

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

**Seventy-Seventh Session
June 2, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 5:53 p.m. on Sunday, June 2, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

COMMITTEE MEMBERS ABSENT:

Senator Joyce Woodhouse (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of
Business and Industry
Judy Stokey, NV Energy

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Rose McKinney-James, Bombard Electric
Russell Rowe, SolarCity Corporation
Chad Dickason, Hamilton Solar
Stacey Crowley, Director, Office of Energy, Office of the Governor
Kyle Davis, Nevada Conservation League
Lydia Ball, Clean Energy Project
Terry Care, K Road Moapa Solar
Alfredo Alonso, Ormat Technologies
Jack Mallory, Southern Nevada Building and Construction Trades Council
Joe Johnson, Toiyabe Chapter, Sierra Club
Jeffrey Fontaine, Nevada Association of Counties

Chair Atkinson:

I will open the hearing on Assembly Bill (A.B.) 425.

ASSEMBLY BILL 425 (2nd Reprint): Revises the Nevada Insurance Code.
(BDR 57-1156)

Adam Plain (Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry):

Assembly Bill 425 is sponsored by the Division of Insurance, Department of Business and Industry, and conforms Nevada law to the federal requirements of the Affordable Care Act (ACA). Approximately the first 30 sections of the bill create a licensing and certification standard for exchange enrollment facilitators, who will be certified as navigators, assisters or application counselors by the Silver State Health Insurance Exchange (SSHIX). Facilitators will be active in the State starting January 1, 2014. This will allow the Division of Insurance to ensure facilitators are properly educated and accountable for their actions.

We are adding new sections to *Nevada Revised Statutes* (NRS) in this bill. The new sections concern policies dealing with the filing of rates for health insurance. This will give certain items confidentiality in compliance with current law and conform to federal definitions. This would create a standard where rate filings would be published when accepted, but they would be kept confidential until approved. This will ensure there will not be a first-mover penalty for insurers who file their rates first.

The bill would establish a 90-day waiting period for individuals wishing to purchase insurance through the SSHIX.

Sections 35 through 118 of the bill are proposed changes to conform with federal law. For example, we must change our rating factors to include only the four federally approved rating factors of age, geographic location, family composition and tobacco usage.

Section 119 of the bill contains a lengthy list of sections proposed to be repealed. The repealed sections deal with continuation of coverage. Many plans will no longer be required because of guaranteed availability and no pre-existing condition exclusions.

Assembly Bill 425 transfers a component of network adequacy to the Division of Insurance. Currently, the Department of Health and Human Services (DHHS) manages the network for health maintenance organizations. The Division of Insurance, DHHS and the SSHIX agreed to have one agency be responsible for network adequacy for health maintenance organizations and preferred provider organizations on and off the SSHIX.

The bill is effective immediately for the facilitator provisions and adopting regulations.

I have submitted a proposed amendment ([Exhibit C](#)). Previously, this Committee heard Senate Bill (S.B.) 266 regarding orally administered anti-cancer medication. The bill passed both houses. Subsequently, we have learned there is a small technical error in S.B. 266.

SENATE BILL 266: Revises provisions governing coverage for chemotherapy in a policy of health insurance of health care plan. (BDR 57-879)

Using the term “deductible” when referencing a \$100 cost-sharing limit would cause all tax-advantaged health savings accounts (HSAs) paired with high deductible health plans to be invalid in the State. Those plans are extremely popular in Nevada. We do not want to cause them to be invalid. The proposed amendment would incorporate the necessary provisions of S.B. 266 into A.B. 425 for the purposes of making the technical corrections.

Senator Settlemeyer:

Are we putting anything into NRS that may need to remain flexible? I am concerned about putting hard data into statute rather than regulation, in case there is a problem later.

Mr. Plain:

We have done our best to remain as flexible as possible. Most of the changes in the bill are eliminatory changes—removing restrictions the federal government no longer allows. There are a few instances where we have codified explicit provisions of federal law, specifically, health insurers can now only rate on four specific factors. It is required in order to enforce the ACA properly at the state level.

Senator Settlemeyer:

I am interested in what you mentioned about HSAs. Is the proposed amendment necessary to ensure all HSAs in the State remain valid?

Mr. Plain:

Yes. The HSAs are regulated at the federal level under the *Internal Revenue Code*. Individuals are allowed to contribute pre-tax funds to an HSA, and those funds do not count as part of the individual's income as long as the HSA is paired with a high-deductible health plan. A plan to qualify as a high-deductible health plan cannot include any cost sharing from the insurer outside of basic preventative medicine until the individual reaches his or her medical deductible. The intent of S.B. 266 was that your \$100 maximum coinsurance or co-payment would start once an individual's coverage starts. In reading the plain language of the bill, it seems that an individual would not have to meet his or her high-deductible health plan deductible, only the \$100 special pharmaceutical deductible. That does not comply with the federal regulations for high-deductible health plans and would invalidate the tax advantages of the HSA.

Senator Settlemeyer:

Once I meet my HSA deductible, everything is free from there. I do not even have a co-payment. Are you saying there would still be a \$100 co-payment after the deductible is met?

Mr. Plain:

It depends on the design of each individual health plan. A person can have a health plan designed so that once the deductible is met, there is no cost sharing beyond that. Another common health plan design has 20 percent coinsurance after the deductible is met. You would pay 20 percent and the insurer would pay 80 percent of the costs. That will be in effect until you reach

an out-of-pocket maximum. Then you would not be liable for any further expenses.

Senator Settlemeyer:

The way I am reading this, I would still be liable for additional expenses even if I reach that number.

Chair Atkinson:

I have been in both plans. Currently, I am in a plan that is self-funded. Once I reach my threshold, I have to pay 20 percent of whatever costs I incur and the insurer pays 80 percent. This takes into account each plan, so it would depend on which plan you are in. In certain cases, could it be that each time there would be \$100 deductible?

Mr. Plain:

Yes. The original passage of S.B. 266 put a cap on the amount of cost sharing, co-payment or coinsurance that could be charged for the orally administered anti-cancer medication. You can have that cost-share, but it can never exceed \$100. The amendment seeks to clarify that the cost sharing starts once the deductible is met. Absent that language, there is a problem with the high-deductible health plan and HSA. Nothing precludes an insurer from charging \$20 or having a coinsurance rate of 2 percent, as long as the out-of-pocket dollar amount is less than \$100.

Senator Hutchison:

Is there anything in A.B. 425 that is not required under the ACA? Are we doing anything in addition to or different from the ACA? Is this all required for implementation of the ACA?

Mr. Plain:

It is all required for the implementation of the ACA. There are a couple of provisions that the Division of Insurance inserted as consumer protections around the implementation of the ACA. For example, we inserted the 90-day waiting period for purchases off the SSHIX. Starting in October, then annually thereafter, there is an open enrollment period for products sold both on and off the SSHIX. Once the open enrollment period ends, purchases for products on the SSHIX will be barred until the next open enrollment period, unless the individual has a special qualifying event. That is similar to those who receive group coverage through an employer now. Off the SSHIX, there is no federal

provision either way. Most believe that insurers will set their own open enrollment periods to bar enrollment mid-term. The Division of Insurance has proposed a 90-day waiting period so if there is some reason a person needs to purchase insurance outside of a qualifying event, he or she can do it off the SSHIX mid-year with a lengthy waiting period to exclude those instances where someone might be "buying on the way to the hospital." We do not want that sort of adverse selection involved. The 90-day waiting period gives a fairly lengthy exclusionary period and uses an individual's grace period for the individual shared responsibility tax penalty that he or she is allocated under federal law. Individuals will not be able to avoid tax penalties.

Senator Hutchison:

Are there any provisions that, in the absence of the ACA, would be in this bill?

Mr. Plain:

No. Absent the ACA, A.B. 425 would not exist.

Senator Hutchison:

What is the status under this bill for those plans that exceed the plan requirements under the ACA, the so-called "Cadillac" plans?

Mr. Plain:

Assembly Bill 425 does not affect Cadillac plans. The federal government has a tax disincentive for Cadillac plans, whereby if the total premium contribution for the individual and the employer exceeds a certain indexed amount, the excess amount is subject to a large tax fine. That is to disincentivize Cadillac plans. We are not dealing with that issue at the State level.

Senator Hutchison:

There is a two-thirds majority vote requirement for A.B. 425. Can you please summarize the fees and taxes included in the bill?

Mr. Plain:

Two revenue items are attached to the bill. The first deals with the exchange enrollment facilitators. The exchange enrollment facilitators will be certified as navigators, assisters or application counselors by the SSHIX. There is a licensing fee paid to the Division of Insurance to receive certification. The fee flows through to the State General Fund, so there is a small revenue increase. The fiscal note was about \$59,000.

Additionally, in order to certify a health insurer's network as adequate, the Division of Insurance will be using a third-party contractor and will be using the examination authority to bill the cost of the certification to the insurers. Insurers who wish to sell a product and have their network certified as adequate will apply to the Division of Insurance and pay for the cost. The monies will flow through the Division of Insurance to the third-party contractor. It is purely a flow-through account. There is a fiscal note, but because it was a pass-through, it was cleared through the money committees without any major issues.

Chair Atkinson:

Was it passed through the Assembly Committee on Ways and Means? Has it gone through the Senate Committee on Finance?

Mr. Plain:

It passed through the Assembly Committee on Ways and Means and was part of the Division of Insurance budget when it was heard by the joint subcommittee.

Senator Settlemeyer:

If an individual was to meet the out-of-pocket expense and under his or her plan, no further money had to come out of pocket; this amendment would not require an additional \$100 prescription. Correct?

Mr. Plain:

Correct. Once the out-of-pocket maximum has been reached, there is no provision anywhere in State law that would require additional expenses.

Senator Settlemeyer:

There is a \$15 fee for a new license and renewal. How long is a license valid?

Mr. Plain:

Currently, the Division of Insurance has a 3-year renewal process for all our licenses and certifications.

Chair Atkinson:

To which sections of S.B. 266 does the proposed amendment apply?

Mr. Plain:

It should go into every section that has a clause to that effect.

Chair Atkinson:

The hearing on A.B. 425 is now closed.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 425 WITH THE AMENDMENT PROPOSED BY ADAM PLAIN,
EXHIBIT C.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the hearing on A.B. 428.

ASSEMBLY BILL 428 (1st Reprint): Revises provisions relating to energy.
(BDR 58-797)

Assemblyman David P. Bobzien (Assembly District No. 24):

Assembly Bill 428 is the culmination of a lot of work and compromise. It started out as a distributive generation bill, but this is a wonderful compromise that works in everyone's interests for the next chapter of these incentive programs. Assembly Bill 428 revises the energy incentive and demonstration programs for solar, wind and waterpower energy systems. It gives authority to the Public Utilities Commission of Nevada (PUCN) to set incentive levels to make incentives performance-based and to set dollar limits for the programs. The bill addresses many elements of A.B. No. 416 of the 76th Session, which was vetoed by Governor Brian Sandoval for other reasons, not because of what we did with the performance-based incentives. The bill restates the public policy goal of advancing renewable energy. It also creates the Lower Income Solar Energy Pilot Program to allow low-income Nevadans the opportunity to reap the benefits of low-cost renewable energy installed on their homes and schools. Assembly Bill 428 creates the Legislative Committee on Energy as a statutory interim study committee. The Legislative Committee will review energy policy in the State and make recommendations to future sessions of the

Nevada Legislature. The bill requires the Consumer's Advocate Office, Bureau of Consumer Protection, Office of the Attorney General, to report any cases in which they decline to represent the broad public interest in a rate case before the PUCN. Finally, the bill requires the PUCN to open an investigatory docket to examine the comprehensive costs and benefits of net metering.

We are clarifying the budget for the performance-based incentives. Performance-based incentives will give us more accountability and greater return on the incentive dollars. The Lower Income Solar Energy Pilot Program will be a subset of the overall budget. The bill proposes to give the PUCN the latitude to determine the details. The intent is to target the people who have the greatest difficulty accessing these sorts of incentive programs.

There is statutory language regarding the consumer's advocate reporting requirements proposed to be included in the sections governing the Attorney General. The consumer's advocate has latitude to represent either the broad public interest or individual consumers' interests in filings and interventions. The NRS also recognizes there could be competing discrete consumer classes and interests needing representation in a rate case intervention. The consumer's advocate has the latitude to evaluate the different interests and decide which one to represent. That latitude is important, but it is also murky. How often is the broader public interest actually represented? The idea in A.B. 428 is to create transparency by proposing that the consumer's advocate would need to report why the decision was made to represent one interest over another. My hope is that policy makers in future sessions can look to see what is happening. I did work with the consumer's advocate on this language. Initially, there was language specifying the definition of "public interest." The consumer's advocate said it would result in a significant fiscal note because it would be a new standard requiring specific expertise on a consulting basis. We removed that language, and it removed the fiscal note for that portion of the bill. Everyone is happy. The consumer's advocate can do this reporting without problems.

Many questions arise with some of the bills we have considered this Session. It is important to send a message to businesses, ratepayers and the State that we take energy policy very seriously. The Legislative Committee on Energy proposed in A.B. 428 is one way to do that. This Legislative Committee will watch the developments and prepare for future legislative sessions. We may need to make mid-course adjustments or bring in new programs and policies to

advance Nevada as a leader in energy policy in the United States. Section 25.4 of the bill specifies proposed charges as to the sort of topics the Legislative Committee will cover. The language was drafted based on how statutory interim committees are generally created in the State. We drafted new language for the duties and assignments but used the existing structures from the Legislative Committee on Public Lands and the Legislative Committee on Education.

Senator Hutchison:

If the consumer's advocate decides not to represent the broader public interest in a rate case, who would represent that interest?

Assemblyman Bobzien:

Different public interest organizations may represent the broader public interest out of environmental, health or economic concerns. The consumer's advocate will assess who else will have interest in the rate filing and may decide to focus on the more specific concerns. I am concerned there may be times when that consideration was not given enough attention. This bill will allow for more assurances in how the consumer's advocate makes those decisions. It is important to amass history on those decisions.

Senator Hutchison:

Interest groups will know that someone needs to be watching out for public interest because the consumer's advocate is looking at a narrower interest.

I have some concerns about the powers of the Legislative Committee on Energy. Section 25.45, subsection 1, paragraph (c) allows the Legislative Committee to issue subpoenas for witnesses and documents. Section 25.45, subsections 2, 3 and 4 specify the manner prescribed by the rules of the court for taking depositions in a civil action. Would you be amenable to including in the bill the ability for a subpoenaed party to seek a protective order as one typically can in court? It could be used if the Legislative Committee issues a broad discovery request or subpoenas the wrong witness. It could be inherent because there is a court proceeding, but the court does not have the options, necessarily, of protecting a party that is subpoenaed. Could we clarify that?

Assemblyman Bobzien:

I would defer to Counsel. Assembly Bill 150 takes a similar approach to defining the powers of the Legislative Committee on Governmental Oversight and Accountability.

ASSEMBLY BILL 150 (2nd Reprint): Creates the Legislative Committee on Governmental Oversight and Accountability. (BDR 17-739)

I am happy to put the intent on the record. I am concerned about the limited time left in Session. I understand your concern, and it is valid. I think we can clarify the intent here and on the Senate Floor.

Chair Atkinson:

There are things we can do conceptually.

Senator Hutchison:

Maybe Counsel will tell us there are other mechanisms in law already. We do not want to take away the protections that typically are available for witnesses and for document production. There is a court proceeding process here. I want to clarify that parties can challenge an overly broad subpoena. Courts typically deal with many situations through protective orders.

Assemblyman Bobzien:

There is a broader concern. The role of the oversight of the proposed Legislative Committee on Energy is focused on policy. This is not meant to impinge upon the PUCN regulatory authority. I see the Legislative Committee working hand-in-hand with the PUCN. The Legislative Committee would receive reports from the PUCN on updates from the perspective of the regulator so the policy makers can know what is needed. I would hope the Legislative Committee would be judicious and selective in the use of the tools provided in A.B. 428.

Chair Atkinson:

The Legislative Committee would not have to subpoena the PUCN, but the PUCN would be invited to give testimony and guidance.

Senator Hutchison:

I would like to include a reference to protective orders under Rule 26(c) of the *Nevada Rules of Civil Procedure*. We could just add one sentence saying, "The Rules of 26(c) apply."

Chair Atkinson:

I agree with that addition. Would Counsel please look into that? I am not sure it is necessary, but we will look into it.

Senator Settlemeyer:

I appreciate the comments regarding subpoena powers. Generally, the Legislative Commission is limited in its subpoena powers to those matters for which the Legislature provides money. This is a very broad subpoena power in a realm where the Legislature does not provide money. In my opinion, it should be limited to subpoena powers specifically related to energy matters.

Chair Atkinson:

I think we can also use legislative intent.

Senator Settlemeyer:

I have no problem with the bill in its original form. I am concerned about the addition of sections 25.1 through 25.45 creating the Legislative Committee on Energy. There was discussion on the Senate Floor of another interim committee where the majority leader and minority leader of each house appointed one member to the committee. I am concerned about the makeup of this Legislative Committee.

Chair Atkinson:

We can talk about the makeup of the Legislative Committee. Do you have a problem with the Legislative Committee as a whole or with the makeup of the Legislative Committee?

Senator Settlemeyer:

I have a problem with the makeup of the Legislative Committee on Energy. I want to make sure we clarify our legislative intent that the subpoena powers are extremely limited. I would hate to see things grow to where one committee has such overreaching powers.

Chair Atkinson:

I do not think allowing overreaching power is the intent. You are not the only one who has concerns about the makeup. I spoke to Assemblyman Bobzien earlier because concerns about the makeup came to my attention. The majority party will have more members, but I understand a 6 to 2 partisan split is too much.

Senator Settelmeyer:

The Legislative Commission has an even partisan split. I think this Legislative Committee, which is a form of the Legislative Commission, should also be an even split.

Senator Hardy:

I am concerned about the language in A.B. 428 on lines 13 and 14 of page 20, "Any other matters or topics that, in the determination of the Committee, affect energy policy this State." Everything affects energy policy in the State. Our intent is not to cover everything that may affect energy policy everywhere. I want to make sure we narrow the focus to the energy policy of the State.

The Legislative Commission governs the Legislative Committee. In essence, the Legislative Committee is a creature of the Legislative Commission. The Legislative Commission is designed to be nonpartisan and equally bicameral—equal number of Senate and Assembly members and Republicans and Democrats. The Legislative Committee on Energy will be influential and needs to be perceived as being representative of all the people. I would like it to be equally bipartisan and bicameral.

Assemblyman Bobzien:

I understand your concern about the broadness of the assigned topics. Energy is a very broad topic. It is important to read section 25.4, subsection 1, paragraph (a), subparagraph (10) in the context of the bill. We are discussing energy. We may talk about low-income weather assistance one day and land use planning relating to transmission lines the next. There are possibilities to discuss broad topics, but like any statutory interim committee, we will set up a work plan at the beginning of the interim to decide which topics we will discuss. There are very specific components of S.B. 123 that I would like to see the Legislative Committee discuss.

SENATE BILL 123: Revises provisions relating to energy. (BDR 58-106)

My intent is for the Legislative Committee on Energy to receive reports on some of the issues presented in S.B. 123, such as decommissioning coal assets, preparation for rate impacts and mitigation measures and increasing the replacement capacity. The Legislative Committee will want to explore other energy issues. They should hear from the PUCN and the Office of Energy,

Office of the Governor, to prepare a full program of energy topics to review and prepare the next Session's energy agenda.

I am sensitive to the desire for this not to become a partisan bludgeon. I modeled this after other statutory committees currently in place. There is always more representation from the majority party. There is flexibility written into A.B. 428 to allow the majority leader to appoint more than one minority party member. I would be more comfortable keeping the model we currently have for statutory committees. This discussion is important to explain the intent of the Legislative Committee, though. Changing the number of members on the Legislative Committee on Energy would also be a fiscal consideration. It would cost approximately \$1,500 to add two members to the Legislative Committee. Alternatively, it saves the same amount to decrease the number of members by two. If we increased the number of members to 10, we would have a 6 to 4 partisan split. If we had six members, there would be a 4 to 2 partisan split.

Senator Hardy:

Are there any other interim committees that have a 25 percent representation of the minority party?

Assemblyman Bobzien:

There are a few examples. I do not remember them off the top of my head. I know the Legislative Committee on Public Lands has eight members and a representative from the counties.

Chair Atkinson:

I would not be in favor of increasing the number of members to ten, but decreasing to six would be acceptable. The makeup of a six member Legislative Committee would be a 4 to 2 partisan split. If the Legislative Committee on Energy becomes a subcommittee of the Legislative Commission, the way Senator Hardy explained it, then it should not have the same makeup as the Legislative Commission. I understand the concerns, but it should not be the same.

Senator Hutchison:

I agree with the concerns about the makeup of the Legislative Committee and Rule 26(c) protections. I think we have clear legislative intent regarding the application of Rule 26(c) protections in section 25.4, subsection 1,

paragraph (a), subparagraph (10). We have also clarified that the Legislative Committee on Energy will focus on matters and topics related to the energy policy of the State. It is broad, but that is clear legislative intent of what this Legislative Committee can do in terms of subpoenas and seeking witnesses.

Assemblyman Bobzien:

I do not see this Legislative Committee as being a partisan battleground. The energy policy of the State is important to everyone.

Chair Atkinson:

I agree. I think we had this type of committee a long time ago. If we are going to continue to be serious about energy-related issues in this State, which we are, this committee needs to return and delve into these issues. Energy is one of the more difficult topics to grasp in the Legislature because we are only here 120 days every other year. This will allow an opportunity to discuss energy issues more. If we can discuss these issues throughout the year, it will help all of us, especially in an ever-changing body.

Senator Hardy:

I did some research. The Legislative Committee on Education has a 3 to 1 partisan split. The Legislative Committee on Health has a 4 to 2 split. There are others with a 4 to 2 split and some with a 5 to 3 split. The Legislative Committee on Energy would not be issuing bill draft requests (BDRs), but studying policy. There should be many people from across the State without stifling the representation. I want to make this truly bipartisan and not intimidate anyone from coming to the Legislative Committee on Energy. When the Legislative Committee decides on a policy, it should be presented within the first month of the next Legislative Session with everyone in agreement. I would hate to see this become one-sided with a 6 to 2 partisan split.

Judy Stokey (NV Energy):

NV Energy supports A.B. 428. This bill represents a good compromise on behalf of the interested parties. NV Energy was concerned that there was not a stated \$225 million budget cap. It was not as hard-line as in previous legislation. We were very concerned about that. The budget of \$225 million is now established in the statewide budget.

The bill addresses net metering costs. There have been continuous discussion about the costs associated with net metering, and who is responsible for paying

those costs. Customers participating in net metering will now be paying the legislatively mandated public policy pieces included in customers' bill, including fees for energy efficiency measures and the Universal Energy Charge, which is a fund to help customers pay their power bills when they are suffering financially. Net metering customers will also now contribute to the rebate customers receive for the solar program. The PUCN will start a discovery process to evaluate the costs and benefits for net metered customers. The PUCN will present the results of the investigatory docket at the next Legislative Session or during the interim to the Legislative Committee on Energy. Finally, net metering is expanding. Assembly Bill 428, section 24, subsection 1, proposes to raise the cap for net metering from 2 percent to 3 percent. That is a 50 percent increase. It will increase capacity from approximately 140 megawatts to 210 megawatts of net metered systems in the State.

The rebates for the energy efficiency programs have been dwindling. There is approximately \$90 million left in the budget for the rebates. We want to ensure the rebate monies last as long as possible, so section 5, subsection 1, paragraph (a) of the bill mandates the rebate cannot exceed more than 50 percent of the installed cost of the system. In the past, rebate amounts have been large enough to pay almost for the entire system. We believe customers who want to install energy efficient systems should contribute as well. This will leave additional dollars so other customers can take advantage of the rebate program.

Rose McKinney-James (Bombard Electric):

Bombard Renewable Energy supports A.B. 428. I want to emphasize that the bill is a result of negotiations. We have been discussing these issues for some time. We were very active last Session attempting to address the incentive program. This bill looks at where the market is and has proposed some adjustments to the mechanics of the incentive program to make it more useful for distributive generation providers. Assembly Bill 428 takes steps to strengthen the incentive program and looks to extend the life of the incentive program by being reasonable about the amount of the rebates offered. The monetary amount of the rebates will be consistent with surrounding markets and work within the current budget. We hope the PUCN will promulgate regulations to support the incentive program.

Net metering is key to the State's ability to move forward with distributive generation. The bill adjusts the statewide cap from 2 percent to 3 percent.

Additionally, we agreed that while net metered customers bring a substantial benefit to the overall system, the public policy fees are reasonable accommodations. We are looking forward to the investigatory docket by the PUCN to determine the costs and benefits of net metering and if there are additional fees to consider.

Like any business, over the course of the life of the distributive generation industry, certainty is important. Assembly Bill 428 provides a large degree of certainty and will allow the industry to move into a more fulsome position in our economy. Solar energy in combination with distributive generation will make a huge difference in our economic future.

Russell Rowe (SolarCity Corporation):

SolarCity Corporation is the Nation's largest installer of distributive generation. Bombard Electric and Hamilton Solar founded the industry in Nevada. SolarCity, while being the largest in the Country, recognizes we stand on the hard work and foundation those two companies have built. We are pleased to be working on this legislation with them.

The incentive program currently operates on a lottery system. That makes it difficult for a business to establish a model and have business certainty. A business is currently unable to tell customers if they qualify for the incentive or if they will even receive the incentive if they qualify. Assembly Bill 428 streamlines the incentive process and eliminates the lottery system. If a customer qualifies for the incentive and there is money available, the customer will receive the incentive. The incentives will decline over time until 2021. This gives companies time to adjust their business models and become more efficient. As the incentives decline, the companies will need to absorb the costs with the ultimate goal of not having incentives. We are not asking for an increase in the budget. We want to ensure the remaining budget is used in the most efficient manner possible so Nevada will end up with a sustainable distributive generation industry. This will also result in thousands of new jobs. SolarCity plans to increase from a few hundred employees to a few thousand in a relatively quick manner.

The distributive generation industry and the utilities have been at odds with the net metering fees, but we are happy with what has been negotiated. All customers will now be required to pay the Universal Energy Charge, Temporary

Green Power Financing fee, Renewable Energy Program fee and the Energy Efficiency charge.

Assemblyman Bobzien:

It is important that we not look at policy that is specific to any one business or any one business model. I wanted to look at all the possibilities and create broad policy to aid the entire sector. SolarCity wanted to move its headquarters to Nevada, and A.B. 428 will allow the company the vertical space necessary to create a business here. There is flexibility for the PUCN to create the specific regulations and make adjustments. The incentives will decrease over time, so eventually this industry will stand on its own. The entire State will benefit.

Chair Atkinson:

I want to report some information I have received. The Legislative Committee on Energy will be able to request BDRs. The Legislative Commission is a 6 to 6 split, but the members are appointed by a resolution from each House during session. There are no requirements about the makeup of the Legislative Commission.

Senator Settlemeyer:

I thought there was a rule that the Legislative Commission is an even split unless a particular House did not achieve a two-thirds majority. At that time, it would fall to a different number.

Chair Atkinson:

It is an even split, but it is done by resolution by both Houses. There is no requirement that it has to be split by party. We will double check the two-thirds aspect. The Legislative Committee on Energy can request BDRs, so in my opinion, it makes sense for it not to be an even split. I am comfortable with decreasing it to six members.

Senator Hutchison:

Will the solar program be independent, without incentives, as of January 1, 2021? That is the stated goal in the bill; do you anticipate needing to extend that?

Ms. McKinney-James:

That is the goal. We extended the date so that if the last incentive started in 2021, they would have until 2025 to conclude it. We are looking to be

self-sufficient. It is important to pair the incentive program with a solid net metering program. We have to remain connected to the grid because we have intermittent resources. We want a policy that will allow this industry to stand on its own.

Senator Hutchison:

It is great to have a solid goal set in statute.

Section 5, subsection 1 refers to market-based incentives. Is that a term used throughout the industry? Why are there three categories of market-based incentives?

Mr. Rowe:

We are trying to provide guidance to the PUCN for setting the incentive levels and reconciling how the levels will decline over time. There will have to be hearings by the PUCN to determine the regulatory process, receive input on the status of the market and determine the cost of installation. The other aspect will be to ensure the incentives do not exceed 50 percent of the average cost of installation, which is a market-based cost. Looking at the previous year's installations and getting the actual costs of those installations give us another market basis for the PUCN to consider.

Senator Hutchison:

Is the 50 percent of the installed-cost requirement different from how the program currently works?

Ms. McKinney-James:

This establishes a baseline. We have not had a baseline before. There were instances where the rebate exceeded the cost, so we are trying to establish a baseline.

I wanted to add something with respect to the date of completion of the incentive program. We may find that we have a very robust market and the incentives may be used by 2017. The goal is to use these incentives to help the potential customer and installers advance the availability of these programs. The date was put in to give ourselves some certainty, but we may end the incentives sooner than the stated date.

Senator Hutchison:

Is the 50 percent standard a maximum? Currently, can a company rebate any amount even it exceeds the entire cost of the system?

Ms. McKinney-James:

The PUCN has always had some control over the process. There was a specified rebate amount. We want those amounts to decrease so they are consistent with other incentive programs in the region. We also want to move to a performance-based incentive allowing us to measure the actual performance of the systems. It is prudent to use a performance-based incentive model.

Assemblyman Bobzien:

Previously, we have had an incentive program for wind power. The performance variability in design is far more pronounced with wind power than with solar power. The wind power incentive program was not performance-based. Some people would buy a turbine and never generate power with it. It brought to light the need for establishing performance-based incentives and tying the incentive to the actual generation of power. I want to make the process more accountable and consider the designs of the systems.

Senator Hardy:

I have been looking at the makeup of the other legislative committees. If the Legislative Committee on Energy were to remain at eight members, maybe we could make it a 5 to 3 partisan split. We could consider the distribution of the number of elected members in the Legislature. The Senate has a much smaller partisan split margin, so we could have two majority party and two minority party members from the Senate. Since the Assembly has a much larger margin, there would be three majority party members and one minority party member from the Assembly. That would give the Legislative Committee on Energy a 5 to 3 partisan split.

Assemblyman Bobzien:

I understand the concept. How would you put that in statute to provide flexibility for the fact that numbers change? Under the language here, there is a compelling case to be made to the majority leaders that it makes sense to have two members from each party from the Senate. If there is a statutory way to tie it to the actual partisan makeup of each body, then we could consider that.

Senator Hardy:

I have confidence in the Legal Division.

Chair Atkinson:

I do not see a problem because the legislative committees are appointed after each Session. The makeup will change every session.

Senator Hutchison:

The minority party makes up about 39 percent of the current Legislature—25 out of 63 members. If we increase the number of minority members on the Legislative Committee on Energy to 3, then the makeup would be 3 out of 8, which is about 37 percent.

Chad Dickason (Hamilton Solar):

Hamilton Solar is the largest distributive generation installer based in northern Nevada. The biggest issue the industry faces in getting off the incentives is the cyclical nature of the current incentives. The most important thing we can do is to allow the incentives to be released 365 days a year until they are exhausted. We believe A.B. 428 allows us to do that. There were difficult discussions over the issue, but we support the bill. We believe we can wean the industry off the incentives in a few short years, possibly well before 2021.

Stacey Crowley (Director, Office of Energy, Office of the Governor):

Governor Brian Sandoval supports A.B. 428. He appreciates the hard work of the stakeholders. This is a good step for the distributive generation industry.

Senator Hutchison:

Were you involved in the negotiations on A.B. 428? What was the involvement from the Office of the Governor on this?

Ms. Crowley:

The Office of the Governor did not help negotiate the bill, but we stayed in contact with all parties involved to make sure the policies were sound and would move the distributive generation industry forward.

Senator Hutchison:

It is good to hear the Governor supports this.

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Kyle Davis (Nevada Conservation League):

The Nevada Conservation League supports A.B. 428. This bill accomplishes a lot of what we tried to accomplish with A.B. No. 416 of the 76th Session.

Lydia Ball (Clean Energy Project):

The Clean Energy Project supports A.B. 428.

Chair Atkinson:

What do you think about the makeup of the Legislative Committee on Energy?

Assemblyman Bobzien:

The cleanest way to address any concerns the Committee may have about the partisan balance would be to shrink the committee from 8 to 6 members.

Chair Atkinson:

It would be a 4 to 2 partisan split.

Assemblyman Bobzien:

Yes. The bill requires a minimum of one minority party member, so there could be exceptions. The Legislative Committee on Public Lands actually had a member of the minority party chair the Committee. There is a lot of flexibility in the language, but this should provide a good structure for governance. If we decrease the number of members from 4 to 3, there will be a more appropriate balance, from the minority party view.

Chair Atkinson:

I agree. It would also be an easy change for the Legal Division to make in section 25.25 of A.B. 428.

Assemblyman Bobzien:

It will also reduce the fiscal impact by about \$1,500.

Senator Hutchison:

It is a good compromise. I am happy to see we are agreeing to shrink government.

Chair Atkinson:

This was a good discussion and compromise. This is why there are so many votes that are 21 to 0 on the Senate Floor.

Senator Hutchison:

I would like to clarify how Rule 26(c) and orders of protection are included. If someone gets a subpoena he or she thinks is too broad, what can be done?

Dan Yu (Counsel):

I just wanted to address that question if, in fact, this Committee is going to move on this bill today. I don't want that to be an obstacle to additional considerations. I've been thinking it over and I've looked through NRS, and one of the things I would like point out and note for the record is that these provisions in this bill—it's modeled almost verbatim after existing statutes within relation to other statutory committees. I mean, I don't know if that would alleviate any of your concerns; but in addition to that, with respect to your question concerning Rule 26 protective orders or, for that matter, any other issue a person might encounter with respect to a subpoena and assertion that it is overly broad or overly ambiguous—of course there are conventional court mechanisms as well that a person would be able to trigger. For example, a person could always ask a court to issue an order to quash a subpoena. Certainly, something like that would not be an obstacle in a situation like this. Again, like I said, from a legal perspective, at least from our division, I don't have as much heartache over the language that's currently contained in the bill as perhaps Senator Hutchison has. I don't know if that answers all of your questions.

Senator Hutchison:

That is very helpful. I am relying on the experience of Counsel. The language in A.B. 428, section 25.45, would not preclude someone who has been subpoenaed from exercising a motion to quash, a motion for protective order or any of the conventional defenses and procedural mechanisms he or she would otherwise have when served with a subpoena, correct?

Mr. Yu:

"That's absolutely correct."

Senator Hutchison:

Then I am comfortable going forward.

Chair Atkinson:

If you feel comfortable voting for this, you will have a few hours to look into it further. Having this discussion on the record helps.

Senator Hutchison:

I am relying on the competence and experience of our Counsel.

Senator Hardy:

Do all the other legislative committees have subpoena power and the rights of a court—similar language used in this bill? I have never known a legislative committee to subpoena anyone.

Mr. Yu:

You know, it's difficult for me to say off the top of my head how many [legislative] committees created by statute there may be that have this precise subpoena power, but I can say that it is more than a handful. Several statutory committees have the same subpoena powers.

Chair Atkinson:

The Assembly appointed a committee this Session that had subpoena powers.

Senator Settlemeyer:

We want to change lines 35 and 38 on page 18 to make it three members from each House. The Legislative Commission will review and approve the budget and work program and select the chair and vice chair for the Legislative Committee on Energy.

Senator Hardy:

I will vote for this and look at the reprint to make sure the changes are included.

Chair Atkinson:

The hearing on A.B. 428 is closed.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 428 CHANGING "EIGHT" TO "SIX" ON PAGE 18, LINE 33, AND CHANGING "FOUR" TO "THREE" ON PAGE 18, LINES 35 AND 38.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Atkinson:

I open the hearing on A.B. 388.

ASSEMBLY BILL 388 (2nd Reprint): Revises provisions relating to renewable energy. (BDR 58-517)

Assemblyman David P. Bobzien (Assembly District No. 24):

This is a mix of concepts with which we grappled in the Assembly this Session. Assembly Bill 388 proposes to make changes to geothermal energy systems and would resolve persistent issues with geothermal being excluded from the definition of "renewable energy." The bill would also revise language related to station use credits. It addresses claims or causes of action related to a renewable energy project located on Tribal land. I have submitted the mock-up of Proposed Amendment 9449 (Exhibit D). The proposed amendment clarifies station use language relating to geothermal energy.

Sections 1 and 2 of A.B. 388 provide that geothermal energy would be included in the definition of renewable energy for purposes of certain energy-related tax incentives.

As outlined in Proposed Amendment 9449, section 3, subsection 2, would revise the requirements of a board of county commissioners in reviewing an application for partial tax abatement for renewable generation facilities. This is similar to the language in A.B. 239 with Amendment No. 944.

ASSEMBLY BILL 239: Makes various changes relating to energy. (BDR 58-224)

Under the proposed new language, a board of county commissioners must make a recommendation to the Director of the Office of Energy, Office of the Governor, regarding the abatement. The board of county commissioners may deny an application only if the board determines that the projected cost of the services required to support the facility will exceed the amount of revenue the local government would receive as a result of the abatement, or if the projected

financial benefits enjoyed by the county from employment opportunities and capital investments will not exceed the projected loss in tax revenue. This is a great standard. This resolves many conflicts.

Section 4 proposes to exclude the energy used by a system for basic operations from the calculation of portfolio energy credits for systems installed on or after January 1, 2016. The proposed amendment includes electricity used for heating, lighting, air conditioning and equipment of a building on the site of the system as part of the energy used for basic operations.

Section 5 clarifies a court of this State has jurisdiction over a claim or action relating to a renewable energy project located upon certain Indian tribal land.

Terry Care (K Road Moapa Solar):

I have provided a fact sheet ([Exhibit E](#)) giving some background on the issues relating to section 5 of the bill. K Road Power Holdings has entered into a 50-year lease with the Moapa Band of Paiutes for 2,000 acres to house a yet-to-be built 250-megawatt solar photovoltaic project. That project will sell power under a power purchase agreement with the Los Angeles Department of Water and Power. The permitting for the project is complete, and we plan to start construction later this month. Mitigation for the desert tortoise has already been completed as well. We project to create 450 jobs at the beginning of construction, and, ultimately, more than 600 jobs during construction.

Section 5 clarifies that Nevada courts will have jurisdiction over a claim relating to a renewable energy project on tribal land under certain circumstances. Nevada case law allows sovereign immunity to be waived by a tribe. There is case law addressing that issue, but it is not in statute. The contract between K Road Moapa and the Moapa Band of Paiutes states that in the event of a dispute, the choice of form will be the Nevada courts and the choice of law will be Nevada law. The parties would like this in statute. Section 5 is confined to the narrow circumstances being described—this specific reservation and this contractual project—of a contractual dispute dealing with a renewable energy project.

I have also submitted a letter ([Exhibit F](#)) from the vice chair of the Moapa Band of Paiutes in support of A.B. 388.

Senator Hutchison:

It is important to have this letter from the Moapa Band of Paiutes. They acknowledge they have entered in a contractual relationship and have agreed to be governed by Nevada law and resolve disputes in Nevada courts. Is it the intent of the bill that if the Native American tribes within Clark County enter into these types of contracts, they are waiving their sovereign immunity? Is that possible under current law?

Mr. Care:

Yes. That is the intent, and it is possible.

Alfredo Alonso (Ormat Technologies):

Ormat Technologies supports A.B. 388. The bill includes geothermal energy as part of the definition of "renewable energy" under NRS 701A.340. Much of the language in A.B. 388 is similar to the language of A.B. 239. The proposed amendment gives authority to the counties to determine if certain criteria are met before granting tax abatements.

There were concerns that the original bill was not clear regarding station use. Station usage does not include pumping and compression. That is clarified in the proposed amendment. It follows the rules from the Federal Energy Regulatory Commission (FERC). We wanted to be clear what the FERC meant by station usage for geothermal energy.

Senator Settlemeyer:

Many of my concerns with A.B. 388 have been addressed in the proposed amendment, particularly on page 4. Without the changes on page 4 of [Exhibit D](#), the tax abatements needed would have accounted for over 30 percent of the general fund budget for one of the counties I represent. That county has already established its budget, and it would have been problematic.

Are geothermal energies exempt for all sales taxes? Currently, geothermal projects are exempt from sales tax for 3 years and then have to pay the 0.6 percent for the schools. Would this exempt all building costs for the project?

Mr. Alonso:

Assembly Bill 388 adds geothermal to the definition of "renewable energy." The proposed amendment includes the aspect of A.B. 239 providing a statewide

framework. The tax abatements will not change. This establishes a framework to ensure consistency across counties on when tax abatements can be denied.

Senator Settelmeyer:

Currently, other renewable energy projects do not pay sales tax for building costs. Geothermal energy projects have a tax break for 3 years. I will research further.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

The Southern Nevada Building and Construction Trades Council supports A.B. 388. I have submitted a letter from James Halsey ([Exhibit G](#)), who could not be here today, affirming the International Brotherhood of Electrical Workers Local 357 supports the bill.

Joe Johnson (Toiyabe Chapter, Sierra Club):

The Toiyabe Chapter of the Sierra Club is in support of A.B. 388 and the proposed amendment. We support the Moapa Band of Paiutes in their efforts to close the Reid Gardner Generating Station and to become producers of renewable energy.

Jeffrey Fontaine (Nevada Association of Counties):

The Nevada Association of Counties supports the proposed amendment. We worked closely with the renewable energy industry and think the proposed amendment provides the necessary requirements so counties can grant tax abatements.

Ms. Ball:

The Clean Energy Project supports A.B. 388 and the proposed amendment.

Senator Settelmeyer:

All renewable energies were eligible not to pay sales tax. I received incorrect information before.

Chair Atkinson:

The hearing on A.B. 388 is closed.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 388 WITH PROPOSED AMENDMENT 9449.

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SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Atkinson:

The meeting is adjourned at 7:53 p.m.

RESPECTFULLY SUBMITTED:

Caitlin Brady,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
A.B. 425	C	1	Adam Plain	Proposed amendment
A.B. 388	D	6	Assemblyman David Bobzien	Proposed Amendment 9449
A.B. 388	E	2	Terry Care	Fact sheet
A.B. 388	F	2	Terry Care	Letter from Moapa Band of Paiutes
A.B. 388	G	1	Jack Mallory	Letter from James Halsey