MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Seventh Session
April 19, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 11:10 a.m. on Friday, April 19, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Cresent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Andy Eisen, Clark County Assembly District No. 21

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Julie Kellen, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Regan Comis, representing Board of Medical Examiners
Edward Cousineau, Deputy Executive Director, Board of Medical Examiners
Lawrence Matheis, representing Nevada State Medical Association
Bryan Gresh, representing State Board of Osteopathic Medicine
Jayne Harkins, Executive Director, Colorado River Commission of Nevada
Ann Pongracz, Senior Deputy Attorney General, Colorado River Commission of Nevada
Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services

Chairman Bobzien:
[Roll was called.] We will be hearing three bills today and will begin with Senate Bill 162 (1st Reprint). I would like to call Assemblyman Eisen to the table to present this one.

Senate Bill 162 (1st Reprint): Revises provisions governing the practice of medicine. (BDR 54-108)

Assemblyman Andy Eisen, Clark County Assembly District No. 21:
I appreciate the opportunity this morning to present S.B. 162 (R1). Nevada is one of 13 states that licenses allopathic physicians, those with doctor of medicine (M.D.) degrees, and osteopathic physicians, those with doctor of osteopathic medicine (D.O.) degrees, via separate boards. The remainder of the states and territories have a single board.

The main purpose of S.B. 162 (R1) is to bring those two boards aligned with one another so that these different groups of physicians with the same scope of practice are held to the same standards and are expected to follow similar

procedures. There are some other changes in the bill that we will discuss as we take a brief walk-through.

Section 1 of the bill adds any physician, physician assistant, perfusionist, or practitioner of respiratory care to the list of licensees the Board of Medical Examiners must include in its biennial report of disciplinary action that is taken for malpractice or negligence. That board has licensed those professionals for some time now. Perfusionists were added more recently. They were simply not included in the provision of the report that has to be provided regarding disciplinary actions.

Section 2 prohibits the Board of Medical Examiners from issuing a license by endorsement to practice as an administrative physician, except for some very limited circumstances.

Sections 14.2 through 14.8 and section 16.5 include parallel provisions for the licensure of administrative osteopathic physicians by the State Board of Osteopathic Medicine.

Sections 3 and 4 include some clarifications of language with no change in intent. Sections 5 through 8 and 12, with regard to allopathic physicians, M.D.s, and sections 15 through 18 and 21, with respect to osteopathic physicians, D.O.s, expands the grounds for disciplinary action or denial of licensure based on certain acts, such as procuring or administering a controlled substance or dangerous drug, filing false surgery reports, or failure to submit fingerprint reports in response to disciplinary actions that are committed knowingly or willfully by a person licensed by either board. The State Board of Osteopathic Medicine includes other instances that must conform to similar provisions already existing in *Nevada Revised Statutes* (NRS) Chapter 630 relating to the Board of Medical Examiners.

Sections 9 and 19 for M.D.s and D.O.s, respectively, provide that the reports of a person who conducts an examination of a physician on behalf of the Board or an investigative committee of the Board are not considered privileged communications.

Sections 10 and 20 revise provisions relating to the summary suspension of certain medical practitioners and requires the boards to reinstate the license of a licensee summarily suspended under certain circumstances.

Section 11 revises the complaint procedures affecting the Board of Medical Examiners. Sections 13 and 22 revise provisions governing the service

of process on licensees of the two boards. Section 14 makes a knowing failure to make records available a misdemeanor.

That is a very quick tour of the bill. I would be happy to answer any questions.

Chairman Bobzien:
Could you give us an overview of amendment 15, and what that was designed to address? It is what got amended over on the Senate side.

Assemblyman Eisen:
Could you clarify the question?

Chairman Bobzien:
The bill was amended on the Senate side with amendment 15. We are looking at the first reprint of the bill. I was wondering if you could give the Committee an update as to the conversations on the Senate side and why it was amended.

Assemblyman Eisen:
My apologies, I have the version of the bill as it was passed out of the Senate. I do not have the specific changes that took place. I know the discussion on the Senate side was centered on ensuring the provisions in NRS Chapter 630 for allopathic physicians and NRS Chapter 633 for osteopathic physicians were brought in line with one another.

Chairman Bobzien:
Mr. Mundy can give us a quick update, and maybe the gentleman raising his hand could respond once we hear from our legal counsel.

Matt Mundy, Committee Counsel:
The main change was to bring in NRS Chapter 633 for the osteopaths, which is the administrative physician provisions, so they now have the administrative physician licensee in that Chapter consistent with NRS Chapter 630. They are subsequently prohibited from issuing the license by endorsement for the administrative physician similar to that in the original bill.

Chairman Bobzien:
Are there any questions from the Committee?

Assemblywoman Bustamante Adams:
Dr. Eisen, you said Nevada is one of 13 states that are licensed by the two separate boards. Our goal is to bring these two boards together. Have they agreed to this? Can you give us a little more of a background as to why we have two separate boards and the consideration of bringing these together?

Assemblyman Eisen:
The effort here is not specifically to move toward a merger of the boards but to bring the provisions in line with one another so the standards that are held out for allopathic and osteopathic physicians are the same. This does not combine the boards into one. That has been a decision that has been made over the years in various states whether or not they had a particular preference to have a single board or separate boards. In fact, there are a number of states that have a single professional licensing board that covers more than just physicians. There are others where all licensees with the board are under a centralized system. The architecture for this in Nevada has traditionally been two separate boards. This does not make a move to combine the boards. They are still separate and independent boards. It sets the requirements to be in line with one another.

Assemblyman Hansen:
My first question is for Legal. What is the difference between knowingly and willingly? I am going through the bill and there are a whole bunch of changes. Are we splitting hairs, or is there really that much of a difference between the two?

Matt Mundy:
There is quite a bit of difference. When someone commits an act knowingly, it is only with an awareness of the actual action. It is not an intent to violate a specific provision of law. If someone does something willfully, it is in conscious disregard of an existing provision of law. There is an additional burden there to show that a person acting willfully has done something intentionally to violate the law.

Assemblyman Hansen:
Dr. Eisen, currently disciplinary action by the board only applies to a physician. We are going to add physician's assistant, perfusionist, and practitioner of respiratory care. Are those people not currently under any form of potential disciplinary hearing? Is there a board they answer to now? Is there a reason we are going to add these? Has there been a problem where physicians' assistants have done something to harm patients? What is the purpose behind this?

Assemblyman Eisen:
This change in the statute does not change the authority to regulate or discipline those licensees. These are professionals who are currently licensed by the State Board of Medical Examiners. They are already subject to disciplinary proceedings by the State Board of Medical Examiners. What this provision does is change the requirements of the biennial report of the Board

regarding malpractice actions to include a report of actions taken against those professionals as well. Currently in statute, the report only requires the inclusion of disciplinary actions against physicians.

Assemblyman Ohrenschall:
My question has to do with section 2, page 4, at lines 26 through 31: "The Board shall not issue a license by endorsement to practice as an administrative physician." What is the driving force behind that? I looked at NRS Chapter 630, and administrative physician as defined in NRS 630.007 includes the first two positions mentioned in paragraphs (a) and (b) at lines 29 through 31, which are an employee or officer of a state agency and an independent contractor with the state. But NRS 630.007 is broader and goes on to allow an "Officer, employee or independent contractor of a private insurance company, medical facility or medical care organization." I wondered why we are limiting it to an administrative physician who only works or contracts with a state agency. We are not allowing it for someone in the private service.

Assemblyman Eisen:
The principle behind this is to limit the ability of the Board to issue a license by endorsement alone. This does not prevent the Board from licensing someone to be an administrative physician. It simply prevents that it be a licensure by endorsement rather than through the normal application process. There would still be the ability for someone to apply for a license to be an administrative physician. He or she can apply to the Board for that, but in order for him or her to be able to get that license by endorsement and not through the normal application process, it would be limited to these circumstances.

Assemblyman Ohrenschall:
Was the feeling that it is safer to grant these endorsement licenses just to the administrative physicians who are with the state? Has there been a problem with private administrative physicians, or did you feel that he or she needed to go through the more rigorous process of licensure?

Assemblyman Eisen:
In my view, the issuance of a license by endorsement should be restricted to very limited circumstances and with very good reason. The idea here, in terms of licensure by endorsement for someone who is providing service directly to the state, whether as an employee or through a contract, is that there is particular need that serves the public. It allows for that process. If someone is going to serve as an administrative physician for a private company, I think they should be held to the same standard as a licensure

application because that is the purpose of their service, which is to serve that independent entity, and not necessarily to serve the state as a whole.

Assemblyman Ohrenschall:
That helps clarify it.

Assemblywoman Carlton:
Following along Mr. Ohrenschall's questioning, that is where I was going to go. If we are going to do licensure by endorsement, I do not see why we would section out one particular group over another if endorsement will work for the state or other independent contractors. Why would it not work in other areas? I think the overarching public policy is, if we are going to do this, and it is acceptable to do it, why do we limit it in just certain areas? I would need to learn more about what is actually happening there and what we are really talking about so I can evaluate it. Is there a problem with getting administrative positions at the state level, or are we trying to fill a hole? What is this trying to accomplish by giving the state a different avenue to employees than the private sector? If you are not comfortable with that today, this is fine, but it is something I think we need to look at and understand a little better.

Assemblyman Eisen:
I understand your concern about the distinction of someone who is an administrative physician in service to the state versus one who is in service to a private entity. I would note that this is an addition of a process for licensure by endorsement. That is not something that is currently provided for. This is a new process, but it is a very limited scope of that new process.

Assemblywoman Carlton:
In the time I have been here, it seems that every single year we have a bill that trues up the osteopaths with the allopaths, and I think eventually this body is going to have to consider the fact that there might not be a need for two separate boards in the future. I think we are going to need to look at that seriously in the future.

Chairman Bobzien:
Do we have additional questions for Dr. Eisen? [There were none.] Do you have other people wishing to testify in support of S.B. 162 (R1)?

Regan Comis, representing Board of Medical Examiners:
The Board of Medical Examiners is in support of this bill. We would like to thank Dr. Eisen and Dr. Hardy for bringing it forward. We have been working very closely with the sponsors and feel this bill reflects that work. With me today are the Board's deputy executive director, Edward Cousineau, and the

Board's general legal counsel, Brad Van Ry, to answer any questions the Committee may have.

Assemblyman Ohrenschall:
My question is a follow-up from my earlier one dealing with restricting the licensure by endorsement for the administrative positions. Was there a problem in the past with licensures by endorsement for doctors in the private sector?

Edward Cousineau, Deputy Executive Director, Board of Medical Examiners:
The best way to describe our desires for the change in current language is that it is based on past experience. We have had a couple of individuals who applied for licensure by endorsement with the Board who did not meet the traditional qualifications for licensure by endorsement. There is one area available currently under NRS 630.259. The licensure by endorsement statute was created for circumstances where we have an individual applying for licensure in the state who would not necessarily be able to obtain licensure through the traditional means but would bring some kind of extraordinary skill set or specialty to the Board. We believe that was the desire when it was created several years back. We have had individuals who were probably less than desirous wanting to obtain licensure by endorsement in an administrative role. We want to carve out the exception and make it clear that if you do not meet our requirements under NRS 630.259, which is our administrative licensure statute, that you cannot circumvent that and come through under NRS 630.1605, which is the licensure by endorsement. It was put in place for the purpose of bringing highly qualified, extraordinary practitioners to this state who would not be able to be licensed through our traditional licensure route.

Assemblyman Ohrenschall:
Why leave it open to those physicians who are going to work for a state or local entity but not for those who are going to work in the private sector?

Edward Cousineau:
I believe the genesis of NRS 630.259 was the fact that we had someone who wanted to work in the public sector. There was a position that was available, and he or she was not able to become licensed through our traditional licensure route. He or she may not have had the three years of progressive postgraduate training. We often see this with foreign doctors. We think if we make this exception under endorsement, we would allow those individuals who could not obtain licensure normally to benefit the state public sector in that capacity. I can certainly recognize why there might be concerns as to why we are limiting it, but we would hope that in most instances individuals who are seeking licensure for administrative function would be taking our NRS 630.259 route. An administrative license has no clinical practice involved. We would make that

available, as appropriate, to the individuals who are going to practice clinically under NRS 630.1605. They should be going the traditional NRS 630.259 route if they do not plan on practicing clinical medicine.

Assemblywoman Carlton:
I am looking at all of the citations under NRS 630.261, and this is the locum tenens provision that has been discussed for a very long time. To expand upon my colleague here, I am still having a hard time getting past the fact that we would allow someone to go into state service at one level of proficiency and require another level of proficiency for private service. I believe that no matter where you work, there should be the same level of expertise. We do not provide different levels of care depending upon where or how you access care. When I read this, it leads me down that path. I need it to be clear that is not what we are doing. If we are allowing an exception for state service for a lower level of licensure than we are for the private sector, why are we going there? We should expect the same care at the state as we do in the private sector.

Edward Cousineau:
I understand your sentiments. The NRS 630.259 language that is in place was created to allow individuals to practice in an administrative capacity who would not otherwise be able to obtain licensure here in this state. In that administrative capacity, there was no clinical practice involved. We thought this caveat, this carve-out, would offer that opportunity for those individuals who would be eligible for licensure by endorsement but not for other alternatives.

Assemblywoman Carlton:
I do not think I got an answer. To go to the second part, every session we seem to be truing up allopaths and osteopaths over and over again. Most people do not understand the differences anymore. Is this the State Board of Medical Examiners' bill or the State Board of Osteopathic Medicine's bill?

Edward Cousineau:
This bill was advanced by the State Board of Medical Examiners. I cannot speak to the lobbying efforts or solicitation of the Board of Osteopathic Medicine.

Assemblywoman Carlton:
The request was the point of the question. It does impact the Board of Osteopathic Medicine even though it was requested by the State Board of Medical Examiners.

Edward Cousineau:
Yes, and I think you are correct in recognizing that there is a desire to possibly bring the two licensing boards more in line. As Dr. Eisen stated earlier, the scope of practice is substantially similar, so it seems to be sensible to try to mirror the two boards where appropriate.

Assemblywoman Carlton:
We will not even open up scope of practice.

Chairman Bobzien:
Are there additional questions? [There were none.] Do you have any additional testimony you wanted to provide?

Edward Cousineau:
No, Mr. Chairman.

Chairman Bobzien:
Is there additional support for S.B. 162 (R1) here or in Las Vegas?

Lawrence Matheis, representing Nevada State Medical Association:
We support the bill. There were a few technical issues that were cleaned up on the Senate side. They were all friendly amendments. The Board of Medical Examiners has two investigative committees that follow up on complaints, and the amendment dealing with who on that committee could issue a complaint when the chair of the committee was not available made it so any member of that committee could do it. We did address the knowingly and willfully issue. It had become an issue for the Board in one case where the court interpreted the limited use of knowingly. That is why they sought the changes. We do not have any objection to that. It is the same with the issue regarding expediting when the state is seeking an administrative physician; it goes back to a very specific anecdote. To create the administrative role was to expedite those kinds of searches. I think that is the intent here and to expedite it even further by allowing it to be by endorsement. Whether that should not be open to any applicant for an administrative physician role is certainly something the Committee might want to consider.

Chairman Bobzien:
Do we have any questions for Mr. Matheis? [There were none.] We are going to have to drop our call for a moment with Las Vegas to reestablish the video link. Is there anyone in opposition here in Carson City? [There was no one.] We are going to hold for a moment because we do have one other person who signed in wishing to speak from Las Vegas.

We are back. Mr. Gresh, good morning.

Bryan Gresh, representing State Board of Osteopathic Medicine:
The Board of Osteopathic Medicine does support the bill as presented to you this morning.

Chairman Bobzien:
Are there any questions for Mr. Gresh? [There were none.] Is there any opposition to S.B. 162 (R1)? [There was none.] Is there anyone wishing to testify as neutral? [There was no one.] We will ask Dr. Eisen to give us some final words.

Assemblyman Eisen:
I appreciate the Committee's consideration of this bill. I want to take the opportunity to clarify the matter of the administrative physician. I want to be clear that what is being described here is not a distinction in the expectations for any physician who will provide clinical service in any way. This is exclusively with regard to administrative physicians, who by definition cannot examine or treat a patient. I would be happy to continue to discuss with members of the Committee whether or not that provision should apply more broadly. The intent here was that it would facilitate the recruitment and hiring of administrative physicians who were going to work in service to the state.

I appreciate the support of both the Board of Medical Examiners and the Board of Osteopathic Medicine. We will continue to work together as we move forward.

Chairman Bobzien:
Let us close the hearing on S.B. 162 (R1). We will go to Senate Bill 438. We welcome Ms. Harkins back to the Committee. I understand that Senator Parks wanted to present the bill this morning, but he is attending to floor business on that side of the building.

Senate Bill 438: Revises provisions governing the Colorado River Commission of Nevada. (BDR S-1091)

Jayne Harkins, Executive Director, Colorado River Commission of Nevada:
You have my written testimony (Exhibit C). I will highlight parts of this piece of legislation for you. I want to thank Senator Parks and the Senate Committee on Government Affairs and Senator Ford and the Senate Committee on Natural Resources for supporting our bill and helping us get it through the Senate.

Today I am before you to seek your support for S.B. 438. This legislation clarifies that the Colorado River Commission (CRC) can refinance the high-interest debt associated with the Hoover Dam Visitor Center and other capital improvements at Hoover Dam. [Read from written testimony (Exhibit C).]

We are assuming if we can get a 4.5 percent interest rate, we can save Nevada's Hoover customers approximately $23 million over a 30-year period. Since construction of Hoover Dam, the CRC's customers have paid for Nevada's share of costs of construction, capital, operations, and maintenance at Hoover Dam, and they continue to do so today. As a reminder, the Commission is customer funded. We receive no General Fund monies from the State for operations. In the past, we have issued bonds for various things, including a payment of debt at Hoover Dam. We have issued those bonds with taxpayer support, but we have never burdened the taxpayers with any of the debt repayment.

The benefits of S.B. 438 would go to our customers. Under our statute, we pass the cost of power to them, so if the debt portion of the cost of power is reduced, our power rates are reduced. The beneficiaries are NV Energy, Lincoln County Power District, Overton Power District, Valley Electric Association, Southern Nevada Water Authority, City of Boulder City, and the companies at the Basic Management Industrial Complex near Henderson. About 50 percent of the Commission's Hoover hydropower is delivered to NV Energy, so they get a proportional share. They get 50 percent of those cost savings.

Under *Nevada Revised Statutes* (NRS) Chapter 538, the CRC has broad bonding authority. Every time we do bond, we have to come back to the Legislature or to the Interim Finance Committee to establish the principal cost of that. In the 1980s, Congress authorized substantial construction at Hoover Dam to increase the capacity of the powerhouse and to construct the Hoover Dam Visitor Center. Those costs were paid for by appropriated dollars by Congress with repayment back to the U.S. Treasury by all of the Hoover customers in Arizona, California, and Nevada.

We work with the Office of the State Treasurer. Our bond counsel, John Swendseid, who works for the State Treasurer, looked at our authorities and developed the language for this legislative proposal. He said we needed to seek further clarification, specifically so the refinancing of the Visitor Center debt would be eligible for the natural resources exemption, which is in Section 3 of Article 9 of the *Nevada Constitution*.

I will walk through the provisions. [Continued to read from written testimony (Exhibit C).] There were some questions in the Senate about what natural resources means. We are reviewing that. The way the Legislature has issued bonds for the Commission in the past is that the resource of the Colorado River, and using that resource to generate hydropower at Hoover, allows us to use that natural resources exemption. That is the way it has been done. [Continued to read from written testimony (Exhibit C).] Again, this is as we have issued bonds in the past. We have never had to go back to the taxpayers. Our customers have always repaid our bonds. [Continued to read from written testimony (Exhibit C).]

We have attached legislation from 1983, which was the last time we sought bonding authority from the Legislature. This is very similar legislation that Mr. Swendseid put together for the State Treasurer and for us. With that, I will answer any questions you may have.

Assemblywoman Kirkpatrick:
In section 1, subsection 2, would this allow you to build more plants for more generating capacity?

Jayne Harkins:
No, we would have to come back to the Legislature. This is only to do what has been done. It is only up to the $35 million, so there is a particular cap in here.

Assemblywoman Kirkpatrick:
It says "for the purpose of prepaying the cost of electrical capacity." You could refinance and include within that refinance savings to build additional plants, which would increase your capacity, correct?

Jayne Harkins:
We have no plans of doing that right now at Hoover. Since the last time we did anything at Hoover to increase the capacity of the generating plants, there is no technology now that would help us. Currently, there are no plans. The word "prepay" is because we are paying back to the U.S. Treasury. We are paying back the debt we are already incurring. It would be one payment to the Treasury, and then we would have the bond debt, which would be at a lesser interest rate.

Assemblywoman Kirkpatrick:
We just passed a bill out of the Assembly that would allow you to sell electricity that you may get through Hoover Dam. I am wondering if you will have to build

additional plants to do that. This would allow you to refinance. You would be paying back the U.S. Treasury, but it would open the dollars up for use.

I am having a hard time on page 2, line 10 where it says, "Not later than June 30, 2028." That is 15 years from now. I have never seen "issue from time to time." What does that mean? I do not know legally what that means, but time to time at my house means I can do something whenever I feel like it.

Jayne Harkins:
There are a couple of reasons for the timing component of time to figure this out. One is the debt all of the current Hoover customers have to pay off to the U.S. Treasury. The U.S. Treasury looks at this as one debt, so we all have to pay off at one time. The Arizona Power Authority is at their legislature, seeking additional bonding authority, because they have to issue bonds to try to do this too. Some of the entities in California have said they will pay cash, while others said they will do bonds. After we get this legislation and Arizona gets their legislation, it is going to take us some time to work all of those bonds and cash issuances into one payment.

The other component that we are trying to figure out is how we can do this as soon as possible. We think the bond rates are good, so the sooner we can do this the better. It may be that with the new issuances, and with the other bill you are talking about, Assembly Bill 199, we will have to take into consideration how to reallocate some portion of that. It may be that we do not do this until after 2017 when we have all of the new contractors on board. We were hoping to do this earlier than that, and get all of the pieces in place prior to that, and then reallocate the cost allocations to the new customers as they come on line after 2017. This would be a 30-year bond. We were thinking this is a long-term bond issuance, but we are very much thinking that this is a one-time bond issuance, and the $35 million is the cap just to pay off the current debt to the Visitor Center.

Assemblywoman Kirkpatrick:
To get a $35 million bond, you probably only need $6 million in debt. What is your actual debt? Is it the full $35 million?

Jayne Harkins:
It is close to that for Nevada's share.

Assemblywoman Kirkpatrick:
I thought you said we are still paying off the Visitor Center. Where in this does it allow you to do that? Was that part of your initial bond?

Jayne Harkins:
We are only paying the debt now to the U.S. Treasury. There is no bond issuance. This is like refinancing your house. We would issue the bond in the state of Nevada. Arizona would issue a bond to pay off Arizona's share, and California's share would come in. We would all pay back to the U.S. Treasury at one time. At that point, our rates for Hoover power would drop because that rate includes that debt. We would then have the Nevada debt that we would incorporate into the payment.

Assemblywoman Kirkpatrick:
The rates only drop for the people who utilize that energy, correct?

Jayne Harkins:
For the Hoover power customers, yes.

Assemblywoman Kirkpatrick:
Which are mostly our rurals and California customers.

Jayne Harkins:
Our share is about 23 percent of Hoover. About 25 percent of Hoover comes to Nevada, and the rest is to California and Arizona.

Chairman Bobzien:
Those customers in Nevada include Overton, Lincoln, and NV Energy.

Jayne Harkins:
Yes. We would share that benefit with all of our customers who get Hoover power.

Assemblywoman Kirkpatrick:
"Time to time" does not work for me. I do not know what the rest of the Committee thinks. You do not even see that term in storybooks. It has to be a little bit clearer if we are giving some broad power away.

Chairman Bobzien:
I am not disagreeing with you.

Assemblywoman Kirkpatrick:
We have a lot of attorneys here, and I would like to know where that is defined in statute.

Chairman Bobzien:
This might be something we have to research. When it comes to bond issuance language, is this a concept we have seen before?

Matt Mundy:
Yes, I think it is a concept we have seen before. I do not know if it is exclusively used in every context, but it is generally there to provide for some flexibility as far as how they are issued.

Jayne Harkins:
I have Ann Pongracz, the Deputy Attorney General for the Colorado River Commission in Las Vegas.

Ann Pongracz, Senior Deputy Attorney General, Colorado River Commission of Nevada:
If I may supplement Ms. Harkins' response to the question of issuances from "time to time."

Chairman Bobzien:
Okay.

Ann Pongracz:
As members of the Committee are well aware, with bond issuances, it is difficult to identify a particular point in time when bond issuances will be made because the timing is always dependent upon the status of interest rates in bond markets, which do fluctuate. We have to coordinate with the other 14 Hoover contractors, and that will be a variable in terms of timing. In every bond issuance, you have the situation of needing to time it properly, and the CRC works closely with the Office of the State Treasurer to make sure that the timing is proper and the state gets the optimal results.

Assemblyman Livermore:
I am sitting here trying to capture this. You want the opportunity to issue $35 million in a new debt bond, or it is a replacement debt bond for current debt you have. Is that right?

Jayne Harkins:
It is new debt, but it is paying off current debt that we have.

Assemblyman Livermore:
I understand that. What is the security? What are you going to offer for security?

Jayne Harkins:
It is the Hoover power. That is a valuable resource to our customers. It is cheaper power. Our customers have been and will pay, and that is our security. That Hoover power is ongoing into the future, and we have that under contract from the federal government.

Assemblyman Livermore:
It means you do not come under the Public Utilities Commission. Who is governing the rates and fees you are charging to make sure it covers the bond indebtedness, which is the cash flow and interest and on down the line.

Jayne Harkins:
We do this through the Office of the State Treasurer. Under our statute, we are required to work under the state securities law and through the State Treasurer. Our bond counsel, Mr. John Swendseid, is a consultant to the State Treasurer. He has worked with us for a number of years on all of our bonds. It is done through the State Treasurer, so the State Treasurer is always making sure we are following state law and how those obligations are taken care of.

Assemblyman Livermore:
Is there a fiscal note to this?

Jayne Harkins:
I do not believe there was.

Assemblyman Grady:
I am still a little bit confused. You have one master note for 14 entities. What would happen if one of them would not pay off their debt? Are the rest of you obligated for that debt?

Jayne Harkins:
At this point, we are not. If we issue this for the state of Nevada, this is for our CRC customers. In our regulations for the CRC, we do have that if people are not paying their bills, we can reassign their Hoover power to someone else. It is a short, limited amount of time, within several months after public notice and hearing. We can reassign this to someone who will pay his or her bills. When it comes to Arizona and California, if they are paying cash or with their own bonds, it is up to them to pay. If they are not paying back into the federal government their bills for Hoover power, it is a breach of their contract with the federal government, and that does not hurt us in any way. We only have to worry about our contract with the federal government and any kind of breach in not paying our bills.

Assemblyman Grady:
Following up with my colleague from Carson City, are these general obligation bonds that could fall back on the state of Nevada? You say you have the taxing authority, but if the taxes do not come in, could it ultimately fall back on the state of Nevada?

Jayne Harkins:
The way that Mr. Swendseid wrote this is that we could issue bonds in several ways. There are general obligation bonds and revenue pledged bonds. There are various ways he could do that or a combination. He is looking at various ways he can do that at the time of the bond issuance and how he would write those bonds up. The bonds the CRC has done in the past have been backed by the state of Nevada and have been backed by taxpayers. If for some reason we do not pay the bills—well, we have never gone to the taxpayers to do that. Our customers have always paid their bills, and we have always paid back our bond debt appropriately from our current customers, who are NV Energy, Lincoln, and Overton. They are paying their share of the bond debt.

Assemblyman Grady:
So, if you did have to come back to the state of Nevada, it would be the taxpayers for the entire state of Nevada who would be obligated to pay these general obligation bonds?

Jayne Harkins:
In my understanding, that is the way it works.

Assemblyman Livermore:
I am trying to think this through. You are going to resell your hydropower to NV Energy. Do you have long-term contracts with them?

Jayne Harkins:
Yes.

Assemblyman Livermore:
Is the contract as long as the bond indebtedness?

Jayne Harkins:
Well, that is part of the reason why we needed the date established as "time to time." Current contracts with all of our customers for Hoover end September 30, 2017. We are in the process of doing a reallocation in which we have to get all of those contracts put in place prior to 2016. Our bond counsel has told us we will probably have to get some type of interim contract that they will continue to pay, based on their proportional share of Hoover

power past 2017. There is a lot of work to do. We will not be able to issue the bonds without the assurance of customers that they will pay beyond 2017.

Assemblyman Livermore:
Thank you. You answered my question.

Chairman Bobzien:
Are there further questions?

Assemblywoman Kirkpatrick:
I want to ask the Deputy Attorney General a question. Honestly, this bill should have gone to the Assembly Committee on Government Affairs because that is where all of the bonding bills go. However, now that we have it, let me ask this. I have worked with Mr. Swendseid on bonding bills, but normally he has some sort of time frame included so you have the flexibility. Within the bond covenant, it allows you to be flexible. I have seen a lot of bonding bills, but I have never seen that language. I have never heard Mr. Swendseid say the words "from time to time." If you could get with me off line, that would be great. I bet I have seen 50 bonding bills and have seen him talk 50 times, and I never heard him use that kind of language in any conversations.

Chairman Bobzien:
I think an off-line visit with Mr. Swendseid, about making sure you have the bond and flexibility and what the language means, would be a good thing. I understand you need the flexibility to figure out when to time these things, but I agree that we should dive into the language a little bit. Please feel free to answer, but I think we will take this off line and have a deeper conversation about how we generally do these bonding authority bills.

Ann Pongracz:
I will make a commitment to consult with Mr. Swendseid and get back to you off line. I would hesitate to judge Mr. Swendseid in any matter involving bonds.

Chairman Bobzien:
We would probably concur. Are there any additional questions? [There were none.] Do we have any opposition? [There was no one.] Is there anyone neutral? [There was no one.] We will close the hearing on S.B. 438.

We will move to Senate Bill 40 (1st Reprint).

Senate Bill 40 (1st Reprint): Revises provisions relating to medical laboratories. (BDR 54-314)

Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services:
Senate Bill 40 (R1) is a cleanup bill for us relating to medical laboratories. The bill does two primary things: (1) it cleans up the statute so it is not so limiting in regard us to certifying laboratory technicians, and (2) it allows us to expand our authority for administrative sanctions.

Section 1 allows us to employ an electronic licensing system so it makes some cleanup as it relates to oaths and the type of identity that licensees have to provide to the Division. Section 2 clarifies that regulations adopted, as they relate to administrative penalties, may be more stringent than those imposed in federal regulations. Section 3 provides flexibility for the State Board of Health to set the requirements for certification as a laboratory assistant. Sections 4 and 5 clarify that certain licensed medical professions, such as nurses, may perform waived tests, which are simple tests with low risks of error.

Section 6 changes the way administrative penalties are assessed in regard to medical laboratories and personnel. This issue came to light because we had a situation where there was a violation of regulation, and we were advised that we could not impose any administrative sanctions because the statutes limited those to only statutory violations and regulatory violations. That is the substantive change in this section. Section 7 and 8 are cleanup, technical changes in relation to the certification changes for the licensed medical assistants.

I am happy to answer any questions or go through more detail if needed.

Chairman Bobzien:
On the fines, can you talk a little about the history of this? Why are we doing this and why do we have to go this route? Clearly, there are some stories in the background that we probably need to hear.

Marla McDade Williams:
As I said, we have been advised that we do not have authority. We have a whole set of regulations that our licensees are required to comply with. If there is a violation, when we do an inspection, our options are limited to suspending or revoking a license. In some cases, that is not warranted.

Some of these are administrative issues where we would want to hold the licensee responsible, but we are limited in how we could hold him or her responsible for those actions. The caps are changed significantly. Currently, all but 41 of our labs are also certified under the Clinical Laboratory Improvement Act (CLIA) by the Centers for Medicare and Medicaid Services. Under that act, they are already subject to the maximum limit of $10,000 that is identified in the bill. With the exception of those 41, everybody else who was in violation of CLIA would be subject to similar fines. Those fines would go to the federal government and not to the state of Nevada. This bill allows us to impose equal fines on violations of state law rather than just violations of federal regulations.

Assemblywoman Carlton:
Are the lab assistants registered or licensed?

Marla McDade Williams:
Currently, under section 3, the certification as an assistant in a medical laboratory can only be issued if the exam is given by one of those three organizations that are being removed: the American Medical Technologists, the American Society of Clinical Pathologists, or the National Certification Agency. There are other organizations that do the certifications; however, if a person came to us and said, I am certified by somebody else, we would have said we cannot certify you in the state of Nevada because you do not qualify under one of those three organizations. We are repealing those limiting factors and will establish in regulation the organizations that make someone eligible for certification. Regulations gave us more flexibility to do that than the statutory limitations do.

Assemblywoman Carlton:
Typically, when we see a list of certifying agencies, we also see the boilerplate language "or other agencies substantially equivalent." The regulator has the opportunity to look at the curriculum and make sure it does work that way. I am a little concerned about opening it all the way up, but I understand what you are trying to do.

As you develop these regulations, if someone applies, or wants to gain certification, and if this bill has passed but the regulations have not been established, are we not putting that person in a catch-22 of not being able to become certified and not get a job?

Marla McDade Williams:
It is current law now. If a person is in that situation, they would not be able to get certified in this state.

Assemblywoman Carlton:
Let me clarify. Say, currently, that I come to you and have the American Society of Clinical Pathologists certificate; however, if we have deleted that language from the bill and the bill passes, you have to draft regulations to allow someone to get a certificate. That could take six to nine months. I am in your office with my application; can you still approve it before the regulations are done? I do not want someone to be unable to get a job because we are in the process of trying to help more people get jobs.

Marla McDade Williams:
Section 10 shows the effective date as being January 1, 2014. The changes will not be made until January 1, 2014. Our incentive is to have the regulations in place on that date so no one gets caught in that situation.

Assemblywoman Kirkpatrick:
I understood that you said it would not take effect for another eight to nine months, but it appears to me that there will be two separate sets of regulations. I do not mind fining bad people, because when they do bad things, it is a health and safety issue, among other matters. What is the thought process on section 6? The penalty limit will go from $250 for the first offense to $10,000. I do not mind people paying $10,000 if they are doing bad things, but is there going to be a tiered level? I am sure you have a plan of what would be expected when you write regulations. Could you let us know so we understand, because they come back before the Legislative Commission. I would not want any surprises.

Marla McDade Williams:
You are correct. All of our fines are based on a progressive disciplinary system. We would model this like we do our other health facilities. You have lower-level fines that may result in just a paper-level finding. Then the fines escalate depending on how severe the offense and how many people were affected. When we come back before the Legislature with those regulations, it will be a tiered system modeled after our current system.

Assemblyman Daly:
I have two questions. I think Mrs. Carlton hit on the one about regulation, where you are taking out the organizations in section 3. You are planning on having regulations at least to that standard that is in the law now. When you do it by regulation, you said it would be more flexible. You could also lower the standard. I am concerned on where you are going with that.

Marla McDade Williams:
We do not intend to impose a lesser standard. We intend to maintain all of the current organizations that do these certifications; two of those listed are current organizations, so we will maintain those. We will include all of the others that make a person eligible for certification. We do not intend to reduce the standards.

Assemblyman Daly:
I think I understand. The second question is on page 5, section 6, subsection 5, where it says, "Except as otherwise provided in this section, all money collected from administrative penalties imposed pursuant to this section must be deposited in the State General Fund." Is that how it always was? In subsection 6 it says the money collected may be accounted for separately if we decide to have a different fund to use it for different things. What would you use it for? Why would it not go to the General Fund if it has always gone to the General Fund? What would that separate account be for? If I have the option of giving it to the General Fund or keeping it, I will always keep it. What do you use it for, and why should it not go to the General Fund?

Marla McDade Williams:
Again, we are modeling this after how we inspect health facilities and what our authority is over health facilities. With health facilities, the Health Division is able to keep all of the fines we impose on all of our facilities. We then turn that back into educational and training opportunities for industries, based on what our findings are showing. In subsections 5 and 6, what it says is they are conditioned on each other. If the person we are administering the fine to does not appeal it, or if our findings are upheld in a hearing, we retain those fees. We would look at how we can use those to benefit the industries that we are fining. If someone appeals, and we lose for some reason—for instance, if our case was not as strong as it should have been and we are overturned by a hearing officer—that is the money that goes to the General Fund.

Based on section 8, we still have the ability to come back to the Interim Finance Committee (IFC) and ask that the time and expense we put in and the costs that we incurred be paid back to us. When we do our fees, we base them on the workload for all of the entities we regulate. Some of our costs are outside of the fee development process. We have used some of our other fees for unlicensed facilities. You do not build that into the cost of overseeing your licensed entities. When you are able to retain some of your administrative fines to cover costs for inspectors you did not plan to bring in, that is what we would use some of the other fees for, which are things we do not charge back to our licensed entities. Again, it is modeled after our current health facilities, and we do have the authority to retain our administrative fines under that model.

Assemblyman Livermore:
In section 6, subsection 7, it talks about a hearing officer. Right above that, it talks about administrative penalties without exercising the right to a hearing to contest a penalty. Tell me how you give a person an option to decide whether he or she wants to have the hearing or not. Is there a time window in there? Is there some way to understand how that process works?

Marla McDade Williams:
There is definitely a due process system that is in place for anybody we administer a fine to. The regulations will direct them to the process that should be followed. There are timelines for it, and they have a certain number of days to appeal. Appeals are generally based on whether they believe our findings are consistent or if there was something we overlooked in the investigation process they want to have a discussion about. We have informal appeals and a formal appeal process. If somebody believes we are wrong, we meet with her first. We might agree she is correct and not impose the fine that we initially set. If we say we disagree and none of the information he or she is providing is going to work, we will move it forward to a formal hearing. She appeals to the administrator of the Division; the Division administrator assigns a hearing officer, the attorneys show up, and we go through a formal hearing. Then the attorney makes the decision whether or not the decision should be upheld.

Assemblyman Livermore:
Are those regulations currently drafted, or is that something new you will have to draft?

Marla McDade Williams:
We would model them after our current regulations. Those are already available. We would cite them to these new regulations.

Assemblyman Grady:
In a couple of sections, it says you shall adopt regulations. Are all of these sent to the Legislative Commission under the *Nevada Administrative Code* (NAC) process for approval?

Marla McDade Williams:
Yes, they are.

Assemblyman Daly:
I am going back to section 6, subsection 5. If I understand what you are saying, you have a fee that you base on what it would cost to administer your program and various things. You cannot build some things into the fee. This subsection says, "Except as otherwise provided in this section, all money

collected from administrative penalties." You raised the administrative penalty to up to $10,000. What do you normally do with your administrative penalties? You said you could go to the IFC and ask for some of your costs back. Other agencies are not allowed to keep the administrative penalties, so they do not have an incentive to go out and fine things. We want you to enforce and have the penalty, but those agencies usually do not keep that money. If you want to get money back from the IFC to pay for investigative costs, that is fine, but I do not think you answered my question. You started talking about fees, but I am asking about administrative penalties because that is what is in the bill.

Marla McDade Williams:
We would keep the administrative penalties. We currently keep them for our other facilities. We would look at what kind of initiatives we need to put in place to ensure that we can get our entities in compliance with the statutes and regulations.

Chairman Bobzien:
Do we have any additional questions? [There were none.] Do we have anyone in support of the bill wishing to speak? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on S.B. 40 (R1).

The meeting is adjourned [at 12:25 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 19, 2013 **Time of Meeting: 11:10 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 438	C	Jayne Harkins	Written Testimony