

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

**Seventy-Sixth Session
May 16, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:58 p.m. on Monday, May 16, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)

GUEST LEGISLATORS PRESENT:

Senator John J. Lee, Clark County Senatorial District No. 1
Senator Dean A. Rhoads, Rural Nevada Senatorial District
Senator Joe Hardy, Clark County Senatorial District No. 12
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Sharon McCallen, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Gail J. Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Teresa McKee, General Counsel, Nevada Association of Realtors
Carole Vilardo, President, Nevada Taxpayers Association
Wayne Carlson, Executive Director, Public Agency Compensation Trust
Robert Balkenbush, General Counsel, Public Agency Compensation Trust
Randy Waterman, representing Public Agency Compensation Trust
Robert Osip, Risk Manager, City of Henderson
Vicki Robinson, Risk Manager, City of Las Vegas
David Frazier, Executive Director, Nevada League of Cities and
Municipalities
Constance Brooks, Senior Management Analyst, Office of the County
Manager, Clark County
George Ross, representing Nevada Self-Insurers Association
Wes Henderson, representing Nevada Association of Counties
Lisa Gianoli, representing Washoe County
Rusty McAllister, representing Professional Firefighters of Nevada
Ronald P. Dreher, representing Police Officers Research Association of
Nevada
Michelle Jotz, representing Las Vegas Police Protective Association
James Overland, President, Nevada Chiropractic Association
Robin Huhn, Retired Doctor of Chiropractic, Las Vegas, Nevada
Marsha Berkgigler, representing Chiropractic Physicians' Board of Nevada
Jesse Wadhams, representing Asurion Insurance Company
Brett Barratt, Commissioner of Insurance, Division of Insurance,
Department of Business and Industry

Keith Lee, representing State Contractors' Board, and Board of Medical Examiners
Fred Hillerby, representing Nevada State Board of Accountancy, Board of Dental Examiners of Nevada, State Board of Nursing, and State Board of Pharmacy
Neena Laxalt, representing Board of Dispensing Opticians, and Nevada State Board of Veterinary Medical Examiners
Rocky Finseth, representing Nevada Physical Therapy Association
Michael B. Holloway, Chairman, State Board of Professional Engineers and Land Surveyors
Noni Johnson, Executive Director, Board of Professional Engineers and Land Surveyors
Kim Frakes, Executive Director, Board of Examiners for Social Workers
Stacy Parobek, representing State Board of Osteopathic Medicine
Billie Shea, Chair, Board of Massage Therapists
Steve Johnson, Vice President, Commission of Appraisers of Real Estate
Robert Schiffmacher, Certified General Appraiser, Reno, Nevada
Debbie Huber, Certified Residential Appraiser, Las Vegas, Nevada
Michael Cheshire, President, Commission of Appraisers of Real Estate

Chair Atkinson:

[Roll was called. Committee protocol and rules were explained.] We have five Senate bills today. We will open the hearing with Senate Bill 314. We will be taking our bills out of order.

Senate Bill 314 (1st Reprint): Revises various provisions relating to real property. (BDR 54-631)

Senator John J. Lee, Clark County Senatorial District No. 1:

Asset management companies provide management services for banks, mortgage bankers, mortgage brokers, credit unions, thrift companies, savings and loan associations, or governmental agencies on real property and foreclosures on which they hold a security interest.

Such companies manage the property, performing services such as securing the property by changing locks, removing trash and debris, clearing the property and surrounding properties, performing maintenance and repairs of homes, and disposing of the abandoned personal property.

This sometimes occurs in residential homes—homes with legally protected tenants—and commercial properties. [Senator Lee presented a four-minute video from an NBC News special regarding the "trashing out" or clearing out of homes before owners become aware of action.]

Unlike licensed real estate agents holding property management permits, who perform similar duties for owners of real property, these asset management companies provide this service to a bank and are not licensed, permitted, or registered in this state and are subject to no regulation or oversight.

This lack of oversight has led to some horrendous abuse of power against property owners and tenants. Asset management companies have trespassed on real property that has not yet been foreclosed upon and changed the locks while the owners were still occupying the property. Asset management companies have "trashed out" residences, only to find out later that they had the wrong address and had destroyed the contents of the wrong home.

Assembly Bill 314 (1st Reprint) would allow the Real Estate Division to require the registration of every asset management company and the permitting of every individual performing duties for an asset management company. This would include a criminal background check. Asset management companies would be required to be insured to cover wrongful damage to property and wrongful evictions.

The issues surrounding asset managers, sometimes called preservationists, are similar to the home inspector challenges we had three sessions ago.

Banks turn over the real estate to these asset management companies. Asset management companies then go to the address and do their work or damage. If a problem occurs, the bank says, "We didn't harm you. It was the asset manager contractors we hired—go see them." These companies are not easily found. There is usually no office or place of business, and finding your personal property that was taken illegally, or legally, is sometimes impossible.

This bill will make it possible to find the business and make sure they are not suspicious or criminal people. There would be background checks and the asset managers would be available for those who need to contact them.

I have with me today Gail Anderson and Teresa McKee to help me present this bill.

Chair Atkinson:

Thank you for the presentation. Before taking questions, we will take testimony.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:

This is a new chapter of law which is proposed to be under the jurisdiction of the Real Estate Division. Since it is a new chapter, all of the administrative, licensing, and investigative sections are included. These are patterned after other jurisdictions the Real Estate Division already implements and enforces and are strongly patterned after the Division's appraisal management company registration program, which was enacted in the 2009 Legislative Session.

As Senator Lee said, S.B. 314 (R1) regulates a currently unregulated industry that has a great deal of activity due to the market conditions in our state. The most important parts include section 4, the definition of "asset management" ([Exhibit C](#)). This is a very narrow function for a narrow purpose with a client and is narrowly defined. "Asset management means to manage, oversee, or direct actions taken to maintain any real property, including, without limitation, any actions taken to preserve, restore or improve the value and to lessen the risk of damage to the property on behalf of a client"—and the client is very narrowly defined in section 6—"before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale."

This is very narrowly focused. That client, as defined in section 6, is:

1. A bank, mortgage broker, mortgage banker, or credit union, thrift company, or savings and loan association, or any subsidiary of such which is authorized to transact business in this State;
2. A mortgage holding entity chartered by Congress; or
3. A federal, state or local governmental entity.

It is owned by a lending entity, or on behalf of a lending entity, that is exercising a default clause in the loan documents and then ultimately foreclosing, repossessing, and liquidating that asset.

There are definitions that run through section 12 of this bill. Section 23 of the bill requires the registration of an asset management company. We have patterned this after the appraisal management companies that we currently register and which are often not located within our state. The bill addresses who, what, how, and when a lending entity steps in as the result of a default. The lending entity can act directly as an owner or utilize an employee for its own properties when it has foreclosed or exercised its default rights.

Asset management companies are not owners. With a contractual agreement, a power of attorney, or other legal authority they are acting in a third-party capacity on behalf of a bank or lending entity as defined in section 6.

Another very important section is section 13. This addresses to whom the chapter does not apply. It does not apply to a full-time employee of a bank or someone acting in a judicial capacity in regard to eminent domain.

In Section 13.5 of this amendment of the revised version, this does not apply to a person who has a permit to engage in property management pursuant to *Nevada Revised Statutes* (NRS) Chapter 645, which is a real estate licensee. Real estate licensees can perform these functions and they do more. A real estate licensee holding a property management permit must have an agreement to perform services for this and comply with provisions of this chapter and record keeping.

A public protection of this bill is provided in section 23, subsection 2. The asset manager—the person who works for the asset management company and who is going to hire the people in to do repairs—must use, under this law, the services of a properly licensed person. If they need a plumber or contractor to do repair work, they are accountable in the law to hiring a properly licensed or certified person to perform those services. The asset managers have to have a process in place to review the work and ensure they are working in accordance with the laws of this state. They must ensure that all permits and licenses they have are to do business in this state. As a state entity, we want to make sure that anyone we license and regulate has the appropriate state business license and license to conduct business in their profession.

Another public protection component is in section 24. Insurance is required to be maintained by the asset management company. That would be to protect the general liability on the home—anything happening in the home when someone is working in that home—as well as errors and omission of something that is not properly done.

Section 31 addresses the services that the asset management company may provide, including the proper disposal of property and the storage of property for 30 days. These things are not happening today. These are not involving landlord/tenant law in NRS Chapter 118A. These are properties that have been foreclosed or are in default by owners. They may have a tenant in them, or they may be vacant.

Section 32 defines the unlicensed activity and section 33 outlines the unlawful acts. It is unlawful to conduct an eviction unless it is properly noticed, to dispose of personal property unless it is done properly and held for 30 days, and to seize real property unless it is done with the proper notices. The asset management company cannot do property management activity, including the handling of money belonging to another. They cannot collect rents.

They cannot do anything on behalf of a tenant. They cannot sell, market, or lease. Those are real estate licensed activities. Those are distinguishing activities.

Assemblyman Hickey:

While we have just seen a very compelling report about a seemingly very important problem, you must know there are concerns from other people involved in this industry, not related to the banks, but property managers specifically. They have a concern regarding the need to be wrapped into this bill. They would argue that they already perform some of these things you are talking about—locating licensed contractors to make repairs, et cetera. A good deal of education is involved in getting a property manager's license. Is that same amount of education going to be required of these new asset managers?

Gail Anderson:

No. This does not have any precicensing requirement. This particular activity is held accountable to state laws, but there is not a precicensing component or an education component. Real estate property managers can do all of these activities if they do it through their brokerage, with a property management agreement. There is nothing additional being added to the property managers. If a general contractor wanted to start an asset management business, he could do that and do all of the repairs, but he cannot do any sales and licensing activities. This bill is trying not to duplicate other licensing programs in the state.

Chair Atkinson:

Are there additional questions from the Committee? [There were none.]

Teresa McKee, General Counsel, Nevada Association of Realtors:

I am legal counsel for the Nevada Association of Realtors. Ms. Anderson did an outstanding job of presenting this amendment and the provisions of this bill, so I do not have anything to add. The Nevada Association of Realtors is in support of this bill.

Chair Atkinson:

Are there questions from the Committee? [There were none.] Is there anyone else in the audience wishing to get on record in support of S.B. 314 (R1) here or in Las Vegas? [There was no one.] Anyone in opposition or neutral? [There was no one.] We will close the hearing on S.B. 314 (R1). We will open the hearing for Senate Bill 135 (1st Reprint).

Senate Bill 135 (1st Reprint): Revises provisions governing the presumption of eligibility for coverage for certain occupational diseases. (BDR 53-717)

Senator Dean A. Rhoads, Rural Nevada Senatorial District:

In February, I sponsored this bill. [Continued to read from the following prepared text.] The intent of the bill at that time was to reduce the financial liability for public sector employees for future heart and lung claims while still providing a generous benefit for post-employment heart and lung claims. These future liabilities for Nevada public entities are estimated in the hundreds of millions of dollars. However, the bill in its current form no longer accomplishes the intent of providing any financial relief to public employers because of a legal opinion ([Exhibit D](#)) provided by the Legislative Counsel Bureau (LCB). The Legal Division believed the bill could apply only to future employees and was amended in the Senate to reflect that.

This, effectively, would delay any real financial relief for 20 to 30 years. Subsequently, LCB Legal reviewed the matter and issued a revised opinion ([Exhibit E](#)). It stated that the bill could indeed apply to current employees whose date of disablement occurs on or after the effective date of the bill.

With decreases in revenues and increases in demands for essential services, our cities, counties, and even the state need financial relief and need it sooner rather than later. They cannot wait 20 to 30 years.

I urge you to review S.B. 135 (R1) carefully and consider amending it to take into account the revised LCB legal opinion, making it more closely reflect the original intent and providing much needed financial relief to public entities during these very challenging economic times.

Chair Atkinson:

We will move to those in favor of S.B. 135 (R1).

Carole Vilardo, President, Nevada Taxpayers Association:

I am in support of the bill as we originally had requested it. I had asked Senator Rhoads about putting this bill through, and I am going to present a very quick background regarding the policy issues with the bill.

At the end of the 2009 Legislative Session, I had been at a conference of my colleagues, and one of the items on the agenda happened to be local governments and the liability issue that had come to the forefront because of the Government Accounting Standards Board (GASB) relative to the issue of booking liabilities. I know you are all familiar with booking liabilities relative to the Public Employees' Retirement System (PERS) and booking liabilities relative

to retiree health care, but you also have a liability that local government has to book relative to heart and lung. When I came back from the conference, I called Mr. Carlson, who had been a long-time member of ours and who I knew worked with the issue. Our discussion lasted over half of a day. I asked him some questions and said that this had become problematic because the law is open-ended within the existing law for heart and lung for police and fire. When you go to an actuary to book your liability, the actuary cannot give you a finite number. He has to give you a range. Within that range it is impossible to say he can take so much money and set it aside. I want to make very clear that you do not have to set money aside per se, but you need to book the liability.

You have probably heard in the various committees the fact that the rating agencies look at how a government is managing its money. The rating agencies were saying they would give governments a period of time, generally between 2010 and 2011, relative to how they would begin viewing the local governments and what the impact would be, if any, on the bonds.

One of the things the rating agencies were going to look for was to make sure the liabilities were being booked, and they were going to see if payments were being made or set aside. Again, the Legislature knows, as a full body, just for the employees' health care liability, you had set aside state money—that unfortunately was swept and taken away; it was \$23 million or \$28 million—to start funding that liability. We have to make sure we have good solid numbers, that our books are there, and that we can support those things that we put in statute. We have an obligation to the employees to do that.

I was very surprised at the Senate Committee on Commerce when we found out that the bill had to be amended. We had no knowledge of that ahead of time. In subsequent conversations with Legal, they looked at the documentation presented on case law that had been used. I was sent an email and you will note that it does not carry Legal's confidentiality notice, as I asked that it be removed so that we could share it ([Exhibit E](#)).

For the technical aspects of the amendment and to explain how this would work, I will turn this over to both Wayne Carlson and Randy Waterman from Public Agency Compensation Trust.

Chair Atkinson:

Are there questions from the Committee members? [There were none.]

Wayne Carlson, Executive Director, Public Agency Compensation Trust:

The Public Agency Compensation Trust (PACT) is comprised of rural Nevada governments, cities, counties, towns, special districts, school districts, and hospitals in our program, which provides workers' compensation coverage. The police and fire portion of it, the paid portion, is what is affected by the heart and lung benefits as addressed in S.B. 135 (R1). The existing law has a five-year manifestation period for other occupational diseases that is consistent with what other employees receive. However, based on the *Gallagher and Sorensen* decision that occurred in 1998 [*Gallagher v. City of Las Vegas*, 114 Nev. 595, 959 P.2d 519 (1998)] that manifestation period is lifetime for paid police and fire as long as they have met the five-year service requirement. That decision opened up this huge liability that we have been trying to fund for years at a very substantial impact on our membership. We are not the only ones. Each of the large governments is self-insured, and they too have to fund this future liability. The State of Nevada, with its large deductible programs, has to fund that liability as well.

For us, the actuary who did our study had to use a combination of workers' compensation, health, life, and actuarial approaches to try to estimate this liability. It varies widely. The range given us just for post-employment, not current employees, is from \$20 million to \$80 million. We raised our rates to fund an additional \$1 million per year in order to try to fund this after the first study we did. The most recent study confirmed that minimum number, which meant that while we collected \$7 million, we still need \$20 million to get to the minimum. We have basically gotten nowhere in terms of where this liability is long term.

I would estimate that the statewide liability is in the billion dollar range for this post-employment piece. That is a significant number not only for us and our local government members but also for the entire state and all the local governments.

We have a situation where once the employees have met the five-year requirement, they can leave employment. We have a case where someone left employment after 12 years, went to work for a private contractor for another 13 years, and then filed a heart and lung claim. He was eligible for this benefit. Because he had a job and was not fully retired, he not only was eligible for the medical portion of the benefit, but also was eligible for some indemnity. We have had a couple of cases like that. There are long-term risks of post-employment for someone who is no longer contributing to public safety 13 years after the fact. Yet, that is still our liability. Given the state of the current law, once I have that five years, I could be terminated for cause or quit because I do not like the work or want to do something different, but if I have

that five years, anytime during my lifetime I can come back and file for heart and lung benefits under this statute. That decision was made by the court, not by this legislative debate, that this was for life. When it first went to conclusive presumption, people were looking at it and saying that workers' compensation relates to work. While we allow a short manifestation period beyond work for certain occupational diseases, it still relates to work because it is connected to work.

What we proposed in this bill is to establish a time limit, with a maximum period of five years. That is consistent with what other employees have, instead of this lifetime arrangement where, once they leave our employment, they no longer have to do an annual physical, so there is nothing we can do to manage the risk which was the purpose of the annual physical in the past. If you look at this from a legal liability standpoint, there is a legal connection to work that is fundamental to workers' compensation. Somebody can leave after five years and have another occupation that could be hazardous, but it does not matter because you have this benefit for life. We are trying to put some fiscal sensibility on this benefit as we collect a combined total revenue of approximately \$12 million per year for all worker compensation injuries, including police and fire while they are employed. An additional \$1 million or 10 percent of that is just for the post-employment piece, and rightfully we could be collecting a lot more in order to try to fund that. Our members cannot afford that. We have been raising our rates about 10 percent a year in the past couple of years to try to catch up on this funding after the second actuarial study. If my real liability is \$80 million, I am a long way off.

That is fundamentally what the purpose of this bill is. From the original bill perspective we had proposed some amendments that took things out that we did not intend, but really pared the bill down to this capping it at five years.

In the Senate, on the last day that the bills had to be passed out of the house of origin, literally seconds before the hearing at the end of the last bill of the day for that committee, an amendment was proposed and passed that is reflected in the first reprint. That was not our amendment. We did not have any discussions with anyone, even though we tried. We have some significant problems with the way the first reprint is done.

Randy Waterman has spent a considerable amount of time creating the amendment that would get the first reprint closer to the original bill, and while it is complex, it is important for Randy to walk through it so you understand what we are seeking to do.

Assemblywoman Carlton:

We need to clarify a few things with Mr. Carlson. You used the term eligible. Yes, people can be eligible for benefits, but eligibility does not guarantee that they will be able to receive those benefits. We know that within the heart and lung component, it is an extensive review. You do not fill out the paperwork and get approved. Applications are usually denied for some reason, even of current employees, not just past employees, which I understand is your concern. In order to have a real discussion about this, we need to talk about how many people, current and past, have applied; how many times they have been accepted; what the denial rate has been; how long it takes for them to appeal; and whether they have to go through a Nevada Attorney for Injured Workers (NAIW) or get their own attorney. In numerous cases that I have looked into, they have had to go to the Supreme Court. One case recently went to the Supreme Court and the employee lost.

I do not think it is fair to use the term eligible because anyone can be eligible for something; it is what we actually end up processing and giving folks. I think we discussed the case you were talking about in previous legislative sessions, and that person did not prevail for heart and lung.

Wayne Carlson:

I do not know what case you are referring to.

Assemblywoman Carlton:

The 13-year employee who came back and filed for heart and lung.

Wayne Carlson:

That is one of our cases. I do not know about other entities. That case is still pending. We do not have a determination.

Assemblywoman Carlton:

So they have not prevailed. How long has that been going on?

Wayne Carlson:

I believe that case is less than a year.

Assemblywoman Carlton:

I must be mistaken because I remember having a conversation along this line two sessions ago about heart and lung provisions and eligibility. Is there someone here who can answer the question regarding the cases and denials and the questions I posed?

Wayne Carlson:

I have Bob Balkenbush with me, who is our general counsel and who has managed some of those cases on our behalf. I cannot speak to other entities and how they handle claims. We have a number of accepted claims, and we have claims that are, not uncommonly, worth \$1 million apiece when they are accepted claims. There is significant liability here. In many cases, these are not small claims.

Assemblywoman Carlton:

We can discuss this if we are very careful to not talk about who is eligible, but what actual costs of benefits are and how this really works. Anyone in police and fire in this state could be eligible. Eligibility has nothing to do with the liability that the state is facing.

Robert Balkenbush, General Counsel, Public Agency Compensation Trust:

Your questions address how does the heart and lung bill work in practice and I can address a few of your questions.

Assemblywoman Carlton:

I have lived through it and know how it works in practice. I am curious about people who file for it, the denials, the acceptances, the actual, real numbers of what happens to employees who end up being put through the system of workers' compensation heart and lung.

Robert Balkenbush:

I do not know if they provide those statistics to you. I can only provide an answer to the question you had about that one employee that Mr. Carlson was addressing, and that employee prevailed. I believe he was a 12-year employee who went into private business and filed a claim 6 years post-retirement. He did get both indemnity and medical benefits. The process was very short.

Assemblywoman Carlton:

Then you are appealing it and it is still on appeal?

Robert Balkenbush:

No, not at all.

Assemblywoman Carlton:

That is not what I heard from Mr. Carlson then.

Robert Balkenbush:

That is a claim I can recall because it fits the facts that you mentioned.

Assemblywoman Carlton:

I guess we are talking about two different things here. We probably should get away from the individual claim and go back to what the actual denial rates and acceptance rates and true liabilities will be.

Wayne Carlson:

I do not have the statistics with me regarding denial and acceptance rates on heart claims for us. I can tell you that eligibility does matter in terms of actuarial calculation for funding because everyone who is eligible has the potential to file a claim.

Assemblywoman Carlton:

Everyone who has a car is eligible to file a claim against their car. That does not mean everybody is going to. If we are going to talk real numbers and liabilities, we need to talk about claims history, who has filed, the denial rates, and what the costs are. Every time we hire someone, we know the day we put them on our payroll that we have now made them eligible. We made that decision in 1964. Eligibility is a fair conversation in this particular issue. If we are going to talk numbers, we need to talk claims, denials, appeals, and actual costs. What this bill is trying to address is short circuiting our future liabilities on these issues and whether we are going to allow employees to become eligible. For me to make that decision, I need to know what the dollars are.

Wayne Carlson:

That is what I was alluding to in my statement. The actuary has to rely on statistical data, and part of the data is demographic data, life expectancy tables, and disease rate tables. Heart disease is the number-one killer in this country. Based on that data, those analyses, he came up with a number that ranged between \$20 million and \$80 million just for our small group. When you look at numbers, those are the numbers we are talking about.

Can I say that this employee will have a claim that is accepted and that employee will have a claim that is denied? No. Each employee's claim is evaluated on its merits. We have several claims that we are handling, some for existing and some for post-employment.

We have a demographic problem. It is called the baby boom bubble. That is coming, and you are going to see that liability manifest in the next 5 to 20 years, where that \$20 million to \$80 million that we have to incur is going to start hitting the books. That is where funding becomes a problem. We are either partially solvent or completely insolvent if we book all of that liability at the worst case, which we are not prepared to do. But we have to do some funding for it as long as that liability exists. Those are real, hard numbers. Statewide,

my guess is that it is close to a billion dollars, just projecting our numbers out to what other states may be incurring, and they are larger than we are and individually self-insured. I do not know how much funding other states put together for the post-employment liability piece, but it is a significant financial hit and it is not connected to work. It is not really a workers' compensation benefit when you give someone something that goes way beyond their work experience. It is not adding any value to the taxpayers who ultimately have to fund this because we are a local government agency.

We are a self-insured group funded by our local government members. Those tax burdens go to those taxpayers. If we want the taxpayers to continue to see higher costs passed on to them because we have to collect for this liability, as long as our actuary has given us a parameter on which to fund it, then we have to collect the funds because we are subject to regulation. If we do not collect the funds, and we become insolvent, then that is an issue. Likewise, if the claims begin coming in, we will be affected by those claim dollars, and those could come in sooner than the collection rate that we are proposing in order to fund this liability. At a million dollars a claim, we bear all that loss under our self-insured retention.

We are here with real numbers and real dollars that affect our home tax base. That is why we support the Taxpayers Association and Senator Rhoads on this bill.

Assemblywoman Carlton:

I understand your position, but I disagree. If we hire someone as a police officer or firefighter, we put him on the line; we have made the deal. He is there for five years and he is presumed to be covered under this benefit. Now, even though it is a presumptive benefit, we still make employees fight for it because we still deny it and he has to go through the appeals process. It is not automatically granted. Everyone needs to understand that this is not a given. He still has to prove it, and it can be a very long, arduous, and expensive proposition to prove that he should have this benefit. Even if his doctor and everyone else agree, he still has to prove it.

Your disagreement with this relates to when someone is finished with his service, and goes to another job. Even though he is allowed to retire, you are saying that because he has left state employment and is working for someone else, he should no longer be allowed to get this benefit because it is not tied directly to his employment. Do I understand you correctly?

Wayne Carlson:

Not quite. Employees who work maybe six years, and then leave, are no longer contributing to the taxpayers' benefit in the public safety occupation in this state or any other state. They could be in another occupation entirely. Workers' compensation is supposed to be tied to the legal liability associated for conditions arising out of work.

Chair Atkinson:

Let me go to Mr. Goedhart and then come back.

Assemblyman Goedhart:

You said you had an actuarial assessment done as to the potential liability on both the low end and the high end. Without getting into whether or not this person is eligible for it, under the current program, to determine the assessment of a future liability, it must have taken a set number of years to see how many employees were eligible, and then compare that to a history claim to come up with an actuarial assessment as to future liabilities. Is that how that was done, or was it more ad hoc? Are we going to pull a figure out of the air?

Wayne Carlson:

It is not pulled out of the air. The actuary spent a significant amount of time looking at heart disease rates in this country and looking at the demographic factors. We also did a survey to see how many male and female employees we had and what their age and demographic profile looked like at the time of the study. We could then say when that liability is going to manifest within reasonable projections. It was a very difficult study, because they were trying to determine a very significant liability. When it manifests is difficult to know; we can only say that based on demographic profile, it will begin to manifest in the next 5, 10, or 20 years. Once that begins to occur, those claims will greatly impact the payouts. We have had some of those claims already and they were accepted. I do not accept the argument that these claims are always battled hard, because the evidence is in the record and the claim is accepted. This is a conditional benefit. There are certain criteria that have to be met in order to qualify. If those are not met, they do not qualify. That is the statutory trade-off. We have met quite a number of claims.

Assemblyman Goedhart:

To go back to how the actuarial assessment was calculated, to what degree did they take real-life experience data into the model?

Wayne Carlson:

We have had very few post-employment claims that have come through, again, because of the demographics of when this court decision occurred and when

these cases began to manifest. We have some now and we have used that data in the actuarial study to the extent we had it. Mostly it was relying on national data in looking at health statistics on heart disease and its propensity based on age factors, gender, and that sort of thing.

Assemblywoman Carlton:

Through Mr. Goedhart's question, I heard the statement "accept quite a number of claims," but when I asked the question earlier regarding numbers, those could not be provided. Until I can actually get some numbers, I would have a hard time in validating that statement.

Wayne Carlson:

Some of that data was provided in a prior session, as I recall. There was a survey done to find out about the heart and lung claims activity. We submitted our data along with other entities. I know of current cases that were accepted and we are paying on. We have one claim that has been going on since 1998 for a current employee. There is a long history of acceptance of heart and lung claims.

Assemblywoman Carlton:

Since that information has not been provided this session, how can I go back and locate it? I will be happy to do my own research since that information was not provided with this bill.

Wayne Carlson:

It was a survey done by the Legislative Counsel Bureau. I do not know when it was done and I have not actually seen the results of the study myself.

Assemblyman Daly:

Do you utilize any type of stop-loss for reinsurance to try to smooth out the bigger claims? In other words, you would pay the first \$200,000 and then after that you would give it to insurance? If you use that, what is your attachment point?

Wayne Carlson:

Our present attachment point is \$500,000 in the self-insured group, and then for our captive, we bear 30 percent of the next \$1.5 million. It is about \$800,000 presently. Other individual self-insured governments have attachment points where the retention amount is \$1.5 million or more. It is a substantial risk. Heart disease cases that have indemnity medical—several of them—are well in excess of \$1 million. Most of the time the reinsurance of the excess carriers is not contributing to those cases. The cost of the reinsurance

comes out of our self-funding. We have to collect the premiums from the members to fund those reinsurance costs as well.

Randy Waterman, representing Public Agency Compensation Trust:

I would like to respond to Mr. Daly's question regarding these self-insured retentions and where the excess comes in. I speak from a position of some knowledge, as I was a state risk manager as well as a risk manager for the City of Sparks. For years, our attachment point was \$1.5 million, and the only reason we had that excess workers' compensation insurance was because it is required by statute. There could be cases to exceed that, but for the most part, as Mr. Carlson mentioned, it never comes into play because those claims typically run under \$1.5 million. It is an expense, and the excess insurance market is so leery about the statute here in Nevada and the potential exposure that they will not lower their retention amounts at all.

I would like to touch on the proposed amendment that we submitted ([Exhibit F](#)). Basically, the amendment, as Senator Rhoads discussed, is to take the First Reprint back closer to the original bill by clarifying, first of all, that the law can apply to current employees as was opined by the LCB Legal Division after the bill was passed out of the Senate. It also would make the post-employment filing period for presumptive heart and lung claims a function of potential exposures or years of service. One way to attain that is in the original bill, to cap it at a flat 5 percent. The other way to accomplish that would be to formulize it based on years of service and putting in a formula that would say, for example, you could have a three-month extension for every year of service. If it was done based on 3 years, at 20 years you would have a 5-year post-employment filing period; 30 years would be 7.5 years, et cetera.

The other key point is to delete the confusing language relating to Medicare and other entitlement programs. I understand that the professional firefighters have also suggested an amendment that does a similar thing ([Exhibit G](#)). There are some legal issues with tying this bill into Medicare and terminating claims midstream as a result of someone reaching Medicare age.

Chair Atkinson:

The amendment is online; I also have a copy. Do you have any additional comments?

Randy Waterman:

No.

Chair Atkinson:

Are there any questions from the Committee members? Does anyone else want to testify in favor of S.B. 135 (R1)?

Robert Osip, Risk Manager, City of Henderson:

I am here to express the city's support for the proposed reforms as presented earlier on this bill, basically imposing some kind of five-year cap or, as Mr. Waterman presented, a prorated sunset clause depending on years of service.

As background information, our most recent actuarial analysis of the unpaid heart and lung and cancer liability shows the City of Henderson's outstanding liability is \$2.7 million as of June 30, 2008. The good news was that if we had \$72 million on hand at that point and put it away at 3 percent interest, we could have addressed that liability at that time.

For information purposes, the City of Henderson currently has 29 accepted heart and lung cancer claims, five of which came from retirees—in other words, post-employment. Technically, you do not have to be a retiree.

We estimate that within five years of a sunset provision that we would save about \$50,000 a year in direct health care costs for those retirees. That number will grow in time as our retiree population increases. There is a demographic boom. In Henderson, we have a younger population, so our retiree population is relatively small at this point, but it will only grow.

One issue is health care inflation. Regarding the average cost of a retiree claim, we currently book liability for \$292,000. With a 7 percent health care inflation rate, 20 years from now those costs will go up.

The other factor is to stop the impact on stop-loss insurance. We have a stop loss—a large deductible—of \$2 million deductible on our public safety claims and \$1 million deductible on our regular employees in the City of Henderson.

To give an example of the ability to obtain excess insurance in this state, we recently renewed our policy and only one carrier was willing to write us. That was our incumbent carrier and only under the provision that we increase our stop-loss from \$1.5 million to \$2 million for public safety employees, and then we were rewarded with a 10 percent rate increase. That was \$350,000 for a one-year premium.

There are also challenges when we deal with claims when the person retires from employment in Nevada and moves to another state. There are different

medical networks, different fee schedules to be negotiated, and case management becomes a challenge from remote situations.

Assemblywoman Carlton:

You said you had 29 cases?

Robert Osip:

Correct.

Assemblywoman Carlton:

How many of those were retirees?

Robert Osip:

Five.

Assemblywoman Carlton:

That was 29 cases over what time frame?

Robert Osip:

Since the advent of the heart and lung act.

Assemblywoman Carlton:

That would be 1964. What percentage of employees would have been eligible for that benefit?

Robert Osip:

Those numbers are shortened because we have been self-insured only since 1994. Claims prior to that, or under an insured policy, we do not see. From 1994 on, I could not tell you the number of how many people were potentially eligible.

Assemblywoman Carlton:

If there is a way for you to provide that, I would find it very helpful so we could look at the actual percentage and impact of this. It does not seem that great—five out of 29 out of a total number of employees since 1994.

Vicki Robinson, Risk Manager, City of Las Vegas:

The City of Las Vegas also supports the reforms in the amendments as provided by Mr. Waterman. It is our belief that it is not only logical to limit the benefits provided under the presumptive statutes to some known number of years following retirement, but it also is absolutely necessary for the continued financial stability of all the Nevada cities and counties. Since 1986 the city has had 147 claims filed under various presumptive statutes. To date, over

\$22 million has been spent on the 147 claims. Another \$18 million has been reserved for additional spending on those claims, 40 of which are permanent total claims. The rest are claims where someone had an injury or an illness and recovered. That averages to about \$278,000 per claim. Of those 147 claims to date, 14 involved people who were already retired when they filed their claim. For those specific claims, we spent \$1.5 million to date. It is probably another \$1.5 in spending coming on those claims. That is an average of over \$120,000 a claim for us.

Two of those retiree claims were filed more than 20 years after retirement. At least one was filed 15 years after retirement. Two of those claims were filed by individuals who are already receiving permanent total disability benefits on another presumptive illness.

As it has been previously stated, due to the open-ended nature of this benefit, it is almost impossible to predict these claims from an actuarial standpoint, making funding extremely problematic. In addition, it makes it incredibly difficult to obtain excess insurance coverage, as the carriers fear their financial risk with such an open-ended benefit. Henderson has a good deal. The City of Las Vegas currently has a \$4 million deductible on the public safety portion of its excess coverage and, in the past several years, has spent as much as \$700,000 for one year's premium for the privilege of having that excess coverage, which we know we will never hit, because the average permanent total claim is about \$1.5 million.

Setting a defined time frame would allow us to more accurately fund liability and would make us a more attractive risk to excess carriers. We usually see only one carrier—last year we had two—who were willing to quote on us. They are really not interested.

For Ms. Carlton, I have a report of every claim we have had since 1986, when we went self-insured. I would be happy to provide it as I have in the past. I will redact the names and provide it again. It will indicate that our denial rate is about 20 percent. We deny on items such as not meeting the five-year requirement; we do not believe that bronchitis is a lung disease, those types of things.

It was suggested that there was a case that went to the Supreme Court this year—it was ours. I would note that it was a presumptive benefit case that went to the Nevada Supreme Court; it was a female firefighter who filed a claim for breast cancer. One in eight women gets breast cancer. This was the first breast cancer claim ever filed under Nevada presumptive benefit statutes. We felt it was worth litigating. Ultimately the employee prevailed.

I have appeared before this body every legislative session for the past ten years requesting reform of a benefit that has proven unsustainable for my city.

Once again, the City of Henderson has it good. They have a liability of a little over \$200 million. The same actuarial study indicated that we had a \$700 million liability. The benefit has simply proven unsustainable for my city and the other municipalities in the state. This is a first real hope of reform I have seen. Therefore, on behalf of myself and the City of Las Vegas, I respectfully request that this Committee favorably consider the reforms found in the proposed amendment.

David Frazier, Executive Director, Nevada League of Cities and Municipalities:

On behalf of my members I thank those who have spoken and indicate our support for S.B. 135 (R1) and for the amendment proposed by Mr. Carlson and Mr. Waterman. We believe, for the reasons that have been testified to previously, that they will be important to bring better definition to our future liability.

Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County:

I echo the sentiments of Mr. Frazier. I am not an expert as it relates to the subject matter, but as an organization Clark County does offer its support with regard to this legislation.

George Ross, representing Nevada Self-Insurers Association:

For the reasons that prior witnesses have stated with regard to unfunded future liability, the Nevada Self-Insurers Association supports S.B. 135 (R1) and the amendment offered today by Mr. Carlson and Mr. Waterman.

Wes Henderson, representing Nevada Association of Counties:

We would like to put our support for S.B. 135 (R1) and the proposed amendment on record.

Lisa Gianoli, representing Washoe County:

We also support the bill as amended and presented.

Chair Atkinson:

Is there anyone else who wishes to get on the record in support? [There was no one.] We will move to the opposition.

Rusty McAllister, representing Professional Firefighters of Nevada:

Today, I am here in opposition to S.B. 135 (R1). Because you have so many new legislators on your Committee, for a little historical perspective, the lung statute was put on the books in 1965 by the Legislature for firefighters only. The heart coverage was included in 1967 for firefighters only. Police officers were added to this benefit for both heart and lung in 1973. The last time that the law was significantly amended was 1987. In 1987 the Legislature added the provisions of conclusive presumption, which stated that as long as you had been a firefighter or a police officer for a minimum of five years, and you had submitted to the annual physicals that are required and had made every attempt to correct a predisposing condition that was within your capability of correcting, you were entitled to the benefit.

Interestingly enough, there are only two legislators still here today who voted on that bill in 1987—Senators McGinness and Rhoads, who approved that enhancement of the benefit. The benefit has been amended numerous times, and every time it has been amended, it has been amended to strengthen the benefit as opposed to weakening it. That is over a 40-year period.

In 1998 legislators made reference to the *Gallagher v. Sorensen* decision. That was for two former firefighters, fire battalion chiefs from the City of Las Vegas, who filed claims shortly after they retired because they both had heart problems within two years after they retired. Ultimately they went to the state's Supreme Court and the court ruled that they were entitled to benefits. Of course, there was an outcry from the insurance industry. In 1998 an interim committee looked at that decision and various provisions within the heart and lung statute. The interim committee worked in a proposed piece of legislation to bring to the 1999 Legislature, Senate Bill No. 132 of the 70th Session. That bill was brought forth and heard and testified on by both sides and, ultimately, no action was taken on that bill to change the benefit in any way.

In 1999, the Public Agency Compensation Trust (PACT) was in the Senate proposing four months of coverage for every year of service with no maximum. If you worked 30 years, it gave you 120 months or 12 years of coverage after you left the job. It has actually dropped its ante since then.

In 2004 there was an interim committee and work done through this committee made up of police and fire representatives and the current head of the Department of Business and Industry, Mr. Don Jayne. Mr. Jayne represented the Self-Insured Association at that time. A survey was conducted with as many employers as possible to see what the impact of the laws was on the local governments and private insurers. No legislation was brought forth from that interim committee.

Mrs. Carlton, I believe that had to do with that report Mr. Carlson referenced. There was a vast amount of data that was produced by the local governments. Nothing ever came of that in 2004.

In 2005, the Nevada Supreme Court—and this is important—heard a case called *Howard v. the City of Las Vegas*, 121 Nev. 691, 120, P.3d 410 (2005). The Supreme Court ruled that if a retired firefighter or police officer filed a heart and lung claim after retirement, they would only be entitled to medical coverage for workers' compensation, not indemnity and not disability.

I find it very ironic that Mr. Balkenbush said earlier that on a claim where they had a 12-year employee who left and came back and filed a claim, they paid indemnity and medical. Why? The Supreme Court already said you do not have to pay indemnity. I would question why they did that?

Here we are today, 2011, and we have new legislators. Now we are back in front of the Committee and we are looking for another bite of the apple. We are going to tell the story again, from both sides, and see if we can get a different result this time.

Personally, in our opinion, there is no logic behind what they seek. They seek three months of coverage after they retire for every year of service up to a maximum of five years. Did they come before this Committee and produce one shred of medical evidence that says after 25 to 30 years of exposure to who knows what—stress, sleep deprivation, adrenalin overload, and daily uncertainty—that three months for every year of service to a maximum of five years is a good thing, that it is legitimate? They talked about a reasonable benefit after an employee leaves; I guess it is reasonable in their mind. In our mind, that is not logical. There is no medical proof that says magically, after five years, I will be better all of a sudden after exposing myself to harmful conditions for 25 to 30 years. I am not going to get better.

Our feeling is that they have several reasons to seek these changes, and the biggest reason is that the insurers and employers desire to reduce their period of exposure. This puts money in their pocket as a private insurer and money back in the budgets of the local governments.

I have a copy of the Public Agency Compensation Trust audit for 2009 where they compare 2008 and 2009 numbers. Mr. Carlson told you that they estimated through an actuarial study that their liability was \$20 million to \$80 million, and yet on page 7 of their actuarial report it says that they conducted an actuarial study and the results indicated that the present value of future benefits for former employees was estimated to range between

\$5.6 million and \$22 million, depending on the interpretation as to which legal theory may be applicable. That is a far cry from \$20 million to \$80 million. I have seen actuary numbers from reports from different entities; they have all assumed, as you said, Assemblywoman Carlton, that eligibility does not necessarily equate to the number of claims that will be filed. They base those actuaries on the total number that are eligible, then say everybody is going to get it. It does not happen. That is not the case at a time when things are not going well with the economy. In 2004-2005, PACT's numbers were interesting; their total net assets were \$11.8 million. By 2008-2009, their net assets were \$45.7 million, for a \$34 million increase.

Mr. Carlson is involved with several different companies, including Public Agency Risk Management Services, which is owned by Mr. Carlson. They have an income for management of \$396,000 for 2008, \$408,000 for 2009. I am not against anybody making money. Just do not do it on the backs of firefighters and police officers. Do not do it on public safety.

They talked about attachment points for insurance, for stop-loss insurers. In that 2004 report, there was a report from one of the employers, and on the bottom they listed their attachment points for stop-loss insurance—how much it was. In 1986 to 1998, their stop-loss attachment point was \$500,000. From 1998 to 2002, it dropped to \$350,000. From July 1, 2002, to June 30, 2003, it went up to \$2 million a claim. That is a lot, from \$350,000 to \$2 million. In July 1, 2003, to June 30, 2004, it went up to \$5 million per claim.

What drove those numbers? Do we have a sudden onset of heart and lung claims? No. Were the laws amended to make them more valuable? Did they enhance the benefit? No. The last time it was amended was 1989. This has occurred well after that date. What happened?

Remember that these stop-loss attachment points that they talk about are aggregate. That means if one firefighter is injured or has an illness, they are on the claim for the first, in this case, \$5 million for that claim. If, on the other hand, 50 firefighters run up in a building and it collapses, and 50 of them are killed, they are on the hook only for the first \$5 million of the claim and the stop-loss picks up the difference.

July 1, 2002, was the first opportunity for the insurance industry to adjust stop-loss premiums after 9/11. After 343 firefighters were killed at the World Trade Center, they raised the rate. The insurance industry paid out \$32 billion in claims for 9/11. They were hurting. They had to change the way they did business and recoup some of their losses. They did that by changing the stop-loss attachment points. You may question the feasibility of

that, but at the same time the hotel industry, along with manufacturers, railroads, and the National Football League, went to the federal government and said they could not get liability insurance because of the terrorism threat. The federal government stepped in and provided terrorism insurance. The federal government subsidizes the insurance premium for those industries. They renewed it three years later. We cannot regulate terrorism. We are the first persons involved in that.

We would ask you to look at section 6 ([Exhibit F](#)) of the amendment they are proposing. It says, "The amendatory provisions of this bill apply to any person whose date of disablement occurs on or after the effective date of the bill." We interpret that to mean that any police officer or firefighter who has now been retired for five years or more, and has not already filed a claim, would see their coverage terminated as of July 1, 2011. That means every retiree out there is done. If you have been retired for less than five years, you are done. You no longer have a benefit.

If you were to process this bill in this fashion, what happens to the premiums that have already been collected by the insurers to pay the benefits that are currently in place? The law is already there. They are already putting money aside. Where does that money go? Does it go to the shareholders? Does it go to the company, the owners of PACT, and the other insurers? Maybe bonuses are in line.

The previous speaker from the City of Henderson reported 29 accepted claims in 17 years, and that added up to about 1.7 claims per year, and there was \$50,000 a year in health care savings. Again, health care is all that they get.

If, in fact, you were to process this bill and do away with this coverage, can that retiree now get health insurance? Or will there be some form of added cost to that retiree to get health insurance, because whoever the insurer is, they know from your former employment that you have been exposed. You are a greater risk. Are you going to pay more for health insurance?

We opposed this bill in the Senate, and in an effort to compromise, we brought forth an amendment that was added into the bill as it appears now. The idea came from Senator Schneider, and was worked on by Senator Parks, Legal Division, and me. We felt this compromise would provide insurers with something they currently do not have. They sought to have a sunset on the coverage, and through the current way the bill is written, we did that. The bill sunsets after the retiree leaves and reaches Medicare eligibility. That provides a level of protection for our retiree, and it also provides a sunset for the insurer.

The other part of the legislation that we would address for them, if we could, was the person who works five years and for whom the insurers are on the hook forever. We agree with the insurers. That person should not have that coverage until he dies. We put a provision within the current bill that says, if you leave the job prior to being eligible for an unreduced benefit from the Public Employees' Retirement System (PERS), your eligibility for this benefit goes with you only for five years—then it sunsets. We proposed an amendment, and when it came out of drafting, it basically stated, if a retiree filed a claim and was awarded a claim after he retired, that the eligibility for that insurance benefit would cease once the person reached Medicare eligibility. Medicare would have a severe problem with that. They would require some form of a Medicare subsidy or set aside trust fund to pay for that. You cannot just dump a workers' compensation insurance liability onto Medicare for a claim that has already been accepted. We would ask that you delete that from that claim.

The amendment proposed by PACT would take away the prospective language of the bill. Legal had initially placed in that bill, as it appears, that it is only prospective in nature. They got a revised opinion that is in part based on the opinion in *Public Employees' Retirement Board v. Washoe County* 96 Nev. 718, 615 P.2d 912 (1980). Basically they said that it does not have to be prospective because this issue that was dealt with in regard to retirement, in NRS Chapter 286, applies to NRS Chapter 617, which is workers' compensation. I would be interested to know how a person who is injured correlates with a person who is trying to stay in the early retirement provisions of PERS. Also, in the opinion they received, it says the first two options of the way the bill is currently written are constitutional. If you amend it and revise it to be what they want, that could be constitutional as well. But, under the current provisions, as the bill is drafted, option 1 and option 2 that LCB mentioned, are constitutional.

This bill passed out of the Senate unanimously in its current form. Senator Settelmeyer thanked us for coming forward and offering to work with the Committee in order to come up with a solution. Over 40 years ago, the legislators decided that firefighters and police officers did a unique and dangerous job for the benefit and safety of the public. As a result of these dangerous occupations, we would be more likely to contract occupational diseases of the heart and lungs and also have a greater risk of cancer. They passed laws that provided coverage to protect us in that event.

We essentially both made a promise. We promised to keep running into burning buildings when everyone else was running out. We promised to keep running toward people waving a gun while everyone else was hiding.

We promised to always come whenever you called, day or night, 365 days a year.

They promised that if we got a disease of either the heart or lungs, as long as we had met the provisions set forth in the laws, they would take care of us. It is over 40 years later now, and the things we predicted would happen have happened. We said that there would be an increase in claims because people are exposed to stuff.

Some of our members are contracting diseases of the heart and lungs. Even more are coming down with cancer. There is already a sunset on cancer of five years. I do not know where that number came from. The latest report I received from the Centers for Disease Control and Prevention (CDC) says the latency period for cancer is 15 to 20 years from your first exposure. Maybe we should be looking at how we improve that. How do we take care of those people?

The problem is that those who promised us that they would take care of us are now looking to welsh on that promise. They say it is costing them too much money and they do not feel they should have to cover us. Ironically, they are saying that now that they have all gone self-insured. They were told that they would have a tail—there would be a back end on this. The gentleman from Henderson stated they went self-insured in 1994. The law was amended in 1989; the *Gallagher v. Sorensen* decision was in 1998. Nothing has changed and they have chosen to go self-insured anyway. Now what they are saying is that they do not like it. They want to be cut loose from this benefit.

We have kept our side of the deal and we continue to do so every day. We would ask you to make them hold up their end of the bargain. We ask you to oppose this bill and not pass it. If you decide to process this bill, we would respectfully ask that you reject the amendment proposed by PACT and would ask that you pass the bill with the proposed amendment ([Exhibit G](#)) that we offered to take away the Medicare liability for someone who has had a claim accepted after they retire.

Chair Atkinson:

The bill did make it out of the Senate 21 to 0. Is the amendment that PACT offered the same that was offered on the Senate side?

Rusty McAllister:

The amendment they are offering brings the bill back to almost what it looked like when they submitted it initially to the Senate. This bill was amended, as Mr. Carlson said, on the last day, and it was an amendment that was finished

being drafted by Legal less than 10 minutes before the start of the Committee meeting. There was no time to distribute it.

Chair Atkinson:

So you were not able to oppose it on the Senate side?

Rusty McAllister:

We did oppose the bill. However, we did work in the spirit of compromise, to come up with some form of solution for an amendment that was offered and put into this bill and passed out of the Senate. This was knowing that they would like some form of sunset, and especially to try to address the people who work for five years and leave because we did not want to have them be a drag on the benefit, or a liability on the employer. We have no allegiance to those people if they do not stay.

Chair Atkinson:

So this amendment was offered at the last minute and you opposed it in the Senate?

Rusty McAllister:

No. That amendment they currently have was not offered over there because the original bill looked like that.

Chair Atkinson:

So the amendment you are offering today is a rebuttal to this, or was this offered on the other side as well?

Rusty McAllister:

The amendment that we are offering today ([Exhibit G](#)) was not offered on the other side simply because by the time I received phone calls from attorneys representing Medicare, the bill was on the Senate floor on the last day to be passed. I talked to Senator Parks and basically agreed to move the bill so that it would stay alive to get over here and then work on addressing that concern once it got here to the Assembly.

Assemblyman Daly:

I have been told in the same context that you have to be very careful about dumping claims onto Medicare. You can end up in an adverse selection situation and they will very likely preempt you if you try. I understand your amendment and with the explanation of how you ended up here.

Ronald P. Dreher, representing Police Officers Research Association of Nevada:

I am before you today to respectfully ask you to support S.B. 135 (R1) that was unanimously passed out of the Senate. I also ask you to support the proposed amendment by Rusty McAllister that you have on behalf of the professional firefighters.

The problem that we have with the bill and the amendment that PACT and Nevada Taxpayers Association (NTA) have brought forward is that this bill changes the public policy that this body has endorsed for over the past 40 years. [Continued to read from prepared text ([Exhibit H](#)).]

Michelle Jotz, representing Las Vegas Police Protective Association:

Assemblywoman Carlton addressed what we have seen as commonplace. Claims are typically denied on their surface and then a war begins between the health insurance and the heart and lung provision. I would ask that you support S.B. 135 (R1) with the professional firefighters' amendment ([Exhibit G](#)) and oppose the amendment proposed by PACT ([Exhibit F](#)).

Chair Atkinson:

Are there any questions from the Committee? [There were none.]
Is there anyone else in opposition to S.B. 135 (R1)? [There was no one.]
Is there anyone neutral? [There was no one.]

Wayne Carlson:

I would like to respond to some of the testimony that Mr. McAllister presented—some misrepresentations.

He referenced PACT's financial statements in the footnote in 2009. As I recall, the \$5.6 million was the amount we had collected toward the \$20 million minimum liability that we face. That was not a misrepresentation on my part; \$20 million is the low level and, \$80 million is the upper level of the range.

The retention applies per loss. If there is only one individual, then those retentions apply only for that case. Most heart and lung cases are not going to involve multiple entities.

In terms of my own company, I have a management company. The revenue Mr. McAllister cited is the gross revenue. I have employees. I manage several organizations and there are expenses associated with that.

The shareholders of PACT are the government entities that created PACT through NRS Chapter 277. If there is any money to go back, it goes back to

our members, who are local governments that would directly benefit from a reduction in the cost.

Medical only—those arguments have been made. We have two cases which are both medical and indemnity because there is a combining wage issue in this state, and if they are not fully retired and receiving only pension benefits, but have another job, that other job becomes part of that claim. We have had a couple of those claims. They keep saying they have not heard them; I am telling you that we have two of them that I know of for sure.

The compromise in the Senate was not a compromise. There was no discussion with us about that proposed amendment. It was presented at the last second so there was no compromise.

We agree, relative to the eligibility for those who are not career people, perhaps not getting as long a time as those who are career folks. That is why the three months for each year of service was proposed as an option. It addresses that issue. However, we do not agree that it needs to be tied to unrestricted PERS because PERS is not workers' compensation. A straight three months for each year of service should be sufficient.

I would like to have Mr. Balkenbush address the legal opinion because that was misrepresented in terms of how that legal opinion came about; Mr. Balkenbush worked on that issue substantially.

Assemblyman Ocegura:

I was wondering, since you are refuting what Mr. McAllister said earlier, and you said that for years you had been working on the issue of putting aside, trying to fix this unfunded liability, can you tell me what these agencies have put aside toward this funded liability over the years?

Wayne Carlson:

Yes. At this point we have collected roughly \$7 million toward that future liability just for the post-employment piece. That does not cover the current employees. The minimum liability our actuary has advised us for the post-employment piece is \$20 million and the range is up to \$80 million. That is based on two different actuarial studies over the years. We are a long way away from meeting the minimum, let alone the worst-case scenario.

Robert Balkenbush:

Regarding the bill as amended, S.B. 135 (R1) from PACT, initially LCB informed PACT that they could not even present that amendment to the Legislature because they felt it was precluded by the *Constitution*. In other words, they

viewed the heart and lung benefit as a contractual benefit. They were kind enough to give us the opportunity to respond to the legal authority that they were relying upon to perceive the heart and lung benefits as a contractual benefit. We provided them a legal memorandum that essentially showed that the Nevada Supreme Court viewed the workers' compensation benefits as a statutory benefit and expressly rejected workers' compensation benefits as a contractual benefit. As a consequence of that, those lawyers who represent you have effectively communicated in a memorandum that the amendment that is proposed to S.B. 135 (R1) from PACT is constitutional and that subsection 6, as presented, is constitutional. I want to make sure that is clear. It was not clear from Mr. McAllister's presentation.

Chair Atkinson:

Are there additional questions from the Committee? [There were none.] For having made it out of the Senate 21 to 0, this bill needs a lot of work, and we ask the parties to get together and work out their differences before we attempt to bring this to any resolution. Ms. Carlton is anxious to have a discussion with both of these parties. Ms. Carlton will let me know by Thursday.

We will close the hearing on Senate Bill 135 (1st Reprint) and open the hearing on Senate Bill 215 (1st Reprint).

Senate Bill 215 (1st Reprint): Makes various changes concerning persons regulated by the Chiropractic Physicians' Board of Nevada. (BDR 54-834)

[Chair Atkinson turned the gavel over to Vice Chair Conklin.]

Senator Joe Hardy, Clark County Senatorial District No. 12:

Senate Bill 215 (1st Reprint) will allow the chiropractic assistant to have an opportunity for continuing education and the bill addresses how that will take place.

I would like to introduce Dr. James Overland, President of the Chiropractic Association of Nevada, as well as recognize that you have a proposed amendment ([Exhibit I](#)) for S.B. 215 (R1). In order to make the board move more efficiently, there will be a staggering of the registration between the licensing of chiropractors and the certification of chiropractor's assistants.

James Overland, President, Nevada Chiropractic Association:

This bill would require certified chiropractic assistants to complete 12 hours of approved continuing education over a two-year period. The initial period would end December 31, 2013, and then be every two years thereafter.

Currently there are 19 states plus the District of Columbia that have certified chiropractic assistant programs or a bill pending in their state. All of those states having this in place are requiring continuing education, and the overwhelming majority is seeking six hours per year.

The Federation of Chiropractic Licensing Boards, which is a nonprofit organization that makes recommendations to all states' licensing boards, has been working on a certification the past several years and is recommending that all states adopt such a program. Nevada currently has the basics of this program with the exception that we do not have the recommended six hours per year of continuing education.

This exception is the basis for S.B. 215 (R1). I believe it goes without saying what continued education provides for individuals in any profession. Simply stated, this will make Nevada's chiropractic assistants continually prepared to perform their duties more proficiently and with greater knowledge. They will also be presented new professional education in areas they may not have otherwise had an opportunity to be introduced to.

[Chair Atkinson reassumed the chair.]

Additionally, it will update those persons with new advances in current programs and current knowledge that is accepted. An example of this is the new and accepted techniques for cardiopulmonary resuscitation (CPR) that have been adopted and revised over the last several years. All of these programs will continue to protect our public.

These programs will range from online to live seminars to earn the continuing education credits (CEs). One state, Tennessee, is rescinding the online and will have only live seminars due to the lack of practical learning and hands-on learning after trying online only for several years. Several states allow only their state association to provide the seminars for CEs. This bill is requesting that the CEs be approved by our licensing board continuing education committee and that there be no restrictions on where they can be obtained.

We have scheduled three seminars for this year—First Aid, CPR, and Physical Therapy and Rehabilitative Training. There will be more forthcoming.

Our licensing board approved this bill concept on December 4, 2010, and approved the actual bill on March 12, 2011, with the above-mentioned recommendations for the 12-hour requirement, where they might be obtained, and the time frame for the implementation.

Individuals may have some concern about class costs. The Nevada Chiropractic Association (NCA) will make every effort to provide low-cost seminars, as well as occasional free seminars. There are various ways to obtain these seminars, such as through colleges, online, and in person. A cost evaluation is available for each attendee to determine which is the cheapest for them if that is the need. The NCA has also surveyed many chiropractic physicians in our state, and an overwhelming majority has stated they will more likely than not pay for their assistants to attend these courses. The price range for the seminars will vary. We have found through our survey that it ranges from \$10 to \$20 per credit hour. This would mean a cost of \$120 to \$240 every two years. The NCA feels this is a minimal cost compared to the value of the education that our chiropractic systems will obtain. There would be no cost to the State of Nevada.

It is our hope that this Committee will approve this bill, as the Senate did unanimously, and that our profession in Nevada will continue to be an outstanding leader.

Assemblywoman Carlton:

This is a brand-new continuing education scheme I assume. They have not had continuing education in the past. Is that correct?

James Overland:

Yes, they have not had continuing education in the past.

Assemblywoman Carlton:

Were your remarks encapsulating Senator Hardy's amendment or have we not gotten to that yet?

Senator Hardy:

Yes, the proposed amendment should be in there to clarify that there is an offset, and the order in which that offset is between the licensee and the certificate holder; otherwise, the chiropractic physician and the chiropractic assistant.

Assemblywoman Carlton:

And the amendment applies to renewal fees?

Senator Hardy:

Yes.

Assemblywoman Carlton:

And we are going to a two-year scheme instead of a single year?

Senator Hardy:

Yes.

Assemblywoman Carlton:

We have had other boards do that and come back to the Legislature and ask for us to change it back because of the cost, people not staying in the state, and the economics as they are currently. Was that discussed when this was proposed, that people may not want to pay for a full two years of licensure when they may not be here a full two years?

James Overland:

One of the reasons the two-year program was adopted was because our board has also changed that for the chiropractors. They felt it was more cost effective for our licensing board to do the renewals. The same questions would apply if a chiropractor decided to leave. We are in agreement with the two years.

Assemblywoman Carlton:

This is applying to chiropractors and chiropractic assistants?

James Overland:

No. This bill applies only to chiropractic assistants. We already have 36 hours required for chiropractors every two years.

Assemblywoman Carlton:

That is what I was trying to clarify. For chiropractic assistants you are going to require 12 hours of continuing education?

James Overland:

Correct.

Assemblywoman Carlton:

Over a two-year period?

James Overland:

Correct.

Assemblywoman Carlton:

Is a chiropractic assistant (CA) comparable to a physician's assistant (PA)?

James Overland:

There is one difference for CAs versus PAs. Chiropractic assistants have to have a supervising chiropractor on the premises for all the activities they

perform, and PAs can do those without a medical doctor, who will sign off at a later date.

Assemblywoman Carlton:

What happens if one of your chiropractic assistants is working for one of the chiropractors in the state who has opted not to carry medical malpractice insurance? How is that dealt with?

James Overland:

In our scope of practice, in our state law, if a chiropractor practices without malpractice insurance, there has to be an affidavit provided to all patients notifying them that he does not carry malpractice insurance. Every potential and current patient is aware that there is no malpractice insurance in place in that office. That would also be applicable to anyone working for the doctor at that time.

Assemblywoman Carlton:

So that would apply to the assistants also. When they see the assistant, would they get that same affidavit or would they just know that the two were linked?

James Overland:

I am not certain that the language specifically says any and all employees. I only know that the doctor in that particular office does state that there is no malpractice insurance for that doctor. I would believe that those people who receive treatment from an assistant of that doctor would most likely be aware of that.

Assemblywoman Carlton:

Since we are going to be requiring a new statutory component to keeping your licensure, which requires you to get continuing education, will that be viewed as a new fee?

James Overland:

That would not be a new fee. It would fall under the current requirement for a renewal of a chiropractic assistant that is in place. There would be an additional fee for a chiropractic assistant as a result of this bill.

Assemblywoman Carlton:

But it will cost them more to renew their license. It is a hidden tax rather than up-front.

James Overland:

Yes, the cost would be the fee they would pay to take the seminar to allow them to renew their license.

Chair Atkinson:

Are there additional questions? [There were none.] Is there anyone else wishing to get on record in favor of S.B. 215 (R1)?

Robin Huhn, Retired Doctor of Chiropractic, Las Vegas, Nevada:

I am a retired chiropractor. [Read from letter ([Exhibit J](#))]. I was actively involved in the Nevada Chiropractic Association over many years. During that time I held positions as a director, secretary, president, and executive director of the association. During my tenure, I researched other states' associations that required chiropractic assistants to be licensed, and then to renew their licenses with continuing education and training. I support S.B. 215 (R1). By mandating continuing education and training, it adds credibility and respectability to the honorable chiropractic profession.

The medical profession has its medical assistants, who are also licensed and require continuing education. We believe that chiropractors and chiropractic assistants must also be licensed, as well as take part in continuing education. The Nevada chiropractic physicians and chiropractic assistants seek your support.

Marsha Berkbigler, representing Chiropractic Physicians' Board of Nevada:

We are here in support of S.B. 215 (R1) with the amendment as proposed today by Senator Hardy.

Assemblywoman Carlton:

As we did not get a very definitive answer on the medical malpractice issue and the chiropractor and the chiropractic assistant working together, could you answer that question or get back to me? I would like to know the responsibilities when they do not carry that insurance. I understand the affidavit, but with the assistant working under the chiropractor, how does that work?

Marsha Berkbigler:

I cannot answer that question in total. I can say that with any chiropractor who has chosen not to have medical malpractice coverage, all of his staff works directly under him, so there would not be medical malpractice insurance in the office. From that perspective I suspect all of the patients would be noticed. We can provide you with a detailed explanation of exactly how that works later this week.

Chair Atkinson:

Are there additional questions? [There were none.] Does anyone else want to get on record in favor of S.B. 215 (R1)? [There was no one.] Opposition or neutral? [There was no one.] We will close the hearing on S.B. 215 (R1) and open the hearing on Senate Bill 292 (First Reprint).

[Senate Bill 292 \(1st Reprint\)](#): Revises provisions relating to insurance.
(BDR 57-1074)

Jesse Wadhams, representing Asurion Insurance Company:

This bill would essentially carve out a line of insurance for personal electronics. It would take the current scheme for our cell phone insurance, or personal data assistant (PDA) insurance, and pull it out of what is called Inland Marine Insurance and put it into a limited lines license called Personal Electronics Insurance. We are seeing the proliferation of tablet computers, cell phones, and other personal electronic risks. This would simply get us a little ahead of the curve in terms of how to regulate this product, give the Commissioner of Insurance a better insight into who is selling the product and who is licensed to do so, and implement penalties for improper sales.

Very broadly, we implement new definitions into the law because we are going to have a new line of insurance. There is a scheme for licensure of producers of insurance, a new method for operation, and consumer disclosures all contained within this bill. Overall, we are getting a little ahead of the curve with regard to how we regulate a new proliferating product line. There is online a technical amendment ([Exhibit K](#)). I have been working with the Division of Insurance and through several iterations, where we have missed a couple of components, we have agreed on them, and they do not change the substance of the bill in any manner.

Assemblywoman Carlton:

You are representing Asurion Insurance? I thought I had misread this bill, so I apologize if these questions are off base. It is actually being proposed, in this bill, that when I go to the Verizon store and they sell me the insurance on a new phone, the young man standing behind the counter is going to have to be licensed with the Insurance Division in order to sell me the insurance on my new phone?

Jesse Wadhams:

The answer is no. The vendor will get a producer's license. This attempts to clarify what could be a gray area within the law, where the salesman may be considered a producer of insurance depending on the particular interpretation of

the commissioner at that time. Our bill will take that ambiguity away and going forward the vendors will get that producer's license.

Assemblywoman Carlton:

This is a new group of people who will be mandated to get a license to do business in this state?

Jesse Wadhams:

That would be correct.

Assemblywoman Carlton:

So in a way, it is a new license? We are encapsulating a new group of people who will have to become licensed.

Jesse Wadhams:

Yes. It better defines who should get the producer of insurance license in this situation.

Assemblywoman Carlton:

And that will have the associated fees with it?

Jesse Wadhams:

They would be the standard current producer of insurance license fees.

Assemblywoman Carlton:

Which is?

Jesse Wadhams:

Offhand, I do not know, but the Commissioner of Insurance is sitting here.

Assemblywoman Carlton:

It is quite all right. I just wanted to make sure I got it on record that it is a new license and a new fee. That is two strikes.

Chair Atkinson:

Are there any questions? [There were none.] Is there anyone else in support of S.B. 292 (R1)?

Brett Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

I am neutral on this bill, but I did want to take this opportunity to thank Mr. Wadhams for working with the Insurance Division to resolve my primary concerns. Commercial insurance in the State of Nevada is essentially

deregulated, and because the end user of this insurance product would be an individual, we were able to work with Mr. Wadhams and his company to allow the Insurance Division authority to review the rates and the forms that will be utilized with this type of transaction. Even though Verizon or Best Buy would be the vendor, the certificate of insurance would be issued to an individual. We were able to resolve that.

I would like to share what I think this bill does and how it changes what we have today. Today, an insurance producer could come in and get a full-blown property and casualty license to sell this line of insurance. I understand why Best Buy or Verizon does not necessarily want their counter employees licensed as producers and able to sell a complete line. What this bill does is create a limited line in the area of marine transportation to address just this type of insurance policy—an insurance policy on a mobile electronic device. We do have licensing laws and fees in effect today that these vendors would fit into. We are just creating a new limited line of insurance that did not exist before.

Assemblyman Goedhart:

What is the amount of the insurance license going to be for a vendor like Verizon that has multiple outlets? Does Verizon itself have one overall license that every other store employee works under, or is every store and every employee required to have that license?

Brett Barratt:

The license requirement would be at the vendor level. Verizon would have a license. The cost of that license is \$125 every three years for the insurance enforcement and administration fund, and \$90 of that goes to the state funds. We are talking about \$200 every three years as the license is renewed on a three-year basis.

To answer your question, each individual location would not necessarily have an individual license. It would be the vendor. I would be able to request information from the vendor about where their licensees are selling these products. This bill also contains requirements that those people selling the product—or rather enrolling people into these products—would be required to go through education and/or training by the vendor to ensure that the people enrolling the consumers knew what they were talking about and could adequately answer questions.

Assemblyman Goedhart:

Verizon would only have to buy one license for the whole state even if they had one hundred different locations?

Brett Barratt:

That is correct.

Chair Atkinson:

Is there anyone else in favor of S.B. 292 (R1)? [There was no one.] Opposition? [There was no one.] Neutral? [There was no one.] We will close the hearing on S.B. 292 (R1) and open the hearing on Senate Bill 354 (R1).

Senate Bill 354 (1st Reprint): Makes various changes to regulatory bodies of professions, occupations and businesses. (BDR 54-254)

Senator Michael A. Schneider, Clark County Senatorial District No. 11:

I have had the honor of representing my district for ten sessions. Nine of those sessions I have served on the Senate Committee on Commerce, Labor, and Energy. One of the Commerce Committee's most important responsibilities is to oversee the Title 54 occupational and professional boards and commissions. These boards have jurisdiction over some of the most crucial functions in our society. Consider health care delivery and all of its many facets—physicians, nurses, dentists, pharmacists, opticians, ophthalmologists, hearing aid specialists, audiologists, speech pathologists, interpreters for the deaf, physical and occupational therapists, long-term care facilities, psychologists, behavior analysis, autism interventionists, marriage and family therapists, clinical professional counselors, social workers, alcohol/drug/gambling counselors.

There are boards with jurisdictions over vital areas of our economy, such as architecture, engineering, construction, real estate, appraisers, and mortgage brokers and bankers.

Finally, there are boards over other important areas, such as private investigators, court reporters, veterinarians, barbers and cosmetologists, athletic trainers, massage therapists, and funeral directors and embalmers.

This is truly a cradle-to-grave spectrum of societal activities. Almost no aspect of our lives is untouched by these occupations and professions. Some people may question why these life activities are regulated and whether these regulations are simply government intrusions or burdens on businesses and professions—just an added cost or drag on job creation. Why do we regulate these important occupations and professions? The purpose is set out in *Nevada Revised Statutes* (NRS) 622.080, the introductory section of Title 54: "In regulating an occupation or profession pursuant to this title, each regulatory body shall carry out and enforce the provisions of this title for the protection and benefit of the public."

The Nevada Legislature has been actively involved in this process, and in every session there are additional efforts to refine and improve these public protections. Unfortunately, despite our continual efforts, during the 20 years I have served in the Legislature I have observed too many occasions when the board has forgotten or ignored this directive and instead acted more for the benefit of the profession than the public.

Perhaps the most egregious example, in terms of the impact on innocent lives, is the 2008 hepatitis C crisis. I still recall sitting in this building and listening to excuse after excuse from the Board of Medical Examiners about why I cannot take decisive action against the doctors responsible for that tragedy. The board even defied the Governor's attempts to deal with the crisis. You may hear different stories on that today, but that is the way I interpret it.

In fairness, the people who were responsible for that inaction have been replaced by members and staff who pay more heed to the guidance of NRS 622.080. However, there is no guarantee that another group of people in the future might not revert to the good old boy style of management that has too often characterized our boards in the past. Senate Bill 354 (1st Reprint) will eliminate one of the fundamental causes of this phenomenon, namely the dominance of the boards by the very professions they are established to oversee.

There are 37 occupations and professions subject to Title 54 that have board or commission structures of these types. Three have no public members; those are barbers, realtors, and appraisers. Twenty-four have only one public member, and eight have two or more public members. The largest board has eleven members, but only one public member—that is the dental board. Only one has more nonprofessional board members than professionals—homeopaths have three professionals, three public, and one representative of these who provide care to the indigent or uninsured.

This bill does three major things to correct this imbalance between public and professional representation. It requires all boards to have at least two public members. The Governor appoints one of the members to serve as chair or president, rather than the board selecting its own chair or president. If the Governor fails to make the appointment within 60 days after a vacancy, the longest-serving public member on the board is deemed to be chair or president. If that person declines, the board can appoint a chair or a president. The chair or president, however selected, serves in the capacity at the pleasure of the Governor. This provision gives the Governor more control over these appointed boards. If the chair or president is not responsive to the Governor, the Governor can replace that person with another member. However, the replaced person

remains as a member of the board until the expiration of that person's term. This arrangement preserves the independence of the board.

The chair or president appointed by the Governor hires and fires the executive director if the board has one; otherwise, the chair or president hires and fires staff. Hiring and firing is to be done after consultation with other board members, but the ultimate authority over staff rests with the member who serves as chair or president.

This arrangement prevents staff from becoming captive to the professional members of the board, but still provides adequate input by the professional members. Because the Governor appoints the chair or president, who in turn selects the staff, the staff itself is more responsive to the government than to the professional members of the board.

Senate Bill 354 (1st Reprint) does not remove any current board members. It is designed to phase in the change over to public control as existing terms expire. This feature avoids disruption of board operations and provides for a smooth transition to public control. Since these boards are expressly established by the Legislature for the protection and benefit of the public, we owe it to the public to enhance their representation on the boards. We should no longer entrust this crucial task to the professionals, who have an inherent conflict of interest and a tendency toward a cult of professional protection.

Let me say that over my years I have noticed that we have created boards and commissions, and the boards and commissions come here before you, Mr. Chairman and this Committee, and they often dictate how they should be run and, in their opinion, what is good for the public, and they want to trump what your opinion is. With the turnover in the Legislature—half was turned over last session, and we will have another massive turnover next session—I thought it was important that we look at this. Except for your new member who came down from the Senate, who is probably the most expert person in the history of this state on boards, some people do not understand as she does. They just take orders from boards. Boards hire lobbyists and they operate in their own best interest. That is my attempt at putting democracy back in the boards.

Some may say they do not want to give so much power to the Governor. They may say they do not like this Governor, I did not like the last Governor, I do not want to give them any power, but you know, they may like the next Governor. The Governor is in charge of the state. The form of government we have is a strong government, and if the Governor makes bad decisions, the public can deal with that. I am fully confident that we can trust the Governor to make the right appointments.

Assemblywoman Kirkpatrick:

I want to know how this works. From my perspective in the Assembly Committee on Government Affairs we have seen about five other bills dealing with sunseting boards and the commissions. We heard that one board had never even met. One board has had regulations since 2003, and they cannot seem to get together. We heard a bill this morning that talks about keeping track of all their information, so when the Legislative subcommittee does meet the first of January, they would have ample information to determine if some of these boards do work. If some of these boards are no longer in play, how would that work with this bill?

Senator Schneider:

I think it is two separate things. If there are some boards that need to be dissolved, then you go ahead and dissolve them. This bill would not affect those at all. I think the Governor and this Legislature should take a look at some of those boards and commissions if they are not needed anymore. I do not see the need for a barber or cosmetology board.

Assemblywoman Kirkpatrick:

If there are any boards that come up, I would assume that the Governor would have to appoint them sooner as opposed to trying to wait until the effective date. There is not even a clear number of how many boards we have. Do you think the effective date should be moved out just in case the Governor determines that he is not going to appoint anyone until we go through this commission?

Senator Schneider:

Moving the date out would be all right with me. I do not see a problem with that. However, if the Governor does not appoint someone, after 60 days the ranking civilian would then become the chairman or president of the board.

Assemblywoman Kirkpatrick:

I understand that. I can see we are going to have a lot of changes with boards, and I was wondering if it would be beneficial until we can determine which boards we want to keep or not keep.

Senator Schneider:

I am flexible with the date. For the record, I did not consult with the junior member on this Committee who came from the Senate. I would be more than happy to listen to her input on this. However, my only thought process was what is good for the state going forward.

Assemblywoman Carlton:

Regarding a couple of matters that my former colleague from the Senate brought up, I was part of the legislation that put the safety net provider position within the boards and had to fight for many years. I am still fighting with a couple of the boards to get that safety net provider person to be represented on the board. Public members are very important members of the board, because professionals forget that who they are serving truly is the public, and they see their profession the way we see ours. We get so focused on what we are doing that we do not see what is going on around us. My only concern is that being the chair of a board is a huge responsibility and carries some liability to it. I would be concerned about putting a public citizen without the experience and knowledge of running a board in control of one. The fact that there is an option for them to opt out is good, but I do not think there is anything that prohibits a public member from being a chair now. I have served with a couple of them on different committees that I have been on, so I understand where you are coming from—there are a couple I would like to get rid of as well and I have had to battle with a couple in 2001 and 2003 when we had the dental wars in this building. I understand what a board that is out of control can do to this Legislature, and they should never be allowed to do that again. I just have concerns about the public member and those responsibilities.

Senator Schneider:

I understand what you are saying. For instance, let us take the medical board or the dental board, something that delves into science. The public member could still be head of the board, but in the board you are still going to have committees and subcommittees. Obviously, you would not send the president of the board to a medical convention where they are talking about kidneys and brain surgery. You are going to send the professional who chairs the subcommittee on that. The thought process here is that there is no more sweeping stuff under the rug to protect our own. Everything is brought out in the open, and there is no benefit for the public member to sweep stuff under the rug. They will do the right thing and will not show favoritism to any professionals who may have acted improperly in their profession.

Assemblywoman Carlton:

I respect the Senator's opinion on this, but I remember last session having a bill that defined what a public member is. We had a couple of boards that had people who were intimately involved with others who were regulated by those entities and actually being called a public member. I would have concerns that a public member like that, who is regulated by the board, could end up controlling the board, and there we have another conflict of interest. Did you discuss actually defining what a public member would be to make sure that people do not cross the line on that issue?

Senator Schneider:

I do not believe I did.

Assemblywoman Carlton:

I believe I still have that definition in my desk.

Senator Schneider:

I would love to discuss that with you.

Keith Lee, representing State Contractors' Board and Board of Medical Examiners:

As Senator Schneider said in his closing remarks, we have been working with him on various areas, trying to reach an accommodation on several of the matters of concern to him and to the boards. Part of those discussions involved the fact that, as Mrs. Kirkpatrick indicated, there are several bills out there regarding the sunseting boards and commissions, which my two boards are in favor of pursuing. The issues include determining what boards should continue to exist and under what circumstances. I respectfully suggest that, perhaps if we go forward with Assembly Bill 474, which I believe is Mrs. Smith's bill, with respect to the sunset commission, we should at least address some of the concerns that Senator Schneider has indicated today and which Ms. Carlton has had over a period of time when we have worked on board and commission issues with her.

Assembly Bill 474: Creates the Sunset Subcommittee of the Legislative Commission to review certain boards and commissions. (BDR 18-889)

We might wish to consider, as part of the charge we put forth in A.B. 474, three things that are important as we go forward in determining the viability of boards and commissions.

1. The appointment process by which the Governor appoints people. As Ms. Carlton indicated, one of those issues is how do we find a public member because, generically, we are all members of the public and we all have our various and specific interests that subclassify us as members of the public.
2. The removal process that has been a concern of many in this building and on this Committee and the similar Committee on the Senate side for a number of years. Once a Governor appoints someone to these boards and commissions, it is difficult, if not impossible, to remove him.
3. The governance of boards and commissions. We may wish to consider that issue as we go forward in processing A.B. 474 and melding S.B. 354 (R1) into that. That is exactly part of what I think

Senator Schneider has talked about here—the governance of those boards and commissions.

Mr. Chairman, the specific sections of S.B. 354 (R1) with which my clients take issue are sections 8 through 10 with respect to the Nevada State Contractors' Board, and sections 20 through 23 with respect to the Board of Medical Examiners. They are identical in wording; they just apply to different chapters of the NRS.

I have three statements from three of the public members of the boards I represent. Two of them are from the public members of the Board of Medical Examiners. I might indicate that there are nine members of the Board of Medical Examiners, three of whom are public members. The other statement is from a public member of the State Contractors' Board. There is one public member of the State Contractors' Board which has a total of seven members. I will not read those statements into the record, but would ask that they be made part of the permanent record of this hearing. However, I would like to read several phrases from each of those letters into the record because I think they are important.

The first is from Valerie Clark ([Exhibit L](#)), who is a public member of the State Board of Medical Examiners and is the Secretary/Treasurer, as elected by her peers on that board. She is writing in opposition to S.B. 354 (R1), saying, "This Board is full of situations that require the leadership of someone that is actually a physician." [Continued to summarize letter.]

The second letter is from Donna Ruthe ([Exhibit M](#)), who is one of the three public members to the Board of Medical Examiners. She states that in her tenure she has come to the conclusion that it would be very difficult for her, as a lay person, to serve as the president or chairman of the board.

Finally, there is a statement posted from Donald Drake ([Exhibit N](#)) who is the public member of the State Contractors' Board and he states that, speaking for himself, he would feel uncomfortable serving as chair because "there are so many industry-specific questions and issues" that the chair must deal with.

In addition to the difficulty our boards have with respect to the appointment of a lay person as president, the other issue that we have concern with is that, the way the bill is written, the president of the board, in consultation with the balance of the board, has the responsibility and the ultimate authority in hiring the executive director and, therefore, has all responsibility over the staffing. We think that is an unwarranted intrusion into how we operate these boards and commissions.

Having spoken with other governors in this area, the most difficult job the Governor has is finding people to serve on these 137 boards and commissions. Even more difficult is finding a lay person to serve on these boards. I would suggest it is going to be even more difficult if that lay person has the responsibility of being the president or chairman of the board.

Fred Hillerby, representing Nevada State Board of Accountancy, Board of Dental Examiners of Nevada, State Board of Nursing, and State Board of Pharmacy:

I signed in and am here as someone who is neither for nor against, but someone who understands the importance of looking at these issues.

The sunset bill that is being sponsored here is in the right location for this discussion. I respect Senator Schneider and have talked to him about this bill at length. I understand his perception, but I think it needs a closer look—that is, the perception that consumer members will automatically be better board members than those whose profession is being regulated. I will share my own experience with my board clients. The one I have served the longest is the State Board of Pharmacy. I will tell you that getting a consumer member is very difficult. Sometimes those positions stay vacant for a long time. As an aside, Assemblywoman Carlton, thank you for your legislation of two years ago.

It is very difficult to fill those positions, and now this bill will double the number of consumers that you are looking for. It may be that is the appropriate form of government for these boards, but I think it requires a closer look, which is going to happen. The Legislature will be a party to A.B. 474, the sunset bill that was previously mentioned, and the Governor will be a party to that since he is the appointing one. There is no doubt that everybody thinks there should be a way to get rid of a board member who is not functioning or not being helpful to the process of protecting the public's health and safety. Some of the boards have that provision, and some do not. It seems to us the sunset process that we have endorsed and supported is the way to look at this issue of governance and how to rid yourself of members who are not productive and not there for the correct purposes. That can happen with both a consumer and a professional member of these boards.

I brought this up when the bill was heard the first time, and I apologize to the Senator, because I did not check. If you will go to page 10 of S.B. 354 (R1), section 17, lines 33 and 34, it refers to a member who is a registered public accountant. Registered public accountants are the ones who were around before 1971, when we became certified public accountants, and they were all grandfathered—they could continue to hold themselves out as registered public accountants. There is one left, and although he maintains his license, he is no

longer practicing. This basically says that person, as long as he is alive, should be a member of this board. I think that was an oversight and I should have followed up with a proposed amendment. I just wanted to point out that there is only one person who holds the title of a registered public accountant in the State of Nevada.

Again, I pledge to you that our boards are looking forward to the sunset process and will be productive contributors to that process. We think that is the right venue for this discussion of how many board members should represent what kind of folks.

Neena Laxalt, representing Board of Dispensing Opticians and Nevada State Board of Veterinary Medical Examiners:

I echo everything that has been said. We are in strong support of A.B. 474. It is a good avenue to take because it does not take a broad brush to all of the boards and commissions. This takes an individual look at each board to see how it is functioning and performing, and we think this is the right process to go through. We would ask that you put some of these concerns that Senator Schneider has and combine them with A.B. 474 and the issues they will be addressing for all the boards and commissions.

Rocky Finseth, representing Nevada Physical Therapy Association:

Mr. Hillerby and Mr. Lee have echoed the sentiments of the association, and we want to go on record with having concerns with Senator Schneider's bill and we have spoken to him about it.

Michael B. Holloway, Chairman, State Board of Professional Engineers and Land Surveyors:

As far as our board is concerned, we do not see the need for this. In our board, we are quite good at disciplining our professions. We have taken away several licenses in the past several years, and we have disciplinary hearings constantly. We even had a former board member who gave up his license because he knew he was going to lose it through our board. We do not protect the profession. We protect the public. We very much appreciate the two members we have had for our one position as a public member. It has brought a new perspective to us. One concern is that neither one, although good, has been able to dedicate the amount of time that would be required to be the chairperson of the board.

As current chairman, I can tell you that one spends a lot of time being chairman. It is not just officiating over the meetings; it is being a spokesperson for our board in our profession. I speak at universities, schools, and professional

associations, and when the speaker comes, they like to have the chairman as opposed to the vice chairman.

We are also concerned about this taking one of our professional members away for a new public member. We have two surveyors, one public member, and six professional engineers. We have 20 different disciplines of engineering. The main discipline is civil engineering, and there are five different divisions within civil. Then there are subsets within those divisions. We currently have a geotechnical engineer and a mechanical engineer. The other four are civil, but in that group we cover structures, academia, wastewater, transportation, land development, and bridge design. Losing one of those professional members could cause a problem in fully looking at the disciplinary actions on some of those divisions. We are really concerned about that. Although we love our public member, we do not want to lose a professional member.

We think it would be better to go to A.B. 474 and tie this all together, have a commission, and really study. If you look closely at our board, we know how to do business and we take it very much to heart.

Assemblywoman Carlton:

You are hearing a perfect example of the differences between the health care type of professional boards and the other types of licensing boards. Over the years they have all been lumped together, and they are truly different. They have the same basic mission—to protect the public and guarantee the qualifications of those who are regulated. But when you get into the health care world, it becomes a much more complicated issue. Engineering, architecture, contractors, and a number of the other professions all have a different aspect although they have the same mission. That is one of the factors that has complicated this over the years.

Noni Johnson, Executive Director, State Board of Professional Engineers and Land Surveyors:

We have taken disciplinary action on several high-profile cases this past couple of years. Those include Harmon Tower and City Center in Las Vegas, three Holiday Inn hotels in the State of Nevada, and a log home failure at Mt. Charleston, all of which required highly skilled technical expertise that could not be conducted by a public member. All had a huge impact on public safety. As you may know, Harmon Tower is still vacant and there is a possibility that it may be razed.

The chairman of the board assists the staff in answering highly technical questions from the public and agency officials. The chair speaks to organizations and makes annual presentations on engineering ethics. The board

members qualify the education and the experience of applicants for licensure. They speak to students to encourage them to make engineering their profession. They serve as observers to the accreditation board for engineering technology when a commission accredits engineering programs at Nevada's universities. They serve on national committees on engineering and surveying, assist the national council on exam writing and procedures, and write technical white papers—the most recent on special inspections, which is a nationwide issue. It has been distributed to other boards in the United States. Some of these many duties cannot be performed by a public member.

If this bill passes, the board will lose one of its valuable engineers and the expertise of a professional serving in the capacity of chairman. This is not in the best interest of the public.

Kim Frakes, Executive Director, Board of Examiners for Social Workers:

We do have some concerns. Our board always supports the public's best interest. As far as public members serving as chair, pursuant to our statutes, NRS 641B.120, sections 1 and 2, we do not prohibit public members from serving as chair. However, to my knowledge, in the entire history of the Social Workers Board—because of the technical and educational aspects I assume—none of our public members has been chair. They are very reluctant to serve as board chair.

The other aspect of our board is that the number of licensees has dropped to three and the public members have increased to two, because we are a smaller board. We do utilize our licensees, who volunteer and provide pro bono services to us. I did a calculation of how much it would cost. We have a licensee who oversees the internship quarterly reports for clinical licensure, as well as internship sites, and also trains people how to supervise interns. Our licensee members assist us with continuing education course reviews and also for reviews of certain problematic applications. It would come out to be approximately \$24,500 a year if we had to pay consultants. Right now we have four licensees, and two out of four have the time and are willing to dedicate that time. If that pool is shrunk, it would make things considerably more difficult.

Stacy Parobek, representing State Board of Osteopathic Medicine:

The previous speakers have summed up everything that we would like to add, and we thank you for having us here today.

Billie Shea, Chair, Board of Massage Therapists:

I am proud of the board in that we, as massage therapists, regulate our own. We discipline, and our field goes into human trafficking, sex slavery, and other

things we never anticipated that we would have to deal with. As massage therapists, we take that duty seriously. We work with law enforcement agencies in the State of Nevada. Last year we dedicated \$68,000 from disciplinary fines to the General Fund. We have a good deal of disciplinary action when you consider that our average fine is anywhere from \$500 to \$2,000.

The bill we are looking at today limits our ability to bring the best person to the job of chairperson. If the Governor does not have time or the inclination to assign a chair, the default would be that the public member would be the chairperson. I am not sure that would allow for the best person to serve that function. The only reason I am against this bill is that with seven members, the ability to choose the right person should be spread across the board.

Saying that, I am with Mr. Hillerby and Mr. Lee in supporting the other bill that is being considered.

Steve Johnson, Vice President, Commission of Appraisers of Real Estate:

I have been an appraiser in the State of Nevada for over 40 years. I served on Nevada's first appraisal commission, and I am serving a second term now as Vice President of the Commission.

The Nevada Appraisal Commission strongly opposes this bill. We are required to enforce the Uniform Standards of Professional Appraisal Practice, called USPAP. It is a 424-page document that is very complicated and complex. The appraisals we review are often very complicated—hotel-casinos, major subdivisions, and single-family homes. The USPAP is so complicated that every appraiser in the State of Nevada is required to take a seven-hour update.

We do not mind the public input, but we have five professional members on our board, and to take two of those positions away and replace them with members of the public would be a major problem for enforcing the *Nevada Revised Statutes* and the USPAP requirements.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council oversees us. It was created by the U.S. Congress. If they decertify our appraisals, any federally related transaction, which is any loan made by a federally related bank, or federal highway funds—all of that will be in jeopardy. We have been working very hard to satisfy the requirements of the Appraisal Subcommittee this past year. We did finally get a good report. We need to continue to be certified.

In summary, I would say this would be a major step backward to take two of our professional members off the board and replace them with members of the general public. If you wanted to increase our board membership to seven, fine. I would question having the president of our commission be a lay person because there are a lot of complicated issues. Every time we hear a case, we have available members from the north and the south, residential and commercial appraisers, to make a decision. We are not afraid to take action against our members. Our fines are often \$5,000 to \$20,000, and penalties include suspension of license.

I would like to request that the Nevada Appraisal Commission be exempt from this bill.

Chair Atkinson:

Is there anyone with new information?

Robert Schiffmacher, Certified General Appraiser, Reno, Nevada:

I would like to add that the complaints the Appraisal Commission hears are predominately based upon dissatisfaction with the value conclusion. The Appraisal Commission judges the quality of an appraisal not on the palatability of the value conclusion, but on compliance with the performance and reporting requirements of USPAP. Those two screens, value and compliance, are autonomous; they do not necessarily follow one after another.

I am also in opposition to including the Appraisal Commission in this bill.

Debbie Huber, Certified Residential Appraiser, Las Vegas, Nevada:

I also served on the Nevada Appraisal Commission for about five years. Four of those years I served as chair. I want to respectfully request an exemption for the Appraisal Commission, which is section 95 of this bill. I can speak from personal experience. It is absolutely essential for a knowledgeable appraiser to be on this board because there are very complex issues involved, and for a member of the public to understand the depth of the issues would be impossible. On numerous occasions in my capacity as a commissioner, I have seen revocations of licenses, or voluntary resignations of licenses based on findings because the respondents understood that their peers knew exactly what had happened and, therefore, they were more inclined to give up their licenses.

A somewhat unique feature of the appraisal community is that our work always has an accompanying work file and almost always has written reports. It is a road map to the actions and decisions made by each appraiser, and the only

people who are capable of reading that road map and understanding those reports are other professional appraisers.

Michael Cheshire, President, Commission of Appraisers of Real Estate:

I have also served on the State Board of Equalization and several other county boards. I agree with what my colleagues have said. Anyone can look at our board records and see that our board sweeps nothing under the rug. Our commission is very feared by appraisers, and many surrender their licenses rather than appear before us. We are a very small board when you talk about subcommittees and similar matters. We have one inspector for the entire state. Our board meets four times a year. We would like to meet more often but we do not have the budget. If it were not for volunteers, our board would not be able to accomplish the things it does today.

Also, please remember we are regulated by the federal government, not just the state. We have to be compliant with them, and if we are not, Nevada could be decertified.

As president, I would not want to have the responsibility of hiring and firing staff. I think that is the Governor's job.

Chair Atkinson:

Are there any questions for the Committee or from anyone in Las Vegas? [There were none.] Are there any other comments or questions? [There were none.]

Meeting is adjourned [at 5:15 p.m.].

RESPECTFULLY SUBMITTED:

Sharon McCallen
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 16, 2011

Time of Meeting: 1:58 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 314 (R1)	C	Gail Anderson	Proposed Amendment
S.B. 135 (R1)	D	Senator Rhoads	Legal Opinion
S.B. 135 (R1)	E	Senator Rhoads	Revised Legal Opinion
S.B. 135 (R1)	F	Randy Waterman	PACT Amendment
S.B. 135 (R1)	G	Rusty McAllister	Proposed Amendment from Professional Firefighters
S.B. 135 (R1)	H	Ronald Dreher	Written Testimony
S.B. 215 (R1)	I	Senator Hardy	Proposed Amendment from Chiropractic Association
S.B. 215 (R1)	J	Robin Huhn	Letter of Support
S.B. 292 (R1)	K	Jesse Wadhams	Proposed Amendment
S.B. 354 (R1)	L	Keith Lee	Letter of Opposition from Valerie Clark
S.B. 354 (R1)	M	Keith Lee	Letter of Opposition from Donna Ruthe
S.B. 354 (R1)	N	Keith Lee	Letter from Donald L. Drake