

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

**Seventy-sixth Session
April 8, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 12:02 p.m. on Friday, April 8, 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:

Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12
Senator John J. Lee, Clark County Senatorial District No. 1

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dianna Hegeduis, Esq., Executive Director/Board Counsel, State Board of
Osteopathic Medicine
Rebecca D. Wagner, Commissioner, Public Utilities Commission of Nevada
Samuel McMullen, Nevada Self-Insurers Association
Randy Waterman, Public Agency Compensation Trust

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Craig Coziahr, Nevada Transportation Network Self Insured Group; Nevada Auto Network Self Insured Group; Nevada Retail Network Self Insured Group; Nevada Agriculture Network Self Insured Group; Builders Association of Western Nevada Self Insured Group

Danny Thompson, Nevada State AFL-CIO

Raymond Badger Jr., Nevada Justice Association

Barbara Gruenewald, Nevada Justice Association

Patrick Sanderson, Labor Local 169 Retiree's Council

Jack Mallory, International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council

Ron Dreher, Peace Officers Research Association of Nevada

Evan Beavers, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry

Rose McKinney-James, The Solar Alliance; Bombard Renewable Energy; Amonix, Inc.

Rachel McMahon, Amonix, Inc.

Stacey Crowley, Director, Office of Energy, Office of the Governor

Judy Stokey, NV Energy

John Owens, NV Energy

Joe Johnson, Sierra Club, Toiyabe Chapter

Kyle Davis, Nevada Conservation League

Randell S. Hynes, Nevada Solar Authority, Ltd.

Keith Lee, Nevada Board of Medical Examiners

John Pappageorge, Health Services Coalition

Marla McDade Williams, B.A., M.P.A., Deputy Administrator, Health Division, Department of Health and Human Services

Joanne Levy, Nevada Association of Realtors

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

Rocky Finseth, Nevada Association of Realtors

Teresa McKee, Legal Counsel, Nevada Association of Realtors

Bill Uffelman, Nevada Bankers Association

Jesse Wadhams, Asurion Insurance Services, Inc.

Brett J. Barratt, Esq., Commissioner of Insurance, Division of Insurance, Department of Business and Industry

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CHAIR SCHNEIDER:

In the interest of time, we are going to consider work session bills with the other bills today. We are removing Senate Bill (S.B.) 328 from the work session agenda per the sponsor's request. We should get to it next week.

SENATE BILL 328: Revises provisions governing the payment and collection of wages and other benefits. (BDR 53-108)

CHAIR SCHNEIDER:

I will open a work session bill, S.B. 259, on family trusts. There are proposed amendments from Robert Armstrong (Exhibit C) and Keith Lee (Exhibit D).

SENATE BILL 259: Revises provisions governing licensed family trust companies. (BDR 55-629)

SENATOR COPENING:

Can we get someone to explain what the changes in the amendment will do to the bill?

MATT NICHOLS (Counsel):

The mark-throughs in section 5, section 6, and there are a few other changes throughout that are fairly minor that mostly relate to the changes. Notwithstanding any other provision of law, the biggest change here is that the bill as presented would have allowed a licensed family trust company to essentially exempt a trust from the Uniform Prudent Investor Act, and the changes in the amendment would remove the ability for them to do that.

SENATOR SETTELMAYER:

Do these amendments conflict with each other, or can we accept both?

CHAIR SCHNEIDER:

We can accept both.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 259.

SENATOR SETTELMAYER SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR BREEDEN VOTED NO.)

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CHAIR SCHNEIDER:

I will open the work session hearing on S.B. 273.

SENATE BILL 273: Revises various provisions governing the practice of osteopathic medicine. (BDR 54-959)

DIANNA HEGEDUIS, ESQ. (Executive Director/Board Counsel, State Board of Osteopathic Medicine):

I support this bill. We submitted a proposed amendment ([Exhibit E](#)).

SENATOR COPENING:

I am very comfortable with this amendment.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 273.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

I will open a work session on S.B. 182.

SENATE BILL 182: Makes various changes concerning renewable energy systems. (BDR 58-286)

CHAIR SCHNEIDER:

We do have a proposed amendment prepared by the Research Division, Legislative Counsel Bureau (LCB), ([Exhibit F](#)) based on recommendations from the group working on this bill. I would like Mr. Young to review the amendment for the Committee.

SCOTT YOUNG (Policy Analyst):

The proposed amendment confines the bill to addressing the issue of the contractor's license for the solar thermal program. There has been some uncertainty about what the appropriate license should be for that. The amendment says an appropriate license is issued by the State Contractors' Board. The executive director of the Board is comfortable with this amendment. I have also seen e-mails from the interested parties and they are also comfortable with the amendment.

The amendment also deletes the extension of the wind and water power programs. Senator Schneider is planning to accomplish that in a different bill. On page 3, line 4, the language clarifies that the rebates are provided by the utilities, not by the Public Utilities Commission of Nevada (PUCN). There are some clarifications on page 3 in section 2, dealing with the appropriate performance certification standards from the Solar Rating and Certification Corporation.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 182.

SENATOR PARKS SECONDED THE MOTION.

SENATOR ROBERSON:

Was there an amendment that would sunset this program in 2021 and limit the amount to \$175 million?

REBECCA D. WAGNER (Commissioner, Public Utilities Commission of Nevada):

This bill is very simple. We took out references to the water and wind programs and to any sunseting. We left it very specific to the program for the gas companies. All the other amendments are going to be addressed in other bills.

SENATOR ROBERSON:

Who was involved in the working group?

MS. WAGNER:

The initial group was large, but when we narrowed it down to the solar and thermal program, we were left with NV Energy, Southwest Gas, Mr. Johnson, Luke Busby from the Clean Energy Center and the PUCN.

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CHAIR SCHNEIDER:
We will finish the vote if there is no more discussion.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
I am closing the work session and opening the hearing on S.B. 21.

SENATE BILL 21: Revises the requirements for reopening a claim of compensation for a permanent partial disability. (BDR 53-479)

SAMUEL McMULLEN (Nevada Self-Insurers Association):
I represent a consortium of self-insured companies that manage their own plans. I am presenting a "proposed amendment to mock-up" ([Exhibit G](#)), prepared by the Nevada Self-Insurers Association, dated April 6, 2011. This document is an effort to clarify language in the original "mock-up" ([Exhibit H](#)), prepared by the Legal Division, LCB, dated April 5, 2011. I know it is confusing, but we did want to make some minor changes to the April 5 document. We would appreciate your support.

RANDY WATERMAN (Public Agency Compensation Trust):
We support Mr. McMullen's amendment. We especially like the portion on catastrophic claims.

CRAIG COZIAHR (Nevada Transportation Network Self Insured Group; Nevada Auto Network Self Insured Group; Nevada Retail Network Self Insured Group; Nevada Agriculture Network Self Insured Group; Builders Association of Western Nevada Self Insured Group):
We support this amendment.

CHAIR SCHNEIDER:
This will go to work session next week. I would like to call Danny Thompson to tell us whether this bill does what we want it to do, which is to make the workers' comp process more efficient.

DANNY THOMPSON (Nevada State AFL-CIO):

This issue has been hashed and rehashed for 30 years. This amendment undoes some agreements that were passed into law during the 75th Legislative Session only two years ago. I would sum this up as "You gotta be kidding me!" You would deny benefits to a woman because she is pregnant? This would be a giant step backward for everything we have done over the years to correct problem issues. Last Session, there was an agreement on 25 bills, and we came up with one giant bill that represented a fair settlement for both sides. I adamantly oppose this bill and urge its defeat.

RAYMOND BADGER JR. (Nevada Justice Association):

Most of my law practice in Carson City is representing injured workers with workers' comp claims. Regarding the catastrophic injury section, what is in the bill might be a good move toward clarifying who the important players should be in those situations. Section 7 in the proposed amendment, [Exhibit G](#), changes the time to file a claim from 90 to 30 days. People delay filing a claim for a variety of reasons, not the least of which is their fear of losing a job if they file. This proposal will simply deny more claims and is not good for Nevadans.

BARBARA GRUENEWALD (Nevada Justice Association):

Section 8 of the proposed amendment talks about adding a provision for prohibited substances, but there is no definition of what constitutes a prohibited substance. We have in statute a definition of controlled substances, but not prohibited substances. A person could be taking a doctor-prescribed cough syrup with codeine in it for a cold, test positive for codeine and have their benefits suspended. We would not change this part of the existing bill with the amendment. We think the definition of controlled substances is sufficient.

Section 8, subsection 2, paragraph (c), referring to a required examination needing tests, does not clarify that this is as a result of the industrial injury. We feel this is too open-ended and object to it.

The next provision, page 4, lines 7 through 9, denies benefits to an employee with a terminal condition that interferes permanently with the ability of the physician to examine or treat the injury. A person with a terminal condition could still be treated for an industrial injury under workers' comp law. We object to this section.

The end of section 8, on page 4, lines 14 through 18, suspends benefits to a woman who is pregnant. I have a client who is a teacher with a hand injury as a result of a door at her school slamming into her. She was pregnant at the time of the injury, but she could still be treated for her hand injury. This will only increase the case denials, is discriminatory against women and could be challenged on that basis. We object to this section.

MR. BADGER:

If an injured worker's injury prevents him or her from doing the job being performed when injured, under existing law the employer can offer that worker a different job and the employee does not have the right to refuse. If that person then gets fired from that second position, he or she loses their workers' comp lost wage payments. Section 9 weakens worker protection for this scenario, and we object to this change.

Section 10 involves court cases. If an injured worker has a dispute with the insurance company, the worker goes through a two-level administrative law process. This is a lengthy process, usually taking a minimum of eight months to go through the two levels of hearings. When the insurance company loses at that second level of hearing, they still may not want to pay what the workers' comp judge ordered them to pay. The insurance company may want to have an automatic stay even though they lost. Combining that with the other provision, there is no time limit if the court does not rule on it. No one can guarantee when a trial court with many cases to hear will pick up a workers' comp case. We are not saying there should be an automatic grant of benefits when there is an appeal. That would not be fair either. But this section implies that if the insurer loses and then files an appeal, it should not have to pay. We do not support this.

MS. GRUENEWALD:

In workers' comp, sometimes we have a worker who is not seriously injured. One client, a firefighter, had smoke inhalation and was treated overnight in a hospital. He was off work for only three days. His claim was initially denied, but we won his judgment in a hearing. I wanted that claim on the books for that firefighter in case he developed any lung problems in the future. Section 11 would only allow him to reopen that claim within one year, which we do not support.

This section also proposes to remove "was not off work" and replace it with "did not receive benefits for a temporary total disability." An injured worker has to be off work for five days to get a temporary total disability, so we do not support this.

MR. BADGER:

Section 12 involves lump-sum settlements for vocational rehabilitation. This is aimed at a worker who is permanently prevented from performing his or her pre-injury occupation. The injured worker receives a limited benefit to facilitate finding a new occupation, usually through school or training or on-the-job training with a new employer. Existing statute allows for employee and insurer to make a voluntary agreement for a sum of money to go to the employee. That agreement terminates the employee's future claim for vocational rehabilitation. This proposed amendment would cause an injured worker who cannot work at any job after an injury to be penalized. He or she could very likely make that voluntary agreement with the insurer before realizing the injury caused a total disability. We do not support this.

MS. GRUENEWALD:

Section 13 on page 8 includes periods of incarceration or house arrest to exclude a worker from getting benefits. We agree. An incarcerated person should not get workers' comp benefits. But the language in this amendment adds periods of intermittent incarceration or house arrest to qualifiers for not receiving benefits. Imagine you were injured on the job and receiving temporary total disability because you could not work. If you got a DUI ticket and were allowed to serve the sentence on weekends, this section could eliminate your benefits.

MR. BADGER:

Section 14 addresses permanent partial disability (PPD). If you lose an arm, you will get some payment for that loss. Nevada law gives the choice of two types of payment for a PPD. You can take payments to age 70 or a one-time lump sum. In my experience, people usually take the lump sum. There is a ceiling on the benefit via lump sum, so employees with the largest injury awards cannot take their payment all at once. Part of this proposed amendment raises the ceiling from 25 to 30 percent. By adding the words "impairment of the whole person," some insurers may want to add a claimant's previous injury claims together to total the ceiling amount. We do not support this.

MR. THOMPSON:

We did not get to see the recent changes to this bill. Normally, both sides introduce a bill, battle it out and eventually come to an agreement. I did not introduce a workers' comp bill this Session because I know the condition of the State and the State's budget. There are so many things wrong with this bill. Think back to the argument over national health care and the so-called "death panels." Look at the back of this proposed amendment, [Exhibit H](#), on page 14, line 31, and there is your death panel. The "life care plan" includes a determination of the injured worker's treatment based on life expectancy. I cannot support this bill.

PATRICK SANDERSON (Labor Local 169 Retiree's Council):

This bill as originally presented was a great bill that helped the working men and women of Nevada. This proposed amendment, which was not given to the sponsor of the bill and was not discussed is so convoluted you have to hire a lawyer to understand it. When men and women get hurt in the field, they need help, they do not need lawyers, who are all we have heard from today. I ask you to kill this amendment, go back to the original bill, and think about the working men and women of Nevada. When workers' comp was set up, it was intended to help the workers get well and recover from their injuries.

I know how the game is played here. All the workers' comp bills go back to where there are just a few people who decide the fate of many. All this amendment does now is make you have to hire a lawyer. When you hire a lawyer, you lose at least 40 percent of what you receive from your claim, no matter how bad your injury was. It may mean a worker cannot ever again work in construction or their profession. Listen to the Office of the Nevada Attorney for Injured Workers, Department of Business and Industry (DBI), to see if we can help injured workers in Nevada without having to hire a lawyer.

I say dump this amendment and go back to the original intent of the bill. This is too confusing. When you are injured and trying to take care of your family, you need the money now, you need doctor care now, and you need help now.

CHAIR SCHNEIDER:

I agree with you. It would be good to take care of a catastrophic injury without a battery of Philadelphia attorneys just to get yourself taken care of for the rest of your life. I would like to see us do something like that.

JACK MALLORY (International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council):
We agree with the issues brought up by Mr. Badger and Ms. Gruenewald. This amendment refers to denying coverage to a pregnant woman. What if that woman was pregnant at the time of the injury? Regarding the individuals who are on intermittent incarceration or house arrest, that situation could have preceded their employment on a work release program.

We are concerned about taking away the ability to adopt regulations by the administrator and putting this in statute. These things change over time; we know this. However, because of the nature of the Nevada Legislature, you can only adjust things every other year. We are opposed to this bill.

RON DREHER (Peace Officers Research Association of Nevada):
We oppose this bill. Our officers have had the same problems that other testifiers have expressed here today.

EVAN BEAVERS (Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry):
I am the sponsor of this bill and had not heard anything about it until I recently heard it was being amended. The first proposed amendment struck everything in my bill and adds 16 pages of language I had not seen. I did see it this morning. I ask that you reconsider removing what I originally intended in S.B. 21. I am not the labor lawyer and I am not the trial lawyer's attorney, but I am charged by statute to represent injured workers. One of the things I intended to accomplish with both the bills I submitted this Session was to make it so the lawyers in our office could look the clients in their eyes and say "Here is what the law says, here is your likelihood of success, here is what evidence you have, here is what evidence is missing." I attempted to do that in this bill, and I would like the original language of the bill to be restored. Regarding the amendments offered by Mr. McMullen, I do not disagree with everything he had to offer, but I do disagree with some of the changes, all of which have already been iterated by previous testifiers.

CHAIR SCHNEIDER:

Mr. McMullen, I suggest you work fast before we call this bill back into a work session. I am going to close the hearing on S.B. 21 and open the hearing on S.B. 59.

SENATE BILL 59: Increases the cumulative capacity of net metering systems operating within the service area of an electric utility. (BDR 58-408)

ROSE MCKINNEY-JAMES (The Solar Alliance; Bombard Renewable Energy; Amonix, Inc.):

We realize that S.B. 59 may not ultimately be the best vehicle for our proposed amendment 6019 ([Exhibit I](#)), but we believe it would improve the efficiency and the cost-effectiveness of the SolarGenerations program at NV Energy. We are interested in expanding the capacity of the net metering statute and would like to codify some of the lessons learned. We have been focused on an aggressive target of 400 megawatts over the next two years. It is an aggressive goal, but it is appropriate for a state with a significant resource like Nevada. This proposed amendment would allow our State to remain competitive in the regional market. The focus on continued growth in this industry will allow us to see more manufacturing and ancillary service opportunities. We do have one investor-owned utility and would like to see it continue to meet its obligations.

In the Assembly, there are a number of bills pertaining to the SolarGenerations program. The industry I represent strongly believes the best way to proceed is to use a performance-based incentive (PBIN). We have a program now where we provide up-front rebates. This program does not take into full consideration the potential for balancing and achieving the most cost efficiency for ratepayers. We would like to see those costs spread over time.

The proposed amendment would achieve this goal. There is an error in the wording on page 3, line 20, where it says "incrementally reduced," change that to "incrementally increased." Our provisions begin on page 2, starting on line 10, where we allow for the PUCN to establish regulations directing the incentives to be paid over time, based on the performance of the solar energy system. This is in contrast to what we currently have in the State, which is an up-front rebate system.

On page 4, we are endeavoring to establish parameters allowing 1.5 percent of a combined total annual revenue of all utilities in the State to determine how the incentives will be paid. We raise the increase of a generating capacity of not more than 1 megawatt to "not exceed 120 percent of the annual average consumption of electricity" by the customer.

RACHEL MCMAHON (Amonix, Inc.):

On page 7, starting on line 19 of the proposed amendment, [Exhibit I](#), we propose an incentive to electric utilities within Nevada's renewable portfolio standard (RPS). The incentive is for solar electricity from systems where at least 50 percent of content is manufactured in Nevada. Each unit of energy, or kilowatt-hour, generated by these systems would be worth 3.4 percent kilowatt-hours to the utility. This proposal is consistent with existing incentives in current Nevada RPS law and many other states, including Colorado, Missouri, Michigan and Delaware.

On page 7, lines 24 through 27, we would like to clarify that our intent was not to limit the incentive to projects located on a customer's site and serve the customer's load. It was for any solar project located anywhere on the utility system, even if it is an excess sales agreement with a utility or a sale of the full output. This proposal has the support of the Nevada Commission on Economic Development and the Nevada Development Authority ([Exhibit J](#)).

MS. MCKINNEY-JAMES:

We have submitted materials ([Exhibit K](#)) to the Committee for some background on this issue and how we arrived at some of the numbers and language in this amendment.

Both the Solar Alliance and NV Energy hired consulting firms to analyze the impact this program would have on ratepayers, specifically as it relates to net metering. We have been actively engaged in discussions with parties, including the utilities, to find some common ground.

STACEY CROWLEY (Director, Office of Energy, Office of the Governor):

This bill deals with raising the net metering cap. We do not support any of the amendments. I do appreciate the discussions we have had with the parties proposing the amendments and the Committee. We would like to propose an amendment ([Exhibit L](#)) to the bill. We cap the net metering at 2 percent of the utilities' peak capacity statewide. We also add a trigger allowing the PUCN to raise that cap at 0.5 percent increments when the cap reaches 80 percent capacity. This allows the PUCN to look at where we are if we reach that 2 percent and see how it is benefitting the ratepayers, the industry and the State.

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SENATOR ROBERSON:
What will this cost the ratepayer?

MS. CROWLEY:
It depends on where we set our cost caps for these programs. Ideally, we end up with an incentive program that limits the impact to ratepayers. This bill does not specifically address that issue, however.

SENATOR ROBERSON:
How could we figure it out before we vote on it?

MS. CROWLEY:
The intent of this bill, which was introduced by then-Governor Jim Gibbons, is to work in conjunction with the other bills that are in process. Raising the net metering cap from 1 percent to 2 percent alleviates some of the pressure caused by the 1 percent cap.

SENATOR ROBERSON:
Does the Governor support this?

MS. CROWLEY:
Yes, he supports the 2 percent cap and 0.5 percent increments with the PUCN's review.

MS. WAGNER:
We are in the process of assessing the impact of this amendment's proposed changes. We do not have hard figures yet, but there was a suggestion the subsidy created by net metering would amount to approximately \$8 million per year. That would translate to about five cents a month per ratepayer statewide.

JUDY STOKEY (NV Energy):
We do support renewables. The bill, S.B. 59, sets the net metering cap at 5 percent and Ms. Crowley recommends a 2 percent cap. We are currently implementing a 1 percent cap for each utility company in both northern and southern Nevada. We would like to change the cap to 1 percent statewide, which would give us more flexibility, but we do not think we will be hitting a 2 percent cap for many years, so we do not need to increase the cap at this time. We have submitted an amendment ([Exhibit M](#)). We estimate our net

metering subsidy at approximately \$8 million per year. We would like to remove that subsidy when we do reach the 1 percent cap statewide.

JOHN OWENS (NV Energy):

I want to speak to the amendment offered by Ms. McKinney-James and the Solar Alliance. If you apply the 400-megawatt capacity they propose to build, using their pricing structure, the sum of the incentive payments is \$709 million over the 20-year period these contracts would be active. The PBIN structure directs the PUCN to set an initial price. This is a fixed-price contract for a defined term. There is already a 45-megawatt program in place, with 10 megawatts consisting of wind-generated power and the remaining 35 megawatts coming from solar-generated power. This is projected to be completely installed by the end of 2012. The wind installation will cost an estimated \$30 million and the solar installation cost is estimated at \$140 million. Additionally, we would have the net metering credits and subsidy. These systems do offset fuel and power costs on a per-kilowatt-hour basis. However, they do not support investments in the transmission, distribution and generation systems that are required to serve customers when these renewable systems are not functioning.

If we are required to take 400 megawatts of must-take energy under 10-year contracts that decline over time, we are locking that into our portfolio. There can be additional costs related to that resource costing more than other alternative sources. So we ask ourselves, "What is that 400 megawatts of must-take energy displacing?" It depends. If it is in addition to the RPS, it is probably displacing low-cost market purchases or high-efficiency natural gas generation. Those resources cost anywhere from four cents to six cents a kilowatt-hour today. One last thing to consider is that this program could displace wind and geothermal projects.

MS. MCKINNEY-JAMES:

I have been working on these issues, along with representatives of NV Energy, for over a decade. When we first began the net metering program, we were limited to 50 customers, north and south. We have made adjustments incrementally, taking into account the impacts to ratepayers and working with the PUCN and other stakeholders. We want to continue to do this. We may differ about the mechanism, but this has been used through the southwestern United States, allowing payments to be spread over time. We are trying to get the State to make an ongoing commitment to take advantage of unique

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resources that Nevada has over other states. I pledge to continue these discussions, especially regarding public policy.

CHAIR SCHNEIDER:

We do want to find a home for your amendment.

JOE JOHNSON (Sierra Club, Toiyabe Chapter):

We would like to speak in detail to the amendment offered by Solar Alliance, possibly in the future, when it finds a home, as the Chair said. We do support the proposed amendment to S.B. 59 presented by Ms. Crowley.

KYLE DAVIS (Nevada Conservation League):

We are in favor of many of the concepts in the amendment proposed by the Solar Alliance. We do have some concerns in section 10 of the amendment. Moving towards a PBIN is a priority of ours this Session.

Regarding the amendment proposed by the Office of Energy, we would like to see it move toward 5 percent rather than 1 percent. We are confused about why it would be a problem to move to 5 percent so we can allow for the sustained growth of the solar industry.

Addressing the third amendment proposed by the utility, we do want to work with them. We have concerns, especially regarding whether or not we are talking about a subsidy system. We would like to discuss the multiplier and whether it is appropriate or whether we should be expanding the use of multipliers.

RANDELL S. HYNES (Nevada Solar Authority, Ltd.):

I will also reserve my comments on Solar Alliance's proposed amendment until it finds a home. We do support the Office of Energy's proposed amendment of a 2 percent cap with 0.5 percent increments. Regarding the proposed amendment from NV Energy, we agree with Mr. Davis's comments about the 2.4 multiplier.

CHAIR SCHNEIDER:

I will close the hearing on S.B. 59 and send it to work session next week. I am opening the work session hearing on S.B. 168.

SENATE BILL 168: Makes various changes concerning public health.
(BDR 54-837)

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SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):
I have Keith Lee here to address this bill.

KEITH LEE (Nevada Board of Medical Examiners):

Section 12 is the outstanding issue of this bill. We are all in agreement on the other issues. The fee will be reduced, section 16 is being removed and the amendment from Clark County is unnecessary. I have submitted a conceptual amendment to section 12 ([Exhibit N](#)). It addresses the reporting of the use of defined levels of sedation in an office. According to the amendment, data will be compiled annually and submitted to the Health Division (HD), Department of Health and Human Services. If in-office sedation procedures were performed in a physician's office, that physician will be required to obtain a license issued by the HD prior to doing in-office sedations. Specifically, *Nevada Revised Statute* (NRS) 630.373, which is part of the Medical Practices Act (MPA), makes it a violation of the MPA for a physician to render any of the three defined areas of sedation in his or her office without being first licensed by the HD.

In our proposed amendment to section 12, we are recommending to delete the annual reporting of in-office sedation because it is already against the MPA. Under the present scheme, doctors report sentinel events to the HD annually. We are changing that to require these events be reported within 14 days.

SENATOR BREEDEN:

In the original bill, section 3, it was suggested to strike the language to have the information reported to the HD.

JOHN PAPPAGEORGE (Health Services Coalition):

I was present when Mr. Lee and Bobbette Bond from Health Services Coalition were talking and I feel his reporting is accurate here but I cannot represent her.

MARLA MCDADE WILLIAMS, B.A., M.P.A. (Deputy Administrator, Health Division,
Department of Health and Human Services):

I concur with Mr. Lee regarding section 12.

MR. LEE:

I know Ms. Bond submitted a proposed amendment ([Exhibit O](#)), and may not have totally signed off on this. I will continue to work with Ms. Bond to iron out any difficulties.

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SENATOR BREEDEN:

I have been working with Ms. Bond and have been unable to get in touch with her today, so I would like to hold this bill until I can talk to her.

SENATOR HARDY:

I have not spoken with her today either, but this new 14-day reporting requirement is a definite improvement that Ms. Bond was intending us to move toward. This is an improvement for everyone.

SENATOR ROBERSON:

What is the fiscal impact of this?

MR. LEE:

It would be a substantial decrease for the Board of Medical Examiners' office.

MS. MCDADE WILLIAMS:

If section 12 is amended as Mr. Lee proposes, we will have no fiscal note. We had initially submitted approximately \$130,000 as a fiscal note.

SENATOR SETTELMAYER:

Does that also amend the Investigation Division, Department of Public Safety, fiscal note? That was \$800,000.

SENATOR HARDY:

I think so, but do not have specifics. It may have been from section 17 that their fiscal note was generated, and we have deleted that section, so there is probably no fiscal note.

CHAIR SCHNEIDER:

Which amendment is to your liking?

MR. LEE:

The conceptual amendment I submitted, [Exhibit N](#), is a distillation. The other amendment reducing the fee is also good ([Exhibit P](#)). The amendment from the Clark County coroner is unnecessary; we have resolved that issue. Ms. Bond's amendment is also unnecessary, but we do want to talk to her. Senator Hardy's amendment ([Exhibit Q](#)) to delete section 17 goes forward.

SENATOR SETTELMAYER:

Can we please hold this until we get a full mock-up? There are so many amendments I would like to see it all in one piece.

CHAIR SCHNEIDER:

Yes, we can do that. I will close the work session hearing on S.B. 168 now and open the hearing on S.B. 413.

SENATE BILL 413: Repeals certain provisions governing licenses issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-1132)

JOANNE LEVY (Nevada Association of Realtors):

We support S.B. 413. Nevada's real estate industry has been hit very hard. The foreclosure crisis has affected homeowners and reduced the number of real estate licensees in the State. The Nevada Association of Realtors (NVAR) has seen a decline of nearly half of our members since 2006. Implementing high renewal fees in fiscal year (FY) 2012 and low renewal fees in FY 2013 will endanger services to licensees and consumer protection. The Real Estate Division (RED), DBI, provides services to licensees and serves the public. The current budget cuts are threatening the RED with vital personnel cuts, including investigators, licensing administrators and crucial support staff. This bill will help the State and the RED in the long run by setting consistent trends in licensing fees. This would install a four-year licensing schedule.

During the 75th Legislative Session, legislation was passed to change licensing from a two-year cycle to a four-year cycle. This was intended to help licensees, especially brokers, who manage their licensees' renewal paperwork. Given the condition of the real estate market at that time, the bill's implementation date was wisely pushed to 2011. This gave the RED time to work through the changes and allow licensing numbers to rise. The market has not improved since 2009, and still declines. The good intentions of this bill are outweighed by the long-range difficulties it now presents to the RED and the State.

CHAIR SCHNEIDER:

I have been presented an unsolicited fiscal note on this bill ([Exhibit R](#)).

SENATOR SETTELMAYER MOVED TO DO PASS S.B. 413.

SENATOR COPENING SECONDED THE MOTION.

SENATOR PARKS:

I need to disclose that I am a real estate licensee in Nevada. I do not think this will affect me differently than anyone else, so I will vote.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SCHNEIDER:

I will close the hearing on S.B. 413 and open a work session on S.B. 227.

SENATE BILL 227: Revises provisions governing the financial administration of the Real Estate Division of the Department of Business and Industry. (BDR 54-982)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

This bill was a self-funding bill. The RED is one of the few licensing and regulatory agencies that is funded through the State General Fund. Of the 14 agencies in the DBI, only 3 are General Fund agencies. Those are: the Office of the Labor Commissioner, the Nevada Athletic Commission and the RED. This bill creates a budget by the RED that enables its administrator to procure what is needed to run it properly. When money comes in, it will first go to the RED for operations. Any surplus funds would then revert to the General Fund. This bill ensures that the fee-based RED can support itself and the needs of the real estate industry in Nevada. I have submitted an amendment to S.B. 227 that stipulates the surplus money go to the General Fund ([Exhibit S](#)).

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

We will work with the budgeting process. Everything will be legislatively approved and authorized for whatever methodology we use. This could potentially address some of our regular cash flow in terms of time-share revenues that have caused some problems this last biennium.

CHAIR SCHNEIDER:

Are you saying this would affect you adversely?

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MS. ANDERSON:

No, it would put all the licensing fees into the RED's budget first thing, not just one small portion of time-share income, which is what we have relied on for several years.

SENATOR ROBERSON:

Do you really support this?

MS. ANDERSON:

Yes.

SENATOR LEE:

Based on current budget proposals, the RED's staff will be reduced from 36 positions to 16 by 2012. This would mean closure of the licensing sections in northern Nevada, leaving only one location in Las Vegas.

ROCKY FINSETH (Nevada Association of Realtors):

We are in support of this bill.

CHAIR SCHNEIDER:

I have a letter of support for this bill from Karen Dennison ([Exhibit T](#)) and also from Michael R. Cheshire ([Exhibit U](#)).

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 227.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SCHNEIDER:

I will close the work session hearing on S.B. 227 and open the hearing on S.B. 314.

[SENATE BILL 314](#): Revises various provisions relating to residential property.
(BDR 54-631)

SENATOR LEE:

Asset management companies provide management services for banks, mortgage brokers, mortgage bankers, credit unions, thrift companies, savings and loan associations, and/or government entities regarding real property in foreclosure on which they hold a security interest. These companies perform services such as securing the property by changing locks, removing trash and debris, cleaning the property, performing maintenance and repairs of homes and disposing of abandoned personal property. This sometimes occurs in commercial properties and homes with legally protected tenants. Unlike real estate agents who are licensed, these asset management companies are not licensed, permitted or registered, and are not subject to any oversight. This has led to abuses of power against property owners and tenants when the companies trespass on properties still in transition. Asset managers have changed the locks on properties still occupied by owners and trashed residences only to find later they had the wrong address.

This bill, S.B. 314, will allow the RED to require registration of every asset management company and permits for every individual performing duties for the company. Employees would also be subject to a criminal background check. Asset management companies would be required to be insured to cover wrongful property damage and evictions.

Banks turn real estate over to asset management companies, and no one knows who they are. If a problem occurs, the banks blame the asset managers and do not take responsibility. The asset management companies are hard to find, and often they have no business address or published contact information.

MS. LEVY:

We support this bill. In the real estate profession, when property owners want someone to manage their property, they must hire a real estate licensee who holds a property management permit. These individuals are permitted and regulated by the RED.

By Nevada statute, banks, thrift companies and credit unions are specifically excluded from the property management requirements. When a bank or other lender wants to hire a company to manage its assets, which is a property they do not own but in which they have a security interest, they do not have to hire a licensed and permitted property manager. Instead, they are hiring asset management companies that are unregulated and unmonitored. There are cases

where they have gone to homes not yet foreclosed and changed the locks while the home is still occupied. There have been other cases of asset management employees unlawfully evicting tenants, trashing homes prior to foreclosure and trashing out the wrong homes.

One case went to the Nevada Supreme Court: *Countrywide Home Loans, Inc. v. Gerald Thitchener, Katrina Thitchener, Steven Lamb and Kaitlyn Thitchener*, where the homeowner was absent from the home because he was deployed by the Air National Guard, Nevada National Guard, Office of the Military. The asset management company hired by the loan company prior to foreclosure changed the utilities and locks and trashed out the home. They ignored the inconsistent names and inconsistent house numbers on the property and failed to review a preliminary title report. The Thitcheners came home to find their possessions gone. Had asset managers been regulated in accordance with this bill, there may have been insurance to cover the wrongful eviction and disposal of their property. We think it is also important to extend this coverage of asset management registration and regulation to the commercial arena and protect tenants of residences and commercial properties. Commercial borrowers are often small business owners who are also vulnerable to irresponsible asset managers.

SENATOR LEE:

There was a feature on NBC's *Today Show* recently, illustrating a bank foreclosure procedure called "trashing out." This is where the asset management company clears a home of its contents before owners are verifiably consulted or given a reasonable chance to remove their belongings. The woman in the story lived at Lake Tahoe and came home one day to find everything gone, including her husband's ashes. Miscommunication and the volume of foreclosures in the current economy are partially to blame for these incidents, experts say. Sadly, these incidents are not uncommon, especially in Nevada with the highest foreclosure rates in the country.

TERESA MCKEE (Legal Counsel, Nevada Association of Realtors):

We do have a proposed amendment to this bill ([Exhibit V](#)) with changes to sections 5, 12, 24, 31 and 33.

SENATOR LEE:

This is a friendly amendment.

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SENATOR SETTELMAYER:

Do you think the amendment and the bill will be able to cover everyone? Will the banks be able to call these asset managers something different to get away from regulation?

MS. MCKEE:

We worked closely with Gail Anderson from the RED on this issue for that very reason. We endeavored to define the functions the asset managers perform rather than their name, so we feel we have covered that situation.

BILL UFFELMAN (Nevada Bankers Association):
I support this bill.

MS. ANDERSON:

We support this bill. I was pleased when Senator Lee approached me about this bill. It was an issue I had been wanting to address. We support an amendment to section 29 regarding the permit for the employee or independent contractor, to make it conform to our other licensing programs. The intention is to have the permit holder pay \$75 for the issuance of the permit and \$75 for renewal annually. We have not written this amendment yet, but would like to submit it.

SENATOR SETTELMAYER:

Why not change this from charging a set fee to charging the actual cost of the licensing? This would avoid the two-thirds majority vote requirement and allow you to vary the fee depending on the actual cost incurred.

MS. ANDERSON:

I am amenable to that although licensing fees are usually in statute.

SENATOR SETTELMAYER:

Your fees look low, so maybe this will give you the tools you need.

SENATOR PARKS:

Back in the 1970s, I had a moonlighting business where I cleaned out properties on weekends. I worked through a prominent Realtor in Las Vegas. Through this bill, would I have to be licensed?

MS. ANDERSON:

Asset management is defined in section 5 of this bill. It is a narrow definition of a company that provides services in the maintenance, repair and preparation for liquidation of real property owned by, or on behalf of, a bank, mortgage broker, mortgage banker, etc. This is addressing companies that work as third parties for one of those entities, not exactly the handyman repair services, who may need their own licensing.

MS. MCKEE:

Under NRS 645, licensed real estate agents perform these duties for owners of property, but it exempts bank and thrift companies. Because those banks, etc., are specifically excluded, it is only if you are performing these duties for those entities that asset managers are used. If you were performing the same duties for a real estate broker, it would be called property management. If you then hire a handyman, that would be allowed without licensure.

SENATOR LEE:

I want to disclose that I am a licensed contractor. I do not know that this would affect me, but that was not the intent of this bill.

CHAIR SCHNEIDER:

Mr. Nichols, do you have the intent of Ms. Anderson's proposed amendment?

MR. NICHOLS:

Yes, Mr. Chair, for the purposes of the Committee voting on those amendments today, I think I understand what her position was. I don't know that I would want to restate it. But it might be helpful if she did if you were going to entertain a vote.

CHAIR SCHNEIDER:

To allow us to get the amendment written and let the Committee review it, I will close the hearing on S.B. 314 and put it into work session. I will open the work session hearing on S.B. 189 now.

[SENATE BILL 189](#): Revises certain provisions governing real estate transactions.
(BDR 54-615)

SENATOR LEE:

This bill will protect home sellers from a real estate agent who does not put their property into the system in a timely manner. As the law stands, if you have signed a listing with a real estate company, the broker for that company is the owner of your listing, not the agent you are assigned to. If your agent is not working in a timely manner and you decide you do not want that agent, or even that company, you are stuck. This bill stipulates that your property must be listed within two days of signing with the company or you can rescind the contract with the broker. Sellers would have five days to notify the broker of their decision to withdraw from the contract.

MS. ANDERSON:

I have agreed to prepare a form for this transaction if this bill is approved. We would put it on our Website; it would be a uniform rescission form. We would also amend our Residential Disclosure Guide so consumers could understand their recourse if they are unhappy with their agent's performance.

SENATOR SETTELMAYER:

If I list some property and sign the form with a real estate agency, what if they spend the money to advertise? Considering the time lag on some publications, what would we do then?

MS. ANDERSON:

The NRS 645.252 and 645.254 already specify the duties of a Nevada real estate licensee. The RED does investigate complaints against a licensee who does not perform those duties. Specific terms of contracts is something the RED does not deal with, however. Those become civil matters.

SENATOR SETTELMAYER:

Given that information, I have trouble with this bill. Contract law should already deal with these issues.

SENATOR LEE:

In this State, we have the right of rescission. This bill is not totally new ground. It is just an effort to make sure real estate customers are not held hostage by a broker who will harm the ability to sell a house in a short sale situation by not acting in a timely manner. At this point, people want to move fast.

SENATOR BREEDEN:

I like this bill. I think it is good for the consumer.

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CHAIR SCHNEIDER:

I have received a proposed amendment from the Nevada Association of Realtors ([Exhibit W](#)). We will move this bill to work session and close the hearing on S.B. 189. I want to move S.B. 414, the banking bill, to a future work session.

[SENATE BILL 414](#): Revises provisions relating to banks. (BDR 55-1107)

CHAIR SCHNEIDER:

I will open the work session hearing on S.B. 331.

[SENATE BILL 331](#): Revises provisions relating to unlawful discrimination in places of public accommodation. (BDR 54-799)

CHAIR SCHNEIDER:

We do have an amendment to this bill from Morgan Baumgartner representing the Nevada Resort Association ([Exhibit X](#)).

SENATOR PARKS:

The amendment is in regard to "ladies night" events, and we are satisfied with the amendment.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 331.

SENATOR PARKS SECONDED THE MOTION.

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

CHAIR SCHNEIDER:

I will close the work session hearing on S.B. 331 now and open the work session hearing on S.B. 368.

[SENATE BILL 368](#): Prohibits discrimination in housing and certain other transactions involving real property on the basis of sexual orientation or gender identity or expression. (BDR 10-416)

SENATOR PARKS:

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This bill prohibits discrimination based on sexual orientation, gender identity or gender expression in housing and other transactions of property. The bill relates to discrimination in housing and would put Nevada consistent with federal statute.

SENATOR BREEDEN MOVED TO DO PASS S.B. 368.

SENATOR COPENING SECONDED THE MOTION.

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

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CHAIR SCHNEIDER:

I will close the work session hearing on S.B. 368 and open the work session hearing on S.B. 292.

[SENATE BILL 292](#): Revises provisions relating to insurance. (BDR 57-1074)

JESSE WADHAMS (Asurion Insurance Services, Inc.):

This bill creates a limited license for personal electronics insurance. It sets up a regulatory scheme for personal electronics as this market grows with more and more devices linked to data plans, including tablet computers, cellular telephones, etc. We also have an amendment ([Exhibit Y](#)), and we do have some minor issues to work out yet.

SENATOR COPENING:

I would like to hear from the commissioner of insurance on this bill and the amendment.

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BRETT J. BARRATT, ESQ. (Commissioner of Insurance, Division of Insurance,
Department of Business and Industry):

This bill covers two sections of my office, and we are having some overlap.
We just received this amendment and had some concerns about a few things in
the bill. We are confident we can work it out with Mr. Wadhams.

CHAIR SCHNEIDER:

There were some other concerns, so we will roll this bill over to next week.
I will close the work session hearing on S.B. 292. The meeting of the Senate
Committee on Commerce, Labor and Energy is adjourned at 3:21 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A	Agenda	
	B	Attendance Roster	
S.B. 259	C	Robert Armstrong	Proposed Amendment
S.B. 259	D	Keith Lee	Proposed Amendment
S.B. 273	E	Dianna Hegeduis	Proposed Amendment
S.B. 182	F	Research Division	Proposed Amendment
S.B. 21	G	Samuel McMullen,	Proposed Amendment
S.B. 21	H	Legal Division	Proposed Amendment
S.B. 59	I	Legal Division	Proposed Amendment
S.B. 59	J	Nevada Development Authority	Proposed Amendment
S.B. 59	K	Rose McKinney-James	The Solar Alliance Information packet
S.B. 59	L	Stacey Crowley	Proposed Amendment
S.B. 59	M	Judy Stokey	Proposed Amendment
S.B. 168	N	Keith Lee	Proposed Amendment
S.B. 168	O	Bobbette Bond	Proposed Amendment
S.B. 168	P	Keith Lee	Proposed Amendment
S.B. 168	Q	Senator Joseph (Joe) Hardy	Conceptual Amendment
S.B. 413	R	Real Estate Division, Department of Business and Industry	Unsolicited Fiscal Note
S.B. 227	S	Senator John J. Lee	Proposed Amendment
S.B. 227	T	Karen Dennison	Letter
S.B. 227	U	Michael R. Cheshire	Letter
S.B. 314	V	Nevada Association of Realtors	Proposed Amendment
S.B. 189	W	Nevada Association of Realtors	Proposed Amendment
S.B. 331	X	Nevada Resort Association	Proposed Amendment
S.B. 292	Y	Jesse Wadhams	Proposed Amendment