

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

**Seventy-fifth Session
February 16, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:38 p.m. on Monday, February 16, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator 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

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Neena Laxalt, Nevada State Board of Veterinary Medical Examiners; Nevada Cattlemen's Association
Debbie Machen, Executive Director, Nevada State Board of Veterinary Medical Examiners
Richard Simmonds, D.V.M., M.S., Vice President, Nevada State Board of Veterinary Medical Examiners
Gary Ailes, D.V.M., Nevada State Board of Veterinary Medical Examiners
David S. Thain, D.V.M., State Extension Veterinarian; Assistant Professor, Department of Animal Biotechnology, University of Nevada, Reno
Joseph M. Coli, D.V.M., Nevada Veterinary Medical Association

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Michael D. Hillerby, Nevada Veterinary Medical Association
Keith L. Lee, Legislative Counsel, State Contractors' Board
Margi A. Grein, Executive Officer, State Contractors' Board
Walter Bruce Robb, General Counsel, State Contractors' Board
Peter D. Krueger, Nevada Subcontractors Legislative Coalition
Berlyn Miller, Nevada Contractors Association
Bob Maddox, Nevada Justice Association
Megan Jackson, Government Affairs Liaison, Associated Builders & Contractors,
Sierra Nevada Chapter
Trevor Hayes, Nevada Press Association
James Sala, Southwest Regional Council of Carpenters
Jack Jeffrey, Laborers' International Union of North America, Local 872
Gary Milliken, Associated General Contractors, Las Vegas Chapter
Jim Alexander, President, Renaissance Pools & Spas
Paul McKenzie, Secretary/Treasurer, Building and Construction Trades Council
of Northern Nevada
Richard Daly, Laborers, Hod Carriers, Cement Workers and Miners Union,
Local 169
Neil Davis, The Davis Companies, Inc.
Dylan Shaver, Southern Nevada Building and Construction Trades Council
Ian Yamane, D.C., President, Chiropractic Physicians' Board of Nevada
Paula Berkley, Chiropractic Physicians' Board of Nevada
Lorraine Pokorski, Administrator, Board of Examiners for Audiology and Speech
Pathology
Pat Hines
Julie Whitacre, Director of Government Relations, Nevada State Education
Association

CHAIR CARLTON:

I will start with Senate Bill (S.B.) 57.

[SENATE BILL 57](#): Makes various changes relating to veterinary medicine.
(BDR 54-419)

NEENA LAXALT (Nevada State Board of Veterinary Medical Examiners; Nevada
Cattlemen's Association):

You have received our briefing paper on S.B. 57 ([Exhibit C](#)). The current law
allows lay people to gratuitously castrate, dehorn and vaccinate domestic
animals for friends and neighbors. The original intent was for livestock people

only, but the way the law is written, it has allowed lay people to vaccinate their animals with no physical exams prior to giving the vaccine. The first section of S.B. 57, page 2, lines 3 through 9, would close that loophole.

Page 2, lines 6-8 and 24-31, defines which vaccines for zoonotic diseases must be administered by a licensed veterinarian. A zoonotic disease is one that is transferred between animals and humans.

Page 3, lines 9-14, allows veterinarians to consult with out-of-state veterinarians or specialists that do not have a license within the State. Currently veterinarians in the State are not allowed to do that. This bill would allow veterinarians in Nevada to consult with out-of-state veterinarians or specialists.

Right now the foreign equivalency board is specifically named in statute. This bill would take specific names of programs out of statute and put them into the regulation process. There are other boards that approve specific programs through the regulation process, but the standards and criteria are left in the statutes. We are asking the same for veterinarians. When a new program or some new technology comes on line, we would not have to come to the Legislature to ask for changes.

Page 4, lines 13 through 45, and page 5, lines 1 through 5, allows the Nevada State Board of Veterinary Examiners to assess the eligibility of license transfer candidates to ensure they are at least equivalent to the current Nevada requirements.

Section 4 allows licenses to be renewed biennially. Currently, the licenses are renewed annually which is an administrative nightmare for the small staff. Renewing biennially would make it easier for them.

Section 5 gives the Board the authority to adopt regulations regarding grounds for disciplinary action, for example, the closure of a veterinarian facility. Currently, the Board can only restrict or pull a license. They have no authority over a facility itself. They cannot close down a veterinarian facility.

CHAIR CARLTON:

Who does have the authority to close a veterinary facility? Does anyone currently in the State have the authority to close a veterinary office?

MS. LAXALT:

They can pull a license of a veterinarian, but nobody has the authority to close a veterinary facility.

CHAIR CARLTON:

If a single veterinarian is working in a facility, and they pull his license, would the facility be operating without a licensee?

DEBBIE MACHEN (Executive Director, Nevada State Board of Veterinary Medical Examiners):

At this time, we do not have the authority to close a facility for any reason. We can discipline the veterinarian who might own it and pull his license, but he could find a relief veterinarian to bring in and keep the facility open. We are asking for the discretion to be able to close the facility, put it on probation or whatever we need to do.

CHAIR CARLTON:

Why would you close a facility?

MS. MACHEN:

We would be able to close a facility for public health issues of sanitation, dirtiness or diseases running rampant.

CHAIR CARLTON:

Would Clark County Health, Washoe County Health or any county health officer not have a provision within their scope to close a facility for public health reasons?

MS. MACHEN:

I do not know.

CHAIR CARLTON:

We want to find out and double check that, because they probably do have a blanket policy to pull their certificate of occupancy, or whatever is available to them to pull it. It is just a matter of groups working together.

RICHARD SIMMONDS, D.V.M., M.S. (Vice President, Nevada State Board of Veterinary Medical Examiners):

There is also an emerging situation where a non-veterinarian might own the clinic, and the veterinarian in charge is the only one who can be disciplined, when in fact it might not be the veterinarian's fault there is a problem in the clinic.

CHAIR CARLTON:

That opens a whole new can of worms, Doctor, and it is going to take us a lot longer than the time we have today. I understand exactly what you are saying. Did you have any other testimony you wanted to give on the bill?

DR. SIMMONDS:

No, I have no further comments other than the fact that I am in support of the bill.

GARY AILES, D.V.M. (Nevada State Board of Veterinary Medical Examiners):

The only testimony I would like to give in this section is on our foreign equivalency exam. The reason we included it here is, as a Board, we have to come to the Legislature for permission to even evaluate another equivalency exam. Seven or eight years ago another group started a foreign equivalency exam because the American Veterinary Medical Association was behind a year or two in getting people through the process. We are not asking to accept the second exam. We are asking to take it out of statute and put it in regulation. If there are changes occurring, we would have the ability to do workshops and bring in the public for their input and make a decision as a Board, as opposed to making it a political process.

There are about 500 graduates who have gone through the other program, and unless they go back and spend the money with the Association, they will never be able to practice here. Whether or not they have reciprocity would not make any difference because they still have to go through that program.

CHAIR CARLTON:

Did I understand you to say the other program is through the Association?

DR. AILES:

The Association runs the primary foreign equivalency exam. The exam is the Educational Commission for Foreign Veterinary Graduates ([Exhibit D](#)). The other

program that is viable is the Program for the Assessment of Veterinary Education Equivalence (PAVE), provided by the American Association of Veterinary State Boards.

CHAIR CARLTON:

This is basically the same option we give to a number of other boards, as long as it is substantially equivalent with what you are looking for. It is a national accreditation, a national program or another testing mechanism you would be allowed to recognize.

DR. AILES:

We are not asking to recognize that today. We are asking to move it out of statute, into regulation so we can do workshops if that is the decision of the Board.

SENATOR AMODEI:

If you move it out of statute and out of the political process, there are people who are concerned about not having the protection of being in statute as opposed to being at the mercy of the regulation. Has the Board had any discussion with its counsel about protecting the spirit of what is in statute? Has there been discussion on putting something in the regulation which gives people the security in the regulation, they would no longer enjoy in the statute?

DR. AILES:

Yes, that could be put into the regulation. The Board has always been very serious in its approach to what we do and our charge.

The Association opposes the other program because they are concerned we may not have the same kind of educational process. It is not really true. The educational process is just as good.

SENATOR PARKS:

Under section 4, there are a series of fees requested "not to exceed." Were these fees previously in a regulation or how were they previously administered?

MS. MACHEN:

We have never had any defined fees either in statute or regulation for our renewal process. There are fees for the application process but not for

renewals. The Board decided to be proactive, and put this into statute and define it clearly.

SENATOR PARKS:
Were there no renewal fees?

MS. MACHEN:
There were no set renewal fees in statute or regulation.

CHAIR CARLTON:
What are the renewal fees?

MS. MACHEN:
We are on an annual renewal fee of \$250 a year. If we go to biennial it would be \$500, and we are asking for \$750 maximum.

CHAIR CARLTON:
We would have to investigate how this got into place. It is a brand new fee since you did not have them in regulation before. It is going to stay the same, but you are asking for them "not to exceed." I am assuming that is probably the logic behind it, but we will need to double check that.

SENATOR HARDY:
The two-thirds majority vote is required for a tax increase as an issue that we need to answer and probably you do as well. I am wondering if you have briefed the Governor's Office on this fee increase and whether or not it is something he will accept.

MS. MACHEN:
This bill did go through the Governor's Office. We made it very clear, and he had no problem with it. We did talk to him about the fees, and he thought it was better to get them set. We are not raising any fees at all. They have not changed in the last ten years. We want to set the fees in regulation now that we have our maximum set.

SENATOR HARDY:
You could raise them. That might be an oversight on our bill drafter's part as far as the two-thirds majority vote requirement.

What is the status with veterinarians in our State? Are we having a difficult time attracting veterinarians to our State?

MS. MACHEN:

Yes, there is a shortage here. There were 35 job opportunities for veterinarians in the last Association newsletter. Veterinary medicine is ranked 9th on the list of the 30 fastest-growing occupations in the Nation.

SENATOR HARDY:

There are 35 vacant positions in this economy that have not been filled.

MS. MACHEN:

Exactly.

SENATOR RHOADS:

I received a call from Jack Walther. Have his issues been resolved?

DR. AILES:

His issue is with the foreign equivalency exam, that it is going to lower the educational standards. If we evaluate this properly, there will not be any lowering of the standards. The Board will not accept that as a position.

SENATOR RHOADS:

When you say foreign, do you mean somebody from another state or another country?

DR. AILES:

I mean another country. A lot of the kids going through the PAVE program are American kids who did not get into school here. They went to school in the Caribbean and end up returning. Part of what these programs are about is to bring people in and get them to work here; they have to pass the language. Both programs do that.

One of the concerns seems to be that we are going to accept the second program immediately, and it is not the reason for doing this. The reason is to take it out of statute, so we can do it if it becomes necessary for the Board, or if the Board feels it is appropriate.

CHAIR CARLTON:

Would you expand upon the credentialing provision on page 4 of the bill? You spoke of the term reciprocity, but this is not reciprocity. This is what I call credentialing. Under section 3, how did you choose the criteria to include in this provision?

MS. MACHEN:

These were actually taken out of other states offering transfer of license. We are probably the only state that does not have transfer of licensing. We require anybody coming into this State, who has been out of school more than five years, to take the national board exams again before coming here. This issue is just about evaluating people on their practice in other states.

CHAIR CARLTON:

That looks pretty good. I know there are some questions the Legal Division is going to have as far as some definitions, and some other things that are going to have to be reconciled. There is a lot more work needed to be done on this. Please work with them when they contact you to make sure we have the appropriate definitions of livestock and any federal oversight of vaccinations.

MS. LAXALT:

I represent the Nevada Cattlemen's Association, and they are in full support of this bill.

DAVID S. THAIN, D.V.M. (State Extension Veterinarian, Assistant Professor, Department of Animal Biotechnology, University of Nevada, Reno):

I endorse changing the current statute with regard to zoonotic disease vaccination. Currently, a good number of producers as well as companion animal owners are vaccinating their animals with vaccines containing zoonotic agents contrary to statute.

The approval of vaccines has been undertaken by the State Department of Agriculture since the early 1960s. The U.S. Department of Agriculture licenses vaccines in two manners: one is an unconditional license which means it can be distributed to anyone, and the other is a conditional license where they set specific conditions for licensing. The vaccine companies then apply to the State Veterinarian, Division of Animal Industry, State Department of Agriculture, for authority to distribute those licenses within the State. The State Veterinarian then issues approval to distribute either conditionally, which means only to

Nevada licensed veterinarians or Nevada licensed, federally accredited veterinarians; or, on unconditional vaccines the State Veterinarian may grant unconditional licensure to be distributed to anyone within the State. The other issue is the shortage of veterinarians in Nevada, especially with food animal veterinarians. The ideal veterinarian to bring into a large animal practice would be someone with experience. If they have more than five years' experience, they are going to have a tough time passing the national boards. The national boards cover the whole spectrum of veterinary medicine from small animal to large animal. If someone has been practicing with beef cattle or dairy cattle, they are going to have a hard time passing that exam.

Credentialing will allow us to recruit talented people into private practices as well as into government agencies, like the Department of Wildlife.

CHAIR CARLTON:

Is there anyone who is in opposition to the bill?

JOSEPH COLI, D.V.M. (Nevada Veterinary Medical Association):

We are in opposition to S.B. 57, section 2, which pertains to the evaluation of foreign veterinary graduates. There is potential for diminishing the quality of veterinarians that will be practicing in our State.

CHAIR CARLTON:

Hearing the comments made earlier by the members of the board, did that alleviate any of your concerns? Knowing there will be public work sessions, and through the regulatory process, there would be all different stages to be able to address your concerns. Did that help at all?

DR. COLI:

Certainly it helps, but we are still concerned. The extra layer of protection in statute rather than regulations is a comforting thing for our profession.

CHAIR CARLTON:

Does anything else in the bill, the fees, or any of the other things, give you any pause?

DR. COLI:

No, our state association supported the rest of the bill wholeheartedly and unanimously.

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CHAIR CARLTON:

This is just about more veterinarians coming into the State and the quality of those veterinarians.

DR. COLI:

It deals with the quality of the veterinarians; it does not deal with the quantity. If it dealt with just the quantity or competition, we would have opposed the reciprocity portion of the bill also.

MICHAEL D. HILLERBY (Nevada Veterinary Medical Association):

We submitted a letter from Dr. Coli and the Association ([Exhibit E](#)) mentioning that Dr. Jim Nave and Dr. Jack Walther expressed their regrets that they were unable to be here. They would like to have their remarks entered into the record ([Exhibit F](#)).

CHAIR CARLTON:

We can do that. We have it all here.

We will close the hearing on S.B. 57. We will go to S.B. 50.

SENATE BILL 50: Revises provisions relating to complaints against contractors.
(BDR 54-348)

KEITH L. LEE (Legislative Counsel, State Contractors' Board):

We view this bill, at the State Contractors' Board, as the balancing of the public's right to know about the disciplinary proceedings against a particular contractor versus that privileged licensee's right to privacy.

Under current law, if a member of the general public makes inquiry of the State Contractors' Board, with respect to the disciplinary status of a contractor, the Contractors' Board can only give information regarding complaints that have been adjudicated. That would be those in which there has been a finding of some fault, or a finding of dismissal of the complaint, and disciplinary action has been taken.

What we are suggesting is adding to that piece, and this is important, "upon written request of a member of the public." This will not be done telephonically or via e-mail or the Internet. There has to be a written request received by the Contractors' Board. We will respond in writing to the request.

We are requesting as additional information that we can tell a member of the public, who makes an inquiry in that fashion, those complaints that have not gone to a final hearing yet, but which a member of the investigative staff has made a determination there is probable cause a violation of the statute has occurred. If there is a finding, it will go on to a supervisor of the Investigations Office of the Contractors' Board to affirm or reverse the finding.

The third criterion we look at is if there is a finding of guilt on a complaint. If there is a finding of guilt, it will rise to the level of a disciplinary action under the contractors' act. We are also suggesting, in the circumstance where we give written notice of a complaint that has not been finally adjudicated by the Board, to make a disclaimer, in plain, clear language, this is simply an allegation, and there has not yet been a finding of fault on behalf of the Contractors' Board.

The final piece we are proposing is, in order to prevent frivolous complaints from being filed, if a person knowingly files a false complaint, and it is determined to be unfounded, the person could be charged with a misdemeanor. We may then refer it to the district attorney for prosecution.

In section 4 of the bill, subsections 4 and 9, there is language inserted that was not our suggestion. The Legislative Counsel Bureau put it in there. We have been contacted by our licensees who suggested there are some unintended consequences that may result from the change in language. We are requesting there be no changes made in section 4.

MARGI A. GREIN (Executive Officer, State Contractors' Board):

The purpose of the Board is to promote public confidence and trust in the competence of licensees and to protect the health, safety and welfare of the public. We deem public protection to be the Board's highest priority.

The Public Records Act, as set forth in Nevada Revised Statute (NRS) 239.001, subsection 1, expresses a strong public policy favoring public disclosure of public records. The limitations of the Public Records Act come from the language in NRS 239.010 which states in part, "... all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times"

In 2007, the Legislature amended NRS 624.327 declaring that "the existence of and the personally identifying information in a complaint filed with the Board ... all documents and other information compiled as a result of the investigation conducted to determine whether to initiate disciplinary action are confidential." Existing law provides that any information concerning the complaint does not become public until disciplinary action is initiated.

Senate Bill 50 strikes a fair balance on reporting complaints. We do not support disclosure of complaints that have not been investigated or deemed not to be valid. In the past ten years, the Board has focused heavily on improving its enforcement program to enhance public protection. In spite of these improvements, we cannot always act quickly enough to protect the public and prevent harm.

The Board receives multiple complaints from homeowners, contractors, material suppliers or public entities within a short period of time. This might indicate a contractor who may be experiencing financial difficulties which are adversely affecting his work or ability to continue as a licensed contractor in the State.

Contractors experiencing financial difficulty or engaging in fraudulent acts often attempt to obtain new business or contracts, get materials from new suppliers, request cash deposits from new clients, while delaying payment to contractors and suppliers and failing to complete existing work. This will often lead to abandoned projects, incomplete or substandard work, nonpayment and liens being filed.

We must enable the public and contractors with the tools to protect themselves. We accomplish this by giving them information so they can make informed decisions about the contractors they hire or do business with. Consumers have few resources when trying to evaluate contractors. Information about complaints, while not the whole story, is an important piece of the process. This is why this bill is so important, to help the public help themselves. To further reduce consumers' and contractors' ability to protect themselves is a disservice to the public.

CHAIR CARLTON:

Is this in addition to the provisions you already have, or is this a replacement of the provisions that were put into effect last Session?

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MS. GREIN:

This is in addition to the provisions.

CHAIR CARLTON:

Those provisions still stand, which means if I call on the phone to ask about a contractor, I will not get information unless the complaint has been adjudicated.

MS. GREIN:

We do not provide this information over the phone. You would have to request it in writing. Once the complaint is initiated and issued it then becomes public.

CHAIR CARLTON:

Is this in addition to the other provision?

MS. GREIN:

Yes.

SENATOR HARDY:

I'm going to, for a matter of public information, state that I'm president of the Associated Builders and Contractors of Las Vegas. I want to distinguish that is not a Rule 23 disclosure. According to our legal counsel that disclosure is not necessary, because this won't impact me more than anybody else. But I will in the spirit of what Senator Horsford did this morning in Finance, make a public statement that that's my job, but I want to make it very clear that it's not required as a disclosure under Rule 23, so that is not a disclosure just a public statement for the information of the public.

SENATOR COPENING:

Mr. Lee, you had mentioned, in going over section 3, if somebody files a complaint knowing it is false, they are guilty of a misdemeanor. How do you determine the person knew the allegation is false, and what happens at the point it is declared a misdemeanor? Does law enforcement take over?

MR. LEE:

Mr. Robb would be better able to answer your question than I am.

WALTER BRUCE ROBB (General Counsel, State Contractors' Board):

That was put in to avoid a clearly, obviously, maliciously false allegation against a licensee. You would have to have proof beyond a reasonable doubt the complaint was intended to harm a licensee, and was done with knowledge it was fraudulent. You would have to have substantial evidence of the fraud. Not only that it was an improper or unfounded complaint, but it was malicious and done with the intent to defraud the Contractors' Board.

SENATOR COPENING:

Is the Board prepared to launch into investigations to make sure they are false accusations?

MR. ROBB:

Our primary goal with this bill is to inform the public there have been complaints made against a licensee, and to try to alleviate the concerns of some members, who are licensed contractors, about fraudulent claims being made by a competitor or someone who does not like them personally. We added this provision to give the Board the ability to refer to law enforcement a clearly malicious, fraudulent complaint. It is not our goal to get involved with investigations or to go after people who make complaints in good faith. Our goal is to let the public know as much as we can about our licensees.

CHAIR CARLTON:

In my investigation, I did not find any other boards having this component. You are the first board to ask for this provision. Am I correct?

MR. LEE:

To my knowledge, that is correct.

CHAIR CARLTON:

Does any other board refer false complaints to the district attorney, and actually have them become a criminal charge?

MR. LEE:

I am not aware of any.

MS. GREIN:

The language came from the California contractors' board. I was looking for a balance.

CHAIR CARLTON:

Is there any other board in Nevada?

MS. GREIN:

I am not aware of any.

SENATOR SCHNEIDER:

If someone has committed a misdemeanor by filing a false complaint, this could cost the contractor his business, because you have distributed the complaint. You may turn this person over to the district attorney, but you do not have to do so. It is up to your discretion whether to turn him over or not.

MR. ROBB:

That is a public policy decision to be made by the Legislature. If you want to mandate the Board to do that, the Board would certainly follow your direction.

SENATOR SCHNEIDER:

I am still having a problem with this. It does concern me some people will never be happy and will file multiple complaints, which are distributed. There may be nothing the contractor can do to make the person happy. You have determined through your investigation there is nothing the contractor can do to please the person, and all these complaints have been issued to the public.

MR. LEE:

I understand your concerns. We have addressed that in section 2, subsection 1, paragraph (b), subparagraphs 2, 3 and 4, by establishing thresholds that must be met before information becomes a matter of public record.

We rely upon the experience and expertise of the Investigations Office of the Board to determine if there is probable cause. It is a higher standard to determine if there is a probable cause that there is a violation. It is then reviewed by a supervisor of the office. The final criterion is that it has to be a complaint that rises to a violation. If there is a finding of guilt in the violation, it will result in disciplinary action under the code. With those threshold criteria, we will be able to, through the experience and investigative work of the staff, not allow this to become a tool of a vendetta.

It has to be a written request to us, and we will respond in writing. In the response, will be the disclaimer these are simply allegations; they have yet to be proved, and no disciplinary action has been taken against the contractor.

SENATOR RHOADS:

Why does the Contractors' Board want to change the statute?

MR. ROBB:

The Contractors' Board tries to advertise to the public to hire just licensed contractors and to check out the contractor with the Board. This allows us to give information we think is valid to a member of the public who wants to hire a contractor.

SENATOR RHOADS:

Even if it is incorrect, do you still send out the notice?

MR. ROBB:

If it is clearly incorrect, we do not send out a notice. It would have to go through the initial investigation. The investigation is reviewed by a supervisor. It would have to show there is probable cause to believe the licensee is guilty of a violation of our statute.

SENATOR COPENING:

Have you had conversations with the district attorney's office on this?

MR. ROBB:

There are a lot of different district attorney offices. We work quite closely with the district attorney offices in Washoe and Clark Counties in the prosecution of licensees who have defrauded the public.

SENATOR PARKS:

Is this a common practice in other states? Would you use a form? Would this not create some increase in costs to operate your agency?

MS. GREIN:

Arizona and California both have similar policies.

We do not think there will be any additional cost to the Board. We are currently giving license status reports which include the type of license, the address, the status of the license and the bid limit.

PETER D. KRUEGER (Nevada Subcontractors Legislative Coalition):

We are not opposed to the bill as long as section 4 is removed, and there are no amendments added.

BERLYN MILLER (Nevada Contractors Association):

We are in support of S.B. 50. However, we would like to make one request for the disclaimer. It should be in bold type to make it easily recognizable as a disclaimer.

BOB MADDUX (Nevada Justice Association):

We support the bill to the extent it protects consumers, and it provides additional information that may be very important for consumers to make decisions on hiring contractors. We have a concern with section 3. Section 3 should be amended to include stronger language. If a person files a complaint with knowledge it is utterly lacking in merit, with malice aforethought, then the person could be charged with a misdemeanor. To simply say a complaint is false, what does that mean? If the Contractors' Board determines the homeowner is wrong, does that mean the complaint was false, and therefore, the homeowner could be charged with a misdemeanor? This could be extremely intimidating to homeowners who may become afraid to ever make a complaint against a contractor.

MEGAN JACKSON (Government Affairs Liaison, Associated Builders & Contractors, Sierra Nevada Chapter):

We are in support of S.B. 50 and appreciate the language of section 3, subsections 1 and 2. This ensures allegations have merit and prevents contractors from being penalized before due process.

TREVOR HAYES (Nevada Press Association):

We are in favor of more transparency in government and support this bill.

JAMES SALA (Southwest Regional Council of Carpenters):

We are in support of the bill. Prior to 2007, the Contractors' Board routinely issued violations and complaints. The Contractors' Board licenses and regulates contractors, as well as informs the public.

We do not have a problem with the intent of the language in section 3 about knowingly filing a false complaint. In section 3, subsection 2, where it says the Board may notify the district attorney, you may want to put that in front of the issue about the complaint and "will be found guilty of a misdemeanor." The Board will not find them guilty of a misdemeanor, the district attorney will. If the Board believes the complaint was false, they should take the information and turn it over to the district attorney to let them make the determination. The way it is worded right now it just says a person knowing the complaint is false is automatically guilty of a misdemeanor. Obviously the Contractors' Board does not adjudicate that. Otherwise, we are in support of release of the information

JACK JEFFREY (Laborers' International Union of North America, Local 872):

I totally agree with section 2, but I have problems with section 3. When a homeowner has a problem with a contractor, they are fairly unsophisticated in the construction business. Many times they have complaints that are not valid. How do you determine what was in mind when a complaint was filed? If there is a problem with a house, it may or may not be a complaint against the contractor. It may just be general complaint. It has a chilling effect on complaints being filed to begin with. The language in section 3 needs to be tightened up.

CHAIR CARLTON:

I need to make a notation. I received a number of correspondences and was asked to put either their support or opposition into the record. I have a list of their names and copies of their letters: Mr. Waldron ([Exhibit G](#)), Miss Todd ([Exhibit H](#)), Mr. Katakzinsky ([Exhibit I](#)), Miss Miller ([Exhibit J](#)), Miss Foreman ([Exhibit K](#)), Miss Torres ([Exhibit L](#)), Miss Montoya ([Exhibit M](#)), Miss Freeman ([Exhibit N](#)), Mr. Schaefer ([Exhibit O](#)), Mr. Neschke ([Exhibit P](#)), Mr. Stokes ([Exhibit Q](#)), Mr. Ballard and Mr. Laub ([Exhibit R](#)) and Mr. Reiter ([Exhibit S](#)). Your concerns will be part of the legislative record.

GARY MILLIKEN (Associated General Contractors, Las Vegas Chapter):

The Associated General Contractors is opposed to this bill. The Nevada State Contractors' Board has the right to publish complaints that have been determined, through due process, to be violations. As long as they have been investigated, they should print them.

This is the only board that would have the powers in the first part of this bill in section 2. Other boards do not have these powers.

JIM ALEXANDER (President, Renaissance Pools & Spas):

I am presenting written testimony ([Exhibit T](#) and [Exhibit U](#)) in opposition to S.B. 50 because of the Board's personal attack on my business.

PAUL MCKENZIE (Secretary/Treasurer, Building and Construction Trades Council of Northern Nevada):

We fear that the Contractors' Board will use the language in section 3 to single out legitimate people filing complaints. According to section 3, the only criterion for turning complaints over to the district attorney is the Board believes it to be a false complaint. There is no criterion for how the Board will come to that decision.

Maybe section 3 should be aimed at the Board rather than at people filing complaints. Maybe there should be language concerning malicious release of information, or malicious attack on the public who may file a complaint, or failure of the Board to properly investigate complaints that are filed.

SENATOR SCHNEIDER:

Mr. Alexander, if you felt you were targeted by the Contractors' Board, why would you feel you were targeted by them?

MR. ALEXANDER:

Approximately four weeks prior to the attack, I had traveled to Carson City with an attorney, and lobbied for a position on the State Contractors' Board. I have 35 years in the pool business, and I am also a retired police officer from California. I felt I could add something to that body. Shortly after, I received word back they were going to be attacking me, and Margi Grein did not want me on her board. That is what I feel happened.

SENATOR AMODEI:

Did any of you look at any provisions in other jurisdictions on complaints? Are you aware of anything that contains the number of complaints?

My problem with this is on page 1, line 9, and continuing on page 2, lines 1-3. It says you can release complaints: "(1) Of which the board has initiated investigations; (2) Containing allegations of violations which a member of the Investigations Office of the Board has probable cause to believe have occurred ...". There is this tenet in the constitution, everywhere there is due

process that I cannot be an investigator and a judge for probable cause at the same time. This seeks to put in statute, in an investigator in the same enforcement office, to decide whether or not there is probable cause. I do not know if we change any of that. It is one of the things, for administrative procedure, we try to run through the Senate Committee on Judiciary, so we could have some level of due process. I would suggest combining the due process determination in the very investigations office that is in charge of enforcement is combining two of the three checks in government.

If someone has a lot of complaints, before you release those complaints, if you are going to go that far, and I am not sure that is proper either, you ought to also release information on complaints which turn out to be unfounded.

Misdemeanor prosecution is not a high priority with district attorney's office. By telling someone that you can file a complaint with the district attorney for a misdemeanor for a false complaint is, for many people, not much recourse in the event something turns out to be unfounded or malicious.

RICHARD DALY (Laborers, Hod Carriers, Cement Workers and Miners Union, Local 169):

We are in support of the section 2 provision which appears to be a more open process for releasing information.

In section 3, the first standard is that you have to knowingly file a false complaint. This standard is very high. The second standard is if the board believes the complaint is false. These are two standards that are very different.

You need to get rid of section 4. "Exclusively" means I have to do everything myself.

NEIL DAVIS (The Davis Companies, Inc.):

There are a lot of people who file frivolous complaints because they do not want to pay.

DYLAN SHAVER (Southern Nevada Building and Construction Trades Council):

We also have issues with section 3.

CHAIR CARLTON:

We will close the hearing on S.B. 50. There are a lot of leftover questions we will be working on. We will be contacting some of the different people to work on this, and it will be scheduled in the future for a work session.

We will now open the hearing on S.B. 26.

SENATE BILL 26: Revises provisions governing chiropractic physicians.
(BDR 54-349)

IAN YAMANE, D.C. (President, Chiropractic Physicians' Board of Nevada):

We have two proposed changes we would like to make to our statutes as outlined in our handout ([Exhibit V](#)). The first deals with unprofessional conduct. We would like to add some language that comes from a recommendation of our deputy attorney general.

Over the years we have had resistance from licensees who did not abide by the conditions of the agreement. By adding this language, we would avoid that resistance.

CHAIR CARLTON:

You decided you did not want to take their license away; you just want to fine them instead. If they do not comply with your instructions, then you have the right to take their license.

PAULA BERKLEY (Chiropractic Physicians' Board of Nevada):

Right now, they have signed a legal agreement to abide by it. We could take them to court on that. The language we are adding comes under unprofessional conduct. The provision allows us to either suspend or take away a license. You have to do something which requires that, and this language will do so. We are adding one more unprofessional conduct item to the long list which includes violating an order or any agreement of the Board.

CHAIR CARLTON:

Could you explain where you would go with the fine versus where you would go with taking the license? How would you decide? You have the right to fine them. The next part of the bill gives you the \$10,000 fine each time, instead of \$10,000 total. Where are you going to draw the line between the two?

MS. BERKLEY:

It is not an easy question to answer. It depends on the violation. We are hoping we never need to suspend or take a license. We hope if we see some reluctance in paying a fine, we can read this section and say this is unprofessional conduct.

SENATOR HARDY:

This is the same question I had earlier. Ten thousand dollars per occurrence fine is an increase in a fine.

SENATOR CARLTON:

I have the answer to that question. Is that the two-thirds majority vote question?

SENATOR HARDY:

Yes.

SENATOR CARLTON:

I have the answer to that question because it was one of the first things I called about when I got the bill. They do not consider fines the same as fees. We do not do two-thirds majority vote on penalties of fines.

SENATOR HARDY:

What about the Governor?

MS. BERKLEY:

The Governor said the same thing.

SENATOR HARDY:

I would like to see something more along the lines of a sliding scale. Is that in regulation? Is there a sliding scale for the fines? How do you feel about asking for a statutory sliding scale on the penalty side?

DR. YAMANE:

Are you specifically referencing the chiropractic statutes?

SENATOR HARDY:

Yes. We have a lot of other boards.

DR. YAMANE:

We have reserved the \$10,000 fine for more severe cases. In actuality, as far as the Chiropractic Physicians' Board of Nevada's policy, we do have an unofficial sliding scale. It has been very rare that we have instituted the \$10,000 or more, type of fine.

SENATOR HARDY:

Could you provide your guidelines to me, Doctor? Have you thought of the \$10,000 as a cumulative amount?

DR. YAMANE:

We are asking for clarification of the statute. Each deputy attorney general we have had has given us a different interpretation. Prior to two years ago, our understanding was that we could fine per violation. There were only two cases in which we went over the \$10,000 amount. In 2006, that deputy attorney general interpreted the law as a total of \$10,000.

SENATOR HARDY:

Until recently, you have been interpreting and implementing this, and now you are asking for the clear legal authority.

SENATOR AMODEI:

Have you thought about adding violating any "lawful" order of the Board or any "lawful" agreement with the Board to this provision? This is aimed more at Board procedure, to make the Board think about orders and agreements as they are going forward, rather than what the attorney on the other side thinks. Obviously, if it is not lawful, it will be argued any way. There have been rare instances where boards have done things which some people think are illegal.

CHAIR CARLTON:

In the history of the Board, how much have you fined?

MS. BERKLEY:

The board has fined \$10,000 twice, once for more than \$10,000, and the rest of the time it has been for less. The amount of the fine would depend on the severity of the violations.

If you would like us to, we would certainly entertain adding that word so we have Senator Amodei's wholehearted support.

SENATOR AMODEI:

I would defer to committee counsel because there may be a good reason committee counsel would say that is not a good idea and here is why.

CHAIR CARLTON:

We will investigate it for you Senator Amodei, and make sure that someone responds to your request. The word is "lawful."

We will close the hearing on S.B. 26, and open the hearing on S.B. 58.

SENATE BILL 58: Revises provisions governing the licensure and regulation of audiologists and speech pathologists. (BDR 54-362)

LORRAINE POKORSKI (Administrator, Board of Examiners for Audiology and Speech Pathology):

The items we are requesting are brief. In January 2008, the national criteria for audiologists were increased from a master's degree to a doctoral in audiology. We are asking that the standards for Nevada be increased to the same as a doctoral in audiology. Speech pathologists stay the same, a master's degree.

We are also asking the temporary license be changed to accommodate recent graduates in speech pathology only who have not completed their thesis for their master's degree. We would like to issue them a temporary license which is valid for six months. It would allow time to complete their thesis.

One of the items we would like to eliminate is clock hours. Clock hours are the number of hours a speech pathologist has supervised, clinical experience. This increases from time to time. Our statutes require 300 clock hours. The minimum now is 350, and of course this could change. Since it is a requirement for graduation that they have those clock hours, it is redundant to put them in the law and then have to return to request they be increased whenever those number of hours increase.

CHAIR CARLTON:

My concern is under section 3, converting from temporary to permanent license and the time frame. Is it mandatory it gets completed within six months; is it a standard or is it just a time frame the Board picked?

MS. POKORSKI:

That is just a time frame the Board picked.

CHAIR CARLTON:

Would the Board consider making that a provisional instead of a temporary license? The provision would be to finish the thesis, and put the time frame within regulation so the Board does not have to deal with someone starting all over again if they miss the six months by one day. Whenever you have those set times, things can occasionally go wrong.

MS. POKORSKI:

Yes, right.

CHAIR CARLTON:

If I understand your intent, they have completed their course work. It is time to complete the thesis which takes a long time. You want to allow them to provisionally practice until the thesis is turned in, and then get their full licensure.

MS. POKORSKI:

Correct.

CHAIR CARLTON:

We will work together to see if we can get better wording, so you do not have to keep coming back to us.

PAT HINES:

I am a retired speech and language pathologist in this State. I still have my license until next year. Someday I may want to go back to work. I do not think I have all the course work required. I would like to know if I am still in grandfathered status.

CHAIR CARLTON:

I understood this was for new students, new licensees only.

MS. POKORSKI:

Yes. It is for recent graduates, not for people who have been practicing for any length of time.

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JULIE WHITACRE (Director of Government Relations, Nevada State Education Association):

We represent speech pathologists and audiologists in the State. They do support this change in the law and the accountability that goes along with it.

CHAIR CARLTON:

Having no more questions, we will close the hearing on S.B. 58. The hearing of the Senate Committee on Commerce and Labor is adjourned at 3:23 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____