MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session
April 29, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:46 p.m. on Wednesday, April 29, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Assemblyman Jerry D. Claborn, Assembly District No. 19
Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman John Oceguera, Assembly District No. 16

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Cindy Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Josh Griffin, MGM Mirage
Pilar Weiss, Culinary Workers Union Local 226

Dave Garbarino, International Union of Operating Engineers Local 12
Shawn Kinsey, International Union of Operating Engineers Local 12
Louis Loupias, Apprentice Coordinator, International Union of Operating Engineers Local 12
Clyde Raper, Perini Building Company
Gary E. Milliken, Associated General Contractors, Las Vegas Chapter
Jack Jeffrey, International Union of Operating Engineers Local 12
Dylan Shaver, Southern Nevada Building and Construction Trades Council
Phillip Kinser, Manager, Program Development, National Commission for the Certification of Crane Operators
Marti Reis
Ralph Walker
Linda Walker
Scott Canepa, Nevada Justice Association
Peter Krueger, Subcontractors' Legislative Coalition
Richard Peel, Subcontractors' Legislative Coalition
Sherry Vyvyan, Southern Nevada Air Conditioning Refrigeration Service Contractors Association
Jeffrey L. Westover, National Electrical Contractors Association, Southern Nevada Chapter
Dave Bold, Done Right Plumbing
Jim Wadhams, Southern Nevada Home Builders Association
Bruce King, Nevada Subcontractors Association
Jay Parmer, Builders Association of Northern Nevada
David Gould
Jim Wright, Chief, State Fire Marshal Division, Department of Public Safety
Rusty McAllister, Professional Firefighters of Nevada
Rebecca Gasca, American Civil Liberties Union
Erin McMullen, Nevada Self-Insurers Association
David F. Kallas, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Incorporated
Bob Ostrovsky, City of Las Vegas
Richard Gilbert, Contracts Manager, Department of Public Safety
Wayne Carlson, Executive Director, Public Agency Compensation Trust
Jeff Friend, Professional Firefighters of Nevada
Tyler Ferguson, Las Vegas Fire Department
Dean Fletcher, Professional Firefighters of Nevada
Steve Driscoll, CGFM, City of Sparks
Randy Waterman, Public Agency Compensation Trust

Liane Lee, City of Las Vegas
Sabra Smith-Newby, Director, Department of Administrative Services, Clark County

CHAIR CARLTON:
I will open the hearing for Assembly Bill (A.B.) 84.

ASSEMBLY BILL 84 (1st Reprint): Revises provisions governing unemployment compensation. (BDR 53-546)

CINDY JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
This bill amends provisions of chapter 612 of the *Nevada Revised Statutes* (NRS). Assembly Bill 84 was requested by the Employment Security Division to continue unemployment insurance program improvements recommended by the Legislative Counsel Bureau and the Department of Administration's Division of Internal Audits. The bill is specifically designed to protect the financial assets of the Unemployment Insurance Trust Fund on behalf of the Nevada employers who fund the unemployment insurance benefit program.

Concurrent with reductions in federal funding in past years, there has been a national shift to provide economical service delivery using remote methods, such as the Internet and telephone, for unemployment insurance claims. This has increased the potential for fraud by individuals who are not eligible for benefits and by those who file fraudulent claims through identity theft. In 2008, the Division identified and assessed fraudulent overpayments totaling $3,830,000. This amount was twice that detected in 2007. The Division has added resources to fraud-prevention detection over the past two years to thwart unemployment insurance fraud. However, given the state of our economy, instances of fraud have increased. From January 1 through March 31, 2009, the Division has issued over 2,000 fraud determinations totaling more than $3.1 million. At this rate, we expect to issue fraud determinations valued at over $12 million by the end of the year. This bill seeks to give the Division tools to stem the tide of fraud and send the clear message that unemployment insurance fraud will not be tolerated. We are hoping to improve the fiscal integrity of the Unemployment Insurance Trust Fund system with this legislation.

Sections 1 through 8 of A.B. 84 were deleted by the Assembly Committee on Commerce and Labor. Section 8.5 allows the Division to assess fees to recover outstanding fraudulent overpayments through programs initiated and permitted under federal law, such as the federal income tax intercept program.

Section 9, subsections 1 through 3, redefines misrepresentation as fraud, describes fraudulent activities and provides administrative penalties for the commission of fraud. Subsection 4 of section 9 specifies that the act of filing an unemployment claim while incarcerated or causing another to do so on one's behalf is misrepresentation and fraud. Subsection 5 categorizes fraudulent activity resulting in a loss to the trust of more than $250 as theft and indexes the punishment to NRS 205.0835. Subsection 6 adds provisions for financial penalties for the commission of unemployment insurance fraud. The Department of Administration recommended that Nevada's unemployment program adopt penalties for fraud in a 2007 review. A claimant that commits fraud would have to repay a financial penalty along with any benefits obtained fraudulently. The purpose of such penalties is not to generate revenue, but to act as a deterrent to those who seek to defraud the system. A tiered penalty structure is indicated to ensure the penalty fits the crime. If A.B. 84 becomes law, Nevada will become the 45th jurisdiction to include financial penalties in their unemployment insurance fraud laws.

Section 9, subsection 7, prevents a person who fraudulently claimed benefits from receiving further payments until the fraudulently obtained benefits are repaid or the person enters into a payment agreement to repay them. It also provides a mechanism by which the administrator can weigh that requirement with good cause shown.

Section 10 of A.B. 84 provides authority to use penalty and interest funds to enhance programs designed to ensure the integrity of the system and safeguard the employer's tax dollars.

Sections 11 and 12 of the bill follow the recommendation of the attorney general worker's compensation prosecution unit to rectify inconsistencies within NRS chapter 612. The provision defines "making a series of false statements to receive benefits" as a misdemeanor, even though the amounts can exceed $10,000. This is recommended to close a loophole through which those who perpetrate fraud obtain significant reductions in felony charges. Section 13 of the bill extends these provisions to interstate and federal benefit programs.

CHAIR CARLTON:
I understand an amendment is being proposed. Have you seen it?

MS. JONES:
I have. We have no issue with the amendment, since it does not pertain to unemployment compensation law per se, just to unemployment law in general. We have no objection to the amendment, if it is deemed appropriate.

JOSH GRIFFIN (MGM Mirage):
We have a proposed amendment to A.B. 84 (Exhibit C). The amendment relates to overtime provisions in banquet facilities. The federal wage and hour law has an express exception from overtime for commissioned salespersons who earn at least 50 percent of their compensation from commissions. MGM Mirage has treated banquet employees who receive a mandatory gratuity as commissioned salespersons exempt from overtime provisions, and there is case law supporting this at the federal level. The gratuity they receive is built into the fees charged to the guests; the guests must pay it, and there is no real relationship to the service. It is in essence a commission or service charge. We have support from the Culinary Workers Union on this issue. The intent of the proposed amendment is to clarify that Nevada law is consistent with federal law.

SENATOR PARKS:
Your amendment is to go into NRS 608.250, and A.B. 84 deals with NRS 612. Is this the appropriate bill for this particular provision?

CHAIR CARLTON:
I am informed by Daniel Peinado, Committee Counsel, that this amendment is not germane to the subject of A.B. 84. We will discuss the issue, however, in the hopes that we can find another bill that would be a better place for this provision.

PILAR WEISS (Culinary Workers Union Local 226):
The language in Exhibit C would codify current practice. The interpretation has always been that of federal employment law. Because of the commissions banquet workers receive, they are not considered under the same umbrella for overtime. Banquet servers might work straight through for two weeks and then not work for two months. Our legal team has always held, as has case law, that the federal law is the way to interpret it. This has been the practice on the Las Vegas Strip for many years. We are in support of codifying this, if an

appropriate vehicle can be found, so there is not a misinterpretation that would lead to an unfortunate precedent of people not being brought on for banquet functions to avoid overtime.

CHAIR CARLTON:
My experience mirrors this. Banquet servers may literally work 14 days in a row because that is when the business is in town, and then not work again for another 6 weeks. If the overtime provision were to apply, they would work less, because the company would be required to pay time and a half on more than 8 hours a day or 40 hours a week. We are not talking about taking overtime away from employees; we would just allow the status quo to continue.

MS. WEISS:
You are right. Our fear is if there was a misinterpretation of overtime, workers might have their hours cut. In this economy, we have banquet workers who have already seen reduction in hours, and we do not want to see further reduction.

CHAIR CARLTON:
Thank you for bringing this to our attention. We will see what we can do for those workers. I will close the hearing on A.B. 84 and open the hearing on A.B. 208.

ASSEMBLY BILL 208 (1st Reprint): Revises provisions governing certification of crane operators. (BDR 53-114)

ASSEMBLYMAN JERRY D. CLABORN (Assembly District No. 19):
Today I bring you A.B. 208, a crane safety bill. A similar bill was passed into law in 2005, but unfortunately it included a sunset clause that set in January 2007. That sunset clause deleted the requirement for certification for crane operators that included a certain amount of crane-related experience and specified training. We are here today to correct this crane safety problem, which is happening throughout Nevada. This was brought on by the fact that there is also a national concern that is putting together a certification program for cranes, and we want to get in on the ground floor.

DAVE GARBARINO (International Union of Operating Engineers Local 12):
I would like to testify in favor of A.B. 208. I have written testimony describing the urgent need for this legislation (Exhibit D).

I understand part of the opposition to this bill has to do with the verification of the hours. Our members get their certification through the International Union of Operating Engineers' crane certification program, which is an accredited program in Nevada, Utah and California. It also has federal accreditation from the Occupational Safety and Health Administration. Either we or the certifying agency verifies the hours of experience with a random audit. We verify between 30 and 60 percent of the hours by placing phone calls and following up on the information in the application. We have been doing that in California since 2005, and it seems to work pretty well.

CHAIR CARLTON:
Is "crane operator" a basic job classification? Can employers pull a paycheck and say the person was paid for so many hours as a crane operator, so that verifies they were actually sitting in the driver's seat of a crane?

MR. GARBARINO:
Yes, basically. The applicants list the employers they worked for and what their classification was. The certifying agency calls those employers and verifies that they did work there. We also keep records of where each person was dispatched.

SHAWN KINSEY (International Union of Operating Engineers Local 12):
I agree with everything Mr. Garbarino said. We are encouraging your support on this bill.

LOUIS LOUPIAS (Apprentice Coordinator, International Union of Operating Engineers Local 12):
I am here in support of this bill as amended.

CLYDE RAPER (Perini Building Company):
I am in support of this bill with the amendment. I was the supervisor who drew the individual with 4 1/2 hours of crane experience described in Exhibit D, so it is a true story.

CHAIR CARLTON:
Mr. Raper, how many hours would you say you have sat in the chair of a crane in your career?

MR. RAPER:
At a quick guess, I would say perhaps 60,000 hours.

GARY E. MILLIKEN (Associated General Contractors, Las Vegas Chapter):
We worked with Assemblyman Claborn on A.B. 208, and we are in support of the bill.

JACK JEFFREY (International Union of Operating Engineers Local 12):
We are in support of this bill. I also represent the Laborers' International Union of North America Local 872, and they are also in full support.

We do have one concern with the bill. Section 3 of A.B. 208 states the effective date is July 1, 2011, or the date the Governor declares that the federal government has adopted provisions governing the certification of crane operators, whichever is later. There is a concern that if the federal government does not adopt these provisions, there will be no effective date for this measure. We would like to suggest the bill be effective at the earlier of those two dates rather than the later.

DYLAN SHAVER (Southern Nevada Building and Construction Trades Council):
We are here in support of this bill.

PHILLIP KINSER (Manager, Program Development, National Commission for the Certification of Crane Operators):
I have a number of issues with A.B. 208. The summary of the bill refers to "crane-related experience," but the body of the text speaks about operating experience only. There is quite a bit of difference between the two. Crane-related experience can include maintenance, training, operation and inspection, none of which is discussed in this bill.

The term "operating experience" also needs to be defined. There was a reference to the amount of time spent sitting in the seat of a crane, but only a small portion of that time is spent in actual lifting operations, since operators spend a lot of time waiting to make a lift. They may go to a job site, set up a crane and wait 4 hours to make a 15-minute lift. We need a definition of operating experience that decides whether it includes all the time spent sitting in the crane or just the time spent actually lifting. We had a requirement in our program for experience, and we found many applicants who claimed to have 5,000 to 10,000 hours of crane-related or operating experience could not pass

a practical exam. That led us to examine what really constituted experience. Does it include bad experience as well as good experience? We do not want to verify bad experience, but we have no way of determining objectively the quality of an applicant's experience.

Section 1, subsection 2, paragraph (c), subparagraph (3) of A.B. 208 requires a minimum of 1,000 hours of crane-related experience or training. We currently provide certification for 15 states, and none of them require crane-related experience or verification of experience. Most states do not like to have a requirement for experience because it prevents people from getting the job to acquire the skill. In this same section, "training" has also not been defined. Without a definition that a certain amount of the training must be doing lifting operations with and without a load, the term is open to individual interpretation of what constitutes adequate training.

Section 1, subsection 2, paragraph (c), subparagraph (5) of A.B. 208 does not require an examination if the applicant is seeking recertification and has 1,000 hours of experience operating the type of crane for which he is seeking certification during the preceding 5-year period. This will be a difficult requirement for trainers to meet, since it would require them to spend four hours a week operating a crane. If "crane-related experience" is defined to include training, inspection and maintenance, that problem would be solved.

Section 1, subsection 2, paragraph (d) of A.B. 208 requires verification of the hours of experience. One issue we have had when we have tried to enforce this type of policy is access. We contact every employer on the list the applicant gives us, but they do not all wish to reply or give us access to their records. Will we have access to union records for verification purposes? There are many issues associated with ascertaining the actual lifting experience.

SENATOR HARDY:
You have quite a few concerns with this bill. Did you testify when this bill came forward in the Assembly Committee on Commerce and Labor?

MR. KINSER:
No. I was not aware of the bill at that time. I did participate in the creation of the original bill in 2005, however. Assemblywoman Debbie Smith contacted me about A.B. 208, and I have a copy of the e-mail I sent her in reply laying out some of our concerns (Exhibit E).

SENATOR HARDY:
Did you contact the bill's sponsor, Assemblyman Claborn?

MR. KINSER:
I did not.

SENATOR HARDY:
Assemblyman Claborn has been dealing with this issue for a long time, so this should not be a surprise to anyone. However, it is unusual to have concerns of this magnitude brought up this late in the process, particularly without having spoken to the bill's sponsor.

SENATOR PARKS:
Do you have specific language to suggest to better define experience or training?

MR. KINSER:
As I stated in Exhibit E, you would need some well-defined rules on the verification process. In the event of an accident, the certifying body will want to verify the person's skill level and experience. If all we could say was that we made a phone call to the people he indicated were his employers, that does not serve much purpose if that experience was bad. The practical exam assesses their ability in crane operation in a number of ways, and the written test makes them aware of the current federal or state laws and American Society of Mechanical Engineers standards that govern crane operation, as well as industry-accepted criteria. If we can test them and they can demonstrate they understand that knowledge and they can control the crane in the various assessments of their skills, what they do after that point when they go out into the workforce is impossible to control.

The one who has the best control of that is the employer or the contractor who hires them. I understand we are in a much different period of time than we were four years ago when you could not look in Las Vegas without seeing a crane. Contractors were very eager to bring somebody on when they had an open seat and they had to operate that crane, so they were not exercising due diligence in making sure that person had specific experience. The qualification criteria for assessment purposes are the basic skills and knowledge that he must possess to operate that crane safely. That does not mean I can put a man into a crane and he can hang steel, skip concrete or pick up a load of rebar if he has not

done it before. There are so many different particular jobs associated with construction sites and specific skills for doing particular jobs that you could not establish a testing process to test all those areas. We remind contractors that certification is one of the tools he should be using to verify the person has some basic understanding and can operate the crane safely. It is like driving a car. We have many regulations saying how a car should be run, but we still have many accidents and deaths associated with people making the wrong choice. Crane operations has a lot to do with making the right choice.

SENATOR PARKS:
You represent the National Commission for the Certification of Crane Operators. Do they not have specific criteria and standards that evaluate and certify crane operators?

MR. KINSER:
Yes. We have a written exam that meets a job task analysis following the science of psychometrics, as well as a practical exam where they must operate a crane with and without a load, and we test the basic skills to operate a crane, including changing boom angles and controlling the load.

SENATOR PARKS:
Our understanding is that you have not offered those criteria to the sponsor of this bill. Are those criteria codified in statute in other states?

MR. KINSER:
Yes. We were involved in the original bill, and I only found out about this process very recently. We were not invited to join the process in discussing the amendment, and I believe we were kept out of it purposely. We have a delicate situation in southern Nevada.

ASSEMBLYMAN CLABORN:
With regard to the claim that requiring 1,000 hours of experience keeps people out of the job, we have a provisional operating engineer position that is essentially an apprentice. He has to have so many hours of training, but that is how an apprentice gets experience. You cannot put an apprentice in the seat of a crane. A provisional operating engineer works around the crane and works his way into the seat with a journeyman operator watching him. Mr. Loupias is our crane coordinator and can explain the program.

MR. LOUPIAS:
Under NRS 618.880, there is a provision that allows for provisional operators, which means trainees, to get certification and crane experience hours on the job. Mr. Raper has employed probably 20 apprentices in the past 2 years and given them the opportunity to get hands-on experience so they could get their certification.

VICE CHAIR SCHNEIDER:
I will close the hearing on A.B. 208 and open the hearing on A.B. 215.

ASSEMBLY BILL 215 (1st Reprint): Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance. (BDR 54-893)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
This bill requires licensed contractors and applicants for renewal of a contractor's license to obtain and provide proof of limited liability insurance if they are licensed to do work in Nevada. The amount of insurance required would be between $300,000 and $3 million, depending on the size of the job they were licensed to bid.

Assembly Bill 215 is about protecting homeowners in Nevada. Requiring contractors to maintain and provide proof of insurance means someone will be accountable to repair problems that may surface after completion of the job. In the testimony in the Assembly Committee on Commerce and Labor, I asked the State Contractors' Board whether they required insurance of contractors, and they said no. I then asked whether they had that ability, and they said no, but if the Legislature required it they could do it. I do not believe limited liability insurance is an onerous provision. It is important to point out that many of our neighboring states already have such a requirement on their contractors.

MARTI REIS:
I am in support of A.B. 215. I have written testimony describing my experiences with a developer who deliberately underinsured, with the result that my fellow homeowners and I were unable to find relief for housing defects (Exhibit F).

SENATOR SCHNEIDER:
Was Pageantry Homes working on repairs before you started the lawsuit?

MS. REIS:
I had water leakage while my home was supposed to be under warranty. They refused to fix it.

SENATOR SCHNEIDER:
Was that before you hired the services of an attorney?

MS. REIS:
No, that was afterwards. But I had other issues with my condominium before we hired an attorney, and Pageantry would either not come out to look at the problems or would hire a handyman to do repairs. Some of the problems were serious and needed more than a handyman, like water leaks into the electric lines.

RALPH WALKER:
My wife Linda and I enthusiastically support A.B. 215. I have written testimony describing our experiences with an underinsured contractor and a home in Reno that developed major housing defects (Exhibit G). Long before we got an attorney involved, the contractor would come out, look at the problems and say things like, "Yep, the concrete is cracking," but he would not do anything about it. I have additional photographs of the cracking and other problems that were taken this morning (Exhibit H). The contractor repeatedly promised to send someone out to assess and fix the problems, but this never happened. We turned the matter over to a lawyer in 2003. There was a lawsuit involving 13 homes, but since the insurance was for $1 million and all the legal fees also came out of that fund, there was no money left for repairs by the time it got to us. The cost of repairing the house is over $400,000, not including attorney's fees, and we only paid $375,000 for the house.

When the developer represented he had insurance to cover his liability, it should have been adequate insurance. It should not have been a cannibalistic policy in which the attorneys' fees take away from the money available for repairs. It does not cost the developer anything to have adequate insurance because those costs are passed on to the buyer. I would have been happy to pay another $1,000 or whatever it took for our house to have $3 million worth of insurance coverage. But there was only $1 million, and it was gone by the time it got to us.

SENATOR HARDY:
Did you contact the State Contractors' Board when you first had these issues?

MR. WALKER:
They were contacted by the attorney. I am a member of the board of directors of my homeowners' association, and we had many members who went to the State Contractors' Board and got no relief from them. It was less frustrating for us to get an attorney involved.

LINDA WALKER:
I concur with my husband's statements. It has been years of frustration and inconvenience. We relied on the contractor to do his job.

SCOTT CANEPA (Nevada Justice Association):
I will run through A.B. 215. Section 1 says that before the State Contractors' Board issues or renews a license, the contractor must provide proof of insurance. Section 2 sets forth the limits of insurance a contractor must have. The amount is tied to the bid limit that the contractor has on record with the State Contractors' Board. The language is based on Oregon law, and similar statutes are in place in Florida, Louisiana, Utah and other states.

This bill was originally intended to allow people other than owners of single-family homes to make a claim against the State Contractors' Recovery Fund. It was felt in the Assembly Committee on Commerce and Labor that it would take pressure off this fund if instead we had contractors demonstrate they had adequate insurance. By and large, contractors whose licenses have been revoked have been uninsured entities. Requiring contractors to have insurance may serve the dual effect of lowering the amount of the claims against the Fund.

SENATOR PARKS:
What kind of policy would a major developer who builds numerous subdivisions of many homes have? Would they have an individual threshold for each structure, or would that insurance be blanket coverage based on some gross level of sales?

MR. CANEPA:
This is detailed in section 1, subsection 2 of A.B. 215. Contractors with unlimited licenses are required to have $3 million in the aggregate and $3 million

for each occurrence. In the subdivision Ms. Reis spoke about, for which I happen to be the attorney, Pageantry Homes formed a single-purpose limited liability company (LLC). The sole purpose of that LLC was to build and sell the condominiums in that community. They purchased a wrap insurance policy, a type of insurance intended to provide coverage for the LLC and all the subcontractors who do work for them. It had a limit of $1 million for 300-plus condominiums, and it was what is called a self-depleting policy, which means every dollar spent in defense of the claim or on experts reduced that $1 million.

The practical reality is that there is no insurance. By the time defense lawyers hire experts and bill on the file in defense of the contractor and subcontractors, there is nothing left for the homeowners. As was pointed out by Ms. Reis, we have done asset checks. That single-purpose entity formed by Pageantry Homes has no other assets. Pageantry has used that same device in connection with the construction of other similarly situated condominium complexes in southern Nevada. One thing that is puzzling is they have purchased up to $5 million in wrap insurance in other complexes of similar size. There is an outstanding question of why they did this, whether for risk management or some other reason. But this is becoming commonplace. My firm presently represents at least three homeowners' associations that are similarly situated, where the total amount needed to fix the defects far outstrips the available insurance even without taking into account fees for attorneys and experts needed to diagnose the problems.

SENATOR PARKS:
If I were to buy a brand-new home, could I buy an insurance policy that would protect me against major construction defects, such as those described by Mr. Walker?

MR. CANEPA:
The short answer is no. You can buy homeowner's insurance, but those policies have form exclusions to say they do not pay for defects caused by original negligent or faulty construction. There are some secondary insurers who provide what is called a homeowner's warranty policy. Most of the carriers have gone out of business, but the ones that remain impose serious limitations on those policies. When it comes to structural problems like the ones Mr. Walker described, most of those policies require that there be an actual failure of a

structural load-bearing member of the residence before it qualifies for coverage. The Walkers' home may or may not reach that level; I do not represent them.

PETER KRUEGER (Subcontractors' Legislative Coalition):
I am here in opposition to this bill.

RICHARD PEEL (Subcontractors' Legislative Coalition):
I am opposed to A.B. 215. I have written testimony explaining my concerns about requiring developers and contractors to carry excessive amounts of insurance (Exhibit I). The problem is that you cannot get insurance if it is not available. If the statute says you must have insurance at those limits, how would you ever get licensed for residential work? What we are really doing is closing the door on residential contractors being able to work in Nevada.

If the Committee elects to go forward with this bill, we would strongly urge you to consider three changes: lowering the policy limits so they are in the range contractors would normally obtain and are financially available; allowing excess insurance to be used to satisfy the requirements; and allowing some type of carve-out for residential projects so that wrap insurance can satisfy the requirements. Those are the three things we would need to see before we could say we agree with the bill.

SHERRY VYVYAN (Southern Nevada Air Conditioning Refrigeration Service Contractors Association):
We are opposed to A.B. 215. My problem is not that I do not carry insurance. I have an unlimited bond and unlimited license. Frequently, insurance companies have said they will not insure residential service work. It becomes very difficult to get insurance, and I carry it on everything. This bill would make it almost impossible to carry insurance. Insurance costs right now are astronomical in every area, commercial and residential alike. Most carriers do not want to take on residential work, so the rates are very high. With my unlimited license, you are going to put me out of business if you put this bill through. I cannot incur that kind of overhead and pass it on to the customer.

I am a residential owner; I own a home, and I have had building defects. I understand where the homeowners are coming from. But I am opposed to this bill unless changes can be made to it. We will not be able to run service as well as construction. You are going to shut down almost every air-conditioning company in Nevada.

JEFFREY L. WESTOVER (National Electrical Contractors Association, Southern Nevada Chapter):
We are opposed to A.B. 215. The mom-and-pop shops that we represent would be in jeopardy of not being able to keep their doors open in southern Nevada if this bill passes. With the economy as it is right now, it is not a good policy to incur more costs to doing business.

DAVE BOLD (Done Right Plumbing):
I am opposed to A.B. 215. A lot of contractors have gone out of business, and if this bill passes, there will be a lot more who will go out of business. Things are supposed to be fair, but it seems like this bill was brought just to give more money to trial attorneys. All of my employees own houses, so we can understand the concerns of homeowners. Nevada needs to keep people working.

JIM WADHAMS (Southern Nevada Home Builders Association):
We are opposed to A.B. 215. Sad to say, the Southern Nevada Home Builders Association does not have many members left because there is not much construction being done in southern Nevada. We heard recently that in the last month there were only some 30 residential building permits requested.

This bill, while not unprecedented from the standpoint of public policy, creates some dramatic concerns that the Committee needs to be aware of. The precedent for it is in the auto insurance area, in which vehicle owners must have insurance on their vehicles. I raise that because this bill requires the insurance to be maintained and verified, just like car insurance. This Committee has probably heard testimony from the Department of Motor Vehicles about the difficulty of maintaining that verification program. There will probably be a substantial fiscal note on A.B. 215 from the State Contractors' Board because of the need to verify that contractors have the insurance required by this bill.

This insurance is very difficult to find, and the bill requires it to be purchased by every contractor. Technically, this would apply to the person at J.C. Penney's who hangs curtains as well as to the contractors who are working on the CityCenter project in Las Vegas. This raises again the difficulty of finding the insurance and the expense of buying and maintaining it. These are two critical components of an issue that has some value, but it requires a great deal more consideration of the technical aspects.

CHAIR CARLTON:
You mentioned the possibility of a fiscal note. It should be noted that the boards are self-sustaining and do not receive any General Fund revenue. Whatever costs there are would be borne by their licensees rather than the State. I do not want people to misinterpret the term "fiscal note."

MR. WADHAMS:
Thank you for the correction.

MR. MILLIKEN:
We are opposed to this bill and agree with Mr. Wadham's comments regarding insurance. We also have a question regarding section 1, subsection 5 of A.B. 215. Our interpretation of this section is that the State Contractors' Board will need to go out into the field to verify injuries or damage caused by a licensee not having proper insurance. It is uncertain what the role of the Board will be in such cases and what they are being asked to do.

BRUCE KING (Nevada Subcontractors Association):
"I am a member of the Nevada Subcontractors Association. I also happen to sit on the State Contractors' Board, and I am not here in any way representing them. I just wanted to get that on the record."

We as an industry are not opposed to the insurance aspects of A.B. 215. Contractors and home builders alike think there are great aspects to this idea, and we could support a bill that would require everyone in the construction industry to have insurance. But we have many concerns, including the cost of insurance of $3 million for each unit and $3 million aggregate. In fact, I have contacted five insurance brokers, including one of the largest wholesale brokers in Chicago, and they tell me that this insurance policy does not currently exist. There is no way to figure out how much it would cost, or if it is even possible to get such a policy.

There is also the matter of the bill's concern about wrap insurance. I do not often find myself in agreement with Mr. Canepa, but in this instance, I agree that some wrap insurance is underfunded. That needs to be addressed. On the other hand, this bill as written would allow trial attorneys to get around wrap insurance and go after the assets of subcontractors. If that is the purpose of the bill, we are very concerned about that. Wrap insurance is currently the only way the construction industry is able to build multi-family projects, whether

condominiums or apartments. None of us can purchase insurance that allows us to build multi-family units. Wrap insurance is a vital part of our industry, and this bill's effect on those kinds of insurance policies is disconcerting.

We like this bill, but it was not presented to our industry until last week. We have not had time to find out how the insurance industry would react. If this bill had gone into law prior to 2003, most of us would have given up our licenses. Even if we had been allowed to include our excess insurance policies, we could not have purchased those kinds of limits then.

Again, we support the idea that our industry be insured. We would like to have some time to do this the right way. Our industry is on its back. We are hooked to a lifeline, and I ask you please not to pull it by doing something with unknown repercussions.

SENATOR HARDY:

> I don't have a question, just a disclosure. Mr. King also serves on my board of directors at the Associated Builders and Contractors of Las Vegas. Although rule 23 does not require me to abstain because it doesn't impact me any differently than it does the entire industry, nevertheless I'm going to abstain on this bill just to avoid any appearance of impropriety.

JAY PARMER (Builders Association of Northern Nevada):
We are opposed to A.B. 215. I received this information from a builder of single-family residences in Reno, and I just wanted to share it with you. This particular company has been in business for 20 years. They were up for renewal of their liability insurance 2 years ago, and at that time they were producing about $35 million in sales. For $1.5 million in coverage per occurrence, the quoted rate was $600,000 in premium with a $500,000 deductible. This is a business that was free of claims at that point. While liability insurance may be available to some builders, smaller businesses are often forced to self-insure. The Builders Association of Northern Nevada asks you to take this into account before you mandate liability insurance.

DAVID GOULD:
I am an independent agent with the A&H Insurance Agency, and I primarily write insurance for contractors. I concur with the statements made by those speaking in opposition to this bill. It is not the fact that it asks for general

liability coverage for all contractors, which I think is a good idea. It is the hasty manner in which it was put together. It does not take into consideration the premiums and the availability of insurance.

Nevada is a small state, and during the hard market it was difficult to find an insurance company that would write insurance for any contractor. The premiums were unreachable for a lot of contractors. You hear a lot of testimony from people who have construction defects, but there are contractors who have been in business for 40 years who have never had a claim and who build a good product. Something like this is going to put them out of business.

ASSEMBLYMAN OCEGUERA:
There has been some comment to the effect that A.B. 215 was put together hastily. We took the language from other states where the statute is currently in place. Surrounding states have this law, but if it does not work in Nevada, I am just talking about the policy. Having contractors have insurance seems reasonable to me. I am willing to work with interested parties on the numbers.

SENATOR SCHNEIDER:
Mr. Gould, I have heard that as soon as a lawsuit is filed, builders back away. They turn all operations over to their insurance company because if they touch anything, they are going to get sued again and again. What we are trying to accomplish is to get contractors to step up and make repairs, but lawsuits stop repairs. Is that correct?

MR. GOULD:
That is a fair statement. The portion of chapter 40 of the NRS dealing with construction defects was supposed to allow contractors to go in and right the wrongs. What it actually did was prevent contractors from making repairs because they felt lawsuits would just continue.

SENATOR SCHNEIDER:
Does this mean more insurance leads to more lawsuits?

MR. GOULD:
I think it does. This appears to be strictly a response to these specific construction defects, which is not the reason general liability insurance was put together in the first place.

VICE CHAIR SCHNEIDER:
I will close the hearing on A.B. 215 and open the hearing on A.B. 266.

ASSEMBLY BILL 266: Prohibits the sale of novelty lighters. (BDR 52-569)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
This bill would ban the sale or distribution of novelty lighters. I have written testimony explaining the scope of the bill and describing the serious danger these novelty lighters pose to life and property (Exhibit J). I have a PowerPoint presentation that shows examples of these lighters, which in many instances are indistinguishable from children's toys (Exhibit K). We also have samples of some of these lighters for the Committee to examine, and we will show a clip from a report done by a local news station in Tennessee. That clip is online at < www.newschannel5.com/Global/story.asp?S = 7896645&nav = menu374_2_2 > .

SENATOR SCHNEIDER:
Where are these lighters sold?

ASSEMBLYMAN OCEGUERA:
I bought most of these across the street at a 7-Eleven store.

JIM WRIGHT (Chief, State Fire Marshal Division, Department of Public Safety):
I am here in support of A.B. 266. I would like to encourage your support of this bill, as I see this as an important fire-safety and fire-prevention measure. In my inquiries, I have found these novelty lighters readily available at most convenience stores, including some in Carson City.

RUSTY MCALLISTER (Professional Firefighters of Nevada):
We stand in support of A.B. 266. Anything we can do to reduce the risk to children and the possibility that they can be burned is a worthy cause. If you have ever spent time in a burn care unit, you know this is a no-brainer.

SENATOR AMODEI:
The record should probably reflect that these lighters are dangerous to adults as well, as the Committee members are experiencing.

REBECCA GASCA (American Civil Liberties Union):
We are not opposed to the intent of A.B. 266. Clearly, there are safety issues for both children and adults at hand. However, whenever criminal laws are

being passed, we want to make sure they are clear and will not be applied in a vague standard.

We have two small amendments to suggest (Exhibit L). For the last few days, one of our attorneys has been in touch with Assemblyman Oceguera to address some concerns we had with the language in this bill. We were not available to testify when the bill was in the Assembly Committee on Commerce and Labor, so this will be the first time our two amendments will be considered. It is our understanding Assemblyman Oceguera is not opposed to the amendments in Exhibit L.

Our concerns lie in the strict liability criminal penalties attached to the bill. Whenever a strict liability criminal penalty is created, we want to make sure the law is clear and specific. We propose that section 1, subsection 5, paragraph (a), subparagraph (1) be expanded to say, " ... other similar article that a reasonable person would think resembled an object other than a lighter ... " This would clearly cover the novelty lighters displayed by Assemblyman Oceguera. We want to make sure a Zippo lighter with a molding of an eagle, for example, does not fall into this category. Although it might resemble an eagle, it is clearly not made to deceive or look like a toy.

This bill has an impact on those who would be deceived in purchasing such an item, but it also has an impact on shop owners. When you are creating a strict liability criminal penalty, you want to make sure shop owners know and understand what things they are selling that fall under the criminal penalties in the law. We want to make sure shop owners who sell lighters know how this law applies. We also want to make sure there is some outreach so business owners are aware of the new standards. The intent of this legislation is not to criminalize those owners, but to improve safety.

Our other proposed change is in section 1, subsection 5, paragraph (a), subparagraph (2). We suggest the phrase "similar entertaining features" be changed to "multiple buttons or functions." The original language is vague and open to interpretation, and the suggested replacement language covers all the panoply of novelty lighters demonstrated today.

With these two changes, we would change our position on A.B. 266 to neutral.

CHAIR CARLTON:
I will close the hearing on A.B. 266 and open the hearing on A.B. 281.

ASSEMBLY BILL 281 (1st Reprint): Makes various changes concerning workers' compensation. (BDR 53-57)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
You have before you today A.B. 281. I believe all the issues with this bill have been worked out. Over the six years I have been involved with the Legislature, every Session I have had in front of me a group of people who are being denied workers' compensation benefits even though their claims are undeniable under the statute. There is a presumptive benefit for police and firefighters under the heart and lung statutes. It basically says that if they are stricken with an illness covered under these statutes, it is a presumptive workers' compensation case, and benefits are not deniable. The only exception to this that I am aware of has to do with preexisting conditions.

Two Legislative Sessions ago, people testified before us who were dying of cancer, heart disease or some lung ailment. They complained that one employer continued to deny claims that were legally undeniable. That was appalling to me, especially since most of the employers covered by this statute are public entities that we would hope would be doing the right thing and setting an example on how these issues are to be dealt with. I was angered by that and gave notice that the conditions should be changed. Last Session, the same people were back and informed us that no issues had been resolved. I said then that if the employers in question did not take action and fix the situation, I would. Today, those conditions have not changed. What you have in front of you today is my attempt to fulfill a promise. If employers will not take action to take care of the people the statute protects, we as Legislators have an obligation to correct the situation.

What A.B. 281 would do is when claims with a presumptive benefit are denied, it would send them straight to an appeal hearing instead of going through the normal claims process. I worked with Mr. McAllister and a number of people from the insurance industry on this bill, and what you see is largely a compromise. It incorporates all of the changes the parties were willing to make and agree to. I originally asked for a time frame of 30 days; this version of the bill makes it 60 days. There was a request that we make sure there was full disclosure by all parties. The appeals hearing officer has the option to extend

the time if not all the information has been exchanged, so there is a fair appeals process for both sides.

MR. MCALLISTER:
Assemblyman Conklin asked us to work with representatives from the insurance industry to come up with a solution to problems we have been having with regard to the speed at which claims are processed.

The bill deals with presumptive benefits for police officers and firefighters. As Assemblyman Conklin mentioned, these benefits are routinely denied, and under some circumstances employers do have the right to deny benefits. We have no qualms about that; they are rebuttable presumptions in many cases. One problem we have had, though, is that some third-party administrators (TPAs) are denying claims under provisions in the law they are not supposed to use to deny claims. We came to the last Legislative Session and asked for legislation to stop that TPA from denying claims for heart and lung benefits that are conclusively presumed, notwithstanding any other provision of law. They were still denying them under another provision of law. The TPA went to a third provision of the law and is now denying claims under that provision as well as the provisions the Legislature outlawed last Session. When they deny a claim under that provision, the case goes to a hearing officer; the hearing officer cuts and pastes their denial from the statute that does not allow them to do that into the denial letter. Then the case goes to appeal, and we will appeal it. The result is that we do not get relief until we get to the district court level, at which point the district court judge tells them they cannot do what they have done and orders them to accept the claim.

This bill is an attempt to at least expedite the process. Some cases drag on and on, and these are people who are seeking treatment for severe heart problems or cancer. It is a rebuttable presumption, and the TPAs have the right to deny claims, but we should not just drag out the process until the person dies. The bill requires that we skip the hearing phase on presumptive-benefits type claims and go straight to the appeals officer.

Once we get a denial and submit an appeal, the hearings division has 60 days to schedule the hearing. The original form of the bill set this at 30 days, but the insurance representatives said this was too quick, so it was changed to 60 days. They agreed to that as long as information was exchanged at that level and new information could not be added in later without both parties

agreeing. Once the hearing is conducted, the hearing officer has 15 days to render a decision. If he needs another medical evaluation, he can request that and render his decision after that.

As an example of the need for A.B. 281, one of our members was diagnosed with cancer on March 20, 2008. He had a radical prostatectomy on April 16, 2008. He filed a claim, and it was denied; it went to the hearing officer, and it was denied. He filed an appeal, and he had to wait until April 3, 2009, for his appeal hearing. Two days before the hearing was scheduled to take place, his employer withdrew the denial. He had to wait a whole year for them to do the appeal hearing to get his case adjudicated. We would just like to see the process expedited for these types of claims. In this particular case, the person was fortunate enough to negotiate with his health insurance to get a subrogation agreement so he could get medical treatment. But he had to go through quite an ordeal just to get the coverage to which statute said he was entitled.

CHAIR CARLTON:
Would you say it has become the norm for them to deny all claims at the first stage?

MR. MCALLISTER:
I would not make a blanket statement because all insurers are not like that. Some insurers do a very good job and look at each case individually. There are a couple of TPAs, and one in particular, whose process is basically to deny everything. We are just saying that if they are going to deny, let us move forward quickly.

ERIN MCMULLEN (Nevada Self-Insurers Association):
We are here to support A.B. 281 in its present form and to thank Assemblyman Conklin for working with us to address our concerns without compromising the intent of the bill.

DAVID F. KALLAS (Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Incorporated):
We are in support of A.B. 281. I do not know how prevalent denials are, but unfortunately, our members are considered guilty until proven innocent in more cases than we would like to see. A claim is denied that was filed appropriately for no other reason than it was a presumptive-conclusive benefit, and then the

person has to prove it was the result of something that occurred at work. I do not think that is the way we should operate when we provide these types of benefits. The mentality needs to change to where people get accepted for an injury, and if it is proven later that it is fraudulent, then we can take the appropriate action. We need to provide the care they need when they need it and not put them through any extra burdens. We do not want to put a burden on the employer or the health-care plans either.

BOB OSTROVSKY (City of Las Vegas):
I rise in support of A.B. 281. I worked with the fire department and local governments for the better part of a year to come up with language that was satisfactory to all parties. It will give some protection to firefighters who have had issues trying to get their claims treated in an expedited manner. We believe the language of this bill does exactly that and gives them an opportunity to resolve their differences quickly and based on accurate information. Where there are legitimate disputes, no one's rights are taken away. Where there may be abuses on the part of some local administrator who wants to deny claims, this would quash it in quick order.

RICHARD GILBERT (Contracts Manager, Department of Public Safety):
We have a qualified opposition to A.B. 281. Our concern is that bypassing the hearing part of the process and going directly to the appeals process may cause additional cost to either the Department of Public Safety (DPS) or to our employees. At the hearing level, an employee can appear before the hearing officer without any legal representation and merely state their case. At the appeals level, they must be represented by legal counsel, and the process is more of a trial setting. Our concern is not to slow down the process. We certainly want our officers to be covered by the heart and lung regulations. At the same time, we want to avoid any additional cost or expense to our employees and the opportunity for them to present their case in a less formal manner and perhaps get a better representation of their rights by a hearing officer.

Just as an aside, having seen 11 years of workers' compensation claims for the DPS, I would say a third of our officers are denied heart and lung claims. Most of those are on the basis of predisposing risk factors.

CHAIR CARLTON:
We have had a number of workers' compensation bills come up this Legislative Session, and the DPS has not chosen to make a statement on any of them but this one. Is this the only bill you have concerns about?

MR. GILBERT:
All I can say is that I was asked to represent the DPS on this bill. I cannot speak to those other bills.

MR. MCALLISTER:
With regard to Mr. Gilbert's concern, section 1, subsection 8 of A.B. 281 states a claimant may submit a contested claim directly to an appeals officer. If the claimant wants to go through the usual hearing process, they can. This provision is permissive and allows the claimant to speed things up if they choose to do so.

WAYNE CARLSON (Executive Director, Public Agency Compensation Trust):
We are opposed to this bill. I have a written commentary on A.B. 281 describing its unfavorable impact on rural governments and on the workers' compensation process (Exhibit M). We have no objection to accelerating the process. However, we are concerned that compressing the time to 60 days may be too tight for both sides of a dispute. It can affect the ability to do complete discovery by interrogatories or depositions since there are time limits for sending out notices. In talking to our attorney, we feel those time compressions could be problematic because both sides have to agree on the dates for depositions and that sort of thing.

The other major concern is the time required for the appeals officer to consider the merits of the case. Many times, the appeals officer may choose to ask the parties to submit supplemental briefs, and 15 days may not be sufficient time for that. The bill does not allow discretion for that, but only for medical examinations. That is an issue of fairness and due process for both sides and needs to be considered.

CHAIR CARLTON:
I will close the hearing on A.B. 281 and open the hearing on A.B. 521.

ASSEMBLY BILL 521 (1st Reprint): Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

MR. MCALLISTER:
I have provided a packet of articles regarding the increased risk of cancer for firefighters (Exhibit N, original is on file in the Research Library). Cancer protection has been provided for firefighters in Nevada for certain types of cancers since 1987 under A.B. No. 797 of the 64th Session. The statute was amended in 2003, at which time we asked for coverage of specific types of cancers and association with specific chemicals we are exposed to on a regular basis. This was granted. Cancer research is an ongoing process, and the information in Exhibit N comes from a study by Dr. Grace LeMasters from the University of Cincinnati, where she is a professor of epidemiology and biostatistics. The study was sponsored in part by the Ohio Bureau of Workers' Compensation and was published in the *Journal of Occupational and Environmental Medicine* in November 2006. This study looked at 28 cancer studies and did a meta-analysis of the data to see if firefighters are at a greater risk of cancer than the general population. They found that firefighters had an increased risk for specific cancers compared to the general population: 102 percent higher for testicular cancer, 39 percent for skin cancer and 28 percent for prostate cancer. This bill would extend coverage to include those three cancers.

I have also included in A.B. 521 coverage for thyroid cancer. That did not come out in the LeMasters study; instead, it is based on experiences within my fire department. A couple of years ago, we started using the National Fire Protection Association standard 1582, which covers comprehensive occupational medical programs for fire departments, to design our annual medical examinations. One of the tests included in this standard is an ultrasound of the patient's carotid arteries, kidneys and liver. During the course of that, our physician started looking at thyroid glands. He discovered 9 confirmed cases of thyroid cancer out of 501 firefighters. That may not sound like a lot, but the national average is 4.5 to 8 cases out of 100,000 people. New York City firefighters are complaining because they have identified 8 cases of thyroid cancer out of the 11,000 firefighters who worked on the cleanup of the terrorist attacks of September 11, 2001. Oncologists I have talked to say they do not start looking for signs of prostate cancer until age 55. We are finding men with prostate cancer at age 43, which is highly unusual.

Current statute gives firefighters access to cancer coverage after they have been employed full-time as firefighters for five years. I am not sure how this length of time was arrived at, since the Committee minutes from 1987 do not

explain this. The heart and lung benefits for firefighters, which were put in place in 1965 and 1967, start after five years of service, and the cancer statute may have taken the language from there. During the hearing on A.B. 521 in the Assembly Committee on Commerce and Labor, Dr. Matthew Schwartz, our physician, stated research shows it does not take five years of exposure to generate cancer. His research showed two years was probably sufficient. We originally submitted the bill with coverage starting on day one of employment. We amended it in the Assembly to two years to match Dr. Schwartz's testimony.

Another provision of the bill requires that a thyroid ultrasound test be given annually, based on our experiences with thyroid cancer. Currently, we are the only fire department in Nevada providing that test. We also asked for an annual prostate-specific antigen (PSA) test to check for prostate cancer. Also, to provide additional protections for employers, we asked for pre-hire testing of chest X-ray, a thyroid ultrasound scan, a blood panel, a urine occult blood test, a PSA test for men and a mammogram for women. These tests would provide baseline information for the employer to determine preexisting conditions.

When A.B. 521 was heard in the Assembly, I did not realize it had been drafted to include volunteer firefighters in this annual testing and pre-hire screening. They are included in the cancer coverage, although they have to show a causal relationship between exposure and the type of cancer they have. It was not our intent to include them in the testing provision, which would put a fiscal hardship on small rural governments. Currently, volunteer firefighters are tested every three years. We would be more than willing to amend this bill to say this portion of the bill only applies to full-time salaried firefighters.

CHAIR CARLTON:
Are you suggesting we change section 1, subsection 2, paragraph (a), subparagraph (2) of A.B. 521?

MR. MCALLISTER:
No. I was speaking of section 1, subsection 4, which should be changed to: "Each person employed in this State in a full-time, salaried occupation of firefighting who is to be covered for cancer ... ." That removes the provision that volunteer firefighters would have to have the annual testing described. That removes the fiscal note for Esmeralda County, Lander County and some of the small rural counties. They have no full-time salaried firefighters, only volunteers.

CHAIR CARLTON:
I notice in section 1, subsection 2 of A.B 521 that diesel exhaust is listed as associated with most of the cancers listed.

MR. MCALLISTER:
One of the leading carcinogens in diesel exhaust is benzene. Benzene is one of the most virulent carcinogens out there and the root cause of many of these cancers. Most of the fire stations in Nevada do not have a diesel exhaust recovery system in place. Every time you start a fire engine within the station, which happens many times a day, you are kicking up diesel exhaust in a closed environment that is typically located next to the sleeping quarters. This means all firefighters are exposed to diesel exhaust. Our stations have diesel exhaust recovery systems, which is a hose that connects to the tailpipe and vents the exhaust out the roof. However, the engine is not connected when it pulls out of or into the station. All of the carcinogens listed are recognized by the National Toxicology Program or the International Agency for Research on Cancer.

CHAIR CARLTON:
If we know what is causing these cancers, we should also be working on decreasing exposure. I understand this bill, but usually when we protect people, it is because we do not know what is making them sick. If we can pinpoint what is making them sick, why are we letting them get sick?

MR. MCALLISTER:
Firefighters do wear protective clothing, including self-contained breathing apparatuses, while we are working a fire. That provides some level of protection. However, the clothing is not enclosed; it is a coat, a pair of pants and a pair of boots. They are thick and they have vapor and thermal barriers, but they do not block out the air. The primary way firefighters are exposed during a fire is not so much breathing in fumes and smoke as it is skin contact. The protective clothing is thick and heavy, and during the course of fighting a fire, you sweat. It is like wearing a ski coat and pants when it is 110 degrees. When you sweat, your pores open, and you absorb whatever chemicals are in the air. Every time I work a heavy fire, I smell like smoke for two days, especially when I work out at the gym and sweat. I have seen research stating that some of these carcinogens stay in your body for up to 63 days after you are exposed.

The statute is worded this way because we found insurers were routinely denying claims for cancer coverage under the provision that says you had to show association with a chemical that you had been exposed to or a known carcinogen and the type of cancer you had. This was our attempt to establish that association.

There are some things A.B. 521 does not do. It was stated in the Assembly hearing that all men have a chance of getting prostate cancer if they live long enough. The protection for employers here is that there is a sunset clause on cancer protection. It is not like the heart and lung coverage that goes with you into retirement. This coverage is limited to 3 months' coverage for every year of service, up to a maximum of 60 months. If you put in 20 years of service, you have a maximum of 5 years' coverage after you leave the job. If you develop cancer at 65 months, you are not covered. The question was also raised about someone who works for a year and leaves, and then gets cancer ten years later. That person is not covered, since coverage does not begin until after 2 years of service and stops 5 years maximum after service.

Finally, this is a rebuttable presumption. We have had heart and lung cases that went to the Nevada State Supreme Court in which a firefighter smoked, was told to stop and did not, and his claim was denied. We lost those cases because of failure to correct a preexisting condition. This bill does not take away the sunset provision, and it does not take away the rebuttable-presumption clause.

Since A.B. 521 was heard in the Assembly, a report has come out regarding a study that was paid for by the National League of Cities. They hired a company out of Maryland to look at whether firefighters were at greater risk for cancer than the general population. They looked at 17 firefighter-cancer studies and said they could not find any conclusive presumption that firefighters were at greater risk. In the executive summary, it states that researchers concluded there is a lack of substantive specific evidence to confirm or deny any association. It continues:

> Although several studies found supporting associations between firefighting and bladder, brain, colon, Hodgkin's lymphoma, kidney, malignant melanoma, multiple myeloma, non-Hodgkin's lymphoma, prostate, testicular, thyroid, and ureter cancers, the researchers found that considerable research needs to be undertaken before definitive linkages can be supported or refuted.

This is the same argument we heard from the tobacco industry 30 and 40 years ago. They say we need to do more long-term longitudinal studies. That means you bring in a class of firefighters and track them throughout their careers, then see who has cancer after 25 years. This is a delay. This is a stalling tactic. I have included in Exhibit N 10 pages of resources used by the International Association of Firefighters listing over 200 relevant cancer studies and research papers.

I have been a firefighter with the City of Las Vegas for 25 years. In the last five years, three of our guys have died of brain cancer. I have two guys right now with brain cancer. One is 38 years old and has 4 1/2 years of service. His claim has been denied because he does not have five years of service. The other is 32 years old and has 14 years of service. His claim has been denied because they say his brain cancer metastasized from bone cancer, and bone cancer is not covered.

JEFF FRIEND (Professional Firefighters of Nevada):
I work for the City of Las Vegas as a firefighter and have been there six years now. In April 2008, I underwent a thyroidectomy to treat thyroid cancer. I work at a station where my captain had thyroid cancer and a coworker has brain cancer. My claim has been denied by the city, and we are not exactly sure why. My cancer was diagnosed five years after my employment. We are in the appeal process. The part that really gets me is that they are spending untold amounts of money on a lawyer who is not a city lawyer, so they are contracting with an outside agency to fight my case, and they have not spent a dime on trying to figure out what caused the cancer.

On behalf of the people who will come after me, I want to make this right.

TYLER FERGUSON (Las Vegas Fire Department):
Like Jeff, I work at the City of Las Vegas Fire Department and have been there six years. He and I were in the same class. In 2007, we had our annual physical and I had an ultrasound on my thyroid. It was noted as unremarkable. In 2008, a nodule was noted on my thyroid by the same doctor doing the same test. A few months later, in April 2008, I was diagnosed with metastatic thyroid cancer. It ended up being highly metastatic, and I spent most of last year in Houston at the University of Texas M.D. Anderson Cancer Center. My doctors there told me I should be thanking my employer for the annual physical that included an ultrasound on my thyroid because I had no other symptoms, no

family history and nothing that would indicate I was a candidate for thyroid cancer. Since I was 30 years old at the time, it was not something they would normally look for. I have had two surgeries, one in April 2008 and one in September 2008. In the second surgery, they removed all the lymph nodes in my neck, my thyroid gland and a small tumor on my carotid artery. They told me that if I had not been prompt in seeking treatment, I probably would be looking at a more serious cancer, such as lung cancer or liver cancer, and it would not be curable.

The city denied my initial claim on the grounds that they thought the evidence would show the cancer was diagnosed prior to my fifth year of employment. The test that found the nodule on my thyroid was done approximately 3 months prior to my 5-year anniversary. That has been an ongoing battle. I have had two hearings on this case in the last year, and I am still waiting on the results. They have to this point not covered anything to do with the case and are still denying the claim. Luckily, my insurance has covered the claim so far and enabled me to get treatment, without which I would probably not be able to sit here and testify today.

CHAIR CARLTON:
So your firefighter insurance has basically covered you so far, and once the case is resolved, they will hash out who will pay for what. Is that right?

MR. FERGUSON:
Yes, that is correct. Under our insurance, the way things work with the city is it would be covered under on-the-job injuries. I have had to take a lot of time off over the last year to go through this surgery and physical therapy. If it were not for our department that donated sick time, I could not have done it. I was out for more than 9 months, and I had only accrued about 600 hours of sick time, so it would not have come close to covering it.

CHAIR CARLTON:
It is ironic that we want to do tests to make sure everyone is healthy, but they used the test to deny you your benefits.

DEAN FLETCHER (Professional Firefighters of Nevada):
I am a Las Vegas firefighter and the president of the union. I have worked with both of these gentlemen, and I am also a survivor of thyroid cancer, one of the first diagnosed. We have a progressive department with turnout cleaning and

diesel exhaust. The problem is we have done everything we can. Right now, our legal fees are $20,000 a month to fight for coverage for Mr. Friend and Mr. Ferguson. Other firefighters throughout the State do not get the screening test that caught their thyroid cancer at such an early stage, and we are fortunate that we do. It saves our fire department money to have our own physician and do the physicals the way we have. We have had to fight for that, but we have it as a tentative agreement in our new contract.

CHAIR CARLTON:
Mr. Friend mentioned that the city had contracted out for an attorney rather than pursuing this case with their own in-house legal staff. Is that correct?

MR. FLETCHER:
Yes. Every workers' compensation claim hearing or appeals hearing is handled by an outside attorney. We have spent $80,000 fighting a denial on a breast-cancer claim for one of our retired female firefighters. It has been going on for three years now and has just gotten out of their final attempt in district court. The only avenue left for them to overturn that decision in her favor is to go to the Nevada State Supreme Court.

STEVE DRISCOLL, CGFA (City of Sparks):
We are opposed to this bill. I have written testimony explaining our concerns about the language and amendments in A.B. 521 (Exhibit O). You have seen the study published by the National League of Cities, and I have a handout comprised of the table of contents and executive summary of that study (Exhibit P).

CHAIR CARLTON:
As has been said, this is still a rebuttable presumption. Regarding your statements in Exhibit O about bad behavior and bad choices in lifestyle causing cancer, the rebuttable-presumption provision addresses that.

MR. DRISCOLL:
My understanding is that the presumption is rebuttable only as long as the person is employed. Once they retire, there are no annual physicals or doctors monitoring their behavior. There is no rebuttable process once they retire.

CHAIR CARLTON:
Exhibit O includes mention of a million-dollar case. Does that amount include the money you spend on attorneys to fight the case, or are those fees added to the cost?

MR. DRISCOLL:
That $1 million is the actuarial estimate of the medical costs involved with the case. The City of Sparks has not had some of the experiences that were brought to you by previous testimony. We deal with the situation differently.

CHAIR CARLTON:
Exhibit O refers to the list of carcinogens in the bill and uses the term "unreasonable" to link them solely to the job of firefighter, that people could have been exposed to these substances outside the workplace. Not too many people I know of have huge diesel trucks in their garage and have to start them repeatedly each day.

MR. DRISCOLL:
I have a diesel.

CHAIR CARLTON:
I do not think it puts out the amount of exhaust a fire engine does.

MR. DRISCOLL:
But I am around it, and it is an exposure. I recognize what was in the previous testimony. Our fire stations have exhaust recovery systems, and when the engine comes back into the station they get the system on as quickly as possible. It is certainly not a perfect system.

RANDY WATERMAN (Public Agency Compensation Trust):
We are opposed to A.B. 521. This bill has a potentially significant fiscal impact on our 130 public-entity employers. Expanding the list of cancers that are presumptively covered and reducing the eligibility period from 5 years to 2 years could result in covering cancers that did not arise out of the work and materially increasing the cost of workers' compensation. We oppose this bill as an expensive and overly expansive extension of the presumptive benefits. Reducing the time frame for eligibility has the effect of shifting these cancers from a legal liability system to a health-benefit delivery system.

Regarding the dueling studies discussed earlier, I am not sure it is clear that firefighter cancer rates are any higher than the general population, or at least not for all the cancers addressed in A.B. 521. Clear scientific support should be a key consideration for adding presumptive benefits such as those in this bill. Not to delay, but the jury is still out, and it may be worth your while to review in detail before taking such a big step and expanding these very costly presumptive benefits.

MR. CARLSON:
I have a statement detailing the Public Agency Compensation Trust's concerns about this bill (Exhibit Q). We are a self-insured association for public entities, and we have to build in costs for expanded benefits into our program. Our renewal begins July 1, and this bill is effective on July 1, 2009. We have already submitted our rate filings to the Division of Insurance for regulation. That creates for us an exposure for which we cannot collect charges. Also, the additional testing is an additional expense for our local government members, and they already struggling with the expense of testing.

Mr. McAllister talked about preexisting conditions and the reason for the baseline study. Unfortunately, the Americans with Disabilities Act of 1990 (ADA) limits some of that testing. In addition, depending on the test, there may be problems that do not show up on the baseline but develop two years later. There could be some things we could not screen out with pre-employment testing, and we may have to deal with those as covered claims.

Mr. McAllister also mentioned a willingness to carve out the volunteer firefighters. We have both paid and volunteer firefighters, so we still have a fiscal impact. I am not sure, but there may be a conflict between A.B. 521 and Senate Bill (S.B.) 6, which affects testing for volunteer firefighters.

SENATE BILL 6 (1st Reprint): Revises provisions regarding occupational diseases of volunteer firefighters. (BDR 53-46)

MR. CARLSON:
When we are talking about the expansion of benefits, it seems to me these are the kinds of things that should lend themselves to interim studies where you are looking at that evidence in an environment where you can study the data. The study from the National League of Cities just came out. You need to analyze all of these studies, and we are in a compressed time frame in the Legislative

Session. When you are expanding something that is this expensive, it is important to know exactly what you are doing.

The gentlemen who spoke earlier had good health insurance coverage, and not everyone has that. It may be that we are pushing issues from the health system into the workers' compensation systems to cover something that ought to be in the health system. These two silos have always created problems. The City of Las Vegas is self-insured in both health insurance and workers' compensation, but it is still the city's pocket. We are not in the same boat. Our employer members may have commercial insurance or they may be self-insured. With us, any claim that is shifted here becomes a cost to us that we have to bear and then build into the rates going forward.

LIANE LEE (City of Las Vegas):
We are opposed to A.B. 521. Our risk manager, Vickie Robinson, asked me to mention that the two cases of brain cancer that were referred to earlier are being treated for their illness, and treatment was not delayed. In addition, we have paid the claims of those cases of thyroid cancer that met the requirements of statute. I am not an expert in this issue, but I would like to bring your attention to the letter from Ms. Robinson detailing our serious concerns with this bill (Exhibit R). I would also refer you to the National League of Cities study, which states there is a lack of scientific evidence to confirm or deny linkages between firefighting and the elevated incidence of cancer.

CHAIR CARLTON:
Have you always used outside counsel for these cases, or did the city change their policy recently?

MS. LEE:
I do not know. I can find out for you.

CHAIR CARLTON:
I would also like to know the fiscal impact that hiring outside counsel has had on the city's budget.

SABRA SMITH-NEWBY (Director, Department of Administrative Services, Clark County):
We are opposed to A.B. 521. I have a letter from Ed Finger, our risk manager, detailing our concerns about the bill (Exhibit S). I believe my colleagues who testified previously have covered most of the points, and I echo them.

CHAIR CARLTON:
Does Clark County also hire outside counsel to deal with these issues?

MS. SMITH-NEWBY:
I am not aware that we use outside counsel. I will find out and get back to you.

CHAIR CARLTON:
I would also like to know the cost of outside counsel, if you use it.

Is there any further business to come before the Committee? Hearing none, I will adjourn the meeting at 5:04 p.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Maggie Carlton, Chair

DATE:_____