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

## Seventy-sixth Session
## April 13, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:19 p.m. on Wednesday, April 13, 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 Steven A. Horsford, Clark County Senatorial District No. 4
Senator John J. Lee, Clark County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Joe Johnson, Sierra Club, Toiyabe Chapter
Kyle Davis, Nevada Conservation League
Bob Tregilus, Electric Auto Association of Northern Nevada; Feed-in Tariffs for Nevada

Judy Stokey, Executive, Government and External Affairs, Government and Community Strategy, NV Energy
William Uffelman, Nevada Bankers Association
John P. Sande III, Western Alliance Bancorp; Nevada Franchised Auto Dealers Association
Jeanette Belz, Nevada Dental Association
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Jack Mallory, International Union of Painters and Allied Trades District Council 15
Alfredo Alonso, Alliance of Automobile Manufacturers
Keith Lee, Board of Medical Examiners
Robert Ostrovsky, Nevada Resort Association; United Healthcare Services, Inc.; Employers Insurance Group
Jesse Wadhams, Asurion Insurance Services, Inc.
Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
Robert Nellis, Energy Program Manager, Office of Energy, Office of the Governor

CHAIR SCHNEIDER:
The Committee had offered to consider Rose McKinney-James' proposed amendment to Senate Bill (S.B.) 59. This bill was requested by then-Governor Jim Gibbons which he submitted before he left office.

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

Governor Sandoval expressed a desire not to amend S.B. 59 as proposed by Ms. McKinney-James. I indicated to the Committee and Ms. McKinney-James that I would seek a new bill draft request (BDR) to give her a measure in which to place her proposals. In that regard, I would entertain a motion to do the following:

1. Waive the deadline for bill introduction
2. Request a Committee BDR which "Revises provisions relating to renewable energy."
3. Waive all deadlines for this BDR for the remainder of this Session.

The Majority Leader of the Senate has indicated he prefers we move in this direction to address Ms. McKinney-James' issue. This means we will bring the new bill back to the Committee and have a full hearing on it. The Majority Leader of the Senate and the Speaker of the Assembly will have to approve the new bill.

SENATOR SETTELMEYER:
It is not wise to void the rules. I have never voted to amend the rules because "the rules are the rules."

CHAIR SCHNEIDER:
The rules state you can ask for a special bill, but it has to be approved by the Majority Leader of the Senate and the Speaker of the Assembly. This is not unusual at this point in the Session.

> SENATOR SETTELMEYER MOVED TO WAIVE THE DEADLINE FOR BILL INTRODUCTION, REQUEST A COMMITTEE BDR WHICH "REVISES PROVISIONS RELATING TO RENEWABLE ENERGY," AND WAIVE ALL DEADLINES FOR THIS BDR FOR THE REMAINDER OF THIS LEGISLATIVE SESSION.
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> SENATOR ROBERSON SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the hearing on S.B. 281.

**SENATE BILL 281**: Requires the Public Utilities Commission of Nevada to establish the Electric Vehicle Demonstration Program. (BDR 58-1019)

CHAIR SCHNEIDER:
In the 75th Session, I was Chair of the Senate Committee on Energy, Infrastructure and Transportation where I stressed the linkage between energy and transportation issues. Let me read a couple of paragraphs from a news article that appeared in the Friday, April 8, 2011, issue of the *Tri-City Herald* in Washington State. This article captures the thrust of my comments about the

linkage between energy and transportation and demonstrates the potential for technological advancement and economic development that exploiting this linkage can bring to this State. This article is titled "Electric cars likely to spark new 'smart grid,'" by Kevin G. Hall:

> Entire industries grew up around gasoline-powered cars, ranging from the ubiquitous filling stations to fast-food restaurants along highway exits. Similarly, the rise of electric cars probably will transform more than just the automobile.
>
> "The moment you put a plug on a car, you've got two titan industries coming together and supporting a customer," said Ed Kjaer, the director of electric transportation for Southern California Edison, a giant utility.
>
> The alliance between utilities and carmakers will lead to numerous changes, he predicts, including a faster build of the "smart grid." This involves the use of digital technology by utilities to allow consumers real-time measures of their energy use.
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> For power providers, the smart grid allows them to provide pricing that encourages conservation and better utilizes off-peak hours overnight, when there's less draw on electricity as factories and office buildings ramp down.
>
> This is one factor behind General Electric's November announcement that it will purchase 25,000 electric cars by 2015, a number almost as large as its current fleet of 30,000 conventional gasoline-powered cars. GE anticipates savings from fuel economy and overnight charging.
>
> What'll become of the corner Exxon or Shell Station?
>
> The first wave of car-charging stations is likely to involve the owners of buildings, and national retail chains that install car-charging operations for some small economic or marketing gain. Once a critical mass is reached in production and sales of electric cars, advocates said, the market could build out quickly.

> "At some point, you will have these well-capitalized people that come in and who say, 'We want to be the Exxon of charging infrastructure.' And they will buy electricity in bulk from the utilities, and they will pony up money to actually plant infrastructure on the ground, sign up customers," said Mahi Reddy, the CEO of SemaConnect, a company in Annapolis, Md., that's making electric car chargers.

I introduced S.C.R. No. 19 of the 75th Session, which directed " ... the Legislative Commission to appoint a committee to conduct an interim study relating to the production and use of energy in the State." Part of the rationale for that study was the understanding that energy, in terms of electric power production, heating and transportation, is fundamental to every aspect of Nevada's economy and competitiveness.

In connection with S.C.R. No. 19 of the 75th Session, it was also noted that an estimated $11 billion per year is spent on energy and transportation fuel. A great deal of this is spent outside the State. Studies indicate for every dollar retained in the State, there is a multiplier effect on the State's economy.

Because of the linkage between energy and transportation issues, I also introduced S.B. No. 327 of the 75th Session to establish an electric vehicle demonstration program to provide incentives for electric vehicles. The goal was to help Nevada begin to deploy electric and hybrid electric vehicles as well as to give our utilities practical experience with serving a new customer base, the transportation sector, and advance their technical ability to serve them.

Unfortunately, S.B. No. 327 of the 75th Session was not reported out of the Assembly Committee on Commerce and Labor, though estimates were that the modest demonstration program would only cost the average residential customer about three cents a month. There was concern the various energy programs cumulatively would cost ratepayers too much.

Not enough attention was given to the offsetting benefits of encouraging electric vehicle usage, both in terms of reducing gasoline consumption and of reducing environmental impacts. With gasoline approaching $4 per gallon, it is a good time to reassess how much money we want to send out of state for transportation fuel.

We adopt demonstration programs when we want to stimulate new technologies. With the auto industry still recovering, and financing for loans sometimes hard to obtain, as we heard last week in testimony on a bill addressing car dealers, it is important to provide incentives to purchase the clean vehicles we hope will become our primary mode of transportation in the future.

In March 2009, President Obama announced a national goal to put 1 million plug-in hybrid vehicles on American roads by 2015. Senate Bill 281 represents an effort to help achieve that goal. In the interest of time, I will only mention one other feature of S.B. 281. Section 19 clarifies that a person who owns or operates electric vehicle charging stations is not a public utility and is not subject to the jurisdiction of the Public Utilities Commission of Nevada (PUCN). This provision was suggested by the Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General.

There was a dispute in 2008 concerning whether companies that install solar panels on homes or businesses and lease them to the building owners were public utilities. It took a full-blown PUCN hearing and Assemblywoman Sheila Leslie's A.B. No. 186 of the 75th Session to settle the controversy.

We do not want to delay deployment of electric charging stations because the industry is uncertain of how it will be treated by the regulator.

JOE JOHNSON (Sierra Club, Toiyabe Chapter):
We supported the bill in the 75th Session, and we are supporting S.B. 281. We are committed, as a utility in the State, to implement the "smart grid." To use it to maximum benefit, it must be interfaced with the use of electric vehicles. There are many reasons for supporting electric vehicles, and we stand in solid support.

KYLE DAVIS (Nevada Conservation League):
We also support this bill. Obviously, reducing the use of fossil fuels is a priority for our State. This bill is going to help move us on to better technology that will eventually get us to that goal.

BOB TREGILUS (Electric Auto Association of Northern Nevada; Feed-in Tariffs for Nevada):
We support S.B. 281. I have been primarily working in the electric drive transportation sector much longer than in the renewable-energy sector. I have seen this important nexus between distributed generation and electric vehicles. There is potential for electric vehicles to provide storage for the grid, which is nonexistent at this time. In the state of Delaware, they have already implemented programs of this sort, but it should be known to the Committee that Nevada is not "on the radar" for electric drive transportation as are other states: California, Oregon and Texas. A bill like this would certainly send a signal to the industry.

SENATOR SETTELMEYER:
Some electric cars only have a 25-mile range, which is useless in Nevada. The closest place to Carson City to charge a car is about 60 miles to 80 miles away. With the average electric car having a 40-mile range, you cannot make it to the next charging station. Where will the charging stations be? What is the standard time to charge a car using 240 volts? Is it six hours to eight hours?

If you are going to leave your car for six hours to eight hours to charge at work, this would make sense. Is it realistic to leave your car in a public place to charge?

MR. TREGILUS:
There are a lot of problems with people understanding the application of electric drive transportation. The Chevrolet Volt has a 40-mile, all-electric range, but it has a back-up internal combustion engine. If you look at the National Highway Traffic Safety Administration's statistics, 85 percent of us drive less than 40 miles per day. The Chevrolet Volt would take care of 85 percent of our needs.

The average household has two vehicles. When it is time to replace one, replace it with an electric vehicle and retain the other for longer distances. It is about individuals defining their applications and needs. Electric vehicles are not for everybody. Battery-powered vehicles such as the Nissan Leaf have a 100-mile all-electric range and the Tesla Roadster has a 240-mile all-electric range.

SENATOR SETTELMEYER:
Battery-powered vehicles are potentially where the market could be. If this bill goes forward, we might want to limit it to vehicles priced under $50,000. People who can afford vehicles over $50,000 probably do not need the subsidy.

CHAIR SCHNEIDER:
Nevada is the most urban state in the nation. We have all of our population in two areas. We have a large rural area with no population there. Most people who live and work in Reno or in Las Vegas would do fine with electric vehicles. We are trying to encourage this industry.

JUDY STOKEY (Executive, Government and External Affairs, Government and Community Strategy, NV Energy):
We are neutral on this bill. It is a great idea to have electric vehicles all around the State, but we do not advocate for the incentives.

CHAIR SCHNEIDER:
We will close the hearing on S.B. 281 and open the hearing on S.B. 414.

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

CHAIR SCHNEIDER:
Everyone knows Nevada's real-estate market has been devastated. There is no need to go through a list of facts demonstrating that. It is enough to note Nevada leads the nation in foreclosures. Senate Bill 414 addresses several unfortunate consequences of the current real estate market.

Section 2 of the bill prevents a bank from calling due a commercial mortgage loan if the borrower is not in default. Section 3 prohibits a bank from unreasonably delaying a response to an offer for a residential short sale. A bank is presumed to have unreasonably delayed if it does not respond within 90 days after receipt of an offer. Section 4 prohibits a deficiency judgment on a short sale of certain single-family homes.

SENATOR ROBERSON:
I have concerns about the deficiency judgment on a short sale. Would you please explain your rationale for that?

CHAIR SCHNEIDER:
I was concerned about people who are upside down in the mortgages on their homes, cannot make payments anymore, for whatever reason, and they short sell their home. I do not want banks going after the seller for the difference between what the house sold for and the mortgage.

SENATOR ROBERSON:
How do you propose to remedy that situation with this bill?

CHAIR SCHNEIDER:
It would be remedied by not allowing the bank to go after the seller. When the sale closes, the deal is ended.

SENATOR ROBERSON:
Under this bill, if the lender agrees to a short sale but does not agree to not seek a deficiency judgment, the lender will not be able to seek a deficiency judgment.

CHAIR SCHNEIDER:
That is correct.

SENATOR ROBERSON:
Going forward, the lenders would understand the law states that if they agree to a short sale, they cannot go after the deficiency. If that is the case, I am concerned this might reduce the number of short sales to which a bank would agree. This does not solve our problem.

CHAIR SCHNEIDER:
It may solve our problem, which is why we have hearings.

WILLIAM UFFELMAN (Nevada Bankers Association):
Section 2 of the bill addresses commercial mortgage loans. These would be classified as performing/nonperforming loans—even if the agreed payment is being made—if there are other factors in the loan documents that are not being met, such as failure to provide insurance or a reduction in value of the property in the appraisal. This is regulated by the Federal Deposit Insurance Corporation (FDIC).

JOHN P. SANDE III, (Western Alliance Bancorp):
The FDIC or the Office of the Comptroller of the Currency, U.S Department of the Treasury, if it is a federally chartered bank, oversees banks and certain items in loan documents. For example, the most important item we have in Nevada is the loan to value requirement. If the loan is on bare land, the loan has to be no more than 50 percent of the value of the land. The FDIC is overseeing this all the time, auditing and evaluating the loans. They continually require updated appraisals. If the loan to value goes down, the bank has to acquire more security from the borrower, the borrower has to pay down the loan or the bank has to write down the loan on the books, which is difficult for any bank to do. A number of banks have failed because they had to write off so many loans. There are covenants in loans requiring the property be fully insured, and if the borrower drops the insurance, under this bill, this would not be a default of the loan.

CHAIR SCHNEIDER:
I understand the pressure on banks from the FDIC, but individuals will be forced into bankruptcy to protect their assets or they will be forced into foreclosure. Something is broken in this system.

MR. SANDE III:
I agree with you. I have been involved in a lot of transactions in the last few years with people who seemed to be prosperous. Their liquidity has been reduced to nothing because they have multiple loans. They thought the economy was going to continue to be good, and they got overextended. If there is a technical default, the banks will work with the borrower, and as long as the borrower can continue to make payments, the banks will ask the FDIC to be lenient and not make the banks write off the asset.

This is where banks get hurt. If the bank writes off the asset, the FDIC will then give the bank a Capital, Asset Quality, Management, Earnings, Liquidity and Sensitivity score between one and five. If the bank receives a low score, the FDIC will increase the bank's payment for deposit insurance.

Things would be a lot easier were it not for the FDIC. However, the FDIC is trying to prevent banks from failing. But, banks will try to work with borrowers because they do not want more other real estate owned, which is foreclosed property, in their portfolio.

MR. UFFELMAN:
This past Friday, Nevada Commerce Bank in Las Vegas failed. Sixty percent of their commercial loans were in default. These were nonperforming loans.

I have a concern in section 3 of the bill about when the bank gets to the 89th day and an investor in a mortgage-backed security has not signed off on the reduced price on the short sale. Literally, the only thing the lender can do is reject the offer. Maybe language in this section could include "unless otherwise agreed by the parties." I would like to work on this section with you. We conceded in 2009 that on mortgages issued after October 1, 2009, there would be no deficiency judgments. The notion of the deficiency judgment in section 4 appears to apply only to new deficiency judgments. It would, in fact, be retroactive in nature because it would apply to any existing mortgages.

SENATOR SETTELMEYER:
How is the bank able to demand payment if the borrower has been making payments?

MR. UFFELMAN:
Covenants undertaken when the commercial loan is signed often have a five-year maturity. It is a 30-year mortgage in 5-year increments. Those documents will contain items such as, not less than 70 percent occupancy must be maintained or the value of the property must not decline below a certain amount because if it does, the borrower will have to take steps. There is a lot more than just making payments when the borrower signs for a commercial loan for a property.

SENATOR SETTELMEYER:
Is it correct then that these rules are somewhere within the document the individual signed?

MR. UFFELMAN:
Yes, that is correct.

SENATOR ROBERSON:
In section 4, the lender has to agree voluntarily to a short sale. Would you agree this is putting a condition on lenders that if they agree to a short sale, they cannot go after the deficiency?

MR. UFFELMAN:
I agree this is a voluntary act on the part of the lender to forego the deficiency judgment. I am not suggesting that it is not. Our experience has been that for the bulk of residential short sales, the primary lender is foregoing the deficiency judgment. The second mortgage or line of credit lenders are not. In many cases, the short sale is being held up because they are not willing to forgive.

On page 4, lines 6 and 7, the definition of financial institutions in *Nevada Revised Statute* (NRS) 363A.050 excludes credit unions. Credit unions would not be subject to forgiving the deficiency in a short sale if this bill becomes law.

SENATOR ROBERSON:
What would you think the practical impact of this would be? I am concerned there are not enough short sales now, and this might reduce the volume of short sale transactions. Also, there may be other unintended consequences with this bill. How will this affect the housing market in the future?

MR. UFFELMAN:
To initiate a short sale as a borrower, the financial institution holding the mortgage agrees in the beginning to the short sale. The financial institution and the borrower agree on an amount for which the borrower will seek to sell the house. The amount agreed upon would involve an appraisal or at least a broker's price opinion to decide what the property is worth today. Four or five years ago, the property might have been a $400,000 property. The mortgage on the property could be anywhere from $300,000 to whatever the mortgage is. The lender has to agree there will be a short sale.

There can always be a short sale. The borrower can sell the house for less than the mortgage and come up with the difference. This would not be a short sale; it is just a below-market sale. But to the extent that short sales and foreclosures establish market price, you are only going to get "x" dollars for a property. When lenders agree they are willing to accept less and are not going to reserve their deficiency rights, this would apply. In authorizing short sales, lenders have been looking at borrowers who are in default and are not making payments. Lenders have not been enthused about short sales when borrowers are upside down on the property, and can make the payments but just want out. When the financial institution says no to a short sale, I do not know if it will cause the borrower not to make payments anymore.

For the 70 percent of homeowners in Las Vegas who are upside down in their mortgages, this could provide a strong incentive not to make their payments. If they do that, we will have a market-clearing activity, and we will find out where the bottom is in relatively short order in this distressed market. Then people could potentially buy the property.

SENATOR ROBERSON:
I do not think any of us know what the impact on the market would be.

SENATOR SCHNEIDER:
We will close the hearing on S.B. 414 and open the work session on S.B. 278.

**SENATE BILL 278**: Revises provisions relating to health care and health insurance. (BDR 57-253)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):
I am presenting proposed amendment 6250 to S.B. 278 (Exhibit C). This bill is intended to help primary-care physicians deliver quality care as they assume a greater role in providing health care under the Patient Protection and Affordable Care Act (PPACA).

Since the hearing a week ago, there has been much work done on this bill with key stakeholders that included physicians, insurers and representatives of the Division of Health Care Financing and Policy, Department of Health and Human Services (DHHS).

The amended version of S.B. 278 retains its original intent to streamline administrative procedures for physicians. It moves toward a system for prior authorization of medical procedures by insurers reflecting changes occurring in the health-care delivery system, and ensures primary-care physicians are fairly informed about changes in payments by insurers.

In proposed amendment 6250 to S.B. 278, sections 1-5 have been deleted and replaced with new language requiring an interim study by the Legislative Committee on Health Care. The original language had called for the formation of a task force led by the Commissioner of Insurance, Division of Insurance (DOI), Department of Business and Industry (DBI), to determine the feasibility of implementing electronic health identification (ID) cards in doctors' offices.

Testimony at the last hearing and further research indicated a similar effort is already underway in the DHHS as part of the planning for the PPACA. A report including the issue of health-care smartcards is due over the next year. Rather than duplicate that work, S.B. 278 as amended in section 24.7 would require a report to the Legislative Committee on Health Care on the findings of that study. We are achieving the same end without "reinventing the wheel."

Sections 6 and 7 of the bill have been deleted to reflect changes occurring in the delivery of primary health care through the development of "medical homes." These are facilities with a number of primary-care physicians providing a broad spectrum of managed care.

The amendment being proposed in section 24.5 would require the DHHS to assess the development of medical homes, including how they are gearing up to meet anticipated demand, their capacity and adequacy of their network of providers, the best methods of ensuring coordination between physicians and insurers in prior authorization of medical procedures and options for reimbursement to these medical homes by insurers.

The amendment is intended to give a full picture of how primary care is evolving and what adjustments are needed as it plays a more important role in delivering care to more Nevadans. The DHHS would report its findings on medical homes to the Legislative Committee on Health Care for potential action by the 2013 Legislative Session in time for implementation of the PPACA in 2014.

A key element of S.B. 278 is the change it seeks in how physicians are notified by insurers about adjustments in their reimbursement rates. The bill, as heard in the last hearing, suggested physicians are notified 45 days before changes were made. We also had suggested this notification should include changes in fee schedules. The amended version of S.B. 278 includes that specific provision in a number of places.

At the recommendation of the working group, we are also proposing the requirement that physicians notified by registered or certified mail be eliminated out of concern for the expense involved and the agreement other forms of notice, including electronic notices, are adequate.

The real concern of physicians is they need to be informed in advance of changes in fee schedules which drive their reimbursement. This bill makes it clear they would be.

We have added a provision applying the notification requirements to dental practitioners who also operate under fee schedules and deserve the same kind of transparency in their contracts.

We are proposing to make additional modifications to section 16 of the bill which addresses the issue of transparency in reporting reimbursement rates paid by health insurers under State health programs compared with Medicare rates. The new amended version compares rates with current Medicare rates rather than 2002 rates which were determined to be not comparable in the services they cover. The new version makes it clear that reported reimbursement rates should include not only physicians, but assistants and nurse practitioners.

The amended version of S.B. 278 includes a provision in section 17.5 to give nonprofit health insurance companies more latitude to determine the package of benefits they will offer to the people they insure, exempting them from having to comply with any future adopted mandated benefits. The goal is to maintain the affordability of these plans that are strictly nonprofit.

SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):
Because of federal law which precludes a physician from sharing his fees with other physicians and the same federal law which precludes health insurance plans from doing the same thing, we have submitted a short amendment, page 19, Exhibit C, to change some language in this bill.

In section 16, subsection 1, line 26, we are proposing to strike "Each health insurer that provides reimbursement to a provider of health care in this State ... ," and to insert "The Department, under the State plan for Medicaid and the Children's Health Insurance Program, shall report every rate of reimbursement for physicians which is provided under a fee-for-service program which is lower than the rate provided on the current Medicare fee schedule for care and fee services by physicians." This wording allows us to stay in line with federal statutes and at the same time have transparency. It will help practitioners understand what they are being reimbursed. Practitioners are the physicians. Nurse practitioners and physician assistants do not make contracts because they are under the auspices of the physician.

Because it is alluded to in section 16, subsection 3, line 41, Exhibit C, we would strike " ... providers of health care which are reported to the Department by health insurers ... " and replace it with " ... reimbursement for physicians under the fee-for-service program pursuant to subsection 1 to the Director of the Legislative Counsel Bureau for transmittal to the Legislature in odd numbered years or to the Legislative Committee on Health Care in even numbered years." These changes would make it clean enough to be acceptable to the concerned parties.

SENATOR SETTELMEYER:
Did you consult with dentists about page 11 of the proposed amendment 6250 to S.B. 278? The original bill's discussion of dentists is much different. In this amendment, if an insurer advises a dentist the agreement or the payment schedule is going to be modified, the dentist must object to the modification in writing within 45 days. If the dentist does not object, the changes become effective at the end of the 45-day period. This means silence is acceptance. I am concerned about this. Is this good or bad for dentists?

JEANETTE BELZ (Nevada Dental Association):
The Nevada Dental Association (NDA) asked for this amendment. When a bill was passed in the 72nd Session, it included the provisions for notification. That was originally a malpractice bill and when it was amended to include this, chapter 695D of the NRS was not included. When we reviewed the bill, we contacted Legislative Counsel Bureau staff, but they did not know why the chapter was not included in this bill. The DOI advised me that for some reason it had just been left out. So the NDA requested it be included.

SENATOR SETTELMEYER:
I would like to have some time to speak with some dentists to make sure it is okay. Have individuals in the NDA seen this and are they okay with it?

MS. BELZ:
Yes, we requested it.

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
The proposed amendments to S.B. 278 have relieved a lot of our concerns and potential fiscal impacts. However, we still have a concern on page 11 of the amendment relating to dentists and NRS 695D. While Medicaid and the Nevada

Checkup program are exempt from certain sections of the insurance law, we are not exempt from NRS 695D, and we have a concern this may not comport with the way we set rates for dentists in our programs. We do not have individually negotiated reimbursement rates with individual dentists. Under the contract we have with the federal government, we have to set rates on a statewide basis for all dentists. Once we set rates, any practitioner can opt out or opt in to the Medicaid program. We would like to take another look at this and propose another amendment to make sure Medicaid and the Nevada Checkup programs are excluded from this provision.

We do have notification requirements in the NRS and in the *Nevada Administrative Code*. Under federal law, we have to give providers due notice and any rates changes have to go through a public hearing process. We have a lot of provisions requiring provider notification and this might not comport with current practice and law.

CHAIR SCHNEIDER:
Senator Horsford, do you want to hold this bill for an amendment, amend it in the Assembly, or have a floor amendment?

SENATOR HORSFORD:
I would like to have a floor amendment.

CHAIR SCHNEIDER:
We will close the work session on S.B. 278.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 278 WITH PROPOSED AMENDMENT 6250 AND THE ADDITIONAL PROPOSED AMENDMENT PRESENTED BY SENATOR HARDY.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HALSETH VOTED NO.)

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CHAIR SCHNEIDER:
We will open the work session on S.B. 328.

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

SENATOR HORSFORD:
There is a proposed amendment 6243 to S.B. 328 (Exhibit D). Senate Bill 328 would exempt creative professionals in the stage production and film industries from overtime requirements due to the flexible nature of their work. The bill cites a section of the Code of Federal Regulations (CFR) in defining a creative professional. This amendment clarifies that the exemption does not apply to employees of building contractors as could be construed under the CFRs. The amendment was requested and agreed to by Jack Mallory.

JACK MALLORY (International Union of Painters and Allied Trades, District Council 15):
The International Union of Painters and Allied Trades is in a unique situation. We represent a number of very gifted and creative individuals. As I read the definition of creative professionals in the CFRs, I was concerned because of the broad nature of the language. It could potentially encompass people I represent. I offered the amendment in the interest of fair competition among people with equivalent craft skills. This is not intended to encompass someone who is commissioned to paint a portrait of the Governor. Obviously, it is very limited in scope to employees of contractors as defined in NRS 624.

CHAIR SCHNEIDER:
We will close the work session on S.B. 328.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 328 WITH PROPOSED AMENDMENT 6243.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR SCHNEIDER:
We will open the work session on S.B. 234.

**SENATE BILL 234**: Revises provisions relating to motor vehicle dealers. (BDR 43-386)

JOHN SANDE III (Nevada Franchised Auto Dealers Association):
We proposed an amendment to S.B. 234 (Exhibit E). These proposed changes to the bill have been agreed upon by car dealers and manufacturers.

The changes in section 2, which refer to altering substantially an existing facility or building a new facility, have been agreed upon. Sections 4-8 have been deleted. They dealt with the licensing of agents for brokers. They also included the manufacturer's agreement to buy back parts from a dealer for a period of one year at the price the dealer paid for them. Section 8 addressed a manufacturer buying back the franchise and land of a dealer in the event of the termination of the franchise.

We made a language change in section 9 which now reads, "... if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles." This has been agreed upon.

In section 10, we changed the 120-day period to a 60-day period in which a manufacturer must accept an amended claim for labor and parts, if it is the result of a clerical error or other administrative technicality that does not put the legitimacy of the claim into question. Also in section 10, as you may recall, we talked about a manufacturer being able to perform an audit for a period of 12 months. We have proposed they could only perform an audit for a period of no more than six months. This is an issue on which we could not agree. We understand the chair of the Committee is going to propose an amendment to address this disagreement.

However, we also added some language to the proposal which addresses how the warranty and sales audits must be conducted, and if a dealer fails to comply with specific requirements of the manufacturer, the claim will still not be disallowed as long as there is reasonable documentation or other evidence presented to substantiate the claim. Another important sentence added is " ... the manufacturer or distributor shall not deny a claim or reduce the amount of compensation to the dealer for a warranty repair to resolve a condition discovered by the dealer during the course of separate repair." If a dealer is

doing a separate repair and comes across another warranty situation, it can repair and be covered. We have agreed to all the other language, but they would not agree to the 6 months, and we would not agree to the 12 months.

Section 11 was amended to read "A manufacturer shall not prohibit or prevent a dealer from disclosing a manufacturer documented service, repair guidance or recall notice or notifying customers of available warranty coverage and expiration dates of the existing warranty coverage."

We also discussed extending the period of time a dealer would have to rescind a contract when someone buys a car. If the dealer thinks the car buyer is going to get financing, the potential buyer may be allowed to drive away with the new car. If it turns out at the end of 15 days that financing is not possible, under existing law, the dealer has to notify the buyer, and the buyer has to return the car to the dealer. We want to change that period from 15 days to 20 days. There is no opposition. We would like a little more time to get financing. Although it is not in the proposed amendment, we would like to have it be effective on passage of this bill. Right now with the financing situation in Nevada, the more time the dealer has to get financing, the better it would be for the customer and the dealer.

CHAIR SCHNEIDER:
I understand it is in section 10 where there is disagreement. I spent some time with all parties in this bill and I would like to interject myself into this. I would like to propose an amendment to the amendment of S.B. 234 of April 12, 2011, page 19, Exhibit E. Based on my review of other laws around the country, a nine-month audit period is justified here, and the amendment I have would reflect that. Are there any problems with that amendment going forward?

MR. SANDE III:
No, we have discussed this among ourselves, and even though neither side likes the other side, we are all in agreement with the amendment and believe the bill should go forward.

ALFREDO ALONSO (Alliance of Automobile Manufacturers):
We still believe 12 months for an audit period makes the most sense and covers issues such as fraud, etc., because you have a longer period of time to watch those trends. I am sure we can live with what you have discussed, and because of the rest of the language, we are neutral on the bill.

CHAIR SCHNEIDER:
With the amendment for nine months, there are no other problems with the bill.

MR. ALONSO:
No, they are fine.

CHAIR SCHNEIDER:
We will close the work session on S.B. 234.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 234 WITH BOTH AMENDMENTS AND THE ORAL AMENDMENT.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the work session on S.B. 168.

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

SENATOR HARDY:
Senate Bill 168 is the Board of Medical Examiners bill. It attempts to mirror the statutes governing the Board of Medical Examiners and the State Board of Osteopathic Medicine. At the request of this Committee, we are providing the mock-up proposed amendment 6188 to S.B. 168 (Exhibit F). The fiscal note should be gone with the deletion of the sections 11-18 in the amendment.

In section 1, records have to be made available within five business days to someone who needs them as a patient. Section 1.5 addresses the discovery of an overdose in an autopsy. In section 2.5, physicians shall only offer sedation if they are licensed and it is performed in a licensed facility. Section 3, subsection 2, paragraph (c) addresses reporting the number of surgeries and the occurrence of sentinel events. Section 7 cleans up the language for respiratory therapists regarding the National Board for Respiratory Care. Section 7.5,

subsection 4, addresses mandated reporting of a sentinel event within 14 days of the occurrence of the sentinel event.

KEITH LEE (Board of Medical Examiners):
I concur with everything Senator Hardy said.

SENATOR SETTELMEYER:
To what has the fiscal note been reduced?

SENATOR HARDY:
There is no longer a fiscal note.

SENATOR HALSETH:
Does this mean there is no longer a two-thirds majority vote required?

SENATOR HARDY:
No, there should be no two-thirds majority vote required.

CHAIR SCHNEIDER:
We will close the work session on S.B. 168.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 168 WITH THE PROPOSED AMENDMENT 6188.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the work session on S.B. 164.

**SENATE BILL 164**: Revises provisions relating to claims examiners for third-party administrators and vocational rehabilitation counselors. (BDR 57-232)

ROBERT OSTROVSKY (Nevada Resort Association; United Healthcare Services, Inc.; Employers Insurance Group):
I am presenting a conceptual amendment to S.B. 164 (Exhibit G). The question is how to improve quality in the administration of workers' compensation claims (claims). It is not about quantity or benefits; it is about how to ensure claims are processed accurately, timely and with professionalism. Senator Schneider has been relentless in the last four years to get the industry to try to improve itself internally. We have had some "bad actors" along the way. We have had some people who have not done justice to what this Legislature and most employers would expect in the treatment of their employees with claims.

This bill is an effort to try to improve on that situation. We got close in the 75th Session, but we just could not close the deal on how we should look at third-party administrators (TPA). This is where we identified a considerable number of problems. The conceptual amendment to this bill removes vocational rehabilitation from this issue. Vocational rehabilitation is regulated in a number of different statutes, including workers' compensation. There is a minor problem with that which will be addressed in another bill. We took them out of this licensing, because they have licensing statutes already.

We focused on claims examiners in this bill. We decided it is too difficult, and not necessary, to license all claims examiners. It is necessary to have someone responsible at the insurer's office or the TPA's office who would sign off on the important issues and markers in a claim.

We suggest that a senior claims examiner be required to do certain things. Senior claims examiners will be required to be licensed by the DOI. We will have to work out in regulation what the requirements of that individual will be. We will try to work out language quickly with the DOI and the Division of Industrial Relations (DIR), DBI, to put that in section 17 of this bill or other sections and then follow with regulations. We will need until January 1, 2013, to create regulations and to allow people to comply so those who are employed will not find themselves in a situation of having to be replaced because they missed a requirement of licensure. The license would be reviewable by the DOI and the DIR.

Those individuals would be required to sign off on particular items happening in a claim. There is a list of items included in the amendment such as opening a claim, closing a claim, making a permanent partial disability award, etc. When

benefits are cut off or when a claim is denied, the senior claims examiners will have to review and sign off on the claim. They will also have to sign off on any catastrophic claims. They will be qualified individuals, licensed through the DOI. The DOI has experience in licensing claims agents in other insurance fields. We want a senior claims examiner involved in every claim. This will be a requirement of not only TPAs, but all insurers, including self-insurers. We have agreed that if this is good for one, it is good for all. It is necessary to have some assurances.

In that process, we made a discovery that the DIR, which audits TPAs, did not have the authority to audit TPAs per se. They audited the insurer's account, not the TPA as a whole. We are proposing to amend further NRS 616A.400, "Duties of Administrator," to add language to determine whether an insurer or TPA has adequate facilities in the State to administer claims and retain files of each claim. We would also propose to add that the administrator of DIR can conduct investigations and examinations of insurers or TPAs. This change was suggested by Donald Jayne, Administrator, DIR. This will give them a new tool in managing TPAs.

CHAIR SCHNEIDER:
Committee, are you comfortable with amending and passing S.B. 164 today? The amendment would be drafted and brought back to the Committee soon. Mr. Ostrovsky, when could you get the amendment back to the Committee?

MR. OSTROVSKY:
If you amend and do pass this bill, the next deadline for it would be first house passage. We could get it back to you next week.

SENATOR COPENING:
I am prepared to make a motion to amend and do pass, but I would like to get assurances on the record from Mr. Ostrovsky that after it is drafted, if we discover there may be some issues with the way it is drafted, there is a commitment to amend it in the Assembly, on the Assembly Floor or wherever we need to amend it.

MR. OSTROVSKY:
I will pledge to you we will get you a mock-up amendment the Committee can review, and, if there is an issue, we will prepare a floor amendment that is satisfactory to the Committee. I would like to make that pledge about the

Assembly, but I cannot make a guarantee once it leaves the Senate. So let us amend it before it leaves.

CHAIR SCHNEIDER:
It does not have to be out of the Senate until April 28. They could have it done by then.

SENATOR COPENING:
The intent was that you, in good faith, would amend anything with which we were not comfortable.

MR. OSTROVSKY:
Yes, absolutely.

Chair Schneider:
We will close the work session on S.B. 164.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 164 WITH THE AMENDMENTS PROVIDED.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS HALSETH, ROBERSON AND SETTELMEYER VOTED NO.)

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CHAIR SCHNEIDER:
We will open the work session on S.B. 292.

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

JESSE WADHAMS (Asurion Insurance Services, Inc.):
The proposed amendment to S.B. 292 (Exhibit H) has been agreed to by all parties.

SENATOR COPENING:
What were the resolved issues?

MR. WADHAMS:
The bill carves out a component of inland marine insurance, which is an existing line of insurance. This is a specialty line of insurance, and this bill will give it a regulatory process as this area of insurance burgeons out. This line of insurance is called personal electronics insurance.

The bill addresses how individuals will become licensed in the personal electronics insurance area, how it will be sold, and it gives the commissioner of insurance more oversight in how it will be regulated. The underlying issue was the ambiguity of who is selling the insurance. For example, a front-line employee at the Verizon store might suddenly be determined to be selling inland marine insurance. This bill will clarify this is not the case. The employee is working for Verizon selling their products, not insurance.

SENATOR COPENING:
In section 18, subsection 1 of the amendment, is it correct that the fine imposed should be $50,000 and not $25,000?

MR. WADHAMS:
That is correct. It is an aggregate amount of $50,000.

BRETT J. BARRATT (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
As Mr. Wadhams indicated, we are in agreement with the proposed amendments to S.B. 292. All of my concerns have been resolved.

CHAIR SCHNEIDER:
We will close the work session on S.B. 292.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 292, WITH THE AMENDMENT CHANGING $25,000 TO $50,000 IN SECTION 18.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the work session on S.B. 314. A proposed amendment has been submitted by Gail Anderson, Administrator, Real Estate Division, DBI (Exhibit I).

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

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):
I have seen the proposed amendment. I am in agreement with any amendment that produces a good effect for this much-needed legislation.

SENATOR SETTELMEYER:
I still have some concerns with sections 27 and 28 of S.B. 314. I suggest we delete these two sections. The Real Estate Division, DBI, should be doing this now.

SENATOR LEE:
I agree with Senator Settelmeyer's suggestion.

CHAIR SCHNEIDER:
We will close the work session on S.B. 314.

SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 314 WITH THE TWO PROPOSED AMENDMENTS AND THE DELETION OF SECTIONS 23, 27 AND 28.

SENATOR COPENING SECONDED THE MOTION.

MATT NICHOLS (Counsel):
"I am just curious if Senator Settelmeyer might also want to remove sections 23 and 29. I think I know where he is going with this."

SENATOR SETTELMEYER:
Section 29 has already been deleted, but if it is also necessary to delete section 23, I agree.

MR. NICHOLS:
"Okay."

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the work session 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)

SCOTT YOUNG (Policy Analyst):
Two proposed amendments have been presented, one by Judy Stokey, Executive, Government and External Affairs, Government and Community Strategy, NV Energy, page 12 (Exhibit J), and one by Stacey Crowley, Director, Office of Energy, Office of the Governor, page 16, Exhibit J.

Both of these amendments cannot be adopted because they conflict. A choice must be made between the two.

ROBERT NELLIS (Energy Program Manager, Office of Energy, Office of the Governor):
The proposed amendment 6019 to S.B. 59, page 3, Exhibit J, would raise the net metering cap from 1 percent to 2 percent of the State's total peak capacity, instead of the proposed original 5 percent. It also provides for the PUCN to consider 1/2 percent increases up to a total of 3 percent of the total peak capacity.

SENATOR SETTELMEYER:
The trigger for the PUCN generates a fiscal note which may delay this bill in the Senate Committee on Finance. I am not in favor of this trigger because of the involvement of the PUCN. I suggest we increase the cap to 2 percent; then the bill would not get delayed.

MS. STOKEY:
We had the 1 percent statewide cap in our proposed amendment and then the trigger with the PUCN to a total of 2 percent. I can understand Senator Settelmeyer's comments. We are fine with the 2 percent cap, but only if we can ensure that once we hit the 1 percent cap, the subsidy on the net metering is gone, as proposed in our amendment. Customers will still offset

their fuel and purchase power rates, because that is what they are creating, but they will no longer get the subsidy on the transmission and distribution.

SENATOR SCHNEIDER:
Is it correct that Ms. Crowley's proposed amendment retains the subsidy?

MR. NELLIS:
Yes, that is correct.

CHAIR SCHNEIDER:
Senator Settelmeyer wants peak capacity capped at 2 percent, and I would like to retain the subsidy.

SENATOR SETTELMEYER:
I have a problem with the subsidy. We have come to a point where this should pay for itself, but I understand the direction we are going. Perhaps we should hold this and work on a consensus on these issues.

CHAIR SCHNEIDER:
Having no further business, the Senate Committee on Commerce, Labor and Energy is adjourned at 3:15 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

| EXHIBITS | | | |
|---|---|---|---|
| **Bill** | **Exhibit** | **Witness / Agency** | **Description** |
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B. 278 | C | Scott Young | Work Session Documents |
| S.B. 328 | D | Scott Young | Work Session Documents |
| S.B. 234 | E | Scott Young | Work Session Documents |
| S.B. 168 | F | Scott Young | Work Session Documents |
| S.B. 164 | G | Scott Young | Work Session Documents |
| S.B. 292 | H | Scott Young | Work Session Documents |
| S.B. 314 | I | Scott Young | Work Session Documents |
| S.B. 59 | J | Scott Young | Work Session Documents |