

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

**Seventy-Eighth Session
April 1, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:37 p.m. on Wednesday, April 1, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblyman Jim Wheeler, Assembly District No. 39
Assemblyman Nelson Araujo, Assembly District No. 3

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tim Keller, Managing Attorney, Institute for Justice, Tempe, Arizona
Perry Nixdorf, Owner, Paradise Salon-Spa-Wellness, Carson City, Nevada
Kyle Waugh, Owner, L Makeup Institute, Las Vegas, Nevada
Lissette Waugh, Owner, L Makeup Institute, Las Vegas, Nevada
Randy Soltero, representing Local 720, International Alliance of Theatrical
Stage Employees
Amirah Flipping, Private Citizen, Las Vegas, Nevada
Monika Nicoli, Private Citizen, Las Vegas, Nevada
Tom Devlin, Instructor, L Makeup Institute, Las Vegas, Nevada
Nicole Prendergast, Instructor, L Makeup Institute, Las Vegas
Gary K. Landry, Executive Director, State Board of Cosmetology
Gayle Moore, Private Citizen, Las Vegas, Nevada
John Davis, Private Citizen, Las Vegas, Nevada
Miss Dee, Private Citizen, Las Vegas, Nevada
John Grieco, Chief Executive Officer, Academy of Hair Design,
Las Vegas, Nevada
Victor Guerrero, Private Citizen, Las Vegas, Nevada
Liberty Elmer, Director, Paul Mitchell the School, Las Vegas, Nevada
Mary Walker, representing Carson City, Douglas County, Lyon County,
and Storey County
Justin Harrison, Director of Government Affairs, Las Vegas Metro
Chamber of Commerce
Rusty McAllister, President, Professional Fire Fighters of Nevada
Michael Giurlani, President, Nevada State Law Enforcement Officers'
Association
Ronald P. Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada; and representing Washoe County Public
Attorneys' Association; and Washoe School Principals' Association

Carla Fells, Executive Director, Washoe County Employees Association
Marlene Lockard, representing Nevada 1107, Service Employees
International Union

Jessica Ferrato, representing Nevada Association of School Boards
Yolanda T. King, Chief Financial Officer, Department of Finance,
Clark County

Charles Mohler, Chair, Advisory Council on Mortgage Investments and
Mortgage Lending, Division of Mortgage Lending, Department of
Business and Industry

Kyle Nagy, Member, Advisory Council on Mortgage Investments and
Mortgage Lending, Division of Mortgage Lending, Department of
Business and Industry

Joshua Hicks, representing Manufactured Home Community Owners

Darren K. Proulx, Member, Advisory Council on Mortgage Investments
and Mortgage Lending, Division of Mortgage Lending, Department
of Business and Industry

Laura Lychock, President, Clayton Mortgage and Investment, Henderson,
Nevada

Janis Grady, Member, Advisory Council on Mortgage Investments and
Mortgage Lending, Division of Mortgage Lending, Department of
Business and Industry

Max Haynes, Alpen Mortgage, Reno, Nevada

Chairman Kirner:

[The roll was called. A quorum was present.] Assembly Bill 6 will not be heard today. We will open the hearing on Assembly Bill 137.

Assembly Bill 137: Revises provisions governing contractors. (BDR 54-513)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 137 is sponsored by Assemblyman Ellison and was heard in Committee on March 2, 2015. [Referred to work session document ([Exhibit C](#)).] The bill allows the State Contractors' Board to discipline a licensed contractor who solicits a contracting bid or estimate from an unlicensed person. The measure provides that an unlicensed person may not advertise certain services without disclosing that he or she is not licensed. It prohibits a person, whether licensed or unlicensed, to advertise to perform certain services using a license number that does not correspond to a valid license issued to that person by the Board. It increases the fines and penalties for certain violations.

There are two amendments before the Committee today. The first amendment was submitted by the State Contractors' Board. The amendment removes subsection 2 of section 3, related to additional punishments for violations of *Nevada Revised Statutes* 624.3014. It modifies subsection 1 of section 3 by adding the phrase "known by the licensee to be unlicensed pursuant to this chapter."

The second amendment was submitted by the bill sponsor. The amendment allows the Board to exceed the fine limits set forth in section 6 of the bill by adding a fine enhancement of not more than 10 percent of the value of the contract if the person commenced any work or received any money related to the project.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 137.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 173.

Assembly Bill 173: **Revises provisions governing private investigators.**
(BDR 54-758)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 173 is sponsored by Assemblyman Hickey and was heard in Committee on February 25, 2015. [Referred to work session document ([Exhibit D](#)).] This bill exempts information security professionals who are acting in their professional capacity from licensure as private investigators. There is a mock-up attached for the Committee's review and it removes the definition of "information security" professional from section 1 of the bill and inserts a reference to federal law to define the phrase "information security." That is outlined for you in the work session document. "Information security" is further defined to include restoring the integrity, confidentiality, and availability of information and information systems after a data breach. The sponsors would like to add the words "or other security incident." That would appear in paragraph 2 on the second page in green on the mock-up.

The amendment deletes language inserted in *Nevada Revised Statutes* 648.012 in 2013 related to the use of computerized data not available to the public and restates the intent to regulate private investigators' use of nonpublic records in another way at the end of the section. It also excludes from the definition of "private investigator" those persons who provide information security.

Chairman Kirner:

I will accept a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 173.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Carlton:

Could you explain the language in green again?

Kelly Richard:

If you look on page 2 below the stricken language, there is paragraph 1 which says information security has the meaning ascribed to it in 44 U.S.C. § 3542. The second paragraph says the term includes restoring the integrity, confidentiality, and availability of information and information systems after a data breach. After that the sponsor wants to add "or other security incident."

Assemblywoman Carlton:

What was the reason?

Matt Mundy, Committee Counsel:

It was to capture the intent that the language was to include suspected data breaches and not just an actual breach. A security incident is a suspected breach. We think the language of the federal statute presumes that is included, but we wanted to make it clear in the text.

Assemblywoman Carlton:

Is this a consensus amendment?

Chairman Kirner:

It is. There was a lot of work done in the background.

THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 179.

**Assembly Bill 179: Revises provisions governing personal information.
(BDR 52-756)**

Kelly Richard, Committee Policy Analyst:

Assembly Bill 179 was sponsored by Assemblyman Flores and revises provisions governing personal information. [Referred to work session document ([Exhibit E](#)).] As proposed the bill would expand the definition of "personal information" for the purpose of requiring business entities, which collect such information, to provide certain security measures to ensure the information is protected.

There is an amendment attached to the work session document that was submitted by the bill sponsor which replaces section 7 of the bill. The amendment expands the definition of "personal information" to include a driver authorization card number, a medical identification number or health insurance identification number, and a user name, unique identifier, or email address, in combination with a password, access code, or a security question and answer that would permit access to an online account. The amendment also provides that businesses and data collectors would have until July 1, 2016, to comply. It is staff's understanding that the local governments which submitted fiscal notes on the bill would withdraw the fiscal notes if the amendment passes.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 179.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 227.

**Assembly Bill 227: Revises provisions governing the practice of medicine.
(BDR 54-412)**

Kelly Richard, Committee Policy Analyst:

Assembly Bill 227 was heard in Committee on March 16, 2015. [Referred to work session document ([Exhibit F](#)).] It makes various changes to many sections

of statute. It revises the licensure provisions, discipline, and general regulation of physicians, osteopathic physicians, and physician assistants.

There were three amendments presented on this bill at the original hearing. The first amendment, proposed by the Board of Medical Examiners, makes technical changes to the bill related to certain dates for license renewal and adds the phrase "or successor organization" when referring to certain education or training programs. The second amendment, proposed by Chad Christensen, would allow the Board to issue a restricted license for a physician licensed in another state to teach, research, or practice medicine at a medical research facility or medical school. The third amendment was presented orally by Dr. Tracey D. Green at the March 16, 2015, hearing. Dr. Green asked that section 11, subsection 9, paragraph (d) be revised to reflect the definition of "sentinel event" found in *Nevada Revised Statutes* Chapter 439.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 227.

ASSEMBLYMAN PAUL ANDERSON SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Carlton:

I had an opportunity to discuss the concern that I had that was not addressed in the hearing on the self-reporting violation of law, rule, or regulation that was encapsulated in the bill. It is different from what we have had in the past. I still have concerns, but will vote for the bill. If this is to make sure that people do not have a case to defend themselves, then I have concerns. Our diversion programs are very good in the state and the last thing we want to do is lose a doctor, nurse, or osteopath because of a substance abuse problem.

Chairman Kirner:

I will call for the vote.

THE MOTION PASSED UNANIMOUSLY.

We will not consider Assembly Bill 275 at this time because we have some clarifications to make. We will now hear Assembly Bill 295.

Assembly Bill 295: Revises provisions relating to the provision of certain health care services. (BDR 54-698)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 295 was sponsored by Assemblyman Kirner and was heard in Committee on March 23, 2015. [Referred to work session document ([Exhibit G](#)).] The bill requires certain providers of complementary and alternative health care to disclose certain information to consumers. A person who provides these services but who is not licensed, certified, or registered in this state as a provider of health care is not in violation of any law unless he or she performs certain tasks restricted to regulated health care providers.

There is an attached amendment submitted by Alexis Miller which removes the preamble in section 2 and substitutes "wellness services" for all references to "health care services" in the bill. The amendment also includes several new practices in the list of prohibited acts in section 3 and provides a list of various therapies, practices, and products, which are considered "wellness services" for the purposes of the bill.

There was a conceptual amendment requested to ensure that the activities of a medical assistant are not included in the scope of this measure, as defined in Chapters 630 and 633 of *Nevada Revised Statutes*.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 295.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will open the hearing on Assembly Bill 409.

Assembly Bill 409: Revises provisions relating to cosmetology. (BDR 54-1050)

Assemblywoman Victoria Seaman, Assembly District No. 34:

Seated with me is Tim Keller, the managing attorney of the Institute for Justice, Arizona office. He litigates to protect economic liberty nationwide by challenging occupational regulations and other barriers to entrepreneurship in both state and federal courts. Since 2012, he has been litigating a case in Nevada on behalf of two makeup artists with over 40 years of combined

experience. Lissette Waugh opened L Makeup Institute in 2010 and Wendy Robin opened Studio W of Las Vegas soon thereafter in order to train aspiring makeup artists in the art and artistry of applying makeup for the entertainment and retail industries. Wendy closed her business after being threatened by the State Board of Cosmetology in Nevada with fines. Lissette continues to operate her school, which is now fully licensed by the Commission on Postsecondary Education, and is thriving with students and successful graduates.

However, the State Board of Cosmetology believes that Lissette is operating illegally because the L Makeup Institute is not also licensed by the Board of Cosmetology as a cosmetology school. Lissette and the other instructors at the school are not licensed as cosmetology instructors. According to the Board of Cosmetology, makeup artists should be regulated as skin care specialists, a cosmetology subspecialty known as aesthetics. Aestheticians are not taught the broad range of skills and techniques required to be a makeup artist. Aestheticians are trained in skin care which includes services such as facials, facial massage, and hair removal using hot wax and other chemical treatments.

In contrast, makeup artists must master color theory, layering, blending, and applying different types of makeup, such as makeup for stage, special effects, and high definition film, as well as how to apply makeup using an airbrush machine. Makeup students do not need to learn any of the various skin treatments such as facials and waxing that they might learn in cosmetology school in order to thrive as a makeup artist. Nevada already exempts many hardworking makeup artists from the state's cosmetology licensing scheme, such as those working on the sets of movies and television shows and makeup artists working with a photographer. It does not exempt all makeup artists from the state's cosmetology licensing even though most makeup artists are not licensed by the Cosmetology Board because cosmetology schools do not teach makeup artistry. Makeup artistry is safe to teach and practice, so the state has no valid public health or safety justification to require that makeup artists, whether instructors or practitioners, obtain a license to work before being allowed to climb the proverbial economic ladder.

Assembly Bill 409 clarifies that both those who teach and those who practice makeup artistry do not fall under the jurisdiction of the Board of Cosmetology. As the *Las Vegas Review-Journal* noted in its editorial yesterday in support of this bill, A.B. 409 is a great way to help clean up the state's regulatory mess. Nevada's economic well-being depends greatly on dialing back or repealing burdensome government regulations for many occupations.

Tim Keller, Managing Attorney, Institute for Justice, Tempe, Arizona:

I represent Wendy Robin, who owned and operated the Studio W of Las Vegas, a makeup artistry school. I also represent Kyle and Lissette Waugh, the owners and operators of the L Makeup Institute, which is fully licensed by the Commission on Postsecondary Education. The L Makeup Institute has been thriving and operating since 2010, graduating makeup artists, putting them to work, contributing to Nevada's economy, and doing wonderful work.

This bill is a simple and straightforward fix to the real problem that Ms. Waugh and Ms. Robin ran into shortly after opening their businesses. The State Board of Cosmetology told them they had to shut down their businesses and comply with all of the regulations that apply to cosmetology schools. This would require them to teach subjects that they do not want to teach and to comply with utterly irrelevant regulations regarding the setup and conduct of their classrooms. They do not want to teach hairstyling, skin care, or nail technology that are taught in cosmetology school. They want to teach makeup artistry, which is not taught in cosmetology school, or as part of an aesthetics or nail curriculum. This bill clarifies that practicing makeup artists will not be required to spend hundreds of hours and thousands of dollars attending a cosmetology school to not receive any of the instruction that they need to actually implement and practice makeup artistry.

The bill does five things. In section 1, the bill defines a makeup artist. The bill definition encompasses both practicing makeup artists in the film, fashion, and bridal industries as well as makeup artistry instructors. Individuals practicing on the sets of films and television who do makeup artistry are already exempt from Nevada's cosmetology licensing. This bill would make it clear that those individuals who possess those makeup artistry skills and are working on the sets of movies can also work in other areas offering their services to make a living and to offer their valuable services to members of the public who could not obtain them from a licensed aesthetician or cosmetologist unless they had obtained the training somewhere else.

In section 5, the bill clarifies and ensures that makeup artistry is not a branch of cosmetology. Cosmetology schools do not teach makeup artistry. It is a completely separate industry. This ensures that makeup artistry and cosmetology are two separate occupations.

In section 8, the bill exempts makeup artists from the requirements of the cosmetology licensing scheme. There is only one state in the nation that affirmatively licenses and requires the makeup artists to obtain a state license. That is Louisiana. In Louisiana, they require nine days of training, \$25 in fees, and no licensing examination before they can practice. However, in recent

years, we have seen state boards of cosmetology start to assert that in order for individuals to practice as makeup artists they must first obtain either a cosmetology or an aesthetics license. We have been battling this issue all over the country.

We recently ran into this issue in Arizona. Two young ladies wanted to open a business to apply makeup for weddings and proms. Both of them had been practicing in the makeup industry for decades and because they were not licensed cosmetologists, the two women were not allowed to open the business. State Senator Kimberly Yee introduced a bill to exempt makeup artists and to clarify that makeup artists are exempt in Arizona. That bill passed overwhelmingly with bipartisan support. There was a unanimous vote in the state senate and a 40-17 vote in the state house. The Arizona State Board of Cosmetology did not oppose the bill. Those women won a competition to get investment backers for their new business and are moving on. It is an incredible story of innovation and entrepreneurship as the result of a bill very similar to the one you are considering.

In section 6, the bill clarifies that makeup artists may work for compensation in a salon or other establishment licensed by the State Board of Cosmetology without obtaining a cosmetology license. This is to address the fact that many salon owners cannot find individuals who can work as a makeup artist. The licensees who are graduating from the cosmetology schools do not possess the skills to work as makeup artists. Other states allow nonlicensed individuals to work in licensed establishments and this brings that innovation to the state of Nevada. The bill removes the requirement that individuals who are licensed to practice cosmetology in other states must first pass a national exam before being granted reciprocity to practice in Nevada.

The national exam is a fairly recent innovation, having been introduced in 1999. There are many individuals who hold licenses in other states who have not passed that exam, but those people, if they move to Nevada, find that they are not eligible for a reciprocal license unless they first take the exam. It cuts off their ability to earn money by continuing to practice. Removing that exam requirement allows those individuals to continue working.

Chairman Kirner:

Are there any questions?

Assemblyman Hansen:

Do you have any evidence that there have ever been any public safety issues from makeup artists in any other states or Las Vegas where it obviously is a big deal to make up movie stars?

Tim Keller:

In the course of litigation, we asked in discovery for any evidence that any individual had been harmed by either a licensed or unlicensed individual as the result of the application of makeup to that person. They could not produce a single instance of anybody ever being harmed in the state of Nevada from the application of makeup. They could only provide general information that individuals who use unclean instruments or other things could contract pinkeye or other transient, short-lived issues.

Assemblyman Hansen:

So there is no public safety reason to insist that this little branch of the cosmetology world is in need of regulation.

Tim Keller:

The board was unable to find any evidence that the public health or safety was at risk in the course of our litigation. It is not a public health or safety concern.

Assemblywoman Kirkpatrick:

Did you say that you are in the middle of a lawsuit?

Tim Keller:

Yes, we are in the midst of litigation. We have received a decision from the U.S. District Court. That decision has been appealed to the U.S. Ninth Circuit Court of Appeals. That case is currently stayed as we go through the legislative process.

Assemblywoman Kirkpatrick:

I had a conversation with some makeup artists and they said they went to school. Did you say that a makeup artistry school is not an option in Nevada?

Tim Keller:

If an individual attends a licensed cosmetology school, they have three options. They can pursue a license in cosmetology, aesthetics, or nail technology. No matter which of the three they chose, they would not receive any instruction to become a makeup artist. That is exactly what happened to my client, Lissette Waugh. She went to cosmetology school and got her aesthetics license, but did not receive any of the necessary skills to become a makeup artist, which is what she wanted to do. She had to go out and obtain that training on her own. In 2010, seeing the desperate need for a school that actually provides instruction in makeup artistry, she opened the L Makeup Institute. Her school provides instruction to individuals in the art and artistry of

makeup. They have applied to and received a license from Commission on Postsecondary Education in the state. Kyle Waugh, the business operations manager, is available to answer questions about that license.

Assemblywoman Kirkpatrick:

I had a completely different discussion about a 200-hour training program that the makeup artists had to take specifically to learn about skin care.

Tim Keller:

If it was 200 hours, it was probably my client's school. The requirement for an aesthetician license is 900 hours.

Assemblywoman Carlton:

I have some concerns about there being a stay in the litigation waiting to see how the Legislature deals with this issue. I think that decision should be based on the law at the time of the occurrence. I had personal experience with a reaction to theatrical makeup which resulted in immediate blistering to my skin. If this bill passes and that happens to someone, what recourse would they have? I do not think the salon owner is going to be held responsible.

Tim Keller:

The reason the lawsuit is stayed is because if this bill passes, it would result in the lawsuit being moot and then dismissed because there would no longer be a need to continue the litigation. The reason the court decided to stay it was because there was a bill which would potentially moot the lawsuit. They did not want to hear and decide an issue that would simply go away if the Legislature passed this bill. The lawsuit will essentially disappear if this bill passes or another bill passes that addresses my client's concerns.

As to what recourse individuals would have, they could complain to the Department of Health. They could complain to the business owner and file a lawsuit for damages from a poor application of makeup. It is like any other business that harms a consumer or client. If a person were harmed in a licensed establishment, that would be their only recourse. The State Board of Cosmetology does not provide injured individuals any recourse if they are injured in a licensed salon. They can receive the complaint, inspect the salon, and try to take corrective action.

Assemblywoman Seaman:

I owned spas in California for many years, and I am a licensed aesthetician. There are recourses through the law and the Health Department if the client finds her skin has been damaged.

Assemblyman O'Neill:

Are we talking about the people who apply makeup in department stores?

Tim Keller:

The people who work at the makeup counters are exempt from the current licensing scheme and do not need a license to apply makeup to the public. This bill would not change that status. It would clarify their ability to attend a school like Lissette's without the school having to change their business model and become a cosmetology school.

Assemblyman O'Neill:

Why are they exempt?

Tim Keller:

They are exempt because there is already a statutory exemption for individuals who apply makeup as part of a demonstration of the product for the purposes of selling that product. This bill will make it clear that that is permissible.

Assemblywoman Fiore:

I see this bill as needed because if we do not pass it, we will eventually create more licenses and more hassles to do what we normally do on a daily basis. How many jobs do you think it will create in Nevada?

Tim Keller:

I cannot give you a concrete number. Lissette Waugh in Las Vegas could tell you how many students their school has graduated since 2010. That would certainly give an idea of how many jobs have been created already. This would ensure those numbers would continue to grow.

Assemblywoman Seaman:

We have an amendment ([Exhibit H](#)). I spoke with Gary Landry, Executive Director of the State Board of Cosmetology, and we have agreed that those who took their exam prior to the national exam being offered in 1999 would be able to get reciprocity.

Assemblywoman Neal:

In section 5, would the language make them an unregulated industry? Who would create this industry? When we heard Assembly Bill 246 in this Committee, they dealt with schools under all the branches of cosmetology which could include makeup artists.

Tim Keller:

This bill clarifies that makeup artistry is a separate occupation that does not fall under the jurisdiction of the Board of Cosmetology. For those individuals who are practicing makeup, they would not be regulated by the Board or any other state agency. They would be able to offer their services unregulated. As for the schools, they are regulated by the Commission on Postsecondary Education. That ensures that the students who enroll in the schools are protected if the school went out of business; they could receive reimbursement for their tuition and other things. The students are protected by the Commission.

Assemblywoman Neal:

In A.B. 246, there were provisions to give flexibility so people who wanted to create a school under other branches of cosmetology would now be included, such as makeup artists. I thought that was rectifying the district court case.

Tim Keller:

That bill did have a provision that would allow the State Board of Cosmetology by rule to allow schools of cosmetology to provide courses that would ultimately not lead to licensure as either a cosmetologist or an aesthetician. Unfortunately, that bill provided no guidelines as to what the Board could impose on those schools. It would still require the schools to become a school of cosmetology and it is unclear whether those rules would still require schools like the L Makeup Institute to ultimately teach one of the full branches of cosmetology. Even if they could simply teach makeup artistry, that bill would have the same result as far as I can read it. Those individuals would still be permitted to practice without the cosmetology license because it would be clear that the courses they are taking do not lead to licensure as a cosmetologist or aesthetician. The practical effect is the same with regard to practicing cosmetologists and this bill removes an unnecessary level of regulation by the State Board of Cosmetology on the schools.

Assemblywoman Bustamante Adams:

Las Vegas is very different. We have over 40 million visitors per year, and it is quickly becoming the wedding capital of the world. What I understand from this bill is that other people from other states could come in and compete for the business to apply makeup. Is that what you are saying?

Tim Keller:

No, we are saying individuals who live in Nevada can go to a school here.

Assemblywoman Bustamante Adams:

Does that prevent someone from coming in from California and Arizona to compete with the people who have that business here now? You would not have to have a license and there would be no safety protections.

Tim Keller:

They can do that now.

Assemblywoman Bustamante Adams:

You may want to check that. I will ask the Board of Cosmetology to address that later.

Assemblywoman Diaz:

Most people will see makeup artistry under the umbrella of cosmetology. How many other states make the distinction that makeup artistry is unregulated, but everything else has to be?

Tim Keller:

It is a very gray area. There is only one state in the nation that affirmatively requires makeup artists to be licensed. Because cosmetology schools all over the country do not provide individuals the necessary instruction to actually go out and work as a professional makeup artist, most makeup artists are not licensed by a state board of cosmetology. Increasingly as the art and artistry of makeup is becoming more well-known, we are seeing that state boards are starting to overreach their jurisdiction by demanding that individuals who already have the skills to work as a makeup artist now go to a school and take up instruction in topics that are not part of their practice while not receiving any instruction in how to be a makeup artist.

Assemblyman Silberkraus:

I was thinking of a fairness issue. If you have a wedding and hire a photographer who has a makeup artist, they do the makeup for the ceremony. But if you are a less privileged couple and you cannot afford a professional wedding photographer, you cannot hire that same makeup artist to do the same service for the same event, because you do not have a professional photographer attached to the makeup artist.

Tim Keller:

You are correct.

Assemblyman Paul Anderson:

I want to clarify the regulation. A lot of businesses do not have boards that regulate them, but there are still a lot of ways to make complaints against them.

In my business, my clients can sue me, take me to small claims court, not pay the bill, or use other remedies that are available. A lot of businesses operate without direct board supervision. What remedies would people have if the makeup artists do not report to a board?

Tim Keller:

They could report them to the Better Business Bureau, post a bad rating on Yelp, and report to the Health Department. They would have all the remedies that any other consumer would have when dealing with a business that is not regulated by a state board or agency.

Assemblywoman Seaman:

I am a licensed aesthetician, and I am allowed to apply makeup with no training.

Chairman Kirner:

Are there others to speak in support of this bill?

Perry Nixdorf, Owner, Paradise Salon- Spa-Wellness, Carson City, Nevada:

We are a licensed cosmetology establishment in a 7,000-square-foot facility. We apply makeup on our clients in a separate area from the cosmetology establishment because this law is in place. I am in favor of this bill. I think it removes unnecessary restrictions from a common practice. People can go to Macy's and have makeup applied, and those makeup artists are not regulated in the same way as if they came into my establishment.

As a business owner, I do not have the same ability to hire those same individuals. I have to hire licensed cosmetologists. Licensed cosmetologists do not go to school to become makeup artists. Makeup artists go to school to become makeup artists. It is very difficult to find a person to work for me because I am restricted. By removing these regulations, it provides an easier path for individuals who only want to do makeup and I support that. It levels the playing field between makeup counter department stores and my business. I currently have a very good person who applies makeup, but if that person were to leave, I would have immense difficulty in finding a replacement. If I could choose someone and train her myself and/or have her go to makeup school, I would have an easier time adding to my staff. There are makeup manufacturers who provide education to apply their makeup.

One thing we would like to do is offer classes for our consumers. We could not do that because it puts us in conflict with the regulations that say we have to be a school to teach a class. If makeup is removed from cosmetology, I could teach classes, but that is not possible. There are a lot of people doing makeup under the radar, and it criminalizes those individuals who would like to do that.

I cannot do makeup outside of a cosmetology establishment unless I hope that the Board does not show up and find me doing that. If this law is changed, we could do that for more consumers. The perception that it is harmful to the public is overhyped. I do not believe that is the case. I fully support this and believe it will improve my bottom line.

Assemblywoman Fiore:

Do you have body painting classes?

Perry Nixdorf:

I can provide a demonstration of body painting in my establishment, but I could not teach a class. Makeup is a substantial part of my business. A lot of beauty supply companies sell products that are professional only, and they are only allowed to sell certain types of shampoos and conditioners in brands if they have a cosmetology establishment. Beauty supply companies become cosmetology establishments so they can sell certain lines of products. They fall under the same rules and have to hire cosmetologists to sell the makeup in their establishments. I am pretty sure they would be pleased if they could hire someone and train them the way they want without the undue burden of licensure.

Assemblyman Hansen:

My oldest daughter worked for years in the makeup department at Macy's. She won awards for her work, but she received no training. There are many women going to department stores and places like the ULTA salons who are having makeup applied with no health issues and no license. Are you aware of any cases in any of these stores where there has been a health concern or a legitimate public safety issue that may need to be addressed by regulation?

Perry Nixdorf:

I have been doing hair for over 38 years and not once has any individual told me that they got makeup applied and it went bad. I have heard that people have had allergic reactions to product, but they have not had an occasion where they believe that unsanitary conditions have caused a problem for them. The Board would want to regulate the sanitation conditions where makeup is being applied. My establishment is clean not because the State Board says it needs to be clean, but because the customers see it. Not being able to hire the people I want to hire has been a problem for me for years.

Chairman Kirner:

We will move to the testifiers in Las Vegas.

Kyle Waugh, Owner, L Makeup Institute, Las Vegas, Nevada:

We want to thank Tim Keller and the Institute for Justice for their tenacious work in fighting for us small businesses, and Assemblywoman Seaman for this important legislation.

A learning institution should be assessed on the quality and the relevancy of its curriculum, and also on the effectiveness of how that curriculum is delivered. The L Makeup Institute is the standard for makeup artist education in Nevada. Students and educators have relocated from as far away as Florida, Texas, Ohio, Illinois, and Wyoming to learn and teach makeup at our school because we offer courses exclusively in makeup artistry which include beauty, airbrush, body, and special effects. We have self-imposed standards that would exceed anything the Board could regulate. Our students have the option to choose a course based on their specific interest and employment objectives. Every course we offer teaches proper hygiene, sanitation, and sterilization. This is why people need to be professionally trained as makeup artists.

We are licensed by the Commission on Postsecondary Education in Nevada. The Commission reviews our curriculum and our financials, sets our refund policy, and audits our enrollment agreements and transcripts. We are required to post a bond and pay quarterly into a fund so that in the event any postsecondary school goes out of business, students will have their tuition reimbursed. We are also going through the accreditation process which requires certain completion, graduation, and most importantly, job placement rates.

We support A.B. 409 because it will create an even playing field for all makeup artists. Salon owners will add makeup departments and jobs because they will be able to tap into an existing pool of qualified makeup artists. Makeup artist agencies will come out from behind the shadows and expand because they will no longer have the fear of the Board issuing them a fine. We also support this bill because of what it will not do. It will not diminish the value of an aesthetician license. Skin care is not makeup, and makeup artistry is not skin care.

Chairman Kirner:

How many people have graduated from your schools since 2010?

Kyle Waugh:

I would estimate 300 to 400 in four years.

Chairman Kirner:

Are there any questions from the Committee?

Assemblywoman Bustamante Adams:

You have oversight, but it is not by the Board of Cosmetology.

Kyle Waugh:

In order to become licensed by the Commission on Postsecondary Education, we had to complete a lengthy application. Part of that application not only included audited financial statements to make sure we were financially viable as a school, but we also had to submit our curriculum. That is reviewed by the Commission. We are also required to provide quarterly reports regarding our enrollments and to pay per enrollment into the fund I mentioned earlier.

Assemblywoman Bustamante Adams:

I feel comfort in your having oversight. If someone has a complaint, would they go to the Commission to bring resolution? Do they apply some kind of disciplinary action if they feel you are not providing quality?

Kyle Waugh:

Yes, a student could file a complaint for a myriad of reasons.

Assemblywoman Bustamante Adams:

Do they apply a penalty? What happens if a customer complains?

Kyle Waugh:

We do not apply makeup on customers. We are just a school. I want to mention that California is licensed this exact same way. Makeup schools only teach makeup.

Assemblywoman Bustamante Adams:

How much do you charge a student?

Kyle Waugh:

It depends on the course he or she takes. Our courses range from five weeks to over six months.

Assemblywoman Bustamante Adams:

Can you give me a dollar amount?

Kyle Waugh:

It varies from \$5,000 to over \$18,000.

Assemblywoman Kirkpatrick:

What do you do for your students for placement? Are they independent contractors and on their own? What does the certification get them?

Kyle Waugh:

I will defer that question to my wife, Lissette Waugh, who is also the education director for the school.

Lissette Waugh, Owner, L Makeup Institute, Las Vegas, Nevada:

We have a great job placement rate. The types of jobs that we place our graduates in vary. I have employers from all of the local retail cosmetic companies continually calling me and asking me for graduate referrals. The graduates are also hired through makeup artist agencies in Las Vegas. They do freelance and many have their own mobile businesses as makeup artists.

Makeup artistry encompasses more than just bridal makeup. It includes special effects makeup, airbrush makeup, and body painting. There is a lot that falls under the umbrella of makeup artistry, and we want to recognize all of the other artists who specialize in all of the different aspects of makeup artistry. It is not just beauty; it is editorial, it is print, it is airbrush, and it is special effects. I have a lot of production companies that also call to ask for students. We have a 70 percent placement rate.

Randy Soltero, representing Local 720, International Alliance of Theatrical Stage Employees:

We represent many people in the entertainment industry including people who do hair, makeup, and wardrobe. We do not represent people who work in department stores. We represent makeup artists in the field of legitimate theater, showrooms, movie and television production, and special effects makeup. The people we represent in Nevada are not individually licensed as makeup people, but that is because they do more than just makeup. They generally do hair, makeup, wardrobe, wigs, and other things. They have to be licensed to do the hair portion and some of the cosmetology services, but there is not a specific license for makeup. We have a training program and teach makeup in an apprenticeship. We do not charge anything for that once the person becomes a member of the union. We represent hundreds of people in the entertainment industry who do this work.

Chairman Kirner:

Are there any questions? [There were none.] Are there others in support?

Amirah Flipping, Private Citizen, Las Vegas, Nevada:

I am attending L Makeup Institute, and I am a licensed cosmetologist. I went to cosmetology school for a couple of years and learned no makeup. We spent about one hour applying eye lashes and that was it. I do hair, and I went back to school at L Makeup Institute so I could learn what I needed to learn about

makeup. Every day at school there are job placement lists. I was funded by Goodwill Industries to attend the school. I think the school is necessary and important.

Assemblywoman Neal:

How many hours did you have to complete for your makeup artistry program?

Amirah Flipping:

I believe it is 380 hours. I started the course on January 12, 2015, and my last day is April 1, 2015. I took the full beauty course.

Chairman Kirner:

We will move to the next testifier in Las Vegas.

Monika Nicolli, Private Citizen, Las Vegas, Nevada:

I went to cosmetology school and got licensed. I received 15 hours of training out of the 1,500-hour course to learn to apply makeup. I did not know more than the average person. Now I attend makeup school to learn how to apply makeup.

Assemblywoman Neal:

Were your makeup artistry hours reduced because you had already been to cosmetology school?

Monika Nicolli:

No, because I attended when I was 18 years old.

Chairman Kirner:

Are there others in Las Vegas who wish to testify in support of A.B. 409?

Tom Devlin, Instructor, L Makeup Institute, Las Vegas, Nevada:

I am an instructor at L Makeup Institute. My expertise is in special effects makeup. I do not know anything about hair or aesthetician work. I do not know what is encompassed in a cosmetology license. I have been working in the industry for over 15 years. I have worked in film and television. I appeared on the show *Face Off* as a makeup artist. I have never had a job other than doing makeup effects. I teach students full-time and I will help them find work throughout their career. Makeup effects artists and freelance makeup artists bid for jobs and show up on sets to be employed. I do monster makeup, not beauty makeup. I do foam latex and silicone gel filled appliances. That is not something that is taught at a cosmetology school. I feel that what we are doing is very important. I feel the students who walk away from the school are going to have more opportunities.

Somebody asked, what kinds of jobs will it bring to Nevada? There is talk about a tax break coming for filming in Nevada and for bringing in crews from out of state. Movie companies will fly their crews, directors, cast members, and movie stars to Nevada in order to get that tax break. The reason they are being given the tax break is to hire local talent. They need to hire their wardrobe people, their craft services, and their hair and makeup artists. They are going to hire their crew here in Nevada to get the tax break to film a movie for a fraction of the price. Because they are going to pay their big money to the Hollywood stars, the director, and the camera crew, they will use our services. I have been in this industry and I have been nominated for an Emmy. With our connections, I will push my students to those opportunities. I urge my students to go to the Nevada Film Office and get on their list of local makeup artists.

Assemblywoman Bustamante Adams:

Do you develop the curriculum when you teach, and is there a section for skin care and how to protect the individual receiving the makeup?

Tom Devlin:

I have developed part of the curriculum. I was hired from out of state and relocated my family to Nevada to take the position. I taught their curriculum that stood as their Special Effects 101. I was the last stop on their fullest course. The students complete classes in sanitation before they get to me. Within my curriculum, I definitely make mention of sanitation. I am not going to let anybody apply makeup with a dirty brush or not use clean tools. They need to know what prosthetics can be reused and how to sanitize them. They need to know what should be thrown away immediately due to too much exposure or because it was in and around someone's eyes because we do not want to put that on another person. I wrote a curriculum called The Advanced Prosthetics that we have added into the school. We just finished our first class yesterday. These students have learned more skills because there is no one else in Las Vegas or Nevada teaching what I am teaching. If someone wants to learn how to make monsters for television, they cannot learn that in cosmetology school. They cannot go to a cosmetology school and learn to make full, multipiece foam latex zombies. This is makeup artistry, and it has been around since the 1930s.

Assemblywoman Bustamante Adams:

I wanted to confirm that they have sanitation in the curriculum. It is the first part before they get to you, correct?

Tom Devlin:

One hundred percent.

Nicole Prendergast, Instructor, L Makeup Institute, Las Vegas:

I am also a proud instructor at L Makeup Institute. I have been a makeup artist for 15 years and I was trained in California. This bill is amazing to me. I have a twin sister who is a licensed cosmetologist. She graduated two years before me. I had no interest in doing hair. I wanted to work on film and television. I had a great career doing that and then I moved to Nevada. I am a proud International Alliance of Theatrical Stage Employees member and have made a great living in Nevada working on multiple shows on the Strip. The one thing I cannot do is go into a salon and work with my sister. She cannot do makeup and I cannot do hair, and we cannot work together in the same establishment. You have heard from two of my students who graduated today from our school. I am proud of them and have seen their growth in makeup artistry in the three months they have been with me. They will go far given any opportunity.

Chairman Kirner:

There are no questions, so I will move to those who are neutral. Seeing no one, we will move to those in opposition.

Gary K. Landry, Executive Director, State Board of Cosmetology:

I would like to clarify the court case. It revolved around the State Board of Cosmetology enforcing the current laws of the state of Nevada. It is not something we choose to do. We are required to enforce the laws of the state. Mr. Keller is very articulate, but not very accurate on things he said. They won in one of six areas in the case and that is why they are going back to court. They could not prove to a judge that the Board did not have the jurisdiction or the ability to regulate.

Chairman Kirner:

Please move to the testimony involving A.B. 409.

Gary Landry:

The Board accepts most of the definitions of makeup artists and makeup artistry as stipulated in the bill. The definition in section 2, subsection 1 is acceptable. The definition in section 2, subsection 2 is acceptable as long as the instructor is not teaching for licensure. The way it is written is that they would not need to have any certification. The definition of makeup artistry in section 3, subsection 1, paragraph (c) is unacceptable. It would be better if the term prosthetic were defined in the context of makeup artistry to avoid conflicts with the medical community and further litigation.

The Board has no problems with the current exemptions ([Exhibit I](#)). In all currently exempted areas there is a party that is responsible for safe, sanitary practices to protect their brand image and avoid litigation. The Board agrees

with past legislators that the public is adequately protected by these instances. We are not fighting the exemptions. The Board has no problem with all the areas the people from the L Makeup Institute say their graduates work in, including movie studios, television studios, and fashion. Those are not regulated by us and we have no problem with them. This is not something we are fighting, and we are more than happy when things are resolved legally that we have people who can practice in an exempt manner with no licensure in those particular areas.

The one area where we do have problems is allowing unlicensed, untrained makeup artists to work at weddings. The wedding industry is a significant component of the Nevada economy. This is an area that is currently unavailable to licensed cosmetology professionals outside of the salon environment. We are trying to correct that through Assembly Bill 246. Allowing unlicensed, untrained makeup artists to practice in this area would expose this major industry to damaging publicity and news stories once the first tourist is either chemically or physically harmed by a self-proclaimed makeup artist. The problem with the bill is that it is fine to have a great makeup artist school in Nevada, but nothing in the bill requires anyone to attend that school. This bill says the way a person becomes a makeup artist is to say, "I am a makeup artist."

Our biggest problem is that anyone with no sanitation training, with no training in makeup, with no responsibility such as bonding or backing, can become a makeup artist. The only requirement to become a makeup artist is to be a natural person in Nevada. No regulation means exactly that. A natural person is anyone who can fog a mirror.

Regarding allowing unlicensed makeup artists in a licensed cosmetology salon in section 3, subsection 2, and section 6, subsection 3, paragraph (f) this is also a problem for the Board. Since 1931, no one has been allowed to practice inside a licensed cosmetology establishment unless they are licensed. We have no problem with the exempted areas. They can practice where they want because we have no jurisdiction, and we do not want jurisdiction of them. In a licensed cosmetology salon, we have jurisdiction and we have major problems with that.

Licensure provides many important safeguards and assurances to the public. The licensee has been vetted by an agency against specific criteria. A licensee is required to post the license, which contains a picture identification in his or her work area. The licensee is required to follow specific rules and regulations regarding sanitation and infection prevention. The licensee is subject to inspection for compliance with these rules and regulations.

The bill as proposed introduces unlicensed, untrained, self-proclaimed makeup artists, who have been exempted from all cosmetology sanitation laws and regulations and would reverse the public trust that has been in place for over 84 years. Our neighboring states of California, Idaho, Utah, Arizona, and Oregon and other states, including Colorado, Iowa, North Dakota, South Dakota, Missouri, and six others, do not allow unlicensed makeup artists to practice inside cosmetology establishments or for wedding services. California, the state with the most makeup artists, does not allow makeup artists to practice inside licensed cosmetology salons or to do wedding services. That is for the same reason that we have objections. If they are unlicensed, unregulated, and self-proclaimed, without any training, that is a dangerous situation.

Removing makeup artists from the cosmetology occupation is another area of concern. Licensed cosmetologists and aestheticians have the application of makeup as a part of their scope of services, and it is currently identified in the law. It is unreasonable and misleading to state that cosmetology does not include makeup artists. The Milady textbook company internationally produces the largest number of cosmetology school textbooks in the world. As part of a cosmetologist, aesthetician, or makeup training curriculum, Milady produces a 501 page textbook titled *Milady Standard Makeup* covering all facets of makeup science for use at cosmetology schools. I agree it does not include anything about prosthetics or special effects.

Exempting makeup artists from *Nevada Revised Statutes* (NRS) Chapter 644 and *Nevada Administrative Code* (NAC) Chapter 644 as in section 8, subsection 1, paragraph (f) is another problem. By exempting makeup artists from the requirements of NRS Chapter 644 and NAC Chapter 644, they are allowed to practice cosmetology services in all venues open to the public without any sanitation requirements and free of being cited by the Board staff for breaking the sanitation laws and regulations which apply to the state's nearly 26,000 licensed cosmetology professionals. The Board inspectors would not be allowed to cite or take action against a makeup artist even if they saw specific actions that are harmful to the public. If this were to pass, and a makeup artist was practicing in a salon and there were sanitation violations, they would be unable to cite them.

I spoke with Assemblywoman Seaman about removing the national exam for reciprocity candidates. We did not speak about a specific date. The year 1999 is well after the time that the majority of the states had adopted national testing. I think the Board would be amenable to an amendment of the amendment moving that back to 1990. Eliminating the limited license is also in the bill. The Board has not experienced any problems with the limited license

specified in NRS 644.315. Elaine Wynn lead the creation of this statute during the 2005 Legislative Session to allow celebrity cosmetologists to practice for events at hotels, like the Wynn and other major resorts in Nevada, for a limited time period to avoid the administrative process for permanent licensure with the Board. The Board is unsure why this would be proposed for elimination. We have not had any problems with limited licenses to date.

The Board is willing to work with the bill sponsors to revise the sections of the bill that would put the public in danger and provide the technical expertise necessary to achieve the goal of "right touch regulations."

Chairman Kirner:

Are there any questions?

Assemblywoman Fiore:

As a legislator, I look for overregulating industries. I have heard from some of the testifiers in Las Vegas that they have been through cosmetology school and did not get a lot of makeup training. I apply my makeup and I play with makeup with my grandkids, but when does it stop? What about if I apply makeup to a colleague or we go to CNN or Fox and there is a makeup artist? I think this opposition is a bit much.

Gary Landry:

When you go to CNN or Fox, those would be exempt activities, and we have no problem with that. There is a major corporation standing behind them and you would have some form of retribution.

Assemblywoman Fiore:

Then why can my daughter not help her girlfriend at her quinceañera put the makeup on all the girls? Some of these people cannot afford to hire makeup artists.

Gary Landry:

We are aware that people apply makeup to others. What we are opposing in this bill is interjecting an unlicensed, untrained person. The way the bill is written, to become a makeup artist, you say, "I am a makeup artist." You do not register with anyone, you do not train, you have no skills or anything we would normally want in a licensed salon. They could walk in and begin practicing. Most people operate as independent contractors, and the only recourse for a harmed citizen would be to go after that person who does not provide any verification of who he or she is. You are assuming they have been vetted, but under this bill, there is no vetting process.

Assemblyman Nelson:

What would you propose as a solution for people who want to practice makeup artistry in a salon and have said they do not get that training in cosmetology schools? Are you saying there should be a new category of licensure for makeup artists?

Gary Landry:

If a makeup artist wants to practice in a salon, we have an existing license type called demonstrator of cosmetics. They can apply for that. The only thing they have to prove to us is that they are who they say they are and that they are legally allowed to work in this country, which is not in the proposed bill, and that they pass a sanitation test. They are then licensed, and they can work in a salon.

Assemblyman Nelson:

What section of the NRS is that in? Is it a different section than the cosmetologists?

Gary Landry:

It is in the same sections where you would find cosmetologists, aestheticians, and nail technologists; it is just another license type. The requirements are light. You have to pass a sanitation test. We hold the supervisor and the licensee who has the cosmetology establishment responsible for the actions of the demonstrator of cosmetics. There is supervision. That is why we are baffled with makeup artists who say they cannot be employed in the salons because they absolutely can.

Assemblywoman Fiore:

How many issues have we had in Nevada with people putting on makeup?

Gary Landry:

We have received very few complaints because all of the people who work in a cosmetology salon are licensed. I cannot tell you how many people are affected at the makeup counters or others because we cannot handle cases of unlicensed people.

Assemblywoman Fiore:

So we have no problems.

Gary Landry:

We have no problems as a licensed salon with licensees applying makeup.

Assemblywoman Fiore:

But we do not have any problems with unlicensed people either.

Gary Landry:

I do not know.

Assemblywoman Fiore:

You would know because you would be getting the complaints. We have nothing on record, and we have no problems with people doing makeup at quinceañeras and weddings, yet we are here today to create control, licensing fees, and burdensome legislation.

Gary Landry:

We are absolutely not doing that. We are saying if you are going to work in a licensed salon, you should be licensed, and there is an existing license type for makeup artists. If you want to be a makeup artist and practice in a salon, you should be a licensed demonstrator of cosmetics and prove to us that you know sanitation. It is not a difficult test. Without licensure, if an inspector goes to a salon, the makeup artist would not fall under the jurisdiction of the Board.

Chairman Kirner:

We will hear testimony from Las Vegas.

Gayle Moore, Private Citizen, Las Vegas, Nevada:

I work with Expertise Cosmetology Institute in Las Vegas. I feel this is prejudicial. I am listening to Assembly people tell us what cosmetology schools are not teaching. I do not think anyone there has been in one of our cosmetology schools. The one testifier said she took a cosmetology course for 1,500 hours. Wherever she went to school, maybe they did not have aesthetics because the course hours in Nevada have been 1,800 hours for 25 years. We do teach makeup, prosthetics, and special effects in our schools. We teach makeup for quinceañeras and weddings. I applaud Mr. Landry for representing our industry. I have heard many contradictory things. The owner of the school said that California is governed by its State Board of Cosmetology, but that is not true. They are governed by the Bureau for Private Postsecondary Education. That is why teachers in California do not have to have a license in order to be an instructor. They are not regulated by the Board of Cosmetology. The only thing the board does is test them. California cosmetology school is a 1,600-hour program. It is absurd to say we do not teach makeup.

To exempt any person who has not completed a nationally recognized written examination in the state or any other place that person is licensed is undermining our industry. I cannot imagine how we have become so

meaningless to the people of Nevada not to give them the best that we can without our training and licensing in the state.

John Davis, Private Citizen, Las Vegas, Nevada:

I work at Expertise Cosmetology Institute. I cannot say much more than my colleagues have said. Our aesthetic program is a 900-hour program. In that program, there is a lot of makeup that is taught. Our students have done movie makeup. We do theatrical makeup and they have even learned how to put on prosthetics. We have a multitude of different pictures we can show you. I am sorry for the students who did not get makeup training at their institutions; however, in all situations, students must check the curriculum being offered at schools. In Nevada, some schools teach braiding and some do not. Prospective students must learn what the schools are teaching. We teach airbrushing and prosthetics.

I do not have a problem with a specialty school in Nevada, but the school needs to have some type of regulations. All of our schools have some type of governing bodies. I have over 50 different forms from people not in attendance today saying that makeup artists, like anybody else, need to have someone to regulate them. They need to have curriculum that teaches sanitation and sterilization because there needs to be oversight on health and safety.

They can have a makeup school, but it needs to have a certain curriculum, it needs to be governed by someone, and it needs to have licensed makeup teachers who contribute to the economy of Nevada.

Miss Dee, Private Citizen, Las Vegas, Nevada:

I am in opposition to this bill. I want to know who is going to regulate these unlicensed people who want to seek employment in our licensed salons. How could we, in good sense, allow people unlicensed by the Board of Cosmetology to practice alongside of our licensees? I have no problem with the schools who want to teach makeup artistry as long as they are licensed accordingly. If an unlicensed makeup artist is found in violation on a routine inspection from the Board, and that person is found to be in violation of a sanitary measure, who and how is that going to be cited? I think these are valid questions that we need to ask. I have worked for 45 years and am still working behind the chair in the salon, and as an educator. It is critical that we teach and train our future licensed professionals how to obey the safety regulations for the public which is regulated by the Board of Health. I would like for all of us to look carefully into what we are doing here to uphold the standards of this industry.

John Grieco, Chief Executive Officer, Academy of Hair Design, Las Vegas, Nevada:

I have been with the Academy for 12 years. It is a cosmetology school that offers much more than hair. We offer aesthetics, hair design, and nail technology. In the state of Nevada it takes 900 hours for an aesthetics license, which takes six months full-time. We do approximately four weeks of that training in professional makeup so it is an extensive part of our curriculum. We have graduated over 5,000 students in the 44 years we have been in existence and professional makeup is a very extensive entity of cosmetology and the aesthetics program. We take the makeup component seriously in our program.

Chairman Kirner:

Is there any other opposition?

Victor Guerrero, Private Citizen, Las Vegas, Nevada:

I am an instructor at the Expertise Cosmetology Institute and I teach makeup. We have a 900-hour aesthetician program. In that program we train our students to do makeup. We go over the basics and sometimes we do prosthetics and fantasy. It is according to the skills or passion of the students.

Chairman Kirner:

Are there any questions? [There were none.] We will take one more testifier.

Liberty Elmer, Director, Paul Mitchell the School, Las Vegas, Nevada:

I support the comments of my colleagues. I oppose that the makeup school or makeup artists are not held to standards or required to be licensed as are aestheticians, nail technicians, or cosmetologists in Nevada. I agree that many good questions and concerns were raised today and there could be some room for compromise. I oppose this and want to elevate our industry and profession.

Chairman Kirner:

Are there any closing comments?

Tim Keller:

The demonstrator of cosmetics license that was mentioned earlier needs clarification. An individual who holds that license cannot charge to apply makeup. In order to obtain that license, which would allow them to demonstrate a product in a licensed salon, they have to do a self-study packet, pass a written test on sanitation, and pay a small fee, but they cannot work as a makeup artist in a salon. This bill is about economic liberty, which is the right to earn an honest living free from irrational and unreasonable government regulation. The current licensing scheme is irrational because of the wide range

of exemptions that already exist in Nevada law for individuals to work as a makeup artist in a wide range of settings, but not every setting. This bill levels the playing field for all makeup artists. The current law is unreasonable because in order to work in a licensed salon as a makeup artist, you have to take 900 hours of training and take courses costing thousands of dollars and pass a significant examination, none of which teaches or tests makeup artistry.

Assemblywoman Seaman:

I agree with what Mr. Keller said. I went through training and post education and cannot apply makeup and would not because it is not my field of expertise.

Chairman Kirner:

I will close the hearing on A.B. 409 and open the hearing on Assembly Bill 249.

**Assembly Bill 249: Makes various changes relating to collective bargaining.
(BDR 23-521)**

Assemblyman Jim Wheeler, Assembly District No. 39:

Assembly Bill 249 makes changes in the collective bargaining section of *Nevada Revised Statutes* (NRS) Chapter 288. In reality it is a financial sustainability bill. This bill does not favor, in my opinion, the municipalities or the unions. It creates a financial stability in negotiations to make sure that both parties are happy. We have worked with union representatives, and they asked for some slight changes which we have provided in a conceptual amendment ([Exhibit J](#)).

Mary Walker, representing Carson City, Douglas County, Lyon County, and Storey County:

The Nevada Association of Counties is at another hearing and wanted me to relay that they are also in support of A.B. 249. We support A.B. 249 because it provides for greater transparency of the collective bargaining agreements and puts sound fiscal policy into the collective bargaining process. Mr. Wheeler, Mr. O'Neill, and I requested the unions meet with us regarding this bill. At that meeting, the unions did bring up some things which needed to be clarified. The amendment ([Exhibit J](#)) provided to you today, which is on the Nevada Electronic Legislative Information System (NELIS), is the result of trying to address the unions' concerns.

Assembly Bill 249 does three things. First, it provides for greater transparency by requiring the local government employer to place the proposed collective bargaining agreement on its website 21 calendar days in advance of action on the agreement by the local governing body. Second, it inserts a requirement of a finding by the chief executive officer, fact finder, or arbitrator, regarding the

local government's financial sustainability in granting monetary salaries and benefits. Third, it also provides for a three-month general fund balance of 25 percent of expenditures, not available for collective bargaining.

Inserting a finding of a local government's financial sustainability in granting monetary salaries and benefits is critical to the long-term financial health of the local government. Currently, a fact finder or arbitrator only looks at the local government's "ability to pay." If you have a one-time sale of a property and that revenue goes into the general fund, under current statute it would be available to pay for ongoing salaries and benefits. We do not use one-time monies for ongoing expenses in our own homes, why would we do so in local government collective bargaining?

Inserting a finding that a fact finder or arbitrator determine not only the ability to pay but also the long-term financial sustainability of an award would help ensure local governments do not get into financial trouble in future years. Unions may say if we only have a one-year contract, why would the fact finder or arbitrator be required to determine financial sustainability over a three-year time frame? My response is because a one-year contract includes increases in ongoing salaries and benefits. Those salaries and benefits do not stop in one year. They are ongoing into the future. We have to look at the entire fiscal impact of the salaries and benefits over the long term, not just a short-term, one-year snapshot. Salaries and benefits comprise 75 to 85 percent of local government operating expenses. We must have responsible fiscal policy guiding the collective bargaining process.

In A.B. 249, determining financial sustainability by a fact finder or arbitrator means they cannot consider any nonrecurring revenue or nonrecurring transfers or any money reserved to pay current or future costs of health benefits for retired employees or workers' compensation benefits. However, they may utilize nonrecurring revenues or transfers for nonrecurring expenses; this would be financially sustainable.

Assembly Bill 249 also does not allow a fact finder or arbitrator the ability to utilize money reserved to pay current or future costs of health benefits for retired employees or workers' compensation benefits in order to assist the local governments in funding these long-term liabilities. A union cannot have it both ways. They cannot bargain to get long-term retiree health benefits and workers' compensation benefits, and then when the local government is prudent enough to begin to fund the unfunded liability, they try to get that money for salary and benefits. They cannot have it both ways.

Assembly Bill 249 also provides that a three-month expenditure of the general fund balance is not available for collective bargaining. Today in Nevada law, local governments have very limited financial stabilization tools. There is *Nevada Administrative Code* 354.660, which allows for a one-month or 8.3 percent operating fund balance not available for negotiations. The 10 percent stabilization fund can only be used for declining revenues and natural disasters such as flooding or wildland fire.

These limited tools did not work during the last recession in eliminating layoffs or service level reductions. In essence, they were not enough. They did not work. With these limited tools, many local governments in Nevada still experienced a 15 to 30 percent reduction in revenues and had no choice but to reduce staff by 15 to 30 percent.

What local governments need is for sound fiscal policy to be inserted into the collective bargaining process. Assembly Bill 249 is a step to achieving this.

The Government Finance Officers Association (GFOA) has recommended local governments have a minimum unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenses. Furthermore, GFOA states that a government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended two-month lever. For example, the GFOA cites the dependence on volatile revenue sources, such as Nevada's local governments' reliance on the sales taxes through the Consolidated Tax (CTX) Distribution as a reason for a higher than two-month fund balance.

To illustrate this point, Nevada's local governments have experienced a significant decline in statewide consolidated taxes. The CTX collections declined by 5 percent in fiscal year (FY) 2007-2008. In FY 2008-2009, the CTX collections declined by another 13 percent. In FY 2009-2010, the CTX collections declined by yet another 10 percent for a total decline of 28 percent in the three-year period. In FY 2013-2014, the CTX collections were just under \$1.2 billion, which is still 9.5 percent below the CTX collections from FY 2006-2007. Therefore, we still have not caught up from the recession.

In addition, property taxes, which are one of the primary sources of local government revenues in Nevada, declined significantly during the last recession. Property taxes are only distributed to the local governments four times a year or on average every three months. A local government needs a fund balance which is sufficient to pay for operations during the months the property tax revenues are not distributed.

In our own household finances, experts always tell us to have operating savings equivalent to six months of expenditures. We are only asking for three months' operating fund balance. Unions may say local governments have the 8.3 percent fund balance and the 10 percent stabilization fund, so that is 18.3 percent local governments have available. But as we have seen in this last recession when up to 30 percent of local government jobs were eliminated, it is not enough. The current system does not work. It does not provide financial stability to the local government services it provides to its taxpayers, particularly in times of recession.

We need to take the gamble out of the current system by establishing sound fiscal policy, as A.B. 249 will do if it is enacted. A higher fund balance will help provide local governments the ability to meet the demands of recessions yet to come. It will reduce the need for layoffs and service reductions to our citizens until local governments and the unions can sit down and cut costs together, hopefully without layoffs or reductions in service during recessionary periods.

There are a couple messages A.B. 249 would send to local governments and its unions if it were passed. First, it would be telling local governments they need to be financially sustainable, and they need to prepare for the next recession. Second, it tells the fact finders and arbitrators they are required to look at the long-term financial ramifications of the awards they give, not just a short-term snapshot which will ultimately get local governments into future monetary difficulties. We would appreciate your support for A.B. 249.

Assemblyman Wheeler:

There are only three main sections of the bill. The rest are repetitive. Section 1 is about the sustainability of the bill which helps keep the counties and the employees' contracts sustainable. Section 4 is about the transparency of the bill, which is the 21 days that Ms. Walker was talking about regarding putting a notice on a website to be sure the people of the municipality or county are able to see it. Section 8 talks about the fund balance.

Chairman Kirner:

Are there any questions?

Assemblywoman Kirkpatrick:

I have a hard time agreeing with some of the things you have said because we passed Senate Bill No. 98 of the 76th Session, which required everybody to reopen contracts if local governments got into a situation. What I find frustrating in the past six sessions is that this not just the unions' fault. This is the fault of local officials and management in government. Here we are once again trying to fix the problems so they do not have to say no. Local officials

are just as guilty in this entire process and they need to be held accountable. I find it interesting that we have not seen any of them here as we talk about this issue.

I find it disappointing that you talk about the Consolidated Tax Distribution dropping when Douglas County was one of the counties that did not pay sales tax on construction, which affected the CTX. That is not this bill and I will take that up at a different time. I have had this conversation with you, Mr. Wheeler, but I am responding to Ms. Walker's statements. We all know that sales tax collections are up and property taxes are still down and declining. When you talk about the ending fund balance—and I understand your background and experience—where does it say in this bill how it is determined whether money is set aside? We have seen cities and counties circumvent their sewer funds and raise fees so they can use the funds. We have seen other municipalities put money in an imaginary bucket just in case they need it and do not do anything with it. This is a two-way street and this is not a partisan bill. There are just as many Republican union members as there are Democratic union members and nonpartisan union members.

I want to have a real discussion about this ending fund balance because it is easy to broadly put it in there to give everything across the board, but it does not solve the problem. That creates a problem where no one can agree where the dollars should go, how they get spent, whether they are subject to it or not, and we will end up in a million lawsuits. If we are trying to solve a problem this session, let us solve what local government believes is the problem. I do not see that fix in here.

I would like to see more detail in section 8. Legislative intent this session is going to mean a lot. We know more than anything that every city and county attorney interprets everything differently. I want to know the legislative intent in section 8. There is a national standard that we look to on local government finance and you know that more than anyone in this room, Ms. Walker, and that is 16.6 percent. I do not see that in this bill. The accountants who need to comply with this need a number.

Mary Walker:

I have the national standards with me. This is a recommendation of the Executive Board of the Government Finance Officers Association:

GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain an unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating

expenditures.... Furthermore, a government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level.

They talk about what factors to consider and one is the predictability of revenues. I stated that the Consolidated Tax went down three years in a row for a total decrease of 28 percent. The guidance that we get nationally is that you need a minimum of two months just for cash flow. July and August are the first two months of the fiscal year, and we do not get property tax collections until the last day or two of August, or the first couple of days in September, because people do not have to pay them until mid-August and then it gets distributed to local governments through the counties. There are two months when you are not getting property tax revenues. You have to have enough of an operating fund balance for cash flow.

The thing that the national standards state, which I believe is correct, is in places such as Nevada, where revenue sources are unstable, and our Consolidated Tax is so volatile, if you have an emergency situation such as September 11, 2001, we immediately go into a recession. People stopped flying in planes and did not travel. We were in a recession for almost two years. We were in a recession from 1981 to 1983, 1991 to 1992, 2001 to 2002, and in 2008 to 2012. We have had four recessions in the last 35 years. We will have another one. These national standards are saying that the local governments should keep two months in their regular operating funds, but if you have unstable revenue sources, you need to account for that.

Assemblywoman Kirkpatrick:

That is not helping to answer my question. Two to three months is very broad in every local government's decision making. Why not have a percentage in there so that we know what that is and we do not have all these attorneys agreeing to something different. I am asking why not put a number in to make it very clear what the expectation is? Everyone knows what 16.6 percent is of the prospective dollars. Why not go that direction instead of leaving it broad for interpretation.

Chairman Kirner:

I thought you were specifying a 25 percent number?

Mary Walker:

Yes, we are, which is three months.

Assemblywoman Kirkpatrick:

Why is the 25 percent considered three months when the national standard for two months is 16.6 percent?

Mary Walker:

The national standard is not two months; it is a minimum of two months and more if you have unstable revenue sources. The national standard says in our situation in Nevada, with our unstable revenue resources, we need more than two months.

Chairman Kirner:

Are there other questions?

Assemblywoman Neal:

In section 1 it talks about potential loss of revenue. You have stated that we have an unstable source of revenue and a recession is bound to come. How do you calculate potential loss of revenue if the protections could be the result of negotiations for employees? How do you determine potential loss if there is always a potential loss? It is a never-ending story. The other side is, when are we going to get real and fund the state appropriately at an adequate level? It cannot always rest with the employees not being able to negotiate and work with the cities, because the situation is a long-term situation. To me, it is unfair because there is no balance. At least have a balance that says if a government entity appropriately used the funds that they had in place, then a negotiation of financial sustainability is an appropriate conversation.

Mary Walker:

The term "potential loss of revenue" was actually something that bill drafting put into the bill. I think they are looking at financial sustainability that a fact finder and an arbitrator would have to determine. You are correct that you cannot predict a recession. What if something happened in the Legislature or the state's largest employer left the state? Those are the types of things that an arbitrator and fact finder would take into account in looking at financial sustainability. You may want to look at potential increase or loss of revenue because they need to look at all factors at that time.

Assemblywoman Neal:

Let us consider Fernley. They will never get to a point where they are sufficient and financially sustainable. If this law passes, it opens a door for them to talk about and address their 1981 incorporation and the fact that the Consolidated Tax came into existence before they were incorporated. How do you deal with that reality and say you can use this and negotiate? The reality is

the root problem, and the cause is not because of the employees. The bill does not speak to the various situations that exist in all of our counties. That to me is unfair.

Mary Walker:

The fact finder and arbitrator is going to be looking at all of those factors. They do today. I am sure Fernley uses the arguments you just stated when they go to a fact finder and arbitrator.

Assemblywoman Kirkpatrick:

What does the fact finder do?

Mary Walker:

There are processes. You negotiate with your employees. The next level is mediation, where a mediator tries to help the parties come to an agreement, and at the next level it goes to fact-finding. Under fact-finding, you can agree to either have it be binding or nonbinding fact-finding, but both parties have to agree to that. In the fact-finding, they look at just the facts and they give a recommendation. If it is binding, you do what the fact finder tells you. If it is nonbinding, it is just a recommendation. The last level is arbitration. Arbitration for police and fire personnel is binding, and the arbitrator will look at the different proposals and make a decision after looking at all of the data on what should be provided for salary and benefits.

Assemblywoman Kirkpatrick:

Are you giving the fact finder additional responsibilities to circumvent our arbitration? If the local governments want the Legislature to deal with this issue, then we should deal with it.

Mary Walker:

This does not circumvent arbitration at all. There is an additional requirement of the fact finder and the arbitrator. When a fact finder or an arbitrator decides an award under current law, they only determine the ability to pay. The ability to pay could be if you had a local government that sold a piece of property and said they got \$100,000 which goes into the general fund; that is open to the fact finder or arbitrator for negotiation for ongoing salaries and benefits. We are saying here that a fact finder does not just determine the ability to pay, but he also needs to look at the long-term financial sustainability. They would look at a one-time sale of property and decide that cannot go towards ongoing salaries and benefits because the next year they will not have that \$100,000 again. What happened during the recession, if they did have some one-time resources, they could provide a bonus with that money. That would be financially sustainable. It would include one-time revenues and one-time expenditures.

Assemblywoman Kirkpatrick:

Interpretation is everything. I think Consolidated Tax is not a revenue that you can count on every time. You are never going to have that same dollar amount unless you are a guaranteed county. The tax is actually going to change based on whatever resources we have from the sales tax. When you say that you cannot count on any revenue that you are not sure that you will get the next time, that is your entire budget. That is the entire local government budget because every one of your dollars is unpredictable. Shame on Nevada because we do not have anything we can count on tomorrow because we count on 90 percent of our dollars to come from our tourist base. You will never have even \$1 that you can guarantee unless it goes into the sewer fund, and that is tied up now because local governments kept using it for other things and raising the fees. From my perspective, there is no revenue source that is guaranteed in our state.

I want you to explain in section 6, subsection 7, paragraph (b) the legislative intent regarding retired employees or the future cost of health benefits or current cost of health benefits. I worry that it is getting harder to recruit people to our state.

Mary Walker:

Legislative intent is very important. I think the best way to answer your questions is to go through the amendment ([Exhibit J](#)). We corrected some of the concerns of the union in the amendment. It basically has three sections, but it says the same thing. One is in the fact-finding section, the second is the arbitrating section, and the last is for school districts. Basically, what we are saying here is that a fact finder would determine the amount of compensation and monetary benefits that is financially sustainable for the local government employer. In making those determinations, the fact finder shall not consider any nonrecurring revenue or nonrecurring transfers. Then I included excluding for nonrecurring expenditures. That is the example I tried to give about the one-time sale of property that could not be used for ongoing salaries and benefits, but you could use it for nonrecurring expenses like a bonus. One-time revenues could go for one-time expenses, and ongoing revenues go for ongoing expenses. The Consolidated Tax is recurring. It may decrease or increase, but it is a recurring revenue source and is available.

One question that the unions have—and it may go to your concerns—is what if a local government is setting aside funds for something such as retiree health? A lot of the local governments are now funding an Other Post-Employment Benefits (OPEB) trust. For example, Carson City may budget in their general fund for a certain amount of dollars in their services and supplies and then it transfers over to the OPEB trust. While it is in the general fund, the local

government can reserve it for that purpose. The question from the unions was what if you had a situation where a local government set aside \$1 million to go into the OPEB trust, but something happens? The local government says we are hitting a recession or a business left town, so we are not going to use that money for the OPEB trust. The unions pointed that out. So I said if the funds go back to the governing body and they decide to use the funds for some other purpose, it would be available for negotiation. We tried to address the concerns the unions had, and that language is in the amendment.

[Assemblywoman Seaman assumed the Chair.]

Vice Chair Seaman:

Are there any to testify in favor of the bill?

Justin Harrison, Director of Government Affairs, Las Vegas Metro Chamber of Commerce:

We are here in support of the concepts of A.B. 249. We believe there is a need for reform to the current system, and this bill brings increased transparency to the current process.

Vice Chair Seaman:

Is there anyone else in favor of the bill? [There was no one.] Is there any opposition?

Rusty McAllister, President, Professional Fire Fighters of Nevada:

We are in opposition to parts of the provisions of A.B. 249. We are not opposed to section 4. There is a bill with very similar language in the Senate. It is Senate Bill 168, and Clark County offered a three-day window, which was accepted. There may be some conflicting language between the two bills.

We have a major issue with the bill in section 6, subsection 7, paragraph (b), which deals with the amendment proposed by Ms. Walker ([Exhibit J](#)). We met with Assemblyman Wheeler and Ms. Walker on this. We agree with the part about nonrecurring funds. We have concerns about the future costs of health benefits for retired employees or workers' compensation benefits. After reviewing the proposed amendment, we do not believe it completely addresses our concerns. We have a severe lack of trust with some of the local governmental entities. They are known for hiding money while we are in the bargaining process and putting funds in other places to keep the general fund balance down. When we talk about putting funds into retiree health care benefits or workers' compensation benefits for long-term liabilities, we support that 100 percent. But if you say you are going to do it, then do it. We are worried that they are going to put it in a line item in the budget and say it is for

workers' compensation benefits or retiree health care benefits and it is not touchable. After the contract is settled, they take the money for another need. We cannot reopen the contract, but they have a tremendous amount of revenue that is untouchable and all of a sudden it becomes free and clear because there are no negotiations for it.

We would like the amendment to say if a local government reserves money to pay the health care benefits for retirees or workers' compensation benefits, the money reserved cannot be used for any other purpose. We agree that they should be paying into OPEB liability, and they are currently pay-as-you-go for workers' compensation. Most of the self-insured employers are pay-as-you-go. For example, for heart and lung liabilities, they do not put money away in reserve; they pay as they go. This will not make them do that. If they had done that a long time ago, they would not be faced with some of the liabilities they have now.

We have major concerns with section 8, subsection 3 regarding the 25 percent of total budget expenditures from the general fund. Any good financial person will have over a 24 percent ending fund balance. This does nothing to keep them from putting money in all of the other special funds. Some of the local governments have as many as 12 to 14 special revenue funds that they can keep reserves in. They move money from account to account on a daily basis. You will never see a general fund reserve fund of 25 percent. They will always move the money somewhere else. We talked with the Chairman about changing the 25 percent to 16.6 percent and putting something in that applies to all general and special revenue funds combined that receive revenues from property taxes and local government tax distribution accounts. Combine all of the special revenue funds and the general fund and make it 16.6 percent.

I talked to Beth Kohn-Cole, who is a member of the Committee on Local Government Finance. I have an email from one of the finance directors for one of the large local governments in southern Nevada that says that 16.6 percent is best practice and is recommended by the GFOA. We think that is a reasonable amount up from 8.3 percent. It matches language that is currently in Assemblyman Kirner's bill, Assembly Bill 182. We think that is a more reasonable option.

We also think that it should be combined from all revenue funds. We saw the letter ([Exhibit K](#)) from the Nevada State Education Association that is asking for them to be excluded from this. Interestingly enough, there is language in Senate Bill 168 that does the same exact thing to create a 25 percent reserve fund balance that is not touchable. There was an amendment placed in the bill on the day it passed out of the Senate that says except for school districts.

It concerns us that we are being singled out, and it creates a disparity among local government entities.

Michael Giurlani, President, Nevada State Law Enforcement Officers' Association:

I am also speaking for Nevada Association of Public Safety Officers. I agree with the testimony of Rusty McAllister.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; and representing Washoe County Public Attorneys' Association; and Washoe School Principals' Association:

We also support the comments by Rusty McAllister in opposing A.B. 249 for the reasons stated. I want to talk about the financial sustainability language in section 1. We met with the bill sponsors and Ms. Walker. We tried to educate her as to our concerns with that. All of us agreed that we had a major concern over financial sustainability. Every one of the associations that I negotiated for during the fiscal crisis in the past few years stepped up to the plate in the form of concessions, and we helped local governments get through that. On the backs of local government employees, police, firefighters, and others, we stepped up to the plate.

The problem I have with the definition of financial sustainability is that in 2011 we all came to the table and developed language in NRS 288.150, which is in section 3, subsection 2, paragraph (w) of the bill, that provides us with the ability to negotiate fiscal emergency language during the course of a contract when we negotiate over a single year and it goes to a multiyear agreement. The provisions in law are already there to have that happen, and some of the agencies have done that and some have not because it was a negotiated process. I want to know why we are going out three years when under the provisions of fact-finding in the bill in section 5, subsection 7, paragraph (a), subparagraph (1) there are areas that concern what a fact finder must look at. A fact finder looks at three areas when we reach an impasse and we go to mediation and fact-finding which is advisory and binding. It is only binding if both parties agree. The fact finder first looks at the ability to pay, and it comes down to trust and credibility. If we as labor do not trust management, we ask them. If they say they do not have the ability to pay, then we look at their financial documents with our certified public accountants. If they say they have the ability to pay, we still have to go to two other sections. Disregarding the strike-outs, if you go to paragraph (b) on page 7, it says that, "the fact finder shall consider, to the extent appropriate, the compensation of other government employees," and then it says a "consideration of funding for the current year being negotiated." They are already bound by that.

We are not talking about inexperienced fact finders. They are trained, experienced arbitrators. We usually spend the first six hours of a fact-finding educating the arbitrators as to all of the positions in Nevada. We have three, maybe four issues to be considered, including: do they have the ability to pay, and does it have an impact on the health and welfare of the community? If you lose on both of those, you get nowhere and you do not go to fact-finding because there is no point.

Once there is trust and we see there is no ability to pay, it will have an impact on us as taxpayers. You look at comparables and if you do not make that standard, we are not going to fact-finding. That is where we make concessions. That is the process that is in law already. The sustainability that the sponsors are concerned about is also our concern. I have been doing collective bargaining for 31 years and the process works.

The amendment that was submitted ([Exhibit J](#)) is crucial. In our discussions we addressed with Ms. Walker the sections about nonrecurring income. There were bonuses given in Washoe County last year, and our concern was in the original bill about the bonuses. She testified that the bonuses were in place. Bonuses are one-time taxable monies that if you have nothing else, you can give them to employees in an effort to show you care about employees to get through the process. As stated, in the past, some counties have budgeted OPEB monies, and it never goes into the account. At the end of the year there is a sizeable amount of money that is not touchable because it is supposed to go into the trust. That is why we asked Ms. Walker to put a period of time in all three of those sections and then we can live with it. If you tell us that you want to fund the unfunded liability, we are in agreement, but do not hide it and play games with it.

There is another county in the state that deals with the ending fund balance by taking ending fund monies and beginning fund balances each year for five years, which we proved in fact-finding recently. The beginning fund balance was a little higher by about 8 percent. By the time it got to the ending fund balance at the end of the fiscal year, there was a huge increase. We were able to show that there was probably \$1 million in the beginning fund balance and in the ending fund balance there was over \$12 million. You can see the trust and distrust. Local governments have the ability to take money and transfer it. We have to look for that money and that is too bad. That is why we ask local governments to put it all in there. If you are going to use 16.6 percent, which we would like, make it real and make us trust so we do not have to do this all of the time. We have no problem helping the financial sustainability. We want that and we are taxpayers. We do care. We want a livable wage, we want our people to be retained, and we believe we have accomplished that. We tried to

determine what "fiscal emergency" is in 2011. We decided that it is a local government issue. That is why it is in NRS 288.150 currently.

Carla Fells, Executive Director, Washoe County Employees Association:

We are in opposition to this bill. Washoe County is one of the few jurisdictions that prefunded their retiree health benefit. The employees gave up cost of living allowances in order to prefund their retiree health benefits back in the early 1980s. It is now a trust and has grown. Washoe County sets aside an annual required contribution. What Mr. McAllister described previously happened to us in 2011. The county set aside \$22 million to go into the trust and they only paid \$13 million. All that was after we settled our contracts. One of our collective bargaining groups went to final binding arbitration and while we were suffering layoffs and reduced our staff, the arbitrator found that there was enough money and that bargaining unit got the raise they requested because it all came out after they had settled with the other bargaining units. There is some of that moving of monies, and those of us who do not have final binding arbitration do not get that opportunity to make the local government prove that they do not have the money.

We do not want reduction of services. In 2008 and 2009, we met with our finance people because we were trying to get a multiyear contract because we were suffering so many layoffs and such a downturn in the economy. They wanted to negotiate a "trigger document." It would specify the amount of the ending fund balance that would trigger the opening of negotiations on both sides. We started at 12 percent and the county started at 16 percent. By the time we came to an agreement, Washoe County agreed that we could probably do it at 13.5 percent. I find it interesting that 16 percent is being suggested now because we were in a recession, we were laying people off, we did not have money, and the county was being sued in the Incline Village settlement. Now times are better and monies are available, so I find it difficult to go to 25 percent for three months of savings because when we negotiate, we never get to see that.

We are opposed to this bill because we think it is too generous to local government, and we cannot balance this all on the backs of employees. The employees did not create this, but they have suffered from the cutbacks. During that downturn when we were reduced in services, no managers lost positions, but some of our people lost their jobs and we still came up with 13.5 percent.

Vice Chair Seaman:

Are there any questions?

Assemblywoman Kirkpatrick:

This question is for Mr. McAllister. In section 4, subsection 2, I do not particularly like this language, but I do not disagree with putting things on the website so people can see what the agreement was. There are a lot of people who get raises and public employees are going to have to show their raises, and everybody else's raises should come off the consent agenda, which they have been doing for years. When somebody gets a \$50,000 raise and no one gets to ask a question, that is an issue. I live in a city where a lot of people got a lot of big raises and no one said a word. If this language were a little different, would you have a problem, and do you think it is fair if we add some of those other local government officials and some of those contracts?

Rusty McAllister:

We have no problems with the transparency provisions in this bill. If they want to make it 21, 30, or 10 days, we do not care. With regard to equality, if we are going to make it transparent, let us make it transparent for everybody. Senate Bill 158, which will be heard in this Committee, dealt with some of that same topic. If you had a contract agreement that had to be posted online, all of the documents from the contract negotiations had to be posted online a certain number of days before the local government had a chance to actually vote and approve it. We offered an amendment in the Senate that said we agree, but not just for us. We need to make it for all management personnel, all non-bargaining personnel, and everybody. We can post the consent agenda and supporting documentation in the same amount of time online. That way, everybody who is interested will know exactly what the documentation is on what they want to spend the money on. There was a concern that that might be too much of a burden, but it really was not that much. That amendment did not get in the bill. The example used during that hearing was that one local government official was seeking a raise and there were 27 pages of documentation why that official should get a raise. Another local government had a consent agenda item to review a performance evaluation. When they reviewed the performance evaluation, there was a \$50,000 salary increase with no supporting documentation. We agree with the transparency, but we want it to be fair across the board.

Vice Chair Seaman:

Is there anyone else in opposition to this bill in Las Vegas or Carson City?

Marlene Lockard, representing Nevada 1107, Service Employees International Union:

We, too, are in opposition to this bill and concur with the testimony in opposition. When we heard testimony on S.B. 158, we put into the record that we agree with the transparency component in both bills. We could put into the

record a myriad of public contracts where millions of dollars of public money are spent and approved on the consent agenda in Clark County specifically. We think those kinds of contracts with private companies, public entities, and individuals being contracted that do not go through the normal hiring process should be posted online as well.

Vice Chair Seaman:

Is there anyone else in opposition? Seeing no one, is there anyone in the neutral position?

Jessica Ferrato, representing Nevada Association of School Boards:

The Nevada Association of School Boards is officially neutral on the bill because we have not seen all of the amendments. We are supportive of the transparency measures and think there needs to be some increased transparency in collective bargaining. We would like to work with the sponsor and be part of the discussion on the amendments.

Yolanda T. King, Chief Financial Officer, Department of Finance, Clark County:

I am neutral on this bill. I am concerned with wanting to combine the general fund and the special revenue funds. Accounting standards require that you have special revenue funds. The definition of those is that you collect it for a special purpose. For the most part, those special revenue funds are nondiscretionary. For example, within Clark County we have special revenue funds that collect grant funds. Those grant funds are collected solely for the purpose of the grants involved. We have special revenue funds for master transportation where we collect fuel taxes for a specific purpose. We have the residential construction tax. We have court fees that are used for a specific purpose. Combining and having the fund balance percentage applied to the general fund as well as all special revenue funds is a concern for me because they are nondiscretionary funds in special revenue.

Vice Chair Seaman:

Are you going to speak with the sponsor?

Yolanda King:

Rusty McAllister offered an amendment in the Senate that the percentage be applied to both the special revenues and the general fund. I am very concerned and opposed to including special revenues in end fund balances as part of that percentage. Currently, per NRS Chapter 288, collective bargaining agreements have to be posted as part of a public hearing. These are not placed on a consent item. I offered an amendment to a bill that took that transparency or that period of time down from ten days to three days. My reason was that by opening this up to a longer span of time than a three-day period, which is what

is required to post an agenda, it will delay when that agreement goes to a county board of commissioners or a council. It delays when the members will receive their increases or decreases. It was the intent to take it down to three days.

I have no opposition to this bill and I understand the intent is to allow the public a greater number of days to review the collective bargaining agreement, but it seems that the intent is for transparency and for the public to weigh in. However, in Clark County, we have lost arbitrations because we had already tentatively agreed to the collective bargaining. If the intent is to allow the public to provide comment with regard to collective bargaining agreements, and it is changed from what was agreed to, and we go to arbitration, there is a chance the arbitrator will rule based on what was already tentatively agreed upon.

Vice Chair Seaman:

Are there any questions? Seeing none, I would like the sponsor to comment.

Mary Walker:

Comingling legally restricted funds with the general fund, which is not legally restricted, is a very poor financial practice. I do not even think it would be legal. You are talking about legally restricted gas taxes that can only be used for roads, and legally restricted voter-approved overrides that can only be used for what the voters designated in these special revenue funds. You cannot comingle the legally restricted funds with the nonlegally restricted funds in the general fund. We concur with Ms. King.

Assemblyman Wheeler:

We have no problem with the transparency on other contractual employees. We will continue to talk on this bill.

Vice Chair Seaman:

I will close the hearing on A.B. 249 and open the hearing on Assembly Bill 311.

[Assemblyman Kirner reassumed the Chair.]

Assembly Bill 311: Makes various changes to the regulation of residential mortgage bankers, mortgage brokers, mortgage loan originators and mortgage servicers and enacts the Nevada Private Money Real Estate Loan Act. (BDR 54-668)

Assemblyman Nelson Araujo, Assembly District No. 3:

This bill's inception was when I met with the Advisory Council on Mortgage Investments and Mortgage Lending, which is known as MAC [for Mortgage Advisory Council]. They have been working at this for 16 years. They are a strong group of five people who represent various sectors within the mortgage business. They come together as a council to see what areas within the Division of Mortgage Lending, Department of Business and Industry, can be changed to be sure that people have a better experience and to ensure that the entire division is being run smoothly.

One of the big issues they had was the licensing process. Currently there is just one licensing process and that seemed to be burdensome for various reasons. Within that mix you have the residential lenders, the commercial lenders, and the private lenders. They are three very different areas of practice and they all went through one process of licensing. With the help of the Commissioner of the Division of Mortgage Lending, the Advisory Council was able to come up with this piece of legislation which would, in essence, break up that licensing process so it is more streamlined depending on the area of expertise. At the same time, creating these processes will make it easier for those who are practicing within that specific area to understand and to do their job correctly.

There are two important amendments related to this bill. One is to clean up language and is from the MAC group and me ([Exhibit L](#)). The second comes from the Manufactured Home Community Owners; they will speak to their amendment. Both amendments are friendly. I look forward to working with those who have suggested changes to the bill.

In sections 2 to 47 of the bill, we are creating a private money separation section for the private mortgage lenders. It is an entirely new process, and this is why it has been divided into three processes. Sections 50 to 144 are intended to clean up the residential portion of the licensing process. Sections 145 to 151 are being struck. Sections 152 to 181 at the end of the bill are intended to clean up a lot of the *Nevada Revised Statutes* (NRS) that are currently in place.

Charles Mohler, Chair, Advisory Council on Mortgage Investments and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry:

Nevada Revised Statutes Chapter 645B and the Division of Mortgage Lending were created about 20 years ago. About 16 years ago the Advisory Council on Mortgage Investments and Mortgage Lending (MAC) was created as a legislatively appointed group of volunteers to advise the Legislature and the regulatory division and work with the industry to make things work. About every session there has been some kind of change or adjustment. Right now there are contradicting and redundant sections in the law and there are parts that are misplaced. With MAC's purpose of advising people, about three years ago we surveyed the industry members to try to find out and understand what the issues and concerns were. We determined that it was time to clean up all of the pieces and parts of statutes that had been created over the last approximately 20 years. We met in full-day sessions numerous times as a committee with the Commissioner to create this bill. We know other people have suggested amendments and clarifications.

Chairman Kirner:

The bill is long and I do not need you to go through every section and line. You have written a bill. You reviewed it with a group of people with whom you have worked. Now that the bill is written, have you gone back to those people to show them what it looks like? Have you solicited input from other people than the ones that you worked with?

Charles Mohler:

In a limited amount of time, we have tried to get it out to as many people as we could. That is when we started receiving comments back, and we are trying to bring those comments together. We are ready, willing, and able to work with all of them. One of the concerns is that it has come out with a fiscal note. We are willing to remove anything to do with fee increases, or make the adjustments in language to not have a fiscal note, so we can go back to the original intent of separating out the residential and private money and removing the commercial section that shows up in the amendment because we determined that was not necessary.

Chairman Kirner:

The fees will make the bill require a two-thirds majority and need to be referred to the Assembly Committee on Ways and Means, which at this juncture could be a black hole. We are interested in helping Assemblyman Araujo get his bill through. Are you going to do something with the feedback?

Charles Mohler:

We do have feedback from people. There are some terms and definitions that have raised questions about how something is going to be applied and are we accidentally creating any loopholes when we have been trying to do a clean up. Once we bring in the comments from a number of people, we hope to close that up. We are not drawing any lines in the sand, and we are open to modifying and adjusting it to make it pass because we have put too much time in on it.

Assemblyman Araujo:

We have had periodic conference calls where we have looped in all of the partners so everyone can voice their positions. That offer remains open to anyone who wants to continue that dialogue. We do have some people who will be testifying in support. The one factor that may be affecting people in voicing their opinions is the fact that it is a rather large bill. Some people are now trying to read the entire bill to get the information for their members. I am willing to talk with those who did not get heard in time.

Chairman Kirner:

We want to be able to process this bill, and the deadline for amendments is pending. Are there any in support of this bill?

Kyle Nagy, Member, Advisory Council on Mortgage Investments and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry:

I am a member of the MAC and I am also a commercial mortgage banker in southern Nevada. I have worked with Mr. Mohler and the Commissioner over the last 16 months on this bill and I believe it is good legislation and is required for our industry. The industry supports it and the Commissioner has had a hand in drafting the language and working through the group. The length of the bill is mostly due to restating and clarification of existing regulation. There is not a lot of new material in there, but because there has been a hodgepodge of legislation since the Division was formed, this bill has gathered a lot of different pieces that required clarification. I am in support of the bill.

Chairman Kirner:

Are there any questions? [There were none.]

Joshua Hicks, representing Manufactured Home Community Owners:

We would like to thank Assemblyman Araujo for including some language in this bill in section 118 that we have been asking for and believe is very important for the manufactured home community. It is a similar concept to what was in another bill that was heard last week, Assembly Bill 270. It has to do with an exemption from the requirement to be licensed as a mortgage lender when there

is a de minimis amount of loans made. The bill as it exists says that you do not have to be licensed if you own one of these manufactured home parks and you sell a home and carry the mortgage as long as you do three or less per year. We requested five or less per year and Assemblyman Araujo has been receptive to that. That is what we requested in A.B. 270 as well. That is important for this industry, and it will allow them to do some of these things for people who want to buy a home and cannot get a loan from somewhere else. There may be another amendment. I am not sure how I feel about it, but I will be happy to talk to them as well.

Chairman Kirner:

Please do look at that and make it consistent with the language in the other bill.

Darren K. Proulx, Member, Advisory Council on Mortgage Investments and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry:

I am a mortgage broker for Newmark Investment and Loan and a member of the MAC. I looked under the NRS, and it says that I serve at your pleasure. I was appointed to this Council and if I had known what it was going to take, I might have had second thoughts. We met two to three times per month at our own expense. I flew many times to Las Vegas for eight-hour meetings. The MAC is supposed to consult with, advise, and make recommendations to the Commissioner and the Legislature concerning enactment of any legislation. That is what we were tasked to do. We, as a five-member board, have done that over the last 16 months.

Now that this bill has been created, we want your support. It is a big bill, but a lot of it is a restating. It is cleaning up the hodgepodge that exists currently in the NRS. We have read every single word multiple times and spent a great deal of time on it. Somebody talked about who we work with, and I do not work with anybody; I volunteer with the MAC. We were appointed because we are experts in the industry. We took a task and went about it for a long period of time. We need to see the task through to a successful conclusion. We are open to address any thoughts and amendments.

Chairman Kirner:

Thank you, Mr. Proulx, and we do appreciate your service to the state. Are there any questions? Seeing none, we will move to Las Vegas.

Laura Lychock, President, Clayton Mortgage and Investment, Henderson, Nevada:

I am with Clayton Mortgage and Investment. We are in favor of the bill and understand all of the work and effort that has been presented. We have a few

issues which I emailed to the members of the MAC and the Commissioner. I am a private money lender and have been in the state of Nevada for over 25 years. There are a few things that relate to us in this NRS chapter that we will be trying to have separated out.

Chairman Kirner:

You sent your email to the bill sponsor and they have indicated that they received it, so I think that is good. Are there any questions? [There were none.]

Janis Grady, Member, Advisory Council on Mortgage Investments and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry:

I am the qualified employee for Lending Tree and am also on the MAC and have put in many hours on this bill. The Commissioner was here, but he had to leave. He mentioned that he was neutral on the bill and that he worked with us on this bill. I have been part of the Nevada Association of Mortgage Professionals, which is now merged with the Nevada Mortgage Bankers Association, and they are in agreement and support this bill.

Chairman Kirner:

Are there any questions for the MAC committee? [There were none.] Is there anybody else who wishes to testify in support of the bill? [There was no one.] Is there anyone neutral on the bill? Seeing no one, we will move to opposition.

Max Haynes, Alpen Mortgage, Reno, Nevada:

I represent Alpen Mortgage, a private money lender in northern Nevada and Reno. We understand that we are one of the largest volume private lenders, and we did about \$50 million in private money loans in the last year to a year-and-a-half to help get the economy back on track while banks were not able to provide that kind of financing. They were primarily commercial, construction, and subdivision loans.

Unfortunately, I was not on the MAC, and I want to clarify a couple of points. There was no bill sent out to the people in the industry. Assembly Bill 311 was sent by several attorneys to me to ask for comment. I made a phone call to a member of the MAC and emailed the Commissioner and did not get a response from the Commissioner. One member of the MAC said they had been working on this for a long time, and I was barely able to read the 120 pages. The intent of the MAC was to clarify a lot of rules and regulations that are confusing. I have spoken to the Commissioner at length over the past few months about clarifying that. I do not believe the bill's benefits outweigh the additional regulations that have now been added. There is no one else here

to oppose the bill because no one knew about this hearing. There were two or three brokers who were informed yesterday and were not able to attend. You are seeing all of the support from members of the MAC. We never saw this until a week ago. I saw the amendment this morning, and the MAC is telling me we can make some changes. We are running a very busy business. My company is the largest volume private lender in northern Nevada and possibly in the top few in the state.

I must oppose this bill for the following reasons. This bill adds numerous new regulations requiring study and possible legal review. Laura Lychock composed an email which stated the key issue. She said, "This is not the time in a fragile economy to add additional regulation that will scare investment in Nevada." I have received phone calls from no less than three major attorneys representing investors, who are questioning the bill and describing the bill as adding further complication when advising clients to invest in private loans.

The bill attempts to create a new endorsement for mortgage brokers who are coordinating private loans. Mortgage brokers used to number in the thousands, but now there are only 167. The Division of Mortgage Lending is already years behind and slow to respond. The annual audit takes about two-and-a-half years to conduct. They have a very limited staff. It has taken them about a month to respond to an email about a regulation. Adding new regulation that requires explanation and interpretation without additional revenue or staff will add confusion. The attorneys who are writing to the Division to ask for clarification are getting a frequently asked questions (FAQ) form returned to them along with a memo and no direct response. That is subject to interpreting and that slows the deployment of capital.

Section 14 was snuck into the bill. "Private money loan" is defined by qualifying as a private money loan, the loan transaction must be closed by a licensee as lender of record before assigning any portion of the loan to any private money investor, even if the assignments are made simultaneously. This is telling private lenders that they must have a broker. They are not separating commercial if the loan involves private investors. They are saying that the broker has to originate the loan, then assign the note and the deed of trust to that investor. The attorneys pointed out that this is not only ludicrous, but disingenuous because we are masking the fact that we are not funding the loan. I do not have the million dollars to fund the loan. The investor is buying the loan. It brings up the question of adequate consideration in the case of foreclosure or deficiency.

There were laws passed about buying notes at a reduction. The legal community has said, until we understand the effect of this, we cannot say this is a good idea. We have not been doing it this way for 25 years. The reason the Commissioner supported the concept was so we could track the loans and see that somebody was licensed before originating them. The last Commissioner asked for the mortgage number, broker number, and name to be at the top of every recorded document so they could track what broker was involved. This is a major change that no one addressed. We are adding more regulation. Why should we change 20 years of practice in the way we have been doing notes and deeds of trust? The sponsors state that they are clarifying the law. Why regulate private money that is digging Nevada out of a recession? Is there a real problem? If there is, then raise the investor standard. Raise the amount of net worth, but find a way to simplify the law, not add additional regulations to the law.

California is complaint-driven on enforcement. We do not have the resources to audit, inspect, and add endorsements because there are only 167 mortgage brokers. Now we are adding more rules and more response is required by a Division that is grossly understaffed. We need to go to a complaint-driven system that the Commissioner can investigate and the Office of the Attorney General can prosecute over basic laws. Why are we more restrictive than California? We are scaring funds out of Nevada back into California. A lot of these laws were confusing because the Assembly in the last few sessions got overwhelmed with people who lost money. A lot of that had to do with the economy, not just bad practice.

Now the economy is recovering and private money is providing financing and this is saying we want to be more restrictive. There are subtleties, such as in section 19, subsection 2, paragraph (a), where it says an applicant has a minimum of two years of experience working for a private money endorsee within the past five years. How are they going to work for a private money endorsee in the last five years when section 26, subsection 1, paragraph (a) suggests we make a law that the total money invested by a private money investor in loans secured by a mortgage shall not exceed 50 percent of their net worth or annual income? My investors are high net worth, very qualified investors, and usually represented by legal counsel. Why should I regulate them when they are financing Nevada's growth in mostly commercial and construction loans? It is one thing to talk to them about owner-occupied, but now we are telling them if they have over 50 percent of their worth in private loans, they are violating the law. There was another provision included that

said if you violate the law, there are 364 days of jail time. I was told, if you are a good operator, why should you be afraid of jail time? The lawyers for my investors saw that section and were astounded and said Nevada is going after private money.

The reason there is no revenue licensing requirement is because they believe that will not be able to get a two-thirds vote. I have a lot more issues, and it would take a lot of work.

Chairman Kirner:

Do you have your concerns in writing?

Max Haynes:

I will need some time to put my objections in writing, and I will also provide some objections from legal counsel who are specialists in notes and deeds of trust.

Chairman Kirner:

We need to get our bills out of Committee by next Friday. Are there any questions? [There were none.]

Assemblywoman Kirkpatrick:

I would like to have a further discussion because it sounds as if you perhaps should be part of the MAC. I was part of making the appointments in a bipartisan fashion. They do a great job as volunteers, so I do not want you to think we are trying to ram this through. I would like to hear your specific concerns.

Max Haynes:

I know they are good people, but maybe they got caught in the process. There have not been any emails since the MAC had a framework for this bill. It is difficult to make legislation in an isolated world. They may have polled people three years ago, but most of those people are not in business anymore. Now we are talking about something with huge collateral effect such as looking at the validity of a note and a deed of trust if it is assigned. The Commissioner was very good and we discussed some of these issues. The Commissioner is neutral on this bill. I emailed the Commissioner but not the MAC because I thought, maybe I am missing something, and I have not been able to fully read the bill until the last couple of days. The three or four people I checked with have not even read the bill.

Chairman Kirner:

I think the bill sponsor would like to see what you have and try to incorporate it. We want to pass good policy.

Max Haynes:

Let us be careful to not add more regulations at this time. If we are clarifying, minimizing, or pursuing an enforcement issue, I am in favor of that. I am not in favor of adding complexity to people who are already confused. We are asking the Commissioner constantly for clarification if there are exemptions about certain loans. This bill does not make it easier. The intent and the honor of the MAC is good, but the results may not be good.

Chairman Kirner:

I will invite the bill sponsor to close.

Assemblyman Araujo:

I want to thank the Committee for hearing the bill and the MAC for their diligent work. I am eager to work with Mr. Haynes to find a middle ground.

Chairman Kirner:

It seems to me that there is a process, and there is a group of people who have not been fully engaged in that process. Please work with the other parties to make the necessary changes.

Assemblywoman Kirkpatrick:

I do not want Assemblyman Araujo to take the blame for this bill because he has taken ownership. As the current Chair of the Legislative Commission, I worked with other legislators to appoint the MAC members. They asked to have a bill draft. We agreed to give them a bill draft to work with the Division of Mortgage Lending to ensure that we protect Nevadans for the long term when it comes to all of the mortgage situations we have experienced. I gave Assemblyman Araujo the bill draft to work with the MAC and, unfortunately, the legal staff was working on many other things and came out with a bill a little later than all of us would have liked.

Chairman Kirner:

I appreciate Assemblywoman Kirkpatrick's work to help freshman legislators, including me. I am going to close the hearing on A.B. 311 and open the hearing on Assembly Bill 454.

Assembly Bill 454: Revises the applicability of provisions governing manufactured home parks. (BDR 10-1127)

Assemblyman Ellison:

This bill looks at the trailer parks with the least number of units in the state. The bill says 10 units, but I think it will be a lot less. I have contacted the Manufactured Housing Division and we will add an amendment to the bill. Some of the older, smaller trailer park owners have to do continuing education. These trailer parks need a lot of maintenance, but they still have to comply with Chapter 118B of *Nevada Revised Statutes*. A lot of these people are senior citizens who live in very rural areas, and they have to travel to Winnemucca or Las Vegas to take six-hour classes. These parks are lucky to make \$40 per month per unit after paying utilities and taxes. Only nine of the trailer parks in Nevada would fall under this statute. This would exempt them from taking the continuing education course.

Chairman Kirner:

Please work on your amendment and get it back to our Committee Manager so we can share it with members of the Committee. Are there any questions?

Assemblywoman Kirkpatrick:

I thought we fixed this last session.

Assemblyman Ellison:

They made promises to fix this internally, but it did not happen.

Assemblywoman Kirkpatrick:

The Manufactured Housing Division did not make regulations to change that, so you have to change the law.

Chairman Kirner:

Since there is no one here to support, oppose, or testify in neutral, I will close the hearing on Assembly Bill 454. There is no one here for public comment. The meeting is adjourned [at 5:31 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 1, 2015

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 137	C	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 173	D	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 179	E	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 227	F	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 295	G	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 409	H	Assemblywoman Seaman	Proposed amendment
A.B. 409	I	Gary Landry/State Board of Cosmetology	Letter
A.B. 249	J	Mary Walker/Carson City, Douglas County, Lyon County, and Storey County:	Proposed amendment
A.B. 249	K	Mike McLamore/Nevada State Education Association	Letter from Ruben Murillo, Jr., Nevada State Education Association
A.B. 311	L	Assemblyman Araujo	Proposed amendments from The Mortgage Advisory Council