

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

**Seventy-Seventh Session
May 8, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 12:43 p.m. on Wednesday, May 8, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Richard (Skip) Daly, Assembly District No. 31
Assemblywoman Olivia Diaz, Assembly District No. 11
Assemblyman James Healey, Assembly District No. 35
Assemblywoman Ellen B. Spiegel, Assembly District No. 20

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Caitlin Brady, Committee Secretary

OTHERS PRESENT:

Liz MacMenamin, Retail Association of Nevada
Marlene Lockard, Nevada Women's Lobby; Retired Public Employees of Nevada
Patrick T. Sanderson, Nevada Alliance for Retired Americans

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Barry Gold, AARP Nevada

Daniel O. Jacobsen, Technical Staff Manager, Bureau of Consumer Protection,
Office of the Attorney General

Judy Stokey, NV Energy

Herbert E. Randall, Ed.D., President, Nevada Silver Haired Legislative Forum

Barbara Altman, Nevada Silver Haired Legislative Forum

Jayne Harkins, P.E., Executive Director, Colorado River Commission of Nevada

Kyle Davis, Nevada Conservation League

Elisa P. Cafferata, President and CEO, Nevada Advocates for Planned
Parenthood Affiliates

Lea Tauchen, Retail Association of Nevada

Ray Bacon, Nevada Manufacturers Association

Danny Thompson, Nevada State AFL-CIO

Thomas H. Husted, Chief Executive Officer, Valley Electric Association, Inc.

Susan Fisher, Valley Electric Association, Inc.

Curt R. Ledford, General Counsel, Valley Electric Association, Inc.

Dagny Stapleton, Nevada Rural Electric Association

Garrett Weir, Assistant General Counsel, Public Utilities Commission of Nevada

Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of
Nevada

Chair Atkinson:

We will begin the meeting with work session. I am opening the work session on
Assembly Bill (A.B.) 12.

ASSEMBLY BILL 12: Removes the requirement that an employee notify his or
her employer before filing certain complaints with the Division of
Industrial Relations of the Department of Business and Industry. (BDR 53-
352)

Marji Paslov Thomas (Policy Analyst):

I will read the explanation of the bill from the work session document
([Exhibit C](#)).

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Chair Atkinson:

Hearing no discussion, I will close the work session on A.B. 12.

SENATOR HARDY MOVED TO DO PASS A.B. 12.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 22.

ASSEMBLY BILL 22: Revises provisions governing the continuing education requirements for certain persons licensed to perform work of limited scope on manufactured or mobile homes or other similar structures. (BDR 43-358)

Ms. Paslov Thomas:

I will read the explanation of the bill from the work session document ([Exhibit D](#)).

Chair Atkinson:

Hearing no discussion, I will close the work session on A.B. 22.

SENATOR HARDY MOVED TO DO PASS A.B. 22.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 83.

ASSEMBLY BILL 83: Revises provisions governing certain disbursements of money from escrow accounts. (BDR 54-686)

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Ms. Paslov Thomas:

I will read the explanation of the bill and proposed amendment from the work session document ([Exhibit E](#)).

Chair Atkinson:

Hearing no discussion, I will close the work session on A.B. 83.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 83 WITH AMENDMENT PROPOSED BY ROCKY FINSETH.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 179.

ASSEMBLY BILL 179 (1st Reprint): Revises provisions governing audits of certain regulatory boards of this State. (BDR 17-770)

Ms. Paslov Thomas:

I will read the explanation of the bill from the work session document ([Exhibit F](#)).

Chair Atkinson:

Hearing no discussion, I will close the work session on A.B. 179.

SENATOR HARDY MOVED TO DO PASS A.B. 179.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 206.

ASSEMBLY BILL 206: Provides that volunteer members of a county search and rescue organization shall be deemed to be employees of the county at a specified wage for purposes of industrial insurance. (BDR 53-959)

Ms. Paslov Thomas:

I will read the explanation of the bill from the work session document ([Exhibit G](#)).

Senator Settelmeyer:

I had requested Douglas County reevaluate the fiscal note. After review, the fiscal impact went from \$168,000 to \$8,000.

Chair Atkinson:

I will close the work session on A.B. 206.

SENATOR DENIS MOVED TO DO PASS A.B. 206.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 331.

ASSEMBLY BILL 331 (1st Reprint): Revises provisions governing the billing practices of certain providers of health care. (BDR 54-731)

Ms. Paslov Thomas:

I will read information of the bill from the work session document ([Exhibit H](#)).

Senator Hutchison:

This was a monumental effort to obtain consensual agreement from all the parties.

Chair Atkinson:

I will close the work session on A.B. 331.

SENATOR WOODHOUSE MOVED TO DO PASS A.B. 331.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the work session on A.B. 492.

ASSEMBLY BILL 492: Revises provisions governing the Credit Union Advisory Council. (BDR 56-577)

Ms. Paslov Thomas:

I will read the explanation of the bill from the work session document ([Exhibit I](#)).

Chair Atkinson:

Hearing no discussion, I will close the work session on A.B. 492.

SENATOR DENIS MOVED TO DO PASS A.B. 492.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the hearing on A.B. 95.

ASSEMBLY BILL 95 (1st Reprint): Revises provisions governing prescription labels. (BDR 54-648)

Assemblywoman Ellen B. Spiegel (Assembly District No. 20):

This is a common-sense consumer bill to help Nevadans understand their medications. This will help people who have a variety of prescriptions and people who fill daily, weekly or monthly medication containers for loved ones. Assembly Bill 95 requires a prescription label to specify the original drug

prescribed. For example, if you go to the doctor and receive a prescription for Advil and the pharmacy substitutes Ibuprofen, the label would specify you are receiving Ibuprofen instead of Advil and include the words "generic for," "substituted for" or similar words. Consumers will know what medications they are taking. Consumers can opt out of this if they choose. If someone takes a sensitive medication, especially for psychiatric disorders, he or she may not want the information readily accessible to everyone.

Senator Hardy:

If the doctor writes generically, would the pharmacy have to include a non-generic brand name?

Assemblywoman Spiegel:

No.

Senator Hutchison:

How does a consumer opt out?

Assemblywoman Spiegel:

The consumer tells the pharmacist not to print both names on the label.

Senator Hutchison:

Is it only a verbal opt out?

Assemblywoman Spiegel:

Yes.

Senator Jones:

Would you entertain an amendment to allow pharmacists to dispense 90-day supplies instead of 30-day supplies?

Assemblywoman Spiegel:

I tried to do that in the Assembly and it was ruled not germane. I would be happy to entertain it, but I am not sure it is germane.

Chair Atkinson:

I would like to ask counsel to weigh in on this.

Dan Yu (Counsel):

Thank you, Mr. Chair. Just to clarify, I of course am not completely aware of what happened on the Assembly side with respect to that proposed amendment. I am, of course, in full recollection of what happened here. What I stated on the record and with respect to that other bill that Senator Jones was speaking with, it was my conclusion, at that point in time, that it was not germane to that bill. And, I won't belabor the point by talking about what has since occurred with respect to the decision on whether or not it is germane. With respect to this bill, I think it is probably more germane just by looking at the joint rules. With respect to whether it is ultimately germane or not, again, that is going to be the ultimate decision of the Legislative Counsel, and I cannot really represent what she would ultimately decide on that issue. I think I probably made that clear as mud.

Assemblywoman Spiegel:

Legislative Counsel explained that because the summary specifically states the bill revises provisions governing labels and not the filling of prescriptions, the amendment would not be germane. I am willing to entertain the amendment and I hope it is more successful in the Senate.

Liz MacMenamin (Retail Association of Nevada):

The Retail Association of Nevada has supported this from the beginning. Some of our members already do this. Some members will have to make a few changes, but they have agreed to this. We have one concern regarding section 1, subsection 2 on the opt-out provision. We would like to add language to say "upon the first filling of the prescription." If someone has had the prescription for 6 months and then decides he or she does not want both names on the label, it creates recordation problems. If the opt out occurs upon the initial filling, it will be in the system. Assemblywoman Spiegel is willing to work with me to get this conceptual change included.

Senator Hardy:

Will this preclude a doctor writing on the prescription "label as such?" Can the doctor write how he or she wants the prescription labeled?

Ms. MacMenamin:

It will not preclude that.

Marlene Lockard (Nevada Women's Lobby; Retired Public Employees of Nevada):

The Nevada Women's Lobby and the Retired Public Employees of Nevada support this legislation. I support Senator Jones' proposed amendment.

Patrick T. Sanderson (Nevada Alliance for Retired Americans):

It is easy to have a "senior moment" as you get older. Senior citizens like to know what medications they are taking. It can be dangerous when the names change. The Nevada Alliance for Retired Americans supports A.B. 95.

Barry Gold (AARP Nevada):

AARP Nevada supports A.B. 95. I will read my written testimony ([Exhibit J](#)).

Chair Atkinson:

We will incorporate the conceptual amendment. I am closing the hearing on A.B. 95. I will open the hearing on A.B. 173.

ASSEMBLY BILL 173 (1st Reprint): Revises provisions governing rates which may be charged by certain electric utilities. (BDR 58-966)

Assemblyman James Healey (Assembly District No. 35):

I have submitted two handouts for this bill ([Exhibit K](#) and [Exhibit L](#)) regarding smart meters and time-of-use pricing, respectively. This is an important bill for senior citizens, consumers who are homebound due to medical conditions, stay-at-home parents and those who work from home. Assembly Bill 173 is commonly referred to as the time-of-use bill. I have worked with the Office of the Attorney General and NV Energy on the bill. This bill puts into statute that a utility power company cannot mandate a consumer into a time-of-use rate structure. The time-of-use rate structures have different rates based on different times of day, different seasons or different weeks. For example, if you participated in a time-of-use plan, you would pay higher rates at peak times during peak seasons. During off-peak hours, you would pay lower rates. Today, everyone pays a flat rate no matter the time of day or season. It is a comforting rate structure, especially for the most vulnerable populations. The time-of-use rate structure may benefit consumers with varied work schedules or those who work the graveyard or swing shifts. They may not be home during the peak

times of day. When they are home and using power, the rates could be significantly lower than what a flat rate might be. The time-of-use plan may work well for those individuals. Under A.B. 173, an electric utility cannot mandate customers to enroll in a time-of-use plan. The bill does allow customers to enroll in a time-of-use plan if it is offered. It is optional. Currently, we pay about 11 cents per kilowatt-hour. On a time-of-use plan during peak times, the rate could be as high as 66 cents per kilowatt-hour. This is a huge increase, particularly for people who need to budget their utilities. This only affects residential customers. Commercial customers are already enrolled in time-of-use plans.

Senator Hutchison:

Is this preventative or reactionary?

Assemblyman Healey:

Currently, NV Energy has a trial in northern Nevada to test the time-of-use program. It has not been implemented statewide and is not an elected-in option at this time. Assembly Bill 173 will protect consumers if any utility company decides to implement a time-of-use rate structure plan. This would require it to be an optional program.

Senator Settlemeyer:

I am enrolled in a commercial time-of-use plan for the wells I use. Would this preclude seasonal time-of-use plans? Rates can change significantly between summer and winter. Will rates be the same throughout the entire year?

Daniel O. Jacobsen (Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General):

One of the goals of time-of-use pricing is to encourage customers not to use energy during peak periods. If less energy is used during peak periods, then less construction of generating plants and fewer power purchase agreements are needed during the most costly times. That is a good goal. Some customers would have difficulty with high bills during the summer, even if they would make up the cost during the winter. Many residents contacted the Bureau of Consumer Protection when smart meters were installed expressing concern that time-of-use pricing would be next. The intent of the bill is to allow residential customers to keep the flat rate pricing yearlong. We expect to see the utilities offer various time-of-use plans. We hope it results in less construction and lower

costs. This is good protection for customers who cannot shift their usage and would be concerned with high bills during peak periods.

Judy Stokey (NV Energy):

NV Energy supports A.B. 173. We worked together on this bill to ensure the voluntary programs are effective.

Herbert E. Randall, Ed.D. (President, Nevada Silver Haired Legislative Forum):

I have submitted written testimony ([Exhibit M](#)). The Nevada Silver Haired Legislative Forum studies issues affecting senior citizens and makes recommendations to the Legislature. Our most recent report dealt with this issue. We want to prohibit mandatory time-of-use utility rate pricing. Senior citizens are more restricted than most citizens. Most do not work outside the home or are home caring for grandchildren, spouses or themselves. It is important to have a choice and not a mandate. In her book, *Another Country: Navigating the Emotional Terrain of Our Elders*, Dr. Mary Pipher wrote, "Aging in America is harder than it needs to be." We should not add to that difficulty. The Nevada Silver Haired Legislative Forum supports A.B. 173.

Mr. Gold:

I have submitted written testimony ([Exhibit N](#)); AARP Nevada agrees with everything that has been said and supports the bill.

Barbara Altman (Nevada Silver Haired Legislative Forum):

I support the bill, but I am concerned that NV Energy might supersede what the Legislature does and raise rates during peak times. Will this prevent that from happening?

Chair Atkinson:

Representatives from NV Energy are indicating that if it were law, they would abide by it.

Assemblyman Healey:

This is a great bill for all constituents. NV Energy has worked hard with us and supported us to ensure we are doing everything we can to protect the vulnerable that are stuck at home during peak times. A consumer being able to keep a flat rate is a good thing.

Chair Atkinson:

I will close the hearing on A.B. 173. I am opening the hearing on A.B. 199.

ASSEMBLY BILL 199 (1st Reprint): Revises provisions governing the sale of electricity and provision of transmission service and distribution service by the Colorado River Commission of Nevada. (BDR 58-206)

Jayne Harkins, P.E. (Executive Director, Colorado River Commission of Nevada):

I have submitted written testimony ([Exhibit O](#)) and a fact sheet ([Exhibit P](#)). The Colorado River Commission of Nevada (CRC) manages Nevada's interests in hydropower generated on the Colorado River and other aspects of the State's rights and responsibilities regarding water and power. The CRC has received congressional allocations of Hoover Dam hydropower and provided this power to Nevada entities since the passage of the Boulder Canyon Project Act in 1928. The last time Hoover power was allocated was the 1980s for 30-year contracts. Those contracts will all expire by 2017. To prepare, Congress passed the Hoover Power Allocation Act in 2011 authorizing the offering of long-term contracts to current Hoover customers at 95 percent of their current allocations. It also authorized the allocation of the remaining 5 percent of power to new allottees.

The CRC supports A.B. 199. The bill clarifies the CRC has the authority to allocate Hoover power under the Hoover Power Allocation Act to new Nevada customers. *Nevada Revised Statute* (NRS) 704.787 limits the CRC to serving its current customers listed in statute. We need to amend the statute in order to serve new customers.

The Hoover Power Allocation Act creates a new resource pool of the 5 percent of power taken from current customers. The resource pool consists of 103 megawatts to be distributed to new allottees in Arizona, California and Nevada. In Nevada, it would be distributed to new customers in six southern counties. The Western Area Power Administration will allocate 69 megawatts of the resource pool to applicants in Nevada, California and Arizona. It will also allocate 11.5 megawatts exclusively to California applicants. Nevada and Arizona both have state agencies to allocate Hoover power. The Arizona Power Authority will allocate 11.5 megawatts exclusively to Arizona applicants. The CRC will allocate the remaining 11.5 megawatts exclusively to new Nevada entities. The Hoover Power Allocation Act does not create new Hoover energy but redistributes 5 percent of the energy to new entities.

The Hoover Power Allocation Act gives the CRC two new responsibilities. First, the duty to allocate, schedule and administer the 11.5 megawatts of Hoover power from the new resource pool to new Nevada entities. Second, the duty to schedule and provide Hoover power allocated to Nevada entities by the Western Area Power Administration. This legislation adds to the CRC's statutory authority to provide Hoover power offered under the Hoover Power Allocation Act to new customers.

The version of this legislation originally approved by the Legislative Committee on Public Lands was amended in the Assembly to respond to concerns expressed by NV Energy. Those changes are included in section 1, subsection 1, paragraph (c); section 1, subsection 2; and section 1, subsection 4, paragraph (b). The CRC has agreed to include a limitation that if the CRC provides Hoover energy to entities within the NV Energy service territory, NV Energy is authorized to provide power transmission and distribution services to those entities. NV Energy would be compensated for the services by a tariff approved by the Public Utilities Commission of Nevada (PUCN). NV Energy was also concerned the bill could cause adverse impacts to NV Energy ratepayers. We added provisions requiring new Hoover customers to pay the universal energy charge, mandatory fees imposed by the PUCN and an exit fee or credit to offset the customer's share of NV Energy's unrecovered costs of purchased fuel and power.

Section 1, subsection 6 deletes language relating to the review and analysis of the hydrokinetic generation project. The study was completed and submitted to the Legislature in 2010. Subsection 6 now authorizes the CRC to adopt regulations to carry out the provisions of the bill. The bill would become effective upon passage and approval for adopting regulations, and on October 1 for all other purposes.

Chair Atkinson:

Were all the concerns addressed in the Assembly?

Ms. Harkins:

Yes. We worked out all the issues.

Senator Hutchison:

Are the criteria you will use to consider which new entities to allocate power to included in the bill?

Ms. Harkins:

The Western Area Power Administration issued marketing criteria last October for the 69 megawatts they will allocate. The public could comment on the criteria, and the CRC did. The Western Area Power Administration is working on final marketing criteria. The CRC has been reaching out to entities in the six southern counties so they know they will be eligible to apply. We will assist those entities in the application process. After the Western Area Power Administration has finished their allocation process, the CRC will create its marketing criteria in a public process. If the CRC did it simultaneously, we would not know which entities had applied through the Western Area Power Administration. The Western Area Power Administration's regulatory framework is a federal process, so they cannot have ex parte communications with entities. We will wait for the Western Area Power Administration to finish their process and see which entities are allocated power, then the CRC will start the process.

Ms. Stokey:

We worked with the CRC regarding our concerns about customers still using the system. All our concerns have been addressed.

Chair Atkinson:

I will close the hearing on A.B. 199. I am opening the hearing on A.B. 354.

ASSEMBLY BILL 354 (1st Reprint): Prohibits the manufacture, sale or distribution of certain consumer products that contain or come in direct physical contact with Bisphenol A. (BDR 52-789)

Assemblywoman Olivia Diaz (Assembly District No. 11):

As a parent, I am concerned about what my child is exposed to. Assembly Bill 354 is in the best interest of our children. Bisphenol A (BPA) is a toxic chemical that exists in many products families use every day. It can be found in food containers, formula containers, baby bottles and cups. This bill prohibits the manufacture, sale or distribution of certain bottles and cups that contain intentionally-added BPA and are intended for use by children under the age of 4. The U.S. Department of Health and Human Services is currently studying the effects of BPA. Children have an increased risk because their bodies are still developing and are less efficient at eliminating toxic substances. We need to limit their exposure to BPA.

Kyle Davis (Nevada Conservation League):

The Nevada Conservation League supports A.B. 354. Originally, the bill was more expansive and included more topics and chemicals. We narrowed the bill after discussions with stakeholders.

The federal government passed the Toxic Substances Control Act of 1976 (TSCA). It has not been significantly updated since passage. It does not require testing of chemicals used in products. Only 200 of the original 60,000 chemicals listed in the Act have ever been tested. The TSCA also allows for secrecy. Approximately 20 percent of the now 80,000 chemicals are secret. The TSCA puts the burden on the government to prove harm instead of requiring manufacturers to demonstrate the chemicals used in their products are safe. Multiple attempts to reform the TSCA have not been successful. Many states are enacting their own regulations, especially regarding BPA. California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New York, Vermont, Washington and Wisconsin all have some form of ban on BPA-containing products. Arizona, Connecticut, Hawaii, Kentucky, New Jersey, Pennsylvania, Tennessee, Texas and West Virginia are all considering BPA-related legislation this year. A similar bill just passed the Minnesota legislature and is expected to be signed by the governor.

Bisphenol A is a hormone-disrupting chemical that blocks hormones and disrupts the body's normal functions. Numerous studies suggest it can have health effects at extremely low exposure levels. The chemical is of special concern for vulnerable populations—pregnant women, babies and children. It is used in many consumer products such as reusable bottles, food containers, dental sealants and paper receipts. Many manufacturers understand the risks and are making BPA-free products. This bill would ensure that products intended for children under the age of 4 would not contain BPA. I have provided a handout ([Exhibit Q](#)) prepared by Safer Chemicals Healthy Families and the Natural Resources Defense Council detailing some concerns with BPA. Assembly Bill 354 is a good step towards safeguarding our children from harmful chemicals.

Senator Settelmeyer:

You said studies suggest BPA is harmful. Can you send me some proof that BPA is harmful? In Douglas County, the federal government arbitrarily changed the level for arsenic in the water. It created immense issues, and there was never any scientific data to back up the change.

Mr. Davis:

Yes, I will get you the information.

Senator Settlemeyer:

Has the U.S. Environmental Protection Agency (EPA) issued a statement regarding BPA?

Mr. Davis:

No. That is one of the flaws in the TSCA. The EPA lacks the authority to study the effects. There are numerous studies illustrating the link of BPA and harmful effects to the body. That is one of the reasons the market is moving away from using BPA.

Senator Hardy:

What is the volume of products containing BPA because they were made with BPA-containing recycled products?

Mr. Davis:

I do not know. I will get you an answer

Senator Hutchison:

Have there been other toxic chemical challenges that have been successful? Are there any product liability cases involving BPA, or class action claims?

Assemblywoman Diaz:

I do not know if there have been any class action lawsuits or product liability cases. I did visit the U.S. Department of Health and Human Services Website and there is information about BPA for parents. There is an initiative at the federal level to raise awareness of BPA and how to safeguard children. Many of the manufacturers of infant products have already moved away from using BPA in their products. When major companies move away from the practice, it is a good indicator that BPA is not good for children.

Senator Hutchison:

Will we have a shortage of products if this passes?

Assemblywoman Diaz:

No. Many manufacturers of children's products have already stopped using BPA.

Mr. Davis:

These bans are already in place in 12 states. The market is already moving in this direction. We worked with the industry on the bill, and they are confident the manufacturers will be able to stay in business.

Elisa P. Cafferata (President and CEO, Nevada Advocates for Planned Parenthood Affiliates):

The Nevada Advocates for Planned Parenthood Affiliates supports the bill. We have concerns about BPA being an endocrine disruptor. As a health care provider, we are interested in people having the ability to have the families they want, when they are ready. We believe BPA is a chemical of concern for reproduction.

Lea Tauchen (Retail Association of Nevada):

The Retail Association of Nevada supports A.B. 354. We prefer consumer product safety regulations be done at the federal level to ensure uniformity. It can create logistical difficulty for some of our members when there are different standards in each state. We support this bill, though, because the sponsor worked with the industry to find a feasible compromise. This will protect infants from exposure to BPA. Our members are committed to consumer safety, and take the responsibility of selling safe products very seriously. Consumer demand dictates the direction the market moves, so our members are prepared to comply with the restrictions of A.B. 354 to help reduce BPA exposure to infants. The abandonment of these products by manufacturers and retailers should not be interpreted as an indication that BPA-containing products are harmful to health. There are many studies indicating otherwise. We supplied such research in the initial hearing in the Assembly Committee on Commerce and Labor ([Exhibit R](#) was Exhibit J in the April 3, 2013 meeting of the Assembly Committee on Commerce and Labor).

Ray Bacon (Nevada Manufacturers Association):

The Nevada Manufacturers Association supports A.B. 354. It is a reasonable compromise. I would like to offer some insight on the issue of recycling that Senator Hardy brought up. A plastic water bottle has five layers of plastic. Only the middle layer can be manufactured from recycled material. The inside and outside layers must be new material. If there were trace amounts of BPA in the recycled material, it would only be in the middle layer of plastic. To my knowledge, there are no recycled materials used in baby products in this Country.

There is no enforcement mechanism included in this bill. In S.B. No. 210 of the 76th Session, the Legislature amended chapter 446 of NRS to empower State health departments to take responsibility and act on the FDA Food Safety Modernization Act of the 111th Congress (FSMA). There are safety provisions included in the FSMA, and health departments can issue extensive fines and take other enforcement procedures. This is an issue of great uncertainty. There are many studies about BPA and its effects. Since we do not know the effects of BPA, manufacturers have stopped using it. All manufacturers in the United States and Europe have stopped using BPA because they do not know the effects it can cause.

Chair Atkinson:

I will close the hearing on A.B. 354. I am opening the hearing on A.B. 391.

ASSEMBLY BILL 391 (1st Reprint): Revises provisions relating to energy.
(BDR 58-1025)

Assemblyman Richard (Skip) Daly (Assembly District No. 31):

Sections 1 through 8 were deleted in A.B. 391. Sections 9 and 10 clarify a misinterpretation. If a solar energy program project was built on public property or a public facility, it is considered a public work. There was some confusion about that. The changes in sections 9 and 10 clarify the issue. Section 11 is related to sections 9 and 10, and requires a prevailing wage be paid for public work projects. Subsection 4 of section 11 requires contractors to certify that prevailing wages were paid to all employees.

Section 12 of the bill addresses the differences between cooperative utility companies and for-profit public utility companies. The PUCN has two different schemes to ensure ratepayers are protected. Cooperatives have an elected board and only charge a rate to serve members. They do not aim to make a profit. Cooperatives serve within their geographic service boundaries. The PUCN regulates for-profit utilities and only allows justifiable rates. Assembly Bill 391 requires a cooperative utility that operates outside the service boundaries to be fully regulated by the PUCN. Cooperatives are not responsible to customers who are not members of the cooperative. If cooperatives exceed their service authority, they should be regulated.

Danny Thompson (Nevada State AFL-CIO):

The renewable portfolio standard (RPS) does not apply to cooperative companies, only regulated companies. The RPS costs are paid for by the ratepayers, not shareholders. As we forced the RPS on the regulated industry, there had to be a mechanism to pay for the renewable energy required to meet the RPS goals. It is an unfair advantage for an unregulated industry to encroach upon a regulated territory because they do not operate under the same rules. A cooperative in southern Nevada has expanded its territory into Clark County and into the service area of the regulated industry. Cooperatives and their service territories are defined in law. They are not regulated by the PUCN other than the certificate given to them to operate. If a cooperative wants to compete against a for-profit company, the same rules and PUCN regulations should apply to both companies.

Senator Settelmeyer:

There are ranches currently using NV Energy but are located on the service territory border of a cooperative power company. Would this bill prevent a ranch from switching to the cooperative because the cooperative would then have to be regulated by the PUCN? I understand the concept of all ratepayers bearing the cost of the RPS, but a rancher could save between 25 and 30 percent on the cost of producing an agricultural product. Does this bill prevent a rancher from switching to a cooperative power company?

Mr. Thompson:

A cooperative's boundaries are defined. There is a mechanism for a customer to leave the territory of NV Energy. NV Energy's operation, costs and other expenses are compiled into rates. If cooperatives are allowed to pick off NV Energy's customers, rates will increase. That is why a cooperative's boundaries are defined. This cooperative has encroached onto a federal enclave, Creech Air Force Base. There is nothing to stop them from making the same offer to Nellis Air Force Base. The rates for everyone in the State would be affected.

Senator Settelmeyer:

Does Nevada have the authority to prevent a customer from being picked off? In the case of Creech Air Force Base, the federal Supremacy Clause would be a factor. Would this bill affect a federal enclave?

Mr. Thompson:

I am not sure. Many properties on The Strip have expressed a desire to generate their own power. Currently, there is nothing to preclude an unregulated company from seeking out customers like those on The Strip. Every ratepayer in Nevada will be impacted if the regulated companies lose business to an unregulated industry. The purpose of the bill is to create a fair and level industry.

Senator Settelmeyer:

I do not think a cooperative should be able to pick off customers from corporations. In 2011, I sponsored A.B. No. 359 of the 76th Session allowing NV Energy customers to stop using NV Energy and generate their own power or contract with another power company. People should have the ability to choose from whom they get power.

Senator Hutchison:

If a cooperative power company is serving its members inside the geographic area, will the provisions of section 12 of the bill affect the cooperative?

Mr. Thompson:

The provisions of section 12 require regulation by the PUCN only if a cooperative serves customers outside its geographic area.

Senator Hutchison:

Any cooperative operating within its geographic area will not have to worry about the provisions in section 12. Is that correct?

Mr. Thompson:

Yes.

Senator Hardy:

Does the language on page 6, line 30, "supplier of services," include more than the delivery of power?

Mr. Thompson:

Yes. That is existing language used throughout the chapter dealing with utilities.

Senator Hardy:

Are there issues with delivering power to California? Do some cooperatives want to be able to export power to a state with a more vigorous renewable portfolio than Nevada?

Mr. Thompson:

Nevada law speaks to Nevada boundaries. This particular cooperative has joined the California Independent System Operator. The intent of the bill is to stop the cooperative from operating outside the specified territory.

Senator Hardy:

Is there a problem exporting power to California?

Mr. Thompson:

No.

Thomas H. Husted (Chief Executive Officer, Valley Electric Association, Inc.):

The Valley Electric Association, Inc. is opposed to A.B. 391, specifically section 12 relating to NRS 704.675. As written, section 12 addresses all cooperative utilities, but it is aimed at the owners of Valley Electric. Our recent business success has been administratively opposed as a competitive utility, and the AFL-CIO has criticized us.

In the past 5 years, during tough economic times, Valley Electric has grown from \$159 million to \$300 million in assets, increased revenues by 39 percent or \$20 million annually, reduced cost to our member-owners and increased our workforce by 30 percent. We achieved this success by switching over to the California Independent System Operator and acquiring the Nevada National Security Site and Creech Air Force Base contracts within the legal authority afforded to us by the State and federal government.

Now, the Legislature is forced with deciding whether legislation should be enacted to penalize a member-owned utility retroactively because we have been successful. The bill is meant to level the playing field to protect outside stockholders and the personal interests of others. Valley Electric's annual operating revenue, \$71 million, is equal to 8 days of revenue at NV Energy.

If A.B. 391 passed, our costs and our rates will increase. We estimate that full PUCN regulation will result in a rate increase of 7.5 percent. This increase

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would also raise the cost of transmission rates and be passed on to renewable energy developers utilizing our transmission system.

Valley Electric does not need to be regulated in full by the PUCN. We are already regulated by a voluntary board of directors elected by members of the co-op. Additional regulation by the PUCN would be duplicative and contradictory to current legislation.

Private investors own investor-owned utilities, such as NV Energy. The PUCN regulates the utility to protect the ratepayers. If we duplicate the regulation on Valley Electric, whom are we really protecting?

I can only surmise that the criticism from the AFL-CIO is due to Valley Electric being a nonunion entity. We are not opposed to unions; we have many alliances with union companies. Our employees have voted down all prior union organization efforts. In 2012, we compared the total compensation package of a Valley Electric journeyman lineman to that of NV Energy. Our package yielded \$18,874 more in annual compensation.

Why would an organization whose stated mission is to improve the lives of working families, bring justice to the workplace and bring social justice to our State and the Nation be opposed to Valley Electric Association?

Senator Hutchison:

Do you estimate that full PUCN regulation would increase your rates by approximately 7.5 percent?

Mr. Husted:

Yes.

Senator Hutchison:

Would you agree that the fact that you are not regulated by the PUCN gives Valley Electric a 7.5 percent rate advantage over NV Energy because they are regulated by the PUCN?

Mr. Husted:

No, you cannot make a direct comparison.

Senator Hutchison:

If the PUCN regulates Valley Electric, will your rates increase?

Mr. Husted:

Yes.

Senator Hutchison:

Is it fair to assume that NV Energy's rates are higher than they otherwise would be if NV Energy were not regulated by the PUCN?

Mr. Husted:

No.

Senator Hutchison:

Valley Electric's rates would be higher under full PUCN regulation, but NV Energy's rates are not higher because they are regulated by the PUCN. Is that correct?

Mr. Husted:

It is in reference to economies of scale. If the PUCN stopped regulating NV Energy, I do not know that their rates would automatically decrease. There are economies of scale and there is the cost of doing business. Our cost of doing business affords us opportunities that are not afforded to NV Energy based on the business model each company uses.

Senator Hutchison:

Does Valley Electric have to comply with the same RPS standards as NV Energy?

Mr. Husted:

No.

Senator Hutchison:

If you did have to comply with RPS standards, do you think your rates would increase?

Mr. Husted:

We were not part of the discussion when the decision was made not to include cooperatives in the RPS goals. Valley Electric has looked at the RPS standards

and ways to include cooperatives. We were not part of the initial discussions. We do not know if the discussion was to increase renewable resources or reduce greenhouse gas emissions. Approximately 21 percent of Valley Electric's total portfolio in non-greenhouse gas emissions. That may have been part of the decision not to include cooperatives in the RPS standards.

Senator Hutchison:

Is it accurate to say you do not know if complying with the RPS standards would increase rates for Valley Electric customers?

Mr. Husted:

What we would recommend is ...

Senator Hutchison:

I just want to know if it is accurate. Is it accurate to say that you do not know whether your rates would increase if you had to comply with the RPS standards?

Mr. Husted:

It is possible. It would depend on which renewable resources were brought into our portfolio and the cost of those resources.

Senator Hutchison:

So it is possible that the rates would increase, but not definite.

Mr. Husted:

It is possible.

Senator Hutchison:

Is it probable?

Mr. Husted:

It could be.

Senator Hutchison:

It is probable that RPS obligations would increase your rates. You have testified that your compliance with PUCN regulations would increase your rates.

Mr. Husted:

Yes.

Senator Hutchison:

NV Energy has to comply with the RPS standards and PUCN regulations. Do you understand that NV Energy and Valley Electric competing for the same customers is not a fair situation?

Mr. Husted:

No.

Senator Hutchison:

A cooperative is created to serve its members within a certain territorial jurisdiction. You have certain members within a specific geographic area. Valley Electric is operating outside its geographic area and competing with NV Energy that must comply with RPS standards and PUCN regulations. Meeting the RPS standards and complying with PUCN regulations would increase rates for Valley Electric and, therefore, I assume for NV Energy. Do you think this is fair? Should the Legislature not be concerned about this as a policy matter?

Mr. Husted:

There are two points to clarify. First, Valley Electric was able to acquire the service contract for the Nevada National Security Site. The Nevada Supreme Court and the PUCN agreed that it is a unique government installation. It is not in Valley Electric's service territory, nor NV Energy's. It can choose a company. We did not take a customer away from NV Energy. According to preestablished law, we are able to service a customer who has the ability to choose between Valley Electric and NV Energy. The PUCN dismissed NV Energy's complaint on the topic. Additionally, NV Energy still serves Creech Air Force Base. Valley Electric owns all the electric distribution facilities beyond the meter. NV Energy continues to serve as they have in the past. We have not taken a customer from NV Energy. Valley Electric was the only company in Nevada to bid on either of those contracts.

Secondly, we are discussing increasing the cost to the small utility so the large corporation can compete. We should be discussing how to reduce the cost of the large corporation so we can benefit the whole State.

Senator Hutchison:

Is Creech Air Force Base inside your geographic service area?

Mr. Husted:

No.

Senator Hutchison:

Is Creech Air Force Base outside the geographic area for which Valley Electric holds a certificate of public convenience?

Mr. Husted:

Yes.

Senator Hutchison:

The company believes it is offering electrical services at a low price for customers, so I assume you want to continue to grow and develop your customer base. Does Valley Electric want to continue growing?

Mr. Husted:

Yes.

Senator Hutchison:

Do you want to continue to grow and develop your customer base outside of the geographic area described by your certificate of public convenience?

Mr. Husted:

Yes, but ...

Chair Atkinson:

You mentioned some initial discussions in which you were not involved. Were those discussions in the Assembly?

Mr. Husted:

Yes.

Chair Atkinson:

Did you express your concerns and issues during the hearing on this bill in the Assembly Committee on Commerce and Labor, or is this the first time they are being expressed?

Mr. Husted:

This is the first time you are hearing about our concerns.

Chair Atkinson:

Why did Valley Electric not testify during the Assembly hearing?

Susan Fisher (Valley Electric Association, Inc.):

I testified in opposition to the bill in the Assembly Committee on Commerce and Labor.

Chair Atkinson:

Were you opposed to the whole bill or just section 12?

Ms. Fisher:

I testified in opposition to section 12. According to the rules of the Assembly Committee on Commerce and Labor, I was in opposition to the bill.

Chair Atkinson:

Are you currently regulated by the PUCN?

Mr. Husted:

We are not fully regulated.

Chair Atkinson:

What does that mean?

Mr. Husted:

We are regulated in two aspects. One aspect of regulation is our certified service territory. We are not presently serving outside our certified service territory.

Chair Atkinson:

Can you explain how you are a competitive utility? If you were a competitive utility, you would have to be regulated under the same requirements as NV Energy.

Mr. Husted:

We are in a competitive situation. Distribution services are regulated by the PUCN from the standpoint of our certified service territory. Transmission

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services are not regulated by the PUCN. We have a different situation for the utilization of our transmission facilities. We are in a competitive situation with NV Energy not for providing ...

Chair Atkinson:

Are you a competitive utility?

Mr. Husted:

In some aspects, yes.

Chair Atkinson:

Earlier, you said you were a competitive utility. Are you a competitive utility depending on the situation, for certain aspects but not in totality?

Mr. Husted:

That is correct.

Chair Atkinson:

Do you believe this would hurt renewable energy production?

Mr. Husted:

Yes.

Chair Atkinson:

How?

Mr. Husted:

It would increase our costs and those costs would be passed on to the cost of utilization of our transmission system. It would increase the cost to developers who want to utilize those systems to get their product to market.

Chair Atkinson:

I see it differently. Adhering to the RPS would help renewable energy production.

Curt R. Ledford (General Counsel, Valley Electric Association, Inc.):

It appears that section 12 of the bill aims to provide protection against cooperatives extending their service territory. The NRS 704.330 applies to cooperatives, and Valley Electric is subject to those provisions. While

Valley Electric and other cooperatives receive an exemption from full regulation, we are subject to the service territory requirement. If a cooperative violates the service territory, the PUCN can open a docket, investigate, issue a cease and desist order or levy fines to ensure a cooperative does not violate that provision of existing law. The protections already exist.

It was mentioned that nothing precludes a cooperative utility from picking off an entity on The Strip. A cooperative utility cannot extend outside the service territory. There is a process for doing so within the PUCN, but a cooperative cannot simply select customers outside the service territory.

We have also discussed that cooperatives only serve their members. If Valley Electric serves customers who are not members, NRS 704.675 subjects the company to full PUCN regulation. Section 12, subsection 2, paragraph (b) is duplicative. This will have unintended consequences. The Nevada Supreme Court ruled the Nevada National Security Site unique and outside the service territory of NV Energy and Valley Electric. If Valley Electric continues to serve that site, it would violate the bill, but it is acceptable under the Nevada Supreme Court ruling. This has already been litigated, adjudicated and prescribed by this Legislature.

Assembly Bill 391 fails to create a process. It asks more questions than it answers. The PUCN would make a ruling if Valley Electric were serving outside its service territory. This would require full regulation causing dozens of violations of existing statute. How will the PUCN regulate this? Will it be instantaneous or gradual regulation? What happens if a cooperative utility stops serving customers outside its service territory? The Nevada National Security Site and Creech Air Force Base contracts were reviewed before the PUCN. They are federal contracts. The provisions in the bill could interfere with a contract Valley Electric has already negotiated and entered into. It was a 3-year process under federal law. This bill could have a severe negative impact.

Existing law already addresses the concerns section 12 aims at fixing. This seems to penalize small companies for competing in areas in which they are legally allowed to compete. Valley Electric has done so to the benefit of its members. This bill would impose a penalty on an entity for engaging in fair and open competition. It is not equitable.

Chair Atkinson:

Would Valley Electric be subject to a retroactive penalty?

Mr. Ledford:

We have already negotiated and executed a contract. This bill would impact that contract, retroactively. It would cause a negative financial impact for the company.

Chair Atkinson:

Is that what you meant?

Mr. Husted:

Yes.

Senator Hutchison:

Are you saying that currently, if a cooperative serves a customer outside of the geographic service area, the PUCN fully regulates the cooperative just like NV Energy?

Mr. Ledford:

There is a provision in NRS 704.675 exempting cooperatives from regulation when they serve their members. We have always understood and interpreted that provision to mean we can only serve our members. We take careful measures to ensure that every customer we have is a member of the company because otherwise, we would be subject to full PUCN regulation. That is the way we have interpreted that provision. It has never been litigated, and there is no case law about it. It is a fair interpretation of NRS 704.675.

Senator Hutchison:

If Valley Electric serves a customer who is not a member and is located outside the geographic area for which they hold a certificate of public convenience, will the PUCN have full and complete regulatory authority over Valley Electric just as they do NV Energy?

Mr. Ledford:

If a cooperative were serving an individual that is not a member, then the exemption provided in NRS 704.675 from regulation under NRS Chapter 704 no longer applies.

Senator Hutchison:

Is that what this legislation suggests?

Mr. Ledford:

In section 12, subsection 2, paragraph (b), yes.

Senator Hutchison:

You believe that if Valley Electric serves a customer outside its service territory, it will be fully regulated by the PUCN. Why are you opposed to section 12?

Mr. Ledford:

Section 12, subsection 2, paragraph (b) provides for that regulation. Paragraphs (a), (c), (d) and (e) address a different issue in NRS 704.330 regarding service boundaries, not membership.

Senator Hutchison:

Does Valley Electric have any opposition to section 12, subsection 2, paragraph (b)?

Mr. Ledford:

Other than it being redundant, no.

Chair Atkinson:

Are there any other companies that you think will be affected by this? You mentioned you thought this is a personal attack from the AFL-CIO or NV Energy. Is there a reason it would be personal?

Mr. Husted:

We believe it is retaliation. The language mirrors administrative complaints filed against Valley Electric due to our successful business transactions.

Chair Atkinson:

What is it retaliation for?

Mr. Husted:

It is retaliation for being able to acquire Creech Air Force Base, the Nevada National Security Site and other contracts. Also, for moving into the California Independent System Operator market.

Chair Atkinson:

Those are allegations. Is Valley Electric the only company that would be affected by the bill?

Mr. Husted:

It will affect all cooperative utilities.

Senator Hutchison:

Section 12, subsection 1 states this would apply to "every cooperative association or nonprofit corporation or association and every other supplier of services described in this chapter supplying those services for the use of its own members." Mr. Husted is right; it will apply to all cooperatives. There may be some thought that this has ulterior motives, but the way it is written, it applies to all cooperatives.

Chair Atkinson:

That was my understanding too.

Dagny Stapleton (Nevada Rural Electric Association):

The Nevada Rural Electric Association is neutral on this bill. The Nevada Rural Electric Association represents six of the seven electric cooperatives, two power districts and one municipality in Nevada. All our members are nonprofit distribution electric utilities providing cost-based service to parts of rural Nevada that otherwise would not have service. Elected boards govern all of our utilities. The boards are all elected consumers. We have been successfully self-regulating for many years.

Chair Atkinson:

Does Valley Electric Association belong to your network?

Ms. Stapleton:

No.

Chair Atkinson:

Based on the language Senator Hutchison referenced in section 12, subsection 1, would these provisions apply to your members?

Ms. Stapleton:

Yes. Our members would be governed by these regulations.

Chair Atkinson:

Why are you not opposed to this bill like Valley Electric?

Ms. Stapleton:

According to current statute, our members are not allowed to operate outside their service area. This bill adds an extra remedy if they do. It is not something our members have done or plan on doing.

Chair Atkinson:

Have your members operated outside of their service territories?

Ms. Stapleton:

No. Our members have no interest in operating outside the service territory.

Senator Hutchison

Are you not opposed to this bill because your members service their cooperative members within their certified geographic areas?

Ms. Stapleton:

Our members do not serve outside of their territory, and they only serve their members. That is the mission of a cooperative.

Garrett Weir (Assistant General Counsel, Public Utilities Commission of Nevada):

The PUCN is neutral on A.B. 391. There are a few issues we wanted to bring to the Committee's attention. First, there is ambiguity in section 12 regarding what conduct causes an expansion in jurisdiction and PUCN regulation. There is reference to services described in NRS 704. It is unclear if it is a reference to services explicitly described, such as retail electric distribution service, or to something indirectly contained in rates. This could result in a contentious proceeding before the PUCN.

Second, the PUCN would need to open a rule-making proceeding to address this new type of entity. Current regulations do not allow a cooperative to be fully regulated by the PUCN. The PUCN does have provisions permitting disallowances to be borne by shareholders of a private utility company. Cooperatives do not have shareholders, however. The PUCN would need to find a way to incorporate that mechanism into regulations for this new type of cooperative.

Third, there is uncertainty on the cost to the PUCN to regulate cooperatives with a new, expanded jurisdiction. We do not know whether, when or who will trigger the expanded jurisdiction. We could speculate that this would only apply to Valley Electric. There is a contested case currently before the PUCN regarding Creech Air Force Base. We cannot comment on whether the Creech Air Force Base case would cause an expanded jurisdiction. Once the PUCN knows who would be fully regulated, we could start determining the cost to the PUCN.

Senator Hutchison:

Would the PUCN need to create new regulations because we have never had a cooperative electric utility serve customers outside its geographic service area?

Donald J. Lomoljo (Utilities Hearing Officer, Public Utilities Commission of Nevada):

We have had situations where the PUCN has opened dockets to investigate alleged encroachment outside of a service territory. We have not had to regulate any of those entities. The biggest concern is how to handle general rate cases. During a general rate case, the PUCN typically has the flexibility to disallow costs occurring in the past. That is difficult or impossible because cooperatives do not have shareholders to incur those costs. It would be included in rates and the members would pay for those costs. The PUCN would need to figure out how to process rate cases for these types of entities.

Senator Hutchison:

Are you concerned about the language "described in this chapter," used in section 12, subsection 2?

Mr. Weir:

The same language appears throughout section 12. I think it all refers to language that appears on page 6, line 15, "services described in this chapter." Subsequently there is a reference to the same services in section 12, subsection 2, paragraphs (b) and (c).

Mr. Lomoljo:

The main concern is offering those services outside the geographic area for which the cooperative holds a certificate, found in section 12, subsection 2, paragraph (c). That situation has been alluded to.

Senator Hutchison:

Do you have any suggestions on how to improve the language from the perspective of the regulator? Is there a way to clear up uncertainty and prevent litigation?

Mr. Lomoljo:

We have raised the issue with the sponsor, and discussed that there could be ambiguity. Since it is a policy decision, we did not suggest any changes. We are neutral on this issue.

Senator Hutchison:

You are neutral on the policy, but you could be helpful in crafting language.

Chair Atkinson:

I want to follow up on one of Senator Hutchison's questions. You have had to investigate after receiving complaints of a private utility operating outside a specified service territory, but the PUCN has not developed regulations allowing a private utility to operate outside a designated service territory. Is that correct?

Mr. Lomoljo:

We have regulations to investigate whether a utility is serving outside a specified service territory. We do not have regulations in place to regulate a private utility if it is found to be serving outside the territory.

Chair Atkinson:

What did you mean by suggesting this could set up a contentious process?

Mr. Weir:

If the bill is passed in its current form, there could be a dispute as to which services would trigger an expanded jurisdiction. Maintenance of facilities could cause the expansion because those costs are indirectly included in rates. It could only be caused based on explicit services, such as providing retail electric service.

Chair Atkinson:

If this is adopted, the PUCN will have to go from being on the defensive to the offensive on this issue. You will have to come up with regulations. Would you

have both parties come before the PUCN and state their cases, similar to what we have done today?

Mr. Weir:

Essentially the same arguments would be restated before the PUCN.

Assemblyman Daly:

This bill has nothing to do with unions. I am happy employees are making a good wage and benefiting from the company. This bill is about cooperative utilities operating outside their service area. We have a system where the State regulates the monopoly power company to protect the consumers. The PUCN sets a justifiable rate plus a profit margin the for-profit utility can charge. If the utility wants to increase the rate, it must justify the reasons for the increase before passing on the cost to the ratepayers.

A nonprofit or cooperative utility operates outside of State regulation. Instead, the cooperative is assigned a specific service area and members who elect the governing board. The cooperative protects its ratepayers because the ratepayers elect the board members. The cooperatives self-govern outside of PUCN regulation to keep rates as low as possible for their members. Alternatively, we could deregulate all utilities and allow the free market to govern rates. Cooperatives have a duty to serve their members. When they seek new customers outside their service area, they are not accountable to those customers because the nonmember customers do not vote for the governing board members. Additionally, if the cooperative is sued, the members of the cooperative are accountable for costs, similar to shareholders of a corporation.

I do not understand how the language on page 6, line 15 of the bill, "described in this chapter," is suitable and useful. However, on page 6, line 27, it is no longer clear. We could change it to "any service for which they receive compensation."

Chair Atkinson:

I would like to clarify the intent of section 12. Will a utility cooperative operating outside its geographic area, service area or certificate area have to be regulated under this bill? We would need the PUCN to develop regulations for these cooperatives to do this.

Assemblyman Daly:

They would have to be regulated the same as other purveyors.

Chair Atkinson:

Would it be similar to the way NV Energy is regulated?

Assemblyman Daly:

That is the intent.

Mr. Thompson:

I represent over 200,000 people in Nevada. Approximately 90 percent are ratepayers of NV Energy, the monopolistic regulated company. They are all ratepayers who are being harmed by what is happening. This is not retaliation; this is representing our members. There has been discussion of what a service consists of. Currently, any service that NV Energy provides to anyone is regulated. That is well established. I do not think the intention would be any different for someone who would want to compete against the regulated utilities.

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Chair Atkinson:

The hearing on A.B. 391 is closed. The meeting is adjourned at 3 p.m.

RESPECTFULLY SUBMITTED:

Caitlin Brady,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	6		Attendance Roster
A.B. 12	C	1	Marji Paslov Thomas	Work session document
A.B. 22	D	1	Marji Paslov Thomas	Work session document
A.B. 83	E	2	Marji Paslov Thomas	Work session document
A.B. 179	F	1	Marji Paslov Thomas	Work session document
A.B. 206	G	1	Marji Paslov Thomas	Work session document
A.B. 331	H	1	Marji Paslov Thomas	Work session document
A.B. 492	I	1	Marji Paslov Thomas	Work session document
A.B. 95	J	1	Barry Gold	Written testimony
A.B. 173	K	2	Assemblyman James Healey	Handout, NV Energy
A.B. 173	L	1	Assemblyman James Healey	Handout, time of use pricing
A.B. 173	M	2	Herbert E. Randall	Written testimony
A.B. 173	N	1	Barry Gold	Written testimony
A.B. 199	O	21	Jayne Harkins	Written testimony
A.B. 199	P	1	Jayne Harkins	Fact sheet
A.B. 354	Q	2	Kyle Davis	Handout, Safer Chemicals
A.B. 354	R	5	Lea Tauchen	Study about chemicals posing risk to Nevada's Children