

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

**Seventy-Seventh Session  
March 1, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:03 p.m. on Friday, March 1, 2013, in Room 2134 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 Joyce Woodhouse  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer

**COMMITTEE MEMBERS ABSENT:**

Senator Mark Hutchison (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Mark A. Manendo, Senatorial District No. 21  
Senator David R. Parks, Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Caitlin Brady, Committee Secretary

**OTHERS PRESENT:**

Loretta L. Ponton, Executive Director, Board of Occupational Therapy  
Paula Berkley, Board of Occupational Therapy  
Eric Gerken, O.T.R./L., Board of Occupational Therapy

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John Griffin, Esq., Manufactured Home Community Owners' Association  
Jim deProsse, Administrator, Housing Division, Department of Business and Industry  
Bob Varallo, Nevada Association of Manufactured Home Owners  
Eric C. Smith, Chief Inspector, Board for the Regulation of Liquefied Petroleum Gas

**Chair Atkinson:**

I will open the hearing on Senate Bill (S.B.) 153.

**SENATE BILL 153**: Revises provisions relating to occupational therapy. (BDR 54-568)

**Senator David R. Parks (Senatorial District No. 7):**

The bill revises provisions relating to occupational therapy (OT). Occupational therapy is the use of various treatments to develop, recover or maintain the daily life and work skills of patients with physical, mental and developmental conditions. Occupational therapists (OTS) help people participate in things they want and need to do through the therapeutic use of everyday activities. I would like Loretta Ponton, Paula Berkley and Eric Gerken from the Board of Occupational Therapy (Board) to explain the bill.

**Loretta Ponton (Executive Director, Board of Occupational Therapy):**

This bill relates to the provisions governing OTS. I have submitted testimony and supporting documents ([Exhibit C](#)) on this bill, which I will discuss.

**Paula Berkley (Board of Occupational Therapy):**

This is the first bill the Board has presented to the Legislature this Session. The bill contains cleanup language. We have had three meetings discussing the bill—a special education session with all OTS and two public meetings. We also discussed the language with the State Board of Physical Therapy Examiners. That board is closest in scope of practice to ours. Their letter in support of S.B. 153 is included in [Exhibit C](#).

**Ms. Ponton:**

Section 1 of S.B. 153 adds OTS to the definition of a provider of health care. This change would hold OTS to the same standards of other health care providers for reporting requirements and record retention.

**Eric Gerken, O.T.R./L. (Board of Occupational Therapy):**

In section 2 we are updating the definition of OT to use current terminology. We are also clarifying language relating to the purpose of OT and what it entails. We have changed references of patients to clients. "Patients" implies a medical setting, while "client" implies a professional setting outside of a hospital. More and more OTS are working outside of hospitals.

**Ms. Ponton:**

Section 3 of the bill relates to exemptions from licensure. It clarifies the supervised experience must be fieldwork. We also remove the exemption from licensure for individuals who practice in association with an individual in Nevada. We would like anyone practicing in the State to be licensed and governed by the Board. There are ways for those individuals to obtain a temporary license.

The changes to section 4 allow the Board flexibility to schedule meetings as needed. We are changing a position title from executive secretary to executive director in section 5. Section 6 clarifies the Board's enforcement authorities and duties. Section 7 updates fieldwork experience requirements for licensure from 8 to 16 weeks in accordance with national certification standards. We removed out-of-date references to when licensing exams are held in section 8. Changes to this section synchronize *Nevada Revised Statutes* with national certification practices. Section 9 removes references to an obsolete organization and replaces it with the National Board for Certification in Occupational Therapy (NBCOT).

Temporary licensure is addressed in section 10. We are differentiating between experienced licensees and new graduates. Experienced licensees have national certification, have worked in another state and are coming to Nevada to work on a short-term basis. There has been a proliferation of traveling OTS filling in while organizations find permanent replacements. A temporary license is valid for 6 months. It can be extended an additional 6 months or converted to an active license if the individual wanted to stay longer. The second type of temporary license is for new graduates. These individuals have not yet taken the national exam. We would like to allow them to practice under the supervision of licensed OTS while they study for and take their exam. Once they pass the exam, they can convert the temporary license to a regular, active license.

Section 11 of S.B. 153 pertains to the period of validity of a license. We would like to have the flexibility to extend the current 1 year license period as our licensee base and the Board functions grow. It will also save money for the Board. Section 12 conforms with section 11, removing reference to an annual renewal fee.

Section 13 pertains to actions resulting in a misdemeanor. We want to remove the violation of directly supervising an OT aide or technician as a cause for a misdemeanor. These violations are subject to disciplinary action according to our regulations. We do not feel these violations warrant a misdemeanor charge.

**Senator Settlemeyer:**

On page 8, line 4 of S.B. 153, you are deleting the word annual. Are you thinking of going to a biennial license renewal?

**Ms. Ponton:**

Yes.

**Senator Settlemeyer:**

What is the reason for allowing someone who does not achieve a passing score on the licensing exam to have a temporary license?

**Ms. Ponton:**

That applies to new graduates who have received their master's degrees and completed their clinical fieldwork. They need to get into the workforce under the direct supervision of a licensed OTS while they schedule their exams. We would like them to be able to work while they wait to take their exams.

**Senator Settlemeyer:**

Will they have supervision?

**Ms. Ponton:**

Absolutely.

**Senator Hardy:**

How often is the exam given?

**Ms. Ponton:**

The examination is given by the NBCOT, and it is scheduled on an ongoing basis. Individuals submit their credentials, are determined eligible to take the exam and then it is scheduled. It is a computer-based exam.

**Senator Hardy:**

Can it be done every month?

**Ms. Ponton:**

It can be scheduled anytime.

**Senator Hardy:**

Why can you only renew a temporary license once?

**Ms. Ponton:**

For an annual license renewal, we require continuing education credits. We do not require those credits for a temporary license renewal. In order not to circumvent the continuing education requirements, we only allow a temporary license to be renewed once in a 12-month period. After that period, a temporary licensee would have to wait at least 6 months to request another temporary license. The Board has the ability to request additional information from the applicant, such as continuing education information, if we feel they are trying to circumvent the requirements.

**Senator Hardy:**

Is there a 6-month waiting period where an applicant cannot apply, if they have not met the criteria?

**Ms. Ponton:**

That is correct. They could apply for a regular license and go through the entire eligibility review instead.

**Senator Hardy:**

Is the 6-month waiting period only for a temporary license? They could apply for a regular license at any time if they show they have met the criteria.

**Ms. Ponton:**

Yes, that is correct. A temporary licensee could convert his or her temporary license to a regular license during the temporary licensure period prior to expiration with no additional requirements.

**Senator Hardy:**

Section 13 refers to people who are practicing without a license. Do you have the means to investigate these people, or do you defer to law enforcement?

**Ms. Ponton:**

We do not intend to do the job of law enforcement. We regulate and enforce our regulations with OTS and OT assistants. Aides and technicians transport patients. It is very definitive in our regulations what they are allowed to do. They must be under the direct supervision of a licensed OTS.

**Senator Hardy:**

Do you have jurisdiction over someone who is not licensed?

**Ms. Ponton:**

No.

**Senator Hardy:**

Specific to section 13, are you trying to enforce this, or do you look to law enforcement? In other words, an individual acting as an OTS without a license is a criminal.

**Ms. Ponton:**

Are you referring to an unlicensed person, not to technicians and aides?

**Senator Hardy:**

Yes.

**Ms. Ponton:**

We would go to local law enforcement regarding unlicensed persons. We would like to have the authority to move forward with cease and desist actions. We pursue unlicensed practice as a substantial violation of the law.

**Senator Hardy:**

Would you take their license away from them?

**Ms. Ponton:**

If they are not licensed, we cannot do that. We would pursue all legal remedies to ensure they are not practicing.

**Senator Jones:**

I had the same concerns on section 13 as Senator Hardy.

**Senator Denis:**

You are updating the statute relating to the Board.

**Ms. Ponton:**

That is correct.

**Senator Denis:**

How many OTS are there in the State?

**Ms. Ponton:**

As of this morning, there are 863 licensed OTS.

**Senator Denis:**

What are the fees for obtaining a new license and renewing a license?

**Ms. Ponton:**

There is a one-time application fee of \$150. The licensure fee is prorated by quarter. The renewal fee is \$175 for OTS and \$125 to maintain an inactive license.

**Senator Denis:**

How do you know if an individual's national certification is up to date?

**Ms. Ponton:**

We require verification of current certification to come directly from the NBCOT as part of the licensure process. If an applicant claims to be licensed in another state, we require verification of licensure in good standing from that state.

**Senator Denis:**

When are applicants required to prove national certification?

**Ms. Ponton:**

Applicants are required to have current national certification to receive their original licensure. We do not require them to maintain the national certification as long as their licensure does not lapse. Maintaining national certification requires continuing education. We also require continuing education to maintain annual licensure. If their license lapses, their current national certification needs to be verified before receiving a new license.

**Senator Denis:**

Is the State notified if the NBCOT pulls an individual's certification?

**Ms. Ponton:**

To become certified by NBCOT, OTS have to prove they have the necessary education requirements and pass the certification exam. We use the same exam for State licensure. To maintain national certification, OTS must complete 36 hours of continuing education courses over 3 years.

**Senator Denis:**

Do we receive notification if someone does not maintain national certification?

**Ms. Ponton:**

No.

**Senator Denis:**

Could we have OTS practicing without national certification?

**Ms. Ponton:**

Yes, we could, and we do. We have our own continuing education requirements, so we do not require OTS to meet State and national requirements. It is redundant.

**Senator Denis:**

Would you be aware of someone who does not complete national continuing education requirements because they would not meet State requirements as well?

**Ms. Ponton:**

Yes.



**Senator Hardy:**

As a disclosure, when I worked for Touro University of Nevada, I dealt with their School of Occupational Therapy and its students. I also served on the advisory board of the School of Occupational Therapy when it was seeking accreditation.

**Chair Atkinson:**

I will close the hearing on S.B. 153 and open the hearing on S.B. 154.

**SENATE BILL 154:** Revises certain provisions governing manufactured home parks. (BDR 10-23)

**Senator Mark A. Manendo (Senatorial District No. 21):**

The bill clarifies the responsibility for the service and maintenance of manufactured home communities' utilities servicing apparatuses or equipment. I have representatives from the Manufactured Home Community Owners' Association; the Housing Division, Department of Business and Industry; and the Nevada Association of Manufactured Home Owners here to speak to the bill.

**John Griffin, Esq. (Manufactured Home Community Owners' Association):**

Our association represents the people who own manufactured home communities in the State. We support S.B. 154. This is our practice and understanding now, so we are happy to have it codified.

**Chair Atkinson:**

Has this been a problem?

**Senator Manendo:**

It has. Mr. Varallo will give you a few examples.

**Jim deProsse (Administrator, Housing Division, Department of Business and Industry):**

We support improved language to address this issue. We have had a few significant complaints and investigations that have resulted in lawsuits. This language would clarify where the responsibility of the owners and tenants starts and stops. This will benefit all parties.

**Bob Varallo (Nevada Association of Manufactured Home Owners):**

There have been problems that S.B. 154 will clarify. It is our opinion that the landlord is responsible for anything relating to the infrastructure of the community. The infrastructure includes anything already in the community prior to the resident bringing in a home and hooking up the utilities. In one case, there was a gas leak, and the repairs were made. A bill was sent from the landlord to the resident for the repairs. This is not common practice, but it has happened recently. The language in this bill will clarify this issue. We strongly support S.B. 154.

**Eric C. Smith (Chief Inspector, Board for the Regulation of Liquefied Petroleum Gas):**

The language in the bill requiring landlords to maintain utilities distribution apparatuses could include the liquefied petroleum gas distribution systems. We would like to make sure the landlords are not attempting to make repairs to the system without being properly trained.

**Chair Atkinson:**

Are you opposed to the bill?

**Mr. Smith:**

No, we are not opposed to the bill. We want to make the Committee aware of this issue. We hope the intent of S.B. 154 is to have only licensed people working on gas distribution systems. We do not want landlords disconnecting pipes that could lead to an explosion.

**Chair Atkinson:**

I agree. Is that the intent?

**Senator Manendo:**

Yes, that is the intent of the bill.

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**Chair Atkinson:**

I will close the hearing on S.B. 154 and adjourn the meeting at 1:44 p.m.

RESPECTFULLY SUBMITTED:

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Caitlin Brady,  
Committee Secretary

APPROVED BY:

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Senator Kelvin Atkinson, Chair

DATE: \_\_\_\_\_

<u><b>EXHIBITS</b></u>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
S.B. 153	C	10	Loretta Ponton	Testimony