance Services for the City of Las Vegas, who I believe will be testifying from Las Vegas.

Randall Waterman, representing the Public Agency Compensation Trust, Carson City, Nevada:
The Public Agency Compensation Trust (PACT) sees A.B. 521 as being potentially expensive and certainly expands the current law. One of the concerns we have, which has already been discussed, is the from-day-one coverage, but it sounds like the Committee will be reviewing this. I would like to clarify that even though there may be a denial under workers' compensation, they are not sent on their way with no coverage. When I was the Risk and Benefits Manager for the City of Sparks for nine years, we had some of these cases. None of those people went wanting for lack of medical care.

Assemblyman Oceguera:
Mr. Waterman, would you be in support of baseline testing so we would have an idea of where we are starting from?

Randall Waterman:
I think that baseline testing for whatever you are intending to cover is a great idea. Cost is always a factor.

Chairman Conklin:
Are there any additional questions for Mr. Waterman from the Committee? There are none.

Renny Ashleman, Las Vegas, Nevada, representing the City of Henderson, Nevada:
We had some concern about the elimination of the five-year time frame. I would have discussed it with Mr. McAllister, but I did not have a good alternative for a set of years to offer. A one to two year alternative sounds perfectly reasonable in our viewpoint. Just for your information, physical examinations would cost the City of Henderson approximately $35,000. We are not saying that is a reason not to pass the bill, but I am informing you of the cost.

Chairman Conklin:
Are there any questions from the Committee for Mr. Ashleman?

Assemblywoman McClain:
Is that the total cost to the City of Henderson?

Renny Ashleman:
That is an additional cost for this bill.

Assemblywoman Gansert:
Does it matter whether the claim is filed under workers' compensation or group insurance? Does that affect disability insurance moving forward?

Chairman Conklin:
Normal workers' compensation covers everything: medical, disability, et cetera. Private medical insurance would, of course, cover your medical expenses. Usually a private disability insurance policy has time limits. Maybe Research can tell us if there is a standard time limit for workers' compensation claims.

Assemblywoman Gansert:
If you file for workers' compensation, does it automatically put you on a disability track if you are unable to work for a certain period of time?

Chairman Conklin:
Correct.

Renny Ashleman:
In a prior life I actually represented the firefighters for many years and worked on these types of bills. Typically in public employment you would not have a

private disability policy. In most cases it would be more advantageous to be covered under workers' compensation.

Chairman Conklin:
Is there anyone else in Carson City in opposition? Is there anyone in Las Vegas who is in opposition?

Victoria J. Robinson, Manager, Insurance Services, City of Las Vegas, Nevada:
[Spoke from written testimony (Exhibit D).]

Chairman Conklin:
Is your only opposition to this bill the five-year time frame?

Victoria J. Robinson:
Yes, we already provide the cancer testing that is indicated in the bill.

Chairman Conklin:
So you approve of the cancers listed in the bill, just not the five-year portion. Are there any questions from the Committee? There are none.

Ed Finger, Comptroller and Director of Risk Management, Clark County, Nevada:
Clark County has three concerns in opposition to this bill. The first was already addressed very well by Vicky Robinson, which is the five-year time line. The county would be more amenable to a possible three-year time frame. I will acknowledge that the issue before you is challenging.

Two of the four specific cancers mentioned are cancers known to be prevalent in those people who live normal lives. According to the National Cancer Institute if you live a normal life you are more likely than not to develop skin cancer. As a male, if you live a normal life span you are more likely than not to develop prostate cancer. It is very challenging as an employer to create this attachment to an industrial occurrence. Thyroid cancer, as Mr. McAllister acknowledged in his testimony, is challenged as it relates to demonstrating—scientifically, medically, or otherwise—a relationship to firefighting. Certainly with great concern for the persons he works with whom he mentioned, that information is anecdotal and perhaps less than evidentiary to support lawmaking.

Clark County, being a very large employer of firefighters, estimates the cost of the annual thyroid scan for firefighters to be in the range of $500,000 per year.

[Written comments from Wayne Carlson, who did not testify (Exhibit E).]

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone in Las Vegas wanting to get on record in opposition? Is there anyone in the neutral position? We close the hearing on A.B. 521. We will open the hearing on Assembly Bill 355.

Assembly Bill 355: Revises provisions related to certain public utilities that furnish water or sewage disposal. (BDR 58-693)

Assemblyman Ed A. Goedhart, Assembly District No. 36:
This bill is going to make it easier for certain small utility companies that provide water and sewer services to adjust to market conditions for a rate request.

Gregory T. Hafen, Sr., Co-owner, Pahrump Utility Company, Inc., Pahrump, Nevada:
We currently have 450 sewer hookups and 620 water hookups. Because we are a small utility company we have the benefit of filing a rate case under *Nevada Revised Statutes* (NRS) 704.095, which mandates a simplified procedure for small utility companies. In 2007, like many of the developers and contractors in Nevada, we were surprised by the depth of the economic downturn. We realized immediately that in 2008 we needed to adjust our rates to cover operating losses that were going to be significant. We filed under the simplified procedure and found it was anything but simple or easy.

The cost of our rate case was over $200,000 which was 42 percent of our gross revenue of $475,000. This process resulted in over 400 formal and informal data requests from the Public Utilities Commission of Nevada (PUCN) staff and the Nevada Bureau of Consumer Protection (BCP). This was nothing out of the ordinary for a small utility company. The PUCN staff spent two days auditing our books onsite and had multiple conference calls with us to review financial information. This process took us six months to gather all of the required forms and exhibits to go with the application. As you can see at the testimony table, one of the binders is the application, one of the binders is the data requests and responses, and the other binders are our direct testimony that was required.

The complete process took one year. We were losing $1,000 per day in operating losses during this overly burdensome process; we were drowning in red ink for that year. The regulatory lag was a problem since once you file your application it takes 210 days before there is a hearing and a decision. Not only was the regulatory lag and time frame a problem, but in addition to the

$200,000 it cost us to process the rate case, we were losing an additional $1,000 per day in expenses. We were getting pushed further under.

I realized after this case was over, we needed to fix NRS 704.095 and amend it so it would be simpler, shorter, and less expensive. We proposed what eventually became A.B. 355, which increases the monetary threshold so you can qualify for a simplified process from $1 million to $3 million. The reason that is necessary is when you have 3,000 customers, which is the other threshold requirement, and you calculate the average rates that we are currently charging in our utility company and others, the average total revenue for 3,000 customers is $3 million in sewer and $2 million in water. The threshold needs to be increased so it is consistent with the concept of 3,000 customers qualifying as a small utility company.

The other thing the bill does is limit the number of data requests and discovery. This is not an unusual concept, because anybody that practices law knows that the Nevada rules of civil procedure and the federal rules of civil procedure limit interrogatories to 40 in the Nevada state court and 25 in the federal court. That does not mean the PUCN cannot ask more questions, but they would have to come forward on their dime and explain why the information was needed, rather than us spend our dime to stop 400 data requests from coming down the pike.

The bill also requires two settlement conferences, one at the front of the case and one at the back of the case, so the issues can be resolved sooner than later without a hearing.

By statute, now that we are beyond $500,000 in gross revenue with our rate increase, we have to file a rate case every three years starting in 2009. We simply cannot afford a $200,000 rate case every three years, particularly when one is not needed every three years. When we reach a $1 million threshold, we have to file a resource plan. The resource plan is estimated to cost between $150,000 and $200,000. That means every three years we are going to be spending between $350,000 and $500,000 for a rate case and resource plan when both are not necessary. The PUCN staff has the ability anytime they think there is a problem to file a petition to review our rates and our operation and demand a resource plan. Every time we annex a new development we are updating our system demand through an engineer as required by the PUCN. So they are looking at our records whenever we are expanding.

The bill also shortens the hearing process from 210 days to 120 days to prevent the regulatory lag and the losses we are sustaining while we are waiting for rate relief. We think this amendment is critical for the financial survival of the small

utility companies, since other small utility companies have had the same problem. The rate case process is too expensive and too time-consuming if the amount does not justify the cost.

The last thing this bill does is allow for a Consumer Price Index (CPI) or inflation adjustment by a letter of advice. This means you can bypass the application process, file the request, have an investigation, and get a decision. Unfortunately, we do not think that can be done by regulation but needs to be in statute. The statutes have a $2,500 cap on letters of advice. We do not think it will work with that cap still in place. This bill will exempt us from the cap.

Chairman Conklin:
Are there any questions for Mr. Hafen?

Assemblywoman Kirkpatrick:
Can you tell us the last time the threshold was adjusted from the initial legislation that was passed?

Gregory Hafen:
The last amendment to that bill was in 2001.

Assemblywoman Kirkpatrick:
How did you increase so much so quickly?

Gregory Hafen:
There are two thresholds to qualify as a small utility company. One is if you have 3,000 or fewer customers and a monetary threshold of $1 million or less in gross revenue. The 3,000 customer threshold stays the same with our amendment, but it is more realistic because when you multiply 3,000 customers by the average rate for the utilities, it is not $1 million. It is between $2 million and $3 million, depending on whether it is water or sewer. Effectively, if you leave the threshold at $1 million you will never get to the 3,000 customers, you will be at 1,500 to 2,000 customers.

Assemblywoman Kirkpatrick:
Often we wait too long before we increase the thresholds with the prices of things. I wanted to know how we got to this so quickly. Do you think that with the CPI the water rates will go up that much over time?

Gregory Hafen:
The average threshold is $2 million at 3,000 customers for water and $3 million for sewer. If you factor in an annual CPI you can see what is going to happen

to the threshold. Please remember, these thresholds are just to qualify for the simplified procedure. Currently without an inflationary factor, after three or four years, because there is not a way to increase the rates for just inflation, you are losing money and forced to file the very expensive rate cases, because we do not have a letter of advice process available without the $2,500 limitation.

Chairman Conklin:
Did we have a bill last session to deal with the simplified process? Is the PUCN currently working on this particular procedure?

Gregory Hafen:
In 2001 the bill mandated that regulations for a simplified process be implemented, and what we are saying is that they have not been effectively implemented for obvious reasons. It is not working.

Assemblyman Goedhart:
One of the geneses behind this bill was because of the legislative intent point of view, they had given PUCN direction to go forward on the simplified process, and here we are eight years later, and they are handling it as quickly as they do the rate increases. It is nice to realize that a lot of the small utility companies provide a very valuable service. If it is going to cost a utility company with 400 customers $400,000, basically the $1,000 per customer average has to get passed to the ratepayer in the form of higher rates. We are looking at this to be less costly.

M. Kent Hafen, President, Pahrump Utility Company, Inc., Pahrump, Nevada:
As you have heard before it has been eight years since it has been mandated for small utility companies to have a simplified rate case process. Almost nothing has happened since then that would be helpful with this matter. The three large utility companies in the State of Nevada are Sierra Pacific and Nevada Power—which are now NV Energy—and Southwest Gas. There are also 18 small utility companies that range from 22 customers with a revenue of $7,500 per year to a couple of utility companies with gross income exceeding $3 million. Most of them have incomes of much less than $1 million and 1,000 customers. Fourteen of the small utility companies would be affected by A.B. 355. The March 16, 2009, docket does not address the basic problem of too many regulations and calls for the PUCN staff to write more regulations to simplify the rate application process. You saw the volume of documents for our rate case, and that is why it took over six months to put together and cost $200,000. We have spoken to the PUCN staff about regulations that would simplify this, and it has not happened. We believe any attempt that was just filed was to derail A.B. 355.

When staff was preparing regulations to comply with Senate Bill No. 86 of the 74th Session, we submitted our comments in opposition to the draft, as did others, and we still ended up with 23 pages of very detailed, expensive new regulations. On June 18, 2007, the BCP commented, "The BCP commends staff for preparing such detailed and exhaustive proposed regulations that total over 32 pages. The BCP believes that the proposed regulations may be akin to killing a fly with a cannon. The existing electric resource planning regulations are applicable to Nevada Power and Sierra Pacific, and they have combined sales of over $3 billion and a whole staff of personnel devoted to resource planning." They also said, "These regulations should be tailored to carry out the intent of S.B. No. 86 but consideration must be taken into account of the limited resources of small water and sewer companies." This bill, A.B. 355, would exempt the process of those very onerous regulations from happening every three years. I would like to read our rebuttal to the Executive Agency Fiscal Note prepared by the PUCN as the submitting agency (Exhibit F).

Chairman Conklin:
Mr. Hafen, this is a policy committee, and we will make our decision regardless of the fiscal note. It is not in our bill books, but I would invite you to talk with the Chairman of Ways and Means who will take up the fiscal note. I do not mean any disrespect, but we do not vote on fiscal issues.

Vicki Hafen Scott, Treasurer, Pahrump Utility Company Inc., Pahrump, Nevada:
I have worked through rate cases in 2003 and 2008. Since I am the accountant, most of the data requests come through me. I would think from what we have said to you today that this would be an easy bill to move forward on. We know you are under a lot of stress, because the poor economy and the shortfall in revenue for the entire state create a lot of concerns in that regard, but this bill actually lowers cost for the consumers. It also lowers time and effort for small utility companies and has to lower cost for the PUCN. It does not affect any essential services. We would ask you to move this bill forward as a cost-saving measure for all small utility ratepayers.

Assemblyman Goedhart:
[Read second paragraph of letter from Gold Country Water Company (Exhibit G).]

Chairman Conklin:
Are there any questions from the Committee?

Rebecca Willis, Steamboat Springs Waterworks Inc., Reno, Nevada:
We have 286 water connections. I will talk about the expense and complication of rate cases. In our last rate case we were very careful to use a minimum amount of lawyer services by preparing most of the documents ourselves. It still took us four years to pay for the legal fees incurred for attorney services for the settlement conferences we had with the PUCN staff. We agree with the suggestions in Gold Country Water Company's letter to use the percentage of the income of a small water company rather than the rate base. Our system was built in 1972 and has depreciated since then. If more infrastructure is added to our system, the PUCN suggests that we do that with a rate override. If it is done with a rate override, none of the investment in the system goes into the rate base, and we will quickly come to a point where we do not have a rate base. For this reason we feel this should be taken under consideration to keep these small systems viable and make sure there is a way in which the infrastructure can be improved and aging systems can be replaced.

[Letter in support of A.B. 355 (Exhibit G) from Kirk C. Peterson.]

[Letter in support of A.B. 355 (Exhibit H) from Diane F. Sears.]

[Letter in support of A.B. 355 (Exhibit I) from Michael Johnson.]

[Letter in support of A.B. 355 (Exhibit J) from Allyn Emery.]

[Letter in support of A.B. 355 (Exhibit K) from Mark Foree.]

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else wishing to testify in support of A.B. 355 at this time? Is there anyone in opposition to A.B. 355?

David S. Noble, Assistant General Counsel/Utilities Hearings Officer, Public Utilities Commission of Nevada, Carson City, Nevada:
The PUCN is opposed to A.B. 355 as it is currently written. In response to your question, Chairman Conklin, Senate Bill No. 86 dealt predominately with the resource planning process and set the three-year statutory time frame for water utilities making $500,000 or more in revenues as well as the resource plan for a $1 million threshold.

Chairman Conklin:
Prior to last term, how often was a utility company to come in?

David Noble:
They came in whenever they wanted to.

Chairman Conklin:
Last term did we make it every three years?

David Noble:
Yes, for utilities making $500,000 or more.

Chairman Conklin:
How many small utility companies are making that?

David Noble:
Zero.

Chairman Conklin:
So nobody makes more than $500,000?

David Noble:
Pahrump Utility's last rate case was $490,000 for their water system and $390,000 for their sewer system. They are the closest, next in line.

Chairman Conklin:
So they were not obligated to come in. Did they come in because of loss, for rate recovery?

David Noble:
That is correct.

Chairman Conklin:
Please proceed.

David Noble:
To answer Assemblywoman Kirkpatrick's question, the $1 million threshold was put into place in 1991 in Assembly Bill No.174 of the 66th Session. If you calculate the inflation factor from 1991 to 2009, the $1 million would now be between $1.5 million to $1.6 million. I have looked at the rate cases the PUCN heard over the last three years, calculated revenue per customer, and equated that to a 3,000-customer threshold, and that came to anywhere from $800,000 up to $4.5 million depending on the system. That demonstrates the uniqueness of every water utility company we have in the state. There are various issues based on the age, topography, and source of water. We believe the $3 million threshold is a great deal over what would be reasonable and would prevent any

of the other utilities that are currently below the threshold from qualifying for a full general rate case for a very long time.

The PUCN is very interested in the CPI. There was concern that the PUCN could not do that without some sort of guidance. After speaking with our general counsel, staff counsel, and the Attorney General's Office, we believe that we can do that in rule making. In fact, next week docket number 09-02025, that Mr. Hafen referenced, will be on the agenda to propose to expand the docket to include a review of the CPI or another annual, indexed rate increase. The difference is, in A.B. 355 it would be automatic. I would think in regulations the Committee would want to make sure any utility that came in for this request is abiding by the laws and regulations of the state, whether it is their mil assessment or their reporting requirements with Water Resources as well as the PUCN. So it would not be an automatic increase for every utility. There needs to be a checks and balances system. We would also want a review every few years so that if they are getting automatic rate increases they do not get out of proportion with what their true revenue requirements are.

With regard to the 120-day simplified procedure, that is very unworkable if it is going to be a contested case. It just does not work given that noticing takes 30 days; if you have a hearing officer, you have a draft order out; there is actual discovery by staff; and in some cases the Attorney General's Office intervenes, and other county organizations intervene as well. Currently there is a 210-day statutory deadline. The Pahrump Utility Company's last rate case took between 150 to 180 days to process. They referenced that it was actually a year from start to finish. They have six months to put the rate case together based on the test year which was the preceding calendar year. They took the full six months, so they were losing $1,000 per day while they were putting their case together.

The Hafens also said there was no simplified procedure. The PUCN has two simplified procedures. The first is called Rate Assist, and right now that threshold is $100,000. Essentially the utility company will file a letter with the Commission, and staff will put the case together for them. We will also help utilities that are above the threshold, which we offered Pahrump Utility. They declined the offer and hired outside attorneys and certified public accountants (CPA) even though they had attorneys and CPAs in-house.

I believe that Ms. Willis from Steamboat Springs referenced her rate case. That is also a very good example of not using resources available for a rate case. In 2007 they had $78,000 in operating revenues reported with the Commission, so they qualified for the Rate Assist program but instead put together a case

that was handled by a firm who is very expensive. I feel that those costs could have been reduced dramatically if they had asked for Rate Assist.

With regard to limitations on the number of data requests and depositions and no prepared testimony, the reason there would be an increased amount of work by PUCN staff is that they would then have to put the case together. The small utilities that are in support of this law basically want to make it easier for themselves, but in fact this bill makes it much more difficult for the PUCN to prosecute the rate case, gather the information, and make a recommendation so the Commission can make an informed decision. Without prepared testimony ahead of time, it is very difficult for the PUCN to turn the case around. As I am sure you are all aware: What people say and what people write are two very different things. Trying to understand what utilities are actually requesting when they are on the stand and being asked questions in cross-examination is very difficult compared to when they have an opportunity to prepare written testimony. They can review and make sure their requests are accurate so the PUCN can understand and come up with a logical decision.

Concerning the resource plan exemption, the reason why S.B. No. 86 had the $1 million threshold last session is that once you get to $1 million in infrastructure, the system gets much more complicated. In my testimony in 2007, the PUCN believed the initial resource plan would cost approximately $100,000. The Spring Creek Utility has just filed its first resource plan under our new regulations. We have asked them to keep track of the cost. They estimate that it will be approximately $150,000 to $200,000, which will be for their initial plan. The biggest cost associated with the resource plan is the hydraulic plan, which demonstrates how the system works. Once you have the plan in place, the majority of the costs associated with the initial plan are not going to be repeated the next time you need to file a resource plan. Another part of the resource plan is the conservation plan. Our regulations are set up in such a way that the water conservation plan, which is filed with Water Resources for those utilities, can essentially be adjusted to a small degree and then applied to the PUCN. We do not believe that the $500,000 cost every three years that was testified to earlier is accurate.

Chairman Conklin:
Do you have regulations in place now for simplified statutory requirements?

David Noble:
Yes, those are the Rate Assist regulations that have the $100,000 threshold, and with the $1-million-or-less threshold, the utility will file five statements and schedules versus the full rate case which has statements A through Q.

Chairman Conklin:
In the current docket that is being considered, is there anything else being considered to further simplify this process?

David Noble:
Yes, staff has proposed a $500,000 threshold for the Rate Assist. I believe the BCP has proposed a $1 million threshold. With the expansion of the docket next week, we are actually going to be looking at water rate cases from top to bottom to simplify this. The PUCN understands that the costs have been very large for these rate cases, and we are going to try to determine how to decrease those costs while still getting the information to the PUCN so we can make an informed decision to make the rates right.

Chairman Conklin:
Have you given a copy of the proposed amendment (Exhibit L) to the bill sponsor?

David Noble:
Yes, I gave that to the sponsor on Friday.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Goedhart:
I looked at the bill and spoke with some of our constituents, and I believe the amendment as proposed by the PUCN was to bring that up to $2 million. Our constituents are more comfortable with $3 million, but I understand we have to compromise. We are willing to work with the constituents and the PUCN to see what we can agree on.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone wishing to go on record in opposition of A.B. 355? Is there anyone in the neutral position on A.B. 355? We will close the hearing on A.B. 355. Assemblyman Goedhart, could you work with Mr. Noble and other interested parties? I would like to know where Mr. Ostrovsky stands on this issue as well and would appreciate if you could get back to me on that.

Assemblyman Goedhart:
Yes, I will get back to you.

Chairman Conklin:
We are going to start with Assembly Bill 148 of the work session.

Assembly Bill 148: Requires certain health and safety training for construction workers and supervisors. (BDR 53-276)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit M).]

Chairman Conklin:
Assemblyman Oceguera do you have any comments?

Assemblyman Oceguera:
I feel that we have worked out a workable definition of what a construction worker is. Also since our last meeting on this bill, Legal has advised me that there is a recent Supreme Court decision, *Century Steel, Inc. v. Division of Industrial Relations*, where they found that the *Nevada Revised Statutes* (NRS) does not define a willful violation. Because section 12 of the bill, on the last page, talked about this willful violation and it is not defined in NRS, we wanted to change the language. It is not in your mock-up, but at lines 23 through 25 in the mock-up, we propose the language be changed to say, "impose upon the employer the same penalty as if he had committed a willful violation."

Chairman Conklin:
If we were to consider A.B. 148, I think we should consider an amend and do pass, with the amendment being the mock-up amendment plus, in section 12, paragraph (c), conforming language to the most recent Supreme Court case.

Assemblyman Oceguera:
I agree the language would be imposed upon the employer with the same penalty as if he had committed a willful violation.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
I appreciate the concept of this bill of adding safety for the workforce. Under "The Division shall establish a registry to track the providers of courses approved pursuant to subsection 1," can we add "which may include web-based programs and systems," so they can find one that meets their requirements and is acceptable? If someone wants a job for the upcoming weekend, they could do the course online right away, so they would be qualified for an upcoming position. I am also worried that the 15-day deadline may not be enough time for someone to save enough money to pay for the course.

Assemblyman Oceguera:
I did not hear the first part of what Assemblyman Settelmeyer said.

Assemblyman Settelmeyer:
On page 2, line 25, it talks about the Division shall establish a registry of providers. I think we should insert that a web-based system should also be acceptable if it meets the criteria, to encourage the worker to look at web-based providers. From my research online, I found three web-based courses that Occupational Safety and Health Administration said were approved web-based programs, so someone would not have to travel to take a course or incur more expense. It would be more convenient to go online, watch a program, obtain their certificate, and then be available for a job. We need to at least point the Division in the direction that they should try to include a web-based program.

Assemblyman Oceguera:
I think that would be contemplated in regulation. The bill is allowing the Division to establish a registry. Before they would be able to create a registry they would have to come to the Legislative Commission with proposed regulations.

Assemblyman Settelmeyer:
At least now I have it in legislative intent. What about the possibility of entertaining a number of days other than 15 as that seems very short to me?

Assemblyman Oceguera:
The issue with that is if you go longer, there is a question whether an employer would then hire a person for 59 days and then terminate them because of this. We are trying to make it shorter so they would have to have training prior to coming to the job.

Assemblywoman Gansert:
What about the people who are currently employed and have not had this training? Is it still 15 days? There may be a number of people who have only been employed for 15 days. I do not know how many people there are who have not had this training. It looks like you have to have this within 15 days to continue to work.

Chairman Conklin:
The mock-up does not have a date when this goes into effect. Traditionally it would go into effect October 1 of this year. If this were to pass, then you would have 6 months, not 15 days, to get people prepared for the program.

Assemblywoman Gansert:
If we pass it sooner they would have that much time. I want to make sure that people have enough time to take the course and, if there are web-based programs, those would be available, since this training is important.

Assemblyman Oceguera:
That makes sense. I assume people are anticipating this bill and are already preparing for it, but October 1st would be the date since there is no date in the bill.

Chairman Conklin:
Are there any questions or concerns from the Committee? The Chairman would entertain a motion.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 148.

The motion is to accept the mock-up with the additional language, as repeated twice by Assemblyman Oceguera, in section 12 of the bill.

> ASSEMBLYWOMEN MCCLAIN SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Gansert:
I suggest that the regulations establish the list of vendors so they can take the course and test by the October deadline. It sounds like there has to be a regulation process in order to get the list together.

Chairman Conklin:
Assemblywoman Gansert is saying if the bill passes and it goes into effect in October, is that enough time to allow the Division to draft the regulations so that people can comply?

Assemblywoman Kirkpatrick:
There is one of two ways they can do it. They can put in a temporary regulation until the other regulations are done, or they can go through the process. But you have to believe that from July 1 to October 1 there is a lot of work that can be done, because there are other programs available. Because it provides a financial benefit to the employer to have his workers certified for insurance provisions, as Ms. Pittman had testified to, they are going to make sure that things do not move slowly. You can always have a temporary regulation in place so that it is good for an additional 120 days.

Chairman Conklin:
Assemblywoman Gansert is nodding that would be okay. Is there any other discussion on the motion?

> THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND GOEDHART WERE ABSENT FOR THE VOTE.)

Assemblyman Oceguera, I assume you will take this on the floor. I would like to turn our attention to Assembly Bill 176.

Assembly Bill 176: Revises provisions relating to administrators of facilities for long-term care. (BDR 54-173)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit N).]

I would like to comment in terms of whether it is necessary to authorize the board to allow a voluntary surrender of a license. In consultation with my colleague in the Legal Division, we felt it was not necessary to authorize the board to take a voluntary surrender of a license. In the existing statute the voluntary surrender of a license is already contemplated, which you can see on line 26 of the mock-up. The amendment only involves lines 20 through 22 on page 2 of the mock-up.

Chairman Conklin:
Assemblywoman Kirkpatrick and Assemblywoman McClain, are there any questions or concerns?

Assemblywoman McClain:
Are we saying that we do not need lines 20 through 22?

Chairman Conklin:
No, the actual amendment starts on line 19, under "not." The double strike-through on line 20 is what is not needed.

Dave Ziegler:
Allowing a licensee to waive his right to appear at a disciplinary hearing is in lines 21 and 22. Giving notice to the licensee as to when the hearing is going to occur is in lines 20 and 21. As far as authorizing the board to accept the voluntary surrender, it is our staff's opinion that is not necessary to do.

Chairman Conklin:
Assemblywoman Kirkpatrick, is there anything you would like to add?

Assemblywoman Kirkpatrick:
I think this is a good start.

Chairman Conklin:
Are there any questions from the Committee?

> ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 176.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND GOEDHART WERE ABSENT FOR THE VOTE.)

We will turn our attention to Assembly Bill 186.

Assembly Bill 186: Revises the definition of "public utility" and "utility." (BDR 58-189)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit O).]

Chairman Conklin:
The bill sponsor has approved the mock-up amendment.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 186.
>
> ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND GOEDHART WERE ABSENT FOR THE VOTE.)

We will now talk about Assembly Bill 274.

Assembly Bill 274: Makes various changes regarding retail installment sales. (BDR 8-819)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit P).]

For the sake of clarification there were amendments loosely discussed on the day of the hearing, but it is not being proposed that the bill be amended.

Chairman Conklin:
You may recall that this bill is fairly tight and applies exclusively to automobile loans. Are there any questions from the Committee?

> ASSEMBLYWOMAN BUCKLEY MOVED TO DO PASS ASSEMBLY BILL 274.
>
> ASSEMBLYMAN MANENDO SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND GOEDHART WERE ABSENT FOR THE VOTE.)

We will work on Assembly Bill 387.

Assembly Bill 387: Makes various changes to provisions concerning energy resources. (BDR 58-223)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit Q).]

The conceptual amendment and the mock-up do not conflict with each other.

[Vice Chairman Atkinson assumed the Chair.]

Vice Chairman Atkinson:
Is there any discussion?

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 387.

This is with the mock-up and the conceptual amendment.

> ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN GOEDHART WAS ABSENT FOR THE VOTE.)

[Chairman Conklin reassumed the Chair.]

Chairman Conklin:
We will now work on Assembly Bill 399.

Assembly Bill 399: Establishes provisions for the primacy of health care plans. (BDR 57-964)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit R).]

[Vice Chairman Atkinson assumed the Chair.]

Vice Chairman Atkinson:
We will entertain a motion.

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 399.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN GOEDHART WAS ABSENT FOR THE VOTE.)

We will now hear Assembly Bill 470.

Assembly Bill 470: Prohibits non-compete agreements for persons who hold a professional license. (BDR 53-1021)

Dave Ziegler, Committee Policy Analyst:
[Spoke from written testimony (Exhibit S).]

We have received proposed amendments from Assemblyman Anderson, which are attached. They are not in the form of a mock-up, but the staff and legal counsel have reviewed and approved them.

Vice Chairman Atkinson:
Is Mr. Ostrovsky here?

Robert Ostrovsky, representing Nevada Resort Association, Las Vegas, Nevada:
This amendment (Exhibit T) would make an exception to the requirement of this bill in *Nevada Revised Statutes* (NRS) Title 54 where an employee is subject to an employment contract. This would still cover at-will employees but would not cover employees who have an employment agreement. I believe Mr. Bradley has additional changes that are not in the original amendment. The second part of the amendment would provide that you can not have an employment agreement with more than 12 months of a non-compete clause, which was one

of the issues that was brought up in the hearing. The third change is that it would not apply to licenses issued under (NRS) Chapters 630, 630A, and 633, which apply to physicians, homeopathic medicine providers, and osteopathic medicine. These changes were made on behalf of the Nevada Association of Health Plans with Mr. Hillerby.

Vice Chairman Atkinson:
Assemblyman Anderson, did you agree to these?

Assemblyman Anderson:
I agree that the compromises on the bill meet the intent, in part. I think we can move forward.

Vice Chairman Atkinson:
Mr. Bradley, do you agree?

Bill Bradley, representing Nevada Justice Association, Reno, Nevada:
The amendment that has been proposed by Mr. Ostrovsky is appropriate, but we have agreed to two additional words. We would like to add "for cause" employee in paragraph (a). I am happy to explain that, although I understand you want it to be brief.

Vice Chairman Atkinson:
Are we doing that at the end?

Bill Bradley:
In the last sentence of the full paragraph, under subsection 5, it would read, "to the provisions of Title 54 of NRS unless: (a) that ‘for cause’ employee..." The "for cause" is an adjective defining the type of employee this would cover.

Vice Chairman Atkinson:
Does this meet your approval, Assemblyman Anderson?

Assemblyman Anderson:
It is obviously up to our legal drafters as to the way it will be written.

Vice Chairman Atkinson:
Mr. Bradley, could you give us a quick explanation please?

Bill Bradley:
In employment law there are two kinds of employees. There are at-will employees who may be terminated for any reason under the sun. There are "for cause" employees who typically have an employment contract and may be

terminated only for cause. Assemblyman Anderson's intent in this bill, as we understood it, was to make sure that at-will employees will never be subject to an anti-compete clause. Adding the terminology "for cause" will make it clear that at-will employees will never be required to sign a non-compete clause as part of their agreement for employment.

Vice Chairman Atkinson:
Do you have any further questions, Assemblywoman Gansert?

Assemblywoman Gansert:
In subsection 5, paragraph (c), it looks like you took out physicians, homeopathic medicine providers, and osteopathic medicine. Would this amendment exclude executives in large companies who have non-compete contracts?

Fred Hillerby, representing Nevada Association of Health Plans and Renown Health, Reno, Nevada:
You are correct. The only exclusion from Title 54 would be the three groups of doctors mentioned earlier.

Assemblyman Settelmeyer:
Are you stating that the previous bill applied to a wide range of individuals, but now it will apply only to doctors and nurses?

Fred Hillerby:
It applies to everybody who is licensed under Title 54 except those three kinds of doctors.

Assemblyman Settelmeyer:
So this bill would get rid of all the non-compete clauses for all of the titles on the list?

Fred Hillerby:
That is right, with the exception of those listed above. They can have a non-compete clause if they have an employment agreement, but it cannot be longer than twelve months.

Assemblywoman Kirkpatrick:
I am more confused with the new amendments than when we started with the bill. I have to sign a non-compete, which I would expect to in sales. It is the opposite of the way the bill was first presented. Can we start over on this, since I am not comfortable to vote on this today?

Assemblyman Goedhart:
As I understand this now with all the amendments, the bill does not allow for non-compete clauses for at-will employees, with the exception of medical doctors. Does this apply to nurse practitioners or just medical doctors?

Fred Hillerby:
It applies to medical doctors, osteopathic doctors, and homeopaths who also have medical doctor degrees. It is not talking about nurses or nurse practitioners.

Assemblyman Goedhart:
Would someone in sales not be bound by a non-compete clause unless he had an employment contract? If he had an employment contract it would put him into a category in which he could still be required to sign a non-compete clause.

Fred Hillerby:
That is correct.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Anderson:
I can understand where the confusion comes from, Mr. Vice Chairman, in that we are trying to broaden it. With this amendment we took care of the problem raised by a constituent, which occurred because of the type of employment she was in, but which was probably not addressed in the bill from drafting. In reference to the fact that a medical facility may have brought a doctor into a particular area, where under other areas of NRS Chapters 610, 630A, and 633, those folks would then not be able to set up practice across the street and that was a legitimate concern. The amendment Mr. Ostrovsky proposes says if you have a non-compete agreement and know full well what you are getting into, then you are not a part of this. But this bill prevents a group from not allowing at-will employees to stay in an area and compete in a market in which they have a marketable service. In this day and age when people are being let go because of transient reasons, this makes sense. I think the amendment speaks well for the average employee, who works hard, has an industrious nature, and has raised the quality of his employment. This is a good piece of legislation, and I would like to see it passed.

Assemblyman Settelmeyer:
Why are we carving out NRS Chapters 630, 630A, and 633 from the original legislation, and why are we not mentioning attorneys so they can have a non-compete clause?

Fred Hillerby:
The reason we brought these to the attention of Mr. Bradley and Mr. Ostrovsky is because physician recruitment is very difficult at this time due to a shortage of physicians. If you are talking about a case of buying a practice, the fact that it can come with more than one year of non-compete clauses increases the value of that practice for the doctor who is selling it because now the buyer knows he is going to have the physician and his partners in the practice for no less than two years. Also, when you talk to a doctor and bring him into a practice, the person buying the practice or hiring the doctor needs to have some assurances that the doctor will not come in and take advantage of your patient base and in a relatively brief time be able to set up a practice across the street and take those patients with him. That is why we singled out those professional titles. That is the only issue I represent on this amendment.

Assemblyman Settelmeyer:
I appreciate that, but I think there are other businesses that are deficient of professionals, such as nurses, so the same argument you have does not apply.

Bill Bradley:
The intent of the bill Assemblyman Anderson proposes is if nurses are at-will employees, they will not have a non-compete clause. My understanding is that most nurses are at-will employees. If a nurse has an employment agreement then he is subject to an anti-compete clause. That was part of the consideration when the nurse entered into the employment contract. That employment contract must now establish that the nurse be terminated only for cause. In effect, if a nurse is at-will there is no anti-compete clause, which will encourage nurses to remain in the area and practice.

Assemblywoman Gansert:
I am still concerned about people outside of the health industry, such as in technology, insurance, or gaming, who may take key information with them.

Bob Ostrovsky:
This bill is about non-competes only. The existing law in NRS 613.200 still permits agreements for nondisclosure. You can have an agreement controlling trade secrets, business lists, and secret formulas, et cetera. It was never proposed by Assemblyman Anderson to remove those agreements. It is the non-compete part that this bill is trying to address. Assemblyman Anderson narrowed the focus of this bill to certain types of licensees from Title 54. For example, lawyers are not licensed under Title 54. If you are a non-licensed employee like a casino executive and do not otherwise hold any license, then the existing law as it stands would apply. You can have a non-compete agreement as long it is supported by valuable consideration and otherwise

reasonable in scope and duration. That is what the existing law says. The bill only addresses licensees in Title 54, but the amendment requests that we focus on the special circumstances of those licensees, for example, where they have an employment agreement or where we have highlighted various licenses under Title 54 called professions, occupations, and businesses.

Assemblyman Goedhart:
Since we have singled out the three different types of doctors and changed the language with Mr. Bradley's amendment, if we offer a doctor an employment contract and determine he is now a "for cause" employee, we would not have to go with the extra language to further single him out.

Fred Hillerby:
The reason we need the further language is because the language that Mr. Bradley and Mr. Ostrovsky agreed to concerning other "for cause" employees, was for a one-year duration. In the case of the kinds of cost associated with recruiting or with purchasing practices, we needed more than a year. The other argument is clearly a position is on much more of an equal footing with the employer or other individuals that need this type of protection.

Assemblyman Goedhart:
How many years are you looking for?

Fred Hillerby:
Typically, it is two years.

Assemblyman Goedhart:
Thank you.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Christensen:
With "for cause" and agreements where sometimes you have to let people go and come up with a cause, that makes me nervous. I worry about getting into a position where we are opening this up more and there is more push toward the "for cause" contract. Could you please explain the one- to two-year time period?

Fred Hillerby:
We would like the latitude to negotiate with a physician, whether we are buying his practice or hiring him into an existing practice, to have a non-compete clause and not arbitrarily be limited to 12 months or any term. It may be to the

doctor's advantage to have a longer non-compete agreement because his practice is more valuable to you, and therefore to him, when he sells it.

Bill Bradley:
Then the non-compete clause is going to be looked at under existing Nevada law, which looks at the circumstances of the specialty of the employment, the reasonableness of the non-compete clause, and the duration. The way the Supreme Court has set up the law is, depending on the nature of the employment and factors such as the value that is brought to the practice, under those circumstances, the non-compete clause has to be both reasonable in terms of time and distance.

Vice Chairman Atkinson:
Because there are so many questions on this, we are going to turn this back to Committee and see if we can resolve the remaining issues before Wednesday.

[Assemblyman Oceguera assumed the Chair.]

Assemblyman Oceguera:
We will open the hearing on Assembly Bill 281.

Assembly Bill 281: Makes various changes concerning workers' compensation. (BDR 53-57)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
In 2005, in my first term on this Committee, we had several employers and injured workers present in regard to this bill. To summarize their testimonies, the injured workers stated they were injured on the job and covered under heart and lung provisions, but their claims were denied. But the law clearly reads, you cannot deny this heart and lung claim. One person was terminally ill and had his family here. The question becomes, when the law says that you cannot deny a claim, and a family has limited time left to spend with the father or mother, should we be battling it out because some people want to play games with the law? This claim was denied for months, and it was quite emotional. I said at the time I thought it was not a good thing that we put things in statute which eventually do not go the way we plan, and that I hoped that particular employer would look at their practice and fix this problem.

In 2007, two years later, we had almost the exact same story. More claims were denied for what would appear to be no reason. Some people remarked that I appeared to go almost apoplectic. I told them at that time, if they do not fix their problem, I will fix it for them. So I am here today to fix this problem, since it is not fixed yet.

We still have insurers continuing to deny some heart and lung cases that should not be denied. Many of these cases are life-threatening and treatment is being delayed. I do not think it is appropriate behavior that when we have a statute set in law to protect individuals who have certain conditions, insurers continue to deny their claims.

As a result of some interim work with representatives in the industry, people who operate within the provisions of heart and lung, and individuals who have advanced knowledge in insurance and claim practices, we created A.B. 281. This bill requires that if a claim is denied under the heart and lung provision—which it should not be in the first place, but if it is—it goes directly to an appeals process. That appeals process is expedited and resolved in a very timely fashion. When people need treatment and are supposed to be covered and claims are denied, we want to get them treatment as soon as possible.

Assemblyman Oceguera:
Are there any questions from the Committee? There are none.

Rusty McAllister, representing Professional Firefighters of Nevada, Las Vegas, Nevada:
Assemblyman Conklin came to me and Mr. Ostrovsky and asked us if there was anything we could think of to resolve the issue of denial of claims for no reason at all. Once a claim is denied and you start the appeals process with the hearing officer, the appeals officer, and the district court, the claim is delayed for a very unreasonable amount of time. As an example, one of our firefighters from northern Nevada was diagnosed with prostrate cancer, filed a workers' compensation claim on March 20, 2008, and had a radical surgery on April 16, 2008. After his claim was denied, he was supposed to have his appeals hearing this morning, April 6, 2009. After waiting for almost a year, the employer pulled the claim from the appeal process two days before the hearing. As I mentioned earlier, we had a female employee with breast cancer. The claim was denied, but we won it with the hearing officer, the appeals officer, and the district court. And now three years later we are waiting to be heard in the Supreme Court. Another southern Nevada firefighter had a heart and lung claim denied in August of 2007 and just recently met with the appeals officer in June 2008.

Working with Mr. Ostrovsky, we discussed adding language about an expedited appeals process. Since the employer is going to deny it anyway and it is going to go to a hearing officer, let us skip that part on the presumptive cases and go right to the appeals office and have an expedited process by which those claims get heard. Typically these are claims that cannot wait for long-term decision-making processes on whether or not they are going to be accepted.

In previous testimony today, some of the insurance companies said that nobody goes without treatment. The bottom line is the counties for the two largest fire departments in southern Nevada do not provide health insurance. Insurance is provided under self-insured trusts that are run by the firefighters. Our members sign a type of subrogation agreement to get them treatment once the claim is denied. Even when the claim is accepted, we have had to hire attorneys to go back to the employer because they try to change the date so they will not have to cover the total time of treatment. We have spent a lot of money for attorney fees to get that money back for the trust funds. That is why the testimony from the insurance companies is a bit misleading on how these cases get resolved.

The firefighter I mentioned earlier was in a quandary because the insurer said it was a workers' compensation claim, but workers' compensation denied it. Finally he worked with the insurer to get them to take the subrogation and to get treatment, at least pending the outcome of the workers' compensation denial case. The idea was to skip the hearings officer, go right to the appeals officer, and then put it on an expedited process to schedule a hearing within 30 days. Once they heard the case, they would have 15 days in which to render an opinion. If we needed to move to the district court we would at least be in an expedited phase to pursue that. I spoke with the hearing division, and they indicated that 30 days would be too short a period of time but said they are not opposed to the bill and would comply with whatever the Legislature decided. They said the reason it might be too quick is because of the exchange of information required by the two groups of attorneys.

I have a copy of an amendment (Exhibit U) from the Nevada Self-Insurers Association which proposes 90 days, but that seems too long. We would be willing to look at somewhere in between those time frames that would satisfy both parties.

Assemblyman Oceguera:
Are there any questions for Mr. McAllister? At the risk of advocating for a bill, I will point out that I believe it was Mr. Waterman who you were quoting. I found it interesting as well, because in the first part of his testimony he said that they do deny the claims, but the claimant is not left uninsured. I thought that interesting because I feel that is exactly what the problem is.

Robert Ostrovsky, representing the City of Las Vegas, Nevada:
I worked with the parties here to assist with the language that would solve the problem that Assemblyman Conklin described to you. I am looking at the employers' side of the situation and have agreed with Mr. McAllister that we need to find an expedited method to get the situation resolved, because waiting

for a hearing for a year is too long. We decided on 30 days for the waiting period. You might hear testimony that 30 days will be too quick.

The City of Las Vegas needs time to exchange information, because the appeals hearing is the record if you have to go to District Court. The court can only review the record and cannot take new testimony. The records that are created for the appeals hearing are very important for both sides that proceed in these matters. With some exchange of information and added time, stays are permitted anyway under the law. My understanding, from talking with the hearing division, is the attorneys representing either side frequently ask the judge for more time, which is granted. With some flexibility, the intent of this bill is to move the process along to make sure that legitimate disputes are resolved, where people are taking actions to impede the claim for no good reason. If we can come up with language that sees that justice is done quickly in these matters, it will go a long way toward resolving issues that firefighters have had with pursuing these presumptive benefits.

Assemblyman Oceguera:
Are there any questions for Mr. Ostrovsky? There are none. Are there any others wishing to testify in favor of the bill?

Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry, Carson City, Nevada:
We are in favor of the bill. I spoke with Mr. McAllister and Robert Ostrovsky who are in favor of three changes which I have distributed (Exhibit V). We are in agreement on the timeframe of 30 days for a hearing because section 8 says that if the attorneys need more time, they can agree to a continuance. When there are issues that are not apparent on the surface and more time is necessary then that can be approved. At least the matter would be set in an expedited fashion.

Assemblyman Oceguera:
We appreciate your and Mr. Ostrovsky's willingness to work on this issue. We have worked on this issue ever since I have been in the Legislature, and every year we say, "We really mean it. We really, really, really, really mean it." Every year we add one more "really," but at least this will give us an expedited procedure. If a claim is going to be denied anyway from the get-go, at least we will do this in an expedited manner and will come to some resolution quicker. I want to recognize that Mr. Ostrovsky has been working on this issue with us, and I appreciate it.

Nancyann Leeder:
The first change I proposed is in section 2, page 3, line 16, where the claimant would have to mail the request to the insurer. I changed it to "provided in writing," so that the claimant could actually fax or email it, as long as it is in writing. This would also assist in expediting the process.

The second change is on page 3, lines 23 to 24, because everybody else has 70 days to appeal, but when there is an unanswered request, you do not have 70 days to appeal. So I changed the wording slightly to give the 70 days to appeal, in case there is a problem.

The third change is at page 7, line 3, adding "or subsequent medical evidence, or argument." Many times when the appeals officer has sent out a request for the medical examination, the report comes back and is insufficient as it is, without more fleshing of the issues.

Assemblyman Oceguera:
Are there any questions for Ms. Leeder? There are none. Is there anyone wishing to testify against the bill?

George Ross, representing Nevada Self-Insurers Association, Las Vegas, Nevada:
Being against the bill misrepresents our position, because we have no problem with going directly to the appeal hearing. We understand the desire of the Chairman and the Majority Leader to resolve this situation. However, we would like to suggest an amendment to make it more practical. The amendment (Exhibit U) we brought forth shows, under section 2, line 8, that we are crossing out "Except as otherwise provided in subsection 12." A lawyer suggested doing that to make it clear that, when both sides could agree a continuation of stay might be necessary, there is nothing in section 12 that would prevent that.

The Self-Insurers Association asked whether we could get 90 days in section 12. I understand that Mr. McAllister and the sponsor feel that is too long, given they want to get this done and out of the way, but clearly our side felt that 30 days was not adequate time to exchange and go over information. We do not have a problem with skipping the hearing process. Since the first hearing is for exchanging information, we added into the bill "The scheduled date shall allow for sufficient time for full disclosure, exchange, and examination of medical and other pertinent information. No information may be introduced at the appeal hearing that was not previously disclosed and exchanged, unless all parties to the matter agree that a particular piece of evidence may be introduced." I know from your perspective you may find this hard to believe,

but from the cities' and counties' perspective, they would like me to point out that they believe they have significant difficulty in getting information from the claimants concerning medical evidence.

Assemblyman Oceguera:
Because the claimant is in the hospital, or he has cancer, or he has just had surgery.

George Ross:
I understand. But there may be other cases, however, that are not always that way. I certainly would never disagree with you on that particular case. I am trying to explain why my clients have asked me to amend the bill in this way. They do not object to going directly to the appeals hearing, and they do not object to doing this relatively quickly, but they would like to get the full disclosure information prior to the appeal and not be surprised on the day of the appeal.

Assemblyman Conklin:
It is unfortunate that this problem is caused by a very few insurers, but the problem I have concerns the claimants who are dying as a result of somebody not complying with the law and denying claims for the sake of trying to save money. At the end of the day, that comes down to self-insurers and third-party administrators and that is problematic. What makes it even more problematic is that it is one in particular who is making it difficult for the rest. I am really sorry the City of Las Vegas is still on the monitor because they should not have to be here. When they have a claim, they take care of it within the confines of the law. There are very few cases that get denied, but they are denied for the right reasons. And there are others we will not mention, but anyone can check legislative history to find out who the few are who do not comply with the law. Then there are others who process their claims in a timely and correct manner. For me, it is both emotional and frustrating to have this bill.

George Ross:
I do not think the amendment that we have raised would in any way impede what you are trying to accomplish in a fair way for both sides.

Assemblyman Conklin:
It is not about making it fair. The problem I have is we should not be here in the first place.

Assemblyman Oceguera:
Are there any questions from the Committee?

Bryan Wachter, representing Retail Association of Nevada, Carson City, Nevada:
With the current state of declining business, the new minimum wage increases, the rise in the cost of health care, the decrease in consumer spending, and the potential increase in workers' compensation benefits, there is a perfect storm that will further create a climate where more businesses will close. The Retail Association of Nevada believes the current workers' compensation system in general works but acknowledges that there are some bad examples that do exist. We also believe any changes to workers' compensation need to be made with one action rather than bill-by-bill because of the multiple workers' compensation bills heard today that are still on your docket. We think that a broader approach to the general workers' compensation issue should be taken rather than going section-by-section. We also think there should be consideration of the effect on the whole system, rather than pieces. We recognize the emotions and hardships, but we want to be careful and make sure the intent is for this specific group of employees, because we feel that legislative intent is sometimes aimed at one group but then expanded to all people.

We feel this will create two classes of injured employees. Another concern of ours is this may increase the load for the appeals officers because some of those are not determined at the hearing level.

Assemblyman Oceguera:
Are there any questions from the Committee? Are there others in opposition of the bill? Is there anyone wishing to speak in the neutral? Is there anyone else wishing to speak on the bill? We will close the hearing on A.B. 281.

[Letter from Victoria J. Robinson was introduced, but she did not testify on this bill (Exhibit W).]

[Chairman Conklin reassumed the Chair of the meeting.]

Chairman Conklin:
I am going to pull Assembly Bill 410 from the agenda since the person in support of this bill is not here.

We will turn our attention to Assembly Bill 511. In 1993 or 1995, we transitioned into a monopoly environment where we had one state-regulated insurer for workers' compensation. Because of this, some employees' rights were pulled out of statute. Since early 2002 when we transitioned back to a private market for workers' compensation, some of the protections that were in place for employees were never put back from the last time it was a private market. This is one of the protections that has been severely missed, and this

is an opportunity to hear reasons why it should be back in the law in a market that is privatized without government regulation.

Assembly Bill 511: Revises industrial insurance provisions relating to insurers and third-party administrators. (BDR 53-115)

Dean Hardy, representing Nevada Justice Association, Las Vegas, Nevada:
I participated in the hearings for this provision in 1995 when what was generically denoted as the elimination of bad faith for the inappropriate administration of a workers' compensation claim came into existence. What needs to be understood is nowhere in the American jurisprudence is there an inability for a first-party insured to sue their insurer for the inappropriate administration of a claim—nowhere, except in Nevada workers' compensation law. That may be hard for some of you to believe, but this is absolutely true. In 1995 there was an attempt to eliminate a claim that had been made against a third-party administrator so the third-party administrator could sell their business. The sale of the business could not go forward with the pending bad faith claim against the third-party administrator. The language of the bill made it inappropriate to bring a claim, file a lawsuit, or maintain a lawsuit. That is the language of the statute as it exists now. You cannot file or maintain a claim against an insurer, a third-party administrator, or an employer for the inappropriate administration of a workers' compensation claim. To be fair, when that law was brought into existence, there was an alternative that individuals could file against a third-party administrator or an insurer for the inappropriate administration of a claim. That is the benefit penalty claims and the administrative fine claims, which were the substitution for the inappropriate administration of a workers' compensation claim.

When I testified in 1995 I had an office in Las Vegas doing exclusively workers' compensation claims, and I told the Committee that from 1985 to 1995, when you passed that statute, I had filed exactly zero bad-faith claims. The reason I filed zero bad-faith claims—I did not have to file any bad-faith claims—was because I could send a letter to a third-party administrator or draft a complaint for the civil lawsuit of bad faith. The letter usually sufficed by saying, "Your conduct is dangerously close to bad faith, and unless you amend your conduct and administer this claim in an appropriate fashion and in accordance with Nevada law, I am going to file a lawsuit which is over and above the workers' compensation benefits." Usually that got the attention of the third-party administrator or the insurer and usually resulted in their changing their behavior to conform to the Nevada law and administering the claim in what we perceived to be an appropriate fashion. I told the Committee then that after 1995, if they passed that statute, I guaranteed that I could file dozens of claims per year for the inappropriate administration of workers' compensation claims,

and that has come to fruition. It is not because I can see into the future, but I can certainly understand why there is inappropriate administration of a workers' compensation claim.

When you, Mr. Chairman, have asked time and time again for language strong enough to preclude denial and still observe denial of workers' compensation claims, you can see what we witness, not only in that particular case and other heart and lung claims, but also in the day-to-day practice of workers' compensation. The reason that we now see more and more inappropriate administration of workers' compensation claims is because the only penalty that the third-party administrator might see is a $500 benefit penalty, which does not change the behavior.

If we are able to get the language of A.B. 511 passed, it would give rise to a common law tort action for inappropriate claims management. As I said earlier, in every other aspect of American jurisprudence there is a provision for an insured to file a claim against an insurer. It should be there for a workers' compensation claimant to proceed against an insurer or a third-party administrator. We are not talking about a minor problem with a claim. We are talking about issues that rise to the level of willful disregard of an individual claimant's rights. That is the standard that usually is necessary, and that is the standard you would look for in a statutory change like this. It is something that is necessary and will make the claims practices improve.

As I stated, from 1985 to 1995, they administered the claims appropriately and professionally. Now what we see are claims that are being administered by amateurs, haphazardly and inappropriately. When you administer a claim inappropriately, especially when you are dealing with someone’s health, welfare, and life, there should be penalties for that type of action. People do what is "inspected," not what is expected, and when I can inspect what they do and when a court can inspect what they do, they will do what is right. When there is no inspection, they will do what they can get away with.

Chairman Conklin:
Are there any questions from the Committee for Mr. Hardy? There are none.

Barbara Gruenewald, representing Nevada Justice Association, Las Vegas, Nevada:
I practice in the area of workers' compensation, and I am also a member of the Nevada Justice Association. [Visual aids, not distributed.] We need this bad-faith cause of action back for the following reasons. Many insurers do not provide the workers' compensation benefits that they are supposed to provide by law. There is a procedure under *Nevada Revised Statutes* (NRS) 616C.315

that allows a claimant, if an insurer does not provide a benefit, to send a demand letter to the insurer, asking the insurer to provide a benefit the claimant is entitled to by law. I want to show the Committee that in 2007 I sent this many demand letters, and in 2008 I sent this many demand letters. [Pointed to two boxes on the witness table.]

Let me give you an example of why I would send a demand letter. If my client was injured, he would usually go to the doctor, and the doctor would recommend physical therapy. When the doctor gives the injured worker a prescription, he now goes to the physical therapist, and the physical therapist faxes a request for authorization to the insurance company, but the insurance company does not do anything. After two weeks go by, the worker comes to my office and asks why he is not getting physical therapy. I obtain a doctor's letter and send a demand letter to the insurance company. Once you send a demand letter the insurance company has 30 days to respond. If they do not respond I can send an appeal to the hearing officer. So now it has been a whole month after the doctor said you should have physical therapy, and nothing has happened. We have sent a demand letter and have to wait another 30 days; we send an appeal and go to hearing, which is another 30 days. We are now 90 days down the road before a hearing officer says, "Give him physical therapy."

I believe if the Legislature passes this bill, insurance companies may provide benefits in a much more timely manner. Thus the claimant would not have to go to as many hearings and generate a great deal of paperwork.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Danny L. Thompson, representing the Nevada State AFL-CIO, Henderson, Nevada:
I have watched this over the years morph to where we are today. I am not aware of a single successful bad faith lawsuit since 1981. But in 1995 when all the negative changes were made to workers' compensation, the provision that allowed the ability to have a bad faith lawsuit was replaced with a "fine" structure. If you read NRS 616D.030, no cause of action may be brought or maintained against any insurer or third-party administrator who violates any provision of any of those Chapters. So I can break the law all I want, and there is nothing you can do to me other than impose a benefit penalty. In the beginning the penalty started out to be up to a maximum of $2,000, or it could be 50 cents. Fortunately, that has been adjusted over the years. Two sessions ago we found a third-party administrator who was selling their wares by going to employers and saying, "Look, here is how I will save you 75 percent on your

cost. If you deny every claim, 50 percent of the people will just walk away, and of the 50 percent remaining, you will win half of those, so you are only paying 25 percent." That was the order of business, and in response to that, we increased the fines to higher monetary amounts. Today we see that those fines do not even work. A case that was heard in the Senate involved a third-party administrator who was fined, went out of business, did not pay the fine, but got a new license and is in business today, without ever paying the fine. This is not an isolated incident.

If this were State Farm Insurance, and this were a constituent's automobile insurance, and State Farm was doing what insurers are doing to workers, there would be outrage, and people would be here with pitchforks. This has gotten to the point that something must be done. Earlier this month, Senator Carlton wanted to hear from people in the Senate Commerce and Labor Committee. We went there to testify, and on that particular day, we had with us one of our business agents who had flown to Carson City, not for that meeting, but to watch and learn. When Senator Carlton asked for other testimony, our agent testified that he was a victim of a bad faith claim. He lost his house, his car, his family, and was homeless for two years. He got hurt on the job, and a third-party administrator chose not to accept the claim. He fought the claim at any cost, and if not for his parents, he would have been on the street. We did not know he was going to testify. You can multiply this times an untold number of your constituents and know this is exactly what is happening.

The only way to fix this is for people to have the right to recover. I see this as the right to recover, because right now exclusive remedy is one thing, but when there is no remedy, people are just left out. I see this bill as leveling the playing field, and I would say if you want to do more to fix workers' compensation than anything that you have heard already, change this. Let there be one bad faith lawsuit, and there will not be another one, because there had never been one prior to the passage of this statute. I urge your adoption of this bill.

Chairman Conklin:
Are there any questions from the Committee? There are none.

John Jeffrey, representing Laborers International Union of North America, Local #872, Las Vegas, Nevada, and International Union of Operating Engineers, Local #15, Henderson, Nevada:
I think the biggest thing that can be done to remedy the workers' compensation situation in the State of Nevada is this bill. When a third-party administrator or an insurer knows the most that is going to happen to them if they get caught is to pay the claim, that is not much incentive. When the Division of Industrial Relations (DIR) first started administrating these benefit penalties, a lawsuit

would be given away for the benefit penalty, which at that time was $250. Two hundred and fifty dollars is a pretty cheap penalty. Let us face it; it is all about money and greed. If they can deny a claim and make more money, they will do it. I do not understand how some of these people sleep at night. It is wrong: knowing they are denying a legitimate claim and putting a person through hearings, appeals, and delays that can sometimes take a year or longer, and the claimant cannot work, which causes them to require other social services. These are people who want to work.

The business agent that Danny Thompson was talking about was a construction worker who did everything he could to get back to work. He finally made it after two years. I do not even understand how they are saving money. I guess they save money by the people who walk away, because the people who stay in the system end up costing them more. If this guy had received the medical attention and rehabilitation he needed, he would have been back to work in three months. He would not have lost his house, car, and family. The most important thing you can do in this Session is to straighten this system out.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there any additional support for A.B. 511?

Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry, Carson City, Nevada:
I am here on behalf of many of our workers who have become homeless, have conditions that worsened, have committed suicide, and have lost their families. This bill is about making people whole, because in the workers' compensation system you do not get any reimbursement for any of those injuries.

A former client of mine who is here, but is not a speaker, has asked me to share his circumstances. As a construction worker, he was injured in January 2002. His claim was denied and then went to a hearing where his claim was accepted. It was accepted for a right wrist neuropathy. Although he is left-handed, as a mason he needs to use both hands. The doctor diagnosed him with carpal tunnel, for which he had surgery six months later. The first time he returned to the doctor post-op, he explained that he was still having the symptoms. A month later, the doctor released him from carpal tunnel but referred him to another doctor to investigate the cause of the problem. He could not get permission to go to the other doctor to find out what was wrong unless he first went to a hearing. This resulted in roughly 10 to 12 cases, some of which were because he complained to DIR.

Because DIR is an administrative remedy, they look at the issue that is before them at the time and not at the general issue of treatment. For instance, at one point the third-party administrator timely denied him the right to go to a doctor to find out what was going on. He wrote a complaint to DIR saying that he had been timely denied a change of physician. The DIR responded to his complaint that he was denied timely, and therefore they could not do anything about that. The appeals officer, however, noted that he had an open case, and, therefore, not only should he be treated, but he should be getting a determination of what his physical restrictions are so he can get vocational rehabilitation. All of this time he had not been getting benefits and could not work without the use of his hand.

He ultimately did go to the doctor, and it was found that the issue was the median nerve, which is carpal tunnel but also the ulnar nerve, and that was why he continued having problems. The doctor took care of it with surgery, and the case was finally completed in 2009. That was seven years later and after 10 to 12 cases, because every single step of the way his case had to be litigated because of the denials.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else wanting to get on record for A.B. 511? Is there anyone in opposition?

Robert Ostrovsky, representing Employers Insurance Group, Las Vegas, Nevada:
Comments were made that this is the only insurance where you can find that a cause of action cannot be brought for bad faith. That is because workers' compensation is a very unusual kind of insurance and is a no-fault system. No matter who caused the injury, and even if it was the fault of the employee, that employee is still entitled to benefits. In our view it is a different situation from other kinds of insurance where fault has to be determined. That being said, it is difficult to get in front of you and have to defend bad actors.

The statute contemplates bad actors, and there are penalties for that in NRS 616D.120. Testimony was that they start at $250. Now the minimum is $5,000 and the maximum is $37,500. There are also substantial benefits penalties in addition to fines which are in the statute.

In addition the statute contemplates further action against insurers and third-party administrators who participate in these bad acts on a continuous basis. They can be referred to the Division of Insurance to have their license or certificate of self-insurance removed. There is a statute that says a third-party administrator can be referred to the Insurance Commissioner to look at the removal of their certificate. The things that the Insurance Commissioner would

look at are: not competent to act as an administrator; not trustworthy or financially responsible; does not have a good personal or business reputation; has had a license certificate previously suspended, denied, or revoked in this state;: failed to comply with any provisions of the chapter; or is financially unsound.

In addition, insurers have to go through market conduct reviews with the Division of Insurance to see that their claims-handling practices are satisfactory. All that being said, we know there are bad actors who make things bad for all of us who try to do a good job. We believe the benefit penalties section, in a no-fault situation, is the appropriate way to handle that.

There are very few bad faith claims, and they are very hard to pursue and win. If someone wins such a case, substantial damages can be awarded to those who might be considered the victim in those cases. What happens is, for all the other workers' compensation claims that have small problems not rising to a level of bad faith, employees have nowhere to get their case resolved other than an administrative penalty, which are relatively small fines. In some ways the majority of people who have problems probably will not get them resolved because they will not find an attorney who will take a bad-faith case unless they have a very good set of facts. I agree that if there is a good set of facts you can get a judge to rule in your favor, and there will be substantial damages.

For the record, in 2008, the total amount of benefit penalties assessed against insurers and third-party administrators was $426,260, based on a report from the Division to the Legislative Counsel Bureau on March 25, 2009. The amount of administrative fines in that same period of time was $249,850. There is in fact action being taken by the DIR. If those actions are not adequate, we need to look at the laws in terms of how to make them adequate. Are the fines too low? Is the authority given to the DIR to take action too restrictive? Are there things that we can do to improve this? To step from where we are to bad faith is a step that goes in the wrong direction for the majority of individuals.

I personally would like to see a situation where we pulled the certificates of some insurance companies and third-party administrators. I think that would get the message across, rather than what I think to be a huge step of moving to bad faith. I would encourage you to look in that direction as opposed to the direction of bad faith claims, understanding that it is a no-fault system. I know there are always horror stories, but if you look at the hundreds of thousands of claims that are handled and the 7 to 8 percent of claims that are denied, we do a pretty good job. Where people are doing the wrong job, take action within the statute or strengthen it, but I would urge you not to adopt a bad-faith standard.

Chairman Conklin:
I am assuming you were around before we repealed this in the first place.

Robert Ostrovsky:
That is correct, Mr. Chairman. I was part of the group that developed and created the section of the law, NRS 616D.120.

Chairman Conklin:
How many cases are you aware of where a bad-faith workers' compensation claim went through to fruition?

Robert Ostrovsky:
I do not have that in front of me, but I can tell you it is a very small number.

Chairman Conklin:
Is it somewhere between zero and a small number?

Robert Ostrovsky:
That is correct. It is a handful of cases.

Chairman Conklin:
So Mr. Hardy was correct when he said that it is not necessarily that you will have 10,000 bad-faith claims, it is the threat of having it out there that forces people to comply. The reason I bring that up concerns the case Mr. Thompson mentioned that was heard in the Senate, where a young man in his early twenties was run over by a truck on the job. There is fault everywhere. The claim gets denied, the DIR says they cannot deny the claim, so they bring back the claim and pay him for 30 days, and then they deny it again. The truck crushed his leg, and he was almost killed. He was in the hospital for months, and to this day, almost three years later, he cannot be released to drive because it was his right leg that was injured. They requested that he go to physical therapy, to which he responded, "Great, I need a ride; can you pick me up?" They did not show up, and then they denied his claim for not showing up for his physical therapy. This went on for months and months and months—denial, denial, denial, and then he appealed. There was no fine on the third-party administrator at all. He called me and said, "I do not know what to do anymore."

I called DIR and they said that this was the first they had heard of it, in spite of the fact that he had posted formal complaints. They got on the phone with him and told him that they were going to investigate. After a few months went by there was still no action. When I called again and asked what the issue was, they said they could not find anything. Now I was getting two different stories,

so I called another person at DIR who said they did not have any investigations open. I said, "How can you not have any investigations open, since I know the person has called and I have called?" They responded by saying, "I am sorry but we do not have any investigations on this person." So that opened up some complaints. A couple of months went by, and, lo and behold, a couple of fines were imposed. The problem was, now that the fines were imposed, the company went out of business, went to the Secretary of State's Office, formed another Limited Liability Company (LLC), and then went to the Division of Insurance and got a new license. Ten days later they were operating as if nothing ever happened. They did not pay any penalties.

I point this out because from an ordinary person's view, when the system fails me, I have no recourse. There is nothing left for me. That is what this bill is about. At the end of the day, we know small claims are not going to be able to do anything for him. When you have been wronged in a catastrophic event, the DIR and all the others are not standing up for what is right, and you have no access to justice or the court, that is problematic. If it is not this, I want to see the bill that forces these people to comply with the laws that we have set out. When somebody violates your rights, they should be fined. If they would be fined and forced to pay and not be allowed to go around the system, they would stop doing it. But today we have not been able to do that.

Are there any questions from the Committee?

George Ross, representing Nevada Self-Insurers Association, Nevada Restaurant Association, and the Las Vegas Chamber of Commerce, Las Vegas, Nevada:

The organizations I represent include thousands of Nevada's small and medium employers, large self-insureds, and private companies, as well as a number of counties, cities, and school districts in the public sector. The challenge I have in representing this group is the problem of having individual tragedies which can never be defended because of the way many of them have been handled.

At the same time you have statistics which show that thousands of cases, the majority of situations, are handled very well. Claims are increasingly being accepted and handled well over time. The DIR has statistics showing that in 1998, 84 percent of claims were accepted. For the most recent year, 92 percent were accepted. The City of Las Vegas accepts annually between 93 and 95 percent of their claims. I wish we had this hearing earlier, because Victoria Robinson from the City of Las Vegas would have been a very eloquent and cogent witness to this issue. ProGroup, who has representatives in the audience, manages five large self-insured groups that represent

2,300 employers, and over 60,000 employees. Over the last nine years they have handled almost 23,000 claims and have accepted 91 percent.

There is no way the statistics can change the impact of the cases that came out horribly for some individuals. I do not just mean the ones that the Chairman has mentioned, but ones that we have heard of previously and in the Senate a few weeks ago. The solution is to have DIR more aggressively pursue the enforcement of the laws and regulations. But let us not throw the baby out with the bath water. There are two goals, for example, neither one of which are exactly related to this, but they go in that direction. The Speaker has a bill in this House, and the Senate Majority Leader has one in the other House. They both put standards and performance requirements on the departments of this government and hold those departments to those standards. That is the kind of approach that we suggest would work. We absolutely cannot defend those who do their jobs poorly and do not have any humanity in the handling of certain claims.

Let us go at this from a different perspective. I ask that this Committee look at this from a big-picture perspective. When one testifies on these matters when it is a Committee bill as this is, it is almost intimidating, because this is a star-chamber Committee. It is basically Leadership and Committee Chairs, and there is a lot of prestige and impetus and power behind a bill when it is a Committee bill. I also know that the Leadership of this House has been very careful how they discuss the crisis we are in financially as a state. They are very careful and have made clear that they realize the people and businesses of this state cannot afford too heavy of a burden. Most of us know we will end up paying more because we are in an unbelievable financial crisis.

We believe you need to take into consideration that situation when you look at this bill and the previously introduced Assembly Bill 178 and Senate Bill 366. Collectively those three bills are a very sharp-pointed sword right at the heart of the workers' compensation system in this state. For some of you, that may be exactly what you want to do, due to individual tragedies that have occurred. If you look at the overall health of the economy of this state and the health of those thousands of businesses who are going to be impacted by these bills, you might take a different approach. If this bill were to pass, the insurers, third-party administrators, the self-insured employers, and the employers who buy the insurance can be sued. They will all pay much higher expenses for workers' compensation insurance, and they will all pay far higher legal fees. For those poor companies who are the giant, out-of-state corporations, pity them when they are in court, trying to defend themselves against the allegations against a single, poor, individual Nevadan. It is a picture out of

another “John Grisham” novel. They deserve the same legal rights and the same privileges as every other corporation.

Finally, I think it is important to look at the impact on the public sector. Every single entity that we are talking about is hurting. I have heard the Speaker say over and over that we must fund education adequately. You may say that I am too extreme, but I am not too wrong in saying you can spend money on teachers, text books, Clark County School District, Washoe County School District, or you can spend that money on lawyers. That is what this means. Trial lawyers do a great service to our state in many ways, but in this type of situation what they look for is the deep pocket. If it is a school employee, it is that same money that could go to make sure one of the previous speaker's daughters has a text book. Or it can go to the teacher so she is getting enough pay so that she does not run to New York, instead of staying in Nevada for a year or two in hopes that the situation will turn around, because she happens to like teaching here. These are the kinds of choices that I think you need to make.

I am not going to sit here and deny what has been said about the problems we have, but I think there are other ways to approach this problem without destroying the system we have, which works in the majority of cases. I think that any economic development official, and certainly my Chamber client, would tell you that one of the biggest advantages our state has over every other state surrounding us is when it comes to trying to recruit and retain businesses.

Chairman Conklin:
Do you have any bona fide evidence suggesting that the cost of insurance would go up?

George Ross:
I do not have any studies. I have the sense that once the insurance company knows that they are going to be facing extensive litigation, they will have to cover that. And in order to do that, they will have to raise their rates to those who buy it.

Chairman Conklin:
The previous testimony from both a bill opponent and a bill proponent agreed that when we had these provisions in statute there was zero to one claim over a decade or longer prior. Did rates go down after 1995 or have rates continued to increase? If rates have continued to increase, certainly that could not be because people were no longer allowed access to the justice system. Could it be that rates increased because people did not have access to the justice system, and it was not quite as important for a business to focus on workers'

compensation or safety on the job? There are all kinds of incentives that are being played out. One potential incentive is that if you know you are going to be liable, as opposed to right now where you know you have a better than average chance of not being liable, you are going to pay closer attention. There will be fewer injuries just because the cost of that injury may potentially be larger. If somebody is injured, you are not going to violate their rights, you are going to follow the letter of the law and get them back to work as soon as possible.

I understand where you are going, and I do not necessarily disagree that the logic is flawed, but there are many alternative, plausible, and logical reasons why prices go up and down other than whether or not somebody has the right to recover that which is due them in a no-fault claim.

George Ross:
It is inconceivable that rates will not go up if there is going to be extended litigation. The fact that no litigation might have been successful does not mean that companies do not have to spend a great deal more money to defend these cases. I used to work for a company where we never lost an antitrust case, but we spent tens of millions of dollars winning those cases. The issue is the cost of defending oneself. There are going to be legitimate cases, as we have heard plenty of stories today, but there will also be many cases that have no merit whatsoever, other than a chance to win. If you are a good lawyer and you have a good story, you can, in many cases, win.

Assemblyman Horne:
Everyone identifies that there are bad actors. An argument was made this morning that by trying to capture the bad actors the rates are going to increase. I do not get the logic. If the majority of insurers are practicing under the law, they are not going to have anything to worry about with these claims defending themselves against this. If the third party administrators and insurers have a statute dealing with a bad-faith claim, they may act appropriately in the future. The vast majority of third-party administrators are not going to have to worry about anything. Is that not true? This bill is only going to apply to those bad actors.

George Ross:
One would hope that this would certainly be the case in the existing system if you strengthen it. One would also hope that insurance companies take into account a company's experience in claims, how well they control their situation, and how well they deal with their employees and train them to avoid workers' compensation injuries. They can also look at the litigation climate and the potential for bringing lawsuits in general, justified or unjustified, and adjust that

into their prices. That was certainly true in medical malpractice. If you look at the prices they were paying for a number of companies who would insure, which went down to virtually zero, and what they were charged when they could be insured, the price went up very high prior to the passage of the law and the initiative.

Assemblyman Horne:
You indicated that you recognize the problems that exist.

George Ross:
I am not going to deny that there are certain problems.

Assemblyman Horne:
You said certain problems can be fixed in other ways besides this bill. That said, I have not heard exactly what that recommendation is. These problems existed before this Session began, and the recommendations did not come, and so I would hope that at least now that there is a recommendation, you would say something other than there is another way to do it.

George Ross:
Assemblyman Horne, would you like me to respond to the medical malpractice question or the workers' compensation question?

Assemblyman Horne:
I would like you to respond to the workers' compensation question addressing what the recommendation would be.

George Ross:
First, I would defer to the decade of experience Mr. Ostrovsky has, in comparison to mine in that area, and I would wholeheartedly endorse what he had to say. Second, part of that, in general, is to strengthen the authority of DIR, both in terms of its investigation and its authority to fine. Third, I endorse the approach that was in Assembly Bill 446 sponsored by Assemblywoman Buckley as well as in Senate Bill 346 sponsored by Senate Majority Leader Horsford, which implements performance standards and demands the DIR does their job and holds them to it. I think that is what is needed here.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Goedhart:
We had a reduction in rates once we privatized the system, and, as an employer, I have 13 years of experience with the system. Even with today's rates, legal climate, and moderating, it is incumbent on every business to maximize worker training and job safety. None of us likes to see any employee get hurt. In my experience with Employers Insurance Company of Nevada, which has been my carrier for the last 13 years, they were always more than happy to pay the claim. If they paid the claim, my moderating went up, and I paid it.

Sometimes I actually would talk to them and ask them whether they were sure this was a legitimate claim. One of the most egregious examples I had was where an employee said he hurt his back and went out on a permanent partial disability and got $60,000. He bought himself a new car, put a down payment on a modular home, and after three months went down the street and was literally bagging 110-pound sacks of silica sand.

I think we have a pretty good system in Nevada. We have heard that businesses are hurting, the economy is hurting, and we have to expand and continue unemployment benefits, but a lot of the bills are job-killers. It reminds me of the old adage "The beatings shall continue until morale improves." This is a tough subject, and I agree with some of your sensibilities about this issue. I think the best way to correct this is to go through the DIR, administratively.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Bryan Wachter, representing Retail Association of Nevada, Carson City, Nevada:
We believe that the system generally works. Instead of changing the system and creating new rules, we feel that strengthening the enforcement abilities of the DIR to go after those bad actors may be a more prudent system. Without having those facts and figures in front of me, Mr. Chairman, my members are very concerned that if the law changes and allows these types of lawsuits, there may be an increase in rates, which affects employee hiring. Employers are very scared to take on new employees based on different costs associated with that employee.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Tray Abney, representing the Reno-Sparks Chamber of Commerce, Reno, Nevada:
We of course are always concerned about any bill that has the potential to drive up insurance costs. This bill, in addition to the various other health insurance mandate bills and others we have heard, frankly concerns us. Anything that increases the cost of doing business could result in fewer employees hired, fewer employees covered by health insurance, or even more unemployed people. We urge the Committee to consider the total effect of all the bills before you.

Chairman Conklin:
Are there any questions from the Committee for Mr. Abney? There are none.

Vance Christiaens, representing Nevada Motor Transport Association, Reno, Nevada:
I want to echo the people in opposition who testified before me and answer one of your questions. The transportation self-insured group that we represent has had two rate decreases over the past ten years.

Chairman Conklin:
What was that a result of?

Vance Christiaens:
I do not have a good answer for you on that but can get back to you with a proper answer.

Chairman Conklin:
In the same period did you have any increases?

Vance Christiaens:
No, we had no increases over that period.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Christopher B. Reich, General Counsel, Washoe County School District, Reno, Nevada:
[Spoke from written testimony (Exhibit X).]

Since 1995 we have had one or two changes with our third-party administrators. We are self-insured and have not had any bad-faith claims and penalties filed against us. In the last two years we have paid out $3 million in workers' compensation benefits.

Chairman Conklin:
Did you say that you have not had any bad-faith claims filed in the last few years?

Christopher Reich:
Since 1995 with the change in legislation we have not had any.

Chairman Conklin:
That is because they cannot.

Christopher Reich:
But there are no claims through the statutory framework for penalties.

Chairman Conklin:
The whole debate today is that in 1995 we took away their right to make those, so in essence it would appear that nobody has filed because they cannot. And what you are saying is prior to 1995 they did file. Is that because you were not in compliance with the law?

Christopher Reich:
What I am saying is that we have not paid any benefit damages under the current statute.

Chairman Conklin:
I do not think anyone has. Are there any questions from the Committee?

Nicole Rourke, representing Clark County School District, Las Vegas, Nevada:
[Spoke from written testimony (Exhibit Y).]

Chairman Conklin:
Are there any questions from the Committee? There are none.

Daniel Markels, representing National Federation of Independent Businesses, San Carlos, California:
I agree with many of the statements that were made by Mr. Ross, Mr. Ostrovsky, and others. We feel legislation should strengthen the current system. Do not throw the baby out with the bath water, do not make public policy based on a few bad actors, and do not penalize everyone else. Our members are hurting. They are laying off people. Many of them, unfortunately, are going out of business. This is not the time to enact sweeping changes that can lead to higher costs and make the employment picture even worse.

[Letter from Victoria J. Robinson (Exhibit Z).]

[Written comments from Wayne Carlson (Exhibit AA).]

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else wishing to get on record in opposition? Is there anyone wishing to get on record in the neutral position? We will close the hearing at this time on A.B. 511 and bring it back to Committee. Is there any other business that needs to come before the Committee at this time?

[Assembly Bill 410 and Assembly Bill 436 were not heard.]

[Meeting adjourned at 5:34.p.m.]

RESPECTFULLY SUBMITTED:

_____
Karen Fox
Committee Secretary

APPROVED BY:

_____
Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 6, 2009 **Time of Meeting: 1:47 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 521	C	Rusty McAllister	Articles
AB 521	D	Victoria J. Robinson	Letter
AB 521	E	Wayne Carlson	Written comments
AB 355	F	M. Kent Hafen	Letter
AB 355	G	Kirk C. Peterson	Letter
AB 355	H	Diane F. Sears	Letter
AB 355	I	Michael L. Johnson	Letter
AB 355	J	Allyn Emery	Letter
AB 355	K	Mark Foree	Letter
AB 355	L	David Noble	Proposed Amendment
AB 148	M	David Ziegler	Work Session Document
AB 176	N	David Ziegler	Work Session Document
AB 186	O	David Ziegler	Work Session Document
AB 274	P	David Ziegler	Work Session Document
AB 387	Q	David Ziegler	Work Session Document
AB 399	R	David Ziegler	Work Session Document
AB 470	S	David Ziegler	Work Session Document
AB 470	T	Robert Ostrovsky	Proposed Amendment
AB 281	U	George Ross	Proposed Amendment
AB 281	V	Nancyann Leeder	Proposed Amendment
AB 281	W	Victoria J. Robinson	Letter
AB 511	X	Christopher B. Reich	Written Testimony
AB 511	Y	Nicole Rourke	Written Testimony
AB 511	Z	Victoria J. Robinson	Letter
AB 511	AA	Wayne Carlson	Written comments