

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Fifth Session
April 6, 2009**

The Committee on Health and Human Services was called to order by Chair Debbie Smith at 1:37 p.m. on Monday, April 6, 2009, in Room 3138 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:

Assemblywoman Debbie Smith, Chairwoman
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Ty Cobb
Assemblyman Mo Denis
Assemblyman John Hambrick
Assemblyman Joseph (Joe) P. Hardy
Assemblywoman Sheila Leslie
Assemblywoman April Mastroluca
Assemblywoman Bonnie Parnell
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Melissa Woodbury, Clark County Assembly District
No. 23
Senator Terry Care, Clark County Senatorial District No. 7

Minutes ID: 803



STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Chris Kanowitz, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jan M. Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders, Las Vegas, Nevada
Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services; Commissioner, Nevada Commission on Autism Spectrum Disorders, Carson City, Nevada
Amy Johnson, Private Citizen, North Las Vegas, Nevada
Nicole Kalkowski, Private Citizen, Las Vegas, Nevada
Bryn Lapenta, Senior Director, Public Policy, Accountability and Assessment, Washoe County School District, Reno, Nevada
G. Randall Figurski, Manager, Autism Training and Technical Assistance Center, Health Division, Department of Health and Human Services
Wendy Hruska, Private Citizen, Reno, Nevada
Kelly Upp, Private Citizen, Las Vegas, Nevada
Janelle Mulvenon, M.S., Chief, Bureau of Early Intervention Services, Health Division, Department of Health and Human Services
Chris Giunchigliani, Commissioner, District E, Clark County Board of Commissioners, Las Vegas, Nevada
Jane Feldman, Secretary, Toiyabe Chapter, Sierra Club, Reno, Nevada
Monica Brett, Las Vegas, Nevada, Nevada Program Associate, Southwest Energy Efficiency Project, Boulder, Colorado
Scot Rutledge, Executive Director, Nevada Conservation League, Las Vegas, Nevada
Steven Rypka, Private Citizen, Henderson, Nevada
Launce Rake, Communications Director, Progressive Leadership Alliance of Nevada, Las Vegas, Nevada
John C. Sagebiel, Ph.D., Private Citizen, Reno, Nevada
Charles M. Benjamin, Ph.D., J.D., Director, Nevada Office, Western Resource Advocates, Carson City, Nevada
Lynn Orphan, PE, Regional Water Quality Manager, Clean Water Coalition, Henderson, Nevada
Steve Walker, Minden, Nevada, representing Truckee Meadows Water Authority, Reno, Nevada; City of Carson City, Nevada; Douglas County, Nevada
Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority, Las Vegas, Nevada

Barney Rabold, Deputy Director, Utility Services, City of Henderson, Nevada
David Bowers, Assistant City Engineer, Department of Public Works, City of Las Vegas, Nevada
Joseph L. Pollock, Public Health Engineer, Frontier and Rural Health Services Program, Health Division, Department of Health and Human Services
Stacey Gross, MPH, CHES, Community Programs Manager, Susan G. Komen for the Cure Southern Nevada, Las Vegas, Nevada
Thomas McCoy, Government Relations Director, American Cancer Society Cancer Action Network, Reno, Nevada
Warren Russell, Commissioner, Elko County Board of Commissioners, Elko, Nevada
John Ellerton, M.D., Private Citizen, Las Vegas, Nevada
Brian Brannman, Chief Operating Officer, University Medical Center, Las Vegas, Nevada
Jeri White, Director, Social Services, University Medical Center, Las Vegas, Nevada
Nancy McClane, Director, Clark County Social Services, Las Vegas, Nevada
Justine Harrison, Vice President, Legal and Government Affairs, Nevada Cancer Institute, Las Vegas, Nevada

Chairwoman Smith:

[Roll taken. Quorum present.] We have four bills and a possible work session today. At this point, I will open the hearing on Assembly Bill 359 (1st Reprint). This bill is sponsored by Assemblywoman Woodbury.

Assembly Bill 359 (1st Reprint): Revises provisions governing certain personnel who work with children with autism. (BDR 34-1024)

Assemblywoman Melissa Woodbury, Clark County Assembly District No. 23:

I am pleased to appear before you today in support of A.B. 359 (R1). Many of you who sit on the Education Committee have already been introduced to this bill, so I will try to give a brief overview, and then focus specifically on the portion that relates to the Department of Health and Human Services.

Just to provide some background on this bill, Assembly Bill No. 629 of the 74th Session created the Nevada Autism Task Force, "...to study and make recommendations to the Governor and the Legislature regarding the growing incidences of autism and ways to improve the delivery and coordination of autism services in the State." The Task Force subsequently produced

a document entitled *The 2008 Report of the Nevada Autism Task Force* ([Exhibit C](#)). The report outlines 146 recommendations organized by the seven categories listed in the tabs of the report. From the 146 recommendations, the 11 most critical priorities were identified and are outlined in the executive summary, which can be found beginning on page 9, under the title of "Recommendations for Immediate Action." Assembly Bill 359 (1st Reprint) addresses portions of items 3, 4, 6, and 7. When we presented this bill to the Committee on Education, we proposed an amendment ([Exhibit D](#)), and this amendment is going to be what I am going to be referring to, as some of the sections have changed due to the amendment.

Section 3, in the yellow amendment, establishes that a grant fund for the training of educational personnel is to be administered by the Department of Education. While our intention in including the training of professionals and paraprofessionals in the bill was to make any training that takes place this biennium contingent on the provision of stimulus dollars, the additional establishment of a grant fund would allow gifts or grants to be accepted into the fund from any source, at any time, as well as to have important legislation already in place for funding consideration in future sessions.

Section 4 of the amendment addresses the training of licensed personnel employed by school districts or charter schools who work with people with autism.

Section 5 directs that certain school personnel refer to *The 2008 Report of the Nevada Autism Task Force* when assisting parents of pupils with autism in decision making processes.

Section 6 of the amendment was deleted. Section 7 addresses the knowledge and skills needed by paraprofessionals who work with people with autism.

Section 8, originally section 6 in the bill, was not amended when the bill passed the Committee on Education. However, we have a proposed amendment ([Exhibit E](#)) with us today. It addresses the knowledge and skills needed by those employed by the Health Division of the Department of Health and Human Services who work with pupils with autism, or provide services to their families. The amendment clarifies that the training will only be for those employees who work with, as well as those contracted to work with, children with autism and their families, rather than all employees. I have seated with me a former member of the Nevada Autism Task Force, Jan Crandy, who is also a current member of the Commission on Autism Spectrum Disorders.

Jan M. Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders, Las Vegas, Nevada:

We took the language from the "Education," "Screening and Diagnosis," and "Best Practices" sections of the document when we drafted this bill. We felt strongly about improving the knowledge of those who work with and treat individuals with autism spectrum disorders by presenting an overall vision for treatment and education, which includes provisions to ensure parents and caregivers receive accurate information, students receive the necessary support, and staff receives appropriate training. There is no consistent, statewide standard of service and/or treatment in Nevada for children, youth, and adults with autism. That means Nevada state agencies and school districts do not regularly support, recognize, or provide evidence-based services or education. Training is also inconsistent across the state.

I would like to share with you one of our main driving points in the Nevada Autism Task Force document. We believe that it is critical for professionals charged with making decisions about methodologies and services for children with autism to obtain, know, and understand the scientific support for each approach and recognize the difference between an approach that is scientifically validated and one that is not. In addition, we believe professionals endorsing a specific intervention for autism have an ethical responsibility to accurately describe the research support for intervention or the lack thereof; refrain from exaggerated claims of effectiveness when data supporting such claims does not exist; portray the method as experimental if it is not yet validated as effective; and to disclose this status to key decision makers influencing the child's intervention. Finally, it is important to note that data exists in some cases that repeatedly lead to conclusions that a methodology might be harmful or ineffective. In such cases, the Nevada Autism Task Force believes that continued utilization of resources on these approaches is, at best, ethically questionable and is a significant waste of time, energy, and money. A child's time is so valuable, and there is such a small window for our children, and I believe these guiding principles are the core of A.B. 359 (R1).

There will be parents testifying today as to their experiences with trusted, well-meaning professionals. I believe the professionals have good hearts, but lack the knowledge and training to help parents become informed decision makers in their child's treatment plan. Often, they lead parents in the wrong direction by discouraging them from pursuing certain types of evidence-based treatments. That is what this bill will change. Children also need to be screened for autism. The American Academy of Pediatrics (AAP) recommends screening all children two times before the age of two, so they receive treatment as soon as possible. The importance of early and intensive intervention for children with autism cannot be overstated. Numerous studies

have concluded that outcomes are substantially more positive when the children begin receiving effective and intensive intervention as early as possible in life, including the potential to live a normal life. If they begin early in life, they increase their potential to become normally functioning. Furthermore, early intensive intervention offers the hope of significant cost reductions, reducing the need for more intensive services later in life. The AAP also recommends that treatment be started when an autism diagnosis is suspected, rather than waiting for a formal diagnosis.

The last section of this bill, in the amendment, requires doctors to screen every child at the recommendation of the AAP. National data on early identification indicates that most parents become concerned about their child's development between the ages of 15 and 18 months, but may have difficulty getting their concerns recognized by physicians or professionals in the field. This often results in significant delays between the parents' raising of concerns and the child's eventual diagnosis. Many parents report that it is two to three years before they actually get a diagnosis after these concerns are addressed.

Screening tools are brief and easy. I have provided you with an example of one of the screening tools, called the Modified Checklist for Autism in Toddlers (M-CHAT) ([Exhibit F](#)). If a child has two to three flags, he is at risk for having autism. It is an easy and simple screening tool that can be performed. I have also included a chart ([Exhibit G](#)) showing you the number of children we suspect have been served through Nevada Early Intervention Services (NEIS). Nevada has continued to not identify these children. As you can see, using the prevalence rate of 1 in 150, there should be 836 children within that age group identified with autism. The latest figure confirms 144 cases of children with autism, which means children are not being diagnosed and not receiving the appropriate treatment. It is often thought that a parent needs time to adjust to the diagnosis of autism, which is what I have been told numerous times by the staff at NEIS, so they delay informing the parent. I understand due to the budget crisis, that the appropriate number of hours may not be a possibility. However, if parents had accurate information, they could at least attempt to access evidence-based treatments and the appropriate amount of services, independent of NEIS. If your child had cancer, you would be informed immediately so your child could begin treatment. That is what children with autism deserve. Their long-term outcome depends on it.

Assembly Bill 359 (1st Reprint) addresses the issues of accurate information being shared with families, improves paraprofessional support and teacher retention, and will increase the likelihood of children starting treatment earlier by

promoting screening at NEIS. It also requires staff to give parents accurate information, instead of discouraging parents from starting treatment.

Assemblywoman Woodbury wanted me to review the amendments with you. We met with Mary Wherry and Janelle Mulvenon from NEIS and they are in agreement with these amendments. Instead of asking for all the personnel to be trained, they are going to have a core group who will be trained as the autism staff. They are pulling their fiscal note off the bill because they have to train this core group anyway.

The other part is educating the staff to provide parents with accurate information. Part of that piece could be just handing parents a brochure with information, and the Commission on Autism Spectrum Disorders will work with them to help create that.

The third part provides for the screening at the recommended age, which can change; for example, research shows that we can now diagnose at 16 months. Currently, the most accurate screenings are at 18 months.

The other amendments change wording. It now says, "For each method or approach..." but the change will be to "the methods and approaches...." This leaves it open so they do not have to know every single approach.

Assemblywoman Leslie:

I think this is a good approach, but I am wondering about this grant fund. I know why you took the fiscal note out of the bill, because otherwise it was not going to pass. I appreciate that because, unfortunately, we do not have any money, but is this grant fund realistic? Who would be putting money into the grant fund?

Jan M. Crandy:

The grant fund is only for the school district piece; the Department of Health and Human Services says it is going to do this without a fiscal note. If we get any money, we will be glad to share it. We are going to look for money in the community, but we were hoping that there would be some special education stimulus money that could flow into this.

Assemblywoman Leslie:

So that is the money that you are hoping for?

Jan M. Crandy:

Yes.

Chairwoman Smith:

If I may clarify that question, when we met and talked about your amendment, we discussed the fact that early intervention already does this to some degree. This just clarifies the process and the tools that they will use. They already have employees doing the work; the problem is how it is being done.

Jan M. Crandy:

Yes, and getting them to give accurate information and to keep their opinions to themselves.

Assemblywoman Parnell:

I have a question regarding the last page of the mock-up of the amendment ([Exhibit E](#)), on page 2. Subsection 2 states that "The Health Division shall ensure that the personnel employed by the Health Division...and the persons with whom the Health Division contracts...." It is mentioned again in subsection 3. How would that work? It seems to put the Health Division in the difficult place of determining if everyone they contract with will abide by the rules.

Jan M. Crandy:

Currently they use some community partners, which are agencies that families can elect to go to instead of NEIS. They also contract with some speech therapists and occupational therapists, but they do staffing. A lot of this is informational through lectures, not hands-on training. When the children first come in, they are screened, so all staff will have to do is add that extra screening to the screening they are already doing.

Assemblyman Hambrick:

In section 6, subsection 1 of the amendment ([Exhibit E](#)), you mentioned the need for people who possess the knowledge and skills necessary to serve these children. Could you give us some idea, in your opinion, of the minimum skills and knowledge necessary?

Jan M. Crandy:

I hope that the people who are performing direct services have a lot of hands-on training. But in NEIS, the majority of the staff who are delivering services to children with autism, besides the speech therapist and the occupational therapist, are developmental specialists. For some of their intensive intervention they were actually using interns—which I believe they stopped due to a budget problem—but they certainly are minimally trained. I would love for them to receive more training, but I know we do not have the funds to do that.

Our biggest problem is that parents are not being fully informed and given accurate information. Families are often led away from doing evidence-based treatments, even outside NEIS. I have had families turn down funding because someone at NEIS told them that the treatment would be too much for the child. Parents build a trust with the professional who is working with their child and tend to believe them. I believe they have good intentions, but they do not realize that evidence-based treatment is the treatment with the most success: 47 percent of those children go on to lead independent lives.

Assemblyman Hardy:

Would the people the Health Division employs include the physicians who do the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) test?

Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services; Commissioner, Nevada Commission on Autism Spectrum Disorders, Carson City, Nevada:

As a department, we have been trying to standardize some of these things. We have had issue groups working on this, and we very much want to see early screening. Assemblyman Hardy, if I am correct, you are talking about physicians who are not part of our system who would be doing the EPSDT?

Assemblyman Hardy:

Correct.

Mary Liveratti:

I think in that case, they do not necessarily have contracts with the Health Division. They can be through Medicaid or a variety of other sources. Our intent would be to get the information out to all physicians and pediatricians who are dealing with these children—whether or not they come through one of our systems or programs—so that early screening is being conducted. We have a campaign to bring screenings to 18-month-olds, we have developed some screening protocols, and we are doing an educational campaign with physicians. However, they are not required. If they are contracting with our department, then, yes, we would work with them to provide that information. We really would like to see it across the board to all physicians, so that it would be available to screen these children as early as possible. Does that answer your question?

Assemblyman Hardy:

It actually brings up another one. Obviously, for the family pediatrician who performs the early screening, there is probably not a little box on the form that says, "Yes, I screened for autism." In essence, that is where you are going. I want to ensure that the definition does not refer to those physicians who

perform the early screenings and are not specifically contracted with the Health Division.

Mary Liveratti:

It is my understanding that the amendment would refer to the physicians with whom the Health Division is contracting. Again, we are going to try to get the word out to all physicians, especially pediatricians, that the M-CHAT specifically screens for autism. If a doctor did that screening, there are indicators that would show that a child needs to be referred to a specialist to be evaluated for autism.

Assemblyman Hardy:

So those are the people who you call under contract? Even though you have a contract as a physician to do the early screening, that is not the contract that you are alluding to?

Mary Liveratti?

That is correct.

Chairwoman Smith:

Did you have any more testimony?

Mary Liveratti:

I just wanted to say that the Department of Health and Human Services is in support of the bill with the amendment. We did have a fiscal note on it, but my understanding is that the Health Division will be pulling the fiscal note off. As I said before, we have been very interested, as a department, in moving towards what is addressed in this bill. We want to address early screening and to ensure that everyone in our department who works with children with autism has the training to do the job. We also want to look at evidence-based treatments, so that we give people information about all the options that are out there, but specifically the evidence-based treatment.

Chairwoman Smith:

I will ask anyone who is in support of this bill to come forward.

Amy Johnson, Private Citizen, North Las Vegas, Nevada:

I am here on behalf of my son, Ben, who has been going through NEIS. [Read prepared testimony ([Exhibit H](#)).]

Nicole Kalkowski, Private Citizen, Las Vegas, Nevada:

It all begins with a mother's intuition. A skill is lost or a milestone is not met in time. Seeking reassurance, we turn to family and friends hoping they will tell us

that all is okay. You come to a point where you realize that you need to seek professionals, and hopefully hear from them that your concerns do not add up to autism. This led me to NEIS.

I went to the first intake evaluation for my son Ryan, and I had the M-CHAT in hand. I am a former special education teacher, so I knew about that scoring system. They were kind, they listened to us, and they asked multiple questions to determine whether Ryan qualified for services. In the end, he did. We asked if our son had autism. They answered that they were sorry, but they did not deal with diagnosis. We were puzzled and wanted to know who could help us. They gave us names of professionals, Dr. Julie Beasley and Dr. Johanna Fricke. We immediately called to see if we could get an evaluation, but were told that it was a year-and-a-half wait. We knew that our Individual Family Service Plan (IFSP) was set to begin in a month, so we decided to take the time to research everything we could find about autism. We were confident that our son was autistic.

Earlier, when Ms. Crandy spoke, she talked about NEIS's statement about families needing time to adjust to the diagnosis of autism. This has been the most devastating event to occur in our family. I would like NEIS, and any person or agency that is in a position to deliver the news to families, to realize that parents are in a state of grief and we need a confirmed diagnosis to begin that process. You cannot begin to accept something unless you are told what you are dealing with, or to come up with a plan of action. We need a diagnosis. They are not helping, or saving families any grief, by lengthening the time between evaluation and diagnosis. Critical time is lost.

You cannot turn on the television now without hearing about autism "in the window." Everyone knows about "the window" and that is why you have an early intervention program for different diagnoses. This is a critical time in brain development. If it takes four months, six months, or even a year for parents to get a diagnosis for their child, vital skills are being lost as the child slowly slips into the grip of autism.

This was our experience. When we first noticed symptoms in my son, it was quite mild. Looking back, and this is painful, by the time anyone was willing to listen to us, he had progressed to a severe diagnosis. I know all too well what his story would be had he received the services and diagnosis that he needed just prior to turning two years old. I am a coordinator for a national organization working with autism, and I get to meet children from other states who have received early diagnoses and early intervention. I have seen their prognoses. I am thrilled for those families, but it hurts me tremendously to know that we are not in the same place that they are. We were ready

to hear the news, for someone to be honest with us, and to help us get the services that we needed.

I would like to impress upon you that families are getting the information they need from other families, not from professionals; we need to change that. My story is not only mine; it is the same as hundreds of other families. I was told by NEIS professionals that Applied Behavior Analysis (ABA) therapy would compromise the social and emotional well-being of my child. I was also told that NEIS does not provide services such as speech, occupational, and ABA therapy. Shortly after that, my family was featured in a national magazine. Suddenly we found that those services did, in fact, exist and we started receiving them for our child. But, by then, my child was almost too old for the system. I am often told by parents that, by the time they figure out how to access available services that should legally be provided to them, their child is either "aging out" of NEIS—turning three years old—or they only have a short time with them, maybe a month or two. Those are our issues and concerns as parents. Thank you for listening.

**Bryn Lapenta, Senior Director, Public Policy, Accountability and Assessment,
Washoe County School District, Reno, Nevada:**

Our Superintendent of Student Support Services sat on the committee that created the document that is before you ([Exhibit C](#)), and we are 100 percent in support of this bill.

Chairwoman Smith:

As a reminder to the Committee, this bill was also heard in the Committee on Education, and that portion has been thoroughly vetted with Chairwoman Parnell's Committee.

**G. Randall Figurski, Manager, Autism Training and Technical Assistance Center,
Health Division, Department of Health and Human Services:**

I worked in school districts as a speech pathologist and in NEIS as a speech pathologist and supervisor. I also had a private practice in which I consulted with 11 of Nevada's 17 school districts. I am here to confirm that there is a dire need for training all service providers. I need to emphasize that this bill is not motivated by blaming professionals. All of the professionals that I have met are very well-meaning, and they desire to help their clients and students. The problem with autism is that it is a special case within the special education community, and it requires intensive and specialized training and services in order for students to benefit from their education, and to eventually become independent citizens. When services are administered appropriately and effectively, the results are dramatic. Problems occur when services are delivered by those who are not well-trained, resulting in the child not making

progress and possibly being harmed by some intervention methods, albeit unintentionally. Consistent training needs to be increased dramatically for professionals who work with this population, not only in large urban areas, but also in our rural counties.

Assemblywoman Parnell:

We have another problem in the big picture. I know a young speech pathologist and audiologist who works with some autistic children in Washoe County. However, the Public Employees' Benefits Program (PEBP) has some exclusive contracts for autism services. So this group of young, vivacious people who know all the latest and greatest research are not able to serve the children that they want to help because of the current system. I think it is important for all of us to remember that these issues related to autism are not the only ones; they are much broader. At some point, we need to have that discussion as well.

Wendy Hruska, Private Citizen, Reno, Nevada:

I am here to tell you about my family's experience with NEIS. [Read prepared testimony ([Exhibit I](#)).]

Assemblywoman Spiegel:

Did you feel that this was a training issue on the part of NEIS or a policy directive?

Wendy Hruska:

I think it was a little of both. I think NEIS was afraid I would be asking for ABA if I realized how much it would help my son, and they could not provide it. I also feel that some of the staff at NEIS were very well-meaning, and they honestly did not think ABA would help my son become the kid he is today. I think they really did not know it was possible.

Kelly Upp, Private Citizen, Las Vegas, Nevada:

My son, Tyler Upp, was diagnosed with autism when he was 21 months old. We were referred to NEIS on November 2, 2007. We had our initial intake and screening on December 10, 2007, at which time it was determined he was eligible for services. Tyler had a 25-percent delay in speech and a 25-percent delay in social and emotional skills. We were just happy at that time to know that he had qualified for services. At the end of that intake and screening, we were given a copy of his assessment, but not his M-CHAT. At 21 months of age, he was showing a 10-month delay in gross motor skills, an 11-month delay in fine motor skills, an 11-month delay in cognitive skills, a 15-month delay in expressive and receptive language, an 11-month delay in self-help skills, an 11-month delay in coping behaviors, a 12.5-month delay in social skills,

and an 8-month delay in emotional skills. Obviously at 21 months of age these are huge delays that needed to be dealt with.

We had an appointment the next week for the team to come to our home and write out our IFSP. On December 17, 2007, when the team came to our home, we were not told that Tyler had failed the M-CHAT checklist. We knew that it was filled out at the December 10 meeting, but at no point were we given a copy of it, nor did we even know what it was at that time. Later, finding out that the team knew that our son had 9 "no's" out of 13 on that checklist was extremely frustrating for us. We were never told that they felt he had autism; we were told only about the speech and social/emotional delays that qualified him for services. At the December 17 IFSP meeting, only four goals were written, and those were based on my husband's and my concerns. Being first-time parents, they were just basic goals, and we do not feel we received professional help to write the goals. At the end of writing these four goals, we were offered one hour of behavioral services per week. From our own research, we knew that Tyler needed a minimum of 25 hours per week. We questioned them and were told that one hour was the amount they could give, with the possibility of increasing it later. Knowing that we could not get a diagnosis through NEIS because of the long wait list in Nevada, we chose to go out of state to Los Angeles for a diagnosis.

At the December 17 IFSP meeting, we were told that Tyler's one hour of behavioral services would begin on January 16. We would have to wait 30 days to start getting that one hour. During that 30-day period, my husband and I did some research and talked to other parents. We started asking questions about what we could do to get more services because we knew that the window was closing. During those 30 days, we received a copy of the autism diagnosis from the psychologist in Los Angeles, and that was given to our NEIS team members. It had specific recommendations about what would help our son: specifically, 16 to 20 hours of ABA, as well as starting with speech and occupational therapy because he was so young, and gradually building up to 40 hours. We gave that report to our team, but we feel that they just filed it. We were told that NEIS did not provide ABA services because it was not their philosophy. We were told that NEIS provided children services with an "eclectic" approach through training their parents.

After getting the diagnosis, we started supplementing services, knowing that our son needed more than an hour a week. We started a program with the Lovaas Institute, which gave Tyler the recommended 16 to 20 hours per week. We were also one of the families lucky enough to get some funding to allow us to be able to give our son that 16 to 20 hours, so we were running the program simultaneously. Our son was flying through 3.5-hour sessions of ABA Lovaas

with the tutors and learning things at a rapid rate, and then our NEIS team would come in for that one hour, and he would tantrum for the entire time. We continuously expressed our concerns to the team, and were continuously told that there was nothing they could do, it was not their philosophy, or that they would not provide the services with an ABA approach.

On March 31, 2008, we cancelled our services with NEIS and have continued 35 to 40 hours per week with Lovaas. It has now been just over a year, and our son is a different child. What I am asking is that the NEIS team be trained to work with these children. It was extremely frustrating to have interns come into our home who were doing things differently and causing confusion. Training! Training! Training!

Chairwoman Smith:

Is there anyone who would like to speak in favor of A.B. 359 (R1)? [There was no response.] Is there anyone who would like to speak in opposition of A.B. 359 (R1)? [There was no response.] Is there anyone who would like to give neutral testimony? We do have written testimony from Janelle Mulvenon ([Exhibit J](#)), so if you could please look that over.

Janelle Mulvenon, M.S., Chief, Bureau of Early Intervention Services, Health Division, Department of Health and Human Services:

I just wanted to reiterate that the Health Division is in support of the amendments found in section 6.

Chairwoman Smith:

I will close the hearing on A.B. 359 (R1) and open the hearing on Assembly Bill 363. The bill is sponsored by Assemblywoman Leslie, and I see our former colleague, Chris Giunchigliani, is here with us today. I need to caution everyone that we have 12 people signed in to testify on this bill, and we still have two more bills to hear after this. We are at a serious time disadvantage here, and I need to encourage those people who wish to speak to try to keep your comments brief. We want to try to give everyone an opportunity to speak. Assemblywoman Leslie, please proceed.

Assembly Bill 363: Provides for the collection and application of graywater for a single-family residence. (BDR 40-1087)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:

I do not know very much about graywater. I will be coming back up to my seat and learning along with the rest of you. I grew up in California and I was in college during the great drought in the mid-1970s. I do not know what it was like here in Nevada, but in northern California we were rationing our water.

I will not go into the details about when you could flush your toilet, but I have lived through a real drought and water rationing, so I am very interested in this bill from a public health perspective to make sure it is safe, and for conservation efforts. As you all know, we live in the desert and we are dependant on an ever-shrinking water supply. Anytime we can recycle water safely, I am for it.

We have a lot of experts here to testify. Commissioner Giunchigliani called me and said that this has been a problem in southern Nevada and asked if I would consider putting this bill in. I am here to support the concept. There are a lot of amendments and concerns, and I am hoping that the Committee can listen to all of this today. We need to advance this issue in some way this session. At this time, I will turn it over to Commissioner Giunchigliani and Senator Care.

Chris Giunchigliani, Commissioner, District E, Clark County Board of Commissioners, Las Vegas, Nevada:

I would like to thank Assemblywoman Leslie for bringing forth this legislation. The bill is about conserving water, conserving energy, decreasing water bills, and creating green jobs. There are manufacturers who wish to come into Nevada to do this kind of work, but we have had some barriers there. Our plumbing codes used to allow for graywater. About six years ago, the water district went to the plumbing code committee and asked that they delete the entire section that related to graywater. The committee did, in violation of state law. By law they are supposed to advise the State Public Works Board that they are making amendments to the plumbing code. I checked recently, and the Public Works Board cannot find any record of anyone notifying them that they were making that kind of change.

The intent of A.B. 363 is to enable residents and businesses that deal with residential construction to utilize graywater. That is the simple intent. Graywater is not toxic and is generally free from disease. There are no health issues that have ever been tied to graywater use; there are suspicions, but there is no documentation of any illness or disease that has come from graywater. Basically, graywater can be spelled with an "a" or an "e" and it is untreated water that comes from your sinks and your showers. The bill is modeled after Arizona's and New Mexico's graywater legislation. California was actually one of the first states that did this, but they made it such a regulatory bureaucracy that basically no one has participated in it. What we are trying to do here is make it simple for residents, so that it is safe, but is allowable, and to avoid the bureaucratic mess that makes it so unpalatable that no one can actually participate in it. Arizona has the most progressive graywater legislation, and that is what this bill is modeled on. They are involved in negotiations with us about water conservation. Arizona actually allows

400 gallons of graywater to be used, but we made it 250 gallons to see if we could show folks that if you let us at least get started, and do this in a reasonable manner, then maybe we can increase the gallons later. I will stop my testimony now and ask Senator Care if he would like to speak.

Senator Terry Care, Clark County Senatorial District No. 7:

I would say that seven or eight months ago, I had never heard of graywater. I received a call from a friend of mine who had done quite a bit of investigating, and he schooled me on the Arizona ordinances. As I understood it, it is actually a conservation measure. Basically, you capture the water that goes down the sink and the shower and you use that a second time; for example, to water the lawn. The way it was explained to me, there are systems that allow you to do that underground; we are not talking about some mechanism on the rooftop. By my friend's estimates, you could cut your water bill in half, which sounded like a conservation measure to me, and I thought that was great. I have since learned that Assemblywoman Leslie was thinking along the same lines, so I dropped my bill and signed on to hers. I am no expert in the area, and I am only just learning the concept, but I wanted to be on the record as being in favor of A.B. 363.

Assemblyman Hambrick:

Senator, do you know if this would decrease the volume of water going back into the Las Vegas Wash in southern Nevada?

Senator Care:

I will let the Southern Nevada Water Authority testify to that. I am looking to help someone who wants to reduce his or her water bill, which it would do.

Assemblyman Hambrick:

Madam Chair, may I repeat my question to the Water Authority when they come to the table?

Chairwoman Smith:

Absolutely.

Assemblywoman Mastroluca:

It seems to me that, in the long run, this would actually save money and energy because it would be much less water that would need to be pumped back into the valley. Is that a fair assumption?

Chris Giunchigliani:

Yes, and in the packet that I handed out ([Exhibit K](#)), there is a table entitled "Water Savings" that shows an example of what the savings could be.

Assemblywoman Mastroluca:

Who would verify that the regulations are being adhered to; for example, the floodplain and things like that?

Chris Giunchigliani:

My understanding is, because of the way this is modeled, the local health district could establish the permit but the state would still have the authority that it currently does. I think the issue is that people are doing this now without permits. This bill helps us monitor graywater use to make sure there are no problems.

Chairwoman Smith:

Seeing no more questions, would you like to finish your testimony?

Chris Giunchigliani:

Thank you, Madam Chair. Again, I have given you a packet ([Exhibit K](#)) that contains background information on this subject. I am no expert on graywater. Basically, we do not want a lengthy permit process. As I indicated before, Arizona has been the most forward-thinking state on graywater policy. Since it borders Nevada, has a similar climate, has the same water issues, and participates with us in negotiating with the other western states regarding water laws, we decided we would model our legislation on theirs.

As homeowners, we pay for our water use. The water comes to us treated, so we pay for that. The water we use is pumped up about 1,000 feet, but graywater use would reduce the amount of water that needs to be pumped so we would save on electricity. If we homeowners could reuse what we have already paid for and not waste already treated good drinking water on irrigation and water for our plants, it would make more sense.

The Water Authority will argue that the return flow credits will be impacted. I believe that is wrong because you will continue to get their credit based on what people take out. This bill simply saves us energy costs by not pumping water back to a treatment area and then putting it into the lake to get a credit. If I do not need to take 250 gallons out to use on my lawn, there is no loss to Southern Nevada Water Authority. It actually saves them water in the long run.

Now the cycle goes on and on. My understanding is that close to 40 percent of their billings are tied to electricity; therefore, our water rates include the costs of pumping the water, treating it, using it, pumping it back, and treating it again. It is just nonsensical to me. In fact, in the United States, one-third of all drinking water is wasted on irrigation. Why not allow people to reuse it?

If we allow the graywater to be treated and pumped back, then you have 250 fewer gallons of water coming out of the lake; therefore you have conserved. To me, it is not a loss of the return flow credit; it is just one batch of water that you are not having to pay for again.

Now in terms of jobs, I have a letter here from Southwest Homes that I would like to enter into the record ([Exhibit L](#)). The President of Southwest Homes wanted me to say that they were in support of this bill. They were going to build a residential project using this new type of technology. It is fairly simple. There were two or three manufacturing companies that were actually interested in coming into the state. Southwest Homes was not allowed, as a residential developer, to put this type of system into their plans. To me, that is what this whole session is about. We need to remove political and governmental barriers that prohibit jobs from being created, that prohibit people from thinking outside of the box, that prohibit people from doing the right thing—like using their own household water that they have already paid for on their own lawns. That is really what it comes down to.

I sit on the Water Authority Board and they recently passed a resolution—I was the only "no" vote on it—to prohibit southern Nevadans from using graywater on their lawns except in the outlying areas. The irony of that is, if you look at the front page of the packet ([Exhibit K](#)), the Springs Preserve which is owned, run, and paid for by the public and managed by the Southern Nevada Water Authority, uses graywater. They even promote it. Why is it that residents cannot? I just think that this is one more opportunity to not make this bureaucratic; it is a simple permitting process, and it enables people to move forward. I think we can bring in some new businesses and I think we can bring in some new jobs. Las Vegas City Councilwoman Lois Tarkanian asked me to enter her support of this bill into the record as well ([Exhibit M](#)). Thank you.

Assemblyman Stewart:

As I understand it, nearly 100 percent of the water that is not used outdoors is returned to the Las Vegas Wash, correct?

Chris Giunchigliani:

That is my understanding.

Assemblyman Stewart:

So what would be the physical way of recapturing the graywater differently from what we do now?

Chris Giunchigliani:

As I understand your question, if I can use graywater through the drip irrigation system, it eventually will permeate through, but that water has already been treated and come into the house. You are right. We do not send it back to Lake Mead, but you do not pay for the energy to bring it back, and you are actually taking out 250 gallons less, because you are reusing your own water.

Assemblyman Stewart:

So you would have to set up a system in each home?

Chris Giunchigliani:

Yes, there are three or four products that I was able to find online, and I included pictures of them in the packet ([Exhibit K](#)). They are fairly simple. They are just plastic pumps. The key piece to the graywater is that it should not be sprayed and should not be stored; it should be drip irrigated throughout your landscaping. There is a side component that can be installed very easily into a residential home, for those who choose to participate in this, and it just pumps the water back through.

Assemblyman Stewart:

Do you know what the cost would be per household?

Chris Giunchigliani:

No, I do not. We may have some people here who can testify to that. I also wanted to note that we did look at the amendments, and unfortunately, I think they gut the bill. I personally would not support them.

Chairwoman Smith:

Thank you, Ms. Giunchigliani. I am going to turn the meeting over to the Vice Chair. Assemblywoman Pierce will resume the meeting with people who are speaking in favor of the bill.

Vice Chair Pierce:

Thank you, Madam Chair. Who would like to testify in support?

Jane Feldman, Secretary, Toiyabe Chapter, Sierra Club, Reno, Nevada:

I represent the Toiyabe Chapter of the Sierra Club and we have about 4,000 members here in Nevada. Speaking in support of A.B. 363, I do not have a lot of technical information, but there are a couple of things I would like to emphasize. One is that this is as much about energy and electricity as it is about water. We are excited about conservation efficiency, saving both water and energy. As a long-term strategy, using graywater must be a part of our total water management package. As Senator Care said, it is what makes

sense. One of the things that I wanted to point out to you is that people get really excited when they recycle, reduce, and reuse their resources. They get excited not just by saving money, but by saving resources through conservation and efficiency. I think what we are going to find out is that people are going to have a very positive response to this kind of graywater reuse. We are going to see the same kind of reaction that people had a few years ago when we had drought rules instituted here in southern Nevada. The Clark County Growth Task Force found out that there was so much positive response to our drought rules that one of the first things the county did was make the drought rules normal operating procedure, and the same kind of thing is going to happen with graywater here in southern Nevada.

Monica Brett, Las Vegas, Nevada, Nevada Program Associate, Southwest Energy Efficiency Project, Boulder, Colorado:

We are a public interest organization that works to promote energy efficiency. We support A.B. 363 because it also reduces energy use. When water travels from its source to house to sewage plant, energy is used to pump and treat it. We think this is a very good idea, and since you are a health committee, we have researched and determined that the conditions in this bill are very safe.

Scot Rutledge, Executive Director, Nevada Conservation League, Las Vegas, Nevada:

We support A.B. 363. You should have some handouts ([Exhibit N](#)). It is a series of photos that were taken at the Las Vegas Springs Preserve, and basically point out the benefits of graywater. It has thousands of visitors who come through each year, and the staff is educating the visitors about graywater, so it seems disingenuous that an authority or agency that would promote graywater to thousands of visitors to southern Nevada would oppose the policy established in this bill.

One other thing I would point out is that there was a report done by Dr. Peter Glick, with the Pacific Institute, partnered with Western Resource Advocates. They point out in this report, called "Hidden Oasis," that 100 gallons of water per day, per person, is used to sustain lawns and gardens in southern Nevada. What if we could replace even a portion of that 100 gallons of water per day, per person, with graywater instead of using potable drinking water?

Then they point to Las Vegas Boulevard and to the fountains. My mother was in town a few months ago, and we went to see the Bellagio fountains. She asked me why we were wasting all that water. I explained that it was actually graywater. She asked if we use graywater in our homes, to which I answered no, and so a conversation about graywater use ensued. I think it is

a conversation that we are going to continue to have until we pass policies like this. I thank you for your time.

Steven Rypka, Private Citizen, Henderson, Nevada:

The use of graywater for irrigation is of vital importance in creating a sustainable water use plan for Nevada. I have provided written testimony ([Exhibit O](#)).

To close, I would like to read a paragraph from a book by Brad Lancaster, who is an expert on rainwater harvesting. This addresses his results from implementing a simple, integrated water conservation program that includes graywater. Keep in mind that the average, daily per capita use of water in southern Nevada is 250 gallons. Brad writes, "Our daily municipal water use dropped from the Tucson residential average of 114 gallons per person, per day, to fewer than 20 gallons per person, per day, and our water and electric bills plummeted. This earned us five visits from workers at both the water and electric utilities, because they were sure our meters were broken." Now, Tucson is a little bit different than southern Nevada, but we have incredible opportunities here for conservation and harvesting other resources that are not directly addressed in this bill. I think A.B. 363 is a great first step toward implementing a truly sustainable, comprehensive plan of water use in southern Nevada.

Launce Rake, Communications Director, Progressive Leadership Alliance of Nevada, Las Vegas, Nevada:

I am here to offer a few comments and urge your support for A.B. 363. The first thing I would like to do is note that, although this bill deals with water, I think its primary benefit is that it would save huge amounts of energy. That cuts the amount of carbon that we would be putting into the atmosphere which is, of course, associated with climate change, and instead of pumping water uphill from Lake Mead, which is incredibly energy intensive, we would be recycling the water and using it for irrigation.

To give you an idea of how important that is, a typical family could save a quarter ton of carbon annually with a graywater system. That is carbon that would go directly into the atmosphere and accelerate global climate change. Those few, or many, environmentally responsible consumers would also save a lot of money on their water bills, so there is a personal motivation to do this.

I suspect that this is not a pleasing option for our water agencies in southern Nevada. They make their money, in part, through selling water. That is important to keep in mind here. Some argue that graywater systems would lead to increased water use. I do not think that is true. If the agency

is truly concerned about conservation, there are a number of steps that have been suggested, and have been ignored by the agency, but perhaps that is another issue. Progressive Leadership Alliance of Nevada, and other groups, support sincere efforts to conserve water, including limiting landscaping. Even with desert landscaping, we would use some water for irrigation. The question is whether we use treated, potable water from the municipal provider at full cost, or wastewater from indoor use.

This is not the first time this question has come forward. Southern Nevada Water Authority (SNWA), and affiliated agencies, already provide graywater systems for huge industrial users such as golf courses and casinos. These have been touted by the SNWA as environmental successes. Note that some golf courses get significantly discounted prices on the water from the municipal providers, even though the region gets no return flow credit benefit from the water that they use for irrigation.

The SNWA's sister agency, the Las Vegas Valley Water District, boasts about the benefits of graywater use in their Desert Springs Preserve. Those benefits, especially the financial benefits, are available only to huge water consumers that have the money to lobby the political leadership. For the SNWA, we have seen time and time again, huge water users get discounts while residential users get the shaft. The exact same arguments that SNWA uses to justify wastewater recycling and graywater for the big users apply to the families of Las Vegas who want to do the responsible thing. Yes, those families pay a lot more per gallon than the industrial users, but that is no excuse to prevent them from doing the right thing. I hope the Legislature will work to reverse this unconscionable ban on graywater systems, enacted over the objections of the conservation community, and I would have to say that when we cannot trust the water agencies to do the right thing, we turn to the Legislature for some relief. I hope you will consider this option.

John C. Sagebiel, Ph.D., Private Citizen, Reno, Nevada:

I am the Environmental Affairs Manager at the University of Nevada, Reno, but I am here as a private homeowner and operator of a graywater system. I was told that I have the first permitted graywater system in Washoe County, which was installed in 2003 when I built my environmentally friendly house. I would like to offer myself as an expert on the specifics of this bill, because this is addressing exactly what I did. In fact, my system would look exactly like what you would build if you were following this bill. I did provide a handout ([Exhibit P](#)) that has five pictures in it that show you the system. I used a completely subsurface distribution system that pushes the water out through gravel and sand and into the growth field of the plants so that the water never reaches the surface. I urge you to support A.B. 363.

Assemblywoman Leslie:

Thank you for coming today. This is fascinating. How much did this cost, and how did you know you needed a permit?

John C. Sagebiel:

I cannot really tell you how much it cost because it was installed by the same subcontractor who did the septic system we have. Essentially, we have two sets of piping in the house that follow parallel to one another. They were already digging, so I cannot imagine that it was a huge amount.

Assemblywoman Leslie:

You just did it as you went along, because you were already building the house?

John C. Sagebiel:

Absolutely, and the reason that we knew we needed a permit was we were originally unsure if we could do this, and we put into our building plans that we were going to plumb the house with two parallel lines for a potential future application of graywater. The county inspectors came back and told us to just put it in now because it would be easier. We worked with them, and they were very cooperative.

Assemblywoman Leslie:

What is your permit? The permit is specifically for graywater?

John C. Sagebiel:

I believe not. I believe that we just have a building permit that includes a graywater system with the specifications.

Assemblywoman Leslie:

Great. Do you know if anyone else in Washoe County has done this?

John C. Sagebiel:

To my knowledge, no, not through the building process like this, although I am not certain.

Assemblywoman Leslie:

Did anyone complain that you were diverting water from the Truckee River, or the return flow to the Truckee River, or something like that?

John C. Sagebiel:

No, they did not.

Vice Chair Pierce:

Is there anyone else who would like to testify in support of A.B. 363?

Charles M. Benjamin, Ph.D., J.D., Director, Nevada Office, Western Resource Advocates, Carson City, Nevada:

We are a nonprofit environmental conservation group that operates in six intermountain states. We have a water program, an energy program, and a land program, and we are very familiar with graywater systems. You have my written testimony ([Exhibit Q](#)), so I will not repeat it, but I will say that if you want to reduce residential demand for potable water, lower residential water bills, reduce the energy used to pump, treat, and distribute potable water—and if you want to provide a local drought-proof water supply for residents—you should pass this bill. If you would like more information about the kinds of research that we have done on the water issue, particularly in the Las Vegas area, please go to our website.

Vice Chair Pierce:

Are there any questions? Seeing none, is there anyone who would like to speak in opposition to this bill?

Lynn Orphan, PE, Regional Water Quality Manager, Clean Water Coalition, Henderson, Nevada:

The Clean Water Coalition is the joint-powers authority that serves the Cities of Henderson, Las Vegas, and North Las Vegas and the Clark County Water Reclamation District. I am a registered civil engineer in the State of Nevada, and I have worked throughout the state for the last 30 years designing wastewater systems and drinking water systems. I was also president of the largest nonprofit wastewater organization in the world which represents all of the engineers and operators of wastewater treatment plants. So I have some background on the technical issues of wastewater, reclaimed water, and graywater.

The Clean Water Coalition is here to testify in opposition to A.B. 363 but in support of the amendment that has been prepared. I will start off by saying that the purpose of wastewater treatment is for public health. The Las Vegas wastewater treatment plants are among the top 7 percent in the country. They treat wastewater to a very high degree so that all of the wastewater that is generated is then recycled. We have 100 percent recycling of reclaimed water in the Las Vegas area. It is important to remember that what gets used, and can be returned, is put back to beneficial use. It either goes back to Lake Mead to be part of the water supply, or that recycled, treated wastewater is used on golf courses, xeriscape landscaping, and cooling tower water. It is being put back to use in places where you do not have to use potable water.

This recycled water does not include graywater; I will explain the difference soon.

The Clean Water Coalition and SNWA did a study on recycled water for southern Nevada. The purpose of all the wastewater and water agencies doing this study was to make sure that we were doing the most that we could with our recycled water. We wanted to be energy efficient, water efficient, and protect public health. You should have a white folder ([Exhibit R](#)). There are three things inside that folder. First is the *Southern Nevada Regional Water Recycling Study*. You will also find a graywater study. We found that a lot of people were interested in asking questions about graywater, so we had an expert in water recycling put together a small study on graywater and its quality and use throughout the country and the world.

The third thing you will find in that package is the water recycling policy. This is a policy that was unanimously adopted by the Clean Water Coalition in December 2008. The SNWA had a 6-to-1 approval of this policy also. The policy covers the entire spectrum of recycled water and was specific about graywater. That language was "To prohibit the use of treated or untreated graywater in the Las Vegas Valley, and prohibit its use outside the valley, where there is reasonable potential for return flow to the Colorado River system, or other water recycling programs." I will tell you why that is important, but let me first define what graywater is, since most people do not know.

Graywater is the water that comes out of your bathroom sink drains, shower and bathtub drains, and washing machines. It is not what comes out of the toilet, the dishwasher, or the kitchen sinks. But, if you can visualize cleaning your bathroom sink, as many of us have done, or cleaning out the drain in your shower, that is the water that goes into a graywater system. The hair and the organic material that you see caught in the trap underneath your sink is the kind of material that you will see in a graywater system. That is why many graywater systems use screens, chlorine tablets, and pumps to try to clean the water. It is certainly cleaner than what goes through a toilet, but if anyone has ever washed the bottom of a baby in the bathtub, or cleaned your pet in the bathroom sink, or even just the normal activities of washing your clothes, or caring for sick people or children, you can imagine the kind of material that goes into a graywater system. Again, it is not nearly as bad as what goes through the toilet, but in the graywater study that you have in your packet, in every case where the water in a graywater storage tank was tested, there was total coliform that was measured, and there was fecal coliform. There are bacteria that do go through in graywater systems. That is why graywater systems are normally required to be subsurface, so that water does not come up to the surface, so that your children who are playing in the backyard are not

exposed to it. Nevertheless, if you have water that has a compromised quality, we want to have treatment and/or permitting in place so that everyone who buys a house or owns and lives in a house has their health protected. That is our job, to protect public health.

So now you know a little bit about what graywater is. We have a citation from a World Health Organization report which was done in 2006. It pointed out that, because of the chemical and bacteriological constituents in graywater, it does have the potential to transmit diseases. So, in the bill where it stated that the State of Nevada could not require permits, we certainly oppose anything that would take away from the ability to have permitting and enforcement on something like graywater that would have potential for disease transmission. After all, there are thousands of septic tanks in this state. Every rural area, and everybody who lives on one acre or more, can have a permitted septic system. So why would you not have the same degree of permitting for graywater that you would for septic tanks?

On the subject of conservation, Nevada is doing an awfully good job of conserving water. I am very proud of how much conservation we are doing. What a lot of people do not know is, if you drive down The Strip and you look at the fountains, that is not graywater and it is not recycled wastewater either. They are very clever about how they use water. There is a lot of shallow groundwater and, when those hotels built their basements to put in their parking garages and a lot of their equipment down there, they pump groundwater out of those basements all the time. That is the water that supplies those fountains. There are a lot of innovative uses of water throughout Nevada besides graywater.

There was a study done in Perth, Australia. Perth has some really strong conservation programs. After people had been encouraged to put graywater systems in, they found about a year later that people had actually used more water in their houses. I am not saying that everyone does that, but that was the finding of their study. They figured since people were being "green," they could let their showers run longer. So in the end, they did not conserve water. On the subject of conserving energy, wastewater treatment plants have to be sized that big and have that equipment running all the time, whether you have graywater or not. We have to treat for the biological contamination, not just for the volume of water running through. So, we still have to size and operate our systems the same way whether there is graywater or not.

Finally, the study that we did in southern Nevada found that our system of having return flow credit, where everything you put back in the river you can use again, is rather unique. Not totally unique, but in some places like Arizona,

when they are finished with their wastewater, it goes into a dry river bed; it is not recycled. We already have the opportunity to recycle. In the coastal areas of California, when they treat their wastewater and they send it out into the ocean, they do not get an opportunity to use it again. If you are on a septic system, it goes into the ground; you do not get to use it again. In those situations, graywater might make a lot of sense. If you are in the rural areas, you are on one acre, and you have a septic system, then a graywater system might be perfect. But in areas where we can send it back to a river and use it again, like you can in the Truckee and the Colorado Rivers, then it should be up to the local water and wastewater authorities to come up with the best way to conserve and reuse water and not have a state bill take away that authority. For these reasons, we oppose the bill.

Assemblyman Hardy:

If this were proposed to Lake Tahoe, how far would it get?

Lynn Orphan:

Physically? I will let Mr. Walker answer that.

Steve Walker, Minden, Nevada, representing Truckee Meadows Water Authority, Reno, Nevada; City of Carson City, Nevada; Douglas County, Nevada:

I have that information in my testimony. Basically, it would not get very far under the Tahoe Regional Planning Agency (TRPA) rules. The amendment, which we will address later, includes the word "lake" to address that issue.

Assemblywoman Mastroluca:

I just wanted to clarify something. You said that the water used for the fountains for the hotels on The Strip comes from groundwater?

Lynn Orphan:

Shallow groundwater; it is not drinking water wells.

Assemblywoman Mastroluca:

They have their own wastewater treatment plant under Treasure Island. That is what they use to do all of their irrigation for their outside attractions.

Lynn Orphan:

They closed down part of that wastewater system because it was becoming difficult and expensive to operate.

Assemblywoman Mastroluca:

I think you led us astray by implying that it was completely groundwater, because that is not 100 percent correct.

Lynn Orphan:

Correct. Thank you for correcting me.

Assemblywoman Leslie:

So the gentleman from Reno, Dr. Sagebiel, whom we just heard testimony from, like others out there who have built graywater systems into their houses, did not get a permit. Apparently, it was considered part of his building permit, but he did not get a specific permit with regards to the health conditions. What about those people? Are you saying they should not be doing this? What about all the people in Arizona and New Mexico who are doing this?

Lynn Orphan:

What I thought I said was that when people are using septic systems, they have a septic tank and a leach field in their backyard, so it would make a lot of sense...

Assemblywoman Leslie:

So you think it is okay for Dr. Sagebiel since he has a septic system?

Lynn Orphan:

Because he already has taken on the responsibility of knowing that he has to maintain a septic system...

Assemblywoman Leslie:

I thought you were talking about health concerns.

Lynn Orphan:

I am. When you have a septic system, you take on a responsibility for making sure that it gets pumped out periodically, that your leach field stays clear, and when the water starts to bubble...

Assemblywoman Leslie:

I know what a septic system is.

Lynn Orphan:

So with a graywater system, you have to feel ready to take on the same responsibility to keep it as maintained as you would a septic system.

Assemblywoman Leslie:

I would feel better if the Health Department had regulations that outlined how citizens should do this. Maybe that is a regulation they should have.

Lynn Orphan:

They do. There is already state regulation about that. There is somebody with greater expertise than I who will testify afterwards.

Assemblywoman Leslie:

I just have to say that I did not find your testimony very persuasive.

Lynn Orphan:

Okay.

Assemblyman Stewart:

Who is the governing body of the Clean Water Coalition?

Lynn Orphan:

There are four members: the City of Las Vegas, the City of Henderson, the City of North Las Vegas, and the Clark County Water Reclamation District.

Assemblyman Stewart:

They were unanimously in favor of your...

Lynn Orphan:

Of the recycled water policy, which addressed graywater.

Steve Walker:

We are opposed to the bill as written, but we do support the amendments. The first thing that I would like to clarify is that on page 2 of the original bill, lines 11 and 12, it states "...application of graywater for a single-family residence must not require a person to obtain a permit...." It was implied that we need some type of permit, and we do. The Truckee Meadows Water Authority's (TMWA) main concern on this issue is cross-connection. We are concerned someone could cross-connect a graywater system into a potable water system or into the existing lawn and sprinkler system. If that occurred, we would need to know where that house is and who has a permit for graywater around here, because that will show up in the potable water supply as sudsy water. That is probably our number one issue—protecting against cross-connection. You have to have a permit and you have to have an inspection to do that. This bill does not allow that, and I think it needs to be amended to make sure that it does.

Speaking of Washoe County, this is their permit for a graywater system. It is actually from the Health Department, and it is the same code or chapter for individual wastewater treatment systems, so it is part of the septic system permit. It is not a building permit; it is an actual permit from Washoe County. They do the inspection since you have to follow plumbing code. It is not widely applied. It was developed in 1997 along with a water plan that I was involved with. There have been ten applications for the permit and six inspections, and it has all been on domestic wells. It is not part of the building permit; it is part of the individual wastewater treatment permit.

Furthermore, from a northern Nevada perspective, most of the testimony has come from southern Nevada. Our issues would be that if we had widespread application of graywater systems in existing neighborhoods, particularly in Reno-Sparks, we could possibly impact our return flow requirement. For downstream uses, 50 percent of our potable water supply goes back into the Truckee River. Downstream uses are for the Truckee-Carson Irrigation District (TCID) and the irrigation of Fallon, particularly during a dry year. In a wet year, our downstream uses are to fill up Pyramid Lake, and to help with endangered species. It is tied in to a specific requirement, and it is important. Carson City recycles 100 percent of its wastewater treatment and irrigates the parks, golf courses, and athletic fields, and it is all on contract. Again, widespread application, in existing neighborhoods, would impact flows to that system and could disrupt contracts. We need to deal with that issue.

Douglas County's issue was one that has not been raised yet. Widespread application of graywater systems in existing sewer neighborhoods could foul up the design of the interceptors. The sewer's load would become more solid, and less liquid, and it is designed to flow on a certain slope. The treatment process at the plant is, too. Again, this would not impact a system that was designed around graywater, rather than adding graywater to a system that has already dealt with how to recycle its water. We have to address that issue. I do not think anyone is really against graywater; I think what we are trying to do is make it applicable and not cause problems.

Lastly, this cannot be applied to Lake Tahoe. There is too much phosphorus in graywater, and phosphorus means algae growth, and it will not make it there. That is one of the amendments that says "river and lake." I could also put specific language in there that talks about the area under TRPA jurisdiction that we use to exclude Lake Tahoe in other legislation. I think we need to move forward, but in a way that we address the issues that are out there—not just the southern Nevada issues, but the northern Nevada issues as well.

Assemblywoman Spiegel:

I sit on the Assembly Committee on Government Affairs and we have had a lot of hearings that talk about water rights, and I was wondering if you could just clarify something for me. I know that water rights will revert back for things like groundwater. At what point does the water authority get the rights to the return flow? Is it at the moment that the water leaves the home? Is it at the moment that the water leaves the homeowner's property? Or is it something else?

Steve Walker:

This can be a slippery slope. In the TMWA, and in most cases in northern Nevada, if you are going to build a house, there is a water right dedicated to your house. It varies depending on the size of the lot and how big the house is. Let's use an example. You need to buy 6/10 of an acre-foot to build a three-bedroom, two-bath home on a 14,000-square-foot lot. The water you actually use turns into the water that is beneficially used, under state water law. Although you might dedicate 6/10, if you only use 4/10, you beneficially use 4/10 and that is the water that you have; the rest goes down to the system, which is called "back to the source." That is the way it works on a water right dedication system, and it is very consistent with state water law. You make an estimate of use, then you see how much you actually use, and that is the beneficial use of water. Does that answer your question?

Assemblywoman Spiegel:

Graywater would then increase the beneficial use? Am I following you correctly?

Steve Walker:

Yes, because you would have more water going through your meter. Would it exceed your dedication, you do not know. If it did, there could be an issue and you have to go to the State Engineer and rectify that situation. But it is a quantified measure, so it can go both ways. There has been talk of permitting through the Nevada Division of Environmental Protection (NDEP), but there is no graywater permit that I am aware of in NDEP.

Assemblywoman Leslie:

How do you define widespread application in your mind? Are you thinking 50 percent, 60 percent, or 10 percent?

Steve Walker:

It would have to be around 10 percent, because you are going to have an impact even at that level.

Assemblywoman Leslie:

I have a question about the amendment ([Exhibit S](#)), since TMWA's name is on the amendment. I would just like to read this one subsection, and you tell me if this would have prohibited the gentleman from having a graywater system in place in Washoe County. I am looking at section 1, subsection 2, where you are saying that the regulations for graywater for a single-family residence must prohibit the collection and application of graywater for a single-family residence in any area in the state where there is (1) the reasonable potential for return flow to a river system or a lake; (2) a requirement for return of effluent to a river system; or (3) an existing alternate recycled water program. How would that affect the gentleman we heard from?

Steve Walker:

It would not affect him, because he is on a domestic well, so he has a septic system...

Assemblywoman Leslie:

So where I live in southwest Reno, I cannot do it?

Steve Walker:

No, you could not do it under the amendments.

Assemblywoman Leslie:

I am just trying to understand. So it is only for people who have wells and septic systems, who live away from the river?

Steve Walker:

Well, it could actually be where you do not have return flow to the Truckee River with your septic system, or all the water is committed to a recycle program. If you only use part of your water for recycled water, it would apply there. Maybe out in Cold Springs.

Assemblywoman Leslie:

So you would have to go to Cold Springs before you could do this?

Steve Walker:

Yes, out of the Truckee River wash.

Assemblywoman Leslie:

So all of Reno is pretty much out of it?

Steve Walker:

True.

Assemblywoman Leslie:

So this pretty much does gut the bill?

Steve Walker:

If you have return flow to the Truckee River.

Assemblywoman Leslie:

Which is Reno-Sparks?

Steve Walker:

Correct.

Vice Chair Pierce:

I have a couple of questions. As the bill is written, this would not apply to areas governed by the TRPA, would it?

Steve Walker:

As the bill is written, "...the State Board of Health shall adopt regulations..." it does not say where, and it does not limit where, those regulations are going to be adopted. Part of TRPA's jurisdictional area within Nevada is in Washoe County, Carson City, and Douglas County. In my opinion, as it is written, it includes Lake Tahoe.

Vice Chair Pierce:

I am confused about the cross-connection problem that you were talking about earlier. How would that work?

Steve Walker:

Without a permit or inspection of the installation of a graywater system, you could make a mistake in the plumbing and put the graywater system into a potable water pipe. That is called a cross-connection, where you cross a wastewater system with a potable water system. The problem could also occur if you connect the graywater system to your existing lawn sprinkler system without a backflow valve. Without that valve, the graywater could go back into the TMWA distribution system. It is a basic plumbing mistake, and you avoid it by inspection and permitting.

Vice Chair Pierce:

So if someone made this mistake at their home, they could actually affect other homes? It seems as if you would be able to affect only your own home.

Steve Walker:

If the graywater backflowed into the water main going into the street, the problem would be that the water is then distributed to the other homes. You would suddenly have water coming in from a nonpotable source.

Assemblyman Hardy:

Would graywater be from a hose bib, or would it go directly into a sprinkler system, which would prevent someone from inadvertently drinking it?

Steve Walker:

The only regulations that I know are from Washoe County, and they state that you cannot do that under their regulations. The graywater system has to be six inches below the ground in a perforated pipe. It should not be part of a sprinkler system at all. As the bill is written, it talks about not spraying the graywater too. The way the regulations exist right now, that would not happen because the inspector from the Health Department would make sure that the system was down in a trench, had a perforated pipe, and you had plans to use the water.

Vice Chair Pierce:

Mr. Belanger, please proceed.

Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority, Las Vegas, Nevada:

We are in support of the concept of this bill. We support the reuse of water in the State of Nevada wherever it could possibly be done and in whatever way makes most sense for that community. We believe the local areas have the best understanding of their local water picture and how water reuse fits into that picture. For the last 35 years, southern Nevada has been recycling every drop of water that is used indoors through return flow credits. That water is then reused, again and again, to help the community stretch its very limited Colorado River water supply. The reality is that places like Tucson, and other places that have adopted graywater reuse policies, have done so because they do not have the ability to generate return flow credits like we do. We are the only state on the Colorado River, because of our proximity, which has the ability to use return flow credits to the extent that we are able to. So we are able to stretch our allocation from the Colorado River about 70 percent further than it would normally go because of the reuse of water. Virtually everything that is used indoors is recycled and returned to the Colorado River. From our perspective, developing a graywater system in southern Nevada is duplicative of the process that has been in place for the last 35 years and has been working extremely well to ensure that our water supply is reliable and is there when our customers need it.

We believe this bill will have no impact on water savings and limited impact on energy savings. The reason is because, about a decade ago, we looked at the questions that were raised by some of the people down in Las Vegas regarding energy use. In concert with the Clark County Water Reclamation District, the Las Vegas Valley Water District built the Desert Breeze Water Resource Center in the southwest part of Las Vegas. That facility takes wastewater that is generated regionally, in that locality, treats it onsite, and then applies it to large turf areas, like golf courses and parks, so that we are not taking potable water from Lake Mead to supply those areas. We partnered with the City of Las Vegas to build the Northwest Water Resource Center so there are facilities in the northwest and southwest parts of the valley. The City of Henderson has been a leader in water reuse for several decades in applying wastewater, generated from its customers, on large turf areas. In my mind, I am not sure why this bill is necessary. We ought to be recycling water everywhere that we can in the State of Nevada and using whatever methods local agencies view as the most important and the most economical for them. We spend a lot of money building facilities, both regional wastewater facilities, and we have the return flow credit process. All of those things are in place and are working, and in this time of economic downturn, when people are looking for every penny to save to ensure that they can provide the necessary quality of life for their families, I am not sure that this bill helps in any way. I suspect that the way we are doing things now does what Assemblywoman Leslie and Commissioner Giunchigliani would like to see happen.

Assemblywoman Leslie:

That was very interesting. I am not going to argue with you except to say that your current way of doing things does not meet what we are after, in any sense of the word, because you are prohibiting citizens from installing their own water recycling projects at their homes. You are prohibiting this developer that we heard from in southern Nevada from building energy-friendly and graywater homes. You are prohibiting people from conserving water. You do not do what our intent is.

Assemblywoman Smith:

Thank you. I am trying to get up to speed because I had to step out, but would you explain something to me Mr. Belanger? According to Commissioner Giunchigliani, if you did not have to use the resources to recycle the water and send it back, the water authority is not losing anything by leaving the water in the system. Would you respond to that for me?

Andy Belanger:

The return flow credit system requires that the water return to Lake Mead and then be treated and taken back out of the system. Commissioner Giunchigliani

is correct; if we did that for all water reuse in Nevada, there would be an energy cost associated with that, and the adoption of graywater systems might potentially defer or abate in some way. But we have built regional wastewater facilities in the northwest and the southwest, and those facilities are designed to locally treat wastewater that is generated in those areas and then apply it to large turf areas. It is essentially the same concept of a graywater system; it is just done more comprehensively and more holistically. Instead of doing it one home at a time, in southern Nevada we have made a policy decision that water reuse is so critical and important that everyone ought to do it. Everyone who uses the potable system ought to recycle that water, and so we have built the system so that, no matter whether you know it or not, we are recycling that water. We are either doing it locally, at regional water resource facilities, or we are doing it through return flow credits which expands the community's water supply by about 70 percent. So, I am not sure why the bill is necessary if we are doing those other things.

Assemblyman Hambrick:

Over the years, those of us in southern Nevada have learned to understand some of the needs for the Las Vegas Wash. Would the bill, as presented, have a potential affect on the Las Vegas Wash?

Andy Belanger:

Potentially, half of the wastewater that is generated could have an impact on the Wash. If there was widespread use of these systems, there could be an impact on the Wash, but going forward I am not sure there is going to be much impact.

Assemblyman Stewart:

Do you have any figures or evidence that your recycle program has been effective?

Andy Belanger:

The SNWA estimates that in 2008, the community used 22 billion gallons less water than they did in 2002. That is about 63,000 acre-feet that was saved. That is a significant amount of water, and that is despite an addition of about 400,000 people who have moved into the valley and about 39-40 million annual visitors that we get. Sometimes you hear from our opponents, the conservation people, that the gallons per capita per day in southern Nevada are significantly higher than in Tucson or other places. If you actually took the number of population served, we have 300,000 acre-feet of Colorado River water, and last year we used 262,000 acre-feet. You add on top of that the 45,000 acre-feet of groundwater that we have the ability to use, you divide it by the total population in southern Nevada, and we use about 137 gallons of water

per person per day, consumptively. With the return flow credits, we are able to save over 100 gallons per person per day through the use of return flow credits.

Assemblyman Cobb:

I was trying to envision how we could mesh these two concepts—allow people who wish to install a graywater system and have an enclosed water system with the septic tanks and such but also have some type of recycling program as well, if you are on the water systems such as TMWA and SNWA. Am I to understand that the goal of your amendment is to allow for the new graywater systems in certain areas, but, where you have the water systems already created, you are going to try to maximize the recycling through those systems as well?

Andy Belanger:

The purpose of the amendment ([Exhibit S](#)) is to allow graywater in places in Nevada where it makes sense to do it because there is not the potential for return flow credit, there is not a requirement for effluent return, and there is not an alternate recycled water program in place. In essence, what it would be saying is all of the state water reuse should be a priority, and if you have an alternate method that you are currently using, that method should be preserved. But in those areas of the state where it makes sense to do graywater because your system is totally groundwater and there is no potential for return flow, graywater should be something that is looked at because it does save water. We do support the concept of graywater, we just do not think you should do this in places where you are already doing something else that is working.

Vice Chair Pierce:

Is there anyone else who would like to testify in opposition to this bill?

Barney Rabold, Deputy Director, Utility Services, City of Henderson, Nevada:

I work for the City of Henderson, and I am a registered Professional Engineer in the State of Nevada. We have 285,000 citizens in the City of Henderson, we have approximately 82,000 water and wastewater accounts, and we operate water and wastewater systems and delivery and collection systems. We use over 250 people to deliver water to our citizens. We meet the regulations of the State of Nevada and the federal government.

I would like to give you a brief demonstration about some of the things that we do. I brought a couple of sample jars with me. [Mr. Rabold placed jars of water on the witness table.] This sample jar is an example of the water that we deliver [showed jar of water to the Committee]. This is our drinking water

for our community. This sample jar is an example of our treated effluent that we deliver to the recycle users in our community and to the Las Vegas Wash once we treat our wastewater [showed jar of water to the Committee]. This is an example of a highly treated wastewater that was discussed earlier. The water that you see here is used on golf courses, on cemeteries, and on roadside irrigation. This water is not suitable for human consumption but it is acceptable for human contact, based on the treatment that we give it and the disinfection that is applied to it before it leaves our plant.

The City of Henderson has carefully reviewed the issue of graywater in our community. As you have been told, graywater comes from bathroom sinks and showers and from the washing machine. We know that a wide variety of products are introduced into these including cleaning chemicals and, potentially, human waste. Without the sophisticated and complex treatments that we provide to the wastewater we receive, we cannot guarantee the public's safety. For this reason, the Henderson City Council unanimously passed a resolution that ratified the policy on recycled water which, in part, prohibits the use of graywater in our community. The policy was reached after careful consideration of our guiding principles of safety, sustainability, and effectiveness. The City of Henderson hopes that you will consider the process that we followed in reaching our conclusion that graywater should not be allowed in our community. We urge you to support the amendment which has been offered, which allows the City of Henderson to continue to make this choice as the governing agency that is most closely tied to the services that are provided to our citizens.

[Chairwoman Smith assumed the Chair.]

Chairwoman Smith:

Are there any questions? I do not see any. Thank you for your demonstration.

David Bowers, Assistant City Engineer, Department of Public Works, City of Las Vegas, Nevada:

The City of Las Vegas, as part of the Clean Water Coalition, is opposed to the original bill for the reasons that have been stated before. Potentially, you have bacteria and different types of viruses that could come through this water. There are potential health issues. Finally, the most important point is the loss of authority to regulate the system. Without the requirement for a permit to be issued, we have no control over these systems, and we are not sure what the health authority has in place to ensure that they are installed properly.

Assemblyman Hambrick:

Going back to what Commissioner Giunchigliani said, she indicated a drip system. When we heard from someone who had the system, Washoe County required a subterranean system. In your understanding of the bill, could this possibly be an aboveground system?

David Bowers:

I mentioned sprinkler heads, but basically any type of drip irrigation system involves tubes and hosing that could potentially break, depending on what is being done with the landscaping. If there was a pipe that broke that contained this graywater, it could easily come up to the surface and be exposed at that time.

Chairwoman Smith:

I know we are running behind, but I need to ask the Committee to hang in for a little longer. We need to at least get the other bill open, if we can. We have people who have travelled to provide testimony.

Joseph L. Pollock, Public Health Engineer, Frontier and Rural Health Services Program, Health Division, Department of Health and Human Services:

The Health Division is not opposed to A.B. 363; we are neutral on this. I have provided my testimony ([Exhibit T](#)), which, in the interest of time, I will not read; however, I would like to touch on a couple of topics.

On March 25, 1999, the State Board of Health adopted regulations for graywater application for single family dwellings that are served by an individual sewage disposal system. *Nevada Administrative Code* (NAC) 444.837 and 444.8372 require that a permit be obtained from the administrative authority and that the graywater be used for subsurface irrigation only. In the State of Nevada, we adopt our regulations, and they apply to our jurisdiction, which are the 14 rural and frontier counties: Douglas County being the rural and the other 13 counties are the frontier. To my knowledge, southern Nevada has not adopted separate regulations for graywater, so these graywater regulations would apply in southern Nevada for people on residential septic systems. Washoe County has adopted their own individual sewage disposal system regulations, so their more stringent regulations would apply there. Graywater is defined in NAC 444.7616 as untreated household wastewater that has not come into contact with toilet waste. Graywater does contain pathogenic bacteria and coliform and should be treated as sewage. Surface application of graywater will result in increased exposure to that sewage, and that is one of the concerns that the Health Division has with the way this bill is written. It does allow surface application. It did say no sprinkling, but there can be

accumulation on the surface. We believe that only subsurface should be permitted.

Chairwoman Smith:

What about the fact that this is being used in other cities in other states? How does that work? I am assuming the Health Division has looked at that.

Joseph Pollock:

We have looked at other graywater systems. We adopted our regulations back in 1999, and when we looked at the environmental textbooks, they said to treat graywater as sewage, which is why we require subsurface application of the graywater. That is the biggest concern. We do not have a problem with graywater, since we have already adopted the regulations; it is the surface application of the graywater that can come into contact with pets and children.

Chairwoman Smith:

But we heard that other states are using this type of graywater application that is in the bill, correct?

Joseph Pollock:

Yes, but I do not believe those states are using surface application of graywater. I think graywater is pretty standard throughout the nation; however, where it is applied, I believe that it is typically subsurface.

Chairwoman Smith:

Is there anyone else who wishes to testify in opposition or give neutral testimony on this bill? [There was no response.] I will close the hearing on A.B. 363.

We will open the hearing on Assembly Bill 433. This is Ms. Pierce's bill. We have quite a few people who have traveled to testify, so I would like to get this bill on the record and get some testimony. We may have to carry it over to Wednesday. Go ahead, Assemblywoman Pierce.

Assembly Bill 433: Requires county hospitals to provide cancer treatment as part of their care to indigent persons. (BDR 40-976)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:

In November, in Clark County, we received the news that our county hospital, University Medical Center (UMC), was going to cease providing outpatient oncology services as part of their indigent care program. Like many Las Vegans, I was appalled. It is clearly enough of a horrific situation that we made the news program *60 Minutes* last night. Anyone who watched that, and

I think most of us did, was heartbroken. As all of you know, I am someone who has looked into the eyes of a doctor when I was told that I have cancer. I am a person with extraordinarily good health insurance, so when I was told that I had cancer, I did not at any time have to consider what to do if the money runs out or how do I get cured? I had very good insurance, and I knew that I was never going to have to face anything but being cured. I have often thought with the level of uninsured that we have in our state, what is it like to have somebody look at you and say you have cancer and you do not have health insurance? I cannot imagine. It is too horrible to imagine. Then to know that there are people in our community who were being told that they have cancer and "good luck." To me, this is simply not an acceptable decision in a community that is as affluent as ours. Las Vegas is not a poor community. This bill is an unfunded mandate, but I just want to be sure that this decision is taken off the table forever and that, from here on out, we are clear that in southern Nevada we are a community that takes care of its most vulnerable; we do not send people to die. If you saw *60 Minutes* last night, it is clear that we are sending people to die. That is just not acceptable to me, and I do not think it is acceptable to the vast majority of people in southern Nevada.

One thing I will say is that it is my understanding this decision was made for the lack of less than \$2 million, which is shocking to me. The other thing that I would say about the bill specifically is that only Clark County has a county hospital. This is a bill that does not affect any of the other counties; this is only a Clark County bill. I do have DVD copies of the *60 Minutes* report, so if anyone on the Committee would like to see it, I will be happy to provide it to you. You can see the terrible depths—the whole nation was shown—that Clark County has sunk to in this terrible economy. We want to take this option off the table for now, forever, for any bad economy that comes down the road; we need to find some money, somehow.

Chairwoman Smith:

In this time where we have been sitting in budget hearings for weeks, listening to the budget concerns and doing our best to determine what essential services we need to provide to keep our citizens safe, it strikes me that this would be considered an essential type of service. I think those of us here can definitely relate to having to make those decisions, but I cannot imagine this not making it to the list of essential services.

Stacey Gross, MPH, CHES, Community Programs Manager, Susan G. Komen for the Cure Southern Nevada, Las Vegas, Nevada:

Our organization is dedicated to saving lives and ending breast cancer, forever, and that is what I am here to talk to you about today. [Read prepared testimony ([Exhibit U](#)).]

**Thomas McCoy, Government Relations Director, American Cancer Society
Cancer Action Network, Reno, Nevada:**

You have my written testimony ([Exhibit V](#)), so I am going to try to paraphrase it for you.

Cancer is the number one personal health concern of Americans. There is no question about it. Therefore, the American Cancer Society believes that after tobacco use, lack of access to health care is probably the biggest barrier we are ever going to have to progress in the fight against cancer. If you saw *60 Minutes* last night or heard Ms. Gross' comments, you might think they are anecdotal and rare examples. They are not. It is a tragic fact that the uninsured are diagnosed more often with advanced stages of cancer.

The American Cancer Society did some research, and this is what I want to pass along to you. It is shown that people without health insurance and those on Medicaid are more likely to be diagnosed with advanced stages of cancer than those with private health insurance. Not unexpectedly, they have a greater risk of death. The critical significance of access to care is reflected in the study that I want to address, just briefly, on the medical severity of breast cancer.

Stage three or four breast cancer develops in 18 percent of uninsured women and almost 20 percent of women on Medicaid compared to 8 percent of women with private insurance. This is consistent for other cancer sites as well. African-American and Hispanic women have higher incidences of advanced stages of the disease compared to white women. Prevention and early detection are very important in treating cancer. This would save the state money, in addition to saving lives and suffering. When breast cancer is diagnosed at the localized stage, the five-year survival rate is 98 percent. If it spreads to distant organs, that rate is 27 percent.

I hope that A.B. 433 is something that we can get on the books. Our counties have a responsibility to care for the indigent, which is statutorily required. I hope that all of us can address the access to care problems. They are problems that go beyond just the County Commissioners who are the Trustees of the UMC. It has to do with funding Medicaid. As you are aware, we are at the bottom in terms of what we spend per capita in Medicaid. Medicaid funding, as low as it is, discourages providers and hospitals from participating in necessary treatment. What I hope is that what happened in Las Vegas stays in Las Vegas and does not spread to the rest of the state, and I think that is, in large measure, up to the Legislature.

Assemblywoman Leslie:

I agree with you on the Medicaid funding. We are 51st in the country and still cutting more out of our system, which does affect the hospitals and what they are able to provide. Nevertheless, I have to agree with our Chairman. This clinic is the definition of an essential service, because if you do not provide it, people die. Closing the clinic means people die. Did UMC contact the American Cancer Society before they did this or work with you to find an alternative, so that people would not be left to die?

Thomas McCoy:

We took the initiative ourselves to try to get involved. I traveled to Las Vegas. Ms. Gross contacted me, and we talked about a community meeting that was going to take place in late November. Dr. Linda Ferris, who is associated with the Renown Health Cancer Institute, and I went to the meeting. We basically said that there has to be a solution and northern Nevada may be able to help. I told this Committee last week about a situation in which a lady in southern Nevada could not be seen by the physician. She had a Clark County Medical Assistance card that was going to expire before she could see an oncologist, and I was able to get her up to Reno where she was seen and told she was going to be okay. We have 77 oncologists in this state: 42 in Las Vegas and the others are primarily in Washoe County. Is there something that we can do in collaboration to resolve some of this in the interim? I do not know. I am just throwing this out to the Committee.

Assemblywoman Leslie:

I agree with you. We have to find a solution.

Chairwoman Smith:

Mr. Russell, I know you traveled a long way, so I would like to make sure you get a chance to testify.

Warren Russell, Commissioner, Elko County Board of Commissioners, Elko, Nevada:

I would like to testify in the neutral position. I think this bill is caring and a good-hearted effort to address health needs for indigent people. But I think there are some other issues here. For example, one of the questions I have is what happens if we have an indigent person and we have no provision for them at our local hospital? What happens in Elko County is that we have a \$25,000 deductible, then we send the person to another facility, or they start getting treatment, and there is no way to pay for this. The Legislature has swept our supplemental funds, so we are stuck with whatever money it is. If there is no provision for care in Elko County where we do not have

a county hospital, then I think they are going to the hospital in Las Vegas, and we are putting the burden on UMC in Las Vegas.

The way the bill is written, and I am not sure if it was done with the intent of isolating Clark County in this, it says that if the person is a resident of Nevada, and they are a resident when they are diagnosed with the cancer, then they are eligible. Under those criteria, residents from Elko County can come to UMC in Las Vegas. So not only will you have a problem with people in Clark County, but you will have a problem with people from Elko County going down to UMC. Then UMC is going to say that since they are coming from Elko County, they need to pay for services, and then they are going to come to the county and tell us that we need to pay for those patients.

It is a good response to a real problem, but there needs to be some kind of response financially, not only in Clark County, but also in the rest of the state. Taking away the supplemental funds is removing a support for indigent care, and if you really care about people in this state who cannot afford insurance, then you are going to support this, which is either a problem for you or a problem for someone else. It is such a tender subject, but we also have to be realistic about it. It is almost like saying that you come to me with a problem, and you ask me to help you, so I walk down the street, take money from someone else, and use it to solve your problem. I think if the Legislature is saying that you want us to care, and we really do care about cancer patients, then it is not only our problem at the county level, it is your problem at the state level. If you really want to be responsible and do something, then you will get involved too and not just lay the problem on top of the counties. I think if you look at this bill in a more expanded way, you may find that you can resolve some issues and find it in your hearts to really do something for these folks.

Chairwoman Smith:

Thank you for your testimony. I think you have raised an interesting question that we need to think through about the issues of people who do not reside within Clark County. I do not know the answer to that, and that is something we will have to explore. The way I read the bill, it only applies to Clark County because that is the only county with an actual county hospital. The rest of your questions are interesting, and we will explore them. Also, I am sure you are aware that our budget committees are working diligently to try to give as much help as we can.

John Ellerton, M.D., Private Citizen, Las Vegas, Nevada:

I am in favor of this bill. This is not an abstract issue, although we have heard some abstract numbers today. I can assure you, as an oncologist and being on the frontline in the care of these patients at UMC, that we are facing

five to ten inpatients a week for whom we have no reasonable expectation there is a place for them to go as an outpatient. This does not in any way include the people outside the hospital who are calling the office asking for appointments, either with the support of Clark County Social Services or they do not have any insurance or any way to get money. I do not know what every oncologist experiences in Las Vegas, but I am certainly seeing a number of these patients, and we try not to turn them away, but there is a limit to what you can do.

Remember that this clinic was over 35 years old. I have worked in it, on and off, for 30 of those 35 years. When it was closed, it was servicing roughly 40 infusion patients a day and somewhere in the neighborhood of 40,000 to 50,000 visits per year, and suddenly it is shut down. The bottom line is that this clinic has to come back. I am not here on behalf of UMC. I am the Chief of the Medical Staff, and every day doctors come up to me and ask when the clinic is going to reopen. Imagine you are a physician with a cancer patient in the hospital, and you do not know what is going to happen to that patient when he is discharged, whereas before you had a place to send him. The patients who come to my office, whether they are insured or uninsured, often bring up the same issue, especially since *60 Minutes* was shown yesterday. This oncology clinic had a national reputation and, certainly, had a local reputation. It was excellent. Clark County Social Services has tried to step into the breach here, but this is shifting the responsibility of the hospital over to the private sector, and I have to be honest, there is a limit to how much you can do and how many of these patients you can see. Please understand that Clark County Social Services reimburses us for drugs and supplies at the Medicaid rate. If a patient is seen at UMC, and is truly indigent, the drug costs are zero because those drug costs can be recovered. I pay the wholesale rate for drugs, but UMC does not. They pay a rate, in oncology, around 40 to 50 percent, so there is a differential in financing when the patients are not treated in the hospital. More importantly is that the hospital clinic created a system—a place to refer the patients where they could get the necessary supportive care, nursing care, chemotherapy, and radiation. We have a surgical clinic, which is still partially functioning, but certainly not like it was. This was an integral part of the teaching experience of the residents in the hospital, so I think it is critical that this clinic be brought back. You have no idea how frustrating this is to have these patients in the hospital. We give all the patients the same advice—immediately go to Clark County Social Services and try to get eligibility analyzed and get a card. That at least allows medications, x-rays, and lab work to be done at UMC, and we can see the patients in our offices to some extent, or we tell them to go to the state and try to get Medicaid.

I understand the financial problems that are occurring and what is happening to UMC. I am here because I have always believed that we at UMC need to offer the best care to all our patients, regardless of their ability to pay. I am going to make a pitch here. Part of the private oncology community has come forward and agreed to see patients. I did not see any of the other hospitals stepping forward to say that they were going to help. Once again, UMC is left to take care of these people who need help. So, I think when you are considering financial issues, you should take into account that the place that looked after these patients, and should continue to do so, is UMC. This would also apply to the cut that was made in the Medicaid funds, which affects UMC in a disproportionate amount because a majority of the Medicaid money goes to UMC. As a physician working in this community, not only as one who is an oncologist, to have this clinic disappear is not acceptable, and I urge you to pass this bill and make it clear that this is the responsibility of the county, and we will make it clear that it is the responsibility of the physicians to help look after these patients.

Chairwoman Smith:

Thank you, Dr. Ellerton. You made a very good point about the teaching aspect of this issue. I appreciate you bringing that into this discussion, because it is a huge loss to our medical students to not have access to that teaching opportunity, and it is a loss to the community for future patients as well.

Assemblywoman Leslie:

Thank you, Dr. Ellerton. I guess I cannot understand the sudden closure of this clinic. Was Assemblywoman Pierce's estimate of about \$2 million accurate? Was that the cost to UMC?

John Ellerton:

I would not pretend to know all the details about the costs. It may have been \$2 million. I think the fiscal analysis attached to the bill is a little suspicious. I do know that this clinic attracted a large number of paying patients from private practitioners, including my practice and several others. I think that since there was a cut in the Medicaid funding, they decided to close.

Assemblywoman Leslie:

That is the part that I do not understand, and I have not yet seen the fiscal note. I am hoping this was not a political decision designed to get the Legislature's attention at the expense of people's lives. It seems that within the huge budget that UMC has, why would you cut a lifesaving clinic?

Chairwoman Smith:

I would like the hospital representatives to come to the table. I think we will take this testimony and then roll this bill to Wednesday.

Brian Brannman, Chief Operating Officer, University Medical Center, Las Vegas, Nevada:

I would like Jeri White and Nancy McClane to begin and to talk about where we are today regarding the care of these people. Then we could turn the discussion back to me about the decision to close this clinic.

Jeri White, Director, Social Services, University Medical Center, Las Vegas, Nevada:

Upon notification that the outpatient oncology program was closing, UMC worked closely with Clark County Social Services to develop a process for transitioning the newly diagnosed, indigent cancer patient into the community. A special outreach referral process was developed to identify indigent cancer patients hospitalized at UMC and to transition them as quickly as possible to an outpatient oncology provider. This referral process still remains in place today. In my opinion, Clark County Social Services has done an outstanding job of facilitating and coordinating outpatient oncology services for the indigent oncology patients.

Nancy McClane, Director, Clark County Social Services, Las Vegas, Nevada:

From the time that UMC closed its oncology center, our agency has ensured access to treatment for every qualified, indigent patient diagnosed with cancer. There has been no interruption in their care, and we are working with local providers and Great Basin HealthNet to ensure the availability of services and a referral process is in place to transition patients from UMC inpatient treatment to outpatient oncology services. As of April 1, 2009, 38 eligible clients are receiving cancer treatment through four contracted providers, plus Great Basin HealthNet. Five of these clients have been determined to be Medicaid eligible since the start of their treatment. All of these individuals were diagnosed while under the care of UMC physicians, and UMC continues to be a key partner in their care, providing lab work, radiology, and biopsies for these patients.

I would like to give credit to the providers that are being utilized: the Women's Cancer Center, Cancer Consultants, Nevada Cancer Centers, Las Vegas Cancer Center, and the Comprehensive Cancer Centers of Nevada. Eighteen different types of cancer are being treated, including breast, lung, colon, liver, lymphoma, leukemia, and various obstetric/gynecological cancers. I cannot provide a cost analysis at this time because complete billings have not been received from the providers to date; however, we generally pay Medicaid rates regardless of the provider. Clark County Social Services also provides

payment for the Consolidated Omnibus Budget Reconciliation Act (COBRA) insurance continuation for clients who present with a medical need. We cover clients with income levels up to 180 percent of federal poverty level, and we also provide assistance with co-pays. Those people would not have their care coordinated through our agency but would continue their care through their normally established medical providers. Individuals who do not meet the eligibility criteria for county medical assistance are referred to Great Basin HealthNet which offers self-pay access to medical care, including oncology, at significantly discounted rates. This also applies to undocumented persons. From the perspective of Clark County Social Services, A.B. 433 is an unnecessary bill because our indigent clients are receiving a full complement of cancer treatment services through area providers.

Chairwoman Smith:

How do we explain the people who were featured in the *60 Minutes* segment; the people who said that they do not have access to care?

Nancy McClane:

That segment was created very early in the process, and, unfortunately, the Health Insurance Portability and Accountability Act (HIPAA) regulations prohibit me from giving you specifics about anyone who may be our client. But if they are our clients, they are receiving care.

Chairwoman Smith:

Let us move on to the next speaker.

Justine Harrison, Vice President, Legal and Government Affairs, Nevada Cancer Institute, Las Vegas, Nevada:

Thank you, Madam Chair, and I believe I may be able to address your question in my comments.

As the official cancer institute for the State of Nevada, the Nevada Cancer Institute's mission is to reduce the burden of cancer in Nevada, the nation, and the world. [Read from prepared testimony ([Exhibit W](#)).]

Chairwoman Smith:

Do you have the answer about the dollar amount that the clinic was closed over? It was suggested that it was \$2 million. Is that true?

Brian Brannman:

The estimate that we provided in the bill summary is an effort to try to narrow the costs. I would say the immediate impact of savings for the current fiscal year was around a couple million dollars. That number, annualized,

certainly would be somewhat greater than that. It was one sliver of an estimate taken in a very short interval of time trying to offset a \$20 million cut. I would say that when this was proposed in November, which is about half way through the fiscal year, it was about \$2 million. If we look at this overall, it is about \$15 million, but that also includes some inpatient care.

Chairwoman Smith:

But your fiscal note is saying over \$50 million?

Brian Brannman:

No. It says \$15 million was spent in cancer care at UMC.

Chairwoman Smith:

But your fiscal note is \$55 million for future biennia, and I did not add up the other three. It is very large. We will continue this part of the discussion on Wednesday. Please take a look at your fiscal note, and we can talk about it later.

Ms. Harrison, I wanted to ask you about the Cancer Institute's role in providing some of this care. I did not hear the Cancer Institute mentioned on the list of agencies that are involved in the care of Clark County Social Services' clients. Could you tell us about that?

Justine Harrison:

We have been at the table with the County and the Commissioners at multiple meetings, and we have offered free physician services as well. We continue to perform charity care at the Institute, as we have since our inception. An additional service, which we have seen an uptake in providing, is our patient navigation services, which is connecting patients in need to resources, whether it be financial, treatment, support services, support groups, et cetera. I will say that in the month that UMC notified its patients it would no longer keep the cancer care clinic, we had more than a twofold increase in our state-supported patient navigation line of people needing to be connected with resources. Oftentimes that included walking people through the Medicaid process and the Clark County Social Services process, but we continue to see charity care patients.

Chairwoman Smith:

I hope you all can come back on Wednesday when we continue this discussion.

Brian Brannman:

Would you like me to walk through how UMC decided to close the clinic, or would you prefer that I do that on Wednesday?

Chairwoman Smith:

I would prefer to do that on Wednesday when we are fresh and we have the full Committee. I hate to not give the rest of the Committee the opportunity to hear your response. I will close the hearing on A.B. 433. Is there any public comment? [There was no response.] Any comments from Committee members? [There was no response.] There being no further business before the Committee, we are adjourned [at 4:54 p.m.].

RESPECTFULLY SUBMITTED:

Chris Kanowitz
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblywoman Debbie Smith, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: April 6, 2009

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 359	C	Assemblywoman Woodbury	Nevada Autism Task Force Report
A.B. 359	D	Assemblywoman Woodbury	Proposed Amendment No. 112
A.B. 359	E	Assemblywoman Woodbury	Proposed Amendment No. 3875
A.B. 359	F	Jan Crandy	M-CHAT
A.B. 359	G	Jan Crandy	NEIS Chart
A.B. 359	H	Amy Johnson	Testimony
A.B. 359	I	Wendy Hruska	Testimony
A.B. 359	J	Janelle Mulvenon	Testimony
A.B. 363	K	Chris Giunchigliani	Graywater packet
A.B. 363	L	Chris Giunchigliani	Letter from Todd Slusher
A.B. 363	M	Chris Giunchigliani	Email from Lois Tarkanian
A.B. 363	N	Scot Rutledge	Pictures
A.B. 363	O	Steven Rypka	Testimony and Information
A.B. 363	P	John C. Sagebiel	Testimony and Pictures
A.B. 363	Q	Chales M. Benjamin	Testimony
A.B. 363	R	Lynn Orphan	Packet
A.B. 363	S	Lynn Orphan, Steve Walker, and Andy Belanger	Proposed Amendment

A.B. 363	T	Joseph L. Pollock	Testimony
A.B. 433	U	Stacey Gross	Testimony
A.B. 433	V	Thomas McCoy	Testimony
A.B. 433	W	Justine Harrison	Testimony