MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-Seventh Session
April 6, 2013

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 9:03 a.m. on Saturday, April 6, 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. Settelmeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wynona Majied-Martinez, Committee Secretary

OTHERS PRESENT:

Bobby J. Hollis, NV Energy
Judy Stokey, Executive, Government and External Affairs, Government and Community Strategy, NV Energy:
Danny L. Thompson, Nevada State AFL-CIO
Paul McKenzie, Building and Construction Trades Council of Northern Nevada, AFL-CIO

Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of Nevada
Anne-Marie Cuneo, Director of Regulatory Operations, Public Utilities Commission of Nevada
Ryan M. Brennan, Advantage Capital Partners
Philippe Jaramillo, The Nevadian, Inc.; Best Western Mardi Gras Hotel
Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry
George A. Ross, Co-chair, Insurance and Tort Reform Task Force, Las Vegas Metro Chamber of Commerce
Jeanette K. Belz, M.B.A., Property Casualty Insurers Association
Eric Schuller, Oasis Legal Finance
Keith Lee, Preferred Capital Funding
Bob Kominsky, Preferred Capital Funding
Patricia L. Parker
Garrett Gordon, American Legal Finance Association
Brett Carter, Nevada Justice Association
Teresa McKee, Nevada Association of Realtors
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Michael A. Schneider
Laura Lychock, Clayton Mortgage & Investment
Rocky Finseth, Nevada Land Title Association
Russell Dalton, Chairman, Nevada Land Title Association; First American Title Insurance Company
John Wagner, Independent American Party

Chair Atkinson:
We will have Senator Hardy open with Senate Bill (S.B.) 339.

SENATE BILL 339: Revises provisions relating to electric utilities. (BDR 58-835)

Senator Joseph P. Hardy (Senatorial District 12):
Senate Bill 339 had its genesis in a meeting with Judy Stokey, a lobbyist for NV Energy. Our discussion focused on what could be done to generate more renewable power in the State. We found that NV Energy does not have the ability, or the option, to own some sources of renewable power generation. We brainstormed and thought it would be a good thing if we were to allow NV Energy or any power company to generate a renewable source of energy

from its own site. It also would be good to support competition for the use of that particular renewable resource.

We looked at the portfolio cap and the portfolio energy credits (PECs) that NV Energy bought through legislative mandate to help reach its portfolio standard. We thought some PECs could be sold and free up room under the cap for geothermal or other renewables. That strategy would give Nevadans an opportunity to get more power from renewables. By selling those PECs, the ratepayers and NV Energy would benefit. Other renewable operations also would have more options.

I have provided you with a proposed amendment to S.B. 339 (Exhibit C) which includes the input of Ms. Stokey and Mr. Hollis, who also works in the renewable energy department of NV Energy. The proposal aims to ensure that we hold PECs that can be sold in such a way that we do not lose money.

Senator Jones:
Is the second part of your proposal, the part that addresses credits, similar to Senator Pat Spearman's bill, S.B. 326? We are trying to understand all the applicable bills together. Is it similar or the same as her proposal?

SENATE BILL 326: Revises provisions relating to the renewable energy portfolio standard. (BDR 58-776)

Senator Hardy:
There are a lot of moving parts, and I do not know where all the pieces are going to come together. I would hope that between Mr. Hollis and Ms. Stokey we might acquire some clarification.

Chair Atkinson:
The way I read it, the bills look similar. We will have representatives from the utilities at the table, and they will tell us how the bills are similar.

Bobby J. Hollis (NV Energy):
Yes, it is similar to Senator Spearman's bill, S.B. 326. This one is slightly different in that provisions in S.B. 326 are elective. The measure says you can undertake sales if you want and if you meet certain requirements. The language in S.B. 339, and in the revisions, S.B. 252, is almost identical. They both say if

you have more than a certain number of credits, you must attempt to make sales.

SENATE BILL 252: Revises provisions relating to the portfolio standard for providers of electric service. (BDR 58-775)

Senator Hutchison:
Would you say that the difference between the bills is that Senator Spearman's is discretionary and S.B. 339 is mandatory?

Mr. Hollis:
Yes, that is correct.

Senator Hutchison:
In your view, which is the better approach?

Mr. Hollis:
Once all the moving parts are in place, the better approach from the standpoint of current law would be the elective approach. It allows making purchases when it makes sense. To the extent we set a cap on the number of PECs a company can hold from year-to-year, this elective approach is necessary.

The mandatory cap, which initially was proposed, has lost its value. Under that method, if the number of PECs exceeds a set amount, the surplus will go away. From a public policy perspective, the obligatory attempt to sell the PECs and return the revenues to customers is the better approach.

Senator Hutchison:
Would you like the opportunity to merge the two and outline best practices from both bills? Would that make sense?

Mr. Hollis:
We have attempted to do that. We want the language to reflect that a confluence is taking place. The two bills can be merged.

The changes we propose in our amendment are intended to reflect the goal of Senator Hardy's bill, S.B. 339, to limit the surplus and to do so in a way the bill retains the most value and to ensure a win-win situation. There was a significant expansion of the portfolio standard in section 1. I do not think that

was intended. Committee members will be able to see that when reading the introduction. By proposing to delete section 1 in its entirety, our amendment proposes to delete the language that expands the portfolio standard not only from the load-based portfolio standard but also from a generation-based perspective.

The second part amends section 2 and mirrors S.B. 252, which revises provisions relating to the portfolio standard for providers of electric service. If we set a measurement equal to 25 percent of all generation, the company that exceeds that amount is obligated to seek sales. The proceeds would go back to the customers through rates as quickly as possible.

To the extent that we make or do not make those sales, a later risk of failure to comply can exist. To avoid noncompliance, we will look for a way to mitigate any possible risk and avoid a penalty.

Chair Atkinson:
The Committee should remember that the credits issue is being dealt with in three different energy bills to be heard and vetted. We have S.B. 252, Senator Spearman's bill, S.B. 326, and this one, S.B. 339. They all address in different ways how we might deal with those credits. Committee members will have to determine which approach we think is better. We address it somewhat in S.B. 123 as well. I want all the members' energy issues to be heard and vetted, which is why we are doing it this way.

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

Senator Denis:
We have the issue of credits in all those bills. Are they all the same credits? Are they all just different ways of measuring credits?

Mr. Hollis:
They refer to the same PECs and the same surplus. The PECs generated in past years is available for use in future years.

Senator Denis:
In previous testimony, one of the issues concerned the limited pool of purchasers. Would it be the same for this way of going about it?

Mr. Hollis:
I should have mentioned our intention to undertake certification. That notion exists in all three bills. In previous testimony, Ann-Marie Cuneo, Director of Regulatory Operations, Public Utilities Commission of Nevada (PUCN), spoke about WREGIS (Western Renewable Energy Generation Information System), a renewable energy registry and tracking system.

The system that helps to ensure the "green" value of renewable electricity is credible and facilitates the growth of renewable energy. It is mostly used throughout the West. All three bills recognize the administrative costs of certifying credits in WREGIS so we can undertake sale to other states, whether to California, Washington, or some other state. It is possible to get those costs back. It has not always been clear you could do that, since you already are certifying them for Nevada and they are available for sale elsewhere.

Senator Denis:
As the system currently exists, could you sell credits to yourself without the WREGIS system?

Mr. Hollis:
Credits could be sold to yourself, or Barrick Gold Mine or anyone else, if they had a reason to purchase them.

Senator Denis:
Sale is encouraged in all three bills but is not required. How long does the process take?

Mr. Hollis:
The process can take a few months, but it depends. The complication with WREGIS is the necessity for its parent organization, the Western Electricity Coordinating Council, to certify for each state that is a possible purchaser. The WREGIS is intended to be an aggregator of all PECs, but every state has laws that outline what counts and what does not count. The Council, which administers and enforces requirements set forth in the Federal Power Act for the Western Interconnection, will want to know how the equation works out with credits sold to the states of Washington and Montana. It will need to know how those credits should be certified.

If we wanted to certify to a certain state or by a certain date, we would go into WREGIS to do it. Certifying to a California facility takes about 6 months. Once you have certified to that facility, the credits generated there are certified quarterly.

Senator Denis:
Would it be worth the time and cost of selling the surplus credits when we have to go through that entire process to get to a specific market?

Mr. Hollis:
Considering the goal of mitigating the surplus and realizing value, it is absolutely worth it. The expense is minimal. It is larger at the front end when certifying a facility. That calls for a lot of back-and-forth negotiation, and there is an application fee. All told, the fee would be less than a dollar per PEC.

Although we are making the certifications, trying to make sales, and making sure we can clear both the WREGIS administrative cost and whatever we decide is the right market value, it still is worth the effort. Otherwise, we would remain in the same boat we are in now, where people wonder how we can get rid of the surplus, lacking real opportunities to do so, while realizing value for customers.

Chair Atkinson:
We will ask Ms. Paslov Thomas to put together a chart that shows the differences among the three bills dealing with the credits to make it easier for us to understand.

Judy Stokey (Executive, Government and External Affairs, Government and Community Strategy, NV Energy):
We could put that chart together for you.

Danny L. Thompson (Nevada State AFL-CIO):
It is important for us to support S.B. 339. We have supported the plan throughout the Session, and we are interested now in digesting the amendment.

Paul McKenzie (Building and Construction Trades Council of Northern Nevada, AFL-CIO):
We support S.B. 339, but we look at it from an alternate perspective. If we look at the Nevada law that addresses portfolio standards, we see many ghost

credits. The State does not give PECs on what is actually generated but, rather, on the capacity of the projects. Through that method of setting up these PECs, we do not necessarily generate the electricity through renewables for which we give the PECs. Once we start selling these PECs, maybe they will turn into real credits. We do give a special credit that has a higher value for photovoltaic solar. We hope that through this legislation, the market will force us to award PECs based on true generation, rather than on breaks given under the current law. We strongly support S.B. 339.

Donald J. Lomoljo (Utilities Hearings Officer, Public Utilities Commission of Nevada):
We are neutral on S.B. 339. Our concern regarding the similarity between Senator Spearman's S.B. 326 and NV Energy's proposed amendment to S.B. 339 is related to average price. We are willing to work with NV Energy on the issue cited on the last page of the amendment, where section 2, subsection 4, paragraph (b) of S.B. 339, concerns the average price for PECs that would be sold.

Senator Settelmeyer:
Would this require an updated computer system to track the PECs or will the current system handle it?

Anne-Marie Cuneo (Director of Regulatory Operations, Public Utilities Commission of Nevada):
We did not put a fiscal note on S.B. 339. I think this can be managed with the existing system.

Senator Denis:
Ms. Cuneo, can you talk about the process of the WREGIS system.

Ms. Cuneo:
I know the process as the program administrator; I do not always know the process from the generator side.

Mr. Hollis is correct in that there is a time element when making an application through the WREGIS system. The application is vetted by each of the states for which you want to certify your PECs, and that takes time. You do not lose PECs accumulated during that period. The WREGIS system will go back and issue PECs for the time it takes to be certified and registered, and you can still track

the PECs and the generation. Once you are registered and the application fees are paid, WREGIS will certify your PECs are for sale within whatever states for which your generator is eligible. Then we set prices for the transactions. As I recall, it costs one-half cent per megawatt hour to retire the credit a few years ago.

The cost, then, is minimal. It is an effective and well-used system, and I am proud and biased because I sit on that committee.

Senator Denis:
How many states participate in the WREGIS system?

Ms. Cuneo:
All the Western Interconnection is eligible to participate. The western area goes north through the western parts of Canada, from California on the west and over to the Dakotas, then south to Mexico. The most active states are California, Nevada, Oregon, Washington, Utah, Arizona and New Mexico.

Senator Denis:
When you say, "active," is Nevada mostly on the purchasing side, or are we selling?

Ms. Cuneo:
Nevada is active with respect to the setup, implementation and guidance policy of the WREGIS system. We do not use WREGIS much for tracking because most of the generation and Nevada's tracking system predates WREGIS. We developed ours first. It may have been on some spreadsheets and some databases, but it predates the system.

NV Energy has relied on our system, rather than WREGIS. We use WREGIS a little, but since NV Energy had already registered with our system, it became less necessary to use WREGIS. As the State grows, the portfolio standard grows; a larger, regional system like WREGIS will become increasingly more useful.

Senator Denis:
Is that in plans for the future?

Ms. Cuneo:
Absolutely, the utility company can and should be encouraged to use WREGIS as much as possible. Our State system, however, has been free for years, and WREGIS charges a fee.

Chair Atkinson:
We now will close the hearing on S.B. 339, try to determine the differences among these three bills, and decide on the one the Committee wants to go forward. We will get a chart for that and figure out where we are. The next hearing to open is S.B. 357.

SENATE BILL 357: Provides for tax credits for certain business entities. (BDR 57-478)

Senator Michael Roberson (Senatorial District No. 20):
I am here to introduce S.B. 357, the Nevada New Markets Jobs Act. The concept is based on the United States Department of the Treasury New Markets Tax Credit Program (NMTC Program), which was established by the federal government in 2000. The goal is to spur revitalization efforts in low-income and impoverished communities across the United States. I have taken some concepts from the federal program and tailored them to the needs of Nevada. This Nevada NMTC Program will help small business owners located in distressed areas to create private sector jobs and expand their businesses by offering patient growth capital in the form of low-interest loans or equity. It is already working across the Country. Since 2007, 11 states have enacted legislation. Four of those states have reauthorized the program, based on superior results. A map is included with my testimony (Exhibit D). Page 1 of Exhibit D shows areas statewide that are eligible to participate in this program. Shaded areas on page 2 show eligible zones in Las Vegas and North Las Vegas, and page 3 illustrates areas in the Greater Las Vegas Region.

The Nevada NMTC Program will help companies struggling to find traditional sources of capital to fund expansion. The companies may be able to raise 60 percent to 70 percent of the capital they need from their banks, but they struggle to fill the remaining shortfall. That is where NMTC helps. Without this program, these business expansions would not happen, and the new jobs would never be created.

Modeled after the successful decade-old federal program that has incentivized $33 billion of private investment, the state program will help incentivize federal new markets to the State. Nevada desperately needs this. This State ranks last in per capita investment attracted from federal new markets.

Qualified community development entities (CDEs) are United States Department of the Treasury—certified investors that can participate in the State program. Their existence means Nevada can have confidence that only the best investors will participate. Our program would drive up $250 million of private investment in qualified small businesses in the first 12 months and $375 million over 7 years. Capital must remain at work in small business the entire time, and qualified community development entities must invest 150 percent of the capital they raise during that same 7 years. Also, their investment in any single qualified small business can be no more than 25 percent of the total raised.

The Nevada NMTC Program will offer a 58 percent premium tax credit redeemed over 7 years to insurance companies that invest in CDEs, which turn around and make investments in qualified small businesses. These tax credits are the sparks that ignite the flow of private capital to our State. The tax credit schedule has a 2-year delay to ensure the program remains revenue-positive from day one. Because investments must be made in the first 12 months, the capital has time to work to offset future tax credits. The tax credits are capped in each year.

A qualified small business must be located in a low-income community as defined by the 2010 Census. A low-income community is defined as an area where the poverty rate is at least 20 percent of the statewide median family income or the median family income is less than 80 percent of the statewide median. The statute has a severe recapture clause if requirements are not met by qualified CDEs at any point during the 7 years. Oversight is provided by the IRS and the U.S. Treasury. Risk is significantly decreased because of oversight and Tier 1 vetted investors.

Ryan M. Brennan (Advantage Capital Partners):
My testimony favors S.B. 357. We have provided letters of support from chambers of commerce and recipients of investments (Exhibit E).

Advantage Capital is one of the 350 participants in the federal NMTC Program. The federal program has become one of the bipartisan job creation programs run

out of Washington, D.C. It was created as part of the welfare reform process to drive capital to low-income urban and rural communities, and it has been successful. It has grown from about $20 billion at startup and was reauthorized up to $33 billion. It was in the last President Bush budget, in both President Obama budgets and has been embraced on both sides of the aisle.

Separating it from other federal initiatives, this program puts tax credits and incentives in place so the private sector can make investment decisions. Government is never put in the position of having to choose which qualified small businesses will receive investments. Each of our 350 firms submits a 70-plus page application every year, detailing their track records. Each outlines what it has done well and the assistance it will give to qualified small businesses to help them grow. Then we are scored and compared with other investors to determine whether we will be able to participate during the coming year.

The federal program was recognized as among the top 25 innovations in government by Harvard for 2 years in a row. It is part of the National Urban League's Jobs Rebuild America initiative and is embraced by many constituencies, communities and investors serving these communities.

Nevada ranks fiftieth out of the 50 states that have had success in getting part of those funds. In 2007, states began to wonder how to get a share of the $33 billion in federal NMTC money. They started to put state tax credits in place and to mirror the program to attract investors. This bill, S.B. 357, is intended to reach out to prospective qualified community development entities and encourage them to invest their own dollars and federal monies in qualified small businesses and communities in this State. Advantage Capital is among the 60 participants, and we want to invest in Nevada. We are licensed to do so through the Department of the Treasury.

In 2007, Missouri was the first state to implement these investments. Once the spark occurred, for every dollar of federal NMTC investment, Missouri generated about $20 from private non-tax credit sources such as banks and private investors. Over a period of 4 years, 57 qualified small businesses received investments; 25 percent of the businesses were in manufacturing, and 22 percent were in rural areas. This created 1,656 direct jobs and 5,161 jobs total. That is in the report to Missouri's state senate finance committee.

The Florida NMTC program kicked off in 2009, added money in 2010 and is considering doing so again this year. Thirty-three qualified small businesses received investments, and 2,824 jobs were created with an average salary of $51,700.

The letters of support, Exhibit E, detail what these qualified community development entities did with the financing when the local financing bank market had fallen down and not been able to meet the companies' needs, and what happened once they were able to get the Florida NMTC investments.

The federal-state NMTC Program has become perhaps the most popular approach for jobs creation at the state level. It is able to leverage thousands of man-hours for vetting by the Department of the Treasury and entities for Treasury to oversee. It has a proven track record for return on investment to the states. Everything we see says Nevada would have the same experience.

Senator Denis:
Are there specific kinds of businesses in particular sectors that have taken advantage of this program?

Mr. Brennan:
A range of qualified small businesses from technology to those that make medical devices have been recipients. Primarily, it has been small businesses that make things. The greatest demand, however, has come from manufacturing companies and industries that had a difficult time in 2008, 2009 and 2010. Many experienced shrinking orders, had to lay off workers or were unable to finance needed equipment. Some banks are willing to lend, but do not come up with the full amount.

Senator Denis:
Are these credits going against the insurance premium taxes?

Senator Roberson:
Yes.

Senator Denis:
Is there a limit on how much the State can access?

Mr. Brennan:
Yes. To drive $375 million in investment, there is an annual cap of $30 million of premium taxes that begins in the third year, and that will reduce to a $27.5-million cap in the fifth, sixth and seventh years.

Senator Denis:
What happens after the sixth year?

Mr. Brennan:
No more credits will be available.

Senator Denis:
Is it that the investment lasts only during that 6-year period after which the premium tax is freed up?

Mr. Brennan:
Yes, Senator Denis.

Senator Jones:
In the 11 states, do they use the insurance premium tax for the tax credit?

Mr. Brennan:
Yes. Of the 11, I believe every one includes the premium tax as an eligible tax against which to take a credit. Insurance companies are long-term, patient investors. They are comfortable with the 7-year stream of credits.

Senator Jones:
Is the insurance premium credit enough to attract new investment? I assume there are other taxes in other states for which the insurance companies seek credits.

Mr. Brennan:
I believe it is. Florida, another no-income-tax state, has had full subscription, full participation in the first two programs. It has been the same with Oregon, which has a somewhat similar tax scheme. It is our understanding that insurance companies continue to be interested in making these investments. We think that would happen in Nevada.

Senator Jones:
Section 14, subsection 4 says, "If the insurance premium tax is eliminated or reduced below the level that was in effect on the first credit allowance date, the entity is entitled to a credit against any other taxes paid through the Department of Taxation … " I get the concept of the insurance premium tax credit. If we have a provision that allows a business simply to reduce any taxes it might pay, there could be a substantial effect in the future.

Mr. Brennan:
That type of language was requested several years ago in other states when officials considered wiping out the premium tax completely and making a separate tax for insurance companies. Assuming you still are going to tax the insurance companies for this activity, we, and perhaps others, would be open to amended language. If the type changes, the insurance company would request acknowledgment that the credit still would be viable even if premium taxes were to be wiped out.

Senator Jones:
Senator Roberson, what other taxes do you think might be eliminated or credited against if the insurance premium tax credit were to go away? Would it be the modified business tax (MBT)?

Senator Roberson:
That is a hypothetical question depending on what taxes are in existence at the time. You know the various tax streams we have. They are limited. The MBT is one of those. Who knows? After this Session, there could be different tax streams to look at, but right now it would be hard to say.

Senator Hutchison:
This appears to be a great model and a great opportunity. Is there any expectation regarding job growth that you think we can model? Is there a certain number of jobs that would come with a certain investment amount, or a certain number of tax credits? One of the criticisms that people level at tax credits concerns the high cost compared with the number of jobs created. Can you give us some perspective in terms of what is happening in other states? Based on performance in other states, is there something that we can expect here in Nevada?

Mr. Brennan:
We can take another look at Florida, since its tax structure is similar to Nevada's.

The demand for this capital has exceeded anyone's expectations. It has been incredibly quick. Eleven of us are making those investments. Thirty-three loans have been issued in 12 months, and much of the job growth has happened almost immediately. Many of those businesses already have plans pending orders, and they have ideas they want to capitalize on. They might have laid off employees. As soon as the financing occurs, the first phone calls they make are for working capital and for equipment financing.

At this level—$250 million invested in 12 months—you should see investments in 50 businesses, more or less, within that first period and another 25 over the life of the program.

Chair Atkinson:
Is your company going to make an NMTC Program investment in Nevada?

Mr. Brennan:
We certainly hope so.

Chair Atkinson:
If so, how would you make investments for the credits you use against the insurance premium?

Mr. Brennan:
Our business model has been to open an office and immediately staff it with full-time lenders in the communities in which we want to invest. Then the demand begins flowing in. We find a great deal of flow from banks that want to keep a relationship with the underlying company, but need another investor. There might be community groups, lawyers, accountants, state chambers, all asking for leads to companies that they know have capital issues.

Chair Atkinson:
Does your company pay the insurance premium tax?

Mr. Brennan:
No, we do not. Like many of our competitors, we have worked with insurance companies, encouraging them to invest in these small businesses. We are familiar with the tax, and we know they are open to these proposals. We do not pay the insurance premium tax, but they do. We know they are watching S.B. 357.

Chair Atkinson:
Does that mean the only companies eligible to participate at this point are insurance companies?

Mr. Brennan:
No. This is the way it has worked in other places. The qualified community development entities are the originating group in the middle. It would be our role to win approval by the State and U.S. Department of the Treasury, and then to find investors that have the capital, the insurance companies. After that, we find qualified small businesses that need capital. We make the specific loan. The insurance companies just want to make one investment. They do not have the bandwidth to make all the qualified small businesses work. We would make the small business loans, then sit on boards and help those small businesses grow. The insurance companies would have to put their capital in up front and keep it there for 7 years. They would receive the credit.

Chair Atkinson:
I saw something in the language about the 7-year investment. Would the qualified small business have to remain invested for 7 years, or would only the loan portion of it have to be there for 7 years?

Mr. Brennan:
That is a key feature of this federal program. It is not a 1-, 2- or 3-year loan. This money has to be in these communities for 7 years in order to qualify. If the qualified small business were to leave at year 6 1/2, all 7 years of credits are recaptured by the state.

The money has to stay in these communities and in these businesses. It affects both. If the business moves, the qualified community development entity has to make a replacement investment with no new credits in a new qualified small business in a low-income community. Even if that business stays in town, but pays you back early, you need to go make a new investment with no new

credits in a different business. That money has to stay in these areas for 7 years.

Senator Hardy:
Was there a lag time in Florida? Did state officials put the $30-million loss in the budget? How is it made up? How did they manage that?

Mr. Brennan:
There is a 2-year delay in the credits to make sure the qualified small businesses can hire and pay additional taxes.

Florida budgeted much like I expect Nevada would. You have a summary of the updated Florida study on page 11 of Exhibit E. Florida projected a confirmed loss of revenue. State officials knew it was going to happen. The new revenue from the 33 businesses that received funding and the 2,800 jobs that were created was greater than the cost of the credits.

Florida's general fund is receiving more revenue than the already budgeted foregone revenue. That is the return-on-investment proposal in this program. There is new business. That new revenue garnered by the state will exceed the cost of the credits by the time they start.

Senator Hardy:
It looks as if the State will not have lost any revenue in the aggregate by starting this with less revenue in the budget in one tax.

Mr. Brennan:
That is how it has happened in the two states that have used it the longest, Missouri and Florida. Both confirm through state audits that the revenue exceeds the cost of the credits.

Senator Roberson:
I want to respond to Senator Jones' concern about S.B. 357, section 14, subsection 4. This contemplates elimination or reduction of the insurance premium tax that the qualified community development entity or insurance company could offset from another tax they are obligated to pay the State. It is not an additional credit. It does not go above the credit limit. It is highly improbable that any time in the near future the State would eliminate or seriously reduce the insurance premium tax. I do not think this is a significant

concern, but I am happy to work with Senator Jones to address those concerns about the legislation's language.

Philippe Jaramillo (The Nevadian, Inc.; Best Western Mardi Gras Hotel):
We are a small property management company with about 60 employees in Las Vegas, and I have friends who own small businesses here. The good part is that demand for hotel rooms is starting to increase as we are coming out of this recession. Unfortunately, it is difficult to get capital from local banks to try to do projects that have been sitting on the sidelines for 4 or 5 years and that we would use to grow and keep up with the demand. Banking is not keeping up with this. We are having a lot of problems.

One of our businesses is the Best Western Mardi Gras Hotel on Paradise Road. We wanted to do a simple thing in 2012. Best Western asked that we put flat-screen TVs in all of our rooms. It was about a $90,000 investment. In the old days, it would have been easy to do. I went to our bank. Bank officers said they were in the process of a merger and could not extend any loans. I went to perhaps six small banks where I know people on the committees. I was told they were not lending to my industry at that time. I thought to myself, "I am in the largest industry in the Southern California region." Also, they said, "We have concerns about your collateral." I have owned this property for 38 years and my loan-to-value is 90 percent. They said, "We are just not lending at this time, but boy, we would love to have your credit cards, and would love to have your deposits and we would love to have your employees do their banking here. But we cannot help you at this time."

I am happy to say that our first mortgage came in at the twelfth hour and we were able to work something out. Normally, a loan like this would be termed over the period that the TVs would last. It turned out to be an extremely short and expensive loan. That makes it difficult to work through this recession.

It is not only my industry that is suffering. A young lady in one of my small shopping centers has a small salon and has been there for 20 years. She wanted to expand to the place next door, to expand from two chairs to four chairs. She needed a $40,000 loan. She went to the bank she has been dealing with for 20 years. I was helping her and she was turned down. She went to her mom and dad and her in-laws to get the money. I think it is time we stop going to our in-laws and our parents when we are in our mid-40s and 50s to keep our businesses open. We want our banks to help us.

Another perfect example is a friend who is a dentist. He spent the past year going to school to increase his services by learning to do implants. He has his certificate, and now he wants to add three more employees. He needs $150,000 to start, to get another chair for the hygienist and to hire someone for the front office. His bank denied his loan application. We are going to talk to all our friends, kind of in the old way, to try getting some money together. We will try to help him increase his business so he can increase jobs and his revenue.

Anything you can do to make funds available to small businesses would be helpful. I am down 25 employees from 5 years ago. I have a lot of things on the sidelines that I would love to do to improve my property. I want to meet demand and keep housekeepers and other staff working. Unfortunately, I and my friends who also have small businesses are sitting on the sidelines.

Senator Hutchison:
You are reflecting a major problem throughout the Country, but particularly here in Nevada—small businesses' inability to access capital. That is particularly true in underserved areas. This is exactly the kind of thing that we would address with this Nevada NMTC Program. The anecdotes that you can tell us about this pent-up business demand and opportunity are helpful. You are exactly the kind of person we want to try to help.

Adam Plain (Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry):
The Division of Insurance, Department of Business and Industry, is neutral on S.B. 357. Before I go into my testimony, I want to disclose that my wife and I own a small business and could potentially benefit from this legislation.

The Division of Insurance has one concern regarding the entirety of the legislation proposed to be inserted in Title 57 of the *Nevada Revised Statutes* (NRS), otherwise known as the Nevada Insurance Code. Senate Bill 357 provides that tax credits are to be administered on the State level by the Office of Economic Development and the Department of Taxation. Under NRS 679B.120, subsection 3, the Commissioner of Insurance has the authority and the duty to enforce all the provisions of the Nevada Insurance Code. Insertion into NRS Title 57 could present some unknown responsibility to enforce provisions of the bill. Therefore, we have inserted an unquantified fiscal

note. We do not anticipate having any regulatory authority in this matter, but in case it ends up being "backdoored," we wanted to make that concern known.

Senator Hardy:
To your knowledge or experience has there been any appetite in the private sector to help with the government setup or administrative costs?

Mr. Plain:
I do not believe the Division has any experience we can speak to in that regard. I do not know that we are the best agency to answer that question.

Senator Hardy:
Is there any opportunity for a public-private partnership in supporting the setup of the program? Was there any concrete buy-in that would help the State?

Mr. Brennan:
Yes. Oregon has an application fee. It could run from $5,000 to $20,000. Additionally, states can charge annual fees that would offset any expense generated in program oversight. With the idea that it has been about half of a full-time employee, those fees would constitute buy-in.

Senator Hardy:
That probably would allay some of Mr. Plain's concerns about unknown items which were the reason for his fiscal note. Any unknown fiscal note well could be self-funded.

Mr. Brennan:
That is how it has worked in other states.

Senator Denis:
Is there a limit to the amount that can be given to qualified small businesses?

Mr. Brennan:
Twenty-five percent of what is allocated by the state is the maximum. Nebraska has a $30 million allocation, so no more than $7.5 million can be given to any one qualified small business there. There is no minimum. Sooner or later, it becomes uneconomical to make micro loans. Our smaller loans are between $200,000 and $250,000.

Senator Denis:
Recalling the gentleman who mentioned he needed to expand and purchase flat-screen TVs, costing him $90,000, I started thinking at that time there might be a bottom end. Would that be considered a micro loan and not advantageous?

Mr. Brennan:
That is right. Once the relationship is created, however, we might find there are larger needs than just that one $90,000 project. Perhaps it is rehiring some of those 25 employees. Perhaps it is other improvements so the entrepreneur does not have to take out a loan every time he or she needs to initiate a project. Ninety thousand dollars would be below our general level, but we find that is usually the tip of the iceberg of total needs.

Senator Denis:
Would this apply to startups, expansion projects or both?

Mr. Brennan:
It would be for both. Startups account for about 25 percent of the projects in other states. Startups comprise a completely different type of risk. They are risks which this tax credit allows us to take and are part of the growth story. We have found through this downturn and in the 20 years we have existed that this is a special period in financing. Incredible businesses with good banks are calling and canceling loans. Financing marginal expansion, enabling qualified small businesses to get through this phase, and then, hopefully, to have increased expansion 2 or 3 years into the loan period has been the sweet spot for this NMTC Program. The program also has serviced startups where owners are only at the idea stage and need that capital to open their doors.

Senator Denis:
On the subject of risk, we know that in the case of new businesses, some succeed, some do not. If a business is going to fail, it is likely to be within the first 3 years. What is the risk to the state if a business does not make it through those 7 years?

Mr. Brennan:
The value of the credit would be at risk. The insurance company would incur a similar risk of losing its money. This law says firms like ours can take only our fee at the end of 7 years. The fee would be in exchange for arranging the loan. The state would lose the value of the credit, we would lose the value of the fee

and the insurance company would lose its investment. We hope that never happens.

Chair Atkinson:
Why would we need this state program if the federal program is already in effect?

Mr. Brennan:
That is the grand question. It defies logic to some extent that of those states participating in this $33 billion federal program, Nevada should rank last. The small business need exists. This program aims to change the flow of capital and attract the 60 firms like ours that say they are interested in Nevada. There are 2 years left in the federal program. About $7 billion will be invested somewhere within the next 24 months. Putting this in place now puts Nevada at the top of the list for that money to come here instead of going someplace else.

Chair Atkinson:
We will now close the hearing on S.B. 357 and open the hearing on S.B. 361.

SENATE BILL 361: Revises provisions relating to unfair lending practices. (BDR 52-901)

Senator Michael Roberson (Senatorial District No. 20):
I would be happy to ban the consumer lawsuit lending referred to in S.B. 361, which involves unfair lending practices. In recent years, a number of companies across the Country have engaged in this type of consumer lawsuit lending. A loan is made directly to a plaintiff or potential plaintiff in a lawsuit. It is to be repaid from the proceeds of the suit should the plaintiff win. The plaintiff also must pay his trial attorney the typical fee of 30 percent to 40 percent. The problem from the plaintiff's point of view is that such loans often carry high-interest rates.

Assembly Bill No. 465 of the 76th Session was introduced as an attempt by such loan makers to legitimize themselves by establishing a regulatory framework. Annual interest rates can run as high as 160 percent if the loan is repaid after 181 days and close to 90 percent if repaid at 720 days after funding. These are extraordinarily high rates and often would leave little for the plaintiff's own use after repaying the loan and compensating the attorney.

Who would seek such a loan? Loan recipients tend to be individuals who are financially vulnerable or those who otherwise might seek payday loans. Payday loans already are regulated. In addition to preying on needy consumers, these loans challenge the integrity of our legal system. Persons with no stake or interest in a case are making investments by this method and indirectly influencing the outcome of a settlement. When offered a settlement by defense counsel, the plaintiff must calculate whether the offer is enough to repay the loan and high-interest costs so he or she can recover damages and pay counsel. Faced with this kind of situation, plaintiffs are likely to refuse sensible, fair settlement offers, thus driving settlements much higher than the cases would warrant on their true merits.

As demands outside the bounds of reasonable settlements grow, more trials will result, making compensation more uncertain. In addition, the availability of financing for plaintiffs will enable more undeserving lawsuits to go forward. None of these consequences bodes well for the business environment in Nevada. They make for a more litigious and costly legal environment right when we are trying to attract more businesses and diversify the economy. Moreover, consumer lawsuit lending perverts the basis of the American legal system. Courts become a gambling forum or stock market where individuals with financial interests wager on cases just as gamblers bet on basketball games or roll the dice in our casinos. It is not unlike situations where investors buy stocks or products in commodity markets and hope they can ride their prices up. Nevada's courts are intended to be houses of justice not poker parlors.

I filed a bill draft that would have banned this practice. On further consideration, I realized there are some who see it as an acceptable entrepreneurial and lending activity as a means to tide a person over financially. If this is the case, then interest rates should be limited to a level that does not overly burden the plaintiff. The plaintiff should have the ability both to repay the debt and compensate his or her attorney, while also recovering something. The reason the lawsuit was filed in the first place was to gain recovery.

The amended bill limits interest on such loans to an annual rate of 24 percent, certainly a generous amount. The amended bill explains that consumer lawsuit lending is the practice of providing money to a plaintiff or potential plaintiff in a lawsuit. The money would pay that person's personal expenses while the lawsuit proceeds. It is understood that the lender would be repaid only if the

lawsuit is won. The amended bill brings consumer lawsuit lending within the ambit of Nevada Fair Lending laws by capping.

Chair Atkinson:
What amended law? I am trying to find this.

Senator Roberson:
Everyone on the Committee should have an amendment. If you do not, we have copies.

Chair Atkinson:
Are you talking about the amendment that someone tried to submit this morning?

Senator Roberson:
Yes.

Chair Atkinson:
We did not accept that amendment, which came in at the last minute, an hour before this hearing. Amendments in this Committee have to be submitted 24 hours in advance to give the Committee time to review and digest them. The amendment I saw totally rewrites this bill. Are you referring to that? I do not have it, because I asked that it be pulled. We can address this bill as it is, and you can try to amend it in another forum.

Senator Roberson:
That is no problem, Mr. Chair. Senate Bill 361 would ban this practice of consumer lawsuit lending. When you accept the amendment, we can limit the rate to 24 percent. It comes down to banning the practice or regulating it at a reasonable interest rate, 24 percent. Either approach is acceptable to me.

Senator Jones:
Senator Roberson, with regard to the reasonable rate of 24 percent, would you be willing to apply that to all loans?

Senator Roberson:
No, I would not.

Senator Jones:
Why is it reasonable in this context and not in another context?

Senator Roberson:
We looked at usury laws throughout the Country, and that seemed to be in the ballpark with other usury laws. My preference is to ban this practice. But I know there will be others who will oppose S.B. 361 and say, "Let's regulate it." They may have other ideas. However, 24 percent is the number we came up with. I would be happy to ban this practice.

Senator Jones:
Why is this practice worse than payday lenders or other practices?

Senator Roberson:
In my testimony, I outlined exactly why I think it is worse. It creates havoc with our legal system, is unfair to plaintiffs and discourages reasonable settlements. I think it is a very bad practice.

Senator Settelmeyer:
I can appreciate your views on the 24 percent interest rate applied to all loans. Another condition of the proposal is that it only applies to an individual who is successful in the case. That contingency could not be applied to all loans. They come with different situations. Are there other situations in which the 24 percent rate is only allowed if the individual is successful in the case, contingent upon winning? That is not the same as a credit card for which the interest rate is clearly above 24 percent a year. Also, a credit card does not work on the concept of a contingency. Can you weigh in on that?

Senator Roberson:
I agree with what you are saying. This practice would turn our courts of justice into poker parlors. It is definitely different from any other kind of loan made here in this State.

Senator Hutchison:
What are your thoughts on the interest rate about which we have heard so much testimony and discussion? We should consider the idea of just noticing people, informing them about what they are getting ready to do. My experience has been that when plaintiffs sign up for these loans, they do not understand what is going to happen at the end of the day and there is rarely much money

left over. I understand that plaintiffs often are challenged to meet the basic needs of life. This can motivate people to get these loans. When they sign up, they often do not have enough information. As I have said before, fundamental to justice and equity is this idea of notice. Can you address that in terms of what you hope to accomplish?

Senator Roberson:
I agree with what you are saying. There are two primary motives to S.B. 361. One is to protect the integrity of the legal system. The other is consumer protection. These lending companies prey on the most vulnerable in our society who do not understand the consequences of taking out these loans.

George A. Ross (Co-chair, Insurance and Tort Reform Task Force, Las Vegas Metro Chamber of Commerce):
This practice is a challenge to the integrity of our legal system. We want to address the concept of champerty in which people get involved with cases in which they have no interest other than monetary.

The justice system is designed to find a solution of equity and to keep a person whole when there are two parties. In these cases, there is a third party with a financial interest that can impact the outcome. It is like working in the wilderness for 25 years where you make investments based upon knowing that a lot of your oil wells will be dry. We all understand chance-factor investing. Some questions arise. Is chance-factored investment what we want people doing with our justice system? Is rolling a dice in a casino what we want people doing with our justice system? Those are fundamental points.

Additionally, I would emphasize that this practice changes the nature of how businesses regard the tort system. Given the availability of these loans, more lawsuits are going to be brought. When a plaintiff's attorney considers the potential for a lawsuit, he or she knows payment will come from the contingency, so from the beginning, he or she is figuring out which cases to bring. The case must present half a decent chance to win. Cases brought to court generally will be more viable than others, and we will be less likely to have weaker cases moving through the justice system. The amount of litigation decreases across the board. The defense attorney also will evaluate the situation with a bell-shaped curve and consider whether there are any extraneous factors. Then, he or she comes in with a settlement offer.

If you are the plaintiff, you have to get the attorney his 40 percent and you have to pay off this loan. The attorney may not be able to settle at this number and decide more is needed.

The bill that Senator Roberson cited, A.B. No. 465 of the 76th Session, came in 2 years ago through efforts by the other lenders as a way to regulate and legalize the business. A lot of loans carry interest of 2 percent to 4 percent. Let us say you get a loan that is 4 percent per month. We all know that cases take a while. Suppose this case goes on for 3 years. The loan originally amounts to only 15 percent of the potential value of the case. But, 15 percent at 4 percent a month over 3 years grows to 60 percent of the value of the case. The lawyer gets 40 percent and the loan company gets 60 percent. What is left for the plaintiff?

That is the consumer side of this as well as the business side. There is nothing left for the plaintiff unless he or she says, "I cannot settle at that amount. I have to go higher." It drives settlements higher. Or the consumer may just say, "I cannot afford this, I have to go to trial."

There is a reason plaintiffs settle, and there is a reason defendants settle. They know when you go to trial things are a little shakier. The plaintiff might get less than hoped for or than needed. The defendant could get annihilated. The plaintiff may want to settle, but the negotiations either drive the numbers higher or create a more uncertain trial situation. In cases we do not see very often, the interests of the business and those of the consumer, whom we want to protect, come together.

There have been some situations where we hired a plaintiff's attorney. I was emotionally drained, upset and angry. Luckily, I was not financially vulnerable, but in such a situation, a person does not think as rationally as normal. Combine that with financial vulnerability, and you get the picture.

Given the impact of this on the justice system, it would be our preference if this practice were to be banned. We would like to see S.B. 361 put into the consumer protection laws. We would like to see the same kind of disclosures and protections we have from payday loans for which former Assembly Speaker Barbara Buckley worked for more than a decade.

The 24 percent rate is typical of an unsecured loan. I have one credit card in my pocket that says cash advances, 19.24 percent, and another one that says 25.24 percent. Twenty-four percent is very much in the ballpark for the kind of interest rates that anyone with a credit card will be paying for a cash advance, which essentially is what this loan is.

As with the chance-factored investment in the oil business that I used as an example, we need a higher rate to make any money. If we get the higher rate, immediately we run into problems with the justice system and with whether the cover will be enough to take care of the plaintiff. A higher rate would be abusive, but you need a rate that will allow enough money for the plaintiff.

There are three reasons S.B. 361 is important. Number one is that we need to preserve the integrity of the justice system. Number two addresses the impact on the litigation aspect of the business climate. Larger businesses in particular pay close attention to the tort climate in states and localities. Number three is that it is good for the consumer or the person who may be tempted or who has the opportunity to get such a loan. I am not saying that we should protect everyone from themselves, but in this particular situation, the consumer is in a very vulnerable psychological position to begin with. A person would not take this loan if he or she were not in a vulnerable financial situation. It is important for us to provide the consumer with that protection.

Senator Settelmeyer:
What is the general range of these loans now in the State?

Mr. Ross:
The lenders will be able to give a definitive answer because they make these loans, but it is my understanding that the range is 2 percent to 4 percent a month. The other thing I wonder about relates to lenders not citing interest rates in A.B. No. 465 of the 76th Session. They said at 181 days after funding, the consumer will have a fee plus 0.8 percent of the funded amount. At 181 days, that works out to 160 percent annually. If the loan is repaid after 721 days, the fee in addition to the loan would be twice the funding amount, which works out to be somewhere around 90 percent interest rate annually. They were willing to put a cap that high, which means the average loan percentage was going to be very high. My understanding is that typical loans are more than 2 percent to 4 percent per month. At that rate, it does not take long before consumers owe a lot of money.

Senator Jones:
Mr. Ross, suppose a Chamber member has a lawsuit against another Chamber member, and attorney's fees must be paid. The member suing does not have the money up front, and the lawyer sends a bill. Under proposed S.B. 361, would the Chamber member be prohibited from going to his or her local bank or to a consumer lawsuit loan company to obtain a loan with the collateral being the outcome of that litigation?

Mr. Ross:
Yes. It would bar that practice.

Senator Jones:
Can you give me a real-world example of how one of these loans might have caused litigation that otherwise would not have gone forward?

Mr. Ross:
The New York Times published an article in January 2011, "Lawsuit Loans Add New Risk for the Injured," by Mr. Binyamin Appelbaum about a man named Larry Long who suffered a stroke after taking Vioxx. The journalist found there was little risk in lending money to Mr. Long because the drug manufacturer had already agreed to settle the Vioxx class action. Oasis Legal Finance offered to advance payment to Long in return for part of his settlement. Long, legally blind and on regular dialysis, was in a financially desperate situation. He accepted Oasis' terms and borrowed $9,150 while waiting for settlement payments. By the time Long received his first settlement payment of $27,000, he owed Oasis $23,588, nearly the entire amount of his check. That is the kind of situation in which people find themselves. These cases get drawn out. Those kinds of interest rates can hurt a person.

Senator Hardy:
I am trying to get my head around the idea of "nothing left for the plaintiff." I am going to ask a naïve question. If, as in your example, Mr. Long took out a $9,000 loan, got $27,000 from his class-action suit, owed $23,000 back to the lender and he was only left with $4,000, what right did he have to $4,000? He was supposed to recover money to pay off the loan, which he did. Is the plaintiff, then, supposed to have something left? Or is he supposed to have had everything paid off? It sounds like he was able to do that.

Mr. Ross:
When the plaintiff gets a settlement, he or she should also receive an amount for damages and should be made whole. In some situations, there could be some extra damages, depending upon how the jury looks at things or has looked at things, or how the settlement is evaluated.

We would like the plaintiff to get something. Mr. Long recovered almost nothing. The question is whether he should have brought the suit at all.

Senator Denis:
There are various reasons why someone could borrow money, but can they borrow for living expenses? If that is why they are borrowing, instead of just so they could get a lawyer who would take the case, would this bill prohibit that?

Mr. Ross:
Yes. That is one of the reasons these occur. That is one reason we proposed the alternative. People will get these high-interest loans and use them for living expenses. When all is said and done, there is little left because they have to pay back so much. There are two sides to this, and that is why we get to talk about the alternative. If the person is going to get that loan for his or her living expenses, he or she needs to be in a situation where it is not going to be like many of our 22- and 23-year-old children after they max out their credit cards and keep piling up 19 percent interest every month. It is the same kind of situation. In this case, the interest rate would be 60 percent a year, instead of 19 percent, unless we control the interest rate.

Senator Hutchison:
One of the things you did not spend much time talking about was making business-friendly decisions. Among our priorities is making Nevada a business-friendly State. We spend a lot of money and the Governor's Office spends a lot of money, trying to attract business to Nevada. That would be one of the purposes of this kind of legislation. You said businesses consider the impact of litigation in their business decisions, including where they choose to do business. Can you spend a minute to educate us on this?

Mr. Ross:
I will go back to my own personal experience. As you know, I used to work for a Fortune 25 company. During the last 7 years I worked there, one of my primary responsibilities was tort reform on a national scale. I was involved with

some large companies which, frankly, spent a lot of time trying to keep the tort environment from getting worse. The large amount of time and money we devoted to this effort was a measure of how important tort reform was to those companies. Any one of them could be looking to invest or come to Nevada.

This type of legislation has a high priority with the U.S. Chamber of Commerce and the American Tort Reform Association. They spend a lot of time on these laws. It is not that we try to let businesses skate. They are trying to preserve the way in which the justice system is supposed to work. They do not want to change the scale in the courthouse and have a situation where a party has no interest in a case other than recovering the investment and the hope of getting back more.

Senator Hardy:
Has this 24 percent cap been instituted or banned anywhere else?

Mr. Ross:
To my knowledge, it has been brought into several states, but I do not know of anywhere it has passed.

We have just begun to try enacting this type of legislation. In the past, there were ten bills that were blocked and defeated. The intent was to control the higher interest rate. The prior effort in Nevada in 2011 was mainly defensive, and we have just now gone on the offense.

Jeanette K. Belz, M.B.A. (Property Casualty Insurers Association):
We would like to be on the record in support of S.B. 361. We have submitted a statement (Exhibit F) outlining the reasons we reject the unfair and predatory practices of lawsuit loan companies and why it is important to approve S.B. 361.

Eric Schuller (Oasis Legal Finance):
We are opposed to S.B. 361. Oasis is one of the largest consumer legal funding companies in the Country. This is how the product works. When the consumer contacts the funding company, the first two questions asked are: "Do you already have a pending legal claim? Do you already have an attorney?"

If the answer is "No" to either of those questions, everything stops. If "Yes," the consumer gives some basic information to the funding company. With the

consumer's permission, we contact the attorney and verify the information. A contract is submitted to the consumer which is reviewed and signed by the attorney, and they receive the funds.

We are repaid last. When the settlement comes in, the attorneys get their fees, all other statutory and mandatory liens are paid, and then we are repaid.

Let me skip ahead regarding the Larry Long story that was in *The New York Times*. That was our case. Mr. Long received $9,150 from Oasis. The case settled for $65,000. Oasis received back $9,150. We only received our principal. Nothing more than that. We did not receive $26,000, and if the Committee wishes, I would be happy to give you copies of the transaction.

This lending product is needed because the insurance industry typically puts the consumer in a stranglehold by stretching the time to claims resolution. Recently, there was an article published by the Consumer Federation of America which outlines how insurance companies drag out cases to weaken the consumer's position. This increases the damages and settlements. According to the U.S. Chamber of Commerce Institute for Legal Reform, in the "2012 State Liability Systems Ranking Study" on the 2012 lawsuit climate in Nebraska, the state is ranked No. 1 for damages, timeliness, summary judgment and dismissals and jury fairness. It ranked No. 2 in overall treatment in torts and contract litigation. Also, according to the study, Nebraska is rated second on the list of best lawsuit climates in the Country. Before the legislation was enacted, it was No. 3.

The product is not cheap. In 47 percent of the cases we fund, we recover less than our contracted amount. In 22 percent of the time, we recover the principal or less, and 10 percent of the time, we recover absolutely nothing. Whenever a rate cap is placed on a product, such as the 24 percent, that becomes the artificial floor. The rate needs to be open to the market and clearly noticed and disclosed as in other states besides Nebraska, such as Maine and Ohio. Then, consumers can make reasonable judgments about whether the product is good for them. Consumers acknowledge the worst-case scenario in terms of cost from day one.

The legislation is being pushed by the U.S. Chamber of Commerce and the insurance industry. It is a way to force consumers to accept the first offer that comes along when they are desperate and accept the lowball offer. "Stopping

the Sale on Lawsuits: A Proposal to Regulate Third-Party Investments in Litigation," released by the U.S. Chamber Institute for Legal Reform in October 2012, claimed that attempting to implement a federal regulatory regime is better than regulating third-party litigation funding. It would be more effective than attempting to achieve harmonized state regimes. Do they really want this regulated at the state level or at the federal level?

Abraham Lincoln once said that you can fool all the people some of the time; you can fool some of the people all the time; but you cannot fool all the people all the time. Do not be fooled by S.B. 361, thinking it is protecting consumers. All it is doing is making the practice unavailable to lenders and making sure consumers take the lowest settlement offer possible.

Senator Hutchison:
How many plaintiffs have been referred to Oasis by their counsels as opposed to knowing independently about your services?

Mr. Schuller:
About 30 percent come through on referral from their attorneys. Attorneys we have worked with in the past give them the names of three or four funding companies. The majority find us on the Internet or through other referrals.

Senator Hutchison:
When did funding companies begin to be readily available? Was it in the 1800s? Or is it a fairly new concept?

Mr. Schuller:
A book called *Deny, Delay, Defend* by Jay M. Feinman, clearly describes the insurance industry, beginning in the late 1990s or early 2000s, when the practice of stretching the claims process began. Industry practices prevented clients from getting initial settlements. Ironically, that was during the time when the consumer legal funding industry was evolving. A group of entrepreneurs saw an opportunity to help consumers while they were awaiting their legal claims. This has gone on for about 10 years, and Oasis has been around since about 2004.

Senator Hutchison:
It is not your testimony, is it, that insurance companies were perfect models of business that treated everyone well before the late 1990s or 2000s? I have to believe you feel there were problems before that.

Mr. Schuller:
Yes, but they have changed their business model. They have gone to a software system called Colossus from Computer Science Corporation, which evaluates each claim. Legislation is pending against USA Insurance for shortchanging service members in the claims process.

Sen. Hutchison:
Insurance companies, personal injury cases and plenty of lawyers have been around for a long time. Are you saying that before your industry came along and your company in particular in 2004, the system was just so whacked-out there was no justice in America when someone was injured?

Mr. Schuller:
No, I am not saying that. I am saying that around the late 1990s and early 2000s, the insurance industry changed the way it was paying claims. That is when insurance companies went to this practice of stretching the claims period as long as possible. Prior to that, most of the claims were paid expeditiously.

Senator Hutchison:
Prior to the late 1990s, insurance companies did not try to prolong litigation or make a plaintiff wait for payment? They were expeditiously paying out their claims? Is that your testimony?

Mr. Schuller:
What I am testifying to is when their business model changed. It has been documented in several cases that their business model changed at that time.

Keith Lee (Preferred Capital Funding):
I will have Mr. Kominsky explain to you how Preferred Capital operates and our guidelines and limitations.

Bob Kominsky (Preferred Capital Funding):
I support this form of funding here in Nevada. An accident tends to pose a financial hardship upon victims. They are unable to work; they are unable to

pay their bills; they are unable to pay for necessities until the claim is settled. We have helped more than 100,000 personal injury victims with our funding. Having been licensed under NRS 675 since 2007, we are monitored by the State. We are audited every year. We have had no exceptions in any year. We have an A-plus rating with the Better Business Bureau. To date, we have no consumer complaints filed against our company. Under NRS 675 licensing, our fees are capped at 40 percent, so we charge in the high 30 percent range, which is no different from a lot of credit card companies. Most of our clients who have poor credit ratings cannot qualify for credit cards.

Our lending practices are such that we have lawyers who are experienced in personal injury. We review the cases, and we only loan a small percentage to victims who are in need so they can meet their necessities. That is the purpose of the money. We do not create litigation. We do not increase court filings. There is absolutely no evidence of that. Our goal is merely to allow people who have valid claims to be able to survive the length of the litigation until they are able to reach a financial settlement.

We have with us Patty Parker who testified about 2 years ago in front of this Committee. She is a customer of Preferred Capital Lending. She was in an accident approximately 7 years ago.

Patricia L. Parker
I had a vehicle accident 6 1/2 years ago. On October 1, it will be 7 years. A taxi T-boned the car in which I was a passenger, and I was knocked unconscious. I have permanent injuries in my neck, spine, knee, left shoulder and back. I have been through numerous surgeries and still have one to go. Later, I spent 2 days on the street, sleeping in the park with two suitcases and two bags because I had nowhere to go. I will always need financial help. I will always need physical and emotional help. I see a psychologist just to get the vision of that taxi out of my head. I do not know what I would have done if not for this company. If I did not have approval to get this loan from Preferred Capital, I would have been on the street to this day.

I was awarded the judgment three times. The company does not want to pay. We have gone all the way to the Nevada Supreme Court, which ordered them to pay. They have not paid. Meanwhile, I am in jeopardy of losing my apartment. My son is helping me as much as he can on $9 an hour. It has been a nightmare.

Without this lending company, regardless of their interest rates, I would not be sitting here right now. I probably would be one of those people you pass on the street with a cup. I do not know. But I thank God I was approved. Whatever the insurance rates are, you need to consider that. At the same time, I do not have the choice to worry about how much interest I am going to have to pay if I win or do not win. A certain part of me worries, but there is the bigger part that wonders, "Am I going to stay alive? Am I going to eat tomorrow? Am I going to be able to walk?"

When I was referred to Preferred Capital, I was worried about the interest, of course. If I lost, what would I do? If I won, what would I do? While that was an issue, my real concern was to survive. It was not just to survive in the end, but to survive and be normal again. Physically, that is never going to be.

Yes, I do worry about the interest. I have been through six surgeries, six rehabilitation programs and I have one more to go. Now, I am on Medicare. They have taken Medicaid away. Nobody seems to know the reason. I receive $206 less per month. I live on $514. That is food, transportation, rent, everything. God, forbid, if I should need something aside from that.

The people at Preferred Capital have been human and compassionate. They have been kind, understanding and helpful. They have given me advice I have taken and put into action. It has been the right advice for me. All I can say is God bless them.

Garrett Gordon (American Legal Finance Association):
I represent the leading legal funding company in the Nation, dedicated to fair, ethical and transparent standards in this consumer legal funding industry. This is a unique financial product, and it helps consumers get by while they wait for a fair settlement in their cases. The proceeds are used for mortgages, bills and keeping small businesses alive, while plaintiffs go through the legal process.

Four points should be stressed. First, consumers must have an existing claim. No one is trying to fund lawsuits that have not yet been filed. Second, consumers must already be represented by an attorney who must sign off on the contract. That addresses the concern about having irrational and desperate plaintiffs signing onto the claims. Also, do plaintiffs know what they are getting into? I would say absolutely. They have legal counsel who has to approve the agreements before they are executed by the plaintiff. Third, this is

a nonrecourse transaction. There is no guarantee of repayment and no collateral. The companies are only repaid from proceeds of the claim. Finally, many consumers exhaust all other options and often do not have access to traditional forms of credit. Ours is an important financial tool.

I will end by addressing four common misconceptions. First, some say this promotes frivolous lawsuits. You heard testimony about a wide, sweeping problem in Nevada. We have no data to that effect. I do not believe any data exists to say that there is such a pattern of abuse. For this situation, a person needs a financial product. Cases are funded on their merits. Given the nonrecourse nature of the transaction, all cases are screened to ensure they are legitimate.

Second, there is no interference with the case or the settlement. Control of the case always remains in the hands of the plaintiffs and the plaintiffs' attorneys. Our member companies are not involved in the cases. Third, this will increase the amount of litigation. It is important to remember that this will not impact the amount of litigation because these cases already exist and our member companies provide proceeds to individuals in their deepest need. Fourth is the matter of interference with attorney-client privilege. I would submit there is no impact here. Our companies do not ask for and do not need privileged information to provide funding.

We are willing to work with the Chamber and Senator Roberson on a regulatory scheme in the interim and prior to the next Session. Good data exist showing that other states have done it and have done it well. You have heard in testimony that Nebraska has one of the highest regulatory ratings in the Country. We are here to work with regulators.

Senator Hutchison:
I have some experience with these loans. Some lawyers will not sign off on these documents because they think the terms are so crazy. They are worried about what could happen at the end of the case when the loans get out of control, and a case that should settle for a small amount becomes impossible to settle because of the liens. In addition, some lawyers refuse to sign off because there appears to be a conflict of interest. When a lawyer is asked to sign off on a document that would allow his client to continue the case, and the client is going to pay the lawyer based on whether the case continues, there can be at least the appearance of a conflict of interest. I do not agree that overall

protection and transparency exist just by saying lawyers must be involved. That does not ensure safeguards. The conflict of interest is built in.

Do you think there is no room for regulatory controls or laws that would limit the amount of interest when you have people who are in such desperate situations as you described? We listened to the heartbreaking story of Ms. Parker and know there are people who are just desperate to make ends meet. The interest is in the back of their minds, but they feel they have no choice.

Do you feel that there is no role for oversight or regulation in this environment, given what appears to be a clear conflict of interest for lawyers? Is there no role for oversight when questionable notice is given to consumers and even more challenging is the desperate situation in which consumers find themselves?

Mr. Gordon:
On behalf of approximately 15 companies in this State that are members of our association, best practices call for the plaintiff's attorney to sign off. In addition, the proceeds are not used for legal expenses.

I would also note that this industry brought a bill 2 years ago to regulate themselves. That bill did not go anywhere. We are willing to move forward with some regulatory scheme to regulate ourselves. There are bad actors in every industry. We do not believe our members are bad actors, but we are willing to work through some of these concerns about interest rates. If we do not do it this Session, then we can certainly do it in the interim and next Session.

Brett Carter (Nevada Justice Association):
I have been a personal injury attorney for 17 years. I have come across these settlement funding loans on numerous occasions. There are pros and cons to them. Some of the companies are meritorious, and others commit quite a number of abuses. Sometimes it can hamstring an attorney. Sometimes they are predatory and take advantage of a victim, further victimizing them.

I oppose S.B. 361. As much as I do not like it, however, those lending practices are necessary options. Without them, the next step would be to prevent victims of car accidents from getting cash advances on credit cards. This is a means for them to be able to hold on during this period while the lawsuit is being resolved. Things have tightened since the late 1990s. It has never been easy, but the

environment has become more litigious. It is harder, and there is a lot more cost.

Eight attorneys work in our office. Four, including me, primarily do litigation. It is 90 percent of what I do. Because we are litigating more, it is increasingly more difficult to get a decent offer on cases. Many factors are involved, such as when the victim cannot bridge the gap, cannot pay the medical expenses where the doctor will not agree to wait and cannot pay living expenses when he or she cannot work. This makes a desperate person even more desperate. There are quite a few settlement loans on which I will not sign off.

Our firm used to refuse to acknowledge these loans. That was a mistake. I have a fiduciary duty to my clients to make sure that if they go forward on their own, they make sure they have at least considered the best options available. There are companies that will loan without an attorney's acknowledgment.

I have a case in federal court where the principal—my client—received $50,000, and the bill climbed to $850,000. It has been 7 years. We fought a medical malpractice case where they have admitted liability, but it has gone in many different directions. I have worked with Preferred Capital before. The company operates as if there already is a statutory requirement which I have not heard today. High-interest loans are capped by NRS 604A at 40 percent and also provides criminal penalties for exceeding that rate. I was happy to hear there will be an attempt to work together and that some of the proponents suggest a cap instead of a prohibition. That makes sense. I have worked in a situation where the 40 percent cap is in place. In fact, that is what I used as well as champerty, which the Chamber representative said was a way to attack some of these loans. One loan, in fact, was where the loan amount had grown from $50,000 to $700,00 or $800,000.

Those loans are necessary options. Removing those options does nothing to help the consumer. It would only help insurance industry businesses. If we want to protect consumers, we need to look at limiting and regulating these loans. The regulation would not be on behalf of the lending industry. Some of these loans are based on a contingency, so they do not have nonrecourse. There was an estimate where 10 percent or 20 percent of the consumers did not get anything. That would not shock me.

Fortunately, my cases recover a little better than that. Preferred Capital has been willing to take a reduction, be reasonable and understand that cases resolve for a certain amount or there is an offer on the table. Understanding that is in everybody's best interest. I have not seen a situation where these cases are pushed on and on because of the loans. In fact, I think they assist resolutions, except in cases where abuses exist.

Senator Hutchison:
You mentioned there are cases where you have to "attack" the loans, use different legal strategies for that purpose. Can you help educate the Committee in terms of the conditions or circumstances in your practice under which you have had to attack these loans?

Mr. Carter:
I had a case that started before 2007. That is when NRS 604A and the 40 percent cap was enacted. These loans were administrated in 2005. It is hard to believe that case is still going, but it sometimes happens.

We tried to argue that the statutory scheme is applicable. If nothing else, the legislative intent is applicable and if the case was fought, the outcome would be in our favor. The opposition showed willingness to work with us, but we also had to up the ante by showing the issues of champerty. If you are trying to get a certain interest in the loan where there is some kind of assignment, you potentially have a right to prevent the settlement or prevent a resolution. At that point, the argument potentially can be void in the law and public policy.

If we cannot resolve this internally, we will have to involve the courts. So far, the lenders—some that have historically committed abuses—have been willing to work with us. Since 2007, we have not had to fight about loans because they have been capped at 40 percent. Even at 40 percent, however, they have been willing to work with us, because they understand the realities of litigation. If they force us into trial, we could lose and on a nonrecourse loan they would get nothing. Or we could get an award from the jury less than the settlement offer. It is in everybody's best interest to work together. Typically, the reputable companies understand that.

Senator Hutchison:
In your practice, you have seen the use of these loans, but you also have seen instances where there can be abuses or where there needs to be some hard

negotiation, reminding them of their legal obligations or maybe of some legal consequences to get them to come down. Like anything else, you might see that there is a need for some oversight and regulation.

Mr. Carter:
Absolutely. There are some companies that say they are not required by law to follow NRS 604A and the 40 percent cap. We need to make sure that abuses stop. If we provide the opportunity to do that, it would be fantastic.

Senator Hardy:
What I hear you saying, Mr. Carter, is correcting disreputable companies to practice in a reputable way would probably require the force of law. The statute would have to require consumers to have an existing claim, attorneys to sign off on claims, to have nonrecourse in the claim, to have exhausted all other options, and to adhere to NRS 604A and the 40 percent cap. You see those amendments to S.B. 361 so we could create teeth to force disreputable companies to operate reputably.

Mr. Carter:
That is a bit beyond what I had intended. If an attorney is required to sign off, my concern is that you would be forcing the individual to retain counsel. I am not saying the Legislature should act in that regard. I am wary about that. I cannot think of an example offhand where agreements were made only nonrecourse. I could see a lower interest rate if it were recourse. A bank could extend a signature loan for the same purpose at 6 percent or 9 percent. If other options exist, where the injured party is still responsible for the debt, removing the practice would force an individual into higher loan brackets. They have these higher interests because the loan would be nonrecourse. Both options are still necessary. My biggest concern is lenders who think the 40 percent cap in the law does not apply to them. If you were to make regulations specific to any loans funded for lawsuits, that would be helpful.

Senator Roberson:
In response to Senator Jones' request for specific examples in Nevada, you have an example in the $50,000 loan that turned into an $800,000 loan. That does nothing to help consumers who are in desperate situations. This practice needs to be regulated. Payday loans are regulated. Auto title loans are regulated. This industry is not regulated in this State, and many of those who argued against this legislation also argue in their printed materials that they are

not subject to NRS 604A and the caps to which payday loans and other kinds of consumer loans are subject. That has to be fixed. We do not need to wait until the interim to study this. At some point, you will be able to review a conceptual amendment. I encourage this Committee to look at regulating this practice during this Session.

Chair Atkinson:
We will close the hearing on S.B. 361. We will now open the hearing on S.B. 402.

SENATE BILL 402: Revises certain provisions relating to real estate. (BDR 54-913)

Senator Michael Roberson (Senatorial District No. 20):
Senate Bill 402 solves a licensing problem for real estate agents. It is a matter of omission that ties the hands of the Real Estate Division, Department of Business and Industry. Real estate licensees can hold two different types of permits under NRS chapter 645. They can hold a property management permit and/or a business broker permit. To apply for either of these, the licensee must pay for and attend at least 24 hours of education, take an exam and submit the payment of application fees to the Division. This permit is tied to the agent's real estate license and must be renewed at the same time as the license, every 4 years. *Nevada Revised Statute* 645.785 allows late renewal of a real estate license, but it has no corresponding allowance for late renewal of the permits attached to the license. A licensee being late in renewing his or her license causes an irrevocable expiration of the permit that requires renewal of the license if a penalty is paid.

Teresa McKee (Nevada Association of Realtors):
There is an omission in statute that treats the late renewal of a permit differently from late renewal of the license. According to S.B. 402, section 1, subsection 1, a license can be renewed late within a year if a penalty is paid in addition to the regular renewal fee. The permit, which is renewed on the same date as the license, irrevocably expires when the renewal is 1 day late. No penalty payment can reinstate that permit. The Division has to require that the licensee go back to the pre-permitting school to acquire the 24 hours of permit education, pass the tests and reapply for the permit.

Subsection 2 mirrors language in subsection 1 regarding the licensees and allows a late renewal penalty of $20 in addition to the regular renewal fee of $40 as long as it is within 1 year of expiration. If they have been expired for longer than a year, we support the idea that neither the permit nor the license would be renewed, and other sections of the statute would apply to obtain that renewal.

Senate Bill 402 also requests in section 1, subsection 1 that the late-renewal penalty for the license be set at $100 instead of the current language that requires the penalty of 1 1/2 times the amount otherwise required.

Gail J. Anderson (Administrator, Real Estate Division, Department of Business and Industry):
The Real Estate Division supports creating the provision in S.B. 402 that would allow late renewal of a property management and a business broker permit. The Division supports implementation of a flat fee for the late renewal of a real estate license and permit. This is a business-friendly proposal that will allow more licensees to maintain their licenses and will simplify their processing. You have our written testimony discussing the provision (Exhibit G).

Chair Atkinson:
We will close the hearing on S.B. 402 and bring it back in one of our work sessions. We will now open the hearing on S.B. 493.

Senate Bill 493: Revises provisions concerning real property transactions. (BDR 54-642)

Michael A. Schneider:
My partner and I made an offer to buy a piece of ground a couple weeks ago and found that the ground was a foreclosed property and a number of investors had put money up to finance the property. To purchase it, we would need all the investors to agree to sell it. The title companies will not give title insurance unless 100 percent of the investors agree.

Some real estate properties involve multiple investors. There can be 30 or 40 people in a real estate investment project. Since about 2000, property values have plummeted. Investors are going to lose money. Also, some investors have died. The really egregious thing is that investors in the "super minority" are shaking down the supermajority. When 70 percent to 80 percent

of the investors agree to sell, they know they will take a loss. The other 20 percent, or maybe fewer, may say they will not sell unless they are paid more. They are actually shaking down their partners. The deal is likely to stalemate.

This affects sections 1 and 2 of S.B. 493. Two people can speak to this issue. Andi Glenn manages several of these properties, including the one on which we made the offer. The other is Laura Lychock, who has a mortgage company, Clayton Mortgage. They have worked on the language with the Commissioner, Division of Mortgage Lending, Department of Business and Industry. They also have worked with people in the title industry. The title industry needs this language.

Senator Hutchison:
The way I read section 2, an agreement could be drawn that requires 75 percent or 100 percent of the investors to concur. It is not the intent of this legislation to interfere with that kind of operating agreement. Correct?

Mr. Schneider:
That is my understanding. I will have Ms. Lychock explain that.

Senator Hardy:
Is this already expanded enough to include a decommissioned power plant in southern Nevada?

Mr. Schneider:
As long as the investors roll their money into green energy, I think we can support a decommissioned power plant.

Senator Jones:
Does section 2 apply to existing loans or only future loans?

Mr. Schneider:
It is my understanding it applies to existing loans that have been foreclosed and then to any future loans. The problem is that you have inventory of land and buildings, but you cannot get title insurance because you cannot get 100 percent agreement of the investors.

Senator Jones:
Is there any risk to modifying contracts that already exist?

Mr. Schneider:
I am not sure that can be done.

Senator Jones:
Does this legislation modify loans that already exist, or is it only for future loans?

Laura Lychock (Clayton Mortgage & Investment):
It is our hope that it will be for everything retroactively. The initial version of what is now NRS 645B.340 states that this would apply regardless of the date the interests were created. We would like to leave it that way. The issue at hand is not moving forward. These default loans and the investors who are not necessarily put into any kind of entity, LLC or any kind of business trust need to have a way to sell and dispose of the properties, despite absence because of a death or bankruptcy of another individual tenant-in-common who maybe just does not respond. Perhaps, the issue involves investors with whom you just cannot connect. Our intent is to help clear the existing inventory and get these properties sold and closed.

Senator Jones:
Is there any risk of challenge to a contract clause by a minority investor who might say, "I entered into this believing that my vote would be required in order to take any action, and now I do not have that right?"

Ms. Lychock:
Not to my knowledge. We have always operated on the 51 percent majority rule. Original contracts are always the majority rules—a 51 percent rule on which all the investors operate. We would like to keep that congruent through the post-foreclosure process as well.

Senator Hutchison:
It does not appear to be the intent of the legislation to modify agreements between the parties or among the beneficiaries. If there is some agreement that says we, the supermajority, will sell the piece of property, we are not talking about that situation. Right?

Ms. Lychock:
That is correct.

Senator Hutchison:
My understanding of the challenge here is nothing exists under Nevada law that documents the 51 percent rule that would be contained in loan documents. The title companies will not issue insurance without the 100 percent sign-off.

Ms. Lychock:
The 51 percent rule is addressed in NRS 645B.340. A number of title companies deny title insurance based on that law simply because it has not been tested or proved. I would let the title companies comment on that, because it has not been proved in court and because there has not been anything to substantiate the law that was actually passed.

Senator Hutchison:
It looks as if we are putting in another law. If the 51 percent rule already is in place, why would the title company need 100 percent sign-off?

Ms. Lychock:
With S.B. 493, we are trying to arrive at clarification to the point that title companies are comfortable with the language. You have our list of proposed changes to S.B. 493 (Exhibit H).

Senator Hutchison:
If we pass this legislation, will we be tackling the issue head-on? Will the intent be clear?

Senator Denis:
It was mentioned we need to consider what happens when someone dies and, obviously, they cannot sign. How does the law handle it if a person owns 51 percent or more and is deceased?

Ms. Lychock:
Nine times out of ten, an investor who owns 51 percent of the property will have an estate plan. We have not come across an owner who does not have a successor trust deed or a trust or something like that. This bill is intended for minority interest holders, not major holders, although I see your point.

Senator Denis:
Although that could happen, right?

Ms. Lychock:
Yes. But it is highly unlikely that would happen without some kind of a trust vehicle in place.

Senator Denis:
Or perhaps it might be in place through a probate court?

Ms. Lychock:
That would have to happen; otherwise, we have to go through that with minority investors as well. If someone is deceased and we cannot get a signature, the investor group would have to pay for the probate of that estate before it could be sold.

Senator Settelmeyer:
I appreciate the fact that the 51 percent rule already is in law. I appreciate your amendment, which tries to expand on the definition of the 51 percent rule, especially in relation to the bona fide purchasers. I assume this legislation comes about because of the discomfort expressed by title companies. Have you had the opportunity to talk to some of those individuals to see if this would meet their comfort level? Is there anyone who would say this could resolve the issue?

Ms. Lychock:
Yes. We have someone from the title industry who has been working with us. We had a meeting with the commissioner, his staff, a title agency representative and the Division's Advisory Council in Mortgage Investments and Mortgage Lending. Chuck Mulder was in the meeting as well. Everyone to my knowledge was comfortable with this verbiage. Each title company operates differently, and each title insurance plan works differently. I would have to leave that question to someone from that industry regarding what they may or may not accept.

Rocky Finseth (Nevada Land Title Association):
Our comments are restricted to section 3. That portion of S.B. 493 was brought by the industry to fill a void that exists in the real estate sector.

In reviewing the bill with Mr. Dalton, Nevada Land Title Association, we saw technical problems in several parts of the bill that needed to be cleaned up. I am happy to work with your staff on this. Citations of "NRS 107.087" should be replaced by "NRS 107.077" in section 3, on page 3, line 24; on page 4, line 29; and on page 6, line 29 in S.B. 493.

Russell Dalton (Chairman, Nevada Land Title Association; First American Title Insurance Company):
I support S.B. 493. You have my statement (Exhibit I). This is an important issue. Senate Bill 493 takes care of the problem related to moving releases and reconveyances of paid and unreleased deeds of trust off the record. On many occasions, we find deeds of trust where the borrower or successor-owner does not know the agreements remain on the record or are under the impression the deeds of trust already have been released. Statutes provide a method whereby the obligation, if paid through a real estate transaction and handled by a title insurance company, can be released by giving notice to the beneficiary and others that the payoff was made and there was an intention to reconvey that deed of trust.

The purpose of this bill is to fill a void where we encounter a situation in which a title insurer or title company was not involved in paying off the transaction. It could have been paid off internally, bank-to-bank; by the borrower to the bank; or to the lender without going through an escrow transaction. So there is no one to attest under the statute that it was paid off through a title insurer. The only option now are for those kinds of deeds of trust to be ignored or insured over or maybe extinguished from the record is through legal action brought by that borrower against the lender under a quiet title action. Those actions could be expensive and time-consuming.

This legislation proposes a reasonable method for having the parties purchase a surety bond that is sufficient to cover any challenge made by the beneficiary later saying the debt was not paid in full. If the beneficiary does not object quickly enough to the release of the lien by way of the surety bond, there is something to protect his or her position.

Senator Hutchison:
I follow the bill easily to the point where the debt is paid in full and you cannot find the beneficiary or the beneficiary refuses to give a deed of reconveyance or otherwise release the lien. Then you have a situation in section 3, subsection 1,

where there is still a balance owed, and you cannot locate the beneficiary. At that point, you get a bond. How do you determine the amount of the surety when you still have an amount due? Is it just on the balance the borrower said he or she owes? Is there any way to verify that?

Mr. Dalton:
The method relies on the borrower's admitting what is owed, then on calculating the principal, interest and whatever can be proven and then purchasing the surety bond based on that amount.

Senator Hutchison:
Is there any obligation to have verification of the balance? You could see how that could be abused. For example, they could say they owe $100,000, but in fact they owe $1 million and they only get bonded for the amount based on $100,000.

Mr. Dalton:
In this proposal, there is not a method for verifying the amount. The affidavit submitted by the borrower with the surety bond is sworn to under penalty of perjury, and that is about all we have.

Senator Hutchison:
The bonding company would just rely on the accuracy of the affidavit. Other than that you have no way to verify. Do you think that is a problem?

Mr. Dalton:
The surety would review the situation to verify whether they were willing to issue the bond.

Dan Yu (Counsel):

> In response to Mr. Finseth's earlier catch, he is correct. That reference in those three sections or those three lines of S.B. 493 is actually an incorrect reference to the applicable NRS provision. The one that he cited to you is in fact correct. That appears to be some sort of typographical error when this bill was being finalized and processed. So, that is something that I will make our [Legal] Division aware of and that we could easily fix.

Senator Atkinson:
We will close the hearing on S.B. 493 and bring it back next week in our work session. The last two bills will be presented by Marji Paslov Thomas. We will open the hearing on S.B. 506.

SENATE BILL 506: Repeals provisions governing certain employment practices concerning members of the Communist Party and related organizations. (BDR 53-574)

Marji Paslov Thomas (Policy Analyst):
I would start by saying that I am nonpartisan staff, and I neither support nor oppose this legislation. I will provide background information.

Under NRS 220.085, the Legislative Counsel and the director of the Legislative Counsel Bureau's Research Division work together during the interim to identify obsolete or antiquated statutes and then make recommendations concerning these statutes to the Legislative Commission. Based on these recommendations, the Commission, as it deems appropriate, can request a bill draft to repeal those statutes that are obsolete, outdated or antiquated.

Senate Bill 506 is one of four bills introduced this Session on behalf of the Legislative Commission to repeal obsolete provisions. As background on S.B. 506, following World War II, the rise of the Cold War with communist regimes led to concern about threats to the United States posed by such governments. A number of state and federal laws were enacted to address these concerns. Eventually, many such enactments were viewed as infringements on constitutional rights or as no longer necessary, especially with the dissolution of the Soviet Union. One of these Cold War-era statutes continues in the form of NRS 613.360. The text of the statute is on page 2 of the bill.

The McCarran Internal Security Act officially was the first Cold War-era statute. The Subversive Activities Control Act of 1950 was a federal law that required the registration of communist organizations with the U.S. Attorney General, among other provisions. The act established the Subversive Activities Control Board to investigate persons suspected of engaging in subversive activities or otherwise promoting the establishment of a totalitarian dictatorship, fascist or communist. Over the years, the U.S. Supreme Court declared various portions of this act unconstitutional but it was not fully repealed until 1993.

Because the statute creating the Subversive Activities Control Board has been repealed, NRS 613.360 has no further force.

Chair Atkinson:
It might be helpful to say where this came from.

Senator Settelmeyer:
This came from the Sunset Subcommittee of the Legislative Commission, did it not? Is it the original bill or part of it that you are asking about?

Ms. Paslov Thomas:
It came from the Legislative Counsel and the Research Director during the interim to identify these, and then it went to the Legislative Commission as a recommendation. The Legislative Commission voted on requesting four bills.

Senator Settelmeyer:
I remember that. It was unanimous. We were also getting rid of the commission on metric system or something like that.

Chair Atkinson:
I wanted to make that clear for the record while there are reporters here, because it is labeled a Senate Committee on Commerce, Labor and Energy bill.

John Wagner (Independent American Party):
I speak in opposition to S.B. 506. I am from the old era. I went to high school during the Korean War. Friends went over there who never came back. I would like to speak for them. I also have a question. How many members of the Communist Party are still left in this State? I know there used to be a Party in Carson City because I used to see it on the voter rolls. Now, in my position as State Chair of the Independent American Party, I have had access to all the voter rolls, and I cannot remember seeing anybody registered as a member of the Communist Party, which is fine with me.

I was in the Army between wars, and I knew a lot of soldiers who came back from Korea. I knew people who went to Vietnam and came back, and I also have many friends who came from behind the Iron Curtain. I heard some of their stories. I had the privilege of going behind the Iron Curtain one time, supposedly to a friendly Communist country, Yugoslavia, and saw how they lived, and I did not particularly like it.

It bothers me right now that communism is not dead. We have some official over there in Pyongyang, North Korea, rattling his sword, putting his missiles on the east coast of the country as those miles would make a difference in launching missile attacks. Communism is not dead, and I feel for the survivors and victims of communism. For that reason, I would ask to leave this on the books. It is only a short paragraph anyway. It is not like it is taking up a lot of space.

Chair Atkinson:
We will close the hearing on S.B. 506 and open the hearing for S.B. 507.

SENATE BILL 507: Repeals provisions relating to development corporations and corporations for economic revitalization and diversification. (BDR 55-575)

Ms. Paslov Thomas:
Senate Bill 507 was requested by the Legislative Commission to repeal an obsolete and antiquated statute. This is one of the four bills, so you are hearing two of these bills today in this Committee.

Senate Bill 507 is part of the development corporations in Corporations for Economic Revitalization and Diversification. Chapter 670 of the NRS addresses development corporations and was originally enacted in 1975. The Development Corporation is one that is established as expressed in subsection 3 of NRS 670.080 that is in your bill.

While the purposes for which such corporations were first authorized are still an important subject for public policy, the structure of these entities is not. Staff had contact with representatives from the Division of Financial Institutions in the Department of Business and Industry, who provided the following information.

At this time, there are still no licensees under either chapter 670 or 670A. No license has been issued in longer than 7 years. The last active license was closed in 2005. Only four licenses were issued: three in Reno and one in Las Vegas. Chapter 670 relates to development corporations if financing is previously denied. Chapters 670 and 670A represent business models that do not work in the current environment. Staff also said that over the past 11 years, the Division of Financial Institutions has never received an application. Chapters 670 and 670A corporations can make loans but they cannot take

deposits. The loans that they make by statute must be first refused by a bank or other financial institution. Therefore, the loans sound like subprime loans and/or hard money loans, according to staff. The majority of development corporations today are subsidiaries of larger banks under the Federal Community Reinvestment Act of 1977 and that this is an antiquated mechanism not in the current model. Other states utilize nonprofit organizations such as Community Development Corporations and subsidiaries of large banks. Since there are no longer any active corporations formed under NRS 670, and research indicates these entities are an outdated model, it is recommended that NRS 670 be repealed.

Chapter 670A of the NRS addresses Corporations for Economic Revitalization and Diversification and was originally enacted in 1983. The Corporation for Economic Revitalization and Diversification is one that is established by the following purposes as expressed in NRS 670A.080.

The comments on NRS 670 apply to NRS 670A as well and need not be repeated. For the same reasons as noted in regard to chapter 670, it is recommended that chapter 670A be repealed.

Chair Atkinson:
We will now close the hearing on S.B. 507. We are adjourned at 12:29 p.m.

RESPECTFULLY SUBMITTED:

_____
Wynona Majied-Martinez,
Committee Secretary

APPROVED BY:

_____
Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
S.B. 339	C	3	Senator Joseph P. Hardy	Proposed Amendment, NV Energy
S.B. 357	D	3	Senator Michael Roberson	Maps
S.B. 357	E	14	Ryan M. Brennan	Letters
S.B. 361	F	3	Jeanette K. Belz	Comments
S.B. 402	G	1	Gail J. Anderson	Written Testimony
S.B. 493	H	3	Laura Lychock	Proposed Amendment
S.B. 493	I	1	Russell Dalton	Written Testimony