MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
May 4, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:19 p.m. on Wednesday, May 4, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24
Assemblyman Steven J. Brooks, Assembly District No. 19
Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Peter Livermore, Assembly District No. 40

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Tom Clark, OPOWER; Interwest Energy Alliance
Jeff Lyng, OPOWER
Kyle Davis, Nevada Conservation League

Joe Johnson, Sierra Club, Toiyabe Chapter
Daniel Jacobsen, Bureau of Consumer Protection (Consumer's Advocate). Office of the Attorney General
Judy Stokey, NV Energy
John Owens, NV Energy
Monica Brett, Southwest Energy Efficiency Project
Keith Lee, State Contractors' Board
Peter Krueger, Subcontractors' Legislative Coalition
Warren B. Hardy II, Ex-Senator, Associated Builders and Contractors of Nevada; Hamilton Solar
Jon Sasser, Esq., Washoe Legal Services; Legal Aid Center of Southern Nevada
Ernest Nielsen, Washoe County Senior Law Project
Samuel McMullen, Las Vegas Chamber of Commerce
Tray Abney, Reno Sparks Chamber of Commerce
Debra Gallo, Southwest Gas Corporation
Anthony Rogers, International Union of Bricklayers and Allied Craftworkers, Local 13 Nevada; Building & Construction Trades Council
Renny Ashleman, City of Henderson
Jason Geddes, City of Reno
Rose McKinney-James, The Solar Alliance; Bombard Renewable Energy
Chris Brooks, Bombard Renewable Energy
Constance Brooks, Clark County
Lisa Foster, Nevada League of Cities and Municipalities
Kathy Clewett, City of Sparks
Tom Clark, Interwest Energy Alliance
Karl Hall
Bruce Kittess
Paul Eastwood
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Scott DiBiasio, Appraisal Institute
Michael Cheshire, President, Commission of Appraisers of Real Estate, Real Estate Division, Department of Business and Industry
Michael L. Brunson, President, Coalition of Appraisers in Nevada

CHAIR SCHNEIDER:
I will open the hearing on Assembly Bill (A.B.) 150.

ASSEMBLY BILL 150: Revises provisions governing portfolio standards for providers of electric service. (BDR 58-848)

ASSEMBLYMAN DAVID P. BOBZIEN (Assembly District No. 24):
This is a very simple bill. It makes a minor modification to the definition of an "energy efficiency measure" to include "implemented measures." The existing definition of an energy efficiency measure in the renewable portfolio standard (RPS), of which energy efficiency may comprise up to 25 percent, allows Nevada utilities to take credit for only measures that are installed. This includes compact fluorescent lightbulbs and ENERGY STAR appliances. By giving utilities the option to include implemented measures into their efficiency programs, they will have the option to deploy low cost, proven, behavior-changing programs that educate customers on how to conserve energy and save money on utility bills.

This proposed bill provides low-cost options for utilities to meet their RPS goals while also driving reductions to Nevadans' energy bills. We submitted a letter of support (Exhibit C) from Federal Energy Regulatory Commission Chair John Wellinghoff, who is the principal author of Nevada's RPS, along with Rose McKinney-James. This bill, A.B. 150, is basically about getting the biggest bang for our buck while not limiting ourselves to objects, but being allowed to look at systems.

There is some concern about the concept of lost rate recovery. The concern is the possible impact to ratepayers from energy efficiency measures. My first reaction to this amendment is it would create a bifurcated system where the objects, the lightbulbs and appliances, would fall under recovery but the implemented systems would not. I think this further muddies the issue and makes it difficult for the public to understand. I do not support the amendment.

TOM CLARK (OPOWER):
We have prepared a PowerPoint presentation but will not show it in the interest of time. We do have a handout that illustrates the slide show (Exhibit D).

JEFF LYNG (OPOWER):
OPOWER is an energy efficiency and smart grid software company. We support this bill. I have submitted my written testimony (Exhibit E). On page 5 of our hard copy PowerPoint, Exhibit D, you see a typical home energy report that OPOWER delivers to customers. This helps people discern whether they live in

what we call a "Prius house," or a "Hummer house." Many people can tell you the miles-per-gallon rating of their car or truck, but can they tell you about the energy efficiency of their house? This report on page 5 shows John Doe's energy usage relative to other houses with similar demands in his neighborhood. We can also rank the customer compared to 100 other similar customers in their neighborhoods. This information is motivating to homeowners, especially if they are using more energy than expected. On page 5, we also have suggestions for how to conserve, which empowers the customers. We usually see a 20 percent increase in the participation of existing utility energy-efficiency programs from showing customers this data. We also see a significant increase in customer satisfaction.

Page 6 illustrates our approach to measuring and verifying energy savings. It is important to understand that an energy-related behavior-changing program tends to have a more rigorous methodology for measuring and verifying energy savings than most other efficiency programs. Similar to the way a pharmaceutical company uses control groups to evaluate the effectiveness of their products, we set aside a test group and a control group. The control group does not receive the home energy report, but the test group does. We know from these results that the savings of the test group are directly caused by receiving the home energy reports. This is an important distinction in documenting the real and verifiable savings from a behavior-changing home energy report. It offers benefit and value to the ratepayers. I am willing to work with the Committee on the amendment.

KYLE DAVIS (Nevada Conservation League):
We support this bill. It will expand our options for energy efficiency.

JOE JOHNSON (Sierra Club, Toiyabe Chapter):
We support A.B. 150 and think it is a significant step forward. We have some concerns that could be addressed in the regulatory process. I would like to read the amendment, but we support the concept.

DANIEL JACOBSEN (Bureau of Consumer Protection (Consumer's Advocate), Office of the Attorney General):
We are concerned about the potential rate increases resulting from the program this bill proposes. Senate Bill No. 358 of the 75th Session made it possible for a utility company to go to the Public Utilities Commission of Nevada (PUCN) and request compensation for the revenue loss from their customers' conservation

efforts, and the resultant loss of kilowatt (kW) sales. The PUCN could then take the tariff rate and apply it to the number of kWs the utility did not provide because their customers conserved. The utility would then get compensated, which turns into a rate increase, because all the customers were charged the compensation.

We do think the OPOWER program might be helpful to customers by helping them understand their electric usage compared to a peer group. OPOWER's approach is different from other efficiency measures, because in other efficiency measures, a customer makes a conscious decision to buy a lightbulb or replace an appliance. This program would automatically include every customer. If utility customers saw areas in their own energy reports where improvements could be made, they could implement them bit by bit. If their monthly rates went down as a result, the utility would then get more lost sales compensation, which, again, is essentially a rate increase.

Our proposed amendment (Exhibit F) states that lost sales compensation would not apply to measures implemented. This means the utility could propose a program to the PUCN, and ratepayers rates could go up to cover the program cost. We know there are costs associated with implementing these new programs, and we are fine with the rates going up to cover these costs. We also have no problem with any savings identified being used to fulfill the RPS. If customers begin to participate in conservation programs as a result of seeing their energy use report, we do agree the utility should receive lost sales compensation. However, it is difficult to explain to customers why their conservation efforts would result in a rate increase on their monthly bill since the losses would be passed back to all utility customers. This proposed amendment would prevent that from happening.

CHAIR SCHNEIDER:
If people take it upon themselves to save power by turning their air conditioners down five degrees, are you saying the utility is guaranteed reimbursement on kWs the customer saved?

MR. JACOBSEN:
Yes, and that is hard to explain to customers. You might question why a utility would implement a program like this if they were not going to receive lost sales compensation. There are two likely reasons. One, it would increase participation in the programs for which the utility gets compensated. Secondly, it improves

customer satisfaction. Companies do a lot of things to improve their image. There are feel-good advertisements being run by NV Energy right now. We do not think it is unreasonable for a company like NV Energy to pursue a program like this one proposed in A.B. 150 to improve their customer image.

JUDY STOKEY (NV Energy):
We support this proposed bill as written, and not with the proposed amendment. This is a less expensive way for us to meet our RPS, and it impacts our customers less as a result. It also allows NV Energy to postpone building new power plants.

JOHN OWENS (NV Energy):
This proposed bill provides an additional option to help customers improve the energy efficiency of their homes and businesses. Mr. Jacobsen's concerns about the lost sales issue is not a basis to rule out an efficiency program like this one, because it is only one part of the overall picture. This type of program could be even more cost-effective than a traditional efficiency program that requires investment in equipment.

We think it is good to have the option to deploy this type of program, because there is a structured process these programs go through. We would present it to the PUCN to review and authorize. Investments in energy-efficiency programs represent the most cost-effective way to comply with the RPS in Nevada. The life cycle cost of a portfolio energy credit from an energy-efficiency program is in the range of 2 cents to 4 cents per kW-hour. If cost is a concern, this is a great way to comply with the RPS requirements.

CHAIR SCHNEIDER:
Why do you not offer this home energy report like OPOWER's for your customers?

MR. OWENS:
We offer a variety of education programs and information on our Website, but OPOWER has developed a very specialized software tool to implement their studies and reports. It is not as simple as sending out a letter to customers comparing their usage to their neighbors. Rather than spend our capital creating a product that already exists in the market, we find it is more efficient to take market leaders like OPOWER or their peers and deploy something that has already been developed and proven.

MR. CLARK:
I want to make two points. First, this proposed bill is not aimed specifically at OPOWER, I do not want to give the impression it would only benefit them. Secondly, Mr. Jacobsen referred to people making energy-efficiency improvements to their houses, resulting in a rate increase. Everyone is going to get that rate increase under that scenario, so I do not want it to appear that if I do personal things to improve the energy efficiency in my home I am the only one getting a rate increase. It will be everyone, because the utility will go to the PUCN and report the loss. If approved, the rate increase to cover that revenue loss due to conservation will apply to all their customers.

MR. LYNG:
OPOWER is a 200-person company where 33 percent to 50 percent of personnel are software engineers. These engineers do the analytics behind the energy usage data and perform the algorithms to make those three precise recommendations to the customer. It would be expensive for a utility to build that capability in-house, and many of our utility partners recognize this, especially since we can offer it at a lower cost.

Regarding the proposed amendment, the PUCN periodically goes through a rigorous process to assess which programs are cost-effective and of greatest value to the ratepayer. That seems like the best way to determine which programs to implement and it is a forum that already exists.

We also think the proposed amendment would create bad public policy by creating a precedent for treating some efficiency programs different than others. Allowing utilities to recover lost revenue from some programs and not others would create an uneven playing field.

CHAIR SCHNEIDER:
What does this program cost per household?

MR. LYNG:
It costs approximately 3 cents per kW-hour, amounting to around $10 per household annually. The resultant savings is typically $25 to $50 annually.

MONICA BRETT (Southwest Energy Efficiency Project):
Using the soft sciences as a way to increase energy efficiency is only now gaining traction within the Office of Energy (OE), Office of the Governor.

My organization, the Southwest Energy Efficiency Project, is giving OE many new study reports using behavior change as a vehicle to improve energy efficiency. We do support this bill as written, without the proposed amendment.

CHAIR SCHNEIDER:
I will close the hearing on A.B. 150 and open the hearing on A.B. 31.

ASSEMBLY BILL 31 (1st Reprint): Revises an exemption from the provisions governing contractors. (BDR 54-621)

KEITH LEE (State Contractors' Board):
During the construction and building boom in our State, it became difficult to get a licensed contractor to do what we call handyman work. We now face the opposite dilemma with many licensed and formerly licensed contractors looking for work. In the past, we developed an exception in statute for licensure for the handyman who performs tasks totaling less than $1,000. There has been a gradual abuse of the $1,000 handyman exemption. A handyman will come in and bid a paint job, painting a room for $500 on a Monday. Then, the handyman would bid another job on a Wednesday for the same customer and charge $300. The handyman would do another bid and job on a Friday for another $500. So the sum total of the work performed would exceed the $1,000 exemption. That scenario created a problem for the State Contractors' Board (SCB) if something went wrong with the work. The consumer would call the SCB to complain, and we would ask if the worker was a licensed contractor. If the consumer said no, we would have no jurisdiction because the worker was exerting the handyman exemption.

This proposed bill tightens up the handyman exemption. The language specifies that it is not a one-time job for $1,000 that is exempted, but instead it is the aggregate of all the jobs done over a 12-month period.

SENATOR PARKS:
What if I employ a handyman to replace my high-flow toilets in my three bathrooms and I pay him $750. Then if a neighbor wanted to use the same handyman in the home for the same job, could they hire the same handyman under this proposal?

MR. LEE:
That job would be a plumbing matter and not within the handyman exemption. But if your neighbor wanted to hire the handyman, it would be permissible.

SENATOR SETTELMEYER:
If Senator Parks gets some water damage several months later from the replaced toilets and it is going to cost $400 to replace some carpet, could he hire the same handyman?

MR. LEE:
No, he could not.

PETER KRUEGER (Subcontractors' Legislative Coalition):
We support this bill and think it will help with the enforcement problem facing the SCB. Most of our members are in fields that deal with life safety, including electrical, plumbing, heating and air conditioning.

WARREN B. HARDY II, Ex-Senator, (Associated Builders and Contractors of Nevada):
We support A.B. 31 also but do not want to lose focus on what the SCB was trying to do with the handyman exemption. It just created an opportunity for mischief, but we think this proposed bill will help address that.

CHAIR SCHNEIDER:
If someone was to buy a new stove and microwave for $1,200 and wanted to have them installed, could that person hire someone to do that, since the total cost is already over $1,000?

MR. LEE:
Yes, because the customer bought the items.

CHAIR SCHNEIDER:
What if the handyman said he could get the appliances cheaper and they would be $1,000 instead of $1,200. If he offers to go buy, deliver and install the appliances and the total was more than $1,000, would that be possible under this bill?

MR. LEE:
No, because it is over the $1,000 limit.

SENATOR HARDY:
The first scenario you mentioned is what we initially intended for a handyman to be able to do. The second scenario is a problem, though. The type of scenario we are trying to address with this bill is to prevent a handyman from coming to install your appliances and then being asked to perform other jobs, especially jobs for which he is not licensed.

SENATOR SETTELMEYER:
I am still thinking about the scenario where the handyman switches out three toilets for $750. Then three months later, you want to have some carpet replaced for $400. Is there any way we can make this work? I understand the concept of using licensed individuals taking care of certain things, but can we work around this?

SENATOR HARDY:
This is a valid question. We did discuss a handyman licensure when we were talking about this bill. This is a carve-out from licensure, though. The balancing act is that you do not need a fully licensed contractor to install a microwave, for example. It is mainly the safety issue we want to address.

MR. LEE:
I think a handyman could get licensed under classification C-3, which is carpentry, maintenance and minor repairs. But we do require a license applicant to post a bond or a cash surety, and it can be an expensive and complicated process. One reason we want to keep this exemption fairly limited and restricted is that we have a recovery fund paid into by licensed contractors. If something goes wrong, we have a hearing and make monetary judgments. Last year, we paid out more than $120,000 on complaints. This is only for licensed contractors. Anyone fitting into the handyman exemption cannot generate payment from the recovery fund because they are not licensed. This bill is not all-encompassing, but our goal is to help people get small jobs done while employing some workers.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 31 and open the hearing on A.B. 352.

ASSEMBLY BILL 352 (1st Reprint): Revises provisions relating to certain trade practices. (BDR 52-976)

ASSEMBLYWOMAN MAGGIE CARLTON (Assembly District No. 14):
This bill has enjoyed bipartisan support in the Assembly. I have experts helping me introduce it.

JON SASSER, ESQ. (Washoe Legal Services; Legal Aid Center of Southern Nevada):
I am here in support of this proposed bill. It is a new incarnation of A.B. No. 22 of the 75th Session which passed with bipartisan support from both Houses of the Legislature and was vetoed by then-Governor Gibbons. It came back and was overridden 42-0 in the Assembly but was not overridden in the Senate. The bill did three things. The most controversial part added statutory damages in the amount of $5,000 per violation for deceptive trade practices. That was specifically what the Governor mentioned in his veto. This bill removes that controversial portion and keeps the other two sections intact. I have submitted my written testimony (Exhibit G). I am also submitting the written testimony from Dan L. Wulz, who said at the last minute he could not be here (Exhibit H).

ERNEST NIELSEN (Washoe County Senior Law Project):
I represent an organization that provides free legal services to senior citizens in Washoe County. We also represent consumers in consumer fraud cases. We think this is a useful tool for us to protect the senior citizens of Washoe County and the entire State. We heartily support the bill.

SAMUEL MCMULLEN (Las Vegas Chamber of Commerce):
We support this bill because it would be good for business.

TRAY ABNEY (Reno Sparks Chamber of Commerce):
We support this bill. Knowingly taking advantage is an important distinction we are glad to see in statute.

CHAIR SCHNEIDER:
I will close the hearing on A.B. 352 and open the hearing on A.B. 441.

ASSEMBLY BILL 441 (1st Reprint): Provides a classification of licensing for certain persons who install and maintain thermal system insulation. (BDR 54-1080)

ASSEMBLYMAN STEVEN J. BROOKS (Assembly District No. 19):
This proposed bill requires the SCB to establish an advisory committee to make recommendations concerning the licensure classification of persons who install or maintain building shell insulation or thermal system insulation. The recommendations could include training or continuing education. This bill defines "thermal system insulation" on page 2, lines 34-38. The bill also defines "building shell insulation" on page 2, lines 30-33.

Insulation keeps a home or commercial building comfortable while reducing costs for heating and cooling. If insufficient insulation is installed, or if there is an error in the installation, these benefits are not realized. There can also be safety issues with erroneous installations blocking vents or causing fires. The SCB currently licenses insulation installers under general classifications without addressing either the installation or removal of these products as a stand-alone craft. Instead, it is included as a subclassification within related fields such as plumbing, heating and carpentry.

Insulation is very cost-effective in reducing energy use. Southwest Gas Corporation (SGC) recently completed a weatherization program as part of its consumer products conservation and energy-efficiency program. Under the program, rebates were provided for insulation for ceilings, attics, floors and walls. Based on the increase in participants, SGC representatives agreed that the SCB should more closely scrutinize insulation installers.

DEBRA GALLO (Southwest Gas Corporation):
We support this bill. One of the frustrations we had with our program was the question of what kind of license we should require. We have learned a lot about insulation, and think it is time to look at this issue. Insulation used to be installed at the time a home was built, but now the rebate programs and the increasing knowledge about weatherization have inspired people to go back in and upgrade.

SENATOR HALSETH:
Why does the State need to legislate an advisory board? Why can you not just create one without legislating it?

MS. GALLO:
We are not the SCB. We could not ask the SCB to set up an advisory board for Southwest Gas.

MR. LEE:
We were unaware of this specific problem until this bill was proposed. For a number of years, we have had in statute the ability to create advisory committees. We send out inquiries to let those involved know we are establishing an advisory committee In this case, we would notify insulation contractors, builders, SGC and other providers. We would ask them if they wish to participate and then see if we need additional classification. If so, we would put that in place. We could expand current definitions and even require that participants get further education or training. This is best addressed by an advisory committee so we can spend the time necessary with the people who need to be involved to determine what needs to be changed.

SENATOR HALSETH:
How many advisory boards do we have now?

MR. LEE:
I do not know, but I could get that information for you. The boards do not exist in perpetuity.

SENATOR HALSETH:
I would also like to know how many advisory boards have been dissolved. We seem to keep legislating advisory boards, and I do not think they are being dissolved.

SENATOR BREEDEN:
In section 2, the language is permissive, it says “may,” which seems to leave it up to the discretion of the SCB.

MR. LEE:
On page 2, line 3, where it says “shall,“ which makes it mandatory; that is not permissive.

ASSEMBLYMAN BROOKS:
We would like to make that an amendment to the bill, to have it say “shall” instead of “may.”

SENATOR BREEDEN:
I was referring to page 1, lines 3 and 7, where it uses the language “may,” which is permissive.

ASSEMBLYMAN BROOKS:
We can fix that.

MR. LEE:
If you look at line 6 on page 1, it says "Except as otherwise provided in subsection 3, ... " and then you look at that subsection and it says "shall," so I do not think there is a problem; nothing needs to be changed.

SENATOR BREEDEN:
How do you get your volunteers?

MR. LEE:
We will work with Mr. Brooks and Ms. Gallo to see whom they recommend. There is an advisory committee, and then we will want to have open meetings and publish the details so anyone can come.

ANTHONY ROGERS (International Union of Bricklayers and Allied Craftworkers, Local 13 Nevada; Building & Construction Trades Council):
We support this bill and think it is a great piece of legislation.

MR. HARDY:
We support this bill too and think it is an important piece of legislation. It is symptomatic of a problem out there that needs to be addressed because of the ever-changing nature of technology.

MS. STOKEY:
We support this proposed bill also.

SENATOR BREEDEN:
With no one else wanting to testify, I am closing the hearing on A.B. 441 and opening the hearing on A.B. 122.

ASSEMBLY BILL 122 (2nd Reprint): Authorizes the imposition of certain reasonable restrictions or requirements relating to systems for obtaining wind and solar energy. (BDR 22-592)

ASSEMBLYMAN PETER LIVERMORE (Assembly District No. 40):
This bill deals with the authorization and imposition of certain reasonable restrictions or requirements relating to systems that harness wind and solar

energy. I have submitted to you the same report I presented to the Assembly Committee on Government Affairs in February (Exhibit I). I will read page 2 from this submission which explains a little bit about wind turbines and solar array installations in neighborhoods. On page 6, you will see a turbine with a reflective finish. This is why we offered proposed amendment 6741 (Exhibit J) to require that the finish be non-reflective. At the right moment, when the sun reflects off wind turbine propellers, they can flash like strobes. The strobe effect could be dangerous to drivers. Not every piece of property in Nevada is suited for wind turbine development.

Page 9 of my presentation shows the site layout of a local school property, Seeliger Elementary School, with a solar array. My amendment allows a planning commission to have a discretionary discussion with the applicant and the neighbors about appropriate locations for these structures. Page 12 illustrates a solar array on a commercial property in Carson City. There was no controversy about this installation. The application was nonintrusive to residences since none abutted the site.

RENNY ASHLEMAN (City of Henderson):
The original bill proposal was strongly in favor of local governments allowing the requirement of special use permits (SUP) quite liberally. Past statutes were unclear whether height enforcements could be enforced and specified that we could not "unreasonably restrict" a system. There was no coordination between these factors. Our primary goal was to be able to coordinate any abilities to have planning with that particular restriction. That was problem number one. The second reprint came out, and it basically removed the SUP references, but did not help with the coordination of language adopted previously by legislation and the need for us to have some ability to control, properly zone and plan ahead.

We had a problem in Washoe County where a district judge ruled that windmills are "attractive nuisances," which puts quite a pall on the industry. Most of us involved in this situation believe in two goals. One, that there should be appropriate regulation by local governments. Two, that we do not put the renewable energy people out of business. In my proposed amendment 6741, Exhibit J, we propose to make the statute apply either to owned or leased property instead of owned property only as it stands now. Secondly, we added a restriction or requirement of the Federal Aviation Administration. Everyone agrees on this. On page 2, the "reasonable restrictions" are listed on

lines 6 through 30. This addresses issues including the color and reflectivity of the windmill, the location and number of units allowed, height, noise, size of property and other factors that affect neighboring residents. One of the most important specifications in the proposed amendment is allowing the governing body to require the person to obtain a SUP or conditional permit on properties that are one acre or less. Windmills in general are not compatible with small developments. We have had a tremendous outcry from our citizenry about this, as have other jurisdictions.

We also propose that the governing body be able to require a SUP for development on property owned by a government entity adjacent to residential property. This would be for a system obtaining solar energy placed on a new structure. Many solar energy proponents may not want to have this and some local governments may want something stronger, but what we have now is ambiguous.

SENATOR COPENING:
Has anyone done research on the possible depreciation of home values when structures like this are installed, in a homeowners association, for example?

MR. ASHLEMAN:
There is wide controversy within the industry about this. There is not a consensus out there in spite of the studies that have been done.

SENATOR COPENING:
I am thinking of the point of view of neighbors who might not care for a windmill in their neighborhood.

ASSEMBLYMAN LIVERMORE:
I do not know of any official studies, but we have a testifier here who has had experience in this area.

SENATOR SETTELMEYER:
I appreciate that this bill tries to attach some reasonable guidelines for these structures. If someone has a 40-foot square property, then installing a 20-foot windmill is totally ridiculous, because if it falls over it would reach the edge of the property. But if I have a 100-acre piece of property, who are you to tell me I cannot have a 200-foot windmill? I am curious about the part in the bill

pertaining to reasonable requirements. If a community decides to establish an ordinance based on windmills, then do these rules apply?

MATT NICHOLS (COUNSEL):

> I think the way it would work is that if a local government adopted an ordinance that was exactly matching one of the provisions in subsection 2 – the height restrictions – those would be absolutely protected under the statute. They would be deemed reasonable ordinances. I think local government could probably still adopt different restrictions regarding height, but then those restrictions would be subject to analysis under subsection 3, the unreasonable definition that is in there. So, you could have regulations at the local level that differed from what is in subsection 2, but they would be subject to analysis for reasonableness under that definition in subsection 3. I do not know how a court would come out on that, but we have identified specific regulations in this proposed amendment that would be per se reasonable, and anything else, the court would have to look at.

SENATOR SETTELMEYER:

Then I would like to see on page 2, line 22, of the proposed amendment 6741, a deletion of the term "20 acres." Why go between 5 and 20 acres? If I own 22 acres, do I have no protection from a county putting in an unreasonable law? What if you had 1,000 acres? It would be reasonable to put in a 199-foot windmill on property that size. I like the concept of putting in decibels so people understand what is acceptable in that category. I also want to protect an individual's property rights. If memory serves, there still is no Nevada statute regarding view. You do not have a legally protected right to a view.

MR. NICHOLS:

"I would have to look into that to confirm it for you, Senator."

MR. ASHLEMAN:

I was not able to consult with all of the local governments and players on the solar and wind side that I would have liked to. We put this together fairly quickly, and I am willing to work with the Committee on this.

ASSEMBLYMAN LIVERMORE:
I was part of local government for 12 years, and when we were trying to enact ordinances on wind turbines and solar panels, it took us almost 6 months to come to a reasonable agreement. I have been surprised at the attention my bill received from local governments and interests within the industry. As a local government, trying to come up with a fair set of ordinances for our community of Carson City, we did not have to deal with the large parcels of land to which Senator Settelmeyer is referring in Douglas County. We deal with maybe five-acre parcels. We established a maximum height in the local ordinance of 65 feet.

CHAIR SCHNEIDER:
When you talk about Las Vegas with two million people and compact lots, it is a whole different story. We will let you work with everyone involved on an amendment.

ASSEMBLYMAN LIVERMORE:
I am committed to that.

SENATOR PARKS:
Has anyone tried to put together a matrix of what laws are currently being used in counties and cities regarding distance and height requirements for both wind turbines and solar panels? It would be helpful to have that information to guide us through this.

ASSEMBLYMAN LIVERMORE:
No, I have not done that, although we did review existing ordinances when we were constructing our Carson City ordinance.

MR. ASHLEMAN:
I did not do that either. The real issue for us when we get together and deliberate is whether we can find a general framework to allow flexibility locally, which will result in the most desirable outcome.

CHAIR SCHNEIDER:
Mr. Ashleman told me his group had purchased the map with the wind corridor information on it, and there were only about six areas in the Las Vegas Valley. It is better suited for harnessing solar energy.

MR. ASHLEMAN:
Yes, my understanding is that the Las Vegas Valley is not suitable for really useful wind development. We may want to put in the amendment that it must be demonstrated that the turbines would be useful so they are not sold to people who could not use them.

JASON GEDDES (City of Reno):
I spent five years on the Nevada Renewable Energy and Energy Conservation Task Force. We looked at the study on what we should be doing to advance installation of small wind turbines in the State. I worked with then-Assemblyman Joseph (Joe) Hardy and we came up with A.B. No. 236 of the 73rd Session. Originally we included standards similar to what is in Mr. Ashleman's amendment. We wanted the local governments to have the jurisdiction to set standards to fit their needs. My concern with this legislation is the SUP. We had tried to take the SUPs out of regulating small wind turbines so local governments could set up their own standards and not have to adhere to a statewide statute.

In the City of Reno, we put in our standards in 2008 and modified them in 2011, and they still work well for us. We have a public process with hearings, planning commission meetings and city council meetings. This way, all the citizens get a chance to see our codes and regulations and comment on them. To date, we have installed more than 20 wind turbines, and the City of Reno has installed 9 of its own. We have not received any pushback or arguments from citizens. We do not have minimum lot size. We tried not to make it so specific for wind turbines based on the knowledge of just one style of wind turbine since there are many styles. Of course, a 120-foot, two blade, very loud wind turbine does not make sense on a small lot. If you have a building-integrated wind turbine, or if you are putting one on a roof, it could make sense. There are new technologies which take advantage of winds up to five miles per hour. We tried not to make it so restrictive that we would be prohibiting wind turbines regardless of how good they can be.

In Assemblyman Livermore's presentation, Exhibit I, on page 15, there are photos of wind spires installed in Pleasant Valley. Those neighbors love them; the spires are 35-foot towers, two on each lot, which would not be allowed in the amendment restrictions of one wind turbine per lot. In the City of Reno, we have two wind turbines on top of City Hall, which is 240 feet tall. The wind turbines on top are 18 feet tall, but they are sitting on top of a 240-foot

building. I am not sure if that would work with this legislation, especially since City Hall is on less than an acre. Our opposition is to the height and concentration provisions and to the SUP, which adds costs to the system. The wind spires, which are designed for small urban settings, can be installed for around $12,000. In the City of Reno, a SUP is $5,400. The cost of having to pay those SUPs would eliminate one year of the savings we would have incurred from putting in the renewable-energy system.

We are currently installing 12 different solar arrays in Reno: in parks, in swimming pools and at our sewage treatment plant. We are putting them on shade structures so the solar panels also provide shaded parking. In this proposed amendment, we would have to obtain a SUP for these projects. Unless some of the other programs come through, such as the rebate program, the current laws only allow us 12 months from getting a rebate approval for a system, to getting it installed. We are already going through a public request for proposal bidding process, going through the Reno City Council approval process, and if we now have to go through a SUP process, we run the risk of not being able to complete all this and install a system within that 12-month time limit.

It is important to realize what the market is and how it is changing when you are writing legislation like this. Let each jurisdiction put in what is reasonable for its community. What works in Clark County may not work in Humboldt County and vice versa.

SENATOR SETTELMEYER:
Can you explain how the shorter wind turbines do not catch the best wind?

MR. GEDDES:
In the City of Reno we did not put in a height restriction on wind turbines; we instead used our general restrictions. Wind turbines should be above the trees and buildings to get that so-called “sweet” wind. In certain areas, it is reasonable to restrict that and let the homeowner know he or she may not be getting the expected wind because of trees and other obstructions.

In the case of the turbine on City Hall in Reno, there is no tall building obstructing us, but the building itself creates turbulence. We went up 18 feet, but we did a wind study and discovered we should have gone up 25 feet to get out of that turbulence. We have lost efficiency on our turbines because we did not go up high enough. We would have had to have a SUP for that installation

under this amendment, even though our flagpole and satellite dish are both higher than the wind turbines.

ROSE MCKINNEY-JAMES (The Solar Alliance; Bombard Renewable Energy):
We have some questions and concerns about this amendment as far as solar energy is concerned. We are concerned about adding costs and the unintended consequences on the industry.

CHRIS BROOKS (Bombard Renewable Energy):
Solar and wind are two very different technologies. I will address the solar portion of this amendment. Special use permits add considerable expense to a project administratively. *Nevada Revised Statute* (NRS) 278.315 would allow for 65 days, and in some cases even more time, for the process of review for that SUP, which can run around $5,000 each in southern Nevada. That time delay could affect the issuance of a building permit and impact the assessment of the viability of the project and the eligibility for time sensitive rebates. I agree with local governments having the ability to exercise reasonable restrictions on solar systems, but many of our projects are covered parking systems which look just like other covered parking systems. We would have to go through the process and expense of getting the SUP, quite possibly making those projects financially unfeasible. If all the projects we have pending were to fall under the guidelines that would require us to get a SUP, it is possible we would have to abandon several million dollars worth of projects because we might not meet the timeline to get the rebates to make these projects viable.

CONSTANCE BROOKS (CLARK COUNTY):
We are generally supportive of any intent that would allow us to regulate permitting better. This bill, A.B. 122, has been modified with two amendments that give us pause. Specifically, in unincorporated Clark County, we are not sure how the restrictions and permitting would be applied. Also, concerning Bureau of Land Management, U.S. Department of the Interior property, we are concerned about how this legislation would apply to that category of land. We will work with others to reach a healthy compromise.

MS. STOKEY:
We support this proposed bill. We do not want it to hurt our industry, so we want to work with those involved in finalizing the language of this bill.

LISA FOSTER (Nevada League of Cities and Municipalities):
There is great variation in the local ordinances pertaining to wind and solar applications. I appreciated Senator Parks' comment on needing to look at all the different ordinances throughout the State. Boulder City's ordinance requires a 25-foot limit on wind turbines despite the fact they have abundant open areas to harness wind energy. I know the cost of a SUP can be high, but that process brings people closest to government. A concerned neighbor can address the government through the planning commissions or city councils for the one issue that requires a SUP. I look forward to working with the other parties.

KATHY CLEWETT (City of Sparks):
We agree with all the positive comments and want to work with the Committee on this bill. The City of Sparks has very detailed requirements for any kind of renewable-energy system, whether it is geothermal, solar or wind conversion. We want our statutes to remain the same since our system works well for us. We do not have SUPs; instead we use building permits.

TOM CLARK (Interwest Energy Alliance):
I have been to many of the planning commissions around Nevada, and they are all starting this process. The intent of putting restrictions and permitting parameters in statute is largely an effort to define what is reasonable. Many counties in the State do not have building departments with the ability even to draft these ordinances. We look forward to working with the Committee.

WARREN B. HARDY II, EX-SENATOR (Hamilton Solar):
We support this bill and would like to work with all interested parties.

KARL HALL:
I am the person to whom Assemblyman Livermore referred earlier. I was involved in a lawsuit in Washoe County to prevent my neighbor from installing a wind turbine. I agree with Assemblyman Livermore and Mr. Ashleman on this issue, but do have concern about lines 19 and 20 on page 2 of the proposed 6741 amendment. There, it states that on land from 1 to 5 acres, the maximum height of a wind turbine can only be 75 feet. I am also concerned about limiting a government body's ability to require a SUP. I live on a 2 1/2 acre lot and my neighbor wanted to put up a 75-foot wind turbine to generate 25 kWs approximately 150 feet from my front door. That is why there was a nuisance complaint filed and why it prevailed.

We are now looking at the pros and cons of having the ability to get a SUP or complain about the location, size, safety and other issues related to a wind turbine. The other option is to file a nuisance complaint, which requires a judge to look at the proposed wind turbine and the impact it would have on all parties. That investigation is then followed by three days of court testimony on the project.

In my case, Washoe County code states that properties larger than 1 acre can install a 75-foot, 55-decibel wind turbine to generate 25 kWs. I believe that since I won the nuisance suit, county officials are trying to get the law changed to require a building permit for people wanting to install a wind turbine of that size on land greater than one acre. This is not fair; it does not give a citizen due process rights. I approve of the amendments and think homeowners should have a say in what goes up around their property.

BRUCE KITTESS:
I support this bill, A.B. 122, but do not support the 6741 amendment, Exhibit J. I do not support making it possible for people to install renewable-energy structures on leased property. Does this mean that in my residential neighborhood of Lakeview, north of Carson City, someone can come in and lease a lot to build wind turbines? I have submitted my written testimony (Exhibit K).

CHAIR SCHNEIDER:
On page 2 of the bill, starting on line 22 it states "A governing body shall not adopt an ordinance, regulation or plan or take any other action that prohibits or unreasonably restricts the owner of real property ... ." This specifies that a city council, county commission, etc., cannot adopt an ordinance.

PAUL EASTWOOD:
I am directly in the impact area of a ground-mounted solar array on one and a third acres in the Seeliger Elementary School area of Carson City. The solar array is 90 feet off our property on the north side, 46 feet off the west side and is in the middle of a park area, 30 feet away from a soccer field. Residents play there all the time. We had several issues with the ground-mounted project. It is a safety hazard for children because of the seven-foot fence surrounding the solar array. The project will produce an extreme amount of electricity, making it an electric generating facility in the middle of a neighborhood. There are 24 homes with an unobstructed view of this array, which is near completion.

Before the installation, there were discussions about the possible depreciation of property values. I did some personal research, calling appraisers before the installation went in. No one would talk about it, because they have nothing by which to gauge it. Unfortunately we are the guinea pigs for future solar arrays in neighborhoods. Two doors down, a nice house has been on the market for three months. The homes in this neighborhood have been appraised between $225,000 and $240,000. Yesterday I asked the real estate agent why this house was not selling and was told that although there were several people looking at the house, no one had made an offer. He asked potential buyers why they were not going to make an offer and half said it was because of the solar array within eyeshot. The house is priced at $175,000 now, far lower than the comparables.

There were five solar arrays going in around Carson City School District. Three needed the SUP, but the one near my house went in as is, with no SUP. It is 60,000 square feet, which is larger than a football field. We have been told it will save the school district $60,000 per year after the project is paid for. With the projected depreciation in home values being approximately 25 percent, which is what is happening with that house I referenced, you can see that the amount of money the school district is saving is equal to the depreciation of property values for people impacted by this solar array. I am in favor of A.B. 122 and would like to see restrictions in neighborhoods when it comes to safety and property values. Most of us purchased our homes in which to live, as well as for an investment in our future, and this has been devastating.

CHAIR SCHNEIDER:
I would like Mr. Ashleman to head up a group of any of these testifiers so we can get a consensus on this bill. You can use my office, or we will find you a place to work together. Please come back with something by May 14.

ASSEMBLYMAN LIVERMORE:
As you can see, technology is evolving, and I know you have been a leader in the area of renewable energy. I will work with everyone on this bill.

CHAIR SCHNEIDER:
I will close the hearing on A.B. 122 and open the work session hearing on A.B. 524, the appraiser bill.

ASSEMBLY BILL 524: Increases certain fees for residential and general appraisers to cover an increase in federal registry fees. (BDR 54-1199)

CHAIR SCHNEIDER:
The Journal of Real Estate Research published an article (Exhibit L) that is an academic survey of reports about appraisals in the residential lending process. The report was compiled by two California finance professors. I will read from page 15, Exhibit L, under the Agency (Incentive) Issues section:

> An appraisal is a decision-making tool used to facilitate a real estate transaction. In a typical lending situation, an appraiser has a duty to function as a fiduciary by performing as a disinterested third party and rendering an objective and unbiased estimate of value untainted by the influence of personal or business interests. Agency-type problems arise in appraisal when one or more of the parties to the transaction directly seek to influence the outcome of an appraisal or indirectly attempt to bias the outcome of the appraisal through the incentives offered to appraisers.

In *Black's Law Dictionary*, the definition of fiduciary is: a duty of utmost good faith, trust, confidence and candor; a duty to act in the highest degree of honesty and loyalty toward another person and in the best interest of the other person.

I will read a few more paragraphs from pages 16, 18 and 19 of the article, Exhibit L:

> In an oversight report issued in 1986 and also in a report accompanying the Real Estate Appraisal Reform Act of 1988 (H.R. 3675), the Government Operations Committee of the House of Representatives alleged that faulty and fraudulent appraisals were a significant factor contributing to the banking crisis of the 1980s. The reports were critical of the lack of objectivity and professional integrity on the part of appraisers who acceded to the wishes of clients (lenders, real estate brokers, developers and others who made their living from fees, commissions, salaried bonuses and profits tied to real estate deals) to provide the "right" (*i.e.*, the deal-making) estimate of value.

> Academic research ... [reported by Ferguson in 1988] found that the number of appraisals that provided estimates above the contract sale price were statistically significant. He interpreted the result as evidence that most residential appraisals performed for lenders are not truly appraisals (objective estimates of value), but rather justifications for the requested loan amount. Ferguson also found that 81 percent of the independent appraisal firms' appraisals were above the contract price in contrast to 63 percent of staff appraisers' appraisals. Ferguson attributes the difference to the greater pressure faced by independent appraisers to come in "high" because many lenders and other potential clients tend not to offer much business to independent appraisers with a reputation for "tight" appraisals.
>
> A direct and potentially powerful method of dealing with the agency issues would be to develop a methodology to examine the consistency of appraisal reports. Such a methodology would permit financial institutions to monitor appraiser activity to reduce agency-related problems and to improve the quality of their performance and would allow the regulators of financial institutions to monitor the appraisal policies and practices of the financial institutions under their jurisdiction. While it is impossible to know whether an appraiser deliberately under- or overestimates value in a particular appraisal report, it is possible to draw an inference when all the reports performed by a particular appraiser are examined together.
>
> Finally, it is well known that agency issues are particularly severe in the appraisal industry. If the appraisal industry is concerned about its long-run viability, even survival, this is the issue that it has to address quickly. We recommend the development of techniques that can check the consistency as well as the accuracy of appraisal values reported by appraisers. We also recommend research into ways in which private appraisal organizations can be more effectively utilized in the regulatory scheme of things to enhance the professionalism and ethical behavior of appraisers.

I did introduce a bill earlier this year, S.B. 330, which proposed having appraisers assigned by the Real Estate Division (RED), Department of Business

and Industry (DBI), so when someone needs an appraiser, the RED would just assign the next appraiser on the list to the job.

SENATE BILL 330: Makes various changes to provisions governing real estate. (BDR 54-532)

It would get around people going to work just for a bank, or a builder or just for certain realtors and then hitting the mark for their employer on appraisals, which is what I think happened in creating the bubble in the "sand states" across the nation. Every time a builder would complete a new phase in a subdivision with seven to ten new and available homes, the home prices would go up $15,000. With every new phase, prices would go up another $15,000, and the mark kept getting hit by appraisers. The appraiser who did not hit the mark would lose the contract with the builder. Then a new appraiser would be hired and do the next 350 homes for the builder.

I believe the appraisers are the firewall in the system, and the firewall melted down. I know there are appraisers here who would differ with me, but I have also heard from appraisers who told me, "Well, I stopped. I wouldn't go higher, I backed off when I saw it was too high." But people kept going higher with their appraisals. Where was the report to the Legislature about what was going on? Where was the report to the Commission of Appraisers of Real Estate (CARE), RED, DBI? I am not saying all the mortgage brokers were good people; they were looking for their commissions and pushed hard to get appraisals up. I think the appraisal market got out of control as it did in the 1980s when the savings and loan collapse happened. This collapse just happens to be worse.

SENATOR BREEDEN:
Does your amendment apply to both residential and commercial property?

CHAIR SCHNEIDER:
Yes. When we went toward the bubble, the prices were being pushed up, then they hit the peak, the bubble burst, and the prices are going down. The appraisal industry, for some reason, is forcing those prices further and further down so in Las Vegas, in my district, we have 65,000 to 95,000 vacant houses which the banks are not releasing. The price keeps going down, and you cannot get an appraisal. If you do, it will come in at less than the replacement cost of the house from the slab up, not including the land and offsite assets. The market is actually quite active in Las Vegas right now. They are selling

houses rapidly because the prices are much undervalued. When the prices went up before, they blew past affordability for the local workforce. Now it is being forced way down. I think appraisers have a moral obligation to this State and to these communities. Right now, with the collapse of the real estate market, these extremely low appraisals are busting local governments and school districts. I know this goes against the grain of some appraisers who think they are absolutely the experts, and the last word on value, but I do not believe that to be true. I think appraisers are so out of line right now in my Senate district that "windshield," or drive-by appraisers can just go to the Internet and pull a value off. That may yield a number closer to the building's true value than the appraisal for which you pay $350.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):
I would be glad to answer your questions.

CHAIR SCHNEIDER:
My proposal is to put the appraisers under the RED, so there would be a list of appraisers, and when someone needed an appraisal, the next available appraiser would be assigned to do the appraisal. I heard that was controversial. There was a fiscal note of more than $600,000, so it was expensive. That amount is the equivalent of maybe three or four houses, and the way the subdivisions have crashed, it seems like a relatively insignificant amount. The tax revenue lost from these empty homes is really unbearable. The school districts are closing budgets across the halls right now, and our budgets are crashing. We would sure like to see real estate recover faster here and have more value put back into the system. What do you think about a potential amendment to put this in place?

MS. ANDERSON:
We reviewed S.B. 330 when it was introduced, and we began trying to estimate the number of appraisals done in the State. I believe the data was taken from federally related transactions that had been recorded over a period of a year. There are many other types of appraisals besides property sales, such as estates, wills, divorces, trusts and other evaluation purposes. Looking at the raw numbers, which are probably low, we were estimating mainly staffing needs of what that bill would require from us. Even if we had a staff member making an appraiser assignment that took ten minutes, it would take

five administrative assistants to handle the bigger process, and five may be a conservative estimate.

In terms of how this would work, one of our main concerns would be the competency of appraisers. There are three appraisal certificates and licenses available, each with specific criteria for the type of property being appraised. There is also a geographic competency that has to be considered. We have a number of temporary-permitted appraisers who come into the State and pay a temporary license fee to perform appraisals. Those are usually for very specialized projects. I do not know if this new proposal would affect those individuals and permits.

CHAIR SCHNEIDER:
Obviously, you would not hire an appraiser from Carson City to appraise a high-rise condominium on the Las Vegas Strip. In Las Vegas, there are Members of the Appraisal Institute (MAI) who can appraise certain commercial properties. These MAIs could be put in a certain category. I know of a leased office building in Las Vegas that has not had a vacancy in ten years, and the appraisals are coming in just silly. They are way down. The appraisals do not even reflect cash flow anymore. Someone can have a building with healthy cash flow and the numbers would justify a $1 million value, and you will get an appraisal of $330,000. It is just nuts. I know people with these buildings. This is happening in the commercial area, with raw and improved land and also with housing.

The banks have foreclosed on properties and taken possession of the properties. They are now bundling houses and selling them for cash to investors. In my opinion, those are not real sales. No one knows what the bank has in the property because many of those loans are insured. A bank can take a property and sell it for $50,000, and if they had a $250,000 mortgage on it, maybe that mortgage is totally insured. I do not think people are looking broadly at this situation or looking closely at their appraisals, but it sure is not a good situation for Nevada. In this new economy, maybe appraisers should get paid more for an appraisal.

MS. ANDERSON:
We would want to look at what this would do with entities with staff appraisers. Would we eliminate those? There are banks and government entities with staff appraisers. That would need to be examined. Could this be addressed

through beefing up enforcement from the RED? We have one investigator statewide, and we are losing our administrative assistant for that section in our budget reduction. We have two staff statewide in that program. Is that a place to start looking?

CHAIR SCHNEIDER:
That is why you are the administrator. You can come up with the ideas. None of us on this Committee are experts in this area. We are looking for ideas. What do you think about what I read earlier, the study indicating big flaws in the industry? Do you have ideas on how to help fix this?

MS. ANDERSON:
I had not discussed with you or previously thought about some of the comments you made today. It would be helpful to be able to think about that a bit, although I know time is running out. In regard to the report you referenced, the licensing and regulation of appraisers came out of the savings and loan crash of the 1980s. Nevada is a mandatory appraisal-licensing State. Federal regulations require the certification and licensure of appraisers for federally related transactions. The appraiser licensing law was intended to address those issues.

Experts in the CARE who work in the field might be able to give us some ideas. Perhaps proactive reporting to the RED could work. We could also think of doing something with projects, whether it is a subdivision or a condominium development where multiple appraisers would have to be used. That could be a small step.

CHAIR SCHNEIDER:
Good idea. Can you work with the appraisers on this and come back with some ideas? I realize there are federal laws with which we need to contend. I also know that members of this Committee and the Legislature are really upset about the direction our real estate industry is going and the effect it is having on funding government and schools. There is not going to be a real estate industry left if we do not do something. We cannot sell houses if companies will not move here because of the extreme low funding of schools, and real estate values fund schools.

MS. ANDERSON:
I can get with everyone and report back in ten days.

SCOTT DIBIASIO (Appraisal Institute):
I want to respond to comments the Chair made about inappropriate pressure being put on appraisers to hit or reduce value. During the 75th Session, you did pass a very strong appraiser independence bill. Anything related to inappropriate pressure on an appraiser is now a criminal offense, punishable by serious jail time. If anyone has specific examples of inappropriate pressure on appraisers, I would encourage them to take the information to the CARE and have that person investigated. Also, if there are specific examples such as the office building referenced by the Chair, I encourage that these appraisals be taken to the CARE and the RED. They will investigate whether there were violations of the uniform standards of professional appraisal practice, and if appropriate, the CARE can and should take disciplinary action.

Enforcement is a very strong requirement. I do not think it is appropriate for the RED to be in the business of assigning appraisers. Ms. Anderson mentioned the competency issues. If there is a commercial appraiser with a specialty appraising nursing homes, why should that appraiser be selected to appraise a golf course? I have submitted a letter of support (Exhibit M) for this bill with no amendments and would be happy to work with the Committee.

CHAIR SCHNEIDER:
Have there been any investigations of appraisers since the 2009 law passed?

MR. DIBIASIO:
I am not aware of any. Perhaps Ms. Anderson or Mike Cheshire in Las Vegas would know.

MICHAEL CHESHIRE (President, Commission of Appraisers of Real Estate, Real Estate Division, Department of Business and Industry):
Our staff has investigated numerous complaints since 2009. We have had licenses surrendered, and we have taken licenses from appraisers. I was upset by a few comments the Chair made.

CHAIR SCHNEIDER:
I realize my comments were pretty strong. I would request that the CARE supply us with a list of actions taken against appraisers.

MR. CHESHIRE:
We would be happy to do that, and Brenda Kindred-Kipling has that list available.

CHAIR SCHNEIDER:
I do not think the owners of commercial buildings who are getting these appraisals have time to bring an action against appraisers. They are floating and trying to keep their heads above water with banks that are now coming in and calling for a $500,000 reduction in loans. I hear from them; they are my constituents. I look forward to you working with Ms. Anderson and think it is time we had a real conversation.

MR. CHESHIRE:
You did mention the federal issues. I am submitting a letter from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC), written by its executive director, James Park (Exhibit N).

MICHAEL L. BRUNSON (President, Coalition of Appraisers in Nevada):
We support A.B. 524 but not the amendments. I am submitting a letter from the Coalition of Appraisers in Nevada (Exhibit O). I recognize the passion of the Chair on this issue. As you were reading the Ferguson study, I could not stop nodding; I agree with everything in that study. But the Committee needs to recognize the fact that the study was based on appraisals done prior to the 1980s savings and loan crash. The result of that study was the passage of Public Law 101-73, Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 by the 101st Congress of the United States. That law established, among other things, the uniform standards of professional appraisal practice, which is the law of the land, both federal and state. That law specifies what I am allowed to do and what I am not allowed to do as an appraiser.

I felt like applauding when I heard the Chair talking about us being the gatekeepers, referring to the agency-incentive issues. The reason I felt like applauding is that we still get pressure to hit a specific value. I realize the issue is a sensitive one for your constituents. My home is underwater, too. An appraiser's job is not to create value, we do not determine what something is worth, we simply look at the market, measure it and report the data. Granted, there are nuances within an appraisal which allow us to express an opinion based on certain factors. However, it does not allow us to bolster up a failing economy in any municipality by coming up with artificially high values.

That would be just as bad as coming in with artificially low values. We need to be cautious about looking at an entire industry with a fiduciary responsibility to the lenders. Our job is to help them determine the risk in a particular situation. If we were to ignore those vacant houses of which the Chair spoke and produce artificially high values, the risk to the banks could be tantamount to a third bubble bursting. If that were to happen in the current economy, that would make the last bubble look like nothing.

A direct result of Ferguson's report was the establishment of the Appraisal Subcommittee, FFIEC, by Congress. It gave responsibility to the appraisal foundation to disseminate and promulgate the uniform standards. Those really are the laws of the land. When you say people do not have time to bring an action, it is very simple. Because Nevada is a mandatory licensing state, bringing an action amounts to filling out a short form and sign your name. It will be investigated. For the last five years, I sat at every CARE meeting I could attend. I have watched people lose their licenses or just give them back and say they were never going to appraise in Nevada again because they did not realize it was going to be so hard.

CHAIR SCHNEIDER:
I realize the appraisers were the firewall and the bankers on Wall Street bundled these mortgages and sold them like commodities all over the world. They knew they were bad, and not one banker has gone to jail yet. Somehow, they were able to get appraisals on these properties. We need to look at every phase of the real estate industry. We do not have control over Wall Street, but we do have some control over the appraisers in this State, as well as the builders and the Realtors. Everyone needs to be looked at to see what happened. Something has to happen. It damaged your industry severely.

MR. DIBIASIO:
In response to many of those issues involving the bubble, that is one reason why the FIRREA was passed. If there are individuals out there who are putting inappropriate pressure on appraisers, they need to be called on the carpet for that. If there are appraisers responding to that pressure, they need to be dealt with accordingly. There have been new rules put in place to prevent this from recurring.

CHAIR SCHNEIDER:
Seeing no more testimony on this bill, I am closing the work session hearing on A.B. 524. The Senate Committee on Commerce, Labor and Energy is adjourned at 4:19 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 150	C	Assemblyman David P. Bobzien	Letter
A.B. 150	D	Tom Clark	PowerPoint illustration
A.B. 150	E	Jeff Lyng	Written Testimony
A.B. 150	F	Daniel Jacobsen	Proposed Amendment
A.B. 352	G	Jon L. Sasser	Written Testimony
A.B. 352	H	Dan L. Wulz	Written Testimony
A.B. 122	I	Assemblyman Peter Livermore	Presentation
A.B. 122	J	Assemblyman Peter Livermore	Proposed Amendment
A.B. 122	K	Bruce Kittess	Written Testimony
A.B. 524	L	Michael A. Schneider	Academic Article
A.B. 524	M	Scott DiBiasio	Letter from Appraisal Institute
A.B. 524	N	James Park	Letter
A.B. 524	O	Coalition of Appraisers in Nevada	Letter