MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
February 16, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:07 p.m. on Wednesday, February 16, 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:

Senator Joe Hardy, Clark County Senatorial District No. 12
Senator Dean A. Rhoads, Rural Nevada Senatorial District

STAFF MEMBERS PRESENT:

Matt Nichols, Counsel
Scott Young, Policy Analyst
Vicki Folster, Committee Secretary

OTHERS PRESENT:

John Wagner, State Chairman, Independent American Party
Lynn Chapman, Nevada Eagle Forum
David Schumann, Nevada Committee for Full Statehood
Tray Abney, Reno/Sparks Chamber of Commerce

Lea Tauchen, Director, Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Samuel P. McMullen, Las Vegas Chamber of Commerce
Gail Tuzzolo, Nevada AFL-CIO
Yvanna Cancela, Culinary Workers Union Local 226
Danny Thompson, Nevada AFL-CIO
Marlene Lockard, Nevada Women's Lobby
Rita Weisshaar, International Brotherhood of Electrical Workers Local 1245
Randy Waterman, Public Agency Compensation Trust
Carole Vilardo, President, Nevada Taxpayers Association
Wayne E. Carlson, Executive Director, Public Agency Compensation Trust
Rusty McAllister, Professional Firefighters of Nevada
Ronald P. Dreher, Peace Officers Research Association of Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
John Sande, III, Nevada Bankers Association; Board of Western Alliance Bank
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry

CHAIR SCHNEIDER:
We will open the hearing on Senate Bill (S.B.) 99.

SENATE BILL 99: Makes various changes concerning consumer protection. (BDR 52-127)

SENATOR JOE HARDY (Clark County Senatorial District No. 12):
I am introducing S.B. 99 for your consideration. The City of Henderson and the Henderson Chamber of Commerce became aware of telemarketing entities that offered grant-writing services to businesses. These companies would obtain business licenses and join the Chamber of Commerce to provide an air of legitimacy. Once operational, the grant-writing entities would contact business owners in other states and offer to write funding proposals for a fee. The recorded fee stated in the contract was always below $10,000 with a notation of no guarantee of success. After the contract for services was signed and fees were paid, no grant funding was ever obtained, as no effort was made by the telemarketers to actually prepare grant requests.

The victimized out-of-state businesses described the problem to the Chamber of Commerce and local and state entities. The entities would then say they could not do anything outside of the civil process, because the fees were less than

the $10,000 limit. Senator Stan R. Olsen, serving in the 26th Special Session, became aware of this problem and recommended we do something to prevent scam artists from working in Nevada to avoid becoming an Internet banking-scheme mecca.

In full disclosure, when the bill was written, it had some fatal flaws. One of them was the $3 million fiscal note. Another was the $100,000 bond requirement for each grant-writing entity. After hearing from many grant-writing individuals, I considered killing the bill, but the same individuals agreed that we should address the need to prevent scam artists from taking advantage of Nevada and businesses in other states. At this time, I request the Committee's help to determine if there is method to prevent scam-artist operations in Nevada in a way that will not harm nonprofit organizations, insurance companies and anyone identifying fundraising needs.

SENATOR COPENING:
Did you work with, or reach out to, any legitimate professional grant writers to develop the language for this bill?

SENATOR HARDY:
I received many contacts from the community of grant writers and they have indicated the bill has fatal flaws. There is a problem, and we would like to solve it during this Session.

SENATOR COPENING:
I would be happy to assist you during this Session.

CHAIR SCHNEIDER:
I propose a subcommittee to work with S.B. 99, and Senator Halseth will chair the subcommittee. The hearing is closed on S.B. 99.

The hearing is now open for Senate Joint Resolution (S.J.R.) 2.

SENATE JOINT RESOLUTION 2: Proposes to amend the Nevada Constitution to repeal the constitutional provision requiring the payment of a minimum wage. (BDR C-578)

SENATOR HARDY:
Senate Joint Resolution 2 involves the Fair Labor Standards Act's (FLSA) minimum-wage standard requirement that became effective on July 24, 2009, and Nevada's $1 increase above the FLSA standard requirement. At that time, the Nevada voters were concerned about the fairness of paying only $5.15 per hour to a willing worker. Since then, the FLSA minimum-wage standard has increased significantly and in Nevada we find ourselves paying a teenager over $8 per hour for an entry-level job. Those employers who provide health insurance coverage get a break from that requirement by not paying the $1 over the FLSA wage standard. We now see employers who are concerned about the economy and the viability of their businesses becoming more cautious and reluctant to hire individuals for $1 more than what is required in other states. Teenagers and hospitality workers are especially affected by this climate of hiring at the mandatory minimum wage. Some employers have made up for paying higher minimum wage by hiring fewer individuals, cutting back hours and limiting overtime hours.

Nevada's higher minimum-wage requirement has had some unintended consequences on the job market. The $1 increase over minimum wage has shifted the curve away from job growth. This proposal will eventually require a vote of the people to amend it out of the *Constitution of the State of Nevada* and return Nevada to a level playing field with other states for those who want to create jobs and foster economic growth.

SENATOR COPENING:
Senator Hardy, please explain your comment "level the playing field with other states."

SENATOR HARDY:
There are about 36 states that have a minimum wage consistent with the FLSA minimum-wage requirement. Fourteen states have minimum wages higher than the FLSA minimum-wage standard, and Nevada is one of those. After reviewing how those are juxtaposed geographically, we compared the best economies of those states. At the moment, Texas is one state that is doing well economically with the normal federal minimum wage. This certainly is not indicative of the only thing that Texas may be doing differently than Nevada, but it is one of the things that should be looked at. Are we pricing ourselves out of a market of attracting businesses and jobs?

SENATOR COPENING:
Senator Settelmeyer just showed me a graph that indicates the variations between the states. Of those that have either no minimum-wage laws or lower than the federal requirement, can you tell me about their economic climate or how employment is doing in those states? Do they tend to have a higher amount of welfare recipients? Have you done any research in that area?

SENATOR HARDY:
I have not completed any original research but the bottom line is, if we look at the states close to us such as Utah, that are thriving, they have a lower minimum wage than Nevada. We are going to be competing with them. California has a higher minimum wage and, in my opinion, the people who are leaving there are going to Texas, a state with a lower minimum wage. This is one type of information to look at. Georgia, with no minimum wage, is another state to consider. However, states with no minimum wage always have the FLSA's minimum-wage standard even if they do not have a state wage law. Whether or not the Legislators vote twice to allow the people of Nevada to vote again, it would still go back to the FLSA standard minimum-wage law. We would not be doing away with minimum wage; we would be doing away with the increased minimum wage previously passed in Nevada.

CHAIR SCHNEIDER:
Senator Hardy, have you done a comparison with any of the surrounding states, such as Utah? Have you compared our overall tax rate and the fact that we have no income tax, no corporate tax, no inventory tax, etc., and how these factors affect businesses' overall costs in one of those states?

SENATOR HARDY:
I do not have the figures in front of me. If we consider the tax structure in other states such as income tax, corporate tax, etc., they have a higher tax in every area and they struggle with their economy. This is not a single pivotal thing that happens, but it is one of the things businesses are looking at when they are trying to consider hiring or whether or not to keep someone employed.

CHAIR SCHNEIDER:
We will now hear from those who are in favor of S.J.R. 2.

JOHN WAGNER (State Chairman, Independent American Party):
We are in favor of this bill and believe that the FLSA's standard for the minimum wage should be sufficient. We should be more like the state of Texas, rather than like our neighbor to our west.

The intent of the minimum-wage bill is good. We want to help people prosper. The problem occurs when jobs are not worth the minimum wage. Employers get around paying minimum wage by hiring someone "under the table," or by eliminating a position and combining it with another. The minimum-wage intention is good, but the results have not been good.

LYNN CHAPMAN (Nevada Eagle Forum):
We support S.J.R. 2 for many of the same reasons that have already been stated. It prohibits people from working, usually minorities and teens.

DAVID SCHUMANN (Nevada Committee for Full Statehood):
This bill will affect people in their teens. Teenagers who lack skills and experience are not worth $8 per hour. As they learn more skills, employers will pay more. As the minimum wage currently stands, it is a deterrent to employing teenagers and minorities. The original bill is a bad one and what is being proposed is an excellent idea.

TRAY ABNEY (Reno/Sparks Chamber of Commerce):
We support S.J.R. 2. The Chamber of Commerce has historically been opposed to making these types of decisions by the initiative process. We believe these types of laws and decisions should be made at the Legislature in a committee hearing such as this. With the nation's highest unemployment rate, making labor more expensive is probably not the best way to create jobs. We support this bill.

Lea Tauchen (Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada):
We support S.J.R. 2. At the time of the original enactment, Nevada was experiencing phenomenal economic expansion. Unfortunately, not enough thought was given to what would happen if the economy would enter a downward cycle. A consideration that may not have been discussed at the time of enactment was the potential of another terrorist incident occurring, such as the tragedy of September 11, 2001, where we experienced serious travel restrictions and curtailment to the economy in Las Vegas. These types of

realities require flexibility, not blind escalation of wages in the face of circumstances that can worsen. We want to avoid unintended consequences such as those that Senator Hardy mentioned, and a one-size-fits-all compensation policy could do that.

The middle ground we are proposing is at the minimum providing some flexibility for rolling back when economic circumstances support it and in the same manner, rolling forward as economic indicators indicate an increase is appropriate. For Nevada to be competitive with other western states, we need a policy to give our private-sector managers the tools to remain competitive.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce):
We actually opposed S.J.R. 2 when it was first introduced, but we now support the bill. We would like the Committee to revisit some of the arguments that were utilized for the passage of this resolution. There are many good arguments for the dignity of employees and what they should be paid. Our primary opposition at the time was based on the fact that it was going to lock the rate into the Constitution and, in hindsight, may have not been the best thing.

Arguments for the passage at the time included the rates. They were too low before the federal government passed the minimum-wage increase. The increase consisted of 3 increments of 70 cents per hour that have now, or are about to be, fully implemented. Consequently, we are now at $1 above the $2.10 incremental increase. The real issue is whether or not we want to lock into being $1 ahead of every other state. This is now a locked-in statute and the circumstances have changed and will continue to change. It may be better to let the people have the chance to revisit this and take it out of the Constitution and continue to manage it on a case-by-case basis through the statute.

One argument was that it had to be in the Constitution. The reason it was structured as a constitutional initiative was to make sure it got into the election cycle for the next general election. We are now locked into some complex amendments of the Constitution in terms of technical detail with a document that should have set the policies and goals and then the details should be established by statute. This would allow the public to decide whether it should be removed from the Constitution.

Another reason was, in that economy, other employers would not be fair. I think the economy has shown us that there are other reasons about the fairness or

the unfairness of employers. One of the side issues was that we would not need a tip credit and we could lock that into the Constitution.

Another anomaly of the constitutional initiative passage was that some individuals in the restaurant business, because of tip revenues, were paid higher wages than individuals who were not eligible for the increase due to employer benefits being paid. The $1 per hour pay increase did not apply to them. Frequently there are other unintended consequences with this law, including employers reducing employee hours or reducing the individual to a part-time status to adjust to higher employment costs.

Additionally, this would synthesize health care. Basically, $1 per hour is approximately $166 in additional payroll costs for full-time workers working 40 hours per week. The trade-off in this constitutional initiative when providing health-care coverage to families and dependents is that employers can reduce the minimum wage. The few that are affected are tipped employees in the restaurant industry.

We would support a resolution to allow this issue to be revisited by the public.

CHAIR SCHNEIDER:
We will now hear from those who are opposed to this resolution.

GAIL TUZZOLO (Nevada AFL-CIO):
Nevada families have had a few rough years. The economy has devastated our communities, leaving many unemployed or underemployed. The middle class is rapidly shrinking. We should be talking about creating jobs and rebuilding the economy, not taking income away from individuals who are struggling to put food on their tables.

The historical record is clear. Increases made to the minimum wage have helped to lower the poverty level. Increases in the minimum wage typically raise the wages of the lowest-paid workers. Many of these individuals are part of low-income families. Economists have evaluated the impact of the minimum wage since the inception of the wage floor in the 1930s. At this point, the debate over the purported job-loss effect is a debate over whether this effect is slightly below zero or at zero. Even if the most negative finding is accepted, the conclusion is that the benefits far outweigh the costs. There is no better example than the most recent increase that took place in the 1996-1997 years.

Despite the dire predictions that we heard today, we have solid evidence that the last minimum-wage increase lifted the earnings of the low-wage workers without diminishing their employment prospects.

Two noted economists, Jared Bernstein and John Schmitt, in 1999, investigated the employment effects of the 1996-1997 wage increase. They ran four separate tests in four separate states and found that none showed systematic job loss; the effect on employment is generally economically small and statistically insignificant—as likely to be positive as it is to be negative—and academic models, time-series models, revealed statistically insignificant results.

We also know that low-wage earners put every bit of their income back into the community where they live. When we talk about rolling back the minimum wage for Nevada's low-wage workers to the federal limit, we are talking about literally taking money away from our lowest-paid workers. This affects poor people. Taking this provision out of the Constitution will be another step in moving Nevada's most vulnerable citizens backwards.

YVANNA CANCELA (Culinary Workers Union Local 226):
We have had much discussion today about the fact that this is a constitutional amendment. In 2004, it received the highest number of votes by citizens of Nevada than any other item on the ticket. That is important to remember. In 2006, it was voted on again. This was decided by the people and should not be changed against their will.

DANNY THOMPSON (Nevada AFL-CIO):
We sponsored this initiative petition. It is interesting to me that many have testified today and discussed the Constitution when the reality is, this is the law of the land today because of the people of Nevada. We brought this bill to the Nevada Legislature and the Legislature refused to change the law. We then went to the citizens of Nevada who signed a petition in order to put this on the ballot. There were over 200,000 signatures. The citizens discussed this issue in every county of the State. This issue received more votes than any elected official in both elections in which it stood before the voters. This issue received more votes than any other issue on the ballot for four years. For individuals to come here today and say that the Legislature should undo this is a slap in the face of the people of Nevada.

We put a provision in to help with the cost of health care. If an employer were trying to help employees with health care, this initiative helped in that the employer did not have to pay the additional $1. That was before the federal government acted and now their actions have been undone by a federal court, and this is relevant again.

We are opposed to S.J.R. 2.

SENATOR COPENING:
Mr. Thompson, if this were given to the people for a vote today, what do you believe would be the outcome?

MR. THOMPSON:
Considering the economic condition today, this would result in a higher vote. There is no question in my mind that people are suffering and they are not going to vote to reduce the minimum wage. Minimum-wage earners do not put their money in Swiss bank accounts; they spend it in the community where they live.

SENATOR SETTELMEYER:
I understand your opinion on this initiative, so I do not understand what the problem is in letting it go to a vote of the people. If you are confident that the people will do it, let it go to the ballot and let it get defeated. We have other subjects in the Constitution that some individuals would have no problem changing. I think your argument is invalid, because people have the right to vote again and make a decision. They may make a different decision.

MR. THOMPSON:
You may do that in this process. If you do bring it to the ballot, you would be thwarting the will of the people, because the people signed a petition after the Legislature failed to act.

MARLENE LOCKARD (Nevada Women's Lobby):
The Nevada Women's Lobby represents women and children in various communities in Nevada. We feel this would have a very negative impact on the working poor and the single parent trying to raise a family on that $8 per hour.

RITA WEISSHAAR (International Brotherhood of Electrical Workers Local 1245):
The paychecks that minimum-wage workers bring home are crucial to their families' survival. We often hear the claim that a higher minimum wage makes it

harder for small businesses to hire workers. However, a study by the Fiscal Policy Institute (Exhibit C) found no evidence that state minimum wages hurt small businesses' employment. In fact, they found the direct opposite. It appears we are taking money out of people's pockets during this terrible economic depression. It would drive us deeper into the hole we are in.

Repealing Nevada's minimum wage is unfair. While working people are struggling to put food on the table and pay their bills, people at the top are keeping more for themselves. There are many examples, and I offer one from my own experience. I am a retired customer service employee from Sierra Pacific Power, now NV Energy. The customers in this utility now pay the highest rate of any mountain state. Minimum-wage workers are just trying to keep things together, trying to keep the gas and electricity on, while top NV Energy executives are making exorbitant amounts. Our own Public Utilities Commission of Nevada is investigating the staffing levels and the company's failure to hire enough people to keep the lights on. Where is the hearing on that?

My point is to stop looking at ways to "beat down" our State's minimum-wage earners. They are just trying to make ends meet. That includes a large group of retirees. Take a closer look at the maximum-wage earners. When I worked at Sierra Pacific Power, we were rated by JD Power as a top utility for customer satisfaction. Today, they rate last.

CHAIR SCHNEIDER:
Would you provide us with a copy of the statistics you mentioned?

MS. WEISSHAAR:
I will leave a copy with the secretary.

CHAIR SCHNEIDER:
We will close the hearing on S.J.R. 2. Senator Rhoads will discuss S.B. 135.

SENATE BILL 135: Revises provisions governing the presumption of eligibility for coverage for certain occupational diseases. (BDR 53-717)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):
The primary intent of S.B. 135 is to limit the time frame during which heart, lung cancer and hepatitis claims can be filed after an employee has retired or

terminated employment. Current law allows claims for presumptive benefits for these diseases to be filed for the rest of the employee's life, regardless of how long the employee worked, subject to a minimum of five years, for as long as that person lives after leaving the job. There is no law more liberal than this anywhere in the country today. Senate Bill 135 specifies a five-year time limit to file these claims after leaving the job. A definite time frame will better allow for potential future liability and for these claims to be more accurately quantified and more reasonably funded. With the current financial crisis where all Nevada public entities find themselves, having a lifetime filing period is not affordable. By limiting the time frame within which claims must be filed, S.B. 135 provides financial relief to our struggling cities, counties and the State. There is a proposed amendment (Exhibit D) that Randy Waterman will be presenting.

RANDY WATERMAN (Public Agency Compensation Trust):
I have submitted a proposed amendment to S.B. 135, Exhibit D. The intent of the amendment is to focus the discussion of this benefit to the time frame to which claims can be filed. Other items originally in the bill when it was written, exceeded what was intended by the requestor of the bill, the Nevada Taxpayers Association.

In an effort to make discussions more meaningful and to the point, it would be better if some of this clutter was cleaned up prior to the start of any discussions. The proposed amendment, Exhibit D, is intended to do just that. It will eliminate the distractions so everyone may focus on the sole intent of the bill which is to limit the time frame within which these claims can be filed.

I have discussed these changes with Senator Rhoads and Carole Vilardo, President of the Nevada Taxpayers Association. Basically, the proposed amendment reverts to the language contained in the current statutes in several sections of the bill, leaving only the claim-filing time frame to be considered.

Section 1 of the bill talks about cancer as an occupational disease presumed to have arisen out of the job. I suggested it be amended to remove the new language and maintain the original language in the current statute. It was not the intent of this bill to eliminate coverage to currently eligible volunteer firefighters. We would like to leave them in the bill and remove the new language.

In section 2, subsection 5, I suggest removing the word "rebuttable." The current language states that a disease of the lungs is conclusively presumed to be a result of the work and therefore compensable. Adding the word "rebuttable" directly conflicts with the current language above and takes away benefits from those currently eligible. This was not the intent of the bill requestor.

In section 3, subsection 1, the change suggested removes the word "rebuttable" for the same reasons. It conflicts with language in the bill:

> ... diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

Adding the word "rebuttable" directly conflicts with the original language and potentially takes benefits away from those currently eligible. This was not the intent of the bill requestor.

CHAIR SCHNEIDER:
Mr. Waterman, can you tell me who is the Public Agency Compensation Trust (PACT)?

MR. WATERMAN:
The PACT is a group of approximately 130 small public employers in the state of Nevada. These include counties, water districts and cities. Typically, it includes those entities that are too small to self-insure their workers' compensation insurance on their own. They have grouped together to self-fund their workers' compensation.

CAROLE VILARDO (President, Nevada Taxpayers Association):
This bill was requested to put in a time frame. I became aware of the time-frame issue at a conference in the fall of 2008. After speaking with Wayne Carlson, Executive Director, PACT, subsequently, this has been a subject at other conferences. The genesis was the Governmental Accounting Standards Board (GASB) set certain rules for government, including how the

public sector will do their financial statements and what will be included as liabilities.

Most of you are aware that in the last eight or nine years, GASB has required depreciation to be booked where government never booked it before; it has required the public employee retirement system liability to be booked; and it has required health care to be booked. Because we interface with GASB on a number of issues, I spoke with one of the project directors and asked him how we were treating heart and lung claims, how liabilities are booked and the reason for booking. The reason you book a liability, besides providing an accurate picture of what that budget and expenditures are for local government, is to recognize the ability to fund those liabilities. Discussions have arisen because of the Public Employees' Retirement System and the potential liability involved. Even then-Governor Kenny Guinn, in 2005, had a bill to start funding retirement health-care liability.

An example of a situation for an actuary to determine liability might include the following example: A police officer or firefighter takes a job at age 21 in Nevada and he leaves the job at age 29. After being out of the State for 21 years, he is diagnosed with a heart condition at age 50. During his absence from Nevada, he may have smoked or engaged in unhealthy habits, etc. Also during this time there is no requirement for an annual physical. His diagnosis includes the need for a bypass operation. He comes back into Nevada and, because he worked those five years with the State, he is now eligible to have medical coverage.

During the 21 years this individual is absent from Nevada, we have kept his benefit open. After researching other states, I found there is no other state that has an open-ended provision. The other states have very specific, finite times to file claims. There is a fiduciary responsibility to both police and firemen to know that, at some point, we can intelligently and logically fund benefits.

As it currently stands, you probably could not fund the benefit because of the fiscal situation in which the local governments find themselves. I am willing to discuss and review a tiered system of benefits. Perhaps we need to include language addressing types of illnesses and annual physical requirements to track the root cause of illness. I do not know the answer, but I do know from fiscal policy that there has to be a finite period of time placed in the provision of the statute. I am asking you to consider that.

SENATOR PARKS:
Ms. Vilardo, after reviewing the Nevada Electronic Legislative Information System (NELIS), I did not see the documentation you referenced of other states' programs. Do you have that information available?

MS. VILARDO:
I recently received that information verbally. The information is on the National League of Cities publication Website. I have a link to this site for this study and will send it to the Committee.

SENATOR PARKS:
Thank you. We could put that on NELIS and avoid using paper.

WAYNE E. CARLSON (Executive Director, Public Agency Compensation Trust):
The PACT was formed in 1996 as a self-insured group for public entities. We are in rural areas, representing smaller cities and counties with police and fire units. Our members consist of volunteers and paid employees who are eligible for this conclusive presumption of illness.

The workers' compensation system was founded on a legal liability relationship between an employer and employee. Conditions in the employment arena increased the risk to an employee in the occupation. For those conditions the employer agreed to provide coverage in exchange for limiting lawsuits between employers and employees. Conclusive presumption was demonstrated in a case litigated in 1998, the *Gallagher v. City of Las Vegas; City of Las Vegas v. Sorensen* decision. This decision described the minimum requirement for five years of continuous employment as a police officer or firefighter was enough to trigger a lifetime benefit; there was no limitation of when that claim is filed.

As Ms. Vilardo pointed out, if someone left employment after a short time or was terminated for cause or left the State or retired from a full-service career, that individual could come back and file a claim in their late years for heart or lung disease. Another factor is the demographic bubble. Those cases are more likely to come out in the next 15 to 20 years in a far more aggressive way. Additionally, the spouse who survives an employee is eligible for this benefit and receives those benefits for the rest of the spouse's life. This creates a significant long-term liability.

We do not have control over conditions resulting from an intervening cause or other working situations once people leave our employment. We have a benefit during employment and, as we are pointing out, at some point also for post employment so there must be an end point to calculate claims. It is an extremely difficult actuarial effort. It takes a combination of a health insurance, life insurance and workers' compensation actuaries to figure out the range. The initial PACT actuary study is only on the post-employment piece, showing a cost range from $20 million to $80 million. The study is based on the assumptions made as to when those heart conditions will develop, what the demographic factor will be and the awareness of the former employee about the benefit to come back to Nevada and file the claim. For PACT, it meant we had to raise our rates for our basic coverage for the active employees based on the potential long-term liability. Additionally, to add a component for the post-employment piece, our base rates, depending on the class, increased between 100 percent to 200 percent since 2001.

The post-employment piece alone was $1 million per year towards collecting that first $20 million. We are not there yet and are a long way from meeting that requirement. If we were to try to collect the $80 million at $1 million per year, it will take us a long time to get there. This is a huge liability that we do not know will develop at those levels. Our actuary, without doing a full study, informed PACT that if we were able to cap the liability post-employment to 5 years, we could cut that range down by 40 percent to 50 percent. We are still funding claims for people who are actively employed plus those separated for over five years. It will not eliminate all liability, but will give us an estimate, to some degree, of the savings potential from the post-employment piece.

We are a small number of employers compared to the large government entities whose liabilities, cumulatively, are far greater than ours. We have implemented a voluntary cardiac wellness program to reduce the risk. We have had resistance due to the perception that if one participated in the program, it might somehow take away benefits. This was not the intent. The program is a risk-management tool to cut down on the amount of liability. The participation rate is low. Once people leave employment, we have no ability to incentivize them. They do not have to have annual physicals. They are not getting orders to correct conditions. Once the individual leaves employment, the liability becomes greater than for those employees who are currently employed. We are asking for some time certainty to help with actuarial numbers and reduce the rates we have to charge. This is a fiscal issue for local government. Some believe this

compensation is taxpayers' burden and when it is not fully funded, the taxpayers would not want to come up with the full funding because of their own inability to pay.

Once employees leave employment, if they fully retire and do not go back to work somewhere else, the benefits they receive are the medical costs. The general actuarial assumption on medical inflation is about 7 percent per year. That means medical inflation may double the cost about every 10 years. That is a huge liability. If the employee leaves employment for another occupation and has a heart attack in the other occupation, the individual could then file a claim with us. The reason for that is, they could use the wage from the other occupation, combine it with the zero wage of retirement income and get an indemnity benefit. That is a very significant medical inflationary factor.

As we age, our medical costs go up. Our likelihood of having these various diseases and contributing causes go up. We are willing to negotiate a range of alternatives. We want to state that these claims need to be time-specific to better make the actuary calculations for the funding.

SENATOR SETTELMEYER:
What are your thoughts about changing the concept? Perhaps you could grant 1.5 to 2.0 times the length of employment for which a claim could be filed. A fireman who worked five to ten years would get much exposure. Why not give him 20 to 30 years of coverage or something of that nature, rather than a flat five years? What is your concept of that?

MR. CARLSON:
We are willing to look at alternatives and have discussed some of those items. We need some time-certainty to manage the liability risk. We are an entity that has actually started the funding program and are building up reserves for that potential, knowing this demographic bubble is going to hit us. We understand that many local self-insured governments have not, nor can, set up reserves, given the current fiscal crisis.

SENATOR PARKS:
Mr. Carlson, you mentioned something about a spouse getting a survivor benefit. Did I understand that correctly?

MR. CARLSON:
Yes. If the employee dies as a result of heart disease, then the survivor gets that same stream of indemnity payments for the rest of that person's life.

SENATOR PARKS:
Is that under the condition that they are still an employee; not a retiree or someone who comes back years later?

MR. CARLSON:
It is a condition of their relationship to the person who is eligible for the benefits. It would apply to both the employee and the retiree.

SENATOR ROBERSON:
I want to clarify your answer to Senator Parks. When is the survivor's benefit applicable? The example was of a person who left employment and had been gone for 20 years, then got heart disease and died. Perhaps he was married for two months. At that point does his spouse get benefits?

MR. CARLSON:
Yes. If his heart-disease claim is accepted, which under the current statute it would have to be, unless there is some other rationale behind excluding it, that spouse is eligible for continuation of those benefits.

SENATOR BREEDEN:
Mr. Carlson, do you have any first-responder statistics you can show us? Is there something showing how many have lung disease or heart disease?

MR. CARLSON:
We have limited data on our claims. There may be other studies that would indicate data for a broader range of claims. I do not have data for other entities that would have similar claims.

SENATOR BREEDEN:
Is what you have available to us?

MR. CARLSON:
I could put some statistics together and make it available to you.

SENATOR BREEDEN:
I should disclose that my son is a firefighter and he is young, so he will be able to retire with the full 25 years. I think folks may be forgetting the type of work they do and the injuries that happen to them. My concern is the stress they are under and the conditions of their work. I would like to see statistics indicating the ages and types of medical conditions that occur.

MR. CARLSON:
One of the things we have learned is not only from claims, but from our wellness-program data, is certain types of conditions such as metabolic syndrome, insulin resistance and other factors such as cholesterol levels are precursor indicators of potential disease. Through the PACT wellness program, our wellness providers have given me statistical profiles. We had a 29-year-old firefighter with out-of-control, undiagnosed diabetes that was discovered. That warned of a future heart attack. Had we not found it, he may or may not have discovered it within a reasonable time. Was it related to his work? It is doubtful. It is probably genetic. We obviously do not know the medical details. But we found other factors related more to lifestyle. The lifestyle of an individual may increase or decrease medical risk. That is why we try to manage it through the wellness program and identify those high-risk individuals. We can then assist them to better their health.

Claims filed by age do not give all the necessary information to help understand the risk. There are quite a few things in the risk profile that have not materialized into a claim yet. Our small base will not give you a significant indicator, but the large self-insured entities will have a larger base of statistical information. There is no central database source for that information. Each one has their own third-party claims administrator. It is not uncommon that those claims exceed $1 million for heart disease, especially when there is a surviving spouse and the spouse has a long lifetime. Those are the volatile parameters that we get hit with and have difficulty funding, especially without a post-employment, risk-management program in place.

SENATOR ROBERSON:
Ms. Vilardo, how long has this policy been in place in Nevada? You previously mentioned that this is unique nationally and no other state has this type of policy. Was this put in place because at the time we were trying to recruit more firefighters and police officers to Nevada? If that is the case, has that situation changed since then?

MR. CARLSON:
The conclusive presumption language has been in law and was not for lifetime benefits until the *Gallagher v. City of Las Vegas; City of Las Vegas v. Sorensen* decision in 1998. That involved two former firefighters who retired and two years after their retirement filed heart-disease cases. That is when the presumption of disability was extended to a lifetime interpretation. I do not believe that firefighters or police officers assumed it was for life when the law existed. The workers' compensation system is a legal system where there is a nexus between the employer and the employee relationship. In certain occupational diseases, we recognize the delayed manifestation, allowing for a short period of post-employment. None of the other occupational diseases for other employees is longer than five years, post-employment. Typically it is three months for every year of service, not to exceed five years. This is the first time the courts determined there does not need to be a nexus to work. It was not until that decision was made that this liability became so large that it became impossible to calculate effectively what the necessary amount is to be placed in reserve to fund this risk.

MS. VILARDO:
When I made that statement, I meant there was no other state that has a totally open-ended policy. They all are year-specific. Nevada is the only state that has no post-employment limit, or at least for the life of the claimant and beyond in some cases.

CHAIR SCHNEIDER:
Years ago this was a workers' compensation issue in which cities and counties were anxious to get out from under the state system to go on their own and they were heroes for five or six years because they saved money. They were warned about a "tail" and now there is a tail. Negotiated contracts have saved money for a few years and now adjustments are being requested.

MS. VILARDO:
The reason we are back here is the GASB started reviewing government financial statements and made substantive changes, starting with derivatives. Ultimately, it is the taxpayers' dollars that fund the state and local government. There were many items in government's budgets that were required by the GASB standards to appear in a private-sector budget. Yet the budgets were not transparent for government. Now people have become very aware of the liability. If we keep spending money on programs and services and do not cover

the liability, at some point that liability manifests itself in substantial numbers. It is the taxpayer on the hook. It is not a transparent issue. You have done a disservice to the people who are supposed to benefit from this program. We have consistently recommended the support of funding to the Public Employees' Retirement System and retiree health care. We have recommended that surpluses be used to get a jump-start on that. When you find out you have the only benefit that goes forever and it is not time certain, you start to question how to handle it. Even if we want to fund it, it will have to be funded higher. When funded higher, there is less money for programs and services unless we want to raise the tax base.

This is a fiscal-policy issue. I want transparency and know that nobody is going to get the short end of the stick. That is the reason for the bill.

MR. CARLSON:
In response to your comments about the self-insurance environment, I was a risk manager of a county that went self-insured back in 1981. Others went in the mid-eighties to the early nineties, prior to the *Gallagher v. City of Las Vegas; City of Las Vegas v. Sorensen* decision. The liability was active during the period of time individuals were current employees. We are not talking about that time. We are talking about when the liability happens post-employment for life. That is the unfunded liability. That is the liability that is very difficult to predict and which we want to cap. We recognized the risk and we managed that risk for current liability in the PACT program, and we built up reserves appropriate for the current employment. It is for the post-employment piece that we are trying to build funds. We cannot afford to raise the rates to cover the liabilities soon enough and the local governments cannot afford to pay those rates. We are going to have to pay between $20 million and $80 million.

CHAIR SCHNEIDER:
Is there anyone in opposition to S.B. 135? Once we hear from the opposition, we will submit the bill to subcommittee. The chairman for the subcommittee is Senator Parks.

RUSTY MCALLISTER (Professional Firefighters of Nevada):
We are opposed to the changes being proposed with the amendments. To address Senator Roberson's questions, the heart and lung statutes started in 1965 for firefighters for lung and 1967 for heart coverage. Police officers were added to that coverage in 1973. It has been amended about five times since

then. The last time it was amended with a significant change was in 1989 when they added the language for conclusive presumption. Then the Legislators reviewed it and the discussion was regarding the denial of claims on rebuttal presumption. To clarify that, the Legislature chose to add in the conclusive presumptive language. That was voted on and passed unanimously by both Houses.

Since then, in 1998, the court case that Mr. Carlson refers to, the *Gallagher v. City of Las Vegas; City of Las Vegas v. Sorensen* was decided. The Nevada Supreme Court ruled that based on the language of the statute, if the firefighter or police officer worked continuously for five years or more and had followed the guidelines of getting annual physicals and corrected any predisposing conditions, their benefit went forth. The Supreme Court awarded on behalf of the two retired firefighters from the City of Las Vegas who worked 30 and 35 years, respectively. Both had heart attacks two years after they retired.

Also in 1998, after the decision, there was an interim committee formed for workers' compensation chaired by former Senator Ann O'Connell. They discussed the heart and lung language and proposed changes to that language. One of the proposals during that legislative hearing, S.B. No. 132 of the 70th Session, was to change and place a sunset on the heart and lung benefits because of the *Gallagher v. City of Las Vegas; City of Las Vegas v. Sorensen* decision. An arbitrary number of four months for every year of service was chosen. Actually, that was a better deal then, because they offered more time at that time than they do now. Today, they offer five years' post-employment; back then the offer was four months for every year of service which would have been 10 years for a person who worked 30 years. The Senate Committee on Commerce and Labor was chaired by ex-Senator Townsend with former Senator O'Connell as Vice Chair. Senator Schneider and Senator Rhoads, the sponsor of the bill, were on this Committee. At that time, the Committee decided to "peel off" the legislation regarding heart and lung, or any sunsets, and completely disposed of it. They passed the bill as an infectious-disease bill on a completely different topic. The issues with regard to the sunset of heart and lung claims were removed from that legislation.

Twelve years later, with five different Senators, we are looking for another bite of the apple. There are new players, but this is not a new issue. Mr. Carlson and I have differed on the way we think about certain things. That being said, Ms. Vilardo has brought forth the idea that we need a five-year sunset.

I understand her concerns about funding. In 2003, the Committee asked representative members of police officers and firefighters, along with the self-insured associations, to get together and do some research about how many claims there were, how much money was being spent on medical expenses and how much indemnity was being paid out. We put together a questionnaire that was sent to the employers and received data back from them. The questionnaire was extensive, asking how many claims they had, the ages, whether male or female, whether police officer or firefighter, how many years of service, whether the claim was denied, accepted or appealed, how much was paid on medical expenses, how much was paid for indemnity and how much was reserved for medical and indemnity expenses. Based on this data, it showed significant amounts of money that was set aside for gross reserves for medical and indemnity expenses. If that is the case, and Ms. Vilardo states they have not set it aside, then perhaps they lied about the reserves to pay these claims.

In fairness to Mr. Carlson and Ms. Vilardo, they are talking about the cost of reserves needed to fund extended benefits out beyond the time of retirement. But for the benefit itself, supposedly, they have been setting aside reserves for these claims. Where did the five-year number come from? Can they show any medical data that says five years after I retire, after breathing and absorbing heaven knows what mixed together, you may wave your magic wand and I am better? It is all gone away; all the damage that was done during that period of time, is all gone and I am better and healthier. That is not the case. Logically speaking, as time goes by, the impact is worse as opposed to better. It is not like we get healthier five years later because of what we have been exposed to. There is a sunset clause currently on cancer legislation and I have numerous individuals with cancer, above the national averages. The five-year number intrigues me and I want to know where that number originated.

In response to Senator Roberson's question about whether a spouse receives a benefit, after conferring with our legal counsel it is our understanding if a member is currently employed that, yes, their spouse is entitled to some of that disability payment if the insured becomes diseased. If, on the other hand, the member is already retired, has filed a claim and is awarded a benefit, under the current statutes, they are not entitled to indemnity anyway. The Nevada Supreme Court, in *Howard v. City of Las Vegas,* stated they were entitled to medical coverage, but not indemnity. Therefore, I would surmise that after they retire and file a claim and were successful in that claim and later died, their

spouse would not be entitled to indemnity payments, because the Supreme Court has already ruled they do not get indemnity; they are only covered for medical payments.

We would like to be a part of the subcommittee.

SENATOR ROBERSON:
From your perspective, should there be any changes to the current law? Should we be the one jurisdiction, the one state in the country that has this policy? Is there any compromise?

MR. MCALLISTER:
Certainly we are not so close-minded to say we would never consider any other changes. In subcommittee, we would be willing to discuss with proponents of this bill any changes they may be considering that would provide both coverage and benefits for our members and address some of the concerns they have about funding. I find it interesting they have testified about a 21-year-old man who worked five years and left to work construction. Show me someone who has left before they actually retire from the police or fire department who comes back and files a heart or lung claim. I have not had anyone who can show me one claim.

SENATOR SETTELMEYER:
I understand your concerns. We keep adding more individuals into the heart and lung claims. As far as changes, they occur both ways. We have done things to make it more beneficial, potentially doing something you may view as detrimental. Just because a bill has not become due, does not mean it will not. I have a friend who quit working after 6 years of employment and went from 180 pounds to 325 pounds. If he has a heart problem, I do not believe it to be conclusively presumptive that it happened because of his job. Do you think that we could have some sort of concept, based on the length of employment that would make more sense than just a guaranteed presumption of disability after five years of employment?

MR. MCALLISTER:
Certainly, and we would be happy to discuss that. It is not our intent to have anyone who is not a career individual to jeopardize the benefit for those who are actually serving in a career capacity, putting forth 25 to 30 years of hard work and exposure. We do not want them to jeopardize our benefits.

SENATOR SETTELMEYER:
Where did the five years come from that is in the bill now, stating that after five years as a police officer it is rebuttable that it came from the job?

MR. MCALLISTER:
I do not know.

RONALD P. DREHER (Peace Officers Research Association of Nevada):
The Peace Officers Research Association of Nevada (PORAN) is opposed to S.B. 135 on behalf of all of our professional peace officers of Nevada. Mr. McAllister has done an awesome job of giving you a time line as to how this came about. We have heard Mr. Carlson try to undo and reduce the benefits we have. We heard Ms. Vilardo talk about the GASB Statement No. 45 which says you need to show an unfunded liability. Specifically, it does not have to be funded. Mr. McAllister showed that we were part of an interim study using questionnaires sent to employers of this State.

I have submitted information (Exhibit E) that includes a 2002 position paper written by Attorneys General Frankie Sue Del Papa and Thomas M. Patton, and a 2005 Opinion Paper based on the *Howard v. City of Las Vegas*. Everyone over the past 40 years recognizes there is a public policy that policemen and firemen are different. Senate Bill 135 changes the public policy that this body has endorsed over those years. The legislative body and the people of Nevada recognize the inherent dangers that our professional peace officers face each and every day of the year throughout their careers. This body recognized long ago, beginning in 1965, that the diseases of the heart and lung, and hepatitis in 2005, affect our communities' protectors and our immediate first responders more than regular employees. You have provided annual physical exams to us that we take every year, and we are monitored every year to detect any abnormalities in these categories. Those provisions work and are doing what they were intended to do. There is no valid reason to reduce or change those.

In the 1975 Legislative Session, the Senate and the Assembly unanimously voted to add two categories of peace officers and arson investigators to the heart and lung provisions. We presented evidence as to why they should be included in the conclusive, presumptive-for-life heart and lung coverage. Professional peace officers are our nation's soldiers. The reason we have come to you and why you have supported this in the past is so we can have coverage, post-retirement and throughout our careers. We came to this body

and then-Senator Townsend sponsored our bill for the survivor benefits. To answer Senator Roberson's questions, it was specifically about heart diseases and if the employee has a heart attack. Does the spouse get the coverage? Senator Heck at the time questioned that. The person does not get that benefit post-retirement.

My handout, Exhibit E, includes two opinions. The first is the 2002 Attorney General Opinion that speaks to what happens when a post-retirement person has a heart attack or a lung problem and they do not follow what the heart and lung doctors said they should. Those individuals do not get the coverage. While it says conclusive, it is rebuttable. One actually has to do what the doctor says at the annual physical exams. On page 6, footnote 2 reads:

> We note that while NRS 617.455 [subsection] (5) creates a conclusive presumption of occupational lung disease for firefighters and police officers who have served five years or more, and NRS 617.457 [subsection] (1) creates a conclusive presumption of occupational heart disease for the same employees, the Nevada Legislature also provided for an exception to the significant liability that arises as a result of these presumptions. Specifically, NRS 617.455 [subsection] (6) and 617.457 [subsection] (6) both provide that, "Failure to correct predisposing conditions which lead to [lung or heart] disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee."

That is specific. If you turn to the *Howard v. City of Las Vegas* decision, Exhibit E on page 8, note the decision. In that decision, it specifies the claimant gets the medical concerns taken care of. There is no disability benefit.

In closing, I hope that you will add us to the subcommittee. On behalf of PORAN, a group of individuals who put their lives on the line for Nevada citizens, there should be compensation as a cost of doing business. Please do not change this bill. We do have an exception in Nevada and if we are the only state out of our 50 states, so be it.

CHAIR SCHNEIDER:
We will close the hearing on this bill and submit it to subcommittee. We will now open the hearing on S.B. 136.

SENATE BILL 136: Revises provisions governing certain real property held by banks. (BDR 55-737)

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
Senator Rhoads submitted the bill for us. The community bankers drafted this bill as we looked at things we could do to relieve the regulatory burden on community banks. As you may know, there are both state and federally chartered banks in Nevada and this is a law that only affects state chartered banks. These banks fall under the Financial Institutions Division, Department of Business and Industry, where George Burns is the Commissioner.

The existing law says that if a state chartered bank owns other real estate owned (OREO), they have to disclose ownership within 10 years. The existing law says they have to depreciate it 10 percent per year regardless of the appraised value of that property. It has come to light that, because of Federal Deposit Insurance Corporation actions and the Generally Accepted Accounting Principles (GAAP), we have to have the property reappraised at least every 12 months. The reality for some banks is that some properties are reappraised more often than that. An appraisal is done, the property is obtained through foreclosure and 12 months later, after the property has been acquired, no matter the amount of the new appraisal, you still have to depreciate it 10 percent. Federally chartered banks do not have to make this reduction. We are asking that the 10 percent reduction requirement be eliminated. The bank then has two accounting statements. One is from the GAAP accounting and the other is the value minus 10 percent every year. We are trying to remedy that.

JOHN SANDE, III (Nevada Bankers Association; Board of Western Alliance Bank):
This law, I assume, came up when banks were foreclosing in the past, holding property too long. They wanted to bring pressure to dispose of property. Anytime property is foreclosed on, it is called OREO for banking purposes. We have had a tremendous amount of foreclosures in Nevada and banks have a lot of OREO.

An accountant knows if you are getting properties appraised regularly, the property is valued at the appraised value. The write-down of 10 percent is

eliminated if the home has not gone down 10 percent in value. On the other hand, if it had gone down by 20 percent, the write-off is shown as 20 percent on the financial statements. It causes a conflict between what accountants say needs to be disclosed to shareholders and what the law says. This seems to be straightforward, but many banks have had problems with this, especially in Nevada. I would point out things appear to be getting better and more banks believe they will have less loan losses and less nonperforming assets this year.

GEORGE BURNS (Commissioner, Division of Financial Institutions, Department of Business and Industry):
The Division of Financial Institutions neither supports nor opposes this proposal. However, because this is a statute that intends to address the issue of fundamental safety and soundness in banks, the Division requests that Legislators give consideration to all of the facts in the regulatory principles in the matter before rendering a final policy decision on this. Written testimony is submitted for the record (Exhibit F).

The background for OREO is explained, Exhibit F, along with the statutory intent of this particular provision of NRS 662.015, subsection 3. If the Committee should decide to eliminate the 10 percent charge-off provision of this statute, the Division respectfully requests the Committee give consideration to shortening the time period that a bank can hold OREO.

SENATOR COPENING:
Mr. Burns, are you planning to submit an amendment?

MR. BURNS:
I recently had contact with Mr. Uffelman and the Nevada Bankers Association about this bill. We are open to any discussion to develop some middle ground with which we all can live. If the Committee decides to eliminate this, it should also eliminate the 10-year holding period. From a regulatory point of view, we have other tools to enforce the non-holding of OREO with a bank. They are less direct than what is in the statute, but we can do that through a straight order.

VICE CHAIR BREEDEN:
We will close the meeting on S.B.136. There being no further business, the meeting of the Senate Committee on Commerce, Labor and Energy is adjourned at 3:09 p.m.

RESPECTFULLY SUBMITTED:

Vicki Folster,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

EXHIBITS

Committee Name: Committee on Commerce, Labor and Energy

Date: February 16, 2011 Time of Meeting: 1:07 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.J.R. 2	C	Rita Weisshaar	States with Minimum Wages above the Federal Level have had Faster Small Business and Retail Job Growth, March 30, 2006
S.B. 135	D	Randy Waterman	Proposed Amendment to S.B. 135
S.B. 135	E	Ronald Dreher	Testimony and Position Paper
S.B. 136	F	George E. Burns	Testimony and 2010 Opinion regarding NRS 662.015