MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
June 1, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 3:29 p.m. on Wednesday, June 1, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator 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:

Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Pete Goicoechea, Assembly District No. 35

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
Helen Foley, National Association of Professional Employer Organizations
Steve Watson, Retired Public Employees of Nevada
Robert Vogel, Nevada Captive Insurance Association

Jesse Wadhams, Nevada Association of Health Underwriters
Louis Roggensack, Executive Director, Chairman of the Board, Nevada Life and Health Insurance Guaranty Association
Donald E. Jayne, Administrator, Division of Insurance, Department of Business and Industry
Steve Coffield, Chief Administrative Officer, Nevada Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry
Bob Ostrovsky, Nevada Resort Association
Judy Stokey, NV Energy
Luke Busby, Clean Energy Center, LLC

CHAIR SCHNEIDER:
We will open the hearing on Assembly Bill (A.B.) 74.

ASSEMBLY BILL 74 (1st Reprint): Revises various provisions relating to the regulation of the insurance industry. (BDR 57-472)

BRETT J. BARRATT (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
Assembly Bill 74 is the Division of Insurance (DOI), Department of Business and Industry's (DBI) omnibus bill. The language in A.B. 74 was released to the DOI stakeholders over one year ago. It has been fully vetted with the insurance industry and other stakeholders. It was passed out of the Assembly with a unanimous vote.

I have a presentation on A.B. 74 (Exhibit C) which reviews the highlights of the bill. The significant areas of the bill are the external review, group-health rate regulation, long-term care insurance, annuity and life insurance and credit-extraordinary life events.

An external review or independent review, page 4, Exhibit C, occurs when consumers have disagreements with their health insurers regarding coverage of certain medical procedures. The health insurer has an internal appeals process to allow consumers to voice their concerns. However, under the Patient Protection and Affordable Care Act (PPACA), states must also have an independent or external review system. Nevada has had an external review system in place since 2003. Minimum standards have been set by the PPACA for an external review program.

When A.B. 74 was initially proposed, I had instructed staff to delete existing language and insert external review model language to ensure compliance with the PPACA. In the Assembly, the Nevada Justice Association, the Nevada Trial Lawyers Association and others had valid concerns with that. Assembly Bill 74, as presented today, brings back deleted language in every place where Nevada law meets or exceeds PPACA standards.

We have also made changes to comply with the PPACA. One change from existing statute to the federal standard is the removal of the $500 out-of-pocket minimum required before the insured can take advantage of the external review process. Another change was that notices to claimants must be provided in a culturally and linguistically appropriate manner. I have provided a document which explains how the external review process works (Exhibit D).

I am pleased to report after numerous conversations with the federal government, I was given verbal confirmation that A.B. 74, in the first reprint, meets federal standards. Passing A.B. 74 would ensure the federal government would not be conducting external reviews. The process would remain with Nevada. I do not know of any person or entity that would want the federal government conducting external reviews. The federal government does not want to conduct external reviews.

The next slide covers group-health rate regulation, page 5, Exhibit C. Only small and large health maintenance organizations group rates are regulated by the DOI. This proposal would expand DOI oversight to small group preferred provider organizations (PPO). The DOI would still not regulate large group PPOs; this is consistent with federal law.

The next slide in the presentation deals with long-term care insurance, page 6. Insurers are bundling products, and we are trying to clarify that the new “hybrid” products are still subject to regulation by the DOI. These products still need to be filed to eliminate any argument they do not fall under the oversight of the DOI or have to follow State law. This will provide more consumer protection.

Annuity and life insurance material on page 7, Exhibit C, aligns Nevada law with national standards set by the Interstate Insurance Product Regulation Compact. It is clear in statute that the ten-day review period applies to life insurance. This will clarify that the ten-day review and return period also applies to annuities.

Assembly Bill 74 will also provide a 30-day review period upon purchasing a replacement annuity contract or life insurance policy. We have seen unscrupulous producers take advantage of consumers by enticing them to surrender their existing annuities for what they claim is a better annuity. When this occurs, there are often significant annuity surrender charges involved. Assembly Bill 74 would allow the consumer a 30-day review period possibly to avoid a complex transaction without harm. Assembly Bill 74 also limits the penalty for the early surrender of an annuity to limit subjectivity and clarify there are limits to the surrender charges.

The next slide addresses credit-extraordinary life events, page 8, Exhibit C. This would allow consumers whose credit has been negatively impacted by certain life events to contact their insurers about that event. The insurer cannot then use credit scoring to determine the insured's premium rates. For example, if consumers lose a spouse, lose a job, experience identity theft or are deployed by the military, they would be able to contact their insurers, and the insurers cannot use credit scoring in the underwriting process to determine their premium rates. These changes are based on and follow the National Conference of Insurance Legislators credit scoring model act. It would be good for Nevada consumers.

Evidence of insurance on page 10 of my presentation, Exhibit C, is a business friendly proposal. Nevada law requires the proof of insurance card to contain specific vehicle information. That may not be practical in the commercial environment when a company has vehicles moving in and out of service on a daily basis. Assembly Bill 74 would allow fleet insurance policies to be written on an "any auto" or on a "blanket policy" basis. This would reduce the amount of paperwork required of brokers, small businesses and large businesses to satisfy Nevada's minimum financial responsibility requirements.

Another consumer protection in A.B. 74 would be manufactured home valuation, page 11, Exhibit C. Much of Nevada's population lives in manufactured homes. Individuals who own a manufactured home are only offered actual cash value coverage by their insurers instead of replacement value. Actual cash value is a depreciated amount. If a home was to be destroyed by fire, and the homeowner has an actual cash value policy, the homeowner may not be able to replace the home. Assembly Bill 74 would require insurers to offer full replacement coverage to manufactured homeowners. It does not require the homeowner to purchase full replacement

coverage. However, in the event of a total loss to the homeowner with full replacement coverage, the home would be replaced. This coverage would be limited to a home manufactured within the preceding 15 years because manufactured homes depreciate more quickly than "stick-built" homes.

Electronic insurance transactions, page 12, Exhibit C, would allow the DOI to adopt regulations regarding electronic transactions. It would also allow insurance companies to settle claims and communicate with their insureds via e-mail. Consumers would have to opt into electronic transactions from their insurance companies. Assembly Bill 74 would also facilitate the electronic submission of fingerprints with producer license applications. It would also speed the process of licensing producers and submitting fingerprints to the Federal Bureau of Investigation and the Department of Public Safety.

Service contracts, page 13 of my presentation, Exhibit C, are technically not insurance under the insurance code. However, they are regulated by the DOI even though there is no premium tax requirement. Assembly Bill 74 would allow the commissioner of insurance (COI), DOI, DBI, to suspend, limit or revoke a service contract provider's certificate of registration for statute or regulation violations or for conducting business in an unsuitable manner. The bill would also reduce the financial security required to obtain or retain a service contract license from three to two options. One option is to maintain a contractual liability insurance policy (CLIP) insuring each service contract's obligations. The second option is that the company or its parent must maintain a net worth or stockholder equity of $100 million. The third option, which would be deleted by A.B. 74, is 40 percent of the premium volume has to be kept in a reserve account, and 5 percent of the service contract fee amount has to be deposited with the DOI.

Over the last biennium, four service contract carriers have gone into bankruptcy. This is a concern because consumers have paid a fee for protection. When a company goes into bankruptcy, consumers are not able to get the value for which they have paid a fee. By eliminating one of the financial responsibility requirements, there will be fewer bankruptcies negatively affecting consumers in Nevada.

Another proposal in A.B. 74 addressing the CLIP would prohibit the policy from being written by an affiliate of the service contract provider, page 13, Exhibit C. If the service contract provider goes bankrupt, and their insurer is an affiliated

risk retention group, everything will dissolve. Therefore the CLIP should be issued by an independent insurance company.

Assembly Bill 74 would clarify the process used by captive insurers, page 14, Exhibit C, to pay dividends from their capital and/or surplus, and the determination of an insurer's surplus adequacy. It would also require the March 1 annual report to be consistent with existing reporting requirements and specifies the penalties for material false statements and failure to file the annual report.

The next slide in the presentation, Exhibit C, addresses third-party administrators (TPA), page 15. Assembly Bill 74 would allow an insurer to administer claims on behalf of its Nevada licensed affiliates without requiring a separate TPA certificate of registration. This is business friendly because if a holding company has two subsidiaries and one subsidiary does not have as much work as the other, the holding company can transfer work between the subsidiaries. This would also apply to workers' compensation insurance administrators. The holding company would still be required to have a license and registration.

The clean-up and clarification proposals, page 16, Exhibit C, in A.B. 74 are technical in nature or address lawsuits. Federal lawsuits against the DOI relate to Nevada's discrimination against nonresidents which is in violation of the United States Constitution.

There are a number of proposed amendments to A.B. 74, pages 18 and 19, Exhibit C, and in my proposed amendment 442, proposed revisions (Exhibit E). Most of them are technical clean-up, but some address issues from stakeholders or the insurance industry.

The first proposed amendment, Exhibit E, regarding independent review organizations changes the word "external" to "independent." The second proposed amendment, Exhibit E, is in section 12.5 of A.B. 74 and addresses continuous care coverage. Continuous care coverage was enacted in the 75th Session. It is a combination of workers' compensation insurance and health insurance. The proposed amendment would clarify the licensing requirements for an insurance producer to sell continuous care coverage.

The third proposed amendment, Exhibit E, to A.B. 74 is in section 57. It would delete the words "without limitation." If these words remained in the bill, the coverage could be cost-prohibitive to the policyholder for transporting and installing a new manufactured home and for debris removal.

The fourth proposed amendment addresses captive insurers. The majority of new captive insurers in Nevada are referred to as "single parent" or "pure captives." These companies only insure a portion of risk for their affiliated parent company. These captives do not cover third parties; therefore there is no risk other than to the parent company. From 2009 to 2011, Nevada has slipped from third in the nation to eighth in the nation with regard to licensure and domestication of captive insurers. The proposed amendments will help Nevada maintain its competitiveness as more states enter into the captive insurance market. The DOI has worked closely with its stakeholders to identify changes in captive insurance statutes that would allow Nevada to become more competitive as a single parent captive domicile. There are three proposed amendments addressing captive insurers. These proposed amendments would allow an actuary, authorized by the DOI, in addition to an accountant, to submit financial statements. It would also change reporting dates from March 1 to June 30 of each year and would change the due date of the annual report from 60 days to 180 days after the end of each fiscal year. It would also address pure captive insurers. Only pure captive insurers would be exempt from inspection and examination by the DOI every three years. The DOI would have the discretion to examine pure captive insurers as it deems necessary. Nevada is the only captive domicile state requiring pure captive insurers to be examined at all. This is the most significant of the three proposed amendments and would assist Nevada in maintaining its ranking as a desirable state in which to domicile captive insurers. These amendments will not affect the General Fund in a negative way. The more captive insurers we attract to Nevada, the greater the contribution to the General Fund based on their premium tax. Also, pure captive insurers are required to have a least one annual board meeting in Nevada. By attracting more captive insurers to Nevada, we will increase the number of white collar, non-gaming, nonpolluting jobs.

The fifth proposed amendment, Exhibit E, is to section 33 of A.B. 74, credit accident and health insurance. The term "credit health insurance" would be changed to "credit accident and health insurance". It would also exempt credit involuntary unemployment insurance from the requirements of

Nevada Revised Statute (NRS) 686B.010 because requirements for rates for that insurance are detailed in NRS 690A.

The sixth proposed amendment is to section 65.5 of A.B. 74 which would correct the reference to the federal definition of large group employer. The NRS definition of a large employer is 50 or more employees. Although in 2016, pursuant to federal law, the definition of a large employer will be 100 or more employees, the DOI would like to maintain the NRS definition. Based upon concerns raised by stakeholders regarding exempting large insurance plans from NRS 695C.180, subsection 3, there has been agreement to delete this subsection.

The seventh proposed amendment is to section 115 of A.B. 74 and addresses the definition of "final adverse determination." The term "final adverse determination" does not exist in Nevada statute. We would propose to delete the word "final" from the definition.

The final proposed amendment to section 118, lines 4, 12, 16, 23, and 33 of A.B. 74 would change the term "managed care organization" to "health carrier."

I have also submitted written testimony on A.B. 74 (Exhibit F).

A number of amendments to A.B. 74 have been proposed by others. I have spoken to Helen Foley regarding her proposed amendment about employee leasing companies (Exhibit G). I support her proposed amendment. It will help small and large businesses obtain more buying power in the health insurance market.

There is also a proposed amendment submitted by Steve Watson representing Retired Public Employees of Nevada (RPEN) regarding the Nevada Life and Health Insurance Guaranty Association (NLHIGA) coverage of unallocated annuity contracts (Exhibit H). I have no problem with that amendment.

There was a third amendment proposed by Assemblywoman Maggie Carlton which I just received this morning (Exhibit I). It proposes to make commissions paid to health agents and brokers more transparent. I am neutral on that amendment.

ASSEMBLYWOMAN MAGGIE CARLTON (Assembly District No. 14):
The amendment proposed by RPEN caused a number of questions and concerns in the Assembly. That is why RPEN was asked to present their proposed amendment to the Senate Committee on Commerce, Labor and Energy.

My proposed amendment to A.B. 74, Exhibit I, involves full disclosure and transparency. It would require an insurance producer to disclose information to the consumer concerning the amount of the commission the producer would receive. Producer commissions are a component of the premium the consumer will pay for health insurance.

HELEN FOLEY (National Association of Professional Employer Organizations):
In section 128 of A.B. 74, the COI wanted strong clarification that employee leasing companies are not allowed to offer self-funded insurance programs. Unfortunately, with the language in A.B. 74, there appeared to be an ambiguity over whether or not employee leasing companies could offer any insurance program to their client companies and employees. When employee companies offer insurance programs, they have greater purchasing power. This allows small businesses to provide insurance for their employees.

When the initial amendment to section 51.7 was proposed, employee leasing companies were limited to providing insurance to the small-group market. My amendment, Exhibit G, states that for more than 50 employees, including its leased employees at client locations, employee leasing companies can sponsor a fully insured health benefit plan. It allows them to be in the small-group as well as the large-group markets.

STEVE WATSON (Retired Public Employees of Nevada):
I was contacted by RPEN members seeking help in securing their deferred compensation retirement. Working with two former Nevada Deferred Compensation Committee chairmen, John R. Crossley, retired Legislative Counsel Bureau director and Jack Crawford, retired Nevada Department of Transportation right-of-way director, we decided to seek legislation to change NRS 686C which deals with the NLHIGA. The RPEN membership includes State employees, county employees and city employees who participate in the Nevada State Public Employees Deferred Compensation Program, which utilizes The Hartford and ING. Other public entities utilize Great-West, ICMA, Nationwide, Fidelity and TIA CREF for their deferred compensation providers. Therefore, by changing the statute, all retirement plans and governmental

retirement plans established under the Internal Revenue Code, Title 26 U.S.C. sections 401, 403(b) and 457 would be protected if an association member company becomes insolvent.

The NLHIGA was created by the 57th Session to protect State residents who are policyholders and beneficiaries of policies issued by an insolvent insurance company. All insurance companies, with limited exceptions, licensed to write life and health insurance or annuities in Nevada are required, as a condition of doing business in this State, to be members of the NLHIGA. If a member company becomes insolvent, money to continue coverage and pay claims is obtained through assessments of the remaining members. All 50 states, the District of Columbia and Puerto Rico have life and health insurance guaranty associations.

Nevada Revised Statute 686C.130, subsection 2 states:

> For purposes of administration and assessment, the Association shall maintain two accounts: (a) The Account for Health insurance; and (b) The Account for Life Insurance and Annuities, which consists of: (1) The Subaccount for Life Insurance; and (2) The Subaccount for Annuities, including annuities owned by a governmental retirement plan, or its trustees, established under section 401, 403(b) or 457 of the Internal Revenue Code ... .

While this section has been updated to address governmental deferred compensation 401, 403(b) and 457 plans, NRS 686C.035 states: "This chapter does not provide coverage for ... , (k) An unallocated annuity contract."

A government retirement guaranteed account has been interpreted as an unallocated annuity contract and therefore is exempt. The intent of the proposed amendment, Exhibit H, is to allow an unallocated annuity contract, thus covering 401, 403(b) and 457 guaranteed accounts for government retirement plans. For example, an active state employee has money in the ABC general account and the employee's son, who works for the Reno Police Department, has money in the XYZ general account. If ABC and XYZ become insolvent, they would both lose the money they had set aside for retirement. When the state employee retires, if the State employee had chosen to annuitize the ABC general account money and ABC becomes insolvent, the State employee's money would be protected under the Nevada guaranty association. However, because the employee's son cannot annuitize his money

until he leaves service, if XYZ Company becomes insolvent, the son would lose his money. If the State employee retires and did not choose to annuitize the ABC general account money, the State employee would lose the money if ABC became insolvent. The son, who cannot choose to annuitize until he leaves service, would also lose his money if XYZ became insolvent. The law does not treat all participants equally, and this proposed amendment, Exhibit H, would correct that.

At the April 27 meeting of the Nevada Deferred Compensation Committee, they voted for a neutral position on the proposed amendment. Darrell Craig, chair of the Washoe County Deferred Compensation Committee, former Nevada Deferred Compensation Committee chair Mary Keating, former state board member Dr. Carlos Romo and participant Ben Sarrat spoke in favor of the proposed amendment. Nobody expressed a negative position on the proposed amendment.

CHAIR SCHNEIDER:
How much would the insurance guaranty be if a company becomes insolvent?

MR. WATSON:
On the third page of the proposed amendment, Exhibit H, written in green, is one of the issues the COI specifically asked us to address. That section states:

> ... (e) With respect to each participant in a governmental retirement plan covered by an unallocated annuity contract owned by the governmental retirement plan, or its trustees, established under section 401, 403(b) or 457 of the Internal Revenue Code, 26 U.S.C. sections 401, 403(b) and 457, in no event may the coverage exceed $100,000 in the aggregate, regardless of the number of contracts. Each such unallocated annuity contract owned by a governmental retirement plan or its trustees is under the authority of and subject to the approval of the Commissioner, ...

CHAIR SCHNEIDER:
Is that $100,000 per person?

MR. WATSON:
Yes, it is.

CHAIR SCHNEIDER:
How many people are in the plan?

MR. WATSON:
I am not sure how many people are in the plan.

CHAIR SCHNEIDER:
How would this be repaid? Which company is it?

MR. WATSON:
This could be any insurance company that provides a deferred compensation contract in an annuity program.

CHAIR SCHNEIDER:
For example, if The Hartford becomes insolvent and there is $100 million in premium, how does that get repaid?

MR. WATSON:
There are a number of steps through which the NLHIGA goes. Before a company becomes insolvent, the NLHIGA might try to have another company take it over. They might have a person try to help the company become solvent. However, if a company becomes insolvent, the NLHIGA has the right to assess all of the insurance companies with that line of insurance. There are over 700 member companies in the NLHIGA. All of those companies would be assessed based on how much money they receive in premiums. The NLHIGA would use that money to pay any bills due. Each of those companies that were assessed can apply a 20 percent premium tax reduction for five years.

CHAIR SCHNEIDER:
The different companies would be able take the premium tax deductions, but would the State be liable?

MR. WATSON:
This was done in the 57th Session when the NLHIGA was created. We are not trying to change any of that.

CHAIR SCHNEIDER:
For clarification, can the assessment be deducted from the premium tax, and then is the State liable after that?

MR. WATSON:
Yes, that is how I understand it.

CHAIR SCHNEIDER:
What would happen if the retirement account did not have an insurance policy?

MR. WATSON:
I do not know.

ROBERT VOGEL (Nevada Captive Insurance Association):
The Nevada Captive Insurance Association supports A.B. 74 and the proposed amendments.

CHAIR SCHNEIDER:
If one of these insurance companies becomes insolvent, for how much would the State be liable?

MR. VOGEL:
I do not know.

JESSE WADHAMS (Nevada Association of Health Underwriters):
The Nevada Association of Health Underwriters (NAHU) is neutral on A.B. 74, but we are reviewing the proposed amendment submitted by Assemblywoman Maggie Carlton, Exhibit I. The NAHU is opposed to it as written.

The PPACA affects medical loss ratios and how commissions will be dealt with, and perhaps this is where these issues should be considered. The NAHU is opposed to this amendment, but they are reviewing it to ensure they understand it.

CHAIR SCHNEIDER:
What about Ms. Foley's proposed amendment, Exhibit G?

MR. WADHAMS:
I do not have a problem with Ms. Foley's amendment.

LOUIS ROGGENSACK (Executive Director, Chairman of the Board, Nevada Life and Health Insurance Guaranty Association):
I would like to clarify your question regarding the responsibility of the State should a company go insolvent. *Nevada Revised Statute* 686C.240 states the NLHIGA can assess all of these companies for the amount of claims as necessary [to continue keeping the policies in force]. Over the next 5 years, each of those companies that have been assessed would be allowed a deduction of 20 percent from their premium tax payment to the State. Over five years, 100 percent of what is assessed would be taken out of the premium tax.

CHAIR SCHNEIDER:
Would it be recovered by the companies?

MR. ROGGENSACK:
It would be recovered by the companies through their premium tax deductions.

CHAIR SCHNEIDER:
Would the State pay $100 million?

MR. ROGGENSACK:
Yes, that is correct.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 74, and we will open the work session on A.B. 255 with the work session document (Exhibit J).

ASSEMBLY BILL 255 (1st Reprint): Revises procedures relating to certain accidents occurring in the course of employment. (BDR 53-102)

SENATOR SETTELMEYER:
I was bothered by the list of employee representatives in section 1, subsection 2 of the bill. I have no problem with family members or individuals being kept in the loop on the status of a claim. I was concerned with who was considered the representative of a deceased employee. It can be a representative of the employee bargaining unit, an attorney acting on behalf of the employee or a person designated by a court. I am concerned by that language. Is that common throughout statute, or is this new?

DONALD E. JAYNE (Administrator, Division of Industrial Relations, Department of Business and Industry):
Some of the information in the subsection to which you are referring is at the top of page 3, lines 1-7 of A.B. 255. That language is attempting to codify who would be an authorized representative in the event it is needed.

In Nevada, Occupational Safety and Health Administration (Nevada OSHA), representatives of the collective bargaining relationship have been involved if the employer is a union shop. The labor representative has always had the right to participate in the process and to participate in informal conferences and meetings. The addition of the attorney and the person designated by the court comes from concerns of the stakeholders that if someone is incapacitated and we are advised who is the representative, we would also notify the representative. That may be new to Nevada OSHA standards. Section 1, subsection 2, paragraph (c) is meant for someone who is incapacitated.

STEVE COFFIELD (Chief Administrative Officer, Nevada Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry):
I concur with Mr. Jayne's comments. Labor has had an active role in Nevada OSHA inspections. This would be an additional standing that would allow labor representatives to be kept up to date about the inspection process that takes place when a fatality occurs or when there is a catastrophic accident which hospitalizes three or more employees. It would be a new entitlement to the union. Section 1, subsection 2, paragraphs (a), (b) and (c) of A.B. 255 are new, and to my knowledge, federal OSHA does not have an equivalent to paragraphs (a), (b) and (c). Nevada would be the only state plan in the Country to offer this information.

CHAIR SCHNEIDER:
Mr. Ostrovsky, do any of these proposed amendments cause any problems for your clients?

BOB OSTROVSKY (Nevada Resort Association):
I would concur that labor has always had standing in Nevada OSHA investigations. We invite labor representatives to come with us on Nevada OSHA inspections. They are entitled to be with an employee with whom we speak. I participated in the interim meetings on this subject and participated in the negotiations that occurred in the Assembly on A.B. 255. I do not believe

this is an expansion of what we do. This is to ensure we do not miss anyone. If there are going to be lawyers involved, they will be involved. If the person is represented by labor, labor has a right to a standing in the case. It may be something new to Nevada, but it may be a small change. We are trying to let families feel they are involved and can have input in the case prior to the decision-making process. That is the overriding piece of this. I understand Senator Settelmeyer's concerns. I would not let that section alone or those words hold up this bill. I do not view it as a significant change.

SENATOR HALSETH:
I would suggest the same thing. I had the same issue with A.B. 255.

SENATOR SETTELMEYER:
If paragraphs (a) and (b) of section 1, subsection 2 on page 3 were deleted, I would support the bill.

CHAIR SCHNEIDER:
If we eliminate paragraphs (a) and (b) of section 1, subsection 2 from A.B. 255, the bill would have to be returned to the Assembly. This has been worked out, and probably 90 percent of all the people representing employees in Nevada are happy with the bill. They need the bill.

SENATOR SETTELMEYER:
I support the intent of the bill. I support 95 percent of the bill, but those lines perplex me, and as indicated in the testimony, this is something new in the United States. This is something that is not common, and it perplexes me. I would give this bill unanimous support on the Senate Floor, but that aspect bothers me.

SENATOR HALSETH:
I would like to echo what Senator Settelmeyer is suggesting. This is a great measure; however, there are some reservations with that section. We could get unanimous support if we just edited out a few portions.

SENATOR BREEDEN:
When people are having an issue with Nevada OSHA, they have representatives working with them. Whether it is someone from the union or an attorney, if an injured employee does not have a representative with them, then that employee

is all alone. To eliminate this support would be a disadvantage to the injured employee.

CHAIR SCHNEIDER:
Under the workers' compensation statute, is it the law that the attorney must be notified?

MR. JAYNE:
In workers' compensation, if we are notified of counsel representing an injured worker, we correspond with the attorney. Mr. Coffield was explaining that some of the criteria listed here, regarding the information we would send, is new to us. In Nevada OSHA, we need to be at least as effective as the federal program, and we are. This bill would go beyond the federal program and provide more information to the families or representatives of the families.

SENATOR BREEDEN:
What is wrong with that? The transparency part is important. What is wrong with giving information to family members?

SENATOR SETTELMEYER:
I did not say I had a problem with that. My problem is a new entitlement program for the unions.

SENATOR BREEDEN MOVED TO DO PASS A.B. 255.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HALSETH, ROBERSON AND SETTELMEYER VOTED NO.)

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CHAIR SCHNEIDER:
We will go to the work session on A.B. 359 with the work session documents (EXHIBIT K).

ASSEMBLY BILL 359 (1st Reprint): Revises provisions governing energy. (BDR 58-1064)

JUDY STOKEY (NV Energy):
After this bill was heard yesterday, the parties got together and discussed the bill to ensure everyone's concerns were addressed. Luke Busby has submitted a proposed amendment to A.B. 359, Exhibit K.

In section 3.5 of the proposed amendment, regarding the definition of contiguous, could counsel please explain what programs will be affected?

MATT NICHOLS (Counsel):

> NV Energy had expressed some concerns the other day that the addition of the definition of contiguous to [NRS] chapter 704 would somehow expand the ability of the Public Utilities Commission [of Nevada] to interpret what a premises means generally throughout 704 and throughout the regulation of utilities. It's ... in theory, that definition applies to the entire [NRS] chapter ... 704, but definitions only have an effect where that word itself is used, and the word contiguous is used only once in the bill as it sits before you, and that's for hydro power for the purposes of net metering. That is similar to Senator Settelmeyer's bill that we had in here earlier in the Session. And then in the mock-up that you have in your work session document, the use of that term, contiguous, its again in the same section, but it would apply only to wind power and only for the purposes of certain net-metering systems. And so, while definitions generally apply throughout a chapter, they only apply when they are specifically used. So either with the bill or the bill as amended by the mock-up, contiguous would only modify net metering for hydro power or for certain wind programs. It would not expand the commission's authority beyond that.

MS. STOKEY:
That makes me much more comfortable.

ASSEMBLYMAN PETE GOICOECHEA (Assembly District No. 35):
We worked on the proposed amendment, Exhibit K, and I am fine with it.

LUKE BUSBY (Clean Energy Center, LLC):
We support the proposed amendment, Exhibit K, with one small technical issue. There is a possibility that a third-party owner of a wind system could be classified as a public utility. We would ask that the proposed amendment to A.B. 359 be modified in section 6, subsection 1, paragraph (c), providing eligibility for net metering of this narrow class of wind projects for institutions of higher learning, to make clear that third-party owners of such systems are not public utilities. I have conferred with NV Energy and the bill's sponsors on this issue, and they have no objections to this change. We ask that it be incorporated into the proposed amendment.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 359.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
Having no further business, the Senate Committee on Commerce, Labor and Energy is adjourned at 4:38 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 74	C	Brett J. Barratt	Slide Presentation
A.B. 74	D	Brett J. Barratt	Explanation of the External Review Process
A.B. 74	E	Brett J. Barratt	Proposed Amendment 442
A.B. 74	F	Brett J. Barratt	Written Testimony
A.B. 74	G	Helen Foley	Proposed Amendment
A.B. 74	H	Steve Watson	Proposed Amendment
A.B. 74	I	Assemblywoman Maggie Carlton	Proposed Amendment
A.B. 255	J	Chair Schneider	Work Session Document
A.B. 359	K	Chair Schneider	Work Session Documents